



Scottish Biometrics
Commissioner
Coimiseanair
Biometrics na h-Alba

First Statutory 3-Year Review

of the Scottish Biometrics
Commissioner Code of Practice

Safeguarding our biometric future

On the acquisition, retention, use, and
destruction of biometric data for criminal justice
and police purposes by Police Scotland,
the Scottish Police Authority and the Police
Investigations and Review Commissioner

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Key Findings

- There have been no breaches of the Code of Practice in the almost 3-years since it has been in legal effect following approval by Scottish Ministers and the Parliament on 16 November 2022. This has been verified through structured compliance assessments and assurance reviews, and the investigation of any complaints received.
- In that period there have been more than 300,000 custody episodes in Scotland with a significant amount of those resulting in biometric data capture. Police Scotland has issued a biometrics information leaflet to such data subjects since the summer of 2024 to advise citizens of their information rights and of the Commissioner's Code of Practice and complaints procedure.
- Despite such high custody throughput and biometrics capture in other non-arrest circumstances, the Commissioner has received only six complaints under the Code's complaints procedure in the 3-years since the Code has been in effect. Only four of those competently related to biometric data and none have been upheld.
- Since the Code was approved by Parliament, Police Scotland, the SPA, and the PIRC have engaged positively, and each has significantly improved their internal policies for, and governance of, biometric data.
- In the 3-year period, the Commissioner has served one Information Notice on Police Scotland relative to hosting biometric data on hyperscale Cloud infrastructure (DESC). No Compliance Notices have been issued, and the Commissioner considers that his legal powers remain adequate.
- Police Scotland, the SPA, and the PIRC are each acquiring, retaining, using, and destroying biometric data in a lawful, effective, and ethical manner as prescribed by the Code. Police Scotland is however reviewing its internal retention policy for the biometric data of convicted persons following a joint recommendation from Scottish Government and the Commissioner in October 2024.¹
- The Code of Practice has withstood the test of time and has demonstrated Scotland leading the way in a progressive approach to public accountability for the use of biometric data for criminal justice and police purposes.
- It is the Commissioner's intention to revise the Code in the 7th session of the Scottish Parliament (2026/27) to incorporate changes including to UK legislation such as [The Independent Commission for Reconciliation and Information Recovery \(Biometric Material\) Regulations 2024](#), and the [UK Data \(Use and Access\) Act 2025](#).
- Until such time, the current Code remains fit for purpose and continues to have legal effect.

¹Report of a review of the retention of biometric data provided for under Sections 18 to 19C of the Criminal Procedure (Scotland) Act 1995 - Recommendation 3, page 35

Introduction

About the Scottish Biometrics Commissioner

The Scottish Biometrics Commissioner is established under the [Scottish Biometrics Commissioner Act 2020](#). 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:

- [The Police Service of Scotland](#) (Police Scotland)
- [Scottish Police Authority](#) (SPA)
- [Police Investigations and Review Commissioner](#) (PIRC)

The Commissioner has wide 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 functions².

The Code of Practice

[Section 7](#) of the Scottish Biometrics Commissioner Act 2020 requires that in furtherance of the Commissioner's general function, 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.

The Act provides that the Code of Practice must include provisions about when biometric data must be destroyed in circumstances where a relevant enactment does not make such provision and that the Code may make different provisions for different purposes. For the purposes of this section of the Act, 'relevant enactments' include:

- a. [Part 2 of the Criminal Procedure \(Scotland\) Act 1995](#).
- b. [Section 56 of the Criminal Justice \(Scotland\) Act 2003](#).
- c. [Chapter 4 of Part 4 of the Age of Criminal Responsibility \(Scotland\) Act 2019](#)

The first Code of Practice was laid to Parliament by the Commissioner on 19 April 2022, the SSI (Scottish Statutory Instrument) was laid on 7 September 2022 and the Code came into effect on 16 November 2022. This was achieved after a public consultation; statutory consultation under Section 10 of the Act 2020; consultation with the Advisory Group under Section 33 of the Act; and following approval under the terms of Section 11 of the Act where the Scottish Parliament's Criminal Justice Committee approved the Code and Section 12 of the Act which saw the Scottish Ministers approving the Code without amendment.

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

Meaning of biometric data

The term 'biometric data' is defined differently in different UK legislation. However, under [Section 34](#) of the Scottish Biometrics Commissioner Act 2020 it means **'information about an individual's physical, biological, physiological or behavioural characteristics which is being 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'**.

Section 34(2)(c) and (d) of the Act specifies that such data may include samples taken from any part of an individual's body from which information can be derived, and the information subsequently derived from such samples. Therefore, the definition of biometric data within the Scottish Biometrics Commissioner Act 2020 includes both source samples as well as the computerised representation of those samples in the form of biometric data and any associated information relating to the identity of an individual from whom such data is acquired or retained.

Exercising our general function

In exercising our general function, the Commissioner is required 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 (SPA) and the Police Investigations and Review Commissioner (PIRC). The Commissioner 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.

Details of how we exercise our general function can be viewed in our [Strategic Plan 2021/25](#). When discharging our statutory functions, we 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 functions extend. Our framework can be found as an Appendix to our [Code of Practice](#).

Foreword

by the Scottish Biometrics Commissioner

I have pleasure in presenting the first statutory 3-year review of my Code of Practice to the Scottish Parliament under Section 14 of the Scottish Biometrics Commissioner Act 2020.

The current Code took legal effect in Scotland on 16 November 2022, having been developed through extensive consultation and following the approval of Scottish Ministers and the Parliament at which point Scotland became the first country in the world to have a statutory Code of Practice to regulate how biometric data may be used for criminal justice and police purposes. This demonstrated Scotland leading the way in a progressive approach to public accountability for the use of biometric data for criminal justice and police purpose. In accordance with my legal mandate, I am required to keep the Code under review, to prepare and publish a report on my findings, and to lay a copy before the Scottish Parliament which I now do.

In this report to Parliament, I explain the antecedents to the Scottish Biometrics Commissioner Act and the need for a Code as well as explaining the mechanisms through which the first Code was developed. I then provide an update to Parliament on the operation of the Code since 2022 and in so doing provide assurance to Parliament that the acquisition, retention, use, and destruction of biometric data by Police Scotland, the Scottish Police Authority, and the Police Investigations and Review Commissioner is lawful, effective, and ethical and complies with the Code. I also advise the Parliament that there have been no breaches of the Code.

Finally, I signpost some areas from this review where the Code might benefit from minor updating and advise the Parliament of my intention to initiate consultation on proposed revisions over the winter of 2025/26 and for a revised Code to be presented for Ministerial approval during the 7th session of the Scottish Parliament. Until then, the current Code remains fit for purpose and has withstood the test of time.

The legislation requires that subsequent reviews and reports on the Code must be laid before Parliament no later than 4 years after the date on which the last such report was laid. Therefore, the next will be due in 2029, which is beyond my remaining period in office.

I wish to thank Police Scotland, the SPA, and the PIRC for engaging so willingly with the Code of Practice since 2022, and to congratulate them for continuing to exercise robust governance over significant volumes of biometric data, and in a way that is lawful, effective, and ethical, and therefore in the public interest.

Dr Brian Plastow

**Scottish Biometrics Commissioner
October 2025**



SG/2025/237 - prepared in accordance with the provisions of Section 7 of the Scottish Biometrics Commissioner Act 2020.

Antecedents to the Scottish Biometrics Commissioner Act 2020

In the years preceding the Scottish Parliament passing the Scottish Biometrics Commissioner Act 2020 including the requirement for a statutory Code of Practice, some significant publications had signposted opportunities to deliver improved and independent oversight.

In chronological order, these included a report published in 2009 by forensic expert Professor Jim Fraser, University of Strathclyde who had been invited to review the effectiveness of the fingerprint and DNA databases in Scotland under legacy policing arrangements. His report (now archived) amongst other things identified the absence of independent oversight. The Scottish Government accepted the recommendations in his report of 2009, which led to subsequent changes in law and practice.

That same year, Scottish Government had established the Scottish Fingerprint Inquiry under the Inquiries Act 2005 to look at the steps which were taken to (mis) identify and (mis) verify the fingerprints associated with the case of HM Advocate v McKie in 1999. The report (now archived) made eighty-six recommendations but did not consider the need for independent oversight as this was not part of the terms of reference for the inquiry. The report nevertheless shone a light on legacy policing arrangements and served as a catalyst for the accreditation of forensic science techniques, and establishing the sterile corridor between the police and scientific investigation that is a feature of the current crime scene to court model in Scotland.

In January 2016, an Audit and Assurance Review conducted by HM Chief Inspector of Constabulary in Scotland (HMICS) into the use of the Facial Search functionality within the UK Police National Database (PND) by Police Scotland again highlighted the need for independent oversight of biometric data. The report from HMICS contained four recommendations including two which specifically recommended the appointment of a Scottish Biometrics Commissioner and a statutory Code of Practice:

Recommendation 2

Scottish Government should work with Police Scotland, the SPA, COPFS and other interested parties to consider the establishment of an independent Scottish Commissioner to address the issues of ethical and independent oversight over biometric databases and records held in Scotland, with sufficient flexibility to embrace future technologies and relevant codes of practice.

and

Recommendation 4

Police Scotland and the Scottish Police Authority should consult with Scottish Government and other stakeholders on the potential development of a statutory Code of Practice for the use of biometric data in Scotland.

The following year, in May 2017 Scottish Government asked John Scott QC, then Solicitor Advocate (now Lord Scott KC, Senator of the College of Justice) to chair an Independent Advisory Group (IAG) to review the retention of custody images by Police Scotland. The Cabinet Secretary for Justice also asked that the Group consider the use and retention of biometric data more generally in policing to seek to establish an ethical and human rights-based framework which could be applied to existing, emerging and future biometrics in what is an important and fast-moving area of technology.

In March 2018, Scottish Government published the Report of the Independent Advisory Group on the use of Biometric Data in Scotland. The report made a total of nine recommendations including two recommendations relating to a future Code of Practice:

Recommendation 2

Legislation should establish a Code of Practice covering the acquisition, retention, use and disposal of DNA, fingerprints, facial and other photographic images (including custody images) and all existing, emerging and future biometrics for Police Scotland, the Scottish Police Authority and other bodies working in the field of law enforcement. The legislation should outline matters relating to review of the Code by the Scottish Parliament.

Recommendation 3

The Code of Practice should be the subject of detailed consultation. It should contain relevant human rights and ethical principles, address the implications of any presumption regarding retention and specify relevant procedures for applications from private citizens for deletion of biometric data. It should contain specific reference to validation of biometric technologies.

The report of the IAG also recommended:

Recommendation 8

There should be legislation to create an independent Scottish Biometrics Commissioner. The Commissioner should be answerable to the Scottish Parliament, and report to the Parliament. The Commissioner should keep under review the acquisition, retention, use and disposal of all biometric data by the police, SPA and other public bodies. The Commissioner should promote good practice amongst relevant public and private bodies, and monitor compliance with the Code of Practice.

These recommendations were accepted by Scottish Government and were the basis upon which legislation was then brought forward. However, whilst the IAG were clear that the oversight of the future Commissioner and therefore the reach of the Code of Practice could potentially extend beyond policing, the Bill and subsequent Act constrained the functions of the Commissioner to Police Scotland, the SPA, and the PIRC.

Accordingly, the Parliament may wish to note that Section 6 of the Scottish Biometrics Commissioner Act 2020, requires that Scottish Ministers must, before the expiry of the period of 12 months beginning with the day after the last day of the period to which the Commissioner's first Strategic Plan relates—

- a. prepare and publish a report on the Commissioner's functions, and
- b. lay a copy of the report before the Scottish Parliament.

The Commissioner's first Strategic Plan expires on 30 November 2025. Accordingly, Scottish Ministers will have to lay such a report in Parliament before 29 November 2026. This will be an opportunity for Ministers and the Scottish Parliament to consider whether the functions of the Commissioner, and therefore the reach of the Code (or separate Codes of Practice) could be extended to other public bodies for example to establish independent oversight of biometric data acquired under domestic Scottish legislation by the Scottish Prison Service which is shared extensively with criminal justice partners, or to oversight of biometric data acquired through Scotland's public safety camera network given the inexorable rise of facial recognition technologies in such contexts and the need to maintain public confidence and trust.



Chapter 1



Chapter 1

Arriving at the first Code of Practice in 6th Scottish Parliament

The Bill preceding the Scottish Biometrics Commissioners Act was passed by the 5th Scottish Parliament on 10 March 2020 and received Royal Assent on 20 April 2020. Due to delays associated with the Covid-19 Pandemic, the first Commissioner was appointed on 12 April 2021 and commenced activity to stand up the new function.

By the early summer of 2021, the Commissioner had developed a first draft of the current Code of Practice. The first draft was presented for discussion at the first meeting of the Commissioner's Advisory Group established under Section 33 of the Act and is recorded in the published minutes of the meeting which took place on 19 July 2021. Members of the Advisory Group provided feedback by the end of August 2021.

Between 01 October 2021 and 31 December 2021, an updated draft was then the subject of a 3-month closed consultation under the provisions of Section 10 of the Act. The statutory consultees with whom the Commissioner must consult being:

- a. the Scottish Ministers,
- b. the Lord Advocate,
- c. the Lord Justice General,
- d. the Faculty of Advocates,
- e. the Law Society of Scotland,
- f. the chief constable of the Police Service of Scotland,
- g. His Majesty's Inspectors of Constabulary in Scotland,
- h. the Scottish Police Authority,
- i. the Police Investigations and Review Commissioner,
- j. the Information Commissioner,
- k. the Scottish Human Rights Commission,
- l. the Commissioner for Children and Young People in Scotland, and

In addition to consulting the above, Section 10 of the Act provides that the Commissioner must also consult:

- m. such other persons as the Commissioner considers appropriate.

In total, thirty-five different agencies, organisations, officeholders, and individuals were consulted in the closed consultation phase. In circumstances where respondents gave consent to publication of their response, we published this on our website.

In parallel with the statutory consultation, the Commissioner had asked ScotCen to conduct a public attitudes survey during November and December 2021 to gauge public attitudes to the use of biometric data for policing purposes in Scotland to understand any concerns and to serve as a baseline. The independent survey results were published on the Commissioner's website in 2022 and largely demonstrated public confidence and support for the use of biometric data for policing purposes in Scotland.

The public attitudes survey was followed by the draft Code of Practice being exposed to a two month open public consultation via the Commissioner's website in April and May 2022. No public responses were received but it should be noted that the website had only been launched in January 2022 and accordingly had low footfall in the first few months. However, the Commissioner also engaged further with civil society through online discussions forums such as the RSA network in Scotland.

On Wednesday 15 June 2022, the draft Code of Practice was exposed to Parliamentary scrutiny via the Criminal Justice Committee having been laid in Parliament under [Section 11](#) of the Act. The Commissioners full evidence session with the Parliament's [Criminal Justice Committee](#) can be viewed [here](#). A [transcript](#) of the evidence session is also available.

On 20 June 2022, the Convenor of the Criminal Justice Committee Audrey Nicoll MSP wrote a [letter](#) to the Commissioner confirming that the Committee was content for the draft Code to proceed without amendment and to be brought into force in due course, in accordance with Section 12 of the Scottish Biometric Commissioner Act 2020. On 27 June 2022, the Commissioner [wrote](#) back to the Convenor thanking the Committee for their support and answering several ancillary questions that had followed on from the evidence session.

Following receipt of Parliamentary approval in June 2022, the draft Code was then submitted to Scottish Government officials for the approval of Scottish Ministers under [Section 12](#) of the Act with an accompanying [letter](#) from the Commissioner sent on 01 July 2020 to the then Cabinet Secretary of Justice.



On 8 August 2022, the then Cabinet Secretary for Justice wrote a [letter](#) back to the Commissioner confirming that he was content to approve the Code in terms of Section 12(2)(a) of the Scottish Biometrics Commissioner Act 2020, without modification. The Cabinet Secretary also confirmed that the next steps would be for Scottish Ministers to bring the Code into effect through laying the approved Code alongside the necessary Scottish Statutory Instrument (SSI) at Parliament under the affirmative procedure.

Scottish Ministers then laid the SSI on 7 September 2022 under [Section 13](#) of the Scottish Biometrics Commissioner Act 2020, for approval by resolution of the Scottish Parliament under [Section 37\(2\)](#), and the code took legal effect on 16 November 2022 via [The Scottish Biometrics Commissioner Act 2020 \(Code of Practice\) \(Appointed Day\) \(Scotland\) Regulations 2022](#).

At this juncture, Scotland became the first country in the world to have a statutory Code of Practice to regulate how biometric data may be used for criminal justice and police purposes and was widely reported in the popular media.³

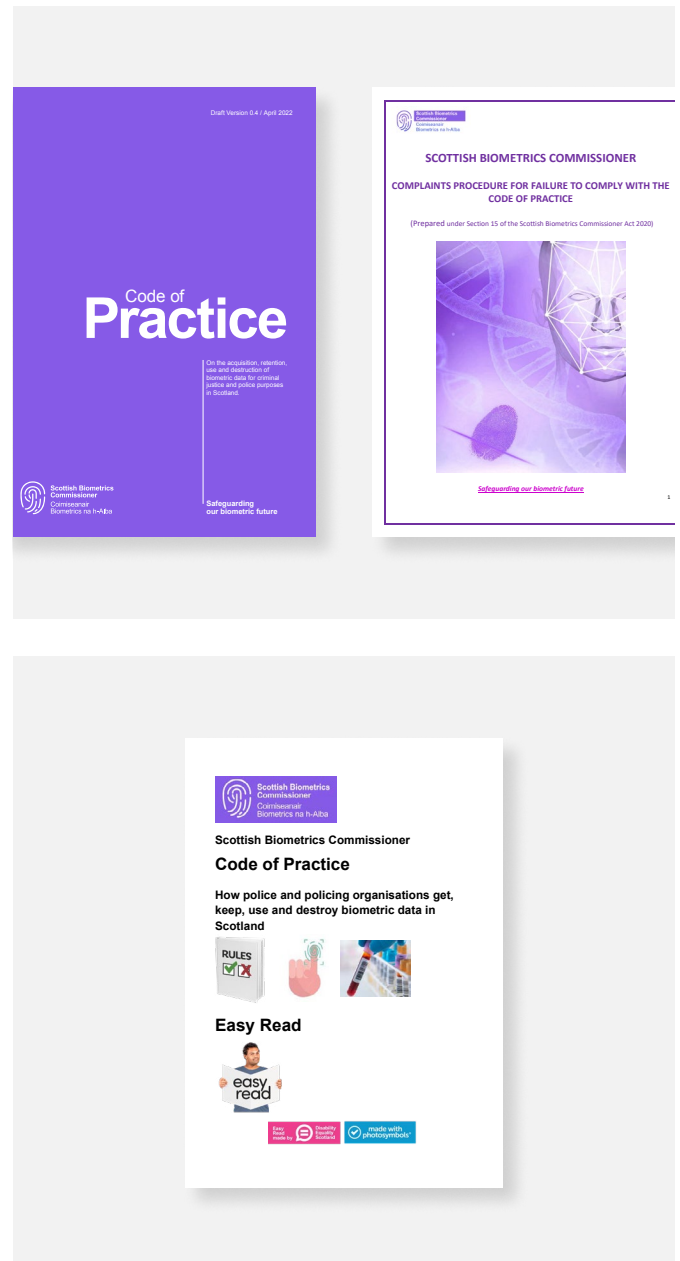
Following the Code of Practice taking legal effect on 16 November 2022, a complaints procedure was established by the Commissioner under the provisions of [Section 15](#) of the Act about failures to comply with the Code of Practice.

The complaints procedure enables persons whose biometric data is captured or held by Police Scotland, the SPA, or the PIRC (data subjects) to complain to the Commissioner in circumstances where the data subject believes that there may be a breach of the Code. Should the Commissioner determine that a person who is required by Section 9(1) to comply with the Code of Practice has not done or is not doing so, [Section 20](#) of the Act requires that the Commissioner must prepare and publish a report about that failure unless the Commissioner considers that it is sufficiently minor not to merit it.

³See for example: scottishlegal.com

Should the Commissioner make such a determination, he may also serve a compliance notice under Section 23 of the Act. A “compliance notice” is a notice requiring the person to whom it is issued to take the steps set out in the notice to address the person’s failure to comply with the code of practice. Section 27 of the Act, provides that where a person to whom a compliance notice has been issued refuses or fails, without reasonable excuse, to comply with the notice, the Commissioner may report the matter to the Court of Session.

The Commissioner has also published an Easy Read version of the Code of Practice in partnership with Disability Equality Scotland. The complaint procedure relating to the code is published on the Commissioner’s website.



Chapter 2



Chapter 2

The Code of Practice in operation 2022 to 2025

Relationship between the Commissioner's Strategic Plan and Code of Practice

The Commissioner's 4-year Strategic Plan 2021 to 2025 as approved by the Parliament Corporation sets out to Parliament how the Commissioner will discharge his legal powers and functions. This includes identified objectives and priorities for that period, an explanation of how those objectives and priorities will be achieved, a timetable for doing so, and estimated (or actual) costs.

The Commissioner has adopted a proactive and preventative approach to the delivery of his Strategic Plan whereby the Code of Practice together with our National Assessment Framework for biometric data outcomes encourage compliance with the Code whilst also providing a quality assurance substructure through which to assess compliance and more generally in the evaluation of overall direction, execution, and results. This with the strategic intention of supporting and promoting the lawful, effective, and ethical use of biometric data and technologies and in helping to improve independent oversight, governance, and scrutiny.

Page 5 of the Code of Practice explains that its purpose is to promote good practice, transparency, and accountability in Scotland by setting out an agreed framework of standards for professional decision-making which strikes the right balance between the needs and responsibilities of policing and our criminal justice system in terms of enforcing the law and keeping citizens safe, and the fundamental obligation to guarantee the basic human rights, privacy, and freedoms of individual members of the public. The Guiding Principles and Ethical Considerations outlined in the Code of Practice are supported by a National Assessment Framework for Biometric Data Outcomes in

Scotland developed by the Commissioner in 2021 in partnership with the Improvement Service in Scotland.

The 12 General Principles and Ethical Considerations within the Code contain the information and substructure required to assess compliance with the Code of Practice and serves as a self-assessment checklist for the bodies to whom the Code applies in terms of supporting their own distinct internal policies and governance arrangements.

Part 6 of the Code is forward looking and outlines the considerations and recommended process for adopting future biometric technologies or new applications of existing technologies. Part 7 and 8 of the Code describe the arrangements set out in the Scottish Biometrics Commissioner Act 2020, for the Commissioner to monitor and report on the Code, including where necessary the service of information or compliance notices. The closing chapters of the Code also explain the legal mechanisms available to the Commissioner for addressing any failures to comply with the Code, albeit that the strategic emphasis from the Commissioner is on encouraging and promoting compliance.



As already mentioned, the Scottish Biometrics Commissioner Act 2020 makes provision for a procedure by which an individual, or someone acting on an individual's behalf, may make a complaint to the Commissioner. This procedure is published separately from the Code.

In terms of 'how' the Commissioner's Strategic Plan for 2021 to 2025 which concludes on 30 November 2025 is achieved may be summarised as:

- a. A structured programme of formal compliance assessments on the Code of Practice for Police Scotland, the SPA, and the PIRC.
- b. A structured annual programme of thematic assurance reviews as reported to Parliament including any recommendations for improvement.
- c. The submission of Annual Reports and Accounts to Parliament as externally audited by the Auditor General for Scotland (Audit Scotland).
- d. Joint work with Scottish Government in reviewing the laws of biometric data retention under Sections 18 to 19C of the Criminal Procedure (Scotland) Act 1995.
- e. The investigation of complaints received from data subjects relative to the Code of Practice.
- f. The exercise of legal powers to ensure compliance with the Code.

This programme of work therefore also provides a convenient lens through which to evaluate the operation of the Code in the three years since it was approved by the Scottish Parliament and it is to the closer inspection of these matters that this section of the report to Parliament under Sections 14(1) and 14(2) of the SBC Act now turns.

Formal compliance assessments on the Code

The first round of formal compliance assessments took place over the winter of 2023/24 following the first anniversary of the Code of Practice taking legal effect. To ensure that the programme of annual compliance assessments did not place an unreasonable administrative burden on the organisations to whom the Code applies and thereby detract from important public service delivery, the assessment methodology was based on 'validated self-assessment' and followed a 5-stage process involving:

- Initial self-assessment by Police Scotland, the SPA, and the PIRC against a questionnaire containing sixty-four self-assessment questions drawn from the Commissioner's National Assessment Framework.
- Independent review of the self-assessment evidence provided in response to the Commissioner by the Commissioner's Office.
- Strategic validation conversations between the Commissioner and senior representatives of Police Scotland, the SPA, and the PIRC.
- The issue of a draft report by the Commissioner for factual accuracy checking by those to whom the Code applies.
- The publication of an overall assessment on compliance with the Code on the Commissioner's website.

Section 19 of the Scottish Biometrics Commissioner Act 2020 creates an offence for the Commissioner or a member of the Commissioner's staff to knowingly disclose confidential information except in certain prescribed circumstances. Accordingly, the written self-assessment return provided to the Commissioner by Police Scotland, the SPA, and the PIRC were exempted from publication on the grounds that they may contain sensitive operational information, which if released, could compromise the integrity of those operations, and thereby endanger public safety.

For 2023/24 the Commissioner's conclusion based on his independent assessment of the evidence available was that Police Scotland, the SPA, and the PIRC were all using biometric data and technologies in a lawful, effective, and ethical manner and that consequently each was compliant with the Code of Practice. An Executive Summary report for [Police Scotland](#), the [SPA](#), and the [PIRC](#) was then prepared by the Commissioner and published on his website.

The second round of formal compliance assessments took place over the winter of 2024/25. For reasons of proportionality and having regards to Police Scotland, the SPA, and the PIRC already having achieved full compliance with the Code, each were asked to revisit their self-assessment from 2023/24, to consider anything that had changed, and then to provide a letter of assurance to the Commissioner on compliance with the Code.

Again for 2024/25, the Commissioner concluded that all were using biometric data and technologies in a lawful, effective, and ethical manner and were compliant with the Code of Practice. The relevant Executive Summary reports for [Police Scotland](#), the [SPA](#), and the [PIRC](#) for 2024/25 prepared by the Commissioner may be viewed on the Commissioner's website.

Thematic Assurance Reviews

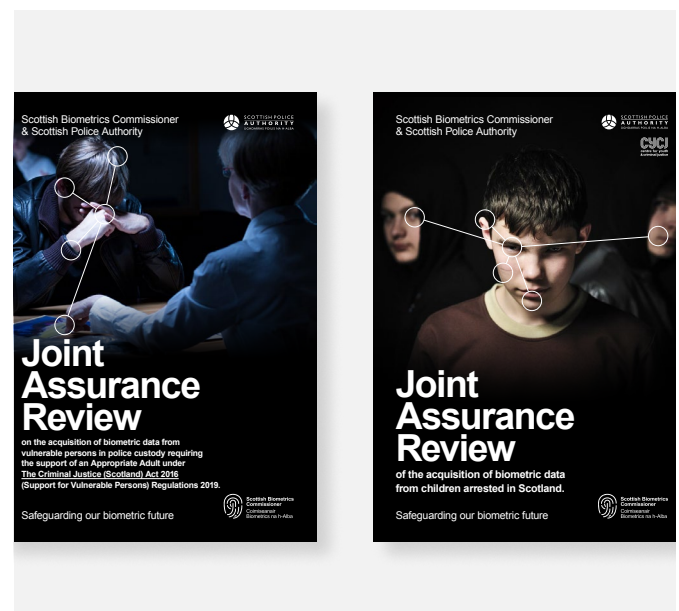
Since the Code was brought into legal effect on 16 November 2022, the Commissioner has laid five separate thematic assurance reviews in Parliament:

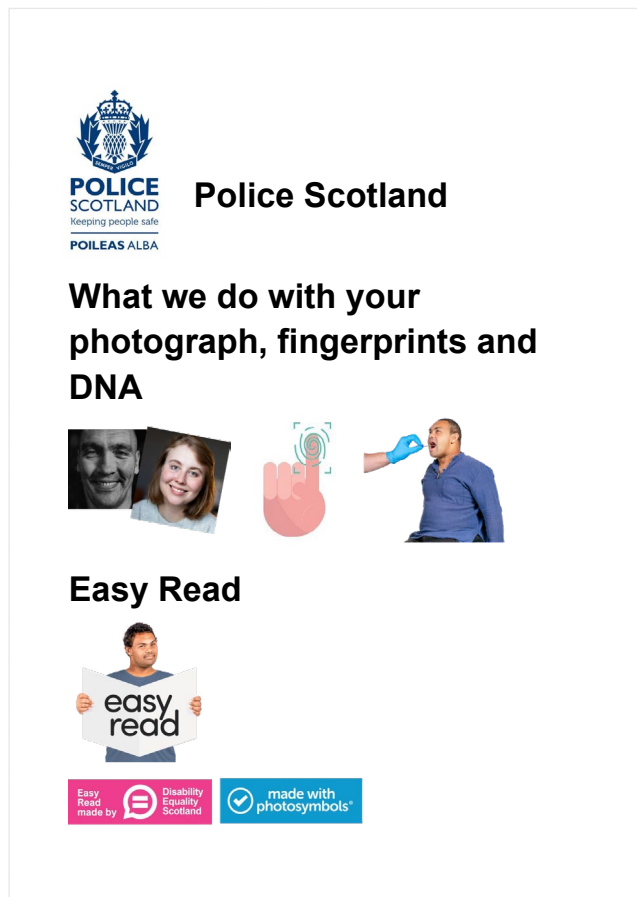
2023

In February 2023, the Commissioner published his first thematic assurance review conducted in partnership with the Scottish Police Authority. The published report examined the acquisition of biometric data from vulnerable persons in police custody requiring the support of an Appropriate Adult under the Criminal Justice (Scotland) Act 2016 (support for vulnerable persons) Regulations 2019. The report made

three recommendations for improvement to Police Scotland. Two of those recommendations related to upholding the information rights of data subjects and the third related to improving management information on all biometric data types to help inform strategic decision-making.

In March 2023, the Commissioner published his second thematic assurance review again conducted in partnership with the Scottish Police Authority and the Centre for Youth and Criminal Justice (CYCJ). The published report examined the [acquisition of biometric data from persons under 18 years of age \(children\) arrested in Scotland](#). The report made the same three recommendations as the vulnerable persons report but additionally made a fourth recommendation that Police Scotland should develop, consult on, and then publish operational policies, procedures, and practices for the acquisition of biometric data from children under 18 years of age that are consistent with the Justice Vision for Scotland and relevant standards for working with children in conflict with the law. There should be no general policy, which otherwise sanctions the blanket capture of biometric data from children. Any decision to take biometric data from a child should be taken on a case-by-case basis.





The decision to make vulnerable people and children the topics for our first two thematic assurance reviews was because of the legislative duty on the Commissioner under Section 2(3) of the Act which requires that in exercising the Commissioner's general function, the Commissioner must have regard to the interests of (a) children and young persons, and (b) vulnerable persons.

In the summer of 2024, Police Scotland successfully discharged these recommendations. In relation to upholding the information rights of data subjects Police Scotland introduced a new Biometrics Leaflet: 'Your photograph, fingerprints and DNA: What we do with them'. There are around 100,000 custody episodes recorded by Police Scotland each year and a sizeable proportion of those arrested will go on to be charged and will have at least one biometric data type captured. Such persons now receive the leaflet which also explains the functions of the Scottish Biometrics Commissioner, the Code of Practice, and the complaints procedure that accompanies the Code.⁴

Police Scotland has also published an Easy Read version of the information leaflet which is also available on the Police Scotland website in multiple language translations.

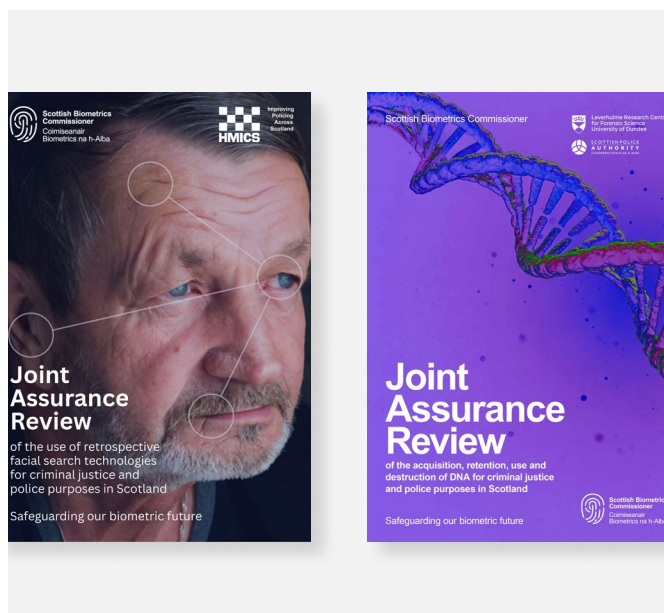
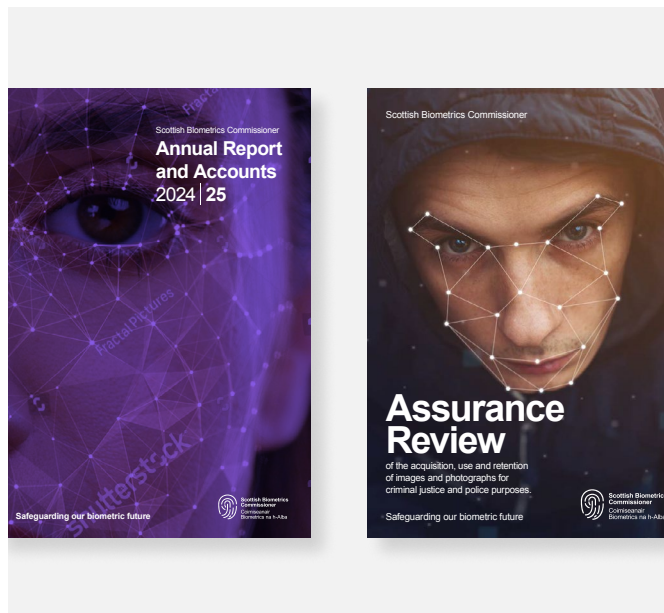
Police Scotland has also significantly improved its management information on biometric data to support strategic decision-making including the appointment of a Head of Biometrics and a dedicated biometrics page on the Police Scotland website where information is published to enhance public understanding.

Police Scotland also introduced new distinct policy in relation to the acquisition of biometric data whereby such data is mostly only taken from children to be charged with violent and/or sexual offending or otherwise by exception. In the year following the policy change, there has been a 7.5% reduction in the number of children having biometrics captured.

⁴In 2024/25, Police Scotland had seventy-two custody centres operational across Scotland.

2024

In March 2024, the Commissioner published his third thematic assurance review examining how Police Scotland, the SPA, and the PIRC acquire, retain, and use photographs and images. There were no specific recommendations arising from this work which noted as a key finding that the Commissioner was satisfied that Police Scotland, the SPA, and the PIRC were all compliant with the Code in relation to their uses of photographs and images.



2025

In February 2025, the Commissioner published his fourth thematic assurance review examining the acquisition, retention, use, and destruction of DNA by Police Scotland and the Scottish Police Authority Forensic Services. The joint assurance review was conducted in partnership with the SPA and with the Leverhulme Research Centre for Forensic Science at the University of Dundee. Although the review found no issues relative to compliance with the Code, it highlighted the crucial role of DNA in the investigation of serious crime and made seven recommendations for improvement to help strengthen strategy, policy, and practice.

Then in March 2025, the Commissioner published his fifth and most recent thematic assurance review examining the use of retrospective facial search technologies by Police Scotland within two UK policing databases. These were the UK Police National Database (PND) and the UK Child Abuse Image Database (CAID). The joint assurance review was conducted in partnership with HM Chief Inspector of Constabulary in Scotland (HMICS). Whilst the review revealed no issues relative to compliance with the Code, it made four recommendations to Police Scotland on policy, training, noting the limited effectiveness of the technologies in use, and producing better management information having regard to 98% of all retrospective searches yielding no potential intelligence leads in substantial part because of problems with the inadequate quality of reference images (custody images) held by Police Scotland.

The five assurance reviews conducted since the Code took legal effect as summarised above are one of several mechanisms through which the Commissioner may give ongoing assurance to the Scottish Parliament on compliance with the Code.

Annual Reports and Accounts

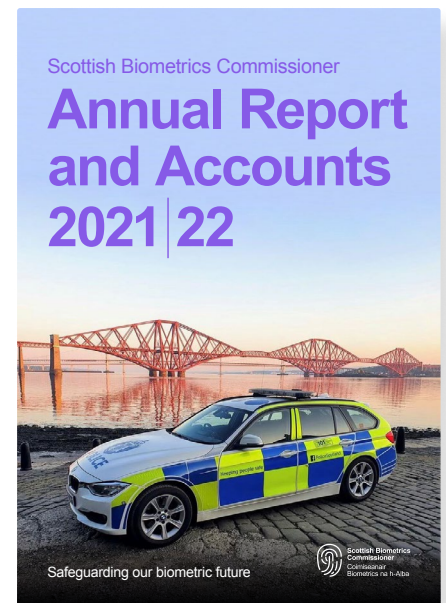
The Commissioner is required by Sections 31 and 32 of the Act, to lay an Annual Report and Accounts (ARA) in Parliament each year. The ARA is externally audited each year by the Auditor General for Scotland. All ARA's published by the Commissioner since 2022, confirm ongoing compliance with the Code.

Joint review of the retention of biometric data

In October 2024, and working in partnership with Scottish Government, a joint report was published comprising of a review of the retention of biometric data provided for under sections 18 to 19C of the Criminal Procedure (Scotland) Act 1995.

Amongst other things, the review found that the law on the retention of biometric data as set out under Sections 18 to 19C of the 1995 Act complies with human rights and recent legal judgments, based on the available evidence. In terms of future-proofing the legislation, the review found that a more robust evidence base was required to determine whether and how Scotland should change its existing legislation for biometric retention. The review made six recommendations in total including four for Police Scotland, the most significant of which was to set up a Short Life Working Group to develop an options appraisal for their retention policies for the biometric data of convicted persons, which is evidence-based; observes the need for proportionality and necessity; and complies with the law and relevant legal rulings of the European Court of Human Rights (ECtHR), particularly Article 8 ECHR. The policy options must expressly prohibit indefinite retention without periodic review.

Police Scotland are currently progressing the recommendations from the joint review and there are no concerns specific to compliance with the Code of Practice.

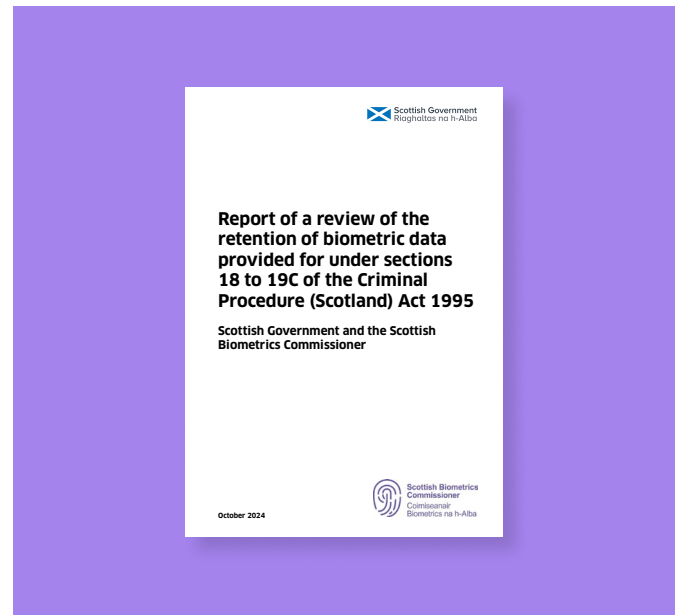


Complaints received relative to the Code

Since the Code took legal effect on 16 November 2022, a total of six complaints have been received by the Commissioner in the period to the drafting of this report in late September 2025. All are from persons arrested or otherwise engaged by Police Scotland as part of criminal investigations. Two of those complaints (33%) did not competently relate to biometric data or the Code meaning that there have been only four competent complaints with the legislative authority of the Commissioner and the Code.

In 2023, there were no complaints. In 2024, two complaints were received. One was resolved following investigation through explanation to the complainer that their data was lawfully held by Police Scotland in accordance with the Criminal Procedure (Scotland) Act 1995, due to them having been arrested and then convicted. In the other case the person was found not guilty after being charged, and the investigation established that their biometrics were already scheduled for destruction by Police Scotland in accordance with policy and guidance in the Code.

To date, four complaints have been filed in 2025, including the two which were closed after recording as the circumstances did not competently relate to biometric data or the Code.⁵ Of the remaining two, one was resolved after investigation by explanation to the complainer that their data was lawfully held by Police Scotland in accordance with the Criminal Procedure (Scotland) Act 1995, due to them having been arrested and then convicted. The other was resolved following investigation as Police Scotland confirmed that the persons data had already been deleted.



⁵These two complaints may be summarised as expressions of dissatisfaction about being arrested and taken into custody and were not complaints about biometric data. The complainers were redirected to Police Scotland

The exercise of other legal powers to ensure compliance

In the first three years of the operation of the Code, the Commissioner has had only one occasion to exercise his other legal powers to assess or ensure compliance. This happened on 22 April 2023, when the Commissioner served an [Information Notice](#) under [Section 16](#) of the Act on Police Scotland about its use of hyperscale cloud infrastructure as part of the Digital Evidence Sharing Capability (DESC) project. The notice to Police Scotland required the provision of information to ensure that Police Scotland were not breaching the data protection requirements contained within the Code relating to the UK Data Protection Act 2018 (DPA), the UK General Data Protection Regulations (UK GDPR) and the Law Enforcement Provisions of the DPA 2018 (Part 3). (Code of Practice: paragraph 69, page 29).

Whilst Police Scotland complied with the Information Notice, the response did not ameliorate the Commissioner's specific concerns, and he had occasion to write again to Police Scotland in October 2023 highlighting his concerns about Police Scotland 'offshoring' sensitive Scottish biometric data in the U.S. Cloud. [The Commissioner's letter](#) (subsequently commended for demonstrating due diligence by the Convenor of the Parliament's Criminal Justice Committee) highlighted data sovereignty and data security concerns that arise from Police Scotland uploading biometric data (and other law enforcement data) to the [Scottish Government Digital Evidence Sharing Capability \(DESC\)](#) pilot in Dundee, and highlighted a potential conflict with the Code.

Since then, the new [UK Data Use and Access Act 2025](#) (DUA Act) has introduced a recalibration of the UK's approach to international data transfers by replacing the threshold for adequacy of the EU GDPR from the "essential equivalence" standard with a "not materially lower" threshold. This means that a third country's legal framework for personal data protection no longer needs to match the GDPR in form or substance. It merely must not

fall materially below UK standards. This reform affects both adequacy decisions and transfer mechanisms, signalling a more flexible, risk-based approach to cross-border data flows.

Therefore the UK has shifted from the systemic adequacy model used in the EU (and confirmed in [Schrems II](#)) to a risk-based, contextual model grounded in material harm to data subjects. This divergence lowers the adequacy bar for lawful transfers from the UK and could create operational divergence for dual EU–UK compliance regimes. Whilst further guidance from the UK Information Commissioner (ICO) is anticipated, Police Scotland currently remain in compliance with the Code on this matter.

Other powers available to the Commissioner such as those relating to [compliance notices](#) have, at the time of writing, not been required and the Commissioner is of the opinion that his current legal powers are adequate.

Chapter 3



Chapter 3

Next Steps: Updating the Code for approval by the 7th Scottish Parliament

As indicated already in this report, at the point when Scottish Ministers and the Scottish Parliament approved the Code of Practice on 16 November 2022, Scotland became the first country in the world to have a legally binding Code on the use of biometric data for criminal justice and police purposes. As noted by the Cabinet Secretary for Justice, this has seen Scotland leading the way in a progressive approach to public accountability for the use of biometric data.

In the three years between then and now, there have been no breaches of the Code by Police Scotland, the SPA, or the PIRC and all are to be highly commended for the positive way in which they have responded to ensure compliance. In discharging his legal duty to support and promote lawful, ethical, and effective use, the Commissioner wishes to place on public record the outstanding level of support that his function has received from those policing bodies in Scotland in pursuit of a common public interest.

As mentioned, in those three years, Scotland will have witnessed somewhere in the region of 300,000 custody episodes with many of those episodes resulting in the acquisition of biometric data from persons charged with criminal offences.⁶ Over the same period, biometric data has also been acquired from victims of crime, and sometimes from witnesses or others (for example as part of the process of post-conviction sex offender registration) or on another lawful or sometimes voluntary basis. Yet despite those high volumes, and the provision of an information leaflet since the summer of 2024 to arrested persons whose data is captured by Police Scotland after being charged, the volume of complaints received by the Commissioner is exceptionally low (only four competent complaints) with not a single complaint over those three years being substantiated as breaching the Code.



“The code of practice for Scotland is leading the way in a progressive approach to public accountability for police use of biometric data”

Angela Constance
Justice Secretary

⁶Based on official Police Scotland data on custody throughput published in the Annual Report for 2022/23, 2023/24, and 2024/25 from the Independent Custody Visitor Association in Scotland (ICVA) where the three-year total custody throughput was 303,761 episodes.

This is an extraordinarily good news story as it is suggestive of person-centred justice services where the needs and values of persons whose biometric data is captured following arrest or perhaps because they are a victim of crime or for some other reason is respected meaning that they largely understand the reasons for their biometrics being taken. This is entirely in keeping with the aspirations of the [Justice Vision for Scotland](#) and the delivery of person-centred justice services. Such prominent levels of apparent public confidence in the use of biometrics for criminal justice and police purposes from offenders and victims are also reflected in the findings of independent research into general public attitudes in the wider community in Scotland conducted independently for the Commissioner in [2021](#) and again in [2025](#).

Whilst the Code has stood the test of time and is still fit for purpose, it is equally the case that recent changes to UK legislation such as [The Independent Commission for Reconciliation and Information Recovery \(Biometric Material\) Regulations 2024](#), and the new [UK Data \(Use and Access\) Act 2025](#) will have implications for Scotland requiring incorporation to the Scottish Code during 2026.

Other factors such as the inexorable rise of Artificial Intelligence (AI) in policing and the application of AI to biometric enabled technologies and biometric templates may require updates to the Code. More generally, a 'refresh' after the Parliament has considered this report will also sweep up other update opportunities such as providing a hyperlink to the Commissioner's complaints procedure and on referencing the public sector equality duty ([PSED](#)) on issues such as recording the ethnicity of biometric data subjects, and in ensuring further protections for children and vulnerable adults.

Accordingly, the Commissioner has determined that in accordance with the provisions of Section 7(1) of the Act, the process to revise and update the Code will commence over the winter months of 2025/26, but because of the electoral timetable, any revised Code will not be presented for Ministerial approval until after the 7th session of the Scottish Parliament has commenced. This is because the legislative provisions of Sections 8, 10 and 12 of the Act equally apply to a revised code of practice meaning that the necessary legislative formalities could not be achieved in the time left available to the current session of Parliament.

Therefore, the Commissioner must observe this key consideration and will consult on any proposed revisions to the Code as required by Section 10 of the Act after this report has been laid in Parliament. However, the subsequent approval of Scottish Ministers of any revised version of the Code will be sought after the Scottish elections in 2026, meaning that it would be unlikely to take legal effect before late 2026 and more likely in 2027. Until such time, the current Code of Practice remains fit for purpose and continues to operate.



**Scottish Biometrics
Commissioner**
Coimiseanair
Biometrics na h-Alba