

# SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 1 – Appointment of the Scottish Parliamentary Standards Commissioner*

17. Subsection (1) creates the statutory office of the Commissioner.
18. Subsection (2) requires the Scottish Parliamentary Corporate Body (SPCB) to appoint the Commissioner but only with the agreement of the Parliament. The SPCB was created by section 21 of the Scotland Act 1998 to oversee the administration of the Parliament and represent it in legal matters. The SPCB carries out the functions that the Scotland Act conferred upon it and can have additional functions conferred on it by other enactments. The method of obtaining the Parliament's agreement to the appointment will be a matter to be set out in the standing orders. For example, it would be possible for the Parliament's agreement to be sought to an appointment on a motion of the Standards Committee.
19. Under subsection (3), eligibility for appointment to the post of Commissioner is restricted. Members of the Parliament and the staff of the Parliament are ineligible. In addition, a person who has been a member of the Parliament or a member of staff of the Parliament during the two years preceding the date the appointment commences is not eligible for appointment. This second restriction is to reduce the possibility of a Commissioner having to consider a complaint concerning matters that occurred when they were a member of the Parliament or member of the Parliament's staff. Should an older complaint arise it would be possible for the Commissioner to decline to investigate and for an acting Commissioner to be appointed in such cases (see section 2).
20. The maximum period of initial appointment is set out in subsection (4) as five years and is in conformity with the maximum period recommended by guidance issued by the Commissioner for Public Appointments in relation to appointments to Public Bodies.
21. The guidance by the Commissioner for Public Appointments also allows for re-appointment and this is provided for in subsection (5). There can only be one re-appointment which, although it need not be consecutive to the original appointment, cannot be for more than another five years. No further re-appointment is allowed. As a consequence the maximum period of time which one person can serve as Commissioner is ten years.
22. Subsection (6) allows the Commissioner to resign from office or be removed from office by the SPCB. The grounds for removal are not set out in the Bill but will be set out in the Commissioner's terms and conditions of appointment (see paragraph 1(1) of the schedule). However, removal is subject to subsection (7) and can only follow upon a resolution by the Parliament. In the event of a vote on such a resolution it may only be carried if at least two-thirds of the total number of votes cast by those present, including any abstentions, are in favour.