



STATUTORY INSTRUMENTS.

**S.I. No. 192 of 2014**



COMMISSION OF INVESTIGATION (CERTAIN MATTERS RELATIVE  
TO AN GARDA SÍOCHÁNA AND OTHER PERSONS) ORDER 2014

## COMMISSION OF INVESTIGATION (CERTAIN MATTERS RELATIVE TO AN GARDA SÍOCHÁNA AND OTHER PERSONS) ORDER 2014

WHEREAS pursuant to section 3(1) of the Commissions of Investigation Act 2004 (No. 23 of 2004) the Taoiseach, with the approval of the Minister for Public Expenditure and Reform, made a proposal to the Government for the establishment of a commission to investigate the matters specified in Article 3 of the following Order and to make any reports required under that Act in relation to its investigation;

AND WHEREAS the Government by decision made on 15 April 2014 considered those matters to be of significant public concern;

AND WHEREAS a draft of the following Order has been laid before each House of the Oireachtas, together with a statement of the reasons for establishing the commission, and a resolution approving that draft has been passed by each such House;

NOW, the Government, in exercise of the powers conferred on them by section 3 of the Commissions of Investigation Act 2004 (No. 23 of 2004), hereby order as follows:

1. This Order may be cited as the Commission of Investigation (Certain Matters relative to An Garda Síochána and other persons) Order 2014.
2. In this Order “Act” means the Commissions of Investigation Act 2004 (No. 23 of 2004).
3. A commission is hereby established to—
  - (a) investigate the matters, which are considered by the Government to be of significant public concern, referred to in the terms of reference (the text of which is, for convenience of reference, set out in the Schedule) of the commission, and
  - (b) make any reports required under the Act in relation to its investigation.
4. The Taoiseach is specified as the Minister of the Government responsible for overseeing administrative matters relating to the establishment of the commission, for receiving its reports and for performing any other functions given to him under the Act.

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 6th May, 2014.*

## SCHEDULE

TERMS OF REFERENCE FOR COMMISSION OF INVESTIGATION REGARDING CERTAIN  
MATTERS RELATIVE TO AN GARDA SÍOCHÁNA AND OTHER PERSONS

1. The Commission is directed to investigate and to make a report to the Taoiseach in accordance with the provisions of Section 32 of the Commissions of Investigation Act, 2004 (No. 23 of 2004) on the operation of Garda Síochána telephone recording systems and on the following matters in particular:

- (a) To identify all Garda Stations in which telephone recording systems, to record calls other than 999 calls to the Emergency Call Answering Service, were installed and/or operated by An Garda Síochána between 1st January 1980 and 27th November 2013 and to establish an inventory of those Garda Stations so identified to include:
  - (i) the date of initial installation, where such installation occurred at a date between 1st January 1980 and 27th November 2013;
  - (ii) to report whether any such installations were already in existence on the 1st January 1980;
  - (iii) the duration for which telephone recording systems continued in operation in each such Garda Station;
  - (iv) the date on which telephone recording systems were terminated or removed from each such Garda Station.
- (b) To establish the immediate circumstances surrounding the installation of telephone recording systems operated by An Garda Síochána at the said Garda Stations referred to at (a) above and to establish what authorisation was sought or obtained by An Garda Síochána for such installation and, including the funding, installation, maintenance and / or upgrading of those telephone recording systems, to include the public procurement procedure followed in 1996 and further in relation to the installation of the NICE recorder system in 2008.
- (c) To establish how the said telephone recording systems operated by An Garda Síochána were managed and to establish what use (if any), was made by An Garda Síochána of any information collated by the said telephone recording systems.
- (d) To identify the organisation and structures in place for the installation, operation and management of the said telephone recording systems and in the storage, access, analysis and use of any information obtained from them.
- (e) To investigate and report on the level of knowledge of the existence, operation and use of the said telephone recording systems within An Garda Síochána.

- (f) To investigate and report on the level of knowledge of the existence, operation and use of the said telephone recording systems within the Office of the Minister for Justice and Equality, the Department of Justice and Equality, the Office of the Attorney General, the Chief State Solicitor's Office, the Office of the Director of Public Prosecutions, the Office of the Data Protection Commissioner and the Garda Síochána Ombudsman Commission.
- (g) To establish whether the installation, operation and use of the said telephone recording systems was authorised by law.
- (h) To establish whether any telephone conversations between solicitors and their clients were recorded by the said telephone recording systems.
- (i) To establish whether any information obtained from the said telephone recording systems by An Garda Síochána was used by it either improperly or unlawfully and, in particular, whether any recordings as may have been made by An Garda Síochána of Solicitor / Client telephone conversations were used for any purpose whatsoever.
- (j) To establish where the recorded information obtained from the telephone recording systems operated by An Garda Síochána was stored since the creation of same and to establish how such information was accessed and analysed by An Garda Síochána.
- (k) To establish whether any of the recorded information has been destroyed.
- (l) To establish any instances during the relevant period where the Office of the Director of Public Prosecutions made use of the data and information produced by the said telephone recording systems for any purpose.
- (m) In particular, to identify and review all recordings in the possession of An Garda Síochána emanating from the Garda telephone recording system at Bandon Garda Station or otherwise, which relate to the Garda investigation into the death of Sophie Toscan du Plantier and to establish whether those recorded phone calls, and any other acts or events in the course of the said Garda investigation, disclose any evidence of unlawful or improper conduct by members of An Garda Síochána in connection with that investigation.
- (n) To investigate and report on the furnishing to the Minister of a letter dated 10th March 2014 sent by the former Garda Commissioner, Mr. Martin Callinan, to the Secretary General of the Department of Justice and Equality.
- (o) To investigate and report on the sequence of events leading up to the retirement of the former Garda Commissioner Mr. Martin Callinan on the 25th March 2014.

- (p) In the event that any matter arises from the Report of the Inspector of Prisons Judge Michael Reilly pursuant to section 31 of the Prisons Act 2007 into all the circumstances surrounding the recording of telephone conversations between prisoners and their solicitors, which appears to require further investigation in the public interest the Commission may investigate and report on same.
- (q) To report on any other matters of concern arising from its investigation of recordings to and from Garda Stations and to make any further recommendations as it sees fit.

2. The Commission shall exercise discretion in relation to the scope and intensity of the investigation it considers necessary and appropriate, having regard to the general objective of the investigation. In particular, the Commission shall have the discretion to decide to limit its investigation to samples of recordings in the light of what is disclosed as the investigation progresses.

3. The Government has appointed the Honourable Mr. Justice Nial Fennelly, Judge of the Supreme Court, to act as the Sole Member of the Commission of Investigation.

4. The Commission of Investigation is directed to conduct the task assigned to it under these Terms of Reference and to report to the Government no later than the 31st December 2014, subject to section 6(6) of the Commissions of Investigation Act, 2004.



GIVEN under the Official Seal of the Government,  
30 April 2014.

ENDA KENNY,  
Taoiseach.

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.

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