

FROM THE OFFICE OF THE JUSTICE MINISTER



Department of  
**Justice**

An Roinn Dlí agus Cirt

Mánnystrie O tha Laa

[www.justice-ni.gov.uk](http://www.justice-ni.gov.uk)

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Kathy O'Hanlon  
Clerk to the Committee for Justice  
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08 August 2025

Dear Kathy,

## **JUSTICE BILL – PHOTOGRAPHS AS BIOMETRIC DATA**

I refer to your letter dated 1 July 2025 relating to the queries raised by the Justice Committee regarding the issue of photographs and whether they should be included in the new retention framework contained in Part 1 of the Justice Bill. Responses to the queries are provided below.

### **Detailed explanation of why photographs are not included as biometric data in the Justice Bill or the proposed biometrics amendment**

It is the Department's view that the task at the present time is to provide a resolution to the compliance issues associated with the amendments to the Police and Criminal Evidence (NI) Order 1989 (PACE NI) made by the Criminal Justice Act (NI) 2013, which was never commenced and which related to DNA and fingerprints only.

Therefore, the proposed new retention framework for Northern Ireland relates to DNA and fingerprints only. This is in line with the retention framework in England and Wales (Part 5 of the Police and Criminal Evidence Act 1984), which has been operating since 31 October 2013 without challenge.

It is important to note that the Council of Europe's Committee of Ministers (1483<sup>rd</sup> meeting, 5-7 December 2023)<sup>1</sup> noted with satisfaction that the retention of photographs in England and Wales is governed by a separate framework. A similar approach exists in Northern Ireland, with photographs being included within the PSNI Review, Retention and Disposal Schedule<sup>2</sup> that identifies the disposal arrangements for records created by the PSNI. The Schedule complies with the requirements in the Public Records Act (NI) 1923 and the Disposal of Documents Order (S.R & O. 1925 No 167).

The Department is cognisant of the continuing debate on the definition of images as a biometric and the ongoing development of facial matching processes and technology in this area. Regarding the definition of images as a biometric, it is worth noting that Article 4(4) of the EU GDPR defines biometric data as *“personal data resulting from specific technical processing relating to the physical, physiological or behavioural characteristics of a natural person, which allow or confirm the unique identification of that natural person, such as facial images or dactyloscopic data”*. Furthermore, the Information Commissioner's Office, in its published biometric recognition guidance,<sup>3</sup> advises that whilst someone's physical characteristics may be shown in a photo, this is not enough to make that photo biometric data; it is only when something else happens to that photo, a discrete processing operation or set of operations that result in something that allows or confirms someone's unique identification, that the result becomes biometric data.

In addition, the Department considers that the retention of photographs needs to be considered alongside the use of such photographs and the need for legislation in this regard. The Department is of the opinion that these important matters should be afforded the appropriate time and space, to allow for engagement with key stakeholders and to take forward a public consultation. The Department notes that in England and Wales, and in Scotland, work is underway on the development of policy and legislation on the retention and use of photographs, including the use of technologies such as facial

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<sup>1</sup> <https://hudoc.exec.coe.int/eng?i=004-55601>

<sup>2</sup> <https://www.psni.police.uk/sites/default/files/2025-07/Police%20Service%20of%20Northern%20Ireland%20%28PSNI%29%20-%20Review%2C%20Retention%20and%20Disposal%20Schedule%20V0.4.pdf>

<sup>3</sup> <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/lawful-basis/biometric-data-guidance-biometric-recognition/>



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recognition. The Department proposes taking forward similar work to consider the need for policy and legislation in Northern Ireland, taking account of ongoing developments in England and Wales and in Scotland (including any proposed legislation) and technological developments.

Furthermore, the Justice Bill provides for the appointment of a new Northern Ireland Commissioner for the Retention of Biometric Material with the Commissioner having a role (new Article 63Z) in keeping new areas of biometric technologies under review and providing advice to the Department on future legislation. The Department would want to involve the Biometrics Commissioner in its policy development work.

The Department advised officials from the Department for the Execution of Judgments of the European Court of Human Rights of its approach to images during a regular update session on 28 September 2023 and no objections or concerns were raised.

**Whether the Department believes that the absence of retention periods of photographs is compliant with the ECHR, particularly Article 8, and with the judgment by the ECtHR in *Gaughran v UK***

**How the absence of retention periods for photographs could be defended in the event of legal challenge via judicial review or a human rights challenge**

Following receipt of Senior Counsel advice, the Department is satisfied that the absence of retention periods in the Justice Bill does not raise any ECHR compliance issues and that the exclusion of photographs from the scope of the Bill does not render the new legislation unlawful. The Department believes that the positive duties under Article 8 of the ECHR does not give rise to a positive duty to enact legislation. The Department also believes that the PSNI approach of implementing the same DNA and fingerprints retention regime for photographs on a non-statutory basis still addresses the key failings identified in *Gaughran v UK* of a blanket and indiscriminate approach without the possibility of a review and will ensure compliance with the ECHR and *Gaughran* judgment.



## **How existing photographs will be treated under data protection law and any new retention schedule**

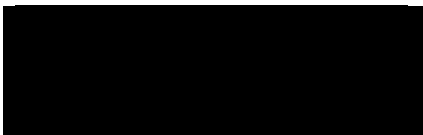
Data Protection legislation continues to apply to photographs held by the PSNI and it is for PSNI to ensure compliance, including in relation to retention (see above reference to PSNI Review, Retention and Disposal Schedule). The PSNI will operate the same retention and deletion policy on a non-statutory basis<sup>4</sup> regarding photographs as the new legislative framework will provide for DNA and fingerprints. Therefore, once the new retention framework for DNA and fingerprints comes into effect, the result will be the same i.e. an individual's photographs will be deleted at the same time as their DNA and fingerprints.

## **The Department's views on the definition of biometrics applied in Scotland**

Whilst the definition of biometric data in Section 34(2) of the Scottish Biometrics Commissioner Act 2020 includes photographs, the Department's view is that this definition relates to the broader oversight role of the Scottish Biometrics Commissioner, rather than the statutory retention framework in Scotland. The statutory retention framework is contained in sections 18-20 of the Criminal Procedure (Scotland) Act 1995 and relates to fingerprints and samples and does not include images. The 1995 Act is also silent on retention periods.

I trust you will find this helpful.

Yours sincerely,



**DAVID GRAHAM  
DALO**

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<sup>4</sup> [https://www.psnipolice.uk/sites/default/files/2023-11/Retention%20and%20Deletion%20of%20PACE%20Biometrics%207%20November%202023\\_3.pdf](https://www.psnipolice.uk/sites/default/files/2023-11/Retention%20and%20Deletion%20of%20PACE%20Biometrics%207%20November%202023_3.pdf) The PSNI's interim service instruction regarding the retention and deletion of PACE biometrics states that custody images will be deleted at the same time as DNA & fingerprints.



**Northern Ireland Assembly  
Committee for Justice**

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1 July 2025

**Justice Bill – Photographs as Biometric data**

Dear David

At its meeting on 26 June 2025, the Committee for Justice received a briefing from the Assembly Legal Services on the consideration of photographs as biometric data.

The Committee is concerned that photographs could potentially be processed in such a way that they should be considered to be biometric data. The Committee agreed to ask the Department for the following:

- a detailed explanation of why photographs are not included as biometric data in the Justice Bill or the proposed biometrics amendment;
  - whether the Department believes that the absence of retention periods for photographs is compliant with the European Convention on Human Rights, particularly Article 8, and with the judgement by the European Court of Human Rights in *Gaughran vs UK*;
  - how the absence of retention periods for photographs could be defended in the event of legal challenge via judicial review or a human rights challenge;
- and

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- how existing photographs will be treated under data protection law and any new retention schedule.

You will be aware that the Committee has previously taken evidence from the Scottish Biometrics Commissioner on the Justice Bill and the proposed biometric amendment, who applies the definition of biometrics as set out in Section 34(2) of the Scottish Biometrics Commissioner Act 2020:

- (1) 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.*
- (2) For the purposes of subsection (1), “biometric data” 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 samples.*

The Committee agreed to ask for the Department’s views on the definition of biometrics applied in Scotland.

I should appreciate a response by 22 July 2025.

Yours sincerely

*Kathy O’Hanlon*

**Kathy O’Hanlon**  
**Clerk to the Committee for Justice**