POLICY NOTE

THE EQUALITY ACT 2010 (SPECIFICATION OF PUBLIC AUTHORITIES) (SCOTLAND) ORDER 2020

S.S.I. 2020/XXX

The above instrument is proposed to be made in exercise of the powers conferred by section 151(3) of the Equality Act 2010 ("the 2010 Act"). The instrument is subject to the affirmative procedure.

Purpose of the instrument. The instrument adds the Scottish Biometrics Commissioner ("the Commissioner") to the list of public authorities in Part 3 of schedule 19 of the 2010 Act required to comply with the public sector equality duty.

Policy Objective

The public sector equality duty in section 149(1) of the 2010 Act requires public authorities to have due regard, when exercising their functions, to the need to:

• eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
• advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
• foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Those bodies and office holders subject to the public sector equality duty are listed in Part 3 of schedule 19 of the 2010 Act.

The Scottish Biometrics Commissioner Act 2020 ("the 2020 Act") established the office of the Commissioner who will have oversight of the acquisition, use, retention and disposal of biometric data (fingerprints, DNA samples, facial images etc.) for policing and criminal justice purposes.

The draft Order proposes to add the Commissioner to Part 3 of schedule 19 of the 2010 Act so as to require the Commissioner to comply with the public sector equality duty. It is considered that this duty should be extended to the Commissioner so that the Commissioner must have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act when exercising any of their functions in the 2020 Act.

Consultation

In accordance with the requirement under section 152(3) of the 2010 Act, the Commission for Equality and Human Rights was consulted and are content with the proposal to add the Scottish Biometrics Commissioner to schedule 19 of the 2010 Act.

Impact Assessments

An equality impact assessment (EQIA) was completed on the Scottish Biometrics Commissioner Bill ("the Bill") which preceded the 2020 Act. This assessment is published at: https://www.gov.scot/publications/scottish-biometrics-commissioner-bill-equality-impact-assessment-eqia-results/. The assessment concluded that the proposed functions of the Commissioner had the potential to have a positive impact on protected characteristic groups identified in the 2010 Act with no negative impact identified.

That assessment also made reference to the intention of the Scottish Government, once the Bill was passed, to add the Commissioner to schedule 19 of the Equality Act 2010 thereby making the Commissioner subject to the public sector equality duty to reduce or eliminate discrimination. The duty will therefore have an effect on how the Commissioner conducts reviews; the recommendations the Commissioner makes; and the content of the code of practice, as the Commissioner may make special mention or take a special interest in what the police are doing to eliminate discrimination. This instrument therefore seeks to achieve that policy objective. As the proposal in this instrument is primarily consequential in nature to the 2020 Act, it is therefore considered that no further EQIA is required for this instrument.

A Children's Rights and Wellbeing Impact Assessment (CRWIA) was completed on the Scottish Biometrics Commissioner Bill which preceded the 2020 Act. This assessment is published at: https://www.gov.scot/publications/scottish-biometrics-commissioner-bill-child-rights-wellbeing-assessment-crwia/. The assessment concluded that the proposed functions of the Commissioner would have a positive impact on the rights of Children and Young People with no negative impact identified. As the proposal in this instrument is primarily consequential in nature to the 2020 Act, it is considered that no further CRWIA is required for this instrument.

No Privacy Impact Assessment was required for this instrument because there is no change in how personal data is managed as a result of it.

Due to the technical aspect of this instrument there is no requirement for a Strategic Environmental Assessment.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary, as the instrument has no financial effects on the Scottish Government, local government or business.

Scottish Government
Directorate for Safer Communities
August 2020