

DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART

JOINT COMMITTEE ON JUSTICE

Dé Máirt, 21 Meán Fómhair 2021

Tuesday, 21 September 2021

Tháinig an Comhchoiste le chéile ag 3.30 p.m.

The Joint Committee met at 3.30 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Jennifer Carroll MacNeill,	Robbie Gallagher,
Patrick Costello,	Vincent P. Martin,
Pa Daly,	Lynn Ruane,
Brendan Howlin,	Barry Ward.
Martin Kenny,	
Niamh Smyth.	

Teachta / Deputy James Lawless sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: I welcome members of the committee who are participating physically. It has been a while so it is good to have people in the room. I also welcome those joining us through the online system. It is great we are able to facilitate that as well. We will have a hybrid meeting. We have received apologies from Deputy Pringle.

General Scheme of the Garda Síochána (Digital Recording) Bill 2021: Discussion

Chairman: Our witnesses are all very welcome. I remind members and witnesses to turn off their mobile phones or to switch them to flight mode. Even if they are not making noise, they can interfere with the recording and broadcast at times. I call on members and witnesses to see to it that their phones are on airplane mode. For the benefit of members and witnesses, I note that a sound recording will be made to assist in the production of minutes. That is what we have started to do. That recording will be deleted immediately upon the minutes being agreed. I say that so people are aware of it.

The purpose of our meeting today is to have an engagement with a number of stakeholders who made written submissions on the general scheme of the Garda Síochána (digital recording) Bill 2021. All witnesses are appearing virtually. We are continuing that approach for witnesses. They are, of course, all outside the precincts of Leinster House. In most cases, they are in their own offices or other locations.

I will welcome each witness in turn. Today we have with us Mr. Bob Collins, chairperson of the Policing Authority; Ms Helen Hall, chief executive of the Policing Authority; Mr. Dale Sunderland, deputy commissioner at the Data Protection Commission; Mr. Gary Russell, assistant commissioner at the Data Protection Commission; Mr. Liam Herrick, executive director of the Irish Council for Civil Liberties; Ms Doireann Ansbro, head of legal and policy at the Irish Council for Civil Liberties; Mr. Philip McAnenly, general secretary of the Garda Representative Association; Mr. Brendan O'Connor, vice president of the Garda Representative Association; Ms Rachel Woods, assistant secretary of criminal legislation at the Department of Justice; and Ms Maeve-Anne Kenny, assistant principal of criminal legislation at the Department of Justice. They are all very welcome and I look forward to their engagement over the course of the meeting. When witnesses are speaking, I ask them to ensure they unmute themselves but to mute themselves again after their contribution to avoid interference in the meeting.

Before I move to our guests' opening statements, I want to advise about parliamentary privilege. All witnesses are reminded of the long-standing parliamentary practice to the effect that they should not criticise or make charges against a person or entity by name or in such a way as to make him, her or it identifiable, or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. If their statements, therefore, are potentially defamatory in regard to an identifiable person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction. For witnesses, in particular those attending remotely from a place outside of the Leinster House campus, they should

be aware there are some additional limitations to parliamentary privilege and, as such, they may not benefit from the same level of immunity from legal proceedings as a witness who is physically present in the complex. Our guests are probably aware of that at this stage but it is important to reiterate that. The same goes for members. Again, members will be familiar with the practice and precedent of parliamentary privilege and how it works.

The format of the meeting is that I will invite each organisation to make an opening statement up to a maximum of five minutes. Once all opening statements have been delivered, I will call on the members of the committee in the order in which they indicate to me to put their questions. In the time remaining, if there is time remaining, there will be an opportunity for members to ask supplementary questions. The duration of the meeting is limited, so I ask everyone to be focused in their contributions.

I will call on each organisation to deliver its opening statements. Not every witness I welcomed will give an opening statement but each organisation certainly will. Mr. Bob Collins from the Policing Authority is the first up. He is welcome to the committee.

Mr. Bob Collins: I thank the committee for the opportunity to be present and to contribute at this session. This is a welcome and necessary Bill. The facility of recording has benefits for both gardaí and the public alike and is in part a reflection of our times and must be regulated. The authority also welcomes the changes that have been made to the initial draft heads and is pleased that some of the measures which it proposed and which others, no doubt, have proposed have been incorporated in whole or in part. These measures that have been accepted can be of benefit to public safety, to the prevention of crime and to the promotion of effective policing.

As with most things in life, however, there are conditions attached to that welcome and that approval. The experience of facing the task of policing during the health emergency has highlighted the importance and the real value of public confidence in the Garda Síochána, especially in terms of protecting its legitimacy when exercising extra powers while at the same time vindicating our human rights. It is a crucial contributor to this sense of legitimacy that the right balance be achieved between powers and rights. These new technologies - body-worn cameras and closed circuit television - if not used with caution and with external, transparent and independent scrutiny, can be a barrier to the trust the public has in the Garda Síochána, can hinder the perception of its legitimacy and can infringe basic human rights. In previous submissions the authority identified a number of principles it believes must be underpinned in the legislation, and there is value in noting them very briefly.

Regarding device neutrality and a clear framework, technology constantly changes, sometimes with dazzling speed, and it is important this Bill is device-neutral. That has two dimensions. It is vital the principles that underpin this Bill are not confined to the technologies we know and that those principles can be applicable to any devices that may emerge in future. Related to that is the fact such new devices may have potential and consequences currently unknown or unimagined. It is reasonable to say that if this Bill were being drafted and discussed five years ago, nobody would have foreseen the possible uses to which drones can be put now and the nature and scale and miniature nature of that particular technology. That principle requires that the framework of the measure is adaptable to future circumstances and that the code of practice be sufficiently strong and sufficiently flexible to reflect and govern what new technologies may emerge. This will help in avoiding new technologies being evaluated on an *ad hoc* basis and avoid the use of devices not contemplated in this measure or their use in policing contexts not currently envisaged.

Ethics and proportionate use is the second principle. We welcome the fact the Bill provides for the development of codes of practice for recording devices and CCTV. This provides the opportunity to reflect the tests of fairness, ethical behaviour and proportionality of use that are of central importance.

The use of these technologies in some respects can see both the infringement and the vindication of human rights, at times simultaneously. Even if properly applied, their use will infringe on rights such as the individual's Article 8 right to privacy for both members of the public and Garda members, and the public's rights to free expression, free assembly and free association. To ensure the intention implicit in the decision to require a human rights impact assessment is made real, the authority would wish to see a requirement rather than an enablement to consult the public in the preparation of the codes of practice. This should also be required in respect of any amendment to any one or other of the two codes. The authority would also like to see an external dimension beyond the consultative process in the undertaking and in the analysis of any such human rights impact assessment.

In welcoming the identification and inclusion of a number of statutory consultees, the authority would also wish to see the requirement that any review of the codes or of the statute taking account of the extent of their use, that is, the use of these technologies, any evaluation of their impact and any trends in respect of complaints concerning any aspect of their use. The authority would also reiterate its previously expressed concern about the process by which requests from lawyers to access footage in which clients are captured will be handled and at what point they will be given access. This is at the very least, we believe, something that should be provided for in the statute and specifically included in the codes of practice.

There are principles of transparent oversight and accountability which require that the powers given and their exercise are transparent to the public, are subject to independent oversight by an external body and are clear as to where accountability lies. We identify at least six elements, which I will note very briefly, to achieve this.

The Bill should require that the Garda Síochána employ a comprehensive process of reliable and published recordings of the incidence of the use of these technologies. The Bill should include reference to the development of a robust mechanism to review, appeal and oversee decisions to use the technologies under discussion. It should make appropriate provision for the making available of relevant recordings to GSOC and the Garda Inspectorate, or their successor bodies, to inform their investigations and inspections. It should ensure visibility. We believe that unless the circumstances require a covert installation, it should be made explicit in the legislation that the public be informed about the existence and operation of a CCTV system, whether fixed or mobile.

An overly centralist approach should be avoided in authorising the installation and operation of CCTV. We acknowledge clearly the advantage of having a single point of decision-making, in the person of the Commissioner, because that provides consistency of application and avoids unnecessary and sometimes unwarranted CCTV installations. However, we wish to emphasise the importance of some measure of local engagement, especially in circumstances in which a refusal is contemplated. This would allow meaningful community input while not diminishing the decision-making capacity of the Commissioner. We would also suggest that the decision-making should not be capable of being delegated beyond a deputy or assistant commissioner so as to retain that clarity of consistency throughout the State.

Finally, we think the measure or the code should require that the Garda Síochána publish,

annually at least and perhaps more frequently, the number of authorisations sought, granted or refused in respect of access to a third party CCTV on a live feed basis. This would give a sense as to whether the use of this power was confined to genuinely acceptable circumstances.

Chairman: Thank you, Mr. Collins. I ask you to finish there. You have gone over your five minutes. I gave you a little latitude because there was a technical issue at the start but I will be tight on time for the meeting. I will follow your-----

Mr. Bob Collins: I can come back on some of the points if time permits.

Chairman: Yes. Following your written submission, I will let you get to the key points at the end.

Mr. Bob Collins: That is all right.

Chairman: Thank you for that. I will move on to Mr. Dale Sunderland of the Data Protection Commission.

Mr. Dale Sunderland: I thank the Chair and members for the opportunity to participate in today's session. I also thank the committee for the opportunity to have made written submissions on the proposed Bill. At the outset, as a general observation, the implementation of any digital recording system 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. The aim, therefore, particularly from a data protection perspective, should be to ensure appropriate limitations, safeguards and balance of rights in the underpinning legislation.

In commenting on the Bill, I wish to emphasise that the obligations on public authorities and bodies processing personal data for law enforcement purposes flow from EU law, in particular from the 2016 EU law enforcement directive, which was transposed into Irish law in the Data Protection Act in 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 Data Protection Commission'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.

I will turn to some of the key provisions of the proposed Bill, which we have highlighted in our submission. In particular, 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 gardaí 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 appears to provide a legal basis for the processing of special category data in CCTV or other smart camera recording systems that support capability to profile automatically or recognise automatically and track individuals such as the use of facial recognition technology. If it is the intention of the Legislature that such processing is to be permitted, it would need to be very explicitly and carefully provided for in legislation.

Concerning the provision for the use of body-worn cameras by members of An Garda Síochána, we welcome that such devices must be visible on the clothing or uniform of members and must have a visible indication that the device is recording. In particular, the requirement

for a code of practice on the use of body-worn cameras will be critical to ensuring the use of such technology is proportionate and that the resulting data is properly secured and is not used for other purposes beyond what is provided for in law.

Regarding Part 3, we welcome 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 number 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 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. We also welcome the provisions throughout the Bill on various compulsory codes of practice. Such codes will be necessary to satisfy fully 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 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, as the Policing Authority has referenced, that consideration should be given to the 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 thank the Chairman and members for giving of their time. I am very happy to any questions they may have.

Ms Doireann Ansbro: The Irish Council for Civil Liberties, ICCL, thanks the committee for this opportunity to participate here today. I am joined by our executive director, Mr. Liam Herrick, and we are both happy to answer questions. In this statement I will summarise our key concerns with the Bill, as outlined in more detail in our written submission.

The ICCL welcomes the inclusion of requirements to carry out data protection and human rights impact assessments as well as the requirements to consult the Data Protection Commission and the Irish Human Rights and Equality Commission ahead of the creation of codes of practice. We note the inclusion of some requirements for consideration of necessity and proportionality for authorising surveillance, which we also welcome.

The ICCL recognises that digital technology may offer a valuable tool in the detection of crime. However, it considers this Bill will vastly expand the surveillance powers of An Garda Síochána without sufficient evidence these developments are necessary in the Irish context, proportionate to the risk they pose to a range of rights, or that there are sufficient data protection safeguards. The ICCL also questions the proposed expansion of surveillance powers while, as we understand it, there are ongoing inquiries by the Data Protection Commission into the compliance of An Garda Síochána with data protection law. We note the deeply concerning findings last June while recognising what the representative from the Data Protection Commission has just said in terms of welcoming aspects of the Bill. We note the deeply concerning findings last year that indicated a generalised failure by An Garda Síochána to comply with data protection law. It is in that context the ICCL would call on the Government to pause any proposal to expand Garda surveillance powers until such time as there are satisfactory, proper and sufficient

policies and practices to ensure data protection law is being complied with.

We have previously expressed our opposition to the introduction of body-worn cameras for gardaí given the risks to privacy and data protection and, in our view, the glaring absence of conclusive evidence from other jurisdictions that they contribute positively to policing or justice outcomes. We call on the Government to abandon plans to introduce body-worn cameras or, alternatively, we call for more research to demonstrate they are necessary in Ireland, including through the introduction of a pilot programme before a general roll-out of them.

The Bill proposes a significant expansion in the use of CCTV by An Garda Síochána, including by providing access to real-time live feed from non-Garda or third party CCTV cameras. We have identified some serious and ongoing risks with the use of CCTV and we call for more research into the effectiveness of CCTV in both preventing and detecting crime before Garda access is expanded.

We also call for greater safeguards around the use of drones given their increased risk to privacy and transparency. We question whether sufficient safeguards are in place for the proposed expanded use of automatic number plate recognition technology.

In our written submission we have made 22 specific recommendations on how we believe the Bill can be strengthened. Those include the following five key issues. The lawful purpose assigned to the use of recording devices is too broad and may lend itself to an overuse of such devices. The definition of what constitutes a recording device is vague and may pave the way for the introduction of new technologies such as facial recognition technology without sufficient debate, research or a demonstration of their necessity in the Irish context. We note that facial recognition technology has renowned ethnic, racial and gender biases and has enabled mass surveillance and discriminatory targeted surveillance elsewhere. We also consider there are important distinctions in law between the thresholds and safeguards which must apply to both covert and overt surveillance. We consider the requirement of visibility of recording devices for overt surveillance is not sufficiently addressed in the Bill and provisions on covert surveillance would appear not to be accompanied by sufficient safeguards.

The Bill is also not clear regarding who has the authorisation to install, use and access recording devices. We note the DPC's concerns, outlined in its report last year, that there has been excessive access to monitoring stations within Garda stations. We call for greater transparency on this issue and accountability where policies and protocols are not followed. While recognising the provision that a recording device itself does not have to be produced in court is practical and therefore welcome, we call for the provision at head 20(A)(3) on the admissibility of evidence to be removed. In our view such decisions should remain strictly with the courts. The apparent proposal to exclude gardaí from criminal liability under the legislation should be removed or it should be made clearer that gardaí can be held criminally liable if they commit any of the offences that are created by this Bill, including the offence of tampering with recording devices.

Digital surveillance presents a direct interference with the right to privacy and impacts a range of other rights. We urge the Government to pause any expansion of Garda surveillance powers at a time when there are clear findings that existing powers have been misused. We call for any revision of surveillance powers to be accompanied by robust safeguards, including adequate oversight, to ensure our rights are always protected.

Mr. Philip McAnenly: I thank the Chairman and the members of the committee for pro-

viding us with this opportunity to meet them and make a submission. I want to take just ten seconds to point out we were somewhat surprised and even astounded we were not given the same opportunity when the general scheme on policing, security and community safety Bill was released. As we represent almost 100% of the 11,800 rank-and-file and front-line members of An Garda Síochána, we believe it might have been an oversight on the part of the committee to not include us as a stakeholder. We ask the committee to reflect on that.

On the GRA's position, the availability of body-worn cameras has the potential to enhance the safety of members of An Garda Síochána and protect them against malicious and vexatious complaints and from that point of view, this development is very welcome. Body-worn cameras also have the potential to gather better evidence to assist in the prosecution and, ultimately, the conviction of offenders. If we look at the context, the increasing level of assaults against gardaí is well documented and in 2020, almost 1,000 of our members were assaulted in the course of their duty. Gardaí, like many other victims of crime, often express frustration that the penalties imposed on assailants are unduly lenient and do not reflect the severity of the attack. Body cameras allow a judge and jury to relive the experience of the assaulted officer from a very unique viewpoint. The camera, after all, does not lie, as long as the chain of evidence is properly processed and protected.

Our Garda members approach the debate around body-worn cameras from the perspective of protecting themselves and their colleagues. However, the benefits also extend to the victims of crimes that our Garda members investigate. As first responders, gardaí are often present at crime scenes in the immediate aftermath. The appropriate use of camera technology provides an impartial and clinical recollection of crime scenes, road traffic collisions and comments made by both the victims and the suspects.

While the body-worn cameras are welcomed, the current draft of the Bill may cause confusion and fear among gardaí because there is a suggestion that we may be subject to both civil and criminal liability and prosecution. If it is directed that members wear body-worn cameras in accordance with an agreed protocol and procedure, with appropriate and essential training, a garda should not be at risk of private or civil actions. In this age of data protection and personal privacy, gardaí cannot be held personally liable in any such actions for invasion of privacy or breach of data protection while carrying out their duties, and any such actions must be indemnified by An Garda Síochána.

Chairman: I thank Mr. McAnely. He mentioned another Bill, which will be before us on a different day. It is not really the occasion to talk about that today but I will respond to his point at the end of the contributions. There is a process under way there. I call Ms Woods.

Ms Rachel Woods: I thank the Chairman and the committee for the opportunity to address it today and to contribute to its deliberations. This is an important Bill. It brings together a number of areas where An Garda Síochána either currently records the activities of the general public or where it intends 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 on and supported the deployment of body-worn cameras. It seemed like an ideal opportunity to not only legislate for that but to update the law in a number of areas where recordings are made for law enforcement purposes.

Some people will have concerns about the Bill, some of which have been raised already, 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 Garda 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 people's right to privacy. Article 8 of the European Convention on Human Rights states, "Everyone has the right to respect for his private and family life, his home and his correspondence." However, this right is not absolute. Police 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 one will see the powers that are being given to An Garda Síochána, the purpose of the recording and 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, regarding parts 2 and 3 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.

I will not go into the details of the Bill as all members have had a good look at those already. I will just say that it is our intention, and the Minister's, that this Bill will fully comply with international human rights instruments and with data protection law. There are requirements for review 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 parts 4 and 5 of the Act under review. It is our intention to replace this provision with the arrangements for an independent examiner of security, which will be provided for in the policing, security and community safety Bill. Whichever provision is ultimately included will depend on the progress of each Bill through the Houses.

I thank the committee. My colleague and I are happy to take questions and will try to address any concerns raised.

Chairman: I thank Ms Woods. She came in well under time, which helps progress the meeting. To respond briefly, Mr. McAnely from the Garda Representative Association had a query about the general scheme of the policing, security and community safety Bill. That is not really an item for today. However, on 18 August an email was sent to the GRA's general secretary, which I think is Mr. McAnely, inviting it to make a submission. I am not sure if he received that email but if he wishes to have a discussion about the procedures around that or any other Bill I am quite happy to talk to him about it offline. That might be a useful and helpful thing to do.

I will invite members in the order they have indicated. For the first round, members will be allowed seven minutes for questions and answers. If we have time after the first round we can do a second or even a third round. I call Senator Ruane, followed by Deputy Carroll MacNeill

and Senator Ward.

Senator Lynn Ruane: I thank all the witnesses for their contributions. I have questions for everybody so I hope to be able to come back in at the end. I will ask direct questions and I ask the witnesses to be as concise as possible in their responses so I can get through as many of them as I can. My first questions are for the witnesses from the Garda Representative Association. Can they inform the committee of any plans to couple the use of CCTV with crime predictive technology such as PredPol? Has the Garda piloted any crime predictive schemes it may use to justify CCTV placement in particular communities? Has the Garda piloted any facial recognition software in CCTV, which may inform increased CCTV placement within particular communities? I would like an answer to those questions first and then I will come in with my next ones.

Mr. Brendan O'Connor: As representatives of members of garda rank we would not actually have a role at that high level in making decisions on roll-outs. From my own understanding I believe that the intent here is to regularise the situation. Operationally, there are a lot of community CCTV systems that were in place and that were used for many of the purposes that are described here, such as crime prevention. Some contributors highlighted that there were issues with data protection compliance so I understand the intent of this Bill is to regularise the situation. Certainly, I am not aware of any intention to use it as a facial recognition system. From our own perspective in the GRA, we would say that we are very behind in our technology and we have not seen any evidence of that. We cannot, however, speak comprehensively on behalf of An Garda Síochána or the Commissioner. That is not our role here.

Senator Lynn Ruane: I thank Mr. O'Connor. My next question is for the Department officials. Will they explain to me why members of An Garda Síochána are exempt from any criminal liability including the one set out in this legislation? The Policing Authority's submission speaks about trusting the gardaí but then we carve out an exemption in the legislation around the law on their own liability.

Ms Helen Hall: I might come in on that. The provision around the liability of members of An Garda Síochána with respect to breaches of the Act and breaches of the code does not provide blanket liability to those members. In essence, it says that a breach of the code or provision of the Act in and of itself will not make them liable for civil or criminal proceedings. It is not blanket liability.

I will clarify what is provided for in head 5 in relation to destruction of or tampering with body-worn cameras or the data obtained from them. It is intended that this provision will apply to An Garda Síochána in the same way that it would apply to anybody else. If there is any confusion as to whether that applies, it can be addressed during drafting.

Senator Lynn Ruane: My next question is for the Policing Authority. Can the representatives justify public health as the primary purpose of body-worn cameras? My concern is around the privacy of people who might be experiencing psychosis or struggling with addiction, or those in the homeless sector, all of whom fall under the umbrella of public health. Consider also the situation currently with Covid, for example, where large numbers or gatherings of people together and protests are seen as a public health issue. Will the representatives comment on what would justify a public health issue as a reason to use body-worn cameras?

Mr. Bob Collins: It is not the most significant point that the authority makes in its submission, but one of the considerations is that a potential benefit of the use of body-worn cameras,

rather than a justification for their use, would be to establish in circumstances in which somebody had a health issue whether that health issue was appropriately taken into account in the manner in which they were approached or dealt with by a member of An Garda Síochána. We do not identify it as a justification for the introduction of the legislation. There are other reasons the legislation has value and is important. It is as a possible assistance rather than as a justification.

Senator Lynn Ruane: My next question is to the Data Protection Commission. Should the storage and retention of mass surveillance through CCTV networks and targeted surveillance be regarded as data infrastructure? If so, how would we have to treat and manage such data and surveillance?

Mr. Dale Sunderland: Any kind of processing and collection of data falls under data protection laws. In the context of data for purposes in the criminal justice sphere, they fall under the law enforcement directive. Retention periods and the security of data all need to be very clearly established. I will highlight the importance again of what we would see as the code of practice under this Bill. The draft heads are very clear in what needs to be considered. The Bill refers to the purposes for which the technology will be used and provides that a data protection impact assessment is mandatory. The Senator may be aware that regardless of the type of processing, the data protection impact assessment requires that a very detailed work-through of all the elements of the data processing is done including the data captured and how they are captured, the purpose of the data, for how long they will be retained and how they will be retained. All of these matters will be worked through in detail. That is a mandatory statutory obligation under the proposed Bill. We would expect that all of those matters should be thoroughly addressed in the specific context for which the data are to be collected and the purpose for which they are collected. I hope this answers the Senator's question.

Senator Lynn Ruane: I thank Mr. Sunderland. I would like to go back to the Garda representatives for a moment. Reference was made to the protection of gardaí with regard to body-worn cameras. Obviously, violence of any nature should not be condoned but, as they say, the camera does not lie. When a body camera is turned on, however, it could give a perception of an event that may not be accurate. When a garda is in control of deciding at what moment a camera or a body-worn camera is turned on, it can give an alternative view of an event where there may have been provocation on behalf of the gardaí, or where there may have been a scuffle or something that we are not seeing. How do we account for this when we are looking at the evidence? Do the Garda representatives see this as being permissible, whereby a body-worn camera may not capture the start of an event to the end, and it may come in at a moment within the event?

Chairman: There is just time for an answer to this. Is that question to the Garda representatives?

Senator Lynn Ruane: Yes.

Mr. Brendan O'Connor: We would be looking for strong protocols to be in place that would give guidance to our members on that and help in that decision. It is also important to consider that the evidence to be given will probably be decided or examined in an independent forum, which the Senator has alluded to. I would imagine that this would include the context and how the camera is switched on, and it would give this some understanding and would raise questions. As it evolves, I would imagine that the process will help to eradicate such behaviour if it was to take place, and that it will be plain to see if something was taken out of context. A

jury, a judge or an investigator from the Garda Síochána Ombudsman Commission would have the same clinical approach in taking things as they are presented and deciding on whether there is something missing. Certainly, that is going to be a weakness but the protocol should overcome that or at least minimise it.

Chairman: I thank the Senator and other members for their engagement there. Our next speaker is Deputy Jennifer Carroll MacNeill.

Deputy Jennifer Carroll MacNeill: I will just follow up on that point exactly. I want to ask the GRA for its perspective on the need for this among its members. Clearly, we are having a conversation about the balance of rights, about enhancing confidence in policing, and about enhancing confidence in the community that policing will be as effective as it can be within the appropriate structures that we need.

We have seen two very high-profile cases in the United States of America where body-cam technology has been extremely useful in convicting criminally errant police officers, and also in cases of domestic abuse where evidence was gathered in the course of normal events. Will the GRA representatives please talk about the perception around the justification of it?

Following up on Senator Ruane's perspective, does the GRA anticipate that the camera would be on at all times when members of An Garda Síochána are interacting with the public, and therefore gathering as much evidence as possible? Clearly, members of An Garda Síochána are also engaged in their own private policing work as well. Could the GRA representatives please give their perspective on that?

Mr. Brendan O'Connor: I thank the Deputy. I will try to address that. The Deputy has outlined the benefits and those are exactly the circumstances where we feel our members could rely on and present better evidence. It will also bring a level of transparency and accountability to our members. We have nothing to fear. This will give confidence to those people who have doubts about how gardaí conduct their duties, and particularly in communities where relations can be improved and where there may be a perceived mistrust among some parties.

The Deputy asked when the cameras would be switched on. Obviously, again we come back to the protocol. We must be mindful of citizens' right to privacy and when it is appropriate to record. Generally, we would probably expect to see this being used in situations that are confrontational. A tourist approaching a garda on O'Connell Street looking for directions is not going to want to have his or her image or audio recorded. That would be inappropriate. There are other such circumstances, for example, with a victim of sexual assault or a person seeking advice from a garda on a personal issue. It would not be appropriate to record those interactions. This is where we will find guidance in the protocol. These systems are tried and tested in other jurisdictions and hopefully the protocol will reflect what has been learned.

Reference was made to gathering evidence at crime scenes. One of the big success stories from the perspective of victims is in relation to domestic violence. We are all well versed that there has been an increase in domestic violence. I believe it is more likely for a person to be a victim of homicide in domestic circumstances than in any other circumstances. This seems to be the case across the world. In our experience, one could go to the same location time after time and witness a vulnerable person being the victim of an assault or violence on repeated occasions and never having the confidence to make that statement to outline what happened, or where perhaps making the statement can revisit the trauma. When a police officer is on the scene who has a recording of the trauma and how the person was reacting, it can gather the ag-

gression and the attitude of the offender or suspect. It creates an excellent piece of evidence and allows a jury or a judge to see what the victim was subjected to. The benefits are huge for victims of crime and also in terms of efficiencies within the criminal justice system. There has been an emphasis and focus within the organisation on training so that we can provide a more effective response to domestic violence. This is a key part of that strategy and we would see it as bringing huge benefits for victims, particularly victims of domestic violence.

Deputy Jennifer Carroll MacNeill: I agree there is a huge opportunity there because, as Mr. O'Connor has said, it can be such a difficult thing to get a report and to be able to gather evidence. So much of it is so nuanced and that is one of the difficulties that the organisation has in the context of training. The organisation has the capacity to use it for a specified purpose but there are issues around the protocol, how that is put together, the consultation involved, how often it is reviewed and by whom. These issues are important both in terms of the protection of privacy and also of efficacy. When the camera is switched on is important and that is about the judgment of the individual member. Of course, it is not the only place where that is supervised by the courts but there is clearly a way of working and I would like to hear the Department's perspective on that.

Ms Maeve-Anne Kenny: In drafting the legislation, the Department was conscious that there are obviously a lot of operational matters for An Garda Síochána to consider in its deployment of body-worn cameras including the types of crimes for which they might be useful, as well as considerations such as people's right to privacy, where they might have an expectation of privacy and where that expectation might be higher. Therefore, it is proposed to provide An Garda Síochána with the power to deploy body-worn cameras subject to codes of practice. It has already been outlined that those codes of practice will need a data protection impact assessment and a human rights impact assessment as well as consultation with oversight bodies and the Data Protection Commission to help the Commissioner to inform those codes so that they can be appropriately operational for gardaí while also providing appropriate safeguards for citizens.

Deputy Jennifer Carroll MacNeill: In terms of drafting, I ask the Department to consider the role of this Oireachtas committee because this is a very fine balance of rights that could just as easily be dealt with on a legislative basis rather than being left to codes of practice. Is there a role for the Department in terms of coming back and providing a level of detail to this committee and its successors on the operation of this? How could we do that?

Ms Maeve-Anne Kenny: We can certainly take that into account in terms of reviewing the codes but as has been mentioned already, technology is evolving all of the time and there may be options available in the future that are not available now so the codes were seen as a more appropriate vehicle, rather than providing for each specific technology in the primary legislation.

Deputy Jennifer Carroll MacNeill: I have a question for Mr. Sunderland which he may have already answered; apologies if that is so. Presumably in drafting, there will be a legal basis for storing and processing the data. How long is appropriate for storing, recognising what An Garda Síochána is saying about gathering evidence over a period of time, particularly in domestic violence cases?

Mr. Dale Sunderland: It is difficult to give a precise timeframe because it will depend on the circumstances. The first thing that needs to be determined is the exact purpose for which the technology is to be used. That is a level of detail that is really important but it is to be worked out in the context of a data protection impact assessment. Data protection law does not specify

timelines but it does specify that data should only be retained for as long as is necessary. The justification would have to be made by An Garda Síochána, specifying the timelines or the duration for which the data will be retained and why it is necessary to retain it for that duration. That is a level of detail that is beyond me in my role but that has to be worked through----

Deputy Jennifer Carroll MacNeill: Legally, would it be possible to create subcategories of data? A recording, for example, of me in my car having been stopped for a traffic error of some kind might not need to be kept for very long but in domestic violence cases, a body of evidence might be gathered over a number of years. Could Mr. Sunderland envisage subcategories of data for different purposes? Is that okay legally? Is it the case that the data would not all have to be treated the same?

Mr. Dale Sunderland: Certainly and I will give an example. Any organisation that captures CCTV footage retains the general footage for approximately 30 days but there are situations where, if something has happened, it is then necessary to retain that data for a longer period. I would again reference what I said in my opening remarks about the need for clarity, precision and foreseeability in the law. In essence, the law must enable individuals, that is, data subjects to foresee the consequences of the legislation and how the processing of personal data might apply to them. The more granular in detail it is, the better. In fact, under data protection law, a level of granularity and precision is required and that is where the codes of practice come into play in providing that.

Senator Barry Ward: My initial questions are for the Department and relate to the heads of the Bill. Heads 5 and 6 provide for the basis on which the recording of data or the wearing of the camera can take place. While I generally welcome this and believe it is a great idea that makes perfect sense, I acknowledge the potential problems and pitfalls that have been raised by others. The heads of Bill as currently designed really only allow for the gathering of data in the context of evidence. One of the aspects of this technology that is potentially beneficial is in the protection of gardaí against false accusations. We know accusations are made against gardaí that are sometimes, unfortunately, well-founded but there are times when they are not. In certain circumstances, the Bill as currently drafted, does not provide permission to use the body cameras to protect gardaí from false allegations. Has any consideration been given to that? Is there an obvious reason, that I cannot see, for it not to be included?

Ms Maeve-Anne Kenny: Quite frequently when accusations are made against gardaí, it would be in the context of an incident that has occurred where somebody is perhaps disgruntled and in those circumstances, the camera may well be switched on for one of the purposes outlined in the Bill. This purpose has been considered and due to the fact that it is not explicitly a law enforcement purpose, different objection standards might apply in gathering data for that purpose. It has not been included in this Bill which is designed to deal with the use of recording devices for Garda functions of investigation or prosecution of offences, public order and the security of the State.

Senator Barry Ward: The Data Protection Commission and the Irish Council for Civil Liberties have both raised the issue today of the collection of data in certain contexts, like profiling data, for example. I ask the Department to confirm that information gathered by body cameras will not be used for that purpose and that it is intended to prohibit that through the protocols.

Ms Maeve-Anne Kenny: I ask the Senator to expand a little on his question because I am not quite sure what his concern is.

Senator Barry Ward: There was a discussion during the contributions from the Data Protection Commission and the Irish Council for Civil Liberties that the Bill does not really address the gathering of special data in the context of body cameras that might profile people in a particular way. I ask the Department to confirm that this will not be allowed, either under the Bill as finally drafted or under any subsequent protocols.

Ms Maeve-Anne Kenny: I wish to confirm, first and foremost, that the definition of a recording device is intentionally broad in the general scheme of the Bill. As has been mentioned previously, this has been done to cover the possibility of future types of recording devices that we have not necessarily thought of now. It also covers the processing of images that will be gathered by those devices. The safeguards come in by way of the codes of practice which will require data protection impact assessments and human rights impact assessments, as well as consultation prior to the introduction of a code relating to a specific device. It will be for those data protection impact assessments, consultations with the Data Protection Commissioner and so on to dictate what may transpire in the future. The intention is to make the definition in the legislation broad enough to capture potential future developments.

Senator Barry Ward: I am not sure who is the most appropriate person to direct my next question to, which relates to the retention of data and the period of time for which it can be retained. The first issue in that context relates to subhead 5 of head 6 which refers to an offence of manipulating or otherwise destroying evidence. We do not yet have the detail as to what will be defined as evidence but we cannot have a situation where the data gathered from these cameras is kept forever. I do not think anybody intends that to be the case, notwithstanding the points that were made earlier about it making sense to keep certain data for long periods but what provision is there in that regard? In the Bill at the moment there does not seem to be a provision for the deletion of data. Would that constitute destruction, which would be an offence under subhead (5) of head 6? How will we include in the Bill that there is a power for the data controller, in this instance, to delete data over time? Second, what are the protocols that we will put in place - this may not have been envisaged yet - for governing the responsibilities An Garda Síochána, or other agencies, have for deciding when the appropriate time is to delete data? How will we arrive at that decision?

Ms Maeve-Anne Kenny: I will come in on this question. The offence provided for under head 6 is intended to cover the malicious destruction, falsification or concealment of evidence. Perhaps that is not crystal clear in the heads. We will make certain that it is dealt with in drafting, if that is an issue. The destruction of data that no longer serves a purpose or cannot be retained any longer due to the statutory codes that will be put in place is a different matter. I understand the length of time for which the data will be retained will be dictated by the data protection impact assessment. For example, if an incident is flagged for which no criminal charge is made, but subsequently a criminal charge is made, obviously one would need the provision to retain that data until such time as criminal proceedings are finalised. The time periods will vary depending on the type of data in question.

Senator Barry Ward: Do representatives from the Irish Council for Civil Liberties or the Data Protection Commission have a view on that?

Mr. Dale Sunderland: I agree with the synopsis of the Department. The statutory requirement for the code of practice - it will be a statutory code of practice - must set out the provision, under head 7, for "the confidentiality, security, storage, access and retention of data gathered in accordance with Part 2" of the Act. This is an essential and important question, and the Senator is correct in raising it: how long will data be retained for? That will have to be worked out. The

Bill in its current form provides a statutory obligation, which exists under data protection law anyway regardless of the Act. However, it is further emphasised and provided for in the Bill in that those issues must be assessed thoroughly. In meeting the requirements under data protection law - as I highlighted in my opening comments and submission - this Bill together with the codes of conduct go toward satisfying the requirements of the law enforcement directive and requirements under EU law. The Bill in itself does not do that. It will require the development of those codes and the layout of those codes, in a statutory sense, before the Oireachtas to satisfy the requirements of data protection law. They very much go hand in glove. The issues raised by the Senator will have to be addressed. The retention periods will have to be established for each element of the data captured and there will need to be a justification for that.

Chairman: That concludes that interaction. The next member who has indicated is Deputy Costello, with Deputy Pa Daly to follow. That is the running order of the first round of questions.

Deputy Patrick Costello: On the issue of data retention, the Court of Justice of the European Union is dealing with a case at present that may influence all of that. I am conscious of the various codes of practice that are required under different parts of the legislation. The Bill states: "In addition to the consultations undertaken [with certain named persons] the Commissioner may consult with any other person or body appearing to the Garda Commissioner to have an interest in the matter." I would argue that we should be looking at full public consultation on these codes of practice in regard to their initial creation and renewal. I believe the general public has an interest in this matter. Will there be any scope during drafting to include a requirement for public consultation? I have another question which may be that of a new Deputy. Head 7(5) states: "Where the Minister receives a draft code of practice ... he or she may by order declare that the code, scheduled to the order, shall be a code of practice." I ask that clarity be provided on how much scope the Minister will have to vary or change what he or she receives at that point in time. I have a couple of other questions for the Department around drafting issues. I will run through some points and then come back in.

Head 15 deals with temporary approval for access to third-party CCTV. Several of the heads before head 15 deal with the issue of an application by An Garda Síochána to adjudge for authorisation, in the same manner that is done for a search warrant. However, there is no urgency test in the temporary approval as is required under Criminal Justice (Search Warrants) Act 2012. If there are circumstances where judicial approval is not practical, we need to state that there is an urgency in those situations. The lack of an urgency test is concerning, and I ask that it is addressed in drafting. The period allowed under the Bill is 72 hours which, again, speaks to a lack of urgency. If 72 hours of recording is allowed, that strikes me as something that should - as contained in the previous heads - go before a judge for independent judicial assessment and authorisation.

Head 9 states how CCTV will be operated on behalf of An Garda Síochána. Will witnesses provide clarity on who they envisage will operate that? I am conscious that the definition of a member of An Garda Síochána, under head 2, includes civilian Garda staff. If we outsource the monitoring of CCTV to persons outside An Garda Síochána, we will lose some of the transparency and oversight of protocols, rules and training that currently exist in An Garda Síochána and which give security to those activities.

Under head 8, no difference is made between overt surveillance and covert surveillance. Will that be addressed? There is a lot of talk about the need for recording equipment to be identified. Obviously, there are cases where a crime is being investigated and the last thing one

wants is a giant sign that reads “there is a recording device here”. From my perspective, we are getting into an area - covert surveillance - in which we need to balance rights. Should we be seeking warrants for covert surveillance? Is there an intention to address the difference between overt and covert surveillance? I will leave my questions at that for now. I may ask one more question afterwards, if I have time.

Chairman: Does the Deputy want any particular individual to respond?

Ms Maeve-Anne Kenny: I will do my best to go over those questions. On the codes of practice and the question around a public consultation, the heads provide for the possibility of public consultation on the human rights impact assessment. I appreciate that the matter the Deputy spoke about is wider than that. That is certainly something which can be taken into account.

On head 7(5) and the Minister’s role in approving the codes of practice under Part 2, the Minister is a person to be consulted in regard to the preparation of the codes. The idea is that the Minister and other bodies will already have been consulted and given the opportunity to express their views as to how the code should be structured and what detail should go into it. Ultimately, the Minister will have the discretion not to sign such an order should he or she believe it would not be appropriate. The Minister will have an opportunity at a stage earlier than that to provide input, if necessary.

On head 15 and the temporary access to a third-party CCTV, this is a provision that is intended to be used in circumstances where it is necessary to get access at short notice. If that is not particularly clear in the heads, it can be addressed in drafting. That is the intention behind head 15. I refer to CCTV and other parties who may make an application to the Garda Commissioner. These provisions are modelled on what is provided for under section 38 of the Garda Act. That relates to potential contractors for An Garda Síochána and relates to Garda surveillance only. I further understand that no such authorisation has been granted to date in respect of that category of persons who may apply.

Finally, on head 8 and CCTV, and the issue of overt versus covert, I return to head 2 and the interpretation section where the definition of “CCTV” provides for optical devices in public place. We are, therefore, not talking about private spaces; we are talking about public spaces. I appreciate the point around transparency, which will be addressed through codes of practice but on a very basic level we are talking about recording in public spaces.

Mr. Liam Herrick: I want to pick up on the point raised by Deputy Costello regarding head 15. From our perspective, this is one of the most important provisions of the Bill. The possibility of Garda access to third-party CCTV opens the possibility of a broad volume of surveillance information being accessed by the Garda. Head 13 provides strong judicial oversight of that power. However, head 15 potentially completely circumvents and undermines that protection because if the Garda can access this third-party material on Garda authorisation for 72 hours, there will be a strong temptation to use that provision and circumvent the judicial oversight. Therefore, in our view head 15 should either be completely removed or significantly amended before it proceeds.

Deputy Pa Daly: This for the Department. It is difficult to make too much comment because there seems to be wide discretion as to how it will be operated and wide circumstances in which it will be used. I have three questions. I apologise if this has been dealt with as I was in the Chamber. When does the Department anticipate that the code of practice will be available?

On the recording of the devices on Garda body cams, will an independent record be kept of the time the recording commenced and when it stopped? Following on from some of the comments made by the Policing Authority about the access to the footage, does the Department anticipate that a person who has had an altercation or interaction with An Garda Síochána will be allowed to have access to the recording immediately or prior to a court charge? In the normal course of events an application will be made to the judge and the judge will allow access to the information. Will a citizen or accused person or someone who has even had an interaction have an entitlement to view the footage before they are charged with an offence?

Ms Maeve-Anne Kenny: We are not in a great position to speak concretely about recording devices and the independent record of when recording started and was completed at the moment because it will depend on the types of devices, body-worn cameras, that are ultimately procured by An Garda Síochána. That also leads into the question on the codes of practice. The codes of practice will be complied with using the types of technological devices that An Garda Síochána has access to, when it is in a position to roll them out, etc. The code of practice will have to be developed and agreed prior to the roll-out of body-worn cameras but, as it stands, it is not clear when exactly that will be.

On access to footage, I imagine that data held by An Garda Síochána is subject to the same rights of access requests, etc., that can be made under data protection law. Separately, regarding access to information in respect of criminal charges, it is not proposed under the Bill to provide for a separate regime for disclosure of evidence. An Garda Síochána currently gathers a lot of CCTV footage from other areas. It will not always be footage that has been Garda obtained. Therefore we are not providing a specific system for access to evidence obtained under this Bill.

Deputy Pa Daly: On my second question on the independent record, will the most up-to-date technology be used on the recording machinery? In the past, I have found that the recording systems inside Garda stations, for example, have been almost out of date by the time they have been installed. It is important that there would be very up-to-date recording machinery.

On the first question, does the Department anticipate that the code of practice will be available prior to the legislation being put to a vote in the Dáil?

Ms Rachel Woods: On timelines, the legislation is to some degree enabling. On the technology, there has to be a procurement process that follows State procurement guidelines. The codes of practice will have to take account of the specific technology that is available. This is part of the reason the codes of practice are drafted the way they are and why they are such a significant piece of the legislation. The timeline will involve the enactment of the legislation and only after that can the technology be procured. Once the technology is procured and known, then the codes of practice have to be drafted with that in mind. There will be preparation of the codes of practice but they cannot be finalised until the procurement is done.

Chairman: Mr. Collins is indicating. Did he want to come in on that point?

Mr. Bob Collins: Not specifically on that but on an earlier point on the specific issue of head 15. Not only does that give 72 hours, but it allows that period to be extended in circumstances where the authorising officer believes that it may be necessary to extend it. That will usually come towards the end of that period and then pending the making of a judicial determination, the initial permission continues. It could, therefore, be a considerable time beyond the 72 hours and that is an issue that needs to be looked at.

Second, referring back to a number of contributions from Deputies and Senators, the code of practice is critical, as the Department's representative just said, which amplifies and reinforces why at all stages - initial and renewal stages in respect of both codes - that the code of practice should be the subject of public consultation because of the significance of the code beyond the significance that the legislation itself contains why there needs to be public consultation on those.

There is no doubt that the Policing Authority or its successor will review this issue in the context of its continuing and specifically its annual review of An Garda Síochána performance in respect of its policing priorities and its policing plan and that this will come under constant and continuing engagement and oversight by the Policing Authority or the policing and community safety authority that will emerge from the other legislation when it is enacted.

Deputy Pa Daly: It would be important that anyone who had an interaction, which may be the subject of a complaint to GSOC, for example, would have immediate access, either via their legal representative or themselves, to the footage from the body cam. That should be enshrined in any code of practice.

Chairman: We will move to the second round of questions as all members who wished to come in have done so at least once. Senator Ruane, Deputy Costello, and Senator Ward have indicated that they would like to come in again. I will take the members in that order. We will have five minutes each for the second round. If a member who has not yet contributed joins the meeting late, they will be facilitated to come in. Every member should have one outing at least. I call Senator Ruane who can put her supplementary questions the witnesses within the five minutes.

Senator Lynn Ruane: Legislation like this makes me quite nervous. I always struggle not to see something like this through the lens of social class. Senator Ward asked about the intentions of technological profiling. With all the best intentions, we can say that that is not the purpose of this legislation. However, class bias is already built into technologies and into algorithms before we even put the CCTV cameras up for their intended use. How do we safeguard people from working class communities who will probably be disproportionately affected by the use of cameras in their community?

This legislation talks about prevention of crime. I do not think that anyone should be under the illusion that this would prevent crime. In particular in the places where there will be calls to put CCTV, the crime will just move to another location. This is about the detection of crime. My concern is that if we look for crime in particular places, we are going to find it. The most important thing for me will be how the decisions will be made about where we look. Whatever about the technology not being set out to profile people, the decisions are already set to profile people. This is because decisions will be made geographically, by socioeconomic class, and about particular communities where there is a high amount of deprivation that results in a particular amount of criminality at whatever level. The profiling will have, therefore, already happened before the CCTV camera even goes in. This is what makes me nervous.

From the point of view of the Irish Council for Civil Liberties, how do we ensure that we can protect people from being disproportionately impacted by the use of technology in terms of their civil liberties, their race, their class and everything else that is already built into technology that we have not even procured but for which will have legislation? We do not really have an understanding of what has been built into the technology that we will procure.

Ms Doireann Ansbro: It is important that consideration should be given to future technologies, as well as to facial recognition technology, given the potential impact on minority communities and the potential for discrimination. We have already seen through research in other jurisdictions that using facial recognition technology has a negative and disproportionate impact on people of colour and on women. This is because of misidentification, as well as because of biases that are built into, as the Senator said, the algorithms in that the unconscious biases of the developers are often reflected within the development of this software.

In terms of how to protect people, it is important to note that the EU in the proposed regulation on artificial intelligence has suggested that facial recognition technology should never be used in a public place. We need to be cognisant of that. I would highlight that this is contrary to what is in An Garda Síochána modernisation plan 2016-2021, which states that it plans to use facial recognition technology to track suspects from CCTV, as well as to use technologies such as face-in-the-crowd and shape-in-the-crowd biometrics. We would be highly concerned about any use or potential use of facial recognition technology. We need to specify that that will not be used in the Irish context.

It is also important to note that the current Department of Justice and An Garda Síochána code of practice states that automatic facial recognition technologies are prohibited. In our opposition to body-worn cameras, we have also noted concerns in other jurisdictions, where they have been more used in communities that are already over-policed. This is having an impact on trust and on community policing between the people who are policed and the police themselves. It also potentially impacts on garda discretion itself, where a garda is able to use his or her discretion on whether or not something is pursued. There are a lot of ramifications and this is why we are calling for more research and for a pilot project before there is a general roll-out. There are a lot of ramifications that we need to consider before such software is rolled out.

One other point is about this idea that potentially new software can be included in this legislation. I understand the rationale is that safeguards should be applied to any future technology. However, we need to be cognisant that the rapid development of technology and software at the moment poses new and unforeseen risks to rights. That is why we say that future technology should be assessed individually, on a case-by-case basis, to make sure that the impact on rights is not disproportionate. A dangerous part of this legislation is that new software is potentially envisioned to be covered by it.

Chairman: I will move on to the next speaker. As I indicated, if a member has not got in yet, I will facilitate them. Deputy Smyth has her hand up. This is the Deputy's first contribution, so she will have seven minutes.

Deputy Niamh Smyth: I thank our witnesses for their statements and for an interesting debate so far. I have a question that is probably more for the Department to respond. Maybe the Garda representatives will also have a view. Not that long ago, the Department rolled out the CCTV community scheme. I worked with my local community scheming to try to get that scheme up and running. It was for CCTV cameras around our towns and villages to combat crime and to have this type of evidence. However, there was huge difficulty in terms of the data storage, data protection and data retention. At the time, after lots of toing and froing, I realised that the onus for that data protection and data storage lay firmly with local authorities. In my experience, local authorities were not willing to take on that role.

In this particular Bill, which is about digital recording, has that been given any consideration? This has an important role to play in crime prevention and in the gathering of evidence.

It could be an opportunity. I would like the Department's view. My experience is that communities probably missed out a lot on that scheme, because there was much resistance from local authorities to take on that role. I think that is understandable. My view is that role should not be with the local authorities. They are nowhere near geared for data protection, retention or storage. It would be much more suitable for An Garda Síochána to be responsible for that element of work.

Ms Maeve-Anne Kenny: There have been some changes made to the CCTV provisions under this proposed legislation that will make significant changes for community groups from what is currently provided under section 38 of the Garda Síochána Act. Due to some of the concerns raised in relation to monitoring arrangements and access arrangements for local community groups, which the Deputy also highlighted, and the issue of confusion over who is the appropriate data controller, we have had a rethink about community CCTV.

The new legislation will stipulate that local authorities alone will make an application for authorisation to Garda Commissioner and that community groups will not, therefore, have a role in monitoring or accessing footage from CCTV. That is not to say that there is no role for communities in the provision or application for CCTVs in their communities. Certainly, the Minister has committed to carrying out a review of CCTV, in tangent with the drafting of this Bill, to ensure that community voices can adequately be reflected in the new arrangements for community CCTV under the draft law.

Deputy Niamh Smyth: Do the Garda representatives have a view on the scheme up to this point? Storage and retention of data was a big issue for communities and local authorities.

Mr. Brendan O'Connor: I share the Deputy's frustration and the experience of members. We had the same issues. Around the country there were some very good quality cameras in place. We were using them to investigate crime. However, issues arose, as the Deputy highlighted, in relation to who the data controller was. In my own division in Letterkenny, we had a problem where there is a CCTV system that is quite similar to that which operates in Dublin city centre. Yet, unlike in Dublin, the county council in Donegal was the data controller, even though gardaí in the communications room were actually controlling the joystick. There are, therefore, huge logistical issues. In rural communities then we had the situation where funding and grants were available, which bodies like Muintir na Tíre were trying to draw down, but it seemed to get lost in bureaucracy, obligations and problems. We would certainly hope this legislation addresses that I believe it was the intention of Part 3 of the Bill to do so.

It is a huge issue, however, and it is impacting on the effectiveness of rural policing whenever we are trying to do more with less and maybe with Garda stations being closed. Unfortunately, we would never see CCTV as a substitute for policing but it does complement policing. We can definitely relate to the problems highlighted by the Deputy. We would like to see those sorts of things addressed because there is a huge problem there.

Deputy Niamh Smyth: I thank the witnesses.

Chairman: I thank Deputy Smyth. Deputy Costello is going to come in next followed by Senator Ward and Deputy Carroll MacNeill. That will probably conclude our public session because we are up against the clock for a 5.30 p.m. finish. Deputy Costello has a chance to come in now with a supplementary question.

Deputy Patrick Costello: I thank the Chairman. I want to continue some of my questions

to the Department about elements of the drafting that I am concerned are unnecessarily broad and concerns about a lack of safeguards.

Head 5(1) sets up that the use of the recording will be in areas where gardaí are legally permitted to be, where they are authorised by law or where they are expressly invited or impliedly invited. That kind of context is missing from head 9. Head 9 could apply to the use of drones and be about enabling them. Essentially, we are missing a safeguard that is in a previous head with regard to the use of drones. That is particularly important in the context of whether the gardaí should need a warrant with regard to the use of drones in monitoring somebody's private house. I would like to see that discrepancy addressed. Will it be possible to address that discrepancy in the future drafting?

One of the other issues then is with regard to head 18. When read in the context of the definitions in the interpretation in head 2, the "relevant data" seem to be relegated to "Automatic Number Plate Recognition". If that is what it is about, why not say that? The reading of head 18 as it stands now, without that context from head 2, seems to be very concerning. It seems to give *carte blanche* in terms of investigatory powers and demanding data. It would be a watering down of many of the protections and requirements for getting a warrant or judicial warrant with regard to phone or bank records or things like that. As I said, the way it is drafted means it is about the relevant data under head 2, which are defined simply as "Automatic Number Plate Recognition". I do not understand why head 18 is drawn so broad for one small piece of data. Again, that is part of my theme about unnecessary broadness and a concern around lack of safeguards.

They are the issues I would like to see addressed along with head 15 in relation to a lack of urgency test and an unnecessarily long period of 72 hours. I appreciate there are times when evidence may be destroyed when there is a need to act quickly from the gardaí. As I said, however, if we compare that to other legislation around warrants and searches, there is an urgency test as well as the idea of independence and the rank of superintendent or higher, which is entirely missing from head 15. The Department might comment on those points and whether those concerns will be addressed during the drafting process.

Ms Maeve-Anne Kenny: I thank the Deputy. First, I will mention head 9, which deals with mobile CCTV. CCTV is defined as including recording devices in public places. Even in terms of the operation of drones or any other kind of mobile CCTV, it is intended to cover public spaces only and not private residences or homes. I would just make that clarification.

With regard to the definition of "relevant data" in head 18 and head 2, naturally, the final definitions in the Bill, when it is presented to the Houses, will be subject to agreement of text with the Attorney General. This is a broad intention of the policy behind it. Perhaps our definitions are not necessary and the Attorney General will, no doubt, advise on that. As discussed earlier, I am sure the period of 72 hours can be considered in more detail depending on the recommendations of the committee.

Deputy Patrick Costello: As I said, the difference between public spaces and private spaces is addressed in head 5. It would, therefore, seem that there is a text that can be used for head 9. It is not just the issue of the time with regard to head 15. It is the urgency test. The Criminal Justice (Search Warrants) Act 2012 sets up three criteria: a member of An Garda Síochána must not be below the rank of superintendent; he or she must be independent of the investigation; and there is an urgency or an expediency, meaning that it would be dangerous for the gathering of the evidence or evidence could be lost if a person had to go in front of a judge. It is not just

the length of time but the lack of the urgency test which is a concern.

Chairman: I thank the Deputy; the point is well made. Because Senator Gallagher has not had a chance to come in thus far, I will allow him to come in now ahead of others on the second round of questions. I may not be able to give the Senator the full seven minutes that earlier first round speakers got so he might be concise.

Senator Robbie Gallagher: The Chairman can cut me off after seven minutes.

Chairman: I may need to.

Senator Robbie Gallagher: At the outset, I would like to apologise. I had to leave the meeting earlier to go to the Chamber and so I missed many of the contributions. I welcome all the speakers this afternoon. The bit that I heard has been very informative. It would appear that there is quite a journey to go yet with regard to this particular legislation.

First, I will make a comment on CCTV. I respectfully suggest that any community watching the debate this afternoon is probably doing so aghast when it comes to the installation of CCTV in towns throughout the length and breadth of the country. My experience is that the process is very cumbersome and time-consuming. I am aware of a couple of examples in my part of the world where applications for CCTV seem to go on for an eternity. I do not know whether that particular issue can be addressed by this legislation.

I very much welcome CCTV. I believe it acts in the prevention as well as the investigation of crime. I know of many incidents where positive outcomes have resulted from it. I am, therefore, very much a fan of CCTV. Having said that, it is important we balance that with citizens' rights and we must also be very cognisant of victims of crime when we discuss matters like this.

With regard to the body cameras, a number of speakers have alluded to the rapid development of technologies. That is very true and it is a question of how legislation keeps up with that rapid development of technology. It is a challenge and it is important. I do not know if a commitment was given here that this piece of legislation will adapt and be flexible with those advances in technology. That is vitally important. What have been the learnings, good and bad, from the experiences of other jurisdictions that have adopted body cameras over a period? How can we take those learnings and adapt them for our system?

My next point may have been covered earlier and if it has, I apologise. I am thinking of a practical situation where a member of the Garda arrives at the scene of a disturbance or whatever. At what point are gardaí meant to inform the individual or individuals concerned that they are turning on a camera or videoing the scene? It is important that people know that. Someone could begin videoing this meeting at this point and have a totally different perception of the meeting and contributions by the end. What is the opinion of the Department and others, including gardaí, who want to speak about that?

Are there clear parameters and guidelines on the use of devices and at what point recording commences and is terminated? A garda could arrive at a situation that is quite calm but that could explode in a matter of seconds. How can the guidelines and framework in the Bill be adopted from a practical day-to-day point of view? What has been learned from other police forces?

Chairman: Does the Senator want to nominate any particular witness?

Senator Robbie Gallagher: Whoever wishes to comment.

Chairman: Perhaps the Department might answer the first question on how cameras would be activated or how a person would be notified. As the authors of the Bill, perhaps the departmental officials are best placed to answer that. Other people can then comment. Would that be okay?

Senator Robbie Gallagher: Yes.

Ms Maeve-Anne Kenny: I thank the Senator. On a fundamental level, the Bill provides for the basic standards that must be complied with in terms of body-worn cameras. Head 6 provides for a requirement that the body-worn camera be visible on the uniform or clothing of the member and that it has a visual indicator when it is being operated. Outside of that, subject to whatever discussions may arise in the context of consultations and data protection and human rights impact assessments, additional standards can be imposed on the use of body-worn cameras.

Other jurisdictions have comprehensive codes in respect of how body worn cameras are deployed. For example, some codes will specify situations where body-worn cameras are not appropriate, such as where somebody is a recent victim of a sexual assault or something of that nature. That was mentioned by another contributor. The Bill will set out the basic requirements for visibility and a visible indicator when it is turned on. The codes can then set additional standards.

Senator Robbie Gallagher: What are the thoughts of gardaí on that?

Mr. Philip McAnenly: We would like to make a few points in this regard. In our submission we alluded to the failure to consult with us on the code of practice. This part of the discussion reinforces the absolute importance of involving the Garda staff associations in the consultation process for development of the code of practice required. It is something I ask Ms Kenny to take on board.

On our experience of international colleagues and police forces, I did not get an opportunity to come back to Senator Ruane's comments. The evidence that we are aware of is that the use of body-worn cameras has a very positive effect in many cases on crime prevention and the behaviour of the participants or persons involved in an interaction that may escalate and get out of control. Oftentimes, the use of a body-worn camera can be preventative in that respect.

I also do not accept that crime is not preventable and crime simply moves on. Were that to be the case our members would be demotivated working in the areas they are working in. We would argue that crime is very much preventable and our members are doing a tremendous job in preventing crime. I understand that is the point that is being made.

We cannot get away from the fact there is a requirement to ensure there is proper training for our members should the Bill be concluded. It is important that there should be appropriate and proper training for our members, not only in the use of the equipment but also updating our members on the rights of citizens to privacy and issues around that. They are the key points we would like to make.

Chairman: That is very good.

Senator Robbie Gallagher: Could I make one final comment?

Chairman: Very briefly.

Senator Robbie Gallagher: It is hugely disappointing that, if I am hearing correctly, the Garda representative associations have not been involved and have had no input into this to date. That is very worrying and disappointing.

Chairman: I thank the Senator. There are two final second round speakers. I ask them to keep things tight because we have some other business to fulfil and we are due to complete our meeting by 5.30 p.m. We have to let the witnesses go. Senator Ward will be followed by Deputy Carroll MacNeill. That will conclude our questioning.

Senator Barry Ward: I want to primarily focus on CCTV and its community aspects. I welcome these provisions. It is a good idea to put this into the realm of the State. That protects everybody involved. Community organisations in my area have a great fear of transgressing the protocols, in particular GDPR, and other data protection laws. It is something they worry about.

However, while CCTV has a role to play, I have a great fear of the Big Brother aspect. I worry about the notion of CCTV. I recognise what the GRA said about it being a tool rather than a primary source of crime prevention, but I worry about it. In our nearest jurisdiction, the UK, it is used to an extraordinary extent. It is oppressive on the population there.

Who will prevent that from happening? Whose role is it to ensure that we do not have a proliferation of CCTV that will create all kinds of problems and infringe on people's rights to privacy? How will it operate between An Garda Síochána and local authorities? Who is the ultimate arbiter? For example, if a local authority does not want to co-operate, would that create problems? If a community wants to run a scheme that objectively makes sense but there is not buy-in from the local authority, does that mean it cannot go ahead? By the same token, if there is not buy-in from An Garda Síochána, does that prevent the scheme from going ahead? Who is the safeguarder and who is the final arbiter in operating a scheme?

Ms Maeve-Anne Kenny: I apologise; I was not sure if those questions were for the Department. I will come in anyway.

In essence, on the first question on CCTV and the idea that we will have an excess of cameras or far more cameras than are necessary, the requirements in the Bill in terms of authorisation by the Garda Commissioner are that a data protection impact assessment is carried out prior to the installation of any CCTV. Any alterations to existing CCTV schemes where that would extend their coverage or number of cameras would be subject to another authorisation. The old authorisation cannot be relied on; a separate application has to be made.

There will be codes of practice governing CCTV as well as the other technologies under in the Bill, which will require consultation with the Data Protection Commissioner and data protection and human rights impact assessments. From our point of view, we feel there are safeguards in the Bill to prevent the type of situation to which the Senator referred.

On the new roll-out of community CCTV, as I mentioned, the Minister has committed to undertake a review of how communities can continue to play a role in CCTV and how the proposals under the Bill will take effect over the next couple of years. We will have to await the outcome of that review to make further comment on that point. The key thing to note is that the local authority and Garda Commissioner will be required under the Bill to enter into a joint data control agreement. It would be very clear what their rights and responsibilities are in respect

of the data from CCTV.

Chairman: I might move on as time is tight.

Deputy Jennifer Carroll MacNeill: I have one question for the GRA and one for Mr. Collins. I will pick up on what Senator Ruane said about the perception of distribution being overly focused on areas possibly experiencing overpolicing. What is Mr. O'Connor's view on that? The community I represent has a very strong view that it would like to be supported by effective and enhanced policing. How do we assess that or track and monitor it so that we can reduce the concern or at least provide data regarding it?

Garda members should be inherently involved in the design of the programme, which should be overseen by external bodies because they are the people who will be implementing it and their view is essential. Have many of them expressed concern or is there overwhelming support for the programme? I am not sure if we have achieved that.

I wish to ask Mr. Collins a question given his oversight position. It is clear there have been a lot of questions on policing, and policing by consent has come up to a great extent in the past year with Covid. How does he view the proposed change and the legitimacy of policing in Ireland? Does he think it will enhance effectiveness and legitimacy or does he see it more as a threat? What is his overall take on it?

Mr. Brendan O'Connor: Deputy Carroll MacNeill asked about the response of our members. They are overwhelmingly calling for this. We feel very much we have nothing to hide. Regarding the comments on overpolicing, we bring our own subjective opinion. We feel that nearly every community is underpoliced. This will bring a level of transparency. On the fears and suspicions that exist, we feel this will address any doubts because the interactions of gardaí with any community will be there to be scrutinised by relevant oversight bodies and supervision within the organisation. If improper or poor practice exists, it would help eradicate it, but we contend it is not at the level suggested by some. The level of transparency will enhance the quality of policing and the professionalism of members.

Deputy Jennifer Carroll MacNeill: I tend to agree. It is a bit like the change in the Supreme Court. I am sorry I cannot remember the name of the case, but it concerned the change from the Kenny rule on the admissibility of evidence obtained incorrectly. I thought it was going to create a stronger onus on An Garda Síochána to do things correctly and to have to explain it rather than simply being off the hook by virtue of the evidence being ruled out automatically, but it enhances the strength of An Garda Síochána.

Mr. Bob Collins: The authority sees the potential in that the use of body-worn cameras can be behaviour-modifying both for the Garda Síochána and individuals in circumstances that may be fraught or tense. Over the period of the health emergency in the past 18 months, the authority has been monitoring and overseeing very carefully the exercise by the Garda Síochána of the additional powers that were given to them. In the 15 reports the authority submitted to the Minister, the overwhelming response from the public has been very positive on the approach of the Garda Síochána. A great deal of that derived from the fact there was a new tone and a new approach being deployed and displayed by gardaí. There was more empathy, respect and human engagement, if I could use that term, without in any sense diminishing the work of the gardaí involved. That is an important lesson to be learned from that period.

There is no doubt the experiences of some who engaged with the Garda Síochána are less

positive than that, and some of those unhappy experiences have perhaps been intensified during the course of the pandemic. There are also lessons in that on the way in which people and communities are approached. Some communities have a history of poor engagement with the Garda Síochána and responsibility for that rests probably somewhere between both. There is a challenge to be met by the Garda, as there is a challenge for those communities and those who work with them, to find new ways of engagement.

To reiterate a point I made earlier, the codes of practice in this Bill are of critical importance. The value and necessity for extensive public engagement with communities will be of significant importance. The issue-----

Chairman: I will interrupt there. Mr. Collins will get the last word. I thank him for his contribution.

Mr. Bob Collins: I was just going to finish that sentence by saying the issue is less one of more or less policing than of the quality of policing and the quality of the engagement. That can certainly play a significant role.

Chairman: Very good. I thank Mr. Collins. It is quality not quantity. I thank all the witnesses. We have a bit of private business to address with committee members, but that concludes our engagement with the witnesses. I thank all of them for their contributions at the outset and during the meeting. The witnesses can now disengage from the meeting. I am sure we will be in touch with most if not all of them very shortly as they are all regular contributors.

As per our normal practice, it is proposed we publish all the opening statements on the committee website. Is that agreed by the members? Agreed. I ask members to stay on the call as we will deal with a bit of private business.

The joint committee went into private session at 5.26 p.m. and adjourned at 5.29 p.m. until 3.30 p.m. on Wednesday, 22 September 2021.