

SCOTTISH BIOMETRICS COMMISSIONER ACT 2020

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Meaning of key terms

Section 34: Meaning of “biometric data”

53. This section defines what is meant by the term “biometric data” where it appears in the Act. For the purposes of this Act, biometric data means information about an individual’s physical, biological, physiological or behavioural characteristics which may establish the identity of an individual, either on its own or when combined with other information of a biometric or non-biometric nature. The reference to combining information with other information means that something like a partial fingerprint is still treated as biometric data. In addition, because the definition is about “an individual” generally rather than the particular individual in question, information such as DNA would be biometric data even where it is taken from an individual who is an identical twin (and whose biometric data is therefore not unique in this regard).
54. Information about a person’s physical characteristics would include data that would facilitate facial recognition. Information about a person’s biological characteristics would include a DNA profile, which can be derived from blood, saliva, hair etc. Information about a person’s physiological characteristics would include vein patterns. Information about a person’s behavioural characteristics would include an analysis of that person’s gait or speech pattern. A number of examples of biometric data are given in the Act, but these are examples only and are not exhaustive. It should be noted that the definition covers both the material itself and the information which is derived from it.

Section 35: Power to change meaning of “biometric data”

55. Section 35 enables the Scottish Ministers to, by regulations, change or clarify the meaning of biometric data in section 34 of the Act. This allows the definition of biometric data to be kept relevant in an environment where change is fast-paced. This power is subject to the affirmative procedure under section 37(2).

Section 36: Interpretation

56. Section 36 provides the definition of various terms used in the Act: “code of practice”, “Commissioner” and “Parliamentary corporation”.