

## **Big Brother Watch briefing on Clause 21 of the Criminal Justice Bill**

Big Brother Watch is deeply concerned by proposals in the Criminal Justice Bill which will allow for the creation of a vast facial recognition database of 55 million drivers' licences, accessible to police forces. This is a huge, disproportionate expansion of police surveillance powers that will place the majority of Britons in a digital police line-up, without their consent.

Combined with Policing Minister Chris Philp's proposal that passport photos will also be used for facial recognition searches, this would represent over 100 million images subverted into the biggest biometric database ever created in the UK for police access.

**We urge parliamentarians to oppose these plans and support the following suggested amendment to the Criminal Justice Bill, which would prevent the use of facial recognition on the DVLA database.**

### Proposed amendment

*Clause 21, page 18, line 26, at end insert—*

*(1) Bodies listed in Clause 71(4) may not use the information referenced in subsection (1) for the purposes of biometric searches using facial recognition technology.*

### Clause 21

Clause 21 replaces Clause 71 of the Criminal Justice and Court Services Act, allowing the Secretary of State to create regulations which grant police access to DVLA records for "purposes and circumstances as are related to policing or law enforcement", expanding police access far beyond road traffic offences, which is the current legal position.<sup>1</sup> While the Clause does not specifically mention facial recognition, Policing Minister Chris Philp stated during a committee session for the Criminal Justice Bill that this is the intended outcome: "There is a power in clause 21 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."<sup>2</sup>

Regulations will be brought forward "following engagement between the Information Commissioner's Office, DVLA and Department for Transport".<sup>3</sup> They will be subject to the negative procedure, meaning extremely limited scrutiny. This is entirely inappropriate, given the scale of intrusion that Clause 21 will enable.

Clause 21 also allows for regulations to be made to increase the bodies, beyond police forces, able to access DVLA data, providing the possibility of further expansion of these significant powers, with limited parliamentary oversight.

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 [...] In a specific enquiry, they can also request access to a UK passport image. 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.**"<sup>4</sup>*

Facial recognition technology is a deeply intrusive surveillance tool which poses a serious threat to the civil liberties and human rights of UK citizens. **Clause 21 represents a disproportionate expansion of police powers to track and identify citizens across time and locations, for low-level policing needs.** As our democratic allies in the EU and United States take steps to ban and restrict the use of facial recognition, the UK is at risk of becoming an outlier in its approach to this AI-powered surveillance technology.

1 The Motor Vehicles (Access to Driver Licensing Records) Regulations 2001 set out under what circumstances police forces can access DVLA records

2 Criminal Justice Bill (Second sitting), HC Deb (12<sup>th</sup> December 2023), col 48

3 Criminal Justice Bill: Police powers – GOV.UK, accessed 8<sup>th</sup> January 2024: <https://www.gov.uk/government/publications/criminal-justice-bill-2023-factsheets/criminal-justice-bill-police-powers>

4 Is Scotland 'sleepwalking' towards its place within a UK surveillance state in 2024? – Dr Brian Plastow, Scottish Biometrics Commissioner, 8<sup>th</sup> January 2024: <https://www.biometricscommissioner.scot/news/is-scotland-sleepwalking-towards-its-place-within-a-uk-surveillance-state-in-2024/>