

SCOTTISH BIOMETRICS COMMISSIONER ACT 2020

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Reporting

Section 20: Reports and recommendations

33. Subsection (1) of section 20 requires the Commissioner to publish a report about a failure to comply with the code of practice, unless the failure is sufficiently minor not to merit a report. Subsection (2) provides that the Commissioner may prepare and publish a report about any other matter relating to the Commissioner's functions. A report under subsection (1) or (2) may include recommendations on matters mentioned in subsection (5).
34. Subsection (3) requires the Commissioner to lay a copy of a report published under subsection (1) or (2) before the Parliament. Subsection (4) makes clear that one report can cover several separate failures to comply with the code of practice by different persons. Subsection (6) provides that sensitive information must be withheld in a report. This means information cannot be included in a report on the grounds that to do so would or might be unlawful, would or might prejudice the administration of justice or would otherwise be contrary to the public interest.

Section 21: Requirement to respond to reports

35. Section 21 provides that where the Commissioner's report under section 20 includes a recommendation addressed to a person in relation to whom the Commissioner has functions under section 2(1), and that recommendation relates to technologies used or capable of being used to acquire, retain, use or destroy biometric data, the Commissioner must impose on the person a requirement to respond to that recommendation.
36. Where a report includes a recommendation that does not relate to technologies used or capable of being used to acquire, retain, use or destroy biometric data, the Commissioner can choose whether or not to impose a requirement to respond to that recommendation.
37. Where a requirement to respond to a recommendation in a report is imposed by the Commissioner, the Commissioner must give a copy of the report to the relevant person, and the person must respond in writing by the deadline set by the Commissioner. The written response must set out the actions which the person has taken, or will take, to respond to the recommendation, or the reasons why the person has decided not to implement the recommendation (in cases where the recommendation is not being implemented either in full or in part).

Section 22: Publication of responses to reports

38. This section requires the Commissioner to publish any response to a recommendation contained in a report, and to lay the published response before the Parliament, unless there is a reason it would be inappropriate to do so. In particular, in publishing a response, the Commissioner is (so far as reasonably practicable) to have regard to the same considerations as set out in section 20(6) – namely, the need to withhold information where the Commissioner considers that to include it would or might be unlawful, would or might prejudice the administration of justice, or would not be in the public interest. The Commissioner is also permitted to publicise any failure to respond in a way which the Commissioner considers appropriate.