

# SCOTTISH PARLIAMENTARY COMMISSIONS AND COMMISSIONERS ETC. ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 1

#### **The Commission for Ethical Standards in Public Life in Scotland: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland**

#### *Section 1: Establishment, members and functions of the Commission for Ethical Standards in Public Life in Scotland*

33. [Section 1](#) establishes a corporate body to be known as the “Commission for Ethical Standards in Public Life in Scotland” (“CESPLS”). The CESPLS is to have organisational and administrative functions much like the Parliamentary corporation provides to members of the Scottish Parliament. The Commission’s functions are provided for at subsection (7). These functions are administrative in nature and ensure that the Commission provides the Commissioners with the property, staff and services needed to fulfil their functions. This subsection also makes provision for the Commission to make reasonable and practical arrangements to co-ordinate the functions of the Commissioners, for example to obtain public relations services or organise events.
34. Subsection (2) provides that the Commission is to be composed of two members who are to be known as the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland as per subsections (3) and (4). The members (the Commissioners) are to be appointed by the Parliamentary corporation with the agreement of the Parliament. Subsection (5) indicates that they have the functions transferred to them by sections 2(1) and (2).

#### *Section 2: Functions of the Commissioners*

35. [Section 2](#) provides for the transfer of functions from existing officeholders to the new Commissioners (at subsections (1) and (2)) and abolishes those existing offices (3).
36. Subsection (4) sets out certain abbreviations used throughout the Act. The Ethical Standards in Public Life etc. (Scotland) Act 2000 is referred to as the “Ethical Standards Act”; the Scottish Parliamentary Standards Commissioner Act 2002 as the “Parliamentary Standards Act” and the Public Appointments and Public Bodies etc. (Scotland) Act 2003 as the “Public Appointments Act”.
37. Subsection (5) introduces schedule 1 of the Act which contains further consequential amendments to other statutes following the establishment of the Commission, namely the [Ethical Standards Act](#), the [Parliamentary Standards Act](#), the [Public Appointments](#)

*These notes relate to the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11) which received Royal Assent on 19 July 2010*

Act the Scottish Public Services Ombudsman Act 2002 (asp 11), and the Public Services Reform (Scotland) Act 2010 (asp 8).

### ***Section 3: Status of Commission and Commissioners***

38. Section 3(1)(a) provides that the Commission, its staff and any assessors appointed by it, are not to be regarded as servants or agents of the Crown and that the Commission has no status, immunity or privilege of the Crown (section 3(1)(b)). Similarly, section 3(2) (a) provides that the Commissioners are not to be regarded as servants or agents of the Crown and that its members have no status, immunity or privilege of the Crown (section 3(2)(b)). This has legal implications in relation to immunities which servants or agents of the Crown benefit from and also in relation to particular statutory provisions which relate to Crown property.

### ***Section 4: Independence of Commissioners***

39. Section 4 makes provision for the Commissioners, in the exercise of their respective functions: the Public Standards Commissioner for Scotland (under the Ethical Standards Act and the Parliamentary Standards Act) or the Public Appointments Commissioner for Scotland (under the Public Appointments Act) are not subject to the direction or control of: any member of Parliament; any member of the Scottish Executive; or the Parliamentary corporation. For example, the Parliamentary corporation could not interfere in relation to investigations carried out by the Public Standards Commissioner for Scotland nor the Scottish Executive direct the Public Appointments Commissioner for Scotland in relation to the preparation of any codes which Ministers are expected to adhere to.

### ***Section 5: Protection of Commission from actions for defamation***

40. Section 5 provides that any statements made by the CESPLS in carrying out its functions have qualified privilege. Where a statement is subject to qualified privilege, a defamation action in respect of it is not completely excluded, but the maker of that statement is protected in such an action and has a defence if they can prove that the statement was not motivated by malice. "Statement" has the same meaning as in the Defamation Act 1996 (c.31) and therefore includes words, pictures, visual images, gestures or any other method of signifying meaning.

### ***Section 6: Designation of Chief Commissioner***

41. The purpose of section 6 is to enhance and support the working arrangements of the CESPLS. This section makes provision for one of the Commissioners to be designated Chief Commissioner by the Parliamentary corporation; however a Chief Commissioner could not interfere with the other Commissioner's functions.
42. The process whereby a Commissioner is designated is provided for in subsection (1). In monitoring the effectiveness of the working arrangements of the Commission, the Parliamentary corporation has the power at any time to designate one of the Commissioners as the Chief Commissioner or revoke a previous designation and can give directions to the CESPLS accordingly. Parliamentary approval is not required allowing action to be taken quickly to ensure continued effectiveness of the working arrangements of the CESPLS, for example, in relation to decision making in respect of appointment of staff.
43. Subsection (2) ensures that such arrangements do not interfere with the terms and conditions of appointment of the Commissioner or the validity of the actions of the Commissioners or the Commission. In particular, under subsection (2)(c) the Chief Commissioner could not interfere with the undertaking of the respective functions of the Commissioners i.e. the Public Standards Commissioner for Scotland's functions under the Ethical Standards Act and the Parliamentary Standards Act; and the Public Appointments Commissioner for Scotland under the Public Appointments Act. The

Commissioners independence is further provided for in section 4 (see paragraph 40 of these notes).

### ***Section 7: Appointment of acting Commissioner***

44. This section provides for the appointment of an acting Commissioner under subsection (1). The provision provides flexibility to cover a range of situations and circumstances that may arise and is primarily directed at ensuring the efficient and continuing discharge of functions. An acting Commissioner may be appointed to deal with a number of different circumstances where for any reason and, to any extent, a Commissioner is unable to act or the office of a Commissioner is vacant. In relation to the Public Standards Commissioner for Scotland, for example, an acting Commissioner may be appointed to deal with an individual case. This could happen if investigating a complaint would result in a conflict of interest for the Commissioner. Alternatively an acting Commissioner could be appointed to deal with a number of cases, for example, if there is an exceptionally large number of cases at one particular time which the commissioner is unable to deal with. Finally, an acting Commissioner could be appointed to cover for a specified period of time, for example, leave office unexpectedly.
45. An acting Commissioner is appointed by the Parliamentary corporation under subsection (1). However, because appointment is intended to be for a limited duration, to avoid any delay in an investigation or investigations for instance, the agreement of the Parliament to the appointment is not required. In practice, it is anticipated that the Parliamentary corporation will consult the Standards, Procedures and Public Appointments Committee before appointing.
46. Subsection (2) clarifies that the duration of the appointment has to be set out in the terms and conditions of appointment. This may be for a specified period or until the occurrence of a future event e.g. the appointment of a new Commissioner.
47. Subsection (3) enables an acting Commissioner to perform the same duties as a Commissioner, but in relation to different matters, for example both could undertake investigations into complaints but not in relation to the same complaint.
48. Identical conditions regarding eligibility for appointment to the post of Commissioner apply to that of the post of acting Commissioner (subsection (4)). In other words, the restrictions on appointments set out in section 8 (see paragraph 53 to 56) equally apply to the appointment of a person to an acting post. Under subsection (5) a member of staff of the Commission may be appointed as an acting Commissioner as long as that person is eligible.
49. Subsection (6) provides that one of the Commissioners could be appointed as an acting Commissioner to carry out the functions of the other Commissioner by the Parliamentary corporation. This provides the Parliamentary corporation with additional flexibility to appoint speedily. The Parliamentary corporation would consider, as it would do when making any appointment, whether this is appropriate in light of all the circumstances.
50. Subsection (7) allows for resignation and removal of an acting Commissioner as well as stipulating that the conditions applying to the office are to be set by the Parliamentary corporation. The subsection makes clear that the acting Commissioner while holding office is to be treated for all purposes as the Commissioner. However certain provisions which relate to Commissioners do not apply to an acting Commissioner. These are: the term of appointment (section 9(1)); resignation (section 9(2)); removal from office (section 9(3) and (4)); and if appropriate payment of pensions, allowances and gratuities (section 10).
51. Subsection (8) provides for the Parliamentary corporation to set the minimum notice required to be given should an acting Commissioner wish to resign.

### **Section 8: Disqualification**

52. This section brings together the existing disqualification provisions in the Ethical Standards Act, the Parliamentary Standards Act and the Public Appointments Act. This provision prevents conflict of interests occurring and addresses any perception that the Commissioners actions can be influenced by other positions held.
53. **Section 8** sets out the circumstances which disqualify a person from holding appointment as a Commissioner. The same restrictions continue to apply during the Commissioner's term of office. No person may become a Commissioner if that person is a member of the Scottish Parliament (or its staff), the House of Commons or the House of Lords and is entitled to vote there. Persons who have been a member of the Scottish Parliament in the previous two years from when the appointment is to take effect are also disqualified. Similarly, no person who is employed or appointed in any other capacity by the Commission can be appointed as a Commissioner. Should a Commissioner be elected to the Parliament, for example, the person would immediately be disqualified from holding office as a Commissioner and would be required to relinquish office.
54. Other employment, appointments or memberships are listed. These include being: a member, employee or appointee of, the Standards Commission for Scotland; a specified authority (including where the specified authority is an individual); a devolved public body; an employee or appointee of the SPSO; a member of a council (or a council committee); disqualified from being a member of a council; or a member of a joint board or joint committee. For example, membership of a council could pose a conflict of interest for the Public Standards Commissioner for Scotland as the Commissioner may have to carry out an investigation into the council under the Ethical Standards Act. Similarly, the Public Appointments Commissioner for Scotland for instance could be perceived as having a conflict of interest in relation to a particular specified authority, as the authority, by virtue of being specified in schedule 2 to the Public Appointments Act would come within the Commissioner's remit.
55. Subsection (2) also defines various terms (specified authority, council joint board and joint committee and devolved public body) by reference to other statutes. It also defines paid office as being any one where the holder is entitled to any remuneration, allowances or expenses.

### **Section 9: Terms of office and remuneration**

56. **Section 9** sets out the terms of office and remuneration which will apply to the Commissioners. Under subsection (1) each Commissioner may hold office for a single term of up to a period of 8 years. Subsection (2) allows a Commissioner to resign from office at anytime subject to giving of any minimum period of notice as provided for in subsection (9). A Commissioner may be removed from office by the Parliamentary corporation under subsection (3) but only if the circumstances set out in subsection (4).
57. Subsection (4)(a) states that a Commissioner may be removed from office if the Parliamentary corporation is satisfied that the Commissioner has breached their terms and conditions of appointment. Having come to that view, the Parliamentary corporation would ask the Parliament to resolve that the Commissioner should be removed for the breach.
58. Under subsection (4)(b), a Commissioner may be removed from office if the Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to perform their functions.
59. In both circumstances, a resolution must be voted for by at least 86 members being a number not less than two thirds of the total number of seats of members of the Parliament.
60. **Section 9(5)** provides that each Commissioner is entitled to such remuneration and allowances as are determined by the Parliamentary corporation. These will be subject

to contractual arrangements between the parties. Commissioners other terms and conditions of holding office are also determined by the Parliamentary corporation, under subsection (6).

61. Under subsection (7) the Parliamentary corporation may determine whether the Commissioners should be permitted to hold any other office, employment or appointment or engagement during their term of office. For example, the holding of another position may compromise or be perceived to compromise the independence of the Commissioner.

#### ***Section 10: Pensions etc.***

62. **Section 10** provides for the arrangements for the payment of pensions, allowances and gratuities to any person who has ceased to be a Commissioner. This could include, for example, death in service benefits. The Parliamentary corporation must approve all such arrangements. The references to pensions, allowances or gratuities arranged under this section may include compensation for loss of office.

#### ***Section 11: Subsequent appointments etc. of former Commissioner***

63. This section makes some similar restrictions on subsequent appointments once a Commissioner has left office to those that applied to the original appointment under section 7 (see paragraphs 53 and 54 of these notes). As well as a restriction on employment with the CESPLS, a former Commissioner cannot be: a member, employee or appointee of the Standards Commission for Scotland; a specified authority; or a devolved public body. Restrictions also apply to a specified authority where the authority is an individual. A former Commissioner cannot be appointed as the SPSO or be an employee or appointee of the SPSO.
64. Under subsection (2) the restrictions run from the date of leaving office until the end of the financial year following the one in which the person ceased to be a Commissioner. Thus if a Commissioner leaves on 1 November 2010 the restriction would subsist until 1 April 2012.

#### ***Section 12: General powers***

65. **Section 12** gives the CESPLS wide powers to do anything which appears necessary or expedient for the purpose of, or in connection with or conducive to, the exercise of its functions or efficiency of its administration. These powers include for example the power to enter into contracts. The exercise of the powers in relation to the acquisition or disposal of land are, however, subject to Parliamentary corporation approval under subsection (3).
66. Subsections (4) and (5) allow the CESPLS to charge reasonable sums for services it provides, or which are provided on its behalf. For example, this section would allow the CESPLS to organise training events or seminars and charge attendance fees. Any sums received must be retained by the CESPLS and used to meet the costs of the services provided and charged for, for example the training event.

#### ***Section 13: Payment of witnesses' expenses***

67. In accordance with section 13, the CESPLS may pay allowances and expenses to any individual giving information of any kind in response to section 13 of the Ethical Standards Act or section 13 of the Parliamentary Standards Act, subject to the approval of the Parliamentary corporation. It is anticipated that the CESPLS and the Parliamentary corporation will agree delegated limits to avoid continual oversight on routine amount and payments. The relevant sections of the aforementioned Acts provide powers to compel the attendance of witnesses or the production of information for the purposes of an investigation under those Acts.

#### **Section 14: Strategic plans**

68. **Section 14** requires the CESPLS to produce a strategic plan and details arrangements for timing, content, consultation and review. Under subsection (1) the plan covers a four year period and sets out how the Commission and each Commissioner propose to perform their functions during the period.
69. Subsection (2) sets out broad details of what a plan must contain. In particular it is required to provide the objectives and the priorities during the period and state proposals for achieving them. In addition the plan must provide timetables and cost estimates.
70. Subsection (3) requires the CESPLS to consult on the plan before laying it before Parliament. Comment on a draft must be sought from the Parliamentary corporation and any other person the CESPLS thinks appropriate, which includes a Committee of the Parliament (subsection (4)).
71. Subsection (5) requires the CESPLS to lay each strategic plan before Parliament prior to the start of the four year period which is defined in subsection (10) as beginning on the next 1 April after commencement and each subsequent period of four years. Subsection (6) requires the Commission to publish each plan.
72. Under subsection (7) the CESPLS can review its strategic plan at any time during the four year period and lay a revised plan before the Parliament. Subsection (8) provides that, in that event, the provisions in subsection (2) to (7) about content, consultation, publication and review apply. Subsection (9) clarifies that a revised plan must be laid before the Parliament not later than the beginning of the period to which the revised strategic plan relates.

#### **Section 15: Procedure and validity of acts**

73. **Section 15** allows the CESPLS to regulate its own procedure, subject to any direction from the Parliamentary corporation given in that regard and the other provisions in Part 1 of the Act. Procedure may include such matters as internal methods of working, division of tasks etc.
74. Subsection (2) provides that the validity of any acts of the CESPLS is unaffected by any procedural defects in the appointments of any of the Commissioners, disqualification of a Commissioner or by any vacancy in the office of a Commissioner.
75. Subsection (3) makes similar provision to that of subsection (2) in relation to the validity of acts of a Commissioner.

#### **Section 16: Delegation**

76. Under this section the CESPLS or Commissioner can delegate any of their respective functions to any person it authorises to act upon its behalf. The CESPLS or Commissioner remains ultimately responsible for carrying out delegated functions. The responsibilities of the CESPLS' accountable officer are set out at section 19. The performance of these functions may not be delegated.

#### **Section 17: Staff**

77. **Section 17** allows the CESPLS to appoint staff on such terms and conditions as it determines subject to the approval of the Parliamentary corporation. In addition, the Commission must comply with any direction in this regard given by the Parliamentary corporation.
78. Subsection (2) makes provision for the payment of pensions, allowances and gratuities to former CESPLS staff. Subsection (3) makes provision for CESPLS to (a) make contributions or payments towards provisions for such pensions, allowances and (b) establish one or more pension schemes. As read with subsection (4) these provisions

give authority to the CESPLS to make arrangements which may include pensions, allowances or gratuities by way of compensation for loss of employment. Approval for such arrangements must be obtained from the Parliamentary corporation and the CESPLS must comply with any related direction. Provisions covering the arrangements for the payment of pensions etc. for Commissioners are set out in section 10.

### ***Section 18: Advisers, assessors and other services***

79. Under section 18 the CESPLS can obtain advice, assistance or any other service for use by itself or by a Commissioner. There may be circumstances where the Commission might want to secure separate advice for a Commissioner for example, in relation to legal issues arising out of a particular investigation. Such advice or services can be procured from anyone whom the CESPLS considers is qualified to provide it. Payment of fees and allowances is determined by the CESPLS. Any payment for providing services and payment in respect of that advice, assistance or service provided, is subject to approval by the Parliamentary corporation.

### ***Section 19: Accountable officer***

80. **Section 19** requires the Parliamentary corporation to designate a person as the accountable officer.
81. Subsection (1) requires that the accountable officer must either be a Commissioner or a member of the CESPLS' staff. Under subsection (4) the accountable officer is directly answerable to Parliament for the exercise of those functions specified in subsection (2).
82. The functions of the accountable officer are set out in subsection (2) and include: the signing of the CESPLS' accounts; ensuring that the CESPLS' finances are kept in good order; and ensuring that the CESPLS' resources are used economically, efficiently and effectively. That latter requirement links to section 20 (Budget), in terms of which the budget is approved by the Parliamentary corporation and the CESPLS is required to ensure that its resources are used economically, efficiently and effectively.
83. Subsection (3) provides a degree of protection for the accountable officer should they be required to act in any way which is inconsistent with their responsibilities. Before any such action can be taken the accountable officer must to obtain written authority from the CESPLS. Thereafter a copy of the authority must be sent as soon as possible to the Auditor General for Scotland.

### ***Section 20: Budget***

84. **Section 20** implements the recommendations of the Finance Committee's report by enacting existing administrative budgetary arrangements between officeholders and the Parliamentary corporation designed to ensure accountability for the use of public funds.
85. Subsection (1) requires the CESPLS to prepare budget proposals for each financial year, in advance of that year, for approval by the Parliamentary corporation. The Parliamentary corporation is given power to set a timetable for the submission and approval of the budget proposals which will allow them to be integrated within the Parliamentary corporations wider budgetary arrangements.
86. Under subsection (2) the CESPLS may seek to revise the budget during the year by submitting revised proposals to the Parliamentary corporation for approval.
87. Under subsection (3), in preparing a budget or a revised budget, the Commission is required to ensure that resources will be used economically, efficiently and effectively and must under subsection (4) so certify in any budget or revised budget proposal.

### ***Section 21: Funding***

88. **Section 21** sets out the financial arrangements to be adhered to by the Parliamentary corporation in relation to the CESPLS and the Commissioners.
89. Under subsection (1)(a) the Parliamentary corporation must pay the Commissioners' remuneration and allowances. Under subsection (1)(b), the Parliamentary corporation only needs to pay the CESPLS' expenses where properly incurred in undertaking its functions less any sums the CESPLS has received in payment for services provided under section 12(5), for example, in providing training. In practice this will mean that the costs of holding a conference, for example, will be offset by the income received in conference fees. The Parliamentary corporation is not compelled under subsection (2) to pay any expenses which exceed or were not included in the agreed budget (see section 20). It is anticipated however, in this situation that the Parliamentary corporation will take a decision in light of the relevant circumstances. Should the Parliamentary corporation wish to pay these expenses then power is provided in subsection (3) to do so.
90. Subsection (1)(c) provides that the Parliamentary corporation will indemnify the CESPLS and each Commissioner in respect of any liabilities incurred by it or by a Commissioner in the performance of their respective functions. An example of this would be where a Commissioner causes a traffic accident while driving to a meeting while on official business.

### ***Section 22: Accounts and audit***

91. **Section 22** sets out the accounting and auditing requirements that apply to the CESPLS. The CESPLS must keep proper accounts and accounting records and prepare annual accounts for each financial year. In so doing the CESPLS must comply with any directions given by the Scottish Ministers who are responsible for such matters under section 19 of the **Public Finance and Accountability Act 2000 (asp 1)**. Under subsection (1)(c), a copy of the accounts are to be sent to the Auditor General for Scotland for auditing. Under subsection (4), the CESPLS must make a copy of its audited accounts available for inspection, free of charge, to anyone on request.

### ***Section 23: Location of office***

92. Under section 23 the CESPLS is required to comply with any directions by the Parliamentary corporation as to the location of its office.

### ***Section 24: Sharing of premises, staff, services and other resources***

93. **Section 24** allows the Parliamentary corporation to direct the CESPLS as to the sharing of premises, staff, services or other resources with any public body or any officeholder. The Parliamentary corporation could use this power to rationalise the number of premises occupied by the bodies covered by this Act or to direct that the provision of services such as human resources, payroll, finance or procurement should be carried out centrally.

### ***Section 25: Annual report***

94. **Section 25** requires the CESPLS to prepare and lay before Parliament an annual report. The section contains the details that a report must contain as set out in the original Scottish Parliamentary Standards Act and the Public Appointments Act. The Ethical Standards Act has no annual report provisions so this section creates provision for the CIO functions performed under that Act in line with those that applied to the SPSC. As well as certain specified information, the annual report must include a general report on the performance of the CESPLS' functions, and a report on the performance of each of the Commissioner's respective functions during the reporting year beginning 1 April (subsection (8)).



95. Subsection (2) lists the specific matters that must be reported upon in relation to the functions of the Public Standards Commissioner for Scotland.
96. The matters required under subsection (2) for the reporting year are:
- The number of complaints received about members of the Parliament; councillors and members of devolved public bodies;
  - The number of complaints withdrawn by the complainer together with information on the stage of investigation they had reached when they were withdrawn;
  - In relation to complaints under section 12 of the Ethical Standards Act made about councillors and members of devolved public bodies:
    - The number of investigations begun,
    - The number of investigations not proceeded with,
    - The number of investigations completed;
  - The number of reports submitted by the Public Standards Commissioner for Scotland to the Standards Commission under section 14 of the Ethical Standards Act on the outcome of investigations;
  - The number of further investigations under section 16 of the Ethical Standards Act that the Standards Commission for Scotland directed the Public Standards Commissioner for Scotland to carry out;
  - In relation to complaints made about Members of the Parliament:
    - The number of Stage 1 investigations completed into the admissibility of complaints,
    - The number of complaints dismissed at Stage 1 as not admissible,
    - The number of complaints found to be admissible or which the Commissioner was directed by the Scottish Parliament to treat as admissible,
    - The number of Stage 2 investigations completed,
    - The number of reports made on the conclusion of an investigation under section 9 (Stage 2) of the Parliamentary Standards Act to the Scottish Parliament.
    - The number of further investigations that the Public Standards Commissioner for Scotland was directed by the Scottish Parliament to carry out under section 10(2) of the Parliamentary Standards Act.
97. Subsection (3) lists specific matters that must be reported upon in relation to the functions of the Public Appointments Commissioner for Scotland.
98. The matters required under subsection (3) for the reporting year are:
- A summary of any revisions made to the code of practice for the making of appointments;
  - A summary of any complaints received arising about the making by the Scottish Ministers of any appointment or recommendation for appointment;
  - A summary of any guidance issued to the Scottish Ministers under section 2(6) of the Public Appointments Act as to compliance with the code of practice;
  - The number of cases reported to the Parliament under section 2(8)(a) where it appears the code of practice has not been complied with in a material regard in terms of section 2(7) of the Public Appointments Act;

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- The number of cases where the Public Appointments Commissioner for Scotland has directed the Scottish Ministers to delay making an appointment or recommendation for appointment in terms of section 2(8)(b) of the Public Appointments Act.
  - Subsection (4) requires that the report must also include a summary of other activities undertaken by the CESPLS, not covered by the other reporting requirements.
99. Under subsection (5) the report must be laid before the Scottish Parliament within 7 months of the end of the reporting year and be published. The report must be published under subsection (6). Publication method is not specified but may be in hard copy or by making it available and accessible on a website.
100. Subsection (7) obliges the CESPLS to comply with any directions given by the Parliamentary corporation regarding the form and content of the report.

### ***Section 26: Commission and Commissioners to be subject to investigations by Scottish Public Services Ombudsman***

101. The actings of the CIO are currently subject to investigation by the SPSO being a body listed in schedule 2 to the SPSO Act. An amendment is currently pending to add the OCPAS to schedule 2 – it has not come into force yet. Section 25 adds the CESPLS and the Public Appointments Commissioner for Scotland to that list. In addition the Public Standards Commissioner for Scotland is added in relation to the performance of functions under the Ethical Standards Act only. Functions performed by the Commissioner under the Parliamentary Standards Act continue to fall outwith the SPSO's jurisdiction.
102. The existing entry in the SPSO Act relating to the CIO is repealed in Schedule 1, Part 2.

### ***Section 27: Commission and Public Appointments Commissioner for Scotland to be subject to Freedom of Information (Scotland) Act***

103. An amendment is currently pending to add the OCPAS to the listed bodies set out in Part 7 of schedule 1 to FOISA– it has not come into force yet. That schedule lists those Scottish public authorities who must provide information on request as set out in FOISA. Section 27 adds the CESPLS and the Public Appointments Commissioner for Scotland to the list in Schedule 1. Functions performed by the Public Standards Commissioner for Scotland under the Parliamentary Standards Act and the Ethical Standards Act continue to fall out-with the scope of the FOISA.

### ***Section 28: Interpretation of Part 1***

104. This section explains the terms used in Part 1 which relate to the establishment of the CESPLS and its Commissioners.

## **Part 2**

### **Amendments of Provisions Relating to Other Commissions and Officeholders**

#### ***Section 29: Standardising and other amendments***

105. **Part 2** introduces a number of schedules which make amendments to the other commissions and officeholders' statutes to standardise certain provisions and make other minor amendments extending and qualifying the SPSO's functions.
106. **Section 29(2)** introduces schedule 2 to the Act which amends the Ethical Standards Act to provide governance arrangements for the Standards Commission for Scotland. It standardises the terms and conditions of appointment of the members of the Standards

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Commission with the other officeholders and members of bodies supported by the Parliamentary corporation.

107. [Section 29\(3\)](#) introduces schedule 3 to the Act which provides for the standardisation of the governance arrangements and the terms and conditions of the SPSO with the other officeholders and members of bodies supported by the Parliamentary corporation. Other amendments make minor changes to improve the operation of the SPSO Act. It also transfers the functions of the Scottish Prison Complaints Commission to the SPSO.
108. [Section 29](#) also introduces schedules 4, 5 and 6 to the Act which provide for the standardisation of the governance arrangements and the terms and conditions of appointment of the SIC, SCCYP and SHRC respectively with the other officeholders and members of bodies supported by the Parliamentary corporation.

## **Part 3**

### **General**

#### ***Section 30: Interpretation***

109. Defines the acronyms used to describe the statutes referred to throughout this Act.

#### ***Section 31: Short title, commencement, transfers and transitionals.***

110. The majority of the Act comes into force on 1 April 2011. Paragraph 14 of schedule 2 in relation to the new paragraph 10C (budget) inserted into schedule 1 of the Ethical Standards Act commences on 1 August 2010 and allows the Standards Commission to prepare and submit a budget proposal in advance of the financial year for approval by the Parliamentary corporation. Enabling it to be integrated within wider budgetary arrangements. Paragraph 20 of schedule 3 in relation to the transfer to the SPSO of prison complaints commences on 1 October 2010 when the transfer of responsibility will take place and the Scottish Prison Complaints Commission will cease to exist.

#### **Schedule 1**

#### ***Consequential Amendments of Enactments Referred to in Section 2(5)***

111. [Schedule 1](#) contains consequential amendments to the Ethical Standards Act, the Parliamentary Standards Act, the Public Appointments Act and the SPSO Act as a result of the provisions in the Act creating the CESPLS.

## **Part 1**

### **The Ethical Standards Act**

112. [Paragraphs 1 to 9](#) make the changes necessary to facilitate the transfer of functions from the CIO to the Public Standards Commissioner for Scotland to investigate breaches of codes. These amendments replace the references to the Chief Investigating Officer and the Officer etc. with references to the Public Standards Commissioner for Scotland.

## **Part 2**

### **The Scottish Public Services Ombudsman Act 2002**

113. [Paragraph 10](#) repeals the reference to the Chief Investigating Officer in paragraph 21 in Part 2 of Schedule 2 to the SPSO Act. The addition of the Public Standards Commissioner for Scotland to Schedule 2 in relation to the performance of functions under the Ethical Standards Act is provided for by section 26 of this Act.

### **Part 3**

#### **The Parliamentary Standards Act**

114. Paragraphs 11 to 14 amend the Parliamentary Standards Act to provide for the transfer of functions from the Scottish Parliamentary Standards Commissioner to the Public Standards Commissioner for Scotland as set out in section 1(5) of the Act. References to the Scottish Parliamentary Standards Commissioner are replaced with references to the Public Standards Commissioner for Scotland along with other consequential amendments.

### **Part 4**

#### **The Public Appointments Act**

115. Paragraphs 15 to 19 amend the Public Appointments Act to provide for the transfer of functions from the Commissioner for Public Appointments in Scotland (“OCPAS”) to the Public Appointments Commissioner for Scotland as set out in section 1(5) of the Act. References to the OCPAS are replaced with references to the Public Standards Commissioner for Scotland along with other consequential amendments.

### **Part 5**

#### **The Public Services (Reform) Scotland Act**

Paragraphs 20-22 amend the Public Services (Reform) Scotland Act to reflect changes to the offices listed in Schedules to that Act. Reference to the Chief Investigating Officer, the Parliamentary Standards Commissioner and OCPAS are removed and replaced with references to CESPLS in Schedules 5, 6 and 8 of that Act. Reference to the Standards Commission for Scotland is added to Schedule 6.

#### ***Schedule 2 Amendments of the Ethical Standards Act***

116. Schedule 2 is introduced by Section 29(2) of the Act and amends the Ethical Standards Act so that the Parliamentary corporation becomes the sponsoring body of the Standards Commission, rather than the Scottish Ministers. It also standardises the governance arrangements and the terms and conditions of appointment of members of the Standards Commission with the other officeholders and members of bodies supported by the Parliamentary corporation.
117. Paragraph 1 amends section 8 (establishment, functions and membership of the Standards Commission for Scotland) to make provision for the Parliamentary corporation to appoint the members of the Standards Commission, with the agreement of the Parliament, instead of the Scottish Ministers. Consultation with such association of councils and other persons the Parliamentary corporation considers appropriate is required. Provision is also made so that the order making power under section 8(2)(b) (other functions of the Commission) of the Ethical Standards Act can only be exercised after consultation with the Parliamentary corporation and the Standards Commission, and that any order becomes subject to affirmative procedure rather than negative procedure. Affirmative procedure is necessary because the addition of extra functions may impact on the workload of the Standards Commission and could increase running costs.
118. Paragraph 2 amends section 17(8) (payment by Commission of witnesses’ etc) to standardise the provisions relating to witness expenses to require the approval of the Parliamentary corporation. It is anticipated that the Commission and the Parliamentary corporation will agree delegated limits to avoid continual oversight on routine amount and payments.

*These notes relate to the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11) which received Royal Assent on 19 July 2010*

119. [Paragraph 3](#) amends section 27(1) (protection from actions of defamation). The provision retains the existing protections and provides absolute privilege to any statement made in pursuance of the purposes of the Ethical Standards Act by the Standards Commission or any of its employees and by the Public Standards Commissioner for Scotland. A new provision gives the protection of qualified privilege to statements made to that Commissioner or any employees of the CESPLS.
120. [Paragraph 4](#) explains that the changes made in paragraphs 5 to 16 relate to schedule 1 of the Ethical Standards Act.
121. [Paragraph 5](#) amends paragraph 2 (General powers) so that the Standards Commission may only acquire and dispose of land with the consent of the Parliamentary corporation.
122. In addition, paragraph 5 amends paragraph 2 to allow the Standards Commission to charge reasonable sums for any services it provides, or which are provided on its behalf. For example, this section would allow the Commission to organise training events or seminars and charge attendance fees. Any sums received must be retained by the Standards Commission and used to meet the costs of those services provided.
123. [Paragraph 6](#) inserts paragraph 2A (Location of office) which provides that the Standards Commission is required to comply with any directions given by the Parliamentary corporation as to the location of its office.
124. Furthermore, paragraph 6 inserts paragraph 2B (Sharing of premises, staff, services and other resources) to allow the Parliamentary corporation to direct the Standards Commission as to the sharing of premises, staff, services or other resources with any public body or any officeholder. The Parliamentary corporation could use this power to rationalise the number of premises occupied by the bodies or to direct that the provision of services such as human resources, payroll, finance or procurement should be carried out centrally.
125. [Paragraph 7](#) amends paragraph 4 (appointment of convener) to reflect that it is the Parliamentary corporation who appoint one member of the Commission as its Convener rather than the Scottish Ministers.
126. [Paragraph 8](#) replaces the existing paragraphs 5 (tenure of office of members) and 6 (remuneration etc) with a new paragraph 5 (Tenure of office, remuneration etc) to standardise these provisions with the other officeholders and members of bodies supported by the Parliamentary corporation.
127. Under paragraph 5(1) each member of the Standards Commission shall hold office for a single term of up to 8 years. Sub-paragraph (2) clarifies that a member who has ceased to be a member is not eligible for reappointment. Sub-paragraph (3) allows a member to resign from office at anytime subject to any minimum period of notice set by the Parliamentary corporation under sub-paragraph (6). Alternatively, a member can be removed from office by the Parliamentary corporation under sub-paragraph (4) only in the circumstances as set out in sub-paragraph (5).
128. Sub-paragraph 5(a) states that a member may be removed from office if the Parliamentary corporation is satisfied that the member has breached their terms and conditions of appointment. Having come to a view, the Parliamentary corporation would then ask the Parliament to resolve that the member should be removed from office for the breach.
129. Alternatively, under sub-paragraph 5(b), a member may be removed from office if the Parliament resolves that it has lost confidence in the member's willingness, suitability or ability to perform their functions.
130. In both circumstances, a resolution must be voted for by at least 86 members of the Parliament, being a number not less than two thirds of the total number of seats of members of the Parliament.

131. Sub-paragraph (7) provides that each member is entitled to such remuneration and allowances as the Parliamentary corporation determines. These will be subject to contractual arrangements between the parties. Other terms and conditions of holding office may be determined by the Parliamentary corporation, under sub-paragraph (8).
132. Under sub-paragraph (9) the Parliamentary corporation may determine whether the members should be permitted to hold any other office, employment or appointment or engagement whilst in post. This power may be used differently in relation to the member appointed as convener and the other members. For example, there could be instances when an appointment might be seen to compromise or give the appearance of compromising the independence of the member.
133. [Paragraph 9](#) inserts paragraph 5A (Subsequent appointments) which makes restrictions on subsequent appointments once a member has left office. As well as a restriction on employment with the Standards Commission for Scotland, a former member cannot be: an employee or appointee of the CESPLS; or be an employee or appointee of the SPSO; or hold any other office, employment or appointment or engage in any other occupation which that person could not have held when a member of the Standards Commission.
134. Under sub-paragraph (2) the restrictions run from the date of leaving office until the end of the financial year following the one in which the person ceased to be a member. Thus if a member leaves office on 1 November 2010 the restriction would subsist until 1 April 2012.
135. [Paragraph 10](#) amends paragraph 7 (employees) to remove references to the Scottish Ministers and to provide a new sub-paragraph (4A). That provides that staff appointments both in terms of numbers of staff and their terms and conditions of appointment are subject to the approval of the Parliamentary corporation.
136. [Paragraph 11](#) repeals paragraph 8 (remuneration, pensions etc of Chief Investigating Officer and staff) as these functions relating to the new Public Standards Commissioner for Scotland and the staff of CESPLS are now contained in this Act (see sections 9, 10 and 17).
137. [Paragraph 12](#) inserts new paragraph 8A (advisers and other services). Under paragraph 8A the Standards Commission can obtain advice, assistance or any other service. There may be circumstances where the Standards Commission might want to secure advice for example, in relation to legal issues. This advice or services can be procured from anyone whom the Standards Commission considers qualified to provide it. Payment of fees and allowances are determined by the Standards Commission. Any payment for providing services and payment in respect of that advice, assistance or service provided, is subject to approval by the Parliamentary corporation.
138. [Paragraph 13](#) inserts paragraph 10A (Strategic plans). Paragraph 10A requires the Standards Commission to produce a strategic plan and details arrangements for timing, content, consultation and review. Under sub-paragraph (1) the plan covers a four year period and sets out how the Commission proposes to perform its functions during that period.
139. Sub-paragraph (2) sets out broad details of what a plan must contain. In particular it is required to provide the objectives and the priorities during the period and state proposals for achieving them. In addition the plan must provide timetables and cost estimates.
140. Sub-paragraph (3) requires the Commission to consult on the plan before laying it before Parliament. Comment on a draft must be sought from the Parliamentary corporation and any other person the Commission thinks appropriate, which includes a Committee of the Parliament (sub-paragraph (4)).
141. Sub-paragraph (5) requires the Commission to lay each strategic plan before Parliament prior to the start of the four year period which is defined in sub-paragraph (10) as

- beginning on the next 1 April after commencement and each subsequent period of four years. Sub-paragraph (6) requires the Commission to publish each plan.
142. Under sub-paragraph (7) the Commission can review its strategic plan at any time during the four year period and lay a revised plan before the Parliament. Sub-paragraph (8) provides that, in that event, the provisions in sub-paragraph (2) to (7) about content, consultation and publication apply. Subsection (9) clarifies that a revised plan must be laid before the Parliament not later than the beginning of the period to which the revised strategic plan relates.
  143. [Paragraph 14](#) inserts new paragraphs 10B (Accountable officer), 10C (Budget), 10D (Commission's expenses and liabilities) and 10E (Accounts and Audit).
  144. Paragraph 10B requires the Parliamentary corporation to designate a person as the accountable officer.
  145. Sub-paragraph (1) requires that the accountable officer must either be a member of the Standards Commission or a member of the Commission's staff. Under sub-paragraph (4) the accountable officer is answerable directly to Parliament for the exercise of those functions specified in sub-paragraph (2).
  146. The functions of the accountable officer are set out in sub-paragraph (2) and include: the signing of the Commission's accounts; ensuring that the Commission's finances are kept in good order; and ensuring that the Commission's resources are used economically, efficiently and effectively. That latter requirement links to new paragraph 10C, in terms of which the budget is approved by the Parliamentary corporation and the Commission is required to ensure that its resources are used economically, efficiently and effectively.
  147. Sub-paragraph (3) provides a degree of protection for the accountable officer if they consider that they are being required to act in any way which is inconsistent with their responsibilities. Before any such action can be taken the accountable officer is required to obtain written authority from the Commission. Thereafter a copy of that authority must be sent as soon as possible to the Auditor General for Scotland.
  148. Paragraph 10C implements the recommendations of the Finance Committee's report and enacts existing administrative budgetary arrangements between other officeholders and the Parliamentary corporation designed to ensure accountability for the use of public funds.
  149. Sub-paragraph (1) requires the Standards Commission to prepare budget proposals for each financial year, in advance of that year, for approval by the Parliamentary corporation. The Parliamentary corporation is given power to set a timetable for submission and approval of the budget which will allow it to be integrated within wider budgetary arrangements.
  150. Under sub-paragraph (2) the Commission may seek to revise the budget during the year by submitting revised proposals to the Parliamentary corporation for approval.
  151. Under sub-paragraph (3), in preparing a budget or a revised budget, the Commission is required to ensure that resources will be used economically, efficiently and effectively and must under sub-paragraph (4) so certify in any budget or revised budget proposal.
  152. New paragraph 10D (Commission's expenses and liabilities) under sub-paragraph (1) the Parliamentary corporation must pay the Standards Commission's expenses where properly incurred in undertaking its functions less any sums it has received in payment for services provided under paragraph 2(5), for example, in providing training or holding seminars. The Parliamentary corporation is not compelled under subsection (2) to pay expenses which exceed or were not included in the agreed budget (see paragraph 10C). It is anticipated in such a situation that the Parliamentary corporation would take

a decision in light of the relevant circumstances. Should the Parliamentary corporation wish to pay these expenses the power is provided for in sub-paragraph (3).

153. Sub-paragraph (4) provides that the Parliamentary corporation must indemnify the Standards Commission in respect of any liability incurred by it while performing its functions. An example of this would be where a member of the Standards Commission causes a traffic accident while driving to a meeting while on official business.
154. [Paragraph 15](#) repeals paragraph 11 (expenses) of Schedule 1 to the Ethical Standards Act.
155. New paragraph 10E (Accounts and Audit) sets out the accounting and auditing requirements that apply to the Standards Commission. The Standards Commission must keep proper accounts and accounting records and prepare annual accounts for each financial year. In so doing the Commission must comply with any directions given by the Scottish Ministers who are responsible for such matters under Section 19 of the [Public Finance and Accountability Act 2000 \(asp 1\)](#). Under sub-paragraph (1)(c), a copy of the accounts are to be sent to the Auditor General for Scotland for auditing. Under sub-paragraph (2), the Commission must make a copy of its audited accounts available for inspection, free of charge, to anyone on request.
156. [Paragraph 16](#) inserts new paragraph 10F (Annual reports). Paragraph 10F requires the Standards Commission to prepare and lay before Parliament an annual report. Under sub-paragraph (2)(a) the annual report must include a summary of any hearings held by the Commission. Sub-paragraph (2)(b) requires that the report must also include a summary of other activities undertaken by the Commission, during the reporting year beginning 1 April (sub-paragraph (6)).
157. Under sub-paragraph (3) the report must be laid before the Scottish Parliament within 7 months of the end of the reporting year. The report must be published under sub-paragraph (4). Publication method is not specified but may be in hard copy or by making it available and accessible on a website.
158. Sub-paragraph (5) obliges the Commission to comply with any direction given by the Parliamentary corporation regarding the form and content of the report.
159. [Paragraph 17](#) repeals Schedule 2 (terms and conditions of office, staff and status of the Chief Investigating Officer) these functions relating to the Public Standards Commissioner for Scotland are now contained in this Act.

### ***Schedule 3***

160. [Schedule 3](#) is introduced by section 29(3) and primarily amends the SPSO Act to standardise the SPSO's terms and conditions and standardise the accountability and governance arrangements with those of the other officeholders and bodies supported by the Parliamentary corporation. Other amendments are made to assist the SPSO in its operations. The Schedule also includes provisions to enable the transfer of the functions of the Scottish Prison Complaints Commission to the SPSO.
161. [Paragraph 1](#) makes an amendment to section 5(1)(a) (matters which may be investigated) to correct a minor grammatical error in the section .
162. [Paragraph 2](#) amends section 11 (decisions not to investigate). This paragraph extends the requirement placed upon the SPSO to send a statement of reasons for not investigating a complaint to cases where the investigation is discontinued. That requirement is extended by new paragraph (3A) to also require such a statement to be sent to any listed authority as covered by paragraphs (b), (f) and (g) of subsection (2) whose action was investigated by the SPSO in connection with the investigation despite the fact that it was not mentioned in the complaint.



163. [Paragraph 3](#) amends section 12 (investigation procedure). Subsection (7) is inserted to allow a public authority which was not the original public body complained about but who is being investigated similar rights in the investigation as the named body. These are the opportunity to comment on any allegations contained in the complaint and the assurance that the investigation does not affect any action taken by that body or any power or duty of that body to take further action with respect to any matter being investigated.
164. [Paragraph 4](#) amends section 13 (evidence). Subsection (10) is inserted to allow the SPSO to require evidence from a public authority which was not the original public body complained about but where the investigation of matters following a complaint leads to another authority.
165. [Paragraph 5](#) amends section 15 (reports on investigations). Subsection (1A) provides the SPSO with the option to send a report to Scottish Ministers and lay a copy of the report before the Parliament where the SPSO has decided to discontinue an investigation under section 2(3) of the SPSO Act. Subsection (4)(a)(i) of the SPSO Act is amended to clarify that the duty of a listed authority to publicise a report only applies to any reports that have been sent to it by the SPSO. In addition, this paragraph also inserts section 15(8) which allows the SPSO to identify in any report on an investigation any authority investigated following a complaint, where that authority was not mentioned in the complaint.
166. [Paragraph 6](#) amends section 17 (Annual reports). Section 17 is amended to require the annual report to be laid before the Scottish Parliament within 7 months of the end of the reporting year (subsection (2A) and to be published (subsection 3A). Subsection (3) is amended to oblige the SPSO to comply with any directions given by the Parliamentary corporation regarding the form and content of the report. New subsection (5) defines the reporting year as beginning 1 April.
167. [Paragraph 7](#) inserts new section 17A (strategic plans). Section 17A requires the SPSO to produce a strategic plan and details arrangements for timing, content, consultation and review. Under sub-paragraph (1) the plan covers a four year period and sets out how the SPSO proposes to perform its functions during the period.
168. Sub-paragraph (2) sets out broad details of what a plan must contain. In particular it is required to provide the objectives and the priorities during the period and state proposals for achieving them. In addition the plan must provide timetables and cost estimates.
169. Sub-paragraph (3) requires the SPSO to consult on the plan before laying it before Parliament. Comment on a draft must be sought from the Parliamentary corporation and any other person the SPSO thinks appropriate, which includes a Committee of the Parliament (sub-paragraph (4)).
170. Sub-paragraph (5) requires the SPSO to lay each strategic plan before Parliament prior to the start of the four year period, which is defined in sub-paragraph (10) as beginning on the next 1 April after commencement and each subsequent period of four years. Sub-paragraph (6) requires the SPSO to publish each plan.
171. Under sub-paragraph (7) the SPSO can review its strategic plan at any time during the four year period and lay a revised plan before the Parliament. Sub-paragraph (8) provides that, in that event, the provisions in sub-paragraph (2) to (7) about content, consultation and publication apply. Subsection (9) clarifies that a revised plan must be laid before the Parliament not later than the beginning of the period to which the revised strategic plan relates.
172. [Paragraph 8](#) amends section 19 (confidentiality of information) to permit the SPSO to disclose information when it considers that it is of the effect that any person is likely to constitute a threat to the health or safety of an individual(s). Under the existing provisions, disclosure is only justified where information is of the effect that any person is likely to constitute a threat to the health or safety of patients. In conducting an

investigation it is possible that the SPSO may come into possession of information that suggests there may be a threat to the health or safety of other persons, for example a child, who is not a patient. In these circumstances disclosure of the threat may be justified, but is not allowed under existing provisions. As a consequence of this amendment, paragraph 9 repeals the definition of “patient” at section 23.

173. [Paragraph 10](#) explains that paragraphs 11 to 19 relate to Schedule 1 to the SPSO Act.
174. [Paragraph 11](#) replaces paragraph 1(3) (disqualification of SPSO from certain posts). Paragraph 11 makes similar restrictions on subsequent appointments once the SPSO or Deputy SPSO has left office to those that applied to the original appointment under paragraph 1(1) of Schedule 1 to the SPSO Act. The restrictions apply to being appointed or elected as: the holder any office which is a listed authority; a member, officer or employee of such an authority; or being appointed to a paid post by a listed authority. Restrictions are applied to the holding of any other office, employment, appointment or occupation which that person could not have held when they were in post (see paragraph 178).
175. Under sub-paragraph (3A) the restrictions run from the date of leaving office until the end of the financial year following the one in which the person left office. Thus if the SPSO leaves on 1 November 2010 the restriction would subsist until 1 April 2012.
176. [Paragraph 12](#) amends paragraph 2 (status of SPSO) to clarify the legal status of the SPSO. The paragraph provides that the SPSO is a juristic person distinct from the natural person holding the office of SPSO. This paragraph also updates the list of provisions under paragraph 2(3) of Schedule 1 to the SPSO Act where the SPSO is subject to direction or control.
177. [Paragraph 13](#) amends paragraph 4 (period of office, tenure etc) to provide for an SPSO or deputy SPSO to hold office for a single term of up to a period of 8 years and clarifies that a person who has ceased to hold such office is not eligible for reappointment. However, a Deputy SPSO may hold the office of SPSO and vice versa as long as the appointments in total do not exceed the period of 8 years from when the person was first appointed (sub-paragraph (2B)).
178. [Paragraph 13](#) also inserts sub-paragraphs (2C) and (2D) which provide for an SPSO or Deputy SPSO (sub-paragraph (2D)) to be removed from office. Sub-paragraph (2C) (a) states that an SPSO may be removed from office if the Parliamentary corporation is satisfied that the office holder has breached their terms of appointment. Having come to a view the Parliamentary corporation would then have to ask the Parliament to resolve that the member should be removed from office for the breach.
179. Alternatively, under sub-paragraph (2C)(b), an SPSO may be removed from office if the Parliament resolves that it has lost confidence in the SPSO’s willingness, suitability or ability to perform their functions.
180. In both circumstances, a resolution must be voted for by at least 86 members of the Parliament, being a number not less than two thirds of the total number of seats of members of the Parliament.
181. Furthermore paragraph 13 inserts new sub-paragraph (2E). Under sub-paragraph (2E) the Parliamentary corporation may determine in the SPSO’s terms and conditions of office whether the SPSO or Deputy SPSO should be permitted to hold any other office, employment or appointment or engagement in addition to those from which the officeholder is already specifically disqualified.
182. [Paragraph 14](#) substitutes a new paragraph 10 (Advisers and other services). Under new paragraph 10 the SPSO can secure advice, assistance or any other service. There may be circumstances where the SPSO might want to secure advice for example, in relation to legal issues. This advice or services can be procured from anyone whom the SPSO considers is qualified to provide it. Payment of fees and allowances is determined by

- the SPSO. Any payment for providing services and payment in respect of that advice, assistance or service provided, is subject to approval by the Parliamentary corporation.
183. [Paragraph 15](#) amends paragraph 12 (Ombudsman's general powers) so that the SPSO may only acquire and dispose of land with the consent of the Parliamentary corporation.
  184. [Paragraph 16](#) inserts paragraph 12A (Location of office) which provides that the SPSO is required to comply with any directions by the Parliamentary corporation as to the location of the SPSO's office. This paragraph also inserts paragraph 12B (Sharing of premises, staff, services and other resources) which allows the Parliamentary corporation to direct the SPSO as to the sharing of premises, staff, services or other resources with any public body or any officeholder. The Parliamentary corporation could use this power to rationalise the number of premises occupied by the bodies or to direct that the provision of services such as human resources, payroll, finance or procurement should be carried out centrally.
  185. [Paragraph 16](#) also inserts 12C (charges for services). This provision allows the SPSO to charge reasonable sums for anything done by it, or on its behalf in the performance of, or in connection with, the SPSO's functions. For example, this section would allow the SPSO to organise training events or seminars and charge attendance fees. Any sums received must be retained by the SPSO and used to meet the costs of the services provided and charged for, for example the training event.
  186. [Paragraph 17](#) inserts paragraph 12D (Budget). Paragraph 12D implements the recommendations of the Finance Committee's report and enacts existing administrative budgetary arrangements between the SPSO and the Parliamentary corporation designed to ensure accountability for the use of public funds.
  187. Sub-paragraph (1) requires the SPSO to prepare budget proposals for each financial year, in advance of that year, for approval by the Parliamentary corporation. The Parliamentary corporation is given power to set a timetable for submission and approval of the budget which will allow it to be integrated within wider budgetary arrangements.
  188. Under sub-paragraph (2) the SPSO may seek to revise the budget during the year by submitting revised proposals to the Parliamentary corporation for approval.
  189. Under sub-paragraph (3), in preparing a budget or a revised budget, the SPSO is required to ensure that resources will be used economically, efficiently and effectively and must under sub-paragraph (4) so certify in any budget or revised budget proposal.
  190. [Paragraph 18](#) amends paragraph 13(b) (Parliamentary corporation to pay Ombudsman's expenses) Under paragraph 13(b) the Parliamentary corporation must pay the SPSO's expenses where properly incurred in achieving its functions less any sums the SPSO has received in payment for services provided under paragraph 12(C), for example, in providing training or holding seminars.
  191. [Paragraph 19](#) further amends paragraph 13 inserting sub-paragraph (2) which clarifies that the Parliamentary corporation is not compelled to pay expenses which exceed or were not included in the agreed budget (see paragraph 187 above). It is anticipated in this situation that the Parliamentary corporation will take a decision in light of the relevant circumstances. Should the Parliamentary corporation wish to pay these expenses the power is provided for in sub-paragraph (3). Sub-paragraph (4) provides that the Parliamentary corporation must indemnify the SPSO in respect of any liability incurred by the SPSO while performing its functions.
  192. [Paragraph 20](#) amends Part 1 of schedule 2 to the SPSO Act (list of persons liable to investigation) by inserting paragraph 17A (Prisons). This provision enables the SPSO to investigate complaints in respect of governors or prisons, medical officers and the equivalent persons in respect of contracted-out prisons. This provision ensures the transfer of the functions currently performed by the Scottish Prison Complaints Commission to the SPSO.

193. The Scottish Ministers are already a listed authority under the SPSO Act (paragraph 2 of schedule 2 to that Act) so to the extent that the SPSO is able to consider complaints by prisoners in respect of administrative functions and service failure in respect of the Scottish Ministers then these are matters that the SPSO can already investigate. Currently, the SPSO Act does not specifically list Governors of prisons as persons in respect of whom the SPSO can investigate complaints. The issue as to whether Governors act independently or on behalf of the Scottish Ministers was considered in the case of *Somerville and other v Scottish Ministers* (2007 UKHL 44). The Court in that case decided that the person exercising the power of the Governor was exercising an independent function as he or she was not subject to direction or control of the Scottish Ministers. Therefore the amendment to schedule 2 to the SPSO Act provides that the Governor is a listed authority, but only when acting in a capacity independent of Scottish Ministers. In terms of medical officers, they also appear to exercise independent functions, not functions of the Scottish Ministers, therefore their actions cannot currently be investigated by the SPSO. The amendment to schedule 2 to the SPSO provides that a medical officer is a listed authority where they are not exercising functions of the Scottish Ministers.
194. [Paragraph 21](#) amends paragraph 2 of schedule 4 to the SPSO Act (Matters which the Ombudsman must not investigate). This amendment resolves existing doubts by clarifying that the SPSO cannot investigate inquiries under the [Fatal Accidents and Sudden Deaths Inquiry \(Scotland\) Act 1976 \(c.14\)](#) as civil proceedings are excluded from the SPSO's jurisdiction and civil proceedings include a reference to such inquiries.
195. [Paragraph 21](#) also amends paragraph 7(1) of schedule 4 to make it clear that the SPSO cannot investigate matters arising from concluded contracts but that it can investigate matters relating to the process leading up to the conclusion of a contract.

#### ***Schedule 4 Amendments of the Freedom of Information (Scotland) Act 2002***

196. [Schedule 4](#) is introduced by section 29(4) of the Act and contains amendments to the FOISA.
197. [Paragraph 1](#) amends section 42 (the Scottish Information Commissioner) with regard to disqualification from office, the terms and period of office, removal and the independence of the SIC. New subsection (1A) is inserted disqualifying from appointment as SIC any person who is, holds office in or is an employee or appointee of another Scottish public authority and as such subject to the jurisdiction of the SIC under FOISA.
198. New subsection (1B) further restricts the SIC from holding any such position once in post without the approval of the Parliamentary corporation. This restriction avoids any suggestion or perception that the SIC's actions could be influenced by another position held.
199. Section 42 (3) is amended by paragraph 1(b) to allow the SIC to hold office for a single term only of up to a period of 8 years. Paragraph 1(g) replaces section 42(5) to make it clear that a SIC may not be reappointed at any time.
200. Sub-paragraph 1(c) adds a new subsection (3A) making clear that the SIC holds office on such terms and conditions as the Parliamentary corporation may decide. New subsection (3B)(a) allows the Parliamentary corporation in those terms and conditions to prohibit the SIC from holding any other specified office, employment or appointment or to engage in specified occupations. Subsection (3B)(b) further provides that the holding of any other such office, employment, appointment or occupation is subject to the Parliamentary corporation's approval.
201. Sub-paragraph 1(d) amends section 42(4)(c) of FOISA in line with changes made to the other officeholders in this Act relating to removal from office.

202. The SIC can be removed from office by the Parliamentary corporation under new subsection (4) only in the circumstances as set out in subsection (4A).
203. Subsection 4A(a) states that the SIC may be removed from office if the Parliamentary corporation is satisfied that the office holder has breached their terms of appointment. Having come to that view the Parliamentary corporation would then have to ask the Parliament to resolve that the member should be removed from office for the breach.
204. Alternatively, under subsection 4A(b), the SIC may be removed from office if the Parliament resolves that it has lost confidence in the SIC's willingness, suitability or ability to perform their functions.
205. In both circumstances, a resolution must be voted for by at least 86 members of the Parliament, being a number not less than two thirds of the total number of seats of members of the Parliament.
206. [Paragraph 1](#) also updates the list of powers at subsection (7) (exceptions to the independence of the SIC) where the SIC is subject to direction or control to take account of the changes to the supervisory regime made by this Act.
207. [Paragraph 2](#) inserts new subsections (9A), (9B) and (9C) (Advisers and other services) into section 42. Under subsections (9A), (9B) and (9C) the SIC can secure advice, assistance or any other service. There may be circumstances where the SIC might want to secure legal advice for example, in relation to a particular case. Advice or services can be procured from anyone whom the SIC considers is qualified to provide it. Payment of any fees and allowances for advice or services is determined by the SIC. Any payment for providing services and payment in respect of that advice, assistance or service provided, is subject to approval by the Parliamentary corporation.
208. [Paragraph 3](#) amends section 42(11)(b) (payment of Commissioner's expenses). Section 42(11)(b), as amended, requires the Parliamentary corporation to pay the SIC's expenses where properly incurred in exercising its functions. Any sums the SIC has received in payment for services provided under section 43(6), for example, in providing training or holding seminars, fall to be deducted from the amount paid.
209. [Paragraph 4](#) inserts new subsection (11A) into section 42 under which the Parliamentary corporation is not compelled under subsection 11(b) to pay expenses which exceed or were not included in the agreed budget (see new paragraph 4A of Schedule 2). It is anticipated in this situation that the Parliamentary corporation will take a decision in light of the relevant circumstances. Should the Parliamentary corporation wish to pay these expenses the power is provided for in new subsection (11B).
210. Subsection (11C) provides that the Parliamentary corporation will indemnify the SIC in respect of any liabilities incurred by them while performing their functions.
211. [Paragraph 5](#) amends section 43 (general functions). This provision allows the SIC to charge reasonable sums for anything done by it, or on its behalf in the performance of, or in connection with, the SIC's functions. For example, this section would allow the SIC to organise training events or seminars and charge attendance fees. Any sums received must be retained by the SIC and used to meet the costs of the services provided and charged for, for example the training event.
212. [Paragraph 6](#) amends section 46 (reports). The amendments to the section require the annual report to be laid before the Scottish Parliament within 7 months of the end of the reporting year (subsection (1A)) and be published (subsection 3A). Subsection (2A) obliges the SIC to comply with any directions given by the Parliamentary corporation regarding the form and content of the report. Subsection (1B) defines the reporting year as beginning 1 April.
213. [Paragraph 7](#) inserts new section 46A (strategic plans). Section 46A requires the SIC to produce a strategic plan and details arrangements for timing, content, consultation and

review. Under sub-paragraph (1) the plan covers a four year period and sets out how the SIC proposes to perform its functions during the period.

214. Sub-paragraph (2) sets out broad details of what a plan must contain. In particular it is required to provide the objectives and the priorities during the period and state proposals for achieving them. In addition the plan must provide timetables and cost estimates.
215. Sub-paragraph (3) requires the SIC to consult on the plan before laying it before Parliament. Comment on a draft must be sought from the Parliamentary corporation, the Keeper of the Records of Scotland and any other person the SIC thinks appropriate, which includes a Committee of the Parliament (sub-paragraph (4)).
216. Sub-paragraph (5) requires the SIC to lay each strategic plan before Parliament prior to the start of the four year period which is defined in sub-paragraph (10) as beginning on the next 1 April after commencement and each subsequent period of four years. Sub-paragraph (6) requires the SIC to publish each plan.
217. Under sub-paragraph (7) the SIC can review its strategic plan at any time during the four year period and lay a revised plan before the Parliament. Sub-paragraph (8) provides that, in that event, the provisions in sub-paragraph (2) to (7) about content, consultation and publication apply. Subsection (9) clarifies that a revised plan must be laid before the Parliament not later than the beginning of the period to which the revised strategic plan relates.
218. [Paragraph 8](#) explains that paragraph 9 onwards relates to schedule 2 to FOISA.
219. [Paragraph 9](#) amends paragraph 1 (Legal Status) to clarify that the status of the SIC is that of a juristic person distinct from the natural person holding the office of the SIC.
220. [Paragraph 10](#) replaces paragraph 3(4) (approval by Parliamentary corporation of appointments etc of staff) to provide that the Parliamentary corporation must approve appointments, both in terms of the number of staff and their terms and conditions of appointment.
221. [Paragraph 11](#) inserts new paragraph 4A (Budget). Paragraph 4A enacts the recommendations of the Finance Committee's report and implements existing administrative budgetary arrangements between the officeholders and the Parliamentary corporation designed to ensure accountability for the use of public funds.
222. Sub-paragraph (1) requires the SIC to prepare budget proposals for each financial year, in advance of that year, for approval by the Parliamentary corporation. The Parliamentary corporation is given power to set a timetable for submission and approval of the budget which will allow it to be integrated within wider budgetary arrangements.
223. Under sub-paragraph (2) the SIC may seek to revise the budget during the year by submitting revised proposals to the Parliamentary corporation for approval.
224. Under sub-paragraph (3), in preparing a budget or a revised budget, the SIC is required to ensure that resources will be used economically, efficiently and effectively and must under sub-paragraph (4) so certify in any budget or revised budget proposal.
225. [Paragraph 12](#) amends paragraph 6 (Commissioner's general powers, including acquisition and disposal of property) so that the SIC may only acquire and dispose of land with the consent of the Parliamentary corporation.
226. [Paragraph 13](#) inserts new paragraph 7 (Location of office) which provides that the SIC is required to comply with any directions by the Parliamentary corporation as to the location of the SIC's office. This paragraph also inserts new paragraph 8 (Sharing of premises, staff, services and other resources) which allows the Parliamentary corporation to direct the SIC as to the sharing of premises, staff, services or other resources with any public body or any officeholder. The Parliamentary corporation could use this power to rationalise the number of premises occupied by the officeholders

and bodies or to direct that the provision of services such as human resources, payroll, finance or procurement should be carried out centrally.

227. **Paragraph 14** inserts new paragraph 9 (Restrictions on subsequent appointments) which makes some similar restrictions on subsequent appointments once the SIC has left office to those that applied to the original appointment under new section 42(1A) and (1B) (see paragraphs 197 and 198 of these notes). As well as restriction on employment with the SIC, a former SIC cannot be: a Scottish public authority; hold office in or be an employee or appointee of a Scottish public authority; or hold any other office, employment or appointment or engage in any other occupation which that person could not hold when appointed as the SIC under new section 42(3B).
228. Under sub-paragraph (2) the restrictions run from the date of leaving office until the end of the financial year following the one in which the person ceased to be the SIC. Thus if a SIC leaves on 1 November 2010 the restriction would subsist until 1 April 2012.

### **Schedule 5**

229. **Schedule 5** is introduced by section 29(10) of the Act and contains amendments to the SCCYP Act.
230. **Paragraph 1** amends section 2 (appointment of Commissioner) to provide for the SCCYP to hold office for a single term of up to a period of 8 years and replaces subsection (4) to make clear that a person who has ceased to be a SCCYP is not eligible for reappointment at any time.
231. **Paragraph 2** amends section 3 (removal of Commissioner). The SCCYP can be removed from office by the Parliamentary corporation under subsection (1) only in 2 circumstances as set out in subsection (2).
232. New subsection 2(a) states that the SCCYP may be removed from office if the Parliamentary corporation is satisfied that the office holder has breached their terms of appointment. Having come to a view the Parliamentary corporation then ask the Parliament to resolve that the SCCYP should be removed from office for the breach.
233. Alternatively, under subsection 2(b), the SCCYP may be removed from office if the Parliament resolves that it has lost confidence in the SCCYP's willingness, suitability or ability to perform their functions.
234. In both circumstances, a resolution must be voted for by at least 86 members of the Parliament, being a number not less than two thirds of the total number of seats of members of the Parliament.
235. **Paragraph 3** amends section 10 (annual reports). Section 10 is amended to require the annual report to be laid before the Scottish Parliament within 7 months of the end of the reporting year (subsection (3)). Subsection (4) obliges the SCCYP to comply with any directions given by the Parliamentary corporation regarding the form and content of the report. Subsection (5) defines the reporting year as beginning 1 April.
236. **Paragraph 4** inserts new section 14A (strategic plans). Section 14A requires the SCCYP to produce a strategic plan and details arrangements for timing, content, consultation and review. Under sub-paragraph (1) the plan covers a four year period and sets out how the SCCYP proposes to perform its functions during the period.
237. Subsection (2) sets out broad details of what a plan must contain. In particular it is required to provide the objectives and the priorities during the period and state proposals for achieving them. In addition the plan must provide timetables and cost estimates.
238. Subsection (3) requires the SCCYP to consult on the plan before laying it before Parliament. Comment on a draft must be sought from the Parliamentary corporation and any other person the SCCYP thinks appropriate, which includes a Committee of the Parliament (subsection (4)).

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239. Subsection (5) requires the SCCYP to lay each strategic plan before Parliament prior to the start of the four year period which is defined in sub-section (10) as beginning on the next 1 April after commencement and each subsequent period of four years. Subsection (6) requires the SCCYP to publish each plan.
240. Under subsection (7) the SCCYP can review its strategic plan at any time during the four year period and lay a revised plan before the Parliament. Subsection (8) provides that, in that event, the provisions in subsections (2) to (7) about content, consultation and publication apply. Subsection (9) clarifies that a revised plan must be laid before the Parliament not later than the beginning of the period to which the revised strategic plan relates.
241. [Paragraph 5](#) explains that paragraph 6 onwards relates to Schedule 1 to the SCCYP Act.
242. [Paragraph 6](#) amends paragraph 1 (legal status of the Commissioner) to provide that the status of the SCCYP is that of a juristic person distinct from the natural person holding the office of SCCYP.
243. [Paragraph 7](#) updates the list of powers at paragraph 2(2) (independence) where the SCCYP is subject to direction or control to take account of the changes to the supervisory regime made by this Act.
244. [Paragraph 8](#) amends paragraph 4 (Disqualification). New paragraph 8(1A) sets out the circumstances which disqualify a person from continuing to hold the post of SCCYP. A person cannot continue to be a SCCYP if that person becomes a member of the Scottish Parliament, the House of Commons or a Member of the European Parliament. Should a SCCYP be elected to the Parliament, for example, the person would immediately be disqualified from holding office as a SCCYP and would be required to relinquish office. Under sub-paragraph (3) the Parliamentary corporation may determine as part of the terms and conditions of appointment of the SCCYP, whether the SCCYP should be permitted to hold any other office, employment or appointment or engagement.
245. [Paragraph 9](#) inserts paragraph 5A (Subsequent appointments etc) which makes similar restrictions on subsequent appointments once a SCCYP has left office to those that applied to the original appointment under paragraph 4(3) (see para 245 of these notes). As well as a restriction on employment with the SCCYP, a former SCCYP cannot be: an employee or appointee of any person or body into which an investigation had been carried out or continued by the former SCCYP when in office; or hold any other office, employment or appointment or engage in any other occupation which that person could not hold when appointed as the SCCYP under paragraph 4(3)(a).
246. Under sub-paragraph (2) the restrictions run from the date of leaving office until the end of the financial year following the one in which the person ceased to be a SCCYP. Thus if a SCCYP leaves on 1 November 2010 the restriction would subsist until 1 April 2012.
247. [Paragraph 10](#) amends paragraph 6(2) (Commissioner's general powers to include power to acquire and dispose of property) and adds a new sub-paragraph (2A) so that the SCCYP may only acquire and dispose of land with the consent of the Parliamentary corporation. This paragraph also amends paragraph 6(3) (charges for certain services specified by order by Scottish Ministers) to remove the involvement of Scottish Ministers. A new sub-paragraph (3A) is added to enable the SCCYP to charge reasonable sums for services it provides. Paragraph 10(e) repeals the Scottish Ministers order making powers under paragraph 6(4) which are no longer appropriate as a consequence of the above change. For example, this section would allow the SCCYP to organise training events or seminars and charge attendance fees. Any sums received must be retained by the SCCYP and used to meet the costs of the services provided and charged for, for example the training event.
248. [Paragraph 11](#) inserts new paragraph 6A (location of office) to provide that the SCCYP is required to comply with any directions by the Parliamentary corporation as to the location of the SCCYP's office.



249. **Paragraph 13** inserts paragraph 7A (Sharing of premises, staff, services and other resources) which provides for the Parliamentary corporation to direct the SCCYP as to the sharing of premises, staff, services or other resources with any public body or any officeholder. The Parliamentary corporation could use this power to rationalise the number of premises occupied by the officeholders and bodies or to direct that the provision of services such as human resources, payroll, finance or procurement should be carried out centrally.
250. Furthermore paragraph 13 also inserts new paragraph (7B) (advisers and other services). Under paragraph 7B the SCCYP can obtain advice, assistance or any other service for use by the SCCYP. There may be circumstances where the SCCYP might want to secure advice for example, in relation to legal issues. This advice or services can be procured from anyone whom the SCCYP considers is qualified to provide it. Payment of fees and allowances is determined by the SCCYP. Any payment in respect of that advice, assistance or service provided, is subject to approval by the Parliamentary corporation.
251. **Paragraph 14** amends paragraph 9 (payment of Commissioner's salary, expenses etc). New sub-paragraph (2) requires the Parliamentary corporation to pay the SCCYP's expenses where properly incurred in achieving its functions less any sums the SCCYP has received in payment for services provided under paragraph 6(3A) of the SCCYP Act for example, in providing training or holding seminars. The Parliamentary corporation is not compelled under sub-paragraph (2) to pay expenses which exceed or were not included in the agreed budget (see new paragraph 9A). It is anticipated in this situation that the Parliamentary corporation will take a decision in light of the relevant circumstances. Should the Parliamentary corporation wish to pay these expenses the power is provided for in sub-paragraph (3). Sub-paragraph (4) provides that the Parliamentary corporation will indemnify the SCCYP in respect of any liabilities incurred by the SCCYP while undertaking its functions.
252. **Paragraph 15** inserts new paragraph 9A (Budget). Paragraph 9A enacts the recommendations of the Finance Committee's report and implements existing administrative budgetary arrangements between the officeholder and the Parliamentary corporation designed to ensure accountability for the use of public funds.
253. Sub-paragraph (1) requires the SCCYP to prepare budget proposals for each financial year, in advance of that year, for approval by the Parliamentary corporation. The Parliamentary corporation is given power to set a timetable for submission and approval of the budget which will allow it to be integrated within wider budgetary arrangements.
254. Under sub-paragraph (2) the SCCYP may seek to revise the budget during the year by submitting revised proposals to the Parliamentary corporation for approval.
255. Under sub-paragraph (3), in preparing a budget or a revised budget, the SCCYP is required to ensure that resources will be used economically, efficiently and effectively and must under sub-paragraph (4) so certify in any budget or revised budget proposal.

### **Schedule 6**

256. **Schedule 6** is introduced by section 29(11) of the Act and contains amendments to the SCHR Act.
257. **Paragraph 1** amends section 7 (strategic plans). The amendment to subsection (2) requires the SHRC to provide cost estimates for achieving the objectives and the priorities and undertaking those reviews set out in the strategic plan. New subsection (6A) clarifies that a revised plan must be laid before the Parliament not later than the beginning of the period to which the revised strategic plan relates.
258. **Paragraph 2** amends section 15 (Commission's annual report). Section 15 is amended to clarify the reporting year begins on 1 April (new subsection (4)) and to require the report to be laid before the Scottish Parliament within 7 months of the end of the reporting year (new subsection (2A)).

259. [Paragraph 3](#) explains that paragraph 4 onwards relates to Schedule 1 to the SCHR Act.
260. [Paragraph 4](#) extends the list in paragraph 3(2) (exceptional matters in which Commission subject to direction or control) to take account of the changes to the supervisory regime made by this Act to include 11A(3) (Advisers and other services), 12(3) and 13A (Budget).
261. [Paragraph 5](#) amends paragraph 5 (terms of office etc of Commission members) to provide for a member of the SHRC to hold office for a single term of up to a period of 8 years and clarifies that a member who has ceased to be a member of the SHRC is not eligible for reappointment.
262. [Paragraph 5](#) also amends paragraph 5 in relation to removal of members. Sub-paragraph (5) is amended to provide for a member to be removed from office if the Parliament resolves that it has lost confidence in the member's willingness, suitability or ability to perform their functions. Sub-paragraph (6) is amended so that a resolution under sub-paragraph (4)(b) and (5) must be voted for by at least 86 members of the Parliament, being a number not less than two thirds of the total number of seats of members of the Parliament.
263. [Paragraph 5](#) also inserts new sub-paragraphs (9) and (10) into paragraph 5. Under sub-paragraph (9) the Parliamentary corporation may determine whether the members should be permitted to hold any other office, employment or appointment or engagement during their term of office. This power may be used differently in relation to the member appointed as chair and the other members. For example, the holding of another position may compromise or be perceived to compromise the independence of the member.
264. [Paragraph 6](#) inserts paragraph 6A (Subsequent appointments etc) which makes some similar restrictions on subsequent appointments once a member has left office to those that applied to the original appointment under paragraph 4. As well as restriction on employment with the SHRC, a former member cannot hold office in or be: an employee or appointee of any Scottish public authority in relation to which the SHRC conducted an inquiry into policy and practices while that person was a member; in any other employment or appointment or engage in any other occupation which that person could not hold when a appointed as member of the SHRC.
265. Under sub-paragraph (2) the restrictions run from the date of leaving office until the end of the financial year following the one in which the person ceased to be a member. Thus if a member leaves on 1 November 2010 the restriction would subsist until 1 April 2012.
266. [Paragraph 7](#) amends paragraph 8 (Commission's powers to include acquisition and disposal of land) so that the SHRC may only acquire and dispose of land with the consent of the Parliamentary corporation.
267. [Paragraph 8](#) replaces paragraph 10 (location of office) to provide that the SHRC is required to comply with any directions given by the Parliamentary corporation as to the location of the SHRC's office.
268. [Paragraph 9](#) inserts new paragraph 11A (advisers and other services). Under paragraph 11A the SHRC can secure advice, assistance or any other service for use by the SHRC. There may be circumstances where the SHRC might want to secure advice for example, in relation to legal issues. This advice or services can be procured from anyone whom the SHRC considers is qualified to provide it. Payment of fees and allowances is determined by the SHRC. Any payment for providing services and payment in respect of that advice, assistance or service provided, is subject to approval by the Parliamentary corporation.
269. [Paragraph 10](#) inserts a new sub-paragraph 12(3) (Sharing of premises, staff, services and other resources) which provides for the Parliamentary corporation to direct the SHRC as to the sharing of premises, staff, services or other resources with any public body

or any officeholder. The Parliamentary corporation could use this power to rationalise the number of premises occupied by the bodies or to direct that the provision of services such as human resources, payroll, finance or procurement should be carried out centrally.

270. [Paragraph 11](#) inserts new paragraph 13A (Budget). Paragraph 13A enacts the recommendations of the Finance Committee's report and implements existing administrative budgetary arrangements between the officeholder and the Parliamentary corporation designed to ensure accountability for the use of public funds.
271. Sub-paragraph (1) requires the SHRC to prepare budget proposals for each financial year, in advance of that year, for approval by the Parliamentary corporation. The Parliamentary corporation is given power to set a timetable for submission and approval of the budget which will allow it to be integrated within wider budgetary arrangements.
272. Under sub-paragraph (2) the SHRC may seek to revise the budget during the year by submitting revised proposals to the Parliamentary corporation for approval.
273. Under sub-paragraph (3), in preparing a budget or a revised budget, the SHRC is required to ensure that resources will be used economically, efficiently and effectively and must under sub-paragraph (4) so certify in any budget or revised budget.
274. [Paragraph 12](#) substitutes paragraph 14(1) (payment of Commissioner's remuneration and Commission's expenses). Under sub-paragraph (1) the Parliamentary corporation must pay the remuneration and allowances of each member of the SHRC and pay any expenses properly incurred by the SHRC in exercising its functions, less any sums the SHRC has received in payment for services provided under section 3(3), for example, in providing training or holding seminars. Sub-paragraph (1)(c) provides that the Parliamentary corporation must indemnify the SHRC in respect of any liabilities incurred by it while performing its functions.

### ***Schedule 7 Transfer of Staff, Property, Liabilities and Transitional Provisions***

275. [Schedule 7](#) sets out the provisions required to transfer staff, property and liabilities to the Commission for Ethical Standards in Public Life in Scotland. This Schedule also contains transitional and saving provisions covering the provisions of the Act.

#### **Part 1**

276. [Part 1](#) of Schedule 7 deals with transfer of staff, property and liabilities to the Commission for Ethical Standards in Public Life Commission ("CESPLS"). Paragraph 1 (Staff) provides for employees of the CIO and the staff of the SPSC and the OCPAS to transfer to and become staff of the CESPLS. Transfer will take place on 1 April 2011.
277. [Paragraph 1\(2\)](#) provides that the existing contract of employment of any person who transfers to the CESPLS is not terminated by the transfer and has effect as though originally made between the person and the CESPLS. Sub-paragraph (3) ensures that all the previous rights, powers, duties and liabilities of the CIO, the SPSC and the OCPAS as employers transfer to the CESPLS unchanged. On transfer the CESPLS will become liable for any actions of the previous employers in respect of any contract or person.
278. A transferred person's right to terminate their contract of employment, where there is a substantially detrimental change to the person's contract of employment, is not affected by the provisions of sub-paragraphs (1) to (4). However, the mere change of the identity of a person's employer from the CIO, the SPSC or the OCPAS to the CESPLS is not to be treated as a substantially detrimental change to the person's contract of employment (sub-paragraph (5)).
279. [Paragraph 2](#) (property) provides for property (including rights) to which the CIO, SPSC or OCPAS were entitled to transfer to the CESPLS on 1 April 2011. It also enables the

transfer of any liabilities to which those officeholders were subject to the new CESPLS. The transfer of property includes the transfer of ownership of information held on file.

## **Part 2**

280. **Part 2** of Schedule 7 deals with transitional and saving provisions. Paragraph 3 (Undetermined processes under Ethical Standards, Parliamentary Standards and Public Appointments Acts) enables any ongoing processes, for example, in relation to complaints handling where the previous officeholder (the CIO or the SPSC) has yet to make a determination or complete an investigation, to be continued by the Public Standards Commissioner for Scotland, as though it had been made originally to that Commissioner (sub-paragraphs (1) and (2)). Sub-paragraphs (3) and (4) make similar provision in relation to the ongoing processes of the Commissioner for Public Appointments in Scotland being continued by the Public Appointments Commissioner for Scotland.

**Paragraph 4** makes transitional arrangements for assessors who are currently appointed by the Commissioner for Public Appointments in Scotland to enable them to continue to exercise their functions after the Commission for Ethical Standards in Public Life in Scotland comes into existence on 1 April 2011.

281. **Paragraph 5** (New Commission's first budget) provides for the preparation of the Commission's first budget. Budget provisions are set out in section 20 (see paragraphs x to y). Before the start of each financial year, the CESPLS must prepare a budget. As the CESPLS will be established on 1 April 2011 this paragraph provides that the CESPLS must prepare a budget as soon as possible for the financial year ending with 31 March 2012, with a deadline of 30 June 2011.

282. **Paragraph 6** (Scottish Parliamentary Standards Commissioner's last annual report) makes provision for the final annual report of the SPSC. Currently under section 18 of the Parliamentary Standards Act the SPSC must lay an annual report before the Parliament as soon as possible after the end of each calendar year on the performance of the SPSC's functions during that year. The functions of the SPSC will transfer to the Public Standards Commissioner for Scotland under section 2 of the Act (see paragraphs x and y). This paragraph ensures that the SPSC produces an annual report for the calendar year 2010 which also includes the performance of functions from 1 January 2011 to 31 March 2011.

283. **Paragraph 7** (Other annual reports) makes equivalent provision to that of paragraph 5 in respect of all the other existing bodies or officeholders required to produce annual or general reports but by requiring those bodies or officeholders to report on the performance of their functions during any transitional period of a reporting year (i.e. from 2 April 2010 to 31 March 2011), in the annual report required for the reporting year beginning on 1 April 2011. The effect of the paragraph is as per paragraph 5 to prevent there being any need for part year reports or for two reports in one year.

284. **Paragraph 8** (The Scottish Parliamentary Standards Commissioner and the Chief Investigating Officer) makes transitional provisions for the appointment of the Public Standards Commissioner for Scotland. This ensures that the SPSC in post on 31 March 2011 becomes the Public Standards Commissioner for Scotland (sub-paragraph 1) (In practice both that post and the post of CIO are currently held by the same person.). The post of SPSC will cease to exist from the 31 March 2011. The officeholder may be reappointed as long as the individual's appointment in total, including time in post prior to 31 March 2011, does not exceed the period of 8 years (sub-paragraph (3)).

285. **Paragraph 9** (Commissioner for Public Appointments) makes transitional provisions for the appointment of the Public Appointments Commissioner for Scotland. This enables the current OCPAS to become the Public Appointments Commissioner for Scotland (sub-paragraph 1). The post of OCPAS will cease to exist from the 31 March 2011. The officeholder may be reappointed as long as the individual's appointment in total does

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not exceed the period of 8 years (sub-paragraph (3)). Sub-paragraph (7) applies if the postholder in office at 31 May 2012 remains in office and specifies 30 April 2012 as the end date of their appointment in line with the existing contract in force.

286. [Paragraph 10](#) (existing members of the Standards Commission) makes transitional provisions for the appointment of members of the Standards Commission. Sub-paragraph (1) provides for an existing member of the Standards Commission to be reappointed for a further term. Members may be reappointed as long as the appointment in total does not exceed the period of 8 years from when first appointed (sub-paragraph (2)).
287. [Paragraph 11](#) (Commissioner for Children and Young People and the Public Services Ombudsman) makes transitional provisions for the appointment of the SCCYP and the SPSO. Sub-paragraph (1) enables the current SCCYP to become eligible for reappointment. Sub-paragraph (2) enables the current SPSO to become eligible for reappointment. These officeholders may be reappointed as long as the individual's appointment in total does not exceed the period of 8 years from when that person was first appointed (sub-paragraph (3)).
288. [Paragraph 12](#) (Members of the Scottish Commission for Human Rights) makes transitional provisions for the appointment of the chair of the SHRC and the other members of the SHRC. Sub-paragraph (1) enables the current chair of the SHRC to become eligible for reappointment. Sub-paragraph (2) enables the current other members of the SHRC to become eligible for reappointment. These officeholders may be reappointed as long as the individual's appointment in total does not exceed the period of 8 years from when that person was first appointed (sub-paragraph (3)).
289. [Paragraph 13](#) (General provisions about reappointment) clarifies that an officeholder is not eligible for reappointment if the person has held office for a total of 8 years or longer.