



# An Garda Síochána

## Human Rights Screening Tool

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<b>Effective Date</b>	1 <sup>st</sup> June 2019
<b>Version No.</b>	Version 1.0
<b>Approved by</b>	Garda Executive
<b>Introduced by</b>	HQ Directive 19 /2019
<b>Policy Owner</b>	Executive Director Legal



## Introduction

This human rights Screening Tool provides a structure for the development, implementation and monitoring of human rights compliance consistently across the three pillars of policy, training and operations. It aims to ensure human rights standards are met in accordance with legal obligations.

## Scope

This Screening Tool is to be used in conjunction with the Human Rights Framework by those developing and implementing policy, training materials and operational orders and inspection by supervisory officers, inspection and review teams or other agreed processes. In that context, this Screening Tool and all associated documentation apply to members of An Garda Síochána and Garda Staff. It also applies to Police Officers from the Police Service of Northern Ireland (PSNI) seconded to An Garda Síochána in accordance with Section 53, Garda Síochána Act 2005.

## Relevant Terms and Definitions

The term ‘**member of An Garda Síochána**’, is defined in the Garda Síochána Act 2005, as amended, as; a member of any rank (including the Garda Commissioner) and a reserve Garda but does not include a member of the civilian staff of An Garda Síochána.

The term ‘**civilian staff**’ in the Garda Síochána Act 2005, as amended, is utilised to reference civilian staff of all grades within An Garda Síochána.

The term ‘**Garda Personnel**’ in this Human Rights Framework and Human Rights Screening Tool will be utilised to reference both members of An Garda Síochána and Garda staff.

The term ‘**document**’ is used throughout the Screening Tool which primarily relates to policy, procedure, guidance, training material and operational documents such as operational orders. It also refers to any amendments to the said documents.

## Roles & Responsibilities

This Screening Tool provides a set of questions at **Appendix A** to be applied and completed by those developing and implementing policy, developing and implementing training materials, developing and implementing operational orders and inspection by supervisory officers, inspection and review teams or other agreed processes.

## Screening Tool

The questions are prompts to ensure human rights standards are met in accordance with legal obligations. Above all, they should ensure that human rights considerations are at the core of modern day policing.



In answering the questions, it is important to advocate and facilitate the desire of An Garda Síochána to promote and protect human rights in a positive and proactive way. In developing policy, training material and operational orders for example, it is important that relevant human rights principles are interwoven throughout the document as appropriate. It is important to ensure clear and unambiguous guidance is provided to maximise compliance.

This Screening Tool is to be completed by the Owner to demonstrate what steps have been taken by the Owner to ensure compliance with human rights obligations. The Response sections should be completed by the individual completing the document, providing evidence of research/documentation/consultation process with a view to ensuring full compliance with human rights obligations. While the majority of the questions will apply across the three pillars, there will be some questions unique to specific pillars for example, question 15 - transparency. This question is unique to policy and is not applicable to operational orders for operational reasons. It will be necessary to ensure that each question is answered. In the event that it is not applicable the reason must be stated. The completed Screening Tool should be attached to the file for this purpose.

Equally, any proposed amendments to the approved document must be subjected to this Screening Tool.

This Screening Tool is accompanied by Guidance Notes for use in conjunction with the human rights framework.

This completed Screening Tool may be the subject of disclosure/discovery.

### **Compliance**

Compliance with the Human Rights Screening Tool is mandatory by those developing and implementing policy, training materials and operational orders and inspection by supervisory officers, inspection and review teams or other agreed processes.

### **Related Documents**

This Human Rights Screening Tool should be read in conjunction with the Human Rights Framework.

### **Legal & Human Rights Screening**

This document has been legal and Human Rights screened in terms of the respective obligations placed on An Garda Síochána for the subject area concerned.



**Ethical Standards & Commitments**

Every person working in An Garda Síochána must observe and adhere to the standards and commitments set out in the [Code of Ethics](#) for An Garda Síochána and uphold and promote this Code throughout the organisation.

**Process Review**

This document and associated Human Rights Framework will be reviewed 12 months from its date of effect and every three years thereafter or as appropriate.

**Disclaimer**

This document is not intended to, nor does it represent legal advice to be relied upon in respect of the subject matter contained herein. This document should not be used as a substitute for professional legal advice.

**Framework & Screening Tool Feedback**

The Policy and Governance Coordination Unit maintains a Policy Issues Log. Where there are potential issues regarding the implementation of the Process set out in this document, please forward an outline of same through the relevant Divisional Office to the Section mail-box [policy.governance@garda.ie](mailto:policy.governance@garda.ie). Divisional submissions will be recorded in the Policy Issues Log and forwarded to the Policy Owner for whatever action deemed necessary.



Issue	Question	Response
<b>1. Aim/Intention</b>	1.1 What is the aim/ intention/rationale of this document? Give details.	
<b>2. Scoping Exercise</b>	2.1 Is the human rights framework or any other document relevant to the formulation of this document? If not, please indicate the reasons why.	
	2.2 Who are the relevant partners/stakeholders that should be consulted in the formulation of this document?	
	2.3 List stakeholders consulted in the formulation of this document, if relevant. In cases where consultation did not occur, please indicate the reasons why.	

Issue	Question	Response
<b>3. Identify potential to Promote Human Rights</b>	3.1 Is there potential within this document to show positive promotion of human rights norms? If so, give details.	
<b>4. Identify potential to Interfere with Human Rights</b>	4.1 Identify potential for interference with an individual's rights? Give details. Please refer to the human rights framework.	
<b>5. Status in terms of previous document review</b>	5.1 Has the document been previously screened for human rights compliance in accordance with this Screening Tool? If so, give details.  5.2 Has the document been the subject of any legal/human rights advice? If so, give details.	
<b>6. Fundamental Principles</b>	6.1 Does the document address the fundamental principles of legality, necessity, proportionality, accountability and non-discrimination in respect of each potential interference with human rights? Give details.  6.2 Does the document take account of the Garda decision-making model? Give details.	

Issue	Question	Response
<b>7. Legality</b>	7.1 Does the document contain a statement explaining the specific legal basis for any action, direction or use of discretion? Give details.	
<b>8. Necessity</b>	8.1 Does the document assert any legitimate aim(s), which justify interference with rights identified at 4.1 (above)? Give details.  8.2 Is the action strictly necessary in order to resolve a particular problem or deal with a threat? Give details.  <i>Note: Any action taken must be in accordance with law.</i>	
<b>9. Proportionality</b>	9.1 Does the document ensure that any action taken is proportionate to the threat or issue that it seeks to address?  9.2 Have other options been considered to mitigate the interference(s)? Explain why these may have been discounted?	
<b>10. Accountability</b>	10.1 Does the document draw sufficient attention to the Human Rights Framework? For example, areas addressing the decision-making model, notetaking/documenting decision making, failure to comply with human rights standards?	



Issue	Question	Response
<b>11. Equality and Non Discrimination</b>	<p>11.1 Is there any potential for this document to promote equality/non-discrimination? If so, give details.</p> <p>11.2 Is there any particular group of people identified that might potentially be at risk of discrimination as regards the implementation of this document? If so, give details.</p> <p>11.3 Where differential treatment may occur as a result of the operation of the document, how can this be justified or prevented as appropriate? Give details.</p> <p>11.4 In an employment context, is there potential for unlawful discrimination against Garda Members or Garda Staff as result of the document? Give details.</p>	
<b>12. Legal Advice</b>	<p>12.1 Does any aspect of the document require legal advice from Garda Legal Section? Give details.</p>	
<b>13. Identify potential Integrity Issues</b>	<p>13.1 Have any groups or role holders within An Garda Síochána been identified as potentially more vulnerable than others as a result of this document? If so, give details.</p>	





Issue	Question	Response
<b>14. Accessibility</b>	14.1 Is the document comprehensible and accessible? Give details.	
<b>15. Transparency</b>	15.1 Can all or part of this document be made available publicly? Give details.  15.2 If this is not possible, please outline the reasons why the document cannot be made available publicly.	
<b>16. Inspection</b>	16.1 Does the document have supporting material for decision making to ensure: A. compliance with human rights standards, and B. for inspection purposes? Give details.	
<b>17. Review Clause</b>	17.1 Has an appropriate review mechanism been embedded to reflect impacts of new legislation and case law?  17.2 Does the document make provision for earlier review in light of significant changes to legislation/judgments in domestic or European Courts/Tribunals, findings of oversight/monitoring bodies etc.	

**NOTICE**

**The document and its implementation in practice must be human rights compliant.**

**Completed by:** \_\_\_\_\_ **Name/Rank/Grade of Author**      **Date:** \_\_\_\_\_

**APPROVED BY:** \_\_\_\_\_ **Name/Rank/Grade of Owner**      **Date:** \_\_\_\_\_



Question	Guidance Notes
1.1	Identify the aim and intention of the document in a short Statement. Ensure that the aim and intention is clearly stated in the document and that the aim in itself is screened for human rights compliance – revisit this question when you have completed the remainder of the Screening Tool. Add a short line or two on rationale, if appropriate.
2.1	<ol style="list-style-type: none"> <li>(1) It will be necessary to consult An Garda Síochána human rights framework and assess which human rights standards are likely to be engaged/interfered with and are relevant for the formulation of this particular document / amendment.</li> <li>(2) Any other relevant international guidance consulted should be cited here for example, Judgments of the ECt.HR specific to this document.</li> <li>(3) All relevant domestic legislation consulted should be cited here.</li> <li>(4) Relevant aspects of the Code of Ethics for An Garda Síochána should be cited here.</li> <li>(5) Any other relevant policies or ‘best practice’ policing documents consulted should be cited here.</li> </ol>
2.2	<ol style="list-style-type: none"> <li>(1) List here all internal members who should be consulted in relation to this document (<i>for example, relevant senior management, trainers, tactical support, Garda Professional Standards Unit, Garda Staff Associations, Strategic Human Rights Advisory Committee, Garda Legal Section, etc</i>).</li> <li>(2) List here all external partners who should be consulted in relation to this document (<i>for example, Irish Human Rights and Equality Commission, Department of Justice &amp; Equality, Policing Authority, Garda Síochána Ombudsman Commission, Garda Inspectorate, Irish Centre for Human Rights, Amnesty International, Irish Council for Civil Liberties, Office of Director of Public Prosecutions, Health Service Executive, Tusla etc</i>). <i>The purpose of this consultation is to make sure all needs and rights are considered in a way which factors in organisational learning and training realities.</i></li> </ol>
3.1	<ol style="list-style-type: none"> <li>(1) All rights that might potentially be promoted and protected proactively by this document should be listed here with their relevant source (for example the standard clause relating to the protection against ill-treatment, data protection).</li> <li>(2) Potential to promote the rights of both employees and members of the public should be adequately considered.</li> <li>(3) Some of the rights listed here may equally fall to be considered below where protecting human rights to the fullest extent possible may entail legitimate interference of certain aspects of certain rights.</li> </ol>



Question	Guidance Notes
4.1	<p>(1) All potential for possible interference with rights should be summarised here, together with the extent of limitation permitted in respect of each right.</p> <p>(2) Some human rights are absolute and cannot be infringed for any reason, such as the prohibition against torture, inhuman or degrading treatment (Article 3 of the ECHR). Others are structured to allow for interference or limitations under certain conditions. Interference with such rights does not necessarily violate the suspect's rights provided it is grounded in law and respects the principles of legality, necessity, proportionality, accountability and non-discrimination. Every interference with a human right must serve a legitimate aim.</p> <p>(3) The extent and detail in which interferences are legally determined depends on the particular right at stake. Some rights can be legally restricted in certain circumstances (<i>Article 8 of the ECHR on the right to private and family life or Article 11 of the ECHR on freedom of assembly, for example</i>), while others may be legally restricted on a very limited basis (<i>Article 5 of the ECHR on the right to liberty and security of person</i>).</p> <p>(4) Record the extent to which the document engages with rights of Gardaí as well as members of the public.</p>
5.1	<p>(1) If it has been, only the amendment requires screening; If it has not been, the whole document requires screening.</p> <p>(2) State whether full or partial screening is being carried out and record the date.</p>
6.1	<p>(1) The document should state that the key guiding principles of legality, necessity, proportionality, accountability and non-discrimination, underpin every aspect of the application of the document. Each of these must also be considered in more detail in terms of how they relate to the particular area being covered by the document. They should be incorporated into the document to the extent necessary to give effect to these principles in implementing the document in question.</p>
6.2	<p>(1) The Garda decision-making model should be considered in respect of each document and should give effect to the document as appropriate.</p>

Question	Guidance Notes
7.1	<p>(1) All actions by An Garda Síochána must have a clear basis in law. Consideration must be given to the relevant law(s) related to the action and its interference with the human right(s) at stake. This is because any interference with a human right must be based on a legal provision. The document should therefore clearly identify the appropriate legal bases for actions, directions and use of discretion that may flow from the appropriate application of the document. <i>(These may be in the form of specific legislation or by reference to clearly established principles at common law, citing relevant cases).</i> The use of discretion must always aim to avoid arbitrariness. In this regard, the use of discretion should be guided by a process which involves “<i>taking relevant considerations into account, ignoring irrelevant considerations and acting proportionately.</i>” The decision making model is relevant in this regard. The following questions should be considered:</p> <ul style="list-style-type: none"> <li>• What are my legal powers in this situation?</li> <li>• What legal action am I obligated to take?</li> <li>• Have I any discretionary power in this situation?</li> <li>• What are the limits of that discretion?</li> </ul>
8.1	<p>(1) See Guidance Note 4.1(2) &amp; (3). Having highlighted the potential for interference with certain rights above, it should be stated here the legitimate aim(s) which might warrant interference with highlighted rights and any legitimate considerations which should be taken into account to identify whether a proposed course of action will in fact be necessary in any particular circumstances. A legitimate aim may include, but is not limited to:</p> <ul style="list-style-type: none"> <li>• national security;</li> <li>• territorial integrity or public safety;</li> <li>• prevention of disorder or crime;</li> <li>• protection of health or morals;</li> <li>• protection of the reputation of others.</li> </ul> <p>To help identify whether there is a legitimate aim involved it will be necessary to consider the law(s) and human right(s) relevant to a situation. Each right engaged by the action/instruction in the document should be examined to establish which, if any, legitimate aim is provided.</p> <p>(2) The question that must be satisfied is as follows:</p> <p>Do the steps provided to achieve the legitimate aims interfere with the identified rights to the least extent <i>necessary</i>?</p>

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- (1) This is where the document must demonstrate that the decision making process under the document incorporates proportionality as an ongoing consideration where the potential interference of rights is concerned.
- (2) Prior to the decision, any other options which would have achieved the same aim must be carefully considered. The decision-maker should be advised here how to evidence any other options considered. That is if there are options. The policy should ensure that the least intrusive method is adopted and indicate how it has attempted to accommodate potentially competing rights or provide a fair and objective balance where rights are in clear conflict.
- (3) The basic idea of proportionality is encapsulated in the common phrase of “*not using a sledgehammer to crack a nut*”. It is about establishing the proper relationship between the means employed and the aims pursued. The end does not justify the means. It is important to achieve objectives in the least intrusive way.
- (4) The following questions are a useful guide to determine necessity and proportionality:
  - Is the action appropriate to achieve the legitimate aim?
  - In answering this question, examine whether the measure is appropriate and effective. Ineffective measures are not proportionate.
  - Is it necessary (a “pressing social need”)?
  - Is it the least intrusive measure?
  - Are there any alternatives?
  - Excessive measures are not proportionate.

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- (1) This seeks to ensure the procedure relating to a specific document contains sufficient decision-making processes and guidance to be followed by personnel implementing the document.
- (2) These checklists and the issues for consideration in reaching a decision are in addition to the fundamental principles of legality, necessity, proportionality and non-discrimination.
- (3) The need to document any decisions and actions taken is highlighted here.
- (4) Standards of documentation include references to standard forms, note book, operational orders, etc., which should be easily identifiable and retrievable for inspection.



Question	Guidance Notes
11.1	(1) Note how this document promotes equality/non-discriminatory practice.
11.2	<p>(1) Which groups, if any, have been identified to potentially be affected by the operation of the document? In this regard, consider whether this document has potential to impact adversely on men, women, the elderly, children, young people, people with learning or other disabilities, those with mental health problems etc. List those considered to potentially be affected by the operation of the document.</p> <p>(2) To assist in this regard, consider whether the document has potential to engage with the following wrongful reasons for discrimination:</p> <ul style="list-style-type: none"> <li>• <i>Age, colour, disability, nationality, family status, ethnic or national origins, gender, sexual orientation, marital status, gender non-conformity, membership of the traveller community, political opinion, religion, residence status, race or social origin.</i></li> </ul> <p>(3) Note relevant issues considered and record action taken to mitigate any potential discriminatory impact by implementing the document.</p>
11.3	<p>(1) Arbitrary discrimination is forbidden. Differential treatment is not prohibited in all instances. Therefore, any differential treatment must have an objective and reasonable justification. Where differential treatment is identified, the following questions should be addressed to establish and enquire into the justification for differential treatment:</p> <ol style="list-style-type: none"> <li>a) What is the justification for this differential treatment? Does it pursue a "legitimate aim"?</li> <li>b) Is the justification objective and reasonable or arbitrary?</li> <li>c) If the justification is considered to be arbitrary the document shall be revised.</li> <li>d) If the justification is considered objective and reasonable, then consider whether the differential treatment is proportionate ie. are the means used proportionate to the aim sought to be achieved by the document, or could that aim be achieved without resorting to differential treatment.</li> </ol>
11.4	(1) Consult relevant chapter of Human Rights Framework to establish the key human rights principles in this regard and consider the duties imposed on An Garda Síochána by employment law, see for example, Employment Equality Act 1998; Equal Status Act 2000; Disability Act 2005; Equality Act 2014. It may be necessary to consult with Executive Director Human Resources & People Development and/or Executive Director Legal for advice as required.

Question	Guidance Notes
12	<p>All Policies/Procedures/Guidance should be forwarded to Executive Director Legal for human rights/legal advice if the policy author identifies a clear legal issue requiring further clarification. The Screening Tool should be completed insofar as is possible by the Owner of the document. Once legal advice is received and the document is amended accordingly, it is not necessary to return the document for further human rights/legal advice unless there has been a material change or further clarification is sought. The responsibility for completing the Screening Tool rests with the Owner of the document.</p>
13	<ol style="list-style-type: none"> <li data-bbox="254 500 2003 607">(1) Identify potentially harmful effects of the proposed document on groups/individuals within An Garda Síochána. Special care will be required when the instruction necessitates the handling of cash, property or financial claims to ensure that this issue is appropriately addressed. Relevant policies must be considered in relation to this issue.</li> <li data-bbox="254 646 2003 753">(2) When authoring documents, authors must be aware of the fact that the public will judge An Garda Síochána on the basis of their perceptions. As such, adequate safeguards to obviate such perceptions must be inbuilt to protect both individual members of staff of An Garda Síochána and the organisation.</li> </ol>
14	<p>Ensure that the document is easy to understand and easy to implement in a human rights compliant manner. Only relevant human rights principles should be interwoven throughout the document. It is not necessary to quote extracts from cases to explain a point. <i>(Use plain language, simple and concise explanations, efficient and effective process etc).</i></p>
15	<ol style="list-style-type: none"> <li data-bbox="254 1015 2003 1195">(1) In line with a desire for greater accountability and transparency, the default position is that policy should be available to members of the public and published on the Garda Website to the fullest extent possible. There may, however, be operational and security reasons why particular aspects of a policy should not be so available. This would typically be the case in respect of operational documents, procedures and guidance documents. If in doubt, Chapter 9 of the <a href="#">Guidelines for Prosecutors [4th Edition - October 2016]</a> (Disclosure - privilege) should be consulted at <a href="http://www.dpp.ie">www.dpp.ie</a></li> <li data-bbox="254 1234 2003 1305">(2) Ensure that the Policy is scrutinised for procedure or tactics that need to be kept internal for valid operational reasons. Advice should be obtained from the Policy and Governance Coordination Unit in relation to policy matters.</li> </ol>

Question	Guidance Notes
16	<p>(1) Having completed the Screening Tool, are you still confident that any negative differential impact is necessary and defensible and that different needs and sensitivities have been provided for where appropriate? Is material supporting the research/consultation and decision-making properly maintained?</p> <p>(2) Screening and inspection may be by supervisory officers, Inspection and Review Teams or other agreed process.</p>
17	<p>(1) Ensure that the document contains a specific review clause for reviewing the instruction. Further advice may be sought from the Policy and Governance Coordination Unit as required in relation to policy.</p> <p>(2) Changes to legislation or judgments/findings relevant to any policy, procedure, guidance or training document should trigger an automatic review. This should be indicated in the policy.</p>