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**Re: Instituting and Conducting the Prosecution of an Offence**  
**Section 8 Garda Siochana Act 2005 — General Direction No. 3**

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Effective from 8 November, 2011, the Director of Public Prosecutions has issued a new General Direction under Section 8 of the Garda Siochana Act, 2005. General Direction No. 3 provides for the continuation of the former Direction contained in General Direction No. 2. The new General Direction is in **exactly the same terms** as General Direction No. 2 and has been issued by the recently appointed Director of Public Prosecutions.

Section 8 of the Garda Siochana Act 2005 is a very important provision which is relevant to all prosecution cases. The section allows the Director of Public Prosecutions to give general or specific directions to An Garda Siochana in relation to the institution and conduct of prosecutions. Members of An Garda Siochana must comply with any such directions. The section puts the relationship between An Garda Siochana and the Director of Public Prosecutions on a statutory footing. Every member should be familiar with its terms and requirements. A copy of the section is set out at the end of this Directive (Appendix 1).

General Direction No. 2 came into effect on 7 December, 2009. H.Q. Directive No. 156/09 dealt with section 8 of the Garda Siochana Act 2005 and General Direction No. 2 issued by the Director of Public Prosecutions under that section. The General Direction identified (a) the offences which could not be preferred by An Garda Siochana without the prior directions of the Director of Public Prosecutions, and (b) the offences which could be dealt with in the District Court without the Director of Public Prosecutions specific directions consenting or electing for summary disposal. It should be emphasised that the Director of Public Prosecutions Office need to be consulted only in cases which are excluded under the General Direction (see point No. 2 overleaf). There is a third category of cases not expressly referred to in the General Direction which can be commenced without the prior directions of the Director of Public Prosecutions Office but cannot be dealt with in the District Court without the

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Director of Public Prosecutions consent. Examples of cases in this category are robbery and serious drugs cases. The General Direction does not require the Director of Public Prosecutions Office to be consulted before an accused is charged with these offences.

The Director of Public Prosecutions has now issued General Direction No. 3, which came into force on **8 November, 2011** and replaced General Direction No. 2. It is vital that each member of An Garda Síochána complies with this Direction, in particular, in deciding whether to charge an accused or in dealing with summary disposal of an indictable offence. The General Direction will be posted on the Garda website and the Director of Public Prosecutions Office website and will be circulated to the judiciary. It is likely, therefore, that compliance with the General Direction will be closely monitored by the courts and by defence lawyers.

Effective from 8 November, 2011 the Director of Public Prosecutions has given the following General Direction for the purposes of section 8:-

- I. Subject to the terms of this or any subsequent direction a member of An Garda Síochána may institute and conduct in the District Court any prosecution for a criminal offence, whether the offence is a summary offence or an indictable offence. Any such prosecution shall be taken in the name of the Director of Public Prosecutions.
2. The decision as to whether a prosecution should or should not be instituted shall be taken by the Director of Public Prosecutions in the following category of cases: -
  - (a) An offence arising from an unlawful killing (including any case of murder, manslaughter, fatal road accident or other fatal accident). Where the victim is deceased no other charge arising from the same incident should be preferred without prior directions. Likewise, where the victim is seriously injured and in danger of dying no charge should be preferred without prior directions. **(Notwithstanding H.Q. Directive 115/04 an accused should not be charged with having excessive alcohol in their body or refusing or failing to provide a specimen if they were involved in a road traffic accident where death has resulted).**
  - (b) An offence of causing serious harm contrary to section 4 of the Non-Fatal Offences against the Person Act, 1997.
  - (bb) An offence of threatening to kill or cause serious harm contrary to section 5 of the Non-Fatal Offences against the Person Act 1997
  - (c) An offence under sections 51A, 52 or 53 of the Road Traffic Act, 1961, as amended, which has resulted in serious injury being suffered by another road user. **(Notwithstanding H.Q. Directive 115/04 an accused should not be charged with having excessive alcohol in their body or refusing or failing to provide a specimen if they were**

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involved in a road traffic accident where serious harm has resulted).

- (d) An offence of a sexual nature.
- (a) An offence of assaulting a member of An Garda Siochana, unless the charge is sanctioned by a member of An Garda Siochana of the rank of Inspector or higher. (Please see Appendix 2 in relation to the circumstances in which such a charge may be sanctioned.)
- (I) Cases involving allegations against members of An Garda Siochana other than minor road traffic cases. Directions should be sought from the Director or Public Prosecutions in any case raising a serious issue as to whether the driving of a Garda amounted either to dangerous driving or careless driving. **(A member of An Garda Siochana may be charged with a breach of section 49(4) of the Road Traffic Act 1961 (as amended) or with refusing or failing to provide a specimen of breath, blood or urine under section 13 of the Road Traffic Act 1994 (as amended) without the prior directions of the Director or Public Prosecutions. A Garda should not be charged under sections 49(4) or 13 in any case without the prior directions of the Director or Public Prosecutions where more serious charges are in contemplation. Where a Garda is charged with sections 49 or 13 a Garda file should be submitted to the Chief Prosecution Solicitor/State Solicitor within one (1) month of the charge).**
- (g) Harassment contrary to section 10 of the Non-Fatal Offences against the Person Act, 1997.
- (a) Endangerment contrary to section 13 of the Non-Fatal Offences against the Person Act, 1997.
- (hh) Breach of the peace contrary to common law.
- (b) False imprisonment.
- (c) A terrorist offence and any offence related to terrorism including any offence under the Offences Against the State Acts, 1939 to 1998.
- (d) Any case in which it is proposed to seek a trial in the Special Criminal Court.
- (I) An offence of possession **or use** of a firearm or ammunition other than possession without a certificate.
- (m) An offence under the Explosive Substances Act, 1883.
- (e) Any allegation of assault arising from a sporting encounter.
- (f) An offence under the Official Secrets Act, 1963.

- (p) Briber) and corruption.
- (a) An offence by an elected Official or a public official alleged to have been committed in the course of carrying out official functions.
- (b) Genocide, war crimes, crimes against humanity, piracy and hijacking.
- (c) Cases in which it is provided by statute that proceedings may not be commenced without the consent of the Director of Public Prosecutions. (Please see Appendix 3).

3. (1) The Director of Public Prosecutions consents to summary disposal in the following category of cases without submission of a Garda file:

- (d) An offence under section 4 of the Criminal Justice (Theft and Fraud Offences) Act 2001 (the Act of 2001) (theft) where the property appropriated does not exceed €7,000 in value.
- (e) An offence under section 8 of the Act Of 2001 (making off without payment). where the property obtained does not exceed €7,000 in value.
- (f) An offence under section 12 of the Act of 2001 (burglary) where any property taken does not exceed €7,000 in value.
- (g) An offence under section 15 of the Act 61'2001 (possession of certain articles).
- (h) An offence under section 17 of the Act of 2001 (handling stolen property) where the property does not exceed €7,000 in value.
- (i) An offence under section 18 of the Act of 2001 (possession of stolen property) where the property does not exceed €7,000 in value.
- (j) Any offence under Part 4 of the Act of 2001 (forgery offences) where the property does not exceed €7,000 in value.
- (k) Attempts to commit offences at (a). (b), (c). (d), (e), (f or (g) above.

(2) A direction as to whether a case can be disposed of summarily should be sought in the usual manner in relation to the other offences under the Act of 2001.

**(1) The Garda having carriage of the case should consider forwarding a file to the Director of Public Prosecutions in any case where, although the offence or offences are captured by the above general consent, the multiplicity of the charges or the previous record of the accused or other aggravating circumstances suggest that summary disposal would**

**be inappropriate or that a 12 months sentence (or in the case of more than one offence, a 24 month sentence) would be inadequate.**

4. ( I ) 'File Director of Public Prosecutions elects for summary disposal in the following category of cases without submission of a Garda file:
- (a) Any offence under section 3 of the Non-Fatal Offences against the Person Act. 1997.
  - (b) Any offence under section 112 of the Road Traffic Act. 1961, as amended.
  - (c) Any offence under section 3 of the Casual Trading Act, 1995.
  - (d) An offence under section 15 of the Misuse of Drugs Act. 1977, where in the opinion of the Garda the market value of the drugs does not exceed
    - (i) in the case of cannabis or cannabis resin an amount of €1.500
    - (ii) in the case of diamorphine, LSD (lysergic acid diethylamide) or cocaine an amount of €500 and
    - (iii) in relation to any other controlled drug an amount of €1.000.
  - (e) Any offence under section 3 of the Misuse of Drugs Act, 1977, (for all controlled drugs).
  - (ee) An offence under section 15C of the Misuse of Drugs Act, 1977 (as inserted by section 83 of the Criminal Justice Act 2006) [supply of controlled drugs into prisons etc.] provided the accused is not employed by the State, where in the opinion of the Garda the market value of the drug does not exceed
    - (iv) in the case of cannabis or cannabis resin an amount of €1.500
    - (v) in the case of diamorphine, LSD (lysergic acid diethylamide) or cocaine an amount of €500 and
    - (vi) in relation to any other controlled drug an amount of €1,000.
  - (0) Any offence under the Criminal Damage Act. 1991 where the property does not exceed €7,000 in value.

An offence under section 9( I ) of the Firearms and Offensive Weapons Act 1990, as amended by section 39 of the Criminal Justice (Miscellaneous Provisions) Act 2009.

- (h) An offence under section 36 of the Prisons Act 2007 [unauthorised possession or use of a mobile phone etc. in a prisOn], provided the accused is not employed by the State.
  - (d) A breach of section 12 of the Sex Offenders Act 2001, as amended by section 13(b) of the Criminal Law (Human Trafficking) Act 2008.
- (2) The Garda having carriage of the case should consider forwarding the file to the Director of Public Prosecutions in any case where, although the offence or offences arc captured by the above election, the multiplicity of the offences or the previous record of the accused or other aggravating circumstances suggest that summary disposal would be inappropriate or that a 12 month sentence (or in the case of more than one offence, a 24 month sentence) would be inadequate.
5. An Garda Siochana must seek the consent of the Director of Public Prosecutions to an accused being sent forward for trial or being sent forward for sentence on a signed plea.
1. An Garda Siochtina are encouraged to seek directions in any case, even of a summary nature, where there is an unusual question of law involved, where the charge is without fairly recent Irish precedent or where the matter has aroused unusual public interest, or is likely to do so.
1. (I) No existing Garda H.Q. directive concerning the instituting and conduct of the prosecution of offences. unless incorporated in this or any subsequent general direction shall be considered a general direction for the purposes of section 8.
- (2) Any such existing circular or directive may however be considered as guidance for the investigation or prosecution of offences, unless its terms have been amended or rescinded by this general direction or any subsequent general direction. Likewise. unless incorporated into this or any subsequent general direction the Guidelines for Prosecutors shall not be considered a general direction for the purposes of section 8.
2. In this general direction a reference to the Director of Public Prosecutions where the context so admits includes a reference to a professional officer of the Director directed pursuant to section 4 of the Prosecution of Offences Act. 1974. to perform a function of the Director.
3. **General Direction No. 2 (of 7 December 2009) will cease to have effect on 8 November, 2011.**

## Explanatory note on the changes that this General Direction makes

### **(A) Excluded Offences**

The prior directions of the Director of Public Prosecutions Office will now be required for the following further offences —

- (i) threat to kill or cause serious harm.
- (ii) breach of the peace contrary to common law, and
- (iii) an offence involving the *use* of a firearm or ammunition, as well as possession.

The Gardai can still charge the offence of possession of a firearm or ammunition without a certificate but this should never be used as a holding charge in a case where more serious charges are being contemplated.

The offence of common law breach of the peace has been made an excluded offence because there continue to be legal challenges to this offence in terms of its summary disposal and constitutional validity. **If there is any case where this offence has been charged without the Director of Public Prosecutions directions and not yet disposed of by the courts, a file should be submitted to the Director of Public Prosecutions Office without delay.** The offence is an indictable offence and can be disposed of in the District Court only with the accused's consent. The statutory offence under section 6 of the Criminal Justice (Public Order) Act 1994 should adequately cover most situations.

### **(B) Summary Consent/Election.**

The Director of Public Prosecutions has extended the offences for which there is now general consent/election for summary disposal to the following offences —

- (i) an offence of supplying controlled drugs into prisons and places of detention, provided the drugs come within the normal market value limits and the accused is not employed by the State (such as a prison officer).
- (ii) an offence under section 9(1) of the Firearms and Offensive Weapons Act 1990 (a summary and indictable offence since 1 August 2009).
- (iii) an offence of possession of a mobile phone etc. in a prison, provided the accused is not employed by the State,
- (iv) breach of section 12 of the Sex Offenders Act 2001, as amended by section 13(b) of the Criminal Law (Human Trafficking) Act 2008, and
- (v) burglary up to a property limit of €7,000.00, even where there was an occupant on the premises at the time of the burglary.

There is no requirement to seek the consent of the Director of Public Prosecutions for summary trial in a burglary case where there was an occupant on the premises. However, members should continue to seek the consent the Director of Public



Prosecutions Office to summary disposal in a burglary case where there is any confrontation between the burglar and an occupant.

**Human Rights**

Members carrying out their functions shall at all times respect a person's personal rights and his/her dignity as a human being and shall not subject any person to ill-treatment of any kind.

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## APPENDIX I

### **Section 8 Garda Siochana Act 2005**

- 8—(1) No member of the Garda Siochana in the course of his or her official duties may institute a prosecution except as provided under this section.
- (2) Subject to subsection (3), any member of the Garda Siochana may institute and conduct prosecutions in a court of summary jurisdiction, but only in the name of the Director of Public Prosecutions.
- (3) In deciding whether to institute and in instituting or conducting a prosecution, a member of the Garda Siochana shall comply with any applicable direction (whether of a general or specific nature) given by the Director of Public Prosecutions under subsection (4).
- (4) The Director of Public Prosecutions may give, vary or rescind directions concerning the institution and conduct of prosecutions by members of the Garda Siochana.
- (5) Directions under subsection (4) may be of a general or specific nature and may, among other things, prohibit members of the Garda Siochana, from
- (a) instituting or conducting prosecutions of specified types of offences or in specified circumstances, or
  - (b) conducting prosecutions beyond a specified stage of the proceedings.
- (6) If a prosecution is instituted or conducted by a member of the Garda Siochana in the name of the Director of Public Prosecutions —
- (c) the member is presumed, unless the contrary is proved, to have complied with this section and any applicable direction given by the Director under this section. and
  - (d) nothing done by the member in instituting or conducting the prosecution is invalid by reason only of the member's failure to comply with this section or that direction.
- (7) Nothing in this section —
- (e) precludes the Director of Public Prosecutions from, at any stage of the proceedings, assuming the conduct of a prosecution instituted by a member of the Garda Siochana. or
  - (f) authorises a member of the Garda Siochana to institute a proceeding without the consent of the Director of Public Prosecutions if an enactment prohibits the institution of that proceeding except by or with the Director's consent.
- (8) For the purpose of this section —
- (g) a direction is of a general nature if it relates to a class of prosecutions, and
  - (h) a direction is of a specific nature if it relates to the prosecution of a person for a specific offence.

## **APPENDIX 2**

### **Instituting the Prosecution of an Offence of Assault on a member of An Garda Siochana.**

In para 2 (e) of General Direction No.3 the Director of Public Prosecutions permits an member of Inspector rank or higher to direct a charge of assault on a member of An Garda Siochana, The purpose of this instruction is to clarify the terms in which this authority may be exercised.

It is intended to cover only clear-cut cases of assault where there is a strong public interest in charging immediately. An example would be the case of a Garda who is assaulted by a prisoner in a station in full view of witnesses in circumstances where there can be no suggestion of any wrongdoing on the part of the Garda involved. However, the vast majority of cases should continue to be the subject of a file to the office of the Director of Public Prosecutions, including all cases where the facts appear to be in dispute.

If the Superintendent or Inspector does direct a charge a report on the matter setting out (a) the circumstances of the assault and (b) the reason why a charge was directed should be submitted in the office of the Director of Public Prosecutions within 7 days of the charging.

### APPENDIX 3

#### **DIRECTOR OF PUBLIC PROSECUTION'S CONSENT REQUIRED FOR PROSECUTION: FREQUENTLY ENCOUNTERED CASES**

- I. Section 15A Misuse of Drugs Act (possession of drug(s) exceeding €13.000 in market value)
  
2. Section 15E3 Misuse of Drugs Act (importation of drug(s) exceeding €13,000 in market value)
  
1. Prohibition of Incitement to Hatred Act. 1989
  
2. Section 7(2) Criminal Law Act. 1997 (doing act to impede apprehension or prosecution of a person who has committed an arrestable offence)
  
3. Section 8 Criminal Law Act. 1997 (concealment of arrestable offence for reward)
  
4. Section 16 Non-Fatal Offences Against the Person Act, 1997 (abduction of child by parent etc)

The above list is not exhaustive. There are other offences such as under the Official Secrets Act, 1963 and certain sexual offences such as marital rape which are in any event listed in paragraph 2 of the Director of Public Prosecution's general direction.

**This information is current at the time of posting but subject to change. Members of the public are advised to seek legal advice**