

SCOTTISH PARLIAMENTARY COMMISSIONS AND COMMISSIONERS ETC. ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 4 Amendments of the Freedom of Information (Scotland) Act 2002

196. [Schedule 4](#) is introduced by section 29(4) of the Act and contains amendments to the FOISA.
197. [Paragraph 1](#) amends section 42 (the Scottish Information Commissioner) with regard to disqualification from office, the terms and period of office, removal and the independence of the SIC. New subsection (1A) is inserted disqualifying from appointment as SIC any person who is, holds office in or is an employee or appointee of another Scottish public authority and as such subject to the jurisdiction of the SIC under FOISA.
198. New subsection (1B) further restricts the SIC from holding any such position once in post without the approval of the Parliamentary corporation. This restriction avoids any suggestion or perception that the SIC's actions could be influenced by another position held.
199. Section 42 (3) is amended by paragraph 1(b) to allow the SIC to hold office for a single term only of up to a period of 8 years. Paragraph 1(g) replaces section 42(5) to make it clear that a SIC may not be reappointed at any time.
200. Sub-paragraph 1(c) adds a new subsection (3A) making clear that the SIC holds office on such terms and conditions as the Parliamentary corporation may decide. New subsection (3B)(a) allows the Parliamentary corporation in those terms and conditions to prohibit the SIC from holding any other specified office, employment or appointment or to engage in specified occupations. Subsection (3B)(b) further provides that the holding of any other such office, employment, appointment or occupation is subject to the Parliamentary corporation's approval.
201. Sub-paragraph 1(d) amends section 42(4)(c) of FOISA in line with changes made to the other officeholders in this Act relating to removal from office.
202. The SIC can be removed from office by the Parliamentary corporation under new subsection (4) only in the circumstances as set out in subsection (4A).
203. Subsection 4A(a) states that the SIC may be removed from office if the Parliamentary corporation is satisfied that the office holder has breached their terms of appointment. Having come to that view the Parliamentary corporation would then have to ask the Parliament to resolve that the member should be removed from office for the breach.
204. Alternatively, under subsection 4A(b), the SIC may be removed from office if the Parliament resolves that it has lost confidence in the SIC's willingness, suitability or ability to perform their functions.

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205. In both circumstances, a resolution must be voted for by at least 86 members of the Parliament, being a number not less than two thirds of the total number of seats of members of the Parliament.
206. [Paragraph 1](#) also updates the list of powers at subsection (7) (exceptions to the independence of the SIC) where the SIC is subject to direction or control to take account of the changes to the supervisory regime made by this Act.
207. [Paragraph 2](#) inserts new subsections (9A), (9B) and (9C) (Advisers and other services) into section 42. Under subsections (9A), (9B) and (9C) the SIC can secure advice, assistance or any other service. There may be circumstances where the SIC might want to secure legal advice for example, in relation to a particular case. Advice or services can be procured from anyone whom the SIC considers is qualified to provide it. Payment of any fees and allowances for advice or services is determined by the SIC. Any payment for providing services and payment in respect of that advice, assistance or service provided, is subject to approval by the Parliamentary corporation.
208. [Paragraph 3](#) amends section 42(11)(b) (payment of Commissioner's expenses). Section 42(11)(b), as amended, requires the Parliamentary corporation to pay the SIC's expenses where properly incurred in exercising its functions. Any sums the SIC has received in payment for services provided under section 43(6), for example, in providing training or holding seminars, fall to be deducted from the amount paid.
209. [Paragraph 4](#) inserts new subsection (11A) into section 42 under which the Parliamentary corporation is not compelled under subsection 11(b) to pay expenses which exceed or were not included in the agreed budget (see new paragraph 4A of Schedule 2). It is anticipated in this situation that the Parliamentary corporation will take a decision in light of the relevant circumstances. Should the Parliamentary corporation wish to pay these expenses the power is provided for in new subsection (11B).
210. Subsection (11C) provides that the Parliamentary corporation will indemnify the SIC in respect of any liabilities incurred by them while performing their functions.
211. [Paragraph 5](#) amends section 43 (general functions). This provision allows the SIC to charge reasonable sums for anything done by it, or on its behalf in the performance of, or in connection with, the SIC's functions. For example, this section would allow the SIC to organise training events or seminars and charge attendance fees. Any sums received must be retained by the SIC and used to meet the costs of the services provided and charged for, for example the training event.
212. [Paragraph 6](#) amends section 46 (reports). The amendments to the section require the annual report to be laid before the Scottish Parliament within 7 months of the end of the reporting year (subsection (1A)) and be published (subsection 3A). Subsection (2A) obliges the SIC to comply with any directions given by the Parliamentary corporation regarding the form and content of the report. Subsection (1B) defines the reporting year as beginning 1 April.
213. [Paragraph 7](#) inserts new section 46A (strategic plans). Section 46A requires the SIC to produce a strategic plan and details arrangements for timing, content, consultation and review. Under sub-paragraph (1) the plan covers a four year period and sets out how the SIC proposes to perform its functions during the period.
214. Sub-paragraph (2) sets out broad details of what a plan must contain. In particular it is required to provide the objectives and the priorities during the period and state proposals for achieving them. In addition the plan must provide timetables and cost estimates.
215. Sub-paragraph (3) requires the SIC to consult on the plan before laying it before Parliament. Comment on a draft must be sought from the Parliamentary corporation, the Keeper of the Records of Scotland and any other person the SIC thinks appropriate, which includes a Committee of the Parliament (sub-paragraph (4)).

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216. Sub-paragraph (5) requires the SIC to lay each strategic plan before Parliament prior to the start of the four year period which is defined in sub-paragraph (10) as beginning on the next 1 April after commencement and each subsequent period of four years. Sub-paragraph (6) requires the SIC to publish each plan.
217. Under sub-paragraph (7) the SIC can review its strategic plan at any time during the four year period and lay a revised plan before the Parliament. Sub-paragraph (8) provides that, in that event, the provisions in sub-paragraph (2) to (7) about content, consultation and publication apply. Subsection (9) clarifies that a revised plan must be laid before the Parliament not later than the beginning of the period to which the revised strategic plan relates.
218. [Paragraph 8](#) explains that paragraph 9 onwards relates to schedule 2 to FOISA.
219. [Paragraph 9](#) amends paragraph 1 (Legal Status) to clarify that the status of the SIC is that of a juristic person distinct from the natural person holding the office of the SIC.
220. [Paragraph 10](#) replaces paragraph 3(4) (approval by Parliamentary corporation of appointments etc of staff) to provide that the Parliamentary corporation must approve appointments, both in terms of the number of staff and their terms and conditions of appointment.
221. [Paragraph 11](#) inserts new paragraph 4A (Budget). Paragraph 4A enacts the recommendations of the Finance Committee's report and implements existing administrative budgetary arrangements between the officeholders and the Parliamentary corporation designed to ensure accountability for the use of public funds.
222. Sub-paragraph (1) requires the SIC to prepare budget proposals for each financial year, in advance of that year, for approval by the Parliamentary corporation. The Parliamentary corporation is given power to set a timetable for submission and approval of the budget which will allow it to be integrated within wider budgetary arrangements.
223. Under sub-paragraph (2) the SIC may seek to revise the budget during the year by submitting revised proposals to the Parliamentary corporation for approval.
224. Under sub-paragraph (3), in preparing a budget or a revised budget, the SIC is required to ensure that resources will be used economically, efficiently and effectively and must under sub-paragraph (4) so certify in any budget or revised budget proposal.
225. [Paragraph 12](#) amends paragraph 6 (Commissioner's general powers, including acquisition and disposal of property) so that the SIC may only acquire and dispose of land with the consent of the Parliamentary corporation.
226. [Paragraph 13](#) inserts new paragraph 7 (Location of office) which provides that the SIC is required to comply with any directions by the Parliamentary corporation as to the location of the SIC's office. This paragraph also inserts new paragraph 8 (Sharing of premises, staff, services and other resources) which allows the Parliamentary corporation to direct the SIC as to the sharing of premises, staff, services or other resources with any public body or any officeholder. The Parliamentary corporation could use this power to rationalise the number of premises occupied by the officeholders and bodies or to direct that the provision of services such as human resources, payroll, finance or procurement should be carried out centrally.
227. [Paragraph 14](#) inserts new paragraph 9 (Restrictions on subsequent appointments) which makes some similar restrictions on subsequent appointments once the SIC has left office to those that applied to the original appointment under new section 42(1A) and (1B) (see paragraphs 197 and 198 of these notes). As well as restriction on employment with the SIC, a former SIC cannot be: a Scottish public authority; hold office in or be an employee or appointee of a Scottish public authority; or hold any other office, employment or appointment or engage in any other occupation which that person could not hold when appointed as the SIC under new section 42(3B).

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228. Under sub-paragraph (2) the restrictions run from the date of leaving office until the end of the financial year following the one in which the person ceased to be the SIC. Thus if a SIC leaves on 1 November 2010 the restriction would subsist until 1 April 2012.