

# Scottish Biometrics Commissioner Bill

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## Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. The information provided is as follows:

- the list of groupings (that is, the order in which amendments will be debated). Any procedural points relevant to each group are noted;
- the text of amendments to be debated on the day of Stage 2 consideration, set out in the order in which they will be debated. **THIS LIST DOES NOT REPLACE THE MARSHALLED LIST, WHICH SETS OUT THE AMENDMENTS IN THE ORDER IN WHICH THEY WILL BE DISPOSED OF.**

### Groupings of amendments

#### **Minor and technical**

14, 15, 17

#### **Bodies subject to oversight or with whom the Commissioner can work**

16, 3, 18, 24, 7

#### **Reports by the Commissioner**

4, 30, 13

#### **Complaints procedure**

5

#### **Post-legislative review**

19

#### **Code of practice: principles and content**

20, 35, 21, 36

#### **Code of practice: procedure for approval**

22, 23, 25, 26, 27, 28, 29

#### **Code of practice: enforcing compliance**

6, 8, 37, 9, 12, 38, 39, 40, 41, 42

*Notes on amendments in this group*

Amendment 8 pre-empts amendment 37

#### **Information notices**

10, 11, 1, 2

**Ethics advisory group**

31

**Definition of biometric data**

32, 33, 34

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**Amendments in debating order**

**Minor and technical**

**Humza Yousaf**

- 14 In schedule 1, page 13, line 21, leave out <must> and insert <may>

**Humza Yousaf**

- 15 In schedule 1, page 13, line 26, leave out <must> and insert <may>

**Humza Yousaf**

- 17 In section 2, page 1, line 28, leave out <it> and insert <the Commissioner>

**Bodies subject to oversight or with whom the Commissioner can work**

**Humza Yousaf**

- 16 In section 2, page 1, line 14, at end insert—  
<( ) the Police Investigations and Review Commissioner.>

**James Kelly**

- 3 In section 2, page 1, line 14, at end insert—  
<(c) local authorities,  
(d) health boards,  
(e) the Scottish Ministers (in respect of their powers with regard to the provision of prisons),  
(f) a person who has entered into a contractual or other arrangement with one of the persons mentioned in paragraphs (a) to (e) who is not acting in the course of employment by that person.>

**Humza Yousaf**

- 18 In section 3, page 2, line 25, at end insert—  
<( ) the Commissioner for the Retention and Use of Biometric Material,>

**Humza Yousaf**

- 24 In section 7, page 3, line 30, at end insert—  
<( ) the Police Investigations and Review Commissioner.>

**James Kelly**

- 7 In section 7, page 3, line 30, at end insert—  
<(c) local authorities,  
(d) health boards,

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- (e) the Scottish Ministers (in respect of their powers with regard to the provision of prisons),
- (f) a person who has entered into a contractual or other arrangement with one of the persons mentioned in paragraphs (a) to (e) who is not acting in the course of employment by that person.>

### **Reports by the Commissioner**

#### **John Finnie**

- 4 In section 2, page 1, line 20, after <data> insert <(including the technologies used to acquire, retain, use and destroy that data)>

#### **Liam McArthur**

- 30 In section 15, page 6, line 29, after <Commissioner> insert <—  
<( ) must prepare and publish reports about failures to have regard to the code by persons required to do so by section 7(1), and  
( )>

#### **John Finnie**

- 13\* In section 15, page 6, line 37, at end insert—
- <(3A) Where a report under subsection (1) includes recommendations in relation to new technologies used to acquire, retain, use or destroy biometric data, the persons mentioned in section 2(1)(a) and (b) must publish a document setting out the steps they will take as a result of the report's recommendations.
  - (3B) A document published under subsection (3A) must be—
    - (a) sent to the Scottish Ministers, and
    - (b) laid before the Scottish Parliament.
  - (3C) Where a report under subsection (1) recommends that a new technology is not to be used for a purpose mentioned in subsection (3A), the persons mentioned in section 2(1)(a) and (b) must not use that technology for that purpose.>

### **Complaints procedure**

#### **Margaret Mitchell**

- 5\* After section 5, insert—
- <**Complaints procedure**
- (1) The Commissioner must establish a procedure by which a person, or someone acting on a person's behalf, may make complaints (or other representations) to the Commissioner in relation to the acquisition, retention, use or destruction of biometric data by or on behalf of—
    - (a) the Police Service of Scotland,

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- (b) the Scottish Police Authority.
- (2) The procedure must provide for it to be available whether or not procedures established by the persons referred to in subsection (1) for making complaints (or other representations) about the acquisition, retention, use and destruction of biometric data have been or are being pursued.
- (3) Before establishing a procedure under subsection (1) the Commissioner must consult—
  - (a) the Scottish Public Services Ombudsman,
  - (b) the Information Commissioner,
  - (c) the persons referred to in subsection (1), and
  - (d) such other persons, or groups of persons, as the Commissioner considers appropriate,on the Commissioner’s proposals for such a procedure.
- (4) The Commissioner must keep the procedure under review and must vary it whenever, after such consultation, the Commissioner considers it appropriate to do so.
- (5) The Commissioner must give such publicity to the procedure (including the procedure as varied under subsection (4)) as the Commissioner considers appropriate and must give a copy of the procedure to any person who requests it.
- (6) For the avoidance of doubt, nothing done under this section affects the powers conferred on the Information Commissioner under the Information Commissioner Act 2000 and any other legislation.>

### **Post-legislative review**

**Liam McArthur**

**19\*** After section 5, insert—

#### **<Review of the Commissioner’s functions and powers**

- (1) The Scottish Ministers must review the powers and functions of the Commissioner—
  - (a) by the end of the period of 3 years after the day of Royal Assent, and
  - (b) by the end of the period of 5 years after each review under this section.
- (2) In undertaking a review under subsection (1) the Scottish Ministers must consider whether—
  - (a) the functions and powers of the Commissioner remain appropriate,
  - (b) the Commissioner’s functions and powers should be extended beyond the functions and powers under section 2(1) for criminal justice and police purposes by—
    - (i) the Police Service of Scotland,
    - (ii) the Scottish Police Authority.
- (3) The Scottish Ministers must—
  - (a) prepare and publish a report on a review under subsection (1),
  - (b) lay a copy of any such report before the Scottish Parliament.

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- (4) In carrying out a review the Scottish Ministers must consult such persons as they consider appropriate.
- (5) A report under subsection (3) must be prepared, published and laid before the Parliament no later than 12 months after commencement of a review.>

### **Code of practice: principles and content**

#### **Humza Yousaf**

- 20 In section 6, page 3, line 13, at beginning insert <In furtherance of the Commissioner’s general function,>

#### **Liam Kerr**

- 35 In section 6, page 3, line 15, after <purposes> insert <, in line with the principles set out in section (*Code of practice: principles*)>

#### **Liam McArthur**

- 21 In section 6, page 3, line 15, at end insert—  
<( ) The code must in particular make provision for a presumption of destruction of biometric data after the expiry of 3 years from acquisition of that data.>

#### **Liam Kerr**

- 36 After section 6, insert—  
<**Code of practice: principles**  
In preparing or, as the case may be, revising, a code of practice under section 6 the Commissioner must have regard to the following principles—  
(a) promoting and protecting human rights,  
(b) promoting and protecting an individual’s right to privacy,  
(c) promoting and protecting public confidence in the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes,  
(d) ensuring the safety of individuals and communities.>

### **Code of practice: procedure for approval**

#### **Humza Yousaf**

- 22 In section 6, page 3, line 16, leave out subsections (2) to (4)

#### **Humza Yousaf**

- 23 In section 6, page 3, line 24, leave out <Subsections (2) to (4) of this section and sections 7> and insert <Unless the context requires otherwise, sections 7, 8 and (*Approval of the code*)>

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### Humza Yousaf

- 25 In section 8, page 4, line 2, leave out <Before submitting a draft code of practice for approval under section 6(2)> and insert <In preparing a draft code of practice>

### Humza Yousaf

- 26 After section 8, insert—

#### <Further procedure in relation to the first code

- (1) Having prepared a draft of the first code of practice with which the Commissioner, with the consent of the Scottish Ministers, wishes to proceed, the Commissioner must lay a copy of it before the Scottish Parliament.
- (2) In finalising a draft of the first code of practice, the Commissioner must have regard to any representations about it that are made to the Commissioner within 60 days of the date on which the copy of it is laid under subsection (1).
- (3) In calculating the period of 60 days for the purpose of subsection (2), no account is to be taken of any time during which the Parliament is dissolved or in recess for more than 4 days.>

### Humza Yousaf

- 27 After section 8, insert—

#### <Approval of the code

- (1) Once the Commissioner has finalised a draft code of practice, the Commissioner must submit it to the Scottish Ministers for approval.
- (2) The Scottish Ministers may approve a draft code of practice—
  - (a) without modification, or
  - (b) with such modifications as they, with the consent of the Commissioner, consider appropriate.
- (3) If the Scottish Ministers do not approve a draft code of practice, they must give the Commissioner a statement of their reasons for not approving it.>

### Humza Yousaf

- 28 In section 9, page 4, line 20, leave out <6(3)> and insert <(Approval of the code)(2)>

### Humza Yousaf

- 29 In section 10, page 4, line 32, leave out <code> and insert <first code of practice>

## Code of practice: enforcing compliance

### John Finnie

- 6 In section 7, page 3, line 27, leave out <have regard to> and insert <comply with>

### John Finnie

- 8 In section 7, page 3, line 33, leave out subsection (3)

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**Humza Yousaf**

- 37 In section 7, page 3, line 33, leave out <have regard to> and insert <comply with>

**John Finnie**

- 9 In section 11, page 5, line 6, leave out <have regard to> and insert <comply with>

**John Finnie**

- 12 In section 15, page 6, line 30, leave out <have regard to> and insert <comply with>

**Humza Yousaf**

- 38 After section 17, insert—

*<Compliance notices*

**Compliance notices**

- (1) Where the Commissioner considers that a person who is required by section 7(1) to comply with the code of practice has not done so or is not doing so, the Commissioner may issue a compliance notice to the person.
- (2) A “compliance notice” is a notice requiring the person to whom it is issued to take the steps set out in the notice in order to address the person’s failure to comply with the code of practice.>

**Humza Yousaf**

- 39 After section 17, insert—

**<Content and form of a compliance notice**

A compliance notice must include—

- (a) a statement of the grounds for issuing the notice, including a statement of—
  - (i) the provision of the code of practice which the Commissioner considers that the person has not complied with,
  - (ii) the act or omission which has caused the Commissioner to conclude that the code of practice has not been complied with,
- (b) details of the steps that the Commissioner requires the person to whom the notice is issued to take in order to—
  - (i) comply with the code of practice, or
  - (ii) ensure that the code of practice will be complied with in future,
- (c) the date of issue of the notice,
- (d) the period of time within which the required steps are to be taken,
- (e) information about the person to whom, and as to how and by when, any representations about the notice may be made,
- (f) an explanation of the consequences of failure to comply with the requirements of the notice.>

**Humza Yousaf**

- 40 After section 17, insert—

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### <Variation of a compliance notice

- (1) The Commissioner may vary a compliance notice—
  - (a) so as to extend the period of time within which the required steps are to be taken, and
  - (b) with the consent of the person to whom the notice was issued, so as to modify the required steps.
- (2) A compliance notice may be varied at any time before the expiry of the period within which the required steps are to be taken.
- (3) A compliance notice is varied by—
  - (a) in the case of a variation under subsection (1)(a), issuing a notice in writing to the person to whom the compliance notice was issued,
  - (b) in the case of a variation under subsection (1)(b), agreement in writing between the Commissioner and the person to whom the compliance notice was issued.>

### Humza Yousaf

41 After section 17, insert—

#### <Revocation of a compliance notice

- (1) The Commissioner may revoke a compliance notice.
- (2) A compliance notice may be revoked—
  - (a) at any time before completion of the steps that are to be taken to comply with it,
  - (b) by issuing a notice in writing to that effect to the person to whom the compliance notice was issued.>

### Humza Yousaf

42 After section 17, insert—

#### <Failure to comply with a compliance notice

- (1) Where a person to whom a compliance notice has been issued refuses or fails, without reasonable excuse, to comply with the notice, the Commissioner may report the matter to the Court of Session.
- (2) After receiving a report under subsection (1) and hearing any evidence or representations on the matter, the Court may (either or both)—
  - (a) make such order for enforcement as it considers appropriate,
  - (b) deal with the matter as if it were a contempt of court.>

### Information notices

#### John Finnie

10 In section 12, page 5, line 32, leave out subsection (2)

#### John Finnie

11 In section 12, page 5, line 35, leave out <or (2)>

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### **Gordon Lindhurst**

- 1 In section 12, page 5, line 36, leave out <(either or both)>

### **Gordon Lindhurst**

- 2 In section 12, page 5, leave out line 38

### **Ethics advisory group**

#### **Liam McArthur**

- 31 After section 22, insert—

*<Ethics Advisory Group*

#### **Ethics Advisory Group**

- (1) The Ethics Advisory Group (in this Act referred to as “the Group”) is established.
- (2) The Group is to meet from time to time and at the least twice annually in order to provide independent advice to the Commissioner on the matters mentioned in subsection (3).
- (3) The matters are—
  - (a) the promotion of ethical considerations in the acquisition, retention, use and disposal of biometric technologies and biometric data, and
  - (b) the legal and ethical issues arising from emerging technological developments.
- (4) The Group must make an annual report to the Commissioner on its consideration of the matters under subsection (3).
- (5) A report under subsection (4) may—
  - (a) propose changes to the code of practice,
  - (b) make such other recommendations to the Commissioner as the Group considers appropriate.
- (6) The Scottish Ministers may by regulations make provision about the governance, remuneration and membership of the Group.
- (7) Regulations under subsection (6) may—
  - (a) specify the number of members of the Group and the process to appoint them,
  - (b) specify remuneration and expenses to be paid to members of the Group,
  - (c) make provision about the preparation and publication of reports by the Group,
  - (d) make such other provision about the functioning of the Group as the Scottish Ministers consider appropriate.
- (8) The Commissioner must appoint the members of the Group in accordance with regulations under subsection (7).
- (9) The Scottish Ministers must provide such financial resources as are considered necessary to support the operation of the Group.
- (10) The Scottish Ministers must bring forward regulations under subsection (7) within one year of this section coming into force.>

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**Definition of biometric data**

**Humza Yousaf**

- 32** In section 23, page 10, line 10, after <body> insert <or any part of an individual’s body>

**Humza Yousaf**

- 33** After section 23, insert—

**<Power to change meaning of “biometric data”**

The Scottish Ministers may by regulations modify section 23 so as to change, or clarify, the meaning of “biometric data” in this Act.>

**Humza Yousaf**

- 34** In section 25, page 10, line 26, leave out <and 9(1)> and insert <, 9(1) and (*Power to change meaning of “biometric data”*)>



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