

SCOTTISH PARLIAMENTARY COMMISSIONS AND COMMISSIONERS ETC. ACT 2010

EXPLANATORY NOTES

BACKGROUND TO THE ACT AND SUMMARY

The Parliamentary corporation supported bodies

4. Since 2000, the Scottish Parliament has established six new offices supported by the Parliamentary corporation. Each performs a distinct role, including advocacy, regulatory and investigatory functions. Whilst the officeholders are all directly accountable to Parliament through the laying of annual and other reports, they are independent of the Scottish Government, members of the Scottish Parliament and the Parliamentary corporation in the exercise of their functions.
5. The six Parliamentary corporation supported offices are: the Scottish Public Services Ombudsman; the Scottish Information Commissioner; the Scottish Parliamentary Standards Commissioner; the Commissioner for Children and Young People in Scotland; the Commissioner for Public Appointments in Scotland, and the Scottish Commission for Human Rights.
6. The Parliamentary corporation has a statutory role to ensure that the Parliament is provided with the property, staff and services required to carry out its functions and it has a similar role to play with regard to the officeholders and bodies that it supports. In addition the Parliamentary corporation determines the terms and conditions of the appointment of the Auditor General for Scotland (the Scottish Commission for Public Audit looks after funding for the office).

The RSSB Committee inquiry

7. The Parliament agreed to the establishment of a Committee and its remit on 13 November 2008. The remit was subsequently revised on 25 March 2009 and is in the following terms—

“To consider and report on whether alterations should be made to the terms and conditions of the officeholders and the structure of the bodies supported by the SPCB; to consider how any proposals, including the addition of any new functions, for future arrangements should be taken forward, including by way of a Committee Bill, and to make recommendations accordingly.

Previous inquiries and reports

8. In terms of reviewing the Parliamentary corporation supported officeholders the Committee considered four previous inquiries and reports relevant to the supported offices. Each are described briefly below.

Audit Scotland report 2006

9. Following consideration by the Finance Committee of the 2006-07 public spending budget process and its concerns about rising costs, the Parliamentary corporation requested that Audit Scotland undertake a review of the opportunities for commissioners and the SPSO to share services, including the associated issue of office location. Audit Scotland also reviewed the processes for scrutinising the budgets of the SPSO and commissioners, including an examination of the then existing lines of accountability and how this worked in practice.
10. Audit Scotland made a number of recommendations in its report¹ including:
 - the Parliament and Government should ensure that the scrutiny of the costs of new bodies and scope for efficiencies from shared services are integral when establishing new bodies;
 - the Parliamentary corporation should be given responsibility, powers and resources to oversee the strategic business operations of the officeholders;
 - the Parliamentary corporation should scrutinise the annual business plan and budget projections from officeholders;
 - the Parliamentary corporation should regularly review the strategic business performance of the officeholders;
 - the Parliamentary corporation should provide an added independent dimension to the scrutiny arrangements for the officeholders;
 - the officeholders should continue to have control over their own budgets and be accountable to the Parliamentary corporation for their finances and business operations; and
 - consideration should be given to amending the legislation that created the officeholders to support the proposals.

Finance Committee inquiry

11. In March 2006, the Finance Committee launched an inquiry into accountability and governance in relation to the independent, regulatory and investigatory bodies. The initial locus of interest was specifically the officeholders and bodies supported by the Parliamentary corporation. The Committee also considered budget arrangements for the Auditor General. The inquiry was prompted by concerns around increasing costs, perceived shortcomings of budgetary accountability and lack of governance arrangements.
12. Following its inquiry, the Committee reported in September 2006.² Its recommendations related to:
 - the independence and financial accountability of officeholders;
 - alternative accountability and governance models;
 - the Scottish Commission for Public Audit's scrutiny of the Auditor General and Audit Scotland; and
 - future criteria for establishment of additional commissioners and Ombudsmen and Scottish Executive bodies.
13. The report was debated and approved by the Parliament in December 2006.

1 Audit Scotland. Report on *SPCB Ombudsman/Commissioners Shared Services*, April 2006
<http://www.scottish.parliament.uk/business/committees/finance/inquiries/actgov/FL.S2.06.16.2-Audit%20ScotlandSPCBreport.pdf>

2 Scottish Parliament Finance Committee. 7th Report 2006 (Session 2), *Inquiry into Accountability and Governance* (SPP 631)

Crerar and Sinclair Reports

14. In June 2006, Scottish Ministers commissioned Professor Lorne Crerar to evaluate the current systems of regulation, audit and inspection and complaints handling of public services in Scotland. His report, *The Crerar Report*, was published in September 2007.³ The report was debated in Parliament on 3 October 2007 and, apart from the establishment of a single national scrutiny body, the recommendations were broadly welcomed.
15. The Crerar review considered complaints handling as a strand of external scrutiny. It made proposals for improvements to the complaints handling system to give the public better access to redress and scrutiny. It recommended a system of complaints handling for all public services with the SPSO taking responsibility for its implementation and oversight.
16. To take forward the work arising from the *Crerar Report* the Government established a series of action groups to consider and report on discrete aspects. The five short-life working groups looked at the following specific areas—
 - Accountability and Governance;
 - Policy and Approach;
 - Fit for Purpose Complaint System;
 - User Focus; and
 - Reducing Burdens.
17. The Fit For Purpose Complaint System Action Group considered complaints handling. The Action Group, chaired by Douglas Sinclair, considered how to improve the complaints handling system in Scotland, taking account of the recommendations made in the *Crerar Report*. The Action Group's report (*the Sinclair Report*), was published in July 2008,⁴ it provided Ministers with proposals for simplifying public service complaints handling processes and streamlining the complaints handling landscape, including amalgamation of some complaints handling bodies.

The RSSB Committee's recommendations

18. The RSSB Committee published its report on 21st May 2009, *Review of SPCB Supported Bodies* (1st Report 2009, SP Paper 266). The report contained a number of recommendations. These related to the appropriate governance body for officeholders, terms and conditions of officeholders, the Parliamentary corporation proposals for the SPSO, the structure of the officeholders and the legal status of the stand-alone officeholders. Not all of the recommendations made in the report require legislation in order to be implemented.
19. In terms of Parliamentary procedure a Committee may make a proposal for a bill in the form of a report to the Parliament. The report must be clear that a Committee bill is being proposed and why the bill is necessary. If the Parliament agrees to the proposal, a bill can be introduced by the Convener of the Committee who becomes the "member in charge".
20. This Act is a Committee Bill initiated by a Parliamentary committee under Rule 9.15 of the Parliament's Standing Orders. The RSSB Committee proposal for a Committee Bill was debated and approved by the Parliament on 18 June 2009 giving Trish Godman MSP, as the member in charge, the right to introduce a Bill.

³ *The Crerar Review*. <http://www.scotland.gov.uk/Publications/2007/09/25120506/0>

⁴ The Fit For Purpose Complaint System Action Group (FCSAG)
<http://www.scotland.gov.uk/Topics/Government/PublicServiceReform/IndependentReviewofReg/ActionGroups/ReporttoMinisters>

Recommendations implemented by the Act

21. The Act establishes a new standards body, a body corporate, to be known as the “Commission for Ethical Standards in Public Life in Scotland” (“CESPLS”), which comprises the functions of the SPSC, the CIO and the OCPAS. The roles of the existing CIO and the SPSC are combined into a single post, with the effect that one member of the new Commission will be responsible for exercising the functions of the SPSC and the CIO as currently set out in section 3 to 9 of the Parliamentary Standards Act and sections 9 to 16 of the Ethical Standards Act. The other member of the CESPLS is to carry out the functions currently exercised by the OCPAS, as set out in sections 2 and 3 of the Public Appointments Act.
22. The Act also provides for the Parliamentary corporation to become the sponsoring body for the Standards Commission for Scotland which will remain as an independent adjudication body for determining standards issues in relation to councillors and members of devolved public bodies.
23. The Act will also standardise the accountability and governance arrangements for the CESPLS with the other officeholders and bodies supported by the Parliamentary corporation, including the Standards Commission for Scotland. It harmonises the terms and conditions of appointment of all the officeholders and members of bodies supported by the Parliamentary corporation. The model adopted reflects the Finance Committee recommendations made in its 2006 report. In relation to the accountability and governance arrangements, the Act follows the provisions set out in the SCHR Act, with some modifications.
24. Additionally, the Act provides for the transfer of the functions from the Scottish Prisons Complaints Commission to the SPSO.
25. Transitional provisions are also provided in the Act, as are transfer provisions which enable the transfer of staff, property and liabilities.