

**DRAFT GENERAL SCHEME OF GARDA SÍOCHÁNA
(RECORDING DEVICES) (AMENDMENT) BILL**

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PART ONE – Preliminary and General

Head 1: Short Title and Commencement

PROVIDE THAT:

“1. (1) This Act may be cited as the Garda Síochána (Recording Devices) (Amendment) Act 2023.

(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.” N.1

Notes:

N.1 This is a standard commencement provision.

Head 2: Amendment to Section 2 of Principal Act– INTERPRETATION

“2. Section 2 of the Principal Act is amended by the insertion of the following definitions:

“Act of 2023” means the Policing, Security and Community Safety Act 2023;

“biometric data” has the same meaning attached to it in section 69 of the Data Protection Act 2018 but does not include DNA, fingerprints or any other data except for facial images;

“biometric identification” means identifying or attempting to identify, natural persons, through the comparison of a person’s biometric data with the biometric data which is legally held by An Garda Síochána;

“Principal Act” means the Garda Síochána (Recording Devices) Act 2023;

N.1

Notes:

N.1 This Head provides for definitions that are to be used in the Bill and to apply throughout the Principal Act. Of particular importance is the definition of “biometric identification”.

PART TWO – The insertion of the following Part 6A into the 2023 Act after Part 6

Part 6A An Garda Síochána’s Power to use Biometric Identification

Head 3: New Section 43A – Applicability of this Part

“3. The Principal Act is amended by the insertion of the following:

‘43A. (1) An Garda Síochána’s power to utilise biometric identification, shall be limited to the circumstances prescribed in this Part.

(2) Subject to subsection (1)

(i) nothing in this Part shall prevent An Garda Síochána from processing and storing images which have been legally provided by other national or international organisations;

(ii) nothing in this Part shall prevent An Garda Síochána from cooperating with international law enforcement bodies;

(iii) nothing in this Part shall prevent An Garda Síochána from recording or processing images utilising biometric identification, where such recording or processing is a requirement of a measure under European Union Law and Ireland is bound by that measure.

(3) The use of biometric identification under this Part must be in compliance with a Code of Practice as set out in section 47.’” N.1

Notes:

N.1 This section sets out that An Garda Síochána’s power to use biometric identification shall be limited to the circumstances prescribed in Part 6A of the Bill. It further sets out that, notwithstanding the circumstances set out in Part 6A, the State’s international obligations will continue to be applicable, including future obligations arising out of EU law.

Head 4: New Section 43B – Power to use the Biometric Identification

“4. The Principal Act is amended by the insertion of the following:

‘43B. (1) A member shall not utilise biometric identification unless for one of the following principal purposes:

- (a) the prevention, investigation, detection or prosecution of one or more of the criminal offences listed in the Schedule;
- (b) the protection of the security of the State.

(2) Without prejudice to the generality of subsection (1), a member of Garda personnel may use biometric identification:

- (a) to locate a person or to follow the movements of a person in order to progress an investigation into one or more of the offences specified in the schedule or a matter relating to the protection of the security of the State;
- (b) to identify a person in order to progress an investigation into one or more of the offences specified in the schedule or a matter relating to the protection of the security of the State.

(3) Biometric identification referred to in subsection (1) will only utilise images and video that has already been gathered and are legally held or legally accessed by An Garda Síochána.

(5) Biometric identification referred to in subsection (1) in the context of live feeds is prohibited.

(6) Biometric identification referred to in subsection (1) will be presumed to be necessary and proportionate if its use is in accordance with the applicable code of practice under section 47.’”

N.1

Notes:

N.1 This Head outlines the two circumstances in which An Garda Síochána will have the power to utilise biometric identification i.e. in the context of one of the serious crimes listed in the Schedule or in the context of the security of the State. That utilisation will be limited to images and video legally held by An Garda Síochána.

Head 5: New Section 43C – Application for Approval

“5. The Principal Act is amended by the insertion of the following:

‘43C. (1) A member of the Garda Síochána may make an application to use biometric identification in accordance with section 43B. That application shall be made in writing and include the following information:

- (a) the purpose of the request and the parameters of the search;
- (b) any other detail that may be specified in the associated code of practice under section 47.

(2) An application under subsection (1) may be made to a member of Garda Síochána not below the rank of chief superintendent.” N.1

Notes:

N.1 This Head sets out who may apply for the power to utilise biometric identification, the purpose of that utilisation and to whom that application should be made.

The approach to an application for use is in line with the approach to similar applications taken in other contexts in the Principal Act.

Head 6: New Section 43D – Approval

“6. The Principal Act is amended by the insertion of the following:

‘43D. (1) The chief superintendent of the Garda Síochána to whom an application is made under subsection (1) of section 43C, may approve the application if:

- (a) he or she is independent of the investigation to which the application relates;
- (b) he or she believes on reasonable grounds that the use of biometric identification is necessary and proportionate; and
- (c) he or she believes on reasonable grounds that the use of biometric identification is connected to an investigation of an offence specified in the schedule or a matter relating to the protection of the security of the State.

(2) An approval granted under subsection (1) may be subject to conditions as the approving member of the Garda Síochána considers appropriate, having regard to the information contained in the application.

(3) The Garda Síochána shall create and maintain a written list of applications for the utilisation of biometric identification, which shall contain the details of each application and the reasons why each application was approved or refused, and any further information provided for in an applicable code of practice.” N.1

Notes:

N.1 This Head sets out how an approval requested under section 43C may be granted.

It ensures that the chief superintendent, to whom an application for approval to utilise biometric identification is made, must be independent of that investigation and can only approve if he/she establishes that the use of biometric identification is necessary and proportionate and that he or she believes that the investigation is connected to an investigation of an offence specified in the schedule or a matter relating to the protection of the security of the State. The chief superintendent may attach conditions to their approval.

The approach to the granting of an approval is in line with the approach to approvals taken in other contexts in the Principal Act.

This section also ensures that An Garda Síochána must keep a record of all applications for approval.

Head 7: New Section 43E – Use of the Biometric Identification

“7. The Principal Act is amended by the insertion of the following:

‘43E. (1) Where an approval is granted under section 43D, and subject to the parameters set out in an application made under section 43C(1) and any conditions set out under 43D(2), a member of Garda personnel may utilise biometric identification to search the following in order to locate, follow the movements or identify a person:

- (a) any images or footage that An Garda Síochána legally retains;
- (b) any images or footage that An Garda Síochána can legally access.

(2) The results from any use of the biometric identification must be verified by a member of Garda personnel prior to that result being forwarded to the investigation team.” N.1

Notes:

N.1 This Head sets out how biometric identification may be utilised.

The Head limits the use of biometric identification to images that are legally held by An Garda Síochána i.e. images that are retained by An Garda Síochána and images that they can legally access.

The Head also ensures human intervention in the decision-making surrounding biometric identification – a member of Garda personnel must verify the result ascertained by use of biometric identification.

Head 8: New Section 43F – Power to process data obtained under this Part

“8. The Principal Act is amended by the insertion of the following:

‘43F. A member of Garda personnel may, for a purpose referred to in section 43B(1), and in accordance with an applicable code of practice, process data (including personal data) obtained as a result of the utilisation of biometric identification under this Part.’”

N.1

Notes:

N.1 This Head provides a processing power to An Garda Síochána and is in line with the approach taken to processing in other contexts in the Principal Act.

Personal data is already defined in the Principal Act.

Head 9: New Section 43G – Offences

“9. The Principal Act is amended by the insertion of the following:

‘43G. (1) A person who, without lawful authority or reasonable excuse, knowingly does any of the following:

- (a) falsifies, conceals, destroys or otherwise disposes of any information derived from the utilisation of biometric identification;
- (b) permits the falsification, concealment, destruction or disposal of any information derived from the utilisation of biometric identification;

will be guilty of an offence.

(2) A person who induces, coerces or requests, without lawful authority or reasonable excuse, a member of Garda personnel to commit an offence under subsection (1) shall be guilty of an offence.

(3) 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.” N.1

Notes:

N.1 The Head sets out the offences relating to any tampering or misuse of the information derived from the use of biometric identification. Under the Head, it is also an offence to try to persuade or force a member of Garda personnel to tamper or misuse that information.

These offences are in line with the offences listed in other contexts in the Principal Act.

PART THREE – The insertion of the following consequential amendments into the Principal Act

Head 10: Amending section 47

“10. In subsection (1) of section 47 of the Principal Act, delete the words “Parts 2 to 6” and replace with “Parts 2 to 6A”.

Head 11: Amending section 47

“11. In paragraph (a), subsection (2) of section 47 of the Principal Act, delete the words “Parts 2 to 6” and replace with “Parts 2 to 6A”.

Head 12: Amending section 47

“12. In paragraph (b), subsection (2) of section 47 of the Principal Act, delete the words “Parts 2 to 6” and replace with “Parts 2 to 6A”.

N.1

Notes:

N.1 Heads 10, 11 and 12 are minor technical amendments made on the basis of the inclusion of this new Part (Part 6A) in the Principal Act.

Head 13: Amending section 47

“13. Delete subsection (4) of section 47 of the Principal Act and insert:

‘(4) Where a draft code of practice related to Parts 2 to 6 is submitted to the Minister under subsection (1) or subsection (7)—

(a) the Minister may by order declare that it is a code of practice for the purposes of this Act,

(b) an order under this subsection shall set out the text of the code of practice to which the order relates, and

(c) the code of practice shall come into operation on the date specified in the order.’”

N.1

Notes:

N.1 This Head ensures that draft codes of practice will be sent to the Minister for his/her review and signature for Parts 2-6 of the Principal Act. Part 6A diverges from the Principal Act in this sense in that draft codes of practice prepared must instead be laid before the Houses of the Oireachtas. That approach is provided for in a new subsection (4A) of section 47, covered in Head 14 below.

Head 14: Amending section 47

“14. The Principal Act is amended by the insertion of the following after subsection (4) of section 47:

‘(4A). Where the Minister proposes to make an order under this section relating to Part 6A:

- (a) a draft of the order shall be laid before each of the Houses of Oireachtas and
- (b) the order shall not be made until a resolution approving the draft has been passed by each House of the Oireachtas and
- (c) an order under this subsection shall set out the text of the code of practice to which the order relates and
- (d) the code of practice shall come into operation on the date specified on the order.

N.1

Notes:

N.1 This Head ensures that a draft code of practice prepared for Part 6A must be laid before the Houses of the Oireachtas before being declared a code by Order.

Head 15: Amending section 47

“15. In paragraph (a), subsection (5) of section 47 of the Principal Act, delete the words “under subsection (4)” and replace with “under subsection (4) or (4A)”.

N.1

Notes:

N.1 This Head is a minor consequential amendment to the inclusion of provision for the code of practice for biometric identification (Part 6A). It ensures that a review of a code of practice at least every five years also extends to Part 6A.

Head 16: Amending section 49

“16. In paragraph (a), subsection (3) of section 49 of the Principal Act, delete the words “Parts 3 and 6” and replace with “Parts 3, 6 and 6A.”

N.1

Notes:

N.1 This Head extends the oversight of the High Court Judge in the Principal Act from ANPR (Part 3) and processing of live feed CCTV (Part 6) to include biometric identification (Part 6A).

Schedule of Offences

- Abduction
 - False Imprisonment: Section 15 of the Non-Fatal Offences against the Person Act 1997.

- Aggravated Sexual Assault
 - Criminal Law (Rape) (Amendment) Act 1990, section 3(1) and section 4(1)
 - Criminal Law (Sexual Offences) Act (2017), section 21(4).

- Aggravated Burglary
 - Criminal Justice (Theft and Fraud Offences) Act, 2001, section 13

- Causing serious harm
 - Non-Fatal Offences against the person Act 1997, section 4 and section 4A

- Homicide
 - Offences Against the Person Act 1861, section 4
 - Any offence under section 3 of the Criminal Justice Act 1990
 - The Common Law offence of Murder
 - The Common Law offence of Manslaughter

- Rape
 - The Common Law offence of Rape
 - Criminal Law (Rape) (Amendment) Act 1990, section 4

- Riot and Violent Disorder
 - Criminal Justice (Public Order) Act 1994, sections 14 and 15

- Robbery
 - Criminal Justice (Theft and Fraud Offences) Act (2001), section 14

- Child Sexual Abuse
 - Child Trafficking and Pornography Act 1998, section 3
 - Criminal Law (Sexual Offences) Act 2006, section 2

