

Margaret Mitchell MSP  
Convener, Justice Committee  
C/O Justice Committee Clerks  
Room T2.60  
The Scottish Parliament

29 October 2019

*Dear Ms Mitchell,*

### **Request to Provide Written Evidence on the Scottish Biometrics Commissioner Bill**

Thank you for your letter of 10 October 2019 in relation to the above Bill and for keeping the National Crime Agency (NCA) involved with relevant legislative changes.

#### **The NCA's View on Professor Wiles' Evidence**

The NCA takes no issue with the position of Professor Wiles as set out in your letter. The NCA operates within the Organised Crime Partnership in Scotland and thus follows the relevant protocols of Police Scotland. In Scotland, the Scottish Police Authority undertakes forensics on our behalf and it would usually be they who transfer any data to a national database and apply the appropriate legislative framework. We would only usually share such data with policing partners and prosecutors, including the Crown Office and Procurator Fiscal Service (COPFS).

#### **Legislative Framework for the NCA in Scotland**

The NCA relies upon paragraph 6, Schedule 1 of the Crime and Courts Act 2013 to operate in Scotland, subject to the agreement of the Lord Advocate. We operate fully within the Scottish framework and report all of our cases to the COPFS, in accordance with paragraph 6(3) of Schedule 1 of the Act.

#### **Voluntary Biometric Data**

Retention of biometric data provided voluntarily, such as from victims or relatives of missing persons, is regulated by section 56 of the Criminal Justice (Scotland) Act 2003.

**Samples taken from Known Persons on Arrest**

The Criminal Procedure (Scotland) Act 1995 ("CP(S)A"), as amended, provides the power to take samples of relevant 'physical data' (including biometric data) from individuals following arrest. In particular, section 18 provides that:

*"A constable may take from the person, or require the person to provide him with, such relevant physical data as the constable may, having regard to the circumstances of the suspected offence or the relevant offence (within the meaning of section 164(3) of the Extradition Act 2003) in respect of which the person has been arrested, reasonably consider it appropriate to take from him or require him to provide, and the person so required shall comply with that requirement"*

**Samples and Exhibits recovered from a Scene**

Samples from the scene may be recovered via seizure powers in place and in accordance with any warrant obtained so that biometric data may be extracted.

**Biometric Data taken from Law Enforcement Officers for the purpose of detecting contamination**

The NCA does not currently operate an extensive database of staff fingerprints and DNA because the Police Regulations do not apply to the NCA. In light of the GDPR and Data Protection Act 2018, it is something which we may consider implementing.

**Retention of Samples**

Sections 18 to 18H of the CP(S)A and sections 77 to 79 Criminal Justice & Licensing (Scotland) Act 2010 governs the retention and destruction of samples.

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I hope that the above summarises sufficiently our understanding of the legislative framework upon which the NCA in Scotland relies on to collect, use, share, retain and dispose of biometric data.

We are ready to assist if there is anything additional you seek from the NCA in relation to this Bill.

*Kind regards,  
Lynne Owens*

Lynne Owens CBE QPM  
**Director General**  
**National Crime Agency**