



AN TÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

Policing Performance by the Garda Síochána in relation to COVID-19 Regulations

**Report on the exercising of powers under the Health Act 1947 (Section 31
– Temporary Restrictions)(Covid-19) Regulations 2020**

9 October 2020

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Chairperson's Foreword

As this report is prepared for submission to the Minister, the course of the health emergency is changing yet again. Increasing numbers of cases of Covid 19 prompt growing concern that, in turn, evokes an elevated level of caution and restriction. In all of these phases, the role of the Garda Síochána looms large.

The period since the seventh report was one of relative calm when the focus of regulatory attention was a reflection of the process of re-opening society. As this report shows, the level of compliance is substantially high and the number of enforcements reported by the Garda Síochána correspondingly modest. The engagement of gardaí with communities and vulnerable groups continues to be widely appreciated and, in the view of authoritative and respected groups, has saved lives.

The value of these reports for the public is reflected in the brief summary of the timeline of the availability and use of additional garda powers. It conveys the rapid changes of direction that have mirrored the change in the trajectory of the virus. It indicates, also, the challenge and the complexity that will face the Commissioner and his colleagues in the period ahead. Previous reports have identified the difficulties that confront the Garda Síochána when public expectations of what policing can achieve is not matched by any corresponding powers.

On 8 October, the Authority held its annual meeting (virtually on this occasion) with Joint Policing Committee representatives from across the entire country. Productive, worthwhile and well attended, it offered a snapshot of the views, concerns and hopes of those who engage on a daily basis with the consequences of the health emergency in their local communities. A number of themes from the discussion are relevant to this report and merit reference:

- Wide and wholehearted appreciation of the work of the Garda Síochána throughout the period since early March.
- A certain concern that social solidarity may be fraying a little as the health emergency extends beyond most people's initial expectations.
- A recognition that there were some in society who were not playing their part and who were putting personal preference ahead of the welfare of the entire community.
- A view by quite a number that greater enforcement powers were necessary.

Throughout this period, the Authority has held the view that emergency powers for the Garda Síochána should be at the minimum level possible. The Commissioner has reaffirmed his view that added powers are not required now and that the persuasive influence of a garda presence should not be underestimated.

It is not inappropriate to sound a note of caution. There is a genuine and well-founded concern that extensive new powers for gardaí, and their widespread use, might not be the panacea that is sometimes thought. Increased enforcement is not a universal problem solver. And it is not difficult to envisage a situation where the very considerable support for the role played by the Garda Síochána might be affected as a consequence. Neighbouring jurisdictions have given added, and progressively more stringent, powers to police services but there is little evidence that, in and of itself, such a policy eradicates any undesirable behaviours.

The Authority's outreach work with a range of statutory and voluntary organisations has given a deep insight and understanding of the effect of Covid 19 on the life of very many people and of the positive impact which the great majority of those accord to the work of the Garda Síochána. As we come to a stage in the progress of the Covid 19 emergency where the re-imposition of greater limitations on freedom of action and movement may have to be considered, there is much for policy makers on which to reflect in terms of how some different approaches may merit consideration based on these reported experiences.

Bob Collins
Chairperson

1 Introduction

This is the eighth in a series of reports by the Policing Authority, prepared for the Minister for Justice and Equality, on oversight and assessment of the application of the COVID-19 Regulations by the Garda Síochána.

The report is set out as follows:

- Section 2 presents an overview of the key ongoing developments in the Government's response to the COVID-19 emergency which have had and continue to have an impact on Garda Síochána operations.
- A brief synopsis of the use of enforcement powers by the Garda Síochána over the period from 8 April to 26 September is provided in section 3.
- The Authority has continued to proactively engage with groups and representatives of stakeholders facing particular challenges as a result of COVID-19. Some of the themes emerging in the latest round of consultations are discussed in section 4.

2 Recent Developments

Since the beginning of the public health emergency and in response to the changing conditions wrought by COVID-19, the Government has introduced, intensified, gradually eased and then re-introduced a range of restrictions on people's movements and activities. In concert the Government also introduced, and varied, a number of additional penal provisions to be enforced by the Garda Síochána using a suite of existing and additional powers.

The moves from a national lockdown to lesser restrictions, then to local restrictions and then to a graduated 5 level Framework for Restrictive Measures has been operationally challenging for the Garda Síochána and may be somewhat confusing for the general public. Figure 1 below charts the timeline of these changing restrictions.

- From 20 March to 8 April the Garda Síochána did not have any additional powers and they sought to ensure compliance through the use of engagement, explanation and encouragement.
- Between 8 April and 8 June the Garda Síochána were given extensive powers to enforce compliance with government restrictions on movements and events. They also employed Operation Fanacht which saw an extensive network of checkpoints set up throughout the State and they began implementation (which has continued throughout the period) of Operation Faoiseamh - reaching in to vulnerable groups and individuals.
- On 8 June these powers were revoked as restrictions began to ease and the gardaí resorted in the main to the use of the first three 'E's' (Engage, Explain and Encourage). Some enforcement powers remained for a limited range of activities and events.
- As pubs serving substantial meals and restaurants began to open towards the end of June the gardaí launched Operation Navigation. Without additional powers the Garda Síochána began to inspect licensed premises to ensure they were complying with the terms and conditions for opening.

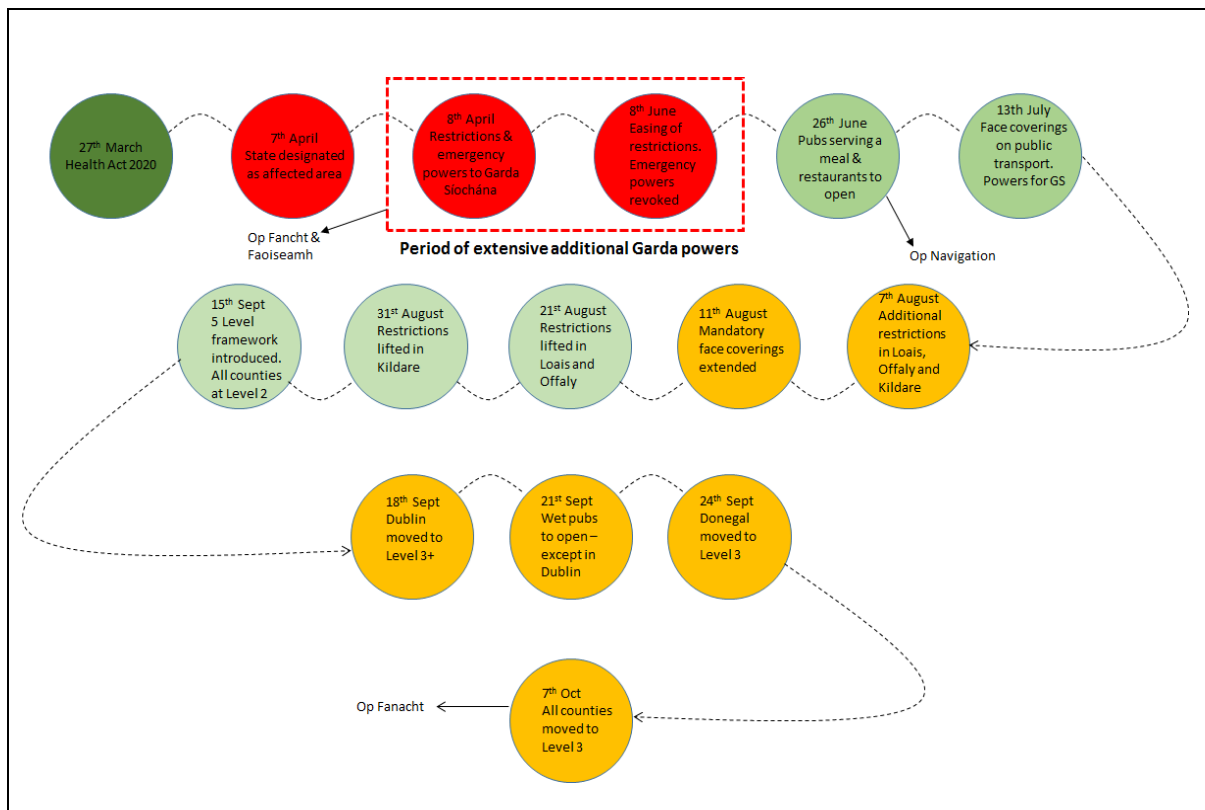
- Mandatory wearing of face coverings initially introduced for travelling on public transport was extended to retail outlets and other businesses in August and the gardaí were given some enforcement powers in relation to this.
- In August additional restrictions were placed on movements, businesses and activities in Counties Kildare, Laois and Offaly - however no additional powers were provided to the gardaí. By the beginning of September these restrictions had been lifted.
- With the enactment of the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 on 11 September the gardaí were given additional powers allowing for the immediate temporary closure of pubs not complying with the conditions for the sale of alcohol on licensed premises.
- On 15 September the Government introduced the 5 level Framework for Restrictive Measures. All counties in the State were placed at Level 2 and no additional enforcement measures were introduced.
- On 18 and 24 September Counties Dublin and Donegal, respectively, were moved to level 3 (with additional restrictions in Dublin).
- So called *wet pubs* opened throughout the country (with the exception of Dublin) on 21 September and the Garda Síochána continued to implement Operation Navigation.
- On 7 October the Government moved all counties in the State to Level 3 until 27 October – restricting movements between counties, with additional restrictions on indoor and outdoor events, no visits to nursing homes etc.¹ The gardaí continue to implement Operation Navigation (licensed premises) and re-introduced Operation Fanacht (checkpoints). There was no re-introduction of the enforcement powers provided under the national lockdown on 8 April and the Garda Síochána continued to use its graduated approach of engagement, explanation and encouragement.

As Figure 1 one shows, the implementation and enactment of the most restrictive additional powers² given to the Garda Síochána was concentrated in the period between 8 April and 8 June. Both before and since that period the gardaí have relied in the main, and with considerable success, on their existing powers and on the graduated response framework promoted by the Garda Commissioner. Despite the movement of all counties to Level 3 on 7 October this “soft” approach to policing COVID-19 restrictions remains the preferred option of both the Government and the Garda Síochána.

¹ For more information on Level 3 restrictions see <https://www.gov.ie/en/publication/ad569-level-3/>

² Under Section 31 (A) of the Amended Health Act, 1947 and the associated regulations the Gardaí were given powers to: (i) Direct a person to comply with the Regulations; (ii) Arrest for failure to comply with such a direction; (iii) Demand a person’s name and address; (iv) Arrest for failure to comply with the demand for name and address; and, (v) Arrest for failure to comply with the Regulations.

Figure 1: Time line of key developments during the COVID-19 emergency



In recent weeks there has been much media and social media comment and reporting on inappropriate behaviour at gatherings including organised events such as protests and house parties and spontaneous events in public areas by large groups of individuals. The Authority recognises the need for individual members of society to take personal responsibility for their actions particularly in light of the potential implications for public health. There is nevertheless a need for an early and visible presence, and a graduated and consistent response by the Garda Síochána. This was raised with the Garda Commissioner during the meeting in public on 30 September and it was noted that the response of the gardaí when such gatherings occur in less advantaged areas is particularly important to the maintenance of relationships with the community.

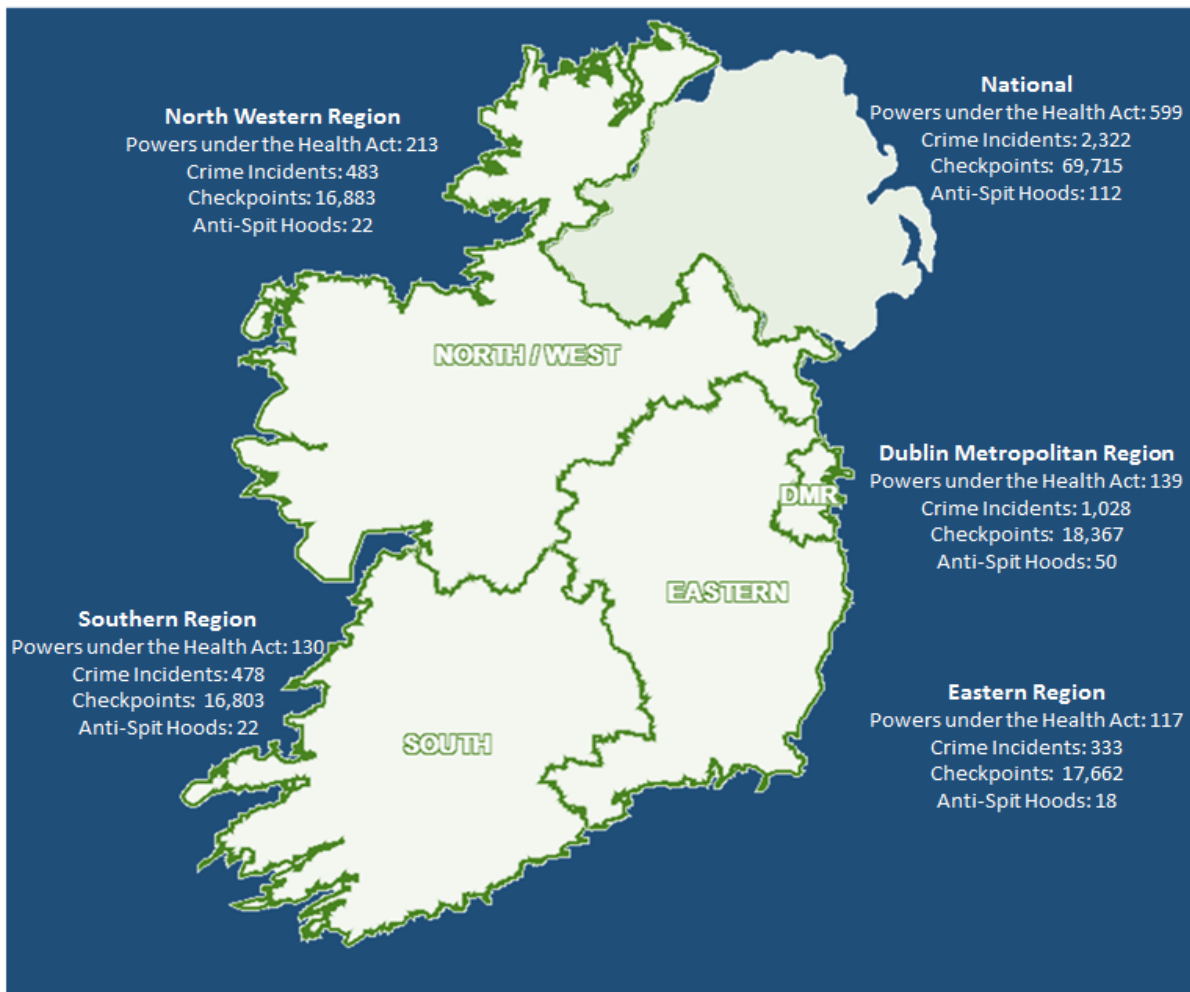
It was noted in previous reports that an important part of the Authority’s oversight role is to consider whether exceptional powers are used, when enacted, fairly, respectfully and in ways which are reasonable, necessary and proportionate. This in turn requires the adequate recording of the use of the powers by individual members. The Authority has continued to convey to the Garda Síochána its view of the importance of being able to report on the number of times that formal enforcement powers have been used such as, for example, formally directing a person to comply with the Regulations where the individual complies. This was also discussed in detail with the Garda Commissioner during the meeting in public on 30 September. In the context of possible further restrictions and/or enforcement powers, the accurate and effective monitoring of such powers will become increasingly important for the oversight activities of the Authority.

3 Policing COVID-19 in Numbers

3.1 Overview

Overall, since the last report to the Minister on 11 September, there have been 62 newly reported incidents where enforcement powers under the Health Act 2020 were used. In addition to this there have been 8 additional instances where anti-spit hoods have been deployed, approximately 6,400 additional checkpoints conducted, and in excess of 7,800 further visits to licensed premises.

Figure 2: Policing COVID-19 in numbers - summary by region for the period 8 April to 26 September³



Since 8 April the Garda Síochána have exercised powers under the Health Act 1947, 599 times. The 62 additional incidents since the last report have been primarily as a result of the outcomes of Operation Navigation and the inspection of licensed premises. Since the commencement of this operation on 3 July, there have been 231 incidents related to the operation. In this context, the Garda Síochána have reported over 38,000 visits to licensed premises, of which approximately 57%

³ With exception of checkpoints, all data refers to 8 April to 26 September. Checkpoints refer to periods 11 May to 2 August and 10 August to 27 September only. Data are indicative only.

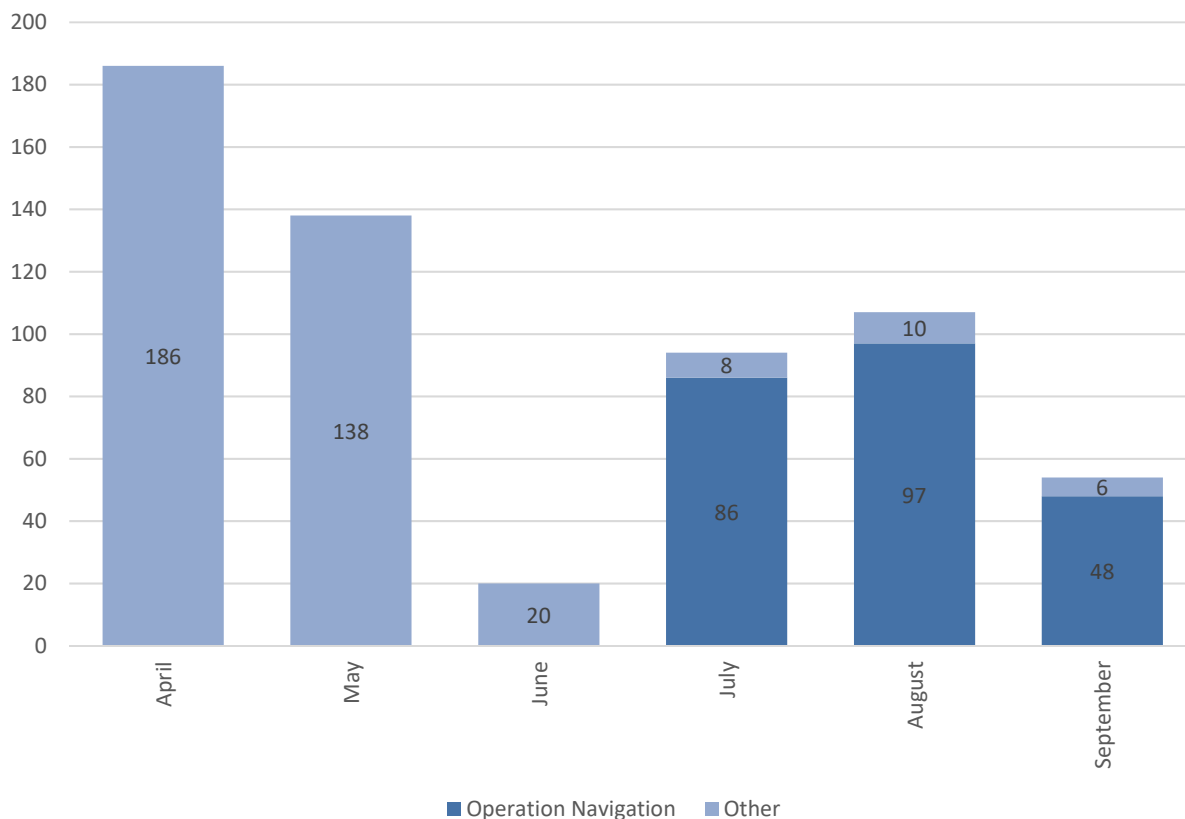
were recorded as being closed. Inspections have fallen from almost 8,000 in the first weekend of the operation to under 2,000 for the weekend of 25 to 27 September.

Excluding Operation Navigation, there have been 368 incidents where powers under the Health Act were used, of which 342 relate to breaches which occurred during the initial lockdown and local travel restrictions up to 28 June. Since then the Garda Síochána have reported the following;

- 6 incidents relating to breaches regarding face coverings;
- 5 incidents relating to breaches regarding international travel; and,
- 15 incidents relating to other breaches (for example, organising events).

Currently there are very limited circumstances where the non-compliance with regulations results in a penal provision being available to the Garda Síochána. In discussion with the Garda Commissioner at its meeting in public on 30 September, it was clear that the Garda Síochána are not seeking additional enforcement measures of penal provisions and believe quite firmly that the current approach of using the first three E’s of Engagement, Explanation and Encouragement remains the most appropriate approach to policing during this health emergency.

Figure 3: Number of times powers under the Health Act 2020 have been used per month from 8 April to 26 September



Out of the 599 incidents the North Western Region accounted for 213 (35.6%) of total incidents since 8 April and remains the region with the highest number of such incidents. Galway and Cavan/Monaghan remain the two divisions with the highest number of incidents. However, the examination of data at station level does not identify any issues of the use of powers being centralised in one locality.

As noted in previous reports, the Authority had requested that the Garda Síochána provide a disaggregation of which of the five powers were used in the 599 incidents and this has not yet been provided.

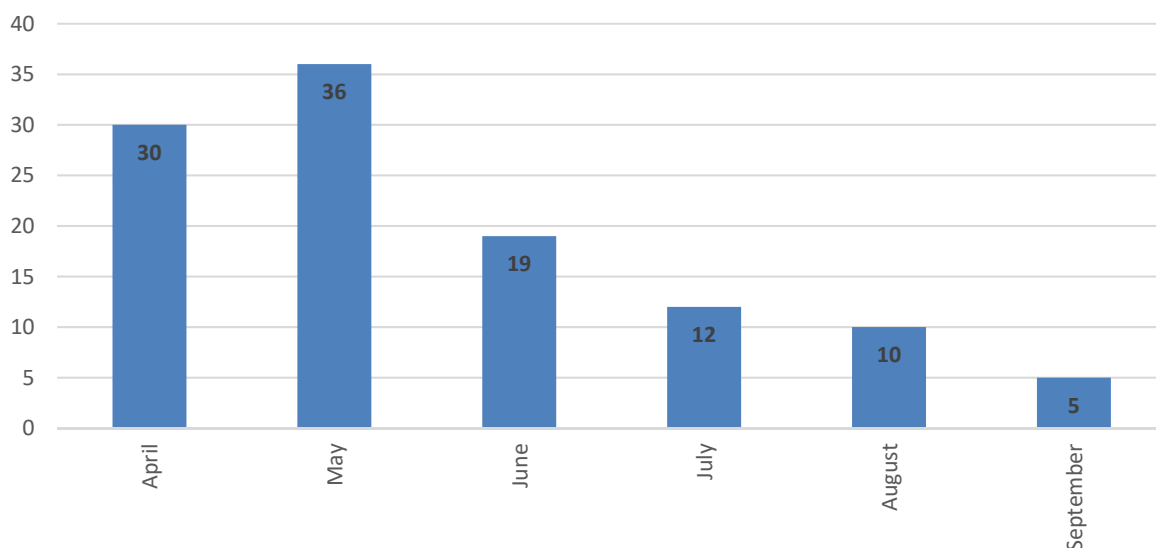
In terms of crime incidents recorded as a result of COVID-19 policing, there has been an increase of only 43 since the last report and, as a result, no new significant trends have emerged.

A complete dataset for checkpoints has not been reported for all weeks since the start of the policing response to the public health emergency. The data provided by the Garda Síochána covers the period 11 May to 2 August and 10 August to 27 September. Since the last report, checkpoint activity has increased significantly in DMR, Eastern and Northern Regions, particularly driven by Level 3 restrictions in Dublin and Donegal. In DMR, the number of checkpoints climbed from approximately 30 in the first week of September to in excess of 450 in the week ending 27 September. This still represents considerably less activity than May when the number of checkpoints carried out in the region exceeded 4,000 per week. It is envisaged that the level of activity will increase significantly with the recommencement of Operation Fanacht following the move to Level 3 for all counties.

3.2 Use of anti-spit hoods

In the report to the Minister on 11 September, the Authority noted its submission in response to the Garda Síochána evaluation on the use and management of anti-spit hoods. The Authority reflected on the absence of evidence for these instruments to protect garda members from COVID-19 and on the human rights concerns that the use of anti-spit hoods raises. The Authority has since published this submission. While the Authority’s reservations remain, it is positive to see the declining use of anti-spit hoods. Since the last report to the Minister, there have been 8 additional incidents recorded, bringing total uses to 112 since their introduction.

Figure 4: The number of applications of anti-spit hoods by the Garda Síochána by month, 12 April to 26 September



An assessment of the 112 incidents demonstrates:

- They have most frequently been used in the Dublin Metropolitan Region, which accounted for 50 of the incidents.
- Public Order offences accounted for 51 of the incidents while assault accounted for a further 32.
- In 94 incidents these were used on males, while the remaining 18 relate to use on females.
- To date anti-spit hoods have been used 6 times on children under the age of 18 years.

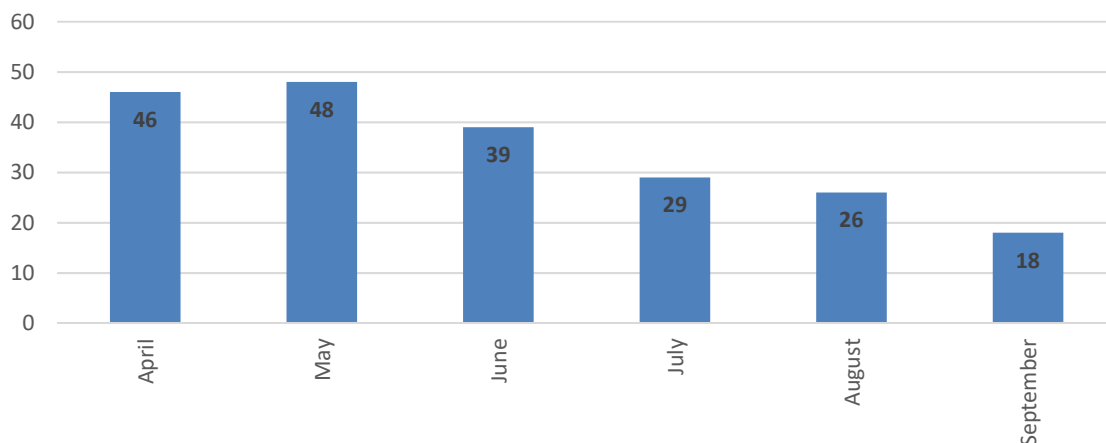
The Authority has received more detailed reports for 99 of these incidents. Additional information from these more detailed reports shows:

- In 14 incidents the garda member perceived the detainee to have obvious signs of a mental health issue. This was not the case in 55 incidents and it was unspecified in a further 30 incidents.
- In 1 incident the garda member perceived the detainee to have obvious signs of a learning disability. This was not the case in 67 incidents and it was unspecified in a further 31 incidents.
- In 64 incidents the garda member perceived the detainee to demonstrate obvious signs of intoxication. This was not the case in 17 incidents and it was unspecified in a further 18 incidents.

3.3 Spitting and Coughing Incidents

The welfare of garda members and staff is of paramount importance to the Authority and it is deeply disappointing and discouraging to see ongoing verbal and physical abuse directed at garda members and staff, particularly during these challenging circumstances. The number of assaults by spitting or coughing at members is illustrated in Figure 5 below. There have been 14 additional incidents recorded since the last report to the Minister, bringing the total to 206 since 12 April.

Figure 5: Monthly breakdown of the number of assaults on garda members who have been coughed on or spat at, 12 April to 26 September



4 Stakeholder Engagement and Operation Faoiseamh

Recent engagement to support this most recent report has included discussions with Joint Policing Committee (JPC) chairpersons, with a number of bodies representing commercial business and with organisations working with older people, in the areas of sexual and domestic abuse and in marginalised urban communities. The outcomes of these discussions are set out briefly below.

4.1 Policing the restrictions

Feedback regarding the manner in which the Garda Síochána has policed the restrictions continues to be predominantly positive. In those counties where additional restrictions were imposed, community representatives reported that a graduated approach to policing the restrictions was evident. Those representing commercial businesses impacted reported that the Garda Síochána had been active in visiting premises, had engaged well with personnel and had used a graduated approach. Where inconsistencies in the garda approach were reported, it was believed that this was primarily, but not always, an outcome of the manner in which the detail of the regulations and how they were to be policed were initially communicated to gardaí. Better engagement with representative bodies would, it was believed, allow for a shared understanding of the requirements on businesses.

Those working with more vulnerable members of the community reported good localised interagency work to identify those at risk. Gardaí are reported to have quickly resumed the role they played earlier in the crisis in those areas, with reference again being made to *'compassion, care and a willingness to help.'*

As reflected in media reports the loosening of restrictions saw more socialising happening and that presents challenges for the Garda Síochána. There is an acknowledgement in the feedback received that the Garda Síochána is trying to *'not be heavy handed'* and using a graduated approach. However, one of the communities spoke to the disappointment felt when the gardaí was perceived to take a *'hands off'* approach to large outdoor parties in the area. While they believed the gardaí were trying to give some leeway to the party goers, it was felt to be to the detriment and neglect of those within the community who wanted and expected a policing intervention in response to their calls for assistance.

4.2 Crime environment

As the restrictions eased, some communities have reported a resurgence of the type of crime that was prevalent in their areas prior to COVID-19. Drug dealing in particular was cited by one community as having re-emerged with renewed vigour as the visibility of gardaí in the area reduced. While the community believes this activity was going on in spite of the restrictions, it was doing so increasingly behind closed doors. For some, this meant that the community could reclaim physical spaces and areas which had been used for dealing.

The impact of the lockdown in terms of the opportunity it provided to gangs to attract young people into drugs related activity was raised. The absence of school or the availability of youth projects during this time is believed to have created the circumstances or conditions in which this was

increasingly possible. As in a previous report, the view was again expressed that youth work should be considered an essential service in light of its potential to offer alternative engagement and activities for young people if public health restrictions mean that the usual social outlets are not available to them.

Hate crime was also raised as an issue that is impacting communities at this time. This was not framed solely in terms of the impact on the person experiencing the hate crime. While this was discussed, hate crime was also framed as a crime that affects and concerns the whole community. The impact on the wider community and its sense of security and confidence to access physical areas within the locality where these crimes typically occur were also raised.

Concerns were raised across a number of communities regarding Halloween. In recent years, the hosting of Halloween themed events and activities for young people is reported as having proven successful in directing young people away from harmful or anti-social activities during the Halloween holidays. The inability to host such events will, it is believed, pose challenges for communities and policing over that period.

4.3 The challenges of policing domestic abuse - messy, but not intractable

Organisations working in the area of domestic abuse continue to report positively on the sustained efforts of the Garda Síochána and the positive impact of that work. As with domestic abuse, the experience of NGOs working in the area of sexual violence has seen significant changes in the numbers contacting their services with a spike in calls early in the crisis and a fall in numbers thereafter. They believe it is too early however to draw any conclusions from these variances as to the likely relationship between a reduced night time economy and fewer reports as for many it may take time to decide to report. Concern was expressed too that there may be a reluctance for victims to come forward to report to the gardaí when an incident takes place in what the victim considers '*an illegal space*' - a situation where the victim was breaching restrictions - for example at a house party. Organisations were anxious that a clear message be articulated that there should be no such reluctance.

The complexity of the levels of trauma that people are dealing with was highlighted. COVID-19 restrictions have affected survivors' own resources to manage the trauma of domestic abuse or sexual assault, for example by not having easy access to friends or even a daily walk to work. The garda response, especially through the Divisional Protective Services Units, was highlighted as very positive, with reference being made to the proactive engagement by the new units at local level with support organisations as they have been rolled out as well as to the leadership shown more generally in this area of policing. The view was expressed that policing of sexual violence and domestic abuse has finally moved from being the '*Cinderella of policing to centre stage*' and that what had been regarded as an intractable set of issues – dealing with domestic and sexual abuse – have been shown to be rather '*perhaps messy, but not intractable when given the resources needed*'.

4.4 Positioning of the Garda Síochána for the next phase

Feedback on Operation Faoiseamh has emphasised the benefit of early and sustained engagement at local and national level between the Garda Síochána and the organisations working with people experiencing domestic abuse. This has focused on the identification of those at risk, a process by which the Garda Síochána will reach out and in to victims, and a clear sense of the respective roles that the Garda Síochána and NGOs play in supporting and protecting victims.

Organisations working with other vulnerable groups have highlighted the view that there needs to be a similar type of engagement between the Garda Síochána and other organisations at national and local level to evaluate together the experience of *'the lockdown'*. This would focus on the nature, variety and volume of the needs that had to be met in the community during that time, the gaps in service that were exposed and the role each organisation played. These organisations are scenario planning for the likelihood of varying levels of national or localised restrictions over the coming months. If this type of engagement and evaluation is not done, the view was expressed that while the Garda Síochána was, and likely will be again, quick to respond, it will perhaps erroneously assume that the same response is required.

Organisations spoken to believe that there is an opportunity to examine the experience of the last number of months to ascertain what are the gaps that the Garda Síochána should fill and what gaps might now more appropriately be taken up by other organisations. More integrated planning drawing on the information and data gathered by these organisations about the level of demand across Divisions, where it came from and what services were needed may help to reposition the nature of the response required of the Garda Síochána. In the absence of such an examination and proactive positioning by the Garda Síochána, it was believed that it will be pressed to fill gaps that lie more appropriately within the competence of others.

Appendix 1 – Graphical summary of certain policing activities

Figure 6: Reported use of COVID-19 policing powers by garda Division, 8 April to 26 September, 2020



Figure 7: Number of incidents associated with COVID-19 policing activities by region, 8 April to 26 September, 2020

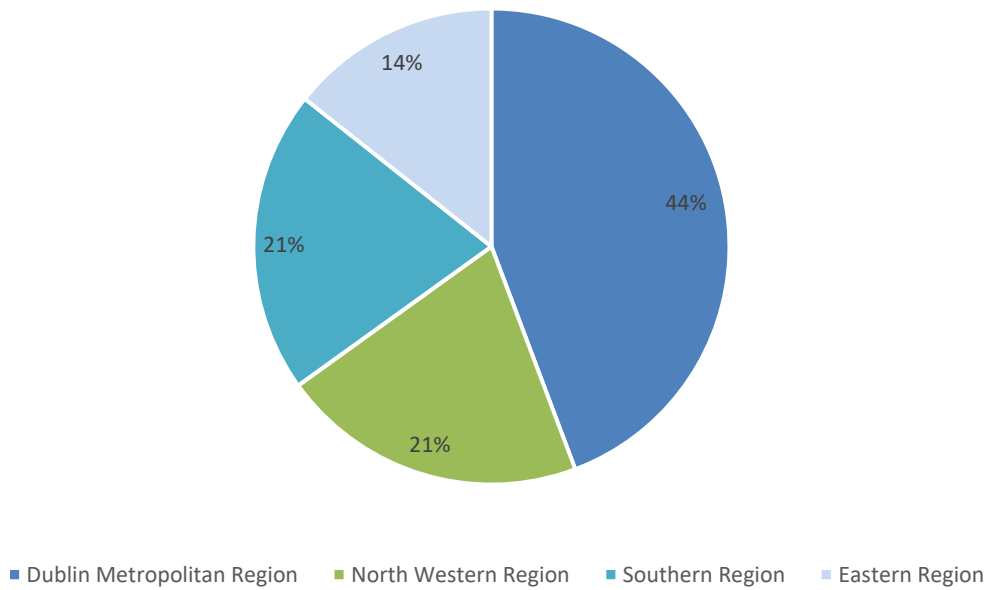


Figure 8: Checkpoints carried out by region, 21 to 27 September, 2020

