



Lobbying (Scotland) Act 2016

2016 asp 16

PART 3

OVERSIGHT AND ENFORCEMENT

PROSPECTIVE

Investigation of complaints

22 Commissioner's duty to investigate and report on complaint

- (1) This section applies where the Commissioner receives a complaint that a person has or might have failed—
- (a) to comply with the duty to provide information under section 8(1),
 - (b) to provide accurate and complete information in an application made under section 9,
 - (c) to comply with the duty to submit information returns under section 11, or
 - (d) to supply accurate and complete information in response to an information notice in accordance with section 17.
- (2) The Commissioner must—
- (a) assess whether the complaint is admissible (see sections 23 and 24), and
 - (b) if the complaint is admissible—
 - (i) investigate the complaint (see section 25), and
 - (ii) report upon the outcome of the investigation to the Parliament (see section 26).
- (3) In carrying out the duties imposed by or under this Act the Commissioner must have regard to the parliamentary guidance (see section 43).
- (4) An assessment under subsection (2)(a) and an investigation under subsection (2)(b) must be conducted in private.
- (i)

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23 Requirements for complaint to be admissible

- (1) A complaint is admissible if—
 - (a) the complaint is relevant,
 - (b) the complaint meets the conditions mentioned in subsection (3), and
 - (c) the complaint warrants further investigation.
- (2) A complaint is relevant if, at first sight—
 - (a) it appears to be about a person who may be, or may have been, engaged or may be likely to engage in regulated lobbying, and
 - (b) it appears that, if it is established that all or part of the conduct complained about occurred, it might amount to a failure to comply with a requirement mentioned in section 22(1)(a) to (d).
- (3) The conditions are that the complaint—
 - (a) is made in writing to the Commissioner,
 - (b) is made by an individual, is signed by that individual and states that individual's name and address,
 - (c) names the person to whom the complaint relates,
 - (d) sets out the facts related to the conduct complained about, and
 - (e) is made before the end of the period of one year beginning on the date when the individual who made the complaint could reasonably have become aware of the conduct complained about.
- (4) A complaint warrants further investigation if, after an initial investigation, the evidence is sufficient to suggest that the person who is the subject of the complaint may have failed to comply with a requirement mentioned in section 22(1)(a) to (d).

24 Procedure for assessing admissibility of complaint

- (1) This section applies where the Commissioner receives a complaint that a person has or might have failed to comply with a requirement mentioned in section 22(1)(a) to (d).
- (2) The Commissioner must—
 - (a) notify the person who is the subject of the complaint that the complaint has been received,
 - (b) inform that person of the nature of the complaint, and
 - (c) except where the Commissioner considers that it would not be appropriate to do so, inform that person of the name of the individual who made the complaint.
- (3) If the Commissioner considers that the complaint is inadmissible due to being irrelevant, the Commissioner must dismiss the complaint.
- (4) Subsections (5) to (7) apply where the Commissioner considers that the complaint is relevant but fails to meet one or more of the conditions mentioned in section 23(3).
- (5) The Commissioner must—
 - (a) if the complaint is of a kind specified in a direction by the Parliament, make a report to the Parliament,
 - (b) if the complaint is not of such kind and the Commissioner considers that the complaint warrants further investigation, make a report to the Parliament,
 - (c) in any other case, dismiss the complaint.

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- (6) A report under subsection (5)(a) or (b) must include—
- (a) the reasons why the Commissioner considers that the complaint fails to meet one or more of the conditions mentioned in section 23(3),
 - (b) the reasons for that failure (if known),
 - (c) if the report is made under subsection (5)(b), a statement that the complaint warrants further investigation,
 - (d) the recommendation of the Commissioner as to whether, having regard to all the circumstances of the case, the complaint should be dismissed as inadmissible for failing to meet one or more of the conditions mentioned in section 23(3) or should be treated as if it had met all of those conditions, and
 - (e) any other matters which the Commissioner considers appropriate.
- (7) After receiving a report under subsection (5)(a) or (b), the Parliament must give the Commissioner a direction—
- (a) to dismiss the complaint as inadmissible for failing to meet one or more of the conditions mentioned in section 23(3), or
 - (b) to treat the complaint as if it had met all of those conditions.
- (8) If the Commissioner considers that the complaint is admissible, the Commissioner must inform—
- (a) the Parliament, by making a report to the Parliament,
 - (b) the individual who made the complaint, and
 - (c) the person who is the subject of the complaint.
- (9) If the Commissioner considers that the complaint is inadmissible and has not already dismissed the complaint under subsection (3) or (5)(c) or in pursuance of subsection (7)(a), the Commissioner must dismiss the complaint.
- (10) In dismissing a complaint, the Commissioner must inform the individual who made the complaint and the person who is the subject of the complaint of the dismissal together with the reasons why the complaint is inadmissible.
- (11) Subsections (2), (8) and (10) apply only to the extent that they are capable of applying where—
- (a) the person to whom the complaint relates has not been named in the complaint, or
 - (b) the individual who made the complaint is anonymous.
- (12) If the Commissioner has not assessed whether a complaint is admissible before the end of the period of 2 months beginning on the date the complaint is received, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the assessment of admissibility.

25 Investigation of complaint

- (1) This section applies to the investigation of a complaint assessed as admissible under section 22(2)(a).
- (2) The investigation must be conducted with a view to making findings of fact in relation to compliance with a requirement mentioned in section 22(1)(a) to (d) by the person who is the subject of the complaint.

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- (3) The Commissioner may make a finding of fact if satisfied on the balance of probabilities that the fact is established.
- (4) If the Commissioner has not completed the investigation before the end of the period of 6 months beginning on the date the complaint is found to be admissible, the Commissioner must, as soon as possible thereafter, make a report to the Parliament on the progress of the investigation.

26 Commissioner's report on complaint

- (1) This section applies to a report made under section 22(2)(b)(ii).
- (2) The report must include—
 - (a) details of the complaint,
 - (b) details of the assessment of admissibility carried out by the Commissioner,
 - (c) details of the investigation carried out by the Commissioner,
 - (d) the facts found by the Commissioner in relation to whether the person who is the subject of the complaint failed to comply with a requirement mentioned in section 22(1)(a) to (d),
 - (e) any representations made under subsection (4)(b).
- (3) The report must not make reference to a measure that may be taken by the Parliament under section 40.
- (4) Before the report is provided to the Parliament, the Commissioner must—
 - (a) provide a copy of a draft report to the person who is the subject of the report,
 - (b) provide that person with an opportunity to make representations on the draft report.

27 Parliament's action on receipt of report

- (1) The Parliament is not bound by the facts found by the Commissioner in a report made under section 22(2)(b)(ii).
- (2) The Parliament may direct the Commissioner to carry out such further investigations as may be specified in the direction and report on the outcome of those investigations to it.
- (3) Subject to a direction under subsection (2), the provisions of this Part and of any other direction made under this Part apply (subject to necessary modifications) in relation to any further investigation and report as they apply to an investigation and report into a complaint.

28 Withdrawal of complaint

- (1) At any time after a complaint has been made to the Commissioner and before a report is made to the Parliament under section 22(2)(b)(ii), the individual who made the complaint may withdraw the complaint by notifying the Commissioner.
- (2) A notification under subsection (1) must be—
 - (a) in writing, and
 - (b) signed by the individual who made the complaint.

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- (3) When a complaint is withdrawn during an assessment under section 22(2)(a), the Commissioner must—
 - (a) cease to investigate the complaint, and
 - (b) inform the person who is the subject of the complaint—
 - (i) that the complaint has been withdrawn,
 - (ii) that the investigation into the complaint has ceased, and
 - (iii) of any reason given by the individual who made the complaint for withdrawing it.
- (4) When a complaint is withdrawn during an investigation under section 22(2)(b)(i), the Commissioner must—
 - (a) inform the person who is the subject of the complaint—
 - (i) that the complaint has been withdrawn, and
 - (ii) of any reason given by the individual who made the complaint for withdrawing it,
 - (b) invite that person to give the Commissioner views on whether the investigation should nevertheless continue, and
 - (c) after taking into account any relevant information, determine whether to recommend to the Parliament that the investigation should continue.
- (5) For the purposes of subsection (4)(c), “relevant information” includes—
 - (a) any reason given by the individual who made the complaint for withdrawing it, and
 - (b) any views expressed by the person who is the subject of the complaint on whether the investigation should continue.
- (6) If the Commissioner determines to recommend to the Parliament that the investigation should cease, the Commissioner must—
 - (a) cease to investigate the complaint,
 - (b) inform the individual who made the complaint that the investigation has ceased,
 - (c) inform the person who is the subject of the complaint that the investigation has ceased, and
 - (d) report to the Parliament—
 - (i) that the complaint has been withdrawn,
 - (ii) that the investigation has ceased, and
 - (iii) on any reason given by the individual who made the complaint for withdrawing it.
- (7) If the Commissioner determines to recommend to the Parliament that the investigation should continue, the Commissioner must report to the Parliament—
 - (a) that the complaint has been withdrawn,
 - (b) on any reason given by the individual who made the complaint for withdrawing it,
 - (c) on any views on the matter expressed by the person who is the subject of the complaint on whether the investigation should continue,
 - (d) that the Commissioner recommends that the investigation should continue, and
 - (e) on the reasons for the Commissioner's recommendation.

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- (8) After receiving a report under subsection (7), the Parliament must direct the Commissioner to—
 - (a) continue the investigation, or
 - (b) cease the investigation.
- (9) After receiving a direction under subsection (8), the Commissioner must inform the individual who made the complaint and the person who is the subject of the complaint whether the investigation will continue or cease.
- (10) Where the Commissioner is required under this section to provide reasons given by the individual who made the complaint for withdrawing it, the Commissioner may provide a summary of those reasons.

29 Commissioner's discretionary reports to Parliament

The Commissioner may, in such circumstances as the Commissioner thinks fit, make a report to the Parliament—

- (a) as to the progress of any actions taken by the Commissioner in accordance with the Commissioner's duties under section 22(2),
- (b) informing the Parliament of a complaint which the Commissioner has dismissed as being inadmissible and the reasons for the dismissal.

30 Restriction on Commissioner's advice

- (1) The Commissioner may not—
 - (a) give advice as to whether conduct which has been, or is proposed to be, carried out by a person would constitute a failure to comply with a requirement mentioned in section 22(1)(a) to (d), or
 - (b) otherwise express a view upon such a requirement,
 except in the context of an investigation or report mentioned in section 22.
- (2) Nothing in subsection (1) prevents the Commissioner from giving advice or otherwise expressing a view about—
 - (a) the procedures for making a complaint to the Commissioner, or
 - (b) the procedures following upon the making of a complaint.

31 Directions to the Commissioner

- (1) The Commissioner must, in carrying out the Commissioner's functions conferred by or under this Act, comply with any direction given by the Parliament.
- (2) A direction under subsection (1) may, in particular—
 - (a) make provision as to the procedure to be followed by the Commissioner when conducting an assessment or investigation mentioned in section 22,
 - (b) set out circumstances where, despite receiving a complaint mentioned in section 22(1), the Commissioner—
 - (i) may decide not to conduct an assessment under section 22(2)(a) or an investigation under section 22(2)(b)(i) or, if started, may suspend or stop such an assessment or investigation before it is concluded,

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- (ii) must not conduct an assessment or an investigation referred to in subparagraph (i) or, if started, must suspend or stop such an assessment or investigation before it is concluded,
 - (iii) is not required to report to the Parliament under section 22(2)(b)(ii), 24(5)(a) or (b), (8)(a) or (12), 25(4) or 28(7),
 - (c) require the Commissioner to report to the Parliament upon such matter relating to the carrying out of the Commissioner's functions as may be specified in the direction.
- (3) A direction under subsection (1) may not direct the Commissioner as to how a particular investigation is to be carried out.

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