

Child Rights and Wellbeing Impact Assessment

Scottish Biometrics Commissioner Bill

May 2019



Scottish Government
Riaghaltas na h-Alba
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CRWIA title: Scottish Biometrics Commissioner Bill

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Summary of policy aims and desired outcomes

The Scottish Biometrics Commissioner Bill will establish the office of Scottish Biometrics Commissioner who will be appointed by the Queen on the nomination of the Scottish Parliament. The Commissioner's general function will be to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data by Police Scotland and the Scottish Police Authority for policing and criminal justice purposes.

'Biometric data' is a relatively broad and evolving concept. It encompasses what is often referred to as 'first-generation biometrics' such as fingerprints, DNA and custody photographs which have been commonly used in policing for many years. It also includes new and emerging technologies (or 'second-generation biometrics') such as facial recognition software, remote iris recognition and other behavioural biometrics such as voice pattern analysis. The biometrics field is evolving rapidly and offers great potential in the identification and prevention of crime and the delivery of community safety. However, the use of biometric data and technologies raises a range of ethical and human rights considerations. A number of independent reports in recent years have called for independent oversight arrangements to be made in respect of biometric data for criminal justice purposes. Therefore, the Scottish Government consulted on proposals for independent oversight in the summer of 2018 - and the proposals were broadly supported. A partial CRWIA was prepared to accompany the consultation.

Following on from the consultation, the Scottish Government is bringing forward legislation to create a new Biometrics Commissioner. The Commissioner will support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data by Police Scotland and the Scottish Police Authority (SPA) for policing and criminal justice purposes. The Commissioner will also produce a statutory code of practice which Police Scotland and the SPA must have regard to when exercising functions to which the code relates.

The policy aims in broad terms are, therefore, to ensure that an effective and proportionate approach is taken to the use of biometric data which maintains public and professional confidence and keeps communities safe, while respecting the rights of the individual and improving the accountability of the police.

	<p>It should be noted that the Commissioner’s role will also include promoting the interests of children and young people when reviewing the law, policy and practice in relation to biometric data. The Commissioner’s scrutiny could therefore include, for example, the implementation by Police Scotland of the new arrangements for taking samples from children under 12 following the provisions of the Age of Criminal Responsibility Bill.</p>
<p>Executive Summary</p>	<p>In March 2018, the Independent Advisory Group on Biometrics (IAG) published its report into the collection, use, retention and disposal of biometric data in a criminal justice context, making a number of recommendations including revised arrangements for taking biometric samples from children and the creation of new independent oversight arrangements. Subsequently, the Scottish Government undertook a public consultation in the summer of 2018 on these three IAG recommendations. Following broad support from the consultative response, Ministers are now proposing that a new Scottish Biometrics Commissioner will :</p> <ul style="list-style-type: none"> • review the law, policy and practice in relation to the collection, use, retention and disposal of biometric data; • promote the standards set out in the Code of Practice and monitor observance of these; • raise public awareness of police powers and duties in relation to biometric data, and how these duties and powers may be monitored or challenged. <p>In carrying out these functions, the Commissioner must have regard to the interests of children and young people (meaning individuals under the age of 18). The Commissioner will also oversee a new statutory Code of Practice which will reflect best practice and recognised standards, and which may reflect the following requirements:</p> <ul style="list-style-type: none"> • For children under 12 who, under the Age of Criminal Responsibility (Scotland) Bill, will no longer be held criminally responsible, biometrics will not be obtained except where they are needed for the investigation of a very serious incident. The capture or use of biometrics will require authorisation from a Sheriff and biometric data taken from children under 12 will have to be destroyed as soon as they are no longer needed for the specific investigation and any resulting Children’s Hearings System proceedings. They will not be placed on the

	<p>Police Scotland Criminal History System (CHS) or the Police National Database (PND).</p> <ul style="list-style-type: none"> • For children or young people aged 12 to 17 years, in each case, consideration should be given as to whether it is proportionate and necessary to obtain biometric data for the purposes of recording on the biometric databases, with the best interests of the child specifically considered in the decision-making process, along with the child's offending behaviour. Where biometric data is obtained, the reasons should be subject to review and scrutiny within a reasonable time frame by supervising officers. <p>The Commissioner may therefore, for example, ascertain whether and how these requirements are being fulfilled in practice by Police Scotland. The Commissioner will also have a role in raising public awareness of police powers and duties in relation to biometric data - including the awareness of children and young people - and of how these powers and duties can be monitored and challenged.</p>
<p>Background</p>	<p>The number of children who come into contact with the police is relatively small in comparison to adults. Over the last decade in particular, it has reduced significantly (at least partially as a result of changes to the way in which children and young people involved in offending are dealt with by diversionary measures). Around 2,200 children were proceeded against in the Scottish courts during 2015/16, of whom very few were under the age of 16. More children were dealt with through the Children's Hearings system – in 2016/17, there were 26,840 referrals to the Children's Hearings system, of which 73% were on non-offence (care and protection) grounds and only 27% on offence grounds.</p> <p>Scotland's "Whole System Approach" to youth justice recognises that bringing young people into the criminal justice system for low-level offences often results in increased offending. Accordingly, the aim is to keep children out of the formal justice system as far as possible, mindful of the risks of stigmatising children through labelling practices which are often driven by evidence of 'previous form' rather than current behaviour.</p> <p>For these reasons, there is a strong need to ensure that biometric data is acquired, used and retained in a proportionate manner that reduces any unintended negative risks or consequences for the child or young person. The creation of a new Commissioner and a Code of Practice supports this policy.</p>

<p>Scope of the CRWIA, Identifying the children and young people affected by the policy, and summarising the evidence base</p>	<p>The provisions of the Scottish Biometrics Commissioner Bill align with the general principles of non-discrimination and the best interests of the child.</p> <p>The wellbeing indicators most relevant to the Bill are: Achieving, Responsible and Included. By promoting the interests of children and young people in relation to the use of biometric data in the context of policing and criminal justice, the Commissioner may contribute to the aim of reducing the overall number of children who have their biometric data captured as part of the criminal justice process. In this regard, we anticipate there may be corresponding reductions in the number of children at risk of being stigmatised, and therefore a corresponding overall effect on wellbeing.</p>
<p>Children and young people's views and experiences</p>	<p>As outlined above, Scotland's "Whole System Approach" to youth justice recognises that bringing young people into the criminal justice system for low-level offences often results in increased offending. Accordingly, police officers and their partners work with the aim of keeping children out of the formal justice system as far as possible, mindful of the risks associated with stigmatisation which might otherwise be encountered.</p> <p>Young people were consulted on the proposals to create a new Commissioner both by the IAG and by the Scottish Government. The IAG established a dedicated Sub-Group to look specifically at whether special arrangements should be introduced for the collection of biometric data by the police from children. The sub-group consulted with young people and those working with children and young people, as well as police officers specialising in this area. The Sub-Group approved the proposal for special arrangements and this was included in the Scottish Government's consultation in the summer of 2018, alongside the proposals around a new Biometrics Commissioner and code of practice.</p> <p>A total of 89 written submissions were received by the Scottish Government's consultation and four consultation events were attended by a total of 44 individuals and organisational representatives from high influence and equality groups, including the Scottish Youth Parliament. A bespoke event was held by the Scottish Youth Parliament and facilitated by Scottish Government officials to discuss the consultation proposals. Views and responses were broadly supportive.</p>

**Key Findings
Including an
assessment of
the impact on
children’s rights,
and how the
measure will
contribute to
children’s
wellbeing**

The Scottish Government is committed to recognising, respecting and promoting children’s rights as part of its wider commitment to improving life chances for all children and young people. The United Nations Convention on Rights of the Child (UNCRC) lies at the heart of the Scottish Government’s policy and practice. The Convention sets out these rights in 54 articles and 2 optional protocols. There is scope for the Scottish Biometrics Commissioner Bill to impact on a number of these articles. These include, but are not limited to:

- Article 2 – Non-Discrimination
- Article 3 – Best Interest of the Child
- Article 4 – Protection of Rights
- Article 37 – Detention and Punishment

We consider that the proposals will have a positive effect on the life chances of children and young people. They are likely to result in children and young people being more aware of their rights and having a Biometrics Commissioner who is promoting their rights and interests. The proposals are in line with Getting it Right for Every Child, which aims to ensure that support for children and young people puts their – and their family’s – needs first.

The intention that any future decisions about the retention of biometric data take full account of the best interests of the child is consistent with the General Principles of the UNCRC, and will help to ensure that children and young people are “Achieving”, “Responsible” and “Included”.

The set up costs associated with establishing a new Scottish Biometrics Commissioner are estimated to be approximately £184,000. The estimated annual running costs for the Scottish Biometrics Commissioner are approximately £330,000. It is, however, important to note that the remit of that Commissioner extends beyond matters pertaining solely to children and young people.

We consider that the proposals outlined are consistent with the consultative response to the Scottish Government’s 2018 consultation and with Scottish Ministers’ commitment to the realisation of children’s rights as described through the UNCRC.

The partial CRWIA which accompanied the 2018 consultation shaped the consultation process, in terms of the consultation questions that were asked and the engagement activities that were undertaken - in particular, activity to engage directly with young people. The CRWIA has also shaped the content of

	the Bill in terms of ensuring that the interests of children and young people are to be specifically promoted by the Commissioner when undertaking his functions.
Monitoring and review	<p>The Commissioner will be accountable to the Scottish Parliament and will prepare a strategic plan every four years, and produce an Annual Report of his/ her activity - both of which will be laid at Parliament. The code of practice will be kept under review by the Commissioner, with a requirement to produce a formal report to Parliament every four years.</p> <p>The Scottish Government will review the legislation to ensure that it is still fit for purpose within 10 years of enactment.</p>
CRWIA Declaration	
Authorisation	
Policy lead Elaine Hamilton, Head of Forensics Policy, Police Division	Date 22 May 2019
Deputy Director or equivalent Euan Dick, Interim Deputy Director, Police Division	Date 23 May 2019



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