

Addendum to the 2018 Annual Report of the Biometrics Commissioner

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This addendum provides an update to my 2018 Annual Report, which I submitted to the Home Secretary on 29th March 2019. Given that three months have passed since the submission of the Report a number of reported issues have moved on considerably. An update on these matters is provided below. Where no update is provided it may be assumed that there has been no significant change over the past three months and the position remains as set out in the Report.

Scottish Biometrics Commissioner Bill - chapter 2, paragraphs 40-43.

The Scottish Government presented its Scottish Biometrics Commissioner Bill to the Scottish Parliament on 30th May 2019. This will create a legal framework for the governance of present and future biometric use by Police Scotland and the Scottish criminal justice system. It is an interesting example of attempting to legislate in a way that will cope with future technical change in this area.¹

In addition to the Bill, proposals to create a new, non-statutory Ethics Advisory Group are currently being developed with stakeholders.

Scottish Justice Secretary Humza Yousaf said:

“Technological advances in biometrics have brought huge benefits to police and other justice agencies in detecting, preventing and prosecuting crime. However, their use also raises a number of ethical and human rights considerations. The Scottish Government wants to ensure that the approach to biometric data in policing and criminal justice system is lawful, effective and ethical.”²

Experimental facial matching in public places - chapter 2, paragraphs 23-32.

South Wales Police have been undertaking Home Office funded trials of live facial matching. I reported that the civil liberties group Liberty had sought a judicial review, challenging the legality of these trials.

¹ <https://www.parliament.scot/parliamentarybusiness/Bills/111859.aspx>

² <https://www.gov.scot/news/biometrics-commissioner-bill-published/>

On 21st May 2019 a three-day hearing began in Cardiff High Court. Liberty, on behalf of their client, a Cardiff resident, challenged the police's use of live facial recognition on the grounds that the use of automated facial technology by South Wales Police breaches the right to privacy, equality laws and data protection laws. A judgment is expected in the case in the coming months. This judgment will be significant not just for South Wales Police and their ongoing trials and/or deployment of this technology but for all police forces, the wider use of the technology and its future governance.

Governance of new biometrics and Home Office Biometrics Strategy - chapter 2.

The House of Commons Science and Technology Select Committee have opened an inquiry into the work of the Biometrics Commissioner and the Forensic Science Regulator³.

The Committee held, on 19th May 2019, a one-off evidence session with myself, the Forensic Science Regulator, Dr Gillian Tully, and the Minister for Countering Extremism, Baroness Williams of Trafford, to follow up on the Committee's 2018 Report "Biometrics strategy and forensic services". During the evidence session I was asked about police use of facial images and facial image matching technology, and the governance framework around the police use of new biometric technologies. A full transcript of the session can be found at

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/science-and-technology-committee/biometrics-strategy-and-forensic-services/oral/78113.pdf>

Ministry of Defence access to police national fingerprint database - chapter 4, paragraphs 96-101.

The Report sets out the ongoing issues in relation to the legal basis for the Ministry of Defence accessing the Police National Fingerprint Database. At the time of writing all parties had agreed that whilst the searching is in the national interest, a lawful basis had to be found and implemented urgently. It seemed at that time that matters were being progressed at pace, two potential solutions having been found, and that the NPCC would be making a decision on the matter imminently. I am therefore disappointed to report that there has been no discernible progress on this matter in the last three months, despite the clear urgency, that the options do not appear to have been evaluated and developed further by the parties and that a decision has not yet been taken by the NPCC.

³ <https://www.parliament.uk/business/committees/committees-a-z/commons-select/science-and-technology-committee/inquiries/parliament-2017/inquiry11/>

Section 18 CTA 2018 – chapter 4, 92-94.

I reported that although this issue had been resolved there remained some unlawfully held records (albeit in an unsearchable format) due to administrative and new governance issues put in place to avoid the inadvertent deletion of legally held material. I have since been informed that these issues are not fully resolved and further problems have been identified.

International exchanges and Brexit – chapter 7, paragraphs 216-218.

The commentary in the Report in relation to Brexit and the effect that it may have on international exchanges of biometrics was written in February and March of 2019. At that time it seemed possible that an agreement would be reached with the EU and that there would then be a further two years to negotiate access to the EU based exchange mechanisms. The Prime Minister stated that she was acutely aware of the need to retain these arrangements. Alternatively, it seemed equally possible that there would be a general election, an extension to the transition period or even a second referendum, all of which would have meant that the arrangements would remain in place, in the short term at least.

Now that it appears that leaving the EU with no deal at the end of October 2019 is a real possibility. Without a deal with the EU there is a real concern that, as set out in the Report, the EU based biometric exchange mechanisms and legal processes will cease to operate, with potentially serious consequences for law enforcement and security cooperation between the UK and the EU that depends on EU agreements rather than bilateral exchanges or other international agreements.