



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

2000 asp 7

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 21st June 2000 and received Royal Assent on 24th July 2000**

An Act of the Scottish Parliament to establish a framework for securing the observance of high standards of conduct by councillors and other persons holding public appointments; and to repeal section 2A of the Local Government Act 1986 and make provision as to how councils are to exercise functions which relate principally to children.

**Modifications etc. (not altering text)**

- C1 Act: functions transferred (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), ss. **2(1)(a)**, 31(5) (with s. 31(6), Sch. 7)

## PART 1

### CODES OF CONDUCT ETC.

#### **1 Code of conduct for councillors**

- (1) The Scottish Ministers (“Ministers”) shall issue a code of conduct for councillors (the “councillors’ code”).
- (2) There shall be set out in the councillors’ code principles and rules governing the conduct of councillors.
- (3) These principles and rules shall include provision about the registration and declaration of the interests of councillors and their ineligibility to discuss or vote upon council business affecting these interests.
- (4) Ministers may, in order to assist themselves in carrying out their duty under subsection (1) above, invite such association of councils as seems appropriate to them to draw up and send them a suggested councillors’ code.

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- (5) Ministers shall issue a councillors’ code only after it has been laid before and approved by a resolution of the Scottish Parliament.
- (6) The councillors’ code shall have effect as from such date (not earlier than its issue) as Ministers fix.
- (7) Ministers may revise or re-issue the councillors’ code; and subsections (4) to (6) above apply to any revisal or re-issue of the councillors’ code as they apply to its issue.
- (8) In subsection (3) above—
  - “interests” means pecuniary and non-pecuniary interests;
  - “council business” includes matters under consideration by any body on which a councillor is a representative or nominee of a council.

## 2 Model code of conduct for members of devolved public bodies

- (1) Ministers shall issue a model code of conduct for members of devolved public bodies (the “members’ model code”).
- (2) There shall be set out in the members’ model code principles and rules governing the conduct of members of devolved public bodies.
- (3) These principles and rules shall include provision about the registration and declaration of the interests of members of devolved public bodies and their ineligibility to discuss or vote upon business of these bodies affecting these interests.
- (4) Ministers shall issue the members’ model code only after it has been laid before and approved by a resolution of the Scottish Parliament.
- (5) Ministers may revise or re-issue the members’ model code; and subsection (4) above applies to any revisal or re-issue of the members’ model code as it applies to the issue of the code.
- (6) The members’ model code may, for the purposes of sections 3(5) and 25(5) below, distinguish between those of its provisions which are mandatory and those which are optional.
- (7) In subsection (3) above, “interests” means pecuniary and non-pecuniary interests and the reference to the business of devolved public bodies shall, in relation to a member of such a body, be construed as including a reference to matters under consideration by any other body on which the member is a representative or nominee of the devolved public body.

## 3 Codes of conduct for members of devolved public bodies

- (1) Each devolved public body shall, within the stipulated time limit, submit to Ministers a draft of a code of conduct for its members (a “draft members’ code”).
- (2) In subsection (1) above, the “stipulated time limit” is such time limit, being not earlier than three months after the making of the order under this subsection, as is stipulated in relation to each devolved public body by order made by Ministers.
- (3) Such an order shall be made by statutory instrument.

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- (4) A statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (5) A draft members' code—
  - (a) shall incorporate such mandatory provisions of the members' model code as apply to the body submitting it;
  - (b) may incorporate any optional provisions of the members' model code;
  - (c) may include such other provisions as are consistent with that code.
- (6) Ministers—
  - (a) may, with or without modifications made by them, approve a draft members' code submitted to them;
  - (b) may substitute for a draft members' code submitted to them a code of their own devising;
  - (c) shall, if a body fails to submit a draft members' code in accordance with subsection (1) above, devise a code for that body.
- (7) Ministers shall, when approving, substituting or devising a code under subsection (6) above, have regard to the members' model code.
- (8) Once a code has been approved, substituted or devised under subsection (6) above, it shall be called a "members' code".
- (9) Any reference in the following provisions of this Act to the members' code is, in relation to a devolved public body, a reference to the members' code applicable to members of that body.
- (10) A members' code shall have effect as from such date as Ministers fix.
- (11) Ministers shall, prior to the date fixed for the coming into effect of a members' code, intimate that date to the devolved public body.

VALID FROM 01/05/2003

#### **4 Revisal etc. of members' codes**

- (1) A devolved public body—
  - (a) may; and
  - (b) on being so required by Ministers and within such time as they direct, shall, submit to them a draft revisal or re-issue of the members' code.
- (2) Ministers—
  - (a) may, with or without modifications made by them, approve a draft revisal or re-issue submitted to them under subsection (1) above;
  - (b) may substitute for a draft revisal or reissue submitted to them a revisal or re-issue of their own devising;
  - (c) shall, if a body fails to submit a draft revisal or re-issue in accordance with a requirement under subsection (1)(b) above, themselves revise or re-issue the members' code.
- (3) Ministers shall impose a requirement under subsection (1)(b) above on a devolved public body if it appears to them that the members' code is not, or is no longer,

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consistent with the members' model code (or that code as revised or re-issued) as it applies to the body.

- (4) Where, however, in the case mentioned in subsection (3) above, Ministers consider it expedient in the public interest to do so, they may, without previously imposing the requirement under subsection (1)(b) above, themselves revise or re-issue the members' code.
- (5) Ministers shall, when approving, substituting, revising or re-issuing a code under subsection (2) or revising or re-issuing a code under subsection (4) above, have regard to the members' model code.
- (6) Subsections (9) to (11) of section 3 above apply in relation to the coming into effect of a revisal or re-issue of a members' code as they apply to the coming into effect of the members' code.

VALID FROM 01/05/2003

## **5 Duties of councils and devolved public bodies**

- (1) Every council shall, in accordance with any guidance issued for the purposes of this section by the Standards Commission for Scotland established by section 8 below—
  - (a) promote the observance by its councillors of high standards of conduct; and
  - (b) assist them to observe the councillors' code.
- (2) Every devolved public body shall, in accordance with any such guidance—
  - (a) promote the observance by its members of high standards of conduct; and
  - (b) assist them to observe the members' code.

VALID FROM 21/02/2003

## **6 Issue of guidance by Standards Commission**

- (1) The Commission shall issue guidance to councils and devolved public bodies on its relationship with them in the carrying out of its functions under this Act.
- (2) Before issuing any such guidance, the Commission shall consult such association of local authorities and any such other bodies or persons as it thinks fit.

VALID FROM 21/02/2003

## **7 Register of interests**

- (1) Every council and every devolved public body shall set up, maintain and make available for public inspection a register of such interests as, respectively—
  - (a) under the councillors' code, its councillors; and
  - (b) under the members' code, its members,
 are required to register.

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- (2) The duties under subsection (1) above shall be carried out in accordance with such regulations as may be made by Ministers for the purposes of this section and such guidance as may be issued by the Standards Commission for Scotland for those purposes.
- (3) In the event of any conflict between those regulations and that guidance, the regulations shall prevail.
- (4) Those regulations shall be made by statutory instrument.
- (5) A statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### Commencement Information

- II** [S. 7](#) wholly in force at 1.5.2003; [s. 7](#) not in force at Royal Assent, see [s. 37\(2\)](#); [s. 7\(2\)](#) in force at 21.2.2003 for specified purposes and [s. 7](#) otherwise in force at 1.5.2003 by [S.S.I. 2003/74](#), [art. 2\(1\)\(b\)\(2\)\(a\)](#)

## PART 2

### ENFORCEMENT

#### 8 Standards Commission for Scotland

- (1) There shall be a Standards Commission for Scotland (“the Commission”).
- (2) Its functions shall be—
  - (a) those functions given to it by this Act; and
  - (b) any others relating to the conduct of councillors and members of devolved public bodies given to it by order made by Ministers.
- (3) Its members, of whom there shall be not fewer than three, shall be appointed by Ministers after consultation with such association of councils and such other persons as Ministers think appropriate.
- (4) Schedule 1 to this Act provides further about the Commission.
- (5) An order under subsection (2)(b) above shall be made by statutory instrument.
- (6) A statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.
- (7) Different provision may be made under subsection (2)(b) above as respects councillors and as respects members of devolved public bodies.
- (8) The Commission shall, in relation to those of its functions which affect matters within the functions of—
  - (a) the Accounts Commission for Scotland; or
  - (b) the Commissioner for Local Administration in Scotland,consult that other Commission or, as the case may be, that Commissioner.

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## **9 Appointment of Chief Investigating Officer and staff**

- (1) There shall be a Chief Investigating Officer.
- (2) The Chief Investigating Officer shall have the function of investigating and reporting to the Commission on cases in which a councillor or member of a devolved public body has, may have or is alleged to have contravened the councillors' or, as the case may be, the members' code.
- (3) The Chief Investigating Officer shall be appointed by Ministers.
- (4) The Chief Investigating Officer may appoint, as employees, persons to assist in carrying out that Officer's function.
- (5) A person who is a member of—
  - (a) the Commission;
  - (b) a council or any committee or sub-committee thereof;
  - (c) a joint board or joint committee; or
  - (d) a devolved public body,
 shall not be appointed under this section.
- (6) Schedule 2 to this Act provides further about the Chief Investigating Officer.

VALID FROM 01/05/2003

## **10 Relationship between Commission and Chief Investigating Officer**

- (1) The Chief Investigating Officer shall, subject to subsection (2) below, in carrying out the functions of that office, comply with any directions given by the Commission.
- (2) The Commission shall not, however, direct the Chief Investigating Officer as to how that Officer carries out any investigation.

VALID FROM 01/05/2003

## **11 Chief Investigating Officer to provide Commission with information**

The Chief Investigating Officer shall provide the Commission with such information concerning the discharge of that Officer's functions as the Commission requires.

VALID FROM 01/05/2003

## **12 Conduct of Chief Investigating Officer's investigations**

- (1) Subject to section 10 above and subsection (2) below, it is for the Chief Investigating Officer to decide whether, when and how to carry out any investigation.
- (2) Investigations shall, so far as possible, be conducted confidentially.

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- (3) An investigation may take place notwithstanding that the person whose conduct is to be investigated is no longer a councillor or, as the case may be, a member of a devolved public body.
- (4) The Chief Investigating Officer may arrange for any person to assist or advise that Officer and may pay such fees or allowances to that person as that Officer may, with the approval of Ministers, fix.
- (5) If it appears to the Chief Investigating Officer that an investigation being carried out under this section will not be completed within three months of the date on which it began, that Officer shall, in writing, inform—
  - (a) the Commission;
  - (b) the councillor or member whose contravention, or possible or alleged contravention, of the councillors' or, as the case may be, members' code is the subject of the investigation; and
  - (c) the council or devolved public body, of that fact.
- (6) Investigations shall, so far as is possible, only be undertaken in response to allegations of misconduct which are made in writing and signed by the complainant.

VALID FROM 01/05/2003

### 13 Chief Investigating Officer's powers

- (1) For the purposes of an investigation, the Chief Investigating Officer—
  - (a) may require any person who, in the opinion of that Officer, is able to give relevant information or produce relevant documents to do so; and
  - (b) shall have the same powers as the Court of Session to enforce the attendance and examination of witnesses and the production of documents.
- (2) No person, however, shall be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.
- (3) If, without reasonable excuse, any person obstructs the Chief Investigating Officer in the performance of that Officer's functions or does anything in relation to an investigation which, had that investigation been proceedings in the Court of Session, would be contempt of court, the Chief Investigating Officer may certify that conduct to the Court of Session.
- (4) Where a person's conduct is so certified, the Court of Session may deal with the person as if any such conduct as occurred had taken place in relation to that Court.
- (5) In this section "documents" includes information held by means of a computer or in any other electronic form.

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#### 14 Chief Investigating Officer's reports

- (1) Subject to section 10 above, it is for the Chief Investigating Officer to decide whether to report to the Commission on the outcome of any investigation.
- (2) No report concluding that a councillor or a member of a devolved public body has contravened the councillors' or, as the case may be, the members' code shall be submitted to the Commission unless the councillor or member has been given a copy of the proposed report and an opportunity to make representations on the alleged contravention and on the proposed report.
- (3) At the same time as the Chief Investigating Officer gives a copy of a proposed report to a councillor or a member of a devolved public body for the purposes of subsection (2) above, that Officer shall give a further copy to the council or, as the case may be, the devolved public body.

VALID FROM 01/05/2003

#### 15 Publication of reports

The Commission may publish a report submitted to it under section 14 above, and may do so in whatever way and send it to whomever it thinks fit.

VALID FROM 01/05/2003

#### 16 Action on receipt of reports

On receiving a report from the Chief Investigating Officer, the Commission may—

- (a) direct that Officer to carry out further investigations;
- (b) hold a hearing; or
- (c) do neither,

and, where it acts under paragraph (a) or (b) above, may do so at any time.

VALID FROM 01/05/2003

#### 17 Hearings before Commission

- (1) Subject to subsections (2) to (10) below, the procedure at a hearing held under section 16(b) above shall be such as the Commission determines.
- (2) The Commission may, at any one hearing, consider alleged contraventions of the councillors' code by more than one councillor or of the members' code by more than one member of a devolved public body.



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- (3) A hearing shall be conducted by not fewer than three members of the Commission selected by the convener of the Commission.
- (4) A councillor or member of a devolved public body whose conduct is being considered by a hearing is entitled to be heard there either in person or represented by counsel or a solicitor or any other person.
- (5) The members of the Commission conducting a hearing may—
  - (a) require any person to attend the hearing, give evidence and produce documents;
  - (b) administer oaths.
- (6) A person shall not, however, be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.
- (7) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (5)(a) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (8) The Commission may pay persons appearing at a hearing or attending it for the purpose of giving evidence or producing documents such expenses or allowances as it thinks fit.
- (9) A hearing shall be held in public unless the members of the Commission conducting it determine that it is in the public interest that it, or such part of it as they specify for the purposes of this subsection, be not so held.
- (10) In this section, “documents” shall be construed as in section 13 above.

VALID FROM 01/05/2003

## 18 Findings of hearings

- (1) The members of the Commission conducting a hearing shall state their findings in writing and give a copy to—
  - (a) the councillor or member of a devolved public body whose contravention, or possible or alleged contravention, of the councillors’ or, as the case may be, the members’ code was the subject of the hearing;
  - (b) the council or the devolved public body;
  - (c) any person the Commission considers should, under this paragraph, receive a copy; and
  - (d) any other person seeking a copy who has paid the Commission’s reasonable charge for providing it.
- (2) A council or devolved public body receiving a copy of findings under subsection (1) above shall consider those findings within three months of receiving them or within such longer period as the Commission may specify in writing.
- (3) The duty imposed on a council or devolved public body by subsection (2) above shall be discharged only by that council or body and not by a committee or sub-committee or an officer.

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## 19 Action on finding of contravention

- (1) Where the members of the Commission conducting a hearing find that a councillor has contravened the councillors' code or a member of a devolved public body the members' code, they shall impose one of the following sanctions—
  - (a) censuring, but otherwise taking no action against, the councillor or member;
  - (b) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend one or more but not all of the following—
    - (i) all meetings of the council or body;
    - (ii) all meetings of one or more committees or sub-committees of the council or body;
    - (iii) all meetings of any other body on which the councillor or member is a representative or nominee of the council or body;
  - (c) suspending, for a period not exceeding one year, the councillor's or member's entitlement to attend meetings of the council or body and of any committee or sub-committee thereof and of any other body on which the councillor or member is a representative or nominee of the council or body;
  - (d) in the case of a councillor, disqualifying the councillor for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, a councillor;
  - (e) in the case of a member of a devolved public body, removing the member from membership of the body and disqualifying the member, for a period not exceeding five years, from membership of the body.
- (2) A period of suspension imposed under subsection (1)(b) or (c) above which would continue until or after the day of the next following ordinary election of councillors shall end at the beginning of that day.
- (3) Disqualification imposed under subsection (1)(d) above—
  - (a) has the effect of vacating the councillor's office; and
  - (b) extends to the councillor's membership of committees and sub-committees of the council of which the councillor was a member and any joint committee, joint board or other body on which the councillor is a representative or nominee of the council.
- (4) Where the members of the Commission disqualify, under subsection (1)(d) above, a councillor who is also a member of a devolved public body otherwise than as a representative or nominee of the council, they may also, in respect of that membership, remove and disqualify that person under subsection (1)(e) above and, where the councillor is also the Water Industry Commissioner for Scotland, they may also impose the sanction in section 25(12)(b) below.
- (5) The members of the Commission, on removing and disqualifying a member of a devolved public body under subsection (1)(e) above, may—
  - (a) where the member is a councillor, disqualify that person under subsection (1)(d) above;
  - (b) direct that the removal from membership and disqualification apply also in respect of any other devolved public body of which the member is a member; or

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- (c) where the member is the Water Industry Commissioner for Scotland, impose the sanction in section 25(12)(b) below.
- (6) The members of the Commission may, on imposing a suspension under subsection (1)(b) or (c) above on a member of a devolved public body, direct that any remuneration or allowance deriving from membership of the body that would be payable to the member be not paid or be reduced as they direct.
- (7) The powers to remove and disqualify a person from membership of a devolved public body under subsections (4) and (5)(b) above are exercisable as respects that body only after the members' code applicable to that body first has effect.
- (8) The Commission shall, after consulting such association of local authorities and any such other bodies or persons as it thinks fit, issue guidance to councils on the extent to which a councillor should engage in activities (other than those mentioned in subsection (1)(c) above) which are, or may be perceived to be, the activities of a councillor during a period of suspension.

VALID FROM 01/05/2003

## 20 Duty of Commission to provide information

The members of the Commission who are to conduct a hearing under section 16(b) above, shall, before doing so, give written notice to the councillor or member of the devolved public body whose contravention, or possible or alleged contravention, of the councillors' or, as the case may be, the members' code is to be the subject of the hearing, of—

- (a) the procedure to be followed at the hearing; and
- (b) the sanctions which may be imposed following a finding of a contravention of the councillors' or, as the case may be, the members' code by that councillor or member.

VALID FROM 01/05/2003

## 21 Interim reports on investigations and action thereon

- (1) The Chief Investigating Officer may, and, if so directed by the Commission, shall, submit an interim report on an investigation being conducted by that Officer.
- (2) On receiving an interim report, the Commission, if it is satisfied—
  - (a) that the further conduct of the investigation is likely to be prejudiced if the sanction mentioned in subsection (3) below is not imposed; or
  - (b) that otherwise it would be in the public interest to impose that sanction, then it may impose that sanction.
- (3) That sanction is suspending the councillor or member of the devolved public body whose alleged contravention of the councillors' code or, as the case may be, the members' code was the subject of the interim report from the entitlement set out in section 19(1)(c) above for a period not exceeding three months.

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- (4) The Commission shall not require to hold a hearing before proceeding to impose that sanction, but shall give the councillor or member an opportunity to make representations on the alleged contravention of the councillors' code or, as the case may be, the members' code and on the interim report.
- (5) The Commission shall put its decision under this section in writing and shall give a copy to—
  - (a) the councillor or member;
  - (b) the council or devolved public body of which that person is a member; and
  - (c) any other person seeking a copy of the decision who has paid the Commission's reasonable charges for providing such a copy.
- (6) A period of suspension imposed under this section ends upon—
  - (a) the issue of findings under section 18 above that the councillor or member has not contravened the councillors' code or, as the case may be, the members' code;
  - (b) the imposition of a sanction under section 19 above; or, as the case may be,
  - (c) a decision by the Commission under section 16(c) above not to hold a hearing.
- (7) A period of suspension imposed upon a councillor under this section which would continue until or after the day of the next following ordinary election of councillors ends at the beginning of that day.
- (8) If, however, the councillor is re-elected at that election, the Commission may re-impose the suspension.
- (9) The period for which suspension may be re-imposed under subsection (8) above is that for which it would have continued to apply but for subsection (7) above.
- (10) On the expiry (otherwise than by operation of subsection (6) or (7) above) of a period of suspension, it may be renewed by the Commission for a period not exceeding three months and a renewed period may likewise be further renewed.
- (11) Where, but for suspension under this section—
  - (a) a councillor would be entitled to receive basic allowance and special responsibility allowance from the council; or
  - (b) a member of a devolved public body would be entitled to receive a salary or daily or other periodic allowance or other payment having the character of remuneration or an honorarium from the devolved public body,the suspension under this section shall not affect that entitlement; but nothing in this subsection authorises the payment or reimbursement of travelling, subsistence or other allowances or expenses.
- (12) In subsection (11) above “basic allowance” and “special responsibility allowance” are the respective allowances referred to in section 18(1)(a) and (c) of the Local Government and Housing Act 1989 (c.42).

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## 22 Appeals from Commission

- (1) A councillor or member of a devolved public body—
  - (a) who is the subject of a finding under section 18 above of a contravention of the councillors' or, as the case may be, the members' code;
  - (b) on whom a sanction under section 19(1)(b) to (e), (4) or (5) above has been imposed; or
  - (c) who has been suspended under section 21(2) above,may appeal to the sheriff principal of the sheriffdom in which the relevant council or devolved public body has its principal office.
- (2) The relevant council or, as the case may be, devolved public body is—
  - (a) in the case, where—
    - (i) a finding of a contravention of the councillors' or the members' code has been made under section 18 above;
    - (ii) a sanction under section 19(1) above has been imposed following such a finding;
    - (iii) a sanction under section 19(4) or (5) above has been imposed following such a finding,the council or devolved public body to which the finding relates;
  - (b) where suspension under section 21(2) above has been imposed, the council or devolved public body from which the councillor or member has been suspended;
  - (c) where the appeal is in respect of findings which relate to more than one council or devolved public body, any one of those councils or devolved public bodies.
- (3) An appeal—
  - (a) under subsection (1)(a) above may be made on one or more of the following grounds—
    - (i) that the Commission's finding was based on an error of law;
    - (ii) that there has been procedural impropriety in the conduct of any hearing held under section 16(b) above;
    - (iii) that the Commission has acted unreasonably in the exercise of its discretion;
    - (iv) that the Commission's finding was not supported by the facts found to be proved by the Commission;
  - (b) under subsection (1)(b) above, may be made on one or both of the following grounds—
    - (i) that the sanction imposed was excessive;
    - (ii) that the Commission has acted unreasonably in the exercise of its discretion;
  - (c) under subsection (1)(c) above, may be made only on the ground that the Commission has acted unreasonably in the exercise of its discretion.
- (4) An appeal under subsection (1) above shall be lodged within 21 days of—

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- (a) the sending of the finding under section 18 above to the councillor or member;
  - (b) the imposition of the sanction under section 19(1) above; or, as the case may be,
  - (c) the imposition of the suspension under section 21(2) above.
- (5) A finding made or sanction imposed by the Commission continues to have effect notwithstanding the lodging of an appeal under subsection (1) above.
- (6) The sheriff principal may—
- (a) in an appeal under subsection (1)(a) above—
    - (i) confirm the finding under section 18 above;
    - (ii) quash the finding;
    - (iii) quash the finding and remit the matter to the Commission to reconsider its decision;
  - (b) in an appeal under subsection (1)(b) above—
    - (i) confirm the sanction;
    - (ii) quash the sanction and either substitute a lesser sanction or remit the matter back to the Commission;
  - (c) in an appeal under subsection (1)(c) above, quash the suspension;
  - (d) award expenses.
- (7) The decision of the sheriff principal under subsection (1) above is a final judgment for the purposes of section 28 (appeals to the Court of Session) of the Sheriff Courts (Scotland) Act 1907 (c.51).
- (8) In an appeal from the sheriff principal by virtue of subsection (7) above, the Court of Session has the powers specified in subsection (6) above.
- (9) The Commission may be a party to any appeal under subsection (1) above and in any appeal from the decision of the sheriff principal.

VALID FROM 01/05/2003

### **23 Special provision for enforcement and suspension in case of Crown appointments**

- (1) Sections 19, 21(2) and 22 above do not apply in the case of members of devolved public bodies who have been appointed by Her Majesty.
- (2) Where the members of the Commission conducting a hearing under section 16(b) above find that a member of a devolved public body so appointed has contravened the members' code they shall submit to the First Minister a recommendation under subsection (3) below.
- (3) That recommendation is that there be imposed on the member such sanction as is specified in the recommendation (being one of those which may be imposed under subsection (1) of section 19 above on a member of a devolved public body who has been appointed otherwise than by Her Majesty) together with any such direction as is so specified (being one of those which may be made under that section in respect of such a member).

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- (4) A recommendation under subsection (3) above having been made, Her Majesty may, on the advice of the First Minister—
- (a) impose on the member who is the subject of the recommendation any sanction; and
  - (b) in that respect, make any direction,
- which could, under section 19 above, be imposed on or made in respect of a member of a devolved public body who was appointed otherwise than by Her Majesty.
- (5) Where the Chief Investigating Officer submits an interim report under section 21(1) above in respect of a contravention of the members' code by a member of a devolved public body who has been appointed by Her Majesty, the Commission may submit to the First Minister a recommendation under subsection (6) below.
- (6) That recommendation is that the member be suspended from the entitlement set out in section 19(1)(c) above for a period not exceeding three months.
- (7) A recommendation under subsection (6) above having been made, Her Majesty may, on the advice of the First Minister, impose any suspension on a member who is the subject of the recommendation which could, under section 21 above, be imposed on a member of a devolved public body who was appointed otherwise than by Her Majesty.
- (8) A period of suspension imposed under subsection (7) above ends upon—
- (a) the issue of findings under section 18 above that the member has not contravened the members' code;
  - (b) the imposition of a sanction under this section; or, as the case may be,
  - (c) a decision by the Commission under section 16(c) above not to hold a hearing.
- (9) On the expiry (otherwise than by operation of subsection (8) above) of a period of suspension it may be renewed by Her Majesty, on the advice of the First Minister, for a period not exceeding three months and a renewed period may likewise be further renewed.

VALID FROM 01/05/2003

## **24 Special provision for employee and ex officio members of devolved public bodies**

- (1) Sections 16 to 19, 21 (other than subsection (1)) and 22 of this Act do not apply in the case of a member of a devolved public body—
- (a) who is also an employee; or
  - (b) who is an ex officio member,
- of the body.
- (2) On receiving—
- (a) a report under section 14 above; or
  - (b) an interim report under section 21(1) above,
- relating to such a member, the Commission shall send it to the devolved public body.

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## 25 Special provision for the Water Industry Commissioner

- (1) Ministers shall issue (and may revise or re-issue) a code of conduct for the Water Industry Commissioner for Scotland (the “Water Commissioner’s code” and the “Water Commissioner”).
- (2) There shall be set out in the Water Commissioner’s code principles and rules governing the conduct of the Water Commissioner.
- (3) These principles and rules shall include provision about the registration and declaration of the interests of the Water Commissioner.
- (4) The Water Commissioner shall, within three months of the first issue of the members’ model code, submit to Ministers a draft of the Water Commissioner’s code.
- (5) The draft Water Commissioner’s code—
  - (a) shall incorporate such mandatory provisions of the members’ model code as apply to the Water Commissioner;
  - (b) may incorporate any optional provisions of the members’ model code;
  - (c) may include such other provisions as are consistent with that code.
- (6) Ministers—
  - (a) may, with or without modifications made by them, approve the draft Water Commissioner’s code submitted to them;
  - (b) may substitute for the draft Water Commissioner’s code submitted to them a code of their own devising;
  - (c) shall, if the Water Commissioner fails to submit the draft code in accordance with subsection (4) above, devise the Water Commissioner’s code.
- (7) Ministers shall, when approving, substituting or devising a code under subsection (6) above, have regard to the members’ model code.
- (8) The Water Commissioner’s code shall have effect as from such date (not earlier than its issue) as Ministers fix.
- (9) The Water Commissioner shall set up, maintain and make available for public inspection a register of such interests as the Commissioner is required to register.
- (10) Subsections (2) to (5) of section 7 above apply to such a register as they apply to a register set up by a devolved public body under subsection (1) of that section.
- (11) The provisions of this Part of this Act except sections 19 and 21 apply in respect of the Water Commissioner’s code and the conduct of the Water Commissioner as they apply in respect of a members’ code and the conduct of a member of a devolved public body.
- (12) Where the members of the Commission conducting a hearing under section 17 above and this section in respect of the conduct of the Water Commissioner conclude that the Water Commissioner has contravened the Water Commissioner’s code, they shall impose one of the following sanctions—
  - (a) censuring, but otherwise taking no action against, the Water Commissioner;



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- (b) removing the Water Commissioner from office and disqualifying the Commissioner, for a period not exceeding five years, from that office.
- (13) The members of the Commission, on imposing a sanction on the Water Commissioner under subsection (12)(b) above, may—
- (a) where the Water Commissioner is also a councillor, disqualify the Commissioner, for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, a councillor;
  - (b) direct that the removal from office and disqualification apply also in respect of any devolved public body of which the Commissioner is a member.

#### Commencement Information

- I2** S. 25 wholly in force at 1.5.2003; s. 25 not in force at Royal Assent, see s. 37(2); s. 25(1)-(8) in force at 21.2.2003 and s. 25 otherwise in force at 1.5.2003 by S.S.I. 2003/74, art. 2(1)(c)(2)(b)

VALID FROM 01/05/2003

## 26 Appeals by Water Industry Commissioner

- (1) If the Water Industry Commissioner for Scotland—
- (a) is the subject of a finding under section 18 above of a contravention of the Water Commissioner's code issued under section 25 above;
  - (b) is made subject to a sanction under section 25(12) and (13) above,
- the Commissioner may appeal to the sheriff principal of the sheriffdom in which the principal office of the Commissioner is situated.
- (2) An appeal—
- (a) under subsection (1)(a) above may be made on one or more of the following grounds—
    - (i) that the Commission's finding was based on an error of law;
    - (ii) that there has been procedural impropriety in the conduct of any hearing held under section 16(b) above;
    - (iii) that the Commission has acted unreasonably in the exercise of its discretion;
    - (iv) that the Commission's finding was not supported by the facts found to be proved by the Commission;
  - (b) under subsection (1)(b) above may be made on one or both of the following grounds—
    - (i) that the sanction imposed was excessive;
    - (ii) that the Commission has acted unreasonably in the exercise of its discretion.
- (3) An appeal under subsection (1) above shall be lodged within 21 days of—
- (a) the sending of the finding under section 18 above to the Commissioner; or
  - (b) the imposition of the sanction under section 25(12) above.
- (4) A finding made or sanction imposed by the Commission continues to have effect notwithstanding the lodging of an appeal under subsection (1) above.

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- (5) The sheriff principal may—
- (a) in an appeal under subsection (1)(a) above—
    - (i) confirm the finding under section 18 above;
    - (ii) quash the finding;
    - (iii) quash the finding and remit the matter to the Commission to reconsider its decision;
  - (b) in an appeal under subsection (1)(b) above—
    - (i) confirm the sanction;
    - (ii) quash the sanction and either substitute a lesser sanction or remit the matter back to the Commission;
  - (c) award expenses.
- (6) The decision of the sheriff principal under subsection (1) above is a final judgment for the purposes of section 28 (appeals to the Court of Session) of the Sheriff Courts (Scotland) Act 1907 (c.51).
- (7) In an appeal from the sheriff principal by virtue of subsection (6) above, the Court of Session has the powers specified in subsection (5) above.
- (8) The Commission may be a party to any appeal under subsection (1) above and in any appeal from the decision of the sheriff principal.

VALID FROM 21/02/2003

## 27 Protection from actions of defamation

- (1) For the purposes of the law of defamation, any statement made in pursuance of the purposes of this Act by the Commission or any of its employees or by the Chief Investigating Officer or any of that Officer's employees shall be absolutely privileged.
- (2) In subsection (1) above—
- “statement” has the same meaning as in the Defamation Act 1996 (c.31);
  - “employee” shall be construed in accordance with paragraphs 7 and 8 of schedule 1 to this Act.

## PART 3

### GENERAL AND MISCELLANEOUS PROVISIONS RELATING TO PARTS 1 TO 3

## 28 Definitions

- (1) In Parts 1 and 2 and this Part of this Act—
- “Chief Investigating Officer” means the Chief Investigating Officer appointed under section 9 above;
  - “the Commission” means the Standards Commission for Scotland set up by section 8 above;

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“council” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994 (c.39);

“councillor” shall be construed accordingly;

“councillors’ code” means the code of conduct for councillors for which provision is made in section 1 above;

“devolved public body” means a body listed in schedule 3 to this Act;

“joint board” and “joint committee” have the meanings respectively given by section 235 of the Local Government (Scotland) Act 1973 (c.65);

“members’ code” means a code of conduct for members of a devolved public body for which code provision is made in section 3 above;

“members’ model code” means the model code for members of devolved public bodies issued under section 2(1) above;

“Ministers” means the Scottish Ministers.

- (2) Ministers may by order modify schedule 3 to this Act by—
  - (a) adding to the bodies listed there any Scottish public authority with mixed functions or no reserved functions;
  - (b) deleting the entry relating to any body listed there.
- (3) An order under subsection (2) above may contain such provisions as appear to Ministers to be necessary or expedient in connection with the addition or deletion effected by the order, including provisions modifying the application of this Act or any other enactment to the body to which the order relates.
- (4) An order under subsection (2) above shall be made by statutory instrument.
- (5) A statutory instrument made under this section shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

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## **29 Suspension and disqualification of councillors: supplementary and consequential provisions**

- (1) In section 35 (vacation of office by failure to attend meetings) of the Local Government (Scotland) Act 1973 (c.65)—
  - (a) in subsection (1) for “(2) and (3)” there is substituted “ (2) to (4) ”; and
  - (b) at the end there is added—
    - “(4) The absence of a member of a local authority from a meeting of the authority during a period of suspension imposed on the member under section 103F or 103G of this Act or section 19 or 21(2) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) is not, for the purposes of this section, a failure to attend the meeting.”.
- (2) In section 36 (casual vacancies) of that Act, in paragraph (c), after the word “principal” there is inserted “ or become vacant by operation of section 19(3)(a) (effect of disqualification) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7). ”.

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### **30 Modification of enactments etc.**

- (1) Ministers may, by order, make such modification as they consider necessary or expedient of any enactment or instrument governing the conduct of a councillor or a member of a devolved public body or the Water Industry Commissioner for Scotland or the tenure of office, suspension, removal from office, disqualification or discipline of any such person in order to make that enactment or instrument consistent with this Act and with the provisions of any code under it applicable to that person.
- (2) An order under subsection (1) above shall be made by statutory instrument.
- (3) No such order shall be made unless a draft of the statutory instrument has been laid before, and approved by a resolution of, the Scottish Parliament.

### **31 Preservation of previous law and rules in relation to members of devolved public bodies**

Subject to sections 30 above and 36 below, nothing in this Act or in any code under it affects the continued operation in relation to a member of a devolved public body of any enactment or other provision governing the conduct of that member or that member's tenure of office or the suspension, removal from membership, disqualification or discipline of that member.

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## **PART 4**

### **CODES OF CONDUCT FOR MEMBERS OF OTHER BODIES**

#### **32 Codes of conduct for members of certain Scottish public authorities**

- (1) Ministers shall issue (and may revise or reissue) a code or codes in respect of the conduct of members of such Scottish public authorities as are specified by Ministers by order.
- (2) Where Ministers issue more than one such code, those codes may provide differently in respect of the members of different such authorities.
- (3) Ministers shall, when preparing provisions for a code under this section, have regard to the members' model code.
- (4) Ministers shall not, in an order under this section, specify any authority which is a devolved public body.
- (5) Ministers may, in such an order, define "member" for the purposes of this section and may do so differently in relation to different authorities.
- (6) It is the duty of a member of an authority to which a code under this section applies to have regard to the provisions of the code in the carrying out of the member's functions and activities as such.
- (7) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.

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(8) In this section, “Ministers”, “devolved public body” and “members’ model code” have the same meanings as in Parts 1 to 3 of this Act.

## PART 5

### FUNCTIONS OF CONTROLLER OF AUDIT AND ACCOUNTS COMMISSION FOR SCOTLAND

#### 33 Procedure for special reports and modification of surcharge provisions

(1) In section 102 (reports to Accounts Commission for Scotland by Controller of Audit) of the Local Government (Scotland) Act 1973 (c.65)—

- (a) in subsection (3), for “shall” there is substituted “ may ”;
- (b) after subsection (3) there is inserted—

“(3A) No such special report shall, however, be so made unless—

- (a) the authority; and
- (b) any person named or referred to in the report—
  - (i) as being to blame in connection with an item of account being contrary to law; or
  - (ii) whose failure, negligence or misconduct is a subject of the report,

has been given a copy of the proposed report and an opportunity to make representations to the Controller on the proposed report and on any of the matters dealt with in it.”.

(2) In section 103 (action by Accounts Commission for Scotland on reports by Controller of Audit) of that Act—

- (a) in subsection (1)—
  - (i) the words “Subject to subsection (2) below,” are repealed; and
  - (ii) after the words “any report” there is inserted “, except a special report under section 102(3) of this Act, ”;
- (b) subsections (2) to (5) are repealed.

(3) After section 103 of that Act there are inserted the following sections—

#### “103A Publication of special reports

The Commission may publish a special report made to it under section 102(3) of this Act, and may do so in whatever way and send it to whomever it thinks fit.

#### 103B Action by Commission on receipt of special reports

(1) On receiving a special report under section 102(3) of this Act from the Controller of Audit, the Commission may—

- (a) direct the Controller to carry out further investigations;
- (b) hold a hearing;

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- (c) state a case on any question of law arising on the special report for the opinion of the Court of Session;
  - (d) subject to subsections (2) and (3) below, do none of the above.
- (2) The Commission shall hold a hearing if requested to so in writing by—
- (a) the local authority which was sent a copy of the report under section 102(3A) of this Act;
  - (b) any person, named or referred to in the report—
    - (i) as being to blame in connection with an item of account being contrary to law;
    - (ii) whose failure, negligence or misconduct is a subject of the report; or
    - (iii) who was sent a copy of the report under section 102(3A) of this Act.
- (3) The Commission shall state a case under subsection (1)(c) above if directed to do so by the Court of Session.

### **103C Hearings on special reports**

- (1) Subject to subsections (2) to (12) below, the procedure at a hearing held under section 103B(1)(b) of this Act shall be such as the Commission determines.
- (2) The Commission may, at any one hearing, consider—
- (a) allegations of blame, in connection with an item of account being contrary to law, against; and
  - (b) failures, negligence or misconduct by, more than one officer or member of a local authority.
- (3) A hearing shall be conducted by not fewer than three members of the Commission selected by the chairman of the Commission.
- (4) Notwithstanding paragraph 4(1) of Schedule 8 to this Act, for the purposes of this section, the quorum for a meeting of the Commission shall be three.
- (5) The following—
- (a) an officer or member—
    - (i) as to whom the question of blame in connection with an item of account being contrary to law is; or
    - (ii) whose alleged failure, negligence or misconduct is being considered by a hearing, is; and
  - (b) the local authority are, entitled to be heard at the hearing.
- (6) An officer or member entitled to be heard at a hearing shall be entitled to be heard either in person or represented by counsel or a solicitor or any other person.
- (7) The members of the Commission conducting a hearing may—
- (a) require any person, including officers or members or former officers or members of any local authority, to attend the hearing, give evidence and produce documents;

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(b) administer oaths.

- (8) A person shall not, however, be compelled to give any evidence or produce any documents which that person could not be compelled to give or produce in civil proceedings in the Court of Session.
- (9) A person who, without reasonable excuse, fails to comply with a requirement imposed under subsection (7)(a) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (10) The Commission may pay persons appearing at a hearing or attending it for the purpose of giving evidence or producing documents such expenses or allowances as it thinks fit.
- (11) A hearing shall be held in public unless the members of the Commission conducting it determine that it is in the public interest that it, or such part of it as they specify for the purposes of this subsection, be not so held.
- (12) In this section, “documents” includes information held by means of a computer or in any other electronic form.

### **103D Findings of hearings**

The members of the Commission conducting a hearing under section 103B(1) (b) of this Act shall state their findings in writing and give a copy to—

- (a) any officer or member of the local authority who is or was blamed in connection with an item of account being contrary to law or whose failure, negligence or misconduct, or alleged failure, negligence or misconduct, was a subject of the hearing;
- (b) the local authority;
- (c) any other person the Commission considers should, under this paragraph, receive such a copy; and
- (d) any other person seeking a copy of those findings who has paid the Commission’s reasonable charge for providing such a copy.

### **103E Action by local authorities on receipt of findings under section 103D**

- (1) A local authority receiving a copy of findings under section 103D of this Act shall consider those findings at a meeting of the authority within three months of receiving them or within such longer period as the Commission may specify in writing.
- (2) The duty imposed on a local authority by subsection (1) above shall be discharged only by that authority and not by a committee or sub-committee or an officer.
- (3) Where findings received by a local authority contain recommendations under section 103F(3)(b) of this Act, the authority shall decide—
  - (a) whether to accept any or all of those recommendations;
  - (b) what, if any, action to take in response to those recommendations.

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- (4) A meeting under subsection (1) above shall not be held unless, at least seven clear days before the meeting, there has been published, in a newspaper circulating in the area of the local authority concerned, a notice which—
- (a) states the time and place of the meeting;
  - (b) indicates that the meeting is to be held in order to consider the findings of the Commission and any recommendations in those findings; and
  - (c) describes the nature of those findings and of any such recommendations.
- (5) The local authority shall, as soon as practicable after that meeting—
- (a) notify the Commission of any decisions made in pursuance of subsection (3) above; and
  - (b) publish, in a newspaper circulating in the area of the local authority, a notice containing a summary, approved by the Commission, of any such decisions.
- (6) A notice under subsection (5)(b) above shall not need to summarise any decision made while the public were excluded from the meeting—
- (a) under section 50A(2) of this Act (confidential matters) or in pursuance of a resolution under section 50A(4) of this Act (exempt information); but
  - (b) in a case where sections 50C and 50D of this Act (availability for inspection after meetings of minutes, background papers and other documents) apply in relation to the meeting, shall indicate the documents which, in relation to that meeting, are open for inspection in accordance with those sections.
- (7) This section is without prejudice to any other duties (so far as they relate to the subject-matter of findings or recommendations sent to the authority) which are imposed by or under Part VII of this Act, section 5 of the Local Government and Housing Act 1989 (c.42) (functions of monitoring officers) or any other enactment.

### **103F Action on finding of failure, negligence or misconduct**

- (1) Where the members of the Commission conducting a hearing under section 103B(1)(b) of this Act find that—
- (a) any item of account is contrary to law;
  - (b) there has been a failure on the part of any person to bring into account any sum which ought to have been brought into account;
  - (c) any loss has been incurred or deficiency caused by the negligence or misconduct of any person or by the failure of the local authority to carry out any duty imposed on them by any enactment;
  - (d) any sum which ought to have been credited or debited to one account of the local authority has been credited or, as the case may be, debited to another account of the authority and the Commission are not satisfied that the authority has taken or is taking such steps as may be necessary to remedy the matter,
- they may, as appropriate, impose one of the sanctions specified in subsection (2) or make any of the recommendations in subsection (3) below.



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- (2) The sanctions which may be imposed under subsection (1) above are—
- (a) censuring, but otherwise taking no action against, an officer or member of the authority;
  - (b) suspending, for a period not exceeding one year, the entitlement of a member of a local authority to attend one or more but not all of the following—
    - (i) all meetings of the local authority;
    - (ii) all meetings of one or more committees or sub-committees of the local authority;
    - (iii) all meetings of any other body on which the member is a representative or nominee of the local authority;
  - (c) suspending, for a period not exceeding one year, the entitlement of a member of a local authority to attend meetings of the local authority and of any committee or sub-committee thereof and of any other body on which the member is a representative or nominee of the local authority;
  - (d) disqualifying a member of a local authority for a period not exceeding five years, from being, or from being nominated for election as, or from being elected, such a member.
- (3) In the case of a local authority, the Commission may—
- (a) make recommendations to the Scottish Ministers that they make an order directing the authority to make such rectification of their accounts as appears to the Commission necessary;
  - (b) include in its findings any recommendations arising from those findings which the Commission think fit.
- (4) A period of suspension imposed under subsection (2)(b) or (c) above which would continue until or after the day of the next following ordinary election of members shall end at the beginning of that day.
- (5) Disqualification imposed under subsection (2)(d) above—
- (a) has the effect of vacating the member's office; and
  - (b) extends to membership of committees and sub-committees of the local authority of which the member was a member and any joint committee, joint board or other body on which the member is a representative or nominee of the local authority.
- (6) The Commission shall, on making a recommendation under subsection (3)(a) above, forthwith send a copy of that recommendation to the local authority and to any person whom the Commission thinks fit.
- (7) Where the Commission make recommendations to the Scottish Ministers under subsection (3)(a) above, Ministers may make an order giving effect to any recommendation, with or without modifications, or may decline to make such an order.
- (8) A local authority shall give effect to any direction to them made in an order under subsection (7) above.

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### **103G Interim reports on investigations and action thereon**

- (1) The Controller of Audit may submit an interim report on an investigation being conducted by that Controller under section 102(3) of this Act.
- (2) On receiving an interim report, the Commission, if it is satisfied—
  - (a) that the further conduct of the investigation is likely to be prejudiced if the sanction mentioned in subsection (3) below is not imposed; or
  - (b) that otherwise it would be in the public interest to impose that sanction,then it may impose that sanction.
- (3) That sanction is suspending the member of the local authority whose alleged blame in connection with an item of account being contrary to law or whose alleged failure, negligence or misconduct was the subject of the interim report from the entitlement set out in section 103F(2)(c) of this Act for a period not exceeding three months.
- (4) The Commission shall not require to hold a hearing before proceeding to impose that sanction, but shall give the member an opportunity to make representations on the allegations of blame, failure, negligence or misconduct and on the interim report.
- (5) The Commission shall put its decision under this section in writing and shall give a copy to—
  - (a) the member;
  - (b) the authority; and
  - (c) any other person seeking a copy of the decision who has paid the Commission's reasonable charges for providing such a copy.
- (6) A period of suspension imposed under this section ends upon—
  - (a) the issue of findings under section 103D of this Act that the member was not to blame or has not failed, been negligent or been guilty of misconduct;
  - (b) the imposition of a sanction under section 103F of this Act or a decision not to impose such a sanction; or, as the case may be,
  - (c) a decision by the Commission under section 103B of this Act not to hold a hearing.
- (7) A period of suspension imposed under subsection (2) above which would continue until or after the day of the next following ordinary election of members ends at the beginning of that day.
- (8) If, however, the member is re-elected at that election, the Commission may re-impose the suspension.
- (9) The period for which suspension may be re-imposed under subsection (8) above is that for which it would have continued to apply but for subsection (7) above.
- (10) On the expiry (otherwise than by operation of subsection (6) or (7) above) of a period of suspension, it may be renewed by the Commission for a period

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not exceeding three months and a renewed period may likewise be further renewed.

- (11) Where, but for the suspension under this section, a member would be entitled to receive basic allowance and special responsibility allowance from the authority, the suspension shall not affect that entitlement; but nothing in this subsection authorises the payment or reimbursement of travelling, subsistence or other allowances or expenses.
- (12) In subsection (11) above, “basic allowance” and “special responsibility allowance” are the respective allowances referred to in section 18(1)(a) and (c) of the Local Government and Housing Act 1989 (c.42).

### **103H Protection from actions of defamation**

- (1) For the purposes of the law of defamation, any statement made by the Commission or any of its agents or staff of Audit Scotland provided for the Commission under section 10(3) of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) or by the Controller of Audit shall be absolutely privileged.
- (2) In subsection (1) above “statement” has the same meaning as in the Defamation Act 1996 (c.31).

### **103J Appeals from Commission**

- (1) An officer or member of a local authority—
  - (a) who is the subject of a finding under section 103F(1) of this Act;
  - (b) on whom a sanction under section 103F(2)(a), (b) or (c) of this Act has been imposed;
  - (c) who has been suspended under section 103G(2) of this Act,may appeal to the sheriff principal of the sheriffdom in which the authority has its principal office.
- (2) An appeal—
  - (a) under subsection (1)(a) above may be made on one or more of the following grounds—
    - (i) that the Commission’s finding was based on an error of law;
    - (ii) that there has been procedural impropriety in the conduct of any hearing held under section 103B(1)(b) of this Act;
    - (iii) that the Commission has acted unreasonably in the exercise of its discretion;
    - (iv) that the Commission’s finding was not supported by the facts found to be proved by the Commission;
  - (b) under subsection (1)(b) above may be made on one or more of the following grounds—
    - (i) that the sanction imposed was excessive;
    - (ii) that the Commission has acted unreasonably in the exercise of its discretion;
  - (c) under subsection (1)(c) above may be made only on the ground that the Commission has acted unreasonably in the exercise of its discretion.

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- (3) An appeal under subsection (1) above shall be lodged within 21 days of—
    - (a) the sending of the finding under section 103F(1) of this Act to the officer or member;
    - (b) the imposition of the sanction under section 103F(2) of this Act; or, as the case may be,
    - (c) the imposition of suspension under section 103G(2) of this Act.
  - (4) A finding made or sanction imposed by the Commission continues to have effect notwithstanding the lodging of an appeal under subsection (1) above.
  - (5) The sheriff principal may—
    - (a) in an appeal under subsection (1)(a) above—
      - (i) confirm the finding under section 103F(1) of this Act;
      - (ii) quash the finding;
      - (iii) quash the finding and remit the matter to the Commission to reconsider its decision;
    - (b) in an appeal under subsection (1)(b) above—
      - (i) confirm the sanction;
      - (ii) quash the sanction and either substitute a lesser sanction or remit the matter back to the Commission;
    - (c) in an appeal under subsection (1)(c) above, quash the suspension;
    - (d) award expenses.
  - (6) The decision of the sheriff principal under subsection (1) above is a final judgment for the purposes of section 28 (appeals to the Court of Session) of the Sheriff Courts (Scotland) Act 1907 (c.51).
  - (7) In an appeal from the sheriff principal by virtue of subsection (6) above, the Court of Session has the powers specified in subsection (5) above.
  - (8) The Commission may be a party to an appeal under subsection (1) above and in any appeal from the decision of the sheriff principal.”.
- (4) Section 104 (action by Scottish Ministers on recommendation by Commission) of that Act is repealed.

#### Commencement Information

**I3** S. 33 wholly in force at 1.1.2002; s. 33 not in force at Royal Assent see s. 37; s. 33 in force by S.S.I. 2001/474, arts. 2, 3 (subject to art. 4)

## PART 6

### TEACHING AND WELFARE OF CHILDREN

#### 34 Repeal of section 2A of Local Government Act 1986

Section 2A (prohibition on local authorities’ activities in connection with same-sex relationships) of the Local Government Act 1986 (c.10) is repealed.

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### 35 Councils' duties to children

- (1) It is the duty of a council, in the performance of those of its functions which relate principally to children, to have regard to—
  - (a) the value of stable family life in a child's development; and
  - (b) the need to ensure that the content of instruction provided in the performance of those functions is appropriate, having regard to each child's age, understanding and stage of development.

- (2) In this section—

“children” means persons of school age within the meaning of section 31 of the Education (Scotland) Act 1980 (c.44) and “child's” in subsection (1)(b) is to be construed accordingly;

“council” has the same meaning as in Parts 1 and 2 of this Act.

## PART 7

### GENERAL AND MISCELLANEOUS PROVISIONS RELATING TO PARTS 1 TO 6

### 36 Other repeals

- (1) The enactments specified in the left hand column of schedule 4 to this Act are repealed to the extent specified in the right hand column.
- (2) The repeal of section 39 (meaning of pecuniary interests) of the Local Government (Scotland) Act 1973 (c.65) does not, however, extend to that section as it has effect for the purposes of section 68(1) (disclosure by local government officers of their pecuniary interests) of that Act.

#### Commencement Information

- I4** S. 36 wholly in force at 1.5.2003; s. 36 not in force at Royal Assent, see s. 37(2); s. 36(1) in force for specified purposes at 29.3.2001 by S.S.I. 2001/113, art. 2(c); s. 36 in force so far as not already in force at 1.5.2003 by S.S.I. 2003/74, art. 2(2)(e)

### 37 Short title, commencement and transitional provision

- (1) This Act may be cited as the Ethical Standards in Public Life etc. (Scotland) Act 2000.
- (2) This Act (other than this section) comes into force on such day as Ministers may by order made by statutory instrument appoint; and different days may be so appointed for different purposes.
- (3) An order under subsection (2) above may include such transitional provisions and savings as appear to Ministers to be necessary or expedient in connection with the provisions brought into force by the order.

#### Subordinate Legislation Made

- P1** S. 37(2) power partly exercised: 1.1.2002 appointed for specific provision by S.S.I. 2001/474, arts. 2, 3, (subject to art. 4)

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| <b>P2</b> | S. 37(2) power partly exercised: 29.3.2001 appointed for specified provisions by <a href="#">S.S.I. 2001/113</a> , <a href="#">art. 2</a>  |
| <b>P3</b> | S. 37(2) power partly exercised: 21.2.3003 appointed for specified provisions and purposes by <a href="#">{S.S.I. 2003/74}</a> , art. 2(1) |
| <b>P4</b> | S. 37(2) power fully exercised: 1.5.2003 appointed for remaining provisions by <a href="#">{S.S.I. 2003/74}</a> , art. 2                   |

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## SCHEDULE 1

(introduced by section 8)

### THE STANDARDS COMMISSION FOR SCOTLAND

#### Status

- 1 (1) The Commission shall be a body corporate.
- (2) It shall not be regarded as the servant or agent of the Crown or have any status, immunity or privilege of the Crown, nor shall its members and employees be regarded as civil servants nor its property as property of or held on behalf of the Crown.

#### General powers

- 2 (1) The Commission may do such things and enter into such transactions as are calculated to facilitate, or are incidental or conducive to, the exercise of —
  - (a) its functions; or
  - (b) the functions of the Chief Investigating Officer.
- (2) The power under sub-paragraph (1)(a) above includes in particular power to acquire and dispose of land.

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#### Location of office

- [<sup>F1</sup>2A The Commission shall comply with any direction given by the Parliamentary corporation as to the location of the Commission's office.]

#### Textual Amendments

- F1** Sch. 1 para. 2A inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), ss. 29(2), 31(5), **sch. 2 para. 6** (with s. 31(6), sch. 7)

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#### Sharing of premises, staff, services and other resources

- [<sup>F2</sup>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.]

#### Textual Amendments

- F2** Sch. 1 para. 2B inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), ss. 29(2), 31(5), **sch. 2 para. 6** (with s. 31(6), sch. 7)

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### *Disqualification*

- 3 A person is disqualified from being appointed as, or from being, a member of the Commission if the person is disqualified under any enactment, including this Act, from being elected, or being, a councillor or under this Act from being a member of any devolved public body or the Water Industry Commissioner for Scotland.

### *Convener*

- 4 Ministers shall appoint one member of the Commission as its convener.

### *Tenure of office*

- 5 (1) The appointment of the convener and members of the Commission shall be on such terms and conditions as Ministers determine.
- (2) Subject to the provisions of this paragraph, a person holds and vacates office as the convener or a member of the Commission in accordance with the terms of appointment of that person.
- (3) The convener or a member may at any time resign his office by notice in writing addressed to the Ministers.
- (4) Ministers may remove the convener or a member from office if they consider—
- (a) that the convener or member is unable or unfit to discharge the functions of office; or
  - (b) that the convener or member has not complied with the terms of appointment of that person.
- (5) The convener, if ceasing to be a member of the Commission, also ceases to be convener.
- (6) A person who ceases, otherwise than by virtue of sub-paragraph (3) above, to be the convener or a member of the Commission is eligible for reappointment.

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### *Subsequent appointments etc.*

- [<sup>F3</sup>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, 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



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- (b) ends on the expiry of the financial year following the one in which it started.]

#### Textual Amendments

- F3** Sch. 1 para. 5A inserted (1.4.2011) by Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11), ss. 29(2), 31(5), **sch. 2 para. 9** (with s. 31(6), sch. 7)

#### Remuneration and allowances

- 6 The Commission may pay the convener and other members of the Commission such remuneration or allowances (if any) as Ministers may determine.

#### Employees

- 7 (1) The Commission shall appoint such staff as it considers necessary for the purpose of enabling it and the Chief Investigating Officer and other persons appointed under section 9 of this Act to exercise their respective functions.
- (2) It shall pay to the members of its staff so appointed (referred to in this paragraph as “employees”) such remuneration and allowances as Ministers may determine.
- (3) Its employees shall be appointed on such other terms and conditions of service as it thinks fit.
- (4) It shall—
- (a) pay such pensions, allowances or gratuities to or in respect of any persons who have been or are employees as Ministers may determine; and
  - (b) make such payments as Ministers may determine towards the provision of pensions, allowances or gratuities to or in respect of any such persons.
- (5) References in sub-paragraph (4) above to pensions, allowances or gratuities to or in respect of any such persons as are mentioned in that sub-paragraph include pensions, allowances or gratuities by way of compensation to or in respect of any employees of the Commission who suffer loss of office or employment.

#### Chief Investigating Officer

- 8 (1) The Commission shall pay to the Chief Investigating Officer and such persons appointed by him under section 9 such remuneration and allowances as Ministers may determine.
- (2) It shall—
- (a) pay such pensions, allowances or gratuities to or in respect of such persons who are or have held the office of Chief Investigating Officer or are or have been employees of the Chief Investigating Officer as Ministers may determine; and
  - (b) make such payments as Ministers may determine toward the provision of pensions, allowances or gratuities to or in respect of any such persons.
- (3) References in sub-paragraph (2) above to pensions, allowances or gratuities to or in respect of any such persons as are mentioned in that sub-paragraph include pensions, allowances or gratuities by way of compensation to or in respect of any

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Chief Investigating Officer or employees of that Officer who suffer loss of office or employment.

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*Advisers and other services*

- [<sup>F4</sup>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.]

**Textual Amendments**

- F4** Sch. 1 para. 8A inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), ss. 29(2), 31(5), **sch. 2 para. 12** (with s. 31(6), sch. 7)

*Proceedings*

- 9 (1) The Commission may regulate its own procedure (and in particular may specify a quorum for meetings).
- (2) The validity of its proceedings is not affected—
- (a) by any vacancy among its members or in the office of its convener;
  - (b) by any defect in the appointment of any person as convener or member; or
  - (c) by a contravention of paragraph 4 above or 10 below.

*Members' interests*

- 10 Any member of the Commission who is directly or indirectly interested in any matter being considered at a meeting of the Commission—
- (a) must disclose the nature of that interest to the meeting; and
  - (b) must not take part in any deliberation or decision of the Commission with respect to that matter.

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*Strategic plans*

- [<sup>F5</sup>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;

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- (b) how the Commission 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 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.]

#### Textual Amendments

- F5** Sch. 1 para. 10A inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), ss. 29(2), 31(5), [sch. 2 para. 13](#) (with s. 31(6), sch. 7)

VALID FROM 01/04/2011

#### *Accountable officer*

- [<sup>F6</sup>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).

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- (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
  - (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).]

#### Textual Amendments

- F6** Sch. 1 paras. 10B-10E inserted (1.8.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(3), [sch. 2 para. 14](#) (with s. 31(6), sch. 7)

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#### *Budget*

- [<sup>F7</sup>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).]

#### Textual Amendments

- F7** Sch. 1 paras. 10B-10E inserted (1.8.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(3), [sch. 2 para. 14](#) (with s. 31(6), sch. 7)

VALID FROM 01/04/2011

#### *Commission's expenses and liabilities*

- [<sup>F8</sup>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).

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- (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.]

#### Textual Amendments

**F8** Sch. 1 paras. 10B-10E inserted (1.8.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(3), [sch. 2 para. 14](#) (with s. 31(6), sch. 7)

VALID FROM 01/04/2011

#### *Accounts and audit*

- [<sup>F9</sup>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.]

#### Textual Amendments

**F9** Sch. 1 paras. 10B-10E inserted (1.8.2010 for specified purposes, 1.4.2011 in so far as not already in force) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(3), [sch. 2 para. 14](#) (with s. 31(6), sch. 7)

VALID FROM 01/04/2011

#### *Annual reports*

- [<sup>F10</sup>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.

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- (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.]

#### Textual Amendments

**F10** Sch. 1 para. 10F inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), ss. 29(2), 31(5), [sch. 2 para. 16](#) (with s. 31(6), sch. 7)

#### Expenses

- 11 The expenditure of the Commission shall be paid by Ministers.

## SCHEDULE 2

*(introduced by section 9)*

### CHIEF INVESTIGATING OFFICER

#### Appointment

- 1 (1) The Chief Investigating Officer’s appointment shall be on such terms and conditions as Ministers determine.
- (2) Those terms and conditions may include arrangements for the payment of pensions, allowances or gratuities to, or in respect of, persons who have ceased to hold office as Chief Investigating Officer.

#### Staff

- 2 (1) The Chief Investigating Officer may, with the consent of Ministers as to numbers, terms and conditions, appoint staff.
- (2) The Chief Investigating Officer may make arrangements for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to be a member of staff of the Chief Investigating Officer and may, in particular—
- (a) make contributions or payments towards provision for such pensions, gratuities or allowances; and
  - (b) establish and administer one or more pension schemes.
- (3) Arrangements under sub-paragraph (2) are subject to the approval of Ministers.

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### Status

- 3 The Chief Investigating Officer and that Officer's staff shall not to be regarded as servants or agents of the Crown or have any status, immunity or privilege of the Crown.

## SCHEDULE 3

(introduced by section 28)

### DEVOLVED PUBLIC BODIES

The Accounts Commission for Scotland

The Royal Commission on the Ancient and Historical Monuments of Scotland

The controlling body of an area tourist board established under section 172 of the Local Government etc. (Scotland) Act 1994 (c.39)

The Clinical Standards Board for Scotland

The Common Services Agency for the Scottish Health Service, constituted under section 10 of the National Health Service (Scotland) Act 1978 (c.29)

The Crofters Commission

The Deer Commission for Scotland

The board of management within the meaning of subsection (1) of section 36 of the Further and Higher Education (Scotland) Act 1992 (c.37) of a college of further education within the meaning of that subsection

A health board, constituted under section 2 of the National Health Service (Scotland) Act 1978 (c.29)

Health Education Board for Scotland

The Health Technology Board for Scotland

Highlands and Islands Enterprise

The Mental Welfare Commission for Scotland

The Board of Trustees for the National Galleries of Scotland, established under section 3 of the National Galleries of Scotland Act 1906 (c.50)

A National Health Service trust

The Trustees of the National Library of Scotland, constituted under section 1 of the National Library of Scotland Act 1925 (c.73)

The Board of Trustees of the National Museums of Scotland

The Parole Board for Scotland

The Board of Trustees of the Royal Botanic Garden, Edinburgh

Scottish Agricultural Wages Board

Scottish Ambulance Service Board

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The Scottish Arts Council

Scottish Children’s Reporter Administration

The Scottish Conveyancing and Executry Services Board

The Scottish Council for Post Graduate Medical and Dental Education

The Scottish Criminal Cases Review Commission

Scottish Enterprise

The Scottish Environment Protection Agency

The Scottish Further Education Funding Council

The Scottish Higher Education Funding Council

Scottish Homes

Scottish Hospital Endowments Research Trust, constituted under section 12 of the National Health Service (Scotland) Act 1978 (c.29)

The Scottish Legal Aid Board

The Scottish Medical Practices Committee, constituted under section 3 of the National Health Service (Scotland) Act 1978 (c.29)

Scottish Natural Heritage

The Scottish Qualifications Authority

The Scottish Sports Council

The Scottish Tourist Board

[<sup>F11</sup>Scottish Water]

#### Textual Amendments

**F11** Sch. 3: entry inserted (1.4.2002) by [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), s. 71(2), **sch. 7 para. 28(b)** (with s. 67); [S.S.I. 2002/118](#), **art. 2(3)**

The State Hospitals Board for Scotland

## SCHEDULE 4

(introduced by section 36)

### REPEALS

#### Commencement Information

**I5** [Sch. 4](#) wholly in force at 1.5.2003; [Sch. 4](#) not in force at Royal Assent, see s. 37(2); [Sch. 4](#) in force for specified purposes at 29.3.2001 by [S.S.I. 2001/113](#), **art. 2(d)**; [Sch. 4](#) in force insofar as not already in force at 1.5.2003 by [S.S.I. 2003/74](#), **art. 2(2)(e)**



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<i><b>Enactment</b></i>	<i><b>Extent of repeal</b></i>
Local Government (Scotland) Act 1973 (c.65)	Sections 38 to 42.
	Section 60.
Local Government (Scotland) Act 1975 (c.30)	In section 28, subsection (3), the words “except where subsection (3A) below applies”; and subsection (3A).
Local Government and Planning (Scotland) Act 1982 (c.43)	In Schedule 3, paragraph 14.
Financial Services Act 1986 (c.60)	In Schedule 16, paragraph 9.
Local Government Act 1988 (c.9)	Section 28.
Local Government and Housing Act 1989 (c.42)	Section 19.
	Section 32(2).
	In Schedule 6, paragraph 23.
	In Schedule 11, paragraph 33.
Local Government Finance Act 1992 (c.14)	In Schedule 13, paragraph 35.
Local Government etc. (Scotland) Act 1994 (c.39)	In Schedule 13, paragraphs 92(9) and 161(9).

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