



THE SCOPE OF THE CODE OF PRACTICE:

WHAT WILL FALL WITHIN THE SCOPE OF THE CODE OF PRACTICE?

DATA OBTAINED UNDER THE CRIMINAL PROCEDURE (SCOTLAND) ACT 1995. THIS IS THE PRIMARY SCOTTISH LEGISLATION WHICH ALLOWS THE RETENTION OF FINGERPRINTS AND OTHER BIOMETRIC SAMPLES FROM A PERSON ARRESTED BY THE POLICE

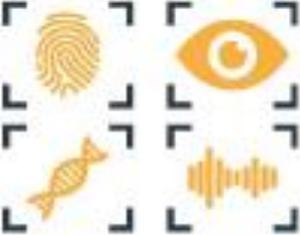


 **BIOMETRIC DATA PROVIDED BY ANOTHER AGENCY, WHICH MAY INCLUDE CCTV IMAGES PROVIDED BY A LOCAL COUNCIL OR DATA PROVIDED BY A HEALTH BOARD**

 **BIOMETRIC DATA DERIVED FROM CRIME SCENE SAMPLES**

 **POLICE OFFICER BIOMETRIC DATA SHARED FOR CRIME SCENE ELIMINATION**

 **BIOMETRIC DATA OF VICTIMS AND WITNESSES, HELD WITH THEIR AGREEMENT IN ORDER TO SUPPORT INVESTIGATIVE ACTIVITY**

 **'SECOND-GENERATION BIOMETRICS' SUCH AS FACIAL RECOGNITION, REMOTE IRIS RECOGNITION AND VOICE PATTERN ANALYSIS**





Question 1

Do you believe a statutory Code of Practice covering the acquisition, use, retention and disposal of biometric data for justice and community safety purposes is required?

Yes

Please expand on the reasons for your answer.

The science and technology around biometric data is developing all the time, and as a result a clear and unequivocal code of practice is required in order for the acquisition, use, retention and disposal of such data in justice and community safety to be understood by all people in Scotland. There can be a real mistrust of public bodies and their data handling / retention. The code of practice goes some way to addressing this.

Question 2

Do you believe the proposed statutory Code of Practice is being applied to the correct individuals/agencies?

Yes

Please expand on the reasons for your answer.

Question 3

Do you believe the General Principles outlined in the statutory Code of Practice are the right ones?

Yes

Please expand on the reasons for your answer.

SCRA is pleased that the proposal is to adopt this rights based approach to the general principles of the code of practice, as recommended by the Independent Advisory Group. We are particularly pleased that the rights of children, the rights of other vulnerable groups and individuals and the Article 8 right to respect for private and family life are specifically protected within the context of biometric data collection and retention.

The DRAFT CODE OF PRACTICE can be found at –
<https://www.gov.scot/Resource/0053/00538315.pdf>

Question 4

Do you believe the statutory Code of Practice covers all relevant issues which require consideration when decisions are being taken about the acquisition, use, retention and disposal of biometric data?

Yes



SCOTTISH

CHILDREN'S REPORTER
ADMINISTRATION



Please expand on the reasons for your answer.

SCRA are pleased that the Section 72 of the Code of Conduct specifically covers the investigation of Children under the age of 12, in the context of a different age of criminal responsibility. We would ask, however, that the Code is framed in terms of the age of criminal responsibility – rather than in terms of age 12 – as we would hope that if 12 is agreed as a minimum age then work would be ongoing to determine whether this could or should be raised further. Any cases which require the processing of biometric data under the age of criminal responsibility will be complex, difficult cases – likely to leave an imprint on all involved and it is right that there are specific protections in relation to them.

Question 5

Do you believe a Scottish Biometrics Commissioner is required?

Yes

Please expand on the reasons for your answer.

This field is increasingly complex and specialised and would benefit from the oversight of a trained and knowledgeable commissioner.

Question 6

Do you believe the Commissioner's statutory remit extends to the correct individuals/agencies?

Yes

Please expand on the reasons for your answer.

Although SCRA would probably want to voluntarily comply with the code.

Question 7

Do you believe the proposed general functions of the Scottish Biometrics Commissioner are the right ones?

Yes

Please expand on the reasons for your answer.

Question 8

Do you believe the proposed approach to the acquisition of biometric data from children and young people in the justice system is the right one?

Yes





Please expand on the reasons for your answer.

The Scottish Children's Reporter Administration (SCRA) would like to stress that the approach to the acquisition of biometric data cannot just be limited to the justice system. The Children's Hearings System is Scotland's distinct system of child protection and youth justice. Among its fundamental principles are:

- the needs of children or young people in trouble should be met through a single holistic and integrated system, whether concerns relate to their welfare or behaviour
- a preventative approach is essential, involving early identification and diagnosis of problems
- the welfare of the child remains at the centre of all decision making and the child's best interests are paramount throughout
- the child's engagement and participation is crucial to good decision making

SCRA operates the Reporter service which sits at the heart of the system. SCRA employs Children's Reporters who are located throughout Scotland, working in close partnership with panel members and other professionals such as social work, education, the police, the health service and the courts system. SCRA's vision is that vulnerable children and young people in Scotland are safe, protected and offered positive futures.

Whilst the numbers of children in the criminal justice system are relatively small, children are also dealt with by the Children's Hearings System under the offence ground for referral to the Hearing (Children's Hearings (Scotland) act 2011 Section 67 (2) (j)).

In 2017/2018 3060 children were referred to the Reporter with an offence ground for referral. Many of these offence grounds for referral will require an assessment of the evidence in relation to a specific offence – and much of this evidence will be biometric data. SCRA is fully committed to ensuring that any stigma or labelling attached to offending or to being involved with the Children's Hearings System is minimised or addressed and that care experience does not continue to be a predictor for negative life-long chances. The proposed regulation and control of biometric data appears to align with these commitments – and we think that a strong and robust regulatory framework will ensure that this continues to be the case in the future.

In addition, SCRA thinks that the proposed Code of Practice should be specifically referenced in the proposed legislation in relation to the Age of Criminal Responsibility, and we would ask that the Government officials responsible for the Code of Practice speak to the ACR Bill Team in order for this to be considered.

SCRA would also like to make clear that at this point we don't think that it is appropriate to align with any timescales in relation to the retention of biometric data. The work ongoing in relation to both the age of criminal responsibility and the rehabilitation of offenders and protection of vulnerable groups is raising and addressing complex philosophical and logistical considerations in relation to the offending behaviour of children and young people – any details of biometric data collection and retention need to be carefully and clearly synchronised with the outcomes of this ongoing work.



SCOTTISH

CHILDREN'S REPORTER
ADMINISTRATION



Question 9

Do you have any views on the appointment and accountability arrangements for the Commissioner?

No

Please expand on the reasons for your answer.

SCRA Practice & Policy Team 2018

