



AN TÚDARÁS PÓILÍNEACHTA
POLICING AUTHORITY

**Policing Authority Submission to the Joint Oireachtas
Committee on Justice**

**General Scheme on the Garda Síochána (Digital
Recording) Bill**

5 August 2021

1 Introduction

1. The Authority welcomes the opportunity to make this submission to the Joint Oireachtas Committee on Justice, on the General Scheme on the Garda Síochána (Digital Recording) Bill (the Bill). The Authority have made submissions to the Department of Justice throughout the development of this Bill to date highlighting a number of principles which it believes should underpin the legislation, including:
 - Device neutrality;
 - Ethics, fairness and proportionate use;
 - Human rights;
 - Transparency;
 - Accountability;
 - Oversight; and
 - Community safety.
2. In addition specific comments were provided on three elements which raised concerns:
 - i. The use of Body-Worn Cameras by the Garda Síochána;
 - ii. The authorisation to install and operate Closed Circuit Television; and
 - iii. Access of the Garda Síochána to third party Closed Circuit Television.

The Authority's detailed submission on the earlier draft of the Bill is attached for the Committee's reference.

3. It is the firm view of the Policing Authority that where invasive technologies such as those under discussion are being used, it is important for public confidence and for the legitimacy of the Garda Síochána's use of these technologies that external, transparent and independent scrutiny exists. This theme is reflected in the observations on individual heads in section 2 below.

2 Observations on Individual Heads

Head	Authority comment
Head 1, 3 to 5, 9, 11 and 13 to 22	No Comments
Head 2 Interpretation	- In its previous submission, the Authority stressed the importance of device neutrality in order to future proof against the emergence of new technologies. It also suggested a review of the act after 5 years (including a consultation with the Policing Authority or its proposed replacement the Policing and Community Safety Authority) in anticipation of unintended consequences related to the emergence of new technologies. The Authority notes that the Codes of Practice to be developed by the Commissioner for recordings by the Garda Síochána (including body worn cameras) and CCTV are subject to a 5 year review and the Policing Authority (among others) must be consulted. We also note that Head 21 provides for a review of the operation of the act by a serving judge specifically in

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Head	Authority comment
	<p>relation to access by the Garda Síochána to third party live feeds and transfer of recorded data and any other matters that are considered relevant.</p> <ul style="list-style-type: none"> - While these provisions are to be welcomed, the Authority is still of the view that agreement on the purpose (and indeed agreement on what is not the purpose) of the Scheme and on the principles underpinning the Scheme must be device neutral and de-coupled from the specificity of any one device or technology, if the scheme is to have resilience against the inevitable technological progress that will be made. If there is not a clear framework within which the boundaries and limits are clear and understood, there is a risk that each new technology will be considered on an ad hoc de novo basis with the risk that the technology will be put to use in policing contexts that were not contemplated but about which the legislation in its specificity is silent. 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 includes consultation with the Policing Authority or the future Policing and Community Safety Authority (PCSA).
<p style="text-align: center;">Head 6 Use of Body-Worn Cameras by the Garda Síochána</p>	<ul style="list-style-type: none"> - In its previous submission, the Policing Authority referred to Head 6 and expressed its concerns regarding the lack of requirement for such devices to be visible. The Authority is pleased to see that its concerns were considered and that the notes for Head 6 now include the following: "...the body-worn camera must be visible". - The Authority's view is that 'public health' should be included as a fourth purpose under the primary purposes for a member of the Garda Síochána to operate a recording device. Although it is arguably included under 'public safety', it is the Authority's view that a more explicit approach is favourable.
<p style="text-align: center;">Head 7 Code of Practice under Part Two</p>	<ul style="list-style-type: none"> - In its previous submission, the Policing Authority referred to Head 7 and noted that there is no mention of a consultation with the Policing Authority or its proposed future replacement (the Policing and Community Safety Authority) nor an opportunity for the public to comment on the proposed legislation. The Authority is 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. - However, the new draft 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. - The Authority is 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

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	<p>and/or amendment of the code will have regard to the prevalence and impact of use of the technology, nor trends emerging with to complaints of its use, both which are crucial in the Authority's view.</p> <ul style="list-style-type: none"> - Lastly, the Authority is pleased to see that the current draft includes a new subhead (9), which addresses the Authority's suggestion to include in the legislation a reference to ensure clarity and avoid vagueness for members of the Garda Síochána.
<p>Head 8 Closed Circuit Television</p>	<ul style="list-style-type: none"> - Visibility - 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. - Head 8 takes a centralist approach by making the Garda Commissioner the 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 terms of consistency, it wishes to emphasise the risks that arise and suggests redrafting with the effect that the Garda Commissioner is obliged to consult with and take into consideration the views of Local Authorities and/or Community Safety Partnerships in the process of such approval. This will allow for less centralist approach and will reduce the burden placed on the Garda Commissioner. - The Authority welcomes the addition in the new draft which limits the authorisation to a period of two years (subhead 15), however this in itself does not address the Authority's concerns mentioned above. - Review Mechanism - the Authority believes that a mechanism to review both a decision to approve or to decline a request to install a CCTV, should be provided and referenced in the legislation. - Transparency - It is the Authority's view that the legislation should include a requirement for the Garda Síochána to publish annually the numbers of authorisations provided to install CCTV, as well as the number of refusals. This would give a sense as to whether this was truly being used in exceptional circumstances.
<p>Head 10 Code of Practice under Part Three</p>	<ul style="list-style-type: none"> - The Authority is pleased to see that Head 10 now sets out process for the preparation and approval of a code or codes of practice in relation to CCTV (similar to the process in Part 2 for Body-Worn Cameras, which the Authority suggested in its previous submission. This addresses some of the concerns raised in the Authority's previous submission (such as lack of reference to a Data Protection Impact Assessment and Human Rights Impact Assessment). , and indeed its suggestion to include a code of practice, however it does not addresses all the concerns raised. - The Authority welcomes the restriction of applications of CCTV to Local Authorities and the criteria that Local Authorities must satisfy and continue to observe when apply for and operating CCTV. It is also notable that the Data Protection Commissioner was consulted in the drafting of this Head

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	<ul style="list-style-type: none"> - Access to footage - The Authority's previously expressed concern remains with regard to how requests by lawyers to access footage in which clients are captured will be handled and at what point will they be given timely access to these. It is the Authority's view that this should be made clear in the legislation.
Head 12	<ul style="list-style-type: none"> - It is the Authority's view that the legislation 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. There should also be a requirement for the Garda Síochána to publish policies, internal codes of practice and any additional data in relation to their access to third party CCTV. - It is the Authority's view that more clarification should be provided as to how a decision that access to third party CCTV is necessary and proportionate was arrived at (subhead 2).