

*Draft Order laid before the Scottish Parliament under section 25(2)(b)(i) of the Public Services Reform (Scotland) Act 2010 for approval by resolution of the Scottish Parliament.*

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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2013 No.**

**PUBLIC SERVICES REFORM**

**The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013**

*Made* - - - - 2013  
*Coming into force* - - 1st July 2013

The Scottish Ministers make the following Order in exercise of the powers conferred by section 14 of the Public Services Reform (Scotland) Act 2010<sup>(1)</sup> and all other powers enabling them to do so.

The Scottish Ministers consider that the conditions in section 16(2) of that Act are satisfied.

They have consulted in accordance with section 26 of that Act.

They have laid an explanatory document in accordance with section 25(2)(b)(ii) of that Act.

In accordance with section 19(2) of that Act, the Scottish Parliamentary Corporate Body has consented to the laying of a draft of this Order.

In accordance with section 25(2)(b)(i) and (c) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament<sup>(2)</sup>.

**Citation and commencement**

**1.** This Order may be cited as the Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 and comes into force on 1st July 2013.

**Interpretation**

**2.** In this Order, “the Act” means the Scottish Parliamentary Commissions and Commissioners etc. Act 2010<sup>(3)</sup>.

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(1) 2010 asp 8.

(2) Section 25(2)(b)(i) and (c) has been modified by paragraph 5(2) of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) 2010 asp 11.

### **Establishment of Commissioner for Ethical Standards in Public Life in Scotland etc.**

**3.**—(1) For section 1 (establishment, members and functions of the Commission for Ethical Standards in Public Life in Scotland) of the Act substitute—

#### **“1 The Commissioner for Ethical Standards in Public Life in Scotland**

(1) There is to be a Commissioner for Ethical Standards in Public Life in Scotland (the “Commissioner”).

(2) The Commissioner is to be an individual appointed by the Parliamentary corporation with the agreement of the Parliament.

(3) The functions of the Commissioner are those conferred on the Commissioner by the following enactments—

- (a) the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7),
- (b) the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16), and
- (c) the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”.

(2) The modifications to the Act in Schedule 1 have effect.

### **Transfer of functions to Commissioner**

**4.**—(1) There are transferred to the Commissioner for Ethical Standards in Public Life in Scotland—

- (a) the functions of the Public Standards Commissioner for Scotland under—
  - (i) the Ethical Standards in Public Life etc. (Scotland) Act 2000; and
  - (ii) the Scottish Parliamentary Standards Commissioner Act 2002; and
- (b) the functions of the Public Appointments Commissioner for Scotland under the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

(2) Accordingly—

- (a) the Commission for Ethical Standards in Public Life in Scotland is dissolved; and
- (b) the following offices are abolished—
  - (i) the Public Appointments Commissioner for Scotland; and
  - (ii) the Public Standards Commissioner for Scotland; and
- (c) the modifications to enactments in Schedule 2 have effect.

### **Transfer of staff, property and liabilities**

**5.** Schedule 3 (which provides for the transfer of staff, property and liabilities) has effect.

### **Transitional and savings provision**

**6.** Schedule 4 (which makes transitional and savings provision) has effect.

St Andrew’s House,  
Edinburgh  
Date

*Name*  
A member of the Scottish Government

## SCHEDULE 1

Article 3(2)

### Modifications to the Act

1. The Act is amended in accordance with this Schedule.
2. Omit section 2 (functions of the Commissioners) and schedule 1 (consequential amendments).
3. For section 3 (status of Commission and Commissioners) substitute—

#### **“4 Status of Commissioner and Commissioner’s staff**

- (1) Neither the Commissioner nor any member of the Commissioner’s staff—
    - (a) is a servant or agent of the Crown,
    - (b) has any status, immunity or privilege of the Crown.
  - (2) The Commissioner’s property is not to be regarded as property of, or property held on behalf of, the Crown.
  - (3) The Commissioner is, as such, to be regarded as a juristic person distinct from the natural person holding the office.”
4. In section 4 (independence of Commissioners)—
    - (a) for “their respective functions, the Commissioners are” substitute “the Commissioner’s functions, the Commissioner is”;
    - (b) in paragraph (b), for “Executive” substitute “Government”; and
    - (c) in the title, for “Commissioners” substitute “Commissioner”.
  5. For section 5 (protection of Commission from actions for defamation) substitute—

#### **“5 Protection from actions for defamation**

- (1) For the purposes of the law of defamation—
    - (a) any statement made by the Commissioner or a member of the Commissioner’s staff in pursuance of the Commissioner’s functions under the Ethical Standards Act or the Parliamentary Standards Act is absolutely privileged,
    - (b) any statement made by the Commissioner or a member of the Commissioner’s staff in pursuance of the Commissioner’s other functions has qualified privilege, and
    - (c) any statement made to the Commissioner or any member of the Commissioner’s staff in pursuance of the purposes of the Ethical Standards Act, the Parliamentary Standards Act or the Public Appointments Act has qualified privilege.
  - (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31).”
6. Omit section 6 (designation of Chief Commissioner).
  7. In section 7 (appointment of acting Commissioner)—
    - (a) in subsection (1), for “a” in the first two places it occurs, substitute “the”;
    - (b) omit subsection (3);
    - (c) in subsection (4), for “a” in the second place it occurs, substitute “the”;
    - (d) in subsection (5) for “Commission’s” substitute “Commissioner’s”;
    - (e) omit subsection (6); and

(f) in subsection (7)(d) omit “in respect of whom the acting Commissioner was appointed”.

**8.** For the cross-heading immediately before section 1 (establishment, members and functions of the Commission for Ethical Standards in Public Life in Scotland) substitute—

*“The Commissioner”.*

**9.** In section 8(1) (disqualification)—

- (a) for “a Commissioner” substitute “the Commissioner”; and
- (b) in paragraph (f), for “Commission” substitute “Commissioner”.

**10.** In section 9 (terms of office and remuneration)—

- (a) in subsections (1) and (5), for “Each” substitute “The”;
- (b) in subsections (2) and (3), for “A” substitute “The”;
- (c) in subsection (6), for “each” substitute “the”; and
- (d) in subsection (9), for “a” substitute “the”.

**11.** In section 10(1) (pensions etc.)—

- (a) for “The Commission may, with the approval of the Parliamentary corporation,” substitute “The Parliamentary corporation may”; and
- (b) for “a” substitute “the”.

**12.** In section 11 (subsequent appointments etc. of former Commissioner)—

- (a) in subsection (1)—
  - (i) for “a Commissioner” substitute “the Commissioner”;
  - (ii) in paragraph (a), for “Commission” substitute “Commissioner”; and
  - (iii) in paragraph (e), for “a” substitute “the”; and
- (b) in subsection (2)(a), for “a” substitute “the”.

**13.** In section 12 (general powers)—

- (a) in subsection (1)—
  - (i) for “Commission” substitute “Commissioner”; and
  - (ii) for “its” in both places it occurs, substitute “the Commissioner’s”;
- (b) in subsection (2), for “Commission” substitute “Commissioner”;
- (c) in subsection (4)—
  - (i) for “Commission” substitute “Commissioner”; and
  - (ii) from “it” to the end, substitute “, or on behalf of, the Commissioner in the performance of, or in connection with, the Commissioner’s functions.”; and
- (d) in subsection (5)—
  - (i) for “Commission” substitute “Commissioner”; and
  - (ii) omit “by it”.

**14.** In section 13 (payment of witnesses’ expenses)—

- (a) for “Commission” substitute “Commissioner”; and
- (b) for “it” substitute “the Commissioner”.

**15.** In section 14 (strategic plans)—

- (a) in subsection (1)—

- (i) for “Commission” in the first place it occurs, substitute “Commissioner”; and
    - (ii) for “Commission and each Commissioner propose to perform their respective” substitute “Commissioner proposes to perform the Commissioner’s”;
  - (b) in subsection (2)—
    - (i) in paragraph (a), omit “Commission’s and each”; and
    - (ii) in paragraph (b), for “Commission and each Commissioner propose” substitute “Commissioner proposes”;
  - (c) in subsection (3)—
    - (i) for “Commission” in the first place it occurs, substitute “Commissioner”; and
    - (ii) in paragraph (b), for “Commission think” substitute “Commissioner thinks”; and
  - (d) in subsections (5), (6) and (7), for “Commission” substitute “Commissioner”.
- 16.** In section 15 (procedure and validity of acts)—
- (a) omit subsections (1), (2) and (4);
  - (b) in subsection (3), for “a” in both places it occurs, substitute “the”; and
  - (c) in the title, for “Procedure and validity” substitute “Validity”.
- 17.** In section 16 (delegation)—
- (a) omit subsections (1) and (2);
  - (b) in subsection (3)—
    - (i) for “a Commissioner” substitute “the Commissioner”;
    - (ii) omit “the other Commissioner or”; and
    - (iii) for “Commission’s” substitute “Commissioner’s”; and
  - (c) in subsection (4)—
    - (i) for “either of the Commissioners” substitute “the Commissioner”; and
    - (ii) for “that” substitute “the”.
- 18.** In the cross-heading immediately before section 12 (general powers), for “*Commission*” substitute “*Commissioner*”.
- 19.** In section 17 (staff)—
- (a) in subsection (1)—
    - (i) for “Commission” substitute “Commissioner”;
    - (ii) omit “, for the purposes of section 1(7),”; and
    - (iii) for “it” substitute “the Commissioner”; and
  - (b) in subsection (2)—
    - (i) for “Commission” substitute “Commissioner”; and
    - (ii) for “its” substitute “the Commissioner’s”.
- 20.** In section 18 (advisors, assessors and other services)—
- (a) in subsection (1)—
    - (i) for “Commission may obtain for itself or for a Commissioner” substitute “Commissioner may obtain”; and
    - (ii) for “Commission” in the second place it occurs, substitute “Commissioner”; and
  - (b) in subsection (2)—

- (i) for “Commission” substitute “Commissioner”; and
  - (ii) for “it” substitute “the Commissioner”.
- 21.** In section 19 (accountable officer)—
  - (a) in subsection (1)—
    - (i) for “a Commissioner” substitute “the Commissioner”; and
    - (ii) for “Commission’s” substitute “Commissioner’s”;
  - (b) in subsection (2), for “Commission” in the three places it occurs, substitute “Commissioner”; and
  - (c) in subsection (3)—
    - (i) after “officer” in the first place it occurs, insert “is not the Commissioner and”; and
    - (ii) in paragraph (a), for “Commission” substitute “Commissioner”.
- 22.** In section 20 (budget)—
  - (a) in subsection (1)—
    - (i) for “Commission” substitute “Commissioner”; and
    - (ii) for “its” substitute “the Commissioner’s”; and
  - (b) in subsections (2), (3) and (4), for “Commission” in the four places it occurs, substitute “Commissioner”.
- 23.** In section 21 (funding)—
  - (a) in subsection (1)(a), for “each” substitute “the”;
  - (b) in subsection (1)(b)—
    - (i) for “Commission” substitute “Commissioner”;
    - (ii) for “its” substitute “the Commissioner’s”; and
    - (iii) for “it” substitute “the Commissioner”;
  - (c) in subsection (1)(c)—
    - (i) omit “Commission and each”;
    - (ii) for “it or, as the case may be, that” substitute “the”; and
    - (iii) for “its or, as the case may be, that” substitute “the”; and
  - (d) in subsection (2), for “Commission” substitute “Commissioner”.
- 24.** In section 22 (accounts and audit), for “Commission” in both places it occurs, substitute “Commissioner”.
- 25.** In section 23 (location of office)—
  - (a) for “Commission” substitute “Commissioner”; and
  - (b) for “Commission’s” substitute “Commissioner’s”.
- 26.** In section 24 (sharing of premises, staff, services and other resources), for “Commission” substitute “Commissioner”.
- 27.** In section 25 (annual reports)—
  - (a) in subsection (1)—
    - (i) for “Commission” in the first place it occurs, substitute “Commissioner”;
    - (ii) for “by the Commission and each of the Commissioners of their respective”, substitute “of the Commissioner’s”;

- (b) in subsection (2)—
  - (i) for “functions of the Public Standards Commissioner for Scotland” substitute “Commissioner’s functions under the Ethical Standards Act and the Parliamentary Standards Act”; and
  - (ii) in paragraph (a), for “that” substitute “the”;
- (c) in subsection (3)—
  - (i) for “functions of the Public Appointments Commissioner for Scotland” substitute “Commissioner’s functions under the Public Appointments Act”; and
  - (ii) in paragraph (b), for “that” substitute “the”;
- (d) omit subsection (4); and
- (e) in subsections (6) and (7), for “Commission” substitute “Commissioner”.

**28.** Omit section 26 (Commission and Commissioners to be subject to investigations by Scottish Public Services Ombudsman).

**29.** Omit section 27 (Commission and Public Appointments Commissioner for Scotland to be subject to Freedom of Information (Scotland) Act).

**30.** In section 28 (interpretation of Part 1)—

- (a) omit the definition of “Commission”;
- (b) for the definition of “Commissioner” substitute—
  - ““Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland,
  - “the Ethical Standards Act” means the Ethical Standards in Public Life etc. (Scotland) Act 2000 ([asp 7](#)),”; and
- (c) after the definition of “Parliamentary corporation” insert—
  - ““the Parliamentary Standards Act” means the Scottish Parliamentary Standards Commissioner Act 2002 ([asp 16](#)), and
  - “the Public Appointments Act” means the Public Appointments and Public Bodies etc. (Scotland) Act 2003 ([asp 4](#)).”.

**31.** For the heading to Part 1 substitute—

***“THE COMMISSIONER FOR ETHICAL  
STANDARDS IN PUBLIC LIFE IN SCOTLAND”.***

**32.** In section 29 (standardising and other enactments)—

- (a) omit subsection (7); and
- (b) after subsection (11) insert—
  - “(12) In this section, “the Ethical Standards Act”, “the Parliamentary Standards Act” and “the Public Appointments Act” have the same meanings given by section 28.”.

**33.** Omit section 30 (interpretation).

## SCHEDULE 2

Article 4(2)(c)

## Modifications to other enactments

**The Ethical Standards in Public Life etc. (Scotland) Act 2000**

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000(4) is amended in accordance with paragraphs 2 to 8.
2. In section 9 (Public Standards Commissioner for Scotland to investigate breaches of codes)—
  - (a) for “Public Standards Commissioner for Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”; and
  - (b) in the title for “Public Standards Commissioner for Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”.
3. In the titles to section 10 and 11, for “Public Standards Commissioner” substitute “Commissioner for Ethical Standards in Public Life in Scotland”.
4. In section 12 (conduct of Public Standards Commissioner’s investigations)—
  - (a) omit subsection (4); and
  - (b) in the title, omit “Public Standards”.
5. In the titles to section 13 and 14, omit “Public Standards”.
6. Omit section 27 (protection from actions of defamation).
7. In section 28(1) (definitions), for the definition of “Commissioner” substitute—
 

““Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland;”.
8. In schedule 1 (the Standards Commission for Scotland)—
  - (a) in paragraph 5A(1)(b), for the words from “be a member” to “in Scotland” substitute “be, or be an employee or appointee of, the Commissioner”; and
  - (b) in paragraph 7(1), from “and the Commissioner” to the end, substitute “to exercise its functions.”.

**The Scottish Public Services Ombudsman Act 2002**

9. In the Scottish Public Services Ombudsman Act 2002(5), in schedule 2 (listed authorities)—
  - (a) for paragraph 21ZA substitute—
 

“**21ZA** The Commissioner for Ethical Standards in Public Life in Scotland in the performance of the Commissioner’s functions under the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) and the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”; and
  - (b) omit paragraphs 32B and 32C.

(4) 2000 asp 7. Sections 9 to 14, 27 and 28 and paragraphs 5A and 7 of schedule 1 to the Act were relevantly amended by sections 2(5) and 29(2) of, and paragraphs 1, 7(a) and 9 of schedule 1 and paragraph 3 of schedule 2 to, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).

(5) 2002 asp 11. Paragraphs 21ZA, 32B and 32C were inserted by section 26 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).



### **The Freedom of Information (Scotland) Act 2002**

**10.** In the Freedom of Information (Scotland) Act 2002(6), in schedule 1 (Scottish public authorities)—

(a) for paragraph 62ZZA substitute—

“**62ZZA** The Commissioner for Ethical Standards in Public Life in Scotland in the performance of the Commissioner’s functions under the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”; and

(b) omit paragraph 75ZA.

### **The Scottish Parliamentary Standards Commissioner Act 2002**

**11.** The Scottish Parliamentary Standards Commissioner Act 2002(7) is amended in accordance with paragraphs 12 to 15.

**12.** In section 3(1) (functions of the Commissioner), for “Public Standards Commissioner for Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”.

**13.** In section 16 (restriction upon disclosure of information)—

(a) in subsection (1), for “Commission for Ethical Standards in Public Life in Scotland (the “Commission”)” substitute “Commissioner”; and

(b) in subsection (2)(a)—

(i) omit “or Commission”; and

(ii) omit “or, as the case may be, Commission”.

**14.** Omit section 17 (protection from actions of defamation).

**15.** In section 20 (interpretation), for the definition of “Commissioner” substitute—

““Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland;”.

### **The Public Appointments and Public Bodies etc. (Scotland) Act 2003**

**16.** In the Public Appointments and Public Bodies etc. (Scotland) Act 2003(8)—

(a) in section 2(1) (the Commissioner’s functions), for “Public Appointments Commissioner for Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”; and

(b) in section 20 (interpretation), for the definition of “the Commissioner” substitute—

““Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland;”.

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(6) 2002 asp 13. Paragraphs 62ZZA and 75ZA were inserted by section 27 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).

(7) 2002 asp 16. Sections 3(1), 16, 17 and 20 were relevantly amended by sections 2(5) and 29(7) of, and paragraphs 12, 13 and 14(b) of schedule 1 to, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).

(8) 2003 asp 4. Sections 2(1) and 20 were relevantly amended by section 2(5) of, and paragraphs 16 and 17 of schedule 1 to, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).

### **The Public Services Reform (Scotland) Act 2010**

**17.** In the Public Services Reform (Scotland) Act 2010(9), in schedule 5 (improvement of public functions: listed bodies), schedule 6 (Part 2 order-making powers (request and consent): listed bodies) and schedule 8 (information on the exercise of listed bodies: listed public bodies)—

- (a) for the entry “Commission for Ethical Standards in Public Life in Scotland” in each schedule, substitute “Commissioner for Ethical Standards in Public Life in Scotland”;
- (b) omit the entry “Public Appointments Commissioner for Scotland” in each schedule; and
- (c) omit the entry “Public Standards Commissioner for Scotland” in each schedule.

### **The Public Records (Scotland) Act 2011**

**18.** In the Public Records (Scotland) Act 2011(10), in the schedule (authorities to which Part 1 applies)—

- (a) for the entry “Commission for Ethical Standards in Public Life in Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”;
- (b) omit the entry relating to the Public Appointments Commissioner for Scotland; and
- (c) omit the entry relating to the Public Standards Commissioner for Scotland.

### **The Public Services Reform (General Teaching Council for Scotland) Order 2011**

**19.** In the Public Services Reform (General Teaching Council for Scotland) Order 2011(11), in paragraph 4(c)(ii) of Schedule 2 (GTCS membership), for “Commission” substitute “Commissioner”.

## SCHEDULE 3

Article 5

### Transfer of staff, property and liabilities

#### **Staff**

**1.—(1)** On the coming into force of this Order, each person who was, immediately before then, a member of the staff of the Commission for Ethical Standards in Public Life in Scotland (“the Commission”) transfers to and becomes a member of the staff of the Commissioner for Ethical Standards in Public Life in Scotland (“the Commissioner”).

(2) The contract of employment of a person who becomes a member of staff of the Commissioner by virtue of sub-paragraph (1)—

- (a) is not terminated by the transfer; and
  - (b) has effect from the coming into force of this Order as if originally made between the person and the Commissioner.
- (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 Order, transferred to the Commissioner; and

(9) 2010 asp 8. Schedules 5, 6 and 8 were relevantly amended by section 2(5) of, and paragraphs 20(a) and (b), 21(a) and (b) and 22(b) and (c) of schedule 1 to, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).

(10) 2011 asp 12. There are amendments to schedule 1 of the Act which are not relevant for the purposes of this Order.

(11) S.S.I. 2011/215.

(b) anything done by the Commission before then in respect of that contract or that person is to be treated from then as having been done by the Commissioner.

(4) 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 Order, all property (including rights) to which, immediately before then, a previous body or officeholder was entitled and liabilities to which, immediately before then, a previous body or officeholder was subject transfer to and vest in the Commissioner for Ethical Standards in Public Life in Scotland.

(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 body or officeholder” means the Public Standards Commissioner for Scotland, the Public Appointments Commissioner for Scotland or, as the case may be, the Commission for Ethical Standards in Public Life in Scotland.

## SCHEDULE 4

Article 6

### Transitional and savings provisions

#### **First appointment to the office of Commissioner**

1.—(1) The person who, immediately before this Order comes into force, holds office as the Public Standards Commissioner for Scotland is, by operation of this sub-paragraph (and not section 1(2) of the Act) appointed as the Commissioner for Ethical Standards in Public Life in Scotland on the coming into force of this Order.

(2) An appointment under sub-paragraph (1) is for a period equal to that for which the person was appointed as the Public Standards Commissioner for Scotland reduced by the time for which the person held that office.

#### **Persons appointed by the Commissioner to provide advice, assistance or any other service**

2. An appointment made, or regarded as having been made, by the Commission for Ethical Standards in Public Life in Scotland under section 18 (advisers, assessors and other services) of the Act that is current immediately before this Order comes into force is to be regarded as having been made under that section by the Commissioner 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.

#### **Undetermined processes**

3.—(1) When this Order comes into force, anything done or being done by or in relation to—

(a) the Public Standards Commissioner for Scotland under—

(i) the Ethical Standards in Public Life etc. (Scotland) Act 2000<sup>(12)</sup>; or

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(12) 2000 asp 7.

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a Scottish Statutory Instrument: *The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 No. 197*

(ii) the Scottish Parliamentary Standards Commissioner Act 2002<sup>(13)</sup>;  
(b) the Public Appointments Commissioner for Scotland under the Public Appointments and Public Bodies etc. (Scotland) Act 2003<sup>(14)</sup>; or  
(c) the Commission for Ethical Standards in Public Life in Scotland under the Act,  
is to be regarded, for the purposes set out in sub-paragraph (2), as done or being done by or in relation to the Commissioner for Ethical Standards in Public Life in Scotland.

(2) Those purposes are the continuation of any process under one of those Acts begun but not determined or completed when this Order comes into force.

#### **New Commissioner's first budget**

4.—(1) Section 20(1) (budget) of the Act applies in respect of the financial year ending with 31st March 2014 with the modification set out in sub-paragraph (2).

(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 31st March 2014 and, in any event, before 30th September 2013”.

#### **Laying of Commission's last annual report**

5. If, when this Order comes into force, a report for the year beginning 1st April 2012 has not yet been laid before Parliament by the Commission for Ethical Standards in Public Life in Scotland in accordance with section 25 (annual reports) of the Act, the report must instead be laid by the Commissioner for Ethical Standards in Public Life in Scotland before 1st November 2013.

#### **New Commissioner's first annual report**

6.—(1) Section 25 (annual reports) of the Act applies in respect of the report for the year beginning 1st April 2013 as if the amendments in paragraph 27(a)(ii), (b), (c) and (d) of Schedule 1 did not apply in relation to the period beginning 1st April 2013 and ending with 30th June 2013.

(2) Accordingly, the report to be laid by the Commissioner for Ethical Standards in Public Life in Scotland for the year beginning 1st April 2013 must also report on the performance by the Commission for Ethical Standards in Public Life in Scotland and each of its Commissioners of their respective functions during the period beginning 1st April 2013 and ending with 30th June 2013.

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### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (“the Act”) to establish a new office of Commissioner for Ethical Standards in Public Life in Scotland. The new office assumes the functions of, and replaces, the Commission for Ethical Standards in

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<sup>(13)</sup> 2002 asp 16.

<sup>(14)</sup> 2003 asp 4.

Public Life in Scotland and its two members: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland (the “former Commissioners”).

Article 3 replaces section 1 of the Act to establish the new office of Commissioner. Schedule 1 modifies other provisions of the Act so that these apply instead to the new Commissioner.

The person who holds the office of Public Standards Commissioner for Scotland immediately before this Order comes into force is appointed instead as the first new Commissioner (Schedule 4, paragraph 1). The Scottish Parliamentary Corporate Body (“the SPCB”) is responsible for making subsequent appointments to the new office with the agreement of the Parliament.

Article 4 transfers to the new Commissioner the functions of the former Commissioners. It also dissolves the Commission and abolishes the former Commissioners. Schedule 2 makes consequential modifications to other enactments.

Other matters for which the new Commissioner assumes responsibility include—

- the power to pay witnesses’ expenses (section 13 of the Act);
- the duty to lay strategic plans before Parliament every 4 years (section 14 of the Act);
- the power to delegate (section 16 of the Act);
- the power to appoint staff (section 17 of the Act);
- the power to obtain advice, assistance or other services (section 18 of the Act);
- the duty to send budget proposals to the SPCB for approval (section 20 of the Act);
- the duty to keep proper accounts and prepare annual accounts (section 22 of the Act);
- the duty to lay an annual report before Parliament and publish it (section 25 of the Act).

Section 12 (general powers) of the Act is adjusted to enable the Commissioner to do anything which appears necessary or expedient in relation to the performance or efficient administration of any of the Commissioner’s functions (and not just those of the former Commission).

Section 8 (disqualification), section 9 (terms of office and remuneration) and section 11 (subsequent appointments etc. of former Commissioner) of the Act are also adjusted so that these apply instead to the new office of Commissioner.

Section 10 (pensions, etc.) of the Act is adjusted so that the SPCB assumes responsibility for making arrangements for the payment of pensions etc. to former Commissioners.

Section 21 (funding) of the Act is adjusted so that the SPCB becomes responsible for paying the remuneration and allowances of the Commissioner and any expenses properly incurred in the performance of the Commissioner’s functions. In addition, it requires the SPCB to indemnify the Commissioner in respect of any liabilities incurred in performing those functions.

Section 23 (location of office) and section 24 (sharing of premises, staff, services and other resources) of the Act are adjusted so that the Commissioner must comply with any direction given by the SPCB as to those matters.

Article 4 and Schedule 3 make provision for the transfer of staff, property and liabilities.

Article 5 and Schedule 4 make transitional and savings provision.