

Introduction

1. This short paper has been prepared for the NI Committee for Justice by the Scottish Biometrics Commissioner. The paper is submitted in advance of the Commissioner giving evidence to the Committee at its meeting on 27 February 2025 to discuss the NI Justice Bill 2024, and specifically sections of the Bill relating to biometric data and the establishment of a NI Biometrics Commissioner.
2. The Scottish Biometrics Commissioner is Dr Brian Plastow. He was appointed on 12 April 2021 by the late Queen Elizabeth II on the nomination of the Scottish Parliament. He is independent of Scottish Government and reports directly to the Scottish Parliament. He has worked in policing and justice in Scotland since 1978 and was formerly a senior police officer and lead inspector with HM Chief Inspector of Constabulary in Scotland.

About the Scottish Biometrics Commissioner

3. The Scottish Biometrics Commissioner is established under the Scottish Biometrics Commissioner Act 2020.
4. 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)
5. 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 functions¹.
6. 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)

¹ Scottish Biometrics Commissioner Act 2020, Section 4

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 Commissioner's functions in Scotland extend not only to DNA profiles and fingerprints but also to photographs, images and recordings and to the source materials from which a biometric data record can be created, for example a DNA mouth swab.

7. The Scottish Biometrics Commissioner also maintains a statutory [Code of Practice](#) and regularly lays thematic Assurance Reviews and Annual Reports before the Scottish Parliament which are considered by the Parliament's Justice Committee. Further information can be found on the Commissioner's [website](#).
8. Although his legal functions extend only to Scotland, the Commissioner also sits in an advisory capacity on the UK Forensic Databases Information Service (FINDS). This is the strategic UK forum that oversees the running of the UK DNA Database (NDNAD), and the UK Fingerprint Database (IDENT1) together with exchange mechanisms between the UK and EU and the UK and Interpol. The Biometrics and Surveillance Camera Commissioner for England and Wales also sits on FINDS, albeit the post has been gapped by the Home Office since August 2024, as does a representative of the UK Information Commissioner (ICO).
9. Importantly, the Committee should be aware that there is currently a UK programme underway to establish a single UK database of custody images to support the application of retrospective image searching (as currently exists within the UK Police National Database [PND] and [CAID] the UK Child Abuse Image Database). This database will also support strategic facial matching capability in UK policing including live facial recognition where required, as well as the anticipated future UK and EU exchange of facial images under arrangements like those which currently exist for DNA and Fingerprints. The relevance of this observation is that the biometric templates derived from custody photographs is the fastest growing area of biometrics in UK policing necessitating robust independent oversight mechanisms to ensure public confidence and trust.

NI Justice Bill 2024: General Comments

10. In general terms, the NI Bill is to be welcomed and there is little doubt that the appointment of a NI Biometrics Commissioner will significantly strengthen public trust and police accountability with regards to the lawful, effective, and ethical use of DNA profiles and fingerprints. The provisions of the Bill which seek to better adhere to relevant human rights rulings on retention periods are also welcome albeit the proposals around maximum retention periods could still conflict with the requirement

for periodic review under UK data protection law. This is something that the Committee may wish to take further advice on from the UK Information Commissioner (ICO).

11. The Committee may also wish to note that Scottish Government and the SBC has recently reviewed [the laws of retention of biometric data in Scotland](#) and have recommended that Police Scotland should review its retention policy for biometric data which must incorporate periodic review to comply with the requirements of UK data protection law and relevant legal rulings.
12. In determining the nature and extent of the Bill and the Commissioners proposed oversight the NI Bill largely follows the general approach in England and Wales where the oversight of the Home Office Commissioner (post currently vacant) extends solely to DNA profiles and fingerprints despite all four previous Home Office Commissioner citing this as a strategic mistake by the Home Office.
13. When someone is arrested by the Police in the UK and is to be charged with an offence it is normal practice for their image, fingerprints, and DNA to be captured at the same time during the custody episode. There are exceptions to this for persons previously arrested and already DNA confirmed. Therefore, not extending oversight and safeguards to the biometric templates derived from custody images as then uploaded to PND and CAID seems paradoxical. The original Home Office thinking under the Protection of Freedoms Act 2012, appears to have been that photographs were not of themselves biometric data. However, nowadays biometric templates are derived from such photographs and are then applied to AI enabled searching platforms and are most categorically biometric data. Accordingly, the Committee may wish to consider whether the most frequently used police biometric should be excluded from the protections of the Bill and from the safeguards and oversight of the Commissioner.
14. There is also reference in the Bill articles to DNA only needing to be taken once because 'DNA does not change' and to there being no need for the police to retain the source sample for these reasons. The Committee should be aware that there are exceptions to this general rule of DNA not changing for example recombinant or chimeric DNA which is where someone's DNA can be changed because of a medical procedure such as a transplant. In such circumstances, persons have been found to carry their own DNA and that of the donor.
15. However more fundamentally DNA profiling technology in policing does change every few years, and if the police in Northern Ireland are not to be permitted to retain the source DNA sample vial taken as part of an arrest then forensic scientists will be denied the opportunity to 're-profile' that sample to a more advanced scientific standard in future.

16. These minor but important observations aside, the Bill is to be welcomed, and the Scottish Biometrics Commissioner welcomes the opportunity to meet with the Committee.

Yours sincerely



Dr Brian Plastow
Scottish Biometrics Commissioner