

EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Enhanced oversight of biometric data for justice and community safety purposes.
Summary of aims and desired outcomes of Policy	The proposals seek to deliver enhanced oversight in relation to the acquisition, retention, use and disposal of biometric data by Police Scotland, the Scottish Police Authority (SPA) and other bodies who collect biometric data from citizens for justice and community safety purposes in Scotland.
Directorate: Division: team	Safer Communities Directorate Police Division Police Powers and Workforce Unit

Executive summary

In June 2017, the then Cabinet Secretary for Justice, Michael Matheson MSP, tasked an Independent Advisory Group (IAG), chaired by Solicitor Advocate John Scott QC, to consider the taking, use and retention of biometric data in policing. A copy of the IAG report can be viewed on the Scottish Government website at:

<http://www.gov.scot/Resource/0053/00533063.pdf>.

The IAG made nine recommendations in total. In particular, the Group called for:

- the establishment of a Scottish Biometrics Commissioner to provide independent oversight of the use of biometric data for justice and community safety purposes in Scotland; and
- a statutory Code of Practice covering biometric data and technologies.

The Scottish Government is now consulting on proposals on both these issues. The intention of the proposals is to balance the needs of policing and community safety with wider ethical and human rights considerations. To that end, the proposed Code of Practice which was issued for views describes particular considerations to be made when collecting, retaining and disposing of biometric data relating to particular groups within society.

This Partial EQIA will be revisited in light of the public consultation, with a further final EQIA being prepared which will take account of any additional views and wider evidence which may emerge.

Background

'Biometric data' is a relatively broad and evolving concept. It encompasses what is often referred to as 'first-generation biometrics' such as fingerprints, DNA and custody photographs which have been commonly used in policing for many years. It also includes new and emerging technologies (or 'second-generation biometrics') such as facial recognition software, remote iris recognition and other behavioural biometrics such as voice pattern analysis.

The biometrics field is evolving rapidly and offers great potential in the identification and prevention of crime and the delivery of community safety. However, the use of biometric data and technologies raises a range of ethical and human rights considerations.

In May 2017, prominent solicitor advocate John Scott QC, was asked by the Cabinet Secretary for Justice to chair an Independent Advisory Group to review the retention of custody images by Police Scotland. This followed the publication of a report in 2016 by Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) on the use of facial search technologies, which called for improved legislation and independent oversight of the use of biometric data for policing, law enforcement, and other public protection purposes in Scotland. The Cabinet Secretary for Justice also asked that the Group consider the use and retention of biometric data more generally in policing to seek to establish an ethical and human rights based framework which could be applied to existing, emerging and future biometrics in what is an important and fast moving area of technology.

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- a statutory Code of Practice covering biometric data and technologies.

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The Scope of the EQIA

The proposals seek to deliver enhanced oversight in relation to the acquisition, retention, use and disposal of biometric data by Police Scotland, the SPA and other bodies who may collect biometric data whilst exercising powers of arrest for devolved purposes in Scotland.

The establishment of a Scottish Biometrics Commissioner and associated statutory Code of Practice will support those bodies in ensuring that the use of such data is lawful, proportionate and

necessary and that there is independent oversight over a range of broader ethical and human rights concerns.

Key Findings

The intention of the proposals is to balance the needs of policing and community safety with wider ethical and human rights considerations. We consider that the policy will not impact negatively on bodies undertaking policing and community safety activity. Further, it will impact positively on individuals whose data is held by those bodies and on overall public confidence by providing enhanced transparency and accountability.

Further to the above, there are a number of specific issues which merit consideration in the context of this Impact Assessment. Firstly, there is a significant body of evidence to show that the collection of biometric data from children is often unnecessary, leading to avoidable interaction with the criminal justice system which can impact negatively on future life chances due to stigmatisation. Separately, there is a significant body of international research which shows that some biometric technologies such as facial recognition solutions have been found to contain discriminatory identification algorithms which have been found to impact negatively on black and minority ethnic citizens through misidentification.

The proposed Scottish Biometrics Commissioner will oversee a statutory Code of Practice on the acquisition, retention, use and disposal of biometric data which will directly address the above issues. Further, the Code will describe the statutory responsibilities of relevant bodies, including their responsibilities under the Public Sector Equality Duty, and contain a set of 'General Principles' which should guide practice and processes surrounding the use of biometric data.

Recommendations and Conclusion

There were no negative consequences identified through Partial EQIA of this policy and in terms of the protected characteristic groups identified in the Equality Act 2010, the policy will advance equality of opportunity both generally to society, and specifically on the grounds of age and race.

The policy will contribute to the following national outcomes:

1. We live in communities that are inclusive, empowered, resilient and safe.
2. We respect, protect and fulfil human rights and live free from discrimination.
3. We are open, connected and make a positive contribution internationally.
4. We grow up loved, safe and respected so that we realise our full potential.

This EQIA will be revisited in light of the public consultation taking place throughout summer 2018, with a further final EQIA being prepared which will take account of any additional views and wider evidence which may emerge.

**SCOTTISH GOVERNMENT
JULY 2018**