



Scottish Parliamentary Standards Commissioner Act 2002

2002 asp 16

The Scottish Parliamentary Standards Commissioner

1 Appointment of the Scottish Parliamentary Standards Commissioner

- (1) There shall be a Scottish Parliamentary Standards Commissioner (in this Act referred to as “the Commissioner”).
- (2) The Commissioner shall be appointed by the Parliamentary corporation with the agreement of the Parliament.
- (3) A person shall not be eligible to be appointed as the Commissioner if that person—
 - (a) is a member of the Parliament or of the staff of the Parliament; or
 - (b) has been such a member at any time during the period of 2 years prior to the date when the appointment is to take effect.
- (4) The Commissioner shall be appointed for such period, not exceeding 5 years, as the Parliamentary corporation may determine.
- (5) A person who has been appointed for one period as the Commissioner may be appointed for a second period (whether or not consecutive) but not for any additional period.
- (6) A person who has been appointed as the Commissioner may at any time—
 - (a) resign by notice given to the Parliamentary corporation; or
 - (b) be removed from office by the Parliamentary corporation.
- (7) The Parliamentary corporation shall not remove a person as the Commissioner unless—
 - (a) the Parliament so resolves; and
 - (b) if the resolution is passed on a division, the number of votes cast in favour of it is not less than two thirds of the total number of votes cast in the division.
- (8) The schedule makes further provision about the Commissioner.

2 Appointment of the acting Commissioner

- (1) When the office of the Commissioner is vacant or the Commissioner is, for any reason, unable to act, the Parliamentary corporation may appoint a person to discharge the functions of that office either generally or in relation to such case or class of cases, and until such time, as may be specified by the Parliamentary corporation as part of the terms and conditions of such appointment; and a person so appointed is referred to in this section as the “acting Commissioner”.
- (2) The Commissioner and the acting Commissioner may each discharge the functions of the office of the Commissioner at the same time but in relation to different cases.
- (3) A person who is not eligible to be appointed as the Commissioner is not eligible to be appointed as the acting Commissioner.
- (4) A person appointed as the acting Commissioner—
 - (a) may at any time resign by notice given to the Parliamentary corporation;
 - (b) may at any time be removed from office by the Parliamentary corporation;
 - (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 section 1 and paragraph 1 of the schedule) as the Commissioner.

3 Functions of the Commissioner

- (1) Subject to the provisions of this Act, where a complaint has been made to the Commissioner about the conduct of a member of the Parliament, it shall be the function of the Commissioner to—
 - (a) investigate whether the member has committed the conduct complained about and has, as a result of that conduct, breached a relevant provision; and
 - (b) report upon the outcome of that investigation to the Parliament.
- (2) However, subject to section 12, the Commissioner shall not investigate any complaint which falls within a class of complaint which is excluded from the jurisdiction of the Commissioner by any provision in the standing orders or in the Code of Conduct; and any such complaint is referred to in this Act as an “excluded complaint”.
- (3) A “relevant provision” is any provision in force at the relevant time—
 - (a) in the standing orders;
 - (b) in the Code of Conduct;
 - (c) in the Scotland Act 1998 (Transitory and Transitional Provisions) (Members' Interests) Order 1999 (S.I.1999/1350); or
 - (d) made by or under an Act of the Scottish Parliament in pursuance of section 39 (members' interests) of the Scotland Act.
- (4) The “relevant time” is the time when the conduct in question is alleged to have taken place, whether before or after this section comes into force.
- (5) The Commissioner may give advice to a member of the Parliament or to a member of the public about the procedures for making a complaint to the Commissioner and the procedures following upon the making of such a complaint.
- (6) However, the Commissioner shall not—

- (a) give advice to a member of the Parliament or to a member of the public as to whether any conduct which has been, or is proposed to be, committed by a member of the Parliament (whether or not the member seeking such advice) would constitute a breach of a relevant provision; or
 - (b) otherwise express any view upon any of the relevant provisions except in the context of an investigation in any particular case or in a report upon the outcome of that investigation or in such other circumstances as may be specified in any direction given to the Commissioner by the Parliament.
- (7) In addition to the functions mentioned in subsections (1) and (5), the Commissioner also has the functions which are conferred or imposed upon the Commissioner by virtue of any other provision in this Act or in any other enactment or in the standing orders.

4 Directions to the Commissioner

- (1) The Commissioner shall, in carrying out the functions of that office, comply with any directions given by the Parliament.
- (2) Any direction to the Commissioner by the Parliament under this section may, in particular—
- (a) make provision as to the procedure to be followed by the Commissioner when conducting—
 - (i) investigations generally into any complaint about the conduct of a member of the Parliament; or
 - (ii) investigations into complaints falling within such class or classes as may be specified in the direction (and different provision may be made in relation to different classes of complaint); or
 - (b) require the Commissioner to make a report to the Parliament upon such matter relating to the exercise of the functions of the Commissioner as may be specified in the direction.
- (3) However, any direction to the Commissioner by the Parliament under this section shall not direct the Commissioner as to whether or how any particular investigation is to be carried out.