

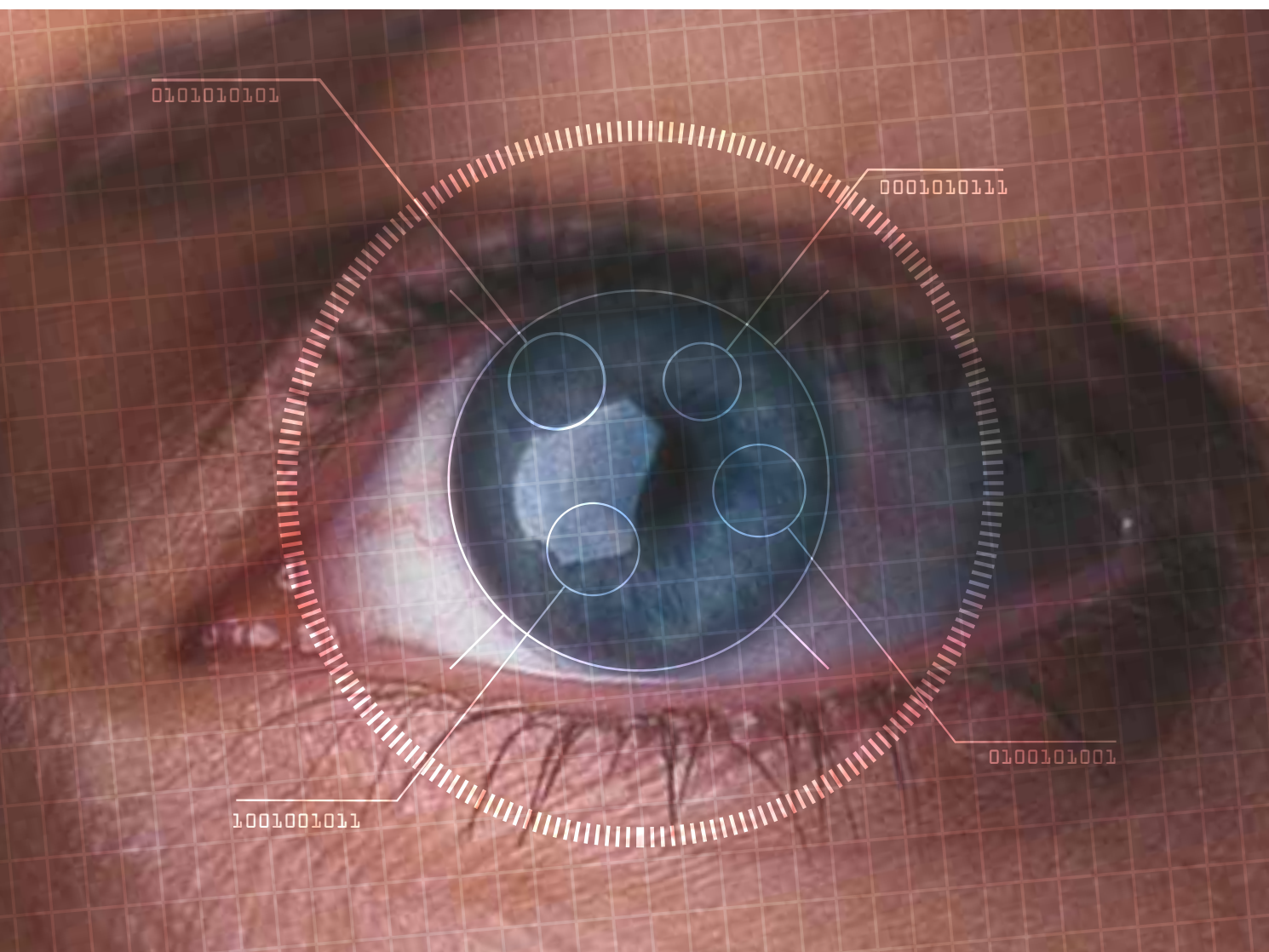


Llywodraeth Cymru
Welsh Government

Draft protection of learners' biometric information

Advice for governing bodies,
headteachers, school staff and further
education institutions

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Draft guidance

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Draft protection of learners' biometric information

Audience	School governing bodies; headteachers; school staff; the heads and staff of further education institutions; learners and parents.
Overview	The Protection of Freedoms Act 2012 makes provision to regulate the use of learners' biometric information by placing a duty on schools and further education institutions (FEIs) to obtain written parental consent before any biometric information can be obtained from a learner under the age of 18 years of age.
Action required	This draft guidance and accompanying consultation seek views about the protection of biometric information of learners in schools and further education institutions.
Further information	<p>Enquiries about this document should be directed to: School Information and Improvement Branch Schools Management and Effectiveness Division Welsh Government Cathays Park Cardiff CF10 3NQ</p> <p>e-mail: IMS@wales.gsi.gov.uk</p>
Additional copies	This document is only accessible from the Welsh Government's website at www.wales.gov.uk/consultations
Related documents	<p><i>Protection of learners' biometric information in schools and further education institutions</i> (2012) Protection of Freedoms Act 2012 Data Protection Act 1998</p>

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Introduction

About this advice

This is non-statutory advice from the Department for Education and Skills. It is intended to explain the legal duties schools and further education institutions (FEIs) have if they use **automated biometric-recognition systems**.

This advice replaces *Becta guidance on biometric technologies in schools* (Becta, 2007).

Expiry/review date

This advice is being published for **consultation purposes only**. It will be reviewed once the consultation process has ended.

What legislation does this advice relate to?

This advice relates to Protection of Freedoms Act 2012 and the Data Protection Act 1998.

Who is this advice for?

This advice is aimed at proprietors, governing bodies, headteachers and principals of **all schools¹** and FEIs.

It will also be of use to school and FEI staff, parents and learners.

Key points

- Schools and FEIs that use **biometric-recognition systems** (see What is biometric-recognition technology? on page 2) must treat the data collected with appropriate care and must comply with the data-protection principles set out in the Data Protection Act 1998.
- Schools and FEIs must ensure that all the parents of a learner are notified and the written consent of at least one parent is gained **before** a learner's **biometric data** (see What is biometric data? on page 2) is taken and **processed** (see What does processing data mean? on page 2) for the purposes of an automated biometric-recognition system. This applies to all learners in schools and FEIs **under the age of 18**.
- Schools and FEIs must not process the biometric data of a learner (under 18 years of age) who objects or refuses to participate in the processing of their biometric data or where a parent has objected or no parent has consented in writing to the processing.
- Schools and FEIs must provide reasonable alternative means of accessing services for those learners who will not be using an automated biometric-recognition system.

¹ 'All schools' includes independent schools and all kinds of maintained schools.

Biometric data

What is biometric data?

Biometric data is personal information about an individual's physical or behavioural characteristics that can be used to identify that person; this can include their fingerprints, facial shape, retina and iris patterns, and hand measurements.

The Information Commissioner considers all biometric information to be personal information under the Data Protection Act 1998; this means that it must be obtained, used and stored in accordance with that Act (see **The Data Protection Act 1998** on page 6).

The Protection of Freedoms Act 2012 includes provision which relates to the use of this data in schools and FEIs (see page 3).

What is biometric-recognition technology?

Biometric-recognition technology is technology that measures an individual's physical or behavioural characteristics by means of equipment operating automatically (i.e. electronically) and uses this information in order to recognise or identify them.

Biometric-recognition systems can use many kinds of physical or behavioural characteristics such as those listed above.²

What does processing data mean?

'Processing' of biometric information includes obtaining, recording or holding the data or carrying out any operation or set of operations on the data. An automated biometric-recognition system processes data when:

- recording learners' biometric data, for example via a fingerprint scanner
- storing data relating to learners' fingerprints on a database system
- using the data as part of an electronic process which compares and matches biometric information in order to recognise learners.

More information on these topics is available from the resources listed on page 9.

² Biometric systems usually store mathematical templates that allow physical characteristics to be recognised rather than images of the characteristics themselves; these templates are also biometric data.

The Protection of Freedoms Act 2012

Parental consent

What the law says

1) Schools and FEIs **must** notify **all** parents³ of learners under the age of 18 where they intend to obtain and subsequently use a learner's biometric information as part of an automated biometric-recognition system. As long as the learner does not object and no parent objects in writing, the written consent of only one parent will be required.

2) Schools and FEIs will not need to notify a particular parent or seek their consent if the school or FEI is satisfied that:

- a. the parent cannot be found, for example where the whereabouts or identity of the parent is not known;
- b. the parent lacks the capacity⁴ to object or to consent to the processing of the learner's biometric information, for example where the parent has a mental impairment;
- c. where the welfare of the learner requires that the parent is not contacted, for example where a learner has been separated from an abusive parent who is not to be informed of the learner's whereabouts; or
- d. where it is otherwise not reasonably practicable for the parent's consent to be obtained.

3) Where none of the parents of a learner can be notified for one of the reasons set out above (which would mean consent cannot be obtained from any of them):

- a. notification must be sent to all those who have care of the learner and written consent must be gained from at least one carer unless paragraph (b) below applies;
- b. where a learner is looked after by a local authority or is accommodated or maintained by a voluntary organisation, the consent of the local authority, or as the case may be, the voluntary organisation must be gained.

4) Schools and FEIs could, at the same time as enrolling a learner, notify parents that they wish to take and then use the learner's biometric information as part of an automated biometric-recognition system and seek written consent to do so – details of both parents should be requested by the school or FEI for both purposes (enrolment and notification of intention to process biometric information).

³ Parents include the birth parents of a learner as well as any individual with parental responsibility for a learner.

⁴ Within the meaning of the Mental Capacity Act 2005.

5) Under the Education (Pupil Registration) (Wales) Regulations 2010, schools are required to keep an admission register that includes the name and address of every person known to the school to be a parent of the learner, including non-resident parents. Schools who wish to notify and seek consent to process a learner's biometric information at any point after enrolment of a learner at the school should, therefore, have contact details for most parents in the admission register. Schools should, however, be alert to the fact that the admission register may, for some reason, not include the details of both parents. Where the name of only one parent is included in the admission register, schools should consider whether any reasonable steps can or should be taken to ascertain the details of the other parent (for example, by asking the parent who is included in the admission register or, where the school is aware of local authority or other agency involvement with the learner and their family, by making enquiries with the local authority or other agency).

6) Schools and FEIs are not expected to engage the services of a 'people tracer' or detective agencies in doing so but are expected to take reasonable steps to locate a parent before they are able to rely on the exemption in [clause] 27(1)(a) (notification of a parent not required if the parent cannot be found).

7) There will never be any circumstances in which a school or FEI can process a learner's biometric information (for the purposes of an automated biometric-recognition system) without one of the persons above having given written consent.

8) Notification sent to parents should include full information about the processing of the learner's biometric information. This information should include details about the type of biometric information to be taken, how it will be used, the parent's and learner's right to refuse or withdraw their consent, and the school's duty to provide alternative arrangements for those learners whose information cannot be processed. Sample 'notification' and 'consent form' templates are included on pages 10–11.

The learner's right to refuse

What the law says

1) If a learner of any age under 18 objects or refuses to participate (or to continue to participate) in anything that involves the processing of their biometric data for the purposes of an automated biometric-recognition system, the school or FEI **must** ensure that the learner's data **is not** processed regardless of any consent given by their parents.

Also note

2) Schools and FEIs should take steps to ensure that learners understand that they can object or refuse to allow their biometric data to be used and that if they do so the school or FEI will have to provide them an alternative way of accessing the relevant service. Parents should also be told of their child's right to object or refuse and encouraged to discuss this with their child.

Providing alternatives

What the law says

- 1) Reasonable alternative arrangements must be provided for learners who do not use automated biometric-recognition systems either because their parents have refused consent or due to their own refusal to participate.

The Data Protection Act 1998

- 1) Schools and FEIs as **data controllers** must process learners' personal data, including biometric data, in accordance with the Data Protection Act 1998 (DPA). The provisions in the Protection of Freedoms Act 2012 are **in addition** to the requirements in the DPA with which schools and FEIs must continue to comply.
- 2) The DPA has eight principles with which all data controllers must comply. More details on these principles can be accessed from the resources listed on page 9.
- 3) When processing a learner's personal data, including any such data used for the purposes of automated biometric-recognition systems, schools and FEIs must:
 - a. Hold biometric data **securely** to prevent unauthorised or unlawful use of the data.
 - b. **Store biometric data for no longer than it is needed.** A school or FEI should therefore destroy any data held on a biometric system once a learner no longer uses the system. For example, the data should be destroyed if the learner leaves the school or FEI, or if parents withdraw consent or the learner no longer wishes to have his or her biometric data processed.
 - c. Ensure that such data is used only for the purposes for which it is obtained and that it is not unlawfully disclosed to third parties.
 - d. For further practical advice see the Associated resources section on page 9.

Frequently asked questions

Q. What information should schools/FEIs provide to parents/learners to help them decide whether to object or to give their consent?

A. Any objection or consent from a parent must of course be informed and schools and FEIs should take steps to ensure parents receive full information about the processing of their child's data including a description of the kind of system they plan to use, the nature of the sensitive data they process, what the purposes of the processing are and how the data will be obtained, used and stored.

Q. What if one parent disagrees with the other?

A. Schools and FEIs will be required to notify all parents that they intend to take and process the learner's biometric information. If one parent objects then the school or FEI will not be permitted to process the learner's data.

Q. How will the learner's right to object work in practice – must they do so in writing?

A. No – the learner is not required to object in writing. An older learner will be able to say that they object to the processing of their biometric data. A younger learner will be able to show reluctance to take part in the physical process of giving the data. In either case the school or FEI will not be permitted to process the data and will have to provide a reasonable alternative way of accessing the relevant service.

Q. Are schools/FEIs required to ask/tell parents before introducing an automatic biometric-recognition system?

A. The law doesn't require that parents are consulted before an automated biometric system is installed, only that parents be notified and that consent from at least one parent be gained before their child's biometric data is obtained or used for the purposes of such a system. It is up to schools and FEIs to decide whether they think it is appropriate to consult parents and learners in advance of installing such a system.

Q. Do schools/FEIs need to renew consent every year?

A. No – the original written consent is valid until such time as it is withdrawn. If a parent or the learner objects at any stage to the processing, then it must cease. When the learner leaves the school or FEI, their data should be removed from the school's/FEI's system.

Q. Can consent be withdrawn by the learner or parent?

A. Parents will be able to withdraw their consent, in writing, at any time. In addition, any other parent will be able to object to the processing at any time. The learner's right to refuse applies both to the giving and the ongoing processing of biometric data. If at any time the learner objects to the processing of biometric data the school or FEI must stop doing so.

Q. Will consent given on entry to primary or secondary school be valid until the learner leaves that school?

A. Yes. Consent will be valid until the learner leaves the school. If at any point the parents or the learner decide that the data should not be processed they will have the right to have it removed from the school's system.

Q. Can the school/FEI notify parents and accept consent via e-mail?

A. Yes – as long as the school/FEI is satisfied that the e-mail contact details are accurate and the consent received is genuine.

Q. Will parents be asked for retrospective consent?

A. No – any processing that has taken place prior to the new legislation coming into force will not be affected. However any school/FEI that wishes to use, or to continue to use, automated biometric-recognition systems when the new legislation comes into force in Wales will have to ensure that they have sent the necessary notifications to all parents and obtained the written consent from at least one parent **before** continuing or starting to use such systems.

Q. Does the legislation cover other technologies such as palm and iris scanning?

A. The legislation covers all systems which by means of automatically operating equipment record or use physical or behavioural characteristics for the purpose of identification. This will include systems which use palm, iris or face recognition among others, as well as fingerprints.

Q. Is parental notification and consent required for the use of photographs and CCTV in schools/FEIs?

A. No. Schools and FEIs must adhere to the requirements in the Data Protection Act 1998 when using CCTV on their premises for general security purposes or when using photographs of learners as part of a manual ID system or as part of an automated system that uses a barcode to provide a learner with access to services. The Government believes this is sufficient to regulate the use of CCTV and photographs for such purposes. Photo ID card systems, where a learner's photo is scanned to provide them with services, would be captured as such systems are automated biometric-recognition systems.

Q. Is parental notification or consent required where a learner uses or accesses standard commercial sites or software which use face-recognition technology?

A. The new legislation only covers the processing of biometric data by or on behalf of the school or FEI. If a school or FEI wishes to use such software for school/college work then the requirement to notify parents and to obtain parental consent will apply. However, if a learner is using this software for their own personal purposes then the provisions do not apply, even if the software is accessed using school or FEI equipment.

Associated resources

DfES guidelines for schools on communicating with parents and obtaining consent.
www.wales.gov.uk/publications/circular/2007/1552456/;jsessionid=btzhPyZJ0jyFTqRvqvQBGcmVhgn9zRL6YNt0J0nDQR012d220vYq!-431527727?lang=en

ICO guidance on biometrics in schools 2008.
www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/fingerprinting_final_view_v1.11.pdf

ICO guide to data protection.
www.ico.gov.uk/for_organisations/data_protection/the_guide.aspx

British Standards Institute guide to biometrics.
<http://shop.bsigroup.com/en/Browse-by-Subject/Biometrics/?t=r>

Notification form template

Notification of intention to process learners' biometric information

- **Biometric information** is information about a person's physical or behavioural characteristics that can be used to identify them.
- The school/FEI intends to take and process learners' biometric information. This information will be used as part of an automated biometric-recognition system, which measures physical characteristics in order to identify or recognise individuals. The system will store information which digitally represents measurements relating to your child's **[insert biometric to be used]** rather than an image of your child's **[insert biometric to be used]**.
- The school/FEI will not use the biometric information for any purpose other than that stated above. The school/FEI will store the biometric information collected securely and will not share this information with any third parties other than **[insert any third party with which the information is to be shared, e.g X supplier of biometric systems]**.
- If you do not wish your son's/daughter's biometric information to be processed by the school/FEI, we will provide reasonable alternative arrangements that allow him/her to access the **[insert relevant service, e.g. school library]**.
- You can object, in writing, to the proposed processing of your child's biometric information at any time or, if you consent, you can withdraw this consent at any time but must do so in writing.
- Your son/daughter may at any time object or refuse to allow their biometric information to be used even if you have given your consent. We will provide reasonable alternative arrangements that allow him/her to access the **[insert relevant service, e.g. school library]**. Please ensure you explain this to your child.
- When your son/daughter leaves the school/FEI, or if for some other reason he/she ceases to use the biometric system, his/her biometric data will be deleted.
- Further information and guidance can be found via the following links:
 - ICO guidance on biometrics in schools 2008
www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/fingerprinting_final_view_v1.11.pdf
 - ICO guide to data protection
www.ico.gov.uk/for_organisations/data_protection/the_guide.aspx

Consent form for schools/FEIs – use of biometric data

Please sign and date the form below if you agree your child's biometric information (as described above) can be used by the school/FEI for **[describe purpose data is to be used for, e.g. administration of school library/canteen]**

.....[name of the child]

Parent 1

Date.....

Parent 2

Date.....