



# Scottish Parliamentary Standards Commissioner Act 2002

2002 asp 16

*The Scottish Parliamentary Standards Commissioner*

## **3 Functions of the Commissioner**

- (1) Subject to the provisions of this Act, where a complaint has been made to the [<sup>F1</sup>[<sup>F2</sup>Commissioner for Ethical Standards in Public Life in Scotland] (the “Commissioner”)] about the conduct of a member of the Parliament, it shall be the function of the Commissioner to—
    - (a) investigate whether the member has committed the conduct complained about and has, as a result of that conduct, breached a relevant provision; and
    - (b) report upon the outcome of that investigation to the Parliament.
  - (2) However, subject to section 12, the Commissioner shall not investigate any complaint which falls within a class of complaint which is excluded from the jurisdiction of the Commissioner by any provision in the standing orders or in the Code of Conduct; and any such complaint is referred to in this Act as an “excluded complaint”.
  - (3) A “relevant provision” is any provision in force [<sup>F3</sup>, or treated as having been in force under subsection (4A),] at the relevant time—
    - (a) in the standing orders;
    - (b) in the Code of Conduct;
    - (c) in the Scotland Act 1998 (Transitory and Transitional Provisions) (Members’ Interests) Order 1999 (S.I. 1999/1350); or
    - (d) made by or under an Act of the Scottish Parliament in pursuance of section 39 (members’ interests) of the Scotland Act.
  - (4) The “relevant time” is the time when the conduct in question is alleged to have taken place, whether before or after this section comes into force.
- [<sup>F4</sup>(4A) For the purpose of subsection (3), paragraphs 5 and 6 of section 7 of the Code of Conduct of 7 January 2020 are, to the extent that they relate to sexual harassment by a member of the Parliament of that member's own staff, to be treated as having come into force on 24 February 2000 with the first edition of the Code of Conduct.]

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*Changes to legislation:* There are currently no known outstanding effects for the Scottish Parliamentary Standards Commissioner Act 2002, Section 3. (See end of Document for details)

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- (5) The Commissioner may give advice to a member of the Parliament or to a member of the public about the procedures for making a complaint to the Commissioner and the procedures following upon the making of such a complaint.
- (6) However, the Commissioner shall not—
- (a) give advice to a member of the Parliament or to a member of the public as to whether any conduct which has been, or is proposed to be, committed by a member of the Parliament (whether or not the member seeking such advice) would constitute a breach of a relevant provision; or
  - (b) otherwise express any view upon any of the relevant provisions except in the context of an investigation in any particular case or in a report upon the outcome of that investigation or in such other circumstances as may be specified in any direction given to the Commissioner by the Parliament.
- (7) In addition to the functions mentioned in subsections (1) and (5), the Commissioner also has the functions which are conferred or imposed upon the Commissioner by virtue of any other provision in this Act or in any other enactment or in the standing orders.

#### Textual Amendments

- F1** Words in s. 3(1) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [Sch. 1 para. 12](#) (with s. 31(6), Sch. 7)
- F2** Words in s. 3(1) substituted (1.7.2013) by [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, [Sch. 2 para. 12](#) (with Sch. 4 para. 3)
- F3** Words in s. 3(3) inserted (21.10.2021) by [Scottish Parliamentary Standards \(Sexual Harassment and Complaints Process\) Act 2021 \(asp 12\)](#), [ss. 1\(2\)\(a\)](#), 4(2) (with s. 4(3))
- F4** [S. 3\(4A\)](#) inserted (21.10.2021) by [Scottish Parliamentary Standards \(Sexual Harassment and Complaints Process\) Act 2021 \(asp 12\)](#), [ss. 1\(2\)\(b\)](#), 4(2) (with s. 4(3))

**Changes to legislation:**

There are currently no known outstanding effects for the Scottish Parliamentary Standards Commissioner Act 2002, Section 3.