

SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3 – Functions of the Commissioner

27. **Section 3** sets out the general functions of the Commissioner and delimits the extent of the role.
28. Under subsection (1)(a), the Commissioner is required on receipt of a complaint to investigate whether a member of the Parliament has committed the conduct complained of and whether the relevant provisions cover that conduct. Investigation is restricted to the conduct complained of and the Act does not allow the Commissioner to investigate any other conduct without a specific complaint. This provision ensures that the Commissioner’s role is limited to complaints that are made direct to him or her. For example, in the absence of a specific complaint, the Commissioner would not be able to investigate an allegation that had appeared in the press.
29. The term “member of the Parliament” is defined in section 20 of the Act. The definition makes clear that the Commissioner can investigate complaints about former members of Parliament in relation to conduct that took place when they were members. In addition the definition includes Scottish Law Officers and former Scottish Law Officers if they are not members of the Parliament. The Scottish Law Officers are the Lord Advocate and the Solicitor General for Scotland. Under Rule 4.5 of the standing orders, the Scottish Law Officers (if not MSPs) may participate in any of the proceedings of the Parliament but are not entitled to vote. This is also consistent with article 2(1) of the Members’ Interests Order that defines a member as including the Scottish Law Officers.
30. The Act uses the term “relevant provisions” to cover the range of measures with which a member of the Parliament must comply and these are set out in subsection (3). The 4th Report recommended that all complaints were to be referred to the Commissioner with the exception of those which are currently required under sections 10.2.13 to 10.2.17 of the Code of Conduct to be referred to the Presiding Officer, the SPCB or the Parliament’s Personnel Office. This includes, for example, complaints about a member’s treatment of a member of the Parliament’s staff. This aspect of the 4th Report is dealt with by subsection (2) which allows the standing orders or the Code of Conduct to specify classes of complaints that are to be excluded from the investigation powers of the Commissioner. However, the excluded complaints may still be investigated by the Commissioner subsequently, if the Standards Committee considers this to be appropriate and makes a direction to this effect under section 12. Subsection (2) therefore ensures that the exclusion of such complaints from the Commissioner’s jurisdiction is subject to any such direction.
31. On completion of an investigation the Commissioner is required under subsection (1) (b) to report the findings to the Standards Committee.

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

32. It is for standing orders to set out the means by which the Commissioner reports to the Parliament. If the model of the 4th Report is followed, standing orders will require the report to be made to the Standards Committee before the Parliament considers the matter although there could be instances where this is not appropriate, if for example the complaint concerned a member of the Standards Committee.
33. The relevant provisions covering the approach members are required to take to their duties are set out in subsection (3). At present these are the provisions contained in standing orders, the Code of Conduct and the Members' Interests Order. Provision is also made for any ASP subsequently passed in relation to Members' Interests to be covered. This subsection also makes it clear that the Commissioner considers the member's conduct with reference to the relevant provision that was in force at the time of the conduct. In other words, any amendments subsequent to the conduct would be ignored by the Commissioner.
34. Subsection (4) gives the Act retrospective effect in relation to the time when the conduct complained about takes place. A retrospective provision is necessary to ensure the smooth transition of investigations from the current arrangements to those under the Act. For example, a complaint made after the Act comes into force but concerning matters that are alleged to have occurred prior to the coming into force of the Act will be for the Commissioner to investigate under the provisions of the Act.
35. The Commissioner may give advice on the procedure for making a complaint (subsection (5)) but is prevented by subsection (6) from giving advice to a member of the Parliament or to a member of the public in relation to whether any proposed or previous conduct would constitute a breach of the relevant provisions. The clerks to the Standards Committee currently provide advice in this regard and will continue to be available after the Commissioner takes up office. This latter provision is designed to avoid the Commissioner having to investigate conduct upon which he or she might previously have expressed an opinion. Subsection (6)(b) also prevents the Commissioner, except within the context of an investigation, from commenting upon any of the relevant provisions. This prevents the Commissioner from making comments generally on the relevant provisions except where there has been an investigation involving those provisions. In such a case, it may be appropriate for the Commissioner to raise matters of principle, e.g. if he or she considers that the particular provisions in question are ambiguous or lacking in clarity.
36. Subsection (7) makes clear that the Commissioner has to undertake all other functions imposed by the Act or by directions made under the Act and also allows for standing orders to impose other functions.