

*Status: Point in time view as at 01/11/2003.*

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## SCHEDULE 1

*(introduced by section 1)*

### THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN SCOTLAND

#### *Status*

- 1 (1) Neither the Commissioner nor any member of the Commissioner's staff is to be regarded as a servant or agent of the Crown or as having 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.

#### *Independence*

- 2 (1) The Commissioner is not, except as provided in the provisions of this Act listed in sub-paragraph (2), subject to the direction or control of—
  - (a) any member of the Parliament;
  - (b) any member of the Scottish Executive; or
  - (c) the Parliamentary corporation.
- (2) The listed provisions are sections 2(3) and 3(1)(b), paragraphs 4, 6(3), 7 and 10 of this schedule and paragraph 8 of schedule 2.

#### *Validity of actings*

- 3 The validity of any actings of the Commissioner is not affected by—
  - (a) any defect in the nomination by the Parliament for the Commissioner's appointment; or
  - (b) any disqualification from appointment as Commissioner.

#### *Remuneration and terms of appointment*

- 4 (1) The Commissioner is entitled to—
  - (a) a salary of such amount; and
  - (b) such allowances,as the Parliamentary corporation may determine.
- (2) The appointment of the Commissioner is otherwise on such terms as the Parliamentary corporation may determine.
- (3) The terms may include provision as to the circumstances in which the Commissioner may hold any other office or appointment.

#### *Pensions etc*

- 5 (1) The Parliamentary corporation may make arrangements for the payment of pensions, allowances and gratuities to, or in respect of, any person who has ceased to hold the office of Commissioner.
- (2) The Parliamentary corporation may, in particular—

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- (a) make contributions or payments towards provision for such pensions, allowances or gratuities; and
- (b) establish and administer one or more pension schemes.

#### *General powers*

- 6 (1) The Commissioner has a general power to do anything necessary or expedient for the purposes of, or in connection with, the exercise of the Commissioner's functions.
- (2) In particular, the Commissioner may enter into contracts and acquire and dispose of property.
- (3) The Commissioner may charge for such services as may be specified by the Scottish Ministers, by order made by statutory instrument, as chargeable services for the purposes of this Act.
- (4) A statutory instrument containing an order under sub-paragraph (3) is subject to annulment in pursuance of a resolution of the Parliament.

#### *Staff*

- 7 (1) The Commissioner may, with the consent of the Parliamentary corporation as to numbers, appoint staff to assist in carrying out the Commissioner's functions.
- (2) The Commissioner may, with the consent of the Parliamentary corporation, determine the terms of appointment of such staff, including arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff of the Commissioner.

#### *Delegation of authority*

- 8 The Commissioner may authorise any person to exercise functions on behalf of the Commissioner to the extent specified in the authorisation, but any such delegation of authority does not affect the responsibility of the Commissioner for the exercise of the functions.

#### *Financial provision*

- 9 The Parliamentary corporation is to pay—
- (a) the salary and allowances of the Commissioner; and
  - (b) any expenses properly incurred by the Commissioner in the exercise of the Commissioner's functions.

#### *Accountable officer*

- 10 (1) The Parliamentary corporation is to designate the Commissioner or a member of the Commissioner's staff as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
- (a) signing the accounts of the expenditure and receipts of the Commissioner;
  - (b) ensuring the propriety and regularity of the finances of the Commissioner;
  - (c) ensuring that the resources of the Commissioner are used economically, efficiently and effectively; and

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- (d) where the accountable officer is not the Commissioner, the duty set out in sub-paragraph (4).
- (3) The accountable officer is answerable to the Parliament for the exercise of those functions.
- (4) The duty referred to in sub-paragraph (2)(d) is a duty, where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), to—
  - (a) obtain written authority from the Commissioner before taking the action; and
  - (b) send a copy of that authority as soon as possible to the Auditor General for Scotland.

#### *Accounts and audit*

- 11
- (1) The Commissioner must keep proper accounts at all times and prepare annual accounts in respect of each financial year.
  - (2) The Commissioner must send a copy of the annual accounts to the Auditor General for Scotland for auditing.
  - (3) The financial year of the Commissioner is—
    - (a) the period beginning with the date on which the first Commissioner is appointed and ending with the 31st of March next following that date; and
    - (b) each successive period of twelve months ending with the 31st of March.
  - (4) If requested by any person, the Commissioner must make available at any reasonable time, and without charge, in printed or electronic form, the audited accounts, so that they may be inspected by that person.

#### *Appointment of acting Commissioner*

- 12
- (1) Where there is no Commissioner for the time being, or the Commissioner is unable to act, the Parliamentary corporation may appoint a person (whether or not a member of the Commissioner's staff) to discharge the Commissioner's functions until a new Commissioner is appointed or the Commissioner is again able to act; and a person so appointed is referred to in this Act as the "acting Commissioner".
  - (2) A person who is disqualified from appointment as the Commissioner is also disqualified from appointment as acting Commissioner.
  - (3) While holding office as such, the acting Commissioner is governed by the provisions of this Act, other than paragraphs 3(a) and 5 of this schedule, applying to the Commissioner.

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## SCHEDULE 2

(introduced by section 9)

### INVESTIGATIONS: SUPPLEMENTARY PROVISIONS ON WITNESSES AND DOCUMENTS

#### PROSPECTIVE

#### *Requirement to give evidence or produce documents*

- 1 (1) A requirement under section 9 is imposed by the Commissioner giving the person in question notice in writing specifying—
- (a) the time and place at which the person is to attend before the Commissioner and the particular subjects concerning which that person is required to give evidence; or
  - (b) the documents, or types of documents, which that person is to produce, the date by which that person is to produce them, and the particular subjects concerning which they are required.
- (2) Such notice must be given—
- (a) in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to that person at the person's usual or last known address or, where the person has given an address for service, at that address;
  - (b) in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.

#### PROSPECTIVE

#### *Privileges*

- 2 (1) A person is not obliged under this Act to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Scotland.
- (2) A Scottish Law Officer or a procurator fiscal is not obliged under this Act to answer any question or to produce any document which that officer would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, section 23(10) of the Scotland Act.

#### PROSPECTIVE

#### *Evidence on oath*

- 3 (1) The Commissioner may—
- (a) administer an oath to any person giving evidence to the Commissioner; and
  - (b) require that person to take an oath.
- (2) Any person who refuses to take an oath when required to do so under this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

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PROSPECTIVE

*Admissibility of statements in subsequent criminal proceedings*

- 4 Any statement made by a person in answer to any question which that person was obliged under this Act to answer is not admissible in any criminal proceedings against that person, except where the proceedings are in respect of perjury relating to that statement.

PROSPECTIVE

*Offences*

- 5 (1) Any person to whom a notice under paragraph 1 has been duly given who, not being privileged under paragraph 2—
- (a) refuses or fails to attend before the Commissioner as required by the notice;
  - (b) refuses or fails, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice;
  - (c) deliberately alters, suppresses, conceals or destroys any document which that person is required to produce by the notice; or
  - (d) refuses or fails to produce any such document,
- is guilty of an offence.
- (2) It is a defence for a person charged with an offence under sub-paragraph (1)(a), (b) or (d) to prove that there was a reasonable excuse for the refusal or failure.
- (3) A person guilty of an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

PROSPECTIVE

*Offences by bodies corporate and partnerships*

- 6 (1) Where an offence under paragraph 5 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) a director, manager, secretary or other similar officer of the body corporate; or
  - (b) any person who was purporting to act in any such capacity,
- that person, as well as the body corporate, is guilty of that offence and liable to be proceeded against accordingly.
- (2) Where the affairs of a body corporate are managed by its members, sub-paragraph (1) applies in relation to the acts or defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

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- (3) Where an offence under paragraph 5 which has been committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, the partner as well as the partnership is guilty of that offence and liable to be proceeded against accordingly.

PROSPECTIVE

*Producing copies or extracts*

- 7 For the purposes of section 9 and this schedule a person complies with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.

PROSPECTIVE

*Allowances and expenses*

- 8 The Commissioner may pay such allowances and expenses to persons giving evidence before the Commissioner or producing documents which they have been required or requested to produce as the Commissioner may, with the agreement of the Parliamentary corporation, determine.

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