

Scottish Biometrics Commissioner Act 2020:

Annual Compliance Assessment for Statutory Code of Practice 2023/24.



Introduction

On 16 November 2022, the Scottish Biometrics Commissioner's statutory [Code of Practice](#) took legal effect after being approved by the Scottish Parliament and Scottish Ministers. The Code covers the acquisition, retention, use, and destruction of biometric data for criminal justice and police purposes by Police Scotland, the Scottish Police Authority (SPA), and the Police Investigations and Review Commissioner (PIRC). The Code is designed around twelve guiding principles and ethical considerations to which Police Scotland, the SPA, and the PIRC must comply.

Further information on the legal basis for the Code of Practice can be found in sections 7 to 27 of the [Scottish Biometrics Commissioner Act 2020](#). The meaning of 'biometric data' in the Scottish legislation is distinct and may be found in section 34 of the Act.

Programme of annual compliance assessments

The Commissioner's [4-year Strategic Plan](#) (as revised), covering the period from 01 December 2021 to 30 November 2025, sets out the intention to conduct a rolling programme of annual compliance assessments for the [Code of Practice](#).

Assessment methodology

To ensure that the programme of annual compliance assessments does 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 against a questionnaire containing sixty-four self-assessment questions provided by the Commissioner.
- independent review of the self-assessment evidence provided in response to the questionnaire.
- a strategic validation conversation.
- a draft report prepared by the Commissioner for factual accuracy checking, and;
- the publication of an overall assessment on compliance with the Code on the Scottish Biometrics Commissioner website.

The independent validation of the self-assessment evidence was conducted using the Scottish Biometrics Commissioner's [National Assessment Framework](#) of quality indicators for biometric data as also detailed in Appendix 'A' (pages 55 to 60) of the Code of Practice.

Scope of validated self-assessment

The scope of the independent validation of the self-assessment evidence provided by Police Scotland re compliance with the statutory Code of Practice in Scotland is restricted to matters within the legislative authority of the Scottish Biometrics Commissioner assigned through the devolved competence of the Scottish Parliament. It does not therefore consider or infer compliance with:

- UK GDPR, The UK data Protection Act 2018, or any matter within the statutory oversight of the UK Information Commissioner (ICO).
- Arrangements for the retention of biometric data obtained under either the UK Counter-Terrorism and Border Security Act 2019, or Schedule 7 to the UK Terrorism Act 2020, and held in relation to non-convicted persons under the provisions of a National Security Determination (NSD), within the statutory oversight of the Biometrics Commissioner for England and Wales.
- The Regulation of Investigatory Powers (Scotland) Act 2002 (RIPSA), or other legislation governing covert activity within the statutory oversight of the UK Investigatory Powers Commissioner's Office (IPCO).
- Forensic Science accreditation across a broad range of examination and testing activities within the remit of UKAS the National Accreditation Body for the United Kingdom.

Handling of Confidential Information

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 is exempted from publication on the grounds that it may contain sensitive operational information, which if released, could compromise the integrity of those operations, and thereby endanger public safety.

Areas for further development self-identified by Police Scotland

As part of its internal governance arrangements including the self-assessment on compliance with the Code of Practice, Police Scotland is currently progressing the following developments:

- Progressing the actions from internal audit, including the development of joint biometrics strategy with the SPA and reporting on progress to the SPA Audit and Risk Committee.
- Establishing a dedicated biometrics resource(s) to support strategic governance arrangements.
- An ongoing data governance programme including the closure of legacy databases.
- Progressing the four recommendations made to Police Scotland in March 2023, arising from the Assurance Reviews laid before the Scottish Parliament by the Scottish Biometrics Commissioner in relation to the acquisition, retention, use, and destruction of biometric data relating to [Children](#) and [Vulnerable Adults](#) requiring the support of an appropriate adult.
- Establishing external assurance mechanisms as part of data ethics governance arrangements.
- Working with Scottish Government and the Scottish Biometrics Commissioner on a review of the laws of the retention of biometric data during 2024.

Complaints about the Code

There have been no complaints received by the Commissioner in the past 12 months from data subjects relative to non-compliance with the Code by Police Scotland.

Reporting breaches of the Code of Practice

In circumstances where the Commissioner determines that the Code is not being complied with, the Commissioner must prepare and publish a report about that failure and lay a copy of the report before the Scottish Parliament. No such reports have been laid in Parliament during 2023/24.

Overall Conclusion and Determination

My conclusion based on independent assessment of the evidence available to me for fiscal year 2023/24 is that Police Scotland are using biometric data and technologies in a lawful, effective, and ethical manner.

Consequently, my overall determination for 2023/24 is that Police Scotland is currently compliant with the Scottish Biometrics Commissioner's Code of Practice.

Brian Plastow

Dr Brian Plastow
Scottish Biometrics Commissioner

Date: 18 January 2024