



# Scottish Parliamentary Standards Commissioner Act 2002

2002 asp 16

*The Scottish Parliamentary Standards Commissioner*

## **1 Appointment of the Scottish Parliamentary Standards Commissioner**

- (1) There shall be a Scottish Parliamentary Standards Commissioner (in this Act referred to as “the Commissioner”).
- (2) The Commissioner shall be appointed by the Parliamentary corporation with the agreement of the Parliament.
- (3) A person shall not be eligible to be appointed as the Commissioner if that person—
  - (a) is a member of the Parliament or of the staff of the Parliament; or
  - (b) has been such a member at any time during the period of 2 years prior to the date when the appointment is to take effect.
- (4) The Commissioner shall be appointed for such period, not exceeding 5 years, as the Parliamentary corporation may determine.
- (5) A person who has been appointed for one period as the Commissioner may be appointed for a second period (whether or not consecutive) but not for any additional period.
- (6) A person who has been appointed as the Commissioner may at any time—
  - (a) resign by notice given to the Parliamentary corporation; or
  - (b) be removed from office by the Parliamentary corporation.
- (7) The Parliamentary corporation shall not remove a person as the Commissioner unless—
  - (a) the Parliament so resolves; and
  - (b) if the resolution is passed on a division, the number of votes cast in favour of it is not less than two thirds of the total number of votes cast in the division.
- (8) The schedule makes further provision about the Commissioner.

## **2 Appointment of the acting Commissioner**

- (1) When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the Parliamentary corporation may appoint a person to discharge the functions of that office either generally or in relation to such case or class of cases, and until such time, as may be specified by the Parliamentary corporation as part of the terms and conditions of such appointment; and a person so appointed is referred to in this section as the “acting Commissioner”.
- (2) The Commissioner and the acting Commissioner may each discharge the functions of the office of the Commissioner at the same time but in relation to different cases.
- (3) A person who is not eligible to be appointed as the Commissioner is not eligible to be appointed as the acting Commissioner.
- (4) A person appointed as the acting Commissioner—
  - (a) may at any time resign by notice given to the Parliamentary corporation;
  - (b) may at any time be removed from office by the Parliamentary corporation;
  - (c) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine; and
  - (d) while holding that appointment is to be treated for all purposes (except those of section 1 and paragraph 1 of the schedule) as the Commissioner.

## **3 Functions of the Commissioner**

- (1) Subject to the provisions of this Act, where a complaint has been made to the Commissioner about the conduct of a member of the Parliament, it shall be the function of the Commissioner to—
  - (a) investigate whether the member has committed the conduct complained about and has, as a result of that conduct, breached a relevant provision; and
  - (b) report upon the outcome of that investigation to the Parliament.
- (2) However, subject to section 12, the Commissioner shall not investigate any complaint which falls within a class of complaint which is excluded from the jurisdiction of the Commissioner by any provision in the standing orders or in the Code of Conduct; and any such complaint is referred to in this Act as an “excluded complaint”.
- (3) A “relevant provision” is any provision in force at the relevant time—
  - (a) in the standing orders;
  - (b) in the Code of Conduct;
  - (c) in the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 (S.I.1999/1350); or
  - (d) made by or under an Act of the Scottish Parliament in pursuance of section 39 (members' interests) of the Scotland Act.
- (4) The “relevant time” is the time when the conduct in question is alleged to have taken place, whether before or after this section comes into force.
- (5) The Commissioner may give advice to a member of the Parliament or to a member of the public about the procedures for making a complaint to the Commissioner and the procedures following upon the making of such a complaint.
- (6) However, the Commissioner shall not—

- (a) give advice to a member of the Parliament or to a member of the public as to whether any conduct which has been, or is proposed to be, committed by a member of the Parliament (whether or not the member seeking such advice) would constitute a breach of a relevant provision; or
  - (b) otherwise express any view upon any of the relevant provisions except in the context of an investigation in any particular case or in a report upon the outcome of that investigation or in such other circumstances as may be specified in any direction given to the Commissioner by the Parliament.
- (7) In addition to the functions mentioned in subsections (1) and (5), the Commissioner also has the functions which are conferred or imposed upon the Commissioner by virtue of any other provision in this Act or in any other enactment or in the standing orders.

#### **4 Directions to the Commissioner**

- (1) The Commissioner shall, in carrying out the functions of that office, comply with any directions given by the Parliament.
- (2) Any direction to the Commissioner by the Parliament under this section may, in particular—
- (a) make provision as to the procedure to be followed by the Commissioner when conducting—
    - (i) investigations generally into any complaint about the conduct of a member of the Parliament; or
    - (ii) investigations into complaints falling within such class or classes as may be specified in the direction (and different provision may be made in relation to different classes of complaint); or
  - (b) require the Commissioner to make a report to the Parliament upon such matter relating to the exercise of the functions of the Commissioner as may be specified in the direction.
- (3) However, any direction to the Commissioner by the Parliament under this section shall not direct the Commissioner as to whether or how any particular investigation is to be carried out.

#### *Investigation of complaints*

#### **5 General provisions relating to an investigation into a complaint**

- (1) There are two possible stages to any investigation by the Commissioner into a complaint, namely—
- (a) Stage 1 which consists of investigating and determining whether a complaint is admissible; and
  - (b) if the complaint is admissible, Stage 2 which consists of further investigating the complaint and reporting upon it to the Parliament,
- and any reference in this Act to “the stage of an investigation” or to “Stage 1” or “Stage 2” shall be construed accordingly.
- (2) Each stage of an investigation into a complaint shall be conducted in private.

- (3) The Commissioner may at any time make a report to the Parliament as to the progress of an investigation into a complaint.
- (4) Subject to the provisions of this Act, it is for the Commissioner to decide when and how to carry out any investigation at each stage.

## **6 Stage 1: Admissibility of complaints**

- (1) At Stage 1, the Commissioner shall investigate and determine whether a complaint is admissible.
- (2) A complaint is admissible if it appears to the Commissioner that the following three tests are satisfied, namely—
  - (a) that the complaint is relevant;
  - (b) that the complaint meets all the requirements specified in subsection (5) (“the specified requirements”) or that the Parliament has, as under section 7(7)(b), directed the Commissioner to treat the complaint as if it had met all of those requirements; and
  - (c) that the complaint warrants further investigation.
- (3) The three tests mentioned in paragraphs (a), (b) and (c) of subsection (2) are referred to as the first, second and third tests respectively.
- (4) For the purposes of the first test, a complaint is relevant if—
  - (a) it is about the conduct of a member of the Parliament;
  - (b) it is not an excluded complaint or, if it is, that the Commissioner has been directed under section 12 to investigate it; and
  - (c) it appears at first sight that, if all or part of the conduct complained about is established to have been committed by that member, it might amount to a breach of a relevant provision or provisions identified by the Commissioner.
- (5) For the purposes of the second test, the specified requirements are that the complaint—
  - (a) is made in writing to the Commissioner;
  - (b) is made by an individual person, is signed by that person and states that person’s name and address;
  - (c) names the member of the Parliament concerned;
  - (d) sets out the facts relevant to the conduct complained about and is accompanied by any supporting evidence which the complainer wishes to submit; and
  - (e) is made within one year from the date when the complainer could reasonably have become aware of the conduct complained about.
- (6) For the purposes of the third test, a complaint warrants further investigation if it appears after an initial investigation that the evidence is sufficient to suggest that the conduct complained about may have taken place.

## **7 Procedures at Stage 1**

- (1) When the Commissioner receives a complaint about the conduct of a member of the Parliament, the Commissioner shall—
  - (a) notify that member that a complaint has been made;
  - (b) inform that member of the nature of the complaint; and

- (c) except where the Commissioner considers that it would be inappropriate to do so, inform that member of the name of the complainer.
- (2) If the Commissioner considers that the complaint is admissible, the Commissioner shall proceed to Stage 2 of the investigation into the complaint and shall—
- (a) make a report to the Parliament informing it of that fact and of the relevant provision or provisions identified by the Commissioner for the purposes of the first test; and
  - (b) inform the complainer and the member of the Parliament concerned accordingly.
- (3) If the Commissioner considers that the complaint is inadmissible for failing to satisfy the first or the third test, the Commissioner shall dismiss the complaint and shall inform the complainer and the member of the Parliament concerned accordingly, together with the reasons for that view.
- (4) Subject to subsection (6), where the Commissioner considers that a complaint satisfies the first test but fails to meet one or more of the specified requirements, the Commissioner shall not dismiss the complaint as inadmissible for failing to satisfy the second test without making a report upon the matter to the Parliament and receiving a direction under subsection (7)(a).
- (5) The report under subsection (4) shall set out—
- (a) the reasons as to why the Commissioner considers that the complaint fails to meet one or more of the specified requirements;
  - (b) the reasons (if known) for that failure;
  - (c) any other matters which the Commissioner considers relevant; and
  - (d) the recommendation of the Commissioner as to whether, having regard to all the circumstances of the case, the complaint should be dismissed as inadmissible for failing to satisfy the second test or should be treated as if it had met all of those requirements.
- (6) Except in the case of a complaint falling within such class or classes of case as may be specified in any direction by the Parliament under this section, the Commissioner shall, before making the report to the Parliament under subsection (4), investigate whether the complaint satisfies the third test and, if it does, the report shall contain a statement to that effect; but, if the Commissioner considers that the complaint fails to satisfy that test, the Commissioner shall dismiss the complaint accordingly and no report requires to be made under that subsection.
- (7) After receiving a report under subsection (4), the Parliament shall give the Commissioner a direction under this section either—
- (a) to dismiss the complaint as inadmissible for failing to satisfy the second test; or
  - (b) to treat the complaint as if it had met all of the specified requirements.
- (8) Where the Commissioner is directed by the Parliament to dismiss the complaint under subsection (7)(a), the Commissioner shall dismiss the complaint and shall inform the complainer and the member of the Parliament concerned accordingly.
- (9) In any case where the member of the Parliament concerned has not been named in the complaint or the complainer is anonymous, subsections (1), (2), (3) and (8) shall apply only to the extent that they are capable of applying.

- (10) The Commissioner may make a report to the Parliament informing it of any complaint which the Commissioner has dismissed as being inadmissible and of the reasons for the dismissal.
- (11) If the Commissioner has not completed the investigation and determined the admissibility of a complaint within two months of the complaint being received, the Commissioner shall, as soon as possible thereafter, make a report to the Parliament upon the progress of any investigation into the complaint at Stage 1.

## **8 Stage 2: Investigation of an admissible complaint**

- (1) At Stage 2, the Commissioner shall investigate an admissible complaint with a view to—
  - (a) making findings of fact in relation to whether the member of the Parliament concerned (whether or not named in the complaint) has committed the conduct complained about; and
  - (b) reaching a conclusion as to whether that member has, as a result of that conduct, breached the relevant provision or provisions identified by the Commissioner for the purposes of the first test.
- (2) The Commissioner may make a finding of fact if satisfied on a balance of probabilities that the fact is established.
- (3) If the Commissioner has not completed the investigation under this section within the period of six months beginning with the date on which the Commissioner found that complaint to be admissible, the Commissioner shall, as soon as possible thereafter, make a report to the Parliament upon the progress of any such investigation.

## **9 Report**

- (1) At the conclusion of an investigation into a complaint at Stage 2, the Commissioner shall make a report to the Parliament upon the outcome of the investigation.
- (2) The report shall include—
  - (a) details of the complaint;
  - (b) details of the investigation carried out by the Commissioner;
  - (c) the facts found by the Commissioner in relation to whether the member of the Parliament concerned (whether or not named in the complaint) has committed the conduct complained about;
  - (d) the conclusion reached by the Commissioner as to whether that member has, as a result of that conduct, breached the relevant provision or provisions identified by the Commissioner for the purposes of the first test and the reasons for that view,but shall not express any view upon what sanction would be appropriate for any breach.
- (3) No report concluding that a member of the Parliament, who is named in the report, has breached a relevant provision shall be made to the Parliament unless the member concerned has been given a copy of the draft report and an opportunity to make representations on the alleged breach and on the draft report; and there shall be annexed to the report made to the Parliament any representations made by that member which are not given effect to in that report.

## **10 Action on receipt of a report**

- (1) The Parliament is not bound by the facts found, or the conclusions reached, by the Commissioner in a report made under section 9.
- (2) The Parliament may direct the Commissioner to carry out such further investigations as may be specified in the direction and to report on the outcome of these investigations to it.
- (3) Subject to any such direction, the provisions of this Act and of any other direction given under this Act shall apply, subject to any necessary modifications, in relation to any investigation and report by virtue of subsection (2) as they apply in relation to an investigation and report into a complaint made to the Commissioner.

## **11 Withdrawal of a complaint**

- (1) At any time after a complaint has been made to the Commissioner and before a report is made to the Parliament under section 9, the complaint may be withdrawn by the complainer by notice in writing to the Commissioner which is signed by the complainer.
- (2) When a complaint has been withdrawn as mentioned in subsection (1) during Stage 1, the Commissioner shall—
  - (a) cease to investigate that complaint; and
  - (b) inform the member of the Parliament concerned that the complaint has been withdrawn, that the investigation into the complaint has ceased and of the reasons given by the complainer for withdrawing the complaint.
- (3) When a complaint has been withdrawn as mentioned in subsection (1) during Stage 2, the Commissioner shall—
  - (a) inform the member of the Parliament concerned that the complaint has been withdrawn and of the reasons given by the complainer for withdrawing the complaint;
  - (b) invite that member to give the Commissioner any views upon whether the investigation should nevertheless continue; and
  - (c) after taking into account any relevant information, including any reasons given by the complainer for withdrawing the complaint and any views expressed by that member, determine whether to recommend to the Parliament that the investigation into the complaint should nevertheless continue.
- (4) If the Commissioner determines not to make any such recommendation as is mentioned in subsection (3), the Commissioner shall—
  - (a) cease to investigate that complaint;
  - (b) inform the complainer and the member of the Parliament concerned the investigation into the complaint has ceased; and
  - (c) report to the Parliament that the complaint has been withdrawn, that the investigation into the complaint has ceased and the reasons given by the complainer for withdrawing the complaint.
- (5) If the Commissioner determines to make any such recommendation as is mentioned in subsection (3), the Commissioner shall report to the Parliament—

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- (a) that the complaint has been withdrawn, the reasons given by the complainer for withdrawing the complaint and the views, if any, expressed by the member concerned as mentioned in subsection (3)(b); and
  - (b) that the Commissioner recommends that the complaint should nevertheless continue to be investigated, together with the reasons for that view.
- (6) After receiving a report under subsection (5), the Parliament shall give the Commissioner a direction under this section either to continue the investigation into the complaint or to cease that investigation; and the Commissioner shall comply with that direction and inform the member of the Parliament concerned and the complainer accordingly.
- (7) Where the Commissioner is required under this section to inform the member of the Parliament concerned of, or to report to the Parliament, the reasons given by the complainer for withdrawing the complaint, the Commissioner may do so by providing a summary of those reasons.
- (8) In any case where the member of the Parliament concerned has not been named in the complaint or the complainer has not given any reasons for withdrawing the complaint, subsections (2) to (7) shall apply only to the extent that they are capable of applying.

## **12 Investigation into excluded complaints**

- (1) The Parliament may direct the Commissioner to undertake an investigation into any excluded complaint specified in the direction.
- (2) Any such direction may direct the Commissioner to take into account any information in connection with the excluded complaint which is specified in the direction.
- (3) Any such direction may direct the Commissioner to treat an excluded complaint as being admissible and, if so, shall specify the relevant provision or provisions which is or are to be treated as having been identified by the Commissioner for the purposes of the first test.
- (4) Subject to any such direction, any excluded complaint which the Commissioner is directed to investigate shall be treated in the same way as any other complaint made to the Commissioner.
- (5) Subject to any such direction, the provisions of this Act and of any other direction given under this Act shall apply, subject to any necessary modifications, in relation to any investigation and report by virtue of this section as they apply in relation to a complaint made to the Commissioner.

### *General*

## **13 Power to call for witnesses and documents**

- (1) Subject to subsection (2), at each stage of an investigation into a complaint the Commissioner may for the purposes of that investigation require any person, whether in or outside Scotland, who is able, in the opinion of the Commissioner, to give relevant evidence or to produce relevant documents, to do so.
- (2) The Commissioner may not impose such a requirement upon any person whom the Parliament could not require, under section 23 of the Scotland Act, to attend its



proceedings for the purpose of giving evidence or to produce any documents for the same purposes.

- (3) A person is not obliged under this section to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- (4) Any statement made by a person in answer to any question which that person was obliged under this section to answer shall not be admissible in any criminal proceedings against that person, except where the proceedings are in respect of perjury relating to that statement.
- (5) A Scottish Law Officer or a procurator fiscal is not obliged under this section to answer any question or to produce any document which that officer would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, section 23(10) of the Scotland Act.
- (6) The Commissioner may—
  - (a) administer an oath to any person giving evidence to the Commissioner; and
  - (b) require that person to take an oath.
- (7) Any person who refuses to take an oath when required to do so under subsection (6)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.
- (8) The Commissioner may pay such allowances and expenses to persons giving evidence before the Commissioner or producing documents which they have been required or requested to produce as the Commissioner may, with the agreement of the Parliamentary corporation, determine.
- (9) For the purposes of this section, a person shall be taken to comply with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.

#### **14 Witnesses and documents: notice**

- (1) A requirement under section 13 shall be imposed by the Commissioner giving the person in question notice in writing specifying—
  - (a) the time and place at which the person is to attend before the Commissioner and the particular subjects concerning which that person is required to give evidence; or
  - (b) the documents, or types of documents, which the person is to produce, the date by which that person is to produce them and the particular subjects concerning which they are required.
- (2) Such notice shall be given—
  - (a) in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to that person at the person's usual or last known address or, where the person has given an address for service, at that address;
  - (b) in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.

## **15 Witnesses and documents: offences**

- (1) Any person to whom a notice under section 14(1) has been given who—
  - (a) refuses or fails to attend before the Commissioner as required by the notice;
  - (b) refuses or fails, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice;
  - (c) deliberately alters, suppresses, conceals or destroys any document which that person is required to produce by the notice; or
  - (d) refuses or fails to produce any such document,is guilty of an offence.
- (2) Subsection (1) is subject to section 13(3) and (5).
- (3) It is a defence for a person charged with an offence under subsection (1)(a), (b) or (d) to prove that there was a reasonable excuse for the refusal or failure.
- (4) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.
- (5) Where an offence under this section which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
  - (a) a director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.

## **16 Restriction upon disclosure of information**

- (1) Except as permitted by subsection (2), the Commissioner or the staff of, or any other person appointed by, the Commissioner shall not disclose any information contained in the complaint or any information which is furnished to or obtained by them in the course of, or for the purposes of, an investigation into that complaint.
- (2) Such information may be disclosed for the purpose of—
  - (a) enabling or assisting the Commissioner to discharge any functions imposed or conferred upon the Commissioner by virtue of any provision in this Act or in any other enactment or in the standing orders, including, in particular, the making of any report to the Parliament; or
  - (b) the investigation or prosecution of any offence or suspected offence.

## **17 Protection from actions of defamation**

- (1) For the purposes of the law of defamation, any statement made in pursuance of the purposes of this Act—
  - (a) by the Commissioner shall have absolute privilege; or
  - (b) to the Commissioner shall have qualified privilege.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

## **18 Annual report**

- (1) As soon as possible after the end of each calendar year, the Commissioner shall lay before the Parliament an annual report upon the performance of the functions of the Commissioner throughout that year.
- (2) Without prejudice to the generality of subsection (1), the annual report shall include, in relation to the year in question—
  - (a) the number of complaints made to the Commissioner;
  - (b) in relation to Stage 1, the number of Stage 1 investigations completed by the Commissioner, the number of complaints which are dismissed, and the number of complaints found to be admissible;
  - (c) in relation to Stage 2, the number of Stage 2 investigations completed by the Commissioner and the number of reports where the Commissioner reached the conclusion that the conduct complained about did or did not constitute a breach of a relevant provision;
  - (d) the number of complaints withdrawn by the complainer and the stage at which they were withdrawn; and
  - (e) the number of investigations carried out by the Commissioner under section 10(2).

## **19 Transitional provision**

- (1) The Parliament may direct the Commissioner to undertake an investigation into any complaint which, on the day when this section comes into force, has been received, or is under investigation, by the Parliament.
- (2) Any such direction may direct the Commissioner to take into account any information in connection with the complaint which is specified in the direction.
- (3) Any such direction may, in relation to a particular complaint, direct the Commissioner to treat that complaint as being admissible and, if so, shall specify the relevant provision or provisions which is or are to be treated as having been identified by the Commissioner for the purposes of the first test.
- (4) Subject to any such direction, any complaint which the Commissioner is directed to investigate shall be treated in the same way as any other complaint which is made to the Commissioner.
- (5) Subject to any such direction, the provisions of this Act and of any other direction given under this Act shall apply, subject to any necessary modifications, in relation to any investigation and report by virtue of this section as they apply in relation to a complaint made to the Commissioner.

### *Supplementary*

## **20 Interpretation**

In this Act—

“acting Commissioner” shall be construed in accordance with section 2(1);

“admissible complaint” shall be construed in accordance with section 6(2) and related expressions shall be construed accordingly;

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*Status: This is the original version (as it was originally enacted).*

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“Code of Conduct” means the Code of Conduct for members of the Parliament made under the standing orders;

“Commissioner” shall be construed in accordance with section 1(1);

“conduct” includes any act or failure to act and related expressions shall be construed accordingly;

“excluded complaint” shall be construed in accordance with section 3(2);

“first test”, “second test” and “third test” shall be construed in accordance with section 6(3);

“member of the Parliament” includes—

- (a) a Scottish Law Officer even where that officer is not a member of the Parliament; and
- (b) except for the purposes of section 1(3), a former member of the Parliament and a former Scottish Law Officer;

“the Parliament” includes any committee of the Parliament;

“Parliamentary corporation” means the Scottish Parliamentary Corporate Body;

“relevant provision” shall be construed in accordance with section 3(3);

“relevant time” shall be construed in accordance with section 3(4);

“Scotland Act” means the Scotland Act 1998 (c. 46);

“Scottish Law Officer” means the Lord Advocate or the Solicitor General for Scotland;

“specified requirement” shall be construed in accordance with section 6(5);

“Stage 1” and “Stage 2” shall be construed in accordance with section 5(1);

“stage of an investigation” shall be construed in accordance with section 5(1); and

“standing orders” means the standing orders of the Parliament.

## **21 Short title and commencement**

- (1) This Act may be cited as the Scottish Parliamentary Standards Commissioner Act 2002.
- (2) This Act comes into force as follows—
  - (a) this section and sections 1 and 20 and the schedule shall come into force the day after the date of Royal Assent; and
  - (b) the remainder of this Act shall come into force at the end of the period of six months beginning with the date of Royal Assent.