

SCOTTISH BIOMETRICS COMMISSIONER ACT 2020

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Compliance notices

Section 23: Compliance notices

39. Subsection (1) of section 23 enables the Commissioner to issue a compliance notice to a person who the Commissioner considers has failed, or is failing, to comply with the code of practice. Subsection (2) defines what is meant by a ‘compliance notice’: this is a notice requiring the person to whom it is addressed to take specified steps to address the failure to comply. This may be a case of taking steps to remedy the breach or, where the breach is not one that is capable of being remedied, it may be a case of taking steps to avoid a similar future breach.

Section 24: Content and form of a compliance notice

40. Paragraphs (a) to (f) of section 24 specify the content which must be included in any compliance notice issued by the Commissioner. This will include, crucially, an explanation of why the notice has been issued, the steps the person is to take, and an explanation of the possible consequences if there is not compliance with the notice.

Section 25: Variation of a compliance notice

41. Subsection (1) of section 25 enables the Commissioner to vary a compliance notice to allow more time for compliance or, with the consent of the person to whom the compliance notice was issued, to change the steps that are required to be taken. Subsection (2) clarifies that a compliance notice can only be varied before the deadline for taking the steps specified in the compliance notice has passed. This prevents a compliance notice from being modified retrospectively, after the deadline for compliance with it has already passed. Subsection (3) specifies how in practice the Commissioner can vary a compliance notice.

Section 26: Revocation of a compliance notice

42. Subsection (1) of section 26 enables the Commissioner to revoke a compliance notice if the Commissioner so wishes. Subsection (2)(a) provides that the revocation of a compliance notice can only take place before the steps specified in the compliance notice have been taken. This prevents a compliance notice from being revoked after completed action has already been taken specifically because the notice required it. Subsection (2)(b) provides that a compliance notice can only be revoked by the Commissioner by giving notice in writing to that effect to the person to whom the compliance notice was issued.

Section 27: Failure to comply with a compliance notice

43. Subsection (1) of section 27 enables the Commissioner to report a refusal or failure, without reasonable excuse, to comply with a compliance notice to the Court of Session. Subsection (2) allows the court, after hearing evidence or representations on the matter, to make an order to enforce the compliance notice and/or deal with the refusal or failure to comply with the notice as if it were contempt of court. Under section 17, the court can also do both of these things in relation to a failure or refusal to comply with an information notice.