



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

20th Meeting, 2019 (Session 5)

Tuesday 25 June 2019

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 5 and 6 in private.

2. **Independent Review of Complaints Handling, Investigations and Misconduct Issues in relation to Policing:** The Committee will take evidence from—

Humza Yousaf, Cabinet Secretary for Justice, Scottish Government.

3. **Scottish Biometrics Commissioner Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Elaine Hamilton, Bill Team Leader, Euan Dick, Deputy Director, Police Division, and Louise Miller, Directorate for Legal Services, Scottish Government.

4. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting held on 13 June 2019.

5. **Scottish Biometrics Commissioner Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

6. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda item 2

Private paper - complaints handling review J/S5/19/20/1 (P)

Agenda item 3

Paper by the Clerk - Scottish Biometrics Commissioner Bill J/S5/19/20/2

Agenda item 4

Paper by the clerk - Justice Sub-Committee on Policing J/S5/19/20/3

Agenda item 5

Private paper - Scottish Biometrics Commissioner Bill J/S5/19/20/4 (P)

Agenda item 6

Private paper - work programme J/S5/19/20/5 (P)

Justice Committee

20th Meeting, 2019 (Session 5), Tuesday, 25 June 2019

Scottish Biometrics Commissioner Bill

Paper from the Clerk

Introduction

1. The [Scottish Biometrics Commissioner Bill](#) (“the Bill”) was introduced in the Scottish Parliament, by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 30 May 2019. The Bill, and its [accompanying documents are available online](#) on the Parliament’s website. The Parliamentary Bureau has designated the Justice Committee as the lead committee for Stage 1 consideration of the Bill.

2. The policy objective of the Bill is to address a range of ethical and human rights considerations in Scotland in terms of the approach to the collection, use, retention and disposal of biometric data in the context of policing and criminal justice. The Bill aims to ensure this is done in a lawful, effective and ethical manner.

3. The Bill seeks to achieve this by establishing the post of the Scottish Biometrics Commissioner (‘the Commissioner’). The primary role of the Commissioner will be to draw up and promote the use of a Code of Practice for the collection, use, retention and disposal of biometric data in the policing and criminal justice system in Scotland. Under Section 2(1) of the Bill, the Code of Practice will apply to Police Scotland and the Scottish Police Authority, who provide the [forensic service](#) to police in Scotland. The Bill also provides for other function in relation to the Commissioner.

4. Under the Bill, the Commissioner will be independent of Scottish Ministers and will be appointed by HM The Queen on the nomination of the Scottish Parliament. The Scottish Parliamentary Corporate Body will be responsible for recruiting the Commissioner and providing the resources for the Commissioner’s office.

Approach to Stage 1 consideration

5. The Committee has yet to consider its approach to its scrutiny of the Bill at Stage 1. In order to inform its consideration, the Committee will take oral evidence from the officials of the Scottish Government Bill Team at its meeting on Tuesday 25 June 2019. They are—

- Elaine Hamilton, Scottish Biometric Commissioner Bill Team Leader;
- Euan Dick, Deputy Director of Police Division, Scottish Government;
- Louise Miller, Solicitor to the Scottish Government.

6. Following this evidence session, the Committee will consider its approach to taking evidence as part of its Stage 1 scrutiny of the Bill.

Justice Clerks
20 June 2019

Justice Committee

20th Meeting, 2019 (Session 5), Tuesday 25 June 2019

Feedback from the Justice Sub-Committee on Policing

Note by the clerk

1. On 13 June 2019, the Justice Sub-Committee on Policing met to take oral evidence on Police Scotland's proposal to introduce the use of digital device triage systems (cyber kiosks) to search mobile phones.
2. At the meeting the Sub-Committee took evidence from the Cabinet Secretary for Justice and his officials on the Scottish Government's response to the recommendations in the Justice Sub-Committee's recent report on Police Scotland's proposal to introduce the use of digital device triage systems.
3. The Sub-Committee also considered written submissions received from a number of stakeholders. These submissions are available online.¹
4. In response to a question on whether the overarching legal framework required to be updated for the use of cyber kiosks and other technologies, such as facial recognition systems, the Cabinet Secretary for Justice told the Sub-Committee that it is for the Scottish Police Authority and Police Scotland to satisfy themselves that they have the legal basis to proceed.
5. Mr Yousaf told the Sub-Committee that he could not give a view on whether there is a legal basis to introduce the use of cyber kiosks, as he is unable to disclose the nature of any legal advice that he may have received. Mr Yousaf added that, whilst he was not advocating this approach, where there is any difference in opinion in relation to the law, it would be up to the courts to make a determination.
6. The Cabinet Secretary explained his intention to form an independently chaired reference group to scope the possible legal and ethical issues arising from emerging technological developments. This is to ensure that Police Scotland can keep communities safe, whilst also protecting the rights of the individual. The remit of the group would be wider than consideration of cyber kiosks. It would include consideration of whether there is a need for legislation, statutory guidance, or codes of practice for current, as well as new and emerging technologies.
7. The Cabinet Secretary added that the independent advisory group on the Use of Biometric Data in Scotland,² having examined and explored the issues, suggested that the next steps would be to have a Scottish Biometrics Commissioner Bill and a code of practice. Because of its work on the issue, Mr Yousaf indicated that he wanted the group to be set up to look at other technologies. The work of the group should be open and transparent, and ethical and human rights considerations will be central to its work.

¹ Scottish Parliament Justice Sub-Committee on Policing:
<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/108429.aspx>

² Independent advisory group on the Use of Biometric Data in Scotland:
<https://www2.gov.scot/About/Review/biometric-data>

8. The Cabinet Secretary indicated that he was confident that lessons had been learned from the proposal to roll-out cyber kiosks, that Police Scotland has the necessary processes in place to provide confidence and reassurance, and confidence in Police Scotland's approach to searching the phones of victims and witnesses of a crime. Mr Yousaf also indicated that he had confidence in Police Scotland and the SPA's financial scrutiny arrangements.
9. Mr Yousaf acknowledged that Police Scotland had been unable to address the concerns raised by the Scottish Human Rights Association and the Information Commissioner's Office. Adding that, it is incumbent on Police Scotland and the SPA to do their utmost to give as much confidence as possible to the public prior to deploying cyber kiosks.

Committee clerk
19 June 2019