

SCOTTISH BIOMETRICS COMMISSIONER ACT 2020

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Code of practice

Section 7: Code of practice

18. Section 7 provides that the Commissioner must, in furtherance of the Commissioner's general function in section 2(1), 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. Anything that the Commissioner does, including preparing the code of practice, should be in furtherance of their general function. This therefore reiterates that the Commissioner must prepare a code that supports and promotes 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.
19. Subsection (2) requires that 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. When making such provision in the code, the Commissioner must have regard to the provision made by relevant enactments. The purpose of these provisions is to ensure that provisions in the code regarding the destruction of biometric data do not duplicate or conflict with existing provisions regarding the destruction of biometric data. The term "relevant enactments" is defined in subsection (6). It should be noted that under section 14 of the Interpretation and Legislative Reform (Scotland) Act 2010, this definition also covers any other any enactments which apply any of the listed enactments. For example, this means that paragraph 7 of schedule 4 of the International Criminal Court (Scotland) Act 2001 (which applies section 18 of the Criminal Procedure (Scotland) Act 1995 – which forms part of Part 2 of that Act) would also be a relevant enactment.
20. Subsection (5) provides that sections 8, 10 and 12 apply to a revised draft code of practice prepared under subsection (1) as they would apply to a draft code of practice. This means that various rules about drafting and seeking approval for the code apply equally to drafting and seeking approval for any revised code. In addition, section 36 (interpretation) provides that, unless the context requires otherwise, a reference to the "code of practice" means the code for the time being in effect. That means that any provision in the Act about matters such as what the code of practice must contain applies equally to any revised code of practice.