1. It is in the public interest that the police are effective in deterring, preventing and detecting crime. Most of us are far more likely to be the victim of a crime than to commit one. This is what one would expect in a civilised society; if it were otherwise, we would be living in the neo-Hobbesian hell on earth of a failed state. An important feature of life in such a civilised society is the freedom to go about one’s lawful business unmolested and without being the subject of intrusive or covert observation, whether by agents of the state or others, whatever form such observation takes.

2. Facial recognition technology (“FRT”) is already in use in parts of the UK, although not, as far as we know, routinely. Concerns have been raised both about its accuracy and the controls governing its use. *Policing 2026* [1], Police Scotland’s 10 year strategy, emphasises the increasing use of technology. Its mantra appears to be that “data will guide everything we do” (page 41). The plan is for the police to be able to make much better use of existing technology, including basic IT, in order to work more efficiently, spending far less time on processing information and routine communications with colleagues and other agencies. It’s striking that the “Day in the Life” feature for 2026 includes as a typical example of a constable’s job the apprehension of a suspect who’s been “recognised by facial recognition software” (page 39).

However, contrary to the document accompanying the Call for Evidence (“CfE”), there’s no “proposal [added emphasis] to introduce the use of facial recognition technology”. Instead, it’s taken as a given; indeed, since the strategy has been agreed and is already in place, it could hardly be otherwise. The strategy does aver that “we will treat all data ethically”, but without suggesting how that ambition might be achieved, or who is to decide if it has been. (We note that, according to the CfE, Police Scotland has said it is awaiting “developments in the passage of the Scottish Biometrics Commissioner Bill” before introducing FRT, but this is at odds with the broad thrust and the specifics of *Policing 2026*. )
3. NO2ID Edinburgh therefore concludes that insufficient attention has so far been paid to the issues raised by FRT. Presumably the Sub-Committee will take evidence from Police Scotland about its use in order to inform its decision-making. For example, it’s clear from Policing 2026 that it’s intended that body-worn cameras will be a standard part of every officer’s equipment. We can understand the benefits of this for policing work. However, the CfE refers to “body worn video cameras at major events, such as protests and football matches”. It’s not clear if these would be in addition to what was being routinely provided to officers. If the reference is to something more elaborate, questions must be asked about its efficacy, and its cost-effectiveness, as well as about whether it is ethical.

4. We very much agree with the UK Biometrics Commissioner, who wrote in his 2018 Annual Report [2] of his concerns that “the speed of technical development in biometric capabilities” was, perhaps inevitably, “faster than the development of appropriate legislation and regulatory frameworks”. As he cautioned, "bolting on governance rules after technical development is much costlier than developing technical solutions within known rules”. NO2ID believes there is a need for a Code of Practice for all forms of biometric data (see paragraph 9 below). We believe that a useful starting point would be the 12 principles in the Surveillance Camera Code of Practice adopted in 2013 for the Surveillance Camera Commissioner for England and Wales [3]. The first of these is that such cameras "must always be [used] for a specified purpose which is in pursuit of a legitimate aim and necessary to meet an identified pressing need”. It’s hard to see how that principle wouldn’t be breached by the use of FRT, which has far greater implications for privacy than CCTV (see paragraph 5 below), at football matches, pop concerts, demonstrations or other large public gatherings. The presumption of innocence is a cornerstone of our criminal justice system. Police Scotland is accountable to the public (and in a democratic society the police must act by consent), which of course funds it and in whose interests it is required to act at all times.

5. NO2ID accepts that targeted and intelligence-led FRT has a place in modern policing, but it should not be resorted to as part of a
fishing expedition or because of a desire to use the latest technology. Furthermore, it must be reliable. The use of DNA evidence, and the great reliance placed on it in criminal proceedings, is justifiable only because of its compelling accuracy. To date, FRT has not achieved the same standard, although no doubt it will improve. However, that will happen only as it becomes far more powerful; the databases and watch lists against which biometric information will be compared will have to be larger and more detailed. There is already legitimate concern about the widespread use of CCTV cameras; FRT raises additional concerns. It is significantly different from CCTV, which is used after the event. When a crime is reported, the police examine available CCTV footage. Otherwise the footage is automatically deleted without ever having been viewed. In contrast, FRT can capture tens of thousands of images which the police (or perhaps other agencies or even private contractors) attempt to match to existing photographic data in the hope of finding someone who is wanted or is in other some other way a person of interest. This is a difference of kind from CCTV, not one of degree. We have no wish to be alarmist, but let us remember that such general surveillance methods, if taken beyond a certain point, are those beloved by police states, which, in contrast to democracies, depend on the population’s fear of their powers rather than its approval of their activities.

6. How to determine where that point is should be the responsibility of the legislature, informed by public debate and the contributions of the new Privacy Commissioner (see paragraph 9 below), recognising that the inevitably more sophisticated technology will require regulation that is both precise, so that the police, the courts and the public all know what is and what is not acceptable, and flexible, so that it can be adjusted as technology develops. Historically, the UK has had a less vigilant attitude to state surveillance than many other European countries; thus our common law has offered less protection for our personal data than, for example, the European Court of Human Rights provides. Combined with the rapid and increasing pace of “improvement” in technology, there is a need for much stronger explicit legal and administrative protections for the individual.
7. That need was recognised by the Independent Advisory Group, which reported to the Cabinet Secretary for Justice in February 2018. It was asked to review the retention of custody images by Police Scotland and the use of biometric data more generally. NO2ID supports its recommendations, in particular the call for a national debate about all aspects of the use of biometric data by the police and for “other public protection purposes” [4], and the recommendation that an all-encompassing Code of Practice should be established. The Group also recommended the formation of an ethics advisory group, which we believe will be essential, especially as technology changes over time.

8. NO2ID continues to maintain, as submitted in our evidence to the Justice Committee on October 1, that what Scotland needs is a full-time Privacy Commissioner, charged with responsibility for FRT and biometric data but also CCTV and all other aspects of personal data north of the border, rather than a part-time Biometrics Commissioner whose brief would be limited to FRT and other biometric data. [5]

9. NO2ID calls for a moratorium on all police or other usage of FRT in Scotland until a full-time Privacy Commissioner is in post and has conducted a full review of this potentially Orwellian new technology. https://consult.scotland.police.uk/consultation/2026/user_uploads/policing-2026-strategy-for-consultation.pdf

NO2ID
1 November 2019

References


