

Big Brother Watch briefing on Clause 27 of the Criminal Justice Bill for the Joint Committee on Human Rights

Big Brother Watch is deeply concerned by suggestions from the Policing Minister that Clause 27 of the Criminal Justice Bill will be used to create a vast police facial recognition database of driving licences. This would be a huge, disproportionate expansion of police surveillance powers that would place the majority of Britons in a digital police line-up, without their consent. It would be completely out of step with legal protections for comparable biometrics, such as DNA, and would have serious ramifications for the population's right to privacy protected by Article 8 ECHR, which are yet to be considered. **We urge the JCHR to make urgent enquiries with the Minister about this issue, so that parliamentarians have clarity on the purpose of Clause 27.**

Clause 27

Clause 27 replaces Clause 71 of the Criminal Justice and Court Services Act, allowing the Secretary of State to create regulations which grant police digital access to DVLA records for "purposes and circumstances as are related to policing or law enforcement". Currently, police forces can only directly access and search DVLA data in relation to road traffic offences,¹ and must phone the DVLA in relation to any other offences.²

The Clause does not specifically mention facial recognition, and facial recognition is not mentioned in the Bill's explanatory notes. However, Policing Minister Chris Philp stated during a committee session for the Bill that this was the intended use of Clause 27: "There is a power in clause [27] to allow police and law enforcement, including the NCA, to access driving licence records to do a facial recognition search, which, anomalously, is currently quite difficult."³ At another Committee session, the Minister stated Clause 27 "would make the DVLA driving licence database searchable by the police, in the same way that other databases are, including for facial recognition purposes".⁴

However, at a later Committee session, the Minister stated "we are not passing clause [27] expressly to authorise the use of DVLA data for facial recognition or indeed for any particular law enforcement purpose."⁵ Further, in a statement to the Guardian, the Home Office said: "[Clause 27] does not allow for automatic access to DVLA records for facial recognition. Any further developments would be subject to further engagement as the public would expect."⁶ **Parliamentarians must have clarity about the purpose of Clause 27, and we urge them to press the Home Office for clarification.**

The Scottish Biometrics Commissioner has expressed serious concerns about these plans:

*"The police in the UK [...] already have the technological means to view a person's driving licence image when dealing with a road traffic matter [...] However, none of this can be done in the form of a routine bulk wash of the images of innocent citizens against images derived from the scene of a minor crime. **Doing so in my view would place citizens in a permanent police 'digital lineup' and would be a disproportionate breach of privacy.**"⁷*

The precedent of police accessing a non-police state database to search millions of innocent people's biometric data for everyday policing purposes would be deeply concerning engagement of the A8 right to privacy. In a rights-respecting country, the public would no less expect police forces to access their facial biometrics from the DVLA database than they would expect them to access their DNA biometric from NHS databases.

If used to enable the creation of a DVLA facial recognition database, **Clause 27 represents a disproportionate expansion of police powers.**

- 1 The Motor Vehicles (Access to Driver Licensing Records) Regulations 2001 set out under what circumstances police forces can access DVLA records
- 2 Explanatory Notes, Criminal Justice Bill, 14 November 2023: <https://publications.parliament.uk/pa/bills/cbill/58-04/0010/en/230010en.pdf>
- 3 Criminal Justice Bill (First sitting), HC Deb (12 December 2023), col 14
- 4 Criminal Justice Bill (Second sitting), HC Deb (12 December 2023), col 48
- 5 Criminal Justice Bill (Eight sitting), HC Deb (16 January 2024), col 230
- 6 Police to be able to run face recognition searches on 50m driving licence holders – Daniel Boffey, the Guardian, 20 December 2023: <https://www.theguardian.com/technology/2023/dec/20/police-to-be-able-to-run-face-recognition-searches-on-50m-driving-licence-holders>
- 7 Is Scotland 'sleepwalking' towards its place within a UK surveillance state in 2024? - Dr Brian Plastow, Scottish Biometrics Commissioner, 8 January 2024: <https://www.biometricscommissioner.scot/news/is-scotland-sleepwalking-towards-its-place-within-a-uk-surveillance-state-in-2024/>