

SCOTTISH COMMISSION FOR HUMAN RIGHTS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 1: The Scottish Commission for Human Rights

74. [Schedule 1](#) makes detailed provision concerning the status, independence, remuneration, terms of appointment and general powers of the Commission. The Schedule also details various administrative and procedural matters.
75. [Paragraph 1\(1\)](#) states that the Commission is to be composed of a member appointed to chair the Commission and not more than four other members. The chair shall be appointed by Her Majesty on the nomination of the Scottish Parliament, and other members will be appointed by the Parliamentary corporation.
76. [Paragraphs 2](#) and [3](#) state that the Commission, in the exercise of its functions, is not subject to the direction or control of any member of the Parliament, the Scottish Executive or the Parliamentary corporation. This is qualified because certain other provisions (section 15(3) and paragraphs 8(2)(b), 10, 11(1), (2) and (3)) give the Parliamentary corporation some control over the Commission, including the form of the Commission's annual report and the location of the Commission's principal office, and subsection (1) of paragraph 15 requires that the Commission comply with such directions as the Scottish Ministers may give regarding accounts and accounting records.
77. [Paragraph 4](#) deals with circumstances which would disqualify a person from appointment and holding office as a member of the Commission. No person may become a member if that person is a member of the House of Commons, the Scottish Parliament or the European Parliament. Persons who have held any of these offices in the previous year are also disqualified. For a prospective chair of the Commission, this means the year preceding the date of nomination, whereas any other member of the Commission would be disqualified if they had held such a post in the year preceding the proposed date of appointment.
78. [Paragraph 5](#) lists details of terms of office and remuneration for Commission members, stating that each may hold office for a period of up to five years and is eligible for reappointment when that period expires. A member of the Commission may be appointed for two terms of up to five years each but may not be reappointed for a third period.
79. [Paragraph 5](#) also provides that the chair of the Commission can be removed from office by Her Majesty at his or her request, or if one of two conditions is met. A member of the Commission can be removed from office by the Parliamentary Corporation under the same conditions, or at his or her request.
80. The first condition, in sub-paragraph (4), states that a member of the Commission may be removed from office if the Parliamentary corporation is satisfied that the office

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holder has breached his or her terms of appointment and the Parliament resolves that the member should be removed.

81. The second condition, in sub-paragraph (5), states that the Parliament may remove a member of the Commission from office if it resolves that it has lost confidence in him or her. In both cases, if passed on division, such a resolution must be voted for by not less than two thirds of those voting.
82. [Paragraph 5](#) also contains details regarding the members of the Commission's salaries, to the effect that each is entitled to such remuneration and allowances as are determined by the Parliamentary corporation. Other terms and conditions of holding office are to be determined by the Parliamentary corporation.
83. [Paragraph 6](#) makes provision for financial matters including payment of pensions, allowances and gratuities to persons who have ceased to be members of the Commission. The Parliamentary corporation has responsibility for arranging such payments. The pensions, allowances or gratuities arranged under this section may be in compensation for loss of office.
84. [Paragraph 7](#) states that the Commission may regulate its own procedure, including any quorum. Sub-paragraph (2) establishes that, if the chair of the Commission is not present at a meeting, then any other member of the Commission may chair the meeting.
85. The validity of any acts of the Commission is unaffected by any procedural defects in the appointment of members of the Commission, or by any vacancies in the membership.
86. [Paragraph 8](#) empowers the Commission to do anything which appears necessary or expedient for the purpose of, or in connection with or conducive to, the exercise of his or her functions. Paragraph 8 also confers upon the Commission the specific power to enter into contracts and, with the consent of the Parliamentary corporation, to acquire and dispose of land.
87. The Commission can delegate any function to any person it authorises to act upon its behalf. The Commission still retains ultimate responsibility for carrying out its functions, whether delegated or not.
88. [Paragraph 10](#) states that the Commission's choice of location for its office is subject to the approval of the Parliamentary corporation.
89. [Paragraph 11](#) allows the Commission to appoint staff on such terms and conditions as the Commission determines. The number of staff and their terms and conditions are subject to the approval of the Parliamentary corporation.
90. Sub-paragraph (3) makes provision for payment of pensions, allowances or gratuities to former staff. As read with sub-paragraph (4) this gives authority to the Commission to make arrangements, which may include pensions, allowances and gratuities made in compensation for loss of employment. Approval of such arrangements must be obtained from the Parliamentary corporation.
91. [Paragraph 12](#) allows the Commission to make arrangements with any other public body or office holder to share staff, premises, services and other resources. The Commission is required to take any advantages conferred by such arrangements into account when considering its requirements.
92. [Paragraph 13](#) requires the Parliamentary corporation to designate a member of the Commission or its staff as the accountable officer and states that he or she is accountable to the Parliament for exercise of those functions. It is the duty of the accountable officer to ensure that the finances of the Commission are kept in good order and that the resources of the Commission are used economically, efficiently and effectively. If the accountable officer is required to act in a manner that he or she considers inconsistent

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with these responsibilities, the accountable officer must obtain written authority from the Commission and send a copy of this to the Auditor General for Scotland.

93. In terms of paragraph 14, the Parliamentary corporation is responsible for payment of the salary etc. of each member of the Commission, and any expenses of the Commission unless such expenses are met by sums received under section 3(3)
94. [Paragraph 14](#) also requires the Commission to prepare budget proposals before the start of each financial year and send these proposals to the Parliamentary corporation for approval. The Commission may revise these proposals during the year in question and send the revised proposals to the Parliamentary corporation for approval. The Commission is required to state in the budget that any proposal or revised proposal complies with the duty to consider sharing services in paragraph 12.
95. The Parliamentary corporation is not required to pay any expenses incurred by the Commission which exceed or are not covered by these proposals, although it has power to do so.
96. The financial year of the Commission begins with the date upon which the Commission is established and ends on 31st March next following that date. Thereafter, the financial year will run for 12 months until 31st March in the following year.
97. [Paragraph 15](#) requires the Commission to keep proper accounts and accounting records, prepare annual accounts for each financial year and send copies of the annual accounts to the Auditor General for Scotland. The Commission must comply with any directions given by the Scottish Ministers in relation to these requirements.
98. The Commission must make a copy of the audited accounts available, free of charge, to anyone who requests them.
99. By virtue of paragraphs 16 and 17, the Commission is subject to the jurisdiction of the Scottish Public Services Ombudsman and the Scottish Information Commissioner.