

Briefing for Committee Stage of the An Garda Síochána (Recording Devices) Bill 2022,
July 2023

Introduction

1. This bill, as proposed, will vastly expand Garda use of devices capable of recording people and their movements by capturing still images, video footage and sounds in public spaces and places where members of An Garda Síochána have lawful access.¹
2. The array of recording devices and measures include, but are not limited to:
 - a. Tracking vehicles via Automatic Number Plate Recognition *without* judicial approval, searching databases of "retained ANPR data", which is not defined, and sharing this data with other bodies;
 - b. Body-worn cameras affixed to Garda members' clothes, uniforms or helmets;
 - c. Body-worn cameras affixed to an animal under Garda control;
 - d. Remotely-controlled devices, including drones;
 - e. Devices affixed to any structure or any vehicle, on land, in the air or at sea;
 - f. Accessing live third-party CCTV for up to 72 hours, *without* judicial approval.
3. While we attach a list of suggested amendments necessary to safeguard people's rights and freedoms, we highlight the following four areas of specific concern:
 - a. Overly broad definition of recording devices (Section 2);
 - b. Lack of a pilot scheme requirement for each recording device (Section 9);
 - c. Use of ANPR (Sections 17, 18 and 19);
 - d. Change in a separate covert surveillance law,² without a stated justification, such that the definition of "surveillance device" *excludes* "video cameras" capable of taking "video footage" (Section 46).

Main concerns:

4. Definition of 'recording device': bill fails to list what tools will be used to monitor us
 - a. Section 2 provides a broad definition of "recording device" such that it could amount to *any* tool, device or system that can record still images, video imagery or sounds. The bill fails to provide a means for the public to know

¹ An Garda Síochána (Recording Devices) Bill, 2022,
<https://data.oireachtas.ie/ie/oireachtas/bill/2022/79/eng/initiated/b7922d.pdf>

² Criminal Justice (Surveillance) Act 2009,
<https://www.irishstatutebook.ie/eli/2009/act/19/section/1/enacted/en/html#sec1>

what specific types of recording devices or systems will be used by An Garda Síochána (AGS) under this legislation. In the interests of democracy and transparency, we must know what tools are used to monitor us. Our suggested amendment is for all types of recording devices or systems used by AGS to, at the very least, be specified in a relevant code of practice. However, the correct approach would be for the insertion of a new section requiring the online publication of a rolling list of all devices approved for usage under this legislation, two months prior to their introduction.

5. Automatic Number Plate Recognition (ANPR): judicial approval is necessary

a. Sections 17 and 18:

- i. Sections 17 and 18 provide for gardaí to carry out secret surveillance of certain vehicles, and therefore people, by monitoring their movements using ANPR. Section 17 provides for this monitoring, for up to three months, subject to approval from a Superintendent or higher-ranking member, but Section 17(5) indicates gardai could potentially renew this beyond the three-month limit.
- ii. Section 18 provides for this monitoring to be extended for a further three months, subject to approval from a District Court judge in the Dublin Metropolitan District.
- iii. These provisions were not in the General Scheme of the Bill, so they were never subjected to pre-legislative scrutiny.
- iv. Tracking vehicles, under these sections, is hugely intrusive. If these sections are to be included, they must be amended to ensure that *any* such monitoring is subject to prior judicial approval. Failure to do so could leave evidence collected in this manner open to challenge.
- v. For ANPR to work, all number plate data is logged and that pool of data is subsequently checked against a watchlist of plates. This bill proposes the processing of *all* number plate data and then providing access to the number plate data gardai are interested in. The Court of Justice of the European Union has repeatedly warned that accessing targeted data out of pools of retained data must be subject to judicial approval (see *DRI*,³ *Tele 2*,⁴ *La Quadrature du Net*,⁵ *Dwyer*⁶).
- vi. Our suggested amendments for Sections 17 and 18 ensure judicial approval is necessary; the tracking is limited to three months; and that the principles of necessity, proportionality, and the impact of the measure on people's fundamental rights, must be considered when an application is made.

b. Section 19:

- i. In respect of allowing Garda access to "retained ANPR data", Section 19 (1) fails to define "retained ANPR data" and therefore fails to

³ Judgment of 8 April 2014, Digital Rights Ireland, [C-293/12](#), see press release [here](#)

⁴ Judgment of 21 December 2016, Tele2 Sverige and Watson and Others, [C-203/15](#) and [C-698/15](#), see press release [here](#)

⁵ Judgment of 6 October 2018, La Quadrature du Net and Others, [C-511/18](#) and [C-512/18](#), see press release [here](#)

⁶ Judgment of 5 April 2022, Commissioner of An Garda Síochána, [C-140/20](#), see press release [here](#)

indicate if the bill intends to refer to a retained pool of ANPR data pertaining to *all* vehicles, or a retained pool of ANPR data strictly pertaining to vehicles of interest.

- ii. Our suggested amendment limits “retained ANPR data” to ANPR data strictly pertaining to those on a watchlist obtained on foot of orders made under Section 17 and/or Section 18, as restricted by our suggested amendments.
- iii. In addition, Section 19 should also require a higher authority than a sergeant to approve searches of retained ANPR data to help safeguard against the risk of abuse.

6. Pilot schemes: must be carried out for each device prior to deployment

- a. Section 9 fails to ensure that pilot schemes are carried out for each type of recording device *prior* to their general deployment by AGS. This needs to be rectified so robust mechanisms of operational and scientific review, with clear criteria, are set out, and satisfied, before roll-out. These schemes should test the effectiveness of a device for a specified purpose and facilitate a human rights impact assessment, privacy impact assessment and a DPIA where necessary. Our suggested amendment reflects this.

7. Covert surveillance law change: no justification provided.

- a. Section 46 of the Bill seeks to amend the Criminal Justice (Surveillance) Act 2009 such that the definition of “surveillance device” excludes “video cameras” capable of taking “video footage”. This has the net effect of changing a covert surveillance law such that the definition of “surveillance device” excludes “video cameras” capable of taking “video footage”.
- b. No justification for this move has been provided and, in the absence of such, it should be removed. Our suggested amendment reflects this.