

EXPLANATORY DOCUMENT

THE PUBLIC SERVICES REFORM (COMMISSIONER FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND ETC.) ORDER 2013

SSI 2013/197

1 Introduction

- 1.1 In January 2012, the Presiding Officer of the Scottish Parliament, on behalf of the Scottish Parliamentary Corporate Body (“SPCB”), requested in writing that the Scottish Ministers bring forward proposals to make provision by order under section 14 of the Public Services Reform (Scotland) Act 2010 (“the Public Services Reform Act”) to restructure the Commission for Ethical Standards in Public Life in Scotland (“the Commission”) so as to improve the exercise of public functions.
- 1.2 The Scottish Ministers were requested to propose provision to replace the Commission (which comprises the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland) with a single Commissioner having responsibility for taking forward the functions of the former Commission and its two members. These functions include the investigation of complaints about MSPs, Councillors and members of public bodies and the regulation of public appointments.
- 1.3 Provision in the draft Order would, from 1st July 2013, establish a Commissioner for Ethical Standards in Public Life in Scotland (the “new Commissioner”) to replace the Commission and its two members. It would also confer on the new Commissioner functions equivalent to those of the former Commission and its two members. The current Public Standards Commissioner for Scotland (and acting Public Appointments Commissioner for Scotland) would be appointed as the first new Commissioner.
- 1.4 The SPCB would have broadly the same responsibilities in relation to the new Commissioner, as it did in relation to the former Commission and its two members. In particular, it would be responsible for making subsequent appointments to the new office, with the approval of the Scottish Parliament.
- 1.5 Provision contained in the draft Order is made under section 14 of the Public Services Reform Act and, in particular, subsections (1), (3)(a) and (c), (6)(b), (7) and (8).

2 Policy objectives

- 2.1 The purpose of the provision contained in the draft Order is to improve the exercise of public functions and, in particular, those of the Commission and the Commissioners, having regard to efficiency, effectiveness and economy.
- 2.2 The Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland (“the Commissioners”) both operate within a statutory framework which promotes ethical standards in public life in Scotland. There is considerable synergy between the Commissioners’ functions. Respective functions in relation to the enforcement of codes of conduct and codes of practice are similar, as are functions in relation to scrutiny and compliance.

- 2.3 The staff of the Commission who assist the Commissioners to perform their respective functions also work closely. In effect, however, the Commission has two chief executives. Bringing the functions together under a single Commissioner would increase the opportunity for efficiency and economy. It would also offer the prospect of a more effective public service, with a single access point for the public.
- 2.4 In particular, it is estimated that the restructure would reduce costs by around £64,000 per annum. This is the projected annual amount of expenditure saved in respect of remuneration and other payments (including national insurance and pension contributions) by virtue of abolishing the position of Public Appointments Commissioner for Scotland. When the position of Public Standards Commissioner for Scotland is abolished on 1st July 2013, the person who held that position will instead become the first new Commissioner and will hold the new office till 31st March 2014.
- 2.5 The new Commissioner will receive remuneration equivalent to the amount that the post-holder received previously as the Public Standards Commissioner for Scotland. Savings will accrue from the amalgamation of the Public Appointment Commissioner's post with the Public Standards Commissioner's post. However, the new Commissioner will require some additional support, for example:
- the Senior Investigating Officer working an extra half-day per week,
 - the Compliance Manager post re-graded from grade 4 to grade 5, and
 - the 5 Investigation Officers working an extra 5 days each per annum.
- 2.6 Although the additional support might cost about £20,000 per annum, together these changes are likely to provide net savings of up to £44,000 per annum. It is anticipated that remuneration for the Commissioner payable in relation to the next appointment in 2014 will not be increased.
- 2.7 There are likely to be some small incidental costs arising from changes required to set up the new Commissioner's website. However, there are no implications for information and communication systems or commercial contracts. The acronym of the new Commissioner will be the same as the predecessor body so no changes are expected to the logo. The cost of rebranding is estimated to be no more than a one off cost of £2,000 which will be met from within the new Commissioner's overall budget.
- 2.8 The new Commissioner would be expected to perform the Commissioner's functions without any detriment to levels or standards of service. The current Public Standards Commissioner (and acting Public Appointments Commissioner for Scotland) has been performing the role of the new Commissioner since June 2012 with the same support staff and with no apparent diminution of levels or standards of service.

3 Provision contained in the draft Order

- 3.1 The draft Order would amend 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 would assume the functions of, and replace, the Commission for Ethical Standards in Public Life in Scotland and its two members: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland (the "former Commissioners").

- 3.2 Article 3 would substitute a new provision for section 1 of the Act to establish the new Commissioner and set out the Commissioner's functions. It would also give effect to Schedule 1 which modifies other provisions of the Act so that these apply in relation to the new Commissioner instead of the predecessor body and former Commissioners.
- 3.3 Schedule 1 would also make the following changes:
- paragraph 3 would substitute a new provision for section 3 of the Act to make it clear that the new Commissioner and members of the Commissioner's staff are not Crown servants or agents, and that holder of the office of Commissioner is to be treated as a separate legal entity, as distinct from the individual who holds it;
 - paragraph 5 would substitute a new provision for section 5 of the Act to consolidate provisions which protected the Commission and former Commissioners from actions of defamation and apply it to the new Commissioner;
 - paragraph 13 would adjust section 12 of the Act to enable the new Commissioner to do anything which appears necessary or expedient in relation to the performance or efficient administration of any of the new Commissioner's functions.
- 3.4 Article 4 would transfer to the new Commissioner the functions of the former Commissioners, dissolve the Commission and abolish the former Commissioners. It would also give effect to Schedule 2 which modifies other enactments so that these apply in relation to the new Commissioner instead of the predecessor body and former Commissioners.
- 3.5 Paragraph 8(b) of Schedule 2 would also amend paragraph 7 of schedule 1 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 so that the Standards Commission for Scotland can only appoint such staff as it considers necessary to enable it to exercise its own functions (and not also those of the new Commissioner).
- 3.6 Article 5 and Schedule 3 would transfer to the new Commissioner, the staff, property and liabilities of the Commission and the Commissioners.
- 3.7 Article 6 and Schedule 4 would make transitional and savings provision.

4 Why the conditions in section 16 of the Public Services Reform Act are satisfied

- 4.1 With reference to provision contained in the draft Order, paragraphs 4.2 to 4.7 explain why the conditions in section 16(2) (where relevant) and 16(10) of the Public Services Reform (Scotland) Act 2010 are considered to be satisfied.
- 4.2 Subsection (2)(a) is satisfied because the provision will improve the exercise of public functions in relation to ethical standards in public life by conferring such functions on a single Commissioner, with anticipated savings of up to £44,000 per annum and an increased opportunity for realising further efficiency, effectiveness and economy. Provision contained in the draft Order to restructure the way in which these functions are delivered is therefore considered a proportionate means of achieving that policy.
- 4.3 Subsection (2)(b) is satisfied because the provision does not remove a necessary protection. In particular, the provision does not remove a protection specified in section 16(4) to (6) of the Public Services Reform Act. Even if a function of the Commission or former Commissioners were a protection, the provision would not

remove that protection (necessary or not) since it delivers the same or similar provision in an alternative way (section 16(7) of the Public Services Reform Act).

- 4.4 Subsection (2)(c) is satisfied because the function of the Standards Commission for Scotland modified by paragraph 8(b) of Schedule 2 will, as modified, remain broadly consistent with the general objects or purpose of that Commission.
- 4.5 Subsection (2)(d) is not relevant because no new functions are conferred on a person, body or office-holder listed in schedule 5 of the Public Services Reform Act.
- 4.6 Subsection (2)(e) is satisfied because the functions conferred on the new Commissioner are broadly consistent the general objects or purposes of the Commission and former Commissioners which would be abolished by the draft Order.
- 4.7 Section 16(10) is satisfied because the provision does not merely restate an enactment.

5 Consultation

- 5.1 A public consultation on the proposed draft Order and proposed explanatory document took place from 18th January to 29th March 2013. Copies were also laid before the Scottish Parliament and sent to the Commission and its Commissioners, the SPCB and other organisations representative of interests substantially affected by the proposals.
- 5.2 The Scottish Ministers have considered all representations made to them in response to the consultation. In particular, the Subordinate Legislation Commission invited the Scottish Government to consider addressing two minor drafting points. First, it was suggested that paragraph 3 of Schedule 2 to the Order be amended to substitute the full title of the new Commissioner (so as to include “in Scotland”). This change has been made to the Order. Second, it was suggested that paragraph 20 of Schedule 1 replace the word “it” in section 18(1) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 with “the Commissioner”. This change has not be made because the word “it” here refers to the advice, assistance or other service to be given by a person to the Commissioner (as opposed to meaning “the Commissioner”).
- 5.3 No further consultation was considered appropriate with respect to this minor change.
- 5.4 The only other change made following on a consultation response is in paragraph 5 of Schedule 1 where the text of the substituted section 5(1)(a) of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 has been altered by the addition of the words “or the Parliamentary Standards Act”. This alteration maintains the present position relative to which statements are absolutely privileged for the purposes of the law of defamation.

6 Impacts

- 6.1 Provision contained in the draft Order is not expected to have any significant financial or other impact on the Scottish Government, local government, business, charities or voluntary bodies. As indicated in paragraph 2.6, the provision is likely to provide net savings of up to £44,000 per annum.