

SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 11 – Withdrawal of a complaint

70. Subsection (1) allows the complainer to withdraw a complaint while it is still with the Commissioner. A notice to the Commissioner withdrawing a complaint must be in writing and be signed by the complainer..
71. When a complaint is withdrawn during Stage 1 of the investigation process, subsection (2) requires that the Commissioner stop the investigation and inform the Standards Committee that the complaint has been withdrawn and of any reasons given for withdrawal.
72. When a complaint is withdrawn during Stage 2 of the investigation process subsections (3) to (6) set out the procedure to be followed. Under subsection (3) the Commissioner must inform the member concerned of withdrawal and of any reasons given. The member is invited to comment on whether the investigation should continue. For example, the member may wish the investigation to continue in the expectation that the report of the investigation will exonerate him or her in relation to a damaging allegation.
73. The Commissioner can recommend to the Standards Committee that an investigation should continue despite withdrawal of the complaint at Stage 2. Before deciding whether or not to do so the Commissioner is required to take into account any relevant information. This might include, for example, information obtained in the course of an investigation. The Commissioner is specifically required to take into account the reasons given by the complainer for withdrawal of the complaint and the views of the member concerned.
74. Subsection (4) applies where the Commissioner decides not to recommend that the investigation of a withdrawn complaint should continue. In such circumstances, the Commissioner stops the investigation and informs the member and the complainer. The Commissioner is also required to report to the Standards Committee that the investigation into the complaint has ceased and the reasons given for withdrawal of the complaint.
75. Under subsection (5), when the Commissioner recommends that the investigation into a withdrawn complaint should continue, a report is made to the Standards Committee. That report must set out the fact that the complaint has been withdrawn, the reasons given for the withdrawal of the complaint by the complainer, any views expressed by the member as to whether the investigation should continue and the reasons for the Commissioner's recommendation.
76. When the Standards Committee receives a report recommending continuation of the investigation they are, under subsection (6), required to give the Commissioner a direction as to whether or not to continue the investigation. The Commissioner is

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

required to comply with the direction and to inform the member and complainer of the decision.

77. Subsection (7) makes it clear that where the Commissioner is required set out the reasons given by a complainer for a withdrawing a complaint, the reasons may be summarised.