



Scottish Biometrics  
Commissioner  
Coimiseanair  
Biometrics na h-Alba



Leverhulme Research Centre  
for Forensic Science  
University of Dundee



SCOTTISH POLICE  
AUTHORITY  
ÙGH DARRAS POILIS NA H-ALBA

# ASSURANCE REVIEW OF THE ACQUISITION, RETENTION, USE AND DESTRUCTION OF DNA FOR CRIMINAL JUSTICE AND POLICE PURPOSES IN SCOTLAND

## THE SCOTTISH BIOMETRICS COMMISSIONER

Terms of Reference

Final Version 1.0 - August 2024



*Safeguarding our biometric future*



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## Document Control

<b>Title</b>	Assurance review of the acquisition, retention, use, and destruction of DNA for criminal justice and police purposes
<b>Prepared by</b>	Scottish Biometrics Commissioner
<b>Reviewed by</b>	Dr Brian Plastow
<b>Version</b>	Final version 1.0
<b>Amendments</b>	Updated re partnership approach with the SPA and Leverhulme.
<b>Date</b>	August 2024



## About the Scottish Biometrics Commissioner

The Scottish Biometrics Commissioner is established under the [Scottish Biometrics Commissioner Act 2020](#). The Commissioner's general function is to support and promote the adoption of lawful, effective and ethical practices in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes by:

- [The Police Service of Scotland](#) (Police Scotland)
- [Scottish Police Authority](#) (SPA)
- [Police Investigations and Review Commissioner](#) (PIRC)

The Commissioner has wide ranging general powers and may do anything which appears to the Commissioner to be necessary or expedient for the purposes of, or in connection with, the performance of the Commissioner's functions, or to be otherwise conducive to the performance of those functions<sup>1</sup>.

## Our Values

As a values-led organisation, we will conduct our activities in a way that is Independent, Transparent, Proportionate and Accountable.

### Independent

We will always act independently and publish impartial and objective review reports. Our professional advice will be informed and unbiased. The Scottish Biometrics Commissioner is a juristic person, appointed by HM the King on the nomination of the Scottish Parliament and is independent of Scottish Government.

### Transparent

We will be open about what we do and give reasons for our decisions. We will publish our reports and findings and will not restrict information unless deemed necessary to protect the identity of data subjects, or due to wider public interest considerations. For example, section 19 of the Scottish Biometrics Commissioner Act 2020 provides that the Commissioner or a member of staff must not knowingly disclose confidential information unless necessary in the exercise of the Commissioner's functions. This means that we will never publish sensitive or specific case information in circumstances that could compromise police investigations or hand competitive advantage to criminals.

### Proportionate

We will ensure that our activity is proportionate and does not exceed what is necessary to achieve our statutory purpose. We will minimise the burden of any review activity on Police Scotland, the Scottish Police

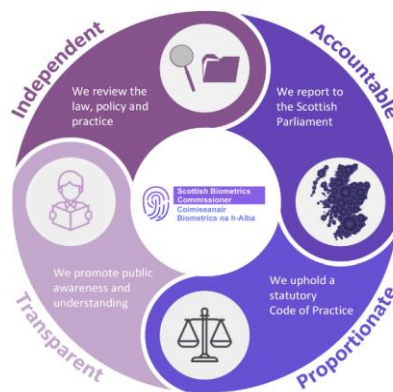
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<sup>1</sup> Scottish Biometrics Commissioner Act 2020, [Section 4](#)

Authority, and the Police Investigations and Review Commissioner. We will ensure that the way that we do what we do is necessary, effective and efficient.

### Accountable

We will be accountable for what we do to the Scottish Parliament and will submit ourselves to whatever scrutiny is appropriate to our function. We will promote equality, diversity, and human rights in everything that we do.



## Our Power to Work with Others

[Section 3](#) of the Scottish Biometrics Commissioner Act 2020 confers a power on the Commissioner in the exercise of his functions to work, assist and consult with other named bodies. This includes amongst others, Police Scotland, the Scottish Police Authority and the Police Investigations and Review Commissioner.

This Assurance Review will be conducted by the Scottish Biometrics Commissioner working in partnership with the [Scottish Police Authority \(SPA\)](#) and the [Leverhulme Research Centre for Forensic Science](#). It is envisaged that the SPA will assist the review by identifying and providing access to relevant forensic science staff with subject expertise in DNA interpretation and analysis, and to relevant staff with expertise in the Scottish DNA database (SDNAD) including those engaged in joint working with Police Scotland on national systems interfaces between the Scottish and UK national DNA database (NDNAD).

The Leverhulme Research Centre for Forensic Science will provide independent commentary for the Commissioner to assist a lay person in understanding whether the use of the 24 genetic marker DNA test (DNA24) as used in Scotland by the SPA Forensic Services provides superior DNA interpretation and analysis capabilities to Police Scotland by comparison with DNA17 which is used within the UK DNA database and which is the European standard for policing. Leverhulme will also provide a short discussion piece on the potential direction of travel for DNA in forensic science in future, and some commentary to help the Parliament and any lay person understand some of the ethical challenges relating to the use of genetic information in police and forensic investigations.

The report to Parliament by the Commissioner in February or March 2025 will acknowledge the partnership approach and carry the corporate logos of all three partners.



## Background

Criminal procedure legislation in Scotland (and the UK) permits the police to obtain DNA samples (normally mouth swabs) without consent from any person detained following arrest for a recordable offence. The Criminal Procedure (Scotland) Act 1995, sections 18 and 19 as amended, sets out the majority of the law relating to the taking of such samples. This includes provisions for samples to be taken from certain categories of individuals, and for the resulting DNA profiles to be retained on a DNA database.

The Criminal Justice (Scotland) Act 2003, section 56, facilitates the taking of DNA samples for recording on the Volunteer DNA database. The investigation of crime in Scotland is also covered by Common Law and other Legislative Acts.

In Scotland, DNA is acquired from arrested and officially accused persons in accordance with Police Scotland policy normally after a decision has been made that the subject is to be cautioned and charged, and providing that the person is not already DNA confirmed meaning that Police Scotland already hold a DNA profile for the person. Police Scotland may also take samples from Not Officially Accused (NOA) persons if an investigation is still live, as this negates the need to re-arrest a person purely to obtain biometric data if they subsequently become officially accused.<sup>2</sup> Police Scotland has a policy in place to ensure weeding if charges are not forthcoming. Police Scotland also have arrangements and policy for obtaining DNA from certain persons on a voluntary basis, for example when there is a significant risk that a person may be abducted or become a victim of crime.

The DNA profile generated from the criminal justice sample is loaded on to the Scottish DNA database and the UK DNA database and is then used in speculative searches for matches to pre-existing or new crime scene profiles. In Scotland, if a person is subsequently convicted, their DNA may be retained indefinitely by Police Scotland.

In other UK jurisdictions, the police also retain and continue to use the samples and profiles of persons arrested but not subsequently charged or convicted. In Scotland, Police Scotland may retain and use samples from non-convicted persons or in cases of non-finding of guilt under the provisions of section 18 A of the Criminal Procedure (Scotland) Act 1995 (prosecutions for sexual and violent offences), or section 18 B and D (alternatives to prosecution) for up to 3 years. The Act also makes provision for retention beyond 3 years on summary application by the Chief Constable to a Sheriff.

Although the Scottish position seems more favourable, the ability to retain and use a person's DNA indefinitely in the UK is highly controversial. This helps to explain why the UK retains more DNA on its citizens than any other country in the world. It also helps to explain why the UK DNA Database is that largest state collection of citizens DNA data in the world when expressed as a percentage of the domestic population.

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<sup>2</sup> See Criminal Justice (Scotland) Act 2016 for further information on persons not officially accused.



DNA can also be recovered from biological materials at crime scenes as part of a forensic investigation, and DNA profiling is a forensic technique used in criminal investigations and in a range of other policing activities such as missing person investigations, or in seeking to identify human remains. DNA profiling regularly compares criminal suspects' profiles to DNA evidence to assess the likelihood of their presence at a crime scene. It also has an important exculpatory value and can quickly eliminate innocent persons from police investigations.

DNA is not used routinely in the majority of police investigations in Scotland and is mainly a feature of more serious crimes such as murders, serious assaults, housebreakings, and sexual offending. Where biological evidence exists at such crime scenes in sufficient quality and quantity, it can identify potential suspects with incredible accuracy.

Importantly, DNA also has an exculpatory value and is used regularly in policing to eliminate innocent people from police investigations.

## Aims

The strategic aim of this joint review is **“to provide assurance to the Scottish Parliament that the acquisition, retention, use, and destruction of DNA for policing and criminal justice purposes in Scotland is lawful, effective, and ethical”**.

The review will consider the nature, and extent of the use of DNA for policing and criminal justice purposes, and the impact of such use in terms of effectiveness including quantitative and qualitative outcomes. This will include, but will not be limited to:

- The law and Police Scotland policy.
- the lawful use of DNA for policing and criminal justice purposes in Scotland.
- Process, including assessing the effectiveness of DNA both in fixing and confirming identity, but also in terms of match rates, its exculpatory value, and in contributing towards overall crime solvency in Scotland.
- The ethical considerations around the current and future use of DNA including whether the current retention regimes are proportionate and necessary. This aspect will link to the joint Scottish Government/Scottish Biometrics Commissioner review of the laws of retention in Scotland due to be published in October 2024.

It is provisionally anticipated that the report will be structured into 5 main chapters as follows:

1. Background to the use of DNA in policing, forensics and criminal justice.
2. The nature of its use under different scenarios.
3. The extent of its use.
4. The impact from its use in terms of effectiveness.
5. Future directions.





## Methodology and scope

The methodology for this review may include (but not be limited to):

- Examination of the end-to-end journey from acquisition of a criminal justice DNA sample following arrest and the journey of that sample through to DNA profiling and uploading to the Scottish DNA database and UK DNA database. [Green Admin Card – Form DNA 1]. This will consider both mouth swabs and the process for hair samples.
- Examination of the end-to-end journey of evidential samples, taken to facilitate comparison against related DNA material. [White Administration Card – Form DNA 2]
- Examination of the end-to-end journey of DNA samples given voluntarily for specific purposes. [Pink Administration Card – Form DNA 3].
- Examination of the end-to-end process from recovery of biological materials at a crime scene and the journey of that sample through to DNA profiling and uploading to the Scottish DNA database and UK DNA database.
- In relation to criminal justice samples, exploring the sampling methods and error rates.
- Exploring criminal justice to crime scene match rates in Scotland.
- Exploring crime scene to criminal justice sample match rates in Scotland.
- Considering the scientific value of DNA24 versus DNA17 in police investigations.
- Exploring the interfaces between the Scottish DNA database, UK DNA database and international exchange mechanisms.
- Exploring the interfaces between Scottish DNA relating to missing persons, the Forensic Gateway and the UK Missing Persons DNA Database (MPDD) managed by the Home Office National DNA Delivery Unit. This will consider direct reference samples, indirect reference samples, and kinship samples.
- Examining the law and corresponding weeding and retention policies and regimes.
- Through sanitised case studies, exploring the qualitative value of DNA in recent and cold case investigations.
- Highlighting ethical considerations and dimensions.

The scope of this assurance review will extend to:

- Police Scotland
- Scottish Police Authority Forensic Services

## Exclusions from Scope

Forensic crime scene examinations and forensic laboratory scientific techniques are not within the jurisdiction of the Scottish Biometrics Commissioner and will not be covered by this review. However, the review report will provide readers with a basic understanding of how forensic DNA profiling has revolutionized forensic science. The review will also not consider national guidelines for streamlined forensic reporting, or UK Accreditation Service (UKAS) conditions on making reference to accreditation and to the signatory status of the multilateral agreements that UKAS has entered into and which accredited bodies are



required to comply with. Scotland does not have a forensic science regulator and accordingly all of these matters are more properly within the jurisdiction of HM Chief Inspector of Constabulary in Scotland.

Police Elimination Sampling [Blue Administration Card – Form DNA 5] is also excluded from the scope of this review.

## Resource plan

The review will be conducted by the Commissioner and SBC Corporate Services Manager with input from key partners to the review as specified. The review activity will be mostly desk-based and will seek to minimise any impact on the day-to-day operations of Police Scotland and the SPA Forensic Services. Close liaison will be maintained with the Police Scotland Head of Biometrics and her team.

## Timeline

The indicative timescale for the necessary activity is as follows:

Key areas	September to December 2024			Jan 2025	Feb 2025	Mar 2025
4-month fieldwork phase. Mainly desk based research and information requests. On site visit (November or December) to a single custody centre and single forensic laboratory visit for process walk through. Bespoke discussion with subject experts in Scotland and the UK will mainly be via Teams as required.						
Writing up report and in-house clearance on draft with partners.						
Factual accuracy checks and sending to publishers						
Submission of joint report to the Scottish Parliament in week commencing 17 March 2025, or sooner.						