

Joint Committee on Justice
**Pre-legislative scrutiny of the general scheme of the Garda Síochána (Digital
Recording) Bill 2021**
Opening Statement of the Data Protection Commission
21 September 2021

I thank the committee for the invitation to contribute to your deliberations on the general scheme of the Garda Digital Recording Bill. I am one of the Deputy Commissioners at the Data Protection Commission (DPC), with responsibility for the DPC's supervision, guidance and international affairs functions. Also in attendance is Gary Russell, Assistant Commissioner, from the DPC's supervision section.

I also thank the committee for the opportunity to have made written submissions on the proposed Bill.

As a general observation, the implementation of any digital recording systems should give us pause in terms of reflecting on the interference with rights and freedoms of individuals. However, it is equally the reality that limited use of such systems is a necessary tool in the armoury of any police force and the aim should be to ensure appropriate limitations, safeguards and balance of rights in the underpinning legislation.

In commenting on the Bill, I would like to emphasise that the obligations on public authorities and bodies processing personal data for law enforcement purposes flow from EU law and in particular from the 2016 EU law enforcement directive (Directive 2016/680), transposed into Irish law in the Data Protection Act, 2018. This requires that any legislation enacted concerning the processing of personal data for law enforcement purposes must have full regard to, and align with, the requirements of the Directive and the 2018 Act. While it is the DPC's overall assessment that the Bill largely aligns with the requirements of the Directive and the 2018 Act, we have made a number of observations in our written submission which we believe require further consideration.

Turning to some of the key provisions of the proposed Bill, Part 2 concerns recording by An Garda Síochána for specified purposes. The Bill provides a legal basis for the processing of images and sound of individuals by An Garda Síochána, and designated others, for the purposes of the prevention, investigation, detection and prosecution of criminal offences, including the safeguarding and prevention of threats against public security.

However, it should be noted that nothing in the Bill provides a legal basis for the processing of special category data in CCTV or other 'smart camera' recording systems

that support capability to automatically profile or automatically recognise and track individuals such as the use of facial recognition technology. If it is the intention of the legislator that such processing is to be permitted, it would need to be explicitly and carefully provided for.

Concerning the provision for the use of body-worn cameras by members of An Garda Síochána, the DPC welcomes that such devices must be visible on the clothing or uniform of members and must have a visible indication that the device is recording. The requirement for a Code of Practice on the use of body-worn cameras will be critical in ensuring the use of such technology is proportionate, that the resulting data is properly secured, and is not used for other purposes beyond what is provided for in law.

Regarding Part 3, the DPC welcomes in particular the provisions relating to the authorisation of CCTV systems to be used by An Garda Síochána and community groups. These provisions address issues of concern arising from a range of statutory inquiries the DPC initiated into the deployment of surveillance technologies by State agencies (including An Garda Síochána and Local Authorities) in support of their various functions.

In particular, the DPC's inquiries identified significant flaws in how Community-Based CCTV schemes are regulated in law, including how they interact with section 38 of the Garda Síochána Act 2005 dealing with the authorisation by the Garda Commissioner of Garda and community CCTV systems. We therefore welcome that the Bill will ensure that CCTV authorisations by the Garda Commissioner are issued to Local Authorities, rather than individuals or groups. We also welcome the requirement that the Local Authority and the Garda Síochána are to be joint controllers for Community CCTV systems.

The DPC welcomes the provisions throughout the Bill on various compulsory Codes of Practice. Such Codes will be necessary in order to fully satisfy the requirements of the Law Enforcement Directive, as well as the standards of clarity, precision and foreseeability in accordance with the case law of the of the Court of Justice of the European Union and the European Court of Human Rights.

While noting that Codes may be laid before the Oireachtas, we recommend that consideration be given to means by which the codes can be more widely published. We further recommend that a public consultation should occur before the making or updating of such codes.

I hope these comments will be of assistance to the committee and I am very happy to answer the questions members may have.