



CONSULTATION RESPONSE
TO THE SCOTTISH
PARLIAMENT'S JUSTICE
COMMITTEE ON THE
POLICE (ETHICS, CONDUCT
AND SCRUTINY)
(SCOTLAND) BILL



Scottish Biometrics Commissioner
Bridgeside House
99 McDonald Road
Edinburgh
EH7 4NS

<https://www.biometricscommissioner.scot>

email:

diego.quiroz@biometricscommissioner.scot

Tel: 0131 202 1043

November 2023

1. Introduction

1.1. The Office of Scottish Biometrics Commissioner was established by the Scottish Biometrics Commissioner Act 2020 (SBC Act). The Commissioner's *general function* is to support and promote the adoption of lawful, effective, *and ethical* practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes.

1.2. The Scottish Biometrics Commissioner (SBC) welcomes the opportunity to comment on the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill. SBC acknowledges the rationale of the Bill, which is to implement some of the recommendations contained in the Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing by making changes to the law and to the functions of the Police Investigations and Review Commissioner (PIRC).

1.3 Our views on this paper focus exclusively on the “Ethics of the police” part – which gives legal recognition to a code of ethics for the police (through amendments to the Police and Fire Reform (Scotland) Act 2012). The paper starts by delineating the legal framework and then explains the policy and practical reasons for *supporting a statutory code of ethics for the Police Service*. This response also offers a specific suggestion aimed at increasing the effectiveness of the code of ethics.

2. Legal Framework

- Scottish Biometrics Commissioner Act 2020
- Police and Fire Reform (Scotland) Act 2012
- SBC Code of Practice on the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes in Scotland (2022)

3. Discussion & Views

3.1. In terms of the policy position, Scotland has moved incrementally towards the codification of ethical standards to ensure consistence and best practice by law enforcement bodies. For example, Section 7 of the [Scottish Biometrics Commissioner Act 2020](#) provides that the Commissioner ‘must prepare, and may from time to time revise, a [code of practice](#) on the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes’. Our code seeks to promote good practice, transparency, and accountability in Scotland by setting out an agreed framework of standards for professional decision-making. As the Committee is aware the SBC code of practice came into effect in November 2022.

3.2. The SBC code was developed following extensive consultation and is structured around 12 Guiding Principles and *Ethical* Considerations to which Police Scotland, the Scottish Police Authority (SPA), and PIRC must adhere in the realm of biometrics data for criminal justice. These 12 Guiding Principle and Ethical Considerations form the basis against which compliance with this code of practice will be assessed.¹ Notably, principle 5 of the SBC Code contains the general ethical considerations to be followed by these public bodies in relation to biometric data.

3.3. SBC considers that the codification of ethical standards provides a clear framework for decision-making and expectations for all members of the service. The importance of these type of codes to the culture and practice of everyone in policing is such that we welcome the proposal to give the non-statutory Police Scotland code of ethics a basis in statute. The new arrangements would also strengthen public trust and confidence. Therefore, we support Section 2 of the Bill, which establishes a statutory code of ethics for the Police Service.

3.4. We also suggest that the Bill could be further enhanced by adding a monitoring mechanism that measures the effectiveness of the code of ethics. While the SBC code and the code of ethics for the Police Service are not necessarily analogous, we could draw on Section 14 of the [Scottish Biometrics Commissioner Act 2020](#) for this

¹ As described in our [4-Year Strategic Plan 2021-2025](#), we are introducing an annual programme of compliance based on validated self-assessment to ensure compliance with the Code for 2023-24.

purpose. Section 14 requires the Commissioner to report on the code to the Scottish Parliament no later than 3 years after the date on which the first code of practice comes into effect and no later than four years for subsequent reports. It is our suggestion that to ensure both the practical application of the code of ethics and to enhance the institutional credibility within our communities the Bill could explicitly require the Chief constable to report on it to the Scottish Parliament or SPA. This could be accomplished by adding a reporting mechanism to the code of ethics in the inserted section 36A(5) of the Bill.

3.5. Inserted section 36B requires the chief constable to consult on the draft code with certain people and organisations. The list is set out in a schedule, which can be changed by regulations made by the Scottish Ministers. As above, we would like to note [principle 5 of the SBC code of practice](#), which covers the general ethical considerations when Police Scotland (SPA and PIRC) acquire, retain, use, and destroy biometric data for criminal justice and policing purposes. Ethics in biometric data context means that Police's staff should promote a culture of equality, fairness and wider community wellbeing when processing biometric data.

3.6. While the two codes have a different purpose and procedure, it would be useful to ensure the statutory code of ethics for the Police Service keeps step and builds into other ethical frameworks within the criminal justice ecosystem in Scotland.

In consequence:

3.7. The Commissioner welcomes the principles of the Bill and *supports* a statutory code of ethics for the Police Service as contained in Section 2 of the Bill. The Commissioner also suggests introducing a reporting mechanism for the code of ethics aimed at increasing its effectiveness, accountability and strengthen the trust of the public.