

**Changes to legislation:** Freedom of Information (Scotland) Act 2002, SCHEDULE 2 is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 2

(introduced by section 42(12))

### THE SCOTTISH INFORMATION COMMISSIONER

#### Status

- 1 (1) <sup>F1</sup>The Commissioner and that officer's staff are not to be regarded as servants or agents of the Crown or as having any status, immunity or privilege of the Crown; and the Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown.
- [<sup>F2</sup>(2) The Commissioner is, as such, to be regarded as a juristic person distinct from the natural person holding the office.]

#### Textual Amendments

- F1** Sch. 2 para. 1(1): sch. 2 para.1 renumbered as sch. 1 para. 1(1) (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 4 para. 9** (with s. 31(6), sch. 7)
- F2** Sch. 2 para. 1(2) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 4 para. 9** (with s. 31(6), sch. 7)

#### Pensions, allowances, etc.

- 2 (1) The Parliamentary corporation may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to hold the office of Commissioner and (without prejudice to that generality) may—
- (a) make contributions or payments towards provision for such pensions, allowances or gratuities; and
  - (b) for the purposes of this sub-paragraph, establish and administer one or more pension schemes.
- (2) The references in sub-paragraph (1) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of office.

#### Staff

- 3 (1) The Commissioner may appoint such staff, on such terms and conditions, as that officer may determine.
- (2) The Commissioner may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of such staff and (without prejudice to that generality) may—
- (a) make contributions or payments towards provision for such pensions, allowances or gratuities; and
  - (b) for the purposes of this sub-paragraph, establish and administer one or more pension schemes.
- (3) The references in sub-paragraph (2) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of employment.

*Changes to legislation: Freedom of Information (Scotland) Act 2002, SCHEDULE 2 is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

[<sup>F3</sup>(4) The exercise of a power in sub-paragraph (1) or (2) is subject to the approval of the Parliamentary corporation.]

#### Textual Amendments

**F3** Sch. 2 para. 3(4) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 10](#) (with s. 31(6), sch. 7)

#### *Accountable officer*

- 4 (1) The Parliamentary corporation is to designate the Commissioner or a member of that officer's staff as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
- (a) those specified in sub-paragraph (3); and
  - (b) where the accountable officer is not the Commissioner, the duty set out in sub-paragraph (4),
- and the accountable officer is answerable to the Parliament for the exercise of those functions.
- (3) The functions referred to in sub-paragraph (2)(a) are—
- (a) signing the accounts of the expenditure and receipts of the Commissioner;
  - (b) ensuring the propriety and regularity of the finances of the Commissioner; and
  - (c) ensuring that the resources of the Commissioner are used economically, efficiently and effectively.
- (4) The duty referred to in sub-paragraph (2)(b) is a duty, where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (3), to—
- (a) obtain written authority from the Commissioner before taking the action; and
  - (b) send a copy of that authority as soon as possible to the Auditor General.

#### *[<sup>F4</sup>Budget*

#### Textual Amendments

**F4** Sch. 2 para. 4A inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 4 para. 11](#) (with s. 31(6), sch. 7)

- 4A (1) The Commissioner must, before the start of each financial year, prepare proposals for the Commissioner's use of resources and expenditure during the year (a "budget") and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.
- (2) The Commissioner may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- (3) In preparing a budget or revised budget, the Commissioner must ensure that the resources of the Commissioner will be used economically, efficiently and effectively.

**Changes to legislation:** Freedom of Information (Scotland) Act 2002, SCHEDULE 2 is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (4) A budget or revised budget must contain a statement that the Commissioner has complied with the duty under sub-paragraph (3).]

#### Accounts

- 5 (1) The Commissioner must—
- (a) keep accounts; and
  - (b) prepare annual accounts in respect of each financial year,
- in accordance with such directions as the Scottish Ministers may give that officer.
- (2) The Commissioner must send a copy of the annual accounts to the Auditor General for Scotland for auditing.
- (3) The financial year of the Commissioner is—
- (a) the period beginning with the date on which the Commissioner is appointed and ending with 31st March next following that date; and
  - (b) each successive period of twelve months ending with 31st March.
- (4) If requested by any person, the Commissioner must make available at any reasonable time, without charge, in printed or in electronic form, the audited accounts, so that they may be inspected by that person.

#### General powers

- 6 (1) <sup>F5</sup>The Commissioner may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of that officer's functions; and without prejudice to that generality, may in particular—
- (a) acquire and dispose of land and other property; and
  - (b) enter into contracts.
- [<sup>F6</sup>(2) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.]

#### Textual Amendments

- F5** Sch. 2 para. 6(1): sch. 2 para. 6 renumbered as sch. 2 para. 6(1) (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 4 para. 12** (with s. 31(6), sch. 7)
- F6** Sch. 2 para. 6(2) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 4 para. 12** (with s. 31(6), sch. 7)

#### [<sup>F7</sup>Location of office

#### Textual Amendments

- F7** Sch. 2 paras. 7, 8 inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 4 para. 13** (with s. 31(6), sch. 7)

- 7 The Commissioner must comply with any direction given by the Parliamentary corporation as to the location of the Commissioner's office.

*Changes to legislation: Freedom of Information (Scotland) Act 2002, SCHEDULE 2 is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

*Sharing of premises, staff, services and other resources*

- 8 The Commissioner must comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other officeholder or any public body.]

*[<sup>F8</sup>Restrictions on subsequent appointments etc.*

**Textual Amendments**

**F8** Sch. 2 para. 9 inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010](#) (asp 11), s. 31(5), [sch. 4 para. 14](#) (with s. 31(6), [sch. 7](#))

- 9 (1) A person who has ceased being the Commissioner may not, without the approval of the Parliamentary corporation—
- (a) be employed or appointed in any other capacity by the Commissioner,
  - (b) be a Scottish public authority or hold office in, or be an employee or appointee of, a Scottish public authority, or
  - (c) hold any other office, employment or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of section 42(3B)(a), that person could not have held or, as the case may be, engaged in when Commissioner.
- (2) The restriction in sub-paragraph (1)—
- (a) starts when the person ceases to be the Commissioner, and
  - (b) ends on the expiry of the financial year next following the one in which it started.]

**Changes to legislation:**

Freedom of Information (Scotland) Act 2002, SCHEDULE 2 is up to date with all changes known to be in force on or before 25 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- sch. 1 para. 74A inserted by [2023 asp 6 sch. 2 para. 2\(2\)](#)