

# SCOTTISH PARLIAMENTARY COMMISSIONS AND COMMISSIONERS ETC. ACT 2010

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 7 Transfer of Staff, Property, Liabilities and Transitional Provisions*

275. [Schedule 7](#) sets out the provisions required to transfer staff, property and liabilities to the Commission for Ethical Standards in Public Life in Scotland. This Schedule also contains transitional and saving provisions covering the provisions of the Act.

#### **Part 1**

276. [Part 1](#) of Schedule 7 deals with transfer of staff, property and liabilities to the Commission for Ethical Standards in Public Life Commission ("CESPLS"). Paragraph 1 (Staff) provides for employees of the CIO and the staff of the SPSC and the OCPAS to transfer to and become staff of the CESPLS. Transfer will take place on 1 April 2011.
277. [Paragraph 1\(2\)](#) provides that the existing contract of employment of any person who transfers to the CESPLS is not terminated by the transfer and has effect as though originally made between the person and the CESPLS. Sub-paragraph (3) ensures that all the previous rights, powers, duties and liabilities of the CIO, the SPSC and the OCPAS as employers transfer to the CESPLS unchanged. On transfer the CESPLS will become liable for any actions of the previous employers in respect of any contract or person.
278. A transferred person's right to terminate their contract of employment, where there is a substantially detrimental change to the person's contract of employment, is not affected by the provisions of sub-paragraphs (1) to (4). However, the mere change of the identity of a person's employer from the CIO, the SPSC or the OCPAS to the CESPLS is not to be treated as a substantially detrimental change to the person's contract of employment (sub-paragraph (5)).
279. [Paragraph 2](#) (property) provides for property (including rights) to which the CIO, SPSC or OCPAS were entitled to transfer to the CESPLS on 1 April 2011. It also enables the transfer of any liabilities to which those officeholders were subject to the new CESPLS. The transfer of property includes the transfer of ownership of information held on file.

#### **Part 2**

280. [Part 2](#) of Schedule 7 deals with transitional and saving provisions. Paragraph 3 (Undetermined processes under Ethical Standards, Parliamentary Standards and Public Appointments Acts) enables any ongoing processes, for example, in relation to complaints handling where the previous officeholder (the CIO or the SPSC) has yet to make a determination or complete an investigation, to be continued by the Public Standards Commissioner for Scotland, as though it had been made originally to that Commissioner (sub-paragraphs (1) and (2)). Sub-paragraphs (3) and (4) make similar provision in relation to the ongoing processes of the Commissioner for Public

Appointments in Scotland being continued by the Public Appointments Commissioner for Scotland.

[Paragraph 4](#) makes transitional arrangements for assessors who are currently appointed by the Commissioner for Public Appointments in Scotland to enable them to continue to exercise their functions after the Commission for Ethical Standards in Public Life in Scotland comes into existence on 1 April 2011.

281. [Paragraph 5](#) (New Commission's first budget) provides for the preparation of the Commission's first budget. Budget provisions are set out in section 20 (see paragraphs x to y). Before the start of each financial year, the CESPLS must prepare a budget. As the CESPLS will be established on 1 April 2011 this paragraph provides that the CESPLS must prepare a budget as soon as possible for the financial year ending with 31 March 2012, with a deadline of 30 June 2011.
282. [Paragraph 6](#) (Scottish Parliamentary Standards Commissioner's last annual report) makes provision for the final annual report of the SPSC. Currently under section 18 of the Parliamentary Standards Act the SPSC must lay an annual report before the Parliament as soon as possible after the end of each calendar year on the performance of the SPSC's functions during that year. The functions of the SPSC will transfer to the Public Standards Commissioner for Scotland under section 2 of the Act (see paragraphs x and y). This paragraph ensures that the SPSC produces an annual report for the calendar year 2010 which also includes the performance of functions from 1 January 2011 to 31 March 2011.
283. [Paragraph 7](#) (Other annual reports) makes equivalent provision to that of paragraph 5 in respect of all the other existing bodies or officeholders required to produce annual or general reports but by requiring those bodies or officeholders to report on the performance of their functions during any transitional period of a reporting year (i.e. from 2 April 2010 to 31 March 2011), in the annual report required for the reporting year beginning on 1 April 2011. The effect of the paragraph is as per paragraph 5 to prevent there being any need for part year reports or for two reports in one year.
284. [Paragraph 8](#) (The Scottish Parliamentary Standards Commissioner and the Chief Investigating Officer) makes transitional provisions for the appointment of the Public Standards Commissioner for Scotland. This ensures that the SPSC in post on 31 March 2011 becomes the Public Standards Commissioner for Scotland (sub-paragraph 1) (In practice both that post and the post of CIO are currently held by the same person.). The post of SPSC will cease to exist from the 31 March 2011. The officeholder may be reappointed as long as the individual's appointment in total, including time in post prior to 31 March 2011, does not exceed the period of 8 years (sub-paragraph (3)).
285. [Paragraph 9](#) (Commissioner for Public Appointments) makes transitional provisions for the appointment of the Public Appointments Commissioner for Scotland. This enables the current OCPAS to become the Public Appointments Commissioner for Scotland (sub-paragraph 1). The post of OCPAS will cease to exist from the 31 March 2011. The officeholder may be reappointed as long as the individual's appointment in total does not exceed the period of 8 years (sub-paragraph (3)). Sub-paragraph (7) applies if the postholder in office at 31 May 2012 remains in office and specifies 30 April 2012 as the end date of their appointment in line with the existing contract in force.
286. [Paragraph 10](#) (existing members of the Standards Commission) makes transitional provisions for the appointment of members of the Standards Commission. Sub-paragraph (1) provides for an existing member of the Standards Commission to be reappointed for a further term. Members may be reappointed as long as the appointment in total does not exceed the period of 8 years from when first appointed (sub-paragraph (2)).
287. [Paragraph 11](#) (Commissioner for Children and Young People and the Public Services Ombudsman) makes transitional provisions for the appointment of the SCCYP and

*These notes relate to the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11) which received Royal Assent on 19 July 2010*

the SPSO. Sub-paragraph (1) enables the current SCCYP to become eligible for reappointment. Sub-paragraph (2) enables the current SPSO to become eligible for reappointment. These officeholders may be reappointed as long as the individual's appointment in total does not exceed the period of 8 years from when that person was first appointed (sub-paragraph (3)).

288. [Paragraph 12](#) (Members of the Scottish Commission for Human Rights) makes transitional provisions for the appointment of the chair of the SHRC and the other members of the SHRC. Sub-paragraph (1) enables the current chair of the SHRC to become eligible for reappointment. Sub-paragraph (2) enables the current other members of the SHRC to become eligible for reappointment. These officeholders may be reappointed as long as the individual's appointment in total does not exceed the period of 8 years from when that person was first appointed (sub-paragraph (3)).
289. [Paragraph 13](#) (General provisions about reappointment) clarifies that an officeholder is not eligible for reappointment if the person has held office for a total of 8 years or longer.