



**Irish Council for
Civil Liberties**

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Commissioner Drew Harris
Office of the Garda Commissioner
An Garda Síochána Headquarters
Phoenix Park
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CC:
Policing Authority
Irish Human Rights and Equality Commission
Department of Justice and Equality
Department of An Taoiseach

27 April 2020

Dear Commissioner,

I write with regards to the role of An Garda Síochána in enforcing the Health Act 1947 (Section 31a - Temporary Restrictions) (Covid-19) Regulations 2020, (the Covid Regulations) and exercising the extraordinary and time-bound powers granted to An Garda Síochána by the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020, (Emergency Health Act).

On behalf of the Irish Council for Civil Liberties (ICCL), I wish to reiterate that ICCL is supportive of the An Garda Síochána's emphasis on 'engage, educate, encourage and then enforce' approach to the regulations and the stated intention to use the regulatory enforcement powers sparingly. We welcome both the Government's and the Commissioner's reassertion of this State's longstanding policy of policing by consent and not coercion. We also welcome the commitment to publish statistics on use of these powers on a weekly basis.

Further to our earlier correspondence of 10 April setting out concerns regarding the policing of the Covid regulations, I wish to raise a number of issues which have been raised with us by members of the public or we have learned of through the media. We believe that any clarification that you can provide about the approach of An Garda Síochána to these issues would greatly enhance public confident trust and cooperation with the complex and unique policing challenges presented by the Covid Regulations.

As you are aware, ICCL and a group of other community organisations have called on the Government to carry out a human rights impact assessment ahead of any decision about the lifting or amendment of current restrictions and regulations. Clarification on current policing practice and your interpretation of the regulations will be an essential element of any assessment of the need for further regulations beyond 5 May.

The following issues have all been raised directly with our office over the last three weeks, or have been drawn to our attention by other community organisations or through the media. We are not in a position to verify some of the reports – such as specific Garda directions which have been reported to us. Nonetheless we believe all of the issues also raise important matters of public interest, and where clarification may greatly assist the public in complying with the regulations.

1. Number and Location of Checkpoints

The statistics published last week and that you intend to publish weekly about arrests, detention and charges under the Covid Regulations have been very helpful. However, it is also essential that information is provided about the number and geographical spread of Covid related checkpoints to address concerns about (i) consistency and non-discrimination in the use of the regulatory powers; and (ii) understanding how the use of checkpoints during the current emergency period differs to ordinary times in order to monitor a return to normal policing practice.

Some members of the public have expressed concern that gardaí have failed to practice appropriate physical distancing at checkpoints. This may give rise of safety concerns for both gardaí and the community.

We would like to request information on:

- i. The number of checkpoints related to Covid 19 which have been put in place during the period of the public health restrictions (from 27 March);
- ii. Locations of these checkpoints by region and division;
- iii. Data on the general use of checkpoints for road traffic or other Garda operations during comparable periods.
- iv. What guidelines are in place for physical distancing by gardaí during checkpoints?

2. Presence of Armed Gardaí at Checkpoints

We have received reports from different parts of the country about the presence of armed gardaí at Covid checkpoints, including at train stations. Given the exceptional public health nature of these specific Garda operations, and the stated emphasis on encouraging compliance with the regulations, ICCL considers the participation of armed gardaí in such operations as wholly inappropriate. The apparent participation of armed gardaí in such operations gives rise to broader concern about the general prevalence of armed gardaí in what is officially an unarmed police service – an issue on which we will write separately to the Commissioner.

We would like to request information on:

- i. Whether armed officers have taken part or are currently taking part in Covid checkpoints or other Covid operations;
- ii. Any official Garda policy on the participation of armed officers in such checkpoints or operations;
- iii. Numbers and ranks of any armed officers who have taken part in such checkpoints and operations.

3. Stop and Search

It has been reported to us that in some urban areas, gardaí, ostensibly engaged in Covid checkpoints or in community policing functions, have engaged in extensive stop and search operations against members of the public, including of shopping bags. Again, given the exceptional public health nature of Covid policing operations, ICCL believes it is essential that such operations be clearly distinguishable from other policing operations. While it may be appropriate for a member to conduct further investigations where he/she has reasonable suspicion in relation specific offences, any widespread or general searches of sections of the community would be inappropriate in this context.

We would like to request information on:

- i. Whether searches been carried out of individuals or vehicles at Covid checkpoints or during related operations?
- ii. What locations have these searches taken place in and what is the profile of those subjected to searches?

4. Deployment of the Public Order Unit

We have also received reports of the deployment of the Public Order Unit to a location or locations in County Wicklow to support Covid operations. This was perceived as intimidatory and is likely to be a disproportionate response in the context of a policing operation based on consent and advice.

We would like to request information on:

- i. Has the Public Order Unit been deployed as part of Covid policing operations, and if so, what is the rationale for such deployment?

5. Use of Pepper Spray

Given that Covid-19 affects the respiratory system, members of the public have expressed concern that use of pepper spray may be especially dangerous at the present time.

ICCL's concerns with regard to the use of spit hoods in this context have already been communicated to An Garda Síochána.

We would like to request information on:

- i. Whether operational guidelines on the use of pepper spray been amended to take into account special health risks associated with Covid 19?

6. Interpretation of 'essential travel' and 'reasonable excuse'

A number of issues have been raised by members of the public about directions they have received from gardaí concerning travel that was deemed to be non-essential, or concerning journeys or activities that they were prevented from undertaking.

We believe that Garda clarification on a number of these points would greatly assist the public, including the following:

- i. People living close to the border with Northern Ireland who wish to cross the border for shopping should not be prevented from doing so;
- ii. There is no role for gardaí in determining which essential retail outlet (e.g. grocery outlet) an individual can access;
- iii. There is no role for for gardaí in determining which items should be considered essential purchases if they are from a recognised essential retail outlet;
- iv. There is no role for for gardaí in determining what activities qualify as exercise under the regulations.

7. Request for ID or travel papers

We have been informed that Gardaí are requesting ID or letters of authority from members of the public. Under the first Emergency Health Act An Garda Síochána have the right to ask a member of the public for their name and address. However, nowhere in

either the enabling Act or in the implementing Regulations is the power given to Gardaí to request ID from members of the public.

We request clarification on the following:

- i. Is it considered Garda policy to request ID at Covid checkpoints?
- ii. If yes, what law does the Garda consider this power derives from?
- iii. If no, can the Garda Commissioner clarify with garda members that they are not entitled to request ID in any circumstances beyond their ordinary powers?

8. Treatment of Protest or Strike

A specific issues has arisen with regard to the treatment of protest and demonstrations. ICCL recognizes that participation in a protest or demonstration was not explicitly listed as a reasonable excuse for movement under the Regulations. Nevertheless, the constitutional right to peaceful protest, and the right to freedom of expression and freedom of assembly under human rights law must be respected, as essential components of a free and democratic society. Members of An Garda must take these rights into account when enforcing the Covid regulations.

ICCL is concerned that restrictions placed on some protestors (Debenhams workers in Dublin city centre) who appeared to be respecting physical distancing were imposed; while at the same time protests in other parts of the country (fishermen in Dingle, Debenhams workers in Cork, protestors outside Four Courts) were facilitated.

We are also concerned at reports that gardaí escorted members of the public to transport facilities and prevented a member of the public speaking with a media outlet.

- i. We request clarification on why different approaches were taken at the different sites, and on whether there are guidelines in place for how gardaí should police protests at this time.
- ii. There is no role for gardaí in accompanying persons to their mode of transport.
- iii. The gardaí should never interfere with the exercise of freedom of expression beyond where there is reasonable suspicion of a criminal offence.

9. Opposing Bail in Covid related cases

ICCL notes from media reports over recent days that gardaí have opposed the granting of bail in a case where an individual has been charged with offences under the Covid regulations and where it appears that he was not facing any other charges. Given the extraordinary nature of the offences under these regulations, and ongoing concerns about overcrowding and risk of outbreaks within the prison system, ICCL queries the basis for opposing bail in such cases.

We would like to request information on:

- i. Is there a Garda policy on opposing bail in cases concerns Covid regulations, and if so what is that policy?

10. Acting on drone footage

ICCL notes from media reports that one local authority has reportedly recorded drone aerial footage for the purpose of tracking individual movement with reference to

public health restrictions and regulations. We understand that this footage has been shared with An Garda Síochána. It had been ICCL's understanding from public comments of Garda management that gardaí have no role in investigating the activities of individuals at their homes, or at their second residences.

We would like to request information on:

- i. Can you confirm that gardaí have no role in investigating the ownership or residence of individuals or families at specific properties?
- ii. Can you confirm that local authorities have no role in investigating the possible commission of criminal offences?

We would appreciate a response on these issues as soon as possibly given the concerns among members of the public and the urgent need for clarity at this extraordinary time for our rights.

Yours sincerely,



Liam Herrick
Executive Director
Irish Council for Civil Liberties