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**Changes to legislation:** There are currently no known outstanding effects for the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, SCHEDULE 4. (See end of Document for details)

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## SCHEDULE 4

(introduced by section 29(4))

### AMENDMENTS OF THE FREEDOM OF INFORMATION (SCOTLAND) ACT 2002 (ASP 13)

#### *The Commissioner: terms and period of office, removal and independence*

- 1 In section 42 (the Scottish Information Commissioner)—
- (a) after subsection (1) there is inserted—
- “(1A) A person is disqualified from appointment as the Commissioner if the person is, or holds office in, or is an employee or appointee of, another Scottish public authority.
- (1B) The Commissioner may not, without the approval of the Parliamentary corporation, also be, or hold office in, or be an employee or appointee of, another Scottish public authority.”
- (b) in subsection (3) (period of office of Commissioner) for “five” there is substituted “eight”,
- (c) after subsection (3) there is inserted—
- “(3A) The Commissioner is to hold office otherwise on such terms and conditions as the Parliamentary corporation may determine.
- (3B) Those terms and conditions may, without prejudice to subsection (1A)—
- (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,
- (b) provide that the Commissioner's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.
- (3C) In subsection (3B), “specified” means specified in the terms and conditions of office or within a description so specified.”
- (d) in subsection (4)(c) for the passage from “in” onward there is substituted “if subsection (4A) applies”,
- (e) subsection (4)(d) and the word “and” immediately before it are repealed,
- (f) after subsection (4) there is inserted—
- “(4A) This subsection applies if—
- (a) the Parliamentary corporation is satisfied that the Commissioner has breached the terms and conditions of office and the Parliament resolves that the Commissioner should be removed from office for that breach, or
- (b) the Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to perform the functions of the Commissioner,
- and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.”
- (g) for subsection (5) there is substituted—

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“(5) A person who has held office as Commissioner is ineligible for reappointment at any time.”,

- (h) in subsection (7) (independence of Commissioner: exceptions) for “paragraph 3(4)” there is substituted “ sections 42(9C) and 46(2A) and paragraphs 3(4), 4A, 6(2), 7 and 8 ”.

*Advice and other services*

2 After subsection (9) of section 42 there is inserted—

“(9A) The Commissioner may obtain advice, assistance or any other service from any person who, in the opinion of the Commissioner, is qualified to give it.

(9B) The Commissioner may pay to that person such fees and allowances as the Commissioner determines.

(9C) Any payment under subsection (9B) is subject to the approval of the Parliamentary corporation.”

*Expenses*

3 In subsection (11)(b) of section 42 (payment of Commissioner's expenses)—

(a) before “incurred” there is inserted “ properly ”, and

(b) after “Act” there is inserted “ so far as those expenses are not met out of sums received and applied by that officer under section 43(6) ”.

4 After subsection (11) of that section there is inserted—

“(11A) Subsection (11)(b) does not require the Parliamentary corporation to pay any expenses incurred by the Commissioner which exceed or are otherwise not covered by a budget or, as the case may be, revised budget approved under paragraph 4A of schedule 2.

(11B) However, the Parliamentary corporation may pay those expenses.

(11C) The Parliamentary corporation is to indemnify the Commissioner in respect of any liabilities incurred by the Commissioner in the exercise of the Commissioner's functions under this Act.”

*Charges*

5 In section 43 (general functions)—

(a) in subsection (5) (charges for services provided by Commissioner) for “sums for services provided under this section” there is substituted “ reasonable sums for anything done or provided by the Commissioner in the performance of, or in connection with, the Commissioner's functions ”, and

(b) in subsection (6) (sums charged to be applied towards related expenditure) for “respect of the services so provided” there is substituted “ doing or providing whatever is charged for ”.

*Annual reports*

6 In section 46 (reports)—

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- (a) in subsection (1) after “exercise” there is inserted “ during the reporting year ”,
  - (b) after that subsection there is inserted—
    - “(1A) Each report must be so laid within 7 months after the end of the reporting year.
    - (1B) In this section, “reporting year” means the year beginning on 1 April.”,
  - (c) after subsection (2) there is inserted—
    - “(2A) In preparing a report under subsection (1), the Commissioner must comply with any direction given by the Parliamentary corporation as to the form and content of the report.”,
  - (d) after subsection (3) there is inserted—
    - “(3A) The Commissioner must arrange for the publication of each report laid before the Parliament under this section.”;
- and the title of section 46 becomes “**Laying and publication of reports**”.

#### *Strategic plans*

7 After section 46 there is inserted—

#### “**46A Strategic plans**

- (1) The Commissioner must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Commissioner proposes to perform the Commissioner's functions during the 4 year period.
- (2) A strategic plan must, in particular, set out—
  - (a) the Commissioner's objectives and priorities during the 4 year period,
  - (b) how the Commissioner proposes to achieve them,
  - (c) a timetable for doing so, and
  - (d) estimates of the costs of doing so.
- (3) Before laying a strategic plan before the Parliament, the Commissioner must provide a draft of it to and invite, and (if any are given) consider, comments on it from—
  - (a) the Parliamentary corporation,
  - (b) the Keeper of the Records of Scotland, and
  - (c) such other persons as the Commissioner thinks appropriate.
- (4) The reference in subsection (3)(c) to other persons includes a committee of the Parliament.
- (5) The Commissioner must lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.
- (6) The Commissioner must arrange for the publication of each strategic plan laid before the Parliament.

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- (7) The Commissioner may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Subsections (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of 4 years beginning on 1 April next following the coming into force of this section and each subsequent period of 4 years.”

*Application of paragraph 9 onward*

- 8 Paragraph 9 onward relates to schedule 2 to the Freedom of Information (Scotland) Act 2002 (asp 13).

*Legal status*

- 9 Paragraph 1 is renumbered as sub-paragraph (1) of that paragraph and after it there is inserted—
  - “(2) The Commissioner is, as such, to be regarded as a juristic person distinct from the natural person holding the office.”

*Staff*

- 10 For paragraph 3(4) (approval by Parliamentary corporation of appointments etc. of staff) there is substituted—
  - “(4) The exercise of a power in sub-paragraph (1) or (2) is subject to the approval of the Parliamentary corporation.”

*Budget*

- 11 After paragraph 4 there is inserted—

*“Budget*

- 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.

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

*Land, location of office, sharing of resources*

- 12 Paragraph 6 (Commissioner's general powers, including acquisition and disposal of property) is renumbered as sub-paragraph (1) of that paragraph and after it there is inserted—

“(2) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.”

- 13 After paragraph 6 there is inserted—

*“Location of office*

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

*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.”

*Subsequent appointments*

- 14 After paragraph 8 (as inserted by paragraph 13 above) there is inserted—

*“Restrictions on subsequent appointments etc.*

- 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.”

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