

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

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – Complaints about past sexual harassment

10. Section 1 amends section 3 of the 2002 Act so as to enable the Commissioner to investigate complaints alleging past sexual harassment by an MSP (that is, someone who was an MSP at the time of the conduct complained about) of a member of that MSP’s own staff, including any staff employed jointly by that member with other members under a pooling arrangement.
11. The main provision by which it does this is section 1(2)(b), which inserts a new subsection (4A) into section 3 of the 2002 Act. Under that new subsection, two paragraphs of the 7 January 2020 version of the Code of Conduct – in so far as they relate to sexual harassment by a member of the Parliament of their own staff – must be treated as if they had always been part of the Code.
12. Section 1(2)(a) extends the definition of “relevant provision” (in section 3(3) of the 2002 Act) so it not only covers provisions that were in force at the relevant time but also those treated (under new subsection (4A)) as having been in force at the relevant time.
13. The effect is to allow the Commissioner to investigate a breach of a “relevant provision” of the Code (about the sexual harassment by an MSP of their own staff) in respect of conduct alleged to have taken place prior to 7 January 2020.
14. Prior to 7 January 2020, the courtesy and respect provisions of the Code applied to the treatment of other MSPs, parliamentary staff (including contractors) and the staff of other MSPs. There was no explicit provision relative to an MSP’s treatment of their own staff. Without section 1, therefore, a complaint that an MSP sexually harassed a member of the MSP’s own staff in the period before 7 January 2020 could be dismissed by the Commissioner as inadmissible, on the grounds that the conduct complained about did not breach a “relevant provision”.
15. The two paragraphs of the Code (7 January 2020 version) referred to in section 1 of the Act read as follows (extract from Section 7: MSPs’ general conduct):

“5 Treatment of others

Members must treat the following individuals with courtesy and respect:

- other MSPs;
- parliamentary staff (including contractors providing services to the Parliament);

These notes relate to the Scottish Parliamentary Standards (Sexual Harassment and Complaints Process) Act 2021 (asp 12) which received Royal Assent on 21 April 2021

- their own staff and the staff of other MSPs.

“6 Members must not behave in a manner towards these individuals that involves bullying, harassment (including sexual harassment) or any other inappropriate behaviour.

Section 2 – Removal of default time limit

16. Section 2 amends section 6 of the 2002 Act so as to remove the one-year time limit (explained in paragraph 8 above). As a result, the fact that a complaint is made more than a year after the complainer could reasonably have become aware of the conduct complained about would no longer be a reason for the Commissioner to find the complaint inadmissible at the first stage of the investigation (on the grounds that it failed to meet the “specified requirements”). Accordingly, the Commissioner will be able to investigate such a complaint (at the second stage) without first reporting to the Parliament and being directed to treat the complaint as if it satisfied the specified requirements.

Section 3 – Removal of requirement for signature

17. Section 3(2) amends section 6 of the 2002 Act so as to remove the requirement for a complaint to be signed, thus facilitating the making and receipt of complaints by electronic means. It will remain necessary for a complaint to be made by an individual person and to state (amongst other things) that person’s name and address.
18. Section 3(3) removes the requirement for the withdrawal of a complaint (under section 11 of the 2002 Act) to be signed by the complainer, thus facilitating withdrawal by electronic means. It will remain a requirement for notice of withdrawal to be made in writing.

Section 4 – Commencement

19. Subsection (3) makes clear that the modifications made to the 2002 Act by section 1 do not apply to any complaint received by the Commissioner before the commencement of that section (which is, by virtue of subsection (2), 6 months after Royal Assent), even if the complaint is ongoing at the point of commencement.