

# Garda Síochána (Recording Devices) (Amendment) Bill

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## Abstract

This Bill Digest provides an overview of the provisions in the Garda Síochána (Recording Devices) (Amendment) Bill 2025. The Bill proposes a number of amendments to the [Garda Síochána \(Recording Devices\) Act 2023](#), including providing for the carrying out of biometric analysis by Garda personnel. The Digest also provides some policy and legal context to the Bill and outlines the pre-legislative scrutiny process.



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## Executive Summary

The Garda Síochána (Recording Devices)(Amendment) Bill 2025 ('the Bill') was published on 11 December 2025 and is scheduled for Second Stage debate on 18 December 2025 in Dáil Éireann. The [Draft General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#) was published on 14 December 2023 and pre-legislative scrutiny took place on **13 February 2024**. The Joint Oireachtas Committee on Justice published its [report](#) on 27 February 2024 with 32 recommendations.

This Bill Digest should be read alongside the [General Scheme Briefing Paper on the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#), which provides detailed legal and policy context, including the ongoing debate in relation to biometric technologies and their implications for human rights as well as the evolving EU Artificial Intelligence Act.

The Bill contains nine sections, divided into two Parts, and proposes a number of amendments to the [Garda Síochána \(Recording Devices\) Act 2023](#) ('the 2023 Act').<sup>1</sup> **Section 6 of the Bill** proposes to insert a new Part, Part 6A, into the 2023 Act, to provide for the carrying out of biometric analysis by members of Garda personnel. The term "biometric analysis" is used in the Bill instead of the term "biometric identification" which was the term used in the General Scheme and is the term defined in the EU AI Act. The main difference between "biometric analysis" and "biometric identification" in the Bill is that the latter involves the use of a database for comparative purposes. While the Bill does not provide for the establishment of a database, the Government has indicated that future legislation will provide for a database which will be used for both retrospective and live biometric identification. The Digest notes that the lack of clarity surrounding the term "biometric analysis" gives rise to uncertainty as to how such technology would be classified under the EU AI Act, which dictates corresponding regulatory obligations.

**Section 7 of the Bill** proposes to insert new subsections 7A and 9 into section 47 of the 2023 Act, which would dispense with consultation requirements where changes are deemed to be "minor" in respect of Codes of Practice under Parts 2-6 of the 2023 Act.

**Section 8 of the Bill** proposes to insert a new Part, Part 8A, into the 2023 Act, to require the Garda Commissioner to develop codes of practice in relation to the use of biometric analysis by members of Garda personnel. Many provisions mirror the existing Part 8 of the 2023 Act and also includes a requirement for a resolution to be passed by both Houses of the Oireachtas before a draft code of practice may become a Ministerial Order.

**Section 9 of the Bill** proposes to amend section 49 of the 2023 Act to bring the use of "biometric analysis" within the remit of the designated judge tasked with reviewing the operation of Parts 3 and 6 of the 2023 Act.

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<sup>1</sup> For further discussion of this legislation, see L&RS [Bill Digest on the Garda Síochána \(Recording Devices\) Bill 2022](#).

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## Introduction

The Garda Síochána (Recording Devices)(Amendment) Bill 2025 ('the Bill') was published on 11 December 2025 and is scheduled for Second Stage debate on 18 December 2025 in Dáil Éireann.

Following the publication of the Bill, Minister for Justice, Home Affairs and Migration, Jim O'Callaghan TD, [stated](#):

“The technologies we intend to provide for under this legislation will allow Gardaí to process vast amounts of footage and imagery much more efficiently than is currently the case.”

Commenting on balancing the rights to privacy and data protection with crime prevention, the Minister [stated](#):

“In introducing legislative change government must always balance that right with what is necessary to prevent crime, enhance public safety and maintain national security. This legislation will achieve that balance.”

This Bill Digest will discuss the following:

- Policy and legal context
- Principal provisions of the Bill
- Regulatory Impact Analysis
- Pre-legislative scrutiny

This Bill Digest should be read alongside the [General Scheme Briefing Paper on the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#) ('the Briefing Paper'), which was published on 17 July 2025 and provides detailed legal and policy context related to this legislation.

### Related Library and Research publications and resources:

- [Bill Resource Page](#) [internal only] Garda Síochána (Recording Devices) (Amendment) Bill
- [L&RS Bill Digest on the Garda Síochána \(Recording Devices\) Bill 2022](#)
- [Bill Resource Page](#) [internal only] Garda Síochána (Recording Devices) Bill 2022
- [L&RS \(2025\) EU Digital Omnibus Package | Resources for Members](#) [internal only]
- [L&RS \(2025\) Research Matters: How AI can impact human rights and equality](#)
- [L&RS \(2024\) Spotlight on 'Artificial Intelligence: Background and overview of the current regulatory landscape in Ireland and the EU'](#)
- [L&RS \(2019\) Note: Data privacy and community CCTV schemes](#)

## Policy and legal context

The Garda Síochána (Recording Devices)(Amendment) Bill 2025 ('the Bill') was published on 11 December 2025 and proposes a number of amendments to the [Garda Síochána \(Recording Devices\) Act 2023](#) ('the 2023 Act') to provide for the use of biometric analysis by Garda personnel. In June 2023, the Government took the decision to amend the 2023 Act to provide that biometric technologies may be used by An Garda Síochána.<sup>2</sup> While the 2023 Act has not yet been fully commenced, some of the provisions, for example those that provide for the use of body worn cameras by An Garda Síochána, have come into effect. The background to the 2023 Act and the legislative proposal that led to this Bill is set out in more detail in previous L&RS publications.<sup>3</sup> It is recommended that the [Briefing Paper](#) be read alongside this Bill Digest for a deeper understanding of the policy and legal background to this legislative proposal. The Briefing Paper contains discussion of the following key points:

- The calls for Facial Recognition Technology (FRT) emerged in the context of wide-ranging policing reform and evolving Government policy on artificial intelligence.
- The increased use of FRT by police forces in other jurisdictions has been controversial and has given rise to debates about the accuracy of the technology, particularly its potential inherent biases and capacity to discriminate against particular groups.
- Human rights lawyers and civil society groups have highlighted the impacts on the rights to privacy as well as several other rights. They also highlighted how this may create a chilling effect on how an individual may behave in society.
- The human rights engaged by FRT may be legally restricted if three tests can be satisfied, namely legality, proportionality and necessity.
- The processing of facial images by law enforcement authorities is already subject to significant regulation under the Data Protection Act 2018, which implements the General Data Protection Regulation (GDPR) and the Law Enforcement Directive.
- The [European Union Regulation on Artificial Intelligence](#) (the 'EU AI Act') describes retrospective facial recognition technology as a high-risk AI system and places specific obligations on users of such systems.<sup>4</sup>

The Briefing Paper also discussed the [Draft General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#), which was published on 14 December 2023. It was suggested in the Briefing Paper that the Bill would be quite different to the General Scheme. While this is the case, much of the policy and legal context remains relevant to this legislation.

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<sup>2</sup> Government decision S180/20/10/2836.

<sup>3</sup> L&RS (2025) [General Scheme Briefing Paper on the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#). L&RS (2022) Bill Digest on the Garda Síochána (Recording Devices) Bill 2022.

<sup>4</sup> Since the Briefing Paper was published, the European Commission has issued a proposal to amend aspects of the EU AI Act, particularly with respect to implementation timelines. This is discussed further in L&RS Blog on [EU Digital Omnibus Package | Resources for Members](#), November 2025.

## Terminology related to facial recognition technology

The EU AI Act defines an AI system as:

“a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.”

The EU AI Act also defines the following terms: ‘biometric verification, biometric categorisation system’, remote biometric identification system’, real-time remote biometric identification system’ and ‘post-remote biometric identification system’.<sup>5</sup>

In the [Draft General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#) the term “biometric identification” was used. As will be discussed below, the Bill uses the term “biometric analysis”. Given that the term “biometric analysis” is not one that does not appear in the EU AI Act, this gives rise to uncertainty as to what the capabilities of this technology are.

Dr. Joy Buolamwini, a leading academic and activist, has defined Facial Recognition Technologies (FRTs) as “a set of digital tools used to perform tasks on images or videos of human faces”.<sup>6</sup> These tools are categorised by Buolamwini based on whether they answer certain questions, which are outlined in Table 1 below.

**Table 1: Types of FRT used to answer specific questions**

Questions	Tasks performed by FRT tools
Is there a face in the image?	Face detection
What kind of face is shown in the image?	Face attribute classification Face attribute estimation Face attribute detection Emotion, affect, and facial expression classification
Whose face is shown in the image?	Facial recognition, including: <ul style="list-style-type: none"> <li>• Face verification</li> <li>• Face identification</li> </ul>

**Source:** L&RS, based on [Buolamwini et al \(2020\), Facial Recognition Technologies: A Primer](#)

Given that the use of the term “biometric analysis” in the Bill may give rise to uncertainty, the above questions and tasks in table 1 should be borne in mind when seeking to ascertain what

<sup>5</sup> These are set out in more detail in the [General Scheme Briefing Paper on the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#).

<sup>6</sup> [Buolamwini et al \(2020\), Facial Recognition Technologies: A Primer](#), p 2.

kind of technology or AI system is being referred to in the Bill.<sup>7</sup> This is particularly important in light of the regulatory obligations that may be imposed under the EU AI Act, which will be discussed later in the Digest.

### Forthcoming legislation on facial recognition technology

According to a Department of Justice, Home Affairs and Migration [press release](#) published on 11 December 2025, Minister O’Callaghan “also received approval to draft heads of a General Scheme to provide for retrospective and live biometric identification”. The [press release](#) outlines the proposed contents of this General Scheme as follows:

“Biometric identification will involve the automated recognition of physical, physiological or behavioural human features for the purpose of ascertaining, or attempting to ascertain, the identity of an individual by comparing biometric data of the individual to biometric data stored in a database of one or more named individuals. This would be, by way of an example, the automated comparison of a facial image against a database which holds images of persons who have committed criminal offences.

The purposes for which retrospective biometric identification may be used will align with the first amending Bill, that is, where an arrestable offence is suspected, for the search for a missing person, and for the protection of the security of the State. The purpose for which live biometric identification may be used will comply with Article 5 of the EU AI Act.”

The established of such a database referred to in this press release is required under an EU Regulation on police cooperation (known as Prüm II).<sup>8</sup> This regulation and legislative proposals related to biometric identification are discussed in more detail in the [General Scheme Briefing Paper on the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#).

This Bill is not currently listed on the Autumn Legislation Programme but in light of this press release, it is anticipated that it will be included in the forthcoming Spring Legislation Programme.

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<sup>7</sup> The origins and operation of FRT is discussed further in the [General Scheme Briefing Paper on the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#)

<sup>8</sup> European Union Regulation (EU) 2024/982 on automated data exchange for police cooperation. Further information available [here](#).

## Principal provisions of the Bill

The [Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#) was published on 11 December 2025 and proposes a number of amendments to the [Garda Síochána \(Recording Devices\) Act 2023](#).<sup>9</sup> At the time of writing, many of the provisions of the 2023 Act had not yet been commenced, including:

- Automatic number plate recognition (ANPR) (Part 3)
- Recording of Certain Telephone Calls to or from Garda Síochána (Part 4)
- Authorisation of Installation and Operation of CCTV for Particular Purposes (Part 5)
- Processing by Members of Garda Personnel of CCTV Operated by Third-Party Through Live Feed (Part 6)
- Review of operation of Parts 3 and 6 (section 49)

The [Garda Síochána \(Recording Devices\)\(Amendment\) Bill 2025](#) [Garda Síochána \(Recording Devices\)\(Amendment\) Bill 2025](#) contains nine sections, divided into two Parts.

Part 1 provides for the short title and commencement and defines ‘the Principal Act’ as the [Garda Síochána \(Recording Devices\) Act 2023](#).

Part 2 provides for a number of amendments to the [Garda Síochána \(Recording Devices\) Act 2023](#) (‘the 2023 Act’). Sections 3-5 of the Bill provide for technical and consequential amendments to the 2023 Act and will not be considered in detail in this section. Given time constraints in drafting this Bill Digest, i.e. the Bill being published on 11 December 2025 and scheduled for Second Stage debate on 18 December 2025, this section of the Digest will only consider sections 6-9 of the Bill in detail.

## Biometric analysis by Garda personnel (Section 6)

### What is biometric analysis?

Section 6 proposes to insert a new Part, Part 6A, into the 2023 Act, to provide for the carrying out of biometric analysis by members of Garda personnel. The proposed new Part 6A contains five new sections, namely sections 43A – 43E. Each section will be considered in turn below.

The proposed section 43A defines what biometric analysis means. This term did not appear in the General Scheme of the Bill. This term is also not defined in the EU AI Act. The Bill (proposed new section 43A) proposes to define the process of biometric analysis as:

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<sup>9</sup> For further discussion of this legislation, see L&RS [Bill Digest on the Garda Síochána \(Recording Devices\) Bill 2022](#).

“... the automated recognition and categorising of instances of physical, physiological or behavioural human features by the use of specific technical processing of documents obtained by An Garda Síochána in the course of an investigation...”.

This process may be applied to individuals generally; a particular, but unidentified, individual; or to a particular, identified, individual. This will be discussed in more detail later in the Digest.

A ‘document’ is defined in section 2 of the 2023 Act as:

- (a) a book, record or other written or printed material,
- (b) a photograph,
- (c) any information stored, maintained or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form, and
- (d) any audio or video recording.

However, no further information is provided on the sources of data that may be used for “biometric analysis”. Concerns were raised, including by the Data Protection Commissioner, in relation to the sources of documents that may be used for biometric identification during pre-legislative process.<sup>10</sup>

Although the term “biometric analysis” does not appear in the EU AI Act, some aspects of the definition in the Bill appear in the EU AI Act. For example, the definition of “biometric analysis” in the Bill includes a reference to ‘automated recognition’ which is also mentioned in the definition of “biometric identification” in the EU AI Act. Moreover, ‘biometric verification’, as defined in article 3(36) of the EU AI Act, also provides for the comparing of biometric data. However, this comparison does not use a database but rather “previously provided biometric data”. This may be akin to what is described in the Bill when sections 43A and sections 43C(5) and (12) are read together. When read together, these provisions in the Bill permit Garda personnel to compare biometric data.

Despite these similarities in terminology, “biometric analysis” is explicitly distinguished from “biometric identification” in the proposed new section 43A. The latter is defined as:

“the automated recognition of physical, physiological or behavioural human features for the purpose of ascertaining, or attempting to ascertain, the identity of an individual by comparing biometric data of the individual to biometric data stored in a database of one or more named individuals”.

This definition of “biometric identification” is similar to that set out in the EU AI Act.<sup>11</sup>

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<sup>10</sup> Joint Oireachtas Committee on Justice [Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill 2023](#), 27 February 2024.

<sup>11</sup> Article 3(35) of the [Regulation \(EU\) 2024/1689](#) (Artificial Intelligence Act).

One of the key differences between “biometric analysis” and “biometric identification”, as defined in the Bill, would seem to be that the latter involves the use of a database for comparative purposes. According to a Department of Justice, Home Affairs and Migration [press release](#) published on 11 December 2025, biometric identification and the establishment of such a database will be provided for in forthcoming legislation.<sup>12</sup>

Therefore, the use of the term “biometric analysis” gives rise to uncertainty given the fact that it is a novel term yet there are some overlaps with the terminology in the EU AI Act. This then raises questions as to how this type of AI system should be classified under the EU AI Act. Article 6(2) of the EU AI Act provides that the AI systems referred to in Annex III of the Act shall be considered to be high-risk. Given the inclusion of a reference to “biometrics” in Annex III, it would appear that this system of “biometric analysis” may fall under high-risk AI systems. Nevertheless, Article 6(3) of the EU AI Act provides that a system listed in Annex III shall not be considered high risk “where it does not pose a significant risk of harm to the health, safety or fundamental rights of natural persons, including by not materially influencing the outcome of decision making”. Without further information and clarity related to the AI system which is being described as “biometric analysis” or a fundamental rights impact assessment related to the same, it is difficult to assess how such a system would be classified under the EU AI Act. This is significant because the classification of AI systems dictates the regulatory obligations that attach to those systems under the EU AI Act. For example, providers and deployers of high-risk AI systems must comply with the following obligations related to the use of retrospective FRT under the EU AI Act:

- Judicial/administrative authorisation
- Limited and specific use
- Human decision-making by the law enforcement authorities required.
- Annual reports on use of FRT must be submitted to the relevant market surveillance and data protection authorities, excluding the disclosure of sensitive operational data related to law enforcement.<sup>13</sup>

Although the term “biometric analysis” was not used in the General Scheme, some of the intended use cases for image analysis and recognition technologies by An Garda Síochána, as outlined in An Garda Síochána’s submission to the Joint Oireachtas Committee on Justice, seem to align with the definition of biometric analysis in the Bill. These include:

- **Person biometric recognition and search** – search for occurrences of a person (without associated identity) based on physical characteristics such as facial features;
- **Person biometric clustering** – having distinguished a person of interest (without associated identity) in a series, find all instances of that person based on physical characteristics; and

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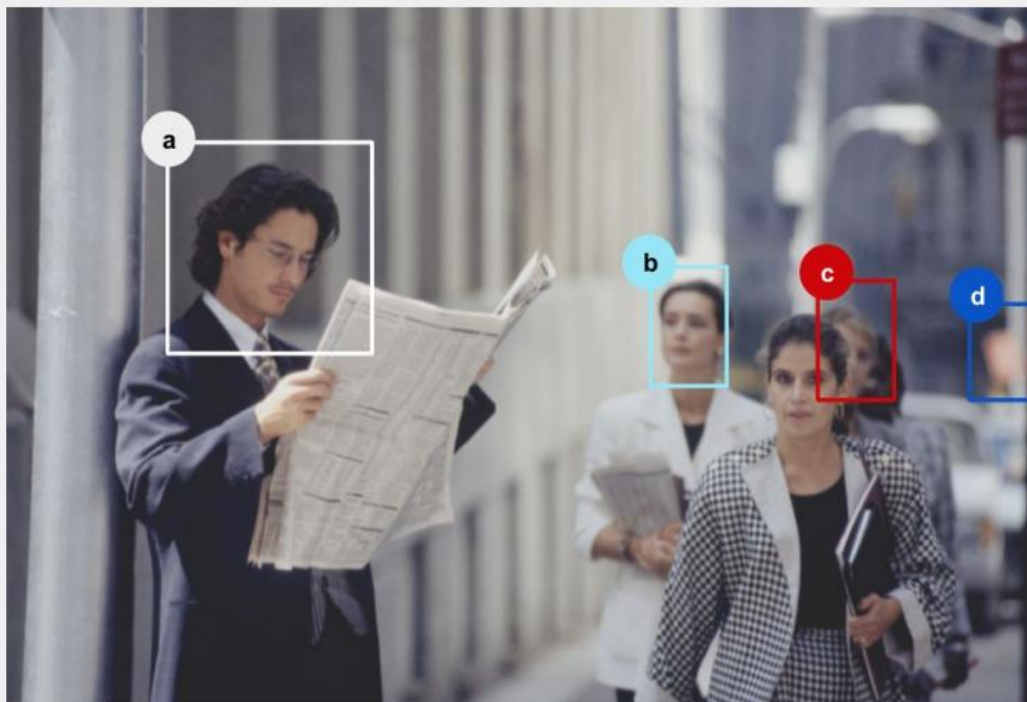
<sup>12</sup> The State is required to establish such a database under an EU Regulation 2024/982 on police cooperation (known as Prüm II).

<sup>13</sup> Article 26(10) of the EU AI Act.

- **Retrospective person remote biometric search** – search for all images in a digital evidence series for occurrences of a specific person of interest’s image (with or without associated identity established).<sup>14</sup>

One of the tasks that may be performed by facial recognition technologies referred to by Dr. Joy Buolamwini is known as facial detection. Dr. Buolamwini has outlined some of the challenges posed by face detection technology as depicted in Figure 1 below.

**Figure 1: Challenges of face detection.**



This figure shows an image in which some, but not all of the faces have been detected and indicated with boxes. Deciding whether or not a region represents a face can be made challenging due to viewing angle (box a), image blur (box b), partial occlusion (box c), and many other factors. False positives may also be detected (box d). Some face detectors have been shown to perform poorly on people with darker skin tones [12].

**Source:** [Buolamwini et al \(2020\), Facial Recognition Technologies: A Primer, p 3.](#)

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<sup>14</sup> An Garda Síochána, Submission on the General Scheme of the Recording Devices (Amendment) Bill 2023, 18 January 2024, available in the [PLS Report](#), p. 113-114.

### Who may carry out biometric analysis?

The proposed new section 43C provides that a “member of Garda personnel” may carry out biometric analysis. This includes both members of An Garda Síochána and Garda staff.<sup>15</sup> The reference to ‘Garda personnel’ is in line with the operation of other recording devices provided for under the 2023 Act.

The proposed new section 43D also provides members of Garda personnel with an explicit power to process data obtained as a result of biometric analysis carried out in accordance with the proposed new Part 6A. This provides An Garda Síochána with a legal basis to process this data as required by the Data Protection Act 2018.

### What data may be analysed?

The proposed new section 43A provides that biometric analysis may be carried out on “documents<sup>16</sup> obtained by An Garda Síochána in the course of an investigation”.

‘Biometric data’ is defined in section 43A as:

“personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of an individual but does not include excluded biometric data”

This definition is similar to that set out in the EU law.<sup>17</sup> However, the definition proposed excludes the following types of biometric data:

- 1) fingerprints;
- 2) a sample of blood, pubic hair, or urine;
- 3) a swab from a genital region or a body orifice other than the mouth;
- 4) a dental impression;<sup>18</sup>
- 5) a sample of saliva, hair other than pubic hair, a nail, or any material found under a nail;

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<sup>15</sup> Section 2 of the 2023 Act and section 44 of the Policing, Security and Community Safety Act 2024.

<sup>16</sup> ‘Document’ is defined in section 2 of the 2023 Act and listed in the previous section of the Digest above.

<sup>17</sup> Article 4(14) of the [General Data Protection Regulation](#); Article 10 of the [Law Enforcement Directive \(EU\) 2016/680](#) and Article 3(34) of the [EU AI Act](#). According to Recital 14 to the EU AI Act “the notion of ‘biometric data’ used in this Regulation should be interpreted in light of the notion of biometric data as defined in Article 4, point (14) of Regulation (EU) 2016/679, Article 3, point (18) of Regulation (EU) 2018/1725 and Article 3, point (13) of Directive (EU) 2016/680”.

<sup>18</sup> Bullet points 2-4 are classified as ‘intimate samples’ under [section 2 of the Criminal Justice \(Forensic Evidence and DNA Database System\) Act 2014](#).

- 6) a swab from any part of the body including the mouth but not from any other body orifice or a genital region; or
- 7) a skin impression<sup>19</sup>.

According to information provided by the Department of Justice, Home Affairs and Migration outlined in the pre-legislative scrutiny section of this Digest, the decision to exclude these types of data is due to the fact that they already have a basis in Irish law, i.e. [the Criminal Justice \(Forensic Evidence and DNA Database System\) Act 2014](#).

Furthermore, it is stated in the Bill that Garda personnel may use “biometric data derived from documents” obtained in the course of an investigation, which includes comparing biometric data derived from such documents<sup>20</sup> in the following circumstances:

in relation to a particular, but unidentified, individual, the automated recognition and categorising of physical, physiological or behavioural human features by the use of specific technical processing of documents obtained by An Garda Síochána in the course of an investigation, in respect of instances of the particular unidentified individual; or

in relation to a particular, identified, individual, the automated recognition and categorising of physical, physiological or behavioural human features by the use of specific technical processing of documents obtained by An Garda Síochána in the course of an investigation, in respect of instances of the particular identified individual for the purpose of localising that particular identified individual.<sup>21</sup>

### **For what purpose can biometric data analysis be carried out by Garda personnel?**

According to the proposed new section 43C(2) biometric analysis may only be carried out for a ‘principal purpose’ or ‘principal purposes’. A principal purpose is defined as:

- (a) the prevention, investigation, detection or prosecution of arrestable offences;
- (b) the protection of the security of the State; or
- (c) a search for one or more missing persons.

An ‘arrestable offence’ is defined in [section 2 of the Criminal Law Act 1997](#) as an offence, or an attempt to commit such an offence, under an enactment or the common law, which attracts a penalty of at least five years imprisonment. The General Scheme had included a list of offences

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<sup>19</sup> Bullet points 5-7 are classified as ‘non-intimate samples’ under [section 2 of the Criminal Justice \(Forensic Evidence and DNA Database System\) Act 2014](#).

<sup>20</sup> The proposed new sections 43C(5) and (12) of the 2023 Act.

<sup>21</sup> These circumstances are set out in paragraphs (b) and (c) of the definition of “biometric analysis” set out in the proposed new section 43A.

in relation to which biometric identification could be used in a Schedule and the then Minister for Justice, Helen McEntee T.D., had requested that the Joint Oireachtas Committee on Justice consider the inclusion of further offences.<sup>22</sup>

The proposed new section 43B provides that nothing in the proposed new Part 6A will affect the following data exchange processes between An Garda Síochána and international agencies or countries:

- 'Exchange of Information for purposes of Council Decision and Schengen Convention',<sup>23</sup>
- Data sharing with the Europol Information System, and<sup>24</sup>
- 'Power to enter into agreements with other law enforcement agencies, relevant persons or bodies outside State'.<sup>25</sup>

### Whose biometric data may be analysed?

According to the proposed new section 43C(6) a member of Garda personnel may only carry out biometric analysis in order to search for:

- (a) an individual who the member has reasonable grounds to suspect
  - (i) of the commission of an arrestable offence, or
  - (ii) is a threat to the security of the State,
- (b) a missing person, or
- (c) an individual who the member reasonably suspects is or has been a victim of an arrestable offence.

'Missing person' is defined in the proposed section 43C(11) as follows:

"a person, other than a person who is a suspected victim of an arrestable offence, who is observed to be missing from his or her normal patterns of life, in relation to whom those persons who are likely to have heard from the person are unaware of the whereabouts of the person and that the circumstances of the person being missing raises concerns for his or her safety and well-being".

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<sup>22</sup> This is discussed further in the L&RS [General Scheme Briefing Paper on the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#).

<sup>23</sup> Section 22 of the [Criminal Justice \(Miscellaneous Provisions\) Act 2009](#).

<sup>24</sup> Sections 8-12 of the [Europol Act 2012](#).

<sup>25</sup> Section 93 of the [Policing, Security and Community Safety Act 2024](#), which commenced on 2/4/2025.

It may be of interest to note that these objectives align with those defined in the EU AI Act<sup>26</sup> in relation to the use of ‘real-time’ remote biometric identification systems in publicly accessible spaces for law enforcement purposes. Biometric analysis does not fall into that category.

In the definition of “biometric analysis” set out in the proposed new section 43A, the process is described as including:

- individuals generally;
- a particular, but unidentified, individual, in respect of instances of the particular unidentified individual; and
- a particular, identified, individual in respect of instances of the particular identified individual for the purpose of localising that particular identified individual.

It would appear that these two provisions (the proposed new sections 43A and 43C(6)) may give rise to some uncertainty when read together, given that the individuals described in section 43C(6) are identified individuals, but the process described in section 43A may relate to unidentified individuals.

### When can biometric analysis be carried out?

Biometric analysis is only permitted when carried out in accordance with the proposed new Part 6A and any forthcoming Code of Practice developed under the proposed new Part 8A.

The proposed new section 43C(7) states that Garda personnel may only carry out biometric analysis on a retrospective basis. Retrospective basis is defined in section 43C(11) as:

“... the carrying out of biometric analysis, the carrying out of biometric analysis in respect of a person, other than in real time.”

In its Report on pre-legislative scrutiny the Joint Oireachtas Committee on Justice recommended that the legislative proposal should:

“... provide for a specific time delay between the creation of images or footage and the permitted processing of the images or footage with biometric identification technology under the legislation, to reflect both European law in respect of the ban on live or live-like use of biometric identification and stated national policy.”<sup>27</sup>

Murray has identified two categories of potential human rights harms linked to retrospective facial recognition technology as follows:

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<sup>26</sup> Article 5(1) of the EU AI Act lists a range of prohibited AI practices. The use of ‘real-time’ remote biometric identification systems in publicly accessible spaces for the purposes of law enforcement is prohibited except where strictly necessary to achieve an objective outlined in Article 5(1)(h).

<sup>27</sup> Joint Oireachtas Committee on Justice [Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill 2023](#), 27 February 2024, p 10.

“First is the immediate impact on an individual’s right to privacy caused by the recording of their movements in public, and by being subject to biometric processing. Second is a potentially more insidious long-term harm, associated with surveillance-related chilling effects.”<sup>28</sup>

### Necessity and proportionality tests

As mentioned above and discussed in greater detail in the L&RS [Briefing Paper](#) published in July 2025, the use of biometric analysis technology engages the rights to privacy and data protection, among other rights. Nevertheless, these rights may be limited in certain circumstances where it is deemed necessary and proportionate to do so. To ensure that such infringements are necessary and proportionate, the European Data Protection Supervisor (EDPS) recommends:

“... a law enforcement measure, if and when assessed to be necessary, should then be analysed according to whether it would be more proportionate if it were limited to only serious crimes. A proportionality test could involve assessing what rules should accompany a surveillance measure before or after it is authorised: such rules, often referred to as ‘safeguards’, would serve to reduce the risks to the fundamental rights posed by the envisaged measure.”<sup>29</sup>

In a 2019 decision, the Data Protection Commission (DPC) found that An Garda Síochána had infringed section 84 of the Data Protection Act 2018 since it had failed:

“to test the necessity of [automatic number plate recognition] ANPR cameras and to demonstrate that the use of ANPR cameras is justified and proportionate vis a vis the crime levels in the area it is trying to address.”<sup>30</sup>

The DPC further stated:

“As no evidence was presented of any consideration being given to the issues of design in terms of what the ANPR cameras capture and how data can subsequently be aggregated, searched, consulted and reported, AGS has failed to consider the privacy impact of such surveillance using ANPR cameras.”<sup>31</sup>

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<sup>28</sup> Murray, [Police Use of Retrospective Facial Recognition Technology: A Step Change in Surveillance Capability Necessitating an Evolution of the Human Rights Law Framework](#) (2023) *Modern Law Review* pp 1–31, at 8.

<sup>29</sup> European Data Protection Supervisor (2017) [Assessing the necessity of measures that limit the fundamental right to the protection of personal data: A Toolkit](#), p 5.

<sup>30</sup> DPC (2019) [Inquiry into An Garda Síochána](#), p 29.

<sup>31</sup> DPC (2019) [Inquiry into An Garda Síochána](#), p 28.

In its Report on pre-legislative scrutiny, the Joint Oireachtas Committee on Justice recommended that the rationale for introducing Facial Recognition Technology (FRT) be published in parallel with the progression of this legislation.<sup>32</sup> The response of the Department is set out in the section on PLS later in the Digest. The [Explanatory Memorandum](#) to the Bill notes:

“The power to process documents using biometrics in this Bill must be subject to sufficient controls and oversight to ensure its use is necessary and proportionate at all times as there are potential implications for fundamental rights of individuals subjected to these technologies.”

The Explanatory Memorandum does not provide any further evidence on how the necessity and proportionality tests may be satisfied in respect of use of biometric analysis technology. The proposed section 43C(3) provides that biometric analysis will only be carried out where it is necessary and proportionate in a missing person case, in order to protect the security of State or in searching for an individual suspected of having committed or being a victim of an arrestable offence. The Bill also contains a presumption of necessity and proportionality<sup>33</sup> where biometric analysis is carried out in accordance with the proposed new Part 6A, and any forthcoming code of practice developed under the proposed new Part 8A.

### Reliability of biometric analysis

Section 43C(8) provides that the results of biometric analysis will not be used if they haven't been reviewed by a member of Garda personnel. This provision does not require the reviewing member of Garda personnel to be independent of the investigation. In contrast, in the 2023 Act, there is provision for a member who is independent of the investigation to approve the use of automatic number plate recognition (ANPR) technology.

Having reviewed the results of the biometric analysis, the member of Garda personnel must then make an assessment as to whether the results are “of sufficient reliability” to be used for a principal purpose (e.g., in the course of an investigation of an arrestable offence, to protect the security of the State or in a missing person case). The Bill does not provide a definition of “sufficient reliability” or a list of criteria that may be used to determine such reliability.

In its Report on pre-legislative scrutiny the Joint Oireachtas Committee on Justice noted concerns about the accuracy of facial recognition technologies and recommended that an

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<sup>32</sup> Joint Oireachtas Committee on Justice [Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill 2023](#), 27 February 2024, p 6.

<sup>33</sup> The proposed new section 43C(4) of the 2023 Act.

annual audit of the use of biometric identification should include an analysis of accuracy scores.<sup>34</sup>

Moreover, in the L&RS Briefing Paper reference was made to the case of *The Queen (on application of Edward Bridges) v The Chief Constable of South Wales Police*.<sup>35</sup> In that case the appellant challenged the use of live automated facial recognition technology by the South Wales Police (SWP) Force. SWP have a statutory public sector equality duty akin to the public sector duty imposed on public bodies in Ireland under section 42 of the Irish Human Rights and Equality Commission Act 2014. One of the grounds of complaint in the case related to an alleged breach by SWP of the public sector equality duty's requirement to have due regard to the need to eliminate discrimination on the basis of the protected grounds of race and sex. The appellant relied on "scientific evidence that facial recognition software can be biased and create a greater risk of false identifications in the case of people from black, Asian and other minority ethnic ("BAME") backgrounds, and also in the case of women."<sup>36</sup> The England and Wales Court of Appeal held:

"... SWP have never sought to satisfy themselves, either directly or by way of independent verification, that the software program in this case does not have an unacceptable bias on grounds of race or sex."<sup>37</sup>

The Court concluded that:

"SWP have not done all that they reasonably could to fulfil the [public sector equality duty] PSED. We would hope that, as AFR [automated facial recognition technology] is a novel and controversial technology, all police forces that intend to use it in the future would wish to satisfy themselves that everything reasonable which could be done had been done in order to make sure that the software used does not have a racial or gender bias."<sup>38</sup>

Given the similarity of the UK's Public Sector Equality Duty to the one applicable in this jurisdiction<sup>39</sup>, the question arises as to whether An Garda Síochána may have to satisfy themselves that the biometric analysis system that may be procured does not have an unacceptable bias which may result in discrimination. In its Interim Report, the Joint Oireachtas Committee on Artificial Intelligence recommended:

The Department of Public Expenditure and Reform's 'Guidelines for the Responsible Use of AI in the Public Service' should be amended to include a reference to the

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<sup>34</sup> Joint Oireachtas Committee on Justice [Report on Pre-Legislative Scrutiny of the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill 2023](#), 27 February 2024, p 7.

<sup>35</sup> [2020] EWCA Civ 1058.

<sup>36</sup> [2020] EWCA Civ 1058, at para. 164.

<sup>37</sup> [2020] EWCA Civ 1058, at para. 199.

<sup>38</sup> [2020] EWCA Civ 1058 para 201.

<sup>39</sup> [Section 42 of the Irish Human Rights and Equality Commission Act 2014](#).

Public Sector Human Rights and Equality Duty. The Duty should be the core framework guiding public bodies in their adoption of AI, ensuring that systems are rights-compliant from the start.

The Committee also recommended that:

Any AI-powered tools or systems being considered for use by Government Departments or State bodies must follow a procurement process and undergo risk assessment and bias testing, before deployment.<sup>40</sup>

The proposed section 43C(8) of the Bill also gives rise to questions about transparency and digital literacy obligations under the EU AI Act. Some research has revealed “explanations increased blind trust rather than appropriate reliance on AI”.<sup>41</sup> Therefore the individual interpreting the explanations of AI must understand how the technology operates in order to ensure appropriate reliance on AI.

### Records management

The new section 43C includes proposals on records management related to the use of biometric analysis, which will be briefly outlined below.

Firstly, section 43C(9) includes a requirement to immediately destroy or delete the results of biometric analysis, where it “does not result in the recognition and categorising of an individual”, in accordance with the forthcoming code of practice.

Secondly, the Garda Commissioner is required to maintain a written list of instances where biometric analysis was carried out, which should include the following:

- (a) the circumstances which gave rise to the use of the biometric analysis, and
- (b) any other matters as may be specified in an applicable code of practice.<sup>42</sup>

Further provision for records management will be set out in a code of practice.

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<sup>40</sup> Joint Oireachtas Committee on Artificial Intelligence, [First Interim Report](#), published 16 December 2025.

<sup>41</sup> Bansal et al [Does the Whole Exceed its Parts? The Effect of AI Explanations on Complementary Team Performance](#). In CHI Conference on Human Factors in Computing Systems (CHI '21), May 8–13, 2021, Yokohama, Japan. ACM, New York, NY, USA.

<sup>42</sup> This appears in the proposed new section 43C(10).

## Offences

The proposed new section 43E creates several criminal offences in relation to the misuse of biometric analysis. These offences are similar to those set out in the 2023 Act.<sup>43</sup> These offences are summarised in the table below.

Section	Offence	Penalty
43E(1)(a)	A person who, without lawful authority or reasonable excuse, knowingly falsifies, conceals, destroys or otherwise disposes of information (including visual or audio information) obtained as a result of the carrying out of biometric analysis under Part 6A of the Garda Síochána (Recording Devices) Act 2023.	<p><b>Summary conviction:</b> a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both</p> <p><b>Conviction on indictment:</b> a fine or imprisonment for a term not exceeding 5 years or both</p>
43E(1)(b)	A person who, without lawful authority or reasonable excuse, knowingly permits the falsification, concealment, destruction or disposal of the information (including visual or audio information) obtained as a result of the carrying out of biometric analysis under Part 6A of the Garda Síochána (Recording Devices) Act 2023.	<p><b>Summary conviction:</b> a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both</p> <p><b>Conviction on indictment:</b> a fine or imprisonment for a term not exceeding 5 years or both</p>
43E(2)	A person who induces, coerces or requests, without lawful authority or reasonable excuse, a member of Garda personnel to commit an offence under section 43E(1) shall be guilty of an offence	<p><b>Summary conviction:</b> a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both</p> <p><b>Conviction on indictment:</b> a fine or imprisonment for a term not exceeding 5 years or both</p>

**Source:** L&RS (2025), based on the proposed new section 43E of the Bill.

<sup>43</sup> Similar offences are set out in respect of Parts 2-7 of the [Garda Síochána \(Recording Devices\) Act 2023](#).

## Codes of Practice related to Parts 2-6 of the 2023 Act (Section 7)

Section 7 of the Bill proposes to amend section 47 of the [Garda Síochána \(Recording Devices\) Act 2023](#), through the insertion of new subsections 7A and 9 which relates to consultation requirements in relation to Codes of Practice in respect of Parts 2-6 of the 2023 Act.<sup>44</sup> This proposal was not included in the General Scheme of the Bill and was therefore not considered during pre-legislative scrutiny.

Since the commencement of section 47 on 15 May 2024, a draft Code of Practice on the operation of body worn cameras by An Garda Síochána was prepared by the Garda Commissioner.<sup>45</sup> According to An Garda Síochána, this draft Code of Practice was put in place to support the trialing of Body-Worn Cameras in five Garda stations<sup>46</sup>. On 9 December 2025, An Garda Síochána launched a public consultation for a Code of Practice on Body-Worn Cameras (BWCs)<sup>47</sup> and an updated [draft Code of Practice on Body Worn Cameras](#) was published on 2 December 2025. The public consultation process will close on 13 January 2026. According to [An Garda Síochána](#):

“Prior to the Code of Practice being issued in a Part 8 consultation process, a Human Rights Impact Assessment was conducted and a Data Protection Impact Assessment will also be conducted before the Code of Practice can be considered by the Minister for Justice, Home Affairs and Migration for publication as a Statutory Instrument.”

Section 7 of the Bill proposes to amend the consultation process in relation to the development of body-worn cameras and other recording devices as provided for in section 47 of the 2023 Act. In particular, section 7(c) of the Bill proposes to allow the Garda Commissioner to provide an amended draft code of practice to the Minister for Justice, Home Affairs and Migration without the amended draft code having undergone a consultation exercise where the amendments to the code are considered to be minor. Section 7(d) of the Bill proposes to insert a new subsection (subsection 9) into section 47 of the 2023 Act which defines minor amendments to a code of practice as:

- a) typographical or other such minor errors;
- b) updating legislative references;
- c) updates to “reflect minor changes in, or the precise operation of, devices or other technology”; or

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<sup>44</sup> These Parts cover the following: PART 2: Operation of Recording Devices by Members of Garda Personnel; PART 3: ANPR; PART 4: Recording of Certain Telephone Calls to or from Garda Síochána; PART 5: Authorisation of Installation and Operation of CCTV for Particular Purposes; PART 6: Processing by Members of Garda Personnel of CCTV Operated by Third-Party Through Live Feed.

<sup>45</sup> [S.I. No. 216/2024 - Garda Síochána \(Recording Devices\) Act 2023 \(Code of Practice\) Order 2024](#) (17 May 2024). A subsequent [draft Code of Practice](#) was published on 2 December 2025.

<sup>46</sup> See further [here](#).

<sup>47</sup> [An Garda Síochána Launches Public Consultation for Body-Worn Cameras - Garda.ie](#), 10/12/2025.

- d) “minor changes in the law, social conditions, the meaning of words used or other relevant matters connected to paragraphs (a) to (c)”.

It is suggested that the proposed new subsections 9(c) and (d) may give rise to legal uncertainty as to what could be considered “minor changes” given the rapidly developing nature of artificial intelligence systems and regulatory requirements under the [EU AI Act](#). The proposed amendment also suggests that the human rights impact assessments<sup>48</sup> and data protection impact assessments<sup>49</sup> may not be updated to reflect minor changes in the operation of devices or technology or in the law. It is also unclear what is meant by ‘social conditions’ in this section since it is not defined in the Bill.

### Codes of Practice related to biometric analysis (Section 8)

Section 8 proposes to insert a new Part, Part 8A, into the 2023 Act, to require the Garda Commissioner to develop codes of practice in relation to the use of biometric analysis by members of Garda personnel. As mentioned above, similar provisions are set out in Part 8 of the 2023 Act in relation to the preparation of codes of practice in respect of Parts 2-6 of the 2023 Act. This section will discuss briefly the similarities between Part 8 and the proposed Part 8A.

### Content of Part 8A Codes of Practice

The proposed section 47A(2) sets out the elements which must be contained within a code of practice under Part 6A. Some of these elements such as procedures and confidentiality requirements are also set out in Part 8 of the 2023 Act. The proposed section 47A(2)(b) also requires an additional element to be included in a code of practice related to Part 6A, namely:

“parameters for use of biometric analysis, including geographical and, subject to section 43C(7), temporal limits of such use,”.

Such a specific provision on the operation of devices was not included in Part 8 of the 2023 Act. The reference to section 43C(7) here means that biometric analysis may only be carried out retrospectively.

The proposed section 47A(3) also provides guidance on other optional matters which may be included in a code of practice. Some of the language in this provision could potentially give rise to uncertainty. This includes a reference to “different types of biometric data and biometric analysis”. Given that there is already a definition of both ‘biometric data’ and “biometric

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<sup>48</sup> Section 47(3)(a) of the 2023 Act requires a human rights impact assessment to be carried out.

<sup>49</sup> Section 47(3)(b) of the 2023 Act requires a data protection impact assessment to be carried out.

analysis” in this Bill, this raises questions as to whether the “different types” referred to envisage matters that fall outside the scope of the definitions provided for. Paragraph (c) of subsection (3) also refers to “different categories of persons or data (including biometric data)”. Lastly, paragraph (d) notes that a code of practice may provide guidance on “the circumstances in which such biometric data is used or such biometric analysis is carried out”. This subsection does not refer to the new provisions in section 6 of the Bill, discussed above, regarding the circumstances in which biometric analysis may be conducted. This omission could potentially give rise to uncertainty.

### Impact assessments and consultation

The proposed new section 47A(4)(a) requires the Garda Commissioner to carry out an assessment of the impact of a draft code prepared under the proposed new Part 6A on “the human rights of individuals affected by the code” before submitting the draft code to the Minister for Justice, Home Affairs and Migration. This section also requires the Garda Commissioner to provide the Minister for Justice, Home Affairs and Migration and a list of stakeholders<sup>50</sup> with the results of such an assessment as well as the results of any data protection impact assessment. Data protection law currently requires such a data protection impact assessment to be carried out where:

“...having regard to its nature, scope, context and purposes, a type of processing, and in particular a type of processing using new technology, is likely to result in a high risk to the rights and freedoms of individuals.”<sup>51</sup>

These provisions are identical to those provided for in the section 47 of the 2023 Act. In the [Bill Digest on the Garda Síochána \(Recording Devices\) Bill 2022](#), it was noted that data protection law is clear on the requirements for a data protection impact assessment. However, there is no equivalent guidance on fundamental rights impact assessments. In the latest draft Code of Practice (COP) on Body Worn Cameras it is stated that “a Human Rights Impact Assessment on this COP has been carried out in accordance with Part 8 of the Act”.<sup>52</sup> Moreover, the draft Code notes:

“In line with the requirements of data protection legislation, An Garda Síochána has conducted a Data Protection Impact Assessment (DPIA) in relation to processing

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<sup>50</sup> An tÚdarás Póilíneachta agus Sábháilteachta Pobail; the Police Ombudsman; the Data Protection Commission; the Irish Human Rights and Equality Commission.

<sup>51</sup> Section 84(1) of the [Data Protection Act 2018](#).

<sup>52</sup> An Garda Síochána [draft Code of Practice on Body Worn Cameras](#), published 2 December 2025, p. 8.

activities relevant to this COP that are likely to result in a high risk to the rights and freedoms of data subjects.”<sup>53</sup>

These impact assessments are not publicly available. While there is no requirement for these impact assessments to be publicly available in the 2023 Act, there are examples of police forces in other jurisdictions publishing such assessments.<sup>54</sup>

The proposed new section 47A(4)(c) also requires the Garda Commissioner to engage in a public consultation on a draft code of practice made under the proposed new Part 6A through the publication of the draft code of practice on its website and issuance of an invitation for written submissions. Similar to the amendments proposed in section 7 of the Bill, section 47A(10) provides that the Garda Commissioner does not have to engage in a consultation where he/she considers that a new draft code contains “minor differences” to the existing code. These differences are defined in subsection 10 and are identical to those set out in the proposed new section 47(9) discussed above and therefore the same issues arise.

### **Approval of the Code of Practice by the Houses of the Oireachtas**

The proposed section 47A(6) requires the draft Ministerial Order (statutory instrument) containing the text of a draft code of practice, to be laid before the Houses of the Oireachtas. Both Dáil Éireann and Seanad Éireann must then pass a resolution approving the draft code of practice before the Ministerial Order will come into force. This differs from section 3(3) of the 2023 Act which provides that either House of the Oireachtas may pass a resolution annulling an order or regulation made under the 2023 Act within 21 days of it being laid before the Houses.

### **Review of the Code of Practice**

Similar to the 2023 Act, the Garda Commissioner is required to review the code of practice no later than 5 years from the date of it becoming an order by statutory instrument.

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<sup>53</sup> An Garda Síochána [draft Code of Practice on Body Worn Cameras](#), published 2 December 2025, p. 17.

<sup>54</sup> See L&RS [Bill Digest on the Garda Síochána \(Recording Devices\) Bill 2022](#), p 42.

## Review of operation of biometric analysis (Section 9)

Section 9 proposes to amend section 49 of the 2023 Act, which currently provides for a review by a designated judge of the operation of automatic number plate recognition (ANPR) (Part 3 of the 2023 Act) and the processing by members of Garda personnel of CCTV operated by third-party through live feed (Part 6 of the 2023 Act). As mentioned above, Part 3, Part 6 and section 49 of the 2023 Act have not yet been commenced.

Specifically, section 9 proposes to substitute the text set out in the Bill for subsection 3 of section 49. There is very little difference between the existing subsection and the proposed amended subsection. The primary change proposed is that biometric analysis by members of Garda personnel (set out in the proposed in new Part 6A) will be subject to review by a designated judge who will be required to report to An Taoiseach on such operations at least once a year.

In the L&RS [Bill Digest on the Garda Síochána \(Recording Devices\) Bill 2022](#), it was noted that similar judicial oversight roles created under the Communications (Retention of Data) Act 2011, have been critiqued for the following reasons:

“...when the oversight role is a part-time function of a busy judge with no staff, specialist training or technical advisors, this lack of detail does not instil confidence and suggests an over-reliance on the entities supposedly being monitored.”<sup>55</sup>

In the [L&RS Digest](#) it was also noted that in the Department of Justice’s explanatory notes to the General Scheme of the Garda Síochána (Recording Devices) Bill, it was proposed that the Independent Examiner of Security Legislation<sup>56</sup> would take on the review functions that will now be given to a designated judge under the Bill. Given that many of the offences in security legislation may be classified as “arrestable offences” to which biometric analysis may be applied under the 2023 Act, if the Bill is enacted, it may be the case that the independent examiner reports on security legislation may scrutinise the use of biometric analysis technology in the future.

Moreover, it was noted in the [General Scheme Briefing Paper on the General Scheme of the Garda Síochána \(Recording Devices\) \(Amendment\) Bill](#), that the EU law requires oversight of the use of certain AI systems. For example, the EU AI Act requires annual report on the use of facial recognition technologies to be submitted to the relevant market surveillance and data

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<sup>55</sup> TJ McIntyre (2016) *Judicial Oversight of Surveillance: The Case of Ireland in Comparative Perspective*. See also Mr Justice Murray (2017) *Review of the Law on the Retention of and Access to Communications Data*, pp 47-48.

<sup>56</sup> The Government designated Mr. Justice George Birmingham as the first Independent Examiner on 15 October 2024 in accordance with Part 7 of the Policing, Security and Community Safety Act 2024. See [L&RS Note on Policing, Security and Community Safety Bill 2023: Independent Examiner of Security Legislation](#) (2023).

protection authorities, excluding the disclosure of sensitive operational data related to law enforcement.<sup>57</sup> As mentioned above, given the uncertainty in relation to the classification of “biometric analysis” under the EU AI Act, it is unclear whether this obligation would apply.

It has also been suggested that the overlaps between the GDPR and the AI Act may present a regulatory challenge, for example:

“A company using a biometric tool internally may act simultaneously as a controller under the GDPR and a deployer under the AI Act, triggering distinct compliance obligations. At the same time, providers of biometric tools — who may typically consider themselves processors under the GDPR — face the most extensive requirements under the AI Act, particularly for high-risk systems.”<sup>58</sup>

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<sup>57</sup> Article 26(10) of the EU AI Act.

<sup>58</sup> Richard Lawne, [Biometrics in the EU: Navigating the GDPR, AI Act](https://www.iapp.org), published on 23 April 2025 on [iapp.org](https://www.iapp.org). According to the website the IAPP is a policy neutral, not-for-profit association founded in 2000 with a mission to define, promote and improve the professions of privacy, AI governance and digital responsibility globally.

## Regulatory impact analysis

### Financial implications

According to the Regulatory Impact Analysis for the Bill:

“... the Minister for Justice, Home Affairs and Migration has allocated €86m for the rollout out of Body-Worn Cameras (BWC) and the Digital Evidence Management System (DEMS), as part of the NDP review for 2026 - 2030. This is part of an overall €460m capital allocation for technology and ICT for AGS. The DEMS will be both the repository and the engine for biometric analysis. These costings relate to the technology solutions and hard costs only. Annual running costs will be addressed through the estimates process.”<sup>59</sup>

### Consultation

According to the Regulatory Impact Analysis for the Bill:

“The Criminal Legislation Function of the Department of Justice has engaged extensively with An Garda Síochána over the last number of years.

The Department acknowledges that there are privacy issues arising in respect of the right to a privacy under the Constitution and under Article 8 of the European Convention on Human Rights.

Data Protection is another important consideration, particularly since the GDPR and accompanying Law Enforcement Directive (LED) were agreed at European Union level in 2016. Data processing for law enforcement purposes must be necessary and proportionate and the Data Protection Commissioner has also been consulted.”

### Implementation issues

According to the Regulatory Impact Analysis for the Bill:

“In the first instance, ensuring the legislation is properly implemented will be a matter for the Garda Commissioner. Ultimately, the Courts will have oversight and will decide if the utilisation of biometric technologies is admissible. The Policing and Community Safety Authority, established on 2 April 2025, following the commencement of the

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<sup>59</sup> See also [Minister Jim O’Callaghan secures Cabinet approval for €2.18 billion Sectoral Investment Plan for Justice 2026-2030](#).

Policing, Security and Community Safety (PSCS) Act 2024, is mandated to provide independent oversight of An Garda Síochána and supports the effective provision and continuous improvement of policing services in Ireland. Also, the Data Protection Commissioner will have enforcement powers in relation to data protection arrangements.

In relation to the use of biometric analysis and identification technologies, the Garda Commissioner is charged with preparing a Code of Practice, a data protection impact assessment and a human rights impact assessment. The Code of Practice will address the rules as to when it is appropriate to use and when it is not. It will address confidentiality rules, as well as storage, access and retention provisions.”

## Pre-legislative scrutiny





The **Draft General Scheme of the Garda Síochána (Recording Devices) (Amendment) Bill** was published on 14 December 2023 and comprised 16 Heads, divided into three Parts, and a Schedule. Pre-legislative scrutiny of the General Scheme took place on **13 February 2024**. The Joint Oireachtas Committee on Justice published its **report** on 27 February 2024 with 32 recommendations.

This section seeks to assess the extent to which the Committee's recommendations have been addressed in the Bill, as presented for Second Stage. To do this, a traffic light system is used by the L&RS, indicating whether a key issue is accepted and reflected in the Bill, whether a consistent or unclear approach is used, and whether the recommendation has not been accepted or is not reflected in the Bill.

Where relevant, an additional categorisation is used for recommendations that were not implemented in the Bill, but where additional considerations are present. For example, where Committee recommendations relate to policy objectives, it may not be possible to progress these objectives in legislation. In the case of this Bill, it should also be noted that there is a difference in the terminology used in the General Scheme and the Bill to describe the technology that is to be used by members of Garda personnel. This difference and the potential for uncertainty has been discussed throughout this paper and it is also evident in the responses from the Department below. In that regard, many of the Committee's recommendations that relate to "biometric identification" have been classified as 'recommendation has not been implemented in the Bill, but additional considerations are present'. Moreover, the EU AI Act was finalised after the Committee's report was published and therefore some of the references to compliance with EU law are superseded by changes to the published Regulation. This should be borne in mind when reviewing the L&RS assessment below.


This traffic light approach represents the L&RS's own, independent analysis of the Bill, and a key to this dashboard is shown in below.




Table 2 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations






L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table summary of PLS recommendations to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear	
Key issue has not been accepted or implemented in the Bill	
Recommendation has not been implemented in the Bill, but additional considerations are present.	






**Source:** L&RS (2025).


Table 3 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.







PLS recommendation as per Committee report	Whether addressed (either in whole or in part) in the Bill
1. The Committee recommends that the rationale for introducing Facial Recognition Technology (FRT) be published in parallel with the progression of this legislation, for the information of all stakeholders.	 <p>The Report of the Commission on the Future of Policing in Ireland (CoFPI) contained 10 key principles for the future of policing. The report recommended that An Garda Síochána should make digital transformation, and investment in same, a priority in order to modernise the service. Further, that they should create a digital strategy which could, inter alia, enhance the service's front-line capability. The 8th principle of the CoFPI report is that policing must be information-led, with associated recommendations on support for effective processes, data quality and access, and</p>





		<p>increased analytics capability. The 10th principle is that policing must be adaptive, innovative and cost effective, including recommendations on modernising core technology platforms, body worn cameras and timely access to information.</p> <p>Deploying facial recognition technology (FRT) for serious crimes and missing persons, with strict safeguards is a commitment outlined in the Programme for Government 2025.</p>
<p>2. The Committee notes the supply of key use cases to the Committee by the Garda Commissioner during the hearings and recommends that clarity is provided as to the intended use of FRT. The General Scheme is drafted to allow comparisons to databases, however the Garda Commissioner stated to the Committee: “It is not our intention to run images against a database”. The Committee believes that redrafting is needed to provide clarity.</p>		<p>The current Bill is providing for biometric analysis which is effectively the automated processing of biometric data in documents, which includes images or video footage. Its use would mean that AGS could sort, filter, compare, recognise or “cluster” relevant images from a collection of images or footage where necessary and proportionate to utilise. A new Bill subsequent to this one is proposed to provide for the use of biometric identification (the automated comparing of an image against a database of persons with known identities). We have obligations under the Prum Regulation 2024/982 to establish a facial images database for automated searching by Member States.</p>
<p>3. The Committee recommends that the legislation must provide further clarity under Heads 2 and 4, on the data sources or reference database that will be used as part of this legislation and that very strict controls should be put in place in relation to the use of additional databases.</p>		<p>The current Bill is providing for biometric analysis and is not providing for a reference database.</p> <p>There are proposals for a new amending Bill subsequent to this one, which will provide for the use of biometric identification (the automated comparing of an image against a database of persons with known identities). We have obligations under the Prum Regulation 2024/982 to establish a facial images database for automated searching by Member States.</p>
<p>4. The Committee also recommends that an Garda Síochána (AGS) and the Department of Justice must urgently clarify some of the following details regarding the database: if it is the intention to provide access to databases; what database they intend to use in respect of retrospective FRT; the source of the database; how a database would be populated if they are to make their own; and the criteria for adding anyone to that database.</p>		<p>The current Bill is providing for biometric analysis and is not providing for a reference database.</p> <p>A new Bill is proposed, subsequent to this one, which will provide for the use of biometric identification (the automated comparing of an image against a database of persons with known identities). We have obligations under the Prum Regulation 2024/982 to establish a facial images database for automated searching by Member States.</p>





<p>5. The Committee recommends that the legislation should provide for a periodic, independent, judge-led review, of all use of biometric identification, based on legislatively defined operational criteria.</p>		<p>Section 9 will amend section 49 of the Principal Act which provides for an annual review of the operation of the provisions by a designated High Court Judge.</p>
<p>6. The Committee recommends that the draft legislation must be compatible with EU law in order to be robust and immune to challenge and to protect victims of crime.</p>		<p>The Bill has been drafted to account for the developments in the EU in this area and is as robust a legislative basis as possible for the use of biometric analysis.</p>
<p>7. The Committee recommends that, to allay the concern by some witnesses and to maintain public confidence regarding the accuracy of FRT and noting that the technology has matured in recent years since some of the earlier testing was performed, the ongoing concern about accuracy must be addressed by the Minister for Justice.</p>		<p>The carrying out of biometric analysis will be for decision support purposes only. Human intervention by trained Garda personnel will be required to assess the probative value of the analysis.</p>
<p>8. The Committee recommends that, to allay the concern by some witnesses regarding potential discrimination in the operation of FRT and to maintain public confidence, the ongoing concern about discrimination or inherent bias must be addressed by the Minister for Justice.</p>		<p>The carrying out of biometric analysis will be for decision support purposes only. Human intervention by trained Garda personnel will be required to assess the probative value of the analysis.</p>
<p>9. The Committee recommends that the legislation should provide for an annual independent audit of the use of biometric identification by AGS under the legislation. This audit should include an analysis of accuracy scores, success rates, and any other legislatively defined operational criteria, including statistically significant differences in performance across race, gender, or other protected characteristics.</p>		<p>Section 9 will amend section 49 of the Principal Act which provides for an annual review by a designated High Court Judge. It is envisaged that the judge would:</p> <ul style="list-style-type: none"> <li>* Keep the operation of the provisions of Part 6A under review;</li> <li>* Confirm that the provisions of Part 6A are being complied with;</li> <li>* Have the power to access and inspect any official documents or records relating to the use of biometric analysis by An Garda Síochána;</li> <li>* Include in their report any matter the Judge considers appropriate.</li> </ul>

<p>10. The Committee recommends that the legislation and/or Code of Practice should provide for necessity and proportionality assessments, to be measured in response to specific legislative operational criteria, including but not limited to, success rates, which shall have legislatively defined criteria, and statistically significant differences in performance across race, gender, or other protected characteristics</p>		<p>Necessity and proportionality will differ depending on the crime or matter being investigated.</p> <p>The Bill is clear that the use of biometric analysis has to be necessary and proportionate. The Code of Practice will set out the operational detail for the use of biometric analysis and is to be drafted by the Garda Commissioner. Prior to being declared a code, requires positive resolutions by both Houses of the Oireachtas. The details to be included in the code are set out in section 8 of the Bill which will insert Part 8A into the Principal Act.</p>
<p>11. The Committee recommends that the legislation should include a mechanism allowing for the immediate revocation of a particular biometric identification technology if it is found that performance metrics are unsatisfactorily low, or if there are significant inconsistencies in performance.</p>		<p>Any use of biometric analysis will be subject to human intervention by trained Garda personnel. It will be a tool to assist with the review of documents, such as video footage or images.</p>
<p>12. The Committee recommends that the legislation should reflect the requirement of AGS to carry out a Data Protection Impact Assessment before introducing any biometric identification system or technology under the Law Enforcement Directive. The legislation should also require AGS to publish each Assessment in the interests of transparency.</p>		<p>Section 8 will insert Part 8A into the Principal Act and contains provisions relating to the requirement for a Code of Practice.</p> <p>During drafting of a Code of Practice, the Garda Commissioner is required to cause an assessment of the impact of human rights (HRIA) and data protection (DPIA) to be conducted.</p> <p>The results of the assessments (HRIA and DPIA) are required to be provided to the bodies listed in section 47A(4). Those bodies include amongst others the Data Protection Commission (DPC) and the Irish Human Rights and Equality Commission (IHREC).</p>
<p>13. The Committee recommends that it shall be a requirement under the legislation that any prosecutions arising from the use of FRT shall disclose that fact as part of the standard disclosure to defence in advance of trial.</p>		<p>Standard rules of evidence will apply to any prosecutions.</p>
<p>14. The Committee recommends that the General Scheme should clarify the access to remedy for those whose rights have been breached as a result of FRT use.</p>		<p>Individuals who allege that their rights have been infringed have access to all of the normal avenues to make their complaint and have it heard in a court.</p> <p>If a person has a complaint about the conduct of a member of the Garda Síochána they can</p>




		<p>make a complaint to Fiosrú, the Office of the Police Ombudsman.</p> <p>Where a person has a complaint about how their personal data is being processed by An Garda Síochána, they will have the right to lodge a complaint with the Data Protection Commission. There are also other rights that a data subject has which are subject to certain restrictions, including the right to access, the right to rectification or erasure, the right to restrict processing in certain conditions.</p> <p>An Garda Síochána has to ensure compliance with applicable data protection legislation. An Garda Síochána are subject to the requirements the Data Protection Act 2018, and Part 5 of that Act if they are processing data for law enforcement purposes. That Part transposed the Law Enforcement Directive (EU) 2016/680 into national law. The Data Protection Act 1988 also applies in relation to processing of data for national security purposes. The Gardaí are also subject to the GDPR for processing of personal data which is for non-law enforcement purposes.</p>
<p>15. The Committee recommends that there should be clear and limited criteria set out in relation to access of data by third-parties. Where footage is obtained by Gardaí from third-parties for the purpose of biometric identification, the Code of Practice must be clear as to the legal mechanism or mechanisms that will allow for this processing of personal data.</p>		<p>An Garda Síochána may request third party CCTV or other footage under section 41 of the Data Protection Act 2018, or via the Courts. Section 41 of the Data Protection Act provides: <i>Without prejudice to the processing of personal data for a purpose other than the purpose for which the data has been collected which is lawful under the Data Protection Regulation, the processing of personal data and special categories of personal data for a purpose other than the purpose for which the data has been collected shall be lawful to the extent that such processing is necessary and proportionate for the purposes—</i></p> <p><i>(a) of preventing a threat to national security, defence or public security,</i></p> <p><i>(b) of preventing, detecting, investigating or prosecuting criminal offences, or</i></p> <p><i>(c) set out in paragraph (a) or (b) of section 47.</i></p>

<p>16. The Committee recommends that the definition of “biometric data” under Head 2 in the draft legislation is redrafted to give greater clarity and to bring it in line with EU law.</p>		<p>The definition of biometric data aligns with the EU AI Act but excludes DNA and fingerprints which already have a legal basis on the Statute Book.</p>
<p>17. The Committee recommends that Section 43B(5) of Head 4 be redrafted to bring it in line with EU law and prevent “Live-like” processing.</p>		<p>Section 6 which will insert section 43C provides for a definition of “retrospective”. It does not permit the use of biometric analysis on a real time basis.</p>
<p>18. The Committee recommends that the provisions under Head 4 should be amended to restrict Garda personnel from using biometric identification to track, monitor, or follow the movements of an individual over time, unless they believe on reasonable grounds that the person was involved in an offence listed in the Schedule, and such focused tracking is strictly necessary and proportionate to obtain evidence of that offence.</p>		<p>Biometric analysis is effectively the automated processing of biometric data in documents, which includes images or video footage. Its use would mean that AGS could sort, filter, compare, recognise or “cluster” relevant images from a collection of images or footage. This will be subject to human review to assess the reliability of the results.</p> <p>A person can only be searched for where there are reasonable grounds to suspect they are involved in the commission of an arrestable offence, reasonable grounds to suspect that they are a missing person or the victim of an arrestable offence, or reasonable grounds to suspect that they are a threat to the security of the State.</p> <p>Any use will have to be necessary and proportionate to the offence or matter to which it relates.</p>
<p>19. The Committee recommends that the proposed Section 43B(1) and Section 43B(2) under Head 4 lack precision and clarity and would benefit from redrafting.</p>		<p>Section 6, which will insert Section 43C into the Principal Act, provides for the principal purposes for the carrying out of biometric analysis; provides the data subjects that can be searched for; and the documents that can be searched, amongst other things.</p>
<p>20. The Committee recommends that Section 43B(6) of Head 4 be redrafted to provide a “strictly necessary” requirement in primary legislation, to ensure necessity and proportionality thresholds required by EU law are effectively assured.</p>		<p>The Bill contains a requirement for necessity and proportionality.</p> <p>Section 4(4) of the Principal Act provides that <i>the provisions of this Act are without prejudice to the provisions of the Data Protection Acts 1988 to 2018.</i></p>
<p>21. The Committee recommends that provisions under Head 5 should be amended to provide for an application process based on prior authorisation by an independent administrative authority or by judicial approval, rather than</p>		<p>The current Bill is providing for the use of biometric analysis for limited purposes. A new Bill is proposed, subsequent to this one, which will provide for the use of biometric identification (the automated comparing of an image against a database of persons with known identities). The proposed second Bill</p>

<p>internal Garda approval, whereby an application to use biometric identification shall be made to a District Court judge rather than to a senior member of AGS. A model for this would be the Communications (Retention of Data) (Amendment) Act 2022. It is also recommended that the processing only be done by suitably trained and qualified Gardaí, independent of the investigation, to ensure both sufficient oversight and independence in decision-making and processing.</p>		<p>will also provide for real-time use which will include a judicial authorisation procedure in line with the EU AI Act.</p>
<p>22. The Committee recommends that the provisions under Head 5 should be amended to provide that any application to use biometric identification must specify a specific and limited set of data sources.</p>		<p>Biometric analysis may only be carried out on documents obtained by An Garda Síochána in the course of a relevant investigation. This will be subject to a code of practice. Section 6, which will insert Section 43C into the Principal Act refers.</p>
<p>23. The Committee recommends that the provisions under Head 6 should be amended to reflect an application process based on judicial approval.</p>		<p>A new Bill is proposed, subsequent to this one, which will provide for the use of biometric identification (the automated comparing of an image against a database of persons with known identities). The proposed second Bill will also provide for real time use which will include a judicial authorisation procedure in line with the EU AI Act.</p>
<p>24. The Committee recommends that the provisions under Head 7 should be amended to provide for a specific time delay between the creation of images or footage and the permitted processing of the images or footage with biometric identification technology under the legislation, to reflect both European law in respect of the ban on live or live-like use of biometric identification and stated national policy.</p>		<p>Section 6 which will insert section 43C into the Principal Act, provides a definition of “retrospective”. It does not permit the use of biometric analysis on a real-time basis.</p>
<p>25. The Committee recommends that the provisions under Head 7 should be amended to provide that any biometric identification may be subject to period sampling by way of blind peer review.</p>		<p>Human review is required for use of biometric analysis to assess the reliability of the results. Section 6, which will insert Section 43C into the Principal Act refers.</p>

<p>26. The Committee recommends that the provisions under Head 7 should be amended to compel AGS to collect and publish, on an annual basis, aggregate, anonymised statistics on uses of biometric identification under the legislation. Head 7 should provide that such statistics shall include aggregate details of the volume of images or footage scanned, the number of matches made and the number of false or incorrect matches, and a breakdown of uses of biometric identification by offence investigated, and the percentage of prosecutions which relied upon biometric identification.</p>		<p>A new Bill is proposed, subsequent to this one, which will provide for the use of biometric identification (the automated comparing of an image against a database of persons with known identities).</p> <p>Section 9 of the Bill will amend section 49 of the Principal Act, which provides for an annual review of the operation of the provisions by a designated High Court Judge.</p>
<p>27. The Committee recommends that Head 7 would regulate the use of any biometric technologies which use web-scraping of images<sup>60</sup>, from social media or other publicly accessible locations.</p>		<p>The AI Act prohibits web-scraping of images and has direct effect. The use of biometric analysis will be limited to documents obtained by An Garda Síochána in the course of a relevant investigation.</p> <p>The purposes for which biometric analysis may be used are set out in section 43C (to be inserted by section 6 of this Bill).</p>
<p>28. The Committee recommends that the provisions under Head 9 should be amended to provide for a disciplinary process arising from deliberate breaches of a Code of Practice.</p>		<p>There are existing mechanisms for complaints concerning the conduct of a member of An Garda Síochána or the misuse of personal data by An Garda Síochána.</p> <p>The Bill also contains offences in section 43E relating to the misuse of data.</p>
<p>29. The Committee recognises the very serious nature of the additional list of offences set out in Appendix 2 and calls on the Government to include each of these offences in the Schedule of the Garda Síochána (Recording Devices) (Amendment) Bill 2023. The offences that the Minister asked the Committee to consider are very serious, such as defilement of a child under the age</p>		<p>The Schedule of offences has been removed and replaced with a more general requirement that An Garda Síochána may utilise biometric analysis in the context of an “arrestable offence”.</p> <p>The offences provided to the Justice Committee in Appendix 2 are captured by the definition of “arrestable offence”.</p> <p>An “arrestable offence” is as defined in section 2 of the Criminal Law Act 1997, and is an offence that may be punished by a term of</p>

<sup>60</sup> Web-scraping is defined by Cambridge dictionary as ‘another name for scraping (= the activity of taking information from a website or computer screen and putting it into an ordered document on a computer)’  
WEB SCRAPING | English meaning - Cambridge Dictionary

<p>of 17, as well as a number of child pornography offences and offences relating to encouraging a sexual offence to be committed against a child. These offences carry heavy prison sentences and should be included in the Bill when published.</p>		<p>imprisonment of five years or by a more severe penalty and includes an attempt to commit any such offence.</p>
<p>30. The Committee recommends that, under Head 3, a draft Code of Practice should be published alongside the Bill.</p>		<p>It is not possible to publish a draft Code of practice alongside the Bill. A code will be required to contain the details specified in section 8 of the Bill which will insert Part 8A into the Principal Act. It will be for the Garda Commissioner to draft the Code of Practice, cause the assessments of human rights and data protection to be conducted and consult with the relevant bodies listed in that section. This includes the general public as the Garda Commissioner is required to publish the Code on the Garda website.</p> <p>A draft code will be required to be laid before the Houses for positive resolutions to be passed, prior to it being declared a code by Ministerial Order.</p>
<p>31. The Committee recommends that there must be mechanisms under the draft legislation to ensure regular reviews of the Code of Practice.</p>		<p>Section 8 which will insert Part 8A into the Principal Act, ensures that the review of the Codes will take place at least every 5 years.</p>
<p>32. The Committee recommends that sufficient time should be allotted to the development of the Code of Practice and there should be consultations with relevant parties in relation to the development of the Code, including groups that would be disproportionately affected by usage of FRT, e.g. children or those from ethnic minority groups.</p>		<p>A public consultation is provided for in section 47A(4)(c) during development of the Code of Practice. There are also a number of bodies set out in section 47A(4)(b) that the Garda Commissioner must consult with prior to submitting the Code to the Minister.</p> <p>Section 47A is to be inserted into the Principal Act by section 8 of this Bill.</p>

**Source:** L&RS (2025), based on Joint Oireachtas Committee PLS Report and information provided by the Department of Justice, Home Affairs and Migration.