

General

The Director of Public Prosecutions (DPP) has no investigative function and no function in relation to many of the matters set out in the questionnaire. Instead, the investigation of crimes and maintenance of public order is a function of An Garda Síochána (National Police). In addition there are specialised investigating authorities in relation to certain particular categories of crime, including the Competition and Consumer Protection Commission in relation to offences against the Competition Acts, the investigation branch of the Revenue Commissioners in relation to revenue offences, the Health and Safety Authority in relation to offences relating to safety and welfare at work, and the Office of the Director of Corporate Enforcement which deals with offences against company law. This list is not exhaustive.

Complaints of criminal conduct made to the DPP cannot be investigated by her but are transmitted to the Garda Commissioner or to one of the other investigating authorities to take the appropriate decisions and action. While the DPP has no investigative function, the Office of the DPP cooperates with An Garda Síochána and the other investigating agencies on an ongoing basis during the course of criminal investigations, particularly in furnishing relevant legal and prosecutorial advice. The relationship between prosecutors and investigators is dealt with more fully in Chapter 7 of the Guidelines for Prosecutors, (link attached).

<https://www.dppireland.ie/app/uploads/2019/12/Guidelines-for-Prosecutors-5th-Edition-eng.pdf>

While many investigative agencies have the power to prosecute summarily without reference to the DPP, the sole power to prosecute on indictment rests with her (apart from a limited number of cases still dealt with by the Attorney General).

When an offence is or may be sufficiently serious to be tried on indictment the investigator sends a file to the Office of the DPP. The decision whether to initiate or continue a criminal prosecution is made by the Director or one of the Director's professional officers who decide independently of those who were responsible for the investigation what, if any, charges to bring. In some cases, a summary prosecution may be directed.

The Director of Public Prosecutions is independent in the performance of her functions and prosecutors carry out their functions in accordance with;

- the Guidelines for Prosecutors which set out in general terms principles and ethics which guide the initiation and conduct of prosecutions in Ireland
- the European Union Victims Directive 2012/29/EU and the Criminal Justice (Victims of Crime) Act 2017, as well as other measures for the rights, support and protection of victims of crime under existing law and prosecution policies. Further information is available in the Victims Charter on the Office website at www.dppireland.ie

Covid19 restrictions – an update on the restrictions in place as of 18 August 2020

A new law in March 2020 gave the Minister for Health the power to make regulations to introduce measures to slow down the spread of the virus (such as travel restrictions, stopping gatherings, closing premises etc).

[Health \(Preservation and Protection and Other Emergency Measures in the Public Interest\) Act 2020](#)

The legislation contains the following preamble:

“An Act, to make exceptional provision, in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19 and in order to mitigate, where practicable, the effect of the spread of the disease known as Covid-19, to amend the Health Act 1947 to confer a power on the Minister for Health to make regulations prohibiting or restricting the holding of certain events or access to certain premises and to provide for enforcement measures; to provide for powers for certain medical officers of health to order, in certain circumstances, the detention of persons who are suspected to be potential sources of infection with the disease known as Covid-19 and to provide for enforcement measures in that regard; and to confer on the Minister for Health the power to designate areas as areas of infection of Covid-19 and to provide for related matters; to amend and extend the Social Welfare Acts to provide for amendments in relation to entitlement to illness benefit for persons who have been diagnosed with, or are a probable source of infection with the disease known as Covid-19; and to provide for amendments in relation to jobseeker’s benefit and jobseeker’s allowance to mitigate the economic effects of the spread of the disease known as Covid-19; and to provide for related matters.

WHEREAS an emergency has arisen of such character that it is necessary for compelling reasons of public interest and for the common good that extraordinary measures should be taken to deal with the immediate, exceptional and manifest risk to human life and public health posed by the spread of the disease known as Covid-19;

AND WHEREAS the State is and its citizens are, in significant respects, highly exposed to the effect of the spread of the disease known as Covid-19; and having regard to the constitutional duty of the State to respect and, as far as practicable, by its laws to defend and vindicate the rights of citizens to life and to bodily integrity, it is necessary to introduce a range of extraordinary measures and safeguards to prevent, minimise, limit or slow the risk of persons being infected with the disease known as Covid-19;

AND WHEREAS as a consequence it is necessary for the State to take the measures in this Act to address the emergency and to defend and vindicate the rights of citizens to life and to bodily integrity;”

Under this legislation the Minister for Health could make regulations to:

- Restrict travel to and from Ireland
- Restrict travel within Ireland to stop people moving to and from affected areas
- Stop gatherings of people from taking place, and to make organisers of these gatherings put safeguards in place to prevent the virus from spreading
- Make businesses (such as shops) put safeguards in place to protect their staff and customers
- Close premises, including schools

Other measures

On 27 March 2020, the President signed the Emergency Measures in the Public Interest (Covid-19) Act 2020 into law. The legislation includes measures to:

- Prevent the termination of residential tenancies and increases in rent
- Allow for the disregard of certain time periods and deadlines in planning and building legislation
- Extend the period that an employee must be temporarily laid off or on short time for before they can claim redundancy

- Simplify the registration process to help recruit retired health professionals
- Facilitate the operation of the mental health tribunals during the pandemic
- Introduce a temporary wage subsidy scheme
- Support re-enlistment of former members of the permanent defence force

Removing restrictions: Roadmap for Reopening Society and Business

The Government set out a Roadmap for Reopening Society and Business to ease the COVID-19 restrictions. The plan set out 4 phases for unlocking restrictions, at 3-week intervals starting 18 May 2020. The phases give an indication of the stages to be followed but the date of each change could vary and depended on the circumstances at the time. Phase 4 was planned to commence on 10 August but has since been delayed until at least 31 August. In addition, restrictions specific to 3 Irish counties were imposed on 7 August.

Detentions and penalties

During the COVID-19 emergency, various regulations have given An Garda Síochána (National Police) additional powers, including arrest without warrant (for failure to comply with a direction of a member of An Garda Síochána to enforce the regulations, for failure refusal to provide a name and address or for providing a false name or address). These powers aimed to prevent or slow the spread of COVID-19 but have since been amended to reflect the easing of some restrictions in line with Phases 1, 2 and 3 of the updated Roadmap for Reopening Society and Business.

It is an offence not to comply with the regulations. This includes:

- Organising a cultural, entertainment, sporting, social, community or educational event for more than 50 people indoors or 200 people outdoors
- Allowing public access to places or entertainment which are not yet allowed to reopen (such as nightclubs or casinos) or pubs and bars which do not serve food.

Any offence is punishable by a fine of up to €2,500, up to six months imprisonment, or a combination of both.

Prosecution decisions on Covid19 Regulation offences are currently centralised within the Directing Division of the Office of the Director of Public Prosecutions

Other penalties

The above legislation also allows for detention where it is believed by a qualified medical person that a person is a potential source of infection and a risk to public health and the detention is necessary to slow the spread of COVID-19. A person will only be detained if they refuse to remain in a specified place like their home or a hospital, or cannot be isolated in any other way.

A person detained will be tested as soon as possible and will be able to ask for a review of their detention by an independent person on the grounds they are not a source of infection. Failure to comply with a detention, or interfering with the detention of a person will be a criminal offence.

Public commentary

The Policing Authority: The Policing Authority in a report on its assessment of policing performance by the Garda Síochána (Irish Police) during the COVID-19 crisis found that the relatively low level of reported use of the COVID-19 powers supported the graduated approach adopted by the Garda Síochána at the outset of the emergency and more importantly its

implementation by members on the ground. An examination of the geographic distribution of the reported use of powers in detail did not identify any concerns with regard to the use of powers being disproportionately used in any particular region.

In discussing the reported experience of policing during COVID-19, the majority of organisations the Authority engaged with referred to an overwhelmingly positive experience of engagement with the Garda Síochána. The importance of good community policing has been raised consistently, as the basis for a community's trust and confidence in the policing service and as the foundation on which policing during the COVID 19 emergency has been built.

However, the Authority indicated that, inevitably, this positive engagement has not been experienced consistently and that there are communities where the relationship with the Garda Síochána has not been as would have been wished. In communities where feedback has been negative, the reported experiences of the community attribute this to factors such as the frequent turnover in community Gardaí which mitigates against relationship building, non-responsiveness to call-outs, and a lack of consistency of tone and respect from all Garda members.

Bail pending trial

While the final decision is a matter for the court, the Guidelines for Prosecutors provide that, where an accused person has been detained in custody prior to the first court appearance, the prosecutor should, in addition to considering the charges to be presented to the court, also consider any continuing need to remand that person in custody. The prosecutor should only request that the court remands an accused person in custody where it is determined (having given due consideration to the nature and gravity of the alleged offence and any relevant criminal history of the accused and having considered the views of the Garda Síochána) that there is a risk of the accused:

- a) absconding;
- b) interfering with witnesses, evidence, or the course of justice generally;
- c) if charged with a serious offence, committing a further serious offence which would form the basis for an objection to bail.

The Garda Síochána must also consider whether there are any bail conditions which could sufficiently counter the risks identified by them in relation to the above grounds.

The prosecutor should consider seeking a revocation of bail where there is a serious breach of a condition attached to its grant.

Prisons

The Director of Public Prosecutions has no function in relation to the management of prisons or release of prisoners. The Minister for Justice approved a number of actions to reduce the number of prisoners in our prisons in March this year to support a more effective infection control regime, including greater physical distancing and cocooning. These included:

- The granting of temporary release (TR) (which is already a normal part of prisoner management) to low risk prisoners, who were assessed on a case-by-case basis. As always TR is conditional on a prisoner being of good behaviour and each prisoner would be subject to re-arrest in the event of a breach. This gradual and planned reduction of the prison population has seen a decrease in the number in custody from 4,235 on 11 March 2020 to 3,833 on 7 April 2020, a reduction of approximately 400 or 9%.

- Providing for longer periods for those prisoners currently on TR to have to sign in with IPS, in order to reduce footfall in and out of the prisons, and to free up administrative staff to mitigate any depletion in prison officer numbers. Rather than signing in weekly, the requirement is currently monthly.

It is important to note that a number of key constraints on the power of release remain:

- the primary one is public safety - no prisoner who poses an undue risk to public safety will be granted TR;
- no one who is remanded for trial can be released;
- factors such as housing and health status are also taken into account. The IPS is coordinating with the Department of Housing, Planning and Local Government and the HSE.

Working arrangements

There has been a lot of change in Ireland in relation to how people work due to the COVID19 crisis. This has also been reflected in arrangements made in the prosecution service. Prosecution services, along with Courts Services, Government Departments and agencies have been working to modify work practices and modes of delivery to meet the challenges faced. The Courts and the Office of the Director of Public Prosecutions remain open with extended opening hours to facilitate differing staff attendance patterns. Many staff are working from home using lap-tops. Office meetings can be held using video conferencing and the Office of the Director of Public Prosecutions continues to have ongoing discussions with the Courts Service and An Garda Síochána (National Police).

There has been an increased use of video conferencing in relation to bail /extradition hearings and also in conducting some hearings on legal issues such as the Supreme Court and Court of Appeal hearings, where it is intended for much of the Court's work to be done remotely where this is suitable. However, these arrangements do not extend to cases where oral testimony is required. Legislation is also due to come into force shortly allowing for the disposal via video conferencing of a lot of procedural business in the lowest criminal court and in trial courts.

Training

It has been necessary for staff to quickly adapt to a range of new work practices and these new practices will give rise to a host of new training needs. In addition, it will be necessary to consider how best to meet the “normal” training needs of staff using the video conferencing tools.

Challenges

Challenges faced by prosecution services in an emergency situation and in its aftermath/recovery include recognising the risk in advance, preparedness to address such risk, implementation of a pre-prepared plan to deal with the immediate effects of the emergency, adapting to changing circumstances.

Overcoming these challenges will involve learning from our experiences in past and present emergencies, planning for recognising risks in advance, preparedness to address such risks, and adapting to changing circumstances. In the current context very significant work was done in a short space of time to enable encrypted remote access for prosecutors to their files and to update court practices and procedures to facilitate much greater use of video-conferencing technology during court proceedings.

Peter McCormick August 2020