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**An Bille Rialtais Áitiúil (Cumhachtaí Faireachais i nDáil le Cionta Áirithe),  
2022**

**Local Government (Surveillance Powers in Relation to Certain Offences) Bill  
2022**

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*Mar a tionscnaíodh*

*As initiated*

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**AN BILLE RIALTAIS ÁITIÚIL (CUMHACHTAÍ FAIREACHAIS I nDÁIL LE CIONTA  
ÁIRITHE), 2022**  
**LOCAL GOVERNMENT (SURVEILLANCE POWERS IN RELATION TO CERTAIN  
OFFENCES) BILL 2022**

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*Mar a tionscnaíodh*

*As initiated*

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## ACTS REFERRED TO

Data Protection Act 2018 (No. 7)  
Data Sharing and Governance Act 2019 (No. 5)  
Irish Human Rights and Equality Commission Act 2014 (No. 25)  
Litter Pollution Act 1997 (No. 12)  
Local Government Act 2001 (No. 37)  
Local Government Reform Act 2014 (No. 1)  
Waste Management Act 1996 (No. 10)



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AN BILLE RIALTAIS ÁITIÚIL (CUMHACHTAÍ FAIREACHAIS I nDÁIL LE CIONTA  
ÁIRITHE), 2022  
LOCAL GOVERNMENT (SURVEILLANCE POWERS IN RELATION TO CERTAIN  
OFFENCES) BILL 2022

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# Bill

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*entitled*

An Act to empower local authorities to authorise the installation and operation of surveillance devices for the purposes of deterring, preventing, detecting and prosecuting certain offences, to provide for exchange of certain data from third party data controllers to local authorities for the purposes of the performance of their functions in relation to such offences, to make certain provision for the purposes of regulating the performance of functions under this Act and to provide for related matters. 10

**Be it enacted by the Oireachtas as follows:**

## Definitions

1. In this Act— 15
- “Act of 2018” means the Data Protection Act 2018;
- “authorisation” means an authorisation given by a local authority under *section 2(1)*;
- “Commission” means the Data Protection Commission;
- “data subject” has the meaning given to it in Part 5 of the Act of 2018;
- “designated person” means a person designated by the Minister under *section 4(2)*; 20
- “local authority” has the meaning given to it in the Local Government Act 2001 (as amended by the Local Government Reform Act 2014);
- “Minister” means the Minister for Housing, Local Government and Heritage;
- “operation”, in relation to relevant surveillance devices, includes the maintenance and monitoring of such devices; 25
- “personal data” has the meaning given to it in Part 5 of the Act of 2018;
- “prescribed” means prescribed by regulations made by the Minister under this Act;
- “relevant offence” means an offence that is specified by or under—
- (a) the Waste Management Act 1996, or
- (b) the Litter Pollution Act 1997, 30

and which may be prosecuted by a local authority under either of those Acts;

“relevant surveillance device” means a device specified by or under *section 2(10)*.

### **Surveillance of public places for purposes of functions relating to relevant offences**

2. (1) Subject to this Act and Part 5 of the Act of 2018, a local authority may authorise either or both the installation and operation of relevant surveillance devices in public places for the sole or primary purpose of facilitating the deterrence, prevention and detection of relevant offences in its functional area and the prosecution of such offences. 5
- (2) Where a local authority gives an authorisation, the authority shall specify the areas within which, based on the information available to it, the installation or operation of such devices is warranted for the purpose specified in *subsection (1)*. 10
- (3) Authorisation may be given to either or both of the following:
- (a) officers of the local authority concerned;
  - (b) persons who meet established criteria and who are retained under a contract with the local authority concerned. 15
- (4) Each local authority shall establish criteria for the purposes of *subsection (3)(b)*.
- (5) An authorisation may contain such terms and conditions as the local authority concerned considers necessary generally for the purpose of this Act and Part 5 of the Act of 2018.
- (6) Prior to giving an authorisation, a local authority shall carry out a data protection impact assessment in accordance with section 84 of the Act of 2018. 20
- (7) A local authority shall ensure that an authorisation is reviewed on a regular basis, and in any event—
- (a) in the case of a first review on a date that is not later than 5 years, or such shorter period as may be prescribed in relation to any authorisation or class of authorisations, after the date on which the authorisation is given, and 25
  - (b) in respect of each subsequent review, not later than once every 5 years, or such shorter period as may be prescribed in relation to any authorisation or class of authorisations, after the previous review of the authorisation concerned.
- (8) Subject to this Act, a local authority may issue directions to persons authorised under this section in relation to the installation or operation of relevant surveillance devices. 30
- (9) A person who contravenes a direction under *subsection (8)* commits an offence and is liable on summary conviction to a class C fine or imprisonment for a term not exceeding 6 months, or both.
- (10) For the purposes of this section any of the following devices may be installed or operated: 35
- (a) fixed CCTV;
  - (b) mobile CCTV;
  - (c) drones;

(d) such other recording devices as may be prescribed.

(11) In this section—

“drone” means an unmanned aircraft, within the meaning of Commission Delegated Regulation (EU) 2019/945 of 12 March 2019<sup>1</sup>, that is equipped with a camera, sensor or other device to like effect that is capable of recording or processing a visual image or moving visual images in a public place; 5

“fixed CCTV” means any fixed system employing recording devices for recording or processing, including through the use of an automatic number plate recognition system, a visual image or moving visual images in a public place;

“mobile CCTV” means any system employing recording devices for recording or processing, including through the use of an automatic number plate recognition system, a visual image or moving visual images in a public place where it is in a vehicle belonging to, or being used by, a local authority or a person referred to in *subsection (3)(b)*; 10

“public place” means a place to which the public have or are permitted access, whether as of right or by express or implied permission; 15

“recording device” means a non-fixed device capable of recording or processing, including through the use of an automatic number plate recognition system, visual images, on any medium, from which a visual image or moving visual images may be produced and includes any accompanying sound or document. 20

### **Third party data controllers**

3. (1) A person may provide such information, records or documents, including personal data, as may be prescribed that is in that person’s possession to a local authority if such provision is necessary and proportionate for the purposes of the performance by a local authority of its functions relating to the enforcement of provisions in respect of a relevant offence. 25
- (2) A local authority may receive and retain such information, records or documents, including personal data, that is provided to it in accordance with *subsection (1)* if such provision is necessary and proportionate for the purposes of the performance by it of its functions relating to the enforcement of provisions in respect of a relevant offence. 30
- (3) For the purposes of this section, the Minister may prescribe such conditions or safeguards as the Minister considers necessary for the purposes of compliance with Part 5 of the Act of 2018.
- (4) This section is without prejudice to any obligation or power to provide, request or receive information, records or documents under any other enactment or rule of law. 35

### **Supplementary provisions in relation to certain data**

4. (1) This section applies to data (in this section referred to as “relevant data”) obtained on foot of an automatic number plate recognition system that is operated pursuant to an authorisation, whether or not accompanied by any image or images of a vehicle or its occupant or occupants. 40

<sup>1</sup> OJ No. L 152, 11.06.2019, p.1

- (2) Subject to *subsection (3)*, the Minister may designate a person for the purposes of this section if the Minister is satisfied that the following applies:
- (a) the relevant data to be provided by the person is necessary and proportionate for the purposes of detecting, investigating or prosecuting relevant offences;
  - (b) the person has adequate systems in place to prevent the unauthorised consultation, alteration, disclosure or erasure of the relevant data; 5
  - (c) the person consents to entering into data-sharing agreements with local authorities in accordance with this section.
- (3) The Minister shall, prior to making a designation under *subsection (2)*, consult with the Commission and the person concerned. 10
- (4) Subject to *subsection (5)*, a designated person shall disclose relevant data to a local authority where each of the following applies:
- (a) the relevant data concerned is disclosed for the purpose of detecting, investigating or prosecuting a relevant offence;
  - (b) the disclosure of the relevant data— 15
    - (i) is necessary for the performance of the functions in relation to which the relevant data is being disclosed, and
    - (ii) is proportionate, having regard to the functions of the local authority concerned in relation to relevant offences and the effects of the disclosure on the rights of the data subjects concerned. 20
- (5) A designated person shall not disclose relevant data to a local authority unless there is in force a data-sharing agreement with the local authority concerned at the time the disclosure is sought.
- (6) (a) A data-sharing agreement referred to in *subsection (5)* shall be in writing and may be made between the designated person concerned and one or more local authorities. 25
- (b) A local authority that is not a party to a data-sharing agreement, made between a designated person and one or more local authorities for the purposes of this section, on its date of execution may accede to the agreement by executing an accession agreement to the data-sharing agreement with the designated person concerned. 30
- (7) A data-sharing agreement referred to in *subsection (5)* shall specify the following:
- (a) the relevant data to be disclosed;
  - (b) how the relevant data to be disclosed is to be processed following its disclosure;
  - (c) the security measures to apply to the transmission, storage and accessing of relevant data, in a manner that does not compromise those security measures; 35
  - (d) the requirements in relation to the retention of—
    - (i) the relevant data to be disclosed, and
    - (ii) any information resulting from the processing of the relevant data,



- for the duration of the agreement and in the event that the agreement is terminated;
- (e) the method to be employed to destroy or delete—
    - (i) the relevant data to be disclosed, and
    - (ii) any information resulting from the processing of the relevant data, 5
 at the end of the period for which the relevant data is to be retained in accordance with the agreement;
  - (f) the procedure in accordance with which a party may withdraw from the agreement;
  - (g) such other matter as may be deemed appropriate by any party to the agreement. 10
- (8) A designated person and each local authority who is a party to a data-sharing agreement for the purposes of this section shall review the operation of the agreement on a regular basis, and in any event—
- (a) in the case of a first review on a date that is not later than 2 years after the date on which the agreement is made, and 15
  - (b) in respect of each subsequent review, not later than once every 2 years after the previous review of the agreement concerned.
- (9) This section is without prejudice to the operation of data protection law within the meaning of the Data Sharing and Governance Act 2019.

## **Data protection**

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5. (1) This section applies in respect of personal data (in this section referred to as “relevant data”) obtained by a local authority on foot of the operation of a relevant surveillance device or in accordance with *section 3*.
- (2) Relevant data shall be processed only for the following purposes:
- (a) detecting the commission of relevant offences; 25
  - (b) identifying persons who commit relevant offences;
  - (c) prosecution of relevant offences.
- (3) Relevant data processed by a local authority for a purpose referred to in this section shall not be retained by a local authority for any longer than is strictly required for the purposes of complying with a condition referred to in *subsection (2)*. 30

## **Codes of practice**

6. (1) Each local authority shall, as soon as practicable after the coming into operation of this Act, prepare and submit to the Minister for approval a draft code of practice regarding the performance of functions by or on behalf of a local authority under this Act. 35
- (2) A draft code of practice referred to in *subsection (1)* shall include provisions in relation to each of the following matters:

- (a) procedures and standards to be followed in the performance of functions under this Act;
  - (b) confidentiality, security, storage, access and retention of data obtained or received in accordance with this Act;
  - (c) measures to protect the rights and freedoms of data subjects; 5
  - (d) such other matters relevant to the performance of functions by or on behalf of a local authority under this Act as the authority considers appropriate.
- (3) In preparing a draft code of practice under this section, a local authority shall ensure that—
- (a) a data protection impact assessment is carried out in accordance with section 84 of the Act of 2018, 10
  - (b) without prejudice to section 42(2) of the Irish Human Rights and Equality Commission Act 2014, an assessment of the human rights issues it believes to be relevant to the performance of functions under this Act by or on behalf of the local authority and the policies, plans and actions in place or proposed to be put in place to address those issues, and 15
  - (c) the assessments referred to in *paragraphs (a) and (b)* will be provided to all parties referred to in *subsection (5)* prior to consultation under that subsection.
- (4) Without prejudice to *subsection (5)*, for the purposes of *subsection (3)(b)* a local authority shall engage in such consultations, including public consultations, as the authority considers appropriate. 20
- (5) Prior to submitting a draft code of practice under *subsection (1)*, a local authority shall consult with the following persons about the content of the draft code:
- (a) the Minister;
  - (b) the Commission; 25
  - (c) the Irish Human Rights and Equality Commission;
  - (d) such other person as the authority considers appropriate.
- (6) Where the Minister receives a draft code of practice from a local authority, the Minister may by order declare that the code, scheduled to the order, shall be a code of practice for the purposes of this Act. 30
- (7) Each local authority shall—
- (a) ensure that a code of practice to which *subsection (6)* relates is reviewed on a regular basis, and in any event—
    - (i) in the case of a first review, on a date that is not later than 5 years after the date on which the code is declared to be a code of practice under that subsection, and 35
    - (ii) in respect of each subsequent review, not later than once every 5 years after the previous review of the code concerned,
- and

- (b) for the purpose of *paragraph (a)*, consult with the persons referred to in *subsection (5)*.
- (8) (a) Subject to *paragraph (b)*, the Minister may at the request of the local authority concerned or after consultation with that authority, by order revoke or amend a code of practice to which *subsection (6)* relates. 5
- (b) Before making an order under *paragraph (a)*, the Minister shall ensure that the matters referred to in *subsections (2) and (3)* are complied with.
- (9) Each local authority shall take such steps as are necessary to ensure that all such persons as appear to the local authority concerned to be appropriate have read and understand the provisions of a code of practice that is declared to be a code of practice for the purposes of this Act in relation to the local authority concerned. 10
- (10) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either such House within the next 21 days on which that House sits after the order is laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder. 15

#### **Admissibility of evidence**

- 7. (1) Evidence obtained under this Act may be admitted as evidence in criminal proceedings.
- (2) Nothing in this Act is to be construed as prejudicing the admissibility of information or material obtained otherwise than under this Act. 20
- (3) (a) Information or documents obtained on foot of the operation of a relevant surveillance device under *section 2* may be admitted as evidence in criminal proceedings notwithstanding any error or omission on the face of the authorisation concerned, if the court, having regard in particular to the matters specified in *paragraph (b)*, is satisfied that each of the following applies: 25
  - (i) the error or omission concerned was inadvertent;
  - (ii) the information or document ought to be admitted in the interests of justice.
- (b) The following matters are specified for the purposes of *paragraph (a)*:
  - (i) whether the error or omission concerned was serious or merely technical in nature; 30
  - (ii) the nature of any right infringed by the obtaining of the information or document concerned;
  - (iii) whether there were circumstances of urgency;
  - (iv) the possible prejudicial effect of the information or document concerned; 35
  - (v) the probative value of the information or document concerned.
- (4) Without prejudice to the power of the court to exclude evidence at its discretion, a failure to observe any provision of this Act or of any direction or guidance given under this Act, shall not of itself affect the admissibility of any evidence obtained under this Act. 40

- (5) It shall be presumed, until the contrary is shown, that a relevant surveillance device operated for the purposes referred to in this Act is a device capable of producing accurate information or material without the necessity of proving that the device concerned was in good working order.

#### **Prohibition of interference with relevant surveillance devices**

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8. (1) A person commits an offence if that person, without lawful authority or reasonable excuse, removes, damages or otherwise interferes with a relevant surveillance device that is installed or operated on foot of an authorisation under *section 2(1)*.
- (2) A person who commits an offence under this section is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both.

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#### **Prosecution of offences**

9. Summary proceedings for an offence under this Act may be brought and prosecuted by the local authority in whose functional area the offence was committed.

#### **Review of operation of *section 4***

10. (1) After consulting with the Minister for Justice, the President of the High Court shall invite a judge of the High Court to undertake (while serving as such a judge) the functions specified in this section and, if the invitation is accepted, the Government shall designate the judge for the purposes of performing those functions. 15
- (2) The designated judge holds office in accordance with the terms of the designation.
- (3) The functions of the designated judge are to— 20
- (a) keep under review the operation of *section 4*, and
- (b) report to the Taoiseach from time to time and at least once every 12 months concerning any matters relating to the operation of that section that the designated judge considers should be reported.
- (4) A person in charge of a place under the control of a local authority or a designated person or any other place in which documents relevant to the performance of the functions of the designated judge are kept shall ensure that the designated judge has access to those places and to any records or documents relating to requests for disclosure by a local authority, or disclosure by a designated person, under *section 4* or such other records or documents that the designated judge considers relevant to the performance of functions under this section. 25 30
- (5) The Taoiseach shall ensure that a copy of a report under *subsection (3)(b)* is laid before each House of the Oireachtas not later than 6 months after it is made.

#### **Regulations**

11. (1) The Minister may, after consultation with the Commission, by regulations provide for any matter referred to in this Act as prescribed or to be prescribed. 35
- (2) Without prejudice to any provision of this Act, regulations under this Act may contain such incidental, supplementary and consequential provisions as appear to the Minister

to be necessary or expedient.

- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled 5 accordingly, but without prejudice to the validity of anything previously done thereunder.

**Short title and commencement**

12. (1) This Act may be cited as the Local Government (Surveillance Powers in Relation to Certain Offences) Act 2022. 10
- (2) This Act comes into operation 3 months after the date of its passing or on such earlier date than the said 3 months as the Minister may by order appoint.

# BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do chumhachtú d'údaráis áitiúla a údarú feistí faireachais a shuiteáil agus a oibriú d'fhonn daoine a chur ó chionta áirithe a dhéanamh agus d'fhonn cionta áirithe a chosc, a bhrath agus a ionchúiseamh, do dhéanamh socrú maidir le sonraí áirithe a aistriú ó rialaitheoirí sonraí tríú páirtí chuig údaráis áitiúla chun a bhfeidhmeanna a chomhlíonadh i ndáil le cionta den sórt sin, do dhéanamh foráil áirithe chun comhlíonadh feidhmeanna faoin Acht seo a rialáil agus do dhéanamh socrú i dtaobh nithe gaolmhara.

An Seanadóir Maolcholm Ó Broin a thíolaic,  
25 Eanáir, 2022

# BILL

(as initiated)

entitled

An Act to empower local authorities to authorise the installation and operation of surveillance devices for the purposes of deterring, preventing, detecting and prosecuting certain offences, to provide for exchange of certain data from third party data controllers to local authorities for the purposes of the performance of their functions in relation to such offences, to make certain provision for the purposes of regulating the performance of functions under this Act and to provide for related matters.

Presented by Senator Malcolm Byrne,  
25th January, 2022

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ó  
FOILSEACHÁIN RIALTAIS,  
BÓTHAR BHAILE UÍ BHEOLÁIN, CILL MHAIGHNEANN,  
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