



Scottish Biometrics Commissioner Act 2020

2020 asp 8

Information-gathering

16 Power to gather information

- (1) The Commissioner may require any person in relation to whom the Commissioner has functions under section 2(1) to supply information which the Commissioner reasonably requires for the purpose of—
 - (a) determining whether persons who are required by section 9(1) to comply with the code of practice have done or are doing so, or
 - (b) exercising any of the Commissioner’s other functions.
- (2) Where a requirement is imposed under subsection (1), the Commissioner must give the person a written notice specifying—
 - (a) the information, or the nature of the information, which is to be supplied,
 - (b) the form in which it is to be supplied,
 - (c) the date on or by which it is to be supplied,
 - (d) in the case of information which is to be supplied by means of a statement in person, the place at which it is to be supplied, and
 - (e) the particular matters in connection with which it is required.
- (3) A person is not obliged under this section to provide information which that person would be entitled to refuse to provide in proceedings in a court in Scotland.
- (4) The Commissioner may revoke any requirement imposed under subsection (1) by giving written notice to the person to whom notice of the requirement was given.
- (5) In this section, “information” includes unrecorded information.

17 Failure to comply with an information notice

- (1) Where a person who is obliged to provide information in accordance with a notice issued under section 16—
 - (a) refuses or fails, without reasonable excuse, to comply with any requirement specified in the notice,

- (b) attends to make a statement in person but refuses or fails, without reasonable excuse, to answer any question concerning the matters specified in the notice, or
 - (c) alters, suppresses, conceals or destroys, without reasonable excuse, any information which the person is required to produce,
- the Commissioner may report the matter to the Court of Session.
- (2) The Commissioner may also report the matter to the Court of Session where the Commissioner considers that a person who is mentioned in subsection (1) is likely to do any of the things specified in paragraphs (a) to (c) of that subsection.
 - (3) After receiving a report under subsection (1) or (2) and hearing any evidence or representations on the matter, the Court may (either or both)—
 - (a) make such order for enforcement as it considers appropriate,
 - (b) deal with the matter as if it were a contempt of court.

18 Admissibility of statements in criminal proceedings

An oral or written statement made by a person which the person was required to give under section 16 is not admissible in any criminal proceedings against that person.

19 Offence of Commissioner's office disclosing confidential information

- (1) A person mentioned in subsection (2) commits an offence if—
 - (a) the person knowingly discloses any information which—
 - (i) has been obtained by or on behalf of the Commissioner for the purposes of exercising the Commissioner's functions, and
 - (ii) at the time of disclosure is not, and has not previously been, in the public domain, and
 - (b) the disclosure is not authorised by subsection (3).
- (2) The persons referred to in subsection (1) are persons who are or have been—
 - (a) the Commissioner,
 - (b) a member of the Commissioner's staff,
 - (c) an agent of the Commissioner.
- (3) For the purposes of subsection (1)(b), disclosure is authorised only so far as—
 - (a) it is made with the consent of the person from whom the information was obtained,
 - (b) it is necessary for the purpose of enabling or assisting the exercise of the Commissioner's functions under this Act, or
 - (c) it is made for the purposes of legal proceedings, whether criminal or civil (including for the purposes of the investigation of any offence or suspected offence).
- (4) A person who commits an offence under subsection (1) is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.