

These notes relate to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003

PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

The Commissioner for Public Appointments in Scotland

Section 2 – The Commissioner’s functions

7. This section and schedule 2 sets out the scope of the Commissioner for Public Appointments’ functions and powers.
8. *Subsection (1)* provides for the Commissioner to prepare a Code of Practice which regulates the process for making appointments and recommendations for appointments by the Scottish Ministers to the “specified authorities” which are the office and bodies listed in Schedule 2. The Commissioner’s remit applies to ministerial appointments and ministerial recommendations for appointment (in practice, Crown appointments), but not to the appointment of staff of the specified authorities.
9. *Subsections (2) and (3)* provide for the scope of the Code of Practice, which is to be prepared, amended and promulgated by the Commissioner.
10. *Subsection (4)* requires that the preparation of and revisions to the Code must be undertaken in consultation with the Scottish Ministers, the Parliament and the public.
11. In addition to preparing (and amending) a Code of Practice, *subsection (5)* provides that the Commissioner shall examine the methods and practices employed by the Scottish Ministers in making appointments and recommendations for appointments, including any particular appointment to those specified authorities listed in schedule 2. It also provides for the Commissioner to investigate complaints arising from any appointment to a specified authority.
12. *Subsection (6)* provides that the Commissioner can issue guidance on compliance with the Code of Practice to the Scottish Ministers, both generally or in specific cases where there is a breach of the Code.
13. Following this, *subsection (7)* provides that, in any case where it appears to the Commissioner that the Code of Practice has not been complied with in a material regard (i.e. if there has been a serious breach of the Code), the Commissioner has intimated that fact to the Scottish Ministers, and the Commissioner considers that the Code is unlikely to be complied with, or has not been complied with, within a reasonable time, action must be taken under *subsection (8)*.
14. *Subsection (8)* provides that the Commissioner must report breaches of the Code by the Scottish Ministers which meet the criteria set out in subsection (7) to the Parliament. If the appointment has not been made, the Commissioner may direct the Scottish Ministers to delay making the appointment until consideration of the case has been concluded by the Parliament.

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15. *Subsections (9) and (10)* provide that the Commissioner is to exercise functions with a view to ensuring that the appointments and recommendations for appointments to the specified authorities are made in a fair and open manner and that as far as possible all categories of people are given the opportunity to apply. In doing so, the Commissioner is to prepare a strategy in consultation with the Scottish Ministers and the Parliament which may include targets for ensuring diversity in the membership of public bodies.