

Status: Point in time view as at 01/04/2011.

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SCHEDULE 2

(introduced by section 29(2))

AMENDMENTS OF THE ETHICAL STANDARDS ACT

Procedure for appointments and orders conferring functions

- 1 In section 8 (establishment, functions and membership of the Standards Commission for Scotland)—
- (a) in subsection (3) (appointment of members) for the passage from “Ministers”, where first occurring, to the end there is substituted “the Parliamentary corporation—
 - (a) after consulting such association of councils and such other persons as the Parliamentary corporation thinks appropriate; and
 - (b) with the agreement of the Parliament.”,
 - (b) after subsection (4) there is inserted—

“(4A) Ministers shall consult the Parliamentary corporation and the Commission before making an order under subsection (2)(b).”
 - (c) for subsection (6) (order conferring functions to be subject to negative procedure) there is substituted—

“(6) No statutory instrument may be made under this section unless a draft of it has been laid before and approved by the Parliament.”

Witnesses' expenses

- 2 In section 17(8) (payment by Commission of witnesses' expenses etc.) for “thinks fit” there is substituted “, with the approval of the Parliamentary corporation, determines”.

Protection from actions of defamation

- 3 In section 27(1) (protection from actions of defamation) for the passage from “by”, where it first occurs, to the end there is substituted—
- “(a) by the Commission or any of its employees, the Public Standards Commissioner for Scotland or any of the employees of the Commission for Ethical Standards in Public Life in Scotland shall be absolutely privileged;
 - (b) to that Commissioner or any of the employees of the Commission for Ethical Standards in Public Life in Scotland shall have qualified privilege.”

Application of paragraphs 5 to 16

- 4 Paragraphs 5 to 16 relate to schedule 1 to the Ethical Standards Act.

Land, charges, location of office and sharing of resources

- 5 In paragraph 2—
- (a) at the end of sub-paragraph (2) (Commission's general powers to include acquisition and disposal of land) there is inserted “, or other property”, and

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(b) after that sub-paragraph there is inserted—

“(3) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.

(4) The Commission may determine and charge reasonable sums for anything done or provided by it or on its behalf in the exercise of, or in connection with, its functions.

(5) The Commission shall retain any sums received by it by virtue of sub-paragraph (4) and apply them to meet expenditure incurred in doing or providing whatever is charged for.”

6 After paragraph 2 there is inserted—

“Location of office

2A The Commission shall comply with any direction given by the Parliamentary corporation as to the location of the Commission's office.

Sharing of premises, staff, services and other resources

2B The Commission shall comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other public body or any officeholder.”

Procedure for appointment of convener

7 In paragraph 4 (appointment of convener) for “Ministers” there is substituted “ The Parliamentary corporation ”.

Members' terms of office, subsequent appointments etc.

8 For paragraphs 5 (tenure of office of members) and 6 (remuneration etc.) there is substituted—

“Tenure of office, remuneration etc.

5 (1) Each member of the Commission shall hold office for such period, not exceeding eight years, as the Parliamentary corporation determines at the time of appointment.

(2) A person who has ceased to be a member is ineligible for reappointment at any time.

(3) A member may resign office at any time by notice in writing given to the Parliamentary corporation.

(4) A member may be removed from office by the Parliamentary corporation if sub-paragraph (5) applies.

(5) This sub-paragraph applies if—

(a) the Parliamentary corporation is satisfied that the member has breached the member's terms and conditions of office and the

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Parliament resolves that the member should be removed from office for that breach; or

- (b) the Parliament resolves that it has lost confidence in the member's willingness, suitability or ability to exercise that member's functions,

and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.

- (6) The Parliamentary corporation may, in the terms and conditions of office of a member, specify the minimum period of notice for the purposes of sub-paragraph (3).
- (7) Each member is entitled to—
 - (a) such remuneration; and
 - (b) such allowances,as the Parliamentary corporation determines.
- (8) In other respects, each member holds office on such terms and conditions as the Parliamentary corporation determines.
- (9) Those terms and conditions may, without prejudice to paragraph 3—
 - (a) prohibit the member from holding any other specified office, employment or appointment or engaging in any other specified occupation;
 - (b) provide that the member's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation;
 - (c) for the purposes of this sub-paragraph, provide differently for the member appointed as convener and the other members.
- (10) In sub-paragraph (9), “specified” means specified in the terms and conditions of office or within a description so specified.”

9 After paragraph 5 (as inserted by paragraph 8 above) there is inserted—

“Subsequent appointments etc.

- 5A (1) A person who has ceased to be a member may not, without the approval of the Parliamentary corporation—
- (a) be employed or appointed in any other capacity by the Commission;
 - (b) be a member or an employee or appointee of the Commission for Ethical Standards in Public Life in Scotland or be, or be an employee or appointee of, the Scottish Public Services Ombudsman;
 - (c) hold any other office, employment or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of paragraph 5(9)(a), that person could not have held or, as the case may be, engaged in when a member.
- (2) The restriction in sub-paragraph (1)—
- (a) starts when the person ceases to be a member; and
 - (b) ends on the expiry of the financial year following the one in which it started.”

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Employees, remuneration and pensions, advisers etc.

- 10 In paragraph 7 (employees)—
- (a) in sub-paragraphs (2) and (4) for “Ministers” in each place where it occurs, there is substituted “ it ”, and
 - (b) after sub-paragraph (4) there is inserted—

“(4A) The exercise of a power in this paragraph requires the approval of the Parliamentary corporation.”
- 11 Paragraph 8 (remuneration, pensions etc. of Chief Investigating Officer and staff) is repealed.
- 12 Before paragraph 9 there is inserted—

“Advisers and other services

- 8A (1) The Commission may obtain advice, assistance or any other service from any person who, in the opinion of the Commission, is qualified to give it.
- (2) The Commission may pay to that person such fees and allowances as the Commission determines.
 - (3) Any payment under sub-paragraph (2) is subject to the approval of the Parliamentary corporation.”

Strategic plans

- 13 After paragraph 10 there is inserted—

“Strategic plans

- 10A(1) The Commission shall, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Commission proposes to exercise the Commission's functions during the 4 year period.
- (2) A strategic plan shall, in particular, set out—
 - (a) the Commission's objectives and priorities during the 4 year period;
 - (b) how the Commission proposes to achieve them;
 - (c) a timetable for doing so; and
 - (d) estimates of the costs of doing so.
 - (3) Before laying a strategic plan before the Parliament, the Commission shall provide a draft of it to and invite, and (if any are given) consider, comments on it from—
 - (a) the Parliamentary corporation; and
 - (b) such other persons as the Commission thinks appropriate.
 - (4) The reference in sub-paragraph (3)(b) to other persons includes a committee of the Parliament.
 - (5) The Commission shall lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.

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- (6) The Commission shall arrange for the publication of each strategic plan laid before the Parliament.
- (7) The Commission may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Sub-paragraphs (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in sub-paragraph (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of 4 years beginning on 1 April next following the coming into force of this paragraph and each subsequent period of 4 years.”

Finance

14 After paragraph 10A (as inserted by paragraph 13 above) there is inserted—

“Accountable officer

- 10B (1) The Parliamentary corporation shall designate a member or employee of the Commission as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
 - (a) signing the accounts of the expenditure and receipts of the Commission;
 - (b) ensuring the propriety and regularity of the finances of the Commission;
 - (c) ensuring that the resources of the Commission are used economically, efficiently and effectively; and
 - (d) the duty set out in sub-paragraph (3).
 - (3) Where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper exercise of the functions specified in sub-paragraph (2)(a) to (c), the accountable officer shall—
 - (a) obtain written authority from the Commission before taking the action; and
 - (b) send a copy of the authority as soon as possible to the Auditor General for Scotland.
 - (4) The accountable officer is answerable to the Parliament for the performance of the functions in sub-paragraph (2).

Budget

- 10C (1) The Commission shall, before the start of each financial year, prepare proposals for its use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.

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- (2) The Commission may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- (3) In preparing a budget or a revised budget, the Commission shall ensure that the resources of the Commission will be used economically, efficiently and effectively.
- (4) A budget or revised budget shall contain a statement that the Commission has complied with the duty under sub-paragraph (3).

Commission's expenses and liabilities

- 10D (1) The Parliamentary corporation shall pay any expenses properly incurred by the Commission in the exercise of its functions so far as not met out of sums received and applied by it under paragraph 2(5).
- (2) Sub-paragraph (1) does not require the Parliamentary corporation to pay any expenses incurred by the Commission which exceed or are otherwise not covered by a budget or, as the case may be, revised budget approved under paragraph 10C.
 - (3) However, the Parliamentary corporation may pay those expenses.
 - (4) The Parliamentary corporation shall indemnify the Commission in respect of any liability incurred by it in the exercise of its functions.

Accounts and audit

- 10E (1) The Commission shall, in accordance with such directions in that regard as the Scottish Ministers may give—
- (a) keep proper accounts and accounting records;
 - (b) prepare annual accounts in respect of each financial year; and
 - (c) send a copy of the annual accounts to the Auditor General for Scotland for auditing.
- (2) If requested by any person, the Commission shall make the audited accounts available, at any reasonable time, without charge and in printed or electronic form, so that they may be inspected by that person.”

Commencement Information

- II** [Sch. 2 para. 14](#) wholly in force at 1.4.2011; [Sch. 2 para. 14](#) in force for specified purposes at 1.8. 2010 and otherwise at 1.4.2011, see [s. 31\(3\)\(5\)](#)

- 15 Paragraph 11 (expenses) is repealed.

Annual reports

- 16 After paragraph 10E (as inserted by paragraph 14 above) there is inserted—

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“Annual reports

- 10F (1) The Commission shall lay before the Parliament annually a general report on the exercise of its functions during the reporting year.
- (2) The report shall, in particular, include—
- (a) a summary of any hearings held by the Commission during the reporting year; and
 - (b) a summary of any other activities undertaken by it during that year in pursuance of its functions.
- (3) The report shall be laid before the Parliament within seven months after the end of the reporting year.
- (4) The Commission shall arrange for the publication of each report laid before the Parliament under this paragraph.
- (5) In preparing a report under this paragraph, the Commission shall comply with any direction given by the Parliamentary corporation as to the form and content of the report.
- (6) In this section “reporting year” means the year beginning on 1 April.”

Terms and conditions of office, staff and status of Chief Investigating Officer

- 17 Schedule 2 (terms and conditions of office, staff and status of Chief Investigating Officer) is repealed.

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