

# SCOTTISH PARLIAMENTARY COMMISSIONS AND COMMISSIONERS ETC. ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 2 Amendments of the Ethical Standards Act*

116. [Schedule 2](#) is introduced by Section 29(2) of the Act and amends the Ethical Standards Act so that the Parliamentary corporation becomes the sponsoring body of the Standards Commission, rather than the Scottish Ministers. It also standardises the governance arrangements and the terms and conditions of appointment of members of the Standards Commission with the other officeholders and members of bodies supported by the Parliamentary corporation.
117. [Paragraph 1](#) amends section 8 (establishment, functions and membership of the Standards Commission for Scotland) to make provision for the Parliamentary corporation to appoint the members of the Standards Commission, with the agreement of the Parliament, instead of the Scottish Ministers. Consultation with such association of councils and other persons the Parliamentary corporation considers appropriate is required. Provision is also made so that the order making power under section 8(2)(b) (other functions of the Commission) of the Ethical Standards Act can only be exercised after consultation with the Parliamentary corporation and the Standards Commission, and that any order becomes subject to affirmative procedure rather than negative procedure. Affirmative procedure is necessary because the addition of extra functions may impact on the workload of the Standards Commission and could increase running costs.
118. [Paragraph 2](#) amends section 17(8) (payment by Commission of witnesses' etc) to standardise the provisions relating to witness expenses to require the approval of the Parliamentary corporation. It is anticipated that the Commission and the Parliamentary corporation will agree delegated limits to avoid continual oversight on routine amount and payments.
119. [Paragraph 3](#) amends section 27(1) (protection from actions of defamation). The provision retains the existing protections and provides absolute privilege to any statement made in pursuance of the purposes of the Ethical Standards Act by the Standards Commission or any of its employees and by the Public Standards Commissioner for Scotland. A new provision gives the protection of qualified privilege to statements made to that Commissioner or any employees of the CESPLS.
120. [Paragraph 4](#) explains that the changes made in paragraphs 5 to 16 relate to schedule 1 of the Ethical Standards Act.
121. [Paragraph 5](#) amends paragraph 2 (General powers) so that the Standards Commission may only acquire and dispose of land with the consent of the Parliamentary corporation.
122. In addition, paragraph 5 amends paragraph 2 to allow the Standards Commission to charge reasonable sums for any services it provides, or which are provided on its behalf.

For example, this section would allow the Commission to organise training events or seminars and charge attendance fees. Any sums received must be retained by the Standards Commission and used to meet the costs of those services provided.

123. [Paragraph 6](#) inserts paragraph 2A (Location of office) which provides that the Standards Commission is required to comply with any directions given by the Parliamentary corporation as to the location of its office.
124. Furthermore, paragraph 6 inserts paragraph 2B (Sharing of premises, staff, services and other resources) to allow the Parliamentary corporation to direct the Standards Commission as to the sharing of premises, staff, services or other resources with any public body or any officeholder. The Parliamentary corporation could use this power to rationalise the number of premises occupied by the bodies or to direct that the provision of services such as human resources, payroll, finance or procurement should be carried out centrally.
125. [Paragraph 7](#) amends paragraph 4 (appointment of convener) to reflect that it is the Parliamentary corporation who appoint one member of the Commission as its Convener rather than the Scottish Ministers.
126. [Paragraph 8](#) replaces the existing paragraphs 5 (tenure of office of members) and 6 (remuneration etc) with a new paragraph 5 (Tenure of office, remuneration etc) to standardise these provisions with the other officeholders and members of bodies supported by the Parliamentary corporation.
127. Under paragraph 5(1) each member of the Standards Commission shall hold office for a single term of up to 8 years. Sub-paragraph (2) clarifies that a member who has ceased to be a member is not eligible for reappointment. Sub-paragraph (3) allows a member to resign from office at anytime subject to any minimum period of notice set by the Parliamentary corporation under sub-paragraph (6). Alternatively, a member can be removed from office by the Parliamentary corporation under sub-paragraph (4) only in the circumstances as set out in sub-paragraph (5).
128. Sub-paragraph 5(a) states that a member may be removed from office if the Parliamentary corporation is satisfied that the member has breached their terms and conditions of appointment. Having come to a view, the Parliamentary corporation would then ask the Parliament to resolve that the member should be removed from office for the breach.
129. Alternatively, under sub-paragraph 5(b), a member may be removed from office if the Parliament resolves that it has lost confidence in the member's willingness, suitability or ability to perform their functions.
130. In both circumstances, a resolution must be voted for by at least 86 members of the Parliament, being a number not less than two thirds of the total number of seats of members of the Parliament.
131. Sub-paragraph (7) provides that each member is entitled to such remuneration and allowances as the Parliamentary corporation determines. These will be subject to contractual arrangements between the parties. Other terms and conditions of holding office may be determined by the Parliamentary corporation, under sub-paragraph (8).
132. Under sub-paragraph (9) the Parliamentary corporation may determine whether the members should be permitted to hold any other office, employment or appointment or engagement whilst in post. This power may be used differently in relation to the member appointed as convener and the other members. For example, there could be instances when an appointment might be seen to compromise or give the appearance of compromising the independence of the member.
133. [Paragraph 9](#) inserts paragraph 5A (Subsequent appointments) which makes restrictions on subsequent appointments once a member has left office. As well as a restriction on

employment with the Standards Commission for Scotland, a former member cannot be: an employee or appointee of the CESPLS; or be an employee or appointee of the SPSO; or hold any other office, employment or appointment or engage in any other occupation which that person could not have held when a member of the Standards Commission.

134. Under sub-paragraph (2) the restrictions run from the date of leaving office until the end of the financial year following the one in which the person ceased to be a member. Thus if a member leaves office on 1 November 2010 the restriction would subsist until 1 April 2012.
135. [Paragraph 10](#) amends paragraph 7 (employees) to remove references to the Scottish Ministers and to provide a new sub-paragraph (4A). That provides that staff appointments both in terms of numbers of staff and their terms and conditions of appointment are subject to the approval of the Parliamentary corporation.
136. [Paragraph 11](#) repeals paragraph 8 (remuneration, pensions etc of Chief Investigating Officer and staff) as these functions relating to the new Public Standards Commissioner for Scotland and the staff of CESPLS are now contained in this Act (see sections 9, 10 and 17).
137. [Paragraph 12](#) inserts new paragraph 8A (advisers and other services). Under paragraph 8A the Standards Commission can obtain advice, assistance or any other service. There may be circumstances where the Standards Commission might want to secure advice for example, in relation to legal issues. This advice or services can be procured from anyone whom the Standards Commission considers qualified to provide it. Payment of fees and allowances are determined by the Standards Commission. Any payment for providing services and payment in respect of that advice, assistance or service provided, is subject to approval by the Parliamentary corporation.
138. [Paragraph 13](#) inserts paragraph 10A (Strategic plans). Paragraph 10A requires the Standards Commission to produce a strategic plan and details arrangements for timing, content, consultation and review. Under sub-paragraph (1) the plan covers a four year period and sets out how the Commission proposes to perform its functions during that period.
139. Sub-paragraph (2) sets out broad details of what a plan must contain. In particular it is required to provide the objectives and the priorities during the period and state proposals for achieving them. In addition the plan must provide timetables and cost estimates.
140. Sub-paragraph (3) requires the Commission to consult on the plan before laying it before Parliament. Comment on a draft must be sought from the Parliamentary corporation and any other person the Commission thinks appropriate, which includes a Committee of the Parliament (sub-paragraph (4)).
141. Sub-paragraph (5) requires the Commission to lay each strategic plan before Parliament prior to the start of the four year period which is defined in sub-paragraph (10) as beginning on the next 1 April after commencement and each subsequent period of four years. Sub-paragraph (6) requires the Commission to publish each plan.
142. Under sub-paragraph (7) the Commission can review its strategic plan at any time during the four year period and lay a revised plan before the Parliament. Sub-paragraph (8) provides that, in that event, the provisions in sub-paragraph (2) to (7) about content, consultation and publication apply. Subsection (9) clarifies that a revised plan must be laid before the Parliament not later than the beginning of the period to which the revised strategic plan relates.
143. [Paragraph 14](#) inserts new paragraphs 10B (Accountable officer), 10C (Budget), 10D (Commission's expenses and liabilities) and 10E (Accounts and Audit).
144. Paragraph 10B requires the Parliamentary corporation to designate a person as the accountable officer.

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

145. Sub-paragraph (1) requires that the accountable officer must either be a member of the Standards Commission or a member of the Commission's staff. Under sub-paragraph (4) the accountable officer is answerable directly to Parliament for the exercise of those functions specified in sub-paragraph (2).
146. The functions of the accountable officer are set out in sub-paragraph (2) and include: the signing of the Commission's accounts; ensuring that the Commission's finances are kept in good order; and ensuring that the Commission's resources are used economically, efficiently and effectively. That latter requirement links to new paragraph 10C, in terms of which the budget is approved by the Parliamentary corporation and the Commission is required to ensure that its resources are used economically, efficiently and effectively.
147. Sub-paragraph (3) provides a degree of protection for the accountable officer if they consider that they are being required to act in any way which is inconsistent with their responsibilities. Before any such action can be taken the accountable officer is required to obtain written authority from the Commission. Thereafter a copy of that authority must be sent as soon as possible to the Auditor General for Scotland.
148. Paragraph 10C implements the recommendations of the Finance Committee's report and enacts existing administrative budgetary arrangements between other officeholders and the Parliamentary corporation designed to ensure accountability for the use of public funds.
149. Sub-paragraph (1) requires the Standards Commission to prepare budget proposals for each financial year, in advance of that year, for approval by the Parliamentary corporation. The Parliamentary corporation is given power to set a timetable for submission and approval of the budget which will allow it to be integrated within wider budgetary arrangements.
150. Under sub-paragraph (2) the Commission may seek to revise the budget during the year by submitting revised proposals to the Parliamentary corporation for approval.
151. Under sub-paragraph (3), in preparing a budget or a revised budget, the Commission is required to ensure that resources will be used economically, efficiently and effectively and must under sub-paragraph (4) so certify in any budget or revised budget proposal.
152. New paragraph 10D (Commission's expenses and liabilities) under sub-paragraph (1) the Parliamentary corporation must pay the Standards Commission's expenses where properly incurred in undertaking its functions less any sums it has received in payment for services provided under paragraph 2(5), for example, in providing training or holding seminars. The Parliamentary corporation is not compelled under subsection (2) to pay expenses which exceed or were not included in the agreed budget (see paragraph 10C). It is anticipated in such a situation that the Parliamentary corporation would take a decision in light of the relevant circumstances. Should the Parliamentary corporation wish to pay these expenses the power is provided for in sub-paragraph (3).
153. Sub-paragraph (4) provides that the Parliamentary corporation must indemnify the Standards Commission in respect of any liability incurred by it while performing its functions. An example of this would be where a member of the Standards Commission causes a traffic accident while driving to a meeting while on official business.
154. [Paragraph 15](#) repeals paragraph 11 (expenses) of Schedule 1 to the Ethical Standards Act.
155. New paragraph 10E (Accounts and Audit) sets out the accounting and auditing requirements that apply to the Standards Commission. The Standards Commission must keep proper accounts and accounting records and prepare annual accounts for each financial year. In so doing the Commission must comply with any directions given by the Scottish Ministers who are responsible for such matters under Section 19 of the [Public Finance and Accountability Act 2000 \(asp 1\)](#). Under sub-paragraph (1)(c), a

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copy of the accounts are to be sent to the Auditor General for Scotland for auditing. Under sub-paragraph (2), the Commission must make a copy of its audited accounts available for inspection, free of charge, to anyone on request.

156. [Paragraph 16](#) inserts new paragraph 10F (Annual reports). Paragraph 10F requires the Standards Commission to prepare and lay before Parliament an annual report. Under sub-paragraph (2)(a) the annual report must include a summary of any hearings held by the Commission. Sub-paragraph (2)(b) requires that the report must also include a summary of other activities undertaken by the Commission, during the reporting year beginning 1 April (sub-paragraph (6)).
157. Under sub-paragraph (3) the report must be laid before the Scottish Parliament within 7 months of the end of the reporting year. The report must be published under sub-paragraph (4). Publication method is not specified but may be in hard copy or by making it available and accessible on a website.
158. Sub-paragraph (5) obliges the Commission to comply with any direction given by the Parliamentary corporation regarding the form and content of the report.
159. [Paragraph 17](#) repeals Schedule 2 (terms and conditions of office, staff and status of the Chief Investigating Officer) these functions relating to the Public Standards Commissioner for Scotland are now contained in this Act.