

GARDA SÍOCHÁNA (RECORDING DEVICES) ACT 2023

Part IV - Recording of Certain Telephone Calls to or from Garda Síochána



An Garda Síochána
Ag Coinneáil Daoine Sábháilte - Keeping People Safe

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Code of Practice

Recording of Certain Telephone Calls to or from the Garda Síochána

Issued pursuant to Parts 4 and 8 of the Garda Síochána (Recording Devices) Act 2023

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1. Overview

1.1 Introduction

This Code of Practice is prepared by the Commissioner of the Garda Síochána in accordance with section 47 of the Garda Síochána (Recording Devices) Act 2023 (the “Act”) and relates to the exercise of powers under Part 4 of the Act concerning the recording of certain telephone calls to or from the Garda Síochána.

This Code sets out the principles, procedures and safeguards governing:

- The designation of telephone lines or numbers,
- The recording of telephone calls,
- The processing, storage, retention and disclosure of recorded data,
- The protection of individual rights,
- Oversight and accountability arrangements.

This Code shall be read and applied in conjunction with the provisions of the Act and any other applicable legislation.

1.2 Aims and Objectives

The objectives of this Code are to:

- Ensure that the recording of telephone calls is conducted lawfully and in accordance with the Act;
- Provide clarity regarding the designation of telephone lines and the lawful processing of recorded data;
- Safeguard the rights and freedoms of individuals;
- Promote transparency, accountability and public confidence in the use of telephone recording powers;
- Ensure that recorded data is processed securely and proportionately;
- Ensure compliance with applicable data protection and human rights obligations

1.3 Legal Context (Scope and Application)

Pursuant to section 22(1) of the Act, telephone calls to or from the Garda Síochána shall not be recorded unless transmitted to or from telephone lines or numbers designated in accordance with Part 4 of the Act or otherwise authorised by legislation.

This Code applies to:

- All members of the Garda Síochána;
- All Garda personnel engaged in the operation, management or processing of recorded telephone calls;
- All designated emergency and non-emergency telephone lines or numbers.

In accordance with section 22(4) of the Act, this Code does not apply to recorded audio or visual messages or other such recordings sent by, and with the consent of, the sender.

This Code shall be read in conjunction with:

- Parts 4 and 8 of the Garda Síochána (Recording Devices) Act 2023;
- The Data Protection Acts 1988–2018;
- Regulation (EU) 2016/679 (General Data Protection Regulation);
- The European Convention on Human Rights;
- Any other applicable legislation.

1.4 Relevant Terms and Definitions

For the purposes of this Code:

Term	Definition
Telephone call	Includes any electronic communication used to access a telephone line or number to or from the Garda Síochána.
Designated line	A telephone line or number designated in writing by the Commissioner under section 22 of the Act.
Emergency line	A line transmitting emergency calls or calls of an emergency nature.
Non-emergency line	A designated line transmitting calls other than emergency calls.
Processing	Has the meaning assigned under applicable data protection legislation.
Data Controller	The Garda Síochána for the purposes of processing recorded telephone data under Part 4 of the Act.

1.5 Guiding Principles

The designation of telephone lines and the recording of telephone calls under Part 4 of the Act shall be governed by the following principles:

1.5.1 Legality

Recording shall occur only where authorised under the Act or otherwise authorised by legislation. All designations and processing must comply with this Code and applicable legislation.

1.5.2 Necessity

Telephone lines shall be designated only where recording is necessary for one or more of the statutory purposes set out in section 22(3)(a) of the Act. The scope of designation shall not exceed what is required to achieve those purposes.

1.5.3 Proportionality

The extent and manner of recording must be proportionate to the identified statutory purpose. Consideration shall be given to the nature of the line, the volume of calls, and the potential impact on individuals.

1.5.4 Purpose Limitation

Recorded telephone data shall be processed only for the purposes for which designation was made, and in accordance with section 23 of the Act.

1.5.5 Accountability

The Commissioner and Garda personnel are responsible for ensuring compliance with the Act, this Code, and applicable data protection legislation. Clear governance arrangements shall be maintained.

1.5.6 Transparency

Where required under section 22(2)(b)(ii) of the Act, individuals shall be informed that calls are being recorded and of the purpose of such recording. Garda Síochána shall maintain appropriate transparency measures regarding recording practices.

1.5.7 Data Protection and Integrity

Recorded telephone data shall be processed fairly and lawfully, protected against unauthorised access, and safeguarded from falsification, concealment or unlawful destruction.

1.5.8 Human Rights Considerations

The recording of telephone calls shall respect the rights protected under the Constitution and the European Convention on Human Rights. Designation decisions shall have regard to the potential impact on privacy and other fundamental rights.

Designation of any telephone line shall only occur where the Commissioner is satisfied that such designation is necessary and proportionate having regard to the statutory purpose.

1.6 Garda Decision Making Model

The Garda Decision Making Model shall guide decision-making processes relevant to the designation, management and processing of recorded telephone calls.

1.7 Permitted Circumstances

Telephone calls may be recorded only where transmitted to or from a designated telephone line or number.

The Commissioner may designate in writing:

- Emergency telephone lines or numbers;
- Non-emergency telephone lines or numbers;
- Classes of telephone lines or numbers.

Designation shall occur only for one or more of the purposes set out in section 22(3)(a) of the Act, including:

- The prevention, investigation, detection or prosecution of criminal offences;
- The execution of criminal penalties;

- Safeguarding against and preventing threats to public security;
- Protection of the security of the State;
- The performance of functions of the Garda Síochána;
- The performance of functions of the Commissioner, including maintaining quality of service and training.

A written record of each designation shall be maintained.

1.8 Additional Considerations

Where a non-emergency line is designated:

- The person making and receiving the call shall be informed that the call is being recorded;
- The purpose of the recording shall be communicated.

Notification may be delivered by automated message or other appropriate means.

1.9 Roles and Responsibilities

The Commissioner is responsible for the designation of telephone lines under section 22 of the Act.

Members and Garda personnel shall:

- Ensure compliance with this Code;
- Record calls only on designated lines;
- Process recorded data in accordance with this Code and applicable legislation.

Supervisory personnel shall ensure appropriate oversight and compliance.

1.10 Telecommunications Infrastructure

This Code applies to designated telephone lines operated within Garda telecommunications infrastructure.

1.11 Regional Control Centres

This Code applies to designated telephone lines operated within Regional Control Centres.

1.12 Emergency Call Answering Service (ECAS)

This Code applies to designated telephone lines operated within Emergency Call Answering Service environments.

1.13 Operational Procedures

1.13.1 General Requirement

In accordance with section 47(2)(a) of the Act, this Code includes provisions relating to the procedures to be followed by members of Garda personnel in the operation of Part 4 of the Act.

Members of Garda personnel shall comply with:

- The provisions of this Code; and
- Any operational procedures issued by the Garda Síochána governing the designation, recording, access, handling and processing of telephone recordings under Part 4 of the Act.

Such procedures shall be consistent with sections 22, 23 and 24 of the Act and with applicable data protection legislation.

1.13.2 Implementation of Designation Decisions

Where a telephone line or class of lines is designated by the Commissioner under section 22 of the Act

- The designation shall be implemented in accordance with approved operational procedures;
- Appropriate technical measures shall be applied to ensure recording occurs only on designated lines;
- A written record of designation shall be maintained and made available for audit.

1.13.3 Notification Procedures (Non-Emergency Lines)

Operational procedures shall ensure that:

Persons making and receiving calls on designated non-emergency lines are informed that the call is being recorded;

The purpose of recording is communicated in accordance with section 22(2)(b)(ii) of the Act;

Notification mechanisms are applied consistently and reliably.

1.13.4 Access and Handling Procedures

Operational procedures shall govern:

- Authorised access to recorded telephone data;
- Audit logging of access and retrieval;
- Secure handling of recordings for evidential, supervisory or training purposes;
- Restrictions on copying, extraction or onward disclosure.

1.13.5 Supervisory Oversight

Operational procedures shall provide for:

- Appropriate supervisory oversight of recording systems;
- Periodic review of access logs;
- Reporting and investigation of any unauthorised recording, access or tampering.

1.13.6 Error Reporting and Remedial Action

Operational procedures shall provide mechanisms for:

- Reporting technical or operational errors;
- Addressing instances of recording on non-designated lines;
- Mitigating potential data protection or human rights impacts.

1.13.7 Training and Awareness

Members and Garda personnel involved in the operation of recording systems shall receive training on:

- The statutory framework under Part 4;
 - Their obligations under this Code;
 - Relevant data protection and human rights requirements.
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2. Data Storage, Processing and Use

2.1 Data Capture and Quality

Recorded telephone data shall be captured accurately and securely in accordance with designated system protocols.

2.2 Data Confidentiality, Security, Access and Viewing

Recorded data shall be:

- Securely stored;
- Protected against unauthorised access;
- Subject to appropriate technical and organisational safeguards;
- Protected against falsification, concealment, destruction or unlawful disclosure.

In line with established procedures

2.2.1 Vetting

Access to recorded data shall be restricted to appropriately vetted personnel.

2.3 Access and Disclosure to Third Parties

Access to and disclosure of recorded telephone data shall occur only where lawful, necessary and proportionate.

Disclosure shall comply with applicable legislation and this Code.

2.4 Data Use and Governance

Recorded telephone data may be processed only:

- For the purposes specified in section 22(3)(a) of the Act;
- In accordance with section 23 of the Act;
- In compliance with this Code and applicable data protection legislation.

2.4.1 Relevant Data Controller

The Garda Síochána is the Data Controller for the purposes of processing under Part 4 of the Act.

2.4.2 Governance and Compliance

Appropriate governance, audit and compliance mechanisms shall be maintained to ensure adherence to this Code.

2.5 Data Retention and Disposal

Retention periods shall reflect operational necessity, evidential requirements and legal obligations.

Recorded data shall not be falsified, concealed, destroyed or disposed of unlawfully.

2.6 User Training

Members and Garda personnel with access to recorded telephone data shall receive appropriate training.

3. Data Protection

3.1 Compliance with Data Protection Legislation

As per Section 8(1) of the Data Protection Act 2018, the Data Protection Act 1988 (as amended) continues to apply to processing of personal data for State security purposes, and the General Data Protection Regulation (GDPR) (EU) 2016/679 applies to processing of personal data for non-legislative enforcement purposes. In processing digital recordings relevant to this Code of Practice (including arrangements for access, storage and retention of recordings), An Garda Síochána will ensure compliance with the relevant and applicable data protection legislative framework for the processing concerned.

3.2 Data Subjects 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 access requests under data protection legislation on behalf of the organisation. The Data Protection Unit ensures that subject access 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.

3.3 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 Code of Practice that are likely to result in a high risk to the rights and freedoms of data subjects.

4. Ethical Standards and Commitments

4.1 Human Rights Impact Assessment

In accordance with Part 8 of the Act, a Human Rights Impact Assessment has been conducted in advance of the preparation and approval of this Code.

The assessment considered the potential impact of the designation and recording of telephone calls on rights protected under the Constitution and the European Convention on Human Rights.

4.2 Approving Authority

In compliance with section 47 of the Act and the procedures set out in Part 8 thereof, this Code has been prepared by the Commissioner and submitted to the Minister for approval.

This Code shall take effect upon its approval by the Minister and its publication as a Statutory Instrument in accordance with the Act.

4.3 Monitoring and Review

This Code of Practice 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

In accordance with section 47 of the Act and Part 8 thereof, An Garda Síochána conducted a consultation process prior to the submission of this Code to the Minister.

That consultation included:

- A public consultation process seeking observations from members of the public; and
- Consultation with the statutory bodies specified under the Act.

Observations received during the consultation process were considered prior to the finalisation of this Code.

4.5 Approving Authority

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

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