

SCHEDULE 1

(introduced by section 2(5))

CONSEQUENTIAL AMENDMENTS OF ENACTMENTS REFERRED TO IN SECTION 2(5)

PART 1

THE ETHICAL STANDARDS ACT

1 For section 9 (appointment and functions of Chief Investigating Officer) there is substituted—

“9 Public Standards Commissioner for Scotland to investigate breaches of codes

It is the duty of the Public Standards Commissioner for Scotland (the “Commissioner”) to investigate and report to the Commission on cases in which a councillor or member of a devolved public body has, might have or is alleged to have contravened the councillors' or, as the case may be, the members' code.”

2 In sections 10(1) and (2), 11, 12(1), (4) and (5), 13(1) and (3), 14(1) and (3), 16, 21(1), 23(5) and 27(1) and paragraphs 2(1) and 7(1) of schedule 1 for “Chief Investigating Officer”, in each place where those words occur, there is substituted “Commissioner”.

3 In section 10(1) for “functions of that office” there is substituted “Commissioner’s functions under this Act”.

4 In sections 10(2), 12(4) and (5), 13(1), 14(3), 16(a) and 21(1) for “that Officer”, in each place where those words occur, there is substituted “the Commissioner”.

5 In section 11 after “functions” there is inserted “under this Act”.

6 In sections 11 and 13(3) for “that Officer's” there is substituted “the Commissioner's”.

7 In section 28(1)—

(a) for the definition of “Chief Investigating Officer” there is substituted—

““Commissioner” means the Public Standards Commissioner for Scotland;”, and

(b) after the definition of “devolved public body” there is inserted—

““investigation” means an investigation under this Act;”.

8 In paragraph 2(1)(b) of schedule 1 after “functions” there is inserted “under this Act”.

9 In the titles to sections 10 to 14 “**Chief Investigating Officer**” and “**Chief Investigating Officer's**”, wherever these expressions occur, become, respectively, “**Public Standards Commissioner**” and “**Public Standards Commissioner's**”.

PART 2

THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002 (ASP 11)

- 10 Paragraph 21 in Part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (Chief Investigating Officer to be subject to investigation by Ombudsman) is repealed.

PART 3

THE PARLIAMENTARY STANDARDS ACT

- 11 Sections 1 and 2 and schedule 1 (appointment, terms of office etc. of Scottish Parliamentary Standards Commissioner and acting Commissioner) are repealed.
- 12 In section 3(1) (functions of Scottish Parliamentary Standards Commissioner) for “Commissioner”, where it first occurs, there is substituted “Public Standards Commissioner for Scotland (the “Commissioner”)”.
- 13 In section 16 (restriction on disclosure of information)—
- (a) in subsection (1) for “Commissioner”, where it secondly occurs, there is substituted “Commission for Ethical Standards in Public Life in Scotland (the “Commission”)”, and
 - (b) in subsection (2)—
 - (i) after “Commissioner”, where it first occurs, there is inserted “or Commission”, and
 - (ii) after “Commissioner”, where it secondly occurs, there is inserted “or, as the case may be, Commission”.
- 14 In section 20 (interpretation)—
- (a) the definition of “acting Commissioner” is repealed, and
 - (b) for the definition of “Commissioner” there is substituted—

““Commissioner” means the Public Standards Commissioner for Scotland;”.

PART 4

THE PUBLIC APPOINTMENTS ACT

- 15 Section 1 and schedule 1 (establishment, appointment etc. of Commissioner for Public Appointments in Scotland) are repealed.
- 16 In section 2(1) (that Commissioner’s duty to prepare code of practice) for “Commissioner” there is substituted “Public Appointments Commissioner for Scotland (the “Commissioner”)”.
- 17 In section 20 (interpretation) for the definition of “the Commissioner” there is substituted—
- ““the Commissioner” means the Public Appointments Commissioner for Scotland;”.

Status: This is the original version (as it was originally enacted).

- 18 Paragraph 16(b) of schedule 4 (Commissioner for Public Appointments in Scotland to be subject to investigation by Ombudsman) and the word “and” immediately before it are repealed.
- 19 Paragraph 17(c)(i) of that schedule (Commissioner for Public Appointments in Scotland to be subject to the Freedom of Information (Scotland) Act 2002) and the words “and (ii)” immediately following it are repealed.

PART 5

THE PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010 (ASP 8)

- 20 In schedule 5 (improvement of public functions: listed persons, bodies and office holders)—
- (a) the entries “Chief Investigating Officer established by section 9(1) of the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(asp 7\)](#)”, “Commissioner for Public Appointments in Scotland” and “Scottish Parliamentary Standards Commissioner” are repealed,
 - (b) after the entry “any Children’s Panel Advisory Committee” there is inserted the following entry—
“Commission for Ethical Standards in Public Life in Scotland”,
 - (c) after the entry “Private Rented Housing Panel” there are inserted the following entries—
“Public Appointments Commissioner for Scotland”
“Public Standards Commissioner for Scotland”.
- 21 In schedule 6 (listed bodies and office-holders in respect of whom a request from and the consent of the Parliamentary corporation is required for orders under Part 2 of the Act)—
- (a) at the beginning there is inserted the following entry—
“Commission for Ethical Standards in Public Life in Scotland”,
 - (b) for the entry “Commissioner for Public Appointments in Scotland” there are substituted the following entries—
“Public Appointments Commissioner for Scotland”
“Public Standards Commissioner for Scotland”,
 - (c) the entry “Scottish Parliamentary Standards Commissioner” is repealed,
 - (d) at the end there is inserted the following entry—
“Standards Commission for Scotland”.
- 22 In schedule 8 (listed persons, bodies and office-holders obliged to publish certain information about public functions)—
- (a) the entries “Chief Investigating Officer established by section 9(1) of the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(asp 7\)](#)”, “Commissioner for Public Appointments in Scotland” and “Scottish Parliamentary Standards Commissioner” are repealed,
 - (b) after the entry “any Children’s Panel Advisory Committee” there is inserted the following entry—
“Commission for Ethical Standards in Public Life in Scotland”,
 - (c) after the entry “Private Rented Housing Panel” there are inserted the following entries—
“Public Appointments Commissioner for Scotland”

Status: This is the original version (as it was originally enacted).

“Public Standards Commissioner for Scotland”.

SCHEDULE 2

(introduced by section 29(2))

AMENDMENTS OF THE ETHICAL STANDARDS ACT

Procedure for appointments and orders conferring functions

- 1 In section 8 (establishment, functions and membership of the Standards Commission for Scotland)—
- (a) in subsection (3) (appointment of members) for the passage from “Ministers”, where first occurring, to the end there is substituted “the Parliamentary corporation—
 - (a) after consulting such association of councils and such other persons as the Parliamentary corporation thinks appropriate; and
 - (b) with the agreement of the Parliament.”,
 - (b) after subsection (4) there is inserted—

“(4A) Ministers shall consult the Parliamentary corporation and the Commission before making an order under subsection (2)(b).”
 - (c) for subsection (6) (order conferring functions to be subject to negative procedure) there is substituted—

“(6) No statutory instrument may be made under this section unless a draft of it has been laid before and approved by the Parliament.”

Witnesses' expenses

- 2 In section 17(8) (payment by Commission of witnesses' expenses etc.) for “thinks fit” there is substituted “, with the approval of the Parliamentary corporation, determines”.

Protection from actions of defamation

- 3 In section 27(1) (protection from actions of defamation) for the passage from “by”, where it first occurs, to the end there is substituted—
- “(a) by the Commission or any of its employees, the Public Standards Commissioner for Scotland or any of the employees of the Commission for Ethical Standards in Public Life in Scotland shall be absolutely privileged;
 - (b) to that Commissioner or any of the employees of the Commission for Ethical Standards in Public Life in Scotland shall have qualified privilege.”

Application of paragraphs 5 to 16

- 4 Paragraphs 5 to 16 relate to schedule 1 to the Ethical Standards Act.

Status: This is the original version (as it was originally enacted).

Land, charges, location of office and sharing of resources

- 5 In paragraph 2—
- (a) at the end of sub-paragraph (2) (Commission’s general powers to include acquisition and disposal of land) there is inserted “, or other property”, and
 - (b) after that sub-paragraph there is inserted—
 - “(3) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.
 - (4) The Commission may determine and charge reasonable sums for anything done or provided by it or on its behalf in the exercise of, or in connection with, its functions.
 - (5) The Commission shall retain any sums received by it by virtue of sub-paragraph (4) and apply them to meet expenditure incurred in doing or providing whatever is charged for.”

- 6 After paragraph 2 there is inserted—

“Location of office

- 2A The Commission shall comply with any direction given by the Parliamentary corporation as to the location of the Commission’s office.

Sharing of premises, staff, services and other resources

- 2B The Commission shall comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other public body or any officeholder.”

Procedure for appointment of convener

- 7 In paragraph 4 (appointment of convener) for “Ministers” there is substituted “The Parliamentary corporation”.

Members' terms of office, subsequent appointments etc.

- 8 For paragraphs 5 (tenure of office of members) and 6 (remuneration etc.) there is substituted—

“Tenure of office, remuneration etc.

- 5
- (1) Each member of the Commission shall hold office for such period, not exceeding eight years, as the Parliamentary corporation determines at the time of appointment.
 - (2) A person who has ceased to be a member is ineligible for reappointment at any time.
 - (3) A member may resign office at any time by notice in writing given to the Parliamentary corporation.
 - (4) A member may be removed from office by the Parliamentary corporation if sub-paragraph (5) applies.

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- (5) This sub-paragraph applies if—
- (a) the Parliamentary corporation is satisfied that the member has breached the member’s terms and conditions of office and the Parliament resolves that the member should be removed from office for that breach; or
 - (b) the Parliament resolves that it has lost confidence in the member’s willingness, suitability or ability to exercise that member’s functions,
- and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.
- (6) The Parliamentary corporation may, in the terms and conditions of office of a member, specify the minimum period of notice for the purposes of sub-paragraph (3).
- (7) Each member is entitled to—
- (a) such remuneration; and
 - (b) such allowances,
- as the Parliamentary corporation determines.
- (8) In other respects, each member holds office on such terms and conditions as the Parliamentary corporation determines.
- (9) Those terms and conditions may, without prejudice to paragraph 3—
- (a) prohibit the member from holding any other specified office, employment or appointment or engaging in any other specified occupation;
 - (b) provide that the member’s holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation;
 - (c) for the purposes of this sub-paragraph, provide differently for the member appointed as convener and the other members.
- (10) In sub-paragraph (9), “specified” means specified in the terms and conditions of office or within a description so specified.”

9 After paragraph 5 (as inserted by paragraph 8 above) there is inserted—

“Subsequent appointments etc.

- 5A (1) A person who has ceased to be a member may not, without the approval of the Parliamentary corporation—
- (a) be employed or appointed in any other capacity by the Commission;
 - (b) be a member or an employee or appointee of the Commission for Ethical Standards in Public Life in Scotland or be, or be an employee or appointee of, the Scottish Public Services Ombudsman;
 - (c) hold any other office, employment or appointment or engage in any other occupation, being an office, employment,

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appointment or occupation which, by virtue of paragraph 5(9) (a), that person could not have held or, as the case may be, engaged in when a member.

- (2) The restriction in sub-paragraph (1)—
- (a) starts when the person ceases to be a member; and
 - (b) ends on the expiry of the financial year following the one in which it started.”

Employees, remuneration and pensions, advisers etc.

- 10 In paragraph 7 (employees)—
- (a) in sub-paragraphs (2) and (4) for “Ministers” in each place where it occurs, there is substituted “it”, and
 - (b) after sub-paragraph (4) there is inserted—
- “(4A) The exercise of a power in this paragraph requires the approval of the Parliamentary corporation.”
- 11 Paragraph 8 (remuneration, pensions etc. of Chief Investigating Officer and staff) is repealed.
- 12 Before paragraph 9 there is inserted—

“Advisers and other services

- 8A (1) The Commission may obtain advice, assistance or any other service from any person who, in the opinion of the Commission, is qualified to give it.
- (2) The Commission may pay to that person such fees and allowances as the Commission determines.
- (3) Any payment under sub-paragraph (2) is subject to the approval of the Parliamentary corporation.”

Strategic plans

- 13 After paragraph 10 there is inserted—

“Strategic plans

- 10A (1) The Commission shall, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Commission proposes to exercise the Commission’s functions during the 4 year period.
- (2) A strategic plan shall, in particular, set out—
- (a) the Commission’s objectives and priorities during the 4 year period;
 - (b) how the Commission proposes to achieve them;
 - (c) a timetable for doing so; and
 - (d) estimates of the costs of doing so.

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- (3) Before laying a strategic plan before the Parliament, the Commission shall provide a draft of it to and invite, and (if any are given) consider, comments on it from—
 - (a) the Parliamentary corporation; and
 - (b) such other persons as the Commission thinks appropriate.
- (4) The reference in sub-paragraph (3)(b) to other persons includes a committee of the Parliament.
- (5) The Commission shall lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.
- (6) The Commission shall arrange for the publication of each strategic plan laid before the Parliament.
- (7) The Commission may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Sub-paragraphs (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in sub-paragraph (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of 4 years beginning on 1 April next following the coming into force of this paragraph and each subsequent period of 4 years.”

Finance

14 After paragraph 10A (as inserted by paragraph 13 above) there is inserted—

“Accountable officer

- 10B (1) The Parliamentary corporation shall designate a member or employee of the Commission as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
 - (a) signing the accounts of the expenditure and receipts of the Commission;
 - (b) ensuring the propriety and regularity of the finances of the Commission;
 - (c) ensuring that the resources of the Commission are used economically, efficiently and effectively; and
 - (d) the duty set out in sub-paragraph (3).
 - (3) Where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper exercise of the functions specified in sub-paragraph (2)(a) to (c), the accountable officer shall—
 - (a) obtain written authority from the Commission before taking the action; and

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- (b) send a copy of the authority as soon as possible to the Auditor General for Scotland.
- (4) The accountable officer is answerable to the Parliament for the performance of the functions in sub-paragraph (2).

Budget

- 10C
- (1) The Commission shall, before the start of each financial year, prepare proposals for its use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.
 - (2) The Commission may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
 - (3) In preparing a budget or a revised budget, the Commission shall ensure that the resources of the Commission will be used economically, efficiently and effectively.
 - (4) A budget or revised budget shall contain a statement that the Commission has complied with the duty under sub-paragraph (3).

Commission’s expenses and liabilities

- 10D
- (1) The Parliamentary corporation shall pay any expenses properly incurred by the Commission in the exercise of its functions so far as not met out of sums received and applied by it under paragraph 2(5).
 - (2) Sub-paragraph (1) does not require the Parliamentary corporation to pay any expenses incurred by the Commission which exceed or are otherwise not covered by a budget or, as the case may be, revised budget approved under paragraph 10C.
 - (3) However, the Parliamentary corporation may pay those expenses.
 - (4) The Parliamentary corporation shall indemnify the Commission in respect of any liability incurred by it in the exercise of its functions.

Accounts and audit

- 10E
- (1) The Commission shall, in accordance with such directions in that regard as the Scottish Ministers may give—
 - (a) keep proper accounts and accounting records;
 - (b) prepare annual accounts in respect of each financial year; and
 - (c) send a copy of the annual accounts to the Auditor General for Scotland for auditing.
 - (2) If requested by any person, the Commission shall make the audited accounts available, at any reasonable time, without charge and in printed or electronic form, so that they may be inspected by that person.”

Status: This is the original version (as it was originally enacted).

Annual reports

16 After paragraph 10E (as inserted by paragraph 14 above) there is inserted—

“Annual reports

10F (1) The Commission shall lay before the Parliament annually a general report on the exercise of its functions during the reporting year.

(2) The report shall, in particular, include—

(a) a summary of any hearings held by the Commission during the reporting year; and

(b) a summary of any other activities undertaken by it during that year in pursuance of its functions.

(3) The report shall be laid before the Parliament within seven months after the end of the reporting year.

(4) The Commission shall arrange for the publication of each report laid before the Parliament under this paragraph.

(5) In preparing a report under this paragraph, the Commission shall comply with any direction given by the Parliamentary corporation as to the form and content of the report.

(6) In this section “reporting year” means the year beginning on 1 April.”

Terms and conditions of office, staff and status of Chief Investigating Officer

17 Schedule 2 (terms and conditions of office, staff and status of Chief Investigating Officer) is repealed.

SCHEDULE 3

(introduced by section 29(3))

AMENDMENTS OF THE [SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002 \(ASP 11\)](#)

Investigations and reports

1 In section 5(1)(a) (matters which may be investigated) after “or”, where it second occurs, there is inserted “on”.

2 In section 11 (decisions not to investigate)—

(a) in subsection (1) the passage from “after” to “complaint”, where it second occurs, becomes paragraph (a) of the subsection and after it there is inserted “, or

(b) decides to discontinue an investigation following a complaint,”,

(b) after subsection (3) there is inserted—

“(3A) Where the Ombudsman decides to discontinue an investigation following a complaint, any reference in paragraphs (b), (f) and (g) of subsection (2) to the listed authority in question or to the listed

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- authority is to be construed as including a reference to a listed authority—
- (a) which was not mentioned in the complaint, but
 - (b) whose action was investigated by the Ombudsman in connection with the investigation.”,
- (c) after subsection (4) there is inserted—
- “(5) Subsection (4) applies where the Ombudsman decides to discontinue an investigation following a request as it applies where the Ombudsman decides not to conduct such an investigation.”,
- (d) accordingly, the title to the section becomes “**Decisions not to investigate or to discontinue investigations**”.
- 3 After subsection (6) of section 12 (investigation procedure) there is inserted—
- “(7) Any reference in subsections (2)(a) and (6)(a) and (b) to the listed authority in question or to the listed authority includes, in relation to an investigation following a complaint, references to a listed authority—
- (a) which is not mentioned in the complaint, but
 - (b) whose action is investigated by the Ombudsman in connection with the investigation.”
- 4 In section 13 (evidence) after subsection (9) there is inserted—
- “(10) Any reference in subsections (1) to (3) to the listed authority in question or to the listed authority includes, in relation to an investigation following a complaint, a reference to a listed authority—
- (a) which is not mentioned in the complaint, but
 - (b) whose action is investigated by the Ombudsman in connection with the investigation.”
- 5 In section 15 (reports on investigations)—
- (a) at the beginning of subsection (1) there is inserted “Subject to subsection (1A),”,
 - (b) after that subsection there is inserted—
- “(1A) Where the Ombudsman decides to discontinue an investigation, the Ombudsman may—
- (a) send a report of the investigation to the Scottish Ministers, and
 - (b) lay a copy of the report before the Parliament.”,
- (c) in subsection (4)(a)(i) after “report” there is inserted “sent to it by virtue of subsection (1)”,
- (d) after subsection (7) there is inserted—
- “(8) Any reference in subsections (3) to (5) to the listed authority in question or to the listed authority includes, in relation to a complaint following which the investigation was conducted, a reference to a listed authority—
- (a) which was not mentioned in the complaint, but
 - (b) whose action was investigated by the Ombudsman in connection with the investigation.”

Annual reports

- 6 In section 17—
- (a) at the end of subsection (1) (duty to lay annual reports) there is inserted “during the reporting year”,
 - (b) in subsection (2) (Ombudsman’s recommendations) for “period in question” there is substituted “reporting year”,
 - (c) after subsection (2) there is inserted—
 - “(2A) A report under subsection (1) must be laid before the Parliament within seven months after the end of the reporting year.”,
 - (d) in subsection (3) (directions as to form and content of reports) for “Parliament” there is substituted “Parliamentary corporation”,
 - (e) after that subsection there is inserted—
 - “(3A) The Ombudsman must arrange for the publication of each report under subsection (1).”,
 - (f) after subsection (4) there is inserted—
 - “(5) In this section, “reporting year” means the year beginning on 1 April.”

Strategic plans

- 7 After section 17 there is inserted—

“17A Strategic plans

- (1) The Ombudsman must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Ombudsman proposes to perform the Ombudsman’s functions during the 4 year period.
- (2) A strategic plan must, in particular, set out—
 - (a) the Ombudsman’s objectives and priorities during the 4 year period,
 - (b) how the Ombudsman proposes to achieve them,
 - (c) a timetable for doing so, and
 - (d) estimates of the costs of doing so.
- (3) Before laying a strategic plan before the Parliament, the Ombudsman must provide a draft of it to and invite, and (if any are given) consider, comments on it from—
 - (a) the Parliamentary corporation, and
 - (b) such other persons as the Ombudsman thinks appropriate.
- (4) The reference in subsection (3)(b) to other persons includes a reference to a committee of the Parliament.
- (5) The Ombudsman must lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.
- (6) The Ombudsman must arrange for the publication of each strategic plan laid before the Parliament.

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- (7) The Ombudsman may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Subsections (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of 4 years beginning on 1 April next following the coming into force of this section and each subsequent period of 4 years.”

Confidentiality of information

- 8 In section 19 (confidentiality of information)—
- (a) in subsection (3)—
 - (i) for “patients”, where it first occurs, there is substituted “individuals (in particular or in general)”,
 - (ii) for “and” there is substituted “or”,
 - (iii) for “patients”, where it second occurs, there is substituted “the particular individuals or, as the case may be, individuals in general”,
 - (b) after subsection (4) there is inserted—
 - “(4A) The duty under subsection (4)(a) to inform a person about the identity of a person to whom information has been disclosed does not apply where informing the former person is likely to constitute a threat to the health or safety of the latter person.”
- 9 In section 23(1) (interpretation) the definition of “patient” is repealed.

Application of paragraphs 11 to 19

- 10 Paragraphs 11 to 19 relate to schedule 1 to the [Scottish Public Services Ombudsman Act 2002 \(asp 11\)](#).

Disqualification, terms of office, status, removal etc.

- 11 For paragraph 1(3) (disqualification of former Ombudsman from certain posts) there is substituted—
- “(3) A person who has ceased to hold office as Ombudsman or deputy Ombudsman may not, without the approval of the Parliamentary corporation—
 - (a) be appointed or, as the case may be, elected as—
 - (i) the holder of any office which is a listed authority, or
 - (ii) a member, officer or member of staff of a listed authority,
 - (b) be appointed to any paid office by a listed authority, or
 - (c) hold any other office, employment, or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of paragraph 4(2E)(a), that person could not have held or, as the case may be, engaged in when Ombudsman or, as the case may be, Deputy Ombudsman.

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(3A) The restriction in sub-paragraph (3)—

- (a) starts when the person ceases to hold office as Ombudsman or, as the case may be, deputy Ombudsman, and
- (b) ends on the expiry of the financial year following the one in which it started.

(3B) In sub-paragraph (3), a “paid office” is one where the holder is entitled to remuneration or expenses or any combination of them.”

12 In paragraph 2 (status of Ombudsman)—

(a) after sub-paragraph (2) there is inserted—

“(2A) The Ombudsman is, as such, to be regarded as a juristic person distinct from the natural person holding the office.”,

(b) in sub-paragraph (3) (respects in which Ombudsman is subject to direction or control) for “paragraph” there is substituted “paragraphs 9(4), 10(3), 12(3), 12A, 12B, 12D and”.

13 In paragraph 4 (period of office, tenure etc.)—

(a) in sub-paragraph (1)—

(i) in paragraph (a) for “five” there is substituted “eight”, and

(ii) for paragraph (d) there is substituted—

“(d) may be removed from office by Her Majesty if sub-paragraph (2C) applies,”,

(b) for sub-paragraphs (2) and (3) there is substituted—

“(2A) A person who has held office as Ombudsman or deputy Ombudsman is ineligible for reappointment at any time.

(2B) Such a person is, however, eligible for appointment to the other office, but may not hold that office beyond the expiry of the period for which the person was first appointed.”,

(c) after sub-paragraph (2B) (as inserted by this paragraph) there is inserted—

“(2C) This sub-paragraph applies if—

(a) the Parliamentary corporation is satisfied that the Ombudsman has breached the terms and conditions of office and the Parliament resolves that the Ombudsman should be removed from office for that breach, or

(b) the Parliament resolves that it has lost confidence in the Ombudsman’s willingness, suitability or ability to perform the functions of the Ombudsman,

and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.

(2D) Sub-paragraph (2C) applies in respect of a deputy Ombudsman as it applies in respect of the Ombudsman.

(2E) The terms and conditions of office referred to in sub-paragraph (1)(e) may, without prejudice to paragraph 1—

(a) prohibit the Ombudsman or deputy Ombudsman from holding any other specified office, employment or

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appointment or engaging in any other specified occupation,

- (b) provide that the Ombudsman’s or deputy Ombudsman’s holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.

(2F) In sub-paragraph (2E), “specified” means specified in the terms and conditions of office or within a description so specified.”

Advisers and other services

14 For paragraph 10 there is substituted—

“Advisers and other services

- 10 (1) The Ombudsman may obtain advice, assistance or any other service from any person who, in the opinion of the Ombudsman, is qualified to give it.
- (2) The Ombudsman may pay to that person such fees and allowances as the Ombudsman determines.
- (3) Any payment under sub-paragraph (2) is subject to the approval of the Parliamentary corporation.”

Land, location of office, sharing of resources and charges

15 At the end of paragraph 12 (Ombudsman’s general powers) there is inserted—

“(3) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.”

16 After paragraph 12 there is inserted—

“Location of office

- 12A The Ombudsman must comply with any direction given by the Parliamentary corporation as to the location of the Ombudsman’s office.

Sharing of premises, staff, services and other resources

- 12B The Ombudsman must comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other officeholder or any public body.

Charges for services

- 12C (1) The Ombudsman may determine and charge reasonable sums for anything done or provided by the Ombudsman in the performance of, or in connection with, the Ombudsman’s functions.
- (2) Any sums received by the Ombudsman by virtue of sub-paragraph (1) are to be retained by the Ombudsman and applied to meet expenditure incurred in doing or providing whatever is charged for.”

Budget

17 After paragraph 12C (as inserted by paragraph 16 above) there is inserted—

“Budget

- 12D (1) The Ombudsman must, before the start of each financial year, prepare proposals for the Ombudsman’s use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.
- (2) The Ombudsman may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- (3) In preparing a budget or revised budget, the Ombudsman must ensure that the resources of the Ombudsman will be used economically, efficiently and effectively.
- (4) A budget or revised budget must contain a statement that the Ombudsman has complied with the duty under sub-paragraph (3).”

Finance

18 In paragraph 13(b) (Parliamentary corporation to pay Ombudsman’s expenses)—

(a) before “incurred” there is inserted “properly”, and

(b) at the end there is inserted “so far as those expenses are not met out of sums received and applied by the Ombudsman under paragraph 12C(2)”.

19 Paragraph 13 (as amended by paragraph 18 above) is renumbered as sub-paragraph (1) of paragraph 13 and after it there is inserted—

- “(2) Sub-paragraph (1)(b) does not require the Parliamentary corporation to pay any expenses which exceed or are otherwise not covered by a budget or, as the case may be, a revised budget approved under paragraph 12D.
- (3) However, the Parliamentary corporation may pay those expenses.
- (4) The Parliamentary corporation is to indemnify the Ombudsman in respect of any liabilities incurred in the exercise of the functions of the Ombudsman.”

Prison management etc.

20 In Part 1 of schedule 2 (list of persons liable to investigation), after paragraph 17 there is inserted—

“Prisons

- 17A Any person who is, or was at the time of the matter complained of—
- (a) the governor of a prison appointed under section 3 of the Prisons (Scotland) Act 1989 (c. 45),
- (b) a medical officer of a prison appointed under section 3A or (if appointed before 1 January 1998) section 3(1) of that Act, or

Status: This is the original version (as it was originally enacted).

- (c) in relation to a contracted out prison (within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994 (c. 33)—
 - (i) the director appointed under section 107(1) of that Act, or
 - (ii) a registered medical practitioner or other person providing appropriate medical services under section 107(6) of that Act,(but only to the extent that the action taken by or on behalf of that person is not a matter liable to investigation under this Act by virtue of paragraph 2 of this schedule).”

Matters excluded from investigation

- 21 In schedule 4—
- (a) paragraph 2 (exclusion of civil, criminal and international proceedings from investigation) is renumbered as sub-paragraph (1) of that paragraph and after it there is inserted—
 - “(2) The reference in sub-paragraph (1) to civil proceedings includes a reference to inquiries under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c. 14).”, and
 - (b) in paragraph 7(1) (exclusion of certain contractual and commercial transactions) for “relating to” there is substituted “arising from concluded”.

SCHEDULE 4

(introduced by section 29(4))

AMENDMENTS OF THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (ASP 13)

The Commissioner: terms and period of office, removal and independence

- 1 In section 42 (the Scottish Information Commissioner)—
- (a) after subsection (1) there is inserted—
 - “(1A) A person is disqualified from appointment as the Commissioner if the person is, or holds office in, or is an employee or appointee of, another Scottish public authority.
 - (1B) The Commissioner may not, without the approval of the Parliamentary corporation, also be, or hold office in, or be an employee or appointee of, another Scottish public authority.”
 - (b) in subsection (3) (period of office of Commissioner) for “five” there is substituted “eight”,
 - (c) after subsection (3) there is inserted—
 - “(3A) The Commissioner is to hold office otherwise on such terms and conditions as the Parliamentary corporation may determine.
 - (3B) Those terms and conditions may, without prejudice to subsection (1A)—

Status: This is the original version (as it was originally enacted).

- (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,
- (b) provide that the Commissioner’s holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.

(3C) In subsection (3B), “specified” means specified in the terms and conditions of office or within a description so specified.”

- (d) in subsection (4)(c) for the passage from “in” onward there is substituted “if subsection (4A) applies”,
- (e) subsection (4)(d) and the word “and” immediately before it are repealed,
- (f) after subsection (4) there is inserted—

“(4A) This subsection applies if—

- (a) the Parliamentary corporation is satisfied that the Commissioner has breached the terms and conditions of office and the Parliament resolves that the Commissioner should be removed from office for that breach, or
- (b) the Parliament resolves that it has lost confidence in the Commissioner’s willingness, suitability or ability to perform the functions of the Commissioner,

and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.”

- (g) for subsection (5) there is substituted—

“(5) A person who has held office as Commissioner is ineligible for reappointment at any time.”

- (h) in subsection (7) (independence of Commissioner: exceptions) for “paragraph 3(4)” there is substituted “sections 42(9C) and 46(2A) and paragraphs 3(4), 4A, 6(2), 7 and 8”.

Advice and other services

2 After subsection (9) of section 42 there is inserted—

“(9A) The Commissioner may obtain advice, assistance or any other service from any person who, in the opinion of the Commissioner, is qualified to give it.

(9B) The Commissioner may pay to that person such fees and allowances as the Commissioner determines.

(9C) Any payment under subsection (9B) is subject to the approval of the Parliamentary corporation.”

Expenses

3 In subsection (11)(b) of section 42 (payment of Commissioner’s expenses)—

- (a) before “incurred” there is inserted “properly”, and
- (b) after “Act” there is inserted “so far as those expenses are not met out of sums received and applied by that officer under section 43(6)”.

Status: This is the original version (as it was originally enacted).

- 4 After subsection (11) of that section there is inserted—
- “(11A) Subsection (11)(b) does not require the Parliamentary corporation to pay any expenses incurred by the Commissioner which exceed or are otherwise not covered by a budget or, as the case may be, revised budget approved under paragraph 4A of schedule 2.
- (11B) However, the Parliamentary corporation may pay those expenses.
- (11C) The Parliamentary corporation is to indemnify the Commissioner in respect of any liabilities incurred by the Commissioner in the exercise of the Commissioner’s functions under this Act.”

Charges

- 5 In section 43 (general functions)—
- (a) in subsection (5) (charges for services provided by Commissioner) for “sums for services provided under this section” there is substituted “reasonable sums for anything done or provided by the Commissioner in the performance of, or in connection with, the Commissioner’s functions”, and
- (b) in subsection (6) (sums charged to be applied towards related expenditure) for “respect of the services so provided” there is substituted “doing or providing whatever is charged for”.

Annual reports

- 6 In section 46 (reports)—
- (a) in subsection (1) after “exercise” there is inserted “during the reporting year”,
- (b) after that subsection there is inserted—
- “(1A) Each report must be so laid within 7 months after the end of the reporting year.
- (1B) In this section, “reporting year” means the year beginning on 1 April.”,
- (c) after subsection (2) there is inserted—
- “(2A) In preparing a report under subsection (1), the Commissioner must comply with any direction given by the Parliamentary corporation as to the form and content of the report.”,
- (d) after subsection (3) there is inserted—
- “(3A) The Commissioner must arrange for the publication of each report laid before the Parliament under this section.”;
- and the title of section 46 becomes “**Laying and publication of reports**”.

Strategic plans

- 7 After section 46 there is inserted—

Status: This is the original version (as it was originally enacted).

“46A Strategic plans

- (1) The Commissioner must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Commissioner proposes to perform the Commissioner’s functions during the 4 year period.
- (2) A strategic plan must, in particular, set out—
 - (a) the Commissioner’s objectives and priorities during the 4 year period,
 - (b) how the Commissioner proposes to achieve them,
 - (c) a timetable for doing so, and
 - (d) estimates of the costs of doing so.
- (3) Before laying a strategic plan before the Parliament, the Commissioner must provide a draft of it to and invite, and (if any are given) consider, comments on it from—
 - (a) the Parliamentary corporation,
 - (b) the Keeper of the Records of Scotland, and
 - (c) such other persons as the Commissioner thinks appropriate.
- (4) The reference in subsection (3)(c) to other persons includes a committee of the Parliament.
- (5) The Commissioner must lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.
- (6) The Commissioner must arrange for the publication of each strategic plan laid before the Parliament.
- (7) The Commissioner may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Subsections (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of 4 years beginning on 1 April next following the coming into force of this section and each subsequent period of 4 years.”

Application of paragraph 9 onward

- 8 Paragraph 9 onward relates to schedule 2 to the [Freedom of Information \(Scotland\) Act 2002 \(asp 13\)](#).

Legal status

- 9 Paragraph 1 is renumbered as sub-paragraph (1) of that paragraph and after it there is inserted—

Status: This is the original version (as it was originally enacted).

“(2) The Commissioner is, as such, to be regarded as a juristic person distinct from the natural person holding the office.”

Staff

10 For paragraph 3(4) (approval by Parliamentary corporation of appointments etc. of staff) there is substituted—

“(4) The exercise of a power in sub-paragraph (1) or (2) is subject to the approval of the Parliamentary corporation.”

Budget

11 After paragraph 4 there is inserted—

“Budget

4A (1) The Commissioner must, before the start of each financial year, prepare proposals for the Commissioner’s use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.

(2) The Commissioner may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.

(3) In preparing a budget or revised budget, the Commissioner must ensure that the resources of the Commissioner will be used economically, efficiently and effectively.

(4) A budget or revised budget must contain a statement that the Commissioner has complied with the duty under sub-paragraph (3).”

Land, location of office, sharing of resources

12 Paragraph 6 (Commissioner’s general powers, including acquisition and disposal of property) is renumbered as sub-paragraph (1) of that paragraph and after it there is inserted—

“(2) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.”

13 After paragraph 6 there is inserted—

“Location of office

7 The Commissioner must comply with any direction given by the Parliamentary corporation as to the location of the Commissioner’s office.

Status: This is the original version (as it was originally enacted).

Sharing of premises, staff, services and other resources

- 8 The Commissioner must comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other officeholder or any public body.”

Subsequent appointments

- 14 After paragraph 8 (as inserted by paragraph 13 above) there is inserted—

“Restrictions on subsequent appointments etc.

- 9 (1) A person who has ceased being the Commissioner may not, without the approval of the Parliamentary corporation—
- (a) be employed or appointed in any other capacity by the Commissioner,
 - (b) be a Scottish public authority or hold office in, or be an employee or appointee of, a Scottish public authority, or
 - (c) hold any other office, employment or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of section 42(3B)(a), that person could not have held or, as the case may be, engaged in when Commissioner.
- (2) The restriction in sub-paragraph (1)—
- (a) starts when the person ceases to be the Commissioner, and
 - (b) ends on the expiry of the financial year next following the one in which it started.”

SCHEDULE 5

(introduced by section 29(10))

AMENDMENTS OF THE **COMMISSIONER FOR CHILDREN
AND YOUNG PEOPLE (SCOTLAND) ACT 2003 (ASP 17)**

The Commissioner: period of appointment, removal etc.

- 1 In section 2 (appointment of Commissioner)—
- (a) in subsection (3) (period of appointment) for “five” there is substituted “eight”,
 - (b) for subsection (4) (re-appointment) there is substituted—
- “(4) A person who has been appointed Commissioner is ineligible for re-appointment at any time.”
- 2 In section 3 (removal of Commissioner) for subsections (1)(b) and (2) there is substituted—
- “(b) subsection (2) applies.
- (2) This subsection applies if—

Status: This is the original version (as it was originally enacted).

- (a) the Parliamentary corporation is satisfied that the Commissioner has breached the terms and conditions of appointment and the Parliament resolves that the Commissioner should be removed from office for that breach, or
 - (b) the Parliament resolves that it has lost confidence in the Commissioner’s willingness, suitability or ability to perform the functions of the Commissioner,
- and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.”

Annual reports

- 3 In section 10 (annual reports)—
- (a) at the end of subsection (1) there is inserted “during the reporting year”,
 - (b) in subsection (2) for “the period covered by the report”, in both places where those words occur, and for “that period” there is substituted, in each case, “the reporting year”, and
 - (c) after subsection (2) there is inserted—
 - “(3) The report must be laid before the Parliament within 7 months after the end of the reporting year.
 - (4) In preparing the report, the Commissioner must comply with any direction given by the Parliamentary corporation as to the form and content of the report.
 - (5) In this section “reporting year” means the year beginning on 1 April.”

Strategic plans

- 4 After section 14 there is inserted—
- “14A Strategic plans**
- (1) The Commissioner must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Commissioner proposes to perform the Commissioner’s functions during the 4 year period.
 - (2) A strategic plan must, in particular, set out—
 - (a) the Commissioner’s objectives and priorities during the 4 year period,
 - (b) how the Commissioner proposes to achieve them,
 - (c) a timetable for doing so, and
 - (d) estimates of the costs of doing so.
 - (3) Before laying a strategic plan before the Parliament, the Commissioner must provide a draft of it to and invite, and (if any are given) consider, comments on it from—
 - (a) the Parliamentary corporation, and

Status: This is the original version (as it was originally enacted).

- (b) such other persons as the Commissioner thinks appropriate.
- (4) The reference in subsection (3)(b) to other persons includes a committee of the Parliament.
- (5) The Commissioner must lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.
- (6) The Commissioner must arrange for the publication of each strategic plan laid before the Parliament.
- (7) The Commissioner may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Subsections (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of 4 years beginning on 1 April next following the coming into force of this section and each subsequent period of 4 years.”

Application of paragraph 6 onward

- 5 Paragraph 6 onward relates to schedule 1 to the [Commissioner for Children and Young People \(Scotland\) Act 2003 \(asp 17\)](#).

Status and independence

- 6 At the end of paragraph 1 (legal status of Commissioner) there is inserted—
- “(3) The Commissioner is, as such, to be regarded as a juristic person distinct from the natural person holding the office.”
- 7 In paragraph 2(2) (respects in which the Commissioner is subject to direction or control) for the passage from “and 3(1)(b)” to “7” there is substituted “, 3(1)(b) and 10(4) and paragraphs 4, 6(2A) and (3), 6A, 7, 7A, 7B(3), 9A”.

Disqualification

- 8 In paragraph 4—
- (a) after sub-paragraph (1) there is inserted—
 - “(1A) The Commissioner ceases to hold office as Commissioner on becoming—
 - (a) a member of the Parliament,
 - (b) a member of the House of Commons, or
 - (c) a member of the European Parliament.”
 - (b) in sub-paragraph (2), after “terms” there is inserted “and conditions”,
 - (c) for sub-paragraph (3) there is substituted—

Status: This is the original version (as it was originally enacted).

“(3) The terms and conditions may, without prejudice to section 2(2) or sub-paragraph (1A) of this paragraph—

- (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,
- (b) provide that the Commissioner’s holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.

(4) In sub-paragraph (3)(b), “specified” means specified in the terms and conditions or within a description so specified.”

Subsequent appointments

9 After paragraph 5 there is inserted—

“Subsequent appointments etc.

5A (1) A person who has ceased being the Commissioner (“the former Commissioner”) may not, without the approval of the Parliamentary corporation—

- (a) be employed or appointed in any other capacity by the Commissioner,
- (b) be an employee or appointee of—
 - (i) any person in relation to whom,
 - (ii) any body in relation to which,an investigation under this Act has been carried out or continued by the former Commissioner when Commissioner, or hold office in any such body, or
- (c) hold any other office, employment or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of paragraph 4(3) (a), that former Commissioner could not have held or, as the case may be, engaged in when Commissioner.

(2) The restriction in sub-paragraph (1)—

- (a) starts when the person ceases to be the Commissioner, and
- (b) ends on the expiry of the financial year next following the one in which it started.”

Land, charges, location of office, sharing of resources, staff and advisers and other services

10 In paragraph 6 (general powers)—

- (a) in sub-paragraph (2) (Commissioner’s general powers to include power to acquire and dispose of property) after “of” there is inserted “land and other”,
- (b) after that sub-paragraph there is inserted—

“(2A) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.”,

Status: This is the original version (as it was originally enacted).

- (c) in sub-paragraph (3) (charges for certain services specified by order by Scottish Ministers), for the passage from “charge” to the end there is substituted “determine and charge reasonable sums for anything done or provided by the Commissioner in the performance of, or in connection with, the Commissioner’s functions.”,
- (d) after sub-paragraph (3) there is inserted—
 - “(3A) Any sums received by the Commissioner by virtue of sub-paragraph (3) are to be retained by the Commissioner and applied to meet expenditure incurred in doing or providing whatever is charged for.”, and
- (e) sub-paragraph (4) (which is about the statutory instrument containing an order under sub-paragraph (3)) is repealed.

11 After paragraph 6 there is inserted—

“Location of office

- 6A The Commissioner must comply with any direction given by the Parliamentary corporation as to the location of the Commissioner’s office.”

12 In paragraph 7(2) (terms of appointment of staff) after “terms” there is inserted “and conditions”.

13 After paragraph 7 there is inserted—

“Sharing of premises, staff, services and other resources

- 7A The Commissioner must comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other officeholder or any public body.

Advisers and other services

- 7B (1) The Commissioner may obtain advice, assistance or any other service from any person who, in the opinion of the Commissioner, is qualified to give it.
- (2) The Commissioner may pay to that person such fees and allowances as the Commissioner determines.
- (3) Any payment under sub-paragraph (2) is subject to the approval of the Parliamentary corporation.”

Finance and budget

14 Paragraph 9 (payment of Commissioner’s salary, expenses etc.) is renumbered as sub-paragraph (1) of that paragraph and—

- (a) at the end of that sub-paragraph (as so renumbered) there is inserted “ so far as not met out of sums received and applied by the Commissioner under paragraph 6(3A), and
- (b) after that sub-paragraph there is inserted—

Status: This is the original version (as it was originally enacted).

- “(2) Sub-paragraph (1)(b) does not require the Parliamentary corporation to pay any expenses incurred by the Commissioner which exceed or are otherwise not covered by a budget or, as the case may be, revised budget approved under paragraph 9A.
- (3) However, the Parliamentary corporation may pay those expenses.
- (4) The Parliamentary corporation is to indemnify the Commissioner in respect of any liabilities incurred by the Commissioner in the exercise of the Commissioner’s functions.”

15 After paragraph 9 there is inserted—

“Budget

- 9A (1) The Commissioner must, before the start of each financial year, prepare proposals for the Commissioner’s use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.
- (2) The Commissioner may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- (3) In preparing a budget or revised budget, the Commissioner must ensure that the resources of the Commissioner will be used economically, efficiently and effectively.
- (4) A budget or revised budget must contain a statement that the Commissioner has complied with the duty under sub-paragraph (3).”

SCHEDULE 6

(introduced by section 29(11))

AMENDMENTS OF THE [SCOTTISH COMMISSION FOR HUMAN RIGHTS ACT 2006 \(ASP 16\)](#)

Strategic plans

- 1 In section 7 (strategic plans)—
- (a) in subsection (2)—
- (i) the word “and” between paragraphs (c) and (d) is repealed, and
- (ii) after paragraph (d) there is inserted “, and
- (e) estimates of the costs of achieving those objectives and priorities and undertaking those reviews and activities.”,
- (b) after subsection (6) there is inserted—
- “(6A) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.”

Annual report

- 2 In section 15 (Commission’s annual report)—
- (a) in subsection (1) for “year to which the report relates (“the reporting year”)” there is substituted “reporting year”,
 - (b) after subsection (2) there is inserted—
 - “(2A) The report must be laid before the Parliament within 7 months after the end of the reporting year.”, and
 - (c) at the end there is inserted—
 - “(4) In this section “reporting year” means the year beginning on 1 April.”

Application of paragraph 4 onward

- 3 Paragraph 4 onward relates to schedule 1 to the [Scottish Commission for Human Rights Act 2006 \(asp 16\)](#).

Independence: exceptions

- 4 In paragraph 3(2) (exceptional matters in which Commission subject to direction or control)—
- (a) for “8(2)(b)” there is substituted “8(3)”, and
 - (b) after “11” there is inserted “, 11A(3), 12(3), 13A”.

Members of the Commission: period of office, removal, and other and subsequent appointments

- 5 In paragraph 5 (terms of office etc. of Commission members)—
- (a) in sub-paragraph (1)(a) (period of office) for “five” there is substituted “eight”,
 - (b) for sub-paragraph (1)(b) and “and” immediately preceding it there is substituted “but
 - (b) is ineligible for reappointment at any time.”,
 - (c) in sub-paragraph (5) (Parliamentary resolution for removal of members) for “member” there is substituted “member’s willingness, suitability or ability to perform that member’s functions”,
 - (d) in sub-paragraph (6) (voting on a resolution) for the passage from “if” onward there is substituted “must be voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament”,
 - (e) after sub-paragraph (8) there is inserted—
 - “(9) Those terms and conditions may, without prejudice to paragraph 4—
 - (a) prohibit the member from holding any other specified office, employment or appointment or engaging in any other specified occupation,
 - (b) provide that a member’s holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation,

Status: This is the original version (as it was originally enacted).

- (c) for the purposes of this sub-paragraph, provide differently for the member appointed to chair the Commission and the other members.

(10) In sub-paragraph (9), “specified” means specified in the terms and conditions or within a description so specified.”

6 After paragraph 6 there is inserted—

“Subsequent appointments etc.

6A (1) A person who has ceased to be a member of the Commission may not, without the approval of the Parliamentary corporation—

- (a) be employed or appointed in any other capacity by the Commission,
- (b) hold office in or be an employee or appointee of any Scottish public authority in relation to which the Commission conducted an inquiry under section 8(1)(a) while that person was a member of the Commission, or
- (c) hold any other office, employment or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of paragraph 5(9)(a), that person could not have held or, as the case may be, engaged in when a member of the Commission.

(2) The restriction in sub-paragraph (1)—

- (a) starts when the person ceases to be a member of the Commission, and
- (b) ends on the expiry of the financial year next following the one in which it started.”

Land, location of office, advisers and other services, sharing of resources and finance

7 In paragraph 8—

(a) for sub-paragraph (2)(b) (Commission’s powers to include acquisition and disposal of land) there is substituted—

“(b) acquire and dispose of land and other property,” and

(b) after sub-paragraph (2) there is inserted—

“(3) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.”

8 For paragraph 10 (location of office) there is substituted—

“Location of office

10 The Commission must comply with any direction given by the Parliamentary corporation as to the location of the Commission’s office.”

9 After paragraph 11 there is inserted—

“Advisers and other services

- 11A (1) The Commission may obtain advice, assistance or any other service from any person who, in the opinion of the Commission, is qualified to give it.
- (2) The Commission may pay to that person such fees and allowances as it determines.
- (3) Any payment under sub-paragraph (2) is subject to the approval of the Parliamentary corporation.”
- 10 In paragraph 12 (sharing of premises, staff, services and other resources) after sub-paragraph (2) there is inserted—
- “(3) The exercise of the power in sub-paragraph (1) is subject to the approval of the Parliamentary corporation.”
- 11 After paragraph 13 there is inserted—

“Budget

- 13A (1) The Commission must, before the start of each financial year, prepare proposals for its use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.
- (2) The Commission may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- (3) In preparing a budget or a revised budget, the Commission must ensure that the resources of the Commission will be used economically, efficiently and effectively.
- (4) A budget or revised budget must contain a statement that the Commission has complied with the duty under subsection (3).”
- 12 For paragraph 14(1) (payment of Commissioners' remuneration and Commission's expenses) there is substituted—
- “(1) The Parliamentary corporation is to—
- (a) pay the remuneration and allowances of each member of the Commission,
 - (b) pay any expenses properly incurred by the Commission in the exercise of its functions, so far as those expenses are not met out of sums retained and applied by it under section 3(3), and
 - (c) indemnify the Commission in respect of any liabilities incurred by it in the exercise of its functions.”

Status: This is the original version (as it was originally enacted).

SCHEDULE 7

(introduced by section 31(6))

TRANSFER OF STAFF, PROPERTY AND LIABILITIES AND TRANSITIONAL AND SAVING PROVISIONS

PART 1

TRANSFER OF STAFF, PROPERTY AND LIABILITIES TO COMMISSION FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND

Staff

- 1 (1) On the coming into force of this schedule, each person who was, immediately before then, one of the—
 - (a) employees appointed by the Chief Investigating Officer under section 9(4) of the Ethical Standards Act, or
 - (b) staff appointed by—
 - (i) the Scottish Parliamentary Standards Commissioner under paragraph 2 of the schedule to the Parliamentary Standards Act, or
 - (ii) the Commissioner for Public Appointments in Scotland under paragraph 8 of schedule 1 to the Public Appointments Act,transfers to and becomes a member of the staff of the Commission for Ethical Standards in Public Life in Scotland (in this paragraph and paragraph 2, “the Commission”).
- (2) The contract of employment of a person who becomes a member of staff of the Commission by virtue of sub-paragraph (1)—
 - (a) is not terminated by the transfer, and
 - (b) has effect from the coming into force of this schedule as if originally made between the person and the Commission.
- (3) Without prejudice to sub-paragraph (2)—
 - (a) all the previous employer’s rights, powers, duties and liabilities under or in connection with the person’s contract of employment are, on the coming into force of this schedule, transferred to the Commission, and
 - (b) anything done by the previous employer before then in respect of that contract or that person is to be treated from then as having been done by the Commission.
- (4) In sub-paragraph (3), the “previous employer” is the Chief Investigating Officer, the Scottish Parliamentary Standards Commissioner or, as the case may be, the Commissioner for Public Appointments in Scotland.
- (5) This paragraph does not prejudice any right of any person to terminate that person’s contract of employment if the terms and conditions of employment are changed substantially to the detriment of that person; but a change is not to be taken to have occurred by reason only that the identity of the person’s employer changes by virtue of this paragraph.

Property and liabilities

- 2 (1) On the coming into force of this schedule, all property (including rights) to which, immediately before then, a previous officeholder was entitled and liabilities to which, immediately before then, a previous officeholder was subject transfer to and vest in the Commission.
- (2) Sub-paragraph (1) has effect in relation to the property (including rights) and liabilities referred to in it despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.
- (3) In sub-paragraph (1), a “previous officeholder” is any of the officeholders referred to in paragraph 1(4).

PART 2

TRANSITIONAL AND SAVING PROVISIONS

Undetermined processes under Ethical Standards, Parliamentary Standards and Public Appointments Acts

- 3 (1) Anything done or being done by or in relation to the Chief Investigating Officer under the Ethical Standards Act or the Scottish Parliamentary Standards Commissioner under the Parliamentary Standards Act when this schedule comes into force is to be regarded, for the purposes set out in sub-paragraph (2), as done or being done by or in relation to the Public Standards Commissioner for Scotland.
- (2) Those purposes are the continuation of any process under either of those Acts begun but not determined or completed when this schedule comes into force.
- (3) Anything done or being done by or in relation to the Commissioner for Public Appointments in Scotland under the Public Appointments Act when this schedule comes into force is to be regarded, for the purposes set out in sub-paragraph (4), as done or being done by or in relation to the Public Appointments Commissioner for Scotland.
- (4) Those purposes are the continuation of any process under that Act begun but not determined or completed when this schedule comes into force.

Current appointments of assessors by the Commissioner for Public Appointments in Scotland

- 4 An appointment of an assessor by the Commissioner for Public Appointments in Scotland under paragraph 9 of schedule 1 to the Public Appointments Act that is current immediately before this schedule comes into force is to be regarded as having been made under section 18 of this Act by the Commission for Ethical Standards in Public Life in Scotland on the same terms and conditions and with the approval referred to in subsection (3) of that section.

New Commission’s first budget

- 5 (1) Section 20(1) applies in respect of the financial year ending with 31 March 2012 with the modification set out in sub-paragraph (2).

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- (2) For “before the start of each financial year” there is substituted “as soon as possible after the start of the financial year ending with 31 March 2012 and, in any event, before 30 June 2011”.

Scottish Parliamentary Standards Commissioner’s last annual report

- 6 (1) Despite section 2 and the repeal of section 18 of the Parliamentary Standards Act (annual report), the Scottish Parliamentary Standards Commissioner remains under obligation on and after the coming into force of this schedule to lay the annual report for the year 2010 required by section 18 of that Act.
- (2) For the purposes of sub-paragraph (1), section 18 of that Act has effect in relation to the period beginning on 1 January 2011 and ending with 31 March 2011 as if it were part of the year 2010.

Other annual reports

- 7 (1) Nothing in any reporting provision requires a body or officeholder to lay before the Parliament an annual or general report in respect only of a transitional part of a reporting period.
- (2) In sub-paragraph (1)—
“reporting provision” means a provision—
(a) of an Act specified in section 29 (other than the Parliamentary Standards Act), and
(b) having effect before the coming into force of this schedule in relation to annual or general reports,
“transitional part of a reporting period”, in relation to a reporting provision, is any part of any reporting period for the purposes of that provision which begins on or after 2 April 2010 and ends on or before 31 March 2011.
- (3) Instead, the information and other matters which would have been contained in such a report are to be included in the annual report by the body or officeholder for the reporting year beginning on 1 April 2011.

The Scottish Parliamentary Standards Commissioner

- 8 (1) The person who, immediately before this schedule comes into force, holds office as the Scottish Parliamentary Standards Commissioner is, by operation of this sub-paragraph (and not section 1), appointed as the Public Standards Commissioner for Scotland on the coming into force of this schedule.
- (2) An appointment under sub-paragraph (1) is for a period equal to that for which the person was appointed, or (in the case of an appointment for a second period) last appointed, as the Scottish Parliamentary Standards Commissioner reduced by the time for which the person held that office (or in the case of a second appointment, the time for which that person held that office under that second appointment).
- (3) But—
(a) sub-paragraph (1) does not operate so as to appoint a person as Public Standards Commissioner for Scotland if that person’s previous term of office exceeds eight years, and

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- (b) where an appointment under that sub-paragraph would, but for this provision, be for a period which, combined with that person's previous term of office, would exceed eight years, that appointment is to be for a period which, when so combined, is eight years.
- (4) In sub-paragraph (3), a person's "previous term of office" is the period for which the person held office as Scottish Parliamentary Standards Commissioner or, where the person was appointed for a second period, the aggregate of the periods for which the person held that office.
- (5) Despite section 2 and the repeal of section 1 of the Parliamentary Standards Act, a person may, after the coming into force of this schedule, be appointed under that section of that Act as the Parliamentary Standards Commissioner for Scotland for a further period.
- (6) An appointment by virtue of sub-paragraph (5) has effect as if made before the coming into force of this schedule; and the period for which the person is appointed, so far as extending beyond then, has effect only for the purposes of sub-paragraph (2).

Commissioner for Public Appointments in Scotland

- 9
- (1) The person who, immediately before this schedule comes into force, holds office as the Commissioner for Public Appointments in Scotland is, by operation of this sub-paragraph (and not section 1), appointed as the Public Appointments Commissioner for Scotland on the coming into force of this schedule.
 - (2) An appointment under sub-paragraph (1) is for a period equal to that for which the person was appointed or (in the case of an appointment for a second or third period) last appointed, as the Commissioner reduced by the time for which the person held that office or (in the case of a second or third appointment) the time for which that person held that office under that second or, as the case may be, third appointment.
 - (3) But—
 - (a) sub-paragraph (1) does not operate so as to appoint a person as Public Appointments Commissioner for Scotland if that person's previous term of office exceeds eight years, and
 - (b) where an appointment under that sub-paragraph would, but for this provision, be for a period which, combined with that person's previous term of office, would exceed eight years, that appointment is to be for a period which, when so combined, is eight years.
 - (4) In sub-paragraph (3), a person's "previous term of office" is the period for which the person held office as Commissioner for Public Appointments in Scotland or, where the person was appointed for a second or third period, the aggregate of the periods for which the person held that office.
 - (5) Despite section 2 and the repeal of paragraph 4 of schedule 1 to the Public Appointments Act, a person may, after the coming into force of this schedule, be appointed under that paragraph as the Public Appointments Commissioner for Scotland for a further period.
 - (6) An appointment by virtue of sub-paragraph (5) has effect as if made before the coming into force of this schedule; and the period for which the person is appointed, so far as extending beyond then, has effect only for the purposes of sub-paragraph (2).

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- (7) Where the person referred to in sub-paragraph (1) also held office as Commissioner for Public Appointments in Scotland on 30 April 2010, the appointment of that person under that sub-paragraph is for the period ending with 31 May 2012.

Members of the Standards Commission

- 10 (1) A person who, on the coming into force of this schedule, holds office as a member of the Standards Commission for Scotland established by section 8 of the Ethical Standards Act is eligible for reappointment.
- (2) A reappointment by virtue of sub-paragraph (1) is to be for a period not longer than eight years reduced by the period for which the person has held that office.

Commissioner for Children and Young People and the Public Services Ombudsman

- 11 (1) The person who, on the coming into force of this schedule, holds office as the Commissioner for Children and Young People in Scotland is eligible for reappointment.
- (2) The person who then holds office as the Scottish Public Services Ombudsman is eligible for reappointment.
- (3) A reappointment under sub-paragraph (1) or (2) is to be for a period not longer than eight years reduced by the period for which the person has held office as Commissioner or, as the case may be, Ombudsman.

Members of the Scottish Commission for Human Rights

- 12 (1) The person who, on the coming into force of this schedule, holds office as the member of the Scottish Commission for Human Rights appointed to chair it (the “chair”) is eligible for reappointment.
- (2) A person who then holds office as an other member of that Commission is eligible for reappointment.
- (3) A reappointment by virtue of sub-paragraph (1) or (2) is to be for a period not longer than eight years reduced by the period for which the member has held office as the chair or, as the case may be, an other member.

General provisions about reappointment

- 13 (1) A person is not eligible for reappointment to an office by virtue of this Part of this schedule if the person has held the office for eight years or longer.
- (2) Other references in this Part of this schedule to reappointment do not include references to second or subsequent reappointments.