

*This Explanatory Memorandum replaces the previous version laid before Parliament on 16 November 2021, which has been withdrawn. Copies will be provided free of charge to all known recipients of that version.*

## **EXPLANATORY MEMORANDUM TO THE SURVEILLANCE CAMERA CODE OF PRACTICE, DATED NOVEMBER 2021**

### **1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

### **2. Purpose of the instrument**

- 2.1 The Surveillance Camera Code provides guidance on the appropriate use of surveillance camera systems by local authorities and the police. Originally published in 2013, it is being updated to reflect legislative developments and an important judgment on police use of live facial recognition: *Bridges v South Wales Police*.<sup>1</sup> We have also consolidated the text, to make it easier to read, but without affecting the substantive sections of the Code.
- 2.2 The Surveillance Camera Code is not a statutory instrument, but amending it follows a process which is akin to that of a negative resolution statutory instrument.

### **3. Matters of special interest to Parliament**

- 3.1 None.

### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England and Wales.

### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

### **6. Legislative Context**

- 6.1 The Protection of Freedoms Act 2012 (PoFA) was wide-ranging, and included provisions to create a Surveillance Camera Code for police and local authority use of surveillance camera systems and a Commissioner to promote compliance with it. The Code was published in June 2013, including twelve guiding principles, which relevant authorities listed in PoFA section 33(5), namely police and local authorities, have to have regard to.
- 6.2 PoFA also gave the Home Secretary the power to issue an amended or replacement Code. It has not been updated since it was published in 2013. During this time the Data Protection Act 2018 replaced the Data Protection Act 1998 Act, providing a comprehensive legal framework for data protection in the UK, in accordance with the General Data Protection Regulation ((EU) 2016/679) (“GDPR”). It updated the rights

---

<sup>1</sup> *Bridges v South Wales Police* [2020] EWCA Civ 1058.

provided for in the 1998 Act to make them easier to exercise and to ensure they continued to be relevant with the advent of more advanced data processing methods. The original Code made a number of references to the 1998 Act, which have been replaced with references to the 2018 Act in the updated Code.

- 6.3 The 2018 Act also introduced data protection impact assessments (DPIAs), replacing privacy impact assessments under the 1998 Act. A DPIA is a process to help users identify and minimise data protection risks and ensure compliance with data protection legislation. Accordingly the updated code refers to DPIAs rather than privacy impact assessments.

## 7. Policy background

- 7.1 The Code provides guidance on the appropriate use of surveillance camera systems by police and local authorities. The revisions reflect subsequent legislative developments, in particular the related data protection legislation, detailed in 6.1-6.3 above.
- 7.2 The updated Code also reflects the 2020 *Bridges v South Wales Police* Court of Appeal [judgment](#) on live facial recognition (LFR). LFR involves searching facial images in a crowd against a watchlist of people wanted by the police, in a live setting. The Court of Appeal found that there is a legal framework for its use, but that South Wales Police did not provide enough detail on the categories of people who could be on the watchlist, or the criteria for determining when to use it, and did not do enough to satisfy its public sector equality duty. The updated Code references the judgment in paragraph 12.3, pointing out the need for the police to comply with it.
- 7.3 The judgment said that South Wales Police could address the judgment themselves by updating their own published guidance, but added that national guidance would provide consistency. The College of Policing will provide that [national guidance](#) in a new Authorised Professional Practice, which they consulted on earlier this year, and plan to publish in early 2022.
- 7.4 That draft guidance covers the requirements of the judgment including:
- (a) The categories that can be included on watchlists include people wanted by the courts, suspects, and those subject to bail conditions or other restrictions that would be breached if they were at the location.
  - (b) Before using LFR the police need reasonable grounds to suspect that one or more people on the watchlist will be at the location.
  - (c) If there is no suggested match to anyone on the watchlist, the biometric data of members of the public should be deleted immediately.
  - (d) The need to comply with the public sector equality duty on an ongoing basis through equality impact assessments, doing as much as they can to ensure the software does not contain unacceptable bias, and ensuring that there is rigorous oversight of the algorithm's statistical accuracy and demographic performance.
- 7.5 The updated Code does not change how police and local authorities can use surveillance camera systems, including for LFR, but now reflects legal changes that have already taken place since it was first introduced.
- 7.6 We have also simplified the text of the Code by removing duplication and by grouping related themes together, with the intention of making it easier for the user to read.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

## **9. Consolidation**

- 9.1 There is no consolidation with other statutory instruments or other legislation.

## **10. Consultation outcome**

- 10.1 We engaged in statutory consultation, as required in Section 29 of the Protection of Freedoms Act 2012. Statutory consultees are:
- (a) such persons appearing to the Secretary of State to be representative of the views of persons who are, or are likely to be, subject to the duty under section 33(1) (duty to have regard to the code<sup>2</sup>) as the Secretary of State considers appropriate,
  - (b) the Association of Chief Police Officers,
  - (c) the Information Commissioner,
  - (d) the Chief Surveillance Commissioner, [*now the Investigatory Powers Commissioner*]
  - (e) the Surveillance Camera Commissioner,
  - (f) the Welsh Ministers, and
  - (g) such other persons as the Secretary of State considers appropriate.
- 10.2 On 28 July 2021 we wrote to representatives of all the organisations listed at (a) to (f) and gave six weeks for responses. The Surveillance Camera Commissioner separately circulated the draft to his key stakeholders (g), advertised the consultation on his webpage on Gov.UK, and forwarded the responses to the Home Office.
- 10.3 We received six responses from statutory consultees. Most supported the changes or confirmed that they had no comments. Some made suggestions that were out of scope of the Code, and so could not be reflected here, such as the suggestion that the Government should adopt the Code, as a minimum voluntarily, across its estate; or changes that would be more appropriate in other guidance referenced by the Code. We accepted some amendments which clarified details of legislation that is referred to in the Code. No objections were raised by representatives of the Welsh government.
- 10.4 The Surveillance Camera Commissioner received 36 responses. Nine of these were from representatives of statutory consultees (police and local authorities), who also declared broad support. These again included some points that were outside the scope of the Code, as well as others that could be considered for inclusion in other guidance.
- 10.5 The other consultees included academics, technology companies, representatives of transport networks, users of CCTV and civil liberties groups. Most responders supported the proposed changes. A number suggested more detailed additional text, for instance to allow the inclusion of guidance on the use of drones. We are considering how best to take forward these suggestions. However, given that the primary purpose of this update is to reflect legislative changes and an important legal judgment and to simplify the Code, we will progress these separately. This includes consideration of the most suitable vehicle for any such changes. As suggested by these consultees, we added further references to legislation in the definitions section, and a

---

<sup>2</sup> This refers to police and local authorities.

reference to the new Forensic Science Regulator Act 2021. As with other responses, there were suggestions that went beyond textual changes and were outside the scope of the consultation. There were also suggestions to ban certain technologies, which conflict with the Government's commitment to empower the police to use them while maintaining public trust.

## **11. Guidance**

- 11.1 The Code is a guidance document. It sets out guiding principles for police and local authority users of surveillance camera systems. More detailed guidance on the use of surveillance camera systems is available elsewhere, for example issued by the Surveillance Camera Commissioner, the Information Commissioner's Office, the College of Policing and the Forensic Science Regulator. The Code refers to these other sources of guidance but does not seek to duplicate detailed content.

## **12. Impact**

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment was published to accompany the original Code, issued in 2013. This legislation maintains existing regulatory standards and does not meet the minimum threshold for completion of a new Impact Assessment or Economic Note as there is no new cost to business.

## **13. Regulating small business**

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

## **14. Monitoring & review**

- 14.1 There are currently no specific plans to review this legislation. However, it will be subject to wide-ranging review in the context of a DCMS-led review of data protection legislation.<sup>3</sup>

## **15. Contact**

- 15.1 Alison Goodall at the Home Office can be contacted with any queries regarding the instrument [07917 243153, Alison.Goodall2@homeoffice.gov.uk].
- 15.2 Alex Macdonald, Deputy Director in the Data and Identity Directorate, at the Home Office can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Kit Malthouse MP, minister at the Home Office can confirm that this Explanatory Memorandum meets the required standard.

---

<sup>3</sup> [Data: a new direction - GOV.UK \(www.gov.uk\)](https://www.gov.uk/data-a-new-direction)