

*These notes relate to the Commissioner for Children and Young People (Scotland) Act 2003 (asp 17) which received Royal Assent on 1 May 2003*

# COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2003

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 1: The Commissioner for Children and Young People in Scotland*

69. [Schedule 1](#) makes detailed provision concerning the status, independence, remuneration, terms of appointment and general powers of the Commissioner. It also makes detailed provision in relation to various matters of an administrative nature.
70. [Paragraph 1](#) of the schedule makes it clear that the Commissioner is not to be regarded as a servant or agent of the Crown and that the Commissioner's property is not to be regarded as property of the Crown. This is necessary because the Commissioner is appointed by the Queen. This has legal implications in relation to immunities which are applied to servants or agents of the Crown and also in relation to particular statutory provisions which relate to Crown property.
71. Under paragraph 4, the Scottish Parliamentary Corporate Body (SPCB) sets the salary and allowances of the Commissioner, and any other terms of the appointment. It will be for the SPCB alone to decide whether the Commissioner should hold any other office or appointment. For example, the SPCB may consider a situation where an appointment would prevent the Commissioner from fulfilling what is expected to be a full time post as being inappropriate for the Commissioner. There may also be instances when an appointment might be seen to compromise the independence of the Commissioner. For example, this could arise if the Commissioner were to become an office-holder of a service provider which he or she would be able to investigate.
72. [Paragraph 6](#) vests a general power in the Commissioner that is ancillary to the Commissioner's main functions, which are detailed from section 4 onwards. This is to ensure that the Commissioner is able to carry out his or her functions effectively.
73. Under paragraph 7, the Commissioner can appoint any number of staff and determine the terms of their appointment with the approval of the SPCB.
74. [Paragraph 12](#) allows for the appointment of an acting Commissioner where the office of Commissioner is vacant or where the Commissioner is unable to act for whatever reason. The same eligibility requirements must be met as for the Commissioner.