

Scottish Biometrics Commissioner Bill

Financial Memorandum

Introduction

1. As required under Rule 9.3.2 of the Parliament's Standing Orders, this Financial Memorandum is published to accompany the Scottish Biometrics Commissioner Bill, introduced in the Scottish Parliament on 30 May 2019.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 48–EN);
 - a Policy Memorandum (SP Bill 48–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 48–LC).
3. This Financial Memorandum has been prepared by the Scottish Government to set out the costs associated with the measures introduced by the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

Background

4. The value of biometric data in the context of criminal justice and community safety is widely recognised. Fingerprints and DNA often carry significant evidential value, and these techniques are increasingly being supplemented by new and emerging technologies such as facial recognition software, remote iris recognition and other behavioural biometrics such as voice pattern analysis.
5. The purpose of the Bill is to establish new independent oversight arrangements for the acquisition, use, retention and disposal of biometric

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data in the context of policing and criminal justice. The arrangements comprise establishing a new, independent Biometrics Commissioner for Scotland, and the creation of a new code of practice. The oversight function of the Commissioner and the code would apply to Police Scotland and the Scottish Police Authority (SPA).

6. The new Scottish Biometrics Commissioner's general function will be to support and promote the adoption of lawful, effective and ethical practices, by Police Scotland and the SPA, in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes. The Commissioner will keep under review the law, policy and practice in relation to the use of biometric data for policing and criminal justice purposes. The Commissioner will also prepare, promote and monitor a new code of practice which will apply to Police Scotland and the SPA, and keep its impact under review. The code is expected to provide detailed information and guidance setting out good practice in accordance with a range of ethical and human rights considerations. The code will support the achievement of recognised standards, thereby helping to drive improvement work in this area. The Commissioner will make recommendations to Police Scotland and the SPA where the Commissioner believes that proper regard is not being had to the code. The Commissioner will also produce an annual report, setting out issues and recommendations regarding the use of biometric data. The Commissioner will also play a key role in raising public awareness of biometrics in the context of policing and criminal justice, and promote in particular the rights of children, young people and vulnerable people.

7. The recruitment of the Scottish Biometrics Commissioner will be carried out by the Scottish Parliament. To ensure the impartiality of the proposed oversight arrangements, the new Scottish Biometrics Commissioner will be appointed by Her Majesty the Queen, on the nomination of the Scottish Parliament.

8. The Commissioner's post is expected to be part time (0.6 FTE) and the staffing complement is expected to be three FTEs. This is on the basis of a comparison with the Office of the Commissioner for the Retention and Use of Biometric Material (CRUBM) who has a similar oversight role in respect of police use of biometric material in England and Wales. The CRUBM is a 0.6 FTE post and his staffing complement is four FTEs. The CRUBM's remit covers all 43 police forces in England & Wales but only in respect of fingerprints and DNA – whereas, the extent of the Scottish Biometrics

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Commissioner's functions will include all current biometric data and any new or emerging biometric data.

9. The estimated costs of the Scottish Biometrics Commissioner are based on costs incurred by comparator bodies, and informed by advice from Scottish Parliamentary Corporate Body (SPCB) officials. Therefore, the set-up costs and running costs estimated in Tables A and B respectively can be predicted with a reasonable degree of certainty. VAT will not be reclaimable by the Scottish Biometrics Commissioner and is therefore added to the costs set out in this Financial Memorandum. The costs to the Commissioner in relation to the code of practice are included in the costs of the Commissioner's office – and the cost to local authorities and other bodies is estimated at nil.

Costs on the Scottish administration Office of Scottish Biometrics Commissioner

10. The costs are presented in two sections – firstly the set-up costs and, secondly, the annual running costs. For the purposes of the Financial Memorandum, it is assumed that the Scottish Biometrics Commissioner will be appointed in autumn 2020 and that the Commissioner's staff will be recruited in late 2020 or early 2021. Therefore, the set-up costs are expected to be incurred wholly in financial year 2020/21. Given that the office is expected to become operational in early 2021, the year one running costs will straddle financial years 2020/21 and 2021/22. The cost per financial year is set out in Table C.

11. Although the Commissioner will be an independent officeholder, in exercising their statutory functions, the Commissioner will be accountable to the Scottish Parliament, and the creation of the Commissioner will result in additional costs on the Scottish Parliament budget. Current practice requires that the set-up and year one running costs fall to be paid by the Scottish Government, with the ongoing running costs to the Scottish Parliament to be considered as part of the annual Scottish Government budget process.

Set-up costs

12. The figures set out in Table A show the estimated set-up costs for the Scottish Biometrics Commissioner in 2020/21, totalling £184,000.

Table A: Estimated set-up costs for the Scottish Biometrics Commissioner, inclusive of VAT where applicable

	2020/21
Set-up costs	£
Recruitment costs	4,000
Accommodation: fit out and legal fees	126,000
IT and website set-up	50,000
Marketing/Payroll and HR set-up	4,000
Total costs	184,000

The Commissioner and staff

13. Recruitment costs of up to £4,000 (including VAT) have been allowed for in the set-up costs to cover the recruitment of the Scottish Biometrics Commissioner (0.6 FTE) and three full time equivalent members of staff (see paragraph 8 for further information on staffing levels). The costs include advertising, assessor’s fees, warrant costs and HR support costs, and are based on recent similar exercises for parliamentary office-holders and staff undertaken by the SPCB – therefore they have a low margin of uncertainty. The recruitment of the Commissioner will be undertaken by a cross-party selection panel chaired by the Presiding Officer, and the recruitment of the Commissioner’s staff will be undertaken by the Commissioner with assistance from recruitment specialists. The £4,000 cost estimate may rise by £1,000 to £1,500 depending on how much specialist recruitment advice the Commissioner requires.

Accommodation costs

14. The location of the Scottish Biometrics Commissioner’s office will be a matter for the Commissioner to decide during the set-up period, subject to any direction given by the SPCB (see section 5(1)(a) of the Bill). It is expected that the office of Scottish Biometrics Commissioner would move into its own accommodation in the final quarter of 2020/21. The accommodation costs in Table A reflect fit out costs of £116,000 (including VAT) for remedial building works and the purchase of furniture (based on a cost of £700 per square metre and a 159 square metre space requirement, as estimated by the Scottish Government Estates Division). As it is not presently possible to predict what sort of office accommodation will be available at the time the Commissioner’s office is being set up, a generous allowance has been made for remedial works. Professional and legal fees of up to £10,000 (including VAT) to search for suitable property, to agree

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terms and to complete legal agreements would also be incurred (as estimated by officials from the SPCB). These cost estimates are expected to be the maximum costs, based on rental of private premises. Every effort will be made to reduce these costs by co-locating with other public bodies in modernised premises.

IT set-up/website

15. It is envisaged that the office of Scottish Biometrics Commissioner may wish to use the Scottish Government IT system, “SCOTS”, as is the case with the Scottish Human Rights Commission, the Police Investigations and Review Commissioner and the Scottish Public Services Ombudsman. This is a secure system which provides the necessary level of separation between the Scottish Government and the client systems. The outline costs in Table A are generous and have been estimated by the Scottish Government Online Communication Team on the basis of a complete installation of SCOTS into a non-SCOTS building, as well as hardware and software costs. If the Scottish Biometrics Commissioner were to be located in an existing SCOTS networked building, the installation costs would be minimal. Specifically, the costs include: wiring; IT systems; telephony; laptops and peripherals; a colour printer and standalone PC – coming to a total of £16,000 (including VAT) which represents the maximum cost likely to be incurred. Website design and installation is estimated at £34,000 (including VAT) based on estimates provided by the Scottish Government Online Communication Team.

16. If the Commissioner wished to install an alternative IT system, the assumption is that the costs would not exceed those for the SCOTS system.

Marketing/payroll/HR services

17. The launch of the proposed model for the Scottish Biometrics Commissioner will require a marketing/branding exercise to raise awareness about the new Commissioner which would be undertaken by the Commissioner and staff. The office of Scottish Biometrics Commissioner will also require to enter into a contract for payroll services and the set-up of HR support (which would include the preparation of staff contracts and a staff handbook). The total costs are estimated at £4,000 (inclusive of VAT) on the basis of comparator organisations.

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Ongoing costs

18. Table B below estimates the annual running costs for the Scottish Biometrics Commissioner at £333,000. These costs will be met in year one by the Scottish Government. From year two onwards, the costs will be met by the Scottish Parliament. Year one running costs are expected to be incurred partly in financial year 2020/21 and partly in 2021/22.

Table B: Estimated ongoing costs for the Scottish Biometrics Commissioner, inclusive of VAT where appropriate

Annual Running Costs	£
Commissioner's remuneration	57,000
Staff salaries	167,000
Accommodation	60,000
IT maintenance	5,000
Website maintenance	15,000
Payroll / HR services	3,000
Travel & subsistence	4,000
Other administrative costs	2,000
Professional fees	20,000
Total costs	333,000

Commissioner's remuneration and staff salaries

19. The appointment of the Commissioner will be taken forward by the Parliament in accordance with the Parliament's Standing Orders¹. The SPCB will set the terms and conditions of appointment which will provide for the Commissioner to be appointed for a fixed term – up to a maximum of eight years. The initial tasks of the Commissioner will be to establish the Commissioner's office, including recruiting staff and identifying suitable office premises. The recruitment of staff will be the responsibility of the Commissioner. The working hours of the Commissioner and the staffing complement are based on comparable Commissioners and their staff, including the UK Commissioner for the Retention and Use of Biometric Material (see paragraph 8 for further discussion of staffing levels).

¹ See rule 3.11 of the Standing Orders, which deals with the nomination of individuals for appointment by Her Majesty.

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20. It is currently envisaged that the remuneration will reflect those terms and conditions afforded to comparable office-holders accountable to the Scottish Parliament. It is estimated that a Scottish Biometrics Commissioner would require to be contracted for a maximum of 0.6 FTE against a full-time salary cost of £70,000 plus employer's on-cost of £26,000 – hence £57,000 per annum (salary £42,000 and employer's on-costs £15,000) at current rates.

21. The full staffing complement at the office of Scottish Biometrics Commissioner is expected to be around three full time equivalent staff members. For estimate purposes, it is expected that the Commissioner will appoint 1 FTE member of administrative staff at a cost of £33,621; 1 FTE member of policy staff at a cost of £50,864; 1 FTE team leader at a cost of £82,368. The estimated salaries are based on the SPCB pay scale for 2018/19, uplifted by 3% per annum to bring out an estimate for financial year 2021/22. This is modelled on the arrangements for the Office of the Commissioner for the Retention and Use of Biometric Material. These costs include employer's costs (NI and pension), bringing the total for staff salaries to approximately £167,000.

22. Although the office of Scottish Biometrics Commissioner staff, including the Commissioner, will not be civil servants, it is anticipated by SPCB officials that they will join the civil service pension scheme, in common with other SPCB-supported office-holders. The salaries included within Table B include employer's pension contributions at current rates.

Accommodation

23. Because it is not presently possible to forecast the availability of shared public sector accommodation, it is assumed, for cost estimate purposes, that a privately rented shared building is required. Rent, rates and service charge of £60,000 (including VAT) would be payable in central Edinburgh on a per annum basis. This represents the maximum estimate in a range which has a lower end of around £32,000 based on a comparable existing parliamentary Commissioner.

24. An estimate of potential dilapidation costs for returning the building to its original state on conclusion of the lease is £77,520 - based on a rate of £38 per square foot of office space in Edinburgh (where an estimated 1,700 square feet are required) plus VAT. A lower rate per square foot may be available for buildings outside central Edinburgh. For example, for a basic office outside Edinburgh in the central belt, a recent rate was £25 per square

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foot - and an office in the suburbs of Edinburgh was approximately £25 per square foot. However, it should be borne in mind that for dilapidations, each building needs to be considered on its own merits, depending on the lease term, standard of maintenance and alterations that the tenant has carried out (including data installations). The rate of £38 per square foot included in the costs is therefore a generous estimate.

IT support and website maintenance

25. As noted at paragraph 15 above, it is envisaged that the office of Scottish Biometrics Commissioner may wish to use the SCOTS IT system. Following installation, annual SCOTS maintenance charges are levied on a per laptop basis. Annual SCOTS maintenance costs have been estimated by Scottish Government IT specialists at a total of £5,000 (including VAT), based on 2018/19 costs. These figures include dedicated networking costs. IT maintenance charges are generally set at a “per user” rate which, for a SCOTS system, can vary between £800 to £1,270. The “per user” rate quoted here (being £1,250) is therefore in the high range. The accounts for year ending March 2017 for the Children and Young People’s Commissioner indicate that £30,000 was spent on IT support (for approximately 15 members of staff and one Commissioner) for a non-SCOTS system.

26. Scottish Government digital communications specialists have estimated £15,000 inclusive of VAT for ongoing website maintenance and support for a SCOTS system. It is difficult to be exact about website maintenance costs as these will vary, depending on the complexity of the website – for example, according to recent annual accounts, the Children and Young People’s Commissioner incurred costs of £13,000 per annum, while the Scottish Commission for Human Rights incurred £4,000.

27. If the Scottish Biometrics Commissioner wished to use a non-SCOTS system, the assumption would be that its cost would not exceed that of SCOTS.

Payroll / HR services

28. The office of Scottish Biometrics Commissioner will require to enter into a contract for payroll services and ongoing HR support. It is estimated that the total ongoing costs will be £3,000 per annum, inclusive of VAT. This is based on a recent estimate from a private payroll provider and a private HR company used by comparable organisations.

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Travel and subsistence

29. To perform its function effectively, the Scottish Biometrics Commissioner will be required to form and maintain close working relationships with Police Scotland, the Scottish Police Authority and related public bodies, including the UK Information Commissioner. Based on a pro-rata comparison with similar public bodies, an estimate of £4,000 per annum (including VAT) has been estimated for travel and expenses for the Commissioner and staff. By way of comparison, the Office of the Commissioner for the Retention and Use of Biometric Material reports expenditure of £6,000 for engagement activity undertaken by the Commissioner and his chief of staff across England and Wales.

Other administration costs and professional fees

30. Administration costs of £2,000 inclusive of VAT have been estimated – to include staff training, stationery and catering. The estimate is based on advice from SPCB officials and pro-rata comparison of the same costs for the Biometric Commissioner for England and Wales, the Commissioner for the Retention and Use of Biometric Material. The professional fees include external audit fees, legal fees and professional research, and are estimated at £20,000 inclusive of VAT, based on comparator bodies. It may be necessary to review this cost once the extent of the Commissioner's functions has been agreed by the Parliament.

Code of practice

31. The Bill places a duty on the Scottish Biometrics Commissioner to prepare, publish and regularly review a code of practice for the acquisition, retention, use and destruction of biometric data. As part of this process, the provisions place a duty on the Commissioner to consult with specified bodies, and other persons as the Commissioner considers appropriate, and to obtain the approval of Scottish Ministers to the code and to any amendments thereto. It is difficult to estimate the costs of implementing the code as it has yet to be written. However, it is anticipated that the code will draw on existing good practice and human rights considerations which Police Scotland and the SPA should in any case be observing and reflecting in standard operating procedures and training – such as the guidance provided to police officers in Police Scotland's standard operating procedures documents – and the SPA's accreditation for their laboratories is already authorised by the United Kingdom Accreditation Service Standards. Police Scotland and the SPA have noted the difficulty in estimating additional costs for a code which has yet to be written, and have acknowledged that business

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as usual change is absorbed into existing budgets, unless there is a significant policy or legislative shift which would then require government funding. The cost of implementing the recommendations of the code is therefore currently expected to be minimal. The costs of preparing the code are already included in the running costs of the Commissioner's office as this will be covered by the staff costs and the Commissioner's remuneration.

Costs summary

32. Table C sets out the estimated split of costs over the two financial years 2020/21 and 2021/22. In financial year 2020/21, there will be a mix of set-up and running costs; in financial year 2021/22, only running costs will be incurred. The split of the costs is based on an assumption around the timing of the Commissioner's appointment and the occupation date of the Commissioner's office premises. It is assumed that the Commissioner will be in place in autumn 2020 and that the Commissioner will have staff in place and will be occupying premises in the final quarter of 2020/21. If there is a delay to staff appointments or occupying the premises, then the 2020/21 costs would be less.

Table C: Estimated split of total costs for the Scottish Biometrics Commissioner between financial years 2020/21 and 2021/22, inclusive of VAT where appropriate

Cost Type	Financial Year 2020/21 <i>(includes set-up costs in italics, and part year running costs)</i> £	Financial Year 2021/22 <i>(recurring running costs for a full financial year)</i> £
<i>Recruitment Costs</i>	4,000	
<i>Accommodation: fit out and legal fees</i>	126,000	
<i>IT and website set-up</i>	50,000	
<i>Marketing/payroll and HR set-up</i>	4,000	
<i>Commissioner's remuneration</i>	28,500	57,000
<i>Staff salaries</i>	42,000	167,000
<i>Accommodation</i>	15,000	60,000

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IT maintenance		5,000
Website maintenance		15,000
Payroll/HR services		3,000
Travel & subsistence	1,000	4,000
Other administrative costs	500	2,000
Professional fees		20,000
Total Costs	271,000	333,000

Costs on local authorities

33. The Bill is not expected to have any financial implications for local authorities.

Costs on other bodies, individuals and businesses

34. The Bill is expected to have minimal or no financial impact on other bodies, individuals or businesses.

35. It is anticipated that the code of practice will draw on existing good practice and human rights considerations which Police Scotland and the SPA should in any case be observing and reflecting in standard operating procedures and training. This would include the guidance provided to police officers in Police Scotland’s standard operating procedures documents, and the SPA’s accreditation for their laboratories which is already authorised by the United Kingdom Accreditation Service Standards. Police Scotland and the SPA have noted the difficulty in estimating additional costs for a code which has yet to be written, and have acknowledged that business as usual change is absorbed into existing budgets, unless there is a significant policy or legislative shift which would then require government funding. The cost of implementing the recommendations of the code is therefore currently expected to be minimal.

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