

***SCHEME TO PROVIDE CONCILIATION AND ARBITRATION
MACHINERY FOR MEMBERS OF THE GARDA SIOCHÁNA
OF THE RANKS OF CHIEF SUPERINTENDENT,
SUPERINTENDENT, INSPECTOR, SERGEANT AND GARDA***

PART 1 GENERAL

1. The purpose of this scheme is to enable the Minister for Justice, Equality and Law Reform, the Minister for Finance and the Commissioner of the Garda Síochána on the one part, and the Association of Chief Superintendents, the Association of Garda Superintendents, the Association of Garda Sergeants and Inspectors and the Garda Representative Association on the other part, to provide means acceptable to the Government and to these representative bodies for the determination of claims and proposals relating to conditions of service of members of the ranks they represent and to secure the fullest co-operation between the State, as employer, and the members, as employees, for the better discharge of the functions of the Garda Síochána. Matters within the scope of the scheme will be dealt with exclusively through the machinery of the scheme.
2. The existence of this scheme does not imply that the Government have surrendered or can surrender their liberty of action in the exercise of their constitutional authority and the discharge of their responsibilities in the public interest.
3. In this scheme –

“Board” means the Arbitration Board;

“Adjudicator” means a person appointed in accordance with Paragraph 33 of the scheme.

“Council” means the Conciliation Council;

“representative associations” means the Association of Chief Superintendents, the Association of Garda Superintendents, the Association of Garda Sergeants and Inspectors and the Garda Representative Association, elected in accordance with the provision of the Garda Síochána (Representative Bodies) Regulations;

“the Ministers” means the Minister for Justice, Equality and Law Reform and the Minister for Finance.

4. Statutory provisions affecting arbitration will not apply to any arbitration under this scheme.
5. (1) This scheme will continue in operation unless and until it is terminated by six months' notice given by the Ministers or by the representative associations.

(2) The scheme may be amended by agreement between the Ministers and the representative associations.

(3) An amendment to the scheme will be formally incorporated in it by means of an addendum signed by the Chairperson and by the Secretaries of the Council.
6. (1) Should a representative association sponsor or resort to any form of public agitation (either by themselves or through any other person or association) as a means of furthering claims or seeking redress for grievances which are appropriate to be dealt with through the scheme, the scheme may thereupon be suspended but before such suspension becomes effective a meeting of the Council may be called at the request of the staff side for the purpose of considering any representations that the staff side may wish to make in the matter

(2) The provisions of the foregoing subparagraph will not, in relation to (a) a non-arbitrable matter on which discussions at the Council have been concluded without agreement having been reached or (b) a matter which has been the subject of a motion introduced in accordance with the provisions of paragraph 60 (2) and (3) of the scheme and carried in Dáil Éireann, prohibit (where this is not otherwise expressly prohibited by the scheme or by the rules and regulations governing the conduct of members of the Garda Síochána) the publication of factual information or reasonable comment by designated spokespersons of the representative associations.
7. Except where, in special circumstances, a member of the Force is required for duty for which no substitute is available, he/she will be given permission to attend (a) meetings of the Council or of any sub-committee set up by the Council including meetings under the Facilitator provided that he/she is a member or a secretary of the Council or (b) to appear as a witness; as an advocate or otherwise to give evidence before the Arbitration Board or Adjudicator. Every such attendance will be deemed an occasion of police duty for purposes of travelling expenses and subsistence allowance.
8. This scheme will apply only to Chief Superintendents, Superintendents, Inspectors, Sergeants and Gardai.
9. The Ministers and the representative associations will each bear half common expenses.

PART II – THE CONCILIATION COUNCIL

10. The Council will consist of –
 - (a) a Chairperson, who will be a serving civil servant nominated by the Ministers;
 - (b) an official side comprising not more than six representatives of whom not more than four will be serving civil servants representing the Minister for Justice, Equality and Law Reform, or the Ministers for Justice, Equality and Law Reform and Finance, and not more than two will be members of the Force representing the Commissioner; and
 - (c) a staff side comprising not more than six representatives, each of whom will be a member of the Force or a civilian employed by the representative associations.
11. The staff side representatives will be selected by the representative association or associations representing the rank or ranks to which a claim or proposal which has been referred to the Council relates and may be varied from time to time.
12. The Council will have two secretaries of whom one will be a serving civil servant nominated by the Minister for Justice, Equality and Law Reform and the other a member of the Force nominated by the staff representatives for the time being on the Council.
13. The number of official and staff side representatives at a meeting of the Council may exceptionally be increased by agreement between both sides.
14. Meetings will be held not less frequently than on one day in any period of two months unless in any such period there is no subject for discussion when, by agreement between the official and the staff side secretaries, it will be recorded that no meeting was required. Not more than one meeting of the Council will be held in any period of two months except by agreement between the Chairman and the staff representatives.
15. Subject to the provisions of paragraph 14, all meetings shall be summoned, on the direction of the Chairperson, jointly by the official side secretaries at the request of either the official side or the staff side.
16. (1) The Staff side may request that a matter which they believe to be appropriate for discussions by the Council should be placed on the agenda for the next meeting of the Council.

(2) The question of whether items placed on the agenda are appropriate for discussion by the Council will be a matter for the Chairperson to decide. Before any such item is excluded as not being appropriate for discussion, the Council will be given an opportunity to express its views as to whether it should be included or excluded.

17. The Ministers may cause any matter which they consider to be appropriate for discussion by the Council, and on which it is desired to have the views of the staff side, to be placed on the agenda for the next meeting of the Council.
18. The matters appropriate for discussion by the Council for ranks covered by the scheme will be:-
 - (a) claims relating to pay and allowances and other emoluments whether in cash or in kind,
 - (b) hours of duty,
 - (c) claims in relation to loss of earnings,
 - (d) standards of accommodation officially provided,
 - (e) principles governing the provision and allocation of living accommodation officially provided,
 - (f) principles governing superannuation,
 - (g) principles governing the grant of annual, sick and special leave,
 - (h) principles governing recruitment,
 - (i) principles governing promotion,
 - (j) principles governing discipline,
 - (k) principles governing transfers,
 - (l) suggestions of general application for promoting the efficiency of the Force.
19. The staff side may bring forward for discussion subjects not listed in paragraph 18 if the Ministers agree that they are appropriate for discussion by the Council.
20.
 - (1) It will not be within the competence of the Council to make agreements binding on the Ministers but the Council may make agreed recommendations or, at the request of either side, may record disagreement.
 - (2) Where any doubt has arisen as to the interpretation of a recommendation of the Council the matter may be resubmitted to the Council for clarification.
21.
 - (1) At the request of either side, reports of discussions which take place at meetings of the Council will be prepared and, on approval by the official and staff sides, signed by the secretaries of the Council. On signature the reports will be deemed to be agreed reports of the Council.

- (2) Agreed reports of discussions which take place at meetings of the Council will be submitted to the Ministers and copies of each such report will be forwarded to the secretary of the staff side of the Council.
22. Decisions of the Ministers on matters discussed at the Council will be conveyed to the staff side secretary of the Council within two months of the adoption of Agreed Reports of the Council which contain agreed recommendations or within such longer period as the two sides may agree.
23. (1) The proceedings of the Council will be confidential and statements concerning them will not be issued without the authority of the Council,
- (2) Where an agreed report of the Council contains an agreed recommendation, the Council will not authorise any publication of the relevant proceedings until the Minister's decision has been conveyed on such agreed recommendation.
- (3) Where authority is granted by the Council for the publication of its proceedings, such authority will be subject to the condition that the agreed report or the section relating to the particular item concerned is published in full and that no editing thereof is undertaken.
24. The Council may, if it considers such a course desirable, set up a sub-committee of official and staff representatives to consider and report to it on any subject which is appropriate for discussions by the Council.

PART III – FACILITATION

25. As an aid to the negotiation process, discussions at the Conciliation stage may be continued under a Facilitator should both sides so agree, where the matter under discussion is arbitrable, or at the request of either side, where the matter under discussion is not arbitrable or where there is doubt as to whether or not the matter is arbitrable.
26. The Facilitator shall be a person agreed by the official side and the staff side.
27. The Facilitator shall have the function of seeking to bring the two sides to an agreement.
28. If agreement does not prove possible, the Facilitator shall prepare a report recording the respective positions of both sides. The agreed report of the Council will include the Facilitator's report.

PART IV – ARBITRATION

29. There will be two forms of arbitration – an Arbitration Board and an Adjudicator.
30. The Arbitration Board will be appointed by the Government and will consist of:-
 - (a) a Chairperson;
 - (b) a member nominated by the representative associations;
 - (c) a member nominated by the Government.
31. The Chairperson shall, on the nomination of the Ministers in agreement with the representative associations, be appointed by the Government. The Chairperson and the other members of the Board will hold office for such term as may be fixed by the Government at the time of their appointment.
32. Whenever the Chairperson is through ill-health or other cause temporarily unable to perform the duties of his/her office, a Deputy Chairperson may be appointed by the Government on the nomination of the Ministers in agreement with the representative associations to hold office during the period of absence of the Chairperson. The Deputy Chairperson will, while his/her appointment continues, have all the duties and powers of the Chairperson.

33. The nomination and appointment of the Adjudicator, including provision for a Deputy Adjudicator, will be on the same basis as for the Chairperson of the Board, as set out in paragraphs 31 and 32.
34. Members of the Oireachtas or the European Parliament, persons serving in the civil service, officials of trade unions or civil service staff organisations and serving or former members of the Garda Síochána will be ineligible for appointment as Chairperson or Deputy Chairperson of the Board. Members of the Oireachtas or the European Parliament will also be ineligible for appointment as Adjudicator or Deputy Adjudicator or as members of the Board.
35. If, within a period of two months following the termination of a period of office of the Chairperson of the Board, or the Adjudicator, a successor in office has not been appointed it shall be open to the representative associations or the Ministers to approach the Chairperson of the Labour Court on the matter with a view to his/her having consulted with the representative associations and the Ministers, putting forward a person for acceptance by the parties for the purposes of paragraphs 31 and 33.
36. The secretary of the Board and the secretary to the Adjudicator will be a serving civil servant and will be appointed by the Minister for Justice, Equality and Law Reform after consultation with the Chairperson of the Board and the staff side.
37. The following claims for ranks covered by the scheme will be arbitrable;
 - (a) claims for adjustments of rates of pay and allowances (including claims for new allowances);
 - (b) claims in regard to periods of annual leave and sick leave;
 - (c) claims in regard to total weekly hours of work;
 - (d) claims in regard to overtime;
 - (e) claims for compensation for loss of earnings.
38. To be referable to the Board or Adjudicator a claim must-
 - (a) be arbitrable;
 - (b) have been discussed at the Council; and
 - (c) have been the subject of either
 - (i) disagreement recorded in a report of the Council which has been submitted to the Ministers or
 - (ii) an agreed recommendation made by the Council which has not been accepted by the Ministers, provided that the decision of the Ministers has been communicated to the Council.

39. All arbitrable claims for revisions of pay or significant changes in other remuneration or conditions of members of the Garda Síochána, and any other claims involving significant extra expenditure shall, subject to the provisions of the scheme, be referable to the Board. All other arbitrable claims will be referable to the Adjudicator save that any such claim may by agreement between the official side and representative associations concerned be referable to the Board.
40. Where, in accordance with paragraph 38 preceding, a claim becomes referable to arbitration, the representative association concerned or the Ministers on their own initiative may request arbitration provided that, in the case of a claim to which sub-paragraph 38 (c) (i) applies, the agreed report of the Council has been submitted to the Ministers.
41. (1) Where the arbitrability of the claim is disputed, or where there is a dispute as to whether a claim should be heard by the Board or the Adjudicator, the party making the claim will be so informed within one month of receipt of the statement of case by the official side and the grounds on which the matter at issue is disputed will be stated. The other party may then request that the question be determined in accordance with the provisions of sub-paragraph (2) of this paragraph and will set out the grounds on which it bases its position. The secretary to the Board or to the Adjudicator, as the case may be, will be furnished with a factual statement, agreed beforehand between the parties, of the matter in dispute together with statements setting out the contentions of each party on the question.
- (2) A dispute as to the arbitrability of a claim shall be determined in the following manner:-
- (a) where it is agreed by the official side and the representative association concerned that the claim, if deemed to be arbitrable, would be properly referable to the Adjudicator, the dispute will be determined by the Adjudicator;
- (b) in all other cases the dispute will be determined by the Board.
- (3) A dispute as to whether an arbitrable claim should be referable to the Board or the Adjudicator shall be determined by the Board.
- (4) The determination of a dispute in accordance with the provision of sub-paragraphs (1), (2) and (3) on this paragraph shall be final.
- (5) In the event that the factual statement referred to in sub-paragraph (1) above is not agreed within two months of the date on which the party disputing arbitrability notified the other party that arbitrability was being disputed, it will be open to the side not disputing arbitrability to refer the matter to the Board or Adjudicator as appropriate. The other side may, if it wishes, submit a counter-statement to the Board or Adjudicator as appropriate.

PART V – PROCEDURES FOR DEALING WITH CLAIMS

Conciliation

42. Claims lodged by the representative associations will be transmitted by the secretary of the staff side to the secretary of the official side. Where a claim, if conceded, would involve extra expenditure an estimate of the annual cost of conceding the claim will be given, indicating the estimated ultimate annual cost where this differs from the estimated immediate annual cost.
43. Claims will be formally presented, and the official side's response given. Where a claim is referred to a sub-committee of a council, presentation and/or response may, subject to the agreement of the official and staff sides, take place at the sub-committee.
44. Claims will be fully discussed in Council or sub-committee with a view to seeking agreement through negotiation.

Facilitation

45. The provisions of Part III of the Scheme (Facilitation) will apply in the event that agreement is not reached between the parties at the Conciliation stage.

Arbitration

46. The detailed procedures for dealing with arbitrable claims for revisions of pay or significant changes in other remuneration or conditions are set out in the Appendix to this scheme.
47. Where agreement is not reached on an arbitrable claim, the matter may be referred to the Board or the Adjudicator, subject to the provisions of paragraphs 37 – 41 above.
48. (1) The staff side will forward a statement of the case, including proposed terms of reference, to the Ministers who will within two months, save in entirely exceptional circumstances, transmit the statement to the secretary of the Board or to the secretary to the Adjudicator, as appropriate, together with their own counter-statement at the same time informing the secretary whether they agree with the terms of reference proposed.

(2) A copy of the Ministers' counter-statement will be sent to the staff side.
49. (1) The Ministers may refer any arbitrable matter to the Board provided disagreement on the matter has been recorded at the Council in a report which has been submitted to them.

(2) In such event the Ministers will transmit a statement of the case, including proposed terms of reference, to the secretary of the Board or to the Adjudicator, and to the Staff Side. The Staff Side will within two months, save in entirely exceptional circumstances, transmit the statement to the secretary of the Board or to the secretary to the Adjudicator, as appropriate, together with their own counter-statement at the same time informing the secretary whether they agree with the terms of reference proposed.

(3) A copy of the staff side's counter-statement will be sent to the Ministers.

50. Each side's statement of case will, as far as possible, contain all submissions relied upon in relation to a particular claim.
51. Failing agreement, the respective statement of case/counterstatement will, subject to the provisions of this scheme and to the rules of procedure of the Board or Adjudicator together constitute the terms of reference. The statement of case and/or the counterstatement may refer to the discussions which have taken place on the claim at conciliation level including any report by the Facilitator.
52. Where arbitrability of a claim is disputed the matter will be determined on the basis set out in paragraph 41 above.
53. The staff side may select not more than three advocates to present their claim to the Board. Each such advocate will be a member of the Force or a civilian employed by the representative associations.
54. The Ministers may select not more than three advocates to present the official case to the Board in relation to any claim. Each such advocate will be a serving civil servant or representative of the Garda Commissioner.
55. The Board and the adjudicator will involve two advocates from each side in their deliberations on the claim.
56. At the request of either side, the Board or the Adjudicator may summon witnesses and request them to furnish evidence in writing or otherwise.
57. Subject to the terms of this scheme, the Board and the Adjudicator will settle their own procedures in consultation with the two sides of the Conciliation Council. Unless by agreement of both sides, the sittings of the Board will be in private.
58. In the case of any claim submitted to the Board, the Board will submit to the Ministers a report, signed by the members of the Board, setting out the finding of the Board on that claim. In the case of a claim referred to the Adjudicator, a report signed by him/her setting out his/her finding on the claim will be submitted to the Ministers. A finding of the Board or Adjudicator shall be based only on the statement of case, counterstatement, submissions at the hearings and the considerations discussed by the Board or before the Adjudicator. A finding shall be made at the meeting between the Board or

Adjudicator, as the case may be, and the advocates presenting the claim and the advocates presenting the Ministerial side case. Reports shall set out the basis of the findings of the Board or Adjudicator, as the case may be.

59. Within one month of the receipt of a report from the Chairperson of the Board, or adjudicator, the Ministers will present it to Dáil Éireann. No such report will be published before presentation to Dáil Éireann.
60. (1) Subject to what follows, the Ministers will authorise the implementation of the finding contained in the report within one month of receiving the report.
- (2) If the Ministers consider that the implementation of the report would have serious financial or budgetary consequences or involve additional taxation in the current year, they will submit the report to the Government. The Government will either authorise the implementation of the finding within three months of the receipt of the report by the Ministers or will, as soon as may be thereafter, introduce a motion in Dáil Éireann proposing an alternative basis for implementation.
- (3) If, for reasons other than, or in addition to, those mentioned in sub paragraph (2) preceding, the Ministers consider that the report should not be accepted, or that the report should be brought to the attention of the Government, they will submit the report to the Government. The Government will either authorise the implementation of the finding within three months of the receipt of the report by the Ministers or will, as soon as may be thereafter, introduce a motion in Dáil Éireann, the rejection of the finding or its modification or the deferment of its implementation pending further consideration.

Criteria

61. At each stage of the procedure under the scheme for dealing with claims i.e. conciliation, discussions under the Facilitator, consideration by the Adjudicator or the Board, the following factors (in addition to any other considerations, adduced by either side in any particular case) will be taken into account:-
- the necessity to ensure that the State as employer can continue to recruit, retain and motivate members of the Garda Síochána of the calibre required.
 - the necessity to take account of the prevailing position in relation to any national policy on pay as reflected in Pay Agreements covering the Garda Síochána.
 - the necessity to take account of the state of the public finances, including the consequences of the Treaty on European Union, and the general economic and employment situation.
 - the necessity to take account of the extent to which working conditions, the organisation of work, pay, perquisites, conditions of employment and

other relevant benefits of ranks within the Garda Síochána differ from those of employees in outside employments doing jobs of the same level of responsibility.

- the necessity to ensure that the Garda Síochána can continue to adapt to necessary changes, to achieve greater efficiency and effectiveness and to match increases in productivity in the remainder of the economy.

No significance attaches to the order in which the criteria are set out.

APPENDIX

PROCEDURES FOR HANDLING PAY CLAIMS AND OTHER MAJOR CLAIMS

1. Such claims will be lodged and presented in accordance with the procedures set out in paragraphs 42 and 43 of scheme.
2. Ranks within the Garda Síochána may seek a review of their pay (or their pay and overall conditions of employment) at intervals of four years. This would not preclude claims for general increases in pay on behalf of all members of the Garda Síochána comprehended by the scheme.
3. A claim for a review of pay (or pay and overall conditions of employment) of any rank coming within the ambit of the Conciliation Council, or a claim on behalf of all ranks, will, unless otherwise agreed between the parties, after formal presentation and response at Conciliation Council, be referred to a sub-committee of Conciliation Council.
4. A claim for a review may be lodged one year in advance of the year in which a review of the pay (or pay and overall conditions) of the particular rank could be sought. The two sides will, unless otherwise agreed between the parties, establish a sub- committee of the Conciliation Council with a view to making preparations for the review.
5. These preparations will involve a detailed examination of the factual basis put forward in support of the claim. Where the factual basis/data involved comparisons with current rates and conditions in other employments, it will be open to the official side, without prejudice to the validity or relevance of comparisons in general or any comparison in particular, to put forward alternative comparisons.
6. At the request of either side the relevant factual information assembled will be referred to an independent unit within the Labour Relations Commission.
7. The independent unit will be asked to confirm that the factual information provided constitutes an adequate and representative information base as an input to negotiations on the claim. The unit shall act in consultation with the appropriate Sub-Committee mentioned in paragraph 4 above, with a view to giving such confirmation, which could involve adding to the factual information referred to it. The totality of the information will constitute the report of the independent unit.
8. It will be open to the Labour Relations Commission, having consulted the Conciliation Council, to publish an appropriate synopsis of the report mentioned in paragraph 7 above.

9. The referral of the factual information to the unit and the issuing of a report by the unit will not:-
 - (1) preclude either side bringing forward arguments, other than those relating to comparisons with pay and conditions in other employments, which they deem appropriate to the consideration of the claim;
 - (2) prejudice the position of either side in relation to the validity or relevance of any comparison to the claim or to the criteria set out in paragraph 61 of the scheme.
10. In the event that the parties are unable to reach an agreement in direct discussions at the sub-committee of the Conciliation Council, the negotiations may, with the agreement of both sides, continue under the Facilitator who will be a person agreed between the official side and the staff side for that purpose. The Facilitator will act in support of the negotiation process.
11. If the claim is not resolved at that stage, it will be open to either side to refer the matter to the Board, subject generally to the provisions of the Scheme. The Agreed Report of the discussions will include a report of the negotiations conducted under the Facilitator.
12. A claim for a general increase in pay on behalf of all ranks comprehended by the scheme will, if it involves comparisons with general movements in pay elsewhere in the economy, be dealt with in accordance with paragraphs 6 to 11 above.