



Bille an Gharda Síochána (Cúiteamh), 2021
Garda Síochána (Compensation) Bill 2021

Mar a tionscnaíodh

As initiated



BILLE AN GHARDA SÍOCHÁNA (CÚITEAMH), 2021
GARDA SÍOCHÁNA (COMPENSATION) BILL 2021

Mar a tionscnaíodh

As initiated

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, collective citations, construction and commencement
2. Interpretation
3. Expenses
4. Regulations
5. Transitional provisions
6. Repeals and revocation

PART 2

APPLICATION FOR INITIAL ASSESSMENT

7. Subject of application for initial assessment
8. Application for initial assessment
9. Person to whom application for initial assessment is made
10. Time limit for application for initial assessment
11. Form of application for initial assessment

PART 3

INITIAL ASSESSMENT

12. Appointment of reporting officer
13. Preliminary examination of application
14. Initial assessment and determination

PART 4

REVIEW

15. Review officer
16. Application for review
17. Review
18. Report of review

PART 5

APPLICATION AND AMENDMENT OF ACT OF 2003

19. Application of Act of 2003
20. Modifications to application of Act of 2003
21. Amendment of Act of 2003

PART 6

PROCEEDINGS ON FOOT OF AUTHORISATION UNDER ACT OF 2003

22. Definition (Part 6)
23. Proceedings on foot of authorisation under Act of 2003
24. Additional provisions regarding proceedings

PART 7

MISCELLANEOUS

25. Subrogation of rights or remedies
26. False statements, etc.
27. Income and compensation
28. Exclusion of compensation from assessment of certain pensions, etc.
29. Amendment of Courts (Supplemental Provisions) Act 1961
30. Amendment of section 18 of Criminal Assets Bureau Act 1996
31. National Treasury Management Agency (Amendment) Act 2000
32. Amendment of section 2 of Act of 2004
33. Amendment of Act of 2005
34. Application of section 31 of Act of 2005
35. Amendment of section 96 of Social Welfare Consolidation Act 2005

ACTS REFERRED TO

Civil Liability (Amendment) Act 1964 (No. 17)
Civil Liability Act 1961 (No. 41)
Civil Liability and Courts Act 2004 (No. 31)
Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)
Courts (Supplemental Provisions) Act 1961 (No. 39)
Criminal Assets Bureau Act 1996 (No. 31)
Garda Síochána (Compensation) (Amendment) Act 1945 (No. 1)
Garda Síochána (Compensation) Act 1941 (No. 19)
Garda Síochána (Compensation) Acts 1941 and 1945
Garda Síochána (Compensation) Acts 1941 to 2003
Garda Síochána Act 1924 (No. 25)
Garda Síochána Act 2005 (No. 20)
Garda Síochána Acts 2005 to 2015
Interpretation Act 2005 (No. 23)
Judicial Council Act 2019 (No. 33)
National Treasury Management Agency (Amendment) Act 2000 (No. 39)
National Treasury Management Agency Acts 1990 to 2014
Personal Injuries Assessment Board Act 2003 (No. 46)
Personal Injuries Assessment Board Acts 2003 to 2019
Police Forces Amalgamation Act 1925 (No. 7)
Public Service Pensions (Single Scheme and Other Provisions) Act 2012 (No. 37)
Social Welfare Consolidation Act 2005 (No. 26)
Statute of Limitations (Amendment) Act 1991 (No. 18)



BILLE AN GHARDA SÍOCHÁNA (CÚITEAMH), 2021
GARDA SÍOCHÁNA (COMPENSATION) BILL 2021

Bill

entitled

An Act to establish a system to replace the system provided for under the Garda Síochána (Compensation) Acts 1941 to 2003 in order to provide for the granting out of public moneys of compensation for personal injuries (including injuries causing death) that were inflicted on a current or former member of the Garda Síochána as a result of a malicious incident; for that and related purposes to apply with modifications and to amend the Personal Injuries Assessment Board Act 2003, and to amend other enactments; to repeal the Garda Síochána (Compensation) Act 1941 and the Garda Síochána (Compensation) (Amendment) Act 1945; and to provide for related matters.

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL 15

Short title, collective citations, construction and commencement

1. (1) This Act may be cited as the Garda Síochána (Compensation) Act 2021.
- (2) The Personal Injuries Assessment Board Acts 2003 to 2019 and *Part 5* may be cited together as the Personal Injuries Assessment Board Acts 2003 to 2021 and shall be construed together as one. 20
- (3) The National Treasury Management Agency Acts 1990 to 2014 and *section 31* may be cited together as the National Treasury Management Agency Acts 1990 to 2021 and shall be construed together as one.
- (4) The Garda Síochána Acts 2005 to 2015 and *sections 33 and 34* may be cited together as the Garda Síochána Acts 2005 to 2021 and shall be construed together as one. 25
- (5) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions and for the repeal of different enactments or provisions of enactments effected by *section 6*. 30

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“Act of 1941” means the Garda Síochána (Compensation) Act 1941;

“Act of 1945” means the Garda Síochána (Compensation) (Amendment) Act 1945;

“Act of 1961” means the Civil Liability Act 1961; 5

“Act of 2003” means the Personal Injuries Assessment Board Act 2003;

“Act of 2004” means the Civil Liability and Courts Act 2004;

“Act of 2005” means the Garda Síochána Act 2005;

“applicant” means a person who has made an application for initial assessment and shall be construed in accordance with *subsection (2)*; 10

“application for initial assessment” means an application referred to in *section 7*;

“document” means—

(a) a book, record or other written or printed material,

(b) a photograph,

(c) any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form, or 15

(d) any audio or video recording;

“enactment” has the same meaning as it has in *section 2(1)* of the Interpretation Act 2005; 20

“former member” means a person who was a member, but who, at the time the application for initial assessment is made, has ceased to be a member;

“Garda Commissioner” means the person for the time being appointed as the Commissioner of the Garda Síochána in accordance with *section 9* of the Act of 2005, or a person performing the functions of the Commissioner of the Garda Síochána pursuant to an authorisation under *section 32* of that Act; 25

“initial assessment report” has the meaning assigned to it by *section 13(1)(b)(i)*;

“malicious incident” means an incident, whether occurring before or after the commencement of this Act, as a result of which personal injuries (which may include injuries causing death) were maliciously inflicted on— 30

(a) a member, where such injuries were inflicted—

(i) in the performance of his or her duties as a member while actually on duty,

(ii) while exercising powers or otherwise acting in his or her general capacity as a member when off duty or on leave or otherwise not actually on duty, or

(iii) while on duty or off duty or on leave or at any other time because of anything previously done by him or her as a member or merely because of his or her being a member, or 35

(b) a person who had previously been, but at the time when such injuries were inflicted, or at the time of his or her death from such injuries, had ceased to be a member, where such injuries were inflicted on the person because of anything done by him or her as a member or merely because of his or her having been a member; 5

“member” means—

(a) a member of any rank of the Garda Síochána (including the Garda Commissioner) appointed under Part 2 of the Act of 2005 or under an enactment repealed by that Act,

(b) a reserve member within the meaning of section 3(1) of that Act, or 10

(c) a person who has been admitted to training for the purposes of appointment as a member of the Garda Síochána,

but does not include a member of the civilian staff of the Garda Síochána;

“Minister” means the Minister for Justice;

“prescribed” means prescribed by regulations made by the Minister; 15

“regulations” means regulations made by the Minister under this Act;

“reporting officer” means a person appointed under *subsection (1) or (2)(a) of section 12*;

“review officer” means a person assigned under *subsection (2) or (7)(a) of section 15*.

(2) A reference in this Act to an applicant— 20

(a) shall include a reference to a person acting on behalf of the applicant in accordance with *section 8(4)*, and

(b) where a single application for initial assessment is made by more than one person in accordance with *section 8(3)(b)*, shall include a reference to each such person.

Expenses 25

3. The expenses incurred by the Minister and the Garda Commissioner in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Regulations

4. (1) The Minister may make regulations providing for any matter or thing which is referred to in this Act as prescribed or to be prescribed or for the purpose of enabling any provision of this Act to have full effect. 30

(2) A regulation under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulation. 35

(3) Every regulation under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House has sat after the

regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Transitional provisions

5. (1) Where, before the date of commencement of this Act, the Minister has authorised, under section 6(1)(a) or section 6(1)(b)(iii) of the Act of 1941, an application to be made to the High Court in accordance with that Act, the Act of 1941 and the Act of 1945 shall continue to apply to and in relation to the application, as if those Acts had not been repealed by *section 6* and as if this Act had not come into operation. 5
- (2) Where—
- (a) before the date of commencement of this Act— 10
- (i) an application for compensation has been refused by the Minister under section 6(1)(b)(i) of the Act of 1941, or
- (ii) in relation to an application for compensation, the Minister has made a payment on foot of an opinion formed under section 6(1)(b)(ii) of the Act of 1941, 15
- (b) whether before, on or after the date of commencement of this Act, an application for leave to apply for judicial review is made in relation to the Minister's refusal or payment, and
- (c) the outcome of the judicial review proceedings is an order of certiorari in respect of that refusal or payment, 20
- the court shall, instead of remitting the application for compensation to the Minister to consider under the Act of 1941, order that the person who had made the application for compensation may make an application for initial assessment in accordance with this Act.
- (3) Where the court has made an order under *subsection (2)*, the Minister shall, as soon as may be, return the application for compensation and any accompanying documents to the person who made the application, together with a notice in writing informing him or her that an application for initial assessment may be made. 25
- (4) Where, on the date of commencement of this Act, the Minister has not, in relation to an application for compensation— 30
- (a) made an authorisation to which section 6(1)(a) or section 6(1)(b)(iii) of the Act of 1941 applies, as the case may be,
- (b) made a refusal to which section 6(1)(b)(i) of the Act of 1941 applies, or
- (c) made a payment to which section 6(1)(b)(ii) of the Act of 1941 applies,
- the Minister shall, as soon as may be, return the application and any accompanying documents to the person who made the application, together with a notice in writing informing him or her that an application for initial assessment may be made. 35
- (5) Notwithstanding *section 10(1)*, an application for initial assessment following a notice in writing referred to in *subsection (3)* or *(4)* shall be made not later than 6 months

after the date of the notice in writing concerned and *subsections (4) to (7) of section 10* shall apply to such period as they apply to a period specified in *section 10(1)*.

- (6) Nothing in this Act shall prevent a person from making an application for initial assessment in accordance with this Act in relation to injuries or death as a result of a malicious incident that occurred before the coming into operation of this Act, where the person had not made an application to the Minister under the Act of 1941 in relation to such injuries or death. 5
- (7) The Minister may make regulations enabling this section to have full effect.
- (8) In this section “application for compensation” means an application to the Minister for compensation made under the Act of 1941. 10

Repeals and revocation

6. Subject to *section 5*—

(a) the following are repealed:

(i) the Garda Síochána (Compensation) Act 1941;

(ii) the Garda Síochána (Compensation) (Amendment) Act 1945, 15

and

(b) the *Gárda Síochána (Application for Compensation) Regulations 1941 (S.I. No. 413 of 1941)* are revoked.

PART 2

APPLICATION FOR INITIAL ASSESSMENT

20

Subject of application for initial assessment

7. Subject to *section 5*, an application for initial assessment may be made by a person referred to in *section 8(2)* to a person referred to in *section 9* alleging that—

(a) injuries inflicted on a member or former member were as a result of a malicious incident, or 25

(b) the death of a member or former member was as a result of a malicious incident (whether or not that member or former member has received compensation for the injuries suffered as a result of the malicious incident).

Application for initial assessment

8. (1) Subject to this section, a person referred to in *subsection (2)* may make an application for initial assessment to a person specified in *section 9*. 30

(2) Any of the following persons shall be entitled to make an application for initial assessment:

(a) in the case of injuries referred to in *section 7(a)*, the member or former member, as the case may be, referred to in that section, or 35

- (b) subject to *subsection (3)*, in the case of a death referred to in *section 7(b)*—
- (i) a person who, on the date of death of the member or former member, was his or her spouse or civil partner,
 - (ii) a person who, on the date of death of the member or former member, had been living with him or her as his or her cohabitant within the meaning of *section 172* of the Act of 2010 for a continuous period—
 - (I) of 2 years or more, in the case where they were the parents of one or more dependent children, and
 - (II) of not less than 3 years, in any other case,
 - (iii) a child or step-child of the deceased member or former member,
 - (iv) a parent or grandparent of the deceased member or former member, or
 - (v) a brother, sister, half-brother or half-sister of the deceased member or former member,
- if the person referred to in *subparagraph (i), (ii), (iii), (iv) or (v)* was wholly or partly dependent on the deceased person and suffered loss by the death.
- (3) In the case of an application for initial assessment in relation to a death referred to in *subsection (2)(b)*—
- (a) only one application for initial assessment may be made in respect of the death,
 - (b) the application for initial assessment may be made by all or any of the persons to whom that subsection refers,
 - (c) the application for initial assessment, by whomsoever made, shall be for the benefit of all the persons to whom that subsection refers, and
 - (d) in relation to the application for initial assessment—
 - (i) the applicant shall provide with the application particulars of the person or persons making the application and, where applicable, particulars of any other person for whom and for whose benefit the application is being made, and
 - (ii) the particulars referred to in *subparagraph (i)* shall include particulars showing that each person referred to in that subparagraph is a person to whom *subsection (2)(b)* applies.
- (4) Where a person to whom *subsection (2)* applies is—
- (a) a person who has attained the age of 18 years who—
 - (i) has a mental disability,
 - (ii) is suffering from a disorder of the mind, whether as a result of mental illness or dementia, or
 - (iii) has a physical disability,
 which is of such nature or degree that it results in the person requiring assistance with communicating and other activities of daily living, or

(b) a person who has not attained the age of 18 years,

an application for initial assessment may be made on his or her behalf by his or her parent, guardian, next friend, committee or any other person duly authorised to act on his or her behalf, and such a person may continue to act on his or her behalf for the purposes of obtaining compensation in accordance with this Act. 5

(5) In deducing any relationship for the purposes of this section, a person *in loco parentis* to another shall be considered the parent of that other.

(6) In this section—

“Act of 2010” means the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010; 10

“dependent child” has the same meaning as it has in section 171 of the Act of 2010.

Person to whom application for initial assessment is made

9. (1) Subject to *subsection (2)*, a person to whom *section 8(2)* applies may make an application for initial assessment to the Garda Commissioner.

(2) Where an applicant is the Garda Commissioner— 15

(a) the application for initial assessment shall be made to the Minister,

(b) the Minister shall, as soon as may be, transmit the application along with any accompanying information and documents to such member of a rank not lower than Assistant Garda Commissioner as he or she considers appropriate, and

(c) *Parts 2 to 4* (other than this section, *section 14(11)(b)* and *section 18(6)(b)*) shall be construed as if a reference to the Garda Commissioner in those Parts were a reference to the member referred to in *paragraph (b)*. 20

Time limit for application for initial assessment

10. (1) Subject to this section, an application for initial assessment shall be made not later than 6 months after— 25

(a) in the case of injuries referred to in *section 7(a)*—

(i) the date upon which the injuries to the member or former member occurred, or

(ii) the date of knowledge of the member or former member of the injuries concerned, 30

whichever is the later, or

(b) in the case of a death referred to in *section 7(b)*, the date of death of the member or former member, as the case may be.

(2) For the purposes of this section, a person’s knowledge includes knowledge which he or she might reasonably have been expected to acquire— 35

(a) from facts observable or ascertainable by him or her, or

- (b) from facts ascertainable by him or her with the help of medical or other appropriate expert advice which it is reasonable for him or her to seek.
- (3) Notwithstanding *subsection (2)*—
- (a) a person shall not be fixed under this section with knowledge of a fact ascertainable only with the help of expert advice so long as he or she has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice, and 5
- (b) a person injured shall not be fixed under this section with knowledge of a fact relevant to the injuries which he or she has failed to acquire as a result of those injuries.
- (4) Where a person fails to make an application for initial assessment before the expiration of the period specified in *subsection (1)*, the Garda Commissioner may decide to extend the period specified in that subsection, on application to him or her in that behalf in writing by the person concerned, where the Garda Commissioner is satisfied that— 10
- (a) it is necessary to do so by reason of the person being a person referred to in *paragraph (a) or (b) of section 8(4)*, or 15
- (b) the circumstances that resulted in the failure to make the application within the period specified in *subsection (1)* were either—
- (i) outside the control of, or
- (ii) could not reasonably have been anticipated by, 20
- the person.
- (5) The Garda Commissioner shall notify in writing the person concerned of his or her decision under *subsection (4)* as soon as practicable after the making of the decision.
- (6) Where the decision of the Garda Commissioner under *subsection (4)* is to extend the period referred to in *subsection (1)*— 25
- (a) the notification under *subsection (5)* shall specify the period of the extension and inform the person of the effect of *paragraph (b)*, and
- (b) the person concerned may make an application for initial assessment before the expiry of the period specified in the notification.
- (7) Where the decision of the Garda Commissioner under *subsection (4)* is not to extend the period referred to in *subsection (1)*, the notification under *subsection (5)* shall— 30
- (a) set out the reasons for the decision, and
- (b) inform the person concerned that he or she may make an application under *section 16* for a review of the decision.
- (8) Where the Garda Commissioner wishes to make an application for initial assessment but has failed to make the application before the expiration of the period specified in *subsection (1)*, *subsections (4) to (7)* shall be construed as if a reference to the Garda Commissioner in those subsections were a reference to the member specified in *section 9(2)(b)*. 35

- (9) In this section “date of knowledge” means the date on which the member or former member or, in the case of a person referred to in *paragraph (a) or (b) of section 8(4)*, the person who is authorised to act on his or her behalf, first had knowledge that the member or former member who is alleged to have suffered injuries as a result of a malicious incident had suffered such injuries. 5

Form of application for initial assessment

11. An application for initial assessment shall—
- (a) be in such form,
 - (b) contain such information, and
 - (c) be accompanied by such documents, 10
- as the Minister may prescribe.

PART 3

INITIAL ASSESSMENT

Appointment of reporting officer

12. (1) On receipt of an application for initial assessment made in accordance with this Act, 15
the Garda Commissioner shall appoint—
- (a) a member not below the rank of superintendent, or
 - (b) a member of the civilian staff of the Garda Síochána of a grade that is equivalent to or above that of the rank of superintendent,
- to perform the functions of a reporting officer specified by or under this Act in 20
relation to the application.
- (2) Where a reporting officer (in this subsection referred to as the “original reporting officer”) is, or becomes, unavailable or unable to perform his or her functions—
- (a) the Garda Commissioner shall, subject to *paragraph (b)*, appoint a person to whom *paragraph (a) or (b) of subsection (1)* applies to perform the functions of 25
the original reporting officer, and
 - (b) the reporting officer appointed under *paragraph (a)* shall be entitled to rely on—
- (i) any step or decision taken, any request, refusal, notification or determination made, any notice given or any other action performed by the original reporting officer when he or she was performing the functions referred to in 30
subsection (1), and
 - (ii) any clarification, information or document provided to, or any document created by, the original reporting officer when he or she was performing such functions.

- (3) A reporting officer may be assisted in the performance of the functions referred to in *subsection (1)* by such members, or members of the civilian staff of the Garda Síochána, as he or she considers appropriate.

Preliminary examination of application

- 13.** (1) The reporting officer shall, as soon as practicable after his or her appointment, examine the application for initial assessment and where he or she— 5
- (a) is not satisfied that the application has been stated to be made by a person to whom *section 8(2)* applies, shall—
- (i) refuse the application, and
- (ii) notify in writing the applicant concerned— 10
- (I) of the refusal referred to in *subparagraph (i)* and the reasons for that refusal, and
- (II) of his or her entitlement to make an application under *section 16* for a review of the refusal,
- or 15
- (b) is satisfied that the application has been stated to be made by a person to whom *section 8(2)* applies, shall—
- (i) prepare a report in writing (in this Act referred to as an “initial assessment report”), and
- (ii) notify the applicant in writing that he or she is so satisfied and that an initial assessment report is being prepared. 20
- (2) Where an application for initial assessment is made by more than one person in accordance with *section 8(3)(b)*, the reporting officer shall consider whether each such applicant is stated to be a person to whom *section 8(2)(b)* applies and—
- (a) if he or she is satisfied that none of the applicants is stated to be a person to whom *section 8(2)(b)* applies, *subsection (1)(a)* shall apply, 25
- (b) if he or she is satisfied that each applicant is stated to be a person to whom *section 8(2)(b)* applies, *subsection (1)(b)* shall apply, or
- (c) if he or she is satisfied that at least one applicant is stated to be a person to whom *section 8(2)(b)* applies, but is not satisfied that another applicant is stated to be a person to whom *section 8(2)(b)* applies— 30
- (i) *subsection (1)(b)* shall apply to the application as if the second mentioned applicant had not made the application,
- (ii) the reporting officer shall refuse the application of the second mentioned applicant, and 35
- (iii) the reporting officer shall notify in writing the second mentioned applicant—
- (I) of the refusal referred to in *subparagraph (ii)* and the reasons for that refusal, and

- (II) that he or she may make an application under *section 16* for a review of the refusal.

Initial assessment and determination

14. (1) For the purposes of completing the initial assessment report, the reporting officer shall consider— 5
- (a) the application for initial assessment and all accompanying information and documents,
 - (b) any information or document provided under *subsection (2)*,
 - (c) any clarification, information or document provided in accordance with a request under *subsection (3)*, and 10
 - (d) such other information or documents, including information or documents relating to the incident the subject of the application for initial assessment, as he or she considers appropriate.
- (2) The applicant may, not later than 60 days after the date of issue of the notification referred to in *section 13(1)(b)(ii)*, provide to the reporting officer further information or documents that he or she considers to be relevant in relation to his or her application for initial assessment. 15
- (3) The applicant shall, within any period requested by the reporting officer, comply with any request by the reporting officer to—
- (a) clarify in writing any information or documents submitted in respect of the application for initial assessment concerned, or 20
 - (b) provide further information or documents in writing in respect of the application for initial assessment concerned.
- (4) The initial assessment report shall be in writing and shall include the following:
- (a) a determination under *subsection (9)*; 25
 - (b) the reasons for the determination;
 - (c) any other information that the reporting officer considers relevant to the application.
- (5) Subject to *subsections (6) to (8)*, the reporting officer shall provide the initial assessment report to the Garda Commissioner not later than 4 months after the date of his or her appointment as reporting officer in respect of the application for initial assessment. 30
- (6) Where the reporting officer is of the view that it will not be possible for him or her to provide the initial assessment report to the Garda Commissioner within the period referred to in *subsection (5)*, the reporting officer shall, before the expiry of that period— 35
- (a) by notice in writing—
 - (i) inform the applicant of the reasons for his or her view, and

- (ii) specify the date (in this section referred to as the “specified date”), not later than 2 months after the end of the period of 4 months referred to in *subsection (5)*, before which the reporting officer shall provide the initial assessment report to the Garda Commissioner,
- and 5
- (b) provide the Garda Commissioner with a copy of the notice in writing.
- (7) Where *subsection (6)* applies and the reporting officer has not provided the initial assessment report to the Garda Commissioner before the specified date—
- (a) the reporting officer shall provide the initial assessment report to the Garda Commissioner not later than 14 days after the specified date, 10
- (b) the determination in the report shall be a determination referred to in *subsection (9)(a)*, and
- (c) *subsection (11)* shall apply accordingly.
- (8) Notwithstanding *subsections (5) to (7)*, where a person has applied for a review under *section 16*, the period of review (namely the date on which the application for review was made until the date the reporting officer receives the report of the review officer, or until the date of withdrawal of the review under *section 16(3)*, as the case may be) shall not be taken into account when calculating the time periods referred to in *subsection (5)* and *paragraph (a)(ii)* of *subsection (6)*. 15
- (9) Subject to *subsection (10)*, the determination contained in an initial assessment report shall be— 20
- (a) a determination that the incident the subject of the application for initial assessment had occurred and was a malicious incident, or
- (b) a determination that the incident the subject of the application for initial assessment either had not occurred or was not a malicious incident. 25
- (10) Where the reporting officer—
- (a) is making a determination under *subsection (9)* as to whether the incident concerned was a malicious incident, and
- (b) is considering as part of the determination whether the injuries or death the subject of the application were as a result of the incident concerned, 30
- it shall be sufficient for the purposes of *paragraph (b)* for him or her to be satisfied that one or more of such injuries, or the death, as the case may be, appears to have resulted from the incident concerned.
- (11) Where the initial assessment report includes a determination referred to in *subsection (9)(a)*— 35
- (a) the Garda Commissioner shall, as soon as practicable, but in any event not later than 30 days after the date on which he or she receives the initial assessment report concerned, send or cause to be sent—
- (i) a notice in writing of the determination and of the matters referred to in *paragraphs (b)* and *(c)*, and 40

- (ii) a copy of the initial assessment report,
to the applicant,
 - (b) subject to *paragraph (c)*, the applicant shall be entitled to take a civil action against the Garda Commissioner arising out of the malicious incident, and
 - (c) the Garda Commissioner shall, as soon as may be, but in any event not later than 30 days after the date on which he or she receives the initial assessment report, make or cause to be made an application to the Personal Injuries Assessment Board on the applicant's behalf under section 11 of the Act of 2003, and *Part 5* and, where appropriate, *Part 6*, shall apply in relation to the application. 5
- (12) Where the initial assessment report includes a determination referred to in *subsection (9)(b)*, the Garda Commissioner shall, as soon as practicable, but in any event not later than 30 days after the date on which he or she receives the initial assessment report concerned, send or cause to be sent to the applicant— 10
- (a) a copy of the initial assessment report, and
 - (b) a notification in writing informing the applicant that he or she may make an application under *section 16* for a review of the determination. 15

PART 4

REVIEW

Review officer

15. (1) The Minister shall establish and maintain a panel of such and so many persons as he or she considers appropriate to perform the functions conferred on a review officer by or under this Act. 20
- (2) Where the Garda Commissioner receives an application under *section 16*, he or she shall assign a person from the panel referred to in *subsection (1)* to carry out a review of the application in accordance with this Part. 25
- (3) A review officer—
- (a) shall be a practising barrister or solicitor of not less than 5 years' standing,
 - (b) shall be appointed for a period of 3 years,
 - (c) shall be appointed on such terms and conditions and be paid such remuneration and allowances for expenses as the Minister, with the consent of the Minister for Public Expenditure and Reform, determines, and 30
 - (d) may resign from the appointment by notice in writing sent or given to the Minister.
- (4) A review officer shall be independent in the performance of his or her functions.
- (5) The Minister may revoke the appointment of a review officer for stated reasons. 35
- (6) A review officer shall, at such intervals and in relation to such periods as are specified in writing by the Minister, submit a report in writing to the Minister in relation to the

performance of his or her functions under this Act as a review officer during the period to which the report relates.

- (7) Where a review officer (in this subsection referred to as the “original review officer”) is, or becomes, unavailable or unable to perform his or her functions—
- (a) the Garda Commissioner shall, subject to *paragraph (b)*, assign another person from the panel referred to in *subsection (1)* to perform the functions of the original review officer, and 5
 - (b) the review officer assigned under *paragraph (a)* shall be entitled to rely on—
 - (i) any step or decision taken, any request, invitation, direction, determination or report made, any notice given or any other action performed by the original review officer when he or she was performing the functions referred to in *subsection (1)*, and 10
 - (ii) any clarification, information or document provided to, or any document created by, the original review officer when he or she was performing such functions. 15

Application for review

16. (1) Subject to *subsection (2)*, a person may apply to the Garda Commissioner for a review by a review officer of any of the following:
- (a) a decision by the Garda Commissioner not to extend, in accordance with *section 10(4)*, the period for making an application for initial assessment; 20
 - (b) a refusal by the reporting officer under *section 13(1)(a)(i)*;
 - (c) a refusal by the reporting officer under *section 13(2)(c)(ii)*;
 - (d) a determination referred to in *section 14(9)(b)*.
- (2) An application under *subsection (1)* for a review shall—
- (a) be made not later than 30 days after the date of issue of the notification of the decision, refusal or determination referred to in that subsection, as the case may be, 25
 - (b) state the reasons for the application, and
 - (c) be made in such form, contain such information and be accompanied by such documents, as may be prescribed. 30
- (3) An applicant may withdraw an application under *subsection (1)* at any time by notice in writing to the review officer.

Review

17. (1) A review officer may, in accordance with the procedures referred to in *subsection (3)*, if any, do either or both of the following: 35
- (a) request such further information from the applicant or the reporting officer concerned, or both, as he or she considers necessary for the purposes of the review;

- (b) invite the applicant or the reporting officer concerned, or both, to make written or oral submissions to him or her in respect of the review and, where the review officer does so, he or she shall specify the period within which such submissions may be made.
- (2) A person shall comply with a request under *subsection (1)(a)*, or an invitation under *subsection (1)(b)*, as the case may be. 5
- (3) The Minister may, in consultation with the Garda Commissioner, establish the procedures, including in relation to the requests referred to in *subsection (1)(a)* and the invitation referred to in *subsection (1)(b)*, to be followed by a review officer in relation to determining reviews. 10
- (4) In considering an application for review under this section the review officer shall consider—
- (a) the reasons for the application stated under *section 16(2)(b)*,
- (b) the information contained in the application, and the documents accompanying the application, referred to in *section 16(2)(c)*, 15
- (c) any information provided or submissions made pursuant to *paragraph (a) or (b) of subsection (1)*, as the case may be, and
- (d) such other information or documents, including information or documents relating to the incident the subject of the application, as he or she considers relevant. 20
- (5) The review officer shall make a determination of the application for a review in writing as soon as is practicable in all the circumstances of the case, but in any event not later than 3 months after the date of his or her assignment under *subsection (2) or (7)(a) of section 15* which may be a determination to—
- (a) confirm— 25
- (i) a decision by the Garda Commissioner not to extend, in accordance with *section 10(4)*, the period for making an application for initial assessment,
- (ii) a refusal referred to in *section 13(1)(a)(i)*,
- (iii) a refusal referred to in *section 13(2)(c)(ii)*, or
- (iv) a determination referred to in *section 14(9)(b)*, 30
- as the case may be, or
- (b) annul—
- (i) a decision by the Garda Commissioner referred to in *paragraph (a)(i)* and direct the Garda Commissioner to extend under *section 10(4)* the period for making an application for initial assessment, 35
- (ii) a refusal referred to in *section 13(1)(a)(i)* and direct the reporting officer to accept the application and arrange under *section 13(1)(b)* for the preparation of an initial assessment report,
- (iii) a refusal referred to in *section 13(2)(c)(ii)* and direct the reporting officer to include the applicant concerned in the application for initial assessment, or 40

- (iv) a determination referred to in *section 14(9)(b)* and replace it with a determination referred to in *section 14(9)(a)* (to which *section 14(10)* shall apply as it applies to the making of a determination by a reporting officer),
as the case may be.

Report of review

- 5
18. (1) The review officer shall, as soon as practicable after the review has been determined by him or her, make a report in writing of the review which shall include—
- (a) particulars of the matters considered by the review officer for the purposes of the review,
- (b) the outcome of the review and the reasons for that outcome, and 10
- (c) any other matters that the review officer considers appropriate.
- (2) Where the report is one to which *section 17(5)(a)(i)* relates, the review officer shall send a copy of the report to the applicant and the Garda Commissioner.
- (3) Where the report is one to which *subparagraph (ii), (iii) or (iv) of section 17(5)(a)* relates, the review officer shall send a copy of the report to the applicant, the reporting officer and the Garda Commissioner. 15
- (4) Where the report is one to which *section 17(5)(b)(i)* relates, the review officer shall send—
- (a) the report to the Garda Commissioner in order that the Garda Commissioner can comply with the direction referred to in that section, and 20
- (b) a copy of the report to the applicant,
and the Garda Commissioner shall comply with that direction.
- (5) Where the report is one to which *section 17(5)(b)(ii) or section 17(5)(b)(iii)* relates, the review officer shall send—
- (a) the report to the reporting officer in order that the reporting officer can comply with the direction referred to in the relevant section, and 25
- (b) a copy of the report to the applicant and the Garda Commissioner,
and the reporting officer shall comply with that direction.
- (6) Where the report contains a determination to which *section 17(5)(b)(iv)* relates—
- (a) the review officer shall, as soon as practicable, but in any event not later than 30 30 days after the date of the making of the report, send—
- (i) a notice in writing of the determination and of the matters referred to in *paragraphs (b) and (c)* to the applicant, and
- (ii) a copy of the report to the applicant, the reporting officer and the Garda Commissioner, 35
- (b) subject to *paragraph (c)*, the applicant shall be entitled to take a civil action against the Garda Commissioner arising out of the malicious incident, and

- (c) the Garda Commissioner shall, as soon as may be, but in any event not later than 30 days after the date on which he or she receives a copy of the report, make or cause to be made an application to the Personal Injuries Assessment Board on the applicant's behalf under section 11 of the Act of 2003, and *Part 5* and, where appropriate, *Part 6*, shall apply in relation to the application. 5

PART 5

APPLICATION AND AMENDMENT OF ACT OF 2003

Application of Act of 2003

19. In relation to an application to the Personal Injuries Assessment Board to which *section 14(11)(c)* or *section 18(6)(c)* applies— 10
- (a) the Act of 2003 shall, subject to this section and *section 20*, apply to, and in relation to, the application, and
- (b) the Garda Commissioner shall be liable to pay any charges imposed by the Personal Injuries Assessment Board pursuant to regulations under section 22 of the Act of 2003 on a claimant within the meaning of that Act to whom that application relates. 15

Modifications to application of Act of 2003

20. The Act of 2003 shall apply to, and in relation to, an application to which *section 19* refers, subject to the following modifications and any other necessary modifications:
- (a) it shall be read as if the words “, in respect of a wrong,” in the definition of “civil action” in section 4(1) of the Act of 2003 were deleted; 20
- (b) an application to which *section 19* refers shall be deemed to be an application made by the claimant under section 11 of the Act of 2003;
- (c) it shall be read as if subsection (5) of section 11 of the Act of 2003 were deleted;
- (d) it shall be read as if the words “rules under section 46(3)” and the words “or rules” in section 12(1) of the Act of 2003 were deleted; 25
- (e) it shall be read as if any reference to “respondent” were a reference to the Garda Commissioner, or to any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner in an action to which section 3(aa) of the Act of 2003 applies; 30
- (f) it shall be read as if section 13(1)(b)(iii) of the Act of 2003 were deleted;
- (g) it shall be read as if the reference in section 20(1) of the Act of 2003 to the assumption that the respondent or respondents are fully liable to the claimant in respect of the claim is a reference to the assumption that the Garda Commissioner, or any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner in an action to which section 3(aa) of the Act of 2003 applies, is fully liable to pay any award of damages made to the claimant in respect of the claim; 35

(h) it shall be read as if section 50 of the Act of 2003 were deleted.

Amendment of Act of 2003

21. (1) The Act of 2003 is amended—

(a) in section 3, by the insertion of the following paragraph after paragraph (a):

“(aa) subject to *Part 5* of the Act of 2021, a civil action against the
Commissioner of the Garda Síochána to which that Act applies,” 5

(b) in section 4(1), by—

(i) the insertion of the following definition:

“ ‘Act of 2021’ means the *Garda Síochána (Compensation) Act
2021*,” 10

(ii) in the definition of “civil action”, the deletion of paragraph (ii),

(iii) the substitution of the following definition for the definition of “claimant”:

“ ‘claimant’ means a person who would, subject to this Act, be entitled
to pursue a civil action to which this Act applies and includes—

(a) other than in a civil action referred to in paragraph (e), a personal
representative in whom a cause of action comprising a civil action
is vested by virtue of the Act of 1961, 15

(b) other than in a civil action referred to in paragraph (e), a person
specified in subsection (3) of section 48 of the Act of 1961 who
would, subject to this Act, be entitled to pursue an action for
damages under that section, 20

(c) a person who would be entitled to act as a next friend of a minor or
a person of unsound mind were a civil action to which this Act
applies to be pursued on his or her behalf,

(d) the committee of a person of unsound mind acting on his or her
behalf in relation to a civil action to which this Act applies that is
proposed to be pursued, and 25

(e) for the purposes of a civil action referred to in section 3(aa), an
applicant within the meaning of the Act of 2021 in relation to
whom an application to the Board referred to in *section 19* of that
Act was made;” 30

and

(iv) the insertion of the following definition:

“ ‘damages’ includes compensation for the purposes of civil actions
referred to in section 3(aa);” 35

(c) in section 20, by the insertion of the following subsection after subsection (5):

- “(6) Notwithstanding subsections (4) and (5), the Board, when making an assessment of a claim in a civil action referred to in section 3(aa), shall take into account the following:
- (a) in the case of a claim relating to personal injuries not causing death, *paragraphs (a) and (b) of section 23(3) of the Act of 2021* and *section 23(4) of the Act of 2021*,
 - (b) in the case of a claim relating to a death, *paragraphs (b) to (e) of section 23(6) of the Act of 2021* and *section 23(7) of the Act of 2021.*”,
- (d) in section 21, by the insertion of the following subsection after subsection (3):
- “(3A) If the assessment is an assessment of a relevant claim relating to a civil action referred to in section 3(aa) that is being taken by or for the benefit of persons to whom *section 8(2)(b) of the Act of 2021* applies, the assessment shall specify the proportion of the amount of damages it provides for to which each of those persons is to be entitled.”,
- (e) in section 30(3)—
- (i) by the substitution of “matter,” for “matter, or” in paragraph (a),
 - (ii) by the insertion of the following paragraph after paragraph (a):
 - “(aa) a person referred to in *section 8(4) of the Act of 2021* is acting on behalf of a person in the matter, or”,
- and
- (iii) by the substitution of “guardian, person referred to in *section 8(4) of the Act of 2021* or” for “guardian or”,
- (f) in section 35(1)—
- (i) by the substitution of “claim,” for “claim, or” in paragraph (a),
 - (ii) by the insertion of the following paragraphs after paragraph (a):
 - “(aa) a person referred to in *section 8(4) of the Act of 2021* is acting on behalf of a person in relation to a claim,
 - (ab) the claim relates to a civil action referred to in section 3(aa) that is being taken by or for the benefit of persons to whom *section 8(2)(b) of the Act of 2021* applies, or”,
- and
- (iii) by the substitution of “and the next friend, committee, person referred to in paragraph (aa), person taking the civil action referred to in paragraph (ab), or the person proposing to bring the action for damages referred to in paragraph (b), as the case may be” for “and the next friend, committee or, as the case may be, the person proposing to bring that action for damages”,
- (g) in section 45—

- (i) by the substitution, in subsections (1) and (4), of “next friend, guardian, or committee of the claimant, or person referred to in *section 8(4)* of the Act of 2021” for “next friend or committee of the claimant”, and
- (ii) by the substitution, in subsections (2) and (4), of “next friend, guardian, person referred to in *section 8(4)* of the Act of 2021 or committee in” for “next friend or committee in”, 5
- (h) in section 46, without prejudice to the generality of *subsection (2)* of this section—
 - (i) by the substitution, in subsection (1), of “this Part (including this Part as applied by *section 19* of the Act of 2021)” for “this Part”, wherever it occurs, 10
 - (ii) by the substitution, in subsection (2), of “this Act (including this Act as applied by *section 19* of the Act of 2021)” for “this Act”, wherever it occurs, and
 - (iii) by the substitution, in subsection (3), of “Except in relation to a civil action to which section 3(aa) refers, rules under” for “Rules under”, 15
- (i) in section 54, without prejudice to the generality of *subsection (2)* of this section, by the substitution of “this Act (including this Act as applied by *section 19* of the Act of 2021)” for “this Act”, wherever it occurs, and
- (j) in section 73(4)(c)(i), by the substitution of “or, other than in relation to a civil action to which section 3(aa) refers, a respondent” for “or a respondent”. 20
- (2) A reference in the Act of 2003 to—
 - (a) “this Act” shall, where applicable and where the context so requires, include a reference to “this Act, as applied by *section 19* of the Act of 2021”,
 - (b) “this Part” shall, where applicable and where the context so requires, include a reference to “this Part, as applied by *section 19* of the Act of 2021”, and 25
 - (c) “this section” shall, where applicable and where the context so requires, include a reference to “this section, as applied by *section 19* of the Act of 2021”.

PART 6

PROCEEDINGS ON FOOT OF AUTHORISATION UNDER ACT OF 2003

- Definition (*Part 6*)** 30
- 22.** In this Part “claimant” means—
- (a) a person to whom paragraph (e) of the definition of “claimant” in section 4(1) of the Act of 2003 applies, or
 - (b) a person referred to in paragraph (c) or (d) of that definition who is acting on behalf of the person referred to in *paragraph (a)*. 35

Proceedings on foot of authorisation under Act of 2003

23. (1) A claimant may bring proceedings against the Garda Commissioner on foot of an authorisation issued by the Personal Injuries Assessment Board under the Act of 2003, and such proceedings shall be subject to this Part and to the Act of 2003 as applied by *Part 5*. 5
- (2) The proceedings referred to in *subsection (1)* shall be brought not later than 6 months after the date of issue of the authorisation.
- (3) In the case of proceedings brought by a claimant who had been an applicant to whom *section 8(2)(a)* refers, the court shall—
- (a) determine the injuries that were inflicted as a result of the malicious incident, 10
 - (b) determine the amount of compensation to be awarded to the claimant for such injuries,
 - (c) order that the compensation be paid to the claimant by the Garda Commissioner or by any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner, and 15
 - (d) make an award of costs, or any other order providing for the payment of costs.
- (4) In making a determination under *subsection (3)(b)*, the court shall—
- (a) have regard to the personal injuries guidelines and any amendments thereto adopted and published by the Judicial Council under *section 7(2)(g)* of the Judicial Council Act 2019, 20
 - (b) have regard to any medical or surgical expenses incurred or likely to be incurred by the claimant in respect or in consequence of the injuries,
 - (c) take into account the detrimental effect which the injuries might reasonably be expected to have on the future earning power generally of the claimant and, in particular (if the injuries do not preclude the claimant from continuing to be a member of the Garda Síochána), on his or her future career in that force, 25
 - (d) have regard to the pain and suffering occasioned by the injuries to the claimant and also, where applicable, to any disease or tendency to disease caused by the injuries,
 - (e) subject to *paragraph (f)* and subsections (4) and (5) of *section 96* of the Social Welfare Consolidation Act 2005, have regard to *section 2* of the Civil Liability (Amendment) Act 1964, and 30
 - (f) take into account the fact, if it is a fact, that the claimant is entitled (under the statutes and statutory orders and regulations relating to the pensions of members of the Garda Síochána and their dependants) to a pension, allowance, or gratuity 35 out of public funds in respect of the injuries the subject of the application, but shall not regard the amount of such pension, allowance, or gratuity (if any) as a measure or standard by reference to which the amount of the compensation is to be fixed.
- (5) *Section 8(3)* shall, with any necessary modifications, apply to the bringing of proceedings by a claimant who had been an applicant to whom *section 8(2)(b)* refers 40

as it applies to the making of an application for initial assessment by such an applicant.

- (6) In the case of proceedings brought in the case of a death referred to in *section 7(b)* by a claimant who had been an applicant to whom *section 8(2)(b)* refers, the court shall, in respect of the claimant and where appropriate in respect of each person for whose benefit the claimant is bringing the proceedings— 5
- (a) consider whether the death was as a result of the malicious incident,
 - (b) consider whether the claimant or person is a person to whom compensation may be granted in respect of the said death,
 - (c) consider whether the claimant or person was wholly or partly dependent on the deceased person, 10
 - (d) consider whether the claimant or person has suffered loss by the death, and in such consideration no account shall be taken of any property (including assets of the deceased) to which the claimant or person has become entitled by reason of the death, 15
 - (e) if the court is satisfied that the claimant or person is a person to whom compensation may be granted, was wholly or partly dependent on the deceased and suffered loss by the death, determine the amount of compensation to be awarded to the claimant or person,
 - (f) where an amount of compensation has been determined under *paragraph (e)*, order that the compensation be paid to the claimant or person by the Garda Commissioner or by any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner, and 20
 - (g) make an award of costs, or any other order providing for the payment of costs.
- (7) In making a determination under *subsection (6)(e)*, the court shall— 25
- (a) have regard to the financial loss sustained by the claimant or person, but in so doing shall not take into account any property (including assets of the deceased) to which the claimant or person has become entitled by reason of the death of the deceased,
 - (b) have regard to any funeral expenses incurred by the claimant or person in respect of the burial of the deceased and any medical or surgical expenses similarly incurred in respect of the injuries to the deceased which caused his or her death, 30
 - (c) take into account the financial benefits which the claimant or person might reasonably have expected to receive in the future from the deceased if the deceased had not died at the time at which he or she did die, 35
 - (d) have regard to any loss (other than financial loss) sustained by the claimant or person,
 - (e) take into account the fact, if it is a fact, that, prior to his or her death, the deceased was awarded compensation under the Act of 2003 as applied by *Part 5*, under this Part, or under the Act of 1941 in respect of the injuries which subsequently caused his or her death, and shall also take into account the amount (if any) of such compensation, 40

- (f) subject to *paragraph (g)* and section 96(5)(a) of the Social Welfare Consolidation Act 2005, have regard to section 50 of the Act of 1961, and
- (g) shall take into account the fact, if it is a fact, that the claimant or person is entitled (under the statutes and statutory orders and regulations relating to the pensions of members of the Garda Síochána and their dependants) to a pension, allowance, or gratuity out of public funds in respect of the death which is the subject of the application, but shall not regard the amount of such pension, allowance, or gratuity (if any) as a measure or standard by reference to which the amount of the compensation is to be fixed. 5
- (8) Where proceedings are brought in the case of a death referred to in *section 7(b)*, the following provisions shall apply: 10
- (a) the court shall indicate separately in the award the amount of compensation awarded to each claimant or person under *subsection (6)(e)*;
- (b) it shall be sufficient for the Garda Commissioner, or any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner, in paying money into court in the action, to pay it in one sum as compensation for all the persons referred to in *subsection (6)* without apportioning it between them; 15
- (c) the amount recovered in the action shall, after deducting any costs not recovered from the Garda Commissioner, or from any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner, be divided among the persons entitled in such shares as have been determined by the court. 20
- (9) *Section 8(4)* shall, with any necessary modifications, apply to the bringing of proceedings on behalf of a person to whom *section 8(2)* refers as it applies to the making of an application for initial assessment.

Additional provisions regarding proceedings 25

24. (1) The proceedings referred to in *section 23* shall, subject to this Act and the Act of 2003 as applied by *section 19* and with any necessary modifications, be deemed to be a personal injuries action for the purposes of any enactments relating in whole or in part to personal injuries actions (including the Act of 2004) and shall be treated as if they were a personal injuries action within the meaning of those enactments, including for the purposes of costs. 30
- (2) Notwithstanding *subsection (1)*, the Act of 2004 shall apply to the proceedings referred to in *section 23* with the following modifications:
- (a) the definition of “pleading” in section 2(1) of the Act of 2004 shall be read as if the words “a Garda compensation personal injuries summons,” were inserted after the words “a personal injuries summons,”; 35
- (b) it shall be read as if section 8 of the Act of 2004 were deleted;
- (c) section 10(1) of the Act of 2004 shall be read as follows:
- “(1) Proceedings in the High Court, Circuit Court or District Court, in respect of a personal injuries action involving proceedings under *section 23* of the *Garda Síochána (Compensation) Act 2021*, shall be 40

commenced by a summons to be known as and referred to in this Act as a ‘Garda compensation personal injuries summons’.”;

(d) section 10(2) of the Act of 2004 shall be read as follows:

“(2) A Garda compensation personal injuries summons shall specify—

- (a) the plaintiff’s name, the address at which he or she ordinarily resides and his or her occupation, 5
- (b) the personal public service number allocated and issued to the plaintiff under section 223 (inserted by section 14 of the Act of 1998) of the Act of 1993,
- (c) the defendant’s name and his or her occupation, 10
- (d) the injuries or death alleged to have been occasioned by the malicious incident,
- (e) full particulars of all items of special damage in respect of which the plaintiff is making a claim,
- (f) full particulars of the malicious incident, and 15
- (g) in the case of proceedings brought by one or more persons to whom *section 8(2)(b)* of the *Garda Síochána (Compensation) Act 2021* refers, full particulars of the applicability of that section to each person by whom or for whose benefit the proceedings are brought.”; 20

(e) section 12 of the Act of 2004 shall be read as if the words “personal injuries summons” were the words “Garda compensation personal injuries summons”, wherever they occur;

(f) it shall be read as if section 22 of the Act of 2004 were deleted.

(3) Notwithstanding *subsection (1)*— 25

(a) the Statute of Limitations (Amendment) Act 1991 and any enactment regarding limitation periods (other than this Act and the Act of 2003 as applied by *section 19*), and

(b) subject to *section 23(7)(f)*, the Act of 1961,

shall not apply to the proceedings referred to in *section 23*. 30

PART 7

MISCELLANEOUS

Subrogation of rights or remedies

25. (1) Where compensation is awarded to a person under this Act (including under the Act of 2003 as applied by *section 19*) the Garda Commissioner shall be subrogated to any rights or remedies to which the person is entitled against any person or the estate of 35

any such person who caused the personal injuries or death resulting from the malicious incident concerned.

- (2) Proceedings by the Garda Commissioner that are brought as a result of the operation of *subsection (1)* shall be brought not later than one year after the date of payment of the compensation concerned. 5
- (3) In this section a reference to the Garda Commissioner includes a reference to any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner.

False statements, etc.

26. (1) A person who— 10
- (a) makes any statement or representation (whether written or oral) which is, to his or her knowledge, false or misleading in any material respect or is reckless as to whether such statement or representation is false or misleading, or
- (b) furnishes or causes or knowingly allows to be furnished, any document or information which he or she knows to be false or misleading in a material respect or is reckless as to whether such document or information is so false or misleading, 15
- in relation to—
- (i) an application for initial assessment, or
- (ii) an application to which *section 19* refers, 20
- commits an offence.
- (2) Where a person commits an offence referred to in *subsection (1)* in relation to an application referred to in *subsection (1)(i)*, the Garda Commissioner shall determine that the application shall be rejected, unless, for reasons that he or she shall state in writing, the rejection of the application would result in injustice being done. 25
- (3) Where a court enters a conviction in a case set out in *subsection (1)*, the court may in the same proceedings order the person who committed the offence to repay to the Garda Commissioner so much of—
- (a) any compensation awarded to and received by that person in accordance with this Act (including the Act of 2003 as applied by *section 19*), or 30
- (b) a payment of compensation received by that person on foot of a settlement with the Garda Commissioner or with any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner,
- as the court directs.
- (4) Moneys received by the Garda Commissioner pursuant to *subsection (3)* shall be paid into, or disposed of for the benefit of, the Exchequer in such manner as the Minister for Public Expenditure and Reform directs. 35
- (5) A person who commits an offence under *subsection (1)* shall be liable—

- (a) on summary conviction, to a class C fine or to imprisonment for a term not exceeding 6 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €15,000 or to imprisonment for a term not exceeding 3 years, or to both.

Income and compensation

5

27. (1) For the purposes of the Income Tax Acts, and notwithstanding any provision of those Acts to the contrary—

(a) income consisting of an award of compensation under this Act shall be disregarded for the purposes of income tax assessment, and

(b) any payment in respect of an award of compensation under this Act shall be treated in all respects as if it were a payment made following the institution, by or on behalf of the person to whom the payment is made, of a civil action for damages in respect of personal injury. 10

(2) In this section “award of compensation under this Act” means an award of compensation under the Act of 2003 as applied by *section 19*, an award of compensation by a court under *Part 6*, or a payment of compensation on foot of a settlement with the Garda Commissioner or with any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner. 15

Exclusion of compensation from assessment of certain pensions, etc.

28. When assessing the amount of any pension, allowance, or gratuity under a scheme or other enactment made under the Garda Síochána Act 1924, the Police Forces Amalgamation Act 1925 or the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 payable to a member on account of injuries inflicted as a result of a malicious incident or payable to the surviving spouse, surviving civil partner, child or other dependant of a member on account of the death of the member as a result of a malicious incident, it shall not be lawful to take into account or have regard to any compensation awarded under this Act (including under the Act of 2003 as applied by *section 19*) or under the Act of 1941, or a payment of compensation on foot of a settlement with the Garda Commissioner or with any person entitled, by or under any enactment, to act on behalf of the Garda Commissioner, in relation to such injuries or death. 20 25 30

Amendment of Courts (Supplemental Provisions) Act 1961

29. The Third Schedule to the Courts (Supplemental Provisions) Act 1961 is amended, in column (2) opposite reference number 29, by the deletion of “(other than proceedings under the Garda Síochána (Compensation) Acts 1941 and 1945)”. 35

Amendment of section 18 of Criminal Assets Bureau Act 1996

30. Section 18(3) of the Criminal Assets Bureau Act 1996 is amended—

- (a) by the substitution of “*Garda Síochána (Compensation) Act 2021*” for “Garda Síochána (Compensation) Act 1941, and the Garda Síochána (Compensation) (Amendment) Act 1945,” and
- (b) in paragraph (b), by the substitution of “injuries inflicted on them as a result of a malicious incident within the meaning of that Act” for “injuries maliciously inflicted on them”.

National Treasury Management Agency (Amendment) Act 2000

- 31.** (1) Section 7(1) of the Act of 2000 is amended by the deletion of paragraph (a) in the definition of “claim”.
- (2) The definition of “claim” in section 7(1) of the Act of 2000 shall be construed as including—
- (a) an application to which *section 5(1)* refers,
 - (b) an application to the Personal Injuries Assessment Board to which *section 19* refers,
 - (c) proceedings to which *Part 6* applies, and
 - (d) proceedings brought as a result of the operation of *section 25*.
- (3) The National Treasury Management Agency shall be deemed to have been delegated, under section 9(1)(a) of the Act of 2000, the management of any claims against the Minister for Public Expenditure and Reform relating to an application for compensation under the Garda Síochána (Compensation) Acts 1941 to 2003 to which *section 5(1)* applies.
- (4) In this section “Act of 2000” means the National Treasury Management Agency (Amendment) Act 2000.

Amendment of section 2 of Act of 2004

- 32.** Section 2(1) of the Act of 2004 is amended, in the definition of “personal injuries action”, by the deletion of “an application for compensation under the Garda Síochána (Compensation) Acts 1941 and 1945, or”.

Amendment of Act of 2005

- 33.** The Act of 2005 is amended—
- (a) in section 51(4), by the substitution of “the *Garda Síochána (Compensation) Act 2021*” for “the Garda Síochána (Compensation) Acts 1941 and 1945”,
 - (b) in section 53(5), by the substitution of “*Garda Síochána (Compensation) Act 2021* does” for “Garda Síochána (Compensation) Acts 1941 and 1945 do”,
 - (c) in section 54(3)(c), by the substitution of “the *Garda Síochána (Compensation) Act 2021* for injuries inflicted as a result of a malicious incident within the meaning of that Act” for “the Garda Síochána (Compensation) Acts 1941 and 1945 for malicious injuries received”, and

- (d) in section 74(4)(c), by the substitution of “the *Garda Síochána (Compensation) Act 2021* for injuries inflicted as a result of a malicious incident within the meaning of that Act” for “the *Garda Síochána (Compensation) Acts 1941 and 1945* for malicious injuries received”.

Application of section 31 of Act of 2005

5

34. (1) Subject to *subsection (3)*, section 31 of the Act of 2005 shall apply to the functions of the Garda Commissioner under this Act and a reference in that section to a function under the Act of 2005 or under a provision of the Act of 2005 shall be construed as including a reference to a function of the Garda Commissioner under this Act.
- (2) A delegation by the Garda Commissioner in accordance with section 31 of the Act of 2005 of any functions to which this Act applies may be made only to a member of a specified rank not below the rank of Assistant Garda Commissioner, or to a member of the civilian staff of the Garda Síochána not below a grade equivalent to the rank of Assistant Garda Commissioner. 10
- (3) In this section a reference to “this Act” includes a reference to the Act of 2003 as applied by *section 19*. 15

Amendment of section 96 of Social Welfare Consolidation Act 2005

35. Section 96 of the Social Welfare Consolidation Act 2005 is amended—

- (a) in subsection (4), by the substitution of “*Garda Síochána (Compensation) Act 2021*, there shall in assessing compensation under that Act (including under the Personal Injuries Assessment Board Act 2003 as applied by that Act)” for “*Garda Síochána (Compensation) Acts 1941 to 2003*, there shall in assessing compensation”, and 20
- (b) in subsection (5), by the substitution of “*Garda Síochána (Compensation) Act 2021*, in assessing compensation under that Act (including under the Personal Injuries Assessment Board Act 2003 as applied by that Act)” for “*Garda Síochána (Compensation) Acts 1941 to 2003*, in assessing compensation under those Acts”. 25

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do bhunú córas a bheidh le cur in ionad an chórais dá bhforáiltear faoi Achtanna an Gharda Síochána (Cúiteamh), 1941 go 2003 d'fhonn socrú a dhéanamh chun cúiteamh a dheonú as airgead poiblí i leith díobhálacha pearsanta (lena n-áirítear díobhálacha is cúis le bás) a rinneadh do chomhalta reatha nó d'iarchomhalta den Gharda Síochána mar thoradh ar theagmhas mailíseach; chun na críche sin agus chun críoch gaolmhar, do dhéanamh an tAcht um Bord Measúnaithe Díobhálacha Pearsanta, 2003 a chur chun feidhme, fara modhnuithe, agus a leasú, agus do leasú achtacháin eile; d'aisghairm an Achta Gárda Síochána (Cúiteamh), 1941 agus an Achta Gárda Síochána (Cúiteamh) (Leasú), 1945; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Seanadóir Regina Doherty a thíolaic thar ceann an Aire Dlí agus Cirt,

19 Aibreán, 2021

BILL

(as initiated)

entitled

An Act to establish a system to replace the system provided for under the Garda Síochána (Compensation) Acts 1941 to 2003 in order to provide for the granting out of public moneys of compensation for personal injuries (including injuries causing death) that were inflicted on a current or former member of the Garda Síochána as a result of a malicious incident; for that and related purposes to apply with modifications and to amend the Personal Injuries Assessment Board Act 2003, and to amend other enactments; to repeal the Garda Síochána (Compensation) Act 1941 and the Garda Síochána (Compensation) (Amendment) Act 1945; and to provide for related matters.

Presented by Senator Regina Doherty on behalf of the Minister for Justice,

19th April, 2021

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

Le ceannach díreach ó

FOILSEACHÁIN RIALTAIS,

52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2.

(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)

nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE

To be purchased from

GOVERNMENT PUBLICATIONS,

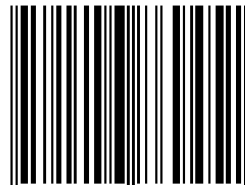
52 ST. STEPHEN'S GREEN, DUBLIN 2.

(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)

or through any bookseller.

€3.81

ISBN 978-1-4468-6945-1



9 781446 869451