

SCOTTISH PARLIAMENTARY STANDARDS (SEXUAL HARASSMENT AND COMPLAINTS PROCESS) ACT 2021

EXPLANATORY NOTES

SUMMARY OF AND BACKGROUND TO THE ACT

4. The Parliament's original standing orders (made under the 1998 Act) provided for the creation of a Code of Conduct for MSPs, and the first version of the Code was approved by the Parliament on 24 February 2000 and came into force the same day. Also in 2000, the Parliament's Standards Committee published a report recommending the creation of an independent commissioner to investigate complaints made about the conduct of MSPs and alleged breaches of the Members' Interests Order or the Code. A further report in 2001 formally proposed the establishment of the Commissioner's office through a Committee Bill. That Bill became the 2002 Act.
5. The 2002 Act provided for the appointment of a person known as the Scottish Parliamentary Standards Commissioner, now known as the Commissioner for Ethical Standards in Public Life in Scotland. It also gives the Commissioner the power to call for witnesses and documents, protection from actions for defamation, and a duty to report annually to the Parliament.
6. Under section 3 of the 2002 Act, where a complaint is made about the conduct of an MSP, the Commissioner is to investigate whether the member has committed the conduct complained about and has, in doing so, breached a "relevant provision", and then to report the outcome of that investigation to the Parliament. A "relevant provision" is defined to mean any provision of the Parliament's standing orders, the Code of Conduct, the Members' Interests Order or any Act of the Scottish Parliament (ASP) made in pursuance of section 39 of the 1998 Act – but only if the provision in question was in force at the time the conduct complained about was alleged to have taken place ("the relevant time"). Since the Members' Interests Order was replaced by the Interests of Members of the Scottish Parliament Act 2006, a "relevant provision" has come to mean any provision, in force at the relevant time, of the standing orders, the Code or the 2006 Act.
7. Section 5 of the 2002 Act requires the Commissioner to conduct a two-stage investigation into any complaint – a first stage to establish whether the complaint is admissible and then, if it is, a second stage to further investigate it and report to the Parliament on whether a breach of a relevant provision occurred. (This two-stage process, which is the focus of the 2002 Act, is itself part of a wider four-stage process – the third stage being consideration of the Commissioner's report by the Standards, Procedures and Public Appointments (SPPA) Committee and a recommendation to the Parliament on what sanctions, if any to impose; and the fourth being consideration by the Parliament of the SPPA Committee's recommendation and a final decision on sanctions.)

8. Under section 6 of the 2002 Act, there are three main admissibility tests for complaints, the second of which is that the complaint meets all of the “specified requirements” listed in paragraphs (a) to (e) of subsection (5). Paragraph (b) includes a requirement that the complaint be signed by the complainer; paragraph (e) is that the complaint “was made within one year from the date when the complainer could reasonably have become aware of the conduct complained about” (the one-year time limit). Under section 7(4), if the Commissioner finds (at the first stage of investigation) that a complaint is inadmissible for failing to satisfy the “specified requirements”, the Commissioner must report this to the Parliament, which must then (under section 7(7)) direct the Commissioner either to dismiss the complaint as inadmissible or to treat the complaint as if it had met all of the specified requirements. Accordingly, the Parliament (in practice, the SPPA Committee) has the power to direct the Commissioner to investigate a complaint even if (for example) it isn’t signed or doesn’t comply with the one-year time limit.
9. Under section 11 of the 2002 Act, a complaint can be withdrawn (at any time after being made but before a report of an investigation is made to the Parliament) by notice in writing to the Commissioner which is signed by the complainer.