



Scottish Biometrics
Commissioner
Coimiseanair
Biometrics na h-Alba

Submission to the Fourth Universal Periodic Review Cycle for The United Kingdom of Great Britain and Northern Ireland



Scottish Biometrics Commissioner

<https://www.biometricscommissioner.scot/>

March 2022

1. Introduction

1.1. The Scottish Biometrics Commissioner (SBC) is a statutory public body set up 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 in Scotland. The Scottish [Biometrics Commissioner Act 2020](#) established the office of the SBC as an independent public body with general powers and specific functions. Dr Brian Plastow was nominated by the Scottish Parliament and appointed by Her Majesty the Queen as the first Scottish Biometrics Commissioner in 2021. The SBC's office became fully operational in 2022.

1.2. This briefing focuses on the new policy and legislative framework introduced in Scotland in relation to the UK UPR 3rd Cycle recommendations: D1 and D46 of the 27 Session of the UN Human Rights Council.

2. Scotland Constitutional Framework

2.1. The establishment of the Scottish Parliament and the Scottish Government via the Scotland Act in 1998 sets out that all policy areas which are not explicitly reserved to the UK Parliament are devolved to the Scottish Parliament. This indicates that the Scottish Parliament has full legislative powers over devolved matters. Including areas such as criminal justice and policing as well as many aspects of education and training, which are within the powers of the Scottish Parliament and responsibilities of the Scottish Government.

2.2. The UK Human Rights Act 1998 (HRA) is embedded into the Scotland Act 1998. As such it is at the centre of Scotland's devolution settlement. The Scottish Parliament may not pass legislation that is inconsistent with the rights in the HRA - any such statute would be found not to be law. Observing and implement all of the UK's international human rights obligations relating to devolved matters is the responsibility of both the Scottish Parliament and Scottish Government Ministers.

2.3. While the UK is the State Party to the United Nations (UN), UN bodies have increasingly recognised the value of specific concluding observations and recommendations for the Scottish Government. This has been recognised as a way to ensure that law, policy and practice in Scotland is fully compliant with all international human rights law and policy. Devolution has made a real difference to the lives of the people in Scotland since the Scottish Parliament was established, and recognises the wishes of the people to have more say over matters that affect them.

3. Follow up and Developments in Scotland

Theme: D46 Right to private life, privacy:

Recommendations from Liechtenstein, Brazil, Paraguay and Haiti.

Theme: D1 Civil & political rights - general measures of implementation

Recommendation from Ecuador and supported by the UK.

3.1. The biometrics field is evolving rapidly and offers good potential in the detection and prosecution of crime and, thereby, the delivery of public safety. However, the use of biometric technology and biometric data raises a range of legal, ethical and human rights challenges. As laws around the world struggle to keep pace with technological advances on biometrics and the need to protect the public while respecting individuals' human rights, Scotland has seized this opportunity to improve both accountability and standards. The following paragraphs describe this progress.

3.2. In June 2017, the Cabinet Secretary for Justice tasked an [Independent Advisory Group](#) (IAG) to consider the collecting, use and retention of biometric data in policing. In March 2018, the IAG made a number of recommendations to the government, including the introduction of legislation to create an independent Scottish Biometrics Commissioner.

3.3. In its response to the IAG's report, the Scottish Government accepted the recommendations and committed to bringing forward legislation on biometrics. A Bill for the Scottish Biometrics Commissioner Act (SBC Act) was introduced to the Scottish Parliament in 2019 and received Royal Assent on 20th April 2020.

3.4. The SBC Act 2020 created an independent Commissioner who plays a central role in setting and promoting working standards surrounding the use of biometrics in a policing and criminal justice context. The Commissioner is entirely independent of the Scottish Government and must provide annual and other reports to the Scottish Parliament. There are a number of innovative legislative features in the Act, including a definition of biometrics; legislation to establish a Code of Practice covering the acquisition, retention, use and disposal of emerging and future biometrics in the criminal justice context; and a number of enforcement powers to ensure compliance with the Code of Practice.

3.5. It is worth noting that the definition of biometric data adopted in Scotland is broader than elsewhere in the UK. It extends to DNA, fingerprints, photographs, or other recordings of any part of an individual's body from which identity information can be derived. It also includes biological samples and materials taken from any part of an individual's body, and to all information derived from such samples (section 34 of the SBA 2020).

3.6. The SBC's general function includes to keep under review the law, policy, and practice as well as promoting public awareness and understanding (section 2 of SBC Act 2020). One of the SBC's specific functions that we want to highlight for this report relates to the preparation of a statutory Code of Practice on the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes (section 11 (1) of SBC Act 2020). The Code of Practice gives key consideration to the promotion and protection of human rights, the right to privacy and increasing public confidence in the use of biometric data.

3.7. The SBC Act 2020 also provides for a number of enforcement powers to promote and monitor the impact of a statutory Code of Practice in Scotland (Sections 16, 20 and 23 of the SBC Act 2020). There is also a complaint procedure by which an individual, or someone acting on an individual's behalf, may make a complaint to the SBC on compliance with the Code of Practice (Section 15 of the SBC Act 2020).

3.8 Since his appointment the Commissioner drafted the Code of Practice and consulted widely on it from October to December 2021. The Code of Practice seeks to promote public confidence and trust through the establishment of a framework for professional decision-making that appropriately balances the needs of law enforcement with the human rights of individuals and groups. The responses received by consultees to date reflect a supportive and positive position to the draft Code of Practice.

3.9. The draft Code of Practice is now with Scottish Government Ministers for approval (required by section 11 (1) of SBC Act 2020) and will be laid before the Parliament in summer 2022. The Commissioner is also planning to hold a wider public consultation in April 2022. Once the Code of Practice is assented by the Scottish Parliament, Scotland will become the first UK country¹ to have detailed legislation, a statutory Code of Practice on the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes.

3.10. As the ultimate goal of UPR is the improvement of the human rights situation in every country with significant consequences for people around the globe, we plan to share our experiences and keep informed the UN Human Rights Council and other treaty bodies of further progress in this area. We also welcome any further discussion in any of the issues presented.

Contact Person: *Diego Quiroz, Operations Manager. Scottish Biometrics Commissioner. Email: Diego.Quiroz@biometricscommissioner.scot*

¹ As our research seems to indicate Scotland would be the first country in the world to have a statutory Code of Practice on biometrics in a policing and criminal justice context.