



LAW SOCIETY
OF IRELAND

OPENING STATEMENT TO THE JOINT OIREACHTAS COMMITTEE ON JUSTICE

General Scheme of the Garda Síochána (Recording Devices)
(Amendment) Bill

13 FEBRUARY 2024

Introduction

Good afternoon. I want to thank the Chair and members of the Committee for the invitation to speak to you this afternoon.

My name is Mark Garrett, Director General of the Law Society and I'm joined here by my colleague, Aimée McCumiskey, a member of our Criminal Law Committee and a Partner at MacGuill & Company Solicitors.

By way of background the Law Society has representative, regulatory and educational functions in respect of the solicitors' profession. Our role is to support an accessible legal system that works for all though the highest professional standards and the promotion of appropriate justice and law reform issues.

We place significant emphasis on constructive and positive civic engagement – and it is in the spirit of this aspect of our work that we share our views on this important legislation.

The Bill

The Law Society is keenly aware of strong feelings in support of, and in opposition to, this Bill. Working on the frontline of the justice system, solicitors know the needs of law enforcement to have at their disposal the necessary tools and technology to deter and detect crime.

We are also very much attuned to the need to respect, protect and enforce the rights and civil liberties of individuals.

As explained in the submission the Law Society made to you last month, we have identified a number of possible weaknesses in the published General Scheme of the Bill.

These weaknesses give rise to a concern that this legislation will be challenged on several grounds including through the lens of:

- privacy rights;
- data protection;
- the right to non-discrimination; and
- the right to a fair trial.

For these reasons, the Law Society believe that the tests of necessity and proportionality required for the introduction of biometric identification in the Irish context merits further examination.

Furthermore, we believe the Bill could provide more safeguards and oversight relating to when biometric identification can be used by An Garda Síochána and the external monitoring of its use.

Specific issues

While time does not permit me to go through with you all of the specific issues we have raised with the Bill, I would like to raise some of them now.

- Much has been made of the intention of this Bill to allow for the use of facial recognition technology by the Gardaí. The General Scheme says that biometric data, as it is phrased, will not extend to such physical features as a person's height or build – presumably because reliance on such information would not lead to a definite identification of a suspect. If it is the intention that the Bill will only apply to facial images and not other physical characteristics of individuals – such as their height – it would be preferable that this is set out more explicitly in the legislation.
- The Scheme permits the Gardaí to process and store “*images which have been legally provided by other national or international organisations*”. The draft does not specify what national or international organisations it refers to – we believe it should do so.
- Further, the Bill should place an onus on the Gardaí to only use images which have been legally obtained by outside organisations. For example, the Department of Social Protection has been implicated in the past for illegally processing biometric data. If such data is subsequently transferred to An Garda Síochána then the whole chain could be tainted- and attempts to secure convictions could fail.
- And finally, for now, it is not explained how, or against what criteria, the Chief Superintendent is to assess whether the use of biometric identification is both necessary and proportionate. As we say in our submission, it is assumed that such technology will only be required for complex investigations and where there is a threat to the public security, concern for a person's safety or the protection of life. The objectives of the Bill could be set out in clearer detail so that the test as to what is necessary and proportionate can be better assessed and reviewed. We also recommend that judicial oversight might be more appropriate here, namely an application to a District Court Judge.

Conclusion

In conclusion, the Law Society is mindful that this is a complex piece of legislation that bears close and considered scrutiny by legislators such as yourselves. On behalf of the Law Society, we look forward to today's discussion and hope that our professional insights in relation to the Bill prove useful in your deliberations.

Thank you.



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