# POLICY NOTE

# THE SCOTTISH BIOMETRICS COMMISSIONER ACT 2020 (CODE OF PRACTICE) (APPOINTED DAY) (SCOTLAND) REGULATIONS 2022

## SSI 2022/XXX

The above instrument was made in exercise of the powers conferred by section 13(1) of the Scottish Biometrics Commissioner Act 2020. The instrument is subject to affirmative procedure.

**Purpose of the instrument. The purpose of the instrument is to specify the day appointed for the coming into effect of the code of practice (the Code) prepared by the Scottish Biometrics Commissioner (the Commissioner) under section 7 of the Scottish Biometrics Commissioner Act 2020 (the 2020 Act), and approved by the Scottish Ministers under section 12(2)(a) of the 2020 Act. A copy of the Code has been laid alongside this instrument.**

**Policy Objectives**

These Regulations give effect to the first Code produced by the Commissioner in relation to the acquisition, retention, use and destruction of biometric data for criminal justice and police purposes in Scotland.

The Code provides information and guidance regarding the responsibilities of Police Scotland, the Scottish Police Authority (SPA) and the Police Investigations and Review Commissioner (PIRC). The Code seeks to promote good practice, transparency and accountability by setting out an agreed framework of standards for professional decision-making which strikes the right balance between the needs and responsibilities of policing and the criminal justice system, and the fundamental obligation to guarantee the basic human-rights, privacy, and freedoms of individual members of the public.

**Consultation**

Consultation on a draft Code was initially undertaken with the professional Advisory Group maintained by the Commissioner under Section 33 of the 2020 Act. This group included representatives from bodies to whom the Commissioner's functions extend.

Section 10 of the 2020 Act required the Commissioner to consult a list of bodies (including those bodies who are subject to the Code). A closed consultation on a draft Code was undertaken by the Commissioner from 1 October to 31 December 2021. The Commissioner has confirmed that all of these bodies have been consulted on a draft Code and had indicated their support.

A public consultation on a draft Code was also undertaken by the Commissioner during April and May 2022. This attracted no responses however the Commissioner has also engaged with the public through online discussions forums and commissioned a public attitudes and awareness survey on the use of biometrics in a policing context which has informed the preparation of the Code.

Section 11(1) of the 2020 Act required that, in relation to the first Code prepared, the Commissioner obtained the consent of the Scottish Minsters to lay the draft Code before the Parliament. Following consent from the Scottish Ministers, a draft version of the Code was laid by the Commissioner in Parliament for the requisite scrutiny period of 60 days. Following an evidence session with the Commissioner on 15 June 2022, the Scottish Parliament's Criminal Justice Committee gave its consent to the draft Code being brought into force. The Scottish Ministers subsequently gave their consent in August 2022 to approve the draft Code in terms of Section 12(2)(a) of the 2020 Act, without modification and for a final version to be laid in Parliament alongside these regulations.

Further information about the consultation on the Code is published on the Commissioner's website at: https://www.biometricscommissioner.scot/publications/code-of-practice/.

**Impact Assessments**

An Equality Impact Assessment (EQIA) and a Children's Rights and Wellbeing Impact Assessment (CRWIA) were previously published by the Scottish Government as part of its proposal to introduce legislation which, amongst other matters, required the Commissioner to prepare the Code. The links below show the relevant documentation:

EQIA – https://www.gov.scot/publications/scottish-biometrics-commissioner-bill-equality-impact-assessment-eqia-results/.
CRWIA - https://www.gov.scot/publications/scottish-biometrics-commissioner-bill-child-rights-wellbeing-assessment-crwia/.

Impact Assessments on the Code have subsequently been prepared by the Commissioner and are published on the Commissioner's website at:
https://www.biometricscommissioner.scot/publications/code-of-practice/.

The Commissioner is satisfied that the measures outlined in the Code actively promote equality, human rights and also the protection of children, young people, and vulnerable adults. The Scottish Government is therefore satisfied that such relevant considerations have been taken into account by the Commissioner in preparing the Code.

**Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) on the Code has been prepared by the Commissioner and is available from the Commissioner's website at:
https://www.biometricscommissioner.scot/publications/code-of-practice/.
The Commissioner's assessment is that no additional costs will be generated as a result of bodies being required to comply with the Code.

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

Scottish Government
Safer Communities Directorate
September 2022