



# Scottish Commission for Human Rights Act 2006

2006 asp 16

*Scottish Commission for Human Rights*

## **1 Scottish Commission for Human Rights**

- (1) There is established a body corporate to be known as the Scottish Commission for Human Rights (and referred to in this Act as the “Commission”).
- (2) Schedule 1 makes further provision about the Commission.

*General functions*

## **2 General duty to promote human rights**

- (1) The Commission’s general duty is, through the exercise of its functions under this Act, to promote human rights and, in particular, to encourage best practice in relation to human rights.
- (2) In this Act, “human rights” means—
  - (a) the Convention rights within the meaning of section 1 of the Human Rights Act 1998 (c. 42), and
  - (b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.
- (3) In this section, “promote”, in relation to human rights, means promote awareness and understanding of, and respect for, those rights.
- (4) In deciding what action to take under this Act in pursuance of its general duty, the Commission must have regard, in particular, to the importance of exercising its functions under this Act in relation to—
  - (a) the Convention rights, and
  - (b) human rights of those groups in society whose human rights are not, in the Commission’s opinion, otherwise being sufficiently promoted.

### **3 Information, guidance, education etc.**

- (1) For the purposes of its general duty, the Commission may—
  - (a) publish or otherwise disseminate information or ideas,
  - (b) provide advice or guidance,
  - (c) conduct research,
  - (d) provide education or training.
- (2) The Commission may charge reasonable fees in connection with anything done by it or on its behalf under subsection (1).
- (3) Sums paid to the Commission in respect of fees charged under subsection (2) are to be retained by it and applied to meet expenses incurred by it in doing anything under subsection (1).

### **4 Monitoring of law, policies and practices**

- (1) For the purposes of its general duty, the Commission may review and recommend changes to—
  - (a) any area of the law of Scotland, or
  - (b) any policies or practices of any Scottish public authorities.
- (2) The Commission must consult the Scottish Law Commission before undertaking a review of any area of the law under subsection (1)(a).

### **5 Power to co-operate etc. with others**

- (1) The Commission may, in the exercise of any of its functions—
  - (a) consult,
  - (b) act jointly with,
  - (c) co-operate with, or
  - (d) assist,any other person.
- (2) The Commission must seek to ensure, so far as practicable, that any activity undertaken by it under this Act does not duplicate unnecessarily any activity undertaken by any other person under any other enactment.

### **6 No power to assist in claims or legal proceedings**

- (1) The Commission may not provide assistance to or in respect of any person in connection with any claim or legal proceedings to which that person is or may become a party.
- (2) In subsection (1), “assistance” includes advice, guidance and grants.

### *Strategic plans*

### **7 Strategic plans**

- (1) The Commission must, before the beginning of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out

information as to how the Commission proposes to fulfil its general duty during that period.

- (2) The plan must, in particular, set out—
  - (a) the Commission’s objectives and priorities for the period to which the plan relates,
  - (b) a statement of any areas of the law which it proposes to review under section 4(1)(a) during that period,
  - (c) details of the other activities or kinds of activities which it proposes to undertake during that period, and
  - (d) a timetable for each review and other activity or kind of activity referred to in paragraphs (b) and (c).
- (3) Before laying a strategic plan before the Parliament, the Commission must provide a draft of it to, and invite comments on it from—
  - (a) the Parliamentary corporation, and
  - (b) such other persons as the Commission considers appropriate.
- (4) The Commission must arrange for the publication of each strategic plan laid before the Parliament.
- (5) The Commission may, at any time during a 4 year period, review the strategic plan for the period and lay a revised plan for the period before the Parliament.
- (6) Subsections (3) to (5) apply to a revised plan as they apply to a strategic plan.
- (7) In this section, “4 year period” means—
  - (a) the period of 4 years beginning with the day on which section 2 comes into force, and
  - (b) each subsequent period of 4 years.

### *Inquiries*

## **8 Power to conduct inquiries**

- (1) The Commission may, in relation to any matter relevant to its general duty, conduct an inquiry into the policies or practices of—
  - (a) a particular Scottish public authority,
  - (b) Scottish public authorities generally, or
  - (c) Scottish public authorities of a particular description,in connection with the matter.
- (2) Subsection (1) is subject to section 9.
- (3) The matter in relation to which an inquiry is conducted is referred to in this Act as the “subject matter” of the inquiry.
- (4) Before taking any step in the conduct of an inquiry, the Commission must—
  - (a) draw up—
    - (i) terms of reference for the proposed inquiry, and
    - (ii) a summary of the procedure to be followed in the conduct of the inquiry,

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- (b) give notice of—
    - (i) the proposed inquiry,
    - (ii) its terms of reference, and
    - (iii) the summary of procedure,
 to each relevant Scottish public authority, and
  - (c) publicise—
    - (i) the proposed inquiry,
    - (ii) its terms of reference, and
    - (iii) the summary of procedure,
 in such manner as it considers appropriate to bring them to the attention of any other persons likely to be affected by the inquiry.
- (5) An inquiry is to be conducted in public except to the extent that the Commission considers it necessary or expedient that any part of the inquiry should be conducted in private.
- (6) Otherwise, the procedure to be followed in the conduct of an inquiry is to be such as the Commission may determine.
- (7) In subsection (4)(b), “relevant Scottish public authority” means, in relation to a proposed inquiry, any Scottish public authority—
- (a) which the Commission considers is likely to be required under section 10(1) to give evidence, produce documents or provide information for the purposes of the inquiry, or
  - (b) any of whose members, officers or staff the Commission considers is likely to be so required.

## **9 Restrictions as to scope of inquiry**

- (1) The Commission may not, in the course of an inquiry (including the report of the inquiry), question the findings of any court or tribunal.
- (2) The Commission may conduct an inquiry into the policies and practices of a particular Scottish public authority only if—
- (a) the authority is the only Scottish public authority with functions in relation to the subject matter of the inquiry, or
  - (b) the subject matter of the inquiry is about whether the human rights specified in subsection (6) are being respected by the authority.
- (3) The Commission may not conduct an inquiry into the policies and practices of any Scottish public authority in relation to a particular case.
- (4) However, subsection (3) does not prevent the Commission taking such policies and practices into account in the course of an inquiry.
- (5) The Commission may conduct an inquiry in relation to the management or operation of a particular institution only if—
- (a) the institution is the only one of its kind in Scotland, or
  - (b) the subject matter of the inquiry is about whether the human rights specified in subsection (6) are being respected at the institution.

- (6) The human rights referred to in subsections (2)(b) and (5)(b) are those contained in the following, so far as ratified by the United Kingdom, namely—
- (a) the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by Resolution 39/46 (10th December 1984) of the General Assembly of the United Nations,
  - (b) the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, done at Strasbourg on 26th November 1987,
  - (c) any protocol to those Conventions, and
  - (d) such other international conventions, treaties or other international instruments as Her Majesty may by Order in Council specify for the purposes of this section.
- (7) No recommendation to make an Order in Council under subsection (6)(d) is to be made to Her Majesty in Council unless a draft of the Order has been laid before and approved by resolution of the Parliament.
- (8) In this section, “institution” means a prison, hospital, school, college, care home or other such establishment.

## **10 Evidence**

- (1) For the purposes of an inquiry, the Commission may require any person specified in subsection (2) to—
- (a) give oral evidence,
  - (b) produce documents, or
  - (c) otherwise provide information,
- relevant to the subject matter of the inquiry.
- (2) Those persons are—
- (a) any Scottish public authority,
  - (b) any member, officer or member of staff of a Scottish public authority who, in the opinion of the Commission, is able to give the evidence, supply the information or produce the documents.
- (3) The Commission may, in the course of an inquiry, take into account any evidence, information or document which it has obtained otherwise than by virtue of a requirement imposed under subsection (1), provided the evidence, information or document is relevant to the subject matter of the inquiry.
- (4) A person is not required under this section to answer any question, produce any document or provide any information which the person would be entitled to refuse to answer, produce or provide in proceedings in a court in Scotland.
- (5) In section 34(2) of the Legal Aid (Scotland) Act 1986 (c. 47) (which specifies the purposes for which the restriction in section 34(1) of that Act on disclosure of information furnished to the Scottish Legal Aid Board does not apply), after paragraph (d) insert—
- “(e) for the purposes of an inquiry by the Scottish Commission for Human Rights under section 8 of the Scottish Commission for Human Rights Act 2006 (asp 16).”.

- (6) Schedule 2 makes further provision in connection with requirements under subsection (1).

## **11 Places of detention: powers of entry, inspection and interview**

- (1) For the purposes of an inquiry, the Commission may—
- (a) enter any place of detention for the purpose of exercising any power under paragraph (b) or (c),
  - (b) inspect the place of detention, and
  - (c) conduct interviews in private with any person detained there, with that person's consent.
- (2) In this section, “place of detention” means any premises, vehicle or other place in or at which an individual is or may be detained by, or with the authority or consent of, a Scottish public authority.
- (3) For the purposes of subsection (2), an individual is detained in or at a place if he or she is imprisoned there or otherwise deprived (to any extent) of his or her liberty to leave the place.
- (4) For the purposes of subsection (1)(c), an interview is in private if it is outwith the hearing of any person involved in the management or control of the place of detention or working at the place of detention.
- (5) Schedule 3 makes further provision in connection with the exercise of the powers under subsection (1).

## **12 Report of inquiry**

- (1) After completing an inquiry other than an excepted inquiry, the Commission must lay before the Parliament a report of the inquiry.
- (2) The report must, in particular, include—
- (a) the Commission's findings as a result of the inquiry, and
  - (b) any recommendations of the Commission in the light of those findings.
- (3) The report must not make reference to the activities of a specified or identifiable person unless the Commission considers that it is necessary to do so in order for the report adequately to reflect the results of the inquiry.
- (4) Before finalising a report containing such a reference, the Commission must—
- (a) provide the person concerned with—
    - (i) a draft of the proposed report, and
    - (ii) an opportunity to make representations concerning the proposed report, and
  - (b) consider any representations made.
- (5) In subsection (1), “excepted inquiry” means an inquiry the subject matter of which falls within section 9(2)(b) or (5)(b).

## **13 Confidentiality of information**

- (1) Subsection (2) applies to a person who is or has been—

- (a) a member of the Commission,
  - (b) a member of the Commission's staff, or
  - (c) otherwise an agent of the Commission.
- (2) The person must not disclose any information which—
- (a) has been obtained by or on behalf of the Commission for the purposes of an inquiry, and
  - (b) is not at the time of the disclosure, and has not previously been, in the public domain,
- unless the disclosure is authorised by subsection (3).
- (3) Disclosure is authorised for the purposes of subsection (2) only so far as—
- (a) it is made with the consent of the person from whom the information was obtained,
  - (b) it is necessary for the purpose of enabling or assisting the exercise by the Commission of any of its functions under this Act, or
  - (c) it is made for the purposes of legal proceedings, whether criminal or civil (including the purposes of the investigation of any offence or suspected offence).
- (4) A person who knowingly contravenes subsection (2) commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
  - (b) on conviction on indictment, to a fine.

#### *Intervention in civil proceedings*

### **14 Power to intervene**

- (1) Subsection (2) applies to civil proceedings before a court, except children's hearing proceedings.
- (2) The Commission may—
- (a) with leave of the court, or
  - (b) at the invitation of the court,
- intervene in the proceedings for the purpose of making a submission to the court on an issue arising in the proceedings.
- (3) The Commission may intervene under subsection (2) only if it appears to the Commission that the issue arising in the proceedings—
- (a) is relevant to its general duty, and
  - (b) raises a matter of public interest.
- (4) An application by the Commission for leave under subsection (2)(a) must set out—
- (a) the issue arising in the proceedings which the Commission intends to address, and
  - (b) a summary of the submission that the Commission intends to make.
- (5) An invitation under subsection (2)(b) must set out the issue arising in the proceedings upon which the court seeks a submission.

- (6) The court may grant leave for or invite the Commission to intervene under subsection (2) only if it is satisfied that the intervention of the Commission is likely to assist the court.
- (7) Further provision as to the procedure in any intervention under subsection (2), including in particular provision as to the form that any submission by the Commission is to take, may be prescribed by Act of Sederunt.
- (8) Subsection (2) is without prejudice to the Commission's capacity to intervene in any proceedings before any court or tribunal under an enactment or in accordance with the practice of the court or tribunal.
- (9) In subsection (1)—
  - “civil proceedings” includes inquiries instituted under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c. 14),
  - “children's hearing proceedings” means any proceedings on an application made to the sheriff, and any other proceedings before the sheriff court or Court of Session (whether on appeal or otherwise), under any provision of Part II of the Children (Scotland) Act 1995 (c. 36) in relation to a children's hearing,
  - “court” means the Court of Session and sheriff court, both as courts of first instance and appeal, and the Land Court.

### *Reports*

#### **15 Annual report**

- (1) The Commission must lay before the Parliament annually a general report on the exercise of its functions during the year to which the report relates (“the reporting year”).
- (2) The report must, in particular, include—
  - (a) a summary of any inquiries conducted by the Commission during the reporting year, and
  - (b) a summary of any other activities undertaken by it during that year in pursuance of its general duty.
- (3) In preparing a report under this section, the Commission must comply with any directions given by the Parliamentary corporation as to the form and content of the report.

#### **16 Publication of reports**

- (1) The Commission must arrange for the publication of reports laid by it before the Parliament.
- (2) The Commission may publish other reports on matters relevant to its general duty.

### *General*

#### **17 Protection from actions for defamation**

- (1) For the purposes of the law of defamation—



- (a) any statement made by the Commission—
    - (i) in conducting an inquiry,
    - (ii) in communicating with any person for the purposes of an inquiry, or
    - (iii) in a report of an inquiry,has absolute privilege,
  - (b) any other statement made by it in pursuance of the purposes of this Act has qualified privilege, and
  - (c) any statement made to it in pursuance of those purposes has qualified privilege.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c. 31).

## **18 Giving of notice**

- (1) Any notice to be given to any person under any provision of this Act must be given—
- (a) in writing, and
  - (b) by one of the means specified in subsection (2).
- (2) Those means are—
- (a) delivering the notice to the person,
  - (b) sending it by registered post or recorded delivery service addressed to the person at—
    - (i) in the case of an individual, the person’s usual or last known address or the person’s place of business or work,
    - (ii) in any other case, the person’s registered or principal office,
  - (c) sending it to the person by some other means (including electronic means) which the person giving the notice considers likely to cause it to be delivered on the same or next day.
- (3) A notice which is given by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.
- (4) A notice given by a means specified in subsection (2)(c) is, unless the contrary is proved, to be presumed to be delivered on the next working day following the day on which it is sent.
- (5) In subsection (4), “working day” means any day other than a Saturday, a Sunday or a day which, under the Banking and Financial Dealings Act 1971 (c. 80), is a bank holiday in Scotland.

## **19 Meaning of “Scottish public authority”**

In this Act, “Scottish public authority” means—

- (a) any body or office which, or office-holder who, is—
  - (i) a part of the Scottish Administration, or
  - (ii) a Scottish public authority with mixed functions or no reserved functions, and
- (b) any other person who is a public authority within the meaning of the Human Rights Act 1998 (c. 42), but only in so far as the public functions exercisable by the person—

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- (i) are exercisable in or as regards Scotland, and
- (ii) do not relate to reserved matters.

## **20 Interpretation**

In this Act, except where the context requires otherwise—

“the Commission” means the Scottish Commission for Human Rights (established by section 1(1)),

“Convention rights” has the meaning given in section 1 of the Human Rights Act 1998 (c. 42),

“human rights” has the meaning given in section 2(2),

“inquiry” means an inquiry under section 8,

“Parliament” means the Scottish Parliament,

“Parliamentary corporation” means the Scottish Parliamentary Corporate Body,

“Scottish public authority” has the meaning given in section 19,

“subject matter”, in relation to an inquiry, is to be construed in accordance with section 8(3).

## **21 Preparation for the Commission**

- (1) The Parliamentary corporation may do anything that it considers necessary or expedient in preparation for the establishment of the Commission.
- (2) In particular, the Parliamentary corporation may determine the initial location of the Commission’s office premises.
- (3) Her Majesty may, by Order in Council, provide for the transfer to the Commission of any—
  - (a) property belonging to the Parliamentary corporation,
  - (b) liabilities to which the Parliamentary corporation is subject.
- (4) An Order in Council under subsection (3)—
  - (a) may make supplementary, incidental, consequential and transitional provision,
  - (b) is subject to annulment in pursuance of a resolution of the Parliament.

## **22 Short title, Crown application and commencement**

- (1) This Act may be cited as the Scottish Commission for Human Rights Act 2006.
- (2) This Act binds the Crown.
- (3) This Act (except section 21 and this section) comes into force on such day as Her Majesty may by Order in Council appoint.
- (4) An Order in Council under subsection (3) may—
  - (a) appoint different days for different purposes, and
  - (b) contain transitional and transitory provision.