

These notes relate to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4) which received Royal Assent on 11 March 2003

PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

The Commissioner for Public Appointments in Scotland

Section 1 – The Commissioner for Public Appointments in Scotland

4. This section creates the office of the Commissioner for Public Appointments in Scotland; provides for the making of the appointment; and provides the basis on which this appointment is held.
5. *Subsection (1)* provides for the appointment of the Commissioner for Public Appointments in Scotland by Her Majesty on the nomination of Parliament.
6. *Subsection (2)* introduces schedule 1 which makes detailed provisions concerning the appointment, status and the administration of the office of Commissioner.

Section 2 – The Commissioner’s functions

7. This section and schedule 2 sets out the scope of the Commissioner for Public Appointments’ functions and powers.
8. *Subsection (1)* provides for the Commissioner to prepare a Code of Practice which regulates the process for making appointments and recommendations for appointments by the Scottish Ministers to the “specified authorities” which are the office and bodies listed in Schedule 2. The Commissioner’s remit applies to ministerial appointments and ministerial recommendations for appointment (in practice, Crown appointments), but not to the appointment of staff of the specified authorities.
9. *Subsections (2) and (3)* provide for the scope of the Code of Practice, which is to be prepared, amended and promulgated by the Commissioner.
10. *Subsection (4)* requires that the preparation of and revisions to the Code must be undertaken in consultation with the Scottish Ministers, the Parliament and the public.
11. In addition to preparing (and amending) a Code of Practice, *subsection (5)* provides that the Commissioner shall examine the methods and practices employed by the Scottish Ministers in making appointments and recommendations for appointments, including any particular appointment to those specified authorities listed in schedule 2. It also provides for the Commissioner to investigate complaints arising from any appointment to a specified authority.
12. *Subsection (6)* provides that the Commissioner can issue guidance on compliance with the Code of Practice to the Scottish Ministers, both generally or in specific cases where there is a breach of the Code.

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13. Following this, *subsection (7)* provides that, in any case where it appears to the Commissioner that the Code of Practice has not been complied with in a material regard (i.e. if there has been a serious breach of the Code), the Commissioner has intimated that fact to the Scottish Ministers, and the Commissioner considers that the Code is unlikely to be complied with, or has not been complied with, within a reasonable time, action must be taken under *subsection (8)*.
14. *Subsection (8)* provides that the Commissioner must report breaches of the Code by the Scottish Ministers which meet the criteria set out in *subsection (7)* to the Parliament. If the appointment has not been made, the Commissioner may direct the Scottish Ministers to delay making the appointment until consideration of the case has been concluded by the Parliament.
15. *Subsections (9) and (10)* provide that the Commissioner is to exercise functions with a view to ensuring that the appointments and recommendations for appointments to the specified authorities are made in a fair and open manner and that as far as possible all categories of people are given the opportunity to apply. In doing so, the Commissioner is to prepare a strategy in consultation with the Scottish Ministers and the Parliament which may include targets for ensuring diversity in the membership of public bodies.

Section 3 – The Commissioner’s functions: further provision

16. *Subsection (1)* requires that the Scottish Ministers provide the Commissioner with any information that he or she reasonably requires.
17. *Subsection (2)* provides that the Scottish Ministers may by order amend schedule 2. This power allows Ministers to add further offices or bodies to the list of “specified authorities” or to remove existing offices or bodies from that list. Section 18 provides that this order will be made under the “affirmative resolution” procedure in the Scottish Parliament. The Scottish Ministers will also have power to give the Commissioner additional functions or remove existing functions by order. This order will be made under the “affirmative resolution” procedure.
18. *Subsection (3)* brings appointments to bodies not yet existing in law within the remit of the Commissioner. That is, if an appointment round is started during the establishment period for a new body, the Commissioner will have the power to regulate the appointments process.