

Partial CRWIA

**Consultation on enhanced
oversight of biometric data for
justice and community safety
purposes**

July 2018



Scottish Government
Riaghaltas na h-Alba
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PARTIAL CRWIA – Consultation on enhanced oversight of biometric data for justice and community safety purposes – July 2018

Enhanced oversight of biometric data for justice and community safety purposes 13 July 2018	
Policy/measure	<p>Proposals to enhance oversight of biometric data for justice and community safety purposes through:</p> <ul style="list-style-type: none"> • The establishment of a Scottish Biometrics Commissioner to provide independent oversight of the use of biometric data for justice and community safety purposes; • The establishment of a statutory Code of Practice covering the acquisition, use, retention and disposal of biometric data for the above purposes.
Summary of policy aims and desired outcomes	<p>'Biometric data' is a relatively broad and evolving concept. It encompasses what is often referred to as 'first-generation biometrics' such as fingerprints, DNA and custody photographs which have been commonly used in policing for many years. It also includes new and emerging technologies (or 'second-generation biometrics') such as facial recognition software, remote iris recognition and other behavioural biometrics such as voice pattern analysis.</p> <p>The biometrics field is evolving rapidly and offers great potential in the identification and prevention of crime and the delivery of community safety. However, the use of biometric data and technologies raises a range of ethical and human rights considerations.</p> <p>In June 2017, the then Cabinet Secretary for Justice, Michael Matheson MSP, tasked an Independent Advisory Group (IAG), chaired by Solicitor Advocate John Scott QC, to consider the taking, use and retention of biometric data in policing. A copy of the IAG report can be viewed on the Scottish Government website at http://www.gov.scot/Resource/0053/00533063.pdf.</p> <p>The IAG made nine recommendations in total. Amongst those, the Group called for:</p> <ul style="list-style-type: none"> • the establishment of a Scottish Biometrics Commissioner to provide independent oversight of the use of biometric data for justice and community safety purposes in Scotland; and • a statutory Code of Practice covering biometric data and technologies. <p>The Scottish Government is now consulting on proposals on both these issues and, as part of this, we are proposing that new arrangements be introduced for the acquisition and retention of biometric data from children and young people who come into contact with the police.</p>

Directorate; Division; Team	Safer Communities Directorate Police Division Police Powers and Workforce Unit
Executive Summary	<p>In light of recommendations made by the IAG, Ministers are proposing that a newly established Scottish Biometrics Commissioner will oversee an appropriately distinct and proportionate approach to the acquisition, retention, use and disposal of biometric data relating to children under the age of 18 in the criminal justice system.</p> <p>The number of children entering the criminal justice system in Scotland is small and we believe there are situations in which biometric data need not be captured in relation to each of these individuals.</p> <p>Specifically, the Commissioner will oversee a new statutory Code of Practice which will reflect the following:</p> <ul style="list-style-type: none"> • For children under 12 who, under the Age of Criminal Responsibility (Scotland) Bill, will no longer be capable of being held criminally responsible, biometrics will not be obtained except where they are needed for the investigation of a very serious incident. The capture or use of biometrics will have to be authorised by a Sheriff and biometric data taken from children under 12 will have to be destroyed as soon as they are no longer needed for the specific investigation and any resulting Children’s Hearings System proceedings. They will not be placed on the Police Scotland Criminal History System (CHS) or the PND. • For children aged 12 to 17 years, in each case, consideration should be given as to whether it is proportionate and necessary to obtain biometric data for the purposes of recording on the biometric databases, with the best interests of the child specifically considered in the decision-making process, along with the child’s offending behaviour. Where biometric data is obtained the reasons should be subject to review and scrutiny within a reasonable time frame, both internally by supervising officers and by the Scottish Biometrics Commissioner.
Background	<p>The report of the IAG highlights that the number of children who come into contact with the police is relatively small in comparison to adults.</p> <p>Over the last decade in particular, it has reduced significantly (at least partially as a result of changes to the way in which children and young people involved in offending are dealt with by diversionary measures). Only around 2,200 children were proceeded against in the Scottish courts during 2015/16, of whom very few were under the age of 16. More children are dealt with through the Children’s Hearings system – in 2016/17, there were 26,840 referrals to the Children’s Hearings system, of which 73% were on non-offence (care and protection) grounds and only 27% on offence grounds.</p>

	<p>Scotland’s “Whole System Approach” to youth justice recognises that bringing young people into the criminal justice system for low-level offences often results in increased offending. Consistent with this, the IAG found that police officers who deal with children and young people on a regular basis are well aware of the issues around criminalising children. Accordingly, they work with the aim of keeping children out of the formal justice system as far as possible, mindful of the risks of stigmatising children through labelling practices which are often driven by evidence of ‘previous form’ rather than current behaviour.</p> <p>For these reasons, there is a strong need to ensure that biometric data are acquired, used and retained in a proportionate manner that reduces any unintended negative risks or consequences for the individual.</p>
<p>Scope of the CRWIA</p>	<p>The CRWIA focuses on children’s rights and wellbeing implications associated with the adoption of a distinct and proportionate approach to the acquisition, retention, use and disposal of biometric data relating to children under the age of 18 in the criminal justice system.</p>
<p>Children and young people’s views and experiences</p>	<p>As outlined above, Scotland’s “Whole System Approach” to youth justice recognises that bringing young people into the criminal justice system for low-level offences often results in increased offending. Accordingly, police officers and their partners work with the aim of keeping children out of the formal justice system as far as possible, mindful of the risks associated with stigmatisation which might otherwise be encountered.</p> <p>With the above in mind, the IAG established a dedicated Sub-Group to look specifically at whether special arrangements should be introduced for the collection of biometric data by the police from children. The sub-group consulted with young people and those working with children and young people, as well as police officers specialising in this area. The Sub-Group approved the recommendation which led to the proposals now being consulted on.</p> <p>Dialogue with all relevant partners, including children and young people, will continue as part of the planned Scottish Government consultation on our proposals in this area.</p>
<p>Key Findings</p> <p>To include impact on UNCRC rights and contribution to wellbeing indicators</p>	<p>We consider that the proposals will have a positive effect on the life chances of children and young people. They are likely to result in significant reductions in the numbers of children and young people having their biometric data captured by the police as part of the criminal justice process, mitigating the stigmatisation that might otherwise be encountered by those individuals. The proposals are in line with Getting it Right for Every Child, which aims to ensure that support for children and young people puts their – and their family’s – needs first.</p> <p>The intention that any future decisions about the retention of biometric data take full account of the best interests of the child is</p>

	consistent with the General Principles of the UNCRC and will help to ensure that children and young people are “Achieving”, “Responsible” and “Included”.
Conclusions and Recommendations	We consider that the proposals outlined are consistent with the recommendations of the Independent Advisory Group on the Use of Biometric Data in Scotland and with Scottish Ministers commitment to the realisation of children’s rights as described through the UNCRC.
Monitoring and review	The findings outlined in this Partial CRWIA will be re-visited in light of the public consultation taking place over summer 2018, with a further final CRWIA being prepared which takes account of any additional views and wider evidence which may emerge.
CRWIA Declaration	
CRWIA required	CRWIA not required
Yes	
Authorisation	
Policy lead Ruth Winkler, Police Powers and Workforce, Police Division	Date 13 July 2018
Deputy Director or equivalent Donna Bell, Deputy Director, Police Division	Date 13 July 2018



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