

SCOTTISH PARLIAMENTARY COMMISSIONS AND COMMISSIONERS ETC. ACT 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1

The Commission for Ethical Standards in Public Life in Scotland: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland

Section 7: Appointment of acting Commissioner

44. This section provides for the appointment of an acting Commissioner under subsection (1). The provision provides flexibility to cover a range of situations and circumstances that may arise and is primarily directed at ensuring the efficient and continuing discharge of functions. An acting Commissioner may be appointed to deal with a number of different circumstances where for any reason and, to any extent, a Commissioner is unable to act or the office of a Commissioner is vacant. In relation to the Public Standards Commissioner for Scotland, for example, an acting Commissioner may be appointed to deal with an individual case. This could happen if investigating a complaint would result in a conflict of interest for the Commissioner. Alternatively an acting Commissioner could be appointed to deal with a number of cases, for example, if there is an exceptionally large number of cases at one particular time which the commissioner is unable to deal with. Finally, an acting Commissioner could be appointed to cover for a specified period of time, for example, leave office unexpectedly.
45. An acting Commissioner is appointed by the Parliamentary corporation under subsection (1). However, because appointment is intended to be for a limited duration, to avoid any delay in an investigation or investigations for instance, the agreement of the Parliament to the appointment is not required. In practice, it is anticipated that the Parliamentary corporation will consult the Standards, Procedures and Public Appointments Committee before appointing.
46. Subsection (2) clarifies that the duration of the appointment has to be set out in the terms and conditions of appointment. This may be for a specified period or until the occurrence of a future event e.g. the appointment of a new Commissioner.
47. Subsection (3) enables an acting Commissioner to perform the same duties as a Commissioner, but in relation to different matters, for example both could undertake investigations into complaints but not in relation to the same complaint.
48. Identical conditions regarding eligibility for appointment to the post of Commissioner apply to that of the post of acting Commissioner (subsection (4)). In other words, the restrictions on appointments set out in section 8 (see paragraph 53 to 56) equally apply to the appointment of a person to an acting post. Under subsection (5) a member of

These notes relate to the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11) which received Royal Assent on 19 July 2010

staff of the Commission may be appointed as an acting Commissioner as long as that person is eligible.

49. Subsection (6) provides that one of the Commissioners could be appointed as an acting Commissioner to carry out the functions of the other Commissioner by the Parliamentary corporation. This provides the Parliamentary corporation with additional flexibility to appoint speedily. The Parliamentary corporation would consider, as it would do when making any appointment, whether this is appropriate in light of all the circumstances.
50. Subsection (7) allows for resignation and removal of an acting Commissioner as well as stipulating that the conditions applying to the office are to be set by the Parliamentary corporation. The subsection makes clear that the acting Commissioner while holding office is to be treated for all purposes as the Commissioner. However certain provisions which relate to Commissioners do not apply to an acting Commissioner. These are: the term of appointment (section 9(1)); resignation (section 9(2)); removal from office (section 9(3) and (4)); and if appropriate payment of pensions, allowances and gratuities (section 10).
51. Subsection (8) provides for the Parliamentary corporation to set the minimum notice required to be given should an acting Commissioner wish to resign.