

JUSTICE COMMITTEE

SCOTTISH BIOMETRIC COMMISSIONERS BILL

SUBMISSION FROM POLICE SCOTLAND

Q1. What are your views on the establishment of a Scottish Biometrics Commissioner as a new body to scrutinise the police?

Police Scotland, having played a full part in the work of the Scottish Government's Independent Advisory Group on Biometrics and thereby the formulation of its nine recommendations, fully supports the establishment of a Scottish Biometrics Commissioner.

Q2. What are your views on the proposed role, responsibilities and enforcement powers of the Scottish Biometrics Commissioner?

Police Scotland considers that the proposed role, responsibilities and enforcement powers of the Scottish Biometrics Commissioner, as laid out within the Bill, reflect the findings and recommendations of the IAG and therefore supports these elements.

Q3. What are your views on the provisions in the Bill for the drawing up of a Code of Practice by the Commissioner, and how compliance with the Code is monitored and reported on?

The establishment of a Code of Practice will benefit both Police Scotland and the Scottish Police Authority when making operational and/or policy based decisions and will serve to enhance and strengthen the good practice which already exists in how biometric data is acquired, retained, used and disposed of by both organisations. Police Scotland also supports the provisions in the Bill for how the Code will be drawn up by the Commissioner, as well as how compliance with the Code will be monitored and reported on.

However, it is suggested that Clause 7 of the Bill - Effect of the Code – may benefit from some further consideration of paragraph 7(1)(b) as only 'the Scottish Police Authority' is mentioned without specifying the Forensic Services department. Forensic Services are a crucial component in the capture, analysis, retention and destruction of a considerable amount of Biometrics data, therefore we are of the opinion that Forensic Services should be specifically defined in this Clause of the Bill. Clause 7(1)(a) is very specific and clearly defines its application to 'constables' (i.e. police officers) and also to members of police staff - as defined in terms of Section 99(1) of the Police & Fire Reform (Scotland) Act 2012. In contrast, Clause 7(1)(b) is much less specific and not at all particular; it just applies to 'The Scottish Police Authority'.

The Police & Fire Reform (Scotland) Act 2012, at Sections 1 to 4 and at Schedule 1, defines the SPA, its function, powers and authority. It is clear from the legislation that the SPA is quite distinct from Police Scotland in function and in structure - critically when it comes to 'Authority staff' who differ in law from 'members of police staff.' The same can be said for those who are employed to work in Forensic Services. This sector is defined in Section 31 of the Police & Fire Reform (Scotland) Act 2012, quite simply as "Forensic Services" - placing the obligation on the SPA to provide forensic services to the Police Service, the Police Investigations and Review Commissioner and the Lord Advocate and Procurators Fiscal.

Those who are employed in Forensic Services share a common employer, the SPA, with members of police staff but those employed in Forensic Services are not the same as police staff as they are not under the Chief Constable's control and direction. Presuming that the Commissioner's oversight and the application of the Code of Practice is intended to be as directly effective on Forensic Services as it is on Police Scotland, then it may be appropriate that Clause 7(1)(b) reflects this.

Q4. What are your views on the appointment process for the Commissioner and the funding being provided to enable them to carry out their role?

Police Scotland considers both the appointment process for the Commissioner, and the funding being provided to enable them to carry out their role, to be matters for the Scottish Parliament and has no particular comment to make on either.

Q5. Do you have any other comments regarding the Bill?

Police Scotland welcomes the Bill and, if passed, looks forward to working, alongside the Scottish Police Authority, with the Scottish Biometrics Commissioner.