



SCOTTISH BIOMETRICS COMMISSIONER & SCOTTISH POLICE AUTHORITY

Joint assurance review of the safeguards in place concerning the acquisition of biometric data from vulnerable persons in police custody requiring the support of an appropriate adult under the provisions of The Criminal Justice (Scotland) Act 2016 (Support for Vulnerable Persons) Regulations 2019.

TERMS OF REFERENCE



Safeguarding our biometric future



Document Control

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About the Scottish Biometrics Commissioner

1. The Scottish Biometrics Commissioner is established under the [Scottish Biometrics Commissioner Act 2020](#).
2. 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 by:
 - (a) [The Police Service of Scotland](#) (Police Scotland)
 - (b) [Scottish Police Authority](#) (SPA)
 - (c) [Police Investigations and Review Commissioner](#) (PIRC)
3. The Commissioner has wide ranging general powers and may do anything which appears to the Commissioner to be necessary or expedient for the purposes of, or in connection with, the performance of the Commissioner's functions, or to be otherwise conducive to the performance of those functions.¹

Meaning of biometric data

4. The Scottish Biometrics Commissioner Act 2020 contains the following definition:

'In this Act, "biometric data" means information about an individual's physical, biological, physiological, or behavioural characteristics which is capable of being used, on its own or in combination with other information (whether or not biometric data), to establish the identity of an individual, and may include:

 - (a) *Physical data comprising or derived from a print or impression of or taken from an individual's body,*
 - (b) *A photograph or other recording of an individual's body or any part of an individual's body,*
 - (c) *Samples of or taken from any part of an individual's body from which information can be derived, and*
 - (d) *Information derived from such samples²*

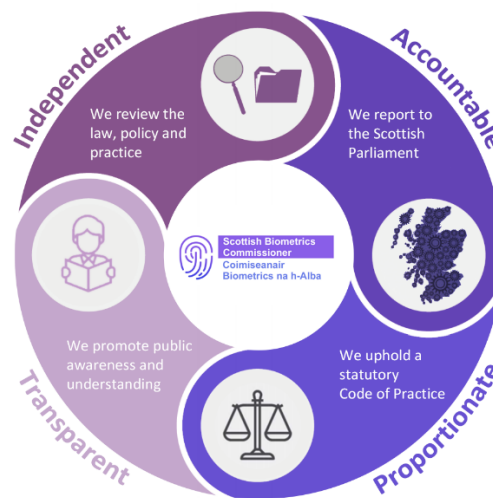
¹ Scottish Biometrics Commissioner Act 2020, [Section 4](#)

² Scottish Biometrics Commissioner Act 2020, [Section 34](#)



Our values

5. As a values-led organisation, we will conduct our activities in a way that is Independent, Transparent, Proportionate and Accountable:



Independent

We will always act independently and publish impartial and objective review reports. Our professional advice will be informed and unbiased. The Scottish Biometrics Commissioner is a juristic person, appointed by Her Majesty the Queen on the nomination of the Scottish Parliament and is independent of Scottish Government.

Transparent

We will be open about what we do and give reasons for our decisions. We will publish our reports and findings and will not restrict information unless deemed necessary to protect the identity of data subjects, or due to wider public interest considerations.

Proportionate

We will ensure that our activity is proportionate and does not exceed what is necessary to achieve our statutory purpose. We will minimise the burden of any review activity on Police Scotland, the Scottish Police Authority, and the Police Investigations and Review Commissioner. We will ensure that the way that we do what we do is necessary, effective, and efficient.

Accountable

We will be accountable for what we do to the Scottish Parliament and will submit ourselves to whatever scrutiny is appropriate to our function. We will promote equality, diversity, and human rights in everything that we do.



Our power to work with others

6. [Section 3](#) of the Scottish Biometrics Commissioner Act 2020 confers a power on the Commissioner in the exercise of his functions to work with other named bodies. This includes amongst others, the Scottish Police Authority.³

Exercising our general function

7. In exercising our general function as previously described, the Commissioner is to keep under review the law, policy and practice relating to the acquisition, retention, use and destruction of biometric data by or on behalf of Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner.
8. We must also promote public awareness and understanding of the powers and duties these persons have in relation to the acquisition, retention, use and destruction of biometric data, how those powers and duties are exercised, and how the exercise of those powers and duties can be monitored or challenged.
9. In supporting and promoting the adoption of lawful, effective, and ethical practices, we must have regard to the interests of [children and young people, and to vulnerable persons](#).⁴ Details of how we will exercise our general function can be viewed in our [Strategic Plan 2021 to 2025](#).⁵
10. When discharging our statutory functions, we will use our National Assessment Framework to consider strategic direction, execution, and results in relation to biometric data used for criminal justice and policing purposes by the bodies to whom our statutory powers extend. Our [framework](#) has six outcome headings and contains forty-two quality indicators that have been nuanced to the biometric data context.

About the Scottish Police Authority

11. The [Police and Fire Reform \(Scotland\) Act 2012](#) created the Scottish Police Authority (SPA) and set out its five core functions:
 - to maintain the Police Service
 - to promote the policing principles set out in the 2012 Act
 - to promote and support continuous improvement in the policing of Scotland
 - to keep under review the policing of Scotland; and
 - to hold the Chief Constable to account for the policing of Scotland.

³ Scottish Biometrics Commissioner Act 2020, [Section 3 \(f\)](#)

⁴ Scottish Biometrics Commissioner Act 2020, [Section 2\(6\)](#)

⁵ The Scottish Biometrics Commissioner 4-year [Strategic Plan 2021-2025](#) was laid before the Scottish Parliament on 24 November 2021



12. These five functions demonstrate the dual, integrated responsibilities of the SPA; its oversight role in scrutinising policing in Scotland and holding the Chief Constable to account; and its supportive role in maintaining and improving the police service. The SPA is also responsible for the management and delivery of Forensic Services in Scotland.
13. The Authority aims to increase public trust and confidence in the policing of Scotland in the way it discharges its functions and through the quality of its governance arrangements. Further information can be found on the [SPA website](#).

Legal basis for this assurance review

14. This joint assurance review will be conducted under the provisions of [Sections 2 \(6\) \(b\) and 3 \(f\) of the Scottish Biometrics Commissioners Act 2020](#). The ensuing report will be laid before the Scottish Parliament by the Commissioner under [Section 20 \(2\) of the Act](#).

Background to vulnerable persons legislation

15. The term “vulnerable persons” can mean different things in different legal contexts. Notwithstanding, and as pertinent to this assurance review, the [Criminal Justice \(Scotland\) Act 2016 \(Support for Vulnerable Persons\) Regulations 2019](#) took legal effect on 10 January 2020. The regulations make provision for “appropriate adult support” to be provided for vulnerable persons during a criminal investigation by the police where the vulnerable person is a victim, witness or potential witness, suspect, or officially accused. The arrangements cater for persons that a Constable believes is 16 years of age or over, and who in the opinion of a Constable requires the support of a vulnerable adult.
16. The purpose of the regulations is to:
 - (a) help the vulnerable person to understand what is happening, and
 - (b) facilitate effective communication between the vulnerable person and the police.
17. Responsibility for providing appropriate adult support to such persons on the request of the police rests with local authorities in Scotland under [Section 4](#) of the 2019 Regulations. In discharging that responsibility, local authorities must have regard to guidance issued by the Scottish Ministers in accordance with [Section 104\(2\)\(b\)](#) of the 2016 Act. Independent oversight and assessment of the quality of any appropriate adult support provided to the police by local authorities is within the remit of the Care Inspectorate.
18. [Section 2](#) of the Scottish Biometrics Commissioner Act 2020 sets out the functions assigned to the Commissioner by the Scottish Parliament. In discharging those functions, and recognising the vulnerable nature of certain groups within the criminal justice system, the Commissioner is required by the provisions of Section 2(6) to have regard to the interests of:
 - (a) children and young persons, and
 - (b) vulnerable persons



19. Section 2(8) of the Scottish Biometrics Commissioner Act defines “vulnerable persons” as:
‘... individuals who, by reason of their personal circumstances or characteristics, may have difficulty understanding matters relating to the acquisition, retention, use and destruction of their biometric data ...’
20. Such a broad definition could of course cater for a multiplicity of circumstances and characteristics. In the police custody setting, this could include persons under the influence of drugs, alcohol, or other substances. It could also cater for a host of other health related conditions such as learning difficulties or dementia, or social circumstances where the subject does not have sufficient command of English. The definition would also cater for both adults and children, and beyond the custody setting would also cater for circumstances where biometric or forensic data may be acquired from victims, suspects, and witnesses who find themselves in a special position of vulnerability.

Scope, Aims and Objectives

21. Whilst we will examine such broader issues on an ongoing basis over the life cycle of our 4-year Strategic Plan, this specific assurance review will focus solely on the safeguards in place concerning the acquisition of biometric data from vulnerable persons in police custody requiring the support of an appropriate adult under the provisions of the [Criminal Justice \(Scotland\) Act 2016 \(Support for Vulnerable Persons\) Regulations 2019](#).
22. The Scottish Biometrics Commissioner’s [Strategic Plan for 2021 to 2025](#), scheduled two distinct but related assurance reviews for the winter months of 2022/23. Both assurance reviews will be conducted in partnership with the Scottish Police Authority. In phase 1, we will examine the arrangements and safeguards in place for the acquisition, retention, use and destruction of biometric data relating to persons under 18 years of age. The terms of reference for that assurance review has already been published and can be viewed on our [website](#).
23. In this second phase, we will focus on the policies, procedures, and safeguarding arrangements in place to provide support to vulnerable persons in police custody, who have been recorded on the Police Scotland Custody System vulnerability assessment page as requiring the assistance of an appropriate adult to help them understand what is happening specifically in relation to the points in the custody process when they are required to have their image, fingerprints, and DNA samples taken.

Exclusions from Scope

24. As this assurance review will be conducted solely through the lens of those arrested by the police and requiring the support of an appropriate adult, it therefore follows that other categories of vulnerable person do not form part of this specific review. In other words, the scope is intentionally restricted to focus solely on the safeguards in place for the acquisition of biometric data from



persons requiring the support of an appropriate adult to assist them in understanding the reasons why they have been arrested, and why their biometric data is being captured.

25. The review will also not consider or examine wider [police custody arrangements \(such matters are inspected by HMICS\)](#) or the quality of the actual Appropriate Adults Support arrangements provided by local authorities (this is within the statutory remit of the Care Inspectorate).

Methodology

26. In conducting this review, we will seek to minimise our scrutiny footprint at a time of high demand across the public sector. In doing so, we will seek evidence from a range of sources including, but not limited to, the following:
- A desk-based review of Police Scotland policies, procedures, and standard operating procedures which give guidance to staff in the custody setting with regards to vulnerable persons, and the acquisition of biometric data, including from such persons.
 - A desk-based review of any internal management reports held by Police Scotland, or others, which have previously reviewed the effectiveness of such arrangements.
 - A year-end custody system data ‘snapshot’ conducted by Police Scotland after 31.12.2022 to ascertain:
 - (a) the total number of custody episodes recorded during the calendar year 2022;
 - (b) From that, the total number of custody episodes where the ‘appropriate adult required’ checkbox on the custody vulnerability assessment page was ticked, and
 - (c) From that subtotal, how many of those vulnerable persons then had their biometric data captured (if possible, segmented by images, DNA swab, and fingerprints).
 - A small number of focus groups, or qualitative interviews with custody staff.
 - A qualitative interview with the COSLA Appropriate Adult Arrangements coordinator.
 - A single focus group, or small number of qualitative interviews with local authority staff providing appropriate adult support to vulnerable persons. This aspect will also assist with the strategic imperative of ensuring user focus as set out in the [Public Services Reform \(Scotland\) Act 2010](#), albeit the Scottish Biometrics Commissioner is not a designated scrutiny body as listed in [Schedule 19](#) of that Act.
 - A review of any arrest rights of accused information materials provided to persons in police custody including the ‘Letter of Rights,’ and any materials which help explain to persons in police custody why their biometric data will be taken, and the purposes for which it will be retained and used.

Resources

27. The lead officer for this review will be Cheryl Glen, SBC Corporate Services Manager, under the overall direction of the Commissioner and assisted by other SBC managers or staff or SPA staff at pertinent points in the review. This review will run in parallel with our related review of biometric data relating to children, with joint coordination to ensure that both reports are published in March 2023.



Timeline

28. The assurance report on the outcome of this review will be laid before the Scottish Parliament before 31 March 2023. The indicative timescale for the necessary activity is as follows:

	November	December	January	February	Mid-March
Review of policies, procedures, and SOP's					
Focus groups and interviews					
Data return from Police Scotland					
Write up of first draft					
Factual accuracy checking on first draft and agreement on content between partners.					
Final draft to publishing company for formatting					
Report laid before the Scottish Parliament no later than 30 March					

Communication Plan

29. A communications plan will be developed between the Scottish Biometrics Commissioner and the Scottish Police Authority at the conclusion of the review activity and prior to the laying of the report before Parliament and subsequent publication.

Further Information

30. Further information on this proposed assurance review may be obtained from Cheryl Glen, SBC Corporate Services Manager: Cheryl.Glen@biometricscommissioner.scot