

**DRAFT GENERAL SCHEME OF GARDA SÍOCHÁNA  
(DIGITAL RECORDING) BILL**

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**LONG TITLE**

An Act to provide for....

## **PART ONE – PRELIMINARY AND GENERAL**

### **HEAD 1: SHORT TITLE AND COMMENCEMENT**

PROVIDE THAT:

- (1) This Act may be cited as the Garda Síochána (Digital Recording) Act 20XX.
  
- (2) This Act shall come into operation on such day or days as the Minister for Justice may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

**Notes:** This is a standard commencement provision.

## HEAD 2: INTERPRETATION

### PROVIDE THAT:

(1) In this Act –

“body-worn camera” means a recording device where it is fixed to the clothing or uniform of a member of the Garda Síochána;

“closed circuit television” or “CCTV” means any fixed system employing recording devices for recording or processing, including through the use of Automatic Number Plate Recognition, a visual image or moving visual images in a public place;

“code of practice” includes part of a code of practice;

“member of the Garda Síochána”, for the purposes of this Act, means

(a) a member of any rank (including the Garda Commissioner) appointed under Part 2 of the Garda Síochána Act 2005 or under an enactment repealed by that Act,

(b) a reserve member appointed under section 15 of the Garda Síochána Act 2005,  
and

(c) civilian staff of the Garda Síochána appointed under section 19 of the Garda Síochána Act 2005;

“Minister” means the Minister for Justice;

“mobile closed circuit television” means any system employing recording devices for recording or processing, including through the use of Automatic Number Plate Recognition, a visual image or moving visual images in a public place where it is in a vehicle belonging to, or being used by, the State;

“public place” means a place to which the public have or are permitted access, whether as of right or by express or implied permission;

“recording device” means a non-fixed device capable of recording or processing, including through the use of Automatic Number Plate Recognition, visual images, on any medium, from which a visual image or moving visual images may be produced and includes any accompanying sound or document;

“relevant body” means [...] and any other such body as may be designated by the Minister in accordance with Head 15;

“relevant data” means Automatic Number Plate Recognition data, whether accompanied by an image or images of a vehicle, or the occupant or occupants of a vehicle, or not;

“vehicle” means any conveyance in or by which any person or thing, or both, is transported which is designed for use on land, or in water or in the air, or in more than one of those ways, and includes an unmanned aerial vehicle.

**Notes:** This Head provides for definitions of some of the key terms to be used in the Bill. Of particular importance is the definition of “recording device” which is intended to be broad enough to encompass recording of an image/images where the device may have software installed such as ANPR to read licence plates, or possible emerging technologies in the future. There are also definitions of CCTV, which is defined as being fixed and mobile CCTV, which is CCTV installed in vehicles owned or operated by the State.

### HEAD 3: APPLICATION OF ACT

#### PROVIDE THAT:

- (1) Nothing in this Act shall render unlawful any activity that would otherwise be lawful.
- (2) For the avoidance of doubt, it is hereby declared that this Act does not apply to the following -
  - (a) the use of a closed circuit television system in a Garda Síochána station;
  - (b) the recording by electronic or other similar means under section 27 of the Criminal Justice Act 1984 of the questioning of a person by members of the Garda Síochána at Garda Síochána stations or elsewhere in connection with the investigation of offences;
  - (c) the recording by electronic or other similar means of any evidence given, or statement made, by a person for the purposes of any court proceedings; or
  - (d) surveillance carried out in accordance with an authorisation or approval given under the Criminal Justice (Surveillance) Act 2009.
- (3) A failure to observe any provision of this Act or of any code of practice made thereunder on the part of any member of the Garda Síochána shall render that member liable to disciplinary proceedings.
- (4) A failure to observe any provision of this Act or of any code of practice made thereunder on the part of any member of the Garda Síochána, shall not of itself, render that member liable to any criminal or civil proceedings.

**Notes:** This Head is intended to clarify that there are other circumstances in which it is lawful for the Garda Síochána to use recording devices, whether under Statute or by virtue of any common law powers, and that this Act does not affect or override this. This Head clarifies

certain types of recording by the Garda Síochána that will not fall under the provisions of this Act, including the electronic recording of suspect interviews. It also provides for liability and disciplinary issues relating to potential breaches of the Act or the Code of Practice by members of the Garda Síochána.



## **HEAD 4: REPEALS AND REVOCATIONS**

PROVIDE THAT:

The following provisions are repealed:

- (a) Section 38 of the Garda Síochána Act 2005.

The following statutory instruments are revoked:

- (a) Garda Síochána (CCTV) Order, 2006 - S.I 289 of 2006

**Notes:** This Head provides for the repeal and revocation of the current statutory provisions in relation to Garda CCTV and community CCTV. The repealed provisions are being reintroduced in Head 10 with additional safeguards and procedures to be complied where the Garda Commissioner is authorising CCTV.

## **PART TWO – RECORDING BY THE GARDA SÍOCHÁNA FOR SPECIFIED PURPOSE**

### **HEAD 5: USE OF RECORDING DEVICE BY THE GARDA SÍOCHÁNA**

PROVIDE THAT:

- (1) A member of the Garda Síochána acting in the course of his or her duties may, in accordance with this Head, operate a recording device in a public place or any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be.
- (2) A member of the Garda Síochána may operate a recording device if it is for the primary purpose of -
  - (a) preventing, investigating, detecting or prosecuting criminal offences,
  - (b) securing public order and public safety, or
  - (c) safeguarding against, and the prevention of, threats to public security.
- (3) Any use of a recording device under subhead (1) must be necessary and proportionate in relation to the functions of the Garda Síochána and the purpose of such use under subhead (2).

**Notes:** This Head is intended to cover the use of recording devices in a public place or any other place where a member of the Garda Síochána has lawful authority or permission to be present, for example when conducting a search of a premises under warrant. Recording devices may include camcorders, mobile phones, tablets, other handheld devices and drones. This is intended to cover incident specific recordings using a device. It should not be relied upon as the basis for permanent installation of a fixed device or for ongoing monitoring.

## **HEAD 6: USE OF BODY-WORN CAMERA BY THE GARDA SÍOCHÁNA**

PROVIDE THAT:

- (1) A member of the Garda Síochána acting in the course of his or her duties may, in accordance with this Head, operate a body-worn camera in a public place or any other place under a power of entry authorised by law or to which or in which he or she was expressly or impliedly invited or permitted to be.
- (2) A member of the Garda Síochána may operate a body-worn camera if it is for the primary purpose of -
  - (a) preventing, investigating, detecting or prosecuting criminal offences,
  - (b) securing public order and public safety, or
  - (c) safeguarding against, and the prevention of, threats to public security.
- (3) A body-worn camera being operated by a member of the Garda Síochána in accordance with this Head shall be visible on the clothing or uniform of the member wearing it and shall have a visible indicator when it is being operated.
- (4) Any use of a body-worn camera under subhead (1) must be necessary and proportionate in relation to the functions of the Garda Síochána and the purpose of such use under subhead (2).
- (5) Any person who -
  - (a) falsifies, conceals, destroys or otherwise disposes of evidence gathered by a body-worn camera;
  - (b) causes or permits its falsification, concealment, destruction or disposal, or
  - (c) knowingly causes damage to or destroys a body-worn camera shall be guilty of an offence.
- (6) A person guilty of an offence under this section shall be liable -

- (a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months or both, or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 5 years or both.

**Notes:** This Head is intended to deal with incident specific use of a body-worn camera, as defined in Head 2, by a member of the Garda Síochána in a public place or any other place where such member has lawful authority or permission to be present, such as when conducting a search under warrant. It is intended to cover the use of a body-worn camera by a member of the Garda Síochána who is on duty only. It is intended that a body-worn camera may be attached to the uniform of a member, or to their clothing if they are not in uniform. However, the body-worn camera must be visible.

## **HEAD 7: CODE OF PRACTICE UNDER THIS PART**

PROVIDE THAT:

- (1) The Garda Commissioner shall, as soon as practicable after the coming into operation of Part 2 of this Act, and having had regard to the matters contained therein, prepare a draft code or codes of practice to set standards for the operation of Part 2 of this Act for submission to the Minister.
- (2) A draft code or codes of practice referred to in subhead (1) shall include provisions in relation to all of the following matters -
  - (a) the circumstances in which a recording device may and may not be operated by members of the Garda Síochána in a public place and otherwise than in public;
  - (b) procedures and standards to be followed by members of the Garda Síochána in the operation of Part 2 of this Act;
  - (c) confidentiality, security, storage, access and retention of data gathered in accordance with Part 2 of this Act;
  - (d) data subject rights, and
  - (e) any other matters relevant to the operation of Part 2 of this Act by members of the Garda Síochána.
- (3) In preparing a draft code of practice under this Head, the Garda Commissioner shall ensure that –
  - (a) a Data Protection Impact Assessment is carried out in accordance with section 84 of the Data Protection Act 2018, and
  - (b) a Human Rights Impact Assessment is carried out, which may include consultation with members of the public, and
  - (c) both assessments will be provided to all parties referred to in subhead (4)(a) prior to consultation.
- (4) (a) Prior to submitting a draft code or codes of practice under this Head, the Garda Commissioner shall consult with the following about the content of the code:

- (a) the Minister;
- (b) the Policing Authority;
- (c) the Garda Síochána Ombudsman Commission;
- (d) the Garda Síochána Inspectorate;
- (e) the Data Protection Commissioner; and
- (f) the Irish Human Rights and Equality Commission.

(b) In addition to the consultations undertaken in accordance with subhead (a), the Commissioner may consult with any other person or body appearing to the Garda Commissioner to have an interest in the matter.

- (5) Where the Minister receives a draft code of practice from the Garda Commissioner he or she may by order declare that the code, scheduled to the order, shall be a code of practice for the purposes of this Act.
- (6) (a) The Garda Commissioner shall ensure that any code or codes or practice under this Head are reviewed on a regular basis, with each such review being carried out on a date that is not more than 5 years from the date of order of the Minister, or in the case of each subsequent review under this subsection, the date of the previous review under this subsection, and
- (b) in conducting a review under this subhead, the bodies listed under subhead (4) shall be consulted.
- (7) (a) The Minister may at the request of or after consultation with the Garda Commissioner by order revoke or amend a code of practice, and
- (b) prior to the amendment of a code of practice, the Garda Commissioner shall ensure that the matters referred to in subheads (2) and (3) are complied with.
- (8) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either House within the next twenty-one days on which that House has sat after the order has been laid before it, the order shall be annulled

accordingly, but without prejudice to the validity of anything previously done there-under.

- (9) The Garda Commissioner shall take such steps as are necessary to ensure that all members of the Garda Síochána have read and understood a code of practice established under this Head and that a record is kept of the steps so taken in relation to each member.

**Notes:** This Head provides for a requirement on the Garda Commissioner to prepare a code of practice for submission to the Minister for Justice in relation to the use of recording devices and body-worn cameras under this Part. The code or codes must set out the procedures and standards to be adopted by members in their use of recording devices and set out how data gathered is to be stored, accessed, retained or deleted. This code once prepared will be given effect to by way of statutory instrument. There are requirements in terms of Data Protection Impact Assessment (DPIA) a Human Rights Impact Assessment (HRIA) and consultation with the Data Protection Commissioner (DPC) and other bodies prior to finalising a code under this Head. The Minister must also be consulted before the code is submitted to him or her.

## **PART THREE – CLOSED CIRCUIT TELEVISION**

### **HEAD 8: CLOSED CIRCUIT TELEVISION**

PROVIDE THAT:

- (1) The Garda Commissioner may authorise the installation and operation of closed circuit television for the sole or primary purpose of:
  - (a) in relation to an authorisation under subhead 3(a), securing public order and safety in public places or the prevention, detection, investigation and prosecution of criminal offences; and
  - (b) in relation to an authorisation under subhead 3(b) or 3(c), securing public order and safety in public places by facilitating the deterrence, prevention, detection and prosecution of criminal offences.
  
- (2) The Garda Commissioner shall specify the areas within which, based on the information available to him or her, the installation and operation of CCTV is necessary and proportionate for the purposes specified in subhead (1)(a) and (b).
  
- (3) Authorisation may be given to any or all of the following:
  - (a) members of the Garda Síochána;
  - (b) persons who meet the established criteria and who are retained under a contract with the Garda Commissioner;
  - (c) local authorities who meet the established criteria and who have consulted the joint policing committee for that administrative area.
  
- (4) The Garda Commissioner shall establish criteria for the purposes of subhead (3)(b).
  
- (5) (a) The following criteria are to be met by local authorities who apply under subhead (3)(c):
  - (i) they are capable of installing and operating the CCTV efficiently,



(ii) that any equipment, other than the recording device or devices, related to CCTV is operated from or stored on property owned or used by the State,

(iii) any persons to be involved with them in the management, operation or control of the CCTV, are of good character,

(iv) the application for authorisation includes the following details:

(I) the sources of funding for the CCTV,

(II) the location and precise numbers of the recording devices used in it and the extent of their coverage,

(III) the arrangements for monitoring, recording and disclosing the images produced and for preserving the recordings, and

(IV) a Data Protection Impact Assessment carried out in accordance with section 84 of the Data Protection Act 2018,

(iv) the application also includes an undertaking by the local authority concerned that it will enter into a joint-data controller agreement with the Garda Síochána in relation to the CCTV, and

(b) they undertake that -

(i) they will give members of the Garda Síochána access at all times to the CCTV for the purposes of supervising and controlling its operation and retrieving information or data recorded by it,

(ii) they will comply with any directions of the Chief Superintendent of the Garda Síochána in charge of the Division concerned in relation to the location or coverage of the optical devices used in the CCTV, and

(iii) the CCTV will at all times comply with any technical specifications that may be issued by the Garda Commissioner and be operated in accordance with any code of practice for such systems which may be so issued.

(6) An authorisation may contain such terms and conditions as the Garda Commissioner considers necessary—

(a) generally for the purpose of this Head, and

(b) in relation only to an authorisation given under subhead (3)(c), for the purposes of controlling and supervising the operation of the CCTV to which the authorisation relates which may include terms and conditions in relation to the location and precise numbers of the optical devices used in it and the extent of their coverage.

(7) Prior to granting any authorisation in accordance with this Head, the Garda Commissioner shall -

(a) be satisfied that a Data Protection Impact Assessment has been carried out in accordance with section 84 of the Data Protection Act 2018, and

(b) ensure that any authorisation granted under this Head is reviewed on a regular basis, with each such review being carried out on a date that is not more than 5 years from the date of the authorisation being granted or in the case of each subsequent review under this subsection, the date of the previous review under this subsection.

(8) Any amendments or additions to a CCTV scheme, other than such repairs and modifications that do not alter the extent of coverage of the scheme or the capability of the recording devices require the applicant to reapply for an authorisation under subhead 3(c).

(9) A person who, operates a CCTV scheme for the purposes prescribed in subhead (1) without authorisation, is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.

(10) A member of the Garda Síochána not below the rank of Chief Superintendent may issue directions to the person to whom the authorisation was given in relation to the installation and operation of CCTV.

- (11) The Garda Commissioner may revoke, for failure to comply with the terms and conditions of the authorisation or with a direction issued in accordance with subhead (10), an authorisation given under subhead (3)(c).
- (12) On being notified by the Garda Commissioner of the revocation of an authorisation under subhead (11), the person to whom the authorisation was given shall terminate the operation of the CCTV to which the revoked authorisation relates.
- (13) A person who contravenes subhead (10) and (12) is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or imprisonment for a term not exceeding 6 months or both.
- (14) For the avoidance of doubt, this Head does not apply to the installation or operation of CCTV on any premises by the owner or occupier of the premises for the purpose of safeguarding persons or property on the premises or in its environs.
- (15) In this Head—  
“operation”, in relation to CCTV, includes the maintenance and monitoring of CCTV;  
“authorisation”, for the purpose of subheads (10) and (11) includes an authorisation granted under section 38 (3)(c) of the Garda Síochána Act 2005 for a period of two years after the commencement of this section.

**Notes:** This Head is intended to replace section 38 of the Garda Síochána Act 2005. The Head is similar to what is currently provided for in the 2005 Act in relation to CCTV but there are a number of notable changes. It will now be a requirement that an application to the Garda Commissioner in relation to community CCTV may be made only by a Local Authority, and that the Local Authority will be responsible for the operation of the CCTV scheme.

The Local Authority must undertake to enter into a joint data control agreement with An Garda Síochána in relation to these schemes. It is intended that schemes currently authorised under section 38 will continue to have effect for a period of two years from the date of commencement of this provision. This is to allow time for schemes currently operating to be disbanded and for new applications to be made under the revised system as required.

Head 8 also provides for a new offence where a person operates a CCTV scheme without an authorisation pursuant to this Head. There will be a requirement on CCTV scheme operators to submit a new authorisation application to the Garda Commissioner where they are adding new cameras or making modifications to existing cameras that would enhance their capabilities.

Finally, there will be a requirement for the Garda Commissioner to review existing authorisation within 5 years of that authorisation being granted. The Data Protection Commissioner was consulted in the development of this Head.

## **HEAD 9: MOBILE CLOSED CIRCUIT TELEVISION**

PROVIDE THAT:

- (1) The Garda Commissioner may provide for the installation of mobile closed circuit television to be operated by or on behalf of a member of the Garda Síochána acting in the course of his or her duties.
  
- (2) Such installation and operation shall be for the purpose of –
  - (a) preventing, investigating, detecting or prosecuting criminal offences,
  - (b) securing public order and public safety, or
  - (c) safeguarding against, and the prevention of, threats to public security.
  
- (3) Any use, installation and operation of mobile CCTV under subhead (1) must be necessary and proportionate in relation to the functions of the Garda Síochána and the purpose of such use under subhead (2).

**Notes:** This Head sets out that the Garda Commissioner may provide for the installation and operation of CCTV in vehicles, as defined in Head 2, for purposes referred to in subhead (2). Although the camera may be fixed to the vehicle, the vehicle is not fixed and as such, CCTV in vehicles does not fall within the provisions of Head 8.

## **HEAD 10: CODE OF PRACTICE UNDER THIS PART**

PROVIDE THAT:

- (1) The Garda Commissioner shall, as soon as practicable after the coming into operation of Part 3 of this Act, and having had regard to the matters contained therein, prepare a draft code or codes of practice to set standards for the operation of Part 3 of this Act for submission to the Minister.
- (2) (a) A draft code or codes of practice referred to in subhead (1) shall include provisions in relation to all of the following matters:
  - (b) procedures and standards to be followed in the operation of Part 3 of this Act;
  - (c) confidentiality, security, storage, access and retention of data gathered in accordance with Part 3 of this Act;
  - (d) data subject rights, and
  - (e) any other matters relevant to the operation of Part 3 of this Act..
- (3) In preparing a draft code or codes of practice under this Head, the Garda Commissioner shall ensure that –
  - (a) a Data Protection Impact Assessment is carried out in accordance with section 84 of the Data Protections Act 2018, and
  - (b) a Human Rights Impact Assessment is carried out, which may include consultation with members of the public.
  - (c) both assessments will be provided to all parties referred to in subhead (4)(a) prior to consultation.
- (4) (a) Prior to submitting a draft code or codes of practice under this Head, the Garda Commissioner shall consult with the following about the content of the code:
  - (a) the Minister;
  - (b) the Policing Authority;
  - (c) the Garda Síochána Ombudsman Commission;
  - (d) the Garda Síochána Inspectorate;
  - (e) the Data Protection Commissioner; and,

(f) the Irish Human Rights and Equality Commission.

(b) In addition to the consultations undertaken in accordance with subhead (a), the Commissioner may consult with any other person or body appearing to the Garda Commissioner to have an interest in the matter.

- (5) Where the Minister receives a draft code of practice from the Garda Commissioner he or she may by order declare that the code, scheduled to the order, shall be a code of practice for the purposes of this Act.
- (6) (a) The Garda Commissioner shall ensure that any code or codes or practice under this Head are reviewed on a regular basis, with each such review being carried out on a date that is not more than 5 years from the date of order of the Minister, or in the case of each subsequent review under this subsection, the date of the previous review under this subsection.
- (b) in conducting a review under this subhead, the bodies listed under subhead (4) shall be consulted.
- (7) (a) The Minister may at the request of or after consultation with the Garda Commissioner by order revoke or amend a code of practice, and
- (b) prior to the amendment of a code of practice, the Garda Commissioner shall ensure that the matters referred to in subheads (2) and (3) are complied with.
- (8) Every order made under this section shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the order is passed by either House within the next twenty-one days on which that House has sat after the order has been laid before it, the order shall be annulled accordingly, but without prejudice to the validity of anything previously done there-under.
- (9) The Garda Commissioner shall take such steps as are necessary to ensure that all members of the Garda Síochána have read and understood a code of practice

established under this Head and that a record is kept of the steps so taken in relation to each member.

**Notes:** This provision sets a similar process as in Part 2 for the preparation and approval of a code or codes of practice in relation to CCTV and Mobile CCTV under Head 8 and Head 9.



## **PART FOUR – THIRD PARTY CCTV**

### **HEAD 11: LIVE FEED ACCESS TO THIRD PARTY CCTV**

PROVIDE THAT:

- (1) A member of the Garda Síochána shall access closed circuit television operated by a third party through a live feed only in accordance with a valid authorisation or an approval granted in accordance with Heads 13, 14 or 15.

**Notes:** Head 11 provides for access by the Garda Síochána to third party CCTV via a live feed in accordance with the procedures set out in this Part. It is envisaged that the Garda Síochána may request such an authorisation for access in circumstances where there is a large public event or where there is a requirement to provide protection to a visiting dignitary, for example. It is also considered that this may be necessary in relation to an increase in criminal activity in a particular area where 3<sup>rd</sup> party cameras may be located.

## HEAD 12: APPLICATION FOR AUTHORISATION

PROVIDE THAT:

(1) A member of the Garda Síochána not below the rank of Superintendent may apply to a judge for an authorisation to access a live feed from the closed circuit television operated by a third party, where he or she has reasonable grounds for believing that such access is required for the purpose of –

- (a) preventing, investigating, detecting or prosecuting criminal offences,
- (b) securing public order and public safety, or
- (c) safeguarding against, and the prevention of, threats to public security.

(2) A member who makes an application under this Head shall also have reasonable grounds for believing that such access to the closed circuit television is—

- (a) necessary and proportionate to its objectives, having regard to all the circumstances including its likely impact on the rights of any person, and
- (b) of a duration that is reasonably required to achieve its objectives.

**Notes:** This Head provides for the criteria to be met for an authorisation to access live feed closed circuit television to be granted. A member not below the rank of Superintendent must make such an application for one of the purposes listed in subhead (1). It is envisaged that access may be sought for a duration of up to one year. Judicial authorisation is an important safeguard in relation to this access.

## HEAD 13: AUTHORISATION

### PROVIDE THAT:

- (1) An application under Head 12 for an authorisation and under Head 14 for a variation or renewal of an authorisation—
  - (a) shall be made *ex parte* and shall be heard otherwise than in public, and
  - (b) may be made to a judge assigned to any district court district.
  
- (2) Subject to subhead (4), the judge shall issue such authorisation as he or she considers reasonable, if satisfied by information on oath of the superior officer concerned that—
  - (a) the requirements specified in Head 12 (1) are fulfilled, and
  - (b) to do so is justified, having regard to the matters referred to in Head 12 (2) and any other relevant circumstances.
  
- (3) Information on oath of a member of the Garda Síochána not below the rank of Superintendent specifying the grounds for his or her belief that the access to closed circuit television operated by a third party through a live feed is necessary for the purpose of preventing the commission of offences need not specify a particular offence in respect of which the authorisation is being sought.
  
- (4) An authorisation may impose such conditions in respect of the access to third party closed circuit television through a live feed authorised as the judge considers appropriate.
  
- (5) An authorisation shall be in writing and shall specify—
  - (a) particulars of the third party closed circuit television that is authorised to be accessed through a live feed, including the location of such closed circuit television,
  - (b) the purpose for which the third party closed circuit television that is authorised to be accessed through a live feed will be used,
  - (c) the name of the member of the Garda Síochána to whom it is issued,

- (d) the conditions (if any) subject to which the authorisation is issued, and
- (e) the date of expiry of the authorisation.

(6) An authorisation shall expire on the day fixed by the judge that he or she considers reasonable in the circumstances and that is not later than 1 year from the day on which it is issued.

(7) Subject to any conditions imposed by the judge under subhead (5), an authorisation shall have effect both within the district court district to which the judge is assigned and in any other part of the State.

**Note:** This Head provides for the procedure in applying to the District Court for access to closed circuit television via live feed, the information to be specified in an authorisation and the time limits for the authorisation.

## **HEAD 14: VARIATION OR RENEWAL OF AUTHORISATION**

PROVIDE THAT:

- (1) A judge may, on application by a member of the Garda Síochána, if satisfied by information on oath of that member justifying the variation or renewal of an authorisation under Head 13-
  - (a) vary the authorisation, or
  - (b) renew the authorisation, on the same or different conditions, for such further period, not exceeding 1 year, as the judge considers appropriate.
  
- (2) An application for a renewal under this Head shall be made before the authorisation concerned, or any previous renewal of that authorisation, as the case may be, has expired.
  
- (3) Where an application for a renewal under this Head has been made and the authorisation concerned would, but for this subhead, expire during the hearing of the application, it shall be deemed not to expire until the determination of the application.

**Notes:** This Head provides for the renewal of variation of authorisations following the expiry of the initial period of authorisation for such access.

## **HEAD 15: APPROVAL FOR TEMPORARY ACCESS TO THIRD PARTY CCTV**

### **PROVIDE THAT:**

- (1) A member of the Garda Síochána may, in accordance with this Head, access closed circuit television operated by a third party through a live feed without an authorisation if such access has been approved by a member of the Garda Síochána who is -
  - (a) not below the rank of Superintendent, and
  - (b) he or she is independent of the investigation of the offence in relation to which the approval is being sought.
  
- (2) The first-mentioned member referred to in subhead (1) may apply to a member of the Garda Síochána not below the rank of Superintendent for the grant of an approval to access closed circuit television operated by a third party through a live feed if he or she believes on reasonable grounds that information relevant to a criminal offence under investigation can be obtained by accessing the third-party CCTV.
  
- (3) A member of the Garda Síochána not below the rank of Superintendent to whom an application under subhead (2) is made shall approve the access to closed circuit television operated by a third party through a live feed as he or she considers appropriate, having regard to the information in the application and the matters referred to in Head 12(2).
  
- (4) An approval may be granted subject to conditions, including as to the duration of the access.
  
- (5) The member or officer shall not access closed circuit television operated by a third party through a live feed under this Head for a period of more than 72 hours from the time at which the approval is granted.
  
- (6) The member of the Garda Síochána who approved the access to closed circuit television operated by a third party through a live feed may vary that approval, or

any condition attached to it, at any time before the expiry of the period of 72 hours.

(7) (a) If the member who approved the access to closed circuit television operated by a third party through a live feed believes on reasonable grounds that access beyond the period of 72 hours is warranted, he or she shall, as soon as possible but in any case before the expiry of that period, make an application under Head 12 for an authorisation to continue the access.

(b) Where an application under Head 12 has been made and the period referred to in paragraph (a) would, but for this paragraph, expire during the hearing of the application, it shall be deemed not to expire until the determination of the application.

(8) A member of the Garda Síochána who accesses the closed circuit television operated by a third party through a live feed under this Head shall make a report as soon as possible and, in any case, not later than 7 days after the access concerned has ceased, specifying the following matters:

- (a) the name and address of the third party cctv operator;
- (b) the time and date the access began and concluded;
- (c) the grounds on which the approval was granted, including a copy of the written record of approval, and
- (d) a summary of the results of the access.

(9) A report under subhead (8) shall be made to a member of the Garda Síochána of the rank of Chief Superintendent.

**Notes:** This Head provides for internal Garda authorisation for access to live feeds for short-term access in cases where Gardaí have reasonable grounds to suspect a criminal offence has been, is being or will be committed in the vicinity of the third party CCTV. This authorisation will be for no longer than 72 hours. A report must be prepared within one week of the access

to CCTV ceasing to a Chief Superintendent in relation to the CCTV accessed and the result of same.



## **HEAD 16: PENALTIES**

To provide that:

- (1) A person/third party who fails to comply with an authorisation in relation to the access to CCTV through a live feed under Head 13, Head 14 or Head 15 without lawful authority or reasonable excuse shall be liable –
  - (a) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or
  - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 3 years or both.
  
- (2) It shall be a defence to proceedings for an offence under subhead (1) for the defendant to prove on the balance of probabilities that he or she unable to comply with the order due to incurring costs not consistent with their standard operations.

**Notes:** This Head provides for penalties on summary conviction or on conviction on indictment for contravention of the provisions governing authorisation for access to CCTV under Heads 13, 14 and 15. It provides for a defence intending to capture circumstances where a third party refuses to allow access to their CCTV on the grounds of costs.

## **PART FIVE – TRANSFER OF RELEVANT DATA TO THE GARDA SÍOCHÁNA**

### **HEAD 17: POWER OF MINISTER TO DESIGNATE RELEVANT BODY**

#### **To provide that:**

- (1) The Minister may, designate another body as a relevant body for the purposes of this Part if he or she is satisfied that –
- (a) the relevant data to be provided by the body is necessary and proportionate for the purposes of-
    - (i) the prevention, investigation, detection or prosecution of criminal offences; or
    - (ii) safeguarding the security of the State.
  - (b) the body has in place systems to provide adequate safeguarding of the relevant data in order to prevent unauthorised consultation, alteration, disclosure or erasure; and
  - (c) the body consents to entering into a data-sharing agreement with the Garda Síochána in accordance with Head 17(3).
- (2) The Minister must consult with the Data Protection Commissioner and the body concerned prior to making a designation under subhead (1).

**Notes:** This Head provides a power for the Minister for Justice to designate bodies as a relevant body for the purposes of this Part. It provides for consultation with the body and the Data Protection Commission prior to any designation. Current bodies to be defined in the Bill are under consideration in consultation with the Garda Síochána.

## HEAD 18: DISCLOSURE OF DATA FROM RELEVANT BODY

### To provide that:

- (1) A relevant body shall disclose relevant data to the Garda Síochána only where
  - (a) the relevant data concerned is disclosed for one or more of the following purposes—
    - (i) preventing, investigating, detecting or prosecuting criminal offences,
    - (ii) securing public order and public safety, or
    - (iii) safeguarding against, and the prevention of, threats to public security, and
  - (b) the disclosure of the relevant data is—
    - (i) necessary for the performance of the functions in relation to which the relevant data is being disclosed, and
    - (ii) proportionate in the context of the functions of the Garda Síochána and the effects of the disclosure on the rights of the data subjects concerned.
  
- (2) A relevant body shall enter into a data-sharing agreement, which must be in writing, with the Garda Síochána prior to the commencement of the disclosure of relevant data.
  
- (3) A data-sharing agreement between a relevant body and the Garda Síochána shall—
  - (a) specify the relevant data to be disclosed,
  - (b) specify how the relevant data to be disclosed is to be processed following its disclosure,
  - (c) specify the security measures to apply to the transmission, storage and accessing of relevant data, in a manner that does not compromise those security measures,
  - (d) specify the requirements in relation to the retention of—
    - (i) the relevant data to be disclosed, and
    - (ii) the relevant data resulting from the processing of that information, for the duration of the agreement and in the event that the agreement is terminated,
  - (e) specify the method to be employed to destroy or delete—
    - (i) the relevant data to be disclosed, and

- (ii) the information resulting from the processing of that relevant data, at the end of the period for which the relevant data is to be retained in accordance with the agreement,
  - (f) specify the procedure in accordance with which a party may withdraw from the agreement, and
  - (g) specify any such other matters as deemed appropriate by either party to the agreement.
  
- (4) The relevant body and the Garda Síochána who are parties to a data-sharing agreement under subhead (2) shall review the operation of the agreement on a regular basis, with each such review being carried out on a date that is not more than 2 years from the date the agreement came into effect or in the case of each subsequent review under this subsection, the date of the previous review under this subsection.

**Notes:** This Head provides that a relevant body may disclose relevant data, as defined in Head 2, to the Garda Síochána. It provides for the purposes of this disclosure. There is also a requirement that a data-sharing agreement be entered into and what should be provided for in any such agreement prior to the disclosure of any data. This data will be stored by An Garda Síochána and accessed in the event of an investigation of a suspected criminal offence.

## **HEAD 19: INTERACTION WITH DATA PROTECTION ACT 2018**

### **To provide that:**

- (1) Nothing in this Part shall affect the operation of data protection law.

**Notes:** This Head makes clear that the provisions of the Data Protection Act 2018 apply to relevant data in the normal way.

## **PART SIX – MISCELLANEOUS**

### **HEAD 20: ADMISSIBILITY OF EVIDENCE UNDER THIS ACT**

PROVIDE THAT:

- (1) Evidence obtained under the Provisions of this Act -
  - (a) may be admitted as evidence in criminal, civil and disciplinary proceedings;
  - (b) have the presumption of being obtained from a device that is accurate and in good working order
  - (c) and shall not require the device from which it was obtained be exhibited in court proceedings.
  
- (2) Nothing in this Act is to be construed as prejudicing the admissibility of information or material obtained otherwise than as a result of the use of a body-worn camera or a recording device under the Provisions of this Act.
  
- (3) (a) Information or documents obtained as a result of an authorisation or approval granted in accordance with Part 3 or Part 4 of this Act may be admitted as evidence in criminal proceedings notwithstanding any error or omission on the face of the authorisation or written record of approval concerned, if the court, having regard in particular to the matters specified in paragraph (b), decides that—
  - (i) the error or omission concerned was inadvertent, and
  - (ii) the information or document ought to be admitted in the interests of justice.
- (b) The matters referred to in paragraph (a) are the following:
  - (i) whether the error or omission concerned was serious or merely technical in nature;
  - (ii) the nature of any right infringed by the obtaining of the information or document concerned;
  - (iii) whether there were circumstances of urgency;

- (iv) the possible prejudicial effect of the information or document concerned; or
- (v) the probative value of the information or document concerned.

(4) A failure to observe any provision of this Act or of any code of practice made thereunder on the part of any member of the Garda Síochána, shall not (without prejudice to the power of the court to exclude evidence at its discretion) of itself affect the admissibility of any evidence thereby obtained.

(5) It shall be presumed, until the contrary is shown, that a body-worn camera, a recording device, a closed circuit television or a mobile closed circuit television operated for the purposes referred to in this Act is a device capable of producing accurate information or material without the necessity of proving that the body-worn camera, recording device, closed circuit television or mobile closed circuit television was in good working order.

**Notes:** This Head is intended to provide for the admissibility of evidence obtained by virtue of the use of recording devices under the provisions of this Bill by An Garda Síochána in criminal, civil or disciplinary proceedings. There is also a presumption in relation to the integrity of the device used to carry out the recording to assist in evidentiary issues that may arise in criminal proceedings.

## HEAD 21: REVIEW OF OPERATION OF ACT

### PROVIDE THAT:

- (1) After consulting with the Minister for Justice, the President of the High Court shall invite a judge of the High Court to undertake (while serving as such a judge) the duties specified in this subhead and, if the invitation is accepted, the Government shall designate the judge for the purposes of performing those functions.
- (2) The designated judge holds office in accordance with the terms of the designation.
- (3) The functions of the designated judge are to—
  - (a) keep under review the operation of Part Four and Part Five of this Act, and
  - (b) report to the Taoiseach from time to time and at least once every 12 months concerning any matters relating to the operation of that part that the designated judge considers should be reported.
- (4) A person in charge of a Garda Síochána station within the meaning of section 99 (10) of the Garda Síochána Act 2005 or any other place in which documents relevant to the performance of the functions of the designated judge are kept shall ensure that the designated judge has access to those places, and to the authorisations, written records of approval, reports and other relevant documents that the designated judge may request.
- (5) The Taoiseach shall ensure that a copy of a report under subhead (3)(b) is laid before each House of the Oireachtas not later than 6 months after it is made, together with a statement of whether any matter has been excluded under subhead (6).
- (6) If the Taoiseach considers, after consultation with the designated judge, that the publication of any matter in a report, copies of which are to be laid before the Houses under subhead (5), would be prejudicial to the security of the State, the Taoiseach may exclude that matter from those copies.



**Notes:** This Head is modelled on section 12 of the Criminal Justice (Surveillance) Act 2009 which provides for a review of the operation of the provisions of that Act. This is intended as a placeholder.

The Independent Examiner (IE) is to be established to carry out functions in relation to the review of surveillance, data retention, interception and other security legislation as provided for in the General Scheme of the Policing and Community Safety Bill. It is proposed that he or she shall also have functions in relation to Part 4 and Part 5 of this Act. Depending on how the two schemes progress will determine how best to provide for this. It is understood that if this Bill is enacted first, the Policing and Community Safety Bill will schedule Part 4 and Part 5 of this Act to the list of relevant statutes for which the IE will have functions. If the Policing and Community Safety Bill is enacted first, the Schedule to same can be amended as part of this Bill.

**HEAD 22: AMENDMENT OF SECTION 1 OF CRIMINAL JUSTICE  
(SURVEILLANCE) ACT 2009**

PROVIDE THAT:

(1) The Criminal Justice (Surveillance) Act 2009 is amended by substituting the following definition for the definition of “surveillance device” in section 1:

“surveillance device” means an apparatus designed or adapted for use in surveillance, but does not include—

- (a) an apparatus designed to enhance visual acuity or night vision, to the extent to which it is not used to make a recording of any person who, or any place or thing that, is being monitored or observed,
- (b) a body-worn camera or a recording device within the meaning of Part 2 of the Garda Síochána (Digital Recording) Act 20XX and used in accordance with that Part ,
- (c) a CCTV or mobile CCTV within the meaning of Part 3 of the Garda Síochána (Digital Recording) Act 20XX and used in accordance with that Part, or
- (d) a camera including a video camera, to the extent to which it is used to take photographs or video footage of any person who, or anything that, is in a place to which the public have access;

**Notes:** This Head is to amend the definition of a “surveillance device” in the Criminal Justice (Surveillance) Act 2009 to exclude the use of recording devices in accordance with this Act from the provisions of that Act.