An Garda Síochána

Code of Practice in respect of Operating Recording Devices fitted to Aerial Platforms

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Garda Síochána (Recording Devices) Act 2023

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1 Overview

1.1 Introduction

This Code of Practice (COP) is in accordance with Part 2 of the Garda Síochána (Recording Devices) Act 2023 (also referred to as "the Act") and pertains solely to the operation of recording devices used in conjunction with an aerial platform (AP) by An Garda Síochána.

The appropriate operation of recording devices used in conjunction with an AP, and the data captured by them, can assist with preventing, investigating, detecting and/or prosecuting criminal offences; securing public order and public safety including the safety of Garda personnel; or safeguarding against, and the prevention of, threats to public security. This COP sets out the policy of An Garda Síochána on the operation of such a recording device.

This COP sets out that recording devices used in conjunction with an AP must be operated fairly, responsibly, with respect for the rights of others, without unlawful discrimination, and as is necessary for a principal purpose in accordance with the Act and this COP, while minimising interference with the rights of others to the least extent possible.

The fundamental principle underpinning this COP is that any action taken must comply with the fundamental principles of legality, necessity, proportionality, and accountability and is applied in a non-discriminatory manner in accordance with the principles of the Constitution of Ireland 1937, the European Convention on Human Rights, and the Charter of Fundamental Rights of the European Union.

1.2 Aims and Objectives

The aim of the COP is to provide further detail on the general operation of recording devices used in conjunction with an AP as set out in the Act for Garda personnel.

The objective of this COP is to ensure that recording devices used in conjunction with an AP are used as tool to protect the rights of the public and members of An Garda Síochána, to gather evidence which contributes to the prevention and effective investigation of crime, to ensure public safety, and/or to protect the security of the State.

1.3 Legal Context (Scope and Application)

The legal basis for operating recording devices used in conjunction with APs is provided for in Part 2 of the Act. This COP is prepared in accordance with Part 8 of the Act. This COP applies to all Garda personnel and provides details on the operation of recording devices used in conjunction with an AP.

The COP includes provisions relating to the processing of data, gathered as a result of the operation of recording devices used in conjunction with an AP, in accordance with Data Protection legislation. Recordings from recording devices used in conjunction with APs may be admissible in evidence in criminal, civil and disciplinary proceedings.

This COP applies to the use of recording devices within the definition of the Garda Síochána (Recording Devices) Act 2023 only. Any reference to the use of an AP applies to the said use of a recording device and does not apply to any

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other use or deployment of such a platform.

This COP does not apply to the use of recording devices used in conjunction with an AP permitted under any other statutory authority.

1.4 Relevant Terms & Definitions

Technical terms and abbreviations which are used throughout this document are defined in this section to provide a common understanding by way of further detail in relation to the operation of Part 2 of the Act and this COP.

Term	Definition
Aerial Platform (AP)	Means any vehicle capable of manned or unmanned flight.
Code of Practice (COP)	As defined in section 2 of the Act, means a Code of Practice approved by the Minister by order under Part 8 and includes part of a Code of Practice.
Data Controller	In relation to the operation of Part 2 of the Act and this COP, the Data Controller is any person who decides the purposes for which and how personal data is processed. The Commissioner of An Garda Síochána is the data controller for any personal data, which is captured on a recording device operated by Garda personnel used in conjunction with an AP.
Digital Evidence Management System (DEMS)	This is a software-based solution that enables an organisation to secure, store, retrieve and manage all of their digital evidence throughout its lifecycle; and provide appropriate audit and controls to ensure data is handled in line with agreed policies.
Document	As defined in section 2 of the Act, means any of the following: a) a book, record or other written or printed material, b) a photograph, c) any information stored, maintained, or preserved by means of any mechanical or electronic device, whether or not stored, maintained or preserved in legible form, and any audio or video recording.
Act	Garda Síochána (Recording Devices) Act 2023.
Principal Purposes	Principal purposes for operating an AP are provided for in the Act (section 9(2)).
Garda Personnel	As defined in section 2 of the Act, a member of Garda personnel means: • a member of An Garda Síochána, or • a member of the civilian staff of An Garda Síochána who was appointed under, or designated by order under, the Garda Síochána Act 2005 or the Policing, Security and Community Safety Act 2024.

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Media Storage device	In relation to the operation of Part 2 of the Act and this COP, Media Storage Device refers to any device on which media is or can be stored or transported. Note: this is distinct from 'Removable media' in the sense that a 'media storage device' as defined in this term may be removable or irremovable.
Member of An Garda Síochána	As defined in section 2 of the Act, means a member within the meaning section 2(1) of the Policing, Security and Community Safety Act 2024.
Minister	As defined in section 2 of the Act, means the Minister for Justice, Home Affairs and Migration.
Original Archive Master Copy (or Master)	In relation to the operation of Part 2 of the Act and this COP, this is an original recording, or digital image from which copies can be made (working copies).
Original Working Copy	In relation to the operation of Part 2 of the Act and this COP, this is an audio-visual recording derived from the Original Archive Master for the purpose of editing or preparation for investigation and presentation in court. The Working Copy may be altered from its Original Master such as changing the file format, orientation, size, cropping, redaction, adjusting brightness, etc.
Personal Data	As defined in section 2 of the Act, means information relating to: • an identified living individual, or • a living individual who can be identified from the data, directly or indirectly, in particular by reference to: - an identifier such as a name, an identification number, location data or an online identifier, or - one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of the individual.
Public Place	As defined in section 2 of the Act, means a place to which the public have or are permitted access, whether as of right or by express or implied permission and whether subject to or free of charge.

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Recording Device	As defined in section 2 of the Act: (a) means a device or system that is capable of creating a record in any medium from which visual images (including moving visual images) or sounds, or both, may, by any means, be reproduced, (b) includes any devices or systems that are capable of processing the record made under paragraph (a), which may include— i. reproducing by any means the visual images (including moving visual images) or sounds concerned, ii. using ANPR in respect of the record, or iii. producing a document relating to the record or the processing concerned, and (c) includes any device or system referred to in paragraph (a) or (b) that is in or affixed to a vehicle or a structure. "structure" means any building, erection, structure or other thing constructed, erected, or made on, in or under any land, or any part of a structure so defined; "vehicle" means any means in or by which any person or thing, or both, is transported or conveyed that is designed for use or may be used on land, in water or in the air, or in more than one of those ways, and includes an unmanned aerial vehicle.
Removable Media	In relation to the operation of Part 2 of the Act and this COP, typically data storage devices (including, but not limited to, such typical examples as CD-ROM, DVD, Memory pen-drive, Memory Card, or portable hard drive) capable of being removed from a computer system without powering off the system for the express purpose of copying and transporting digital files (Recordings or photos).
Working Practice	In relation to the operation of Part 2 of the Act and this COP, refers to the execution of specific tasks or duties in relation to Garda personnel job description, for example, entering or updating an incident in PULSE.

1.5 Guiding Principles

Recording devices used in conjunction with APs must be operated fairly, responsibly, with respect for the rights of others, without unlawful discrimination and as is necessary for a legitimate policing purpose in accordance with the Act and this COP, while minimising interference with the rights of others to the least extent possible. The following key primary principles have been developed to guide the operation of recording devices used in conjunction with APs:

- Prior to operating recording devices used in conjunction with an AP, consideration must always be given to balancing the potential impact on individuals and their privacy against the duty on An Garda Síochána to

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seek out and preserve all evidence that has a bearing or a potential bearing on the issue of guilt or innocence.

This right to privacy is not an unqualified right. Its exercise may be restricted by the constitutional rights of others, including a right to a fair trial, by the requirement of the common good and is subject to the requirements of public order:

- Garda personnel will: be trained in the operation of recording devices used in conjunction with an AP prior to their use; operate such a device in accordance with the Garda Síochána Operations Manual; show due regard to regulation; and follow the manufacturer's instructions;
- The operation of an AP does not replace conventional forms of evidence gathering, (such as collation of physical evidence, written statements and interviews), it supports and enhances them. Garda personnel must continue to follow current practices and procedures for achieving best evidence;
- Recordings and images will be captured via recording devices used in conjunction with an AP for a principal purpose, in accordance with the Act (section 9) and this COP. Such recordings and images may be admissible in evidence in criminal, civil and disciplinary proceedings;
- All recordings and imagery that is viewed, stored, processed, and shared from any recording devices used in conjunction with an AP will be subject to applicable data protection legislation;
- The operation of recording devices used in conjunction with an AP will be incident specific.
- Decision making will be guided by the Garda Decision Making Model (GDMM), on when to operate recording devices used in conjunction with an AP. Factors to consider in decision making include:
    - the use is in accordance with the provisions of the Act and the COP,
    - the use is in support of the duty to seek out and preserve all evidence that has a bearing, or a potential bearing, on the issue of guilt or innocence.
    - the use minimises interference with the rights of others to the least extent possible.

1.6 The Garda Decision Making Model

The GDMM applies to all decisions made by Garda personnel including spontaneous incidents, planned operations, daily duties and strategic planning.

The GDMM ensures consistency of decision making even in the most dynamic circumstances. As such, the GDMM will be used to support effective decision making in relation to the operation of an AP.

The Garda Decision Making Model is available on the Garda website at www.garda.ie.

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2 Aerial Platforms

2.1 Overview

In accordance with Part 2 of the Act, a member of Garda personnel acting in the course of their duties may operate, or cause to be operated, an AP.

The operation of an AP shall be necessary and proportionate with regard to the principal purposes, set out under section 9(2), this COP, and associated procedures.

2.2 Roles & Responsibilities

The use of recording devices used in conjunction with an AP and its associated systems will be strictly controlled. Use of recording devices used in conjunction with an AP, any access to digital evidence, and system privileges will be strictly limited to each member of Garda personnel based on their approved uses. Each member will only be able to access the functionalities and system controls assigned to their role and position. Each member will be responsible for their use of recording devices used in conjunction with an AP and digital evidence procedures, and may be asked to account for their actions in the event of a review. Access controls will ensure that a member may only access the minimal amount of data which is necessary to allow them perform their duty.

2.3 Capture of information

The operation of recording devices used in conjunction with APs enhances the ability of Garda personnel to gather and record information. Recording devices used in conjunction with APs provide the capability to record interactions and observations at scenes of potential incidents. Recording devices used in conjunction with an AP can support Garda personnel's written records of events and provide a visual and audio perspective, where traditionally a notebook was relied on to record key information when capturing initial information at an incident.

2.4 Respect for Human Rights

It is the responsibility of Garda personnel to ensure that their operation of recording devices used in conjunction with an AP is only for a principal purpose. The operation of recording devices used in conjunction with an AP shall only take place as is necessary and proportionate with regard to the purposes under the Act, and such operating is in accordance with this COP and associated procedures. Decisions in this respect will be guided by the GDMM and the Garda Human Rights Framework.

To further ensure respect for and protection of human rights, a Human Rights Impact Assessment (HRIA) of the impact of the COP on the human rights of individuals affected by this COP, has been carried out in accordance with Part 8 of the Act.

2.5 Digital Evidence Storage & Management

Digital evidence generated by the use of recording devices used in conjunction with APS under this COP will be handled, stored, and managed securely and in

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compliance with Garda policy and relevant legal provisions.

2.6 Data Capture Public and Non-Public Places

Extra consideration will be given to the nature and character of the place where recording devices used in conjunction with an AP is to be deployed. In particular, where there may be a greater expectation of privacy or the recording may gather data that would be considered sensitive. The use for a principal purpose must be balanced against this consideration.

Consideration must also be taken to ensure that the deployment of recording devices used in conjunction with an AP is not an unlawful interference with the right to protest or freedom of expression.

2.6.1 Sensitive Locations

Garda personnel can operate recording devices used in conjunction with APs without consent whilst lawfully on private premises. When considering the operation of recording devices used in conjunction with an AP within a sensitive location for a principal purpose, Garda personnel will be mindful of any imposition placed upon others that may occur and aim to minimise interference with the rights of others to the least extent possible. A sensitive location is one where the expectation to privacy is increased as opposed to a public place. Examples would be hospitals, care homes, mental health facilities *etc.*, any other location requiring extra protection based on its individual characteristics.

2.6.2 Objections to Recording

A member of the public when dealing with Garda personnel may, on becoming aware of the use of recording devices used in conjunction with an AP, make demands/requests from the Garda personnel to take certain actions. The decision to use recording devices used in conjunction with an AP, in these situations, rests with the Garda personnel and any action taken should be considered necessary, proportionate and in accordance with this COP and the Act.

2.6.3 Collateral Intrusion

Collateral intrusion is the interference with the privacy of individuals who are not involved in the specific incident the Garda personnel is focused on. An example of this would be the unintentional recording of persons who are present at a location which is the focus of recording devices used in conjunction with an AP. Garda personnel should always attempt to minimise collateral intrusion and protect the rights of others.

Where video is to be shared with external organisations, (third parties), in accordance with law, redaction may be necessary to obscure the identification of uninvolved third parties shown.

2.6.4 Selective Capture

Selective capture applies when Garda personnel make a deliberate choice as to when to record and when not to record.

Where Garda personnel have decided to operate recording devices used in conjunction with an AP, they should record entire encounters from beginning to end without the recording being interrupted. However, the nature of some

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incidents may make it necessary and proportionate for Garda personnel to consider the rationale for not continuing to record throughout entire incidents.

Garda personnel must be aware that stopping a recording during any incident may require an explanation. In cases where Garda personnel do interrupt or cease recording at an ongoing incident, they should record their decision in writing, and include the grounds for making such a decision, when safe to do so.

It must be remembered that a deliberate failure to record relevant events could have an impact on any subsequent prosecution. In addition, such a deliberate failure may be a breach of the law.

2.7 Recording Sequence

This section details the recording process and should be read and followed sequentially.

2.7.1 Pre-Incident

There is no legal requirement in the Act for the operation of recording devices used in conjunction with an AP to be notified to individuals, with the exception of a dwelling. In circumstances when an AP is being operated in or above a dwelling or its curtilage, Garda personnel shall, where the applicable circumstances allow for same and where appropriate, notify the occupants at the start of the operation and make a record of the notification.

2.7.2 During Incident

Members of Garda personnel operating recording devices used in conjunction with an AP should, while using said device, relay pertinent information to any other member of Garda personnel present by way of offering ground support or on behalf of the service requester. Where appropriate, and at the discretion of the recording device operator and/or the applicable member of Garda personnel to whom such information is being relayed, consideration should be given to recording contemporaneous and memory fresh notes regarding evidence or information present as this may assist both Garda personnel and/or any subsequent viewer with later recollection/viewing of a recording.

Recording should, where practicable, be restricted to those individuals and areas where it is necessary to provide evidence relevant to an incident. Garda personnel should consider taking steps to minimise collateral intrusion for any individuals present who are not involved in the incident, particularly in areas where there is a higher than usual expectation of privacy or other relevant rights. When considering the operation of recording devices used in conjunction with an AP in such areas, members of Garda personnel must be mindful of the increased level of justification that is required to respect and protect the dignity of individuals and against inhuman or degrading treatment.

2.7.3 Concluding / Stopping Recording

As the decision to commence recording rests with individual Garda personnel, so does the decision to stop recording. Accordingly, Garda personnel should be satisfied that, in making the decision to stop recording, the risk of not capturing evidential material is minimised against the situations when a recording

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devices used in conjunction with an AP should be activated. Garda personnel should under normal circumstances, cease recording in the following instances:

1. It is no longer a principal purpose to record;
2. The incident has concluded, or Garda personnel have left the scene;
3. A different recording system takes primacy;
4. For firearms deployments when the firearms operation has concluded, save where use of force post incident management procedures have been implemented;
5. When device limitations dictate. These limitations may include, but are not limited to, external factors such as battery expiration, battery changes/charging, weather and flying restrictions.

Garda personnel may be required to outline the rationale for stopping the recording. Therefore, where practical, a note of same should be recorded.

There may be exceptional circumstances, outside of those set out at 1-5 above, where a member of Garda personnel makes a decision to suspend usage of a recording device used in conjunction with an AP, either temporarily or permanently, before Garda involvement in an incident has concluded and where continued operation is otherwise possible.

2.7.4 Post Incident

Garda personnel should upload a recording from the recording device used in conjunction with an AP in compliance with Garda procedure.

2.8 Data Confidentiality, Security, Access & Viewing

Only permitted members of Garda personnel will have access to recordings, unless otherwise directed in accordance with legislation or by way of court order. Garda personnel should only view recordings in accordance with Garda procedure. All recordings must be viewed and managed in accordance with legislative provision, Garda procedure, data protection legislation and in compliance with the Garda Code of Ethics.

2.9 Data Use & Processing

Data usage and processing must be fully compliant with data protection legislation. Recordings may be subject to different handling and retention policies, dependent on their source. As far as reasonably possible, all data will be subject to encryption at rest and in transit.

2.9.1 Data Retrieval

Save where otherwise provided for in this COP, copies of incidents captured on recording devices used in conjunction with APs will only be made available upon application by the applicable supervisory rank or grade in the following instances:

- In accordance with disclosure rules for criminal prosecutions.
- Following instructions from the Director of Public Prosecutions.
- Where the repeated playing of the video is required (e.g. to show a witness).

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- To Fiosrú – Office of the Police Ombudsman in accordance with the provisions of the Policing, Security and Community Safety Act 2024.
- Where required in civil or disciplinary proceedings as evidence in civil or disciplinary proceedings as evidence in accordance with section 48 of the Act, or
- Where otherwise required by law.

2.10 Evidential Use

Garda personnel have a duty to seek out and preserve all evidence that has a bearing or a potential bearing on the issue of guilt or innocence. This includes video or audio captured by recording devices used in conjunction with an AP.

The creation and subsequent movement of working copies will be recorded in accordance with procedures. The master video will never be subjected to editing or processing. Further digital video versions may be made for editing and processing purposes.

2.10.1 Publishing AP footage

Disclosure of the recorded video or images to third parties should only be made in limited circumstances including:

- In accordance with Garda procedure following a formal request from specified Garda personnel for the disclosure of video on the grounds that it is likely to be of use for the investigation of a particular offence.
- a requirement under any enactment, rule of law or court order to disclose the video/images.
- if required where legal proceedings are being taken against An Garda Síochána, the Commissioner of An Garda Síochána, or any member of An Garda Síochána.
- to counteract the spread of misinformation or disinformation.
- to individuals whose images have been recorded and retained in response to a subject access request or other valid legal basis for disclosure.
- to media organisations, where it is decided that the public's assistance is needed to assist in the identification of a victim, witness, or perpetrator in relation to a criminal incident. The wishes of the victim, or where appropriate their family (e.g. vulnerable person), of an incident should be taken into account.
- to media organisations to highlight the work of An Garda Síochána.
- training related purposes for An Garda Síochána.

All requests for access for disclosure should be recorded. If access or disclosure is denied, the reasons will be documented.

In circumstances where images will be disclosed to the media or other third parties, redaction, blurring or otherwise disguising of the images and audio of individuals will be applied so that individuals recorded are not identifiable. Where it is deemed necessary and proportionate to disclose video that includes identifiable individuals, the rationale and the supporting legal basis should be clearly documented.

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2.11 Data Retention & Disposal

In the event, an individual convicted in the courts undertakes appeal or miscarriage of justice proceedings, the recording evidence must be retained on conviction. The circumstances of their retention should ensure that their integrity is maintained in the event of appeals, potential civil claims and or retrials. Recordings are subject to the retention periods set out under Garda policy.

2.12 Professional Standards

Recordings made by recording devices used in conjunction with an AP may be used to resolve complaints and help inform disciplinary investigations.

The reasons for viewing of video by complainants should be recorded by investigating Garda personnel. In such circumstances, consideration must be given to whether non-connected persons on the material shall be obscured to protect their identity/privacy.

2.13 User Training

Only Garda personnel who have received and completed the appropriate Garda specific training course, acknowledge compliance with this COP and have displayed competence, where necessary, regarding the relevant airspaces, flying restrictions and procedures for deployment in same, will be permitted to operate recording devices used in conjunction with an AP.

3 Data Subject Rights

An Garda Síochána will ensure that data subjects can exercise their rights as outlined under data protection legislation. In the context of personal data contained on digital recordings processed for law enforcement purposes, this includes the right of access in accordance with the Data Protection Act 2018.

An Garda Síochána has a dedicated Data Protection Unit that manages subject rights requests under data protection legislation on behalf of the organisation. The Data Protection Unit ensures that such requests are managed in line with the requirements and timescales specified under data protection legislation. This includes reviewing relevant material in relation to a request, including digital recordings, to ensure that appropriate redactions or restrictions are applied, as required, to protect the data protection rights of third parties, or, where a necessary and proportionate measure under data protection legislation, including for the purposes outlined under Section 94 of the Data Protection Act 2018.

3.1 Data Protection Impact Assessment

In line with the requirements of data protection legislation, An Garda Síochána has conducted a Data Protection Impact Assessment (DPIA) in relation to processing activities relevant to this COP that are likely to result in a high risk to the rights and freedoms of data subjects.

4 Governance & Compliance

4.1 Ethical Standards & Commitments

The Code of Ethics for An Garda Síochána sets out guiding principles to inform and guide the actions of all personnel of An Garda Síochána at every level of the organisation.

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Of particular relevance to this COP is the 'Ethical Commitment' to Information and Privacy. The Code of Ethics states that Gardaí must treat information that is provided to the Garda Síochána with respect and in accordance with the law. This protects the rights of people who provide information and the rights of people to whom the information refers. It also ensures that the public feel safe in volunteering information to the Garda Síochána.

4.2 Approving Authority

The Approving Authority for this COP is the Minister for Justice, Home Affairs and Migration in accordance with Part 8 of the Garda Síochána (Recording Devices) Act 2023.

4.3 Monitoring and Review

This COP will be reviewed and amended where appropriate and in compliance with the provisions of Part 8 of the Garda Síochána (Recording Devices) Act 2023.

4.4 Consultation

An Garda Síochána has undergone the consultative process, in accordance with the provisions of Part 8 of the Garda Síochána (Recording Devices) Act 2023, to develop this Code of Practice.

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