Status: *Point in time view as at 11/03/2003. This version of this Act contains provisions that are not valid for this point in time.*
Changes to legislation: *Public Appointments and Public Bodies etc. (Scotland) Act 2003 is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

Public Appointments and Public Bodies etc. (Scotland) Act 2003

2003 asp 4

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 5th February 2003 and received Royal Assent on 11th March 2003

An Act of the Scottish Parliament to establish the office of Commissioner for Public Appointments in Scotland; to make provision in respect of appointments to certain public bodies; to dissolve certain public bodies; to make provision as to certain functions of Health Boards and National Health Service trusts; to make provision as to the functions of the Law Society of Scotland and the Scottish Solicitors' Discipline Tribunal regarding the regulation of conveyancing and executry practitioners and the provision of services by such practitioners; to make modifications in relation to those services, including conferring certain notarial and other functions on such practitioners; to establish the Historic Environment Advisory Council for Scotland; and for connected purposes.

VALID FROM 01/06/2004

PART 1

THE COMMISSIONER FOR PUBLIC APPOINTMENTS IN SCOTLAND

1 Commissioner for Public Appointments in Scotland

(1) There is established the office of Commissioner for Public Appointments in Scotland (in this Act referred to as “the Commissioner”) who is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament.

(2) Schedule 1 makes further provision about the appointment and status of the Commissioner and about certain administrative and other matters with respect to the Commissioner.

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Changes to legislation: *Public Appointments and Public Bodies etc. (Scotland) Act 2003 is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

2 The Commissioner's functions

(1) The Commissioner is to prepare and publish a code of practice in respect of the making by the Scottish Ministers of any appointment or, as the case may be, the making by them of any recommendation for any appointment—

(a) of a person to an office specified in schedule 2; and

(b) to a body specified in that schedule (being an appointment of a person to an office of, or as a member of, the body),

(any office referred to in (a) and any body referred to in (b) being referred to in this Act as "the specified authorities").

(2) The code of practice is to include guidelines as to the methods and practices to be employed in the making of such appointments and recommendations and may, in particular, include guidelines as to—

(a) how vacancies in the specified authorities are to be publicised;

(b) how applications to fill those vacancies are to be encouraged; and

(c) the basis on which the Scottish Ministers are to consider persons for, and for recommendation for, appointment to the specified authorities.

(3) The Commissioner—

(a) is to keep under review the code of practice;

(b) may from time to time revise the code of practice and publish it as so revised; and

(c) is to promote compliance with the code of practice.

(4) In preparing the code of practice, and in making any revisions to it, the Commissioner must—

(a) consult the Parliament and the Scottish Ministers; and

(b) invite (by way of advertisement or otherwise) other persons to make representations,

as regards the code.

(5) The Commissioner—

(a) is to examine—

(i) the methods and practices employed by the Scottish Ministers in the making of appointments, and recommendations for appointment, to the specified authorities; and

(ii) if the Commissioner considers it appropriate, the making by the Scottish Ministers of any appointment, or recommendation for appointment, to any of the specified authorities; and

(b) is to investigate complaints arising from the making by the Scottish Ministers of any appointment, or recommendation for appointment, to any of the specified authorities.

(6) The Commissioner may issue guidance to the Scottish Ministers (either generally or in a particular case) as to compliance with the code of practice.

(7) In any case where—

(a) it appears to the Commissioner that the code of practice has not been complied with in a material regard;

(b) the Commissioner has intimated that fact to the Scottish Ministers; and

(c) the Commissioner considers that—

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(i) the code of practice is unlikely to be complied with within a reasonable time of that intimation; or

(ii) after a reasonable time from that intimation, the code remains to be complied with,

subsection (8) applies.

(8) Where this subsection applies, the Commissioner—

(a) must report the case to the Parliament (together with any information in relation to the case the Commissioner considers appropriate to include); and

(b) if the appointment or recommendation for appointment in question has not been made, may direct the Scottish Ministers to delay making the appointment or, as the case may be, the recommendation until the Parliament has considered the case; and the Scottish Ministers must comply with any such direction.

(9) The Commissioner is to exercise the Commissioner's functions with a view to ensuring that—

(a) appointments, and recommendations for appointment, to the specified authorities are made fairly and openly; and

(b) so far as reasonably practicable, all categories of person are afforded an opportunity to be considered for appointment, and recommendation for appointment, to the specified authorities.

(10) Without prejudice to subsections (2) and (9), the Commissioner—

(a) is to prepare and publish a strategy for ensuring that appointments, and recommendations for appointment, to the specified authorities are made by the Scottish Ministers in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements (those expressions having the same meanings as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46)); and

(b) may, in the strategy, set targets with a view to ensuring that such appointments and recommendations are made with due regard to the need to meet those requirements,

but, in preparing the strategy or setting targets, the Commissioner must consult the Parliament and the Scottish Ministers.

3 The Commissioner's functions: further provision

(1) The Scottish Ministers must provide the Commissioner with such information as the Commissioner reasonably requires in the exercise of the Commissioner's functions.

(2) The Scottish Ministers may by order—

(a) amend schedule 2; or

(b) in relation to appointments to the specified authorities—

(i) confer on the Commissioner any additional function; or

(ii) remove any function of the Commissioner,

which they consider appropriate so to confer or remove.

(3) Where—

(a) an office or body is to be established; and

(b) when established, the office or body is to be specified in schedule 2,

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the Scottish Ministers may by order provide that the office or body is to be treated, for the purposes of or in connection with any appointment to the office or body, as if it were one of the specified authorities.

(4) Each body mentioned in section 4 is to be treated, for the purposes of or in connection with any appointment to the body made before that section comes into force as respects the body, as if it were one of the specified authorities.

VALID FROM 31/05/2003

PART 2

PROVISION AS TO CERTAIN PUBLIC BODIES ETC.

Dissolution of certain bodies

4 Dissolution of certain bodies

The following bodies are dissolved—

(a) the Ancient Monuments Board for Scotland;
(b) the Historic Buildings Council for Scotland;
(c) the Scottish Hospital Trust;
(d) the Scottish Medical Practices Committee; and
(e) the Scottish Conveyancing and Executry Services Board.

Commencement Information

I1 S. 4(a)(b) in force at 31.5.2003 by S.S.I. 2003/219, **art. 2(1)(a)**

VALID FROM 01/01/2004

Health Service bodies

5 Property of the Scottish Hospital Trust

(1) Any—

(a) endowment (and accumulated income thereof) held by the Scottish Hospital Trust by virtue of subsection (3) of section 11 (Scottish Hospital Trust) of the National Health Service (Scotland) Act 1978 (c. 29) (in this Act referred to as the "1978 Act");
(b) endowment and other property (and accumulated income thereof) held by it by virtue of paragraph 4(e) to (f) of Schedule 6 (the Hospital Trust) to that Act; and
(c) other property and rights of or held by the Scottish Hospital Trust (of whatever kind),

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(in this section and section 6 referred to as the "Trust property") is transferred to, and vested in, the Health Boards.

(2) The Scottish Ministers may by regulations make provision for the purposes of or in connection with the transfer and vesting of the Trust property by virtue of subsection (1) and may, in particular, make provision as to how the Trust property is to be divided among different Health Boards, including—
   (a) prescribing the method of calculating the capital value of the property and the share of each Health Board in it;
   (b) providing for any of the Trust property to be realised for value and for the value to be transferred to and vested in the appropriate Health Board in lieu of the property.

(3) Before making regulations under subsection (2), the Scottish Ministers must consult the Scottish Hospital Trust and all Health Boards and NHS trusts on the proposed regulations.

(4) Any Trust property (including any value in lieu of the property) which has been transferred to a Health Board by virtue of subsections (1) and (2), may be transferred by the Board to, and vested in, another Health Board, subject to such conditions (including conditions as to the extent of any transfer or of the transfer of any class of property) as the Scottish Ministers may by regulations provide for.

(5) Where Trust property has been transferred by a Health Board to another Health Board under subsection (4), the other Health Board is (except where, by virtue of a subsequent transfer, the property is held by an NHS trust) to transfer it back to the Health Board which made the transfer within a reasonable time of any requirement for such a transfer as that Health Board may make; and any property so transferred vests in that Health Board.

(6) In this section and sections 6 to 9, the expression "NHS trust" is to be construed in accordance with section 108(1) (interpretation) of the 1978 Act.

VALID FROM 12/02/2004

6 Transfer of certain property between Health Boards and NHS trusts

(1) Any Trust property (including any value in lieu of the property) which—
   (a) has been transferred to a Health Board by virtue of section 5; and
   (b) relates to any service which it is the function of an NHS trust situated in the area of the Health Board to make arrangements for, administer or provide,

may, without prejudice to section 12D (transfer of property, rights and liabilities to NHS trusts) of the 1978 Act, be transferred by the Board to, and vested in, the NHS trust following any request for such a transfer as the trust may make.

(2) Any endowment held by an NHS trust may be transferred by the trust to, and vested in, any Health Board to such extent as the trust may determine.

(3) Where an endowment has been transferred by an NHS trust to a Health Board under subsection (2), the Health Board is to transfer it back to the trust within a

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reasonable time of any requirement for such a transfer as the trust may make; and any endowment so transferred vests in the NHS trust.

7 Investment and borrowing

(1) A Health Board has the following powers—

(a) the like powers in relation to its funds as trustees have, in relation to their trust estate, under section 4(1) of the Trusts (Scotland) Act 1921 (c. 58); and

(b) power to purchase and lease land and to invest in any security in which trustees are authorised to invest under or in pursuance of the Trusts (Scotland) Act 1921 and the Trustee Investments Act 1961 (c. 62) and—

(i) to retain any investment which it from time to time receives;

(ii) to make a narrower-range investment falling within Part II of Schedule 1 to the Trustee Investments Act 1961 without first obtaining advice as required by section 6 of that Act; and

(iii) to invest in the units of a unit trust scheme or in participation certificates or in any form of participation under any trust or scheme having the effect of enabling persons to participate in the profits and income arising from the acquisition, holding, management or disposal of securities or of land.

(2) A Health Board must obtain advice on any investment under subsection (1) from a person whom the Board considers to be qualified to give such advice by the person's ability in, and practical experience of, financial matters; and, where the person is not an officer or employee of the Board, the advice may be given on such terms as the Board and the person may agree to.

(3) A Health Board may borrow from any endowment held by it provided that the endowment does not relate to—

(a) the services provided by another Health Board; or

(b) any service which it is the function of an NHS trust to make arrangements for, administer or provide.

(4) A Health Board may make loans to another Health Board from any endowment held by the Board provided that the endowment relates to the services provided by that other Board; and that other Health Board may borrow accordingly.

(5) A Health Board may make loans to any NHS trust from any endowment held by the Board provided that the endowment relates to any service which it is the function of the trust to make arrangements for, administer or provide; and the NHS trust may borrow accordingly.

(6) An NHS trust may borrow from any endowment held by the trust.

(7) Any loans or borrowing under subsections (3) to (6) require the consent of the Scottish Ministers.

(8) The Scottish Ministers may by regulations make provision as to the terms and conditions to apply to any such loans or borrowing.

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8 Endowment schemes

(1) The Scottish Ministers are by regulations to make a scheme for the distribution of the income from endowments held by Health Boards and NHS trusts.

(2) In devising the scheme, the Scottish Ministers must consult all Health Boards and NHS trusts.

(3) The scheme must provide for the income from such endowments—

(a) in so far as it is distributed among Health Boards, to be used by Boards for purposes relating to services provided under the 1978 Act in or in relation to hospitals, or to research into any such matters as are mentioned in section 47(2) of that Act, or for purposes intended to preserve the memory of any person or category of person; and

(b) in so far as it is distributed among NHS trusts, to be used by trusts for purposes relating to services which it is their function to make arrangements for, administer or provide.

VALID FROM 12/02/2004

9 Directions in relation to endowments

The Scottish Ministers may, without prejudice to section 2(5) of, and paragraph 6(1) of Schedule 7A to, the 1978 Act (which confer powers as to directions), give directions to Health Boards and NHS trusts (either generally or to any particular Board or trust or in any particular case) for the purpose of or in connection with the exercise of their functions as to endowments; and a Board or trust must comply with any such directions given to it.

VALID FROM 12/02/2004

10 Holding of certain property by NHS trusts and Health Boards

(1) In section 12G (trust property of NHS trusts) of the 1978 Act, in subsection (3)(b), after the words "12D" there is inserted "or a request under section 6(1) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)".

(2) In section 82 (use and administration of certain endowments and other property held by Health Boards) of that Act, after subsection (2) there is inserted—

"(2A) All endowments and other property (including value in lieu of the property) vested in a Health Board by virtue of section 5 or 6(2) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) is so vested free of any trust existing immediately before it is so vested (hereafter in this section referred to in relation to any such endowment or property as "the original trust"); but all such endowments and other property shall be held by the Health Board on trust for such purposes relating to services provided under this Act or in relation to hospitals, or to the functions of the Board with respect to research, as the Board may think fit.".

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(3) In section 83 (power of Health Boards to hold property on trust) of that Act, after subsection (1) there is inserted—

"(1A) A Health Board shall have power to accept, hold and administer any property on trust for purposes relating to any service which it is the function of any NHS trust in the area of the Health Board to make arrangements for, administer or provide.".

VALID FROM 15/08/2003

Law Society functions etc. as to certain legal services

11 Property etc. of the Scottish Conveyancing and Executry Services Board

All property, rights and liabilities of the Scottish Conveyancing and Executry Services Board are transferred to, and vested in, the Scottish Ministers; and any property or rights so transferred may be transferred by the Scottish Ministers to the Law Society of Scotland.

12 Regulation by the Law Society of conveyancing and executry services

In the Solicitors (Scotland) Act 1980 (c. 46) (in this Act referred to as the "1980 Act")—

(a) in section 1 (establishment and objects of Law Society of Scotland), in subsection (1), after the word "Act" in the second place where it appears there is inserted ; " and sections 16 to 23 (which relate to the provision of conveyancing and executry services) of the 1990 Act "

(b) in section 3 (establishment and functions of the Council of the Law Society), in subsection (2), after the word "Act" there is inserted ; and " and sections 16 to 23 of the 1990 Act "

(c) in section 65(1) (interpretation), at the appropriate place there is inserted—

""the 1990 Act" means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);".

13 Scottish Solicitors' Discipline Tribunal and certain practitioners

In the 1980 Act—

(a) in section 50 (the Tribunal), in subsection (1), after the word "Act" in the first place where it appears there is inserted ;

"and sections 16 to 23 (which relate to the provision of conveyancing and executry services) of the 1990 Act"

(b) in section 51 (complaints to Tribunal), after subsection (1) there is inserted—

"(1A) In subsection (1) above, without prejudice to the generality of that subsection, the reference to a complaint includes a complaint in respect of conveyancing and executry practitioners and the

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provision by them of conveyancing and executry services (those expressions having the meanings given in section 23 of the 1990 Act).”; and

(c) in section 52 (procedure on complaints to the Tribunal), in subsection (2) —

(i) after the word “Part” there is inserted “, the provisions of sections 16 to 23 of the 1990 Act” ;and

(ii) after paragraph (aa) there is inserted—

“(ab) for regulating the making, hearing and determining of—

(i) inquiries under subsection (2A) of section 20 of the 1990 Act; and

(ii) appeals under subsection (11)(b) of that section.”.

14 Exercise by certain practitioners of notarial and other functions

(1) The functions of a notary public specified in subsection (2) may be exercised in any case by an independent conveyancing practitioner instead of a notary public provided that the exercise of any such function by the practitioner is in connection with other conveyancing services being provided by the practitioner in the case.

(2) The functions are the functions of a notary public exercisable in pursuance of—

(a) sections 1(5) and (6), 6(3)(e), 8(2) and (2A) (which concern administering oaths and receiving affirmations in relation to certain matters) of the Matrimonial Homes (Family Protection) (Scotland) Act 1981 (c. 59); and

(b) section 18(4) (administering oaths and receiving affirmations in relation to reallotment of real burdens) of the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5).

(3) The functions exercisable in pursuance of section 9 (subscription of documents on behalf of granter who is blind or unable to write) of the Requirements of Writing (Scotland) Act 1995 (c. 7) by a relevant person (within the meaning of subsection (6) of that section) may be exercised in any case, instead of by a relevant person—

(a) in so far as relating to the execution of dispositions or standard securities, by a conveyancing practitioner; or

(b) in so far as relating to testamentary documents, by an executry practitioner.

(4) In this section, the expressions “conveyancing practitioner”, “conveyancing services”, “executry practitioner” and “independent conveyancing practitioner” are to be construed in accordance with section 23 (interpretation of sections 16 to 22) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40) (in this Act referred to as “the 1990 Act”).

(5) The Scottish Ministers may by order amend the specification of provisions in subsection (2).

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VALID FROM 01/06/2003

The Historic Environment Advisory Council for Scotland

15 The Historic Environment Advisory Council for Scotland

(1) There is established a body to be known as the Historic Environment Advisory Council for Scotland (in this Act referred to as "the Advisory Council").

(2) Schedule 3 makes provision about the constitution and status of the Advisory Council and about certain administrative and other matters with respect to it.

16 The Advisory Council's functions

(1) The Advisory Council is to provide to the Scottish Ministers the advice mentioned in subsection (2).

(2) The advice is advice on—
- (a) issues affecting the historic environment; and
- (b) how the functions of the Scottish Ministers exercisable in relation to the historic environment may be exercised effectively for the benefit of the historic environment.

(3) For the purposes of subsection (2), the historic environment means any or all of the structures and places in Scotland of historical, archaeological or architectural interest or importance.

(4) The Advisory Council is to provide advice under this section whenever—
- (a) the Scottish Ministers make a request of them for it; or
- (b) the Advisory Council considers it appropriate to do so.

Miscellaneous provision

17 Miscellaneous provision

Schedule 4 (which makes provision in connection with the dissolution of the bodies mentioned in section 4, makes provision as to the functions of Health Boards, makes provision as to the functions of the Law Society of Scotland and the Scottish Solicitors' Discipline Tribunal in relation to the provision of conveyancing and executry services, makes modifications in relation to those services and makes minor and consequential amendments to enactments) has effect.

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PART 3

GENERAL PROVISIONS

18 Orders and regulations

(1) Any power of the Scottish Ministers to make orders or regulations under this Act is exercisable by statutory instrument.

(2) Any such power includes power—

(a) to make such incidental, supplemental, consequential, transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient; and

(b) to make different provision for different purposes.

(3) A statutory instrument containing—

(a) except where subsection (5) applies, an order under section 19; or

(b) regulations under section 5(4) or 7(8),

is subject to annulment in pursuance of a resolution of the Parliament.

(4) A statutory instrument containing—

(a) an order under section 3(2)(a) or (b) or (3) or 14(5); or

(b) regulations under section 5(2) or 8(1),

is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

(5) A statutory instrument containing an order under section 19 which amends an Act is not made unless a draft of the instrument has been laid before, and approved by resolution of, the Parliament.

19 Ancillary provision

The Scottish Ministers may by order make such incidental, supplemental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of or in consequence of this Act.

20 Interpretation

In this Act—

"the 1978 Act" means the National Health Service (Scotland) Act 1978 (c. 29);

"the 1980 Act" means the Solicitors (Scotland) Act 1980 (c. 46);

"the 1990 Act" means the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40);

"the Advisory Council" means the Historic Environment Advisory Council for Scotland;

"the Commissioner" means the Commissioner for Public Appointments in Scotland;

"the Parliament" means the Scottish Parliament;

"the specified authorities" is to be construed in accordance with section 2.

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21 Short title and commencement

(1) This Act may be cited as the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

(2) This Act, except this section and sections 18 to 20, comes into force on such day as the Scottish Ministers may by order appoint.

(3) Different days may be so appointed for different provisions and for different purposes.

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VALID FROM 31/05/2003

VALID FROM 01/06/2004

SCHEDULE 1

(introduced by section 1)

THE COMMISSIONER

. . . . . .

VALID FROM 01/06/2004

SCHEDULE 2

(introduced by section 2)

THE SPECIFIED AUTHORITIES

. . . . . .

VALID FROM 05/07/2003

SCHEDULE 3

(introduced by section 15)

THE ADVISORY COUNCIL

. . . . . .

SCHEDULE 4

(introduced by section 17)

MISCELLANEOUS PROVISION

. . . . . .

Status:
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Changes to legislation:
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