



Údarás Forfheidhmithe Corparáideach
Corporate Enforcement Authority

Memorandum of Understanding between
the Director of Corporate Enforcement

and

An Garda Síochána

This Memorandum is made on the 3rd day of June 2022

Between

The Director of Corporate Enforcement, 16 Parnell Square East, Dublin 1, DO1 W5C2

and

An Garda Síochána, Garda Headquarters, Phoenix Park, Dublin 8, DO8 HN3X

1. DEFINITIONS

“CEA” and *“Authority”* means the Corporate Enforcement Authority

“Director” means Director of Corporate Enforcement

“Member” is a reference to a Member of the Corporate Enforcement Authority, whereas

“member” is a reference to a member of An Garda Síochána.

“Memorandum” means all provisions of this Memorandum of Understanding, as from time to time amended by agreement between CEA and An Garda Síochána in accordance with para. 2.6 of this Memorandum.

“Party” and/or *“Parties”* means a signatory party to this Memorandum of Understanding.

“The 2014 Act” means the Companies Act 2014

“The CEA Act” means the Companies (Corporate Enforcement Authority) Act 2021

“The 2005 Act” means the Garda Síochána Act 2005

“The Chief Executive Officer” means, where only one Member has been appointed to the Corporate Enforcement Authority, that Member. Where more than one Member has been appointed to the Corporate Enforcement Authority, a reference to Chief Executive Officer shall be construed as a reference to Chairperson.

“The Commissioner” means the Commissioner of An Garda Síochána

2. AGREEMENT PARAMETERS

2.1 *Purposes and objectives*

The objective of this Memorandum is to put in place an agreed protocol for the secondment of members of An Garda Síochána to the CEA pursuant to ss. 2 and 944M of the 2014 Act, the Government Decision of 27 July 2021, the Commissioner’s letter to the Director of 23 July 2021, and associated matters.

2.2 This Memorandum confirms that An Garda Síochána and the CEA are committed to: -

- maximising co-operation having regard to their shared goals of investigating suspected criminality, while respecting the parties’ respective statutory mandates and independence;
- promoting positive working relationships and fostering a climate of mutual trust and respect; and
- ensuring an understanding and appreciation of the parties’ respective roles in order to minimise risk, delays, and/or other inefficiencies.

2.3. *Commencement*

This Memorandum is deemed to commence on the date of signature by both parties.

2.4 *Periodic Review*

The operation of this Memorandum shall be reviewed after an initial period of 6 months by an officer of An Garda Síochána duly delegated by the Commissioner and an officer of the CEA duly delegated by the Chief Executive Officer. That review shall be completed within 8 weeks of the initial 6-month period.

2.4.1 The review will evaluate both the terms and implementation of the Memorandum and will: -

- i. identify any issues arising; and
- ii. result in suggestions/recommendations for amendment, where considered necessary, being tabled to the Chief Executive Officer and the Commissioner for consideration.

2.4.2 The parties may amend the terms of this Memorandum by agreement in writing. Any agreed amendment shall be signed by the signatories of this Memorandum or their respective successors and shall be introduced on a date agreed by the parties.

2.4.3 After the initial 6 month review (as referenced at para 2.4 herein), the parties shall review this Memorandum at such intervals as they consider appropriate, but at maximum intervals of 12 months, or exceptionally at any time at the request of either party.

2.4.4 Such further reviews, which will take the form of review referenced at 2.4.1 above, shall be completed within 4 weeks of commencement of the said review.

2.5 ***Termination***

This Memorandum may be terminated by 90 days' notice in writing of either party to the other of its intention to terminate the Memorandum.

3. **FRAMEWORK WITHIN WHICH MEMBERS OF AN GARDA SÍOCHÁNA ARE SECONDED TO THE CEA**

3.1 ***Statutory basis for secondment***

Sections 2 and 944M of the 2014 Act provide for the secondment of members of An Garda Síochána to the CEA.

4. **STATUS OF SECONDED MEMBERS**

4.1 ***Statutory status of seconded members***

In accordance with s. 2 of the 2014 Act, a member of An Garda Síochána seconded to the CEA shall be an officer of the CEA. As further provided for by s. 949(4) of the 2014 Act, the CEA may perform such of its functions as it thinks fit through an officer of the CEA and in the performance of those functions, the officer shall be subject to the direction of the CEA only.

4.1.1 Notwithstanding the secondment, and without prejudice to s. 944D(4) of the Act, a member seconded shall continue to be under the general direction and control of the Commissioner.

4.1.2 Further to s. 944M of the 2014 Act, a member seconded shall continue to be vested with the powers, and be subject to the duties, of a member of An Garda Síochána and may continue to exercise those powers and perform those duties both for the purposes of the 2014 Act and outside that Act.

4.2 ***Duties and obligations of members on secondment to CEA***

The duties and obligations of members of An Garda Síochána on secondment to the CEA, as officers of the CEA, are to perform such of the Authority's functions as directed by the Authority, consistent with the Authority's governing legislation.

4.3 ***Supplementary arrangements***

In support of this Memorandum, the parties will develop a separate document for the purpose of setting out an agreed understanding of certain matters ancillary to the secondment of members.

5. PROCEDURE FOR SECONDING MEMBERS OF AN GARDA SÍOCHÁNA TO THE CEA

5.1 *Process for the selection of secondees*

The parties agree and acknowledge that it is imperative, having regard to Government policy, that there are effective processes and procedures in place to ensure that vacancies in the CEA complement of An Garda Síochána secondees are filled in an expeditious manner.

5.1.1 In that context, An Garda Síochána assumes full responsibility for managing the selection process in a manner that ensures vacancies can be filled in an expeditious manner. Save by way of express agreement between the parties, secondment vacancies will be filled by way of competition. Competitions will be run in line with the Commission for Public Service Appointments' Code of Practice. Where the necessity for a competition is identified, An Garda Síochána will make the necessary arrangements to run such a competition in an expeditious manner.

5.1.2 Eligibility for each competition will be confined to serving members of An Garda Síochána of the relevant qualifying rank. The qualifications, experience, skills, and competencies set for each competition will be relevant to the functions and work of the CEA, will be consistent with rank profiles, and will be agreed with the CEA in advance.

5.2 *Shortlisting and interviews*

Following the expiration of the advertising period, and subject to the volume of applications received, applicants may be shortlisted, and those shortlisted shall be called for interview.

5.2.1 The Interview Board (which will also perform the shortlisting process, if applicable) will be established by agreement of An Garda Síochána and the CEA. Each Interview Board shall comprise of: -

- i. an Independent Chairperson to be agreed by the parties;
- ii. a nominee of the Chief Executive Officer; and
- iii. a nominee of the Commissioner.

5.2.2 The Interview Board can determine whether a second interview is necessary, particularly at higher ranks.

5.3 *Merit List and Assignments*

All candidates assessed at interview as meeting the required standard will be placed on a merit list. A merit list will have a lifetime of 24 months. Candidates will be drawn from the merit list in line with vacancies arising within the CEA. With the express agreement of An Garda Síochána and the CEA, the lifetime of a merit list may be extended if deemed desirable.

5.3.1 Before accepting a secondment offer, a candidate on the merit list will first be required to obtain approval from An Garda Síochána. The provision of such approval by An Garda Síochána is entirely at the discretion of An Garda Síochána management but will not unreasonably be withheld. In order to avoid unnecessary delays in filling vacancies, a decision as to whether or not to grant such approval will be made and communicated by An Garda Síochána to the CEA within 2 weeks of the

candidate having been offered the secondment. In the event that approval has not been granted by An Garda Síochána and communicated to the CEA within that timeframe, the next candidate on the merit list may be offered the secondment – such offer being subject to the approval process referenced herein.

5.4 ***Duration of secondments***

Secondments to the CEA will be for a period of 5 years and may be subject to extension thereafter. The Commissioner retains the right to recall a member on secondment in exceptional circumstances. Should such circumstances arise, the Commissioner will ensure that the CEA is provided with reasonable notice of his intention to recall a secondee in order that the necessary arrangements can be put in place to fill the resultant vacancy, and to facilitate handover arrangements.

5.5 ***Procedure for filling of vacancies arising***

An Garda Síochána will be responsible for ensuring effective succession planning, working collaboratively with the CEA to ensure an active resourcing pipeline, and appropriate handover arrangements. This approach will include an ongoing assessment of current and likely future vacancies e.g., arising as a result of impending retirement, promotion etc. A competition calendar and plan will be agreed between An Garda Síochána and the CEA. Factors influencing a requirement for a competition will include identified future resourcing needs and identified impending vacancies balanced against an assessment of live merit lists.

5.5.1 Save by way of express agreement between the parties, vacancies shall be filled by way of merit lists created at respective ranks further to para 5.3.

5.5.2 Where An Garda Síochána is on notice of a vacancy arising, reasonable notice of the impending vacancy will be provided to the CEA in order that operational continuity can be maintained and so as to facilitate efficient and effective handover arrangements being made in an orderly manner. Where the CEA is aware of increased resourcing requirements, due notice is required in order that the competition plan can be updated.

5.6 ***Procedure for terminating a secondment***

The CEA can request An Garda Síochána to rescind a secondment at any time. If doing so, the CEA will provide a rationale for the request. Where such a request is made by the CEA, An Garda Síochána will recall the secondee in question.

5.7 ***Return of member to An Garda Síochána after secondment period***

At the end of the secondment period (including upon recall by the Commissioner in accordance with para. 5.4 above or the termination of a secondment in accordance with para. 5.6 above) An Garda Síochána management will determine a formerly seconded member's posting upon the return to An Garda Síochána. A formerly seconded member will have no entitlement to a previously held post within An Garda Síochána, nor an entitlement to carry detective status into a new role (unless applicable).

6. CONFIDENTIALITY/INFORMATION SHARING

6.1 *Statutory independence of the CEA*

The CEA has been established by Act of the Oireachtas, i.e., the CEA Act. In accordance with s. 944D of the 2014 Act, the CEA is independent in the performance of its functions.

6.2 *Statutory confidentiality provisions*

The CEA is subject to statutory confidentiality provisions pursuant to s. 944P of the 2014 Act. As officers of the CEA, members of An Garda Síochána seconded to the CEA are subject to the said confidentiality provisions. All information shared by the CEA with An Garda Síochána will be provided in accordance with s.944P of the 2014 Act or any other applicable statutory provisions.

6.3 *Statutory information-sharing gateways*

The parties agree, as far as permitted by law, to endeavour to provide each other with every reasonable assistance upon receipt of a request for information.

6.3.1 All such requests for information should, where possible, be made in writing and with reasonable notice.

6.3.2 In the spirit of co-operation underpinning this Memorandum and having regard to their common interest in investigating suspected criminality, the Parties are supportive of consideration of proposals for joint investigations.

6.4 *Procedures for urgent information requests*

In cases of urgency, requests for information may, at first instance, be made, and responses given, otherwise than in writing. Upon receipt of an urgent request, the Responding Party will endeavour to provide the required information at the earliest opportunity.

7. AN GARDA SÍOCHÁNA SUPPORT FOR SECONDED MEMBERS

7.1 *Seconded members' access to An Garda Síochána resources*

Seconded members of An Garda Síochána will retain full access to necessary Garda information systems e.g., the Garda Portal and the PULSE system, as such access is necessary for the discharge of their functions as CEA officers.

7.1.1 Where seconded members of An Garda Síochána require access to An Garda Síochána resources (e.g., armed support, search teams, surveillance etc.), whether for health and safety reasons or otherwise, those resources shall not unreasonably be withheld.

7.2 *Seconded members' access to An Garda Síochána training*

Seconded members of An Garda Síochána are obliged to comply with An Garda Síochána continuing professional learning and development obligations. Accordingly, seconded members of An Garda Síochána will retain access to An Garda Síochána training courses and programmes such as are necessary for the performance of their duties and responsibilities as members of An Garda Síochána and as officers of the CEA and for the purpose of ensuring

that they remain up to date with relevant policing developments in the areas of training, development, criminal investigative techniques, human rights, health and safety etc.

7.3 ***Officers of the CEA***

In the spirit of co-operation underpinning this Memorandum, civilian officers of the CEA will be provided with access to An Garda Síochána training courses and programmes, subject to the exigencies of an Garda Síochána, as are relevant to the performance of their functions as officers of the CEA and, by way of reciprocity, CEA officers will be made available to provide training to An Garda Síochána in areas relevant to the CEA's statutory mandate.

8. COMMUNICATION AND LIAISON

8.1 ***Channels of communication***

Channels of communication between the CEA and An Garda Síochána shall be, in the first instance, by way of the nominated liaison officers as assigned further to para. 8.2 herein.

8.2 ***Liaison arrangements***

An officer(s) of An Garda Síochána nominated by the Commissioner (Human Resources & People Development or any successor to this Directorate) and an officer(s) of the Authority duly nominated by the Chief Executive Officer of the CEA (Criminal Enforcement Directorate and/or Legal & Policy Directorate or any successors to these Directorates) shall be appointed as liaison officers to act as a first point of contact between the parties regarding the following: -

- the implementation and operation of this Memorandum; and
- the periodic review of the Memorandum.

8.2.1 The nominated liaison officers assigned by the Parties shall meet each other periodically, and no less than 4 times per annum, to discuss issues arising from the operation of this Memorandum and to foster co-operation, positive working relations, mutual trust and respect.

8.3 ***Issues resolution***

Where a conflict of interest or a potentially contentious matter arises, or clarification on an issue as between the CEA and An Garda Síochána is necessitated, such issues shall be raised, and answered, in the first instance as between the officers designated as liaison officers of the respective organisations pursuant to para. 8.2 of this Memorandum.

8.4 ***Escalation procedures***

Where issues raised in the first instance pursuant to para. 8.3 are not capable of resolution at first instance, such issues will be escalated to Assistant Commissioner of Organised and Serious Crime and the Chief Executive Officer of the CEA respectively.

9. TRANSITIONAL ARRANGEMENTS

- 9.1 This Memorandum is signed by the Director in circumstances where, by virtue of the provisions of Section 944F(4)(a) of the Companies Act 2014, the Director will, on the establishment date of the CEA, be a Member of the Corporate Enforcement Authority (and referred to in this Memorandum as the Chief Executive Officer) for the remainder of his term of holding the office of Director.
- 9.2 This Memorandum is signed by the Director to permit the timely and efficient establishment of the CEA and to achieve the objectives set out at paragraphs 2.1 and 2.2 of the Memorandum herein.

Ian Drennan
Director of Corporate Enforcement
3 June 2022

J.A. Harris
Commissioner
An Garda Síochána
3 June 2022