ICCL Submission on the General Scheme of Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025

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Introduction

1. The Irish Council for Civil Liberties (ICCL) welcomes the opportunity to make a submission on the General Scheme of Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025, published 6 May 2025.[1] This submission will focus on the proposed amendments to the Criminal Justice (Public Order) Act 1994 (herein referred to as the Public Order Act) to explicitly grant Gardaí the power to ask someone to remove a face covering in a public space when someone is engaging in violence or intimidation, as well as proposals to use remote hearings in criminal proceedings.

2. There are many reasons people may wish to cover their face at a protest or in daily life – including for health reasons, for religious reasons, to protect their privacy or to demonstrate political solidarity. Wearing a face covering is not in itself violent behaviour, nor does it indicate an intention to engage in violence.[2] ICCL's position is that Gardaí have existing powers under the Public Order Act to address threatening, intimidating or violent behaviour at protests.

3. Since our establishment in 1976, ICCL has defended the right to a jury trial. We see the Bill's failure to include provisions for remote juries as a missed opportunity to protect the right to a jury trial.

Relevant Legal Framework

1. An Garda Síochána is legally obligated to provide policing services in a human rights compliant manner.[3] In doing so, they must facilitate the enjoyment of the right to peaceful protest. Everyone in Ireland has the right to protest, including foreign nationals and persons seeking international protection.

2. The right to peaceful protest is protected under the Irish Constitution, the European Convention on Human Rights, and various international human rights treaties.[4] The restrictions on the right to protest are set out in human rights law. Restrictions must be prescribed by law, be proportionate and necessary to achieve a legitimate aim, and not have a discriminatory effect.[5] ICCL believes that the proposed amendments to the Public Order Act are a disproportionate interference with the right to peaceful protest and an unnecessary expansion of Garda powers.

3. The right to a jury trial in criminal cases is recognised as the gold standard in the Irish Constitution, linked to the fundamental constitutional right of every accused person to a

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[1] This submission was written by Emily Williams, with input from Joe O'Brien, Claire Mc Evoy, Olga Cronin and Seán Egan BL.
[2] UN Human Rights Committee, 'General Comment No. 37 (2020) on the right of peaceful assembly (article 21)' (17 September 2020) CCPR/C/GC/37, para 60.
[3] Irish Human Rights and Equality Commission Act 2014, s 42.
[4] UN Human Rights Committee, 'General Comment No. 37 (2020) on the right of peaceful assembly (article 21), paras 6, 36-47.
[5] Irish Constitution, art 40.6.1°(i), (ii) and (iii); European Convention on Human Rights, art 10(1) and 11; International Covenant on Civil and Political Rights, art 19, 21, and 22.

fair trial.[6] The Juries Act, 1976, as amended, is the statutory framework for the operation of juries.

Part 2: Use of electronic technology in court proceedings

Head 6 – Remote hearings in trials and other contesting proceedings

1. This part provides for certain types of criminal proceedings, including criminal trials, to proceed remotely.[7] ICCL welcomes this development and suggests that provisions for remote juries should be added to this section.

2. Remote juries are a tool to address potential jury intimidation, one of the justifications for the non-jury Special Criminal Court.[8] Indeed, remote juries were also a recommendation from the Minority Report of the Offences Against the State Acts Review Group.[9] While ICCL welcomes recent announcements regarding the Minister for Justice's intention to repeal the Offences Against the State Acts and the Special Criminal Court, we remain deeply concerned at the government's plans to retain a permanent non-jury court.[10] Remote juries should also be considered in the discussion regarding proposals to establish a new, permanent, non-jury court. Video conference platforms such as Pexip (the remote platform used to conduct virtual court hearings) can facilitate remote juries with jurors in confidential locations assigned by the Courts Service.[11] In Scotland, remote juries were successfully used during the Covid-19 pandemic.[12]

Part 9: Amendment of Criminal Justice (Public Order) Act 1994

Head 26 - Amendment of section 8 of Criminal Justice (Public Order) Act 1994

1. This part amends section 8 of the Public Order Act to explicitly grant Gardaí the power to ask someone to remove a face covering in a public space. The power can only be exercised if a Garda member suspects, with reasonable cause, that the person is acting in a way which jeopardises the safety of persons, property or the public peace and is wearing the face covering for the purpose of intimidation or to facilitate the commission of an offence or hinder the investigation or prosecution of an offence. Assessing a potential threat to safety, intimidation, or commission of a crime rests on the individual judgement of a Garda (reasonable cause). This enables wide discretion of Gardaí as there is currently no definition of reasonable cause in Irish law which could lead to misuse and inconsistent application.[13] Protesters need to be treated consistently and fairly. What is the purpose of this provision? The ban on face coverings in the Programme for

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[6] Irish Constitution, art 38.5, 38.1.
[7] General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025, Head 6(1)(c).
[8] Irish Council for Civil Liberties, 'ICCL Submission to the Public Consultation on Jury Reform' (November 2024) 3.
[9] 'Offences Against the State Acts Independent Review Group: Report of the Minority' (May 2023) 7.
[10] Irish Council for Civil Liberties, 'ICCL statement on repeal of Offences Against the State Acts' accessed 23 June 2025.
[11] Irish Council for Civil Liberties, 'ICCL Submission to the Offences Against the State Acts Review Group' (Irish Council for Civil Liberties July 2021) 20.
[12] Irish Council for Civil Liberties (n 8) 7.
[13] JUSTICE, 'Crime and Policing Bill: House of Commons Committee Stage Briefing 2 - Parts 2 to 14' (JUSTICE 23 April 2025) 26.

Government 2025 is included in the "Tackling Anti-Social Behaviour" section, but is this an effective deterrent to reduce such behaviour, or will it serve as a broader chilling effect on individuals who wear face coverings during peaceful protest?[14] Gardaí already have expansive powers under criminal law to address anti-social behaviour or criminal acts at protests, including power to arrest (without a warrant) for offences under the Public Order Act, including threatening, abusive or insulting behaviour in a public place (section 6) and failure to comply with the direction of a member of An Garda Síochána (section 8).

2. Clarification is also required around the inclusion of "intent" in the proposed offence. The mens rea element of intent is present in other offences in the Public Order Act.[15] There needs to be clarity on what intent means in this context. Is the intention element triggered once the person puts the face-covering on, when they enter a public space, or once they begin to behave in a threatening manner? If the offence is triggered when a person behaves in a manner that is threatening or likely to cause a breach of the peace, that behaviour is already covered under section 6 of the Public Order Act.[16] If it is triggered when a person decides to wear a face-covering, it is likely to be an unworkable offence. Ultimately, a face-covering is not in itself offensive in the same way as threatening behaviour or language is and there is room for abuse of this potential offence against protesters covering their faces for legitimate reasons.

3. In its review of public order policing published in March 2025, the Policing Authority noted that this new power "will require clear guidelines for Garda members and for the public as to the parameters within which removal of a mask might be compelled".[17] If this Bill proceeds in its current form, ICCL agrees that such guidelines would be necessary to provide clarification of the circumstances for when it will be used.

4. A similar power was introduced in the UK by the Anti-terrorism, Crime and Security Act 2011. What differentiates the UK power is that police did not have the power to ask people to remove any item that conceals identity unless an authorisation was "issued in particular areas when they reasonably believe that activities may take place in that area that are likely to involve the commission of offences". No such authorisation is present in the text of the General Scheme. Police in the UK found the power to be ineffective, as people would simply remove the face covering and move, then re-enter the protest at a separate access point. The Crime and Policing Bill 2025 is proposing to change this power to make the simple act of wearing a face covering within a designated area a criminal offence.[18] The UK experience demonstrates how these proposed changes are a slippery slope towards additional policies which directly attack and infringe upon the right to protest.

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[14] Government of Ireland, 'Programme for Government 2025: Securing Ireland's Future', p. 118.
[15] For example section 6 (threatening, abusive or insulting behaviour), section 7 (distribution or display in public place of material which is threatening, abusive, insulting or obscene), section 11 (entering building with intent to commit an offence), section 18 (assault with intent to cause bodily harm or commit indictable offence).
[16] See section 6(1): "It shall be an offence for any person in a public place to use or engage in any threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or being reckless as to whether a breach of the peace may be occasioned."
[17] Policing Authority, 'Review of Public Order Policing' (Policing Authority 2025) 30.
[18] Crime and Policing Bill, s 115.

5. In Canada, wearing a mask or other disguise to conceal identity during a riot or unlawful assembly was introduced as a criminal offence following the 2011 Stanley Cup riots and the 2012 Québec student protests.[19] In practice, the mask offences are rarely enforced as police focus on the criminal conduct instead.[20] Experience in the US has found that anti-mask laws are difficult to enforce, can result in increased conflict between police and protesters and are used to hinder "unpopular protests".[21]

6. The definition of face covering in the Bill is incredibly broad: "[…] means any item worn by a person in such a manner as to conceal the person's face or part of the person's face".[22] This definition thus includes items like medical masks, which may be worn for health reasons or to protect from the effects of less lethal weapons like pepper spray. Face coverings worn for religious expression, like a burqa or a niqab would be included in this definition, alongside face coverings worn in political solidarity (e.g., a keyiffah). Such an expansive definition would cast a wide net and may result in increased contact between Gardaí and margnialised and over-policed communities.

7. Based on these concerns, ICCL has a list of questions that the Justice, Migration and Home Affairs Committee should consider during pre-legislative scrutiny:

    - What is the purpose/goal of this proposed legislation?
    - Is this power proportionate and necessary to address the issue?
    - Is there an explicit exemption for health, religion, or other relevant purpose?
    - How are they defining intention to intimidate?
    - How are they defining reasonable cause?
    - How will this bill interact with the proposed Garda Síochána (Powers) bill?
    - How will it make investigations faster and less complex? What is the evidence to support these changes?
    - In practice, is this new power duplicating existing laws? How will this affect prison overcrowding and the strain we have on the criminal justice system?

[19] Criminal Code, s 65(2), 66(2).
[20] Clifford Stott and others, 'International Norms: Governing Police Identification & the Wearing of Masks During Protest: Two Rapid Evidence Reviews' (Hong Kong Independent Police Complaints Council 2019) 8.
[21] ibid 18.
[22] General Scheme of the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2025, Head 26(b).

Conclusion

8. Gardaí already have expansive powers under the Public Order Act to respond to a person acting in a violent or threatening manner, including powers of search and arrest. Existing criminal law is sufficient to address criminal acts at protests. Combined with increased Garda surveillance through body-worn cameras and plans to use facial recognition technology, criminalising face coverings risks creating a chilling effect whereby people feel unable to express their opinions in public spaces. The rights to protest, to privacy and to express ourselves are fundamental rights in any democratic society and should not be eroded.

9. While ICCL welcomes the provisions of the Bill providing for remote hearings, amendments should be made to provide for remote juries to facilitate the right to a jury trial and address jury intimidation.

Recommendations

- Head 6(1) should be amended to provide for remote juries to facilitate the right to a jury trial.
- Repeal Head 26.

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About ICCL

The **Irish Council for Civil Liberties** (ICCL) is Ireland's oldest independent human rights body. It has been at the forefront of every major rights advance in Irish society for over 40 years. ICCL helped decriminalise homosexuality, divorce and contraception. We drove police reform, defending suspects' rights during dark times. In recent years, we led successful campaigns for marriage equality, data protection and reproductive rights.