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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Scottish Biometrics Commissioner Bill: Stage 1



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meeting on 1 October 2019, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the Scottish Biometrics Commissioner Bill at Stage 1.ⁱ
2. The Committee submits this report to the lead Committee for the Bill (the Justice Committee) under Rule 9.6.2 of the Standing Orders.
3. The Scottish Government has provided the Parliament with a memorandum on the delegated powers provisions in the Bill.ⁱⁱ

ⁱ The Bill is available [here](#).

ⁱⁱ The Delegated Powers Memorandum is available [here](#).

Overview of the Bill

4. This Government Bill was introduced by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 30 May 2019. The lead Committee is the Justice Committee.
5. The Bill will create a new Scottish Biometrics Commissioner and provides for a code of practice to support and promote good practice and consistent standards in relation to the acquisition, retention, use and destruction of biometric data by the police. The purpose of the Bill is to establish independent oversight arrangements for the collection, use, retention and disposal of biometric data in Scottish policing and criminal justice. Biometric data encompasses fingerprints, DNA, custody photographs, facial recognition software, remote iris recognition and voice pattern analysis. The Policy Memorandum provided by the Scottish Government describes the field of biometrics as evolving rapidly, and the policy driver is to ensure that the Scottish approach is lawful, effective and ethical.ⁱⁱⁱ
6. In June 2017, the Scottish Government tasked an Independent Advisory Group to consider the taking, use and retention of biometric data in policing. Their March 2018 recommendations called for legislation to create an independent Scottish Biometrics Commissioner, answerable to the Scottish Parliament, who would keep under review the acquisition, retention, use and disposal of all biometric data by the Police, the Scottish Police Authority, and other public bodies, who would promote good practice, and who would monitor compliance with a Code of Practice. And they called for legislation to establish such a Code of Practice covering the acquisition, retention, use and disposal of DNA, fingerprints, facial and other photographic images (including custody images) and all existing, emerging and future biometrics for the Police.
7. The recommendations of this Independent Advisory Group on the Use of Biometric Data in Scotland are also in line with the findings of Professor Jim Fraser in 2008 and Her Majesty's Inspector of Constabulary in Scotland ("HMICS") in 2016. Professor Fraser reviewed the operation and effectiveness of certain aspects of the law relating to the acquisition, use and destruction of forensic data and to identify proportionate options for reforming Scots law. HMICS carried out an audit and assurance review on police use of facial recognition technologies in Scotland following questions directed to the Scottish Government in 2015. That review included a review of the statutory framework.

ⁱⁱⁱ Policy Memorandum is available [here](#).

Delegated Powers

8. The Committee considered each of the delegated powers in the Bill. The Committee determined that it did not need to draw the attention of the Parliament to the delegated powers in the following provisions:

- Section 2 – Functions
- Section 7 – Effect of a code
- Section 9 – Bringing a code into effect
- Section 21 – Accounts and audit
- Section 26 – Ancillary provision
- Section 28 – Commencement

9. The Committee therefore reports that it is content with the delegated powers provisions contained in the Bill.

