

SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 7 – Procedures at Stage 1

49. **Section 7** sets out the procedures applying to the Stage 1 process.
50. Subsection (1) requires that a member be notified that a complaint has been made and the subject matter of the complaint. In addition the member should also be informed of the name of the complainer unless the Commissioner considers that it would be inappropriate to do so. This could arise in circumstances where the complainer is a vulnerable person and might be distressed if their identity was revealed. Alternatively it could be judged that disclosure of the identity of the complainer at the initial stages could prejudice the investigation of the complaint. It would be possible for directions under section 4 to set out the circumstances in which the Commissioner should not reveal the identity of the complainer. Directions could also require the Commissioner to seek comment from the member complained about as part of the Stage 1 investigation. It is anticipated that there will be communications between the Commissioner and the member throughout this stage so that the member is kept informed of the progress of the investigation.
51. Where the Commissioner considers that each of the three tests at section 6 have been met and the complaint is admissible the procedure moves on to Stage 2. The Commissioner is required under subsection (2) to make a report to the Standards Committee informing it of that fact and also to inform the complainer and the member of the Parliament concerned. The Commissioner must also inform the Parliament in the report of the relevant provision or provisions which enable the Commissioner to conclude that the complaint is relevant and that the second test is satisfied.
52. Where the Commissioner is satisfied that the complaint is either not relevant or he/she is able to determine that there has been no breach of the relevant provision (the first and third tests respectively) subsection (3) provides that the complaint shall be dismissed by the Commissioner. The complainer and the member of the Parliament concerned are each informed.
53. Subsection (4) prevents the Commissioner from dismissing complaints that have procedural deficiencies (the second test) without reporting the failure or failures to the Standards Committee and receiving a direction to dismiss the complaint. It provides, when read with subsection (6), that where a complaint meets the first and third tests but fails to meet one or more of the specified requirements the Commissioner cannot dismiss the complaint. Instead the Commissioner is required to report the failure or failures to the Standards Committee. However, see the explanation of subsection (6) in paragraphs 55 and 56 in relation to certain classes of complaints for which the Commissioner will not initially investigate the third test when there is a procedural deficiency.

*These notes relate to the Scottish Parliamentary Standards Commissioner
Act 2002 (asp 16) which received Royal Assent on 30 July 2002*

54. Subsection (5) sets out the information which a report to the Standards Committee under subsection (4) must contain. Before reporting and as part of the investigation into the reasons for any procedural deficiency, the Commissioner will be able to give the complainer a chance to rectify any deficiency.
55. Subsection (6) makes clear that, except where the Standards Committee has made a direction in relation to specific classes of complaints, the Commissioner is required to investigate whether the complaint satisfies the third test before reporting a failure to meet any part of the second test. Where the third test is satisfied that fact must be included in the Commissioners report. But where the third test is not satisfied the Commissioner is required to dismiss the complaint without having to make a report about the procedural deficiencies.
56. The direction-making power in this section is to be exercised in relation to classes of complaints. In other words, it cannot be exercised in relation to individual complaints. It is envisaged that in most cases the Standards Committee would want the third test to be investigated before the Commissioner submits the report about the failure to meet the second test. This ensures that reports are not made about complaints that would, in any event, fail the admissibility test. However, there may be certain types of procedural failures that the Standards Committee wishes the Commissioner to report on immediately before any investigation into the third test is carried out. For example, it may be considered appropriate for complaints that do not identify an MSP to be referred to the Standards Committee before the Commissioner takes any further action.
57. Subsection (7) requires the Standards Committee on receipt of a report under subsection (4) to direct the Commissioner whether to dismiss the complaint or to disregard the procedural failure(s) and treat the complaint as if it did not have any procedural failures.
58. Under subsection (8) the Commissioner must dismiss a complaint when the Standards Committee so directs following a report of a procedural failure. In addition the Commissioner is required to notify the complainer and the member concerned.
59. Subsection (9) makes clear that when the complainer or the name of the member complained about is unknown, the requirements to intimate certain details or progress to that complainer or member under this section do not apply.
60. Subsection (10) allows the Commissioner, when a complaint has been dismissed to send to the Standards Committee a report setting out the reasons for the dismissal. There is no general requirement on the Commissioner to inform the Standards Committee of complaints that have been dismissed. This subsection however permits the Commissioner to keep the Standards Committee informed of dismissed complaints when circumstances dictate. This could arise where the lodging of a complaint has generated some publicity.
61. Since Stage 1 is an initial investigation, the Commissioner should not require to carry out extensive inquiries. The Commissioner is therefore expected to complete any inquiries necessary to determine Stage 1 within two months of a complaint being received. Where this is not possible subsection (11) requires the Commissioner to send a report as soon as possible thereafter on the progress of the investigation to the Standards Committee.