



Bille an Gharda Síochána (Feistí Taifeadta), 2022
Garda Síochána (Recording Devices) Bill 2022

Meabhrán Miniúcháin
Explanatory Memorandum



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EXPLANATORY MEMORANDUM

The main purpose of the Bill is:

The main purpose of the Garda Síochána (Recording Devices) Bill is to provide a robust statutory framework for An Garda Síochána to use digital recording devices to support their key functions, such as the investigation, detection, prevention and prosecution of criminal offences, safeguarding against and preventing threats to public safety and public order, and in matters relating to the security of the State. This includes the use of body-worn cameras by the Garda Síochána as recommended in the Report of the Commission of the Future of Policing in Ireland (COFPI).

The Bill will repeal and replace the CCTV provisions contained in section 38 of the Garda Síochána Act, 2005. It will set out how CCTV schemes should be managed to reflect changes in the law on foot of the introduction of the General Data Protection Regulation and the Law Enforcement Directive. This gives greater clarity in relation to the roles and responsibilities of both An Garda Síochána and Local Authorities in CCTV schemes.

The Bill will provide a statutory basis for the expanded use of Automatic Number Plate Recognition (ANPR) technology. It will allow the Minister to designate other bodies that have networks of ANPR cameras as bodies who may transfer their ANPR records to An Garda Síochána.

The Bill contains provisions for An Garda Síochána to access Third Party CCTV. This allows for judicial authorisation for any access to live feeds, and it permits An Garda Síochána to approve access internally for a period of up to 72 hours. It also provides for access to data retained by third parties as a result of the operation of CCTV.

The Bill addresses the recommendations of the Fennelly Commission of Investigation in relation to the recording of calls to or from the Garda Síochána. The Bill will provide a statutory basis for the recording of 999 calls which are transferred to the Gardaí, and for the recording of other emergency and non-emergency lines or numbers that will be specified in, and governed by, a code of practice.

The Bill provides for the installation and operation of CCTV on Garda premises. This provides an updated legal basis for the installation and operation of CCTV on their premises for the purpose of safeguarding persons or property and for the prevention, detection, investigation and prosecution of offences.

The powers in this Bill must be subject to sufficient controls and oversight to ensure their use is necessary and proportionate at all times as there are

potential implications for the right to privacy and for the data protection rights of individuals. The Bill provides for various codes of practice to be prepared for certain parts of the Bill, including requirements to conduct data protection impact assessments and human rights assessments prior to the deployment of any of the measures.

Provisions of the Bill:

Part 1

Preliminary and General

Section 1: Short title and commencement

Section 1 is a standard provision, which sets out the title of the Bill, and provides for commencement orders for the coming into force of the Bill once enacted.

Section 2: Interpretation

Section 2 is a standard provision defining key words and phrases used in the Bill. Of particular importance is the definition of a “*recording device*” which is defined to include devices capable of recording or processing records created under this Act. It also includes devices which are affixed to a vehicle or structure which means that recording from helicopters, other aircraft and drones are provided for. The definition of a “*member of Garda personnel*” includes both members of An Garda Síochána and civilian staff of the organisation.

Section 3: Orders and regulations

Section 3 provides for the Minister for Justice to make regulations that are necessary for the operation of the Act, and provides that any order or regulation made under the Act will be laid before the Houses of the Oireachtas.

Section 4: Application of Act

Section 4 sets out that nothing shall affect the validity of recording or processing carried out before the coming into operation of a provision within the Act which will govern that type of recording or processing going forward. *Subsection (2)* makes it clear that nothing shall render unlawful processing obtaining or retaining, non personal data that would otherwise be lawful. This section also sets out the type of recording and the Acts under which the recording is carried out, to which this Bill will not apply. The application of the Act is without prejudice to the Data Protection Acts 1988 -2018.

Section 5: Expenses

Section 5 is a standard provision dealing with expenses incurred in the administration of the Act.

Section 6: Repeal and revocation

Section 6 provides for the repeal of section 38 of the Garda Síochána Act 2005 subject to the transitional provisions provided for in *section 7*, and deals with the revocation of the Garda Síochána (CCTV) Order 2006.

Section 7: Transitional provisions

Section 7 sets out how existing CCTV schemes that have an authorisation under section 38 of the Garda Síochána Act 2005 can continue for a period of up to 4 years, notwithstanding the repeal provision in *Section 6(1)*.

Part 2

Operation of Recording Devices by Members of Garda Personnel

Section 8: Application of Part 2

Section 8 specifies that this Part does not apply to recording devices operated for the purposes of CCTV or ANPR.

Section 9: Operation of recording devices generally

Section 9 provides a power for a member of Garda personnel to operate a recording device, or cause a recording device to be operated. The provisions sets out where the operating device may be operated, and includes where the recording device is remotely controlled or attached to an animal.

Subsection (4) provides that the operation of a recording device will be necessary and proportionate to the purposes set out in the section and includes a presumption that the operation of the device will be deemed to be necessary and proportionate if its operation is in line with an applicable Code of Practice.

Subsection (5) provides that, subject to the additional provisions relating to body worn cameras in *Section 10*, the operation of a recording device must be, as far as practical, overt, and that where a recording device is being operated in a dwelling, a member of Garda personnel must, where appropriate, notify the occupants at the start and record the notification.

Section 10: Additional provisions regarding operation of body-worn cameras

Section 10 sets out that where operating a body-worn camera, the body worn camera will be visible on the clothing, uniform or headgear, or on the clothing, uniform or headgear of an animal, and will have a visible indicator showing when it is being operated.

Section 11: Offences under this Part

Section 11 sets out a range of offences relating to falsification or destruction of records or devices.

Subsection (3) sets out the penalties upon conviction for an offence under this section, which are on summary conviction, a class A fine, or a term of imprisonment not exceeding 12 months or both, or on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

Part 3

ANPR

Section 12: Interpretation (Part 3)

Section 12 provides definitions for terms used in this Part of the Bill. This includes the definition of “ANPR data” which includes ANPR records created by Garda personnel and ANPR records created by relevant bodies that are transferred to An Garda Síochána. The Bill lists a number of relevant bodies that have ANPR networks that are of strategic interest to An Garda Síochána.

Section 13: Application of Part 3

Section 13 sets out that the CCTV provisions in Part 5, 6, or 7 do not affect the operation of this Part.

Section 14: Power of member of Garda personnel to utilise ANPR

Section 14 sets out the purposes for which ANPR can be utilised by a member of Garda personnel. The utilisation of ANPR is defined to include both the recording and processing of ANPR records.

Section 15: Designation of relevant body by Minister

Section 15 sets out that the Minister may, after consulting with the Data Protection Commission and the body concerned, designate a body as a relevant body under this Part where he or she is satisfied that the disclosure of the ANPR data is necessary and proportionate to the purposes specified and the body has adequate data safeguards in place.

Section 16: Disclosure of relevant data by relevant body

Section 16 provides a power for a relevant body to disclose relevant data to the Garda Síochána. It sets out the content of a data sharing agreement to be agreed between An Garda Síochána and the relevant body, and ensures that a review of the operation of the data sharing agreement is conducted not more than 3 years from the date of the agreement or from the date of any review.

Section 17: Focussed monitoring by member of Garda personnel relating to arrestable offences and matters relating to security of State.

Section 17 sets out that ANPR data may be used to monitor the movement of a vehicle, called focussed monitoring, if its use has been approved by a member of the Garda Síochána not below the rank of superintendent or if it has been authorised by a judge of the District Court.

Focussed monitoring may be approved where an investigation relates to an arrestable offence, or a matter relating to the security of the State and where it is reasonably believed that a vehicle is connected to one or more of these matters.

The approving officer has to be independent of the investigation or matter for which the application is being made, and must be satisfied that the use is necessary and proportionate to the purpose of the investigation or matter set out. The approving officer may only allow focussed monitoring for a period up to 3 months and may include terms and conditions to their approval if they consider it appropriate.

Section 18: Judicial authorisation of focussed monitoring for more than 3 months

Section 18 contains provisions relating to the continued focussed monitoring of a vehicle beyond 3 months. If a member of the Garda Síochána not below the rank of superintendent believes that further monitoring is justified for the purposes of investigating an arrestable offence or a matter relating to the security of the State, they can make an application to the judge of the Dublin Metropolitan District Court before the expiry of that period, for an authorisation to continue to use ANPR data for that purpose.

If the District Court judge is satisfied that it is justified to do so, they will issue an authorisation for a period that will not exceed 3 months from its date of issue. Provision is made for the variation of an authorisation by the judge, and renewals which must be applied for before their expiry date.

Section 19: Searches of ANPR data retained by Garda Síochána

Section 19 sets out that in order to search retained ANPR data, a member of Garda personnel must make an application to a member of the Garda Síochána of a rank not below sergeant, or higher, as specified in a Code of Practice. It also sets out that the person to whom the application is made, must be independent of the purpose to which the application relates.

The reasons that the member of Garda Síochána to whom the application is made, can approve the search of retained ANPR data, are provided for in *subsection (2)*. This includes that the search is necessary and proportionate to the purposes set out.

Section 20: Offences under this Part

Section 20 sets out a range of offences relating to falsification or destruction of records or devices.

Subsection (3) sets out the penalties upon conviction for an offence under this section, which are on summary conviction, a class A fine, or a term of imprisonment not exceeding 12 months or both, or on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

Part 4

Recording of Certain Telephone Calls To or From Garda Síochána

Section 21: Designation of certain telephone lines or numbers

Section 21 sets out the types of lines or numbers, which may be designated by the Garda Commissioner as lines or numbers that may be recorded, and the purposes for which a designation may be made. Such designations can include emergency and non-emergency calls and will be in accordance with an applicable Code of Practice.

Section 22: Power to process data recorded from telephone lines or numbers designated under this Part

Section 22 sets out that the Garda Síochána may process data from recordings made under *section 21* for the purposes set out in *section 21(3)(a)*, and in accordance with an applicable code of practice.

Part 5

Authorisation of Installation and Operation of CCTV for Particular Purposes

This part contains the new provisions for CCTV schemes replacing the provisions previously contained in *Section 38 of the Garda Síochána Act 2005*.

Section 23: Interpretation (Part 5)

Section 23 provides definitions for terms used in this Part of the Bill.

Section 24: Application of Part 5

Section 24 provides that a person must not install or operate CCTV for the sole or primary purpose of recording in a public place for the purposes set out, without an authorisation issued under this Part, subject to *section 7*. It provides that an authorisation can only be given to a member of Garda personnel, or to a local authority in accordance with *Section 25* or *Section 26* respectively.

Section 25: Authorisation to member of Garda personnel

Section 25 sets out the purposes for which a member of Garda personnel may apply for an authorisation to the Garda Commissioner, and the information that should be included in any application which will be governed by a Code of Practice. It provides for the Garda Commissioner to give an authorisation if satisfied that the installation or operation of CCTV is necessary and proportionate to the purposes specified in this section, and is in accordance with the application information set out, for a period of no more than 5 years. It also provides for the Garda Commissioner to

include terms and conditions on the authorisation if he or she considers it necessary. A data protection impact assessment must be carried out.

Section 26: Authorisation to local authority

Section 26 sets out the purposes for which a local authority may apply for authorisation to the Garda Commissioner, and information that should be included in any application which will be governed by a Code of Practice. It provides for the Garda Commissioner to give an authorisation if satisfied that the installation or operation of CCTV is necessary and proportionate to the purposes specified in this section, is in accordance with the application information set out, and is satisfied that the local authority has consulted with the joint policing committee for the administrative area.

The local authority must agree to give access at all times to the CCTV to members of Garda personnel, that the CCTV will at all times comply with technical specifications that may be issued by the Commissioner and that it is installed and operated in accordance with a Code of Practice.

Section 27: Provisions applying to person installing or operating CCTV on behalf of person to whom authorisation given

Section 27 contains provisions for persons installing or operating CCTV on behalf of a member of Garda Síochána or a local authority to whom an authorisation has been given. It binds them to the terms of the authorisation and specifies what they must do before they install or operate CCTV, namely, have fulfilled criteria detailed by the Garda Commissioner in an applicable Code of Practice, entered into a contract with the party to whom the authorisation was granted, and entered into an agreement relating to the processing of data with either the Commissioner or the local authority.

Section 28: Provisions regarding expiry of authorisation at end of its duration

Section 28 provides that an authorisation expires on the date specified on the authorisation, and the person to whom the authorisation was granted must terminate or cause the termination of the operation the CCTV to which the authorisation relates. If a person wishes to continue operation or installation of the CCTV to which the authorisation relates, then they must apply for a new authorisation under *Section 25* or *26*. If a new application is made, this section also provides that the existing authorisation will be deemed to not have expired until the decision on the new application is made.

Section 29: Provisions applying where certain amendments or additions proposed to be made to CCTV

Section 29 provides that where an authorisation has been given, the Garda Commissioner must be informed of the types of amendments or additions set out. When the Garda Commissioner is being informed of these amendments or additions, any data protection impact assessment conducted must also be provided to him or her. The Garda Commissioner can decide to either modify an existing authorisation or issue a direction under *Section 31* requiring the person to make a new application for an authorisation under *Section 25* or *26*. An authorisation will expire if amendments or additions are made without the relevant modified authorisation or new authorisation.

Section 30: Provisions regarding review and revocation of authorisation

Section 30 provides that the Garda Commissioner may review authorisations issued under *Section 25* or *26*. It also provides for the circumstances under which the Garda Commissioner may revoke authorisations.

Section 31: Directions

Section 31 provides that a member of Garda Síochána not below the rank of chief superintendent may issue directions to a person to whom an authorisation has been granted under this Part and that person must comply with it.

Section 32: Offences under this Part

Subsection (1) makes it an offence for a person to install or operate or cause the installation or operation of CCTV for the purposes set out in *Section 24(1)* without an authorisation. *Subsection (2)* makes it an offence for any person without reasonable excuse, to fail to comply with the provisions contained in this part. *Subsection (3)* sets out a range of offences relating to falsification or destruction of records or devices. *Subsection (4)* makes it an offence to induce, coerce, threaten or request a Garda to act contrary to *subsection (3)*.

The penalties upon conviction for an offence under this section are, on summary conviction, a class A fine, or a term of imprisonment not exceeding 12 months or both, or on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

Part 6

Processing by Members of Garda Personnel of Third-Party CCTV

Section 33: Definition (Part 6)

Section 33 provides a definition for the term “superior officer” used in this Part of the Bill.

Section 34: Application of Part 6

Section 34 provides that this Part does not apply to the processing of CCTV, including processing of live feeds of CCTV operated by, or on behalf of, a local authority under Part 5.

Section 35: Live feed processing by member of Garda personnel of third-party CCTV

Section 35 provides a power for a member of Garda personnel to process live feeds of third-party CCTV only in accordance with an authorisation given by a District Court judge under *Section 37*, or an approval granted under *Section 39* by a superior officer. Provisions for variations of authorisations are also included.

Section 36: Application by superior officer for authorisation

Section 36 sets out that a superior officer may make an application to the judge of the District Court for an authorisation to process live feeds of third-party CCTV, if there are reasonable grounds for believing that such processing for the purposes listed is required.

Section 37: Authorisation

Subsection (1) sets out that the application to the judge of the District Court, will be made to the District Court in which the cameras are situated, on notice to the third party concerned, and heard otherwise than in public. *Subsection (2)* provides that a judge will grant an authorisation where he or she is satisfied by the information provided on oath by the superior officer. *Subsection (3)* provides that the information on oath specifying the grounds for the superior officer’s belief that the authorisation is necessary for any of the purposes in *Section 36*, does not need to contain a particular offence for which it is being sought. *Subsection (4)* allows the judge to impose conditions on the authorisation they may consider appropriate to the processing. In *subsection (5)* the specifics of what an authorisation must contain are set out and *subsection (6)* provides for an expiry date which the

judge will fix subject to *section 38*, which can be no longer than 6 months from the day it is issued.

Section 38: Variation or renewal of authorisation

Section 38 provides for a superior officer to apply to the District Court to vary or renew an authorisation. It sets out what the information on oath should include. It provides that a renewal of an authorisation cannot exceed a 6 month period and a renewal application must be made before the authorisation has expired. The section also sets out that where an authorisation expires before the application is determined, it will be deemed to not expire until the application has been determined.

Section 39: Approval for processing of live feed of third-party CCTV

Section 39 provides that a member of Garda personnel may apply to an independent superior officer, to process live feed of third-party CCTV for up to 72 hours for one or more of the purposes set out. The section contains the considerations of the superior officer if approving an application, allows for conditions to be attached, and provides that the approval will be provided to the third party before processing happens. It allows for the approval to be varied if necessary. It provides that where a superior officer wishes to extend the time-period for access, they must apply to the District Court judge under *section 36* before the approval expires.

Where a member of Garda personnel processes live feeds under this section, they will be required to furnish a report, with the details specified under *subsection (10)*, to a chief superintendent within 7 days of the end of the processing.

Section 40: Request for access to data retained by or on behalf of third party

Section 40 provides that where a member of Garda personnel requests data from a third party which has been obtained as a result of the operation of CCTV and retained by the third party, then the third party must provide that data to the member of Garda personnel with 7 days of the date of the request. It also sets out the purposes for which a member of Garda personnel may request data and that such a request shall be necessary and proportionate with regard to the purposes set out.

Section 41: Offences under this Part

This section sets out the various offences and penalties that are included relating to this part.

Part 7

CCTV in Garda Síochána Premises

Section 42: Authorisation to operate CCTV in Garda Síochána premises

Section 42 provides that the Garda Commissioner may authorise the installation or operation of CCTV in or around Garda premises for the principal purpose of safeguarding persons or property, or for the prevention, investigation, detection, or prosecution of criminal offences. This power can be delegated to a member of Garda personnel not below the rank of chief superintendent, or principal officer grade. This section defines Garda premises to include temporary structures, including premises or structures being used on a temporary basis, or any part thereof, that the Garda Síochána are using for the performance of their functions.

Part 8

Codes of Practice for Parts 2 to 6

Section 43: Codes of Practice for Parts 2 to 6

Section 43 sets out that a code or codes of practice must be drawn up by the Garda Commissioner having regard to the operation of, and any associated procedures or agreements in respect of *Parts 2 to 6*. It also provides what a code or codes of practice must incorporate. This includes provisions relating to the procedures to be followed, and provisions relating to confidentiality, security, storage, access and retention.

It lists, in *subsection (3)*, the stakeholders with whom the Garda Commissioner must consult and the information that must be provided to them. The information comprises of a draft code of practice, the results of any data protection impact assessments, and the results of any assessment of the impact of the human rights of an individual. The draft code must also be published on the Garda website for a period to be determined by the Garda Commissioner to allow persons to make written representations in respect of the draft code. The Garda Commissioner may also consult with any other persons he or she deems appropriate and may amend the code as a result of the consultations.

Subsection (4) provides that once a draft code of practice is submitted to him or her, the Minister may declare it a code of practice for the purpose of the Bill by order. The text of the code of practice will be set out in the order.

Provision is made in *subsection (5)* for the Garda Commissioner to review a code of practice at least every 5 years from the date of the order, or from the previous review. *Subsection (3)* will apply to the review process. *Subsection (6)* provides that the Garda Commissioner may submit further codes of practice to the Minister to amend, revoke, or replace of a code of practice. And *subsection (7)* outlines that the provisions of this section applies to all draft codes submitted to the Minister, including where it is for amendment, revocation of a code or replacement of a code.

Subsection (8) contains a provision to ensure that all reasonable steps are taken by the Commissioner to bring the codes of practice, or any amendments of the codes, which are the subject of an order, to the attention of Garda personnel.

Part 9

Miscellaneous Provisions

Section 44: Admissibility of evidence

Section 44 deals with the issue of admissibility of evidence. It provides that documents obtained under the Bill may be used in civil and criminal proceedings, and in disciplinary actions so defined. It sets out that the provisions of this Act shall not prejudice the admissibility of recordings or documents obtained other than under this Act. It provides that a breach of procedures or a failure to fulfil particular statutory requirements will not, of itself, mean that the documents in question must be excluded from evidence, subject to the discretionary power of the courts to exclude evidence. The section also provides for certain presumptions in respect of a recording device operated in accordance with this Bill and in relation to the signature of a member on an authorisation, designation, approval, produced in proceedings under this Bill.

Section 45: Review of Operation of Parts 3 and 6

Section 45 provides for the appointment of a judge of the High Court to oversee the operation of the provisions relating to Part 3 (ANPR) and Part 6 (processing by members of Garda personnel of third-party CCTV). It also provides for the judge to make regular reports to the Taoiseach on matters relating to the operation of these Parts. Such reports will be laid before both Houses of the Oireachtas and the Taoiseach may exclude certain matters from those reports which may be prejudicial to the security of the State.

Section 46: Amendment of Act of 2009

Section 46 amends the definition of a surveillance device in the Garda Síochána (Surveillance) Act 2009, and excludes this Bill from the application of that Act.

An Roinn Dlí and Cirt,

Lúnasa, 2022.