



Freedom of Information (Scotland) Act 2002 2002 asp 13

PART 3

THE SCOTTISH INFORMATION COMMISSIONER

42 The Scottish Information Commissioner

- (1) For the purposes of this Act there is to be an officer known as the Scottish Information Commissioner (in this Act referred to as the “Commissioner”) who is to be an individual appointed by Her Majesty on the nomination of the Parliament.
- (2) The Commissioner is entitled to—
 - (a) a salary of such amount; and
 - (b) such allowances,as the Parliamentary corporation may determine.
- (3) Subject to subsection (4), the Commissioner is to hold office for such period not exceeding five years as the Parliamentary corporation, at the time of appointment, may determine.
- (4) The Commissioner—
 - (a) may be relieved of office by Her Majesty at that officer’s request;
 - (b) ^{F1}.....
 - (c) may be removed from office by Her Majesty in pursuance of a resolution of the Parliament, which, if passed on a division, must be voted for by the number of members equivalent to not less than two thirds of the total number of seats for members of the Parliament; and
 - (d) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine.
- (5) A person whose term of office as Commissioner expires ^{F2}. . . is eligible for re-appointment; but re-appointment for a third term is competent only if, by reason of special circumstances, such re-appointment is desirable in the public interest.

Status: Point in time view as at 01/10/2006.

Changes to legislation: Freedom of Information (Scotland) Act 2002, Part 3 is up to date with all changes known to be in force on or before 06 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) The validity of any actings of the Commissioner is not affected by a defect in the nomination by the Parliament for that officer's appointment.
- (7) The Commissioner, in the exercise of that officer's functions (except the function of preparing accounts), is not subject to the direction or control of the Parliamentary corporation, of any member of the Scottish Executive or of the Parliament; but this subsection is without prejudice to paragraph 3(4) of schedule 2.
- (8) Where the office of Commissioner is vacant, the Parliamentary corporation may appoint a person (who may or may not be a member of the Commissioner's staff) to discharge the functions of that office until a new Commissioner is appointed.
- (9) A person appointed under subsection (8)—
- (a) may be relieved of that appointment at that person's request;
 - (b) may be removed from office by the Parliamentary corporation by notice in writing given by it;
 - (c) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine; and
 - (d) while holding that appointment, is to be treated for all purposes, except those of subsections (1) to (6) and those of paragraph 2 of schedule 2, as the Commissioner.
- (10) Any function of the Commissioner may be exercised on behalf of that officer by any person (whether or not a member of that officer's staff) authorised by the Commissioner to do so (and to the extent so authorised).
- (11) The Parliamentary corporation is to pay—
- (a) the salary and allowances of the Commissioner;
 - (b) any expenses incurred by that officer in the exercise of functions under this Act; and
 - (c) any sums payable by virtue of subsection (9)(a) to (c) to, or in respect of, a person who—
 - (i) is appointed under subsection (8); or
 - (ii) has ceased to hold office by virtue of having been so appointed.
- (12) Schedule 2 to this Act has effect with respect to the Commissioner.

Textual Amendments

- F1** S. 42(4)(b) repealed (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 49(2), [Sch. 9](#) (with [regs. 44-46](#)).
- F2** Words in brackets in s. 42(5) repealed (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 49(2), [Sch. 9](#) (with [regs. 44-46](#))

43 General functions of Commissioner

- (1) The Commissioner, with a view in particular to promoting the observance by Scottish public authorities of the provisions of—
- (a) this Act; and
 - (b) the codes of practice issued under sections 60 and 61,
- is to promote the following of good practice by those authorities.

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- (2) The Commissioner—
 - (a) must determine what information it is expedient to give the public concerning the following matters—
 - (i) the operation of this Act;
 - (ii) good practice;
 - (iii) other matters within the scope of that officer’s functions,and must secure the dissemination of that information in an appropriate form and manner; and
 - (b) may give advice to any person as to any of those matters.
- (3) The Commissioner may assess whether a Scottish public authority is following good practice.
- (4) The Commissioner may from time to time make proposals to the Scottish Ministers for the exercise by them of their functions under sections 4 and 5 of this Act.
- (5) The Commissioner may determine and charge sums for services provided under this section.
- (6) Any sum received by the Commissioner by virtue of subsection (5) is to be retained by that officer and applied to meet expenditure incurred in respect of the services so provided.
- (7) The Commissioner must from time to time consult the Keeper of the Records of Scotland about the promotion under subsection (1) of the observance by Scottish public authorities of the provisions of the code of practice issued under section 61.
- (8) In this section “good practice”, in relation to a Scottish public authority, means such practice in the discharge of its functions under this Act as appears to the Commissioner to be desirable, and includes (but is not limited to) compliance with the requirements of this Act and the provisions of the codes of practice issued under sections 60 and 61.

Modifications etc. (not altering text)

C1 S. 43(1)-(3)(5)-(8) applied (with modifications) (1.1.2005) by [The Environmental Information \(Scotland\) Regulations 2004 \(S.S.I. 2004/520\)](#), **reg. 18(5)(6)** (with **reg. 3**)

44 Recommendations as to good practice

- (1) If it appears to the Commissioner that the practice of a Scottish public authority in relation to the exercise of its functions under this Act does not conform with the code of practice issued under section 60 or 61, the Commissioner may give the authority a recommendation (in this Act referred to as a “practice recommendation”).
- (2) A practice recommendation must—
 - (a) be in writing and specify the code and the provisions of that code with which, in the Commissioner’s opinion, the authority’s practice does not conform; and
 - (b) specify the steps which that officer considers the authority ought to take in order to conform.

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- (3) The Commissioner must consult the Keeper of the Records of Scotland before giving a practice recommendation to a Scottish public authority (other than the Keeper) in relation to conformity with the code of practice issued under section 61.

Modifications etc. (not altering text)

- C2** S. 44 applied (with modifications) (1.1.2005) by [The Environmental Information \(Scotland\) Regulations 2004 \(S.S.I. 2004/520\)](#), [reg 18\(5\)\(6\)](#) (with [reg. 3](#))

45 Confidentiality of information obtained by or furnished to Commissioner

- (1) A person who is or has been the Commissioner, a member of the Commissioner's staff or an agent of the Commissioner must not disclose any information which—
- (a) has been obtained by, or furnished to, the Commissioner under or for the purposes of this Act; and
 - (b) is not at the time of the disclosure, and has not previously been, available to the public from another source,
- unless the disclosure is made with lawful authority.
- (2) For the purposes of subsection (1), disclosure is made with lawful authority only if, and to the extent that—
- (a) the disclosure is made with the consent of the person from whom the information was so obtained or by whom it was so furnished;
 - (b) the information was provided for the purpose of its being made available to the public (in whatever manner) under a provision of this Act;
 - (c) the disclosure is made for the purpose of, and is necessary for, the discharge of—
 - (i) a function under this Act; or
 - (ii) a Community obligation;
 - (d) the disclosure is made for the purpose of proceedings, whether criminal or civil and whether arising under, or by virtue of, this Act or otherwise; or
 - (e) either—
 - (i) in a case where the person mentioned in paragraph (a) is a Scottish public authority, had that person received on the day of disclosure a request for the information that person; or
 - (ii) in any other case, had the Commissioner received on that day such a request the Commissioner,

would, by virtue of section 1(1), have been under an obligation to give it.
- (3) A person who knowingly or recklessly discloses information in contravention of subsection (1) is guilty of an offence.
- (4) A person guilty of an offence under subsection (3) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
 - (b) on conviction on indictment, to a fine.

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Modifications etc. (not altering text)

- C3** S. 45 applied (with modifications) (1.1.2005) by [The Environmental Information \(Scotland\) Regulations 2004 \(S.S.I. 2004/520\)](#), **reg 18(5)(6)** (with reg. 3)

46 Laying of reports

- (1) The Commissioner must lay annually before the Parliament a general report on the exercise of the functions conferred on that officer under this Act.
- (2) The report mentioned in subsection (1) (without prejudice to the generality of that subsection) must record the number of occasions, during the period covered by the report, on which the Commissioner failed to reach a decision on an application under section 47(1) (being an application on which a decision fell to be made) within the period of four months specified in section 49(3)(b).
- (3) The Commissioner may from time to time lay before the Parliament such other reports with respect to the functions conferred on that officer under this Act as that officer thinks fit.

Modifications etc. (not altering text)

- C4** S. 46 applied (with modifications) (1.1.2005) by [The Environmental Information \(Scotland\) Regulations 2004 \(S.S.I. 2004/520\)](#), **reg 18(5)(6)** (with reg. 3)

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