



# Scottish Biometrics Commissioner Act 2020

2020 asp 8

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 10th March 2020 and received Royal Assent on 20th April 2020**

An Act of the Scottish Parliament to establish the office of Scottish Biometrics Commissioner and to provide for its functions in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes.

## *Establishment*

### **1 Scottish Biometrics Commissioner**

- (1) The office of Scottish Biometrics Commissioner is established.
- (2) Schedule 1 makes further provision about the office.

#### **Commencement Information**

**II** [S. 1](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

## *Functions*

### **2 Functions**

- (1) 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—
  - (a) the Police Service of Scotland,
  - (b) the Scottish Police Authority,
  - (c) the Police Investigations and Review Commissioner.
- (2) But the Commissioner's general function does not extend to biometric data in relation to which the Commissioner for the Retention and Use of Biometric Material has a function under section 20 of the Protection of Freedoms Act 2012.

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*Changes to legislation: There are currently no known outstanding effects for the Scottish Biometrics Commissioner Act 2020. (See end of Document for details)*

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- (3) In exercising that general function, the Commissioner is to—
- (a) keep under review the law, policy and practice relating to the acquisition, retention, use and destruction of biometric data by or on behalf of the persons referred to in subsection (1),
  - (b) promote public awareness and understanding of the powers and duties those persons have in relation to the acquisition, retention, use and destruction of biometric data, how those powers and duties are exercised, and how the exercise of those powers and duties can be monitored or challenged,
  - (c) promote, and monitor the impact of, the code of practice.
- (4) In complying with subsections (3)(a) and (b), the Commissioner is to have regard to the technology used or capable of being used for the purpose of acquiring, retaining, using or destroying biometric data.
- (5) The Commissioner may, in particular—
- (a) carry out, commission or support any research the Commissioner considers appropriate,
  - (b) make recommendations in relation to any matter relevant to the Commissioner's general function.
- (6) In exercising the Commissioner's general function, the Commissioner must have regard to the interests of—
- (a) children and young persons, and
  - (b) vulnerable persons.
- (7) The Scottish Ministers may by regulations amend subsection (1) so as to add a person or description of person, vary an entry listed in it, or remove an entry.
- (8) For the purpose of this section—
- “children and young persons” means individuals under the age of 18 years,
  - “vulnerable persons” means individuals who, by reason of their personal circumstances or characteristics, may have difficulty understanding matters relating to the acquisition, retention, use and destruction of their biometric data by or on behalf of the persons referred to in subsection (1).

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**Commencement Information**

**I2** [S. 2](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

### 3 Power to work with others

The Commissioner may, in the exercise of the Commissioner's functions, work jointly with, assist or consult—

- (a) the Scottish Parliament,
- (b) the Scottish Ministers,
- (c) the Lord Advocate,
- (d) the chief constable of the Police Service of Scotland,
- (e) Her Majesty's Inspectors of Constabulary in Scotland,
- (f) the Scottish Police Authority,
- (g) the Police Investigations and Review Commissioner,

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- (h) the Information Commissioner,
- (i) the Commissioner for the Retention and Use of Biometric Material,
- (j) the Scottish Human Rights Commission,
- (k) such other persons as the Commissioner considers appropriate.

**Commencement Information**

**I3** [S. 3](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

**4 General powers**

- (1) The Commissioner may do anything which appears to the Commissioner—
  - (a) to be necessary or expedient for the purposes of, or in connection with, the performance of the Commissioner's functions, or
  - (b) to be otherwise conducive to the performance of those functions.
- (2) Despite the generality of subsection (1), the Commissioner may pay fees and allowances to a person for advice, assistance or any other service only with the approval of the Parliamentary corporation.

**Commencement Information**

**I4** [S. 4](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

**5 Duty to comply with directions**

- (1) The Commissioner must comply with any direction given to the Commissioner by the Parliamentary corporation in relation to—
  - (a) the location of the Commissioner's office,
  - (b) the sharing of premises, staff, services or other resources with any other officeholder or any public body,
  - (c) the form and content of the Commissioner's annual report under section 32,
  - (d) the process to be followed in appointing members of the advisory group established under section 33.
- (2) A direction under this section may vary or revoke a previous direction.
- (3) The Parliamentary corporation is to make any direction under this section publicly available.

**Commencement Information**

**I5** [S. 5](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

**6 Report on the Commissioner's functions**

- (1) The Scottish Ministers must, before the expiry of the period of 12 months beginning with the day after the last day of the period to which the Commissioner's first strategic plan relates—

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*Changes to legislation:* There are currently no known outstanding effects for the Scottish Biometrics Commissioner Act 2020. (See end of Document for details)

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- (a) prepare and publish a report on the Commissioner's functions, and
  - (b) lay a copy of the report before the Scottish Parliament.
- (2) In preparing the report, the Scottish Ministers must consult such persons as they consider appropriate.
- (3) The report must include an assessment of whether—
  - (a) the functions of the Commissioner remain appropriate,
  - (b) the powers conferred by sections 2(7) and 9(4) should be exercised.
- (4) The Scottish Ministers must, before the expiry of the period of 5 years beginning with the day after the day on which the most recent relevant document was laid before the Scottish Parliament—
  - (a) prepare and publish—
    - (i) a report on the Commissioner's functions, or
    - (ii) a statement setting out why they consider such a report to be unnecessary, and
  - (b) lay a copy of the report or statement before the Scottish Parliament.
- (5) Subsections (2) and (3) apply to a report under subsection (4)(a)(i) as they apply to a report under subsection (1).
- (6) In this section, “relevant document” means—
  - (a) a report under subsection (1) or (4)(a)(i), or
  - (b) a statement under subsection (4)(a)(ii).

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**Commencement Information**

**I6** [S. 6](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

*Code of practice*

**7 Code of practice**

- (1) In furtherance of the Commissioner's general function, the Commissioner must prepare, and may from time to time revise, a code of practice on the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes.
- (2) The code of practice must include provision about when biometric data must be destroyed in cases where a relevant enactment does not make such provision.
- (3) In making provision in accordance with subsection (2), the Commissioner must have regard to the provision made by relevant enactments.
- (4) The code of practice may make different provision for different purposes.
- (5) Sections 8, 10 and 12 apply to a revised draft code of practice as they apply to a draft code of practice.
- (6) For the purpose of this section, the following are “relevant enactments”—
  - (a) Part 2 of the Criminal Procedure (Scotland) Act 1995,
  - (b) section 56 of the Criminal Justice (Scotland) Act 2003,

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- (c) Chapter 4 of Part 4 of the Age of Criminal Responsibility (Scotland) Act 2019.

**Commencement Information**

**I7** [S. 7](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

**8 Key considerations in preparing the code**

In preparing a draft code of practice, the Commissioner must have regard to the importance of—

- (a) promoting and protecting human rights,
- (b) promoting and protecting an individual's right to privacy,
- (c) promoting and protecting public confidence in the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes, and
- (d) ensuring the safety of individuals and communities.

**Commencement Information**

**I8** [S. 8](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

**9 Effect of the code**

- (1) The following persons must comply with the code of practice when exercising functions to which the code relates—
  - (a) constables and police staff of the Police Service of Scotland,
  - (b) the Scottish Police Authority,
  - (c) the Police Investigations and Review Commissioner.
- (2) A court or tribunal in civil or criminal proceedings must take the code of practice into account when determining any question to which the code is relevant.
- (3) Failure to comply with the code of practice does not of itself give rise to grounds for any legal action.
- (4) The Scottish Ministers may by regulations amend subsection (1) so as to add a person or description of person, vary an entry listed in it, or remove an entry.
- (5) In this section, “constable” and “police staff” have the same meanings as in section 99(1) of the Police and Fire Reform (Scotland) Act 2012.

**Commencement Information**

**I9** [S. 9](#) in force at 1.12.2020 by [S.S.I. 2020/250](#), [reg. 2](#)

**10 Consultation on the code**

- (1) In preparing a draft code of practice, the Commissioner must consult—
  - (a) the Scottish Ministers,
  - (b) the Lord Advocate,