

POLICY NOTE

THE SCOTTISH BIOMETRICS COMMISSIONER ACT 2020 (COMMENCEMENT) REGULATIONS 2020

S.S.I. 2020/250

The above instrument is made in exercise of the powers conferred by section 40 of the Scottish Biometrics Commissioner Act 2020 (“the Act”). The instrument is not subject to any parliamentary procedure.

Purpose of the instrument. The purpose of the instrument is to commence the remaining provisions of the Act and to amend the date on which the Scottish Biometrics Commissioner (“the Commissioner”) is required to lay a copy of their first strategic plan before the Scottish Parliament.

Policy Objectives

The 2020 Act established the office of the Commissioner who will have oversight of the acquisition, use, retention and disposal of biometric data (fingerprints, DNA samples, facial images etc.) for policing and criminal justice purposes.

The Bill for the Act received Royal Assent on 20 April 2020. Sections 37, 38, 40 and 41 of the came into force on the following day. The above instrument therefore commences the remaining provisions in the 2020 Act on 1 December 2020.

Section 28(6)(a) of the Act currently places a statutory duty on the Commissioner to prepare and publish a strategic plan and lay a copy of that plan before the Scottish Parliament by 1 April 2021 should that provision be commenced before that date. The recruitment of the Commissioner is expected to commence in Autumn 2020 and an appointment by the Scottish Parliament is estimated to be completed by early 2021. Based on that estimated timeline, the Commissioner, once appointed, is subsequently expected at the outset to be involved with the oversight of the set-up of their office including the recruitment of staff and familiarisation with the broad range of functions required by the Act etc. The Commissioner is also required to consult with the Parliamentary Corporation and other bodies considered appropriate on a draft strategic plan prior to publishing that plan. It is therefore considered that placing a statutory requirement on the Commissioner to prepare and publish a strategic plan and lay a copy of that plan before the Scottish Parliament shortly after appointment would not appear to be a realistic timeframe.

Section 40(4) of the Act enables the Scottish Ministers when laying commencement regulations for the Act to amend the date on which the 4 year strategic plan period begins as per section 28(6)(a) of the Act. It is therefore suggested that the date specified under section 28(6)(a) of the Act be amended. It is considered that extending that date by an additional eight months would provide the Commissioner with additional time to undertake the preliminary tasks as previously highlighted and to then undertake the required business planning to inform the outcomes the Commissioner wishes to achieve over the first reporting period during their time in office.

The above instrument therefore amends section 28(6)(a) of the Act so that the Commissioner is required to prepare and publish a first strategic plan and lay a copy of that plan before the Scottish Parliament by 1 December 2021. That date would then constitute the beginning of any subsequent four year period before a further strategic plan is required by statute to be laid.

Consultation

A public consultation informed the proposal in the Bill which preceded the Act. The relevant documentation is published at <https://consult.gov.scot/safer-communities/use-of-biometric-data/>. As these regulations bring into force the remaining provisions of the Act, no further consultation has been carried out in relation to this aspect of the instrument.

The Scottish Government consulted with officials from the Scottish Parliamentary Corporate Body (SPCB) who are supportive of the proposal to amend the date of when the Commissioner must lay a copy of their first strategic plan before the Scottish Parliament.

Impact Assessments

An Equality Impact Assessment (EQIA) and a Children's Rights and Wellbeing Impact Assessment (CRWIA) were published in relation to the Bill for the Act. No impact issues were identified. The links below show the relevant documentation:

EQIA - <https://www.gov.scot/publications/scottish-biometrics-commissioner-bill-equality-impact-assessment-eqia-results/>

CRWIA - <https://www.gov.scot/publications/scottish-biometrics-commissioner-bill-child-rights-wellbeing-assessment-crwia/>

Financial Effects

A Business and Regulatory Impact Assessment was completed in relation to the Bill for the Act. This is published at <https://www.gov.scot/publications/scottish-biometrics-commissioner-bill-business-regulatory-impact-assessment-bria/>. A Financial Memorandum was also prepared for the Bill as introduced and a supplementary Financial Memorandum was subsequently prepared as a result of the Bill being amended after Stage 2. Both Memoranda are published on the Scottish Parliament website.

Scottish Government
Directorate for Safer Communities
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