

Extract from draft Report by Garda Síochána Inspectorate on its Inspection of the Treatment of Persons in the Custody of the Garda Síochána

Recommendation 32 – summary explanation

The Inspectorate's view regarding extensions of detention under the Offences against the State Act, 1939 is now clearly outlined in the report and Recommendation 32 has been amended to reflect its position. The revised assessment section of the Extending Detention piece of the report as well as the revised wording of Recommendation 32 are included at Appendix 2.

In relation to extensions of detention, the Inspectorate's view is that the person responsible for taking this decision should be independent of the investigation, regardless of the legislation under which the extension is permitted. This position is based on comparable international practice. In terms of who is independent, the Inspectorate considers that this is a person who is not directly involved in the investigation.

Appendix 2

Assessment (Extending Time in Detention)

As part of a review of police powers, the Department of Justice is consolidating the various powers of arrest and detention, including powers to extend detention, which have evolved over time. The Inspectorate supports such a change, although it considers that the Offences against the State Act, 1939 should be retained as a separate piece of legislation because of the nature of the threats that it is designed to tackle.

In terms of extensions of detention, consolidation provides an opportunity to standardise the rank of the decision-maker and length of extensions for all relevant offences. The review also provides an opportunity to assign responsibility for considering any applications for extensions within the first 24 hours in custody to members of the rank of inspector or above. Including "or above" means that superintendents would not be excluded from the process and could undertake this

responsibility if an inspector were unavailable. As inspectors will be on duty in divisions on a 24/7/365 basis under the new Garda Operating Model, they would be readily available to undertake these responsibilities. They would be able to speak in person with the investigating member and the member in charge and examine the custody record to assess the conduct of the custody process up to that point. They would also be able to hear from the arrested person, their legal representative and, if a child, the adult who is supporting them. If the inspector is satisfied that grounds exist to authorise detention, they can then inform the arrested person of their decision and rationale for it. If further extensions beyond 24 hours are permissible in law, these should be the responsibility of members of superintendent rank or above.

The Inspectorate considers that the maximum period of time for which any one extension can be granted should be six hours, provided the total time in custody does not exceed that permitted in law. This would ensure that the necessity for continued detention is subject to regular formal scrutiny. It also considers that granting extensions of detention for the maximum permitted period may on occasions be unnecessary and disproportionate to the investigative actions required. In the Inspectorate's view, those who are deciding whether or not to authorise an extension of detention should also consider the necessity and proportionality of authorising the full period permissible in law, in accordance with human rights principles. The query about the ability to authorise more than one extension within the maximum permitted period should be clarified and the forthcoming legislation written so as to allow more than one extension in the period.

A number of other features of the international legislation and practice examined during this inspection are aimed at protecting the rights of persons in custody. These are:

- The opportunity for representations to be made by or on behalf of the arrested person in respect of the application to extend their time in detention. This enables the person to have a voice in the extension process and allows them or their representative to present any concerns about the circumstances or conditions of their detention;

- The use of a two-part test that must be satisfied before an application to extend detention is granted. The first part is to assess if the investigation so far has been conducted promptly and without undue or unnecessary delays and the second is the necessity for further detention; and
- The person considering whether detention should be extended should be independent, and be seen to be independent, of the investigation.

The Inspectorate considers that these features provide additional protection to the rights of persons in custody and should be included in the new legislation on extensions of detention.

The law regarding authorising and extending the detention of a person arrested under Section 30 of the Offences against the State Act, 1939 is set out in Figure 6.1. This highlights that it is possible to have two periods of detention, each of which is for a maximum of 24 hours, without an explicit legal requirement for the necessity for continued detention to be formally considered during those periods. The Inspectorate is concerned that this provides fewer safeguards for persons arrested under this Act than for those arrested under other legislation. Therefore, the Inspectorate considers that this concern and its proposals regarding extensions of detention should be brought to the attention of the Independent Review Group recently established to examine all aspects of the Offences against the State Acts 1939 to 1998.

Recommendation

In light of these findings, assessments and review of international practice, the Inspectorate makes the following recommendation.

Recommendation 32

The Inspectorate recommends that the Department of Justice review and amend the legislation that applies to extensions of detention in order to better safeguard the rights of persons in custody.

The following matters should be addressed:

- The periods of time for which detention can be extended by members of the Garda Síochána should be standardised;
- Extensions of detention within the first 24 hours in custody should be a matter for members of the rank of inspector or above;
- Where extensions of detention beyond 24 hours are permitted in law, this should be a matter for members of superintendent rank or above;
- Each period of extension should be for a maximum of six hours;
- The ability to authorise more than one period of extension within a six-hour period;
- The member considering an application for an extension must be independent of the investigation;
- The arrested person and/or their legal representative should be given the opportunity to make representations to the decision-maker about the decision to extend the period of detention. Where the arrested person is a child or is vulnerable, an appropriate adult should have this opportunity;
- A formal record should be made of the invitation to make representations, as well as the details of any representations provided;
- The test to be satisfied before authorising an extension should consist of two parts. These are to assess whether the investigation so far has been conducted without undue delay and whether there are reasonable grounds to believe that further detention is necessary for the proper investigation of the offence; and
- **The concerns and proposals regarding extensions of detention should be brought to the attention of the Independent Review Group recently established to examine all aspects of the Offences against the State Acts 1939 to 1998.**

