



Meeting of the Joint Oireachtas Committee on Justice to discuss the General Scheme of the Garda Síochána (Digital Recording) Bill 2021

21 September 2021

Opening Statement by Mr. Bob Collins, Chairperson of the Policing Authority

Chairperson,

Thank you for the opportunity to make a brief opening statement regarding the Policing Authority's views on the Garda Síochána Digital Recording Bill.

As we previously stated in our submissions to the Department of Justice and indeed to this Committee, the Authority acknowledges the benefit of the use of technologies, such as those mentioned in the Bill, to tackle crime and promote effective policing. However, that is not unconditional and the Authority has some significant concerns which I will outline in a moment and for which we believe there are achievable resolutions.

Efforts to manage the impact of the emergency measures enacted as a result of the global pandemic have highlighted the importance of public confidence in the Garda Síochána, especially in terms of its legitimacy in exercising extra powers whilst vindicating our human rights. It is crucial to this sense of legitimacy that the right balance between powers and rights is found.

The use of the technologies covered by the Garda Síochána Digital Recording Bill, e.g. Body Worn Cameras and Closed Circuit Television — if not undertaken with caution and under 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 infringe basic human rights.

Therefore, the Authority highlighted in its previous submissions some principles which it believes must be underpinned in the legislation and I will now go through those briefly:

1. Device neutrality and a clear framework

We live in an age of constant technological progress and we witness the frequent emergence of new technologies. This is of course very positive, but it comes with risks. In terms of the Bill under discussion, it means that powers and responsibilities afforded by the Bill must be **device**



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neutral and de-coupled from the specific characteristics of any one device or technology.

Further, **a clear framework is required, within which the boundaries and limits of use for current and emerging technologies must be explicit and unequivocal.** Otherwise, there is a risk that each new technology will be considered on an ad-hoc basis, and that the technology will be put to use in policing contexts that were not contemplated but about which the legislation is silent. This is not a bureaucratic or administrative point; it has real substance.

Because of the fact that future technology may have consequences that are unintended or unimaginable, it would seem appropriate to make explicit the necessity for a five-year review of this element of the Act which would include consultation with the Policing Authority or the future Policing and Community Safety Authority (PCSA).

2. Ethics and proportionate use

The Authority, in its written submission, proposed that the legislation should include a code of practice, which sets out guiding principles of ethics, fairness and proportional use by individual officers.

These principles should have underlying policies, which can then become the test against which the appropriateness of the use of the relevant technology and indeed any future technologies will be assessed.

The Authority was pleased to see that the current draft (Head 10) now sets out a process for the preparation and approval of a code or codes of practice in relation to CCTV.

This addresses some of the concerns previously raised, such as lack of reference to a Data Protection Impact Assessment and Human Rights Impact Assessment, however it does not address all of the concerns raised, a number of which I will refer to below.

3. Human Rights

The use of these technologies will see both the infringement and 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.

The Authority wishes to reiterate the risks involved in using such technologies and the importance of conscious and cautious usage to mitigate them.

Further on this, the Authority was pleased to see that in the current draft, it is provided that a **Human Rights Impact Assessment** *"...may include consultation with members of the public..."*

and that the list of bodies with which the Garda Commissioner shall consult prior to submitting a draft code or codes of practice has expanded and now includes the Policing Authority, as well as other relevant bodies. The Authority would welcome a requirement to consult with the public. However, the new draft discussed today still does not make it explicit that the Human Rights Impact Assessment to be undertaken will be an external and independent assessment and we reiterate the need for this to be included in the wording of the Head.

With regard to the issue of access to footage, the Authority's previously expressed concern remains with the process by which requests by lawyers to access footage in which clients are captured will be handled and at what point will they be given access to these. It is the Authority's view that this should be made clear in the legislation.

4. Transparency, oversight and accountability

The Authority's well-established position is that oversight and accountability are essential to give legitimacy to public bodies and that the greater the power, the greater must be the accountability.

In that sense, the use by the Garda Síochána of invasive technologies, such as Body Worn Cameras and Closed Circuit Television, must be:

- (1) transparent to the public;
- (2) subject to independent oversight by an external body and;
- (3) clear as to where accountability lies.

The Authority's view is that these three elements are still not adequately reflected in the current draft. Specifically, the legislation:

- (1) should refer to an obligation of the Garda Síochána to employ a comprehensive process of reliable recording of the use of these technologies, and to develop and publish codes of practice alongside specific guiding principles as to their usage.
- (2) should include reference to the development of a robust mechanism to review, appeal and oversee decisions to use the technologies under discussion.
- (3) should make reference to the material collected (i.e. footage and data around the use of the discussed technologies) where relevant and still available, being made available to GSOC and the Garda Inspectorate, to inform their investigations and inspections.



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- (4) should be visible — it is the Authority's view that unless circumstances require a covert installation, it be made explicit in the legislation that the public be informed about the existence of a CCTV system and that they are being recorded.
- (5) should avoid an overly centralist approach by which there is a sole determiner in relation to authorising the installation and operation of CCTV. Although the Authority acknowledges the advantage in having a single focus of decision-making, in the person of the Commissioner, in terms of consistency of application and avoidance of unnecessary (and sometimes unwarranted) CCTV installations, it wishes to emphasise the importance of some measure of local engagement or an un-bureaucratic system of checking/appeal of central decisions as part of the process of such approval. This will allow for meaningful community input while not diminishing the decision-making capacity of the Commissioner.
- (6) should include a requirement for the Garda Síochána to publish annually the numbers of authorisations sought by, granted and/or refused to it, for access to a third party CCTV on a live-feed basis. This would give a sense as to whether this was being used in exceptional circumstances.

Finally on this issue, the Authority was pleased to see that the current draft provides that in conducting the review of the code or codes of practice, the bodies listed in subsection 4(a) shall be consulted. However, the current draft does not provide that such review and/or amendment of the code will have regard to the prevalence and impact of use of the technology, nor trends emerging with regard to complaints in respect of its use, both of which are crucial in the Authority's view.

Conclusion

I hope, Chairperson, that these brief remarks give the Committee a sense of the Authority's concerns with respect to the Bill, as well as an understanding of the proposed means to address them. I would be happy to discuss, with the Committee, these and any other issues of concern.

Thank you.

Bob Collins,

Policing Authority Chairperson