



# Scottish Parliamentary Commissions and Commissioners etc. Act 2010

2010 asp 11

## PART 1

### [<sup>F1</sup>THE COMMISSIONER FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND]

#### [<sup>F1</sup>*The Commissioner*]

#### Textual Amendments

- F1** Cross-heading preceding s. 1 substituted (1.7.2013) by [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, **Sch. 1 para. 8**

#### [<sup>F2</sup>1 **The Commissioner for Ethical Standards in Public Life in Scotland**

- (1) There is to be a Commissioner for Ethical Standards in Public Life in Scotland (the “Commissioner”).
- (2) The Commissioner is to be an individual appointed by the Parliamentary corporation with the agreement of the Parliament.
- (3) The functions of the Commissioner are those conferred on the Commissioner by the following enactments—
  - (a) the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) ,
  - (b) the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16) , <sup>F3</sup>...
  - (c) the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)] [<sup>F4</sup> , and
  - (d) the Lobbying (Scotland) Act 2016.]

#### Textual Amendments

- F2** S. 1 substituted (1.7.2013) by [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), arts. 1, **3(1)**

*Changes to legislation: There are currently no known outstanding effects for the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, Cross Heading: The Commissioner. (See end of Document for details)*

- F3** Word in s. 1(3) repealed (12.3.2018) by [Lobbying \(Scotland\) Act 2016 \(asp 16\)](#), **ss. 38(2)(a)**, 52(2); S.S.I. 2018/73, reg. 2
- F4** S. 1(3)(d) and word inserted (12.3.2018) by [Lobbying \(Scotland\) Act 2016 \(asp 16\)](#), **ss. 38(2)(b)**, 52(2); S.S.I. 2018/73, reg. 2

## **F<sup>5</sup>2 Functions of the Commissioners**

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### **Textual Amendments**

- F5** S. 2 omitted (1.7.2013) by virtue of [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, **Sch. 1 para. 2**

## **[F<sup>6</sup>3 Status of Commissioner and Commissioner's staff**

- (1) Neither the Commissioner nor any member of the Commissioner's staff—
- (a) is a servant or agent of the Crown,
  - (b) has any status, immunity or privilege of the Crown.
- (2) The Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown.
- (3) The Commissioner is, as such, to be regarded as a juristic person distinct from the natural person holding the office.]

### **Textual Amendments**

- F6** S. 3 substituted (1.7.2013) by [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, **Sch. 1 para. 3**

## **4 Independence of [F<sup>7</sup> Commissioner]**

In the performance of [F<sup>8</sup>the Commissioner's functions, the Commissioner is] not subject to the direction or control of—

- (a) any member of the Parliament,
- (b) any member of the Scottish [F<sup>9</sup>Government], or
- (c) the Parliamentary corporation.

### **Textual Amendments**

- F7** Word in s. 4 title substituted (1.7.2013) by [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, **Sch. 1 para. 4(c)**
- F8** Words in s. 4 substituted (1.7.2013) by [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, **Sch. 1 para. 4(a)**
- F9** Word in s. 4(b) substituted (1.7.2013) by [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, **Sch. 1 para. 4(b)**

*Changes to legislation: There are currently no known outstanding effects for the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, Cross Heading: The Commissioner. (See end of Document for details)*

**[<sup>F10</sup>5 Protection from actions for defamation**

- (1) For the purposes of the law of defamation—
- (a) any statement made by the Commissioner or a member of the Commissioner’s staff in pursuance of the Commissioner’s functions under the Ethical Standards Act <sup>F11</sup>... the Parliamentary Standards Act [<sup>F12</sup>or the Lobbying (Scotland) Act 2016] is absolutely privileged,
  - (b) any statement made by the Commissioner or a member of the Commissioner’s staff in pursuance of the Commissioner’s other functions has qualified privilege, and
  - (c) any statement made to the Commissioner or any member of the Commissioner’s staff in pursuance of the purposes of the Ethical Standards Act, the Parliamentary Standards Act <sup>F13</sup>... the Public Appointments Act [<sup>F14</sup>or the Lobbying (Scotland) Act 2016] has qualified privilege.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31) . ]

**Textual Amendments**

- F10** S. 5 substituted (1.7.2013) by [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, **Sch. 1 para. 5**
- F11** Word in s. 5(1)(a) repealed (12.3.2018) by [Lobbying \(Scotland\) Act 2016 \(asp 16\)](#), **ss. 38(3)(a)(i)**, 52(2); S.S.I. 2018/73, reg. 2
- F12** Words in s. 5(1)(a) inserted (12.3.2018) by [Lobbying \(Scotland\) Act 2016 \(asp 16\)](#), **ss. 38(3)(a)(ii)**, 52(2); S.S.I. 2018/73, reg. 2
- F13** Word in s. 5(1)(c) repealed (12.3.2018) by [Lobbying \(Scotland\) Act 2016 \(asp 16\)](#), **ss. 38(3)(b)(i)**, 52(2); S.S.I. 2018/73, reg. 2
- F14** Words in s. 5(1)(c) inserted (12.3.2018) by [Lobbying \(Scotland\) Act 2016 \(asp 16\)](#), **ss. 38(3)(b)(ii)**, 52(2); S.S.I. 2018/73, reg. 2

**<sup>F15</sup>6 Designation of Chief Commissioner**

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**Textual Amendments**

- F15** S. 6 omitted (1.7.2013) by virtue of [The Public Services Reform \(Commissioner for Ethical Standards in Public Life in Scotland etc.\) Order 2013 \(S.S.I. 2013/197\)](#), art. 1, **Sch. 1 para. 6**

**7 Appointment of acting Commissioner**

- (1) If the office of [<sup>F16</sup>the] Commissioner is vacant or [<sup>F16</sup>the] Commissioner is, for any reason and to any extent, unable to act, the Parliamentary corporation may appoint a person (an “acting Commissioner”) to perform the functions of the Commissioner, either generally or in relation to such matters or class of matter as is specified in the terms and conditions of the appointment.
- (2) An appointment of an acting Commissioner is for, or until, such time as is specified in the terms and conditions of appointment.
- <sup>F17</sup>(3) .....

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(4) Subject to subsection (5), a person who is not eligible for appointment as [<sup>F18</sup>the] Commissioner is not eligible for appointment as an acting Commissioner.

(5) Members of the [<sup>F19</sup>Commissioner's] staff are eligible for appointment as an acting Commissioner.

<sup>F20</sup>(6) .....

(7) An acting Commissioner—

- (a) may at any time resign by notice given to the Parliamentary corporation,
- (b) may at any time be removed from office by the Parliamentary corporation,
- (c) subject to this section, holds office on such terms and conditions as the Parliamentary corporation determines, and
- (d) is to be regarded for all purposes, except those of sections 9(1) to (4) and 10, as having the same status, functions and rights and being subject to the same restrictions as the Commissioner <sup>F21</sup>....

(8) The Parliamentary corporation may, in the terms and conditions of appointment of an acting Commissioner, specify the minimum period of notice for the purposes of subsection (7)(a).

#### **Textual Amendments**

- F16** Word in s. 7(1) substituted (1.7.2013) by The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (S.S.I. 2013/197), art. 1, **Sch. 1 para. 7(a)**
- F17** S. 7(3) omitted (1.7.2013) by virtue of The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (S.S.I. 2013/197), art. 1, **Sch. 1 para. 7(b)**
- F18** Word in s. 7(4) substituted (1.7.2013) by The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (S.S.I. 2013/197), art. 1, **Sch. 1 para. 7(c)**
- F19** Word in s. 7(5) substituted (1.7.2013) by The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (S.S.I. 2013/197), art. 1, **Sch. 1 para. 7(d)**
- F20** S. 7(6) omitted (1.7.2013) by virtue of The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (S.S.I. 2013/197), art. 1, **Sch. 1 para. 7(e)**
- F21** Words in s. 7(7)(d) omitted (1.7.2013) by virtue of The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 (S.S.I. 2013/197), art. 1, **Sch. 1 para. 7(f)**

**Changes to legislation:**

There are currently no known outstanding effects for the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, Cross Heading: The Commissioner.