

AN GARDA SÍOCHÁNA



**GARDA SÍOCHÁNA POLICY
ON THE INVESTIGATION OF
SEXUAL CRIME
CRIMES AGAINST CHILDREN
CHILD WELFARE**

2010

POLICY STATEMENTS

An Garda Síochána is fully committed to the fundamental principle of protecting the Human Rights of all those with whom it interfaces in everyday policing. This document represents the Garda Commissioner's policy in respect of the investigation of sexual crime and crimes against children by members of An Garda Síochána. It complies with domestic law, including the principles of the European Convention on Human Rights which is incorporated into Irish law and the Constitution of Ireland.

It is the aim of An Garda Síochána to uphold and protect the human rights of all the people of Ireland by providing a high quality, effective policing service in partnership with the community and in co-operation with other agencies.

The fundamental principle underpinning this policy is the protection of the public by the thorough and professional investigation of this form of crime by all members of the organisation.

Every member of the community has a role in the protection of children. In that context An Garda Síochána would urge on all individuals and organisations with responsibility for children the importance of being aware of child protection measures and being alert to signs of abuse. While An Garda Síochána has significant expertise and experience in the investigation of sexual offences and crimes against children, we can only deploy those skills and resources when we are made aware of the need for investigation. To that end, where abuse is identified or suspected, people must report it to An Garda Síochána.

EXECUTIVE SUMMARY

This document provides a summary of the policies governing the investigation of crimes of a sexual nature and suspected child abuse and is designed to provide practical guidance to members of An Garda Síochána, in creating awareness of the investigative and welfare responsibilities associated with such crimes. It sets out the main legal (including human rights) provisions, necessary when conducting such investigations and addresses the subject matter under the following headings:

- **Part I Investigation of Sexual Crime**
- **Part II Crimes against Children**
- **Part III Child Welfare**

This document provides an aide memoir on Garda standards, procedures and practices making reference to the main legislative provisions, including the legislative changes enacted and commenced since the foundation of the State and it is essential that any actions taken by members of An Garda Síochána are applied in accordance with law.

The document herein is the result of a review of all existing policies and **replaces** the following HQ Directives, which are hereby withdrawn:

- **HQ.56/95 Procedure for notification of suspected cases of child abuse (& HQ 58/95) between Health Boards and Gardaí**
- **HQ.157/99 Investigation of Sexual Assault Cases.**
- **HQ.192/99 National Guidelines for the Protection and Welfare of Children.**
- **HQ.193/02 The Investigation of Sexual Assault Allegations.**
- **HQ.210/02 Establishment of the Paedophile Investigation Unit.**
- **HQ.77/04 Delay in the Making of Complaints of Sexual Assault.**
- **HQ.176/04 Introduction of Early Evidence Kits for Rape and Sexual assault Investigations.**
- **HQ.92/06 Investigation of complaints of Child Sexual Abuse.**
- **HQ.132/06 An Garda Síochána: Children First – Action Checklist. Notifications of Suspected Child Abuse – Children First.**
- **HQ.165/07 PULSE recording procedures when Health Service Executive Intervention is required for children.**
- **HQ.183/07 Specialist Victim Interviewers in the Garda Síochána.**

- **HQ.90/08 Vacancies for members of Garda rank to be employed as full-time Specialist Child Interviewers.**
- **HQ.186/08 Provisions of section 16(1)b Criminal Evidence Act 1992.**
- **HQ.20/09 Risk Assessment of Persons subject to the provision of the Sex Offenders Act 2001.**
- **HQ. 24/10 Complaints received of Alleged Clerical Abuse to be notified to the Domestic Violence & Sexual Assault Investigation Unit at the National Bureau of Criminal Investigation, Harcourt Square.**

All Garda members shall familiarise themselves with its content, which should be read in conjunction with the following:

- Chapters 23 and 33 of An Garda Síochána Code;
- An Garda Síochána Crime Investigation Techniques Manual;
- Rape/Sexual Assault: National Guidelines on Referral and Forensic Clinical Examination in Ireland;
- Children First: National Guidelines for the Protection & Welfare of Children;
- All H.Q. Directives referred to within.

The newly established **Sexual Crime Management Unit** within the Domestic Violence and Sexual Assault Investigation Unit will conduct evaluations of a number of sexual crime investigations throughout the State, each year, to ensure the quality of such investigations is satisfactory. The unit will be informed immediately of any reports of clerical sexual abuse by completion of Form D.V.S.A.I.U. (C.A.). This document provides instructions in cases where religious orders and other external agencies report sexual abuse, such instructions are outlined at Chapter 5.6 with which all Divisional and District Officers should be familiar.

In relation to the investigation of child sexual abuse, the attention of members is drawn to the offence of sexual exploitation of children contrary to section 3 of the Child Trafficking and Pornography Act 1998 (as amended by Section 3 of the Criminal Law (Human Trafficking) Act 2008. This valuable piece of legislation criminalises a wide spectrum of sexual activity with children.

An Garda Síochána is now engaged in the assessment and management of the risk posed to the community by convicted sex offenders and Chapters 14 to 17 (inclusive) provide instruction on such issues. Divisional and District Officers shall ensure their familiarity with the contents of these chapters.

This document also includes policy changes to the role of **Specialist Victim Interviewers**. Specialist Victim interview suites may be used for interviewing victims of other serious crime but only when deemed appropriate by the member i/c of such investigation and in consultation with the District Officer in whose area the suite is located.

The interviewing of child victims of crime will at all times, take precedence over other interviews. However, it is essential that the anonymity of the specific location of each interview suite and its usage is preserved in order to avoid a “walk of shame” scenario, where victims of sexual crimes are forced to walk in front of strangers who can surmise as to their circumstances because the use of the premises is commonly known. It is incumbent on local management to **avoid** the presence of **uniform personnel** (including marked Garda vehicles) at or in the vicinity of these interview suites at all times.

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PART I

THE INVESTIGATION OF SEXUAL CRIME

PART I – THE INVESTIGATION OF SEXUAL CRIME

1. Introduction

1.1. This policy document outlines the procedures that Garda members will adhere to when investigating crimes of a sexual nature and suspected child abuse. It incorporates information on Garda standards, procedures and legislation through to victim support in regard to such incidents. All Garda members must be familiar with its content and it should be read in conjunction with the following documents:

- **Chapter 23 (Crime Investigation)** of An Garda Síochána Code
- An Garda Síochána **Crime Investigation Techniques** Manual
- **Rape/Sexual Assault:** National Guidelines on Referral and Forensic Clinical Examination in Ireland
- **Children First:** National Guidelines for the Protection and Welfare of Children
- All **H.Q. Directives** referred to within

All of these documents can be found on **An Garda Síochána Portal**.

1.2. Sexual Crime includes rape, rape under Section 4 of the Criminal Law (Rape) (Amendment) Act 1990; aggravated sexual assault; sexual assault; defilement of a child; the production, distribution and possession of child pornography; sexual exploitation of a child; child trafficking and taking a child for purposes of sexual exploitation; soliciting, importuning or meeting a child for the purpose of sexual exploitation; incest; indecent exposure; and attempts to commit any of the foregoing offences.

See Appendix B

The above definition is provided for guidance but should not be interpreted as being fully inclusive.

1.3. Sexual crime may be committed by male and female adults and children. Such offences are not necessarily committed by strangers and in fact it is more common that they are committed by persons known to the victim, including family members, friends, associates, partners and persons in authority. Children can be particularly vulnerable to such crime and the protection and future welfare of

children is of paramount importance in the work of An Garda Síochána.

- 1.4. Sexual crime may occur within heterosexual, lesbian, gay, bisexual and transgender relationships. It crosses class, gender, race and religious belief.
- 1.5. The locus in quo is often in private areas to which members of An Garda Síochána have no right of access without statutory powers.
- 1.6. It is the duty of the Gardaí to investigate fully all incidents of sexual crime and child abuse reported to them. These cases require special care and attention because of the usually vulnerable circumstances surrounding the injured party. Because of this, s/he will very often not be able to make the kind of rational decisions which would be in her/his best interests.
- 1.7. Inadequate action by Gardaí during the course of such investigations can often confirm the aggressor's perception of invulnerability which in turn can lead to further crime and/or leave the complainant vulnerable to further attack.
- 1.8. The positive and considerate attitude of members of An Garda Síochána during the course of investigation of such crime is vital to ensuring that the investigation is brought to a successful conclusion. Inappropriate body language, remarks and a failure to show sensitivity and compassion to a victim can and has resulted in the withdrawal of genuine complaints.
- 1.9. Under no circumstances should members dissuade complainants from maintaining their complaints. Members should explain what is involved in the investigation and trial process but this should be conducted in as positive and as clear a manner as possible.
- 1.10. Each District Officer will take personal responsibility for the implementation of the policy contained in this document. Each Divisional Officer will nominate an Inspector to oversee the policy and evaluate its effectiveness within her/his Division.
- 1.11. The fundamental principle underpinning this policy is that any action by a member of the Garda Síochána must comply with the fundamental principles of legality, necessity, proportionality and accountability and is applied in a non-discriminatory

manner.

The primary Garda role is one of ‘protection of rights’ through **law enforcement** and in particular the rights outlined under the European Convention on Human Rights (ECHR), especially:

- **Article 2 – Right to Life**
- **Article 3 – Right to prohibition from inhuman & degrading treatment**
- **Article 5 – Right to liberty and security of person,**
- **Article 6 – Right to a fair trial**
- **Article 8 – Right to respect for the private and family life.**

The personal unspecified **Constitutional** rights to bodily integrity and dignity must also be maintained by the State.

The Legal Basis for the grounding of this policy and its implementation can be found at Appendix A.

2. Procedure

2.1. Reports of crimes of a sexual nature and suspected child abuse will be investigated promptly. Investigations will be conducted under the supervision of the District Officer by a member(s) experienced in the investigation of such crimes. **HQ.17/10** in relation to the taking of complaints and reports and the obligation of An Garda Síochána to investigate will be strictly observed.

2.2. Initial Action

2.2.1. A victim of rape or sexual assault may feel embarrassed at being asked to relate the details of the incident(s) and may be suffering from post traumatic stress.

2.2.2. The investigating members must understand that the existence of these factors could affect their ability to answer effectively questions relating to the crime. The attitude of the interviewers should always be one of sympathy and understanding; however, the importance of obtaining a full and consistent statement must be pointed out to the victim.

2.2.3. To this end, the first member to respond and investigating members will take note of the following:

- Time and date of complaint
- Full particulars of the complaint
- The general state of the victim - signs of mental shock or distress, state of hair, etc.
- Any evidence of injury or marks, intoxication or drugs
- The state of clothing - torn or disarranged; buttons or jewellery missing; stains of mud, earth, blood or semen on clothing
- Detailed description of the scene
- The member dealing with the victim should not have physical contact with any suspect prior to forensic samples, clothing and so on (other items) being taken from the victim or suspect for fear of cross contamination of vital forensic evidence
- Where refreshments have been requested members should be mindful of the fact that evidence could be lost from the mouth or surrounding area.
- If there is a delay in getting to the medical examiner, consider using the Early Evidence Kit. District Officers will ensure the availability of such kits in all

stations and ensure that they have not passed their expiry date.

2.2.4. The victim's statement is the most important evidence in every investigation as it decides the extent of the crime and the gravity of the suspected offence. The fullest and most detailed statement that the victim is capable of making should always be obtained even if this has to be done over a long period of time or several periods of time. The necessity for such detail should be explained to the victim in every case.

2.2.5. Victims should be allowed to tell their stories without interruption. At this stage particular notes should be taken of the scene of the crime. A full description should also be taken of the perpetrator, if not identified by the victim, and this description should immediately be circulated as deemed appropriate.

2.2.6. As well as taking note of the above, the investigating member will also seize and retain any physical evidence, which could be used to support a prosecution and where appropriate preserve the scene.

2.3. **Medical Attention**

2.3.1. Members should arrange for the provision of immediate medical attention where required and the victims removal to hospital if deemed necessary and appropriate.

2.4. **Interviewing the Complainant**

2.4.1. The interview of the injured party should be conducted by two members at the earliest opportunity and in a suitable location for the complainant and Gardaí. This location may be a suitable room in a Garda Station, the home of the victim or a friend/relative, a private area in a hospital, a special victim interview suite or other carefully selected location where the victim feels comfortable. Suspect interview rooms in Garda Stations **should not** be used in this regard. If the interview is to take place in a Garda station, privacy should be ensured

2.4.2. Children under 14 years of age and persons with an intellectual disability who have been the subject of a sexual offence, an offence involving violence or the threat of violence to a person or an offence consisting of attempting or conspiring to commit or of aiding, abetting, counselling, procuring or inciting the commission of any of these offences will be interviewed by trained Specialist Victim Interviewers. Under no circumstances will a member who has not received such training attempt to take a

statement from a person who is under 14 years of age or with an intellectual disability who is the victim of a sexual offence or offence involving crime or the threat of crime. Further guidance in relation to these matters is provided below. The investigating member will at all times display a positive, helpful and non-judgemental attitude.

- 2.4.3. From the beginning, the investigating member will keep in mind the emotional and physical pain the victim may be suffering, while ensuring that all available evidence regarding any reported offence is obtained. Members should be mindful at an early stage of our obligations outlined in the Children First Guidelines.
- 2.4.4. Members should use positive language at all times, avoiding negative terminology as ‘alleged’ or ‘allegation’ and instead use such words as ‘complaint’ or ‘account’, etc.
- 2.4.5. There may be occasions where difficult questions must be asked of complainants (eg, regarding delay in making a complaint, or possible inconsistencies in earlier statements). Such issues commonly arise in genuine cases because of the delay in reporting, because the complainant has forgotten to say something, did not realise the significance of a piece of information, or was too embarrassed to mention it previously. Complainants may omit information because they genuinely believe that the information will affect whether or not their stories are believed. Such omissions must then be addressed in order that a complete picture of the events surrounding the complaint is established prior to any proceedings.
- 2.4.6. To reduce the potential of such an occurrence, investigating/interviewing Gardaí must explain to the complainant, in positive language and at an early stage before the making of any statements, the necessity to give a full and frank account of what happened. A detailed record should be made of anything said by the complainant.
- 2.4.7. Where they arise, the necessity to address such omissions or inconsistencies must be explained to the complainant in positive language **before** asking such questions.
- 2.4.8. Complainants of rape or sexual assault should be interviewed as soon as possible after the occurrence. Whether the interviewers are male or female should be decided by the victim unless, in the circumstances, this is not practicable.
- 2.4.9. It is important that the victim should not be interviewed in the company of any

potential witnesses.

2.5. **Scene of Crime**

2.5.1. A crime scene includes a scene of a sexual offence which may in some instances be private property. In the investigation of crimes of a sexual nature and suspected child abuse members of the Garda Síochána should be aware of the powers available under **section 5 of the Criminal Justice Act 2006** that provides for the designation of a crime scene by a Superintendent, which automatically authorises members of the Garda Síochána to search for and collect evidence at the crime scene.

2.5.2. Members should be familiar with Chapter 11 of the **Crime Investigation Techniques Manual** in relation to the investigation of sexual offences, along with the **National Guidelines on Referral and Forensic Clinical Examination** regarding the medical examination of complainants.

2.6. **Forensic Medical Examination**

2.6.1. The investigating member will at the earliest opportunity arrange for a medical examination of the victim to be carried out. The necessity for such an examination should be clearly explained to the victim and the examination should be carried out by staff attached to a Sexual Assault Treatment Unit or a suitably qualified medical practitioner. This examination will provide the investigating members with the opportunity to obtain the clothing worn at the time and immediately after the incident and each garment should be placed in individual exhibit bags sealed and properly labelled. Gloves should be worn to avoid cross-contamination of evidence.

2.6.2. Members should refer to '**Rape/Sexual Assault: National Guidelines on Referral and Forensic Clinical Examination in Ireland**' regarding the procedures relevant to the forensic medical examination.

2.6.3. In accordance with section 23 of the Non-Fatal Offences Against the Person Act 1997, a child who has attained the age of 16 years may consent to medical treatment and it is not necessary to obtain any consent from the child's parents.

2.7. **Early Evidence Kits**

2.7.1. Early Evidence Kits for the investigation of rape and sexual assaults are available from the Forensic Science Laboratory. These allow for the early retrieval of forensic

evidence where a complaint of a recent sexual assault has been received and the forensic medical examination is expected to be delayed. The Early Evidence Kits will be used primarily in cases where oral sex is reported and/or where toxicological examination may be required (e.g. cases where it is suspected that the complainant's drink was spiked).

2.7.2. District Officers will ensure that an adequate supply of the kits is available within their respective Districts, ensuring the replacement of those that have exceeded their expiry date.

2.7.3. Divisional In-Service training personnel will instruct members locally on their use. A copy of the guidelines on the use of such kits is attached at **Appendix D**.

2.8. **The Use of Drugs in the Commission of Sexual Offences**

2.8.1. As mentioned at 2.7 above, there may be occasions where it is suspected that certain drugs, such as Rohypnol or Gammahydroxybutyrate (GHB), may have been used by perpetrators, in conjunction with alcohol consumption, to incapacitate victims for the purpose of committing sexual offences upon them.

2.8.2. In accordance with **HQ.104/09**, Detective Inspector, Domestic Violence & Sexual Assault Investigation Unit (DVSAIU) will be informed through supervisory channels of any reports of sexual offences where the use of any such drugs:

- is suspected, and/or
- has been positively confirmed by toxicology tests

2.9. **Suspects**

2.9.1. Members' powers of arrest and detention should be utilised as appropriate in respect of offences for which those powers exist and evidence is available to support this course of action.

2.9.2. In the investigation of crimes of a sexual nature and suspected child abuse, members of the Garda Síochána should be aware of the inference provisions available under the **Criminal Justice Act 1984** (the 1984 Act) in relation to suspects, and to consider their use where appropriate. In particular, sections 18, 19 and 19A of the 1984 Act (as amended respectively by sections 28, 29 and 30 of the Criminal Justice Act 2007) provide that inferences may be drawn from failure or refusal to:

- account for any object, substance or mark, or any mark on any such object found (S.18);
- account for his or her presence at a particular place (S.19); or
- mention any fact when questioned, prior to being charged, or when being charged and which is later relied on in her/his defence in proceedings (S.19A).

2.9.3. Members should be aware of the potential use of psychologists and other professional experts in the investigation of serious crime where deemed appropriate in the investigation of sexual crimes. **HQ.37/09** refers. The use of interview advisers should also be considered.

2.10. **False Allegations**

2.10.1. False allegations of sexual crime are not common. Where members are concerned as to the veracity of any complaint, or any element of the complaint, the complaint will be fully investigated but any such concerns will form part of the investigation and will be outlined in the investigation file submitted to the Law Officers.

2.10.2. Members must not display any concerns regarding veracity to the victim unless **evidence** is available which shows that the complaint is false.

2.10.3. Where evidence is available that a complaint is false, members will consider forwarding a file to the Director of Public Prosecutions regarding any disclosed breach of **Section 12 of the Criminal Law Act 1976. Section 5 of the Protections for Persons Reporting Child Abuse Act 1998 (HQ Directive 15/1999)** also applies in respect of false reports of child abuse.

3. Safety/Barring/Interim Barring/Protection Orders

- 3.1. Where the sexual crime is reported to have been committed by a relative or co-habiting partner of the complainant, members should be mindful of the possibility of the complainant obtaining a Safety Order, Barring Order, Interim Barring Order, and/or Protection Order as appropriate.

- 3.2. Members should consult **HQ.198/07** which outlines the **Garda Síochána Policy on Domestic Violence Intervention for guidance.**

4. **Bail**

- 4.1. Where the injured party has reason to fear harassment or retaliation, the court should be so informed in order that this fact can be taken into account in any bail application. In any case, where such a ground is advanced as an objection to bail, the Court normally requires the injured party to give evidence to this effect
- 4.2. Where bail is granted and any special conditions are attached, the injured party will be informed of all details and encouraged to inform the investigating member if any of these conditions are being breached. Likewise, where there has been a change in the circumstances of the investigation (eg, offender is granted bail, bail conditions are changed, etc.), the investigating member should inform the injured party forthwith.
- 4.3. Where a suspect is arrested and charged careful consideration should be given before station bail is granted. Where station bail is not deemed appropriate and the accused is brought to court members will be mindful of the court's powers in relation to the setting of special conditions where appropriate and necessary.
- 4.4. In addition to the O'Callaghan Rules (1966 I.R. 501.) regarding objections to bail, **Section 2 of the Bail Act 1997**) applies where an offender is charged with a "serious offence" (which is set out in the Schedule to the 1997 Act (as amended) and attracts a sentence of 5 years imprisonment or more). A Court may refuse a bail application if the Court is satisfied that such refusal is reasonably considered necessary to prevent the commission of a serious offence by that person.
- 4.5. Members must always be prepared to offer evidence where the Court requires such, rather than submissions, in relation to objections to bail.

5. Reporting & Recording

5.1. All reports of sexual crime must be recorded as outlined in **Code Chapter 33**.

5.2. Recording Sexual Crime on PULSE

5.2.1. On receipt of a complaint the member receiving same will immediately create the appropriate entry on the PULSE system, **clearly identifying** the reported offence.

5.2.2. If at a later stage evidence becomes available indicating that the originally reported offence did not in fact occur, then the matter can be re-categorised or invalidated accordingly. It is imperative that offences are recorded accurately on PULSE.

5.2.3. Divisionally appointed Inspectors will have responsibility for ensuring that all sexual crime incidents are properly recorded and reviewed on PULSE. S/he will review each report on a regular basis and notify the District Officer of matters requiring his attention.

5.3. Reports to District Officer

5.3.1. The member receiving the complaint will submit a report for the information of the District Officer without delay, outlining the nature of the complaint and any action taken to date.

5.3.2. The District Officer's responsibility is to ensure a full, expeditious and professional investigation of the criminal complaint.

5.3.3. To facilitate her/his monitoring of the progress of such investigations in accordance with that responsibility, each District Officer will arrange for the creation of an entry on her/his correspondence register with monthly reminders requesting interim reports from the investigating member.

5.3.4. The District Officer will also ensure that guidance is provided in respect of the investigation and that adequate resources are made available to the investigating member(s).

5.3.5. The District Officer will carry out, on a quarterly basis, a full audit of all reports of sexual crimes, crimes against children and child welfare concerns reported within

her/his District. Ongoing investigations will continue to be audited on a quarterly basis until all matters within those investigations have been finalised.

- 5.3.6. A detailed record of such audit will be maintained and will include a record of the status of all investigations and reasons as to why any investigations have not been finalised. See Appendix E for guidance as to the fields which should be populated during the course of the audit. Other relevant data may be entered as deemed appropriate.
- 5.3.7. In cases where complaints are withdrawn, the audit will reflect that a statement withdrawing the complaint has been taken from the complainant, where same is forthcoming.
- 5.3.8. The District Officer will submit in electronic format, as prescribed by Detective Superintendent Sexual Crime Management Unit, the completed audit to the Divisional Officer who will ensure that all investigations are being dealt with as expeditiously as possible and that any matters requiring attention are dealt with immediately by the District Officer.
- 5.3.9. The Divisional Officer will in turn forward for the information of Detective Chief Superintendent National Bureau of Criminal Investigation within four weeks of the end of each respective quarter, the results of his audit in electronic format as prescribed by Detective Superintendent Sexual Crime Management Unit.

5.4. **Files to the Director of Public Prosecutions**

- 5.4.1. When the matter is investigated, a full investigation file will be prepared by the investigating member. This investigation file will be forwarded to the District Officer for onward transmission to the office of the Director of Public Prosecutions for favour of directions when deemed appropriate and in accordance with the DPP's General Direction No.2 as outlined in **HQ.156/09**.
- 5.4.2. **HQ.17/10** in relation to the taking of complaints and reports and the obligation of An Garda Síochána to investigate will be strictly observed as will **HQ.67/05** regarding submission of files to the DPP.
- 5.4.3. It is the general practice in the vast majority of sexual crime cases that the services of a social worker and/or persons involved in counselling are availed of by the victims.

All investigation files, when being submitted to the Director of Public Prosecutions, will outline the qualifications of such persons in order to provide a more complete picture of events and assist the Director of Public Prosecutions in reaching a decision.

5.4.4. ‘Recovered memory’ has been defined as the emergence of an apparent recollection of a significant life event of which the individual has no previous knowledge. The difficulties involved in relying solely on the evidence of ‘recovered memory’ must be borne in mind. Investigation files submitted to the Director of Public Prosecutions will outline all evidence that involves ‘recovered memory’.

5.4.5. The Director of Public Prosecutions has stated that, in the context of a decision whether or not to commence any type of criminal proceedings,

- “*the attitude of the victim or the family of a victim...to a prosecution*” and
- “*the likely effect on the victim or the family of a victim of a decision to prosecute or not to prosecute*”

are two of the many factors to be considered (**Statement of General Guidelines for Prosecutors**).

Such issues must be given special consideration, particularly in respect of crimes of a sexual nature and should be addressed in any file/report to the Director of Public Prosecutions.

5.4.6. On occasion, despite the views of the complainant, the public interest may indicate that a criminal prosecution ought to be commenced. This situation can arise where, for example, the suspected offender has made a statement of admission which is believed to be correct or where the complainant is reluctant to proceed as a result of improper or undue influence.

5.4.7. If a prosecution follows from such direction it may be instituted by either arrest or by summons as deemed appropriate and in accordance with law.

5.5. **Statistics provided at Joint Policing Committee Meetings**

5.5.1. Statistics provided at Joint Policing Committee meetings are provided in accordance with **HQ.143/09**. Members should also ensure that any statistics referenced do not compromise the obligation of the Garda Síochána to protect victim anonymity.

5.5.2. Members should remain conscious of the fact that the release of statistics involving such crimes as rape and sexual assault at the level of a District or Sub-District may easily result in the unintentional identification of victims.

5.5.3. Non-specific information only should be provided relative to such cases.

5.6. **Referrals from External Agencies**

5.6.1. In accordance with guidelines issued by various religious orders and other external agencies, An Garda Síochána is notified of suspected cases of sexual abuse.

5.6.2. The agencies concerned receive such disclosures for various reasons including concerns for the safety of other potential victims, a victim wishing to inform the agency of hurt caused to them in the past by members of those organisations, or in cases where civil actions are being taken.

5.6.3. When such disclosures are made victims do not necessarily intend that the matter be referred to An Garda Síochána for investigation and may also never intend that the matter is made public. It is also the case that such victims may not have disclosed the abuse to close family members or friends.

5.6.4. For this reason and for reasons of sensitivity and confidentiality, members **will not** make a direct approach to the victim. The person making the report to the Gardaí will be requested in writing to contact the victim and inform them that if they so wish a Garda investigation will be conducted regarding their disclosure, except in cases where there is an immediate and serious risk to the safety and welfare of the victim or others.

5.6.5. To facilitate the victim's engagement with An Garda Síochána, should they so wish, contact details of a suitably qualified member will be provided by An Garda Síochána to the reporting organisation/persons.

5.6.6. This **will not** negate An Garda Síochána's obligations under Children First guidelines. All reports and intelligence received giving rise to child protection and welfare concerns must be notified to the HSE, including uncorroborated rumours regarding the abuse of children.

6. Withdrawal Of Complaints

- 6.1. It is not infrequent that a complainant, having made a written statement of complaint regarding a sexual crime, subsequently, for a variety of reasons, withdraws the complaint. In the majority of cases, the complainant is not stating that the conduct complained of did not take place, but merely that s/he does not wish to proceed with the investigation/prosecution. In such cases an additional written statement should be taken from the complainant withdrawing the complaint and stating generally the reason for withdrawal.
- 6.2. In view of the principles set out by the Director of Public Prosecutions in the ‘**Statement of General Guidelines for Prosecutors**’, in all cases where a complainant has made a written statement of complaint regarding a crime of a sexual nature and subsequently withdraws the complaint (while still maintaining that the conduct complained of in fact took place) a file/report on the matter should be forwarded to the Director of Public Prosecutions for directions.
- 6.3. It is only where a complainant subsequently withdraws a complaint and states that the conduct complained of did not in fact take place, that the requirement to forward a file/report to the Director of Public Prosecutions is negated.
- 6.4. It may be necessary to submit a file to the Law Officers where breaches of **Section 12 of the Criminal Law Act 1976** or **Section 5 of the Protections for Persons Reporting Child Abuse Act 1998** are disclosed.
- 6.5. Where a complaint is withdrawn, the Director of Public Prosecutions has advised as follows on the question as to whether or not any suspected offender should be interviewed prior to submitting a file/report for directions:

“It is difficult to give a general answer to the question as to whether the suspect should be interviewed, where the complainant withdraws her/his complaint before such interview takes place. Perhaps the Gardaí should postpone any attempt to interview the (suspected offender), where the withdrawal of the complaint is clear and of the complainant’s own free will, until a file is submitted to this office for directions.”

7. Historical/Delayed Complaints of Sexual Crime

- 7.1. The Director of Public Prosecutions frequently brings prosecutions which relate to complaints of sexual offences which may have occurred some considerable time previously. In many such cases, judicial review proceedings will be taken in the High Court to prevent the prosecution from proceeding to trial on the basis that there has been an undue delay in charging the accused. Those applications are often grounded on allegations of prejudice being caused by delay, (e.g. a witness who may have been available, had the prosecution been brought sooner, has now ceased to be available).
- 7.2. Accordingly, the investigation of such complaints may require that certain difficult questions be asked of the complainant. As earlier stated the reasons for asking such questions must be explained in positive language **before** asking such questions.
- 7.3. In order to assist in expediting the processing of such files by the Director of Public Prosecutions (expedition being necessary since time is likely to be of the essence) the following matters should be attended to by the investigating Garda and referred to in the file:
- (a) The complainants should be asked as a matter of routine why they did not complain earlier to the Garda. Delay after the age of 18 years should in particular be explained. They should also be asked specifically why the complaint is being made now. This information is necessary in order to consider a defence to any application for judicial review.
 - (b) The investigating Garda should explain to the complainant what may be involved in the defence of an application for a judicial review, (e.g., the Director of Public Prosecutions may direct that the complainant undergo psychological evaluation, that he or she may then have to swear an affidavit as part of the Director's opposition to the application and as a result may be called upon by the High Court to give evidence under cross-examination).
 - (c) In the covering report the investigating Garda should alert the Director of Public Prosecutions as to any known specific prejudice which is likely to be caused to the suspect by reason of lapse of time. In many such cases no person other than the suspect will be aware of the prejudice in question. However, it may be, that in the course of the investigation, the Garda becomes aware of an aspect of prejudice, for example,

- The death or unavailability of a potential witness, (whether defence orientated or otherwise)
- The alteration or demolition of buildings or other places in which offences were stated to have been committed or
- Where some question turns on the accuracy of a witness's recollection of such place, or perhaps the destruction or unavailability of school or institutional records.

7.4. The investigating Garda should explain that the matters at (a) and (b) above are required by law and, accordingly, the fullest response possible is necessary.

7.5. An Garda Síochána does not of course wish to deter persons from proceeding with delayed complaints. However, complainants should be made aware that such complaints may be subject to legal challenge in the event of a prosecution being instituted, based on the constitutional right of the accused to trial with due expedition. If such a challenge is successful the prosecution cannot proceed to trial.

7.6. As many cases reported to An Garda Síochána are of a historical nature, stretching back over many years and, in some cases, decades members should be mindful of the changes brought about by the introduction of various pieces of legislation which impact on the investigation process. Attached at Appendix C is a brief summary of the legislation relating to historical cases paying particular attention to the powers of An Garda Síochána in relation to the arrest and detention of suspects.

7.7. **Doctrine of Recent Complaint**

7.7.1. In general, witnesses may not be asked questions in examination-in-chief referring to former, out-of-court, oral or written statements that are consistent with the evidence being given at trial and might tend to enhance the credibility of that witness. This is known as the 'rule against narrative'.

7.7.2. An exception to the 'rule against narrative' is the 'doctrine of recent complaint', which applies only to sexual offences.

7.7.3. The 'doctrine of recent complaint' allows previous statements by the victim to be put in evidence to bolster her/his credibility, provided that those statements satisfy certain conditions. The complaint

- must be voluntary
- must have been made at the first possible opportunity.

7.7.4. The complaint may be deemed voluntary even if in answer to a question, so long as the question is not a leading one. The relationship between the questioner and the complainant is also of importance. It is the trial judge who decides on such an issue.

7.7.5. Whether or not the complaint was made at the first reasonable opportunity is also a matter for the trial judge to decide upon. It has been held that the complaint of an adult rape victim was deemed inadmissible because she waited one extra day when she had an opportunity to tell her boyfriend on the day following the incident.

7.7.6. However, in cases of systematic abuse, some courts take a more lenient view with regard to the time of making a complaint. For example, when a 13 year-old girl reported sexual abuse one year following the abuse, her complaint was held as admissible due to her age and the fact that the abuse was ongoing. The delay was not deemed to be unreasonable.

7.7.7. In another case, the complaints of two sisters who reported sexual abuse over 20 – 30 years later, after their mother had died, were held as admissible when they explained the delay on the ground that they were anxious for their mother's peace of mind. The complaint was deemed to have been made at the earliest opportunity.

7.7.8. The complainant must testify before the recent complaint can be admitted. Such complaints are only admissible to show consistency and enhance the credibility of the complainant. If they are not consistent with the testimony of the complainant then they should not be adduced in evidence.

7.7.9. Members must bear this rule in mind when interviewing complainants and will ensure that issues relating to whether or not:

- the complaint was voluntary, and
- was made at the first reasonable opportunity

are properly addressed in the statement taken from the complainant during the investigation.

7.8. Indecent Assault upon a Male

- 7.8.1. Prior to the enactment of the Criminal Law (Rape Amendment) Act, 1990, the offence now known as sexual assault was known as indecent assault. Before 1981, indecent assault on a female carried a lower maximum sentence than indecent assault on a male. The Offences Against the Person Act 1861, section 62, provided a maximum of ten years penal servitude for indecent assault on a male and section 52 of the 1861 Act permitted a maximum of two years imprisonment for indecent assault on a female. Section 6 of the Criminal Law Amendment Act 1935 raised the penalty for indecent assault on a female to five years in the case of a second or subsequent conviction and section 10 of the Criminal Law (Rape) Act 1981 raised the maximum penalty to 10 years imprisonment for that offence (1st, 2nd or subsequent conviction).
- 7.8.2. In the case of *S.M v Ireland*, High Court 12 July 2007 (Laffoy J.) found that the distinction between the sentencing structure for indecent assault offences on males and females as laid down by section 62 of the Offences Against the Person Act 1861 which applies to offences committed against males prior to 1990, was unconstitutional on the basis that it offended against the principle of equality before the law enshrined in Article 40.1 of the Constitution. The decision means that, in effect, no statutory penalty now exists for the indecent/sexual assault of a male before 18th January 1991 and common law principles apply to sentencing in these cases.
- 7.8.3. Therefore, members of the Garda Síochána investigating indecent assault upon males which occurred prior to 18th January 1991 should be aware that it is not an arrestable offence for the purpose of section 4 of the Criminal Law Act 1997 and no power of detention exists for the offence under the Criminal Justice Act, 1984.

8. Cultural Issues

- 8.1. Ireland has become a multi-cultural society with numerous different communities each presenting different issues and posing differing needs. Some cultures, as a result of experience in other jurisdictions, may have a distrust of the police service and this may deter them from reporting incidents of sexual crime or indeed any other crime. It is important that good relations between An Garda Síochána and ethnic groups are developed and maintained to ensure reporting of incidents and to raise awareness among victims of sexual crime that there is help and support available.
- 8.2. Members investigating crime of a sexual nature should be mindful of issues related to cultural diversity, such as:
- Distrust of police (based mainly on experience in home country);
 - Language (possible limited ability to communicate with or understand Garda, or any written material on the topic if only available in English);
 - Religious Customs (being separated to be interviewed, male/female Garda issue);
 - Cultural practices (forced marriage, dowry related crime and female genital mutilation among others);
 - Culture (openness to talk about sexual crime, hand shaking, eye contact);
 - Immigration issues (immigration status tied to living with spouse).
- 8.3. Investigating members should contact the Garda Racial and Intercultural Office within the Community Relations section of An Garda Síochána at Harcourt Square, Dublin 2 should they require advice pertaining to cultural issues when investigating sexual crime incidents.

9. Sexual Crime and Disability

9.1. Members responding to sexual crime incidents involving persons with a disability should be mindful of this additional sensitivity and should be conscious that the incident may require interagency intervention (HSE/NGO's etc).

9.2. Garda members should also be aware that disability can take a number of forms, such as:

- Physical (mobility, dexterity);
- Sensory (vision, hearing, speech);
- Intellectual (learning, memory);
- Mental Health (i.e. depression, schizophrenia).

10. Advice and Support to Victims of Sexual Crime

- 10.1. It is important to note that victims of sexual crime vary. All victims both male and female, irrespective of relationship type, will have their complaint of sexual crime investigated without bias or discrimination.
- 10.2. It is vital both for the victim and the court system that cases are dealt with professionally and victims are advised of the relevant services available.
- 10.3. Investigating members should be aware that research has shown that a complainant is more likely to make a statement of complaint and remain committed to the investigation and any subsequent prosecution when:
 - s/he has been supported by a victims group
 - there is a substantial investigative effort, including the early taking of a detailed statement of complaint
 - s/he has been dealt with in a sympathetic, supportive and compassionate manner, and
 - investigating Garda(í) reassure the complainant that her/his complaint will be fully investigated
 - s/he is kept fully and regularly informed of the progress of the investigation/prosecution.
- 10.4. Any investigation of these offences is particularly demanding of the investigator because of the discretion and tact required. It is vital that members show sensitivity in their dealings with victims, particularly when the victim displays behaviour that seems strange or uncharacteristic.
- 10.5. One of the central features evident in incidents of sexual crime is the need for co-ordination of Garda work with that of other relevant services. Liaison with external agencies both locally and nationally is important in furthering our understanding of the issues central to sexual crime.
- 10.6. Where cohabiting couples are involved, the complainant should be informed of the procedure for applying for orders under the Domestic Violence Act 1996.
- 10.7. It is vital that a continued liaison is maintained with the complainant throughout the

investigation and prosecution by the same member of An Garda Síochána. If this is not possible, a formal introduction of the new liaison member will take place and contact details provided. The new nominated member will continue to interact regularly with the complainant.

10.8. Members should be mindful of the provisions of the Garda Síochána Victim's Charter developed by Garda Community Relations Section and comply with same.

10.9. **Crime Victims' Agencies**

10.9.1. The Crime Victims Helpline was launched by the Department of Justice Equality and Law Reform in November 2005. The purpose of the helpline is to provide support and information to victims of crime.

10.9.2. The Helpline service is provided by a team of volunteers under the supervision of the Helpline Co-ordinator and is governed by a Board of Directors to whom the Co-ordinator reports.

10.9.3. Members will refer all victims of crime, with their consent, to a victim of crime agency.

10.9.4. The investigating Garda should make the victim aware of the relevant services in the area, both statutory and voluntary, which may be of assistance to her/him. In all cases of sexual crime, the investigating member will:

(a) Provide the victim with a copy of the relevant sexual crime information literature and make the complainant aware of the relevant services in the area, such as:

- Rape Crisis Centre;
- Women's Aid/Refuge;
- ISPCC
- CARI
- Barnardos
- One In Four
- Faoiseamh (Clerical Abuse)
- AMEN (Abused Men);
- Crime Victim's Helpline;

- Health Service Executive Social Workers;
- Safe Ireland (national body for women's frontline domestic violence services);
- Local Women's Support Groups;
- Local GP's;
- Family Law Courts;
- Legal Aid Board;
- Local Housing Authorities;
- Any other agency which may be of assistance.

Information with regard to these services should be updated as required.

These updated lists should be placed close to the phone in the public office of every Garda Station for ease of access. Where literacy issues may arise, information should be explained verbally. Where language is an issue, the information should be provided in a language which the victim can understand or interpreted to the victim. The nominated Divisional Inspector will have responsibility for ensuring compliance with this direction.

A member of Garda/Sergeant rank will be nominated in each District/Station as a liaison with the relevant non-governmental agencies operating in the area. This member will introduce him/her self as the liaison and provide each organisation with her/his contact details. S/he will support the organisation where possible and familiarise him/herself with the workings and responsibilities of each such organisation.

S/he will compile a detailed dossier outlining the contact details and function(s) of each organisation, which will be available to all members working in the District/Station concerned. The member will ensure that at a very minimum he will call to each organisation once per quarter and maintain a record of her/his ongoing contacts which s/he will make available to the nominated Inspector when requested.

Divisionally appointed Inspectors will ensure that an up-to-date list of contact details for the relevant statutory and non-governmental agencies is maintained in each District/Station as appropriate, and that the nominated liaison Garda/Sergeant in each District/Station fulfils her/his requirements.

- (b) Give the victim, in writing, her/his name, station and telephone number (call card).

- (c) Inform the complainant of the literature available issued by the Director of Public Prosecutions regarding **‘The Role of the DPP’** and **‘Attending Court as a Witness’**.

- (d) Keep the complainant fully and regularly informed of the progress of the investigation/prosecution, provide further information and reassurance on any developments in the investigation.

11. Role of Domestic Violence & Sexual Assault Investigation Unit

11.1. The Domestic Violence and Sexual Assault Investigation Unit (D.V.S.A.I.U.) at the National Bureau of Criminal Investigation is the national unit providing a nucleus of expertise to other Garda units in the investigation of crimes of a sexual nature, including child abuse and exploitation. The unit has a similar brief in relation to domestic violence.

11.2. The D.V.S.A.I.U. also consists of:

- Paedophile Investigation Unit
- Sexual Crime Management Unit
- Sex Offender Management & Intelligence Unit.

11.3. While the investigation of such crime is the responsibility of the local District Officer, the D.V.S.A.I.U. has the following responsibilities:

- Carrying out investigations as directed by Assistant Commissioner National Support Services and Detective Chief Superintendent National Bureau of Criminal Investigation.
- Coordinating and providing assistance in the investigation of sexual crimes which are of a particularly serious, complex and/or sensitive nature.
- Providing assistance in the areas of training and policy implementation
- Promotion of best practice within An Garda Síochána in the investigation of sexual crime
- Providing advice and assistance to other Garda units.
- Liaison with governmental and non-governmental agencies involved in this area of work
- Acting as a central point of contact for religious orders and the Health Service Executive
- Liaison with foreign police organisations via Liaison & Protection Section, Garda Headquarters.

11.4. The Domestic Violence and Sexual Assault Investigation Unit may be contacted as follows:

Address: An Garda Síochána
Domestic Violence & Sexual Assault Investigation Unit
National Bureau of Criminal Investigation
Harcourt Square
Dublin 2

Tel: (01) 6663430

Email: dvsaiu@garda.ie

12. The Paedophile Investigation Unit

12.1. The role of the Paedophile Investigation Unit also includes the following:

- Enforcement of the provisions of the Child Trafficking and Pornography Act, 1998
- Investigation and co-ordination of cases relating to the possession, distribution and production of child pornography, and any related sexual abuse of children
- Proactive investigation of intelligence concerning paedophiles and their use of technology
- The online targeting of suspects for the production, distribution, and possession of child abuse images on the internet.

13. The Sexual Crime Management Unit

13.1. The function of the Sexual Crime Management Unit is to evaluate and monitor, in conjunction with the investigating member and senior management, a number of investigations each year of child sexual abuse, child neglect and other selected sexual offences. This is designed to ensure that such investigations are receiving the appropriate attention and being brought to a prompt conclusion in accordance with best practice in investigation methodology. These cases will be identified via the PULSE system and regular updates in relation to these crimes will be sought from District Officers to promote best practice and to assist and advise members in the investigation of such crime.

13.2. This Unit has responsibility for:

- maintaining a record of **all** complaints of clerical sexual abuse brought to the attention of An Garda Síochána. To ensure that this record is accurately maintained Detective Superintendent D.V.S.A.I.U. will be notified of any such complaint(s) received, **immediately** upon receipt of same, on the prescribed form, D.V.S.A.I.U. (C.A.). It is not necessary that a statement of complaint has been made before the notification is forwarded.
- Developing and maintaining protocols with the various religious organisations operating in this jurisdiction relating to the reporting and exchange of information regarding incidents of sexual, physical and emotional abuse committed by members or employees (whether voluntary or otherwise) of their organisations.
- Maintaining a record of all sexual crime reported to An Garda Síochána and be in a position to provide senior management with up-to-date statistics in this area
- Monitoring the progress of a selected number of sexual crime investigations each year
- Identifying and disseminating to the Garda organisation areas of best practice
- Providing advice to members of the organisation in relation to best practice in the investigation of sexual crime
- Acting as a central point of contact for other organisations working in the area of sexual crime

13.3. Form **D.V.S.A.I.U. (C.A.)** will be available electronically on the Garda Portal and may be forwarded by post or electronically to Detective Superintendent D.V.S.A.I.U.

14. The Sex Offender Management & Intelligence Unit

14.1. The Sex Offenders Management & Intelligence Unit has national responsibility for maintaining records of all persons in the State with obligations under the provisions of the **Sex Offenders Act 2001** (The 2001 Act). The unit monitors all reported activity of sex offenders. When any information is entered onto PULSE, the unit and all nominated Divisional Inspectors receive an automatic notification by email. Any such information requiring attention will be acted upon without delay.

14.2. The unit receives notifications in relation to convicted sex offenders from two sources – the court of conviction and the prison from which s/he is being released.

When a person is convicted of a ‘sexual offence’ as outlined in the schedule of the 2001 Act, a Certificate of Conviction issues from the relevant court to the Sex Offenders Intelligence Unit.

If the convicted offender receives a prison sentence the 2001 Act places an obligation on the Irish Prison Service to notify An Garda Síochána of the forthcoming release of such a prisoner 10 days in advance of such release.

14.3. The Sex Offenders Management & Intelligence Unit notifies the Divisional Officer in whose area the offender resides, or is expected to reside, who in turn forwards the information to the nominated Divisional Inspector.

Any further information that comes to light in relation to a convicted sex offender is collated at the Sex Offenders Management & Intelligence Unit and the nominated Divisional Inspector is notified through the relevant Divisional Officer.

14.4. Following receipt of the notification of conviction, a copy of the Garda investigation report is sought by the Sex Offenders Intelligence Unit, which is then filed with the offender’s details.

14.5. Each convicted sex offender is recorded on the PULSE system in accordance with **HQ.81/09**. When a member accesses a Person’s PULSE details a warning is highlighted indicating that the person is subject to the Act, the dates on which he is subject to the Act and the name of the member attached to D.V.S.A.I.U. who issued the warning. The member accessing PULSE can then contact D.V.S.A.I.U. for further

information.

- 14.6. Where a convicted sex offender commits an offence under the 2001 Act, proceedings should be brought without delay by way of arrest, where such a power exists.
- 14.7. Where a convicted sex offender commits such an offence and her/his whereabouts are unknown this should be brought to the attention of the Sex Offenders Management & Intelligence Unit and the unit will arrange for the issue and circulation of a Criminal Intelligence Bulletin throughout the State.
- 14.8. Where it is believed that a sex offender has left or is leaving the jurisdiction, the appropriate notifications are issued by the Sex Offenders Management & Intelligence Unit through Detective Superintendent, Liaison & Protection.

15. Duties of members relating to the Sex Offenders Act 2001

- 15.1. The role of An Garda Síochána in relation to the obligations of convicted Sex Offenders is clearly outlined in the **Sex Offenders Act 2001** and **H.Q. Directive 167/01**.
- 15.2. The 2001 Act was signed into law on the 30th of June 2001 and commenced on the 27th of September 2001. Part 2 of the 2001 Act sets out the notification requirements of a person who has obligations under that Act. Within seven days of becoming subject to the notification requirements of Part 2, an Offender must, either by personal attendance at a Garda Síochána station which is a District or Divisional Headquarters, or, by written notice (post) to such a station, notify her/his name, date of birth and home address to An Garda Síochána.
- 15.3. Thereafter an Offender must, within seven days of the event, notify An Garda Síochána of any subsequent changes to her/his name or address and any other address at which s/he spends a qualifying period (defined as seven days or more or two or more periods which taken in any 12 month period amounts to seven days or more).
- 15.4. If an Offender wishes to leave the State for an intended period of seven days or more at a time, s/he must notify An Garda Síochána of that intention, in advance of leaving, and state the address at which s/he is staying outside the State, if known. Provision is also made for the Offender who leaves the State not intending to remain outside the State for seven days or more who in fact remains outside the State for seven days or more.
- 15.5. An Offender need not notify at her/his local Garda Station, nor is there any requirement for the Offender to volunteer additional information, e.g. offence details, evidence of identity etc., regardless of whether the Offender opts for the postal notification procedure or calls in person to a Garda Síochána Station.
- 15.6. An Offender, who is otherwise subject to the notification requirements of Part 2, is not subject to such requirements when s/he is remanded in custody, serving a sentence in prison or on temporary release. See **Section 10 of the 2001 Act**.
- 15.7. **Section 12** of the 2001 Act relates to an offence in connection with notification requirements which by virtue of **Section 13 of the Criminal Law (Human**

Trafficking) Act 2008 is an arrestable offence.

- 15.8. The period for which persons are subject to the requirements of the Act are contained within **Section 8 of the Act of 2001**.
- 15.9. **Section 16** of the 2001 Act allows for the obtaining of a Sex Offender Order which shall contain prohibitions on the Offender from doing a thing or things as the Court considers necessary for the purpose of protecting the public from serious harm from the Offender. The Order is obtained on foot of application to the Circuit Court by a member of An Garda Síochána not below the rank of Chief Superintendent and remains in force until the expiration of a period of five years from the date of notification of its making being given to the Offender or such longer period as the Court may provide for in the Order.
- 15.10. Two criteria must be satisfied before an Order can be made. First the Offender must have been convicted of a qualifying sexual offence and second, the Offender must have acted in such a way as to give the Court reasonable grounds for believing that an Order is necessary to protect the public from serious harm.
- 15.11. Breach of the terms of a Sex Offender Order is an arrestable offence under **Section 22** of the 2001 Act.
- 15.12. **Section 26** of the Sex Offenders Act 2001 places an obligation on the Offender to inform employers of her/his sexual offence convictions, if a necessary and regular part of the employment consists mainly of unsupervised access to or contact with children or mentally impaired persons. Failure to do so is an arrestable offence.
- 15.13. **It is essential that all members having any interaction with, or information concerning, convicted sex offenders (whether or not currently subject to the 2001 Act) make a detailed report of such interaction or information for the immediate attention of the Sex Offenders Management & Intelligence Unit through the relevant nominated Divisional Inspector.**

16. Role of Nominated Divisional Inspector – Sex Offenders.

16.1. In accordance with HQ.167/01 a Garda Inspector will be nominated in each Division to oversee the implementation of the 2001 Act (as amended).

16.2. Those Divisional Inspectors will ensure that:

- All sex offenders are aware of the requirements placed on them by the Act and remain fully compliant with the Act;
- Up-to-date information is maintained in respect of each offender;
- Offenders are visited as required;
- Reports are submitted and records updated following such visits;
- The movements of offenders are monitored;
- Intelligence in respect of offenders is recorded on PULSE;
- PULSE records in respect of each offender are accurate and maintained to the highest standard;
- Returns are made on a regular basis in respect of each offender to the D.V.S.A.I.U.;
- Any changes in appearance, vehicle use/possession, associations and any other relevant information are reported to D.V.S.A.I.U. forthwith;
- Breaches of the Act are fully investigated;
- A report is submitted, where deemed appropriate, to the Divisional Officer recommending that an application be made for a Sex Offender Order in accordance with Section 16 of the 2001 Act.
- A report is submitted on the 30th June and 31st December each year for the attention of the Divisional Officer clearly outlining the current status of each offender in the Division. The report will certify that all offenders are compliant with their obligations and that risk management plans are in place in respect of each offender. A copy of these reports will be submitted for the information of Detective Chief Superintendent, National Bureau of Criminal Investigation.

16.3. Each Divisional Officer will ensure that the nominated Divisional Inspector has adequate resources available to comply with her/his obligations as set out at 16.2 above.

17. Risk Assessment of persons subject to the 2001 Act.

- 17.1. Members of An Garda Síochána throughout the State have been trained in the use of Risk Matrix 2000 (RM2000). RM2000 is a statistically-derived risk classification process intended for males aged at least 18 who have been convicted of a sex offence.
- 17.2. Divisional Officers should ensure that the appropriate number of members are trained in RM2000 to undertake the risk assessment of those persons residing in their Divisions who are subject to the requirements of the 2001 Act. The Divisional Inspectors with responsibility for monitoring persons subject to the requirements of the 2001 Act should be in possession of an up to date list of such individuals.
- 17.3. Members who are not trained in RM2000 **should not** be engaged in risk assessment.
- 17.4. The above should be read in conjunction with HQ Directives **167/01, 107/08, 20/09** and **81/09**.
- 17.5. The Sex Offenders Management & Intelligence Unit maintains a record of all persons who are subject to the requirements of the 2001 Act. All relevant information is forwarded to the nominated Divisional Inspector in whose area each offender resides. The Sex Offenders Management & Intelligence Unit can be of assistance in providing an up to date list of such persons if requested.
- 17.6. When the risk assessment has been completed the original RM2000 form will be forwarded **without delay** to the relevant nominated Divisional Inspector. The Divisional Inspector will in turn forward same to Detective Chief Superintendent, National Bureau of Criminal Investigation, who will arrange for the relevant file to be updated and an accurate record maintained of same. The nominated Divisional Inspector and the member conducting the assessment will each retain a copy of the completed RM2000 form.
- 17.7. Divisional Inspectors will actively monitor the sex offenders in their respective Divisions and put in place a plan aimed at managing the risk posed by such offenders. The plan should reflect the category of risk attached to the offender i.e. Low, Medium, High or Very High. The plan should include, but not be confined to, the following actions:
- Suspects should be visited as deemed appropriate for their level of risk. Visits

to such offenders should be made **at least**:

- Once per month for High and Very High Risk Offenders;
 - Once per quarter for Medium Risk Offenders;
 - Twice per annum for Low Risk.
- Members will ensure that offenders are complying with their obligations under the Act.
 - All offender records, including PULSE will be maintained and updated as appropriate.
 - An up-to-date photograph should be obtained from the offender with written consent.
 - Any changes to family, lifestyle or social circumstances which cause concern should be noted and acted upon immediately.
 - An application for a Sex Offender Order pursuant to Section 16 of the Act should be made when deemed appropriate.
 - Members will be mindful of the provisions of the *Children First* (2009) guidelines at all times.
 - Where an offender is subject to post-release supervision by the Probation Service, contact should be maintained with the relevant Probation Service personnel.
- 17.8. Research shows that a high percentage of sex offenders go on to re-offend and members must understand that Low Risk does not mean No Risk. The actions outlined above have been introduced for the protection of the public and should not be read as the definitive action which should be taken in every case. Appropriate and proportionate action must be taken for the protection of the public, being mindful of the rights of the offender.
- 17.9. Bearing in mind the Data Protection Acts 1988 and 2003 and the advice of the Attorney General outlined in **HQ.161/99**, Gardaí are not at liberty to disclose details relating to names, addresses, convictions etc. of convicted sex offenders, except in accordance with Children First guidelines and then only on referral to the HSE via the District Officer. Such disclosure may increase the risk of re-offending due to the stress caused to the offender, make the management of that risk more difficult and may cause unnecessary concern to the public.

18. ViCLAS (Violent Crime Linkage and Analysis System)

- 18.1. ViCLAS (Violent Crime Linkage and Analysis System) is an automated computer system, which has been installed at the National Bureau of Criminal Investigation; it is designed to assist police investigators in determining if criminal cases are linked and to help identify the person(s) responsible. The system is designed to link criminal cases through traditional methods e.g. name, physical description, vehicle, time, location, ballistics, DNA and fingerprints and also behavioural themes e.g. rape / child molester typology, presence of a paraphilia (sexual perversion and/or obsession), mental illness and fantasy.
- 18.2. The ViCLAS System is intended to be of assistance in the investigation of the following types of crimes:
- All solved and unsolved homicides and attempted homicides.
 - Solved and unsolved sexual offences.
 - Missing persons where the circumstances indicate a strong indication of foul play and the victim is still missing.
 - All non-parental abductions and attempted abductions.
 - Suspicious approaches to children.
- 18.3. When a serious crime occurs, which qualifies as a ViCLAS reportable case, (1-5 above) the District Officer will appoint a member to complete the relevant data collection forms. In the case of a major incident the Senior Investigating Officer (SIO) will ensure that a member of the investigation team is tasked to carry out this role. The data collection forms and **ViCLAS Field Guide** are available on the PULSE or **Garda Síochána Portal systems**. These forms will be downloaded and when completed will be forwarded, with victim and offender statements, to the ViCLAS Unit at the National Bureau of Criminal Investigation, Harcourt Square, Dublin 2.
- 18.4. When a serious crime occurs which qualifies as a ViCLAS reportable case the following procedures will apply:
- A ViCLAS form will be completed by the designated member.
 - Completed forms with victim and/or offender statements will be sent to the ViCLAS Unit at the National Bureau of Criminal Investigation, within 20 days

of the commencement of the investigation.

- The Senior Investigating Officer/District Officer will ensure that the information is correct by using the supervisor's checklist which accompanied the original request.
- The forms will undergo a quality review at National Bureau of Criminal Investigation.
- The data will then be entered into the ViCLAS database.
- A ViCLAS Analyst / Detective Garda will perform extensive analysis of the case on the database.
- Any new information received in relation to this crime, not already provided, will be forwarded to the National Bureau of Criminal Investigation, as soon as possible by the Senior Investigating Officer/ designated member in a supplementary ViCLAS booklet.
- Any links, patterns or other information that comes to light as a result of such an analysis will be forwarded to the Senior Investigating Officer/District Officer.

18.5. District Officers will ensure that the **ViCLAS data information forms** are properly completed by the designated member within the 20 day period having regard to the Field Investigators Manual.

19. Training

19.1. The following courses are available at the Garda Síochána College, Templemore, County Tipperary in relation to the investigation of sexual crime and crimes against children. They are designed to enhance An Garda Síochána's ability to investigate such crimes and to ensure that victims of such crimes are dealt with in a professional and sensitive manner, that suspects are interviewed in accordance with law and that all avenues of investigation are dealt with thoroughly.

19.2. A number of the courses relate to the risk assessment and management of sex offenders and these are designed to increase public safety and to reduce the risk that such offenders pose to the community. District and Divisional Officers will ensure that the appropriate members are chosen to undergo these courses and that members under their control are provided with the required training to enable them to carry out their duties in a professional manner.

19.3. **Senior Investigating Officer Training**

19.3.1. The overall aims of the Senior Investigators Officers Development Programme are to:

- Develop and enhance the investigative skills of appointed Inspectors and Superintendents, to enable them to manage Major Crime Investigations in an effective, professional, and ethical manner
- Ensure that newly selected personnel to the role are fully equipped to meet the requirements of the role as outlined in the role profile.
- Develop the competencies identified for the role to the standard set by the organisation
- Establish the role of the Senior Investigating Officer in the context of the Divisional Serious Crime Investigation Team roles
- Promote a consistent approach to the roles and responsibilities of the Senior Investigating Officer that is in line with the recommendations of the report on ‘Divisional Serious Crime Investigation Teams’
- Encourage the application, testing and refining of new behaviours with the support of their coach
- Encourage an approach to learning that is ongoing and embed a philosophy of continuous professional development in programme trainees.

19.4. **Level 3 - Advanced Interviewer Training**

19.4.1. This training is designed for pre-selected investigators (Gardaí & Sergeants) to develop knowledge and skills in interviewing of witnesses and suspects in serious and complex investigations.

19.4.2. Level 3 interviewers will be selected and deployed at divisional level at the discretion of the Divisional Officer who will ensure that sufficient numbers are trained to deal with serious and complex investigation within the Division.

19.4.3. The content of this training programme is designed to develop competence in advanced interview strategies and styles, managing interview resistant subjects, recognising and managing vulnerability, conducting credibility assessments, detecting deception, baseline behaviour measurement and engage in advanced challenge with interview subjects.

19.4.4. This training programme incorporates theory and practice from national and

international experts, national and international best practice and practical skills development. It also incorporates the fundamental principle of protecting the Human Rights of all those who become involved in the investigative interviewing process. The training also incorporates domestic law, including the principles of the European Convention on Human Rights which is incorporated into Irish law and the Constitution of Ireland.

19.4.5. Level 3 Core Curriculum Contents:

- Generic Model – P.F.R.A.C.C
- Constitutional and ECHR considerations.
- Ethical decision-making
- Investigative Mindset
- Rapport Building
- Planning
- Subject specific considerations
- Conversation Management
- Cognitive Interviewing
- Interviewing Sex Offenders
- Assessing/managing vulnerability.

19.5. **Level 4 - Interview Adviser Training**

19.5.1. This training is designed for pre-selected investigators (Gardaí, Sergeants) to develop the ability to manage, coordinate and evaluate interviews of a complex and/or serious nature and advise other members regarding such interviews.

19.5.2. Candidates for Level 4 Interviewer Advisors will be selected at divisional level at the discretion of the Divisional Officer who will ensure that sufficient numbers are trained to deal with serious and complex investigation within the Division. They will be deployed at the discretion of Senior Investigating Officer (S.I.O) or Divisional Officer as required.

19.5.3. The content of this training programme is designed to develop competence in advising on advanced interview strategies and styles, coordinating multiple and/or complex interviews, remote monitoring of interviews to identify problems/issues and evaluate interviews, statements and evidence in the context of interviewing.

19.6. This training programme incorporates theory and practice from national and international experts, national and international best practice and practical skills development.

19.7. Level 4 Core Curriculum Contents:

- Interview subject – specific considerations
- Interview strategies
- Effective decision-making
- Evaluation of interview plans
- Advising on interview format
- Advising on appropriate interview styles
- Advising on appropriate interview teams.

19.8. **Specialist Victim Interviewer Training**

19.8.1. This training is designed for pre-selected Gardaí to develop knowledge and skills in the interviewing of all victims of serious crime occurrences but in particular, children under the age of 14 years and persons with intellectual disabilities who have been victims of a sexual offence or an offence involving violence or the threat of violence.

19.8.2. Candidates for the role of Specialist Victim Interviewer will undergo a pre-selection assessment of their competency to perform the role by testing their current knowledge and communications skills through examination and role play. Candidates are provided, prior to the pre-selection assessment, with a reading list of core materials, including:

- Child Protection and Welfare Guidelines
- Rape/Sexual Assault: National Guidelines on Referral and Forensic Clinical Examination in Ireland
- Relevant Legislation

19.8.3. Training Stage One

Module 1 (duration 10 days) of this stage of the training aims to provide the knowledge foundation to support the development of skills. The module consists of a pre-dominantly lecture based format covering legislation, procedures and required learning in relation to interaction with children and persons with intellectual disabilities. There will also be an input from the Garda Employee Assistance

Programme. Knowledge will be assessed by way of confidence-marked objective test on the final day.

Module 2 (duration 10 days) aims to develop candidates' interview skills within the format of the Good Practice Guidelines for persons involved in video recording interviews with complainants under 14 years of age (or with intellectual disability) for evidential purposes in accordance with section 16(1)(b) of the Criminal Evidence Act, 1992. The training is pre-dominantly practice based, following a case study format, designed to develop interviewing skills.

19.9. Training Stage 2

This stage aims to support the professional development of the participants in practical case management. Operational case supervision will be provided by designated Sergeants within each District, who liaise with the HSE. At six monthly intervals participants will be required to submit a structured reflective report that identifies developmental requirements. Following submission of the report the developmental issues will be addressed in a one day training seminar delivered by persons with expertise in the management of the interviewing process, and the legality of the evidence obtained.

19.10. Training Stage 3

The first day of this two day module will involve supporting any professional requirements identified. Course participants will make an oral presentation to a board at the Garda College. The remaining day will focus on methods of supporting Continuous Professional Developments in the field.

19.11. **Risk Matrix 2000 (RM2000) Training**

19.11.1. This training is designed for Gardaí to develop knowledge and skills in the assessment of the risk posed by convicted sex offenders to the community.

19.11.2. RM2000 assessors will be selected and deployed at divisional level at the discretion of the Divisional Officer who will ensure that sufficient numbers are trained to conduct such risk assessments in the division.

19.11.3. The content of this training programme is designed to develop competence in relation to employing a statistically-derived risk classification process, using simple factual information regarding the history of male offenders over the age of 18 years who

have been convicted of a sexual offence.

19.12. Stable & Acute 2007 Training

19.12.1. This training is designed for Gardaí to develop knowledge and skills in a comprehensive assessment of the risk posed to the community by those convicted sex offenders who have been assessed by the RM2000 as being of highest risk to the community.

19.12.2. Stable & Acute 2007 risk assessors will be selected and deployed at divisional level at the discretion of the Divisional Officer who will ensure that sufficient numbers are trained to conduct such in-depth risk assessments in the division.

19.12.3. The content of this training programme is designed to develop competence in relation to conducting risk assessments based on elements of convicted sex offenders' behaviour and lifestyle that are subject to change, thereby increasing the risk posed to the community over a given period.

19.13. Sex Offender Management Training

19.13.1. This training is designed for Gardaí (including Inspectors appointed to that role) involved in the assessment and management of the risk posed to the community to develop knowledge and skills relating to managing that risk.

19.13.2. The content of this training programme is designed to develop competence in relation to managing the risk posed by convicted sex offenders in conjunction with Probation Service personnel and covers legislation, procedures, staff welfare and elements of the psychology of sex offending.



PART II

THE INVESTIGATION OF CRIMES AGAINST CHILDREN

PART II – THE INVESTIGATION OF CRIMES AGAINST CHILDREN

In conjunction with the matters previously raised, members will be mindful of certain obligations and policy provisions relating to child victims of sexual crime. In relation to the arrest and detention of suspected offenders, members should pay particular attention to the section on the ‘Sexual Exploitation of Children’ below.

20. Investigation of Complaints of Child Sexual Abuse

- 20.1. All complaints of child sexual abuse are required to be recorded on the PULSE system and their investigation will be subjected to rigorous review and scrutiny by supervisory ranks.
- 20.2. An investigation file will be submitted to the Law Officers and/or the Director of the National Juvenile Office, as appropriate, in every case where a suspect has been identified and evidence is available.
- 20.3. Any decision not to submit a file on the matter to the Law Officers rests with the relevant District Officer who should ensure that an exhaustive investigation has taken place and that no further avenues of investigation are currently available. An accurate record will be made of all such decisions and reasons for same.
- 20.4. Any decisions regarding the investigation of complaints of child sexual abuse such as a decision to maintain surveillance on a suspected perpetrator is a matter for the officer in charge of each investigation who is usually the local District Officer. There is no hard or fast rule in this regard and each case should be judged on its own merits by the local investigation team who are most suitably placed to make decisions/recommendations regarding the investigation (including surveillance).
- 20.5. District Officers should be cognisant of the advice and assistance which is available through the Domestic Violence and Sexual Assault Investigation Unit at the National Bureau of Criminal Investigation. This unit should be contacted for such advice, assistance and guidance when deemed appropriate by the District Officer.

21. Sexual Exploitation of Children (under 18 years)

- 21.1. Section 3 of the Child Trafficking & Pornography Act, 1998, as amended by section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 and section 3 of the

Criminal Law (Human Trafficking) Act 2008 provides for substantial offences relating of the sexual exploitation of a child.

21.2. In particular the offence of the sexual exploitation of a child, contrary to section 3(2) of the 1998 Act (as amended by the 2008 Act) provides a single offence that criminalises almost anything involving sexual activity and children. Section 3(5) of the 1998 Act as inserted by the 2008 Act defines sexual exploitation as follows:

- Inviting, inducing or coercing the child to engage in prostitution or the production of child pornography.
- The prostitution of the child or the use of the child for the production of child pornography.
- The commission of an offence specified in the Schedule to the Sex Offenders Act 2001 against the child; causing another person to commit such an offence against the child; or inviting, inducing or coercing the child to commit such an offence against another person.
- Inviting, inducing or coercing the child to engage or participate in any sexual, indecent or obscene act.
- Inviting, inducing or coercing the child to observe any sexual, indecent or obscene act, for the purpose of corrupting or depraving the child.

21.3. The penalty for an offence contrary to section 3(2) of the Act of 1998 is imprisonment for life or a lesser term, or of a fine at the discretion of the court.

21.4. **A child** is defined for the purposes of section 3 of the 1998 Act as being a person **under the age of 18 years**.

21.5. Unless circumstances dictate that other legislation is more appropriate, it is recommended for investigations regarding the sexual abuse of children occurring after 7th June 2008 that, where appropriate, members utilise this legislation for the purposes of arrest and detention of suspects as it covers such a wide spectrum of child sexual abuse. This may make decisions unnecessary in relation to which offences are being investigated for such purposes and may also reduce the need to continue detentions for different offences being committed on different dates.

21.6. Recommendations as to the appropriate charges may still be made in the file submitted to the Law Officers regarding other offences disclosed. Where it applies, a

charge for the offence of sexually exploiting a child should always be recommended.

22. Meeting a Child for the Purpose of Sexual Exploitation

22.1. Subsections (2A) and (2B) of section 3 of the 1998 Act, as inserted by section 6 of the 2007 Act refer to persons travelling to meet children for the purpose of sexually exploiting those children. This offence may be committed within or outside the State.

22.1.1. Section 3(2A) makes it an offence to intentionally meet, or travel with the intention of meeting, a child within the State, having met or communicated with that child on 2 or more previous occasions, for the purpose of the sexual exploitation of that child.

22.1.2. Section 3(2B) makes it an offence to intentionally meet, or travel with the intention of meeting, a child outside the State, having met or communicated with that child on 2 or more previous occasions, for the purpose of the sexual exploitation of that child.

23. Trafficking of Children for the Purpose of Sexual Exploitation

23.1. Section 3(1) of the Child Trafficking & Pornography Act, 1998, as amended by section 6 of the Criminal Law (Sexual Offences) (Amendment) Act 2007 and section 3 of the Criminal Law (Human Trafficking) Act 2008 provides for the offence of trafficking a child for the purposes of the sexual exploitation of that child.

23.2. Trafficking is defined as

- procuring, recruiting, transporting or harbouring the
- child, or—
 - transferring the child to,
 - placing the child in the custody, care or charge, or under the control, of, or
 - otherwise delivering the child to,another person,
- causing the child to enter or leave the State or to travel within the State,
- taking custody of the child or taking the child—
 - into one's care or charge, or
 - under one's control,or
- providing the child with accommodation or employment.

24. Sexual Crimes committed against Children outside the State

24.1. Three pieces of legislation deal with the issue of Irish citizens or persons ordinarily residing in the State committing sexual offences against children outside the State:

- Section 3(2B) of the 1998 Act (as amended by section 6 of the 2007 Act),
- The Sexual Offences (Jurisdiction) Act 1996, and
- Section 7 of the Criminal Law (Human Trafficking) Act 2008.

24.2. Section 3(2B), Child Trafficking & Pornography Act, 1998

24.2.1. Section 3(2B) of the Child Trafficking & Pornography Act, 1998 (as amended by section 6 of the Criminal Law (Sexual Offence) (Amendment) Act 2007 which relates to meeting or travelling to meet children outside the State for the purpose of their sexual exploitation has already been outlined above.

24.3. Sexual Offences (Jurisdiction) Act 1996

24.3.1. The Sexual Offences (Jurisdiction) Act 1996 makes it an offence to do an act outside the State that constitutes:

- an offence in the place where the act was done, and
- an offence in this State - as outlined in the Schedule of the Sexual Offences (Jurisdiction) Act 1996.

24.3.2. The act done, therefore, must be an offence in both this State and the place where it occurred.

24.3.3. The schedule of the 1996 Act lists the offences generally associated with child sexual abuse.

24.4. Section 7, Criminal Law (Human Trafficking) Act 2008

24.4.1. Section 7(1) of the Criminal Law (Human Trafficking) Act 2008 makes it an offence for any Irish citizen, or any person normally resident in the State, does an act in a place other than the State that, if done in the State, would constitute an offence under section 3 (other than subsections (2A) and (2B)) of the Child Trafficking & Pornography Act, 1998 (as amended).

24.4.2. Section 7(2) of the 2008 Act makes it an offence for any person to do an act in relation to an Irish citizen in a place other than the State that, if done in the State,

would constitute an offence under section 3 (other than subsections (2A) and (2B)) of the Act of 1998.

24.4.3. The offences outlined in section 3 of the 1998 Act (as amended by section 3 of the 2008 Act) that are included in the provisions of Section 7(1) and 7(2) of the 2008 Act are:

- The trafficking of children - contrary to section 3(1)
- The sexual exploitation of a child - contrary to section 3(2)
- Causing another person to commit an offence under subsection (1) or (2) – contrary to section 3(3)
- Attempting to commit an offence under subsection (1), (2) or (3) of section 3 – contrary to section 3(4).

24.4.4. The offences outlined in section 3 of the 1998 Act (as amended by section 3 of the 2008 Act) that are **excluded** from this provision are:

- Meeting, or travelling with the intention to meet, children within the State for the purpose of the sexual exploitation of a child - contrary to section 3(2A), and
- Meeting, or travelling with the intention to meet, children outside the State for the purpose of the sexual exploitation of a child - contrary to section 3(2B).

24.4.5. It should be noted that, unlike the 1996 Act, there is no requirement within the 2008 Act for the act done, to be an offence in the place (outside the State) where it occurred so long as the act done constitutes a relevant offence in this State.

24.4.6. Other human trafficking offences are also included in section 7 of the 2008 Act.

25. Provisions of Section 16(1)(b) Criminal Evidence Act, 1992

25.1. By virtue of Statutory Instrument No. 401 of 2008, section 16(1)(b) of the Criminal Evidence Act, 1992 commenced on the 15th October, 2008.

25.2. Section 16(1)(b) of the 1992 Act provides for the video recording of any statement made by a person under 14 years of age (being a person in respect of whom an offence is alleged to have been committed) during an interview with a member of the Garda Síochána or any other person competent for that purpose. Section 16(1)(b) also applies to persons having an intellectual disability.

25.3. The offences to which section 16(1)(b) applies are outlined in section 12 of the 1992 Act and are as follows:

- a) a sexual offence, as defined in the 1992 Act (as amended)
- b) an offence involving violence or the threat of violence to a person, or
- c) an offence consisting of attempting or conspiring to commit, or aiding, abetting, counselling, procuring or inciting the commission of, an offence mentioned in (a) or (b) above.

25.4. **There is an absolute obligation on investigating members to refer the interviewing of such victims to trained specialist victim interviewers.** Specialist victim interviewers have undergone intensive training and are deemed competent to interview such victims. Under no circumstances will a member (who is not a trained specialist victim interviewer) attempt to take a statement from a person who is under 14 years of age (or with an intellectual disability) who is the victim of a sexual offence or an offence involving violence or threats of violence, **except in exceptional urgent circumstances.**

25.5. It is essential that all victims as outlined are dealt with in accordance with the provisions of section 16(1)(b) to ensure that they are afforded the protections as envisaged by this provision i.e. not having to give live evidence in criminal proceedings, unless otherwise directed by the Court.

26. Specialist Victim Interviewers in the Garda Síochána

26.1. As part of the Garda Síochána's response capability to deal with victims of serious crime a number of selected Garda personnel have undergone intensive training and are deemed competent to deal with all victims of serious crime occurrences including under 14 year olds and persons with intellectual disabilities.

26.2. The volume of serious crime occurrences in each District/ Division/ Region will dictate the number of personnel to be trained in this specialist role in each District/Division/Region.

26.3. **Role of Specialist Victim Interviewers**

26.3.1. The tasking of the trained specialist victim interviewer, in relation to the interviewing of children under 14 years of age and vulnerable adults who are victims of sexual offences or offences involving violence or the threat of violence, will be the responsibility of the Divisional Officer on application from the District Officer, D/Superintendent, or D/Inspector. The Divisional Officer will ensure that the specialist victim interviewers are available for this task when required.

26.3.2. When not involved in the interview of children under 14 years of age as above they will, in ordinary course, engage in regular policing duties as directed by their supervisors, which may include the interviewing of:

- a) All other victims of serious sexual offences or witnesses to serious sexual offences.
- b) Victims of all other serious crime or witnesses to serious crime

as their training is of benefit in this regard.

26.3.3. The interviewing of children under the age of 14 years must always take priority to any other duty.

26.3.4. Specialist victim interviewers will not engage in the interview of suspects where they have interviewed a child as part of the same investigation. Best practice in this regard dictates that there should be no cross over between the victim/suspect interviews by the specialist interviewers. Specialist victim interviewers will not be engaged as Family Liaison Officers unless trained to do so, and will not be used as a Family Liaison Officer in any case where they have interviewed a child.

26.3.5. Specialist victim interviewers will ordinarily interview children and victims of sexual offences in plain clothes and will be in receipt of plain clothes allowance in respect of that duty.

26.3.6. The **Good Practice Guidelines (2003)** set out the issues to be considered during preparation for an interview with a child and among these are developmental factors in relation to the child. Having considered all the relevant matters, specialist interviewers may deem it appropriate to conduct certain interviews in uniform.

However, any decision in this regard will be made in the best interest of the child having regard to what the child's expectation of what a Garda is. Each case will depend on the stage of development of the child.

26.4. **Dedicated Interview Suites**

- 26.4.1. A number of dedicated interview suites have been secured at strategic locations throughout the country designed to provide appropriate facilities for interviewing victims of serious crime occurrences including under 14 year olds and persons with intellectual disabilities. The interview suites have the capacity to electronically record witness statements in line with the provisions of section 16(1)(b) of the Criminal Evidence Act, 1992. The interview suites are independently located away from Garda Stations and their locations are listed on the Garda Portal.
- 26.4.2. Usage and maintenance of each dedicated interview suite will be under the strict control of the District Officer in whose area the suite is located. The District officer will be responsible for ensuring that they are regularly cleaned, adequately heated and ventilated, and maintained to the highest standards.
- 26.4.3. Interviews conducted in accordance with Section 16(1)(b) of the Criminal Evidence Act, 1992 will only be conducted by trained Specialist Victim Interviewers.
- 26.4.4. The interview suites may be used for the interviewing of victims of other serious crime when deemed appropriate by the member in charge of the investigation and in consultation with the District Officer in whose area the suite is located. The interviewing of child victims of crime will at all times take precedence over other interviews.
- 26.4.5. **It is essential** that the anonymity of the specific location of each interview suite and its usage is preserved. This is in order to avoid what has been described in other jurisdictions as the “walk of shame” which occurs where victims of sexual crimes are forced to walk in front of strangers who can surmise as to their circumstances because the usage of the premises is widely known. **It is incumbent on local management to avoid the presence of uniform personnel (including marked Garda vehicles) at or around the interview suite.**



PART III

CHILD WELFARE

PART III - WELFARE OF CHILDREN

27. Introduction

- 27.1. The **Children First National Guidelines for the Protection and Welfare of Children** were first published in 1999 and revised in 2009. These guidelines have been adopted as Garda policy for the welfare and protection of children. Although the guidelines are not on a statutory footing, they clearly outline the duty of all members of An Garda Síochána in relation to the welfare and protection of children. Where a member suspects that a child has been, is being, or is at risk of being abused s/he will make the required notification or referral to the HSE.
- 27.2. Children, because of their dependency and immaturity, are vulnerable to abuse in its various forms. Parents or guardians have primary responsibility for the care and protection of their children. A proper balance must be struck between protecting children and respecting the rights and needs of parents/carers and families. Where there is conflict, the child's welfare must come first. When parents or guardians do not, or cannot, fulfil this responsibility, it may be necessary for An Garda Síochána and the Child Welfare and Protection Services of the Health Service Executive (HSE) to intervene to ensure that children are adequately protected.
- 27.3. The **Children First: National Guidelines for the Protection and Welfare of Children 1999 and 2009** are designed to assist in the identification and reporting of child abuse. While the needs of children and families must be at the centre of child welfare and protection services, **the welfare of children is of paramount importance**. The national guidelines highlight the roles and responsibilities of An Garda Síochána and the HSE, which are the two agencies with statutory responsibility for child protection. They also offer guidance to other agencies and voluntary organisations in contact with or providing services to children.
- 27.4. The national guidelines are also intended to provide a framework to support the enhancement of interagency cooperation and the strengthening of multidisciplinary responses to child abuse. Effective child protection will be best achieved where the national guidelines and local procedures are supported by comprehensive training, supervision and support services for families and children.
- 27.5. Child abuse can be categorised into four different types: neglect, emotional abuse, physical abuse and sexual abuse. A child may be subjected to one or more forms of

abuse at any given time. More detail regarding each type of abuse can be found in the Children First guidelines.

27.6. For the purpose of these guidelines, **'a child' means a person under the age of 18 years**, excluding a person who is or has been married.

27.7. Child abuse is not restricted to any socio-economic group, gender or culture. All signs must be considered in the wider social and family context. However, serious deficits in child safety and welfare transcend cultural, social and ethnic norms, and must elicit a response.

28. Responsibility to Report Abuse

28.1. Every member must be alert to the possibility that children with whom they are in contact may be being abused. Concerns must be reported to the Child Welfare and Protection Services of the HSE.

28.2. The guiding principles in regard to reporting child abuse may be summarised as follows:

- the safety and well-being of the child must take priority;
- reports should be made without delay to the Child Welfare and Protection Services of the HSE.

28.3. Any reasonable suspicion of abuse must elicit a response. Ignoring the signals or failing to intervene may result in ongoing or further harm to the child. Children may suffer long-lasting emotional and/or psychological harm as a result of abuse. Physical abuse and neglect can be fatal and some children may be permanently disabled or disfigured as a result of such child abuse.

29. Basis For Reporting Concerns To The HSE

29.1. The Child Welfare and Protection Services of the HSE must always be informed when a member has reasonable grounds for concern that a child may have been abused, is being abused, or is at risk of abuse.

29.2. The following examples would constitute reasonable grounds for concern:

- a specific indication from the child that he or she was abused;
- an account by a person who saw the child being abused;
- evidence, such as an injury or behaviour, that is consistent with abuse and unlikely to be caused in another way;
- an injury or behaviour that is consistent both with abuse and with an innocent explanation, but where there are corroborative indicators supporting the concern that it may be a case of abuse. An example of this would be a pattern of injuries, an implausible explanation, other indications of abuse and/or dysfunctional behaviour;
- consistent indication, over a period of time, that a child is suffering from emotional or physical neglect.

29.3. A concern about a potential risk to children posed by a specific person, even if the children are unidentifiable, should also be communicated to the Child Welfare and Protection Services of the HSE.

29.4. Where an adult reports historical child abuse it is essential to establish whether there is any current risk to any child who may be in contact with the suspected abuser revealed in such disclosures.

29.5. Where a child has been involved in the commission of a criminal offence, particularly where a child has been arrested, members should always consider notifying the HSE in accordance with the Children First guidelines. Where there is a concern because of the child's behaviour that there is an immediate and serious risk to the health or welfare of that child, removing her/him to safety pursuant to **Section 12 of the Child Care Act 1991**, as outlined below, should be considered.

30. Roles & Responsibilities of An Garda Síochána

30.1. The following is a summary of the guidelines which relate directly to the Garda/HSE interface in relation to child protection and welfare, a full copy of which is available on the Garda portal and every member should familiarise him/herself with same.

30.2. As outlined in the Children First guidelines, An Garda Síochána and the HSE Child Welfare and Protection Services have different functions, powers and methods of working. The specific focus of the HSE is on the welfare of the child and family. The specific focus of An Garda Síochána is on the investigation of complaints and establishing whether a crime has been committed. Joint working between An Garda

Síochána and the HSE Child Welfare and Protection Services forms an integral part of the child welfare and protection service.

30.3. The involvement of An Garda Síochána in cases of child abuse stems from its primary responsibility to protect the community and to bring offenders to justice. Where it is suspected that a crime has been committed, An Garda Síochána will have overall responsibility for the direction of any criminal investigation.

30.4. **The Child Care Act, 1991**

30.4.1. From time to time members of An Garda Síochána may be required to execute warrants issued pursuant to various provisions of the Child Care Act 1991 to assist the HSE in executing the various care orders issued under that Act.

30.4.2. Members engaged in such duty will give every lawful assistance to the HSE personnel involved.

30.4.3. Members may also encounter incidents where they find it necessary to remove a child to safety pursuant to section 12 of the Child Care Act 1991. Two central tenets of the Child Care Act 1991 should be borne in mind when considering such action:

- That it is generally in the best interests of a child to be brought up in her/his own family, and
- That the welfare of the child is the first and paramount consideration.

A balance must be achieved between those two issues when deciding whether or not to remove a child to safety.

30.4.4. This is a decision that must not be taken lightly. It is vital that members satisfy themselves that there is an **immediate and serious risk** to the health or welfare of the child(ren) concerned.

30.4.5. This applies also where HSE personnel request members of An Garda Síochána to invoke section 12 of the Act. While the Garda may base her/his decision on the information provided by HSE personnel, it is the Garda removing the child to safety who must be satisfied in her/his own mind that there is an immediate and serious risk to the health and/or welfare of the child(ren) concerned.

30.5. Garda Central Vetting Unit

- 30.5.1. The Garda Central Vetting Unit (GCVU) provides vetting on behalf of organisations employing personnel to work in a full-time, part-time, voluntary or student placement capacity with children and/or vulnerable adults. The GCVU provides its vetting service for each sector requiring vetting through a sectoral 'central point of contact', the task of which is to process vetting applications centrally for that sector.
- 30.5.2. The Authorised Signatory is the point of contact appointed in each organisation to forward forms to the GCVU and any disclosures from Gardaí are returned to the Authorised Signatory confidentially, the implications of which can be assessed by prospective employers using a risk management approach.
- 30.5.3. The GCVU does not deal with individual requests for vetting. An individual must make a written application through the organisation to which their area of work is affiliated.
- 30.5.4. Garda vetting is part of good recruitment practice. It is not the role of GCVU to decide on the suitability of any person to work with children and vulnerable adults. Decisions on suitability for recruitment ultimately rest with the recruiting organisation and the results of vetting should form only one component of the recruitment decision.

31. Protocol for An Garda Síochána – HSE Liaison

- 31.1. Effective interagency cooperation has a number of benefits, including:
- ensuring provision of a comprehensive response to all concerns about children. This includes the pooling of resources and skills at all stages of intervention, from initial enquiry to assessment and case management, including early identification and prevention;
 - avoiding gaps in the service response, especially in cases where information might otherwise remain concealed or unknown;
 - providing mutual support for professionals in complex cases.
- 31.2. An Garda Síochána and the HSE are the key agencies empowered by law to carry out an investigation and assessment of suspected child abuse. Each agency manages the responsibility within its brief and their joint efforts are designed to ensure that the protection of vulnerable children receives priority attention. Their separate and

complementary roles require careful understanding if the shared objectives of child protection are to be realised. An Garda Síochána has the additional responsibility of bringing abusers to justice.

31.3. **Designated Personnel**

31.3.1. Each District Officer will appoint a designated District-based Inspector/Sergeant who with a Social Work Team Leader from the HSE will constitute a Liaison Management Team, the functions of which are:

- to consider notifications of suspected child abuse;
- to assign personnel and supervise investigations;
- to review progress in the case.

31.4. **Tracking Systems**

31.4.1. It is important for both An Garda Síochána and the HSE to chart the progress of an investigation into a notified suspicion of child abuse. A standardised Record of **Garda – HSE Liaison Form** should be used to assist managers and other personnel in this task. The adoption of this procedure should ensure accountability in all cases.

31.5. **Notifications by HSE to An Garda Síochána**

31.5.1. Where the HSE suspects that a child has been or is being physically or sexually abused or wilfully neglected, the HSE have a responsibility to notify An Garda Síochána.

31.5.2. The HSE is not expected to routinely notify suspected cases of emotional abuse or unintentional neglect to An Garda Síochána since the circumstances of such cases may not involve law enforcement issues. Where HSE personnel have any doubt, they may consult with members of An Garda Síochána.

31.5.3. Members should be aware that the offence of cruelty to children contrary to **section 246 of the Children Act 2001** includes the frightening, bullying or threatening of a child and other certain behaviours likely to cause unnecessary suffering or injury to the child's physical, mental or emotional health, or seriously affect his/her physical, mental or emotional wellbeing.

31.5.4. The HSE must inform the person reporting a suspicion of child abuse that their information will be shared with An Garda Síochána.

31.6. **Procedure when the HSE to notify An Garda Síochána**

- 31.6.1. When a District officer receives a Standard Notification Form from a Child Care Manager/equivalent designated person, the District Officer will appoint a Garda to the case and immediately inform the HSE Child Care Manager/equivalent designated person of the Garda's name and station.
- 31.6.2. At the same time, the District Officer will direct the designated Inspector/Sergeant to manage the investigation, monitor its progress and consult with the appointed HSE manager of the case.
- 31.6.3. The appointed Garda will make direct contact without delay with the HSE social worker (or other designated person) dealing with the case in order to obtain details.
- 31.6.4. When contact is established, the designated Garda should make her/himself available to assist the relevant social worker in completing the Record of **Garda – HSE Liaison Form**.
- 31.6.5. Where contact cannot be established between the designated Garda and the social worker, the matter will revert immediately to the designated Garda Inspector/Sergeant and the HSE Social Work Team Leader of the case for resolution.

31.7. **Notifications by An Garda Síochána to HSE**

- 31.7.1. Where a member suspects that a child has been or is being the victim of emotional, physical or sexual abuse or neglect (whether wilful or unintentional), the HSE will be formally notified in accordance with the procedure set out below. It is not necessary for An Garda Síochána to have sufficient evidence to support a criminal prosecution before notifying the HSE.
- 31.7.2. In cases involving criminal investigation only (eg, the assault of a child by a stranger) and a notification is not warranted, members should contact the HSE where there is need for appropriate counselling and other support services for the victims of assaults.
- 31.7.3. An Garda Síochána may be involved in investigating a case of child abuse, or a retrospective complaint of abuse, where the HSE is not involved. Where appropriate, An Garda Síochána should seek the advice of the HSE regarding counselling and other support services for victims.

31.8. **Procedure for An Garda Síochána to notify the HSE**

The procedure for An Garda Síochána to notify the HSE of a suspected case of emotional, physical or sexual abuse or neglect of a child is as follows:

- 31.8.1. The investigating member will complete Standard Notification Form to the HSE Child Care Manager/ equivalent designated person and will submit same, immediately through the usual channels, to the District Officer with an accompanying report outlining the details of the case.
- 31.8.2. The District Officer will send the **Standard Notification Form** to the HSE Child Care Manager/equivalent designated person. A copy will be retained by the Garda member dealing with the case and by the designated Garda Inspector/Sergeant. Where more than one child is involved, a separate Standard Notification Form should be sent in respect of each child.
- 31.8.3. On receipt of the notification form, the HSE Child Care Manager/equivalent designated person has responsibility for arranging to have a social worker (or other designated person) assigned to the case and immediately will notify the Garda Superintendent of the name and location of the designated social worker.
- 31.8.4. The social worker assigned to the case will make direct contact with the Garda in charge of the case in order to obtain details.
- 31.8.5. When contact is established, both the investigating Garda and the social worker will commence completion of the Record of **Garda – HSE Liaison Form**.
- 31.8.6. The District Officer will direct the designated Inspector/Sergeant to manage the investigation, monitor its progress and consult with the appointed HSE manager of the case.
- 31.8.7. Where contact cannot be established between the designated Garda or HSE social worker, the matter will revert immediately to the HSE Social Work Team Leader and the designated Garda Inspector/Sergeant for resolution.

31.9. **The Liaison Management Team**

- 31.9.1. The Liaison Management Team – comprising the designated Garda

Inspector/Sergeant and the HSE Social Work Team Leader – will be responsible for ensuring that interagency liaison occurs and that each Standard Notification Form is appropriately processed.

31.10. **Informal consultation**

31.10.1. Where a member has concerns about a child but is unable to establish sufficient grounds for formal notification to the HSE, the member should consult with her/his supervisor, who will in turn consult with the HSE on an informal basis. Such contact is to be actively encouraged in order to protect the welfare of the child concerned.

31.11. **Emergency intervention**

31.11.1. There may be occasions when a member has to take immediate action to protect a child without first notifying the HSE (e.g. invoking **section 12 of the Child Care Act, 1991**). It is essential that the member informs the HSE through the usual channels, of any actions taken, by sending the **Standard Notification Form** at the earliest opportunity.

31.12. **Investigation of cases**

31.12.1. It is essential that enquiries by An Garda Síochána and the HSE should be coordinated to ensure that:

- the welfare of the child is protected;
- everything possible is done to assist the criminal investigation and protect the available evidence;
- there is a free flow of relevant information between both agencies;
- decisions and actions follow consultation within and between both agencies.

31.12.2. While both organisations conduct separate investigations/ assessments into suspected child abuse cases, a number of issues arise in the management of inter-agency investigations that require careful consideration by both An Garda Síochána and the HSE.

31.12.3. In cases where a specialist assessment of child sexual abuse is underway, the

Children First guidelines advise the HSE that the early interviewing of the child by An Garda Síochána should be facilitated to ensure that statements may be obtained in a manner least likely to cause stress to the child. Along with Gardaí, HSE personnel have been trained in specialist victim interviewing and may be requested to take part in such interviews where required.

31.12.4. Members will keep a written record of decisions taken in relation to the case. This record should be accessible in the absence of the specific Garda member investigating the case. All contacts between An Garda Síochána and the HSE will be recorded. A decision that is made by either the HSE or An Garda Síochána not to proceed must be recorded in detail and explanations recorded as to why this course of action was taken.

31.12.5. It is essential that the designated Garda attend any child protection conferences or strategy meetings to which s/he is invited. An invitation to attend child protection conferences will be sent to the District Officer in order to facilitate the attendance of the designated Garda.

31.13. **Liaison with parents/carers**

31.13.1. Every possible effort should be made to keep the child's parents/carers informed of developments in the case, except where this might place the child at further risk or impede the criminal investigation. It is common practice to invite parents/carers to attend child protection conferences. If this conflicts with the investigative process (eg, one of the parents is a suspect), the matter should be resolved between the relevant case managers, namely the Social Work Team Leader and the designated Garda Inspector/Sergeant.

31.13.2. The views of parents/carers should be sought on the issues to be raised at a child protection conference, so that they can get advice and prepare their representations. All actions in response to concerns about child abuse should be taken in a manner that supports the possibility of families providing safe and nurturing care for their children, now or in the future.

31.13.3. For parents/carers, being asked to participate in, or cooperate with, an investigation into suspected child abuse can provoke powerful emotions, such as anger, fear, shame, guilt or powerlessness. Moreover, parents/carers are usually unaware of the complexity of what is likely to be involved and are unsure of the appropriate rules of

behaviour.

31.13.4. Professionals (including Gardaí) need to build trust with families when involved in child abuse investigations/assessments, in so far as it is possible. It may be unrealistic to expect family members who are the subject of complaints of child abuse and neglect to trust the professionals making the enquiries. Being cast in the role of 'the accused' inhibits parents/carers from trying to understand the professionals' point of view. Nevertheless, in many cases a relationship of trust can be established if the professionals involved create the right conditions for its development.

31.13.5. If the child or parent/carer has a communication difficulty, arrangements must be made to help them during any interviews. This may involve a sign language interpreter, large print, tape or braille. For those whose first language is not English, the services of an interpreter should be made available.

31.14. **Investigation of organised abuse**

31.14.1. The investigation of organised abuse requires particularly sensitive cooperation between An Garda Síochána and the HSE. It may involve surveillance work and a higher degree of secrecy than would normally be expected in child protection work. It may be undesirable to share information fully with families in the early stages of investigation since breaches of confidentiality may seriously impede detection.

31.15. **Confidentiality**

31.15.1. It is essential that all information exchanged between An Garda Síochána and the HSE is treated with the utmost confidentiality in order to safeguard the privacy of the children and families concerned and to avoid prejudicing any subsequent legal proceedings.

31.15.2. Regard must be taken of the Freedom of Information Acts, 1997 & 2003 when considering a request for confidentiality. At present, the Act applies to the HSE, but not to An Garda Síochána. In particular, cognisance should be taken of Section 23 of the Act on 'Law Enforcement and Public Safety' when considering concerns about the confidentiality of information. HSE records containing references to communications with An Garda Síochána will be considered 'third party' records and, as such, will be referred to the Garda Commissioner when any request for information release under the Freedom of Information Act is being considered.

31.16. **Ongoing liaison**

31.16.1. The designated Garda and HSE social worker should stay in regular contact and inform each other of developments in the case as they take place and record these on the Record of **Garda – HSE Liaison Form**. The link between both agencies should be maintained until the criminal investigation and the prosecution (where applicable) is completed.

31.16.2. Certain aspects of the investigation should be considered by both agencies, including:

- impact of a prosecution on the child (victim);
- impact of the reported abuse on the child;
- support for child and adult witnesses;
- victim support services.

31.17. **Strategy meeting**

31.17.1. When a reported concern has been assessed by the HSE as valid and it appears that a child is at serious risk and may need immediate protection, a child protection enquiry will be set up by the HSE. It is vital at the outset that Garda members share all available and relevant information with the HSE.

31.17.2. At any point during a child protection enquiry, it may be considered appropriate to convene a strategy meeting with all relevant professionals. This meeting can involve any or all of the professionals involved at either management or case assessment level, depending on the circumstances. It is particularly important to consider this process following preliminary enquiries and the notification of an ongoing child protection concern to the HSE Child Care Manager/equivalent designated person. It is particularly important that designated members attend such meetings when requested, especially if formal notification procedures are, or have been, invoked.

31.17.3. It is the responsibility of the HSE Social Work Team Leader or Social Work Manager to arrange a strategy meeting. However, should a member have particular concerns about a case and no such meeting has been requested, the member should, through the District Officer, request that a strategy meeting be convened. The District officer will instruct the designated Inspector/Sergeant to request the meeting. An Garda Síochána should not wait for the social work team leader to convene a meeting where there are particular concerns regarding any specific child protection matter but should make

immediate application to the HSE to convene a meeting.

31.17.4. Where a meeting has been requested and not then convened, the designated Inspector/Sergeant will inform the District Officer who will in turn make immediate contact with the Child Care Manager to express the relevant child protection/welfare concerns and again request that a strategy meeting be convened.

31.17.5. Strategy meetings have a number of objectives, including:

- to share available information;
- to consider whether immediate action should be taken to protect the child and other children in the same situation;
- to decide if Section 16(1)(b) Criminal Evidence Act, 1992 interviews should take place;
- to consider available legal options;
- to plan early intervention;
- to identify possible sources of protection and support for the child;
- to identify sources of further information;
- to allocate responsibility;
- to agree as to how the remainder of the enquiry will be conducted.

32. Special Considerations

Certain child protection concerns that come to the attention of the HSE are of particular relevance to An Garda Síochána.

32.1. Organised abuse

32.1.1. Cases of organised abuse comprise only a very small proportion of the child protection concerns that come to the attention of An Garda Síochána or the HSE. Nevertheless, they are complex and require particularly careful handling. Essentially, organised abuse occurs either when one adult moves into an area or institution and systematically entraps children for abusive purposes (mainly sexually) or when two or more adults conspire to similarly abuse children, using inducements.

32.1.2. Organised abuse can occur in different settings, such as the community, the family or extended family, or an institution.

32.1.3. The following factors are particularly associated with organised abuse:

- Detection can take several years.
- Calculating the number of victims involved can be difficult since many will have moved away from the area. Particular efforts, such as helplines and advertisements, may be required in order to contact victims.
- Victims are often more powerless and vulnerable than those in other abuse cases. Many will have grown up in care.
- Victims may be under particular pressure not to disclose because of threats or feelings of shame and responsibility.
- Some victims may have colluded with abusers to entrap other children and may have gone on to become abusers themselves.
- Families may have unwittingly colluded with the abuse by accepting gifts and friendship from the abuser and encouraging their children to associate with the abuser.

32.1.4. The investigation of organised abuse requires particularly sensitive cooperation between An Garda Síochána and the HSE. It may involve surveillance work and a higher degree of secrecy than would normally be expected in child protection work. It may be undesirable to share information fully with families in the early stages of investigation since breaches of confidentiality may seriously impede detection.

32.2. **Protection of children at risk moving to other jurisdictions**

32.2.1. When a family with children who are considered by An Garda Síochána or the HSE to be at risk are believed to have moved to another jurisdiction, the relevant information should be sent to the appropriate authority in that State.

32.2.2. Members becoming aware of such children should notify the HSE, who will make arrangements for the exchange of information as mentioned above. Members should also immediately inform the appropriate law enforcement agency in the State to which the children have moved. This information will always be transmitted through D/Superintendent Liaison & Protection, Garda Headquarters, who will forward the information via a recognised channel (eg Interpol and Europol).

32.3. **Children at risk migrating to Ireland from another jurisdiction**

32.3.1. When the An Garda Síochána or HSE are informed that children who are considered to be at risk have moved into their area, immediate notification procedures must be

followed. If required, a strategy meeting must be arranged between An Garda Síochána and the HSE to review relevant information.

33. Aide Memoire – Children First Notifications

33.1. An “Aide Memoire” is available in laminated form to members which is designed to assist investigating members in child protection cases.

33.2. The “Aide Memoire” has been produced to fit neatly into the current Garda notebook. It is formatted as set out below and requires the following to be documented:

33.2.1. Child Protection/Welfare issues (Is the child safe?)

The Garda designated to investigate the case will:

- Make direct contact (without delay) with the social worker assigned to the case (Arrange strategy meeting with designated social worker)
- Establish the outcome of the Health Service Executive’s child protection assessment (Is the child safe, has the child been seen?)
- Commence completion of the Record of **Garda – HSE Liaison Form**. (also known as the joint action sheet)
- Liaise with the local Validation Unit (Child Sexual Abuse Assessment).

33.2.2. All matters pertinent to the Garda Investigation

With the exception of Section 12 Child Care Act, 1991 the Garda role if a crime is reported, or if there are indicators of a crime (e.g. report of non accidental injury) in child protection cases, remains strictly one of crime investigation (See **Code Chapter 33** for crime recording). Primary consideration of the investigator should be to minimise the stress involved by the investigation.

33.2.3. Information regarding the Perpetrator(s)

All relevant information (M.O., description, mannerisms etc) shall be advised to the local Criminal Intelligence Officer and entered on the PULSE System.

33.2.4. Interim Report

No report should be delayed. Delay can endanger the child, delay can result in loss or damage of evidence (the child may be intimidated or coached) and any delay in the investigation of the case will have to be accounted for when file is transmitted to the Law Officers. Interim report within 10 days.

33.2.5. **Advice**

Where any member experiences difficulties while trying to make contact with the Health Service Executive, they will immediately contact their District liaison manager (Sergeant or Inspector).

34. PULSE - Recording of Requests for HSE Intervention

34.1. The Incident Type '**H.S.E/Child (U18)**' is included in the PULSE Incident Category of '**Attention and Complaints**'. The purpose of this is to record situations involving children requiring intervention from the Health Service Executive.

34.2. The MO Feature '**H.S.E. Requested**' and three MO Feature Type options: '**Section 12 Child Care Act Invoked**'; '**Child Seeking Accommodation**' and '**Child in Custody and H.S.E. informed**' are included on PULSE. When creating an incident on PULSE the reason why H.S.E. intervention is required must be recorded using this MO Feature and one of the associated MO Feature Types.

34.3. **Recording PULSE incidents requiring H.S.E. intervention**

34.3.1. A separate incident must be created for each child requiring H.S.E. intervention. This is in addition to creating a crime incident where the intervention occurred as a result of a crime.

34.3.2. The Incident Type of '**H.S.E/Child (U18)**' should be selected for all incidents where H.S.E. intervention is required.

34.3.3. The child should be recorded with the role of '**Witness**'.

34.3.4. The details of the Garda dealing with the incident should be recorded with the role of '**Reporting Garda**'.

34.3.5. The '**Reported Date**' should be the date when the incident was reported/known to the

Garda.

- 34.3.6. The 'Occurred Date' should be the date when the incident occurred.
- 34.3.7. The 'Scene' should be the location where the incident took place. When a child calls to a Garda Station requesting a service from the H.S.E. then the Garda Station is recorded as the scene.
- 34.3.8. The 'Local Station' should be the relevant Garda station where the incident occurred.
- 34.3.9. The 'Narrative' field must record important and relevant details of the incident.

Appendix A: Legal Basis for Sexual Crime Policy

This section provides a summary of the legal basis governing the investigation of crimes of a sexual nature and suspected child abuse. This section is designed to provide practical guidance to members of the Garda Síochána, so that they are aware of their responsibilities in relation to the investigation of crimes of a sexual nature and suspected child abuse. It will set out the main legal (including human rights) provisions, and give some practical examples, referring to relevant legislation, leading cases and other sources of law, as necessary. It is essential that any action taken by members of the Garda Síochána is only applied in accordance with the law.

Members of the Garda Síochána carrying out their functions must do so in accordance with the:

- 1.1** Constitution of Ireland, 1937,
- 1.2** Irish Statute and Common Law (Appendix A),
- 1.3** European Convention on Human Rights,
- 1.4** Garda Síochána Code of Ethics,
- 1.5** Children First Guidelines.

Members of the Garda Síochána will have regard to the following:

- 1.1** The European Code of Police Ethics,
- 1.2** The UN Convention on the Rights of the Child.

A list of commonly used offences is provided for at Appendix B.

The function of the Garda Síochána is set out in section 7(1) of the 2005 Act which is to provide policing and security services for the State with the objective of:

- (a) preserving peace and public order,
- (b) protecting life and property,
- (c) vindicating the human rights of each individual,
- (d) protecting the security of the State,

- (e) preventing crime,
- (f) bringing criminals to justice, including by detecting and investigating crime, and
- (g) regulating and controlling road traffic and improving road safety.

Section 7 sets out a general duty to protect life and preserve peace and public order and the investigation of crime. As set out in section 7(1)(c) of the 2005 Act the function of the Garda Síochána is to provide policing and security services for the State with the objective of vindicating the human rights of each individual. Carney J. in *D.P.P. v Bartley*¹ outlined the duties of the Garda Síochána as follows:

*“Where a credible complaint of felony is made to a policeman, he has no discretion under the Common Law not to investigate it and apprehend a named offender. A failure to carry out this duty vigorously constitutes an illegality on the policeman’s part and renders him liable to prosecution on indictment. In **Creagh -v- Gamble** 1887 XXIV L.R.I. p.458, Pallas C.B. said:-*

A person against whom a reasonable suspicion of a felony exists shall be brought to justice. The Peace Officer is not only entitled but bound to arrest him”This principle of the common law still holds good 110 years later. It is an indictable offence at Common Law for a public officer wilfully and without reasonable excuse or justification to neglect to perform a duty imposed on him either by Common Law or Statute.”

In addition to the obligations contained in section 7(1) of the 2005 Act, the 2003 Act, which came into force on 31 December 2003 and which incorporated the ECHR into Irish law, provides that *“every organ of the State shall perform its functions in a manner compatible with the State’s obligations under the Convention provisions.”* The Garda Síochána is an *“organ of the State”* for the purposes of the 2003 Act.

¹ *D.P.P. v Bartley*, unreported, High Court, June 13, 1997.

Section 3 of the 2003 Act obliges the Garda Síochána, as an organ of the State, to perform its functions in a manner compatible with the State's obligations under the Convention provisions. In this regard there are a number of seminal findings of the European Commission on Human Rights and judgments of the European Court of Human Rights that outline clearly the duty placed on the member states. This duty is commonly known as "*the positive obligation*" and once a positive obligation on a member state exists, an "*omission*" by a public authority, or the absence of a legal remedy against another individual, may constitute a violation under the ECHR.

In the judgment of **Barabanshchikov v Russian App. No. 36220/02**, judgment delivered on 8th January, 2009, the Court outlined its views on the obligation to investigate and stated as follows:

"...the State's general duty under Article 1 of the convention to 'secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention', requires by implication that there should be an effective official investigation. An obligation to investigate is not an obligation of result, but of means. Not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events, however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, the identification and punishment of those responsible. That meant that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident. Any deficiency in the investigation which undermines its ability to establish the facts will risk falling foul of this standard...."

In this respect, all complaints or reports of crimes of a sexual nature and suspected child abuse will be investigated. There can be no justification for a member of the Garda Síochána refusing to take a complaint or a report from a person on the basis that the incident refers to another Division, District or Sub-district. All such complaints or reports must be taken and in circumstances where such complaints or reports are

forwarded to the appropriate Division, District or Sub-district for investigation or attention the complainant shall be informed of this fact. The member taking the complaint or report will provide their name and Station telephone number to the person making the complaint or report. The member of the Garda Síochána taking a complaint or report should give an adequate explanation to the person making the complaint or report as to the procedures to be employed in the processing of that complaint or report.

In addition to the general duty of the Garda Síochána under Article 1 of the ECHR members of the Garda Síochána carrying out their functions shall at all times respect a person's personal rights and her/his dignity as a human being and shall not subject any person to ill-treatment of any kind and therefore the following additional Human Rights principles are of importance:

Constitution of Ireland 1937

Article 40.1 of the Constitution of Ireland provides that "*All citizens shall, as human persons, be held equal before the law*". Article 40.3.1 of the Constitution of Ireland provides that "*The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.*"

The right to bodily integrity was upheld by the Supreme Court in **Ryan v A.G.**² as being one of the unenumerated rights protected by Article 40.3. However, the Supreme Court also stated that the State had the duty of protecting the citizens from dangers to health in a manner compatible with the rights of these citizens.

In **State (c) v Frawley**³ the High Court held that the right to bodily integrity did not just apply to legislation (**Ryan v A.G.**), but also operated to prevent acts or omissions of the Executive which, without justification, would expose the health of a person to risk or danger including persons in prison/custody. Any excessive and non consensual interference with a persons' physical security, which is not authorised by law, will be considered constitutionally impermissible and evidence obtained in an unlawful personal search may be inadmissible in criminal proceedings.

² *Ryan v A.G.* [1965] IR294

³ [1976] IR 365

Article 38.1 prohibits the trial of a person for a criminal offence otherwise than “in due course of law”. In this regard it is incumbent on members of the Garda Síochána to uphold and protect the constitutional rights of both victims and suspects. Failure to uphold the constitutional rights of suspects is a breach of fair procedures and natural and constitutional justice and will fall foul of the principle of “in due course of law”. The Supreme Court in *D v DPP* [1994] 2 IR 465 at 474 stated that the “*right to fair procedures is superior to the community’s right to prosecute*”.

Excessive delay on the part of the State in commencing or prosecuting proceedings against the accused can be fatal to the accused’s right to a fair trial. In *DPP (Coleman) v Mc Neill* [1999] 1 IR 91 the Supreme Court declared that “*there is a responsibility on anyone having anything to do with prosecuting cases to make sure that they are brought with all due expedition*”. In *DPP v Arthurs* [2000] 2 ILRM 363 at 376 the High Court stated that “... *a necessary corollary of that right [to a speedy or expeditious trial] is that there rests upon the State a duty to ensure that all reasonable steps are taken to ensure a speedy trial is provided. This must necessarily mean conducting the investigation and prosecution in a manner which, in so far as it is reasonably practicable, eliminates unnecessary delay, ...*”

The European Convention on Human Rights

The object and purpose of the ECHR is the protection of individuals’ human rights. The relevant Articles of the ECHR which may be engaged, depending on the circumstances, in relation to investigating crimes of a sexual nature and suspected child abuse are set out below.

Article 3 ECHR – Prohibition of Torture

Article 3 of the ECHR enshrines one of the most fundamental values of a democratic society. Even in the most difficult circumstances, such as the fight against terrorism and organised crime, the ECHR prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Article 3 makes no provision for exceptions and no derogation from it is permissible under Article 15(2) of the ECHR even in the event of a public emergency threatening the life of the Nation **Ilaşcu v. Moldova and**

Russia;⁴ other authorities include, **Selmouni v France**⁵ and **Labita v Italy**.⁶

Article 3 of the ECHR prohibits ill treatment and provides that “*no one shall be subjected to torture or to inhuman or degrading treatment or punishment*”. The test established by the European Court of Human Rights (ECt.HR) is that of attaining a certain minimum level of severity. The approach is that:

“... *ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is, in the nature of things, relative; it depends on all the circumstances of the case, such as the duration or the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim*” (**Ireland v U.K.**⁷ other authorities include, **Kafkaris v Cyprus**⁸, and **A v. United Kingdom**.⁹

The Court in *Ireland v United Kingdom* held that torture involves suffering of a particular intensity and cruelty, attaching a “*special stigma to deliberate inhuman treatment causing very serious and cruel suffering*”. Inhuman treatment covers at least such treatment as deliberately causing severe mental and physical suffering. Degrading treatment or punishment consists of treatment or punishment which grossly humiliates a person or drives him to act against his will or conscience.

The Court has also deemed treatment to be “degrading” in circumstances where it arouses in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them. **Kudła v Poland**¹⁰, **Ilaşcu v. Moldova and Russia**¹¹ and **A v. United Kingdom**.¹²

In considering whether a punishment or treatment was “degrading” within the

⁴ (2005) 40 E.H.R.R. 46.

⁵ (2000) 29 E.H.R.R. 403 at 95.

⁶ App. No.26772/95, April 6, 2000, at 119.

⁷ January 18, 1978, Series A, No. 25; 2 EHRR 25 para. 167.

⁸ App. No.21906/04, February 12, 2008 at 95.

⁹ (2009) 49 E.H.R.R. 29 at 85 para 127.

¹⁰ (2002) 35 E.H.R.R. 11 at 92.

¹¹ At 93 para 425.

¹² A v. United Kingdom

meaning of Article 3, the Court will have regard to whether its object was to humiliate and debase the person concerned and whether, as far as the consequences are concerned, it adversely affected his or her personality in a manner incompatible with Article 3. However, the absence of any such purpose cannot conclusively rule out a finding of a violation of Article 3. In order for a punishment or treatment associated with it to be “inhuman” or “degrading”, the suffering or humiliation involved must go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

In **Timurtas v Turkey**,¹³ the European Court of Human Rights stated; “... *where an individual is taken into custody in good health but is found to be injured at the time of release, it is incumbent on the State to provide a plausible explanation of how those injuries were caused, failing which an issue arises under Article 3 of the Convention.*” In **Ribitsch v Austria**¹⁴ the Court held that: “... *In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention.*”

The European Commission on Human Rights (the Commission) found in the case of **Z v United Kingdom**¹⁵ that States are under a positive obligation to take those steps that could reasonably be expected of them to avoid a real and immediate risk of ill treatment contrary to Article 3 of which they knew or ought to have had knowledge, including ill-treatment administered by private individuals.

Article 6 ECHR - Right to a Fair Trial

Article 6 provides that everyone is entitled to a fair and public hearing within a reasonable time and shall be presumed innocent until proved guilty according to law. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

¹³ (2001) 33 EHRR 121.

¹⁴ (1996) 21 EHRR 573.

¹⁵ Application Number 29392/95 (Comm. Rep 10.9.99) para 94.

- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The ECt.HR has determined that where criminal proceedings are concerned, Article 6 applies from the moment the individual is “*charged*” with a criminal offence. There must be some formal notification of the accusation but a “*charge*” may be constituted by an official act that carries such an implication.¹⁶ This may be the date of the formal charge by the police,¹⁷ but in a case where the charge is delayed, or subsequent charges are added, it may be the date of a person’s initial arrest, or the date on which the defendant becomes aware that he is being “*seriously investigated*” and that “*immediate consideration*” is being given to the possibility of a prosecution.¹⁸ In circumstances where evidence is obtained as a result of a breach of Article 3 of the ECHR such evidence may be excluded or deemed inadmissible in accordance with the rights guaranteed by Article 6 of the ECHR.

Members must ensure strict compliance with the Criminal Justice Act, 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations, 1987 and 2006 in order to ensure that the pre-trial Article 6 rights of suspects are given effect.

Article 8 ECHR - Right to respect for private and family life

Article 8 of the ECHR provides that everyone has the right to respect for her/his private and family life, home and correspondence. In this respect, complaints or reports made by persons must be afforded an appropriate level of confidentiality in

¹⁶ Corigliano v Italy (1982) 5 E.H.R.R. 334

¹⁷ Ewing v United Kingdom (1984) 10 E.W.R.R. 141.

¹⁸ X v. United Kingdom, App. No. 6728/74; 14 D.R.26; X v. United Kingdom, App. No. 8233/78; 17 D.R. 122.

order to secure the complainant's rights under **Article 8** of the ECHR. Any interference by a member of the Garda Síochána with an individual's right under Article 8 (1) must be justified under Article 8 (2). Article 8(1) of the ECHR provides a right to respect for one's "*private and family life, his home and his **correspondence***", subject to certain restrictions as provided for in Article 8(2) that are "*in accordance with law*" and "*necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others*". Since this paragraph provides for exceptions to a right guaranteed by the ECHR, it is to be narrowly interpreted (**Klass v Germany (1978) 2 EHRR 214 (para.42)**) and the need for an interference in a given case must be convincingly established (**Funke v France (1993) 46 EHRR 297 (para.55)**). The interference must be (a) in accordance with the law; (b) in pursuit of one of the legitimate aims set out; and (c) necessary in a democratic society (that is in pursuit of a pressing social need) and proportionate to the legitimate aim pursued.

Criminal Justice (United Nations Convention Against Torture) Act 2000

The Criminal Justice (United Nations Convention Against Torture) Act, 2000 (the 2000 Act) gives effect to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Irish law. It creates an offence of carrying out an act of torture by public officials and an offence of attempt to commit or conspire to commit the offence of torture. Public official "*includes a person acting in an official capacity*". Torture for the purpose of the 2000 Act means "*an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person*".

Therefore, a member of the Garda Síochána who commits an act of torture or attempts to commit or conspires to commit an act of torture within the meaning of the 2000 Act will be criminally liable.

Children and members of other vulnerable groups

Members of the Garda Síochána should give special consideration to the heightened vulnerabilities of children and members of other vulnerable groups when investigating

crimes of a sexual nature and suspected child abuse. Although not incorporated into domestic law members of the Garda Síochána should have regard to the UN Convention on the Rights of the Child. This Convention identifies four core principles:

- 1.1 The best interests of the child must be paramount (Article 3);
- 1.2 Children have a right to be heard (Articles 12 and 13);
- 1.3 Children have a right not to be discriminated against (Article 2);
- 1.4 The State has a duty to protect children (Article 19).

In particular, the Commission in **Z v United Kingdom**¹⁹ opined that “the protection of children who by reason of their age and vulnerability are not capable of protecting themselves requires not merely that criminal law provides protection against Article 3 of the ECHR but that, additionally, this provision will in appropriate circumstances imply a positive obligation on the authorities to take preventative measure to protect a child who is at risk from another individual. It should be noted in this regard the international recognition accorded to this principle in Article 19 of the United Nations Convention on the Rights of the Child which enjoins States to take all appropriate measures to protect the child from all forms of physical and mental violence, injury or abuse”. This opinion has been endorsed by the European Court of Human Rights²⁰.

Reports to the Garda Síochána Ombudsman Commission

Where the conduct of a member of the Garda Síochána has resulted in the death or serious harm of an individual the matter will be referred to the Garda Síochána Ombudsman Commission (GSOC) pursuant to Section 102(1) of the 2005 Act. Protocols agreed between An Garda Síochána and the GSOC shall be complied with in relation to any such investigations.

Approving authority

This policy has been approved by the Garda Commissioner. No amendments shall be made to the policy except by or with the prior approval of the Commissioner.

¹⁹ Application Number 29392/95 (Comm. Report 10.9.99) para 93.

²⁰ (2002) 34 EHRR 3.

Monitoring and Review

This policy shall be reviewed annually.

Human Rights

Human Rights are integral to all the Garda functions. This is of great significance in relation to the investigation of crimes of a sexual nature and suspected child abuse by any member of the Garda Síochána. The relevant human rights provisions are explained above, which sets out the legal requirements for any member in this regard.

The Constitution and the ECHR are living instruments and they seek to account for changes in society and its values. Therefore, State actions that were considered necessary and proportionate in the past may not be viewed as necessary and proportionate today.

It is recognised within ECHR law that the responsibilities of the police extend not only to refraining from acts which violate individual rights but also to taking positive action to protect these rights and freedoms. It is therefore vitally important that the legal parameters of each of these rights and freedoms must be carefully considered. In carrying out their functions in accordance with this document members of the Garda Síochána shall act with due respect for the personal rights of persons and their dignity as a human being and shall not subject any person to ill-treatment of any kind.

Appendix B: Applicable Legislation

Common Law Offences

Child Care Act 1991

Child Trafficking and Pornography Act, 1998

Children Act 2001

Criminal Evidence Act 1992

Criminal Justice Act 1984 see also **Detention and Questioning**

Criminal Justice Act 1984 (Electronic Recording of Interviews) Regulations 1997

Criminal Justice Act 1984 (Treatment of Persons in custody in Garda Síochána Stations) Regulations 1987 and 2006

Criminal Justice Act 1993

Criminal Justice Act 2006

Criminal Law (Amendment) Act 1885

Criminal Law (Human Trafficking) Act 2008

Criminal Law (Incest Proceedings) Act 1995

Criminal Law (Rape) (Amendment) Act, 1990

Criminal Law (Rape) Act 1981

Criminal Law (Sexual Offences) (Amendment) Act 2007

Criminal Law (Sexual Offences) Act, 1993

Criminal Law (Sexual Offences) Act, 2006

Criminal Law Act 1997

Criminal Law Amendment Act 1935

European Convention on Human Rights Act 2003

Garda Síochána Act 2005

Offences Against the Person Act 1861

Punishment of Incest Act 1908

Sex Offenders Act 2001

Sexual Offences (Jurisdiction) Act 1996

Appendix C: Sexual Crime – Relevant Legislation

This section outlines current or historical sexual offences. Under each offence heading is the source of the offence, whether that be common law or a particular statute. The effective dates for each offence are also included along with the relevant penalties (including effective dates where penalties have changed) and advice as to whether or not a power of arrest exists. Some entries include certain elements of the offences concerned to aid investigating members establish the correct offence to be investigated including the relevance of victim gender to each offence.

This section is merely a guide to the law on sexual offences and does not replace legislation. Members should acquaint themselves with the legislation concerned and must always be aware of amendments that may have been made by subsequent statutes.

Rape

- Common Law
- Effective Dates – On any date
- Gender specific – female victim
- Vaginal intercourse only
- Defined by Section 2 Criminal Law (Rape) Act 1981
- Marital exemption in relation to rape was abolished on 18th January 1991
- Penalty – Life Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Buggery

- Section 61 Offences Against the Person Act 1861
- Effective Dates – from 1861 until repealed on 7th July 1993
- Not gender specific – male or female victims
- Penalty – Life Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Buggery of Persons Under 17 years

- Section 3, Criminal Law (Sexual Offences) Act, 1993

- Buggery of persons under 17 years of age and under 15 years of age
- Effective Dates – from 7th July, 1993 to 2nd June, 2006.
- For incidents prior to 7th July 1993 see Buggery (above)
- Not gender specific – male or female victims
- Penalty
 - Buggery with U/15 – Life imprisonment
 - Attempt with U/15 – 1st conviction 5 years, 2nd or subsequent 10 years
 - Buggery with U/17 – 1st conviction 5 years, 2nd or subsequent 10 years
 - Attempt with U/17 – 1st conviction 2 years, 2nd or subsequent conviction 5 years.
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 (except for an attempt with a person under 17 unless there is a previous conviction for same)

Rape under Section 4

- Section 4, Criminal Law (Rape) (Amendment) Act 1990
- Sexual assault that includes
 - Penetration (however slight) of anus or mouth by penis
 - penetration (however slight) of the vagina by any object held or manipulated by another person (excludes penetration by finger as per **HQ.94/07**)
- Effective Dates – 18th January 1991 to date
- Not gender specific – male/female victims (except for penetration of the vagina)
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Penalty – Life imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Aggravated Sexual Assault

- Section 3(1), Criminal Law (Rape) (Amendment) Act, 1990
- Sexual assault involving serious violence, threat of serious violence or is such as to cause injury, humiliation or degradation of a grave nature
- Effective Dates - 18th January, 1991 to date.
- Not gender specific – male or female victims
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Penalty – Life Imprisonment.

- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Defilement of a Girl under the age of 17 years

- Section 2, Criminal Law Amendment Act 1935
- Vaginal intercourse with girl between ages of 15 and 17 years
- Where there was no consent, the offence of rape may still apply
- Effective Dates – From 28th March 1935 to 2nd June 2006.
- Gender specific – female victims
- Penalty
 - 1st offence 5 years, 2nd or subsequent offence 10 years
 - Attempt – 1st offence 2 years, 2nd or subsequent offence 5 years
- ***NB:** Repealed on 2nd June 2006, as defilement of a girl under the age of 15 years (Section 1 of the 1935 Act) was deemed unconstitutional by the Supreme Court on 23rd May 2006.*

Defilement of a Child under 17 years of age

- Section 3, Criminal Law (Sexual Offences) Act 2006.
- Engage in sexual act –
 - sexual intercourse or buggery
 - act described in section 3 of 1990 Act (Aggravated Sexual Assault)
 - act described in section 4 of 1990 Act (Rape under Section 4)
- Where there was no consent, the offences of rape, aggravated sexual assault and/or rape under section 4 may still apply
- Effective Dates – from 2nd June, 2006 to date.
- Not gender specific – male or female victims.
- Defence that perpetrator honestly believed that child was over 17 years
- Penalty – Engage in Sexual Act – 2nd June 2006 to 7th March 2007
 - 1st Conviction - 5 years imprisonment (10 years if by a person in authority)
 - Subsequent Conviction – 10 years imprisonment (15 years if by a person in authority)
- Penalty – Attempt to Engage in Sexual Act – 2nd June 2006 to 7th March 2007
 - 1st Conviction - 2 years imprisonment (4 years if by person in authority)
 - Subsequent Conviction – 4 years imprisonment (7 years if by person in authority)
- Penalty – Engage in Sexual Act (including attempts) – 7th March 2007 to date
 - 1st Conviction - 5 years imprisonment (10 years if by a person in authority)
 - Subsequent Conviction – 10 years imprisonment (15 years if by a person in authority)
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 (except for attempts prior to 7th March 2007, unless by a person in authority with a previous conviction for same

offence).

Gross Indecency with Males under 17 years of age

- Section 4, Criminal Law (Sexual Offences) Act 1993
- Male committing an act of gross indecency with another male under 17 years
- Effective Dates – 7th July 1993 to 2nd June 2006
- Gender specific – male victim, male perpetrator
- Penalty – 2 years Imprisonment
- No power of arrest

Defilement of a Girl under the age of 15 years

- Section 1, Criminal Law Amendment Act 1935
- Vaginal intercourse with girl under 15 years
- Where there was no consent, the offence of rape still applies
- Effective Dates – From 28th March 1935 to 2nd June 2006.
- Gender specific – female victims
- Penalty
 - Penal Servitude for Life
 - Attempts – 1st offence 5 years, 2nd and subsequent offence 10 years
- ***NB:** Deemed unconstitutional by Supreme Court on 23rd May 2006*
- No person should be arrested for this offence.

Defilement of a Child under the age of 15 years

- Section 2, Criminal Law (Sexual Offences) Act 2006
- Engage in sexual act –
 - sexual intercourse or buggery
 - act described in section 3 of 1990 Act (Aggravated Sexual Assault)
 - act described in section 4 of 1990 Act (Rape under Section 4)
- Where there was no consent, the offences of rape, aggravated sexual assault and/or rape under section 4 may still apply
- Effective Dates – From 2nd June 2006 to date.
- Not gender specific – male or female victims
- Defence that perpetrator honestly believed that child was over 15 years
- Penalty – Life Imprisonment (includes attempts)
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Permitting Defilement of Girl under 15/17 years on Premises

- Section 6 Criminal Law Amendment Act, 1885, as amended,
- Allowing on premises – vaginal intercourse with a man
- Effective dates - 1885 to date.
- Gender specific – female victims
- Penalty
 - Girl under 15 – Life Imprisonment
 - Girl under 17 – 2 years Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 (only where girl is under 15 years of age)

Defilement of idiots, imbeciles and feeble-minded females

- Section 4, Criminal Law Amendment Act, 1935
- Vaginal intercourse with a female
- Effective Dates – 28th March 1935 to 7th July 1993
- Gender specific – female victims
- Vaginal intercourse only
- Penalty – 2 years imprisonment
- No power of arrest

Protection of Mentally Impaired Person (from Sexual Abuse)

- Section 5, Criminal Law (Sexual Offences) Act, 1993
- Sexual intercourse, buggery, gross indecency (with male)
- Effective Dates – from 7th July, 1993 to date.
- Penalty –
 - Sexual Intercourse, Buggery – 10 years imprisonment
 - Attempt: 1st conviction - 3 years, 2nd or subsequent conviction - 5 years.
 - Gross Indecency with male (including attempts) – 2 years imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 where penalty is 5 years or more.

Indecent Assault Upon a Female

- Common Law and Section 10 of the Criminal Law (Rape) Act, 1981
- Effective Dates – Until 18th January 1991

- Gender specific – female victims
- Indecent assault upon a female became sexual assault on 18th January 1991
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Penalty
 - 2 years imprisonment from 1861 to 6th June 1981 (5 years for subsequent conviction from 1935)
 - 10 years imprisonment from 6th June 1981 to 18th January 1991
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 for offences committed after 6th June 1981 and prior to that date where there was a previous conviction for same offence.

Indecent Assault Upon a Male

- Common Law and Section 62 Offences Against the Person Act 1861
- Effective Dates – Until 18th January 1991
- Gender specific – male victims
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Penalty –

NB: Was an Arrestable Offence pursuant to Section 4, Criminal Law Act 1997. However in July 2007 the High Court held that the 10 year penalty as provided for in the Offences Against the Person Act 1861 was unconstitutional. It is advised that a power of arrest does not now exist for this offence.
- Indecent assault upon a male became sexual assault on 18th January 1991

Sexual Assault

- Section 2(2)(a) Criminal Law (Rape) (Amendment) Act, 1990 – as amended by Section 37 Sex Offenders Act 2001
- Effective Dates – 18th January, 1991 to date
- Not gender specific – male or female victims
- It is not a defence to a charge of indecent/sexual assault upon a person under the age of 15 to prove that such person consented to the act – 28th March 1935 to date (Section 14, Criminal Law Amendment Act 1935).
- Penalty
 - 5 years from 18th January 1991 to 27th September 2001

- 10 years from 27th September 2001 to date
- 14 years (victim under 17 years) from 27th September 2001 to date
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Incest – Male having unlawful carnal knowledge of female relative

- Section 1 Punishment of Incest Act, 1908 as amended
- Grandmother, mother, daughter, sister
- Relates only to vaginal sexual intercourse
- Effective Dates - 1908 to date
- Gender specific
- Penalty
 - 7 years from 1908 to 3rd May 1993
 - 20 years from 3rd May 1993 to 5th July 1995
 - Life Imprisonment from 5th July 1995 to date
- Where relative is under 15 years – penalty for defilement of girl/child applies
- Attempt – 2 years imprisonment (deleted since 5th July 1995)
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 (not an arrestable offence for an attempt prior to 5th July 1995)

Incest – Female over 17 having unlawful carnal knowledge of male relative

- Section 2 Punishment of Incest Act, 1908 as amended
- Committed by female over 17 years who with consent permits
- Grandfather, father, brother, son
- Relates only to vaginal sexual intercourse
- Effective Dates - 1908 to date
- Gender specific
- Penalty - 7 years
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Procuring Defilement by Threats, Intimidation or False Pretences

- Section 3 Criminal Law Amendment Act, 1885 as amended (sub-section (3) repealed by section 31 N.F.O.A.P.A. from 19th August, 1997)
- Procuring woman or girl for unlawful carnal connection by threats, intimidation or false pretences
- Effective Dates – 1885 to date

- Penalty – Imprisonment not exceeding two (2) years.
- No power of arrest

Soliciting or Importuning for Purpose of Committing a Sexual Offence.

- Section 6, Criminal Law (Sexual Offences) Act, 1993 as amended.
- Solicit or importune persons for purpose of committing sexual offences below
- Effective Dates - 7th July, 1993 to 7th March 2007
 - Buggery with persons under 17 years
 - Gross Indecency with male under 17 years
 - Defilement of girl under 15 years
- Effective Dates - 8th August 2001 (S.250, Children Act 2001) to 7th March 2007
 - Defilement of girl under age of 17 years
- Effective Dates - 7th March 2007 to date
 - Defilement of child under 17 years
 - Defilement of child under 15 years
 - Sexual Assault of child (under 17 years of age)
 - Person who is mentally impaired for purpose of sexual intercourse, buggery, gross indecency (with male)
- Not gender specific – depends on intended offence
- Penalty
 - 12 months – 7th July, 1993 to 7th March 2007
 - 5 years – 7th March 2007 to date
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997 from 7th March 2007 to date)

Causing or encouraging sexual offence upon child (under 17 years of age)

- Section 249 of the Children Act 2001
- Person having custody, charge, care of a child causes or encourages
 - Sexual intercourse or buggery
 - Seduction of a child
 - Prostitution of a child
 - Sexual Assault on a child
- Deemed to be causing or encouraging where sexual intercourse, buggery, seduction, prostitution or sexual assault has taken place and offender knowingly allows child to consort with or enter/continue employment with a prostitute or keeper of a brothel
- Not gender specific (except for sexual intercourse – female victim)
- Effective Dates – 1st May 2002 to date

- Penalty – 10 years Imprisonment
- Arrestable offence pursuant to Section 4 of the Criminal Law Act 1997

Reckless endangerment of children (under 18 years).

- Section 176 of the Criminal Justice Act 2006
- A person, having authority or control over a child or abuser
- Causing or permitting a child to be placed or left in a situation where there is a substantial risk (or fails to take reasonable steps to protect a child from risk) of
 - Serious harm
 - Sexual abuse (offences in schedule of Sex Offenders Act 2001)
- Effective Dates – 1st August 2006
- Not gender specific
- Penalty – 10 years Imprisonment
- Arrestable offence pursuant to Section 4 of the Criminal Law Act 1997

Allowing a child (under 18 years of age) to be in brothel

- Section 248 of the Children Act 2001
- Person having custody, charge, care of a child allows that child
- To frequent or reside in a brothel
- Effective Dates – 1st May 2002 to date
- Not gender specific
- Penalty – 12 months Imprisonment
- Power of Arrest – Section 254 Children Act 2001 (also includes power of search of premises for purpose of arrest)
- No power of detention for proper investigation of offence

Cruelty to children (under 18 years of age).

- Section 246 of the Children Act 2001
- Person having custody, charge, care of a child who has wilfully
 - assaulted
 - ill-treated (includes frightening, bullying, threatening of a child)
 - neglected
 - abandoned or exposed
- a child in a manner likely to
 - cause unnecessary suffering or injury the child's health or

- seriously affect his or her wellbeing
 - (includes physical, mental or emotional health or well-being)
- Or causes, procures or allows same
- Effective Dates – 1st May 2002 to date
- Not gender specific
- Penalty – 7 years Imprisonment
- Arrestable offence pursuant to Section 4 of the Criminal Law Act 1997

Sexual Exploitation of a Child

- Section 3(2), Child Trafficking & Pornography Act, 1998 (as amended)
- Was called ‘using a child’ for sexual exploitation until 7th June 2008, now called sexual exploitation of a child. Definition of sexual exploitation has also changed a number of times.
- Child defined by 1998 Act as
 - person under 17 years – 29th July 1998 to 7th June 2008
 - person under 18 years (for Section 3 only) - 7th June 2008 to date
- Effective Dates – from
 - 29th July 1998 to 7th March 2007 (1998 Act)
 - 7th March 2007 to 7th June 2008 (Definition changed by 2007 Act)
 - 7th June 2008 to date (Definition changed by 2008 Act)
- Not gender specific – male or female victims
- Penalty – changes after 7th June 2008
 - 14 years imprisonment – 29th July 1998 to
 - Life imprisonment – 7th June 2008 to date
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Meeting a Child for Purpose of Sexual Exploitation (within State)

- Section 3(2A), Child Trafficking & Pornography Act, 1998 (as amended)
- Meeting, or travelling to meet, a child (within State) for the purpose of sexual exploitation, having previously met or communicated with child 2 or more times
- Child defined by 1998 Act as
 - person under 17 years – 29th July 1998 to 7th June 2008
 - person under 18 years (for this Section only) - 7th June 2008 to date
- Effective Dates - 7th March 2007 to date
- Not gender specific – male or female victims
- Penalty – 14 years imprisonment

- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Meeting a Child for Purpose of Sexual Exploitation (outside State)

- Section 3(2B), Child Trafficking & Pornography Act, 1998 (as amended)
- Meeting, or travelling to meet, a child (outside State) for the purpose of sexual exploitation, having previously met or communicated with child 2 or more times
- Child defined by 1998 Act as
 - person under 17 years – 29th July 1998 to 7th June 2008
 - person under 18 years (for this Section only) - 7th June 2008 to date
- Effective Dates - 7th March 2007 to date
- Not gender specific – male or female victims
- Penalty – 14 years imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Sexual Offences outside the State - Sexual Offences (Jurisdiction) Act 1996

- Complete Act deals with sexual offences committed against children outside the State
- Committed by Irish citizen or person ordinarily resident in the State (at least 12 months)
- Schedule of offences in this State generally associated with child sexual abuse.
- Act done must also be an offence in place (outside State) where it occurred
- Effective Dates – 19th December 1996 to date
- Not gender specific – male or female victims
- Penalty – liable to penalty assigned to principal offence committed
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Trafficking, taking etc of child for purpose of sexual exploitation

- Section 3(1), Child Trafficking & Pornography Act, 1998 (as amended)
- Trafficking for purpose of sexual exploitation
- Definition changed by section 3 Criminal Law (Human Trafficking) Act 2008
- Effective Dates - 29th July 1998 to date (definition changes 7th June 2008)
- Not gender specific – male or female victims
- Penalty – Imprisonment for Life
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Sexual exploitation of child outside the State by Irish citizens

- Section 7(1), Criminal Law (Human Trafficking) Act 2008

- Any offence under Section 3 Child Trafficking & Pornography Act, 1998 (as amended), except subsections (2A) and (2B)
- Committed by Irish citizen or person ordinarily resident in the State (at least 12 months)
- Act does not need to be an offence in place (outside State) where it occurred
- Child defined by 1998 Act as person under 18 years (for Section 3 only)
- Effective Dates - 7th June 2008 to date
- Not gender specific – male or female victims
- Penalty – Imprisonment for Life
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Sexual exploitation of a child (Irish citizen) outside State by another person

- Section 7(1), Criminal Law (Human Trafficking) Act 2008
- Any offence under Section 3 Child Trafficking & Pornography Act, 1998 (as amended), except subsections (2A) and (2B) committed outside the State.
- Perpetrator does not have to be Irish citizen or person ordinarily resident in the State (at least 12 months)
- Child (victim) is an Irish citizen
- Act does not need to be an offence in place (outside State) where it occurred
- Child defined by 1998 Act as person under 18 years (for Section 3 only)
- Effective Dates - 7th June 2008 to date
- Not gender specific – male or female victims
- Penalty – Imprisonment for Life
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Production, distribution, etc. of child pornography

- Section 5, Child Trafficking & Pornography Act, 1998
- To knowingly produce, distribute, print, publish, import, export, sell, show child pornography
- Includes advertising, encouraging, or knowingly causing or facilitating above
- To knowingly possess for purpose of distributing, publishing, exporting, selling or showing
- Child pornography defined by section 2 of 1998 Act
- Effective Dates – 29th July 1998 to date
- Not gender specific – male or female victims
- Penalty – 14 years Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Possession of child pornography

- Section 5, Child Trafficking & Pornography Act, 1998
- To knowingly possess child pornography
- Child pornography defined by section 2 of 1998 Act
- Effective Dates – 29th July 1998 to date
- Not gender specific – male or female victims
- Penalty – 5 years Imprisonment
- Arrestable Offence pursuant to Section 4, Criminal Law Act 1997

Appendix D. Guidelines on the use of Early Evidence Kits

- The kit will be used in all cases where there is going to be a delay between the reported sexual assault and the medical examination.
- If the reported sexual assault occurred more than twenty four (24) hours previously there is no point in taking oral swabs, as semen does not exist in the mouth beyond this time.
- Urine from complainants of Drug Facilitated Sexual Assault will be analysed for rohypnol and other drugs commonly reported in cases of 'date rape' if taken up to seventy (72) hours after the reported assault.
- After explaining the purpose of the kit to the complainant, written consent to the collection of the samples should be obtained.
- Personnel should check the expiry date on the swabs in the kit.
- If the complainant wishes to urinate, a urine sample should be collected at this time. A large container is available in the kit for the collection of urine. This can be decanted into the smaller screw cap container provided.
- A Garda should witness the urine sample being taken. Standing outside the toilet door is deemed adequate for this purpose.
- Swabs should be pre-labelled by the member, with the complainant's name and the site from which the sample was taken.
- If oral sex is reported the swabs should be taken at the earliest opportunity. If the complainant wishes to have a drink, the mouth should be swabbed before a drink is taken. At least three swabs should be taken; an internal mouth swab, a gums/teeth swab and a swab from the lips.
- The internal mouth swab should be taken by rubbing the swab repeatedly across the inside of the cheeks covering the entire inner surface. The teeth/gums swab should be taken by rubbing the swab repeatedly across the inside and outside of all of the teeth and gums. The lips swab should first be moistened with the complainant's saliva by placing

it in the mouth and then it should be rubbed repeatedly across the entire surface of the outside of the lips.

- The information form accompanying the kit must be filled out by the Garda to enable the scientist to interpret any results obtained.
- The urine and/or swabs should then be packed and sealed in the tamper-proof evidence bag provided. This bag should be labelled with the name of the Garda and the date. A record should be kept of the serial number on the evidence bag.
- If/when a medical examination is carried out on the complainant, the medical examiner should be informed that urine and/or oral swabs have already been taken.