Status: *Point in time view as at 01/04/2011.*
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SCHEDULE 5 S

(introduced by section 29(10))

AMENDMENTS OF THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2003 (ASP 17)

The Commissioner: period of appointment, removal etc.

1 In section 2 (appointment of Commissioner)—

(a) in subsection (3) (period of appointment) for "five" there is substituted " eight ",

(b) for subsection (4) (re-appointment) there is substituted—

"(4) A person who has been appointed Commissioner is ineligible for re-appointment at any time."

2 In section 3 (removal of Commissioner) for subsections (1)(b) and (2) there is substituted—

"(b) subsection (2) applies.

(2) This subsection applies if—

(a) the Parliamentary corporation is satisfied that the Commissioner has breached the terms and conditions of appointment and the Parliament resolves that the Commissioner should be removed from office for that breach, or

(b) the Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to perform the functions of the Commissioner,

and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament."

Annual reports

3 In section 10 (annual reports)—

(a) at the end of subsection (1) there is inserted " during the reporting year ",

(b) in subsection (2) for "the period covered by the report", in both places where those words occur, and for "that period" there is substituted, in each case, " the reporting year ", and

(c) after subsection (2) there is inserted—

"(3) The report must be laid before the Parliament within 7 months after the end of the reporting year.

(4) In preparing the report, the Commissioner must comply with any direction given by the Parliamentary corporation as to the form and content of the report.

(5) In this section "reporting year" means the year beginning on 1 April."

Strategic plans

4 After section 14 there is inserted—

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"**14A Strategic plans**

(1) The Commissioner must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a "strategic plan") setting out how the Commissioner proposes to perform the Commissioner's functions during the 4 year period.

(2) A strategic plan must, in particular, set out—
  (a) the Commissioner's objectives and priorities during the 4 year period,
  (b) how the Commissioner proposes to achieve them,
  (c) a timetable for doing so, and
  (d) estimates of the costs of doing so.

(3) Before laying a strategic plan before the Parliament, the Commissioner must provide a draft of it to and invite, and (if any are given) consider, comments on it from—
  (a) the Parliamentary corporation, and
  (b) such other persons as the Commissioner thinks appropriate.

(4) The reference in subsection (3)(b) to other persons includes a committee of the Parliament.

(5) The Commissioner must lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.

(6) The Commissioner must arrange for the publication of each strategic plan laid before the Parliament.

(7) The Commissioner may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.

(8) Subsections (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.

(9) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.

(10) In this section, "4 year period" means the period of 4 years beginning on 1 April next following the coming into force of this section and each subsequent period of 4 years."

Application of paragraph 6 onward

5 Paragraph 6 onward relates to schedule 1 to the Commissioner for Children and Young People (Scotland) Act 2003 (asp 17).

Status and independence

6 At the end of paragraph 1 (legal status of Commissioner) there is inserted—

"(3) The Commissioner is, as such, to be regarded as a juristic person distinct from the natural person holding the office."

7 In paragraph 2(2) (respects in which the Commissioner is subject to direction or control) for the passage from "and 3(1)(b)" to "7" there is substituted " , 3(1)(b) and 10(4) and paragraphs 4, 6(2A) and (3), 6A, 7, 7A, 7B(3), 9A ".

Disqualification

8 In paragraph 4—

(a) after sub-paragraph (1) there is inserted—

"(1A) The Commissioner ceases to hold office as Commissioner on becoming—

(a) a member of the Parliament,

(b) a member of the House of Commons, or

(c) a member of the European Parliament.",

(b) in sub-paragraph (2), after "terms" there is inserted " and conditions ",

(c) for sub-paragraph (3) there is substituted—

"(3) The terms and conditions may, without prejudice to section 2(2) or sub-paragraph (1A) of this paragraph—

(a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,

(b) provide that the Commissioner's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.

(4) In sub-paragraph (3)(b), "specified" means specified in the terms and conditions or within a description so specified."

Subsequent appointments

9 After paragraph 5 there is inserted—

"Subsequent appointments etc.

5A (1) A person who has ceased being the Commissioner ("the former Commissioner") may not, without the approval of the Parliamentary corporation—

(a) be employed or appointed in any other capacity by the Commissioner,

(b) be an employee or appointee of—

(i) any person in relation to whom, or

(ii) any body in relation to which,

an investigation under this Act has been carried out or continued by the former Commissioner when Commissioner, or hold office in any such body, or

(c) hold any other office, employment or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of paragraph 4(3)(a), that former

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Commissioner could not have held or, as the case may be, engaged in when Commissioner.

(2) The restriction in sub-paragraph (1)—

(a) starts when the person ceases to be the Commissioner, and

(b) ends on the expiry of the financial year next following the one in which it started.”

Land, charges, location of office, sharing of resources, staff and advisers and other services

10 In paragraph 6 (general powers)—

(a) in sub-paragraph (2) (Commissioner's general powers to include power to acquire and dispose of property) after “of” there is inserted “ land and other ”,

(b) after that sub-paragraph there is inserted—

“(2A) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.”,

(c) in sub-paragraph (3) (charges for certain services specified by order by Scottish Ministers), for the passage from “charge” to the end there is substituted “ determine and charge reasonable sums for anything done or provided by the Commissioner in the performance of, or in connection with, the Commissioner's functions. ”,

(d) after sub-paragraph (3) there is inserted—

“(3A) Any sums received by the Commissioner by virtue of sub-paragraph (3) are to be retained by the Commissioner and applied to meet expenditure incurred in doing or providing whatever is charged for.”, and

(e) sub-paragraph (4) (which is about the statutory instrument containing an order under sub-paragraph (3)) is repealed.

11 After paragraph 6 there is inserted—

“Location of office

6A The Commissioner must comply with any direction given by the Parliamentary corporation as to the location of the Commissioner's office.”

12 In paragraph 7(2) (terms of appointment of staff) after “terms” there is inserted “ and conditions ”.

13 After paragraph 7 there is inserted—

“Sharing of premises, staff, services and other resources

7A The Commissioner must comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other officeholder or any public body.

Advisers and other services

7B (1) The Commissioner may obtain advice, assistance or any other service from any person who, in the opinion of the Commissioner, is qualified to give it.

(2) The Commissioner may pay to that person such fees and allowances as the Commissioner determines.

(3) Any payment under sub-paragraph (2) is subject to the approval of the Parliamentary corporation."

Finance and budget

14 Paragraph 9 (payment of Commissioner's salary, expenses etc.) is renumbered as sub-paragraph (1) of that paragraph and—

(a) at the end of that sub-paragraph (as so renumbered) there is inserted " so far as not met out of sums received and applied by the Commissioner under paragraph 6(3A), and

(b) after that sub-paragraph there is inserted—

"(2) Sub-paragraph (1)(b) does not require the Parliamentary corporation to pay any expenses incurred by the Commissioner which exceed or are otherwise not covered by a budget or, as the case may be, revised budget approved under paragraph 9A.

(3) However, the Parliamentary corporation may pay those expenses.

(4) The Parliamentary corporation is to indemnify the Commissioner in respect of any liabilities incurred by the Commissioner in the exercise of the Commissioner's functions."

15 After paragraph 9 there is inserted—

"Budget

9A (1) The Commissioner must, before the start of each financial year, prepare proposals for the Commissioner's use of resources and expenditure during the year (a "budget") and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.

(2) The Commissioner may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.

(3) In preparing a budget or revised budget, the Commissioner must ensure that the resources of the Commissioner will be used economically, efficiently and effectively.

(4) A budget or revised budget must contain a statement that the Commissioner has complied with the duty under sub-paragraph (3)."

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