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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 197**

**PUBLIC SERVICES REFORM**

**The Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013**

*Made* - - - - *11th June 2013*

*Coming into force* - - *1st July 2013*

The Scottish Ministers make the following Order in exercise of the powers conferred by section 14 of the Public Services Reform (Scotland) Act 2010(1) and all other powers enabling them to do so.

The Scottish Ministers consider that the conditions in section 16(2) of that Act are satisfied.

They have consulted in accordance with section 26 of that Act.

They have laid an explanatory document in accordance with section 25(2)(b)(ii) of that Act.

In accordance with section 19(2) of that Act, the Scottish Parliamentary Corporate Body has consented to the laying of a draft of this Order.

In accordance with section 25(2)(b)(i) and (c) of that Act, a draft of this Order has been laid before and approved by resolution of the Scottish Parliament(2).

**Citation and commencement**

1. This Order may be cited as the Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013 and comes into force on 1st July 2013.

**Interpretation**

2. In this Order, “the Act” means the Scottish Parliamentary Commissions and Commissioners etc. Act 2010(3).

**Establishment of Commissioner for Ethical Standards in Public Life in Scotland etc.**

3.—(1) For section 1 (establishment, members and functions of the Commission for Ethical Standards in Public Life in Scotland) of the Act substitute—

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(1) 2010 asp 8.

(2) Section 25(2)(b)(i) and (c) has been modified by paragraph 5(2) of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).

(3) 2010 asp 11.

**“The Commissioner for Ethical Standards in Public Life in Scotland**

1.—(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), and
- (c) the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”.

(2) The modifications to the Act in Schedule 1 have effect.

**Transfer of functions to Commissioner**

4.—(1) There are transferred to the Commissioner for Ethical Standards in Public Life in Scotland

- (a) the functions of the Public Standards Commissioner for Scotland under—
  - (i) the Ethical Standards in Public Life etc. (Scotland) Act 2000; and
  - (ii) the Scottish Parliamentary Standards Commissioner Act 2002; and
- (b) the functions of the Public Appointments Commissioner for Scotland under the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

(2) Accordingly—

- (a) the Commission for Ethical Standards in Public Life in Scotland is dissolved; and
- (b) the following offices are abolished—
  - (i) the Public Appointments Commissioner for Scotland; and
  - (ii) the Public Standards Commissioner for Scotland; and
- (c) the modifications to enactments in Schedule 2 have effect.

**Transfer of staff, property and liabilities**

5. Schedule 3 (which provides for the transfer of staff, property and liabilities) has effect.

**Transitional and savings provision**

6. Schedule 4 (which makes transitional and savings provision) has effect.

St Andrew’s House, Edinburgh  
11th June 2013

*JOHN SWINNEY*  
A member of the Scottish Government

SCHEDULE 1

Article 3(2)

Modifications to the Act

1. The Act is amended in accordance with this Schedule.
2. Omit section 2 (functions of the Commissioners) and schedule 1 (consequential amendments).
3. For section 3 (status of Commission and Commissioners) substitute—

**“Status of Commissioner and Commissioner’s staff**

- 3.—(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.”
4. In section 4 (independence of Commissioners)—
  - (a) for “their respective functions, the Commissioners are” substitute “the Commissioner’s functions, the Commissioner is”;
  - (b) in paragraph (b), for “Executive” substitute “Government”; and
  - (c) in the title, for “Commissioners” substitute “Commissioner”.
5. For section 5 (protection of Commission from actions for defamation) substitute—

**“Protection from actions for defamation**

- 5.—(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 or the Parliamentary Standards Act 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 or the Public Appointments Act has qualified privilege.
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31).”
6. Omit section 6 (designation of Chief Commissioner).
7. In section 7 (appointment of acting Commissioner)—
  - (a) in subsection (1), for “a” in the first two places it occurs, substitute “the”;
  - (b) omit subsection (3);
  - (c) in subsection (4), for “a” in the second place it occurs, substitute “the”;
  - (d) in subsection (5) for “Commission’s” substitute “Commissioner’s”;
  - (e) omit subsection (6); and

(f) in subsection (7)(d) omit “in respect of whom the acting Commissioner was appointed”.

8. For the cross-heading immediately before section 1 (establishment, members and functions of the Commission for Ethical Standards in Public Life in Scotland) substitute—

*“The Commissioner”.*

9. In section 8(1) (disqualification)—

- (a) for “a Commissioner” substitute “the Commissioner”; and
- (b) in paragraph (f), for “Commission” substitute “Commissioner”.

10. In section 9 (terms of office and remuneration)—

- (a) in subsections (1) and (5), for “Each” substitute “The”;
- (b) in subsections (2) and (3), for “A” substitute “The”;
- (c) in subsection (6), for “each” substitute “the”; and
- (d) in subsection (9), for “a” substitute “the”.

11. In section 10(1) (pensions etc.)—

- (a) for “The Commission may, with the approval of the Parliamentary corporation,” substitute “The Parliamentary corporation may”; and
- (b) for “a” substitute “the”.

12. In section 11 (subsequent appointments etc. of former Commissioner)—

- (a) in subsection (1)—
  - (i) for “a Commissioner” substitute “the Commissioner”;
  - (ii) in paragraph (a), for “Commission” substitute “Commissioner”; and
  - (iii) in paragraph (e), for “a” substitute “the”; and
- (b) in subsection (2)(a), for “a” substitute “the”.

13. In section 12 (general powers)—

- (a) in subsection (1)—
  - (i) for “Commission” substitute “Commissioner”; and
  - (ii) for “its” in both places it occurs, substitute “the Commissioner’s”;
- (b) in subsection (2), for “Commission” substitute “Commissioner”;
- (c) in subsection (4)—
  - (i) for “Commission” substitute “Commissioner”; and
  - (ii) from “it” to the end, substitute “, or on behalf of, the Commissioner in the performance of, or in connection with, the Commissioner’s functions.”; and
- (d) in subsection (5)—
  - (i) for “Commission” substitute “Commissioner”; and
  - (ii) omit “by it”.

14. In section 13 (payment of witnesses’ expenses)—

- (a) for “Commission” substitute “Commissioner”; and
- (b) for “it” substitute “the Commissioner”.

15. In section 14 (strategic plans)—

- (a) in subsection (1)—

- (i) for “Commission” in the first place it occurs, substitute “Commissioner”; and
    - (ii) for “Commission and each Commissioner propose to perform their respective” substitute “Commissioner proposes to perform the Commissioner’s”;
  - (b) in subsection (2)—
    - (i) in paragraph (a), omit “Commission’s and each”; and
    - (ii) in paragraph (b), for “Commission and each Commissioner propose” substitute “Commissioner proposes”;
  - (c) in subsection (3)—
    - (i) for “Commission” in the first place it occurs, substitute “Commissioner”; and
    - (ii) in paragraph (b), for “Commission think” substitute “Commissioner thinks”; and
  - (d) in subsections (5), (6) and (7), for “Commission” substitute “Commissioner”.
- 16.** In section 15 (procedure and validity of acts)—
- (a) omit subsections (1), (2) and (4);
  - (b) in subsection (3), for “a” in both places it occurs, substitute “the”; and
  - (c) in the title, for “Procedure and validity” substitute “Validity”.
- 17.** In section 16 (delegation)—
- (a) omit subsections (1) and (2);
  - (b) in subsection (3)—
    - (i) for “a Commissioner” substitute “the Commissioner”;
    - (ii) omit “the other Commissioner or”; and
    - (iii) for “Commission’s” substitute “Commissioner’s”; and
  - (c) in subsection (4)—
    - (i) for “either of the Commissioners” substitute “the Commissioner”; and
    - (ii) for “that” substitute “the”.
- 18.** In the cross-heading immediately before section 12 (general powers), for “*Commission*” substitute “*Commissioner*”.
- 19.** In section 17 (staff)—
- (a) in subsection (1)—
    - (i) for “Commission” substitute “Commissioner”;
    - (ii) omit “, for the purposes of section 1(7),”; and
    - (iii) for “it” substitute “the Commissioner”; and
  - (b) in subsection (2)—
    - (i) for “Commission” substitute “Commissioner”; and
    - (ii) for “its” substitute “the Commissioner’s”.
- 20.** In section 18 (advisers, assessors and other services)—
- (a) in subsection (1)—
    - (i) for “Commission may obtain for itself or for a Commissioner” substitute “Commissioner may obtain”; and
    - (ii) for “Commission” in the second place it occurs, substitute “Commissioner”; and
  - (b) in subsection (2)—