

**MEMORANDUM OF UNDERSTANDING,**

**PROTOCOLS**

**and**

**AGREEMENT on OPERATIONAL MATTERS**

**between**

**THE GARDA SÍOCHÁNA OMBUDSMAN COMMISSION**

**and**

**AN GARDA SÍOCHÁNA**

## Memorandum of Understanding

1. Both the Garda Síochána Ombudsman Commission (GSOC) and An Garda Síochána are charged with duties that are complex and onerous in relation to each other, as set out in the Garda Síochána Act, 2005, as amended ('the Act').
2. It is recognised by both organisations that their obligations will be best discharged in a spirit of mutual co-operation.
3. Desiring to provide efficient and effective mechanisms to enable GSOC to achieve the two objectives set for it in the Act which are:
  - (1) to ensure operation of an efficient and effective complaints system with full fairness to all persons involved; and
  - (2) to promote public confidence in the process for resolving those complaints;

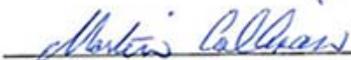
both organisations commit themselves to the attainment of these two objectives.

4. In addition, the two organisations agree to these Protocols with a view to ensuring:
  - civilian oversight of An Garda Síochána maximises effectiveness and fairness to all;
  - that the Protocols not only address alleged misbehaviour by members of An Garda Síochána but also, where appropriate, address issues leading to the grievances of members of the public;
  - that the Protocols reflect the nature, role and obligations of GSOC and An Garda Síochána having regard to the provisions of the European Convention on Human Rights Act, 2003;
  - GSOC and An Garda Síochána carry out their functions in accordance with the fundamental principles of legality, necessity, proportionality, non-discrimination and accountability;
  - proportionate investigation and action in relation to complaints, examinations, inquiries and grievances;
  - that matters of common concern are addressed in a manner that is both effective and efficient.
5. At all times, both An Garda Síochána and GSOC personnel will be aware, and fully respectful, of each other's powers, duties, responsibilities and privileges, as provided for by law.
6. Both members of An Garda Síochána and personnel of GSOC will recognise that their shared priority is to find truth, using only methods that are lawful and that are fully respectful of the human rights of each individual.
7. The highest ethical standards will be maintained at all times by personnel of GSOC and An Garda Síochána in dealing with the public, members of both organisations and with all other agencies throughout operational contact.
8. Written Protocols between GSOC and An Garda Síochána are required under section 108 of the Act which states that GSOC and the Garda Commissioner shall '*make arrangements...by written protocols*' for:

- (a) use of detention facilities at Garda Síochána stations by Designated Officers of GSOC;
  - (b) application of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987/2006;
  - (c) handling of any investigations by GSOC that coincide with investigations of An Garda Síochána into the same matters;
  - (d) the sharing with each other of information, including evidence of offences, obtained by either GSOC or the Garda Commissioner.
9. These Protocols are attached to this Memorandum of Understanding at Part 1. Further matters dealing with operational and administrative issues of joint interest are set out at Part 2.
10. It is recognised by both organisations that this Memorandum of Understanding, the Protocols and matters outlined are not static, immutable documents. They may be reviewed and revised at any time, with agreement, by GSOC and An Garda Síochána (levels 3 and 4, as set out in Chapter 18 of this document).

Agreed this 20 day of July, 2013

Signed:   
**Chairperson**  
**Garda Síochána Ombudsman Commission**

  
**Commissioner**  
**An Garda Síochána**

## Table of Chapters and Appendices

|  |  |   |
|--|--|---|
|  | Glossary   | Page 5  |
| <b>PART ONE The Protocols</b>                    |  |   |
| <b>Chapter 1</b>                                 | Protocol on the use of detention facilities at Garda Síochána stations by GSOC   | Page 6  |
| <b>Chapter 2</b>                                 | Protocol on the application of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 and 2006  | Page 9  |
| <b>Chapter 3</b>                                 | Interview of members of An Garda Síochána  | Page 11   |
| <b>Chapter 4</b>                                 | Protocol on the handling of investigations that coincide<br>Appendix A: Referral and response policy for urgent incidents<br>Appendix B: Protocol for the handling of shared scenes<br>Appendix C: Protocol for the handling and submission of exhibits of potential mutual interest<br>Appendix D: Incident Management Document | Page 12<br>Page 19<br>Page 21<br>Page 23<br>Page 24 |
| <b>Chapter 5</b>                                 | Protocol on the sharing of information including evidence<br>Appendix A: Information-Sharing Protocol  | Page 28<br>Page 30                                  |
| <b>Chapter 6</b>                                 | Protocol on firearms incidents<br>Appendix A: Role and responsibilities of Garda GSOC Liaison Officer following the discharge of a Garda-issue firearm   | Page 34<br>Page 39                                  |
| <b>PART TWO Agreement on Operational Matters</b> |  |   |
| <b>Chapter 7</b>                                 | Administrative/Operational matters<br>Appendix A: Protocol on supervised and unsupervised investigations (section 94 of the Act)   | Page 41<br>Page 45                                  |
| <b>Chapter 8</b>                                 | Reporting of corruption and malpractice/drawing attention to criminal activity   | Page 55   |
| <b>Chapter 9</b>                                 | Investigations by GSOC without receipt of a complaint other than a referral in accordance with section 102(1) of the Act   | Page 56   |
| <b>Chapter 10</b>                                | Examinations by GSOC into 'practices, policy or procedure of An Garda Síochána   | Page 57   |
| <b>Chapter 11</b>                                | Search of Garda Síochána stations  | Page 58   |
| <b>Chapter 12</b>                                | Media and communications   | Page 59   |
| <b>Chapter 13</b>                                | Identification and recognition   | Page 60   |
| <b>Chapter 14</b>                                | Members of An Garda Síochána serving with GSOC   | Page 61   |
| <b>Chapter 15</b>                                | Resolution by mediation or other informal means  | Page 62   |
| <b>Chapter 16</b>                                | False information  | Page 63   |
| <b>Chapter 17</b>                                | Complaints and allegations by Garda members against Designated Officers of GSOC  | Page 64   |
| <b>Chapter 18</b>                                | Review/Resolution/Appeal   | Page 65   |

## **Glossary of abbreviations and terms used**

|              |  |
|--------------|--|
| AGS or GS:   | An Garda Síochána  |
| CO or C/O:   | Case Officer (of GSOC)                                     |
| DO or D/O:   | Designated Officer (of GSOC)                               |
| DPP          | Office of the Director of Public Prosecutions              |
| GIO or GSIO  | Garda (Síochána) Investigating Officer                     |
| GLO          | Garda GSOC Liaison Officer                                 |
| GSA:         | Garda Síochána Act, 2005, as amended                       |
| GSOC:        | Garda Síochána Ombudsman Commission                        |
| IO:          | Investigations Officer (may be AGS or GSOC officer)        |
| MiC          | Member in Charge   |
| SCO          | Senior Case Officer (of GSOC)                              |
| SIO:         | Senior Investigations Officer (may be AGS or GSOC officer) |
| SLO:         | Scene Liaison Officer (Garda)                              |
| The 1997 Act | Non-Fatal Offences Against the Person Act, 1997            |
| The Act      | Garda Síochána Act, 2005, as amended                       |

## **Explanation of Terms**

**Garda GSOC Liaison Officer** For the purpose of these Protocols, this term will relate to the Garda Officer within each Garda District or Section who has been designated to liaise with the GSOC in respect of matters relating to that Garda District or Section.

This will, generally, be the Superintendent, or Manager with responsibility for the area, where the incident occurred or the investigation is being conducted.

In the case of section 102 referrals it will, generally, be the Superintendent who refers the matter.

References throughout this document to the Director of Operations, GSOC, shall be taken, in his/her absence, to refer to his/her nominated deputy.

References throughout this document to Assistant Commissioner, Crime and Security, and Assistant Commissioner, Human Resource Management, in An Garda Síochána shall be taken, in the absence of either, to refer to their nominated deputy.

References throughout this document to 'the Act' or to 'the Garda Síochána Act, 2005' shall be taken to refer to the Garda Síochána Act, 2005, as amended.

## **PART ONE**

### **Chapter 1**

#### **Protocol on the use of detention facilities - section 108(a) of the Act refers**

##### 1.1 Use of detention facilities at Garda Síochána stations by GSOC

- 1.1.1 When detention facilities are required by GSOC, for the detention of a person arrested by GSOC, An Garda Síochána agrees to make facilities available which are geographically suitable. The operational requirements of An Garda Síochána will be taken into account in the allocation of a Garda station for the detention of a person by GSOC.
- 1.1.2 In the case of a planned arrest by GSOC, GSOC will consult with Assistant Commissioner, Crime and Security, in respect of the arrest, and will discuss any operational issues which may arise and identify the Garda station which will be used.
- 1.1.3 An Garda Síochána accepts that the use of its detention facilities by GSOC may have an impact on the operation of the relevant Garda station. The District Officer will provide assistance to GSOC and will make necessary arrangements so that any issues regarding the operation of the Garda station in question are dealt with. Where practicable, persons arrested by GSOC will be brought to Garda stations where no other prisoners are present.
- 1.1.4 An Garda Síochána will identify and agree with GSOC a list of Garda stations with suitable secure detention facilities. These identified Garda stations will be distributed evenly across the country and Garda Divisions so that they are reasonably accessible and reachable by GSOC, as required.
- 1.1.5 The following is a list of facilities which should be available to GSOC at designated Garda stations:
- office facilities;
  - single cell accommodation with blanket and mattress;
  - search room;
  - prisoners' property storage facilities;
  - interview room with audio/visual facilities;
  - custody record recording area (separate custody record to be used);
  - fingerprint facilities/room;
  - power, heat, water, sanitation and basic working furniture;
  - food and refreshments for prisoner;
  - facilities to include gloves, face mask, white suits, magnetrometer, anti-bacterial soap and wipes.

- 1.1.6 Facilities for parking of GSOC vehicles will be provided, where possible.
- 1.1.7 GSOC personnel will comply with any identified relevant health and safety regulations/legislation while using Garda detention facilities.
- 1.1.8 GSOC undertakes, in general and insofar as may be practicable, that if members of An Garda Síochána are detained, their detention will be in a Garda Division other than that in which they serve.
- 1.2 Arrest of a member (or members) of An Garda Síochána
  - 1.2.1 Where practicable and appropriate, when it is the intention of GSOC to arrest a member of An Garda Síochána, Assistant Commissioner, Crime and Security, will be notified, in advance, of the arrest and the circumstances of the case.
  - 1.2.2 Liaison Officers for both organisations will agree a suitable Garda station to which the person should be brought or requested to attend by appointment. GSOC agrees that if a member of An Garda Síochána is detained in a Garda Station, his/her detention, if at all possible, will be at a Garda station in a different Garda Division to that in which he/she serves, as agreed by the Liaison Officers.
  - 1.2.3 In the event that the arrested member of An Garda Síochána is not taken to a Garda station (i.e. is taken directly to court, to hospital, etc.), the Garda GSOC Liaison Officer will be notified where that member is being taken and what is proposed by GSOC.
  - 1.2.4 GSOC will agree in advance with Assistant Commissioner, Crime and Security, any support required to deal with a planned arrest. In urgent cases, GSOC will make contact with Assistant Commissioner, Crime and Security, by telephone as soon as practicable.
  - 1.2.5 An Garda Síochána is committed to supporting GSOC with the necessary assistance as agreed by the Liaison Officer.
- 1.3 Arrest of suspected persons
  - 1.3.1 Persons who are suspects in any inquiry by GSOC will normally be asked to present themselves voluntarily for interview under caution.
  - 1.3.2 GSOC personnel are not trained or equipped to apply force or restraint.
  - 1.3.3 In the event of a request from GSOC to An Garda Síochána for support, then it will be provided as appropriate.
  - 1.3.4 Requests for support will be routed from the Director of Operations, GSOC, to Assistant Commissioner, Human Resource Management.
- 1.4 Use of recording equipment and copies of recorded material
  - 1.4.1 Garda Síochána recording equipment will be used by GSOC personnel at interviews of persons in Garda stations.

- 1.4.2 GSOC undertakes to maintain and retain any written records made during the course of that detention according to the requirements of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006. An Garda Síochána undertakes to maintain and retain any audio or visual records made during the course of that detention according to the requirements of the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006. GSOC will be supplied with a working copy of any such recordings.

## Chapter 2

### **Protocol on the application of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 and 2006**

#### 2.1 Role of Member-in-Charge

- 2.1.1 It is agreed by both organisations that, following an arrest by GSOC, the duties of the Member-in-Charge (MiC) in respect of the person arrested will be performed by the MiC of the Garda station to which the arrested person is brought. The MiC will exercise his/her functions the same as if the person had been arrested by a member of An Garda Síochána. In these circumstances, GSOC will be afforded access to the prisoner for the purposes of interview.
- 2.1.2 In the event of a planned arrest, GSOC will make contact with the office of Assistant Commissioner, Crime and Security. By agreement, a suitable Garda station will be identified to which the person will be brought following arrest. Assistant Commissioner, Crime and Security, will act as liaison between GSOC and the appropriate District Officer.
- 2.1.3 On receipt of notification of a planned arrest of a member of An Garda Síochána by GSOC, the appropriate District Officer will, where possible, ensure that the MiC, for the duration of the arrested person's detention, is of Sergeant rank.
- 2.1.4 In the event of an unplanned arrest, GSOC will, as soon as practicable, make contact with the office of Assistant Commissioner, Crime and Security, to advise of the arrest. In addition, GSOC will endeavour to advise the District Officer, responsible for the Garda station to which the arrested person is to be brought, of the arrest and the imminent arrival of the arrested person.
- 2.1.5 The extension of the period of detention of a person arrested by GSOC and detained by a Garda MiC may be authorised by an appropriate Garda Officer i.e. Superintendent/Chief Superintendent.
- 2.1.6 Where GSOC is required to take (bodily) samples from a person detained, An Garda Síochána will, on request, provide assistance to facilitate the taking of these samples. This assistance will be supervised by a member of An Garda Síochána not below the rank of Inspector. In accordance with the Criminal Justice Act, 1984, as amended, and the Criminal Justice (Forensic Evidence) Act, 1990, as amended, if, following the conclusion of the investigation, no prosecution is commenced against the detained person, all records and samples taken from the arrested person while detained, will be destroyed in accordance with the principles agreed in Appendix B - Protocol for the handling and submission of exhibits of potential mutual interest.

#### 2.2 Interview of persons detained by An Garda Síochána

- 2.2.1 In the event that GSOC requires to interview a person detained by An Garda Síochána, An Garda Síochána shall provide reasonable access which recognises GSOC's duties and functions, while GSOC, for its part, will endeavour to ensure that its requirements will not impede, obstruct or interfere with the ongoing Garda investigation.

2.2.2 If it is the intention of GSOC to interview the detained person in respect of any matter other than that for which the person is lawfully detained, such interview may only take place following consultation with the MiC. Any access granted must be in accordance with appropriate legislation.

## Chapter 3

### Interview of members of An Garda Síochána

#### 3.1 Interviewing of members of An Garda Síochána who are the subject of a complaint

- 3.1.1 Where possible, and expedient, witness interviews will take place by prior arrangement at an agreed venue. This may be at GSOC's offices where facilities are provided. Where appropriate, audio/visual recording of interviews will be arranged.
- 3.1.2 GSOC will inform the appropriate manager, who must be of at least Superintendent or equivalent grade, where it is practicable and operationally appropriate, of its intention to interview a member, under his/her control, prior to such interview taking place. The purpose of this is solely to allow the manager concerned to make appropriate arrangements regarding the member's duty and is in accordance with GSOC's right to advance its enquiries lawfully and independently as it sees fit.
- 3.1.3 Interviews, conducted as part of an investigation pursuant to section 98 of the Act, may be conducted after caution. The Garda member concerned has all the rights and privileges afforded to any person.

#### 3.2 Interviewing of witnesses who are members of An Garda Síochána by GSOC

- 3.2.1 Where possible and expedient, witness interviews will take place by prior arrangement at an agreed venue. This may be at GSOC's offices where facilities are provided. Where appropriate, audio/visual recording of interviews will be arranged.
- 3.2.2 GSOC will inform the appropriate manager, who must be of at least Superintendent or equivalent grade, where it is practicable and operationally appropriate, of its intention to interview a member, under his/her control, prior to such interview taking place. The purpose of this is solely to allow the manager concerned to make appropriate arrangements regarding the member's duty and is in accordance with GSOC's right to advance its enquiries lawfully and independently as it sees fit.
- 3.2.3 Where, in the opinion of GSOC, a member of An Garda Síochána fails to co-operate with an investigation, or behaves in a manner which may bring discredit to An Garda Síochána, the matter will be notified to Assistant Commissioner, Human Resource Management, for appropriate action. An Garda Síochána recognises the importance of co-operation by its members with investigations being conducted by GSOC and will deal with such notifications appropriately.

#### 3.3 Interviewing of persons by An Garda Síochána in GSOC's premises

- 3.3.1 In the event that An Garda Síochána requires the use of GSOC facilities, in relation to the interviewing of witnesses in connection with matters under Garda Síochána jurisdiction, GSOC agrees to make such facilities available, on the authority of the Director of Operations.

## Chapter 4

### Protocol on handling of investigations that coincide

#### 4.1 Scenes Management/Shared Incidents Scenes

- 4.1.1 In any 'live' incident, where issues of safety, containment or other emergency continue, control of the scene will remain with An Garda Síochána.
- 4.1.2 The preservation of scenes of mutual interest is dealt with in Appendix B.
- 4.1.3 A suitable Incident Management Document (Appendix D) will be provided and will be completed by the Garda Síochána Senior Investigating Officer (Garda SIO) and GSOC Senior Investigations Officer (GSOC SIO), setting out details regarding the management of the scene and the investigations being conducted by both parties. The SIOs from both organisations will ensure that this document is maintained and updated as required.
- 4.1.4 In cases where An Garda Síochána and GSOC both have requirements relating to the collection or preservation of evidence, every reasonable effort will be made to ensure that both organisations' interests are met. The SIOs will detail the requirements of both organisations in relation to any evidence being gathered.
- 4.1.5 An Exhibits Officer will be appointed by each organisation to ensure that access to evidence is available at all times. In order to ensure continuity and consistency the Exhibits Officer, where practicable, will not be changed during the course of the examination of the scene or the duration of the investigation. Exhibits will only be released with the approval of the Garda Síochána SIO or GSOC SIO.
- 4.1.6 In order to ensure that a smooth and appropriate transfer of responsibility, in relation to the control of the scene and the investigation of the incident is achieved, An Garda Síochána and GSOC operational personnel will, on arrival, fully brief their counterparts on the circumstances of the incident and any legal requirements involved. Liaison arrangements will be agreed on site. The Incident Management Document will be completed, as soon as practicable, outlining each organisation's responsibilities.
- 4.1.7 At scenes where the primary control has passed to GSOC, the senior Designated Officer (D/O) of GSOC will, following briefing, take overall responsibility for the scene.
- 4.1.8 It may be necessary for members of An Garda Síochána to remain at the scene and to operate under the direction of the Designated Officer. The senior D/O will, ordinarily, pass instructions to Garda members at the scene through the most senior Garda member present who will ensure compliance with such instructions.
- 4.1.9 An Garda Síochána recognises that it may also be necessary for the senior D/O to pass instructions directly to members of An Garda Síochána, in accordance with the powers and duties conferred on the Designated Officer under section 98 of the Act.
- 4.1.10 Where two investigations are running parallel into incidents of equal seriousness both organisations will, at all times, be cognisant of each other's rights and responsibilities, providing full co-operation in recognising those rights and responsibilities.

- 4.1.11 In cases where An Garda Síochána has collected all evidence in relation to an incident and it has not been practicable for GSOC to attend the scene, at that time, following discussions and agreement between both organisations' preservation of the scene will be discontinued. In such cases, An Garda Síochána will ensure that the D/O will have access to all evidence gathered upon arrival.
- 4.1.12 At outdoor scenes, D/O and other personnel will, generally, wear high-visibility outerwear clearly identifying them as GSOC personnel.
- 4.1.13 A detailed set of arrangements and procedures, in relation to scenes of mutual interests, has been developed and is attached at Appendix A.

#### 4.2 Investigations that coincide

- 4.2.1 Both organisations will be cognisant of the investigation being conducted by the other. The SIOs from both organisations shall liaise as early as possible. While each organisation will run its investigation independently, areas of common interest should be established between the Senior Investigations Officers.
- 4.2.2 Where a matter of common interest has been established, it may not be necessary for both organisations to conduct separate investigations in respect of these matters. The SIOs will confer and the organisation best positioned will conduct the necessary enquiries. Therefore, it may not be necessary for officers from both organisations to participate in such enquiries. However, any information or evidence, which is not provided for as 'sensitive', obtained as a result of these enquiries and which is relevant to both investigations will be shared between the organisations, following consultation between the SIOs and subject to any legislative restrictions. Any information or evidence obtained which is deemed 'sensitive' will be shared in accordance with the guidelines provided for in the Protocol regarding information-sharing.
- 4.2.3 The SIOs, or another officer appointed by them, will consult on a regular basis to ensure that all information, which is relevant to both investigations, is identified.

#### 4.3 Section 102(1) of the Act - duty to refer

- 4.3.1 Section 102(1) requires that the Garda Commissioner *shall* refer to GSOC any matter *that appears* to the Garda Commissioner to indicate that the conduct of a member of An Garda Síochána may have resulted in the death of, or serious harm to, a person.
- 4.3.2 The Act provides, at section 82, that '*conduct*' includes both acts and omissions.
- 4.3.3 The decision to refer applies where the death or serious harm appears to be the result of the conduct of a member of An Garda Síochána, therefore:
- a) there is no obligation to refer a case of death or serious harm that occurs prior to Garda contact;
  - b) nor is there a duty to refer in a case of death or serious harm that occurs after the deceased/injured person has had contact with a Garda but where

such a death or injury is in no way related to the conduct of a member of An Garda Síochána.

- 4.3.4 The provision speaks of the conduct having resulted in, rather than caused, death or serious harm.
- 4.3.5 The person killed or seriously harmed may be a civilian or a Garda.
- 4.3.6 The Garda member or members, whose conduct forms the basis of the section 102(1) referral, may be on or off duty.
- 4.3.7 The definitive interpretation of any legal provision is, ultimately, a matter solely for the Courts - however, the following is the agreed position of the Garda Commissioner and GSOC as to the *interpretation* of the legislation:
- ‘*serious harm*’ is defined in section 82 of the Act as follows:
- a) creates a substantial risk of death;
  - b) causes serious disfigurement; or
  - c) causes substantial loss or impairment of mobility of the body as a whole or of the function of any particular bodily member or organ.
- 4.3.8 This definition reflects the definition of ‘*serious harm*’ as provided for under the Non-Fatal Offences Against the Person Act, 1997 (the ‘1997 Act’).
- 4.3.9 Both organisations recognise that timeliness of investigations is critical. In recognition, the Garda Commissioner will endeavour to ensure prompt referrals and GSOC will endeavour to ensure a prompt response.
- 4.3.10 There is established case law on the definition of ‘serious harm’ for the purposes of the 1997 Act, including the judgment of Kearns J. in the *People (DPP)-v-Kirwan, Court of Criminal Appeal, 28<sup>th</sup> October 2005*:
- ‘*loss or impairment of mobility*’ encompasses effects of long and short duration;
- ‘*disfigurement*’ is defined as meaning ‘to spoil the appearance of’ and includes scarring. The age, gender, etc., of the person disfigured is inconsequential. One may be disfigured on a location of the body that is usually covered by clothing;
- ‘*disfigurement*’ connotes an outcome, rather than encompassing a consequence of short duration.
- 4.3.11 For the purpose of a prosecution under section 4 of the 1997 Act, it must be established that serious harm has been caused. Therefore, for the purpose of seeking a direction from the Director of Public Prosecutions (DPP) and conducting a prosecution for an assault contrary to section 4, it is usual practice to wait to assess the outcome of the harm (having regard to any medical treatment given or received), rather than taking a decision on the basis of the immediate effect of the injuries sustained.
- 4.3.12 However, for the purpose of section 102(1) of the Act, all that is required, to activate the Garda Commissioner’s duty to refer, is that it appears to him to indicate that the conduct of a member ‘may’ have resulted in serious harm. Therefore, the threshold of knowledge which is required to activate the ‘duty to refer’ is lower than in the context of the 1997 Act. The Garda officer, who is delegated by the Commissioner and who has to consider a referral under section

102(1), makes the assessment of whether ‘serious harm’ may have occurred at the time that the circumstances of the matter comes to his/her attention. One does not await the outcome of the medical assessment or intervention or to assess the quality of recovery.

4.3.13 The decision to refer a matter to GSOC rests solely with the Commissioner of An Garda Síochána – GSOC does not, and cannot in law, have an involvement in that decision.

4.3.14 The Act requires that the Commissioner of An Garda Síochána must refer any matter when he forms a certain view - namely that the matter appears to him to indicate that the conduct of a member of An Garda Síochána may have resulted in death or serious harm; in other words, the duty to refer exists from the time that this view is formed.

4.3.15 Likewise, the decision not to refer a matter is solely for the Commissioner of An Garda Síochána.

4.3.16 The duty to refer, and any subsequent action of GSOC staff, are, in law, two separate and distinct (though not unrelated) issues. This means:

- the decision to refer is one for the Commissioner of An Garda Síochána;
- the Act makes no provision for a ‘provisional’ or ‘courtesy’ referral - either the matter is referred or it is not;
- GSOC receives section 102(1) referrals - there is no question of the Commissioner of An Garda Síochána ‘calling in’ GSOC staff. The actions of GSOC, on foot of a section 102(1) referral, is prescribed by the provisions of the Act; and
- the reaction of GSOC to a section 102(1) referral is a matter for GSOC and its investigation staff, having regard to the provisions of the Act.

4.3.17 Section 102(2)(a) provides that GSOC shall ensure that any matters referred to it by the Commissioner of An Garda Síochána under section 102(1) are investigated - pursuant to section 102(3) this will take the form of:

- an examination, pursuant to section 91 of the Act by a GSOC Designated Officer (D/O), in the first instance;
- followed by an investigation pursuant to section 95 or section 98 of the Act, as appropriate;
- section 93(1) of the Act empowers GSOC to discontinue such an investigation if, having regard to all the circumstances, GSOC considers that further investigation is not necessary or reasonably practicable.

4.3.18 Decisions by GSOC regarding:

- the duration of an examination pursuant to section 91;

- the determination of an investigation pursuant to section 95 or section 98 of the Act; and
- the appropriateness/timing of a discontinuance pursuant to section 93

will be taken on foot of advice from the GSOC Senior D/O on the ground and having regard to the views of his/her line-management.

4.3.19 Where a referral is in connection with a death, GSOC will, in all cases, make contact with the relevant Coroner to advise him/her of the involvement of GSOC in the matter.

4.3.20 When a matter is referred, in accordance with section 102 of the Act, GSOC will inform An Garda Síochána, as soon as practicable, of the nature of the investigation, if any, to be conducted in respect of the matter. An examination in accordance with section 91 of the Act will be completed in a timely manner and as soon as practicable. Where a matter remains in section 91, GSOC undertakes to provide monthly updates, pursuant to section 103 of the Act, in respect of matter.

4.3.21 Section 102(2) envisages the scenario where a section 102(1) referral has not been made but matters have come to the attention of GSOC (through any other source) which appear to GSOC to indicate that the conduct of a member of An Garda Síochána may have resulted in the death of, or serious harm to, a person.

#### 4.4 Procedures for GSOC for referrals under section 102(1)

4.4.1 GSOC shall, at all times, provide a round-the-clock response service. GSOC has provided contact details for the ‘on-call’ telephone held by the GSOC SIO to the DMR Communications Centre, Harcourt Square. GSOC undertakes to communicate any changes to this arrangement to An Garda Síochána immediately. GSOC undertakes to have Designated Officers (D/Os) on-site, within the State, as soon as practicable, where appropriate.

4.4.2 When an incident occurs that requires referral to GSOC, the following procedures will operate, as set out below.

4.4.3 The Commissioner of An Garda Síochána will put in place arrangements as follows. The senior Garda Síochána member who is present at, or who is notified of, an incident which requires referral to GSOC, that member shall have the duty of notifying the appropriate Garda Superintendent. The Garda Superintendent will cause the Duty Officer of the GSOC to be notified.

4.4.4 The senior D/O receiving the referral will, as soon as practicable, establish contact with the Garda GSOC Liaison Officer at the scene. The senior D/O will make whatever arrangements may appear necessary with the Garda GSOC Liaison Officer, pending the arrival of GSOC at the scene. The Superintendent referring the matter will become the Garda GSOC Liaison Officer, unless another officer is so designated and notified to GSOC by Garda management.

4.4.5 The arrangements will include the taking of any lawful measures which appear to the Garda GSOC Liaison Officer on-scene to be necessary, or expedient, for the purpose of obtaining and preserving evidence relating to the incident, including the:

- preservation of the scene;

- preservation and provision of potential exhibits or evidence, including Garda documentation, vehicles, firearms, uniforms, etc.;
- arranging for initial accounts.

In most circumstances it will be necessary for GSOC to seek an initial account from the Garda member or members involved in the incident. If required, Garda members will be allowed to avail of a rest period and seek welfare support, prior to the account being given. If Garda members have conferred, prior to or during the provision of accounts of an incident, this fact will be identified and brought to the attention of the GSOC SIO.

4.4.6 The following may be requested:

- the GSOC SIO may request the Garda GSOC Liaison Officer to arrange contact with the appropriate technical/forensic services;
- the SIOs of both organisations will arrange for the completion of the Incident Management Document, as soon as practicable.

#### 4.5 Technical and Forensic Services

4.5.1 In circumstances where GSOC requires the assistance of Garda Technical Bureau and Scenes-of-Crime services, the following arrangements (in-line with the provisions agreed in Appendix B) shall apply.

4.5.2 An Garda Síochána recognises, and is conscious of its obligation under the Act when requested, to furnish assistance to GSOC.

4.5.3 Requests for such assistance shall be made by the GSOC Designated Officer through the Garda GSOC Liaison Officer.

4.5.4 At the location of an incident under the control of GSOC, personnel from the Garda Technical Bureau/Forensic Science Laboratory, where deployed, will operate subject to the requirements of the senior GSOC D/O.

4.5.5 GSOC undertakes that instructions at scene will, ordinarily, be communicated through the Garda GSOC Liaison Officer. However, if necessary, instructions will be given directly by the GSOC D/O.

4.5.6 Personnel from the Garda Technical Bureau/Forensic Science Laboratory will be responsible for maintaining the chain of evidence and for the preservation of exhibits, up to such point as to when they may be taken over by GSOC Officers.

4.5.7 In circumstances where GSOC employs the services of forensic and/or technical personnel who have been engaged, under section 74 of the Act to investigate a matter under section 98 (i.e. persons who are not members of An Garda Síochána), An Garda Síochána will extend similar co-operation to such personnel.

4.6 Obtaining and preserving evidence in relation to complaints and investigations under section 102 - section 89 of the Act refers

- 4.6.1 Responsibility for the taking of such measures as are necessary, or expedient, for the purpose of obtaining and preserving evidence relating to the conduct which is the subject of the complaint, or the matter referred in accordance with section 102 of the Act, shall rest with the Garda Superintendent, acting Superintendent or Garda member nominated by him/her. GSOC shall, subsequently, take possession of exhibits, as required.
- 4.6.2 For the avoidance of doubt, section 89 of the Act applies equally to matters arising from section 102 referrals.
- 4.6.3 The GSOC Designated Officer (D/O) shall specify (by telephone or in person and, as soon as practicable, confirm in writing) any records, equipment, vehicles, etc., that he/she believes may constitute such evidence. However, a failure to so specify shall not release the Garda in question from his/her responsibility to obtain and preserve evidence, in accordance with section 89 of the Act.
- 4.6.4 A record of all exhibits gathered will be kept and made available to both organisations. The Liaison Officers from both organisations will ensure that any exhibits, no longer required, are released as soon as practicable.
- 4.6.5 Transfer of physical evidence and exhibits to GSOC D/Os, where this occurs, shall be recorded, timed and signed for by both the Designated Officer and Garda member conducting the transfer, in accordance with the rules relating to continuity of evidence and based on the processes set out in Appendix C on the handling and submission of exhibits of potential mutual interest.
- 4.7 Evidence/Exhibits required in common between GSOC and An Garda Síochána
- 4.7.1 In the event of an exhibit, or any form of evidence, being required in coinciding cases under investigation by An Garda Síochána and GSOC, the following arrangements shall apply.
- In cases where GSOC has jurisdiction, the GSOC SIO may require An Garda Síochána to give possession of evidence/exhibits to GSOC. Similarly, in cases where An Garda Síochána has jurisdiction, the Garda Síochána SIO may require GSOC to give possession of evidence/exhibits to An Garda Síochána.
  - In cases involving items of shared evidential interest to both organisations, possession of the item shall pass to the organisation considered to have the more urgent investigation, dependent on operational, or evidential, requirements. This will be kept under review by both SIOs.
  - In such event, suitable arrangements will be made to record and verify the transfer.
- 4.7.2 A Service Level Agreement has been drawn up and put in place between GSOC and the Forensic Science Laboratory.

## **Chapter 4 - Appendix A**

### **The Garda Síochána Ombudsman Commission (GSOC) and An Garda Síochána (AGS)**

#### **Referral and Response Policy for Urgent Incidents**

##### **General Principles of Intent:**

In accordance with the provisions set out in paragraph 4.3 of the Memorandum of Understanding between GSOC and An Garda Síochána, both parties agree the following operational procedures will apply to the arrangements for the attendance of GSOC personnel at urgent incidents.

##### **GSOC commits that:**

1. it will maintain an on-call team of investigators to respond to urgent incidents;
2. the team will be directed by, at a minimum, a GSOC Designated Officer at SIO grade;
3. there will be a senior Designated Officer called the 'Duty Officer' on-call on a weekly basis;
4. there will be a dedicated, single-purpose, mobile telephone held by the Duty Officer, the number of which will be provided to An Garda Síochána;
5. the Dublin Metropolitan Region (DMR) Communications Centre, Harcourt Square, will be the Single Point of Contact for the notification of incidents to GSOC;
6. based on the information provided as outlined at Point 3 below, the Duty Officer will make the initial assessment regarding the involvement of GSOC in, and response to, the reported incident and will so inform the contacting member of An Garda Síochána;
7. the On-Call Designated Officer may request that An Garda Síochána undertakes certain actions, pending the arrival of the GSOC team (including the call out of specialist and/or forensic assistance where that is deemed to be necessary) and will advise the Garda Síochána contact, as provided at Point 5 below.

##### **An Garda Síochána commits that:**

1. GSOC will be provided with direct contact details for the DMR Communications Room, Harcourt Square;
2. GSOC will be provided with a list of District Officers, including contact details, which will be updated as required.
3. The referring member of An Garda Síochána will, to the extent possible, provide the GSOC Duty Officer with the following:

- 3.1. a concise account of the incident;
  - 3.2. the location of the incident;
  - 3.3. time occurred and time elapsed;
  - 3.4. the principal parties identified;
  - 3.5. any actions taken by An Garda Síochána to preserve the scene, or to collect evidence;
  - 3.6. any actions necessary, in the view of the contacting member.
4. In the event the contacting member is not also the Garda Síochána Incident SIO, he/she will provide the contact details of the Garda Síochána SIO (or other relevant contact person until such time as a Garda Síochána SIO is appointed).
  5. The Superintendent (or the Garda Síochána SIO) will undertake to perform the actions requested by the GSOC Duty Officer.
  6. Noting that, under section 98 of the Act, Designated Officers of GSOC have all the powers, immunities and privileges conferred and all the duties imposed on any member of An Garda Síochána, An Garda Síochána will, where possible and in accordance with law, facilitate the passage of GSOC Designated Officers travelling on duty.

## **Chapter 4 - Appendix B**

### **Protocol for the handling of shared scenes by An Garda Síochána (AGS) and GSOC**

#### **General Principles of Intent:**

The primary over-riding principle in the preservation, management and examination of scenes of interest to both An Garda Síochána and GSOC is to ensure that a professional and thorough examination of the scene takes place allowing for the forensic priorities of both organisations to be addressed.

It is agreed that, in most cases, An Garda Síochána will be responsible for the preservation of the scene and the Garda Síochána SIO will be cognisant of the following:

#### **Preservation of the Scene**

1. There is an onus and responsibility on both organisations to have due regard for scene management and evidence preservation.
2. As a general rule, lead of investigation will rest with the organisation which is investigating the more serious potential offence.
3. Where both organisations are investigating matters of equal importance, the lead of investigation will generally rest with GSOC. In certain cases the lead of investigation shall pass to the organisation considered to have the more urgent investigation, dependent on operational, or evidential, requirements. This will be kept under review by both SIOs. Where there is an issue in determining the level of seriousness of the investigations the matter will be resolved at a more senior level.
4. All decisions regarding lead of investigation will be fully documented by both SIOs.
5. A scene will be preserved until both organisations agree that it may be closed, as provided by statute.

#### **Forensic Management Team:**

1. As soon as possible, a Forensic Management Team for the incident will convene.
2. This meeting will include the GSOC SIO, An Garda Síochána SIO, the Crime Scene Manager (if appointed), the Primary Forensic Scientist (if present) and any other expert assistance that may be required.
3. The purpose of this meeting will be to identify and document a Forensic Strategy that provides for the requirements of both the GSOC and An Garda Síochána, ensuring that the scene is examined in such a manner that fully reflects both interests.
4. Every effort will be made by both organisations to ensure that the collection and preservation of evidence of interest takes place in a professional and thorough

manner, and that neither organisation acts to the exclusion of the other or to the detriment of that organisation's investigative strategies.

5. Any conflict between the interests of GSOC and An Garda Síochána should be negotiated by the SIOs, with the full expert advice of the Crime Scene Manager and any other experts available. If agreement cannot be reached, the matter should be escalated, in accordance with the provisions of Chapter 18.
6. The Forensic Strategy will be documented and all decisions made in relation to the examination of the scene will be recorded.
7. Once the examination of the scene has been completed, the Forensic Management Team should meet, as soon as is practicable, and agree a strategy for the submission and examination of the exhibits.
8. The Forensic Management Team will ensure that effective liaison, on any issues arising out of exhibit handling and examination, continues throughout the duration of the investigation.

## **Chapter 4 - Appendix C**

### **Protocol for the handling and submission of exhibits of potential mutual interest by GSOC and An Garda Síochána (AGS)**

#### **General Principles of Intent**

Both GSOC and An Garda Síochána recognise the over-riding principle requiring the lawful preservation of all available evidence in a manner which promotes the integrity of exhibits and works toward the professional presentation of evidence admissible in a court of law.

#### **Exhibits**

1. Following an incident where there are scenes of interest to both GSOC and An Garda Síochána, the respective SIOs will meet and agree an Exhibits Strategy. This will reflect the principles outlined in the Protocol for the handling of shared scenes.
2. Both organisations will appoint an Exhibits Officer for the incident.
3. The Exhibits Officer from the organisation with the lead investigation will take responsibility for the control of all the exhibits seized from the scene and will be responsible for the proper transit and secure storage of the exhibits prior to submission and following examination at the Technical Bureau, the Forensic Science Laboratory or other appropriate forensic agency. In cases involving items of shared evidential interest to both organisations, possession of the item shall pass to the organisation considered to have the more urgent investigation, dependent on operational, or evidential, requirements. This will be kept under review by both SIOs.
4. The Exhibits Officers will identify and document exhibits of common interest to both GSOC and An Garda Síochána, or of sole interest to either one of the organisations.
5. If an exhibit is required, for example for use in an interview, by the organisation which does not have possession of the exhibits, the Exhibits Officers for both organisations will facilitate access to the exhibits, after consultation with their respective SIO.
6. Both organisations will provide documentation, in the form of receipts and continuity statements, where required by the other organisation.
7. Both organisations will store exhibits in such a manner that will maintain an effective chain of continuity for the exhibits.
8. The organisation with primary control of the exhibit will be responsible for the safe custody, destruction, disposal or return of the exhibit following the conclusion of all court proceedings or on the conclusion of the investigation. No item of identified common interest will be disposed of without consultation between the organisations.



**DECISION ON RESPONSIBILITY OF RESOURCES**

*Relates to, but not limited to, security of the scene, scene examination, authorities, expert scene examination, GSOC liaison and scene log. Both parties are mindful that resource implications will be proportionate.*

*This decision is based on:*

**DECISION ON ACCESS TO WITNESSES**

*Relates to, but not limited to, the interviewing of witnesses, door to door enquiries, and identification of further witnesses. Taking into account the provisions of Chapter 3.*

*This decision is based on:*

**DECISION ON ACCESS TO and MANAGEMENT OF SUSPECTS**

This section will apply in accordance with the principles agreed and set out in Chapter 3 and Chapter 4 of the MoU and Protocols

*This decision is based on:*

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|---|
| <p style="text-align: center;"><b>DECISION ON INFORMATION RELEASES TO THE MEDIA</b><br/><i>Relates to, but not limited to, who is responsible for media releases, agreed media release, content of media releases</i></p> |
| <hr/> <hr/> <hr/> <p><i>This decision is based on:</i></p> <hr/> <hr/> <hr/> <hr/>  |

|  |
|--|
| <p style="text-align: center;"><b>DECISION ON THE SEIZURE AND SECURITY OF EXHIBITS</b><br/><i>Relates to, but not limited to, which agency will be responsible for the seizure of exhibits, the security of those exhibits, technical examination of those exhibits and the sharing of results of that examination</i></p> |
| <hr/> <hr/> <hr/> <p><i>This decision is based on:</i></p> <hr/> <hr/> <hr/> <hr/>   |

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|---|
| <p style="text-align: center;"><b>DECISION ON THE SHARING OF INFORMATION</b><br/><i>Relates to, but not limited to, the sharing of information held by either organisation which may be of relevance to either party's investigation. Any sharing of information is in line with the Agreed Protocol on this topic. Consideration given to having regular joint briefings</i></p> |
| <hr/> <hr/> <hr/> <p><i>This decision is based on:</i></p> <hr/> <hr/> <hr/> <hr/>  |

**DECISION RELATING TO WELFARE OF GARDA MEMBERS**

*The management of welfare issues of Garda members is recognised as a matter for An Garda Síochána. GSOC will take due notice of the health and welfare concerns of members.*

*This decision is based on:*

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**PREPARATION AND PRESENTATION OF DOCUMENTATION INCLUDING CORONERS FILES**

*Relates to, but not limited to, what documentation will be immediately sought, the preparation of collision investigators reports, coroners files, etc.*

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\_\_\_\_\_  
*Senior Investigations Officer  
GSOC*

\_\_\_\_\_  
*Senior Investigations Officer  
An Garda Síochána*

*Date:* \_\_\_\_\_

*Time:* \_\_\_\_\_

## Chapter 5

### Protocol on the sharing of information including evidence

- 5.1.1 Both organisations, mindful of the requirement to put in place arrangements concerning the sharing with each other of information (including evidence of offences), obtained by either GSOC or An Garda Síochána, have put in place this Protocol to facilitate the disclosure of ‘information’ between An Garda Síochána and GSOC.
- 5.1.2 It is agreed that the sharing of information (including evidence of offences) with each other is a key requirement for both organisations to ensure good corporate governance, transparency, accountability, due-process, compliance, meeting obligations under the European Convention on Human Rights (ECHR), statutory and common-law requirements and security of personal and corporate information.
- 5.1.3 It is the intent of both organisations that nothing agreed in this Protocol should act to inhibit the lawful actions of either An Garda Síochána or GSOC in the investigation of offences, or the securing of evidence for the investigation of those offences. Both parties, mindful of their overarching obligations as law enforcement agencies of the State, agree to proactively assist the other, where such circumstances arise.
- 5.1.4 It is recognised by both organisations that their obligations will be best discharged in a spirit of mutual co-operation. Both organisations commit themselves to the attainment of the objectives of the Act. Both organisations will have due regard for, and give serious consideration to, the legal position of the other – in particular with regard to the management of sensitive information – while also recognising the duty of each organisation to operate within its own legal framework.
- 5.1.5 To that end, both parties will continuously endeavour to review and, where appropriate, amend processes to ensure efficiency, effectiveness and timeliness in all aspects of information exchange, including evidence.
- 5.1.6 Both organisations recognise that any information or documentation received has been provided on a confidential basis and for the purpose of the exercise of their respective statutory functions.
- 5.1.7 GSOC retains statutory powers under which it can seize and retain evidence.
- 5.1.8 Sharing information/Access to non-sensitive Garda records
- 5.1.9 An Garda Síochána recognises the requirement of GSOC to access Human Resource records of members of An Garda Síochána who may be subject of an investigation, for the purpose of Parts 3 or 4 of the Act.
- 5.1.10 Requests for access to Human Resource records for Garda personnel from officers of GSOC shall be made through the office of Assistant Commissioner, Human Resource Management.
- 5.1.11 Requests from GSOC for access to policies, action plans or operational orders for the purpose of Parts 3 or 4 of the Act shall be made through the office of Assistant Commissioner, Human Resource Management.

5.1.12 Requests from GSOC for access to criminal records or crime files for the purpose of Part 4 of the Act which may be relevant to an enquiry shall be made through the office of Assistant Commissioner, Human Resource Management.

5.1.13 The officers of GSOC shall be responsible for the safe custody, confidentiality and disposal of any such material.

5.1.14 The agreed processes are set down in Appendix A, the Information-Sharing Protocol.

## 5.2 Access to PULSE and other An Garda Síochána Information Systems

5.2.1 The processes agreeing access to PULSE and other Garda Síochána Information Systems are set down in Appendix 'A' to these Protocols, the Information-Sharing Protocol.

## 5.3 Sensitive Information

5.3.1 Where access to any part of PULSE, or any other Garda Síochána Information System, may be considered to be sensitive, arrangements will be made to have the requested information viewed, or accessed, in the presence of personnel from both An Garda Síochána and GSOC at Garda Headquarters, or such other agreed location as circumstances may require. Such arrangements will be agreed at Level 3 or 4 (see Chapter 18 of this document).

## 5.4 Garda Síochána access to GSOC information

5.4.1 In circumstances in which An Garda Síochána has reason to believe that GSOC has information, in relation to criminal or security matters, which falls within the remit of the Garda Síochána, requests for access to such information shall be made, in the first instance, from Assistant Commissioner, Crime and Security, to the Director of Operations, GSOC.

## **Chapter 5 - Appendix A**

### **Information-Sharing Protocol**

#### **Purpose of the Protocol**

- A5.1 The purpose of this Protocol is to facilitate the disclosure of ‘information’ between An Garda Síochána and GSOC.
- A5.2 ‘Information’ is defined as ‘all information’, electronically-generated or otherwise, including sensitive information, belonging to, held by or in the possession of, either GSOC or An Garda Síochána. For the avoidance of doubt, it includes records obtained, received, created, produced, generated, and maintained as evidence and/or information by, or in the power, possession or control of, either organisation, or any person in the employ of either organisation, in pursuance of legal obligations, or in the transactions or business of the organisations.
- A5.3 Any reference to an Assistant Commissioner of An Garda Síochána, GSOC Commissioner, GSOC Director of Operations or GSOC Intelligence Manager will also refer to the delegated authority.
- A5.4 The ‘information’ requested by GSOC will be made available as soon as practicable and, in any event, the information will be provided within 30 days. If, in exceptional circumstances, the information cannot be supplied within 30 days, the GSOC requesting officer will be advised, in writing, of the reasons for the delay and the expected timeframe for the availability of the information.
- A5.5 The determination of relevance will be made by the requesting agency. The request will be accompanied by an indication of the circumstances giving rise to the investigation leading to the application. Both parties recognise their particular duty of care in the management of information. The providing agency may, in writing, at the time that the information is being supplied, bring to the notice of the requesting agency particular concerns that the providing agency may have regarding a potential legal challenge to the supply of the information. The requesting agency will note these concerns, in the context of ensuring that an appropriate justification and rationale will be available, should a legal challenge arise.

#### **A5.6 Supply of information**

- A5.6.1 Requests for ‘information’ will be made, in writing, to Assistant Commissioner, Human Resource Management. The request will be accompanied by an indication of the circumstances giving rise to the investigation leading to the application.
- A5.6.2 Requests for ‘information’ will relate to the primary record and not to an edited redacted version.
- A5.6.3 An Garda Síochána will, in writing, in appropriate cases, bring to the notice of GSOC particular information that GSOC may wish to consider in the context of arriving at an informed decision, having regard to the provisions of section 103(2) of the Act.

## **A5.7 Sensitive Information**

A5.7.1 Requests for sensitive information will be sent to Assistant Commissioner, Crime and Security, with a notification (on the agreed e-mail address) to Assistant Commissioner, Human Resource Management, of the making of a sensitive information request via that channel. An Garda Síochána will circulate, by way of HQ Directive, categories of ‘sensitive’ information, as agreed between An Garda Síochána and GSOC.

A5.7.2 Both parties recognise their particular duty of care in the management of sensitive information, including responsibility to covert human intelligence sources (‘CHIS’). Each party agrees that sensitive information will be provided to the other on request. Where the supplying party so requests, at the time of transmission of sensitive information, the receiving party will provide reasonable advance notice (usually no less than five working days) of its intention to disclose that information to a third party, so as to allow the other party time to consider its legal position. An Garda Síochána will, in writing, in appropriate cases, bring to the notice of GSOC particular information that GSOC may wish to consider in the context of arriving at an informed decision, having regard to the provisions of section 103(2) of the Act.

A5.7.3 An Garda Síochána will establish a ‘Central Point of Contact’ in Crime and Security for members of the GSOC Intelligence Unit.

A5.7.4 The Garda Síochána Crime and Security ‘Central Point of Contact’ will receive requests for information made by GSOC, via Assistant Commissioner, Crime and Security. The Garda Síochána ‘Central Point of Contact’ will process the request and ensure the information supplied is accurate and, as far as possible, meets the requirements of GSOC.

A5.7.5 In urgent cases where there is an operational necessity for information, the GSOC Intelligence Manager will make direct contact with the Garda Síochána ‘Central Point of Contact’. The Garda Síochána ‘Central Point of Contact’ will provide a 24/7 emergency contact number, to facilitate access to information out-of-office hours, and arrange to provide the requested information where appropriate.

A5.7.6 In circumstances where An Garda Síochána has reason to believe that GSOC has information in relation to criminal or security matters that falls within the remit of An Garda Síochána, requests for access to such information shall be made, in the first instance, from Assistant Commissioner, Crime and Security, to the Director of Operations, GSOC.

## **A5.8 Information Exchange**

A5.8.1 An Garda Síochána and GSOC agree:

- ethical standards will be maintained;
- a mechanism will exist, within both organisations, whereby the exchange and disclosure of information can be controlled;

- appropriate guidance is provided for personnel involved in the agreed process for the requesting and handling of ‘information’.

## **A5.9 PULSE**

A5.9.1 Members of GSOC may require direct access to the PULSE system operated by An Garda Síochána. Such access will be afforded to the Garda Superintendents attached to GSOC. In circumstances of urgency, where direct access to PULSE is required out of hours, members of GSOC will make direct contact with the Superintendent of the District in which they are operating to facilitate such supervised access.

A5.9.2 Normally access to PULSE refers to the highest level of access and not to a lower level of access where relevant information may not be immediately identified.

A5.9.3 An Garda Síochána will provide suitable accommodation to facilitate the viewing and, where appropriate, the provision of information required by GSOC.

A5.9.4 It may be necessary for GSOC to remove ‘information’, if viewing on-site is impractical or where GSOC requires physical possession of the information. In such cases, GSOC will take the ‘information’ against a receipt with an agreed return date, unless GSOC considers that the ‘information’ or part of the ‘information’ should be retained as evidence.

## **A5.10 Data Protection and Freedom of Information legislation**

A5.10.1 If one party to this Protocol receives a Data Protection or Freedom of Information request, concerning ‘information’ which has originated from the other party, the receiving party will contact the originator, to determine if the originator wishes to claim an exemption under the provisions of either Act.

## **A5.11 Security**

A5.11.1 Both organisations are mindful of their responsibilities for the safe transportation and handling of ‘information’ received, and will ensure that there are auditable policies and procedures in place to regulate the dissemination of ‘information’, ensuring it is correctly managed. A record will be kept as to who has had access to the ‘information’ and the reason for same.

A5.11.2 Both organisations will ensure that appropriate processes are in place to prevent:

- accidental or deliberate destruction of the information;
- accidental or deliberate modification of the information;
- unauthorised access to the information or any computer system containing the information;
- misuse of the content of the information.

## **A5.12 Communication**

A5.12.1 There shall be regular meetings between the nominated Garda Síochána intelligence personnel and GSOC Intelligence Managers to ensure the working

relationship as described in this Protocol is being conducted in an effective and efficient manner.

## Chapter 6

### Protocol on Firearms Incidents

#### Introduction

This GSOC/An Garda Síochána Firearms Incident Protocol sets out the procedures and protocols to be followed when there is a discharge of a firearm by members of An Garda Síochána, other than in training or in the lawful destruction of animals. GSOC recognises that the significance of any such discharge of firearms by members of An Garda Síochána requires detailed and distinct Protocols.

In the investigation of incidents involving the discharge of a firearm by members of An Garda Síochána, GSOC will have due regard for the welfare of all involved (including members of the public, the Garda members and the subject(s) of any such occurrence) and GSOC will operate accordingly.

#### 6.1 Background and Purpose

6.1.1 GSOC may become involved in the investigation of incidents involving the discharge of a firearm by a member of An Garda Síochána in a number of ways:

- 1) the matter is referred to GSOC pursuant to section 102(1) of the Act where it appears to the Commissioner of An Garda Síochána to indicate that the conduct of a member of An Garda Síochána may have resulted in the death of, or serious harm to, a person;
- 2) in the absence of a referral from the Commissioner of An Garda Síochána, pursuant to section 102(2)(b) of the Act, it appears to GSOC that the conduct of a member of An Garda Síochána may have resulted in the death of, or serious harm to, a person;
- 3) an admissible complaint is received from a member of the public relating to the discharge of a firearm by a Garda member;
- 4) in accordance with the current Protocols between GSOC and An Garda Síochána, it has been agreed that the Commissioner of An Garda Síochána will notify to GSOC all matters involving the discharge of a firearm by a member of An Garda Síochána that do not result in death or serious harm.

6.1.2 Having regard to the objectives and functions of GSOC, in particular the objective to engender public confidence, and noting that any such incident is likely to attract a degree of public interest or concern, it is important that the investigation of the circumstances surrounding any such discharge is conducted by GSOC.

6.1.3 In accordance with the relevant GSOC policy, an incident of this nature would normally qualify as immediate deployment (although the level of deployment is a matter for the SIO and will depend on the circumstances of each individual incident):

*‘Where there is a need to dispatch GSOC investigators immediately to a location(s) in order to secure and preserve evidence and ensure that no potential evidence is lost, concealed or destroyed or for reasons where there is potential for a high public profile/public interest’.*

- 6.1.4 GSOC and An Garda Síochána will have due regard for their obligations under Article 2 of the European Convention on Human Rights, where the discharge of a firearm by a member of An Garda Síochána results in death or serious harm. In addition, GSOC and An Garda Síochána will have due regard to the fundamental principles of legality, necessity, proportionality, non-discrimination and accountability when carrying out their functions in relation to a death following a shooting incident involving members of An Garda Síochána.
- 6.1.5 The purpose of this Protocol is to provide a framework when dealing with an incident of this type, which presents certain challenges not normally associated with other referrals and notifications from An Garda Síochána.
- 6.1.6 The Protocol for the Handling of Shared Scenes, as set out in the Memorandum of Understanding between GSOC and An Garda Síochána, will apply to firearms-related incidents. The over-arching principle is to ensure that the forensic priorities of both organisations are addressed.

## 6.2 Garda GSOC Liaison Officer with GSOC

- 6.2.1 Following an incident involving the discharge of a firearm by Gardaí, a member of An Garda Síochána will be appointed to liaise with GSOC D/Os. The Garda GSOC Liaison Officer will be the Superintendent who makes the referral, in accordance with the Act, or notification in accordance with the relevant Garda HQ Directive, provided that he/she had no role in the Garda operation or incident involving the discharge of firearms. If the Superintendent who makes the referral or report has been involved in the Garda operation or incident then another Superintendent will be appointed to fulfil the role of Garda GSOC Liaison Officer. The local Chief Superintendent shall be responsible for appointing another Superintendent to the role of Garda GSOC Liaison Officer.

### **The roles and responsibilities for the Garda GSOC Liaison Officer are listed at Chapter 6, Appendix A.**

- 6.2.2 GSOC will seek an early first account from the officer/officers directly involved in the incident. This will be communicated to the Garda GSOC Liaison Officer who will issue an appropriate response, including reasons, if any, if the request cannot be acceded to. In any event, the Garda GSOC Liaison Officer will, in accordance with the principles set out at paragraph 6.1.4 provide the identification of all the members concerned to the Designated Officer, as soon as practicable. The Garda GSOC Liaison Officer will be available to the GSOC D/Os to assist, upon request, with any further enquiries. The Garda GSOC Liaison Officer will also be responsible for the collecting of firearms, ammunition, clothing and other items or equipment which GSOC investigators may require to be seized as part of their investigation. This is to ensure that all relevant material, of a potentially evidential nature, is secured and preserved at the earliest possible opportunity and to ensure that the exposure of GSOC staff to health and safety concerns, relating to the safe-handling of firearms, is minimised.
- 6.2.3 Notwithstanding the role envisaged for the Garda GSOC Liaison Officer, the GSOC SIO retains the right to become directly involved in all aspects of the investigation including evidence seizure and interviewing of persons, if this is deemed necessary having regard to GSOC's duties under the Act and Article 2 of the European Convention on Human Rights or as part of the wider forensic strategy. Any seizure of

firearms or ammunition shall be organised through the role envisaged for the Garda GSOC Liaison Officer and shall be conducted by a person properly trained to do so.

### **6.3 General Principles**

6.3.1 Despite the particular circumstances of firearms-related incidents, there are a number of general principles that will remain the same regardless of the nature of the incident or the circumstances leading to the discharge of the firearm(s).

6.3.2 These principles are broken down into four areas, each of which is explained as shown below.

### **6.4 Seizure of firearm(s) as exhibits**

6.4.1 Having regard to Best Practice and the health and safety of all parties concerned, no member of GSOC staff is to participate in the 'proving' (or 'making-safe') of any firearm seized as an exhibit as part of an investigation. Designated Officers may be present to witness the continuity and the 'proving' of the weapon.

6.4.2 Where there is a requirement to seize a firearm, including spent and/or unused ammunition, the GSOC SIO will direct which items are to be seized. The GSOC SIO will seek to minimise seizure, where possible, to ensure a proportionate investigation. He/she will ensure that a suitably qualified and experienced individual is identified to 'prove' the weapon and place it (in a demonstrably 'made-safe' condition) inside the appropriate packaging. This will normally be a member of An Garda Síochána not connected with the incident giving rise to the firearm discharge and is in the interests of the early and safe collection of the evidence. It is reasonable to assume, in most cases involving the discharge of a firearm, that technical, ballistic or Scenes of Crime support will be required at a scene and these individuals are properly trained and equipped to deal with the seizure of firearms as evidence (and will do so on behalf of GSOC, as per the current Protocol agreement).

6.4.3 In cases where a personal-issue weapon or an individually assigned weapon (other than a weapon left in-situ at a scene) is seized from a member of An Garda Síochána, it may be appropriate that the member from whom the weapon is seized will 'prove' (or 'make-safe') the weapon before any such seizure. In such cases, this should be done following consultation with the GSOC SIO responsible for the wider forensic strategy and the weapon should be 'proved' (or 'made-safe') in the presence of, either, the designated Garda GSOC Liaison Officer taking possession of the weapon or a member of GSOC staff.

6.4.4 GSOC investigators will only take possession of a firearm from a scene or an individual *after* the weapon has been made safe, as outlined above, and is properly packaged and sealed.

6.4.5 The following procedures will apply to the seizure of An Garda Síochána firearms by GSOC:

- the Garda member handing over the firearm will be given a receipt for the weapon and/or any ammunition seized;
- the receipt will be signed and dated by the GSOC Designated Officer taking possession of the items;

- as soon as practicable after the seizure, the Garda GSOC Liaison Officer will notify the Superintendent/Assistant Principal, Procurement Section, Garda Headquarters, setting out the details of the seizure, including the number of weapons seized, the models of weapons, serial numbers, and the amount and type of ammunition seized;
- where possible, GSOC should indicate the estimated period that the weapon(s) and/or ammunition will be retained.

## **6.5 Transportation of firearms**

6.5.1 The transportation of a firearm from the scene of an incident to the place of examination will be the subject of a risk assessment by the GSOC SIO who will, among other things, consider the following matters:

- the number and type of firearms to be transported;
- the quantity, type and current state (i.e. live or spent) of ammunition to be transported;
- the practicalities of transporting the firearm separately from the ammunition;
- the distance and route involved in the journey;
- the requirement for an armed Garda escort during the transportation of firearms;
- the requirement for An Garda Síochána to transport the items, accompanied by GSOC staff;
- the need to take the items directly to the place of examination, as opposed to storage at GSOC HQ; and
- the requirement for temporary, secure storage overnight.

## **6.6 Storage of firearms on GSOC premises**

6.6.1 Any firearm(s)/ammunition seized by GSOC D/Os in connection with an investigation, to be stored on GSOC premises, will be immediately placed into one of the secure gun-safes located in the Exhibit Room. The firearm(s)/ammunition will be treated in exactly the same way as any other exhibit, being properly booked into the Exhibit Room and only removed, against receipt, with a specified purpose.

6.6.2 In all circumstances where firearms/ammunition are brought onto GSOC premises they will be stored in the purpose-built gun safes in the Exhibit Room, no matter how short the period of time involved.

## **6.7 Retention and return of firearms**

- 6.7.1 Firearms and/or ammunition are subject to the same retention criteria as any other exhibit, in that they should be retained until such time as the investigation is concluded and the items are no longer required for any future proceedings (which would include appeal in the case of a criminal trial).
- 6.7.2 The risk assessment process for the return of firearms/ammunition to An Garda Síochána is the same as for their transportation following seizure. It is GSOC policy to arrange for the collection of the firearm(s)/ammunition by the Garda Firearms Section (Garda HQ) from GSOC HQ at an agreed date and time, unless there are good reasons for making alternative arrangements (which should again be properly documented).
- 6.7.3 As soon as practicable, having regard to the circumstances of the case in question, GSOC will make arrangements for the return of firearms/ammunition to the Superintendent/Assistant Principal, Procurement Section, Garda Headquarters for re-issuing.
- 6.7.4 As with all other exhibits, the return of a firearm/ammunition should be done against receipt and records in the Property Book perfected accordingly, with a corresponding entry on the GSOC Case Management System.

## **Chapter 6 - Appendix A**

### **Role and Responsibilities of the Garda GSOC Liaison Officer following the discharge of a Garda-issue firearm**

A6.1 *This document should be read in conjunction with the Firearms Incident Protocol document agreed between An Garda Síochána and GSOC and highlights the role and responsibilities of the Garda GSOC Liaison Officer outlined in that document (when appointed).*

A6.2 The role of the Garda GSOC Liaison Officer is to assist in facilitating the investigation, ensuring integrity of process, while ensuring that the needs of the members concerned are also being addressed in a manner which does not compromise the investigation.

A6.3 When the circumstances of the incident involving the discharge of a firearm (or firearms) dictate the appointment of a Garda GSOC Liaison Officer (GLO), in accordance with the aforementioned Protocol, the GLO will have the following responsibilities:

1. to ensure that all relevant information and decisions are recorded;
2. to take all appropriate steps in the initial stages, required under Article 2 of the European Convention on Human Rights, to reduce any possible risks to the GSOC investigation, by failing to secure evidence, witness testimony and/or forensic evidence;
3. to agree with the GSOC SIO which members of An Garda Síochána are to be considered as Principal Officers<sup>1</sup> at the initial stages of the post-incident process;
4. to ensure that any welfare/support needs of the Garda members concerned are being adequately addressed (this includes, but is not restricted to, medical assessment and access to legal advice and may also include the families/friends of those members, e.g. ensuring access to telephones to allow for contact following an incident);
5. to assist in explaining the role of GSOC to the members concerned and what GSOC's investigative requirements may involve (following discussion with the GSOC SIO);
6. is available to the GSOC SIO for meetings/direct contact;
7. to provide the relevant Branches within An Garda Síochána of the necessary information to assist with internal processes (i.e. welfare, staff associations, etc.);
8. to ensure that, following discussion with the GSOC SIO concerning the forensic strategy for the incident, any forensic procedures are dealt with as

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<sup>1</sup> 'Principal Officers' are defined, for the purpose of this Protocol, as those directly related to the decision to use force. This designation is not necessarily restricted to the individual Member firing the shots and may be subject to change as more information regarding the circumstances of the discharge becomes available.

soon as possible, in accordance with this strategy, and that the members concerned are fully informed as to the necessity for these procedures (e.g. when seizing items as exhibits; swabs, etc.);

9. to maintain dialogue with the GSOC SIO/Garda SIO (in the case of a related Garda investigation) and address, with them, any issues arising (e.g. media appeals, press releases, updates to members, etc.);
10. to facilitate the process of the provision of initial accounts, in accordance with section 6.2.2 of the Protocol;
11. to assist GSOC with any support services required for the investigation, in accordance with the Incident Management/Scene Management agreed Protocol between the GSOC and An Garda Síochána.

A6.4 As the circumstances in each case are different this list should not be considered exhaustive or all-encompassing. These responsibilities should be considered in the context of the Firearms Incident Protocol Agreement and other relevant Protocol Agreements between GSOC and An Garda Síochána.

## **PART TWO**

### **Chapter 7**

#### **Administrative/Operational Matters**

##### Referral of complaints

##### 7.1 Referral of complaints from An Garda Síochána to GSOC - section 85 of the Act refers

- 7.1.1 Complaints received by An Garda Síochána against a member which do not require an urgent response shall be forwarded to the Director of Operations, GSOC.
- 7.1.2 Complaints made at a Garda Station shall be forwarded by the Sergeant-in-Charge, or other member, by registered post, fax or e-mail, as appropriate. Copies of such complaints will be forwarded to the District and Divisional Offices and to Assistant Commissioner, Human Resource Management (Chief Superintendent, Internal Affairs), unless otherwise restricted on the direction of the Commissioner of An Garda Síochána.
- 7.1.3 Complaints which require an urgent response shall be notified immediately by telephone, by the relevant Superintendent to the On-Call Officer, GSOC. Full details of the complaint will be forwarded, in writing, to the Director of Operations, GSOC, and Assistant Commissioner, Human Resource Management, as soon as practicable. The notification of a complaint in this manner should not be taken as a referral in accordance with section 102 of the Act.

##### 7.2 Notification of complaints from GSOC to the Commissioner of An Garda Síochána - section 86 of the Act refers

- 7.2.1 Notification from GSOC to the Garda Commissioner of complaints it has received and which do not require an urgent response, shall be made through Assistant Commissioner, Human Resource Management. Notification of complaints, received directly by GSOC, which require an urgent response from An Garda Síochána, shall be made to the Communications Centre, Harcourt Square and to the relevant Superintendent, or Acting Superintendent, and copied to Assistant Commissioner, Human Resource Management, in writing, as soon as practicable.

##### 7.3 Local Intervention

- 7.3.1 Both organisations recognise the importance of the involvement of local Garda Management in the resolution of complaints. It is agreed that, where a member of the public wishes to make a complaint against a member of An Garda Síochána but does not wish the matter to be formally investigated by GSOC, and is seeking to have local Garda Management deal with their concern, Local Intervention may be the most suitable way to have their concerns addressed.
- 7.3.2 There is no obligation on a complainant to engage in Local Intervention. However, in cases where this process is used, the top page of the GSOC1 will be forwarded to GSOC. If the matter is not resolved to the satisfaction of the

complainant he/she may lodge a formal complaint immediately, or in the future, either at a Garda station, or by making contact directly with GSOC.

7.3.3 Similarly, in appropriate cases, where a complaint is made directly at a Garda station, there is nothing to prohibit the Local Intervention process being attempted. In such cases, GSOC should be informed of the following: that a complaint has been made, the name of the complainant and that the matter was resolved by Local Intervention.

7.4 Ongoing notification of progress on complaints, referrals and other investigations - sections 87 and 88 of the Act refer

7.4.1 Notification by GSOC to the Commissioner of An Garda Síochána of admission, non-admission or general progress of complaints shall be through Assistant Commissioner, Human Resource Management, and will be furnished, in writing, by the Director of Operations or on his behalf.

7.4.2 GSOC acknowledges that the Commissioner of An Garda Síochána is responsible for the management of a disciplined force and, in the exercise of that role, he/she needs to be informed, regularly and comprehensively, as to the progress and results of complaints, referrals and other investigations.

7.4.3 Both parties are mindful of the obligations on GSOC, under section 103 of the Act, to keep the Commissioner of An Garda Síochána informed of the progress and results of GSOC investigations, and also of the reliance of the Commissioner of An Garda Síochána on these reports in managing a disciplined force. Accordingly, both parties agree that the office of the Director of Operations and the office of Assistant Commissioner, Human Resource Management, will work closely to facilitate, and improve, the transmission and quality of information supplied by GSOC to the Commissioner of An Garda Síochána under section 103 of the Act. Both parties note the facility available to GSOC to disclose information to the Commissioner of An Garda Síochána under section 81(4)(a)(i), of the Act.

7.4.4 In investigations carried out by GSOC, under section 98 of the Act, GSOC will inform the Commissioner of An Garda Síochána of the names and details of the Garda Síochána members who have been identified as being subject of the complaint or the investigation.

7.4.5 The Commissioner of An Garda Síochána will provide the necessary notifications, under section 88 of the Act, to the members concerned and will notify GSOC of the members identified, where practicable. GSOC will inform the Commissioner of An Garda Síochána if any of the members notified are not subject of the complaint.

7.4.6 The Commissioner of An Garda Síochána will provide reasonable assistance to identify members who may be subject of a complaint or investigation.

7.4.7 A standard notification will be provided to all members identified subject of a complaint being investigated by GSOC pursuant to section 98 of the Act, which will state the name of the complainant; the nature of the complaint; and, where possible, appropriate contact details in relation to the GSOC D/O.

7.4.8 All notifications will be signed, as received, by the Garda member who is to be notified.

7.4.9 In section 102 referrals, GSOC will inform the Commissioner of An Garda Síochána of the identity of any member whose conduct is subject of the investigation. Similarly, a standard notification will issue, pursuant to section 88 of the Act, to all members identified, which will state the details of the section 102 referral, the section under which the investigation is being conducted, and, where possible, appropriate contact details in relation to the GSOC D/O.

7.5 Discontinuation of investigation by GSOC/Referral of complaint to the Commissioner of An Garda Síochána - sections 92/94 of the Act refer:

7.5.1 Communication\* from GSOC to the Commissioner of An Garda Síochána shall be through Assistant Commissioner, Human Resource Management. Communication from the Commissioner of An Garda Síochána to GSOC shall be through the Director of Operations, GSOC, or on his behalf.

\* 'Communication' may be taken to mean hard-copy paper, fax, e-mail or other electronic means, as agreed by both agencies from time-to-time.

7.6 Procedures for investigation of complaints which do not involve allegations of an offence - sections 95/96/97 of the Act refer

7.6.1 The provisions of these sections relate to GSOC reporting to the Commissioner of An Garda Síochána and making recommendations to him once its enquiries into a complaint are completed. It also entitles GSOC to be notified of a decision made under the Garda Síochána (Discipline) Regulations, 2007, as amended, concerning the member of An Garda Síochána who is subject of the report. Communication, in this context, will be between the Director of Operations, GSOC, and Assistant Commissioner, Human Resource Management.

7.7 Procedures and Arrangements for 'Supervised Investigations', pursuant to section 94 of the Act

7.7.1 The procedures agreed under this section are set out at Appendix A to this Chapter.

Sections 92 and 94 of the Act refer

7.7.2 GSOC may supervise any such investigation. Such supervision is defined in section 94(5) of the Act and may include the involvement of a GSOC Designated Officer or Case Officer in the course of the investigation. GSOC personnel may be present at any interview under the terms of section 94(5)(c) of the Act. The Act is silent as to whether, or not, they may participate in the interview; however, noting that the investigation is one for which An Garda Síochána has carriage, both parties agree that it is not appropriate for the Designated Officer to ask questions. The GSIO should, however, adjourn the interview for a short period, prior to concluding the interview, to facilitate any instructions which the Designated Officer may wish to issue to the GSIO, in accordance with section 94(5)(d) of the Act, that is to say, the Designated Officer may direct the appointed GSIO to further investigate any aspect of the complaint.

7.7.3 GSOC may specify the time within which the appointed GSIO furnishes his/her

interim report and Final Report to GSOC.

7.7.4 Referrals of complaints from GSOC to the Commissioner of An Garda Síochána under these sections will be from the office of the Director of Operations to the office of Assistant Commissioner, Human Resource Management.

7.7.5 The Commissioner of An Garda Síochána will identify a number of Garda members (not less than two), in relation to each complaint referred under this section, from amongst whom the Investigating Officer will be drawn. The suitability of such officers, in relation to the matter subject of complaint, will be determined by the provisions of section 94(1)(b) of the Act which requires that the officer has not been involved, in any capacity, in relation to the case in question.

7.8 Complaints against members of An Garda Síochána due to retire/discontinuation of complaints

7.8.1 The fact that a member of An Garda Síochána who is the subject of a complaint may no longer be a member, or who retires or resigns, is not a bar to GSOC investigating the complaint. In the case of members of An Garda Síochána who have retired, or are due to retire imminently, and who are the subject of a complaint considered to be a criminal offence or a breach of Garda Síochána (Discipline) Regulations, 2007, as amended, the relevant provisions of the Act (i.e. section 87) shall apply. The provision to discontinue an investigation, pursuant to section 93(1)(c) of the Act, may also be applicable here.

## Chapter 7 - Appendix A

### **Protocol agreed between Commissioner of the Garda Síochána and the Garda Síochána Ombudsman Commission (GSOC)**

#### **Section 94 of the Garda Síochána Act, 2005, as amended Supervised and Unsupervised Investigations**

- A7.1 Section 92 of the Act provides that if an admissible complaint is not resolved by mediation, or other informal means, as set out in the guidelines under section 90, the matter can be referred to the Commissioner of An Garda Síochána to be dealt with in accordance with section 94 of the Act.
- A7.2 The Commissioner of An Garda Síochána and GSOC acknowledge that the timely completion of proportionate investigations is key to the objectives of GSOC, as set out in section 67 of the Act. To that end, both parties will ensure, insofar as is possible, that this objective is achieved.
- A7.3 The Act provides for two forms of investigation to be undertaken under section 94 namely:
- unsupervised investigation undertaken by a Garda Síochána Investigating Officer (GSIO) appointed by the Commissioner of An Garda Síochána under the terms of section 94(1); and/or
  - supervised investigation undertaken by a GSIO under the terms agreed at section 94(5) of the Act.
- A7.4 Guidelines on the process to be followed during the course of the investigation have been developed and will be included in documentation provided to GSIOs by both Assistant Commissioner, Human Resource Management, and GSOC.
- A7.5 It is agreed that the Appointing Officer will notify GSOC of the appointment of a GSIO within ten days of receipt by the Garda Commissioner of a complaint under section 92(a). GSOC will seek the assistance of Assistant Commissioner, Human Resource Management, in cases where two requests for the appointment of a GSIO have not resulted in an appointment being made. In addition, GSOC will be informed of the reason for the delay in making an appointment, to enable GSOC to fulfil its obligations to the complainant under section 103 of the Act.
- A7.6 The appointment of a GSIO will take account of the *‘General Principles of Appointment’*, as set out below. The Appointing Officer shall, on notification of the GSIO to GSOC, confirm that the appointment complies with the said General Principles. GSOC undertakes to consider the Garda Commissioner’s nomination and to seek a replacement where it is considered necessary, within five working days of receipt of nomination. Where a replacement nomination is requested, the Commissioner of An Garda Síochána will be notified by GSOC of the reason for the request.
- A7.7 It is agreed that when an Appointing Officer receives a notification from GSOC objecting to the first, or subsequent, nominated GSIO, he/she will notify GSOC of the appointment of an alternative GSIO within five working days.

- A7.8 GSIOs, who are likely to retire from An Garda Síochána before the expected date of conclusion of an investigation, shall not be appointed, except in exceptional circumstances. If it becomes apparent that the GSIO cannot complete his/her investigation due to ill-health, or other unforeseen circumstance, the Appointing Officer will notify GSOC of the appointment of another GSIO within five working days of becoming aware of the circumstance.
- A7.9 Both parties acknowledge that GSOC will keep a watching brief over section 92(a) referrals to the Commissioner of An Garda Síochána for unsupervised investigation under section 94(1). While section 94(1) investigations are conducted under the Garda Síochána (Discipline) Regulations, 2007, as amended, it is agreed that GSOC must be kept apprised of the detail of ongoing enquiries, investigations and developments in the management of the case, to enable it to fulfil its obligations under section 103 of the Act. This will also enable GSOC to carry out its civilian oversight functions and fulfil its objective to promote public confidence in the process for resolving complaints, as set out at section 67 of the Act.
- A7.10 As a general rule, a timeframe of 16 weeks, commencing on the date the GSIO is provided with the documentation, is agreed for the completion of unsupervised investigations. It is agreed that the Commissioner of An Garda Síochána will ensure that all GSIOs are aware of this timeframe, which may be extended with the agreement of GSOC, on the provision of an interim report.
- A7.11 All interim reports will outline, in detail, the following information and shall be provided (a) without the necessity for request and/or (b) within two weeks of receipt of any individual request, which may be made on a case by case basis:
- the progress made to date in the investigation;
  - the matters outstanding to be addressed by the GSIO in order to finalise the investigation;
  - the reason why it has not been possible to complete the investigation within the agreed timeframes; and
  - where practicable, a definitive date for the likely conclusion of the investigation.
- A7.12 In circumstances where the investigation cannot be completed within the agreed timeframe, it is agreed that GSIOs will submit an interim report 12 weeks after the GSIO has been provided with the full details of the complaint by GSOC and on a 6-weekly basis thereafter.
- A7.13 In cases where delays occur, or are envisaged, GSOC will be informed by the GSIO, at the earliest opportunity, of the difficulties being encountered.
- A7.14 In the event that GSOC is not provided with interim reports, or sufficient information to enable it to fulfil its obligations under section 103 of the Act, GSOC will consider invoking section 94(3) of the Act or, on occasion, escalation of the matter to the Commissioner of An Garda Síochána, in accordance with Chapter 18 of the Protocols.

### A7.15 Criminal allegations

A7.15.1 Both parties agree that interpretations of criminal behaviour may differ and there are occasions where a complainant may make an allegation, which he/she describes as a criminal act, but which GSOC views as a possible breach of discipline.

A7.15.2 In circumstances where the GSIO is satisfied, following initial enquiries from the complainant, that a criminal offence has been alleged and prima facie evidence is available to support the allegation, the file should be immediately returned to GSOC. All documents pertaining to the investigation should also be returned to enable GSOC to review the complaint and initiate an investigation pursuant to section 98 of the Act, if appropriate.

### A7.16 False and misleading information

A7.16.1 A recommendation for a prosecution for the offence of providing false or misleading information may only be made by GSOC.

A7.16.2 Both parties agree that there are occasions where individuals knowingly provide false, or misleading, information to GSOC and may subsequently reiterate the allegation to a GSIO who is investigating the admissible complaint under the Garda Síochána (Discipline) Regulations, 2007, as amended.

A7.16.3 In circumstances where a GSIO obtains prima facie evidence of the intentional provision of false or misleading information during the course of an unsupervised investigation he/she is requested to complete the investigation and submit the file to GSOC for consideration by GSOC. Strict timelines have been set by the Director of Public Prosecutions for the receipt of investigation files from GSOC and, for that reason, early submission of investigation files to GSOC is essential to ensure the timely submission of an investigation file to the Office of the Director of Public Prosecutions (DPP).

A7.16.4 Upon receipt of such an investigation file, GSOC will, having considered the matter, notify Assistant Commissioner, Human Resource Management, of its decision and proposed course of action within six weeks of receipt of the report.

### A7.17 Investigations under section 94(1) of the Act

A7.17.1 It is agreed that, at the conclusion of the investigation, the Appointing Officer will, in complying with section 94(9) of the Act, provide GSOC with a final report which, in all cases, includes the following information:

- an outline of the information gathered by the investigation;
- the result of the unsupervised investigation and a rationale for the decision reached;
- a copy of all documents/evidence pertaining to the investigation and upon which the GSIO has based his/her rationale for the outcome of the investigation;

- if appropriate, any action that the Commissioner of An Garda Síochána proposes to take in relation to the matter.

A7.17.2 The Appointing Officer will furnish the complainant and the Garda member subject of complaint with a notification which:

- contains the result of the unsupervised investigation and a rationale for the decision reached;
- if appropriate, any action that the Commissioner of An Garda Síochána proposes to take in relation to the matter.

A7.17.3 Both An Garda Síochána and GSOC recognise the statutory entitlement of a complainant to seek a review of an unsupervised investigation pursuant to section 94(10) at the conclusion of the investigation. Both organisations will endeavour to ensure that this is meaningfully addressed.

A7.17.4 Both parties note the provisions of section 94(11). Such reviews by the Commissioner of An Garda Síochána will be undertaken in as timely a manner as possible and, generally, they should not exceed one month in duration. The findings will be reported to GSOC by the Garda Síochána reviewing officer one week after conclusion of the review.

#### A7.18 Discontinuation

A7.18.1 Bearing in mind the agreement, that proportionate investigations should be conducted, nothing in the Act precludes a GSIO from forming an opinion, at the earliest possible opportunity, that a sufficient and proportionate investigation has been conducted, to establish the facts and form a reasonably-based view that:

- the complainant has failed to engage in the complaint process;
- there is no likelihood that the matter subject of the complaint can be independently corroborated;
- the complaint is found to have no merit;
- an alleged neglect of duty has been satisfactorily explained;
- the matter has previously been investigated by way of internal Garda investigation (the outcome of the internal investigation to be notified to GSOC and the complainant by GSIO/Internal Affairs, Garda Headquarters) and no further action can be taken in the matter;
- the Garda subject of complaint is unidentified/unidentifiable;
- the complainant indicates a wish to withdraw the complaint; and/or,
- the Garda subject of complaint has retired/resigned from An Garda Síochána, or is deceased, and is no longer amenable to the Garda Síochána (Discipline) Regulations, 2007, as amended.

A7.18.2 In any of the circumstances outlined, the GSIO should submit a report to GSOC and the Appointing Officer with a recommendation for discontinuation of the

investigation, supported by a defensible rationale. GSOC will consider any such submissions and revert within four weeks of the receipt of the report.

#### A7.19 Decision to supervise investigation in the public interest

A7.19.1 GSOC can, in accordance with section 94(3) of the Act, decide to supervise the investigation of a complaint previously referred to the Commissioner of An Garda Síochána for an unsupervised investigation, should GSOC consider it desirable, in the public interest.

A7.19.2 GSOC shall inform the Commissioner of An Garda Síochána of the reasons for supervising the investigation.

A7.19.3 In circumstances where section 94(3) of the Act applies, the GSIO will provide a copy of all materials to GSOC within 14 days of Assistant Commissioner, Human Resource Management, being notified of the decision to supervise the investigation. The documents and materials will be listed by the GSIO and received by a GSOC representative.

A7.19.4 In addition, the GSOC supervising officer may, on a case-by-case basis, hold a meeting with the GSIO to devise a strategy for the timely completion of the investigation.

#### A7.20 Investigations under section 94(3) of the Act (Supervised)

A7.20.1 The Commissioner of An Garda Síochána shall be notified by GSOC, under section 94(4) of the Act, that it intends to undertake a supervised investigation in accordance with the provisions of 94(5).

A7.20.2 As per the provisions of section 94(5) of the Act, and in the interest of ensuring the appropriate level of supervision in each case, it is agreed that the GSOC supervising officer and the GSIO will agree a Supervised Investigation Plan and an Investigation Strategy and a record of same will be kept by both parties.

A7.20.3 It is agreed that the GSIO will complete an investigation which commences under section 94(5) of the Act within the timeframe agreed between the GSIO and the GSOC supervising officer. As a general rule, he/she will present the Final Report on the investigation to the GSOC supervising officer within 20 weeks of the date that the investigation strategy document is signed off. This timeframe may be extended, with the agreement of GSOC, on the provision of an interim report, which will outline, in detail:

- the progress of the investigation;
- the matters outstanding to be addressed by the GSIO in order to finalise the investigation;
- the reason why it has not been possible to complete the investigation within the agreed timeframes; and
- where practicable, a definitive date for the likely conclusion of the investigation.

A7.20.4 If the GSIO becomes aware that the timeframe for the Final Report on the investigation will not be met he/she will notify the GSOC supervising officer, in writing, of this fact, at the earliest opportunity. In such cases, the GSIO will provide a report at the expiration of the 16<sup>th</sup> week (and such other reports thereafter, as required by the supervising officer).

A7.20.5 It is agreed that there is a requirement to provide regular updates to the Garda subject of complaint and the complainant. The responsibility for providing these updates will form part of the agreement between the GSIO and the GSOC supervising officer, at the beginning of the process.

A7.20.6 In cases where delays occur, or are envisaged, GSOC will be informed, at the earliest opportunity, of the difficulties being encountered. In the event the GSIO does not respond positively to a requirement made by the supervising officer for updates, GSOC will seek the assistance of Assistant Commissioner, Human Resource Management, and, on a case-by-case basis, in some circumstances, will invoke Chapter 18 of the Protocols.

A7.20.7 There is provision in legislation, should it be required, for a GSOC supervising officer to be present at interviews with Garda members. A short adjournment of the interview will be taken to allow for compliance with section 94(5)(d) of the Act in circumstances where the supervising officer attends the interview.

A7.20.8 It is agreed that no notification of the outcome of the investigation will issue to the Garda subject of complaint and no disciplinary action will be taken against any Garda in advance of the GSIO furnishing GSOC with a Final Report, in accordance with section 94(6) of the Act, which contains:

- a report in respect of the investigation;
- copies of any materials gathered during the course of the investigation.

A7.20.9 As soon as practicable after the conclusion of an investigation under this section, and where GSOC is of the opinion that a breach of the Garda Síochána (Discipline) Regulations, 2007, as amended, may have occurred, GSOC will make a report, in accordance with section 97 of the Act, to the Commissioner of An Garda Síochána within six weeks of the receipt of the Final Report.

#### A7.21 Discontinuation

A7.21.1 Bearing in mind the agreement that proportionate investigations should be conducted, nothing in the Act precludes a GSIO from forming an opinion, at the earliest possible opportunity, that a sufficient and proportionate investigation has been conducted to establish the facts and form a reasonably-based view that:

- the complainant has failed to engage in the complaint process;
- there is no likelihood that the matter subject of complaint can be independently corroborated;
- the complaint is found to have no merit;
- an alleged neglect of duty has been satisfactorily explained;

- the matter has previously been investigated by way of internal Garda investigation (the outcome of the internal investigation to be notified to GSOC and the complainant by GSIO/Internal Affairs, Garda Headquarters) and no further action can be taken in the matter;
- the Garda subject of complaint is unidentified/unidentifiable;
- the complainant indicates a wish to withdraw the complaint; and/or
- the Garda, subject of complaint, has retired/resigned from An Garda Síochána, or is deceased, and is no longer amenable to the Garda Síochána (Discipline) Regulations, 2007, as amended.

A7.21.2 In any of the circumstances outlined, the GSIO should submit a report to GSOC and the Appointing Officer with a recommendation for discontinuation of the investigation, supported by a defensible rationale. GSOC will consider any such submissions and revert within four weeks of the receipt of the report.

**Chapter 7- Appendix A (continued)**

**Sample Agreement**

**Suggested Terms of Reference and  
Investigation Strategy**

|   |  |
|---|--|
| <b>GSOC Case Reference</b>  |  |
| <b>Complainant contact details:</b>                                 |  |
| <b>Section Referred Under:</b>                                      | Section 94(4), Garda Síochána Act, 2005, as amended  |
| <b>GSOC Supervising Officer:</b>                                    |  |
| <b>Garda Síochána Investigating Officer:</b>                        |  |
| <b>Date:</b>  |  |
| <b>Background:</b>  | Full details of complaint made to be included here.  |
| <b>GSOC Documentation:</b>  | <b>Documents provided to assist in this investigation:</b><br><br>1.<br>2.<br>3.   |
| <b>Suggested Investigation Strategy and Actions for discussion:</b> | <b>1) Obtain a statement from ..... addressing the following and any other relevant information:</b><br><br><u>Garda Members &amp; Allegation(s)</u><br><br><ul style="list-style-type: none"><li>• Establish whether Garda concerned is known to the Complainant</li><li>• Obtain a description of the Garda member concerned</li><li>• Establish detail around the events/incident on that date</li><li>• Additional suggestions</li></ul> <b>2) Take statements from witnesses identified by the Complainant</b><br><u>Witnesses</u><br><ul style="list-style-type: none"><li>• No witnesses have been identified by the complainant on his/her GSOC1 form – confirm this in his/her statement.</li></ul> |

|  |  |
|--|--|
|  | <p><b>3) In line with the provisions of Chapter 5 - Appendix A of this Protocol - obtain relevant documentation from An Garda Síochána including:</b></p> <ul style="list-style-type: none"> <li>• copies of any existing Garda notebook entries, report(s), statement(s), property log/return, receipt of registered post and investigation file (where one exists) in relation to the incident on this date with the Complainant;</li> <li>• copy of any PULSE Incident Summary Report in relation to this matter;</li> <li>• establish if any other Garda member was present and, if yes, obtain statement(s);</li> <li>• confirm identity of Garda concerned [Garda....] - <b>Interview the Member concerned and notify GSOC of the proposed date to facilitate GSOC attendance at the interview.</b></li> </ul> <p><b>4) Other</b><br/>Obtain a witness statement from any other witness identified through these enquiries and conduct any other enquiries deemed appropriate.</p> |
|--|--|

**Update interested parties (complainant, member concerned, Assistant Commissioner) as per section 103 of the Garda Síochána Act, 2005, as amended:**

|                                |   |
|--------------------------------|---|
| <b>Update every Six Weeks:</b> | ..... will keep the interested parties informed of the progress of the investigation <i>every six weeks</i> . |
|--------------------------------|---|

**Time Schedule for the Investigation**

|   |  |
|---|--|
| <p><b>Overall Timeframe 12 Weeks:</b><br/>As per the GSOC and An Garda Síochána Memorandum of Understanding and Protocols</p> | <p><b>Submit Final Report pursuant to section 94(6) Garda Síochána Act, 2005, as amended, outlining the facts established by the investigation, to be received by the GSOC by specified date.</b></p> <p>The findings will be forwarded to the Commissioner of An Garda Síochána pursuant to sections 94(7)/97 of the Act, where relevant.</p> |
|---|--|

## **General Principles for section 94 of the Act**

1. A complaint against a member or members which includes an allegation of misconduct must be investigated by a Garda Síochána Investigating Officer not below the rank of Inspector who may, if the circumstances so warrant, be assisted by another member not below the rank of Sergeant (hereafter 'the assisting member').
2. A complaint which includes an allegation of misconduct against a member or members of Sergeant rank, or higher, must be investigated by an officer of not lower than Superintendent rank.
3. No member shall be appointed Garda Síochána Investigating Officer if he/she has been involved, in any capacity, in relation to the complaint to the extent that it may prejudice the outcome. In cases where the nominee for Garda Síochána Investigating Officer has declared a potential conflict of interest, which the Appointing Officer has determined not to be of a nature that would require the nominee's withdrawal, the details of the declaration will be made to GSOC, which will give its opinion before the nomination is endorsed for approval.
4. An Investigating Officer shall not be from the same District as the member or members subject of an admitted complaint.
5. The Investigating Officer shall not be in the direct operational chain of command of the member or members subject of the admitted complaint - e.g. a Chief Superintendent shall not investigate a complaint against an Inspector in his/her own Division.
6. The Investigating Officer shall not be in the same specialist unit as the member or members subject of the admitted complaint - e.g. a Superintendent in the Garda Bureau of Fraud Investigation shall not investigate a complaint involving any member or members of the Garda Bureau of Fraud Investigation.
7. Points 3 to 6 apply equally to the assisting member.

## Chapter 8

### **Reporting of Corruption and Malpractice Regulations/Drawing attention to suspected criminal activity**

#### 8.1 Members of An Garda Síochána reporting corruption or malpractice ('Whistleblower' provisions) - section 124 of the Act refers

- 8.1.1 In the Regulations promulgated under this section, it is provided that the Commissioner of An Garda Síochána will, as soon as practicable, notify GSOC of each report received.
- 8.1.2 The Commissioner of An Garda Síochána will advise GSOC of his/her proposed response and any further information it may request in relation to the matter.
- 8.1.3 If the Commissioner of An Garda Síochána believes a report to be false, frivolous or vexatious or not made in good faith, he shall explain, in his notification, the basis for such belief. GSOC is not authorised to admit complaints from members of An Garda Síochána.

#### 8.2 Drawing attention of the Commissioner of An Garda Síochána to suspected criminal activity

- 8.2.1 If GSOC forms the view that a member of An Garda Síochána has committed a criminal offence, it may draw this to the attention of the Commissioner of An Garda Síochána before it has advanced its investigation to the point at which any criminal charges are preferred.
- 8.2.2 Any such communication will be made by an officer appropriately delegated by GSOC and will be sent to an officer appropriately delegated by the Commissioner of An Garda Síochána, or the Deputy Commissioner acting as Commissioner, to receive such communications.
- 8.2.3 The decision whether to act on such information is that of the Commissioner of the Garda Síochána and he/she will notify GSOC of any action taken.

## Chapter 9

### **Investigations by GSOC without receipt of a complaint other than a referral in accordance with section 102(1) of the Act**

#### 9.1 Section 102 of the Act refers

9.1.1 Independent of the receipt of a complaint, GSOC can initiate investigations under section 102 of the Act. These are:

- 1) section 102(2)(b) where any matter which appears to GSOC to indicate that the conduct of a member of An Garda Síochána may have resulted in the death of, or serious harm to, a person; and
- 2) section 102(4) where it appears to GSOC desirable, in the public interest, to do so and, without receiving a complaint, any matter which appears to it to indicate that a member of An Garda Síochána may have:
  - a) committed an offence, or
  - b) behaved in a manner that would justify disciplinary proceedings.

9.1.2 In addition, where GSOC is made aware, in circumstances other than a referral by the Commissioner of An Garda Síochána, of conduct of member(s) of An Garda Síochána which appears to have caused death or serious harm, it shall ensure that the matter is investigated.

9.1.3 This section (section 102(5)) also enables the Minister to request a GSOC investigation 'in the public interest'.

9.1.4 GSOC undertakes to notify the Commissioner of An Garda Síochána, as soon as practicable, of any such investigation, the lead GSOC personnel assigned and the initial outline of how the investigation is being undertaken.

9.1.5 Such notification will issue, in writing, from an officer appropriately delegated by GSOC and will be sent to an officer appropriately delegated by the Commissioner of An Garda Síochána, or the Deputy Commissioner acting as Commissioner, to receive such notifications.

#### 9.2 Section 103 of the Act refers

9.2.1 Section 103 requires GSOC to keep relevant parties informed of the progress and results of any investigation under this section. Responsibility for this will rest with an officer appropriately delegated by GSOC and, in relation to An Garda Síochána, information will be sent to an officer appropriately delegated by the Commissioner of An Garda Síochána, or the Deputy Commissioner acting as Commissioner.

9.2.2 GSOC will be mindful of the Garda Commissioner's responsibilities regarding the management of An Garda Síochána. In this regard if, during the course of an investigation, GSOC identifies any conduct of a member, or practice, of An Garda Síochána which requires immediate attention, GSOC will inform the Commissioner of An Garda Síochána accordingly.

## **Chapter 10**

### **Examinations by GSOC into ‘practices, policy or procedure of An Garda Síochána’**

#### 10.1 Section 106 of the Act refers

- 10.1.1 Notification to the Garda Commissioner of a request by the Minister for any such examinations by GSOC is the responsibility of the Minister for Justice and Equality.
- 10.1.2 GSOC undertakes to advise the Garda Commissioner, as soon as practicable, of any such examination, the terms of reference of the examination, the lead GSOC personnel to be assigned and the initial outline of how the investigation is being undertaken.
- 10.1.3 Such notification will issue, in writing, from an officer appropriately delegated by GSOC and will be sent to an officer appropriately delegated by the Commissioner of An Garda Síochána, or the Deputy Commissioner acting as Commissioner of An Garda Síochána, to receive such notifications.

#### 10.2 Section 107 of the Act refers

- 10.2.1 Section 107 states the Garda Commissioner shall supply GSOC with ‘such information and documents’ as GSOC may require for this purpose.
- 10.2.2 With the Minister’s consent, the Garda Commissioner’s duty to supply these things will not apply where disclosure would prejudice a criminal investigation or the security of the State or jeopardise the safety of a person.
- 10.2.3 A copy of any report by GSOC, completed under this section, will be provided to the Commissioner of An Garda Síochána, or Deputy Commissioner, by the Chairman or a member of Ombudsman Commission.

## **Chapter 11**

### **Search of Garda Síochána stations**

#### 11.1

- 11.1.1 It is accepted by An Garda Síochána and GSOC that, in the event of it being necessary to search a Garda station, or any part thereof, giving advance notice of such search to members of An Garda Síochána at that Garda station could be to defeat the purpose of the exercise.
- 11.1.2 However, having regard to the Garda Commissioner's responsibility to maintain proper control of An Garda Síochána, notification of any such search will be communicated to the Commissioner of An Garda Síochána at the earliest practicable time.
- 11.1.3 The required authorisation for a search of a Garda station or premises must be issued by the Ombudsman Commission.

#### 11.2

- 11.2.1 When GSOC wishes to search a Garda station, or that part of a Garda station, that has been designated as restricted for reasons of State security (section 126 of the Act refers), such intention shall be communicated to an officer appropriately delegated by the Commissioner of An Garda Síochána, or the Deputy Commissioner acting as Commissioner of An Garda Síochána, to receive such notifications by a member of GSOC or the Director of Operations and confirmed subsequently in writing.
- 11.2.2 If An Garda Síochána objects to the proposed search, the officer appropriately delegated will so inform a member of GSOC and will confirm this subsequently in writing.
- 11.2.3 In ordinary course, GSOC will work in liaison with the relevant Superintendent in the search of a Garda station. However, in some cases, this may not be appropriate. GSOC undertakes to advise the Superintendent, or appropriate officer, as soon as may be practicable that such search is planned or is in progress.

## **Chapter 12**

### **Media and Communications**

#### 12.1

12.1.1 GSOC and An Garda Síochána recognise the need for close liaison and co-ordination between their respective media/communications departments.

12.1.2 Contact on matters of mutual interest will, ordinarily, be effected through the Head of Communications or the Communications Officer, GSOC, on the one hand, and the Superintendent, Garda Press Office, or his/her acting deputy, on the other.

12.1.3 GSOC and An Garda Síochána undertake to furnish each other in advance, where possible, with any material, statements, press releases or other items that impinge upon each other's area of jurisdiction.

12.1.4 GSOC and An Garda Síochána undertake to respect, in their media and communications policy, the division of jurisdiction that applies in shared scene and incident management, as agreed in Chapter 4 and associated Appendices.

12.1.5 The priorities in determining the release of information to news media, and/or the general public, will be as follows:

- safety and health of individuals;
- integrity of legal processes;
- operational needs;
- public reassurance.

12.2 It is recognised that GSOC has a duty to promote public confidence and that this must guide its approach to communications with the media. GSOC and An Garda Síochána will devise and set out agreed guidelines regarding timing and content of material released to the media and the general public.

## Chapter 13

### Identification and Recognition

#### 13.1 Section 73 of the Act refers

13.1.1 An Garda Síochána will be conscious of, and recognise, the warrant cards, seal and other legal documents issued by GSOC. GSOC will periodically provide An Garda Síochána with a full list of its Designated Officers and Case Officers. GSOC will, at all times, keep An Garda Síochána (Commissioner's Office) informed of membership of GSOC (Commissioners), with relevant contact details.

#### 13.2 Section 98 of the Act refers

13.2.1 An Garda Síochána will be conscious of the lawful authority of GSOC's Designated Officers, involved in an investigation into an alleged offence, to:

1. seize, and be in possession of, firearms and ammunition;
2. seize, and be in possession of, controlled substances (drugs);
3. seize, and be in possession of, Garda vehicles, uniforms and any other material, or equipment, that may constitute evidence, or be required for other lawful purposes by GSOC (e.g. identification parades).

13.2.2 Any items taken into possession from members of An Garda Síochána by GSOC Designated Officers shall be in accordance with the procedures outlined in Chapters 4, 5 and 6 of this Protocol.

13.2.3 Suitable, safe arrangements for the disposal of Garda vehicles, controlled drugs, firearms and/or ammunition, where required, will be made by GSOC, under the supervision of the Director of Operations, at the conclusion of any relevant investigation. The Director of Operations will make such arrangements in agreement with the nominated Assistant Commissioner of An Garda Síochána.

13.2.4 Members of An Garda Síochána will be mindful of the entitlement of official GSOC vehicles and of officers and members of GSOC, designated under section 98, while on duty, to exemptions and privileges under the relevant provisions of the Road Traffic Acts.

## **Chapter 14**

### **Members of An Garda Síochána serving with GSOC**

#### 14.1 Section 74 of the Act refers

- 14.1.1 The Commissioner of An Garda Síochána will arrange for a Headquarters Directive to be issued, periodically, advising members of An Garda Síochána of the opportunity to apply to be considered for service with GSOC.
- 14.1.2 On receipt of a request from GSOC for the provision of members of An Garda Síochána to serve with GSOC, the Commissioner of An Garda Síochána will put in place arrangements for a panel to be drawn up, listing members who have been deemed suitable to be considered for service with GSOC.
- 14.1.3 The Commissioner of An Garda Síochána will remain responsible for pay, pension, promotion and compensation issues in respect of these personnel. GSOC may, however, provide special allowances or other incentives in certain cases.
- 14.1.4 Any requirement for a written assessment of a member's performance while on secondment will be provided by the Director of Operations or the Director of Administration, on the basis of a process agreed with the Commissioner of An Garda Síochána.

## **Chapter 15**

### **Resolution by mediation or other informal means**

#### 15.1 Section 90 of the Act refers

- 15.1.1 This section provides that GSOC may issue guidelines for the resolution by mediation or other informal means of certain admissible complaints.
  - 15.1.2 GSOC and An Garda Síochána agree on the desirability, wherever possible, of resolving complaints through these means and each organisation commits itself to pursuing all reasonable measures to make this effective.
  - 15.1.3 GSOC and An Garda Síochána will put in place procedures to communicate fully the nature and purpose of the resolution scheme.
  - 15.1.4 The issuing of relevant guidelines is a matter for GSOC. However, GSOC undertakes to ensure that such guidelines meet the reasonable requirements of the Garda Commissioner, having regard to his responsibilities to maintain discipline and standards within An Garda Síochána.
  - 15.1.5 An Garda Síochána undertakes to put in place effective measures to ensure that details of complaints resolved under these headings are expunged, as required, from the records.
- 15.2 Section 90 of the Act provides for the review of guidelines by GSOC, as required. GSOC undertakes to engage in consultation with An Garda Síochána in any such review.

## Chapter 16

### False Information

#### 16.1 Section 110 of the Act refers

- 16.1.1 When GSOC forms the view that a person has provided information that he/she knows to be false or misleading, in relation to a complaint or investigation, as reflected in primary legislation, the Designated Officer or Case Officer will provide all relevant information to the Director of Operations.
- 16.1.2 If the Director of Operations is satisfied, prima facie, that an offence has been committed, he/she will so advise the members of the Garda Síochána Ombudsman Commission, as soon as practicable.
- 16.1.3 The investigator's report will be considered at Commissioner level at GSOC where a decision will be taken whether to refer the investigation file to the Director of Public Prosecutions. Section 110(2) states that the consent of the Director of Public Prosecutions is necessary to institute a prosecution in such a case.
- 16.2 If information comes into the possession of a member of An Garda Síochána, leading him/her to form the view that an offence has been committed under this section, such information will be communicated through the office of the nominated Garda Assistant Commissioner to the office of the Director of Operations, GSOC.
- 16.3 Both organisations note that the detection of the provision of false or misleading information may initially be made by An Garda Síochána in the course of an investigation which has been referred to An Garda Síochána under section 94 of the Act.
- 16.4 Both organisations further note the provisions of section 89 of the Act and agree that, in the first instance, it is the duty of the Garda Síochána Investigating Officer (GSIO) to make the appropriate enquiries and to secure such evidence, as is possible, of the alleged offence. The GSIO will immediately notify the Appointing Officer and GSOC directly of his/her suspicion and will liaise with the Senior Case Officer who referred the matter.

## **Chapter 17**

### **Complaints and Allegations by Garda members against Designated Officers of GSOC**

#### 17.1 Section 109 of the Act refers

17.1.1 GSOC and An Garda Síochána shall develop a mechanism for reporting the receipt of, and subsequent investigation of, certain complaints relating to the conduct of Designated Officers.

17.1.2 GSOC has drawn up a Code of Conduct and Ethics for its staff, entitled ‘GSOC Code of Ethics’.

17.1.3 In the case of any employee of GSOC becoming a suspect in any Garda investigation into a criminal matter, or being the subject of any criminal charge, the fact will be notified, as soon as practicable, to GSOC, at the level of Commissioner or Director of Administration and/or Operations.

## Chapter 18

### Review/Resolution/Appeal

18.1 In the event of disagreement between GSOC and An Garda Síochána over any aspect of the operation of these Protocols or Appendices, three levels of appeal/resolution will operate:

1. Level One: Deputy Director of Operations/Senior Investigations Officer (SIO) and Chief Superintendent/Superintendent at operational level;
2. Level Two: Director/Deputy Director of Operations and Chief Superintendent/Superintendent, Internal Affairs;
3. Level Three: Director of Operations or Deputy, Director of Administration and Assistant Commissioner, Human Resource Management, or acting deputy;
4. Level Four: Garda Síochána Ombudsman Commissioner and the Commissioner of An Garda Síochána, or Deputy Commissioner, acting Commissioner.

### Review of Protocols

18.2 Further to the agreement made in the final paragraph of the Memorandum of Understanding commencing these Protocols, representatives from the organisations' Internal Affairs, An Garda Síochána and the Operation's Directorate, GSOC will meet at regular intervals, to be agreed at an operational level, to review the functionality and operation of these Protocols. These meetings will identify any issues of difficulty and will seek to reach agreement, in principle, of those issues. Where necessary, these Protocols will be subject to review.

18.2.1 This is without prejudice to either organisation seeking to separately advance any significant issue of concern that may require urgent attention.

-ends