

SCOTTISH PARLIAMENTARY STANDARDS COMMISSIONER ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 6 – Stage 1: Admissibility of complaints

44. [Section 6](#) is concerned with the initial admissibility of complaints at Stage 1.
45. The admissibility of a complaint is a matter for the Commissioner to investigate and determine. Subsection (2) sets out three tests that require to be met.
- The first test (in subsection (2)(a)) is that the complaint is relevant. Subsection (4) provides what is required to meet the relevance test.
 - The second test (in subsection (2)(b)) is largely procedural. The complaint must comply with certain specified requirements listed in subsection (5). Failure to meet any of the specified requirements is a matter that the Commissioner must bring to the Standards Committee under section 7(4) for a decision on whether the complaint should nevertheless be accepted.
 - The third test relates to an initial investigation of the complaint to determine whether it warrants further investigation. Subsection (6) provides further specification.
46. Subsection (4) relates to the first test and sets out three matters that need to be established for a complaint to be relevant.
- The first matter is that the complaint must relate to conduct of a member of the Parliament. For example, this prevents complaints concerning the actions of SPCB staff for which separate arrangements are in place. Similarly, complaints about the conduct of other public officials are not relevant.
 - The second matter is that the complaint falls within the jurisdiction of the Commissioner and is not one of the complaints for which separate arrangements are made (see section 3(2)) unless the Standards Committee has directed the Commissioner to investigate such a complaint under section 12.
 - Finally, some part of the conduct complained about must relate to a matter that the Commissioner considers may be covered by the relevant provisions. The Commissioner is required to identify at this stage which provisions he or she thinks are the relevant ones.
47. The specified procedural requirements of a complaint which form the second test are set out in subsection (5).
- The complaint must be made in writing to the Commissioner; thus neither a verbal complaint nor matters published in a newspaper would be investigated.

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

- The complaint can only be from an individual and must include the complainer's name and address as well as being signed. This restricts the scope for anonymous complaints and prevents complaints from companies or organisations. The requirement for signature at present precludes the submission of complaints by e-mail.
 - The member must be named. This requirement prevents the Commissioner from carrying out investigations into the actions of a group of members of the Parliament generally. It also recognises that it will be very difficult for the Commissioner to investigate complaints about the conduct of unnamed individuals and therefore ensures that the Commissioner is not required to undertake investigations which are unlikely to result in a finding that a particular member has breached a relevant provision. Where a name is not given this could be the subject of a class direction under section 4 setting out specific procedure that the Commissioner must follow. For example, the direction might require the Commissioner to immediately refer all such complaints to the Standards Committee who will decide whether or not to waive this requirement. If for example the complaint concerned the leaking of a committee report or other confidential information a direction could specify that the complaint requires to be referred immediately to the Standards Committee to decide whether the Commissioner should carry out any further investigations. The Standards Committee might wish to obtain further information about the complaint from the Committee involved before deciding whether it would be worthwhile for the Commissioner to investigate the matter or whether some other inquiry should be carried out.
 - Details of the facts relating to the alleged conduct must be given, and the complainer should provide any evidence they have to support the allegation. Section 3(1) of the Act makes clear that investigation is limited to the conduct complained about and cannot cover any other conduct.
 - The conduct complained about must have occurred within one year of the date when the complainer could reasonably have become aware of it. This prevents old matters being brought to the Commissioner where the complainer has been aware of the conduct from an earlier date.
48. Subsection (6) provides that for the purpose of the third test (in subsection (2)(c)) further investigation of a complaint is required where it appears to the Commissioner, having carried out an initial investigation, that there is enough evidence to suggest that the conduct complained about may have taken place.