



# Public Appointments and Public Bodies etc. (Scotland) Act 2003

## 2003 asp 4

### PART 1

#### THE COMMISSIONER FOR PUBLIC APPOINTMENTS IN SCOTLAND

#### **2 The Commissioner's functions**

- (1) The [<sup>F1</sup> [<sup>F2</sup> Commissioner for Ethical Standards in Public Life in Scotland] (the "Commissioner")] is to prepare and publish a code of practice in respect of the making by the Scottish Ministers of any appointment or, as the case may be, the making by them of any recommendation for any appointment—
  - (a) of a person to an office specified in schedule 2; and
  - (b) to a body specified in that schedule (being an appointment of a person to an office of, or as a member of, the body),(any office referred to in (a) and any body referred to in (b) being referred to in this Act as "the specified authorities").
- (2) The code of practice is to include guidelines as to the methods and practices to be employed in the making of such appointments and recommendations and may, in particular, include guidelines as to—
  - (a) how vacancies in the specified authorities are to be publicised;
  - (b) how applications to fill those vacancies are to be encouraged; and
  - (c) the basis on which the Scottish Ministers are to consider persons for, and for recommendation for, appointment to the specified authorities.
- (3) The Commissioner—
  - (a) is to keep under review the code of practice;
  - (b) may from time to time revise the code of practice and publish it as so revised; and
  - (c) is to promote compliance with the code of practice.
- (4) In preparing the code of practice, and in making any revisions to it, the Commissioner must—

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- (a) consult the Parliament and the Scottish Ministers; and
  - (b) invite (by way of advertisement or otherwise) other persons to make representations,
- as regards the code.
- (5) The Commissioner—
- (a) is to examine—
    - (i) the methods and practices employed by the Scottish Ministers in the making of appointments, and recommendations for appointment, to the specified authorities; and
    - (ii) if the Commissioner considers it appropriate, the making by the Scottish Ministers of any appointment, or recommendation for appointment, to any of the specified authorities; and
  - (b) is to investigate complaints arising from the making by the Scottish Ministers of any appointment, or recommendation for appointment, to any of the specified authorities.
- (6) The Commissioner may issue guidance to the Scottish Ministers (either generally or in a particular case) as to compliance with the code of practice.
- (7) In any case where—
- (a) it appears to the Commissioner that the code of practice has not been complied with in a material regard;
  - (b) the Commissioner has intimated that fact to the Scottish Ministers; and
  - (c) the Commissioner considers that—
    - (i) the code of practice is unlikely to be complied with within a reasonable time of that intimation; or
    - (ii) after a reasonable time from that intimation, the code remains to be complied with,
 subsection (8) applies.
- (8) Where this subsection applies, the Commissioner—
- (a) must report the case to the Parliament (together with any information in relation to the case the Commissioner considers appropriate to include); and
  - (b) if the appointment or recommendation for appointment in question has not been made, may direct the Scottish Ministers to delay making the appointment or, as the case may be, the recommendation until the Parliament has considered the case; and the Scottish Ministers must comply with any such direction.
- (9) The Commissioner is to exercise the Commissioner’s functions with a view to ensuring that—
- (a) appointments, and recommendations for appointment, to the specified authorities are made fairly and openly; and
  - (b) so far as reasonably practicable, all categories of person are afforded an opportunity to be considered for appointment, and recommendation for appointment, to the specified authorities.
- (10) Without prejudice to subsections (2) and (9), the Commissioner—
- (a) is to prepare and publish a strategy for ensuring that appointments, and recommendations for appointment, to the specified authorities are made by the Scottish Ministers in a manner which encourages equal opportunities and

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in particular the observance of the equal opportunity requirements (those expressions having the same meanings as in Section L2 (equal opportunities) of Part II of Schedule 5 to the Scotland Act 1998 (c. 46)); and

- (b) may, in the strategy, set targets with a view to ensuring that such appointments and recommendations are made with due regard to the need to meet those requirements,

but, in preparing the strategy or setting targets, the Commissioner must consult the Parliament and the Scottish Ministers.

#### Textual Amendments

- F1** Words in s. 2(1) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 1 para. 16** (with s. 31(6), sch. 7)
- F2** Words in s. 2(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. 2 para. 16(a)** (with sch. 4 para. 3)

#### Modifications etc. (not altering text)

- C1** S. 2(1) extended (1.6.2006) by [The Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(Treatment of Office or Body as Specified Authority\) Order 2006 \(S.S.I. 2006/303\)](#), arts. 1, **2**
- C2** S. 2(1) modified (14.1.2016) by [The Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(Treatment of Community Justice Scotland as Specified Authority\) Order 2016 \(S.S.I. 2016/20\)](#), arts. 1, **4**
- C3** S. 2(1) modified (6.10.2016) by [The Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(Treatment of Crown Estate Scotland \(Interim Management\) as Specified Authority\) Order 2016 \(S.S.I. 2016/311\)](#), arts. 1, **2**
- C4** S. 2(1) modified (24.3.2019) by [The Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(Treatment of South of Scotland Enterprise as Specified Authority\) Order 2019 \(S.S.I. 2019/184\)](#), arts. 1, **2**
- C5** S. 2(1) modified (2.4.2020) by [The Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(Treatment of Consumer Scotland as Specified Authority\) Order 2020 \(S.S.I. 2020/109\)](#), arts. 1, **2**

#### Commencement Information

- I1** S. 2 in force at 1.6.2004 by [S.S.I. 2004/232](#), **art. 2(a)**

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**Changes to legislation:**

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