

Opening Statement to the Committee on Justice

Pre-Legislative Scrutiny – Garda Síochána (Digital Recording) Bill

Statement by Assistant Secretary Rachel Woods

21 September 2021

I thank the Chairman and the committee for the opportunity to address you here today and to contribute to your deliberations. I am joined by my colleague Maeve-Anne Kenny and between us, we hope to be able to answer any questions that you may have.

This is an important Bill. It is bringing together a number of areas where An Garda Síochána either currently record the activities of the general public or where they intend to do so in the future using up-to-date recording technologies. It is important that we get this right and that we provide An Garda Síochána with a robust modern statute that is fit for purpose. Work commenced on this Bill when the Commission on the Future of Policing in Ireland reported and supported the deployment of body-worn cameras. It seemed like an ideal opportunity to legislate for that but also to update the law in a number of areas where recordings are made for law enforcement purposes.

Some people will have concerns about the contents of this Bill. But there is no reason to be concerned. It is the Minister's intention that this will be a strong and effective piece of legislation that will provide the Gardaí with additional powers, but will also contain considerable safeguards and protections for the citizen.

In drafting the General Scheme, the Minister has considered the invasion of privacy that is involved in recording. The Constitution protects your right to privacy. Article 8 of the ECHR states that *"everyone has the right to respect for his private and family life, his home and his correspondence"*. However this right is not absolute. Public authorities may not infringe on this right unless it is done in accordance with the law, is necessary in a democratic society in the interests of national security, public safety or for the prevention of disorder or crime.

Therefore activities that restrict our privacy rights must be prescribed by law, must be necessary to achieve a legitimate aim and must be proportionate to the aim being pursued. Throughout the General Scheme you will see the powers that are being given to An Garda Síochána, you will see the purpose of the recording and then a stipulation that the recording must be necessary and proportionate.

We have placed considerable emphasis on the establishment of codes of practice by the Garda Commissioner, in consultation with stakeholders, in relation to part two and part three of the Bill. In preparing the codes of practice, the Commissioner must ensure that a data protection impact assessment and a human rights impact

assessment are carried out. The Commissioner must consult various bodies such as the Policing Authority, the Garda Síochána Ombudsman Commission, the Garda Inspectorate, the Data Protection Commissioner and the Irish Human Rights and Equality Commission, and may consult other bodies appearing to have an interest in the matter. The bodies mentioned have all been consulted on the drafting of the General Scheme. The final version of the Code of Practice will be submitted to the Minister to be included in a Statutory Instrument and laid before the Houses.

You will note that the power to record in head 5 is device neutral and future-proofed to allow for new technological developments.

Head 6 relates to body worn cameras. The General Scheme provides that such cameras should be worn overtly on the clothing of the Garda personnel. Body worn cameras are becoming more and more popular throughout the world to assist law enforcement authorities.

Head 8 relates to Garda approved CCTV schemes and effectively repeals and replaces the current provisions contained in the Garda Síochána Act 2005. We have had extensive consultations with the Data Protection Commissioner to ensure that this provision fully takes account of the Data Protection Act 2018, the GDPR and the accompanying Law Enforcement Directive. Head 9 provides for the deployment of ANPR and CCTV cameras in Garda vehicles.

Part four of the Bill allows An Garda Síochána to seek court authorisation to access live feeds from CCTV schemes of third

parties. Part five of the Bill would allow An Garda Síochána to receive data and images on an ongoing basis from the ANPR cameras of other organisations. The data would be stored securely within An Garda Síochána and only used for the most serious crime issues and for national security matters. A data sharing agreement would be required between An Garda Síochána and the other body.

It is our intention that this Bill will fully comply with international human rights instruments and with data protection law. There are requirements for reviews on a regular basis to ensure that each provision is operating as we would expect.

In terms of oversight, the ultimate oversight will be provided by the courts in deciding if the recording has been obtained legally and is admissible as evidence. In head 21, we have included temporary provisions for a designated Judge to keep the operation of part four and part five of the Act under review. It is our intention to replace this provision with the arrangements for an Independent Examiner of Security which is being provided for in the Policing, Security and Community Safety Bill. Whichever provision is ultimately included will depend on the progress of each Bill in the Houses.

Mr. Chairman, I won't continue any longer. My colleague and I are happy to take questions and address any issues you wish to raise.