

## SCHEDULE 2

*(introduced by section 50(7))*

### THE SCOTTISH CIVIL ENFORCEMENT COMMISSION

#### *Status*

- 1 (1) The Commission—
  - (a) is not a servant or agent of the Crown; and
  - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) The Commission's property is not property of, or property held on behalf of, the Crown.

#### *Membership*

- 2 The Commission is to consist of—
  - (a) the following persons appointed by the Scottish Ministers—
    - (i) a Senator of the College of Justice nominated by the Lord President of the Court of Session;
    - (ii) a sheriff principal or a sheriff, so nominated;
    - (iii) a person who is an advocate or solicitor;
    - (iv) a judicial officer nominated by the professional association; and
    - (v) 3 other persons, not being persons holding an office or, as the case may be, possessing a qualification referred to in paragraphs (i) to (iv) above;
  - (b) the Lord Lyon King of Arms; and
  - (c) the Keeper of the Registers of Scotland.
- 3 No person may be appointed as a member of the Commission if that person is, or has at any time during the previous year been, a member of—
  - (a) the House of Commons;
  - (b) the Scottish Parliament; or
  - (c) the European Parliament.

#### *Tenure of office*

- 4 Subject to paragraphs 5 to 14 below, a member appointed by the Scottish Ministers holds and vacates office on terms and conditions determined by the Scottish Ministers.
- 5 Subject to paragraphs 6 to 10 below, members are appointed for a period of not more than 5 years and are eligible for reappointment.
- 6 A member who is—
  - (a) a Senator of the College of Justice; or
  - (b) a sheriff principal or a sheriff,holds office only so long as that member retains the office of Senator of the College of Justice or, as the case may be, sheriff principal or sheriff.
- 7 A member who is—
  - (a) a solicitor or advocate; or
  - (b) a judicial officer,

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*Status: This is the original version (as it was originally enacted).*

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holds office only so long as that member retains the qualification of solicitor or advocate or, as the case may be, officer.

8 A member who becomes a member of—

- (a) the House of Commons;
- (b) the Scottish Parliament; or
- (c) the European Parliament,

ceases to be a member of the Commission.

9 A member may at any time resign by notice in writing to the Scottish Ministers.

10 The Scottish Ministers may remove a member from office if they consider—

- (a) that the member is unable or unfit to discharge the functions of a member; or
- (b) that the member has not complied with the terms and conditions of the office as determined under paragraph 4 above.

11 Where—

- (a) a person makes a complaint to the Commission about the conduct of a member; or
- (b) a member is charged with an offence,

the Commission may suspend the member from office.

12 The Commission may revoke or extend a suspension made under paragraph 11 above.

#### *Filling vacancies*

13 (1) This paragraph applies where a person ceases to be a member (whether by resignation or otherwise) prior to the expiry of that member's period of appointment.

(2) The Scottish Ministers must appoint a person to fill the vacancy.

(3) A person so appointed—

- (a) must hold the same office or, as the case may be, possess the same qualification as the member that person succeeds; and
- (b) holds and vacates office as a member on terms and conditions determined by the Scottish Ministers.

14 Paragraphs 5 to 13 above apply in relation to a member appointed under paragraph 13(2) above as they apply to a member appointed under paragraph 4 above.

#### *Chairperson*

15 The Commission must select one member as chairperson of the Commission for a period determined by the Commission.

#### *Disciplinary Committee*

16 The Commission must appoint a disciplinary committee (which may include persons who are not members of the Commission) for the purposes of carrying out disciplinary proceedings under section 71 and making decisions under sections 68(2) and 72 of this Act.

### *Remuneration*

- 17 The Commission must pay to its members (and to members of its committees and sub-committees who are not members of the Commission) any—
- (a) remuneration; and
  - (b) allowances in respect of expenses properly incurred in the performance of their functions,
- as the Scottish Ministers may determine.

### *General powers*

- 18 The Commission may do anything which it considers is necessary or expedient for the purpose of exercising or in connection with its functions.
- 19 The power in paragraph 18 above includes, in particular, power to—
- (a) appoint committees and sub-committees (including committees and sub-committees which include persons who are not members of the Commission);
  - (b) delegate any of its functions to—
    - (i) its committees or sub-committees; or
    - (ii) its chief executive officer appointed under paragraph 24 below;
  - (c) with the approval of the Scottish Ministers, borrow and lend money;
  - (d) acquire and dispose of land and other property;
  - (e) enter into contracts;
  - (f) specify its own procedures, so far as not provided for by this Act or by regulations or rules made under this Act; and
  - (g) levy a charge for services it may provide in accordance with its functions.
- 20 Where the Commission levies charges under paragraph 19(g) above, it must—
- (a) publish a list of; and
  - (b) annually review,
- those charges.

### *Quorum*

- 21 Subject to any regulations as may be made under paragraph 22 below, the quorum of the Commission, the disciplinary committee and any committee or sub-committee appointed under paragraph 19(a) above is such as the Commission may determine.

### *Structure and procedures*

- 22 The Scottish Ministers may, by regulations, make further provision about the structure and procedures of the Commission as they consider appropriate.

### *Chief executive officer and other staff*

- 23 Subject to paragraph 24 below, the Commission may appoint as employees any persons (other than its members) it considers necessary for the performance of its functions.
- 24 The Commission must appoint, as a member of staff, a chief executive officer who is responsible to the Commission for the general exercise of its functions.

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- 25 The Commission may determine the remuneration and conditions of service of a chief executive officer appointed under paragraph 24 above.
- 26 The Commission may—
- (a) pay, or make arrangements for the payment of;
  - (b) make payments towards the provision of; and
  - (c) provide and maintain schemes (whether contributory or not) for the payment of,
- pensions, allowances and gratuities to or in respect of such of its employees, or former employees, as it considers appropriate.
- 27 The reference in paragraph 26 above to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment or reduction in remuneration.
- 28 Anything done by virtue of paragraphs 24 to 27 above must be approved by the Scottish Ministers.

#### *Location of office*

- 29 The Commission—
- (a) must not determine where its office premises are to be located without that location being approved by the Scottish Ministers; and
  - (b) must comply with any direction as to the location of those premises given by the Scottish Ministers.

#### *Financing by the Scottish Ministers*

- 30 The Scottish Ministers may—
- (a) pay grants;
  - (b) make loans,
- to the Commission of amounts that they determine.
- 31 Any—
- (a) grant paid in pursuance of paragraph 30(a) above;
  - (b) loan made in pursuance of paragraph 30(b) above,
- may be paid or, as the case may be, made on such terms and subject to such conditions (including, in the case of a loan, conditions as to repayment) as the Scottish Ministers consider appropriate.
- 32 The Scottish Ministers may, from time to time after any grant is paid or loan made, vary the terms and conditions on which it was paid or, as the case may be, made.

#### *Accounts and audit*

- 33 The Commission must—
- (a) keep proper accounts and accounting records;
  - (b) prepare for each financial year a statement of accounts giving a true and fair view of the state of its financial affairs; and
  - (c) send the statement of accounts, by the time directed by the Scottish Ministers, to the Auditor General for Scotland for auditing.

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- 34 Every statement of accounts prepared by the Commission in accordance with paragraph 33 above must comply with any direction given by the Scottish Ministers relating to—
- (a) the information to be contained in the statement of accounts;
  - (b) the manner in which that information is to be presented; or
  - (c) the methods and principles according to which the statement of accounts is to be prepared.
- 35 The financial year of the Commission is—
- (a) the period beginning with the date on which the Commission is established and ending with 31 March next following that date; and
  - (b) each successive period of 12 months ending with 31 March.