

SCOTTISH BIOMETRICS COMMISSIONER ACT 2020

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2 – Application of public authorities legislation

Freedom of Information (Scotland) Act 2002

76. Paragraph 2 of schedule 2 adds the Commissioner to the list of Scottish public authorities in schedule 1 of the Freedom of Information (Scotland) Act 2002. This means that the Commissioner will be subject to the requirements which that Act places on public bodies, including requirements to provide information to the public on request and to have in place a scheme for the pro-active publication of information it holds.
77. Being a public authority within the meaning of the Freedom of Information (Scotland) Act 2002 also makes the Commissioner a “Scottish public authority” to which the Environmental Information (Scotland) Regulations 2004 apply.
78. It also means that the Commissioner falls within the definition of a “public body” under section 44 of the Climate Change (Scotland) Act 2009. This means that the Commissioner must act in a way calculated to contribute to the delivery of climate change targets and any climate change adaptation programme and in the way that the Commissioner considers is most sustainable. The Commissioner can also be made subject to further climate change duties, including reporting duties.
79. In addition, as a public authority within the meaning of the Freedom of Information (Scotland) Act 2002, the Commissioner is a “public authority” or “public body” for the purposes of the General Data Protection Regulation by virtue of section 7 of the Data Protection Act 2018 (subject to the power under that section to remove that status not being exercised). The General Data Protection Regulation (also commonly referred to by the acronym “GDPR”) is Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data. There are particular rules applied to bodies classified as “public authorities” (over and above those applied to all data processors) in the GDPR and the Data Protection Act 2018. An analysis of those rules is beyond the scope of these Notes.