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**An Bille Rialtais Áitiúil (TCI a Úsáid le linn Cionta a  
Ionchúiseamh), 2021**  
**Local Government (Use of CCTV in Prosecution of  
Offences) Bill 2021**

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*Meabhrán Mínitheach*  
*Explanatory Memorandum*

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**AN BILLE RIALTAIS ÁITIÚIL (TCIA A ÚSÁID LE LINN CIONTA A  
IONCHÚISEAMH), 2021**  
**LOCAL GOVERNMENT (USE OF CCTV IN PROSECUTION OF  
OFFENCES) BILL 2021**

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**EXPLANATORY MEMORANDUM**

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*Purpose of Bill*

The Law Enforcement Directive (Directive (EU) 2016/680) is a sister provision to the EU's Data Protection Regulation and it applies modified GDPR principles to the processing of personal data in the context of the prevention, investigation, detection or prosecution of crime.

The Law Enforcement Directive is given effect in Irish law by Part 5 of the Data Protection Act 2018.

Local authorities are 'competent authorities' performing law enforcement functions when prosecuting offences under waste and litter legislation and so the Law Enforcement Directive applies to these activities.

In 2018 the Data Protection Commission (DPC) inquired into the use of surveillance technologies by both the Garda Síochána and local authorities. This included an examination of the use of CCTV by local authorities in the enforcement of litter and waste management legislation.

The DPC concluded that neither the Litter Pollution Act 1997, the Waste Management Act 1996, nor the Local Government Act 2001 were sufficient to meet the requirements of the Law Enforcement Directive provisions in Part 5 of the 2018 Act, in relation to the deployment of CCTV cameras for law enforcement purposes.

It is important to stress that the Directive does not prohibit the use of CCTV for such purposes; it does, however, require that its use be properly authorised by law. Under the Directive, two criteria must be fulfilled for data processing to be lawful. First, the processing must be necessary for the performance of a task of a competent authority. Second, the processing must be based on either European Union or Member State law. Where Member State law forms the basis for processing, that law should specify the objectives of processing, the personal data to be processed and the purposes of the processing.

In other words, it is not sufficient that the local authority's function of prosecuting crime is conferred by law: the local authority's processing of personal data – such as gathering and using images of identifiable individuals by CCTV to use as evidence in the prosecution of dumping cases – must be also based on a provision of Union or Member State law.

According to the DPC, the matters that Member State law must specify do not necessarily have to be codified in an Act of the Oireachtas, but they

must have a clear legal basis, either in common law or in an enactment. It is legitimate for an Act of the Oireachtas to implicitly provide for the processing of certain personal data, without expressly listing each category of personal data that is to be processed. Such an Act would be sufficient to provide a lawful basis once the objectives, the personal data to be processed and the purposes are clear and foreseeable from that Act.

For example, the DPC examined section 38 of the Garda Síochána Act 2005 which regulates the use of CCTV in public places by Gardaí. The examination concluded that the section meets the requirements of Part 5 of the Data Protection Act 2018, interpreted alongside the Law Enforcement Directive: it is clear that personal data is being processed for the purpose of securing public order and safety, in facilitating the deterrence, prevention, detection and prosecution of offences.

The purpose of this short Bill is to confer a statutory footing similar to that conferred on the Garda Síochána by section 38 of the 2005 Act on the use by local authorities of CCTV in cases where the prosecution of offences is a function vested in them.

#### *Provisions of Bill*

The Bill is by its long title: “An Act to make provision in relation to the prevention, investigation, detection and prosecution by local authorities of certain offences; to provide for the use of closed circuit television in public places by local authorities for the purposes of those functions; and to provide for related matters”.

*Section 1* is headed “Functions of local authorities in relation to offences” and provides, for the avoidance of doubt, that where a local authority is authorised by law to prosecute an offence, it may take such measures, engage in such activities and do such things (including incurring expenditure) as it considers—

- are necessary or expedient for,
- are ancillary, supplementary or incidental to,
- are consequential on or necessary to give full effect to, or
- will otherwise facilitate or be conducive to,

the prevention, investigation, detection and prosecution of the offence.

The section is based on section 8 (1) of the Local Government Act 1991, but it applies to any activities of local authorities that are ancillary to or consequential on the prevention, investigation and detection of offences as well as their prosecution.

*Section 2* provides that, in order to facilitate the prevention, investigation, detection and prosecution of any offence which it is authorised by law to prosecute, a local authority may install and operate CCTV, and may retrieve and process data, including images of members of the public, recorded by CCTV.

The Minister for Housing, Local Government and Heritage must issue guidelines to local authorities concerning the procedures to be followed by them in relation to the operation of CCTV and retrieving or otherwise processing data recorded by CCTV. He or she may also revise the guidelines or may withdraw them and issue new guidelines. Any guidelines so issued must be laid by the Minister before each House of the Oireachtas as soon as practicable after he or she issues them.

The section provides that a local authority must comply with guidelines issued by the Minister.

The section then provides definitions of certain terms:

- “CCTV” means any fixed and permanent system employing optical devices for recording visual images of events occurring in public places;
- “Minister” means the Minister for Housing, Local Government and Heritage;
- “operation”, in relation to CCTV, includes the maintenance and monitoring of CCTV;
- “public place” means a place to which the public have or are permitted access, whether as of right or by express or implied permission.

*Section 3* provides for the short title of the Bill and provides that it shall come into operation three months after its passing.

*Senator Mark Wall, Senator Ivan Bacik, Senator Annie Hoey,  
Senator Rebecca Moynihan, Senator Marie Sherlock,  
Feabhra, 2021.*

