

Opening Statement to the Joint Oireachtas Committee on Justice on the General Scheme of the Garda Siochana (Recording Devices) (Amendment) Bill 2023 LSM

Safe Ireland would like to thank the Committee for this opportunity to address it on the General Scheme of the Garda Siochana (Recording Devices)(Amendment) Bill 2023.

Key Points

1. Safe Ireland's position in summary is that the use of facial recognition technologies ("biometric identification" as it is called in the legislation) in criminal investigations should be controlled strictly to avoid challenges by defendants on the basis that it infringes their rights unfairly and unacceptably. In the context of domestic violence related offences, sometimes a defence is put forward to the effect that an offence was committed by someone else, who may be unknown. In these circumstances, investigators and prosecutors should have access to reliable evidence which can help to prove the identity of the suspect. Therefore, Safe Ireland gives its broad support to this legislation because it appears to contain adequate safeguards which taken together, should ensure that facial recognition evidence is neither collected nor used inappropriately or unfairly. These safeguards are examined in our longer submission. They are summarised below:
2. **Head 4: New Section 43B – Power to use Biometric Identification**
 - This section confines the use of biometric identification to **the scheduled offences** and State security matters. It also puts it beyond doubt that biometric identification in the context of live feeds is not allowed, and that this form of identification can only use images and video already gathered and legally held or accessed by An Garda Siochana. Finally, it mentions again the importance of compliance with the Code of Practice if its use is to be presumed to be "necessary and proportionate";
 - **Head 5: New Section 43C – Application for Approval**
 - This part of the biometric identification procedure involves a Garda seeking the approval of a Chief Superintendent or higher-ranking officer. It also obliges the Garda seeking such approval to set out in writing the rationale for the request and its limits and also, to include any detail required by the Code of Practice. In practical terms, it may make sense to allow designated lesser-ranking Gardaí to grant approval for some categories of offences.
 - **Head 6: New Section 43D – Approval**
 - Additional safeguards under this Section include the independence of the superior Garda officer from the investigation, the use of the expression "necessary and proportionate" as a criterion for the use of biometric identification, the power to impose conditions on the permission to use biometric identification, and the stipulation that the superior officer must believe on reasonable grounds that the use of biometric identification is connected to the investigation of an offence specified in the Schedule/or State security. Also, there is an obligation on An Garda Siochana to create and maintain a list of applications for the use of biometric identification including details of each one and the reasons why it was granted or refused.
 - **Head 7: New Section 43E – Use of the Biometric Identification**

- This Section spells out the uses to which biometric identification can be put, confining it only to images or footage legally retained or accessible by An Garda Síochána. Further, it introduces the further safeguard of verification of the results by a Garda member before they are forwarded to the investigation team.
- **Head 14: Amending section 47**
- Under this Section, every edition of the Code of Practice for use of biometric identification must be approved by each House of the Oireachtas.

3. **Additional inclusions - Offences to be covered by this legislation:**

- Safe Ireland's view is that it is appropriate, indeed "necessary and proportionate", for most of the Notable Offences listed to be included in the Schedule to this Bill, because of the serious and long-lasting effects which they are capable of having on the lives of their victims in the context of domestic violence, with one exception: we do not have any comment to make on the list of Notable Offences under the heading "Other". Safe Ireland's view is that all the offences already on the Schedule should remain there.
- **Safe Ireland also recommends** that the following domestic violence-related offences which correspond to very common forms of domestic abuse - are added to the list:
 - a. Assault causing harm contrary to Section 3 Non-Fatal Offences against the Person Act 1997 (maximum penalty was recently increased to 10 years);
 - b. Non-fatal strangulation or suffocation contrary to Section 3A Non-Fatal Offences against the Person Act 1997 (maximum penalty is 10 years);
 - c. Stalking contrary to Section 10(2) Non-Fatal Offences against the Person Act 1997 as amended (maximum penalty is 10 years) and its alternate
 - d. Harassment contrary to Section 10(1) Non-Fatal Offences against the Person Act 1997 as amended (maximum penalty is 10 years also); and
 - e. Coercive control contrary to Section 39 Domestic Violence Act 2018 (maximum penalty is 5 years, but in our view, that is too low, having regard to the gravity of some examples of this form of offending).
 - f. Publishing or distributing intimate images of the victim without their consent, or threatening to do so with intent to cause harm to that person or being reckless as to whether such harm is caused, contrary to Section 2 of the Harassment, Harmful Offences and Related Offences Act 2020. It has a maximum penalty of 7 years.
 - g. We also think that the offence of making unwarranted demands with menaces contrary to Section 17 of the Criminal Justice (Public Order) Act 1994 (often called blackmail) should be considered for inclusion on this list as we have seen such demands in the context of domestic abuse. It has a maximum penalty of 14 years.

We thank the Committee for their kind attention and look forward to answering any questions.

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Appendix 1: Notable Offences not included in Schedule

- Non-Fatal Offences Against the Person Act (1997), sections 16 & 17 (abduction of a child by a parent and abduction of a child by a person other than their parent is punishable by imprisonment for a term not exceeding 7 years).
- Criminal Law (Rape) (Amendment) Act 1990, section 2 (sexual Assault, punishable by imprisonment for a term not exceeding 14 or 10 years).
- Criminal Law (Sexual Offences) Act 2006, section 3 and 3A (defilement of child under 17 years and the same offence but by a person in authority, punishable by imprisonment for a term not exceeding 15 years and 10 year respectively).
- An offence under any of the following provisions of the Child Trafficking and Pornography Act 1998:
 - Section 4 (allowing child to be used for child pornography, punishable by imprisonment for a term not exceeding 14 years).
 - Section 4A (organising etc. child prostitution or production of child pornography, punishable by imprisonment for a term not exceeding 14 years).
 - Section 5 (producing or distributing child pornography, punishable by imprisonment for a term not exceeding 14 years).
 - Section 5A (participation of child in pornographic performance, punishable by imprisonment for a term not exceeding 10 years).
- Criminal Law (Human Trafficking) Act 2008, section 5 (soliciting or importuning for purposes of prostitution of trafficked person, punishable by imprisonment for a term not exceeding 5 years).
- Criminal Justice Act 2006, section 176 (reckless endangerment of children, punishable by imprisonment for a term not exceeding 10 years).

- Children Act 2001, section 249 (causing or encouraging sexual offence upon a child, punishable by imprisonment for a term not exceeding 10 years).
- An offence under any of the following provisions of the Criminal Law (Sexual Offences) Act 2017:
 - Section 4 (invitation to sexual touching, punishable by imprisonment for a term not exceeding 14 years).
 - Section 5 (sexual activity in presence of child, punishable by imprisonment for a term not exceeding 10 years).
 - Section 6 (causing child to watch sexual activity, punishable by imprisonment for a term not exceeding 14 years).
 - Section 7 (meeting a child for the purposes of sexual exploitation, punishable by imprisonment for a term not exceeding 14 years).
 - Section 8 (use of information and communication technology to facilitate sexual exploitation of child, punishable by imprisonment for a term not exceeding 14 years).
- Property
 - Criminal Damage Act (1991), section 2 (includes arson and criminal damage with intent to endanger life)
- Other
 - Criminal Justice (UN Convention against Torture) Act (2000), section 2
 - Misuse of Drugs Act (1977), sections 15A and 15B (drug trafficking offences for drugs over the value of €13,000, which subject to maximum penalties of life imprisonment)
 - Criminal Justice (Public Order) Act 1994, section 19 (Assault or obstruction of peace officer)