

SHERIFF REVIEW GROUP

April 06th 2023



An Garda Síochána
Submission for Joint Review Group on Role of Sheriff's Office



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Role of Sheriff

The main roles of a Sheriff can be summarised as follows:

- Tax enforcement and debt collection on behalf of Revenue
- Civil debt collection and fines on behalf of the Department of Justice
- Electoral/Returning Officer role on behalf of the Department of Housing, Local Government and Heritage

These functions do not normally require any involvement by An Garda Síochána and there appears to have been little operational engagement with Sheriffs' offices in recent years.

In respect of tax enforcement and debt collection, it would be of benefit to Sheriffs if they were granted similar powers in respect of access to information and freezing of bank accounts as is available to An Garda Síochána under the following legislation:

- Section 17 of the Criminal Justice (Money Laundering and Terrorist) Finance Act 2010 which is a direction not to carry out a service or transaction on an account
- Section 67 of the Criminal Justice (Money Laundering and Terrorist) Finance Act 2010 which is a direction to furnish information or documents

Provisions such as these would allow Sheriffs to receive information as to the monies within an account and freeze those monies until paid to the correct authority.

Separately, it may also be beneficial to have a designated liaison appointed within each Garda division to engage with the local Sheriff. This would provide improved communication with and better support for Sheriffs, particularly in respect of the prevention of breaches of the peace during the course of asset seizures or evictions.



Role of Gardaí

Circumstances often arise where An Garda Síochána is notified by a Sheriff of a repossession or eviction from a private house or property in accordance with a Court Execution Order for Possession. The role of the Gardaí in such circumstances is to ensure peace and public order are maintained and that no criminal offence is committed.

An Garda Síochána can also be called to assist a Sheriff in the enforcement of their powers in the following areas:

- Tax enforcement and debt collection on behalf of the Revenue Commissioners.
- Civil debt enforcement and fines collection on behalf of the Department of Justice.

Such assistance has, on occasion, led to significant incidents of public disorder and has placed An Garda Síochána at the frontline of debt collection for the State, casting An Garda Síochána in a negative light. The powers of a Sheriff should be modernised so as to allow their offices to employ agents/employees directly to enforce court orders, etc. without recourse to members of An Garda Síochána partaking in house evictions or debt collecting. Furthermore, the roles and responsibilities of each agency in such circumstances need to be clearly addressed and defined.

Whilst the Sheriff is empowered to enforce the court order, the role of An Garda Síochána is limited to the prevention of a breach of the peace. The remit of the committee would appear to include the identification of alternative means of recovery of debt. This function should be retained by the Office of the Sheriff.

Another role of the Sheriff's Office is as Electoral/Returning Officer on behalf of the Department of Housing, Local Government and Heritage. Currently, An Garda Síochána has several roles in the electoral process including supervision, storage and escorting ballot boxes. These are non-core roles for An Garda Síochána and would be more appropriately carried out by an approved private service provider.



If the requirement for An Garda Síochána to assist the Sheriff's Office in such non-core duties continues, same should be costed as non-public duty.

Legislation

The policy governing how An Garda Síochána deals with evictions / repossessions is set out in HQ Directive 50/20. Currently, An Garda Síochána is served with documentation requiring their attendance by the Sheriff's Office. As stated above, the roles and responsibilities of each agency in such circumstances need to be clearly addressed and defined. Functions or tasks which require the intervention of An Garda Síochána should be clearly defined and, in the view of An Garda Síochána, should be legislated for.

It is suggested that any re-defined function or administration of a Sheriff's role should include a legislative basis for the presence of An Garda Síochána and/or provision for a Memorandum of Understanding /Protocols between the organisations.

The functions and duties of the Sheriff and his/her agents contain coercive elements, including seizure, entry, etc. In that context, it is recommended that any person acting on the behalf of the Sheriff should meet the 'good character' requirement.

It is strongly recommended that the future function of the Sheriff's Office be governed by a stringent and up-to-date legal framework, prescribing on a statutory basis the procedures to be adopted should the assistance of An Garda Síochána (or any other State agency) be sought. This should include the granting of sufficient notice to An Garda Síochána to enable risk-assessments and for adequate resources to be procured. Any Garda assessment will require sight of the underlying court order upon which each request for assistance is predicated.

The powers of the Sheriff have the potential to engage, amongst other human rights, Article 8 of the European Convention of Human Rights. Similar unilateral authority has been the subject of a number of recent judgements by the European Court of Human Rights (see Gillan &



Quinton v United Kingdom, 2009, 50 EHRR 45, Beghal v. United Kingdom, 2019, 69 EHRR 28, & Colon v Netherlands, (2012), 55 EHRR SE5). These judgements have given clear guidance to the effect that State action against an individual which occurs without appropriate and sufficient oversight will be regarded as a breach of Article 8.

In light of the above, it is recommended that the authority of the Sheriff's Office to issue orders be removed and replaced with an authority to apply to the Courts for similar orders. Where the execution of these orders require the assistance of another State agency such as An Garda Síochána, consideration should be given to making it a requirement that this State agency be put on notice of the application being made in order to allow that State agency to address the Court as to any issues that may present if the application is granted.

Additional duties for Sheriff

Court Warrants

It is assessed that, depending on caseload, there is potential for Sheriffs to assume responsibility for managing the payment/execution of court warrants and service of all summonses issued by the courts.

Execution of Penal Warrants

Further to the above, it is recommended that the role of Sheriffs be extended to include the execution of penal warrants, in conjunction with An Garda Síochána.

A practice has emerged whereby individuals subject to penal warrants allow a number of them to accumulate before having them all executed together. These individuals may then decline to pay the fines and elect to incur the period of imprisonment in default knowing, that there is a likelihood that they may be released early, with all of the penal warrants marked as executed.

In these circumstances, the State loses out on the value of the unpaid fines while, at the same time, incurs the cost of issuing the penal warrants from the courts, employing Gardaí to execute



the warrants, transporting the individuals to prison, employing prison staff to process them and then returning the warrants to have them marked executed by the courts.

If a Sheriff accompanied members of An Garda Síochána in executing penal warrants, it could be feasible that, instead of arresting an individual for defaulting on the payment of the fines, the Sheriff would be in a position to seize assets from the individual instead. The assets could, in turn, be auctioned off in order to offset the value of the fines.

Such an arrangement would incentivise the payment of fines, resulting in a more efficient penal warrant system, increased revenue for the State and a reduced burden on the Irish Prison Service.

Other Jurisdictions

In other jurisdictions throughout Europe, notably in Northern Ireland, there are centralised debt enforcement offices which are funded by the State. This centralised approach would have the effect of streamlining the service that Sheriffs currently provide, allowing for the development of expertise and gaining efficiency in terms of resources.

In some jurisdictions, the cost of enforcement is added to the debt and paid by the debtor. At present in this jurisdiction, a percentage and costs are taken by the Sheriff at the cost of the creditor. Also in this jurisdiction, an attachment of earnings can be used in the sole scenario of orders for maintenance of spouses and children. As in other European jurisdictions, this approach could be expanded to include other scenarios.

Some other jurisdictions provide a mechanism whereby the creditor, through a centralised debt enforcement agency, can apply to the courts to have a freezing order placed on any bank account that the creditor is aware that the debtor has. This order is not lifted until the court is satisfied that the debt has been paid in full. Furthermore, penalties can be added to the debt for non-payment within specified timeframes.



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