

Margaret Mitchell MSP  
Convener  
Justice Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

By email: [justicecommittee@parliament.scot](mailto:justicecommittee@parliament.scot)

03 February 2020

Dear Convener

### **Scottish Biometrics Commissioner Bill - Stage 2 Consideration of Amendments**

I am writing to you in connection with your proposed amendment to the above Bill. The amendment would require the Biometrics Commissioner to *"establish a procedure by which a person, or someone acting on a person's behalf, may make complaints (or other representations) to the Commissioner in relation to the acquisition, retention, use or destruction of biometric data....."*

Where any data relates to an identified or an identifiable person, then its "acquisition, retention, use or destruction" is deemed to be processing of personal data and subject to the provisions of the Data Protection Act 2018 (DPA18). When biometric data relates to an identified or identifiable person it is deemed to be special category data and subject to additional safeguards under the DPA18. Data protection is a reserved matter under the Scotland Act 1998.

I would bring the Committee's attention to the evidence which I gave during its Stage 1 deliberations where I made reference to the role of the UK Information Commissioner's Office regarding complaints about the way in which individuals' personal information is handled. Any complaints about the way in which such data are handled should be referred to the ICO. This separation of locus has worked well south of the border where a Biometrics Commissioner has been in post since 2016. I would also bring the Committee's attention to my comments in respect of the contentions around locus when the Children's Commissioner's role was extended to deal with complaints. If, however, the complaints process envisaged is confined to compliance with the Code of Practice, I would suggest stating this clearly on the face of the Bill to avoid any ambiguity.

Finally, it should be noted that the amendment as it stands is factually incorrect. There is no such legislation as 'The Information Commissioner Act 2000'. Perhaps you meant to reference The Freedom of Information Act 2000 where the title of the Commissioner was changed from the then Data Protection Commissioner to the current title of Information Commissioner. However, it is difficult to see what relevance that legislation would have in respect of this amendment given the use of personal data is governed by the data protection regime under the General Data Protection Regulation and the Data Protection Act 2018.

I trust you find this helpful.

Yours sincerely



**Dr Ken Macdonald**  
**Head of ICO Regions**