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## SCHEDULE 1

(introduced by section 1(2))

### SCOTTISH COMMISSION FOR HUMAN RIGHTS

#### *Membership*

- 1 (1) The Commission consists of the following members—
- (a) a member appointed to chair the Commission, and
  - (b) not more than 4 other members.
- (2) The member appointed to chair the Commission is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament.
- (3) The other members are to be individuals appointed by the Parliamentary corporation.

#### *Status*

- 2 The Commission—
- (a) is not a servant or agent of the Crown, and
  - (b) has no status, immunity or privilege of the Crown.

#### *Independence*

- 3 (1) The Commission, in the exercise of its functions, is not to be subject to the direction or control of—
- (a) any member of the Parliament,
  - (b) any member of the Scottish Executive, or
  - (c) the Parliamentary corporation.
- (2) Sub-paragraph (1) is subject to section 15(3), paragraphs [F18(3)], 10, 11[F2, 11A(3), 12(3), 13A] and 15(1) of this schedule and paragraph 5 of schedule 2.

#### **Textual Amendments**

- F1** Word in Sch. 1 para. 3(2) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 4\(a\)](#) (with s. 31(6), Sch. 7)
- F2** Words in Sch. 1 para. 3(2) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 4\(b\)](#) (with s. 31(6), Sch. 7)

#### *Disqualification*

- 4 (1) A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament, or
  - (c) a member of the European Parliament.
- (2) A person is also disqualified from such appointment if that person has, in the relevant period, held any of the offices set out in sub-paragraph (1)(a) to (c).
- (3) The relevant period is—

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- (a) in relation to the appointment of a member to chair the Commission, the year preceding the date of nomination,
- (b) in relation to the appointment of any other member of the Commission, the year preceding the proposed date of appointment.

*Terms of office and remuneration*

- 5 (1) Each member of the Commission—
- (a) holds office for such period not exceeding [<sup>F3</sup>eight] years as the Parliamentary corporation, at the time of appointment, may determine, [<sup>F4</sup>but ]
  - [<sup>F4</sup>(b) is ineligible for reappointment at any time.]
- (2) The member appointed to chair the Commission may be—
- (a) relieved of office by Her Majesty at the member's request, or
  - (b) removed from office by Her Majesty if condition A or B is satisfied.
- (3) Any other member of the Commission may be—
- (a) relieved of office by the Parliamentary corporation at the member's request, or
  - (b) removed from office by the Parliamentary corporation if condition A or B is satisfied.
- (4) Condition A is that—
- (a) the Parliamentary corporation is satisfied that the member has breached the member's terms of appointment, and
  - (b) the Parliament resolves that the member should be removed from office for that reason
- (5) Condition B is that the Parliament resolves that it has lost confidence in the [<sup>F5</sup>member's willingness, suitability or ability to perform that member's functions]
- (6) A resolution under sub-paragraph (4)(b) or (5), [<sup>F6</sup>must be voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament].
- (7) Each member of the Commission is entitled to—
- (a) such remuneration, and
  - (b) such allowances,
- as the Parliamentary corporation may determine.
- (8) In other respects, each member of the Commission holds office on such terms and conditions as the Parliamentary corporation may determine.
- [<sup>F7</sup>(9) Those terms and conditions may, without prejudice to paragraph 4—
- (a) prohibit the member from holding any other specified office, employment or appointment or engaging in any other specified occupation,
  - (b) provide that a member's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation,
  - (c) for the purposes of this sub-paragraph, provide differently for the member appointed to chair the Commission and the other members.

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- (10) In sub-paragraph (9), “ specified ” means specified in the terms and conditions or within a description so specified. ]

#### Textual Amendments

- F3** Word in Sch. 1 para. 5(1)(a) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 5\(a\)](#) (with s. 31(6), Sch. 7)
- F4** Sch. 1 para. 5(1)(b) and word substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 5\(b\)](#) (with s. 31(6), Sch. 7)
- F5** Words in Sch. 1 para. 5(5) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 5\(c\)](#) (with s. 31(6), Sch. 7)
- F6** Words in Sch. 1 para. 5(6) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 5\(d\)](#) (with s. 31(6), Sch. 7)
- F7** Sch. 1 para. 5(9)(10) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 5\(e\)](#) (with s. 31(6), Sch. 7)

#### *Pensions etc.*

- 6 (1) The Commission may, with the approval of the Parliamentary corporation, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of the Commission and such arrangements may include, in particular—
- the making of contributions or payments towards provision for such pensions, allowances, or gratuities, and
  - the establishing and administering of one or more pension schemes.
- (2) References in sub-paragraph (1) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of office.

#### *Proceedings etc.*

- 7 (1) The Commission may regulate its own procedure (including any quorum).
- (2) Where the member appointed to chair the Commission is not present at a meeting of the Commission, any other member of the Commission may chair the meeting.
- (3) The validity of any acts of the Commission is not affected by any—
- defect in the appointment of a member of the Commission,
  - disqualification from appointment as a member of the Commission, or
  - vacancy in the membership of the Commission.

#### *General powers*

- 8 (1) The Commission may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of its functions.
- (2) In particular, the Commission may—
- enter into contracts, and
  - <sup>F8</sup>(b) acquire and dispose of land and other property,]

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[<sup>F9</sup>(3) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.]

#### Textual Amendments

- F8** Sch. 1 para. 8(2)(b) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 6 para. 7(a)** (with s. 31(6), Sch. 7)
- F9** Sch. 1 para. 8(3) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 6 para. 7(b)** (with s. 31(6), Sch. 7)

#### *Delegation*

- 9 (1) Any function of the Commission may be exercised on its behalf—
- (a) by any person (whether or not a member of the Commission or its staff) authorised by the Commission to do so, and
  - (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the Commission's responsibility for the exercise of its functions.

#### <sup>F10</sup>*Location of office*

#### Textual Amendments

- F10** Sch. 1 para. 10 and cross-heading substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **Sch. 6 para. 8** (with s. 31(6), Sch. 7)

- 10 The Commission must comply with any direction given by the Parliamentary corporation as to the location of the Commission's office.]

#### *Staff*

- 11 (1) The Commission may, with the consent of the Parliamentary corporation as to numbers, appoint staff.
- (2) The appointment of staff is to be on such terms and conditions as the Commission may, with the approval of the Parliamentary corporation, determine.
  - (3) The Commission may, with the approval of the Parliamentary corporation, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff.
  - (4) References in sub-paragraph (3) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of employment.

#### *Sharing of premises, staff, services and other resources*

- 12 (1) The Commission may enter into arrangements with any other public body or office-holder for the sharing of premises, staff, services or other resources.

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- (2) In considering its requirements as to premises, staff, services and other resources, the Commission must have regard, with a view to ensuring the economic, efficient and effective use of resources, to the desirability of entering into arrangements under sub-paragraph (1).
- [<sup>F11</sup>(3) The exercise of the power in sub-paragraph (1) is subject to the approval of the Parliamentary corporation.]

#### Textual Amendments

**F11** Sch. 1 para. 12(3) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 10](#) (with s. 31(6), Sch. 7)

#### *Accountable officer*

- 13 (1) The Parliamentary corporation must designate a member of the Commission or of the Commission's staff as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
- (a) signing the accounts of the expenditure and receipts of the Commission,
  - (b) ensuring the propriety and regularity of the finances of the Commission,
  - (c) ensuring that the resources of the Commission are used economically, efficiently and effectively, and
  - (d) the duty set out in sub-paragraph (3),
- and the accountable officer is answerable to the Parliament for the exercise of those functions.
- (3) Where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), the accountable officer must—
- (a) obtain written authority from the Commission before taking the action, and
  - (b) send a copy of the authority as soon as possible to the Auditor General for Scotland.

#### *Finance*

- 14 [<sup>F12</sup>(1) The Parliamentary corporation is to—
- (a) pay the remuneration and allowances of each member of the Commission,
  - (b) pay any expenses properly incurred by the Commission in the exercise of its functions, so far as those expenses are not met out of sums retained and applied by it under section 3(3), and
  - (c) indemnify the Commission in respect of any liabilities incurred by it in the exercise of its functions.]
- (2) The Commission must, before the start of each financial year, prepare proposals for its use of resources and expenditure during the year and send the proposals to the Parliamentary corporation for approval by such date as the Parliamentary corporation may determine.

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- (3) The Commission may, in the course of a financial year, prepare revised proposals for its use of resources and expenditure during the remainder of the year and send the proposals to the Parliamentary corporation for approval.
- (4) The proposals or, as the case may be, revised proposals must include a statement that the Commission has complied with the duty in paragraph 12(2) in preparing the proposals.
- (5) Sub-paragraph (1)(b) does not require the Parliamentary corporation to pay any expenses incurred by the Commission which exceed, or are otherwise not covered by, any proposals approved under sub-paragraph (2) or (3).
- (6) However, the Parliamentary corporation may pay those expenses.
- (7) The financial year of the Commission is—
  - (a) the period beginning with the date on which the Commission is established and ending with 31st March next following that date, and
  - (b) each successive period of 12 months ending with 31st March.

#### Textual Amendments

**F12** Sch. 1 para. 14(1) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 6 para. 12](#) (with s. 31(6), Sch. 7)

#### *Accounts and audit*

- 15 (1) The Commission must, in accordance with such directions as the Scottish Ministers may give—
  - (a) keep proper accounts and accounting records,
  - (b) prepare annual accounts in respect of each financial year, and
  - (c) send a copy of the annual accounts to the Auditor General for Scotland for auditing.
- (2) If requested by any person, the Commission must make available at any reasonable time, and without charge, in printed or electronic form, the audited accounts, so that they may be inspected by that person.

#### *Scottish Public Services Ombudsman*

- 16 In the Scottish Public Services Ombudsman Act 2002 (asp 11), in schedule 2 (which lists the authorities subject to investigation under that Act), in Part 2 (entries amendable by Order in Council), before paragraph 38 insert—
 

“37B The Scottish Commission for Human Rights.”.

#### *Freedom of information*

- 17 In the Freedom of Information (Scotland) Act 2002 (asp 13), in schedule 1 (which lists the Scottish public authorities subject to that Act), in Part 7 (other authorities), before paragraph 81 insert—
 

“80B The Scottish Commission for Human Rights.”.

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## SCHEDULE 2

*(introduced by section 10(6))*

### INQUIRIES: SUPPLEMENTARY PROVISION AS TO EVIDENCE

#### *Requirements to give evidence etc.*

- 1 The Commission may impose a requirement on a person under section 10(1) by giving notice to the person specifying—
- (a) where the person is required to give oral evidence—
    - (i) the time and place at which the person is to attend to give evidence, and
    - (ii) the particular matter or matters about which the person is required to give evidence,
  - (b) where the person is required to produce a document or documents—
    - (i) the document, or types of documents, which the person is to produce,
    - (ii) the date by which it or they must be produced, and
    - (iii) the particular matter or matters in connection with which they are required,
  - (c) where the person is required otherwise to provide information—
    - (i) the nature of the information required,
    - (ii) the date by which it must be provided, and
    - (iii) the particular matter or matters in connection with which the information is required.

#### *Cancellation of requirements notified under paragraph 1*

- 2 (1) A person to whom notice has been given under paragraph 1 may apply to the sheriff for cancellation of any requirement imposed by the notice.
- (2) On such an application, the sheriff may cancel the requirement if satisfied that the requirement is—
- (a) unnecessary having regard to the purposes of the inquiry to which the notice relates,
  - (b) undesirable for reasons of national security, or
  - (c) otherwise unreasonable.

#### *Administration of oaths*

- 3 The Commission may—
- (a) administer an oath to any person giving evidence to it for the purposes of an inquiry, and
  - (b) require any such person to take an oath.

#### *Obstruction and contempt*

- 4 (1) Sub-paragraph (3) applies where any person to whom notice has been given under paragraph 1—
- (a) refuses or fails, without reasonable excuse, to comply with any requirement specified in the notice,

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- (b) refuses or fails, without reasonable excuse, when attending to give evidence as required by the notice—
    - (i) to take an oath on being required to do so under paragraph 3(b), or
    - (ii) to answer any question relevant to any matter specified in the notice,
 or
  - (c) deliberately alters, suppresses, conceals or destroys any document which the person is required by the notice to produce.
- (2) Sub-paragraph (3) also applies where the Commission considers that any such person as is mentioned in sub-paragraph (1) is likely to do any of the things specified in paragraphs (a) to (c) of that sub-paragraph.
- (3) Where this sub-paragraph applies, the Commission may report the matter to the Court of Session.
- (4) On such a report, the Court may, after hearing any evidence or representations on the matter, (either or both)—
- (a) make such order for enforcement as it sees fit,
  - (b) deal with the matter as if it were a contempt of the Court.

#### *Allowances and expenses*

- 5 The Commission may pay to persons giving evidence, producing documents or providing information pursuant to a notice given under paragraph 1 such allowances and expenses as it may, with the approval of the Parliamentary corporation, determine.

### SCHEDULE 3

*(introduced by section 11(5))*

#### PLACES OF DETENTION: POWERS OF ENTRY, INSPECTION AND INTERVIEW

#### *Evidence of authority*

- 1 The Commission or any other person entitled to exercise any power under section 11(1) (referred to in this schedule as “an authorised person”) must, if required to do so, produce written evidence of that entitlement.
- 2 A person required to produce written evidence of entitlement under paragraph 1 cannot exercise the power under section 11(1) to which the entitlement relates until the person produces such evidence.

#### *Obstruction and contempt*

- 3 (1) Where any person intentionally obstructs the Commission or an authorised person acting in the exercise of a power under section 11(1), the Commission may report the matter to the Court of Session.
- (2) On such a report, the Court may, after hearing any evidence or representations on the matter, (either or both)—
- (a) make such order for enforcement as it sees fit,
  - (b) deal with the matter as if it were a contempt of the Court.



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