

Draft of

ORDER

entitled

**Commission of Investigation (Certain matters relating to two disclosures
made by members of An Garda Síochána under the Protected Disclosures Act 2014)**

Order 2017

To be made by the Government

WHEREAS, pursuant to section 3(1) of the Commissions of Investigation Act 2004 (No. 23 of 2004), the Minister for Justice and Equality, with the approval of the Minister for Public Expenditure and Reform, made a proposal to the Government for the establishment of a commission to investigate the matters specified in Article 3 of the following Order and to make any reports required under that Act in relation to its investigation;

AND WHEREAS the Government by decision made on 7 February 2017 considered those matters to be of significant public concern;

AND WHEREAS a draft of the following Order has been laid before each House of the Oireachtas, together with a statement of the reasons for establishing the commission, and a resolution approving that draft has been passed by each such House;

NOW, the Government, in exercise of the powers conferred on them by section 3 of the Commissions of Investigation Act 2004 (No. 23 of 2004), hereby order as follows:

1. This Order may be cited as Commission of Investigation (Certain matters relating to two disclosures made by members of An Garda Síochána under the Protected Disclosures Act 2014) Order 2017.

2. In this Order “Act” means the Commissions of Investigation Act 2004 (No. 23 of 2004).

3. A commission is hereby established to -

- (a) investigate the matters, which are considered by the Government to be of significant public concern, referred to in the terms of reference (the text of which is, for convenience of reference, set out in the Schedule) of the commission, and
- (b) make any reports required under the Act in relation to its investigation.

4. The Minister for Justice and Equality is -

- (a) specified as the Minister of the Government responsible for overseeing administrative matters relating to the establishment of the commission, for receiving its reports and for performing any other functions given to him or her under the Act, and

(b) authorised to appoint the member or members of the commission.

SCHEDULE

Commission of Investigation (Certain matters relating to two disclosures made by members of An Garda Síochána under the Protected Disclosures Act 2014) Order 2017

Terms of Reference

1 The Commission is directed to investigate the following matters:

[a] The allegation made in a Protected Disclosure made under the provisions of the Protected Disclosures Act 2014, on the 30th of September 2016, by Superintendent David Taylor, wherein he alleges that he was instructed or directed by former Commissioner Martin Callinan and/or Deputy Commissioner Noirin O'Sullivan, to contact the media to brief them negatively against Sergeant Maurice McCabe and in particular to brief the media that Sgt McCabe was motivated by maliciousness and revenge, that he was to encourage the media to write negatively about Sgt McCabe, to the effect that his complaints had no substance, that the Gardaí had fully investigated his complaints and found no substance to his allegations and that he was driven by agendas.

[b] The allegation of Superintendent Taylor in his Protected Disclosure, that he was directed to draw journalists' attention to an allegation of criminal misconduct made against Sgt McCabe and that this was the root cause of his agenda, namely revenge against the Gardaí.

[c] To investigate such knowledge which former Commissioner Callinan and Commissioner O'Sullivan had concerning the matters set out in [a] and [b] above.

[d] To investigate contacts between members of An Garda Síochána and media broadcasting personnel relevant to the matters set out in [a] and [b] above.

[e] To examine all records relating to the mobile telephones used by Superintendent Taylor and former Commissioner Callinan and Commissioner O'Sullivan, in the period from the 1st of July 2012 to the 31st of May 2014 to ascertain whether there are any records of text messages or other telecommunication interactions relating to the matters set out at [a] and [b] above and to examine and consider the content of any such text messages or other telecommunication interactions.

[f] To examine all electronic and paper files, relating to Sergeant Maurice McCabe held by An Garda Síochána and to consider any material therein relevant to [a] and [b] above.

[g] To investigate whether Commissioner O'Sullivan, using briefing material prepared in Garda Headquarters, planned and orchestrated broadcasts on RTE on the 9th of May 2016, purporting to be a leaked account of the unpublished O'Higgins Commission Report, in which Sgt McCabe was branded a liar and irresponsible.

[h] To investigate whether a meeting took place between former Commissioner Callinan and Deputy John McGuinness on the 24th of January 2014 in the carpark of Bewley's Hotel, Newlands Cross, Co. Dublin and to examine and consider the circumstances which led to any such meeting, the purpose of such meeting and matters discussed at such meeting.

[i] To investigate such knowledge which Commissioner O'Sullivan had of the meeting referred to in [h] above.

2 The Commission shall have a discretion in relation to the scope of the investigation it considers necessary and appropriate to achieve the general objective of the investigation.

GIVEN under the Official Seal

of the Government,

_____ 2017.
