

SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 13 – Power to call for witnesses and documents

82. [Section 13](#) of the Act contains various powers to assist the Commissioner in gathering information and undertaking an investigation.
83. Subsection (1) contains the Commissioner’s powers to obtain information from witnesses at each stage of an investigation. The power relates to both oral information and the production of relevant documents and applies to persons who are in or outside Scotland.
84. The Commissioner’s powers are to be in line with the Parliament’s own powers under section 23 of the Scotland Act. The power to obtain information and documents is therefore restricted by subsection (2) so that the Commissioner cannot require information and documents from a person if the Parliament would not be able to require that person to attend its proceedings to give evidence or to produce documents under section 23 of the Scotland Act. Section 23 imposes various restrictions on the Parliament’s powers in relation to persons outside Scotland, Ministers of the Crown, reserved matters, judges and members of tribunals.
85. The power is further restricted by subsection (3) to the limits applicable to court proceedings in Scotland. This is in line with the provision that applies to the Parliament’s own powers in section 23(9) of the Scotland Act. These cover various privileges such as the privilege against self-incrimination and privileges in connection with litigation. A person need not answer any question or produce any document that they would be entitled to refuse to answer or produce in a Scottish court.
86. Where a person makes a statement in answer to any question by the Commissioner which the person was obliged to answer, subsection (4) provides that any such statement would be inadmissible in any proceedings in a criminal court. The effect of this is that a person cannot incriminate him or herself during the investigation process. The one exception to this provision is in the event that perjury proceedings are initiated in respect of the statement made to the Commissioner.
87. Subsection (5) provides a similar restriction to that of the Scotland Act in relation to a Scottish Law Officer or a procurator fiscal declining to answer a question or produce a document in relation to the operation of the system of criminal prosecution in any particular case. Under the Scotland Act this applies to the fiscal if the Lord Advocate considers that answering or producing might prejudice the criminal proceedings in the case in question or would otherwise be contrary to the public interest and the Lord Advocate has authorised the fiscal to decline to answer the question or produce the document on that ground. Similarly, this applies to the Lord Advocate and the Solicitor General if he or she considers that answering the question or producing the document

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

might prejudice criminal proceedings in the case in question or would otherwise be contrary to the public interest.

88. A person giving evidence can be required to do so under oath and subsection (6) authorises the Commissioner to administer such an oath. A person will be able to affirm as an alternative to taking an oath as this is expressly provided for in the [Oaths Act 1978 \(c.19\)](#).
89. Subsection (7) makes it an offence for a person who has been required to take an oath by the Commissioner to fail to do so. A person found guilty by a summary criminal court of an offence under this subsection is liable to a fine not exceeding level 5 on the standard scale (currently £5,000) (section 225 of the [Criminal Procedure \(Scotland\) Act 1995 \(c.46\)](#)) or to imprisonment for a maximum period of three months..
90. Subsection (8) makes provision for the payment of allowances and expenses to persons required to give evidence or produce documents. The level of expenses and allowances will be a matter to be determined by the Commissioner who must first seek agreement to rates with the SPCB.