

# **SCOTTISH BIOMETRICS COMMISSIONER ACT 2020**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### *Accountability*

##### *Section 28: Strategic plans*

44. Section 28 requires the Commissioner to prepare and publish a strategic plan covering a four year period, and to lay the plan before the Scottish Parliament before the beginning of the said four year period. The first four year period is to commence on 1 April in the year following the coming into force of this section, and then each subsequent period of four years will also be covered by a strategic plan. Section 40(4) includes a power to allow the commencement regulations to amend this section to specify the date on which the first four year period is to begin, so that the section will act as an easy reference point.
45. Each strategic plan must set out the Commissioner's objectives and priorities for the four year period and how they plan to achieve them, what the costs will be, and the timescale applicable. The Commissioner is able to review and revise the strategic plan at any time, and any such revised plan is subject to the same rules on publication and laying. However, it should be noted that revising a plan will not alter when the four year period begins and ends. Accordingly, a revised plan only needs to contain information relating to the remainder of the four year period in question, but it must cover the same topics. Before publishing a plan or a revised plan, the Commissioner is to consult on a draft on it with the SPCB and anyone else the Commissioner considers appropriate. This gives the SPCB an opportunity to comment on the strategic objectives and priorities of the Commissioner before a strategic plan is published and laid before the Parliament. Who else it will be appropriate to consult will likely depend on the proposals under consideration.

##### *Section 29: Budgets*

46. Section 29 requires the Commissioner to prepare a budget before the start of each financial year and seek the approval of the SPCB by such a date as the SPCB determines. Under subsection (2), the Commissioner may seek to revise the budget during the year by submitting revised proposals to the SPCB for approval. When preparing a budget or a revised budget, the Commissioner is required to ensure that resources will be used economically, efficiently and effectively and must, under subsection (4), certify this in any budget or revised budget proposal.

##### *Section 30: Accountable officer*

47. This section requires the SPCB to designate either the Commissioner or a member of the Commissioner's staff as the accountable officer. The functions of the accountable officer are set out in subsection (2) and include: the signing of the accounts; ensuring

that the finances are kept in good order; and ensuring that resources are used economically, efficiently and effectively. Subsection (3) provides a degree of protection for an accountable officer who is not also the Commissioner should they be required to act in any way which is inconsistent with their responsibilities. Before any such action can be taken, the accountable officer must obtain written authority from the Commissioner and send a copy of the authority to the Auditor General for Scotland as soon as possible. Under subsection (4), the accountable officer is directly answerable to the Parliament for the exercise of those functions specified in subsection (2).

### ***Section 31: Accounts and audit***

48. Section 31 sets out the accounting and auditing requirements that apply to the Commissioner. The Commissioner must keep proper accounts and accounting records and prepare annual accounts for each financial year. A financial year is defined in schedule 1 of the Interpretation and Legislative Reform (Scotland) Act 2010 and is a year ending with 31 March. In fulfilling these duties, the Commissioner must comply with any directions given by the Scottish Ministers, who are responsible for such matters under section 19 of the Public Finance and Accountability (Scotland) Act 2000.
49. Under subsection (1)(c) of section 31 of the Act, a copy of the accounts are to be sent to the Auditor General for Scotland for auditing. The provisions of sections 21 and 22 of the 2000 Act then require the Auditor General to audit the accounts or appoint someone suitably qualified to do so. It also requires the accounts to be sent to the Auditor General not later than 6 months after the end of the financial year in question. Once the accounts have been audited, the 2000 Act makes provision for them to be sent to the Scottish Ministers, whereupon Ministers are required to lay them before the Parliament within 9 months of the end of the financial year in question.
50. Under subsection (3) of section 31 of the Act, the Commissioner must make a copy of their audited accounts available for inspection, free of charge, to anyone on request.

### ***Section 32: Annual Report***

51. Section 32 requires the Commissioner to prepare and publish a report on the Commissioner's activities each financial year, which must include a review of what the Commissioner has done to fulfil each of their functions, a review of issues which have been identified by the Commissioner as being relevant to the use of biometric data in the criminal justice and policing context, and any recommendations in relation to those issues. While not a requirement, it would be open to the Commissioner to also outline work to be undertaken in the following reporting year. The SPCB could direct that the annual report is to include a forward-look, using its powers under section 5. The report is to be laid before the Parliament within seven months of the last day of the financial year to which the report relates – meaning by 31 October.

### ***Section 33: Advisory Group***

52. Subsection (1) of section 33 requires the Commissioner to establish and maintain an advisory group. Under subsection (2) the purpose of the group is to give the Commissioner advice and information about matters relating to the Commissioner's functions. Subsection (3) provides that the members of the group are to be chosen by the Commissioner. However, this is subject to the proviso that it is for the SPCB to approve the number of members of the group and the persons to be appointed as members. Subsection (4) allows the Commissioner to pay members of the group such remuneration and allowances as the Commissioner, with the approval of the SPCB, determines. Subsection (5) makes it clear that the procedure of the group is to be such as the Commissioner determines.