

SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 5 – General provisions relating to an investigation into a complaint

40. The investigation by the Commissioner falls into two possible and distinct stages as set out in subsection (1). The first stage is concerned with an investigation and determination into admissibility and the criteria or tests to be met are given in the Act at section 6. At Stage 2 the Commissioner carries out further investigations into the complaint before reporting to the Standards Committee and the criteria for this is set out in section 8.
41. Subsection (2) provides that the investigation by the Commissioner shall be conducted in private. Section 10.2.1 of the Code of Conduct already provides that MSPs should not communicate any complaint to the press or other media until a decision has been made as to how the complaint is to be dealt with. Following upon a report by the Commissioner to the Standards Committee at the conclusion of Stage 2 the normal rules as set out in the standing orders governing meetings of the Parliament and committee meetings will apply. Rule 15.1 requires a committee meeting to be held in public unless the committee otherwise decides. The 4th Report envisaged that the Standards Committee would normally consider the Commissioner's report and the member's response in private in order to ensure the privacy of any further investigation by the Commissioner into the complaint. The 4th Report also envisaged that any hearing at which the member appears before the Committee would be in public unless special circumstances applied and that the committee's decision would be made in public.
42. Provision is made in subsection (3) for the Commissioner to make a report to the Standards Committee at any time as to the progress of an investigation. This provision could be utilised for example where an investigation was likely to take a lengthy period of time to conclude. The Standards Committee can also request a report on the progress of an investigation from the Commissioner. This could be used for example if the committee had concerns regarding the progress of an investigation or if there had been publicity about the complaint.
43. Subsection (4) provides that it is for the Commissioner to decide when and how to carry out an investigation. This subsection is subject to the provisions of the Act, in particular to the procedure which the Commissioner must follow during the 2 stages in undertaking an investigation, and the requirement on the Commissioner to comply with directions given under sections 4, 7(5) or 7(6).