

SCOTTISH BIOMETRICS COMMISSIONER ACT 2020

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2 – Application of public authorities legislation

Scottish Public Services Ombudsman Act 2002

75. Paragraph 1 of schedule 2 adds the Commissioner to the list of authorities in schedule 2 of the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”). The effect is to:
- make the Commissioner open to investigation by the ombudsman (see section 5 of the 2002 Act),
 - oblige the Commissioner to have a complaints handling procedure that complies with the statement of principles published by the ombudsman under section 16A of the 2002 Act,
 - permit the Commissioner to be made subject to the further requirement to have a complaints handling procedure that complies with a model complaints handling procedure prepared by the ombudsman, per sections 16B and 16C of the 2002 Act.

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.

Public Services Reform (Scotland) Act 2010

80. Paragraph 3(a) of schedule 2 adds the Commissioner to the list of bodies in schedule 5 of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”). This means that it is a body in relation to which an order can be made under section 14 of that Act where it would improve the exercise of public functions, having regard to efficiency, effectiveness and economy. An order under section 14 of the 2010 Act can (subject to restrictions, and only after the Scottish Parliament has approved a draft of the order):
- modify, confer, abolish, transfer or provide for the delegation of any function of a public body,
 - amend the constitution of a public body.
81. Paragraph 3(b) of schedule 2 adds the Commissioner to the list of bodies in schedule 6 of the 2010 Act. The effect of this is that the Scottish Ministers cannot propose any provision by order under section 14 (the powers to improve the exercise of the Commissioner’s functions having regard to efficiency, effectiveness and economy discussed above) or section 17(1) (power to remove or reduce burdens) unless requested to do so in writing by the SPCB. It also means that the Scottish Ministers cannot lay any subsequent draft order containing such provision unless the SPCB consents.
82. Paragraph 3(c) of schedule 2 adds the Commissioner to the list of bodies in schedule 8 of the 2010 Act. This means that the Commissioner will be subject to the duties to report after each financial year on:
- expenditure (see section 31 of the 2010 Act), and
 - the steps it has taken to promote and increase sustainable growth and improve the Commissioner’s efficiency, effectiveness and economy (see section 32 of the 2010 Act).

Public Records (Scotland) Act 2011

83. Paragraph 4 of schedule 2 makes the Commissioner subject to the duties created by the Public Records (Scotland) Act 2011 to produce, implement and keep under review a records management plan.

Procurement Reform (Scotland) Act 2014

84. Paragraph 5 of schedule 2 adds the Commissioner to the list of contracting authorities subject to the duties created by the Procurement Reform (Scotland) Act 2014 regarding their procurement activities and some specific measures aimed at promoting good, transparent and consistent practice in procurement.