

# Scottish Biometrics Commissioner Bill

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## Marshalled List of Amendments selected for Stage 3

The Bill will be considered in the following order—

Sections 1 to 29  
Long Title

Schedules 1 and 2

Amendments marked \* are new (including manuscript amendments) or have been altered.

### Section 2

#### John Finnie

19 In section 2, page 1, line 27, at end insert—

<( ) In complying with subsections (3)(a) and (b), the Commissioner is to have regard to the technology used or capable of being used for the purpose of acquiring, retaining, using or destroying biometric data.>

#### Humza Yousaf

20 In section 2, page 2, line 12, at end insert—

<“children and young persons” means individuals under the age of 18 years,>

#### Humza Yousaf

21 In section 2, page 2, leave out line 17

### Section 5

#### Liam McArthur

6 In section 5, page 3, line 10, at end insert—

<( ) the process to be followed in appointing members of the advisory group established under section 22A.>

## Section 5A

### Margaret Mitchell

7 Leave out section 5A and insert—

#### <5A Complaints about failures to comply with the code

- (1) The Commissioner must provide for a procedure by which an individual, or someone acting on an individual's behalf, may make a complaint to the Commissioner that a person who is required by section 7(1) to comply with the code of practice has not done or is not doing so in relation to the individual's biometric data.
- (2) The procedure must provide for it to be available whether or not procedures—
  - (a) established by the person about whom the complaint is made, and
  - (b) which allow for the making of a complaint (or other representation) about the acquisition, retention, use or destruction of the individual's biometric data, have been or are being pursued.
- (3) In determining the procedure, the Commissioner must consult—
  - (a) the Scottish Public Services Ombudsman,
  - (b) the Information Commissioner,
  - (c) the persons about whom a complaint may be made,
  - (d) such other persons as the Commissioner considers appropriate.
- (4) The Commissioner must give such publicity to the procedure as the Commissioner considers appropriate and must give a copy of the procedure to any person who requests it.
- (5) The Commissioner must keep the procedure under review and must vary it whenever, after consulting the persons mentioned in subsection (3), the Commissioner considers it appropriate to do so.
- (6) In subsections (2), (4) and (5), "the procedure" means the procedure for the time being in effect.>

### Margaret Mitchell

5 Move section 5A to after section 10

## Section 5B

### Liam McArthur

8 Leave out section 5B and insert—

#### <Report on the Commissioner's functions

- (1) The Scottish Ministers must, before the expiry of the period of 12 months beginning with the day after the last day of the period to which the Commissioner's first strategic plan relates—
  - (a) prepare and publish a report on the Commissioner's functions,

- (b) lay a copy of the report before the Scottish Parliament.
- (2) In preparing the report, the Scottish Ministers must consult such persons as they consider appropriate.
- (3) The report must include an assessment of whether—
  - (a) the functions of the Commissioner remain appropriate,
  - (b) the powers conferred by sections 2(6) and 7(4) should be exercised.
- (4) The Scottish Ministers must, before the expiry of the period of 5 years beginning with the day after the day on which the most recent relevant document was laid before the Scottish Parliament—
  - (a) prepare and publish—
    - (i) a report on the Commissioner’s functions, or
    - (ii) a statement setting out why they consider such a report to be unnecessary,
  - (b) lay a copy of the report or statement before the Scottish Parliament.
- (5) Subsections (2) and (3) apply to a report under subsection (4)(a)(i) as they apply to a report under subsection (1).
- (6) In this section, “relevant document” means—
  - (a) a report under subsection (1) or (4)(a)(i), or
  - (b) a statement under subsection (4)(a)(ii).>

## Section 6

### **Liam Kerr**

- 9** In section 6, page 4, line 24, leave out from <, in> to end of line 25

### **Liam McArthur**

- 10** In section 6, page 4, line 26, leave out subsection (1A) and insert—
- <(1A) The code of practice must include provision about when biometric data must be destroyed in cases where a relevant enactment does not make such provision.
  - (1B) In making provision in accordance with subsection (1A), the Commissioner must have regard to the provision made by relevant enactments.
  - (1C) The code of practice may make different provision for different purposes.>

### **Humza Yousaf**

- 22** In section 6, page 4, line 28, leave out subsection (5) and insert—
- <( ) Sections 6A, 8 and 8B apply to a revised draft code of practice as they apply to a draft code of practice.>

### **Liam McArthur**

- 11** In section 6, page 4, line 29, at end insert—
- <( ) For the purpose of this section, the following are “relevant enactments”—

- (a) Part 2 of the Criminal Procedure (Scotland) Act 1995,
- (b) section 56 of the Criminal Justice (Scotland) Act 2003,
- (c) Chapter 4 of Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019.>

### **Section 6A**

#### **Liam Kerr**

- 12** In section 6A, page 4, line 31, leave out from <or,> to the end of line 32 and insert <a draft code of practice, the Commissioner must have regard to the importance of—>

### **Section 15**

#### **Liam McArthur**

- 13** In section 15, page 8, line 19, leave out from beginning to end of line 21 and insert—
- <(1) If the Commissioner determines that a person who is required by section 7(1) to comply with the code of practice has not done or is not doing so, the Commissioner must prepare and publish a report about that failure unless the Commissioner considers that it is sufficiently minor not to merit it.
- (1A) The Commissioner may prepare and publish a report>

#### **Liam McArthur**

- 14** In section 15, page 8, line 23, after <(1)> insert <or (1A)>

#### **Liam McArthur**

- 15** In section 15, page 8, line 24, at end insert—
- <( ) A report prepared under subsection (1) may relate to separate failures by different persons.>

#### **Liam McArthur**

- 16** In section 15, page 8, line 25, after <(1)> insert <or (1A)>

#### **John Finnie**

- 23** In section 15, page 8, line 26, at end insert—
- <( ) in relation to the technology used or capable of being used for the purpose of acquiring, retaining, using or destroying biometric data, and>

### **Section 16**

#### **John Finnie**

- 24** In section 16, page 8, line 34, at end insert—
- <(A1) Where a report under section 15(1) or (1A) includes a recommendation—

- (a) addressed to a person in relation to whom the Commissioner has functions under section 2(1), and
  - (b) relating to the technology used or capable of being used for the purpose of acquiring, retaining, using or destroying biometric data,
- the Commissioner must, in the report, impose on the person a requirement to respond to the recommendation.>

**Liam McArthur**

- 17 In section 16, page 8, line 35, after <15(1)> insert <or (1A)>

**John Finnie**

- 25 In section 16, page 8, line 35, leave out from <recommendations> to end of line 37 and insert <a recommendation—
- ( ) addressed to a person in relation to whom the Commissioner has functions under section 2(1), and
  - ( ) which is not a recommendation to which the duty in subsection (A1) applies,
- the Commissioner may, in the report, impose on the person a requirement to respond to the recommendation.>

**John Finnie**

- 26 In section 16, page 8, line 38, after <subsection> insert <(A1) or>

**Section 22A**

**Liam McArthur**

- 18 Leave out section 22A and insert—

*<Advisory group*

**Advisory group**

- (1) The Commissioner must establish and maintain an advisory group.
- (2) The purpose of the group is to give advice and information to the Commissioner about matters relating to the Commissioner's functions.
- (3) The members of the group are to be such persons as the Commissioner determines, subject to the approval of the Parliamentary corporation as to—
  - (a) the number of members, and
  - (b) the persons to be appointed.
- (4) The Commissioner may pay to members of the group such remuneration and allowances (including expenses) as the Commissioner, with the approval of the Parliamentary corporation, determines.
- (5) The procedure of the group is to be such as the Commissioner determines.>

## **Section 24**

### **Humza Yousaf**

- 27 In section 24, page 14, line 11, leave out from <a> to end of line and insert <the code of practice for the time being in effect by virtue of section 9,>

## **Schedule 1**

### **Humza Yousaf**

- 28 In schedule 1, page 19, line 7, after <may> insert <, with the consent of the Parliamentary corporation as to numbers,>

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