

## SCHEDULE 1

*(introduced by section 1)*

### THE COMMISSIONER

#### *Disqualification*

- 1 (1) A person is disqualified from appointment, and from holding office, as Commissioner if that person is—
- (a) a member of the House of Lords and entitled to vote in the House;
  - (b) a member of the House of Commons;
  - (c) a member of the Scottish Parliament;
  - (d) a member, officer or member of staff of a specified authority;
  - (e) a specified authority (where the authority is an individual); or
  - (f) disqualified from election as a member of the Scottish Parliament or as a member of a local authority.
- (2) A person holding office as Commissioner is disqualified from appointment—
- (a) as a member, officer or member of staff of a specified authority;
  - (b) to any paid office by a specified authority; and
  - (c) as a specified authority (where the authority is an individual).
- (3) A person who has ceased to hold office as Commissioner is, during the period of 3 years beginning with the date on which that person ceased to hold that office, disqualified from appointment—
- (a) as a member, officer or member of staff of a specified authority;
  - (b) to any paid office by a specified authority; and
  - (c) as a specified authority (where the authority is an individual),
- except in any case where, and to the extent that, the Parliament determines that this sub-paragraph is not to apply.
- (4) In this paragraph, references to a member of a specified authority include any member by co-option of any committee of a specified authority.
- (5) For the purposes of sub-paragraphs (2)(b) and (3)(b), an office is a paid office where the holder of it is entitled to remuneration or expenses (or to both).

#### *Status*

- 2 (1) The Commissioner, the Commissioner's staff and assessors appointed by the Commissioner—
- (a) are not to be regarded as servants or agents of the Crown;
  - (b) do not have any status, immunity or privilege of the Crown,
- and the Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown.
- (2) The Commissioner, in the exercise of the functions of that office, is not subject to the direction or control of—
- (a) any member of the Parliament;
  - (b) any member of the Scottish Executive; or
  - (c) the Parliamentary corporation,

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except in so far as provided for in paragraph 13(1) and (4).

*Validity of actings*

- 3 The validity of any actings of the Commissioner is not affected by—
- (a) any defect in the nomination by the Parliament for the Commissioner's appointment; or
  - (b) any disqualification from appointment as Commissioner.

*Term of office and tenure*

- 4 (1) The Commissioner—
- (a) is appointed to and holds office for such period not exceeding 5 years as the Parliamentary corporation may determine;
  - (b) may be relieved of office by Her Majesty at the Commissioner's request;
  - (c) may be removed from office by Her Majesty in pursuance of a resolution of the Parliament which, if passed on a division, must be voted for by the number of members equivalent to not less than two thirds of the total number of seats for members of the Parliament; and
  - (d) in other respects, is appointed to and holds office on such terms and conditions as the Parliamentary corporation may determine.
- (2) A person whose period of office as Commissioner expires under sub-paragraph (1) (a) is eligible for appointment again, but—
- (a) a person may be appointed as Commissioner for no more than 3 periods of office; and
  - (b) appointment for a third period of office is competent only if, by reason of special circumstances, such appointment is desirable in the public interest.

*Vacancy in office of Commissioner*

- 5 (1) Where the office of Commissioner is vacant, the Parliamentary corporation may appoint a person (whether or not a member of the Commissioner's staff or a person appointed as assessor by the Commissioner) to discharge the Commissioner's functions until a new Commissioner is appointed; and a person so appointed is referred to in this schedule as the "acting Commissioner".
- (2) A person who is disqualified from appointment as Commissioner by virtue of paragraph 1(1) is also disqualified from appointment as acting Commissioner.
- (3) A person appointed as acting Commissioner—
- (a) may be relieved of office at that person's request;
  - (b) may be removed from office by the Parliamentary corporation by notice in writing given by it;
  - (c) in other respects, is appointed to and holds that office on such terms and conditions as the Parliamentary corporation may determine; and
  - (d) while holding that office, is to be treated for all purposes, except those of paragraphs 3(a), 4, 6 and 7, as the Commissioner.

### *Remuneration*

- 6 The Commissioner is entitled to a salary of such amount, and such allowances, as the Parliamentary corporation may determine.

### *Pensions etc.*

- 7 (1) The Parliamentary corporation may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to hold office as Commissioner and, in particular, may—
- (a) make contributions or payments towards provision for such pensions, allowances or gratuities; and
  - (b) establish and administer one or more pension schemes.
- (2) The references in sub-paragraph (1) to pensions, allowances and gratuities include their provision by way of compensation for loss of office.

### *Staff*

- 8 (1) The Commissioner may, with the approval of the Parliamentary corporation, appoint such staff, on such terms and conditions, as the Commissioner may determine.
- (2) The Commissioner may, with the approval of the Parliamentary corporation, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff and, in particular, may—
- (a) make contributions or payments towards provision for such pensions, allowances or gratuities; and
  - (b) establish and administer one or more pensions schemes.
- (3) The references in sub-paragraph (2) to pensions, allowances and gratuities include their provision by way of compensation for loss of employment.

### *Assessors*

- 9 (1) The Commissioner may appoint assessors to assist the Commissioner in the exercise of the Commissioner's functions.
- (2) The Commissioner may, with the approval of the Parliamentary corporation, pay to any assessor such fees and allowances as the Commissioner may determine.

### *Delegation*

- 10 (1) Any function of the Commissioner may be exercised on the Commissioner's behalf—
- (a) by any person (whether or not a member of the Commissioner's staff or an assessor appointed by the Commissioner) authorised by the Commissioner to do so; and
  - (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the responsibility of the Commissioner for the exercise of the Commissioner's functions.

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### *Financial provision*

- 11 The Parliamentary corporation is to pay—
- (a) the salary and allowances of the Commissioner;
  - (b) any expenses incurred by the Commissioner in the exercise of the Commissioner's functions; and
  - (c) any sums payable by virtue of paragraph 5(3)(a) to (c) to, or in respect of, a person who—
    - (i) is appointed as acting Commissioner; or
    - (ii) has ceased to hold the office of acting Commissioner.

### *Accountable officer*

- 12 (1) The Parliamentary corporation is to designate the Commissioner or a member of the Commissioner's staff as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
- (a) those specified in sub-paragraph (3); and
  - (b) where the accountable officer is not the Commissioner, the duty set out in sub-paragraph (4),
- and the accountable officer is answerable to the Parliament for the exercise of those functions.
- (3) The functions referred to in sub-paragraph (2)(a) are—
- (a) signing the accounts of the expenditure and receipts of the Commissioner;
  - (b) ensuring the propriety and regularity of the finances of the Commissioner; and
  - (c) ensuring that the resources of the Commissioner are used economically, efficiently and effectively.
- (4) The duty referred to in sub-paragraph (2)(b) is a duty, where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (3), to—
- (a) obtain written authority from the Commissioner before taking the action; and
  - (b) send a copy of that authority as soon as practicable to the Auditor General for Scotland.

### *Accounts and reports*

- 13 (1) The Commissioner must—
- (a) keep proper accounts and accounting records; and
  - (b) prepare an annual account in respect of each financial year (the financial year being the period of 12 months ending with 31st March),
- in accordance with such directions as the Scottish Ministers may give.
- (2) The Commissioner must send the annual account to the Auditor General for Scotland for auditing.
- (3) If requested by any person, the Commissioner must make available at any reasonable time, and without charge, in printed or in electronic form, the audited accounts, for inspection by that person.

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- (4) The Commissioner must lay before the Parliament annually a report on the exercise of the functions of that office; and the Commissioner is to comply with any direction as to the form and content of such reports as the Parliamentary corporation may give.

*Functions: supplementary provision*

- 14 The Commissioner may do anything which appears necessary or expedient for the purpose of or in connection with the exercise of the functions of that office and, in particular, may—
- (a) acquire and dispose of land and other property; and
  - (b) enter into contracts.