



# Freedom of Information (Scotland) Act 2002

2002 asp 13

## PART 3

### THE SCOTTISH INFORMATION COMMISSIONER

#### 42 The Scottish Information Commissioner

- (1) For the purposes of this Act there is to be an officer known as the Scottish Information Commissioner (in this Act referred to as the “Commissioner”) who is to be an individual appointed by Her Majesty on the nomination of the Parliament.
- [<sup>F1</sup>(1A) A person is disqualified from appointment as the Commissioner if the person is, or holds office in, or is an employee or appointee of, another Scottish public authority.
- (1B) The Commissioner may not, without the approval of the Parliamentary corporation, also be, or hold office in, or be an employee or appointee of, another Scottish public authority.]
- (2) The Commissioner is entitled to—
- (a) a salary of such amount; and
  - (b) such allowances,
- as the Parliamentary corporation may determine.
- (3) Subject to subsection (4), the Commissioner is to hold office for such period not exceeding [<sup>F2</sup> eight ] years as the Parliamentary corporation, at the time of appointment, may determine.
- [<sup>F3</sup>(3A) The Commissioner is to hold office otherwise on such terms and conditions as the Parliamentary corporation may determine.
- (3B) Those terms and conditions may, without prejudice to subsection (1A)—
- (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,

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- (b) provide that the Commissioner's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.

(3C) In subsection (3B), “specified” means specified in the terms and conditions of office or within a description so specified.]

(4) The Commissioner—

- (a) may be relieved of office by Her Majesty at that officer’s request;
- (b) <sup>F4</sup> .....
- (c) may be removed from office by Her Majesty [<sup>F5</sup> if subsection (4A) applies ]
- <sup>F6</sup>(d) .....

[<sup>F7</sup>(4A) This subsection applies if—

- (a) the Parliamentary corporation is satisfied that the Commissioner has breached the terms and conditions of office and the Parliament resolves that the Commissioner should be removed from office for that breach, or
- (b) the Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to perform the functions of the Commissioner,

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.]

[<sup>F8</sup>(5) A person who has held office as Commissioner is ineligible for reappointment at any time.]

- (6) The validity of any actings of the Commissioner is not affected by a defect in the nomination by the Parliament for that officer’s appointment.
- (7) The Commissioner, in the exercise of that officer’s functions (except the function of preparing accounts), is not subject to the direction or control of the Parliamentary corporation, of any member of the Scottish Executive or of the Parliament; but this subsection is without prejudice to [<sup>F9</sup> sections 42(9C) and 46(2A) and paragraphs 3(4), 4A, 6(2), 7 and 8 ] of schedule 2.
- (8) Where the office of Commissioner is vacant, the Parliamentary corporation may appoint a person (who may or may not be a member of the Commissioner’s staff) to discharge the functions of that office until a new Commissioner is appointed.
- (9) A person appointed under subsection (8)—
  - (a) may be relieved of that appointment at that person’s request;
  - (b) may be removed from office by the Parliamentary corporation by notice in writing given by it;
  - (c) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine; and
  - (d) while holding that appointment, is to be treated for all purposes, except those of subsections (1) to (6) and those of paragraph 2 of schedule 2, as the Commissioner.

[<sup>F10</sup>(9A) The Commissioner may obtain advice, assistance or any other service from any person who, in the opinion of the Commissioner, is qualified to give it.

(9B) The Commissioner may pay to that person such fees and allowances as the Commissioner determines.

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(9C) Any payment under subsection (9B) is subject to the approval of the Parliamentary corporation.]

(10) Any function of the Commissioner may be exercised on behalf of that officer by any person (whether or not a member of that officer's staff) authorised by the Commissioner to do so (and to the extent so authorised).

(11) The Parliamentary corporation is to pay—

- (a) the salary and allowances of the Commissioner;
- (b) any expenses [<sup>F11</sup> properly ] incurred by that officer in the exercise of functions under this Act [<sup>F12</sup> so far as those expenses are not met out of sums received and applied by that officer under section 43(6) ] ; and
- (c) any sums payable by virtue of subsection (9)(a) to (c) to, or in respect of, a person who—
  - (i) is appointed under subsection (8); or
  - (ii) has ceased to hold office by virtue of having been so appointed.

[<sup>F13</sup>(11A) Subsection (11)(b) does not require the Parliamentary corporation to pay any expenses incurred by the Commissioner which exceed or are otherwise not covered by a budget or, as the case may be, revised budget approved under paragraph 4A of schedule 2.

(11B) However, the Parliamentary corporation may pay those expenses.

(11C) The Parliamentary corporation is to indemnify the Commissioner in respect of any liabilities incurred by the Commissioner in the exercise of the Commissioner's functions under this Act.]

(12) Schedule 2 to this Act has effect with respect to the Commissioner.

#### Textual Amendments

- F1** S. 42(1A)(1B) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 1\(a\)](#) (with s. 31(6), sch. 7)
- F2** Word in s. 42(3) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 1\(b\)](#) (with s. 31(6), sch. 7)
- F3** S. 42(3A)-(3C) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 1\(c\)](#) (with s. 31(6), sch. 7)
- F4** S. 42(4)(b) repealed (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 49(2), [Sch. 9](#) (with regs. 44-46).
- F5** Words in s. 42(4)(c) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 1\(d\)](#) (with s. 31(6), sch. 7)
- F6** S. 42(4)(d) repealed (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 1\(e\)](#) (with s. 31(6), sch. 7)
- F7** S. 42(4A) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 1\(f\)](#) (with s. 31(6), sch. 7)
- F8** S. 42(5) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 1\(g\)](#) (with s. 31(6), sch. 7)
- F9** Words in s. 42(7) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 1\(h\)](#) (with s. 31(6), sch. 7)
- F10** S. 42(9A)-(9C) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 2](#) (with s. 31(6), sch. 7)
- F11** Word in s. 42(11)(b) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 3\(a\)](#) (with s. 31(6), sch. 7)

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- F12** Words in s. 42(11)(b) inserted (1.4.2011) by Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11), s. 31(5), **sch. 4 para. 3(b)** (with s. 31(6), sch. 7)
- F13** S. 42(11A)-(11C) inserted (1.4.2011) by Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11), s. 31(5), **sch. 4 para. 4** (with s. 31(6), sch. 7)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- sch. 1 para. 74A inserted by [2023 asp 6 sch. 2 para. 2\(2\)](#)