

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Scottish Biometrics Commissioner Bill
Summary of aims and desired outcomes of Policy	The Bill will create a new Biometrics Commissioner who will have oversight of the collection, use, retention and disposal of biometric data in the context of policing and criminal justice. The new oversight arrangements will help to ensure that the approach taken to the use of biometric data by Police Scotland and the Scottish Police Authority is lawful, ethical and effective; and will promote good practice and consistent standards.
Directorate: Division: team	Safer Communities Directorate Police Division Forensics Policy Team

Executive summary

This is a summary of the full Equality Impact Assessment for the Scottish Biometrics Commissioner Bill. The Bill creates a new Biometrics Commissioner and an associated code of practice in respect of the collection, use, retention and disposal of biometric data by Police Scotland and the Scottish Police Authority (SPA) in the context of policing and criminal justice. The functions of the Commissioner are to:

- review the law, policy and practice in relation to the collection, use, retention and disposal of biometric data;

- promote the standards set out in the Code of Practice and monitor observance of these;
- raise public awareness of police powers and duties in relation to biometric data, and how these duties and powers may be monitored or challenged.

This EQIA has considered the effects of the Bill on people with one or more protected characteristics. Our findings are based on desk based research, analysis of consultation responses and stakeholder engagement and feedback.

We found that the Bill has the potential to impact positively on individuals whose biometric data is held by Police Scotland and the SPA, by the provision of enhanced independent oversight mechanisms. In particular, the Bill may impact positively on children, young people and vulnerable adults because the Bill requires the new Biometrics Commissioner, in carrying out his/her functions, to have regard to their interests. Once the Bill is passed, the Commissioner will be added to Schedule 19 of the Equality Act 2010 thereby making him / her subject to the public sector equality duty to reduce or eliminate discrimination. The duty will therefore have an effect on how the Commissioner conducts reviews; the recommendations he/she makes; and the content of the code of practice, as he / she may make special mention or take a special interest in what the police are doing to eliminate discrimination.

Background

The biometrics field is evolving rapidly and offers great potential in the detection, prevention and prosecution of crime and, thereby, the delivery of community safety. However, the use of biometric data and technologies raises a range of ethical and human rights considerations. Therefore, Scottish Ministers want to ensure that the approach to the collection, use, retention and disposal of biometric data in the context of policing and criminal justice is effective, ethical and proportionate.

In May 2017, the then Cabinet Secretary for Justice appointed an Independent Advisory Group (IAG) to review the use and retention of biometric data in policing in order to establish an ethical and human rights-based framework which could be applied to existing, emerging and future biometric data and technologies. In March 2018, the IAG's report was published, making nine recommendations - including the creation of a new Biometrics Commissioner for Scotland, and a new Code of Practice. The IAG's report can be found on the Scottish Government website:

<https://www.gov.scot/publications/report-independent-advisory-group-use-biometric-data-scotland/>

The review was followed up by a Scottish Government consultation in summer 2018 on those two recommendations. The majority of responses supported the two proposals. A consultation analysis report was published in November 2018 and can be accessed at <https://consult.gov.scot/safer-communities/use-of-biometric-data/results/biometricsdata-finalconsultationanalysis.pdf>.

The purpose of the Bill therefore, is to make provision for independent oversight arrangements through the creation of a new Commissioner and a Code of Practice to promote good practice and ensure consistent standards. These are important elements in maintaining public and professional confidence in the use of biometric data in the context of policing and criminal justice.

The Scope of the EQIA

The EQIA was informed by responses to the Scottish Government consultation, including feedback from bespoke events including the Scottish Youth Parliament and Equality spokespeople from Stonewall Scotland; Coalition for Racial Equalities and Rights; Black and Ethnic Minority Infrastructure in Scotland; and the Council of Ethnic Minority Voluntary Organisations.

Key Findings

Equality Impact Analysis was a critical tool used in the development of the consultation process and in the development of the provisions of the Bill. This Bill will address various equality and human-rights concerns identified by stakeholders. By requiring the Commissioner to have regard to the interests of children, young people and vulnerable adults when carrying out his/her functions, the Bill will specifically advance equality of opportunity on the grounds of age. For example, the Commissioner may choose to monitor how the collection of biometric data from children under the requirements of the Age of Criminal Responsibility Act is being implemented by the police.

Also, in observing the public sector equality duty, the Commissioner will reduce or eliminate discrimination more widely, which means that, for example, in framing the code of practice, the Commissioner may make special mention or take a special interest in what the police are doing to prevent discrimination. The Commissioner may also consider any possible discrimination in biometric technologies - for example, discriminatory identification algorithms in facial recognition software - and can make recommendations to the police.

The EQIA process has provided reassurance that the proposed legislative change would have no negative consequences in terms of the protected characteristic groups identified in the Equality Act 2010.

Recommendations and Conclusion

The EQIA process has identified that the Bill has the potential to have positive impacts for those with protected characteristics.

Monitoring and review

The Commissioner will be accountable to the Scottish Parliament and will prepare a strategic plan every four years, and produce an Annual Report of his/ her activity - both of which will be laid

at Parliament. The code of practice will be kept under review by the Commissioner, with a requirement to produce a formal report to Parliament every four years.

Authorisation

I confirm that the impact of the Scottish Biometrics Commissioner Bill has been sufficiently assessed against the needs of the equality duty:

Euan Dick
Interim Deputy Director, Police Division

Date this version authorised: 21 May 2019