

What's changed?

We made some changes to the Biometric Processing Privacy Code based on the feedback received in our recent public consultation on a draft version.

These changes are outlined below – most of the changes are minor or drafting improvements. Many of the rules have stayed the same.

Main changes

Code comes into effect three months after publication

Many submitters who would be regulated under the Code said they would need more time before the Code came into effect.

- The Code now comes into force on 3 November 2025 (3 months from the Code's publication).
- This change also means a longer transition period. Organisations and businesses already using biometrics before or on 3 November 2025 have until 3 August 2026 to align themselves with the new rules (12 months from the Code's publication)

Amendments to rule 1 to improve clarity and workability

Necessity test

Many submitters were concerned that the specific wording of the necessity test in rule 1(1)(b)(ii), the obligation requiring organisations to first consider any alternative options with lower privacy risk, created too high a bar.

- We have clarified that the organisation can consider **how effectively** the alternative with lower privacy risk will achieve their purpose i.e. the organisation can factor in how good the alternative is, not just whether there is an alternative.



Trial provision

Submitters supported the ability to undertake a trial to assess how effective their biometric system is in achieving their purpose but suggested the ability to defer compliance with the effectiveness requirement should extend to other aspects of rule 1 that would also be difficult for them to meet prior to learning the results of the trial.

- We have broadened the trial provision, so that organisations who opt to do a trial can defer compliance with both parts of the necessity test (rule 1(b)). The organisation still has to demonstrate that their trial is proportionate in the circumstances and adopt appropriate safeguards (and all the other rules apply while the trial is ongoing).

Revised the consumer device and personal use exclusion

Submitters found the description of processes excluded from the definition of biometric categorisation (and the scope of the Code) difficult to apply.

- We have revised the drafting of this exclusion (definition of biometric categorisation, limb (d)) to make it clearer and better reflect the policy intent.
- The exclusion now more clearly focuses on excluding processes in consumer devices or services that would otherwise be a type of categorisation but are solely for providing the user with their own personal information (e.g. processes in wearable devices) or an immersive or entertainment experience (e.g. face, body and movement cameras in gaming software or virtual try-on filters).

Stronger safeguards for biometric attention-tracking

Some submitters thought there should be more restrictions around the use of biometrics to monitor attention, alertness or fatigue, particularly to guard against intrusive workplace surveillance practices.

- We have amended the rules around biometric attention tracking so that organisations may only use biometrics to monitor someone's attention, alertness or fatigue for safety purposes (to lessen or prevent a risk to someone's life or health).



- This is in line with the intended policy to ensure that the Code doesn't restrict systems used to improve safety outcomes i.e. professional driver monitoring systems.

Other drafting changes

- Removed the definition of biometric feature. It wasn't necessary for the Code to distinguish between biometric feature and biometric template.
- Amended the definition of biometric template and result.
- Amended the title of rule 2 so it refers to biometric sample. This reflects that biometric samples are the type of information which is the subject of the rule i.e. biometric samples collected *for* biometric processing activities.
- Simplified the drafting for the limits on biometric categorisation in rule 10 (see rule 10(5)-(9)).
- Amended the requirement to notify people about applicable laws relating to biometric processing so that this only applies to laws under which the agency's, use or disclosure of the biometric information is authorised or required, but not more broadly about laws that are "likely to be relevant" to biometric processing. We also consolidated this requirement to sit with the corresponding obligation to notify about laws authorising collection in rule 3(1)(f).
- Removed the reference to biometric feature in rule 13. Referring to biometric template is sufficient to clarify how the rule applies in the biometrics contexts.

No changes

No changes have been made to rules 4, 5, 6, 7, 8, 9, 11, 12 or the review clause.

