



# Scottish Parliamentary Commissions and Commissioners etc. Act 2010

2010 asp 11

**The Bill for this Act of the Scottish Parliament was passed by the Parliament on 9th June 2010 and received Royal Assent on 19th July 2010**

An Act of the Scottish Parliament to establish the Commission for Ethical Standards in Public Life in Scotland; to transfer to its members the functions of the Chief Investigating Officer, the Scottish Parliamentary Standards Commissioner and the Commissioner for Public Appointments in Scotland; to make amendments of the Ethical Standards in Public Life etc. (Scotland) Act 2000, the Scottish Public Services Ombudsman Act 2002, the Freedom of Information (Scotland) Act 2002, the Public Appointments and Public Bodies etc. (Scotland) Act 2003, the Commissioner for Children and Young People (Scotland) Act 2003 and the Scottish Commission for Human Rights Act 2006, including amendments standardising certain provisions of those Acts and extending and qualifying the functions of the Scottish Public Services Ombudsman; and for connected purposes.

## PART 1

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

#### Textual Amendments

- F1** Pt. 1 heading 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. 31](#)

*[<sup>F2</sup>The Commissioner]*

#### Textual Amendments

- F2** 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](#)

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

## <sup>F3</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>F4</sup>...
  - (c) the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)] <sup>F5</sup>, and
  - (d) the Lobbying (Scotland) Act 2016.]

### **Textual Amendments**

- F3** 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)**
- F4** 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
- F5** 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

## <sup>F6</sup>2      **Functions of the Commissioners**

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### **Textual Amendments**

- F6** 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**

## <sup>F7</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**

- F7** 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**

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#### 4 Independence of [<sup>F8</sup>Commissioner]

In the performance of [<sup>F9</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 [<sup>F10</sup>Government], or
- (c) the Parliamentary corporation.

##### Textual Amendments

- F8** 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)**
- F9** 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)**
- F10** 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)**

#### [<sup>F11</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>F12</sup>... the Parliamentary Standards Act [<sup>F13</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>F14</sup>... the Public Appointments Act [<sup>F15</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

- F11** 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**
- F12** 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
- F13** 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
- F14** 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
- F15** 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

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

## **<sup>F16</sup>6      Designation of Chief Commissioner**

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### **Textual Amendments**

**F16** 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>F17</sup>the] Commissioner is vacant or [<sup>F17</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>F18</sup>(3) .....
- (4) Subject to subsection (5), a person who is not eligible for appointment as [<sup>F19</sup>the] Commissioner is not eligible for appointment as an acting Commissioner.
- (5) Members of the [<sup>F20</sup>Commissioner’s] staff are eligible for appointment as an acting Commissioner.
- <sup>F21</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>F22</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**

- F17** 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)**
- F18** 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)**
- F19** 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)**
- F20** 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)**

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

- F21** 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\(e\)](#)
- F22** 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\(f\)](#)

### *Office of Commissioner*

## **8 Disqualification**

- (1) A person is disqualified from appointment and from holding office as [<sup>F23</sup>the Commissioner] if the person—
- (a) is a member of the Parliament or its staff,
  - (b) was a member of the Parliament at any time within two years before the date when the appointment might otherwise have been made,
  - (c) is disqualified from being a member of the Parliament,
  - (d) is a member of the House of Commons,
  - (e) is a member of the House of Lords entitled to vote there,
  - (f) is employed, or appointed in any other capacity, by the [<sup>F24</sup>Commissioner],
  - (g) is a member, employee or appointee of—
    - (i) the Standards Commission for Scotland,
    - (ii) a specified authority, or
    - (iii) a devolved public body,
  - (h) is a specified authority (where the authority is an individual),
  - (i) is, or is an employee or appointee of, the Scottish Public Services Ombudsman,
  - (j) is a member of a council or any committee of a council,
  - (k) is disqualified from being a member of a council, or
  - (l) is a member of a joint board or joint committee.
- (2) In this section—
- (a) the following expressions have the following meanings—
    - “specified authority” means any of the specified authorities referred to in section 2(1) of the Public Appointments Act,
    - “council” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39),
    - “joint board” and “joint committee” have, respectively, the meanings given by section 235(1) of the Local Government (Scotland) Act 1973 (c. 65),
    - “devolved public body” has the meaning given by section 28(1) of the Ethical Standards Act,
  - (b) the reference to a member of a specified authority includes a reference to—
    - (i) a member, by co-option, of any committee of a specified authority,
    - (ii) a holder of a paid office appointed by a specified authority, and
  - (c) a paid office is one where the holder is entitled to remuneration, allowances or expenses or any combination of them.