

SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002

EXPLANATORY NOTES

SUMMARY OF AND BACKGROUND TO THE BILL

3. The Bill for this Act was a Committee Bill (i.e., a Bill initiated by a Parliamentary committee under Rule 9.15 of the Parliament's standing orders). The Bill resulted from an investigation and report published on 3 October 2000, Models of Investigation of Complaints (4th Report 2000, SP Paper 186) (the 4th Report) by the Standards Committee which was followed by a further report published on 6 April 2001, Proposal for a Standards Commissioner Committee Bill (2nd Report 2001, SP Paper 312). The proposal for a Committee Bill was debated and approved by the Parliament on 23 May 2001.
4. The Bill was developed from the Committee's conclusion that the Parliament should have statutory procedures for the independent investigation of complaints made under the Members' Interests Order and the Code of Conduct (see below). The creation of the office of a Scottish Parliamentary Standards Commissioner (the Commissioner) and the arrangements for investigating complaints are intended to supersede temporary investigation provisions set out in the Code of Conduct.
5. The Code of Conduct for members of the Scottish Parliament was adopted and approved by the Parliament on 24 February 2000. The Code underpins the approach that members are required to take in carrying out their Parliamentary duties. Under section 39 of the [Scotland Act 1998 \(c.46\)](#) provision requires to be made about members' interests by or under an Act of the Scottish Parliament (ASP). Transitional provisions to cover members' interests are set out in the [Scotland Act 1998 \(Transitory and Transitional Provisions\) \(Members' Interests\) Order 1999 \(SI 1999/1350\)](#) (the Members' Interests Order). This Order will govern members' interests until the section 39 requirement is given effect to by or under an ASP. The Standards Committee is currently reviewing the Members' Interests Order with a view to bringing forward recommendations to the Parliament for a replacement of the existing Transitional Order by an ASP. Contravention of certain aspects of the Members' Interests Order is an offence. In addition, the Code of Conduct incorporates the relevant provisions of the Members' Interests Order so that a breach of the Order constitutes a breach of the Code of Conduct.
6. The 4th Report envisaged that, subject to certain exceptions, all complaints that a member of the Parliament has breached one of the above provisions, under the Act, would be sent directly to an independent Commissioner. After this, the 4th report envisaged that there would be a four-stage investigative model. Stage 1 would be an initial consideration by the Commissioner. Where the Commissioner was not satisfied that the complaint was admissible he or she would have in most cases the power to dismiss the complaint. In a few situations where there were procedural defects the Commissioner would require to report these failings to the Standards Committee who would be able to instruct that the investigation proceed or that the complaint be dismissed. Otherwise the Commissioner would be required to consider the complaint and carry out an investigation into it (Stage 2).

These notes relate to the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16) which received Royal Assent on 30 July 2002

7. After completing an investigation the 4th Report envisaged that the Commissioner would report to the Standards Committee on the findings together with the conclusions reached. The Commissioner would not express any view upon what sanctions would be appropriate for any breach. Stage 3 would be the Committee's consideration of the report. The Standards Committee would consider the report of the Commissioner and could conduct their own investigations or require the Commissioner to carry out further investigations. The Standards Committee would report to the Parliament on the complaint with any recommendations and on whether sanctions were warranted for any complaint that they consider should be upheld. A copy of the Commissioner's report would be included in the Committee's report. The Parliament would then decide whether to accept the Committee's report and if appropriate impose sanctions (Stage 4).
8. The existing position is that the Parliament also has a four-stage investigative procedure for complaints against Members. Complaints in relation to the conduct of MSPs in carrying out their parliamentary duties should be made in writing and passed to the Standards Adviser. The Adviser can only investigate complaints that fall within the remit of the Standards Committee. The Adviser will initially seek to establish whether a complaint is warranted and requires further investigation (Stage 1). In doing so he will normally contact the complainer and notify the MSP concerned of the allegations and invite him or her to respond. Where the Adviser concludes that a complaint requires further investigation, he will conduct the investigation in private and independently of the Standards Committee (Stage 2). Once the Adviser has completed his investigation he is required to submit a report to the Standards Committee. At this stage the Committee may decide to conduct its own review of the Adviser's report (Stage 3). Having completed its examination of the Adviser's findings and reached a decision on sanctions if appropriate, the Committee is required to report to the Parliament. It is the Parliament on a recommendation from the Standards Committee that decides whether to impose sanctions on a Member or not (Stage 4).
9. The Act creates the post of Scottish Parliamentary Standards Commissioner with the function of investigating whether a member of the Parliament has breached a provision of the Code of Conduct, the Members' Interests Order, any provision in an ASP that replaces that Order or any provision of the standing orders of the Parliament. Standing orders regulate the proceedings of the Parliament and are made under section 22 of the Scotland Act 1998.
10. The Act is only concerned with the Commissioner's role in the complaints process envisaged under the 4th Report, i.e. Stages 1 and 2 of the investigative process.
11. This Act does not deal with the Parliamentary aspect of the investigation process because it is a matter for the Parliament itself by its own internal rules to set out the procedure that is to apply. This means that in order to give full effect to the investigative model set out in the 4th Report, it will be necessary for the Parliament to make separate provision in the standing orders and the Code of Conduct for the way in which the Commissioner will make reports to the Parliament and for the procedure that it will follow once the Commissioner has made a report to it (Stages 3 and 4).
12. As mentioned earlier the 4th Report envisaged that the Commissioner would make reports to the Standards Committee and that the Standards Committee would carry out Stage 3 of the process. However, the Act requires the Commissioner to report to the Parliament (the term "the Parliament" being defined in section 20 of the Act as including any committee of the Parliament). The approach taken in the Act is in recognition of the fact that the question of whether reports are made to a committee of the Parliament or the Parliament as a whole is a matter for the Parliament to determine in its own standing orders.
13. The 4th Report envisaged that the interaction at Stages 1 and 2 between the Commissioner and the Parliament will be between the Standards Committee and the Commissioner. If this model is followed, the standing orders would provide for the Commissioner to make reports to the Standards Committee and for the Standards

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Committee to have the power to give the Commissioner various directions. Standing orders would also give the Standards Committee the power to direct the Commissioner to proceed with or dismiss complaints that fail to meet certain procedural requirements.

14. In these Explanatory Notes where the 4th Report envisaged the interaction to be with the Standards Committee the reference is to that Committee. This is intended to be helpful to the reader in understanding how the procedure may operate, although it will be for standing orders to set out whether the Commissioner interacts with the Standards Committee.
15. Where these Explanatory Notes make reference to “the Parliament” this is because the 4th Report envisaged the particular function referred to being a matter for the whole Parliament rather than the Standards Committee.
16. The standing orders are made by the Parliament on a motion from the Procedures Committee. Any decision of the Parliament to amend standing orders requires an absolute majority. It will be for the Parliament following consideration by the Procedures Committee to decide whether the possible procedures outlined or some other procedures are appropriate.