

SCHEDULE 1

(introduced by section 1)

DEER COMMISSION FOR SCOTLAND: MODIFICATIONS OF ENACTMENTS

Natural Heritage (Scotland) Act 1991 (c. 28)

- 1 The Natural Heritage (Scotland) Act 1991 is amended as follows.
- 2 In section 1 (establishment of Scottish Natural Heritage)—
 - (a) in subsection (1), after “be” where it third occurs insert—
 - “(a) in relation to natural heritage, those specified in subsection (1A) below,
 - (b) in relation to deer, those specified in section 1(1) of the Deer (Scotland) Act 1996 (c. 58).
 - (1A) SNH’s general aims and purposes in relation to natural heritage are—”,
 - (b) after subsection (3) insert—
 - “(4) In this Act, “natural heritage functions”, in relation to SNH, does not include the functions in relation to deer conferred on it by or under the Deer (Scotland) Act 1996 (c. 58) or any other enactment other than one in this Act.”.
- 3 In section 2 (general functions of SNH), in subsection (1)—
 - (a) in paragraph (b), after “its” where it second occurs insert “natural heritage”,
 - (b) in paragraph (c)—
 - (i) for “research”, where it first and second occurs, substitute “any research, inquiry or investigation”,
 - (ii) after “its” where it second and third occurs insert “natural heritage”,
 - (iii) for “itself” substitute “, inquiry or investigation itself or in collaboration with any other person”.
- 4 In section 3 (duty to take account of certain matters), in subsection (1), after “its” insert “natural heritage”.

Deer (Scotland) Act 1996 (c. 58)

- 5 The Deer (Scotland) Act 1996 is amended as follows.
- 6 For “the Commission” and “the Commission’s”, wherever those words occur (except in sections 24 and 27 and in the entry relating to section 24(b) in Schedule 3), substitute respectively “SNH” and “SNH’s”.
- 7 For the title of Part 1 substitute “Scottish Natural Heritage’s deer functions”.
- 8 (1) Section 1 (the Deer Commission for Scotland) is amended as follows.
 - (2) In subsection (1)—
 - (a) for the words from the beginning to “shall” where it second occurs substitute “Scottish Natural Heritage (in this Act referred to as “SNH”) has the following general aims and purposes in relation to deer”,
 - (b) in paragraph (a), after “Act,” insert “to”,
 - (c) in paragraph (b), at the beginning insert “to” and for “them” substitute “it”.

Status: This is the original version (as it was originally enacted).

- (3) After subsection (1) insert—
- “(1A) In this Act references to SNH’s deer functions are to the functions relating to deer conferred on it by or under this Act or any other enactment.”.
- (4) In subsection (2), for “their” substitute “its deer”.
- (5) Subsections (3) to (7) are repealed.
- 9 In section 2 (advice and annual reports)—
- (a) in subsection (1)(a), for “them” substitute “it”,
- (b) subsections (2) and (3) are repealed.
- 10 In section 3 (power to facilitate exercise of functions)—
- (a) in subsection (1), before “functions” insert “deer”,
- (b) in subsection (2), for “their” substitute “its”.
- 11 In section 4 (appointment of panels)—
- (a) in subsection (1), for “they consider” insert “it considers”,
- (b) in subsection (2)—
- (i) for “they think” substitute “it thinks”,
- (ii) for “their” substitute “its”,
- (c) in subsection (3)—
- (i) for “have” substitute “has”,
- (ii) for “they” substitute “it”,
- (d) in subsection (6), before “functions” insert “deer”.
- 12 In section 5 (close seasons)—
- (a) in subsection (3), for “they” in both places substitute “it”,
- (b) in subsection (4), for “have” substitute “has”,
- (c) in subsection (6), for “they are” substitute “it is”.
- 13 In section 7 (control agreements)—
- (a) in subsection (1)—
- (i) for “are” where it first occurs substitute “is”,
- (ii) for “they” substitute “it”,
- (b) in subsection (3), for “they” substitute “it”,
- (c) in subsection (4)—
- (i) for “they have” substitute “it has”,
- (ii) for “consider” substitute “considers”.
- 14 In section 8 (control schemes)—
- (a) in subsection (1)—
- (i) for “are” where it first occurs substitute “is”,
- (ii) for “they” where it first occurs substitute “it”,
- (iii) for “they consider” substitute “it considers”,
- (b) in subsection (8)—
- (i) for “are” in both places substitute “is”,
- (ii) for “they” in both places substitute “it”.
- 15 In section 9 (recovery of control scheme expenses)—
- (a) in subsection (1)—

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- (i) for “their” substitute “its”,
 - (ii) for “them” substitute “it”,
 - (b) in subsections (2) and (5), for “their” substitute “its”.
- 16 In section 10 (emergency measures)—
 - (a) in subsection (1)—
 - (i) for “are” where it first occurs substitute “is”,
 - (ii) in paragraph (b), for “their” substitute “its”,
 - (b) in subsection (2), for “are” substitute “is”,
 - (c) in subsection (3), for “them” substitute “it”,
 - (d) in subsection (4), for “their” substitute “its”,
 - (e) in subsection (5), for “them” substitute “it”,
 - (f) in subsection (7)—
 - (i) for “intend” substitute “intends”,
 - (ii) for “are” substitute “is”,
 - (iii) for “they” where it first occurs substitute “it”,
 - (iv) for “their” substitute “its”,
 - (v) for “they consider” substitute “it considers”,
 - (g) in subsection (8), for “their” insert “its”.
- 17 In section 11 (application of section 10 in relation to natural heritage), for “are” where it first and third occurs substitute “is”.
- 18 In section 12 (power to provide services and equipment etc.)—
 - (a) in subsection (3), for “decide” substitute “decides”,
 - (b) in subsection (4), for “them” substitute “it”.
- 19 In section 15 (power to enter on land), in subsection (3)(b), for “their” substitute “its”.
- 20 In section 16 (service of notices), in subsection (5), for “their” substitute “its”.
- 21 In section 18 (taking or killing deer at night), in subsection (2), for “they are” substitute “it is”.
- 22 In section 37 (restrictions on granting certain authorisations)—
 - (a) in subsection (1), for “they are” substitute “it is”,
 - (b) in subsection (4), for “think” substitute “thinks”,
 - (c) in subsection (5), for “they” substitute “it” and for “their” substitute “its”.
- 23 In section 39 (disposal of deer killed under authority), for “their” substitute “its”.
- 24 In section 40 (returns of number of deer killed), in subsection (1), for “their” substitute “its deer”.
- 25 Section 46 (financial provisions) is repealed.
- 26 (1) Schedule 1 (Deer Commission for Scotland: supplementary provisions) is repealed.
(2) Despite the repeal of paragraph 4 of Schedule 1, that paragraph continues to have effect in relation to the persons who were members of the Commission immediately before the date when section 1 comes into force.
- 27 In Schedule 2 (control schemes), in paragraph 1—
 - (a) for “decide” substitute “decides”,
 - (b) for “they” substitute “it”.

Status: This is the original version (as it was originally enacted).

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 28 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies), the entry relating to the Deer Commission for Scotland is repealed.

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 29 In schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities), in Part 2, the entry relating to the Deer Commission for Scotland is repealed.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 30 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (Scottish public authorities), in Part 7, the entry relating to the Deer Commission for Scotland is repealed.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 31 In schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (the specified authorities), the entry relating to the Deer Commission for Scotland is repealed.

SCHEDULE 2

(introduced by section 3(6))

TRANSFER OF WATERWATCH SCOTLAND FUNCTIONS: MODIFICATIONS OF ENACTMENTS

PART 1

AMENDMENTS

Water Industry (Scotland) Act 2002 (asp 3)

- 1 The Water Industry (Scotland) Act 2002 is amended as follows.
 2 After section 2 (Water Customer Consultation Panels) insert—

“2A National Consumer Council representations

- (1) This section applies where the National Consumer Council (“the Council”) has exercised a function under section 8(1) of the Consumers, Estate Agents and Redress Act 2007 (c. 17) (representative functions) in relation to the activities of Scottish Water.
- (2) The persons listed in subsection (4) must have regard to any advice, information, proposal or representation made to them by the Council under section 8(1) of that Act.

Status: This is the original version (as it was originally enacted).

- (3) Any persons listed in subsection (4) to whom a proposal is made under section 8(1)(b) of that Act must, within 6 months of receipt, publish a summary of their responses to the proposal.
- (4) The persons are—
- (a) the Scottish Ministers,
 - (b) Scottish Water,
 - (c) the Water Industry Commission,
 - (d) the Drinking Water Quality Regulator for Scotland,
 - (e) the Scottish Environment Protection Agency.”.
- 3 In section 4 (power of the Commission to require information) after subsection (3) insert—
- “(4) Scottish Water must comply with any direction given to it by the Commission under section 25(5) of the Consumers, Estate Agents and Redress Act 2007 (enforcement by regulator of notice to provide the National Consumer Council with information).”.
- 4 In section 5 (annual reports by, and information from, the Commission), in subsection (2)—
- (a) in paragraph (a)(i), for “representations made to it by a Customer Panel” substitute “advice, information or representation made to it by the National Consumer Council under section 8(1)(a) or (c) of the Consumers, Estate Agents and Redress Act 2007 (representative functions)”,
 - (b) in paragraph (a)(ii), for “recommendations made to it under section 2(4)” substitute “proposals made to it under section 8(1)(b) of that Act”,
 - (c) in paragraph (b)—
 - (i) after “such” insert “advice, information, proposal or”,
 - (ii) the words “or recommendation” are repealed.
- 5 In section 6 (funding of the Commission), after subsection (2) insert—
- “(2A) Scottish Water must make to the National Consumer Council, in respect of the Council’s expenses (as respects its activities relating to Scottish Water), payments of such amounts, and at such times, as the Scottish Ministers may direct.
- (2B) Before making a direction under subsection (2A), the Scottish Ministers must consult the Council.”.
- 6 In the title to section 6 (funding of the Commission), after “Commission” insert “and the National Consumer Council”.
- 7 In the title to Part 1 (Water Industry Commission and Customer Panels), for “Customer Panels” substitute “the representation of consumers”.
- 8 In section 27 (approval of customer standards code)—
- (a) in subsection (1), for “each Water Customer Consultation Panel” substitute “the National Consumer Council”,
 - (b) in subsection (4), for “each Water Customer Consultation Panel” substitute “the National Consumer Council”.
- 9 In section 28 (consultation code), in subsection (3)(a)—

Status: This is the original version (as it was originally enacted).

- (a) for “each Water Customer Consultation Panel” substitute “the National Consumer Council”,
 - (b) for “any Panel” substitute “the Council”.
- 10 In section 29B (determination of maximum charges), in subsection (4)(a), for subparagraph (iii) substitute—
 “(iii) the National Consumer Council,”.
- 11 In section 29D(5) (statements regarding charges), for paragraph (b) substitute—
 “(b) the National Consumer Council,”.
- 12 In section 56A (directions may set objectives), in subsection (4), for the words “Convener” to “whole” substitute “National Consumer Council”.
- 13 In section 57 (information and reports), in subsection (6)(a), for “Convener of the Water Customer Consultation Panels” substitute “National Consumer Council”.

Water Services etc. (Scotland) Act 2005 (asp 3)

- 14 In section 19 of the Water Services etc. (Scotland) Act 2005 (disconnections code), in subsection (4), for paragraph (c) substitute—
 “(c) the National Consumer Council;”.

Consumers, Estate Agents and Redress Act 2007 (c. 17)

- 15 The Consumers, Estate Agents and Redress Act 2007 is amended as follows.
- 16 In section 2 (the territorial committees), in subsection (1)(a)—
 (a) after “sections” insert “7A,”,
 (b) after “19” insert “, 20A”.
- 17 After section 7 (annual report), insert—

“7A Annual report on Scottish Water related activities

- (1) The Council must—
 - (a) prepare a report for each financial year on its activities in relation to Scottish Water during the year,
 - (b) as soon as reasonably practicable after the end of each financial year, send a copy of the report to the Scottish Ministers, and
 - (c) provide such further information in relation to such activities as the Scottish Ministers may reasonably require.
 - (2) The Scottish Ministers must lay before the Scottish Parliament a copy of each report sent to them under subsection (1)(b).”.
- 18 After section 20 (duty to enter into co-operation arrangements) insert—

“20A Duty to enter into co-operation arrangements about Scottish Water

- (1) It is the duty of the Council and each designated body to enter into co-operation arrangements under this section.
- (2) In this section—
 “co-operation arrangements” has the same meaning as in section 20(2),

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“designated body” means—

- (a) the Scottish Public Services Ombudsman, and
- (b) the Water Industry Commission for Scotland.

(3) As soon as practicable after agreement is reached between the Council and a designated body on co-operation arrangements, the Council and the body must prepare a memorandum setting them out and send a copy of it to the Scottish Ministers.

(4) The Council and the designated body must keep under review any co-operation arrangements entered into by them under this section.

(5) As soon as practicable after agreement is reached on any changes to co-operation arrangements, the Council and the designated body to which they relate must revise their memorandum and send a copy of the revised memorandum to the Scottish Ministers.”.

19 In section 24(9) (provision of information to the Council), after paragraph (c) insert—
“(ca) the Water Industry Commission for Scotland;”.

20 In section 25 (enforcement by regulator of Council notice requiring the provision of information), at the appropriate place in the table in subsection (3) insert—

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| “Scottish Water. | The Water Industry Commission for Scotland.”. |
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PART 2

REPEALS

21 The enactments referred to in the first column of the following table are repealed to the extent specified in the second column.

| <i>Enactment</i> | <i>Extent of repeal</i> |
|--|--|
| Water Industry (Scotland) Act 2002 (asp 3) | Section 2. Section 6A. Section 6B. Section 6C. In schedule 1, Part 2. |
| Scottish Public Services Ombudsman Act 2002 (asp 11) | In schedule 2, paragraph 21B. |
| Freedom of Information (Scotland) Act 2002 (asp 13) | In schedule 1, paragraph 62B. Section 3. |
| Water Services etc. (Scotland) Act 2005 (asp 3) | Section 3. In schedule 5, paragraph 7(3). In schedule 5, sub-paragraph (a) of paragraph 8. |

Status: This is the original version (as it was originally enacted).

| <i>Enactment</i> | <i>Extent of repeal</i> |
|------------------|--|
| | In schedule 5, sub-paragraph (a) of paragraph 9. |

SCHEDULE 3

(introduced by section 3(7))

DISSOLUTION OF WATERWATCH SCOTLAND: ARRANGEMENTS FOR STAFF, PROPERTY ETC.

Transfer of staff

- 1 With effect from the date on which section 3 comes into force, any person—
 - (a) employed by Waterwatch Scotland Limited, and
 - (b) who is, in the opinion of the Convener of the Water Customer Consultation Panels (in this schedule referred to as “the Convener”), primarily involved in assisting with the exercise of the functions of the Convener described in section 6A of the Water Industry (Scotland) Act 2002 (Convener to investigate complaints),
 is transferred to the employment of the Scottish Public Services Ombudsman.

- 2 (1) With effect from the date on which section 3 comes into force, any person—
 - (a) employed by Waterwatch Scotland Limited, and
 - (b) who is, in the opinion of the Convener, primarily involved in assisting with the exercise of the representative functions of the Convener,
 is transferred to the employment of the National Consumer Council.
 - (2) For the purposes of sub-paragraph (1), the “representative functions” of the Convener are those functions relating to the representation of the views and interests of persons whose premises—
 - (a) are connected to the public water supply system or the public sewerage system (within the meaning of Part 2 of the [Water Services etc. \(Scotland\) Act 2005 \(asp 3\)](#)) or both, or
 - (b) might reasonably become connected to either or both of those systems.

- 3 (1) This paragraph applies to any person who—
 - (a) is (immediately before section 3 comes into force) employed by Waterwatch Scotland Limited, and
 - (b) in the opinion of the Convener, does not fall within the description of a person whose employment is to be transferred by virtue of paragraph 1 or 2(1).
 - (2) The Convener must specify whether the person’s employment is to transfer to the Scottish Public Services Ombudsman or to the National Consumer Council.
 - (3) With effect from the date on which section 3 comes into force, the person is transferred to the employment of the employer specified by the Convener under sub-paragraph (2).
 - (4) For the purposes of paragraphs 4 to 6—

- (a) a person who is transferred to the employment of the Scottish Public Service Ombudsman by virtue of this paragraph is to be treated as though the transfer was by virtue of paragraph 1, and
 - (b) a person who is transferred to the employment of the National Consumer Council by virtue of this paragraph is to be treated as though the transfer was by virtue of paragraph 2(1).
- 4 The contract of employment of a person transferred by virtue of paragraph 1 or 2(1)
 - (a) is not terminated by the transfer, and
 - (b) has effect from the date of transfer as if originally made between the transferred person and the Scottish Public Services Ombudsman or, as the case may be, the National Consumer Council.
- 5 Without prejudice to paragraph 4, where a person is transferred—
 - (a) by virtue of paragraph 1—
 - (i) all the rights, powers, duties and liabilities of Waterwatch Scotland Limited under or in connection with the person’s contract of employment are transferred to the Scottish Public Services Ombudsman on the date of the transfer, and
 - (ii) anything done before that date by or in relation to Waterwatch Scotland Limited in respect of the person or the contract is to be treated from that date as having been done by or in relation to the Scottish Public Services Ombudsman,
 - (b) by virtue of paragraph 2(1)—
 - (i) all the rights, powers, duties and liabilities of Waterwatch Scotland Limited under or in connection with the person’s contract of employment are transferred to the National Consumer Council on the date of the transfer, and
 - (ii) anything done before that date by or in relation to Waterwatch Scotland Limited in respect of the person or the contract is to be treated from that date as having been done by or in relation to the National Consumer Council.
- 6 Paragraphs 1 to 5 do not affect any right of any person so transferred to terminate the person’s contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but any such change is not to be taken to have occurred by reason only that the identity of the person’s employer changes by virtue of those paragraphs.

Transfer of property etc.

- 7 (1) With effect from the date on which section 3(1) comes into force all property (including rights) and liabilities of Waterwatch Scotland Limited held, used or, as the case may be, incurred by Waterwatch Scotland Limited for the purposes of or in connection with the exercise of the Convener’s functions under section 6A of the Water Industry (Scotland) Act 2002, are transferred to and vest in the Scottish Public Services Ombudsman.
- (2) With effect from the date on which section 3(3) comes into force all property (including rights) and liabilities of Waterwatch Scotland Limited held, used or, as the case may be, incurred by Waterwatch Scotland Limited for the purposes of or in

connection with the exercise of functions other than those of the Convener mentioned in sub-paragraph (1) are transferred to and vest in the National Consumer Council.

Transfer of undetermined complaints

- 8 (1) This paragraph applies in relation to any complaint (“an undetermined complaint”)—
- (a) made or referred to the Convener under section 6A of the Water Industry (Scotland) Act 2002,
 - (b) which has not been determined by the Convener before the date on which section 3(1) comes into force, and
 - (c) which cannot otherwise be determined (but for sub-paragraph (2)) by the Scottish Public Services Ombudsman (“the Ombudsman”) under the Scottish Public Services Ombudsman Act 2002.
- (2) For the purpose of enabling an undetermined complaint to continue to be dealt with, section 6A of the Water Industry (Scotland) Act 2002 continues in force despite its repeal and has effect as it had effect immediately before its repeal but—
- (a) as if any reference in it to the Convener were a reference to the Ombudsman, and
 - (b) subject to such further modifications (if any) as may be made by virtue of section 132.
- (3) For the purposes of this paragraph a complaint is determined by the Convener if the Convener—
- (a) has decided to conduct an investigation in relation to the complaint and that investigation is concluded, or
 - (b) has decided not to investigate in relation to the complaint.
- (4) Nothing in this paragraph affects the validity of anything done (or having effect as if done) by or in relation to an undetermined complaint by the Convener under the Water Industry (Scotland) Act 2002 before the repeal of section 6A of that Act by this Act.
- (5) Anything (including legal proceedings) which, at that time, is in the process of being done by or in relation to the Convener may, so far as it relates to an undetermined complaint, be continued by or in relation to the Ombudsman.
- (6) Anything done (or having effect as if done) by or in relation to the Convener in relation to an undetermined complaint has effect as if done by or in relation to the Ombudsman in so far as that is required for continuing its effect on or after that time.

SCHEDULE 4

(introduced by section 13)

REGULATION OF OFFICERS OF COURT: MODIFICATIONS OF ENACTMENTS

PART 1

AMENDMENTS

Debtors (Scotland) Act 1987 (c. 18)

- 1 Part 5 of the Debtors (Scotland) Act 1987 is amended as follows.
- 2 In section 75 (regulation of organisation, training, conduct and procedure of officers of court)—
 - (a) in subsection (1)—
 - (i) after paragraph (f) insert—

“(fa) regulate their conduct in exercising their extra-official functions;”,
 - (ii) after paragraph (h) insert—

“(ha) prescribe the procedure in relation to an appeal under section 82 of this Act;”,
 - (iii) in paragraph (j) for the words “for the keeping of accounts by them and the” substitute “about their accounts and finances including the keeping and”,
 - (iv) in paragraph (m) for “necessary or proper” substitute “appropriate”,
 - (b) in subsection (3) after “to” insert “; or revoke,”.
- 3 In section 76 (Advisory Council on Messengers-at Arms and Sheriff Officers)—
 - (a) in subsection (2)(a)—
 - (i) the word “and” immediately following sub-paragraph (iii) is repealed,
 - (ii) after sub-paragraph (iv) add “; and
(v) such other persons (not falling within sub-paragraphs (i) to (iv) above) as the Lord President considers appropriate.”,
 - (b) in subsection (5)—
 - (i) after “under” insert “sub-paragraphs (i) to (iv) of”,
 - (ii) for “that paragraph” substitute “those sub-paragraphs.”,
 - (c) in subsection (7), for “subsection (2)(a)” substitute “subsection (2)(a)(i) to (iv)”.
- 4 In section 79 (investigation of alleged misconduct)—
 - (a) in subsection (1)—
 - (i) in paragraph (a) for “78(3) of this Act” substitute “66(3) of the [Bankruptcy and Diligence etc. \(Scotland\) Act 2007 \(asp 3\)](#) (in this Part “the 2007 Act””,
 - (ii) the word “or” immediately following paragraph (b) is repealed,
 - (iii) after that paragraph insert—

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- “(ba) details of a complaint about an officer of court are sent to the Lord President of the Court of Session or a sheriff principal under section 64 of the 2007 Act;”,
 - (iv) after paragraph (c) add “; or
 - (d) any judge of the Court of Session, or a sheriff principal—
 - (i) becomes aware (whether by notification under subsection (1) of section 62 of the 2007 Act or otherwise) that an event mentioned in subsection (2) of that section has occurred in respect of an officer of court; and
 - (ii) considers that the occurrence of that event or the circumstances surrounding it, although falling short of misconduct and not involving the commission of an offence, gives rise to concerns about the officer, the officer’s exercise of official functions or the officer’s undertaking of extra-official activities.”,
 - (b) subsection (7) is repealed,
 - (c) in subsection (9)—
 - (i) the words from “conduct” to the end of that subsection become paragraph (a) of the subsection,
 - (ii) after that paragraph add—
 - “(b) failure to notify the Lord President of the Court of Session or the sheriff principal under subsection (1) of section 62 of the 2007 Act of the occurrence of an event mentioned in subsection (2) of that section;
 - (c) failure to provide information mentioned in subsection (1A) of section 63 of that Act required by virtue of regulations made under subsection (1) of that section;
 - (d) failure to comply with any code of practice or revised code of practice published under section 63A of that Act; and
 - (e) where a fee is due by virtue of rules made under subsection (1) of section 65A of that Act and a date as mentioned in subsection (2)(a) of that section has been specified by the rules, failure to pay the fee within 3 months of that date.”.
- 5 In section 80 (courts' powers in relation to offences or misconduct)—
- (a) in subsection (1)—
 - (i) the words from “an” to the end of that subsection become paragraph (a) of the subsection,
 - (ii) after that paragraph add—
 - “(b) an order mentioned in paragraph (aa) or (c) of subsection (5) below.”,

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- (b) in subsection (2)—
- (i) the words from “an” to the end of that subsection become paragraph (a) of the subsection,
 - (ii) after that paragraph add—
 - “(b) an order in relation to the sheriff officer of a kind mentioned in paragraph (aa) or (c) of subsection (5) below.”,
- (c) after subsection (3) insert—
- “(3A) Where—
- (a) a solicitor is appointed to investigate a matter in respect of a messenger-at-arms under section 79(2) of this Act; or
 - (b) the Court of Session becomes aware that a messenger-at-arms has been charged with an offence,
- the Court of Session may make an order finding that the messenger-at-arms should be suspended from practice for such period as may be specified in the order or in an order extending such period.
- (3B) Where—
- (a) a solicitor is appointed to investigate a matter in respect of a sheriff officer under section 79(2) of this Act; or
 - (b) the sheriff principal from whom a sheriff officer holds a commission becomes aware that the sheriff officer has been charged with an offence,
- the sheriff principal may make an order suspending the officer from practice for such period as may be specified in the order or in an order extending such period in that sheriffdom.”,
- (d) after subsection (4) insert—
- “(4A) Where the Court of Session at the end of disciplinary proceedings brought under subsection (3) of section 79 of this Act is satisfied that a concern mentioned in subsection (1)(d)(ii) of that section in relation to a messenger-at-arms is founded, the Court of Session may make an order under paragraph (a) or (aa) of subsection (5) below.”,
- (e) in subsection (5) after paragraph (a) insert—
- “(aa) an order restricting—
- (i) the functions which the messenger-at-arms may exercise; or
 - (ii) the activities which the messenger-at-arms may undertake,
- for such period as may be specified in the order;”,
- (f) after subsection (6) insert—
- “(6A) Where the sheriff principal at the end of disciplinary proceedings brought under subsection (3) of section 79 of this Act is satisfied that a concern mentioned in subsection (1)(d)(ii) of that section in relation to a sheriff officer is founded, the sheriff principal may make, in relation to the sheriff officer, an order—
- (a) of a kind mentioned in paragraph (aa) of subsection (5) above; or
 - (b) under paragraph (a) of subsection (7) below.”,

Status: This is the original version (as it was originally enacted).

- (g) in subsection (7)(b) for “subsection (5)(b)” substitute “subsection (5)(aa), (b).”.
- 6 In section 81 (provisions supplementary to section 80)—
- (a) in subsection (1)—
- (i) for “section 80(1), (4)” substitute “section 80(1)(a), (3A), (4), (4A)”,
- (ii) after paragraph (b) add—
- “(c) the professional association designated under section 63(1) of the 2007 Act.”,
- (b) in subsection (2)—
- (i) for “section 80(2), (6)” substitute “section 80(2)(a), (3B), (6), (6A)”,
- (ii) the word “and” immediately following paragraph (a) is repealed,
- (iii) after paragraph (b) add “, and
- (c) the professional association designated under section 63(1) of the 2007 Act.”,
- (c) in subsection (3)—
- (i) for “section 80(1), (2)” substitute “section 80(1)(a), (2)(a), (3A), (3B)”,
- (ii) after “thereof” insert “or of an order under subsection (4A) or (6A) of that section specified respectively in subsection (5)(a) or (7)(a) thereof”.
- 7 (1) In section 82 (appeals from certain decisions)—
- (a) the words from “An” to “Act” become subsection (1) of that section,
- (b) after “under” insert “section 77(1),”,
- (c) for the words “(4) or (6)” substitute “(3A), (3B), (4), (4A), (6), (6A) or (8) (b)”,
- (d) the words from “but” to the end of the section are repealed,
- (e) after subsection (1) (created under paragraph (a)) insert—
- “(2) The decision of the Inner House on an appeal under subsection (1) shall be final.”.
- (2) In the sidenote to section 82, for “79(5) and 80” substitute “77, 79 and 80”.
- 8 After section 86 insert—

“86A Electronic communications

In this Part, any reference to an admission in writing includes a reference to that admission being an electronic communication (within the meaning given by section 15(1) of the Electronic Communications Act 2000 (c. 7)).”.

Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3)

- 9 The Bankruptcy and Diligence etc. (Scotland) Act 2007 is amended as follows.
- 10 For the title of Part 3 (“Enforcement”) substitute “Officers of court”.
- 11 (1) In section 51 (information and annual report)—
- (a) subsection (1) is repealed,
- (b) in subsection (2) for “The Commission” substitute “The Advisory Council on Messengers-at-Arms and Sheriff Officers (the “Advisory Council”)”,

Status: This is the original version (as it was originally enacted).

- (c) in subsection (3)—
 - (i) paragraph (a) is repealed,
 - (ii) in paragraph (b) for “judicial officers” substitute “officers of court”,
 - (iii) in that paragraph for “Commission” substitute “Advisory Council”,
 - (d) in subsection (4)—
 - (i) for “Commission” substitute “Advisory Council”,
 - (ii) for “a judicial officer” substitute “the professional association designated by regulations under section 63(1)(a)”,
 - (iii) for “it” substitute “provided by virtue of regulations under section 63(1A) which the Advisory Council”,
 - (e) in subsection (5) for “Commission” substitute “Advisory Council”,
 - (f) subsection (6) is repealed.
- (2) In the title to section 51 for the words “Information and” substitute “Advisory Council's”.
- (3) Immediately above section 51 insert the italic heading “Advisory Council on Messengers-at-Arms and Sheriff Officers”.
- 12 In section 53 (published information not to enable identification)—
 - (a) paragraph (b) and the word “or” immediately preceding it are repealed,
 - (b) for “judicial officers” substitute “officers of court”.
- 13 (1) In section 61 (regulation of judicial officers)—
 - (a) in subsections (1) and (2)(a) for “judicial officers” substitute “officers of court”,
 - (b) in subsection (2) paragraph (d) is repealed,
 - (c) in subsection (3) for “the Commission” substitute “—
 - (a) the Lord President of the Court of Session; and
 - (b) each sheriff principal.”.
- (2) In the title to section 61 and the italic heading immediately preceding it for “judicial officers” substitute “officers of court”.
- 14 (1) In section 62 (duty to notify Commission of bankruptcy etc.)—
 - (a) in subsection (1)—
 - (i) for “a judicial officer” substitute “an officer of court”,
 - (ii) for “notify the Commission in writing of it” substitute—
 - “(a) in the case of a messenger-at-arms, notify the Lord President of the Court of Session in writing of the event;
 - (b) in the case of a sheriff officer, notify the sheriff principal from whom the officer holds a commission in writing of the event.”,
 - (b) in subsection (2)(a), (f) and (g) for “judicial officer” substitute “officer of court”.
- (2) In the title to section 62 for “Commission” substitute “Lord President and sheriff principal”.
- 15 (1) In section 63 (judicial officers' professional association)—
 - (a) in paragraph (a) of subsection (1)—

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- (i) after “association”, where it first occurs, insert “(in this Part, the “professional association)””,
 - (ii) for “judicial officers” substitute “officers of court”,
 - (b) after subsection (1) insert—
 - “(1A) Regulations under subsection (1) may require an officer of court to provide such information as the professional association reasonably considers necessary.”,
 - (c) for subsection (2)(a) substitute—
 - “(a) the Lord President of the Court of Session;
 - (aa) each sheriff principal;”,
 - (d) in subsection (3) for “a judicial officer” substitute “an officer of court”.
- (2) In the title to section 63 and the italic heading immediately preceding it for “Judicial officers” substitute “Officers of court's”.

16 After section 63 insert—

“63A Code of practice

- (1) The professional association—
 - (a) must prepare and publish a code of practice in relation to the functions of officers of court; and
 - (b) may prepare and publish such a code in relation to the undertaking of activities by such officers.
- (2) The professional association may revise the whole or any part of a code published under this section.
- (3) Where a code or any part of a code is revised under subsection (2), the professional association—
 - (a) in a case where the revision results in substantial changes, must publish the revised code;
 - (b) in any other case, may publish the revised code.
- (4) The professional association must not publish a code of practice or a revised code of practice under this section without the prior approval of the Lord President of the Court of Session.
- (5) The professional association must send a copy of each code of practice published under this section to—
 - (a) the Scottish Ministers;
 - (b) the Lord President of the Court of Session;
 - (c) each sheriff principal; and
 - (d) each officer of court.”.

17 (1) In section 64 (duty of professional association to forward complaints to Commission)

- (a) for “a judicial officer” substitute “an officer of court”,
- (b) for “to the Commission” substitute—
 - “(a) to the Lord President of the Court of Session;

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- (b) in the case of a complaint about a messenger-at-arms, to the sheriff principal from whom the messenger-at-arms holds a commission as a sheriff officer; and
 - (c) in the case of a complaint about a sheriff officer, to the sheriff principal from whom the sheriff officer holds a commission.”.
- (2) In the title to section 64 the words “to Commission” are repealed.
- 18 In section 65 (information from professional association)—
 - (a) for “Commission”, where it first occurs, substitute “Lord President of the Court of Session or any sheriff principal”,
 - (b) for “Commission”, where it second occurs, substitute “Lord President or, as the case may be, sheriff principal”,
 - (c) in paragraph (b) for “67 of this Act” substitute “79(2) of the 1987 Act”,
 - (d) for paragraph (c) substitute—
 - “(c) any disciplinary proceedings brought under section 79(3) of that Act.”.
- 19 After section 65 insert—

“Annual fee for officers of court

65A Annual fee

- (1) The professional association may make rules requiring every officer of court holding a commission to pay an annual fee to the association.
- (2) Rules made under subsection (1) above may include provision—
 - (a) specifying the date by which the fee must be paid each year;
 - (b) specifying the manner in which it must be paid; and
 - (c) about any other matters in relation to the fee that the professional association considers appropriate.
- (3) Rules under this section may be made only with the approval of the Lord President of the Court of Session.”.
- 20 (1) In section 66 (inspection of judicial officer)—
 - (a) in subsection (1)—
 - (i) for “Commission” substitute “Lord President of the Court of Session or any sheriff principal”,
 - (ii) for “a judicial officer” substitute “an officer of court”,
 - (b) in subsection (2)—
 - (i) for “Commission” substitute “Lord President or, as the case may be, the sheriff principal”,
 - (ii) for “judicial officer” substitute “officer of court”,
 - (c) in subsection (3) for “Commission” substitute “Lord President or, as the case may be, the sheriff principal”,
 - (d) in subsection (4) for “Commission” substitute “Scottish Ministers”.
- (2) In the title to section 66 for “judicial officer” substitute “officer of court”.

Status: This is the original version (as it was originally enacted).

- (3) In the italic heading immediately preceding section 66 for “judicial officers” substitute “officers of court”.
- 21 (1) In section 75 (judicial officer’s action void where officer has interest)—
- (a) in subsections (1), (4)(a) and (7) for “a judicial officer” substitute “an officer of court”,
 - (b) in subsection (2), for “A judicial officer” substitute “An officer of court”,
 - (c) in subsections (3)(a) and (6) for “judicial officer” substitute “officer of court”,
 - (d) in subsection (5), for “a judicial officer’s” substitute “an officer of court’s”.
- (2) In the title to section 75 for “Judicial officer’s” substitute “Officer of court’s”.
- 22 In section 77 (effect of code of practice)—
- (a) in subsection (1)—
 - (i) for “A judicial officer” substitute “An officer of court”,
 - (ii) for the words “55 or 56” substitute “63A”,
 - (b) in subsection (2), for “a judicial officer” substitute “an officer of court”,
 - (c) for paragraph (b) of subsection (4) substitute—
 - “(b) a relevant court (within the meaning of subsection (8) of section 79 of the 1987 Act (investigation of alleged misconduct)) in disciplinary proceedings under that section;”.
- 23 In section 78 (electronic publications and communications) the words “admission or representation”, in both places where they occur, are repealed.
- 24 (1) In the provisions listed in sub-paragraph (2) for “judicial officer” substitute “officer of court”.
- (2) The provisions referred to in sub-paragraph (1) are sections 83(5), 176(2), 177(1) and (3) to (8), 178(1) to (4), 179(1) to (4), 180(1), 181(1)(b) and (4), 182(1), (2), (4) and (6)(b), 183(4)(b), (11)(b) and (12)(b), 184(1), (2), (4) and (5)(c), 185(2)(b), (4)(b), (5) and (7), 186(2)(b), (3)(b) and (5)(c), 187(1)(b), (2)(a)(ii) and (3), 188(4), 189(1), (2)(a), (3)(b), (5) and (6), 191(2)(b)(i) and (4), 216(3) and 217(2).
- 25 In—
- (a) sections 117(4), 121(1), 139(1)(c), 157(1)(b) and 183(1)(a), and
 - (b) paragraph 1(j) of schedule 3,
- for “a judicial officer” substitute “an officer of court”.
- 26 In section 128(1) (interpretation of Chapter 2 of Part 4), after the definition of “notice of land attachment” insert—
- ““officer of court” means the officer of court appointed by the creditor;”.
- 27 In section 145(1) (interpretation of Chapter 3 of Part 4), after the definition of “dwellinghouse” insert—
- ““officer of court” means the officer of court appointed by the creditor;”.
- 28 In section 178(1) (presumption of ownership), for “A judicial officer” substitute “An officer of court”.
- 29 In section 198(1) (interpretation of Part 8), after the definition of “money” insert—
- ““officer of court” means the officer of court appointed by the creditor;”.

Status: This is the original version (as it was originally enacted).

- 30 In section 221 (interpretation), after the definition of “electronic communication” insert—
““officer of court” means a messenger-at-arms or a sheriff officer;”.
- 31 In schedule 5 (minor and consequential amendments), in sub-sub-paragraph (c) of paragraph 7(2), for the words from “for” to the end of the sub-sub-paragraph, substitute “for “law agent” substitute “solicitor””.
- 32 In Part 1 of schedule 6 (repeals and revocations), in the entry relating to the [Debt Arrangement and Attachment \(Scotland\) Act 2002 \(asp 17\)](#), before the word “Schedule” in the second column, insert “In”.

PART 2

REPEALS

- 33 The enactments mentioned in the first column of the following table are repealed to the extent specified in the second column.

| <i>Enactment</i> | <i>Extent of repeal</i> |
|--|--|
| Debtors (Scotland) Act 1987 (c. 18) | Section 78. Section 83. |
| Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) | In section 45, in the definition of “officer”, the words from “for”, where it first occurs, to the end of that definition. |
| Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) | Section 50. Section 52. Sections 54 to 60. Section 61(4) to (7). Sections 67 to 74. Section 76. In section 128(1), the definition of “judicial officer”. In section 145(1), the definition of “judicial officer”. Section 189(7). In section 198(1), the definition of “judicial officer”. Section 212(7). In section 221, the definition of the “Commission”; and the definition of “judicial officer”. In schedule 1, paragraph 41(a). |

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| <i>Enactment</i> | <i>Extent of repeal</i> |
|------------------|---|
| | Schedule 2. |
| | In schedule 5, paragraphs 6(4), 7(2)(a), (b)(i) and (ii), (3)(a) and (4), 11, 16(14) (c), 21, 25, 27, 28, 30(8)(b) and (13), 31 and 33. |
| | In schedule 6, in the entry relating to the Sheriff Courts (Scotland) Act 1907, the words “In section 40, the word “officers, ””; in the entry relating to the Execution of Diligence (Scotland) Act 1926, the words “Section 1”; and in the entry relating to the Debtors (Scotland) Act 1987, the words “Part V”. |

SCHEDULE 5

(introduced by section 15)

IMPROVEMENT OF PUBLIC FUNCTIONS: LISTED BODIES

Scottish Administration

The Scottish Ministers

Any other office-holder in the Scottish Administration

Scottish public authorities with mixed functions or no reserved functions

Accounts Commission for Scotland

Additional Support Needs Tribunals for Scotland

Architecture and Design Scotland

Bòrd na Gàidhlig

Caledonian Maritime Assets Ltd

Chief Investigating Officer established by section 9(1) of the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(asp 7\)](#)

any Children’s Panel

any Children’s Panel Advisory Committee

Commissioner for Children and Young People in Scotland

Commissioner for Public Appointments in Scotland

Common Services Agency for the Scottish Health Service

Creative Scotland

Crofters Commission

David MacBrayne Ltd

General Teaching Council for Scotland

any Health Board

Healthcare Improvement Scotland

Her Majesty’s Chief Inspector of Prosecution in Scotland

Highlands and Islands Airports Ltd

Highlands and Islands Enterprise

Judicial Appointments Board for Scotland

Status: This is the original version (as it was originally enacted).

Lands Tribunal for Scotland
Learning and Teaching Scotland
Local Government Boundary Commission for Scotland
Macaulay Land Use Research Institute
Mental Health Tribunal for Scotland
Mental Welfare Commission for Scotland
Mobility and Access Committee for Scotland
More dun Research Institute
Board of Trustees for the National Galleries of Scotland
The Trustees of the National Library of Scotland
Board of Trustees of the National Museums of Scotland
any National Park authority
Office of the Scottish Charity Regulator
Parole Board for Scotland
Police Complaints Commissioner for Scotland
any Private Rented Housing Committee
Private Rented Housing Panel
Public Transport Users' Committee for Scotland
Quality Meat Scotland
Risk Management Authority
Board of Trustees of the Royal Botanic Garden, Edinburgh
Royal Commission on the Ancient and Historical Monuments of Scotland
Scottish Advisory Committee on Distinction Awards
Scottish Agricultural College
Scottish Agricultural Wages Board
Scottish Charity Appeals Panel
Scottish Children's Reporter Administration
Scottish Commission for Human Rights
Scottish Criminal Cases Review Commission
Scottish Crop Research Institute
Scottish Enterprise
Scottish Environment Protection Agency
Scottish Further and Higher Education Funding Council
Scottish Futures Trust Ltd
Scottish Information Commissioner
Scottish Law Commission
Scottish Legal Aid Board
Scottish Legal Complaints Commission
Scottish Local Authorities Remuneration Committee
Scottish Natural Heritage
Scottish Parliamentary Standards Commissioner
Scottish Police Services Authority
Scottish Public Services Ombudsman
Scottish Qualifications Authority
Scottish Road Works Commissioner

Status: This is the original version (as it was originally enacted).

Scottish Social Services Council
 Scottish Sports Council
 Scottish Water
 Skills Development Scotland Co. Ltd
 Social Care and Social Work Improvement Scotland
 any Special Health Board
 Standards Commission for Scotland
 Visiting Committees (appointed under section 19(3) of the Prisons (Scotland) Act 1989 (c. 45) or constituted by rules made under section 39 (as read with section 8(1)) of that Act
 VisitScotland
 Water Industry Commission for Scotland
Cross-border public authorities
 Forestry Commissioners

SCHEDULE 6

(introduced by section 19)

PART 2 ORDER-MAKING POWERS (REQUEST AND CONSENT): LISTED BODIES

Commissioner for Children and Young People in Scotland
 Commissioner for Public Appointments in Scotland
 Scottish Commission for Human Rights
 Scottish Information Commissioner
 Scottish Parliamentary Standards Commissioner
 Scottish Public Services Ombudsman

SCHEDULE 7

(introduced by section 29)

ORDER-MAKING POWERS: MODIFICATIONS OF ENACTMENTS

Deregulation and Contracting Out Act 1994 (c. 40)

- 1 (1) The Deregulation and Contracting Out Act 1994 is amended as follows.
- (2) Sections 1 to 5 and Schedule 1 are repealed.
- (3) In section 6 (model provisions with respect to appeals), in subsection (7)—
- (a) in the definition of “enactment”—
 - (i) the word “and” is omitted,
 - (ii) at the end insert “, an enactment contained in an Act of the Scottish Parliament (whenever passed) and an enactment contained in an instrument made under an Act of the Scottish Parliament (whenever made)”;
 - (b) for the definition of “enforcement action” substitute—

““enforcement action” means—

 - (a) in relation to any restriction, requirement or condition, any action taken with a view to or in connection with imposing any

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- sanction (whether criminal or otherwise) for failure to observe or comply with it; and
 - (b) in relation to a restriction, requirement or condition relating to the grant or renewal of licences, includes any refusal to grant, renew or vary a licence, the imposition of any condition on the grant or renewal of a licence and any variation or revocation of a licence;”,
 - (c) for the definition of “interested person” substitute—
 - ““interested person” means—
 - (a) the person against whom enforcement action may be or has been taken;
 - (b) any other person who will or may be required to meet, or to make a significant contribution towards, the cost of observing the restriction or complying with the requirement or condition; or
 - (c) where the enforcement action which may be or has been taken relates specifically to goods or services which are to be or have been supplied by a person other than the one against whom enforcement action may be or has been taken, that person;”.
- (4) Sub-paragraph (2) does not affect the continuation in force of any order under section 1 of that Act which was made on or before the day on which that sub-paragraph comes into force.

Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c. 40)

- 2 In Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (minor and consequential amendments), paragraph 96 is repealed.

SCHEDULE 8

(introduced by section 35)

INFORMATION ON EXERCISE OF PUBLIC FUNCTIONS: LISTED PUBLIC BODIES

The Scottish Ministers
Accountant in Bankruptcy
Accounts Commission for Scotland
Additional Support Needs Tribunals for Scotland
Architecture and Design Scotland
Audit Scotland
Board of Trustees for the National Galleries of Scotland
Board of Trustees of the National Museums of Scotland
Board of Trustees of the Royal Botanic Garden, Edinburgh
Bòrd na Gàidhlig
Caledonian Maritime Assets Ltd
Chief Investigating Officer established by section 9(1) of the [Ethical Standards in Public Life etc. \(Scotland\) Act 2000 \(asp 7\)](#)
any Children’s Panel
any Children’s Panel Advisory Committee

Status: This is the original version (as it was originally enacted).

Commissioner for Children and Young People in Scotland
Commissioner for Public Appointments in Scotland
Common Services Agency for the Scottish Health Service
Creative Scotland
Crofters Commission
David MacBrayne Ltd
Drinking Water Quality Regulator for Scotland
Forestry Commissioners
General Teaching Council for Scotland
any Health Board
Healthcare Improvement Scotland
Her Majesty's Chief Inspector of Constabulary
Her Majesty's Chief Inspector of Fire and Rescue Authorities
Her Majesty's Chief Inspector of Prisons for Scotland
Her Majesty's Chief Inspector of Prosecution in Scotland
Highlands and Islands Airports Ltd
Highlands and Islands Enterprise
Judicial Appointments Board for Scotland
any Justice of the Peace Advisory Committee
Keeper of the Records of Scotland
Keeper of the Registers of Scotland
Lands Tribunal for Scotland
Learning and Teaching Scotland
Local Government Boundary Commission for Scotland
Macaulay Land Use Research Institute
Mental Health Tribunal for Scotland
Mental Welfare Commission for Scotland
Mobility and Access Committee for Scotland
Moredun Research Institute
any National Park authority
Parole Board for Scotland
Police Complaints Commissioner for Scotland
any Private Rented Housing Committee
Private Rented Housing Panel
Public Transport Users' Committee for Scotland
Quality Meat Scotland
Queen's Printer for Scotland
any regional Transport Partnership
Registrar General of Births, Deaths and Marriages for Scotland
Risk Management Authority
Royal Commission on the Ancient and Historical Monuments of Scotland
Scottish Advisory Committee on Distinction Awards
Scottish Agricultural College
Scottish Agricultural Wages Board
Scottish Charity Appeals Panel

Status: This is the original version (as it was originally enacted).

Scottish Charity Regulator
Scottish Children’s Reporter Administration
Scottish Commission for Human Rights
Scottish Court Service
Scottish Criminal Cases Review Commission
Scottish Crop Research Institute
Scottish Enterprise
Scottish Environment Protection Agency
Scottish Further and Higher Education Funding Council
Scottish Futures Trust Ltd
Scottish Housing Regulator
Scottish Information Commissioner
Scottish Law Commission
Scottish Legal Aid Board
Scottish Legal Complaints Commission
Scottish Local Authorities Remuneration Committee
Scottish Natural Heritage
Scottish Parliamentary Standards Commissioner
Scottish Police Services Authority
Scottish Public Services Ombudsman
Scottish Qualifications Authority
Scottish Road Works Commissioner
Scottish Social Services Council
Scottish Sports Council
Scottish Water
Skills Development Scotland Co. Ltd
Social Care and Social Work Improvement Scotland
any Special Health Board
Standards Commission for Scotland
The Trustees of the National Library of Scotland
Visiting Committees (appointed under section 19(3) of the Prisons (Scotland) Act 1989 (c. 45) or constituted by rules made under section 39 (as read with section 8(1)) of that Act
VisitScotland
Water Industry Commission for Scotland

SCHEDULE 9

(introduced by section 36(2))

CREATIVE SCOTLAND: ESTABLISHMENT ETC.

Status

- (1) Creative Scotland is a body corporate.

Status: This is the original version (as it was originally enacted).

- (2) Creative Scotland is not to be regarded as a servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants.
- (3) Creative Scotland's property is not to be regarded as property of, or held on behalf of, the Crown.

Membership of Creative Scotland

- 2 (1) Creative Scotland is to consist of the following members—
 - (a) a person appointed by the Scottish Ministers to chair Creative Scotland, and
 - (b) no fewer than 8 nor more than 14 other members appointed by the Scottish Ministers.
- (2) The Scottish Ministers may by order made by statutory instrument amend sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.
- (3) A statutory instrument containing an order under sub-paragraph (2) is subject to annulment in pursuance of a resolution of the Scottish Parliament.

Terms of appointment etc.

- 3 (1) Each member of Creative Scotland is to be appointed for such period as the Scottish Ministers think fit.
- (2) A member—
 - (a) holds and vacates office in accordance with the terms and conditions of appointment, but
 - (b) may, by written notice to the Scottish Ministers, resign office as a member.
- (3) A person is, on ceasing to be a member, eligible for reappointment.

Removal of members

- 4 The Scottish Ministers may, by written notice, remove a member from office if they are satisfied that—
 - (a) the member—
 - (i) has been adjudged bankrupt,
 - (ii) has granted a trust deed for creditors or a composition contract,
 - (iii) has proposed a voluntary arrangement which has been approved,
 - (b) the member's estate has been sequestrated,
 - (c) the member has been absent from 3 consecutive meetings of Creative Scotland without the permission of Creative Scotland,
 - (d) the member is otherwise unfit or unable to discharge the functions of a member.

Disqualification from membership

- 5 A person is disqualified from appointment, and from holding office, as a member of Creative Scotland if that person is—
 - (a) a member of the Scottish Parliament,

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- (b) a member of the House of Commons,
- (c) a member of the European Parliament.

Remuneration and allowances for members

- 6 Creative Scotland must pay to each of its members such—
- (a) remuneration, and
 - (b) allowances and expenses,
- as the Scottish Ministers may determine.

Chief executive and other employees

- 7 (1) Creative Scotland is to employ a chief executive.
- (2) The chief executive may not be a member of Creative Scotland.
- (3) The first chief executive employed by Creative Scotland is to be the person who, immediately before the coming into force of this paragraph, is the chief executive designate employed by Creative Scotland 2009 Limited; and that person is employed as chief executive until the term of appointment as chief executive designate of Creative Scotland 2009 Limited would have ended.
- (4) But if there is no person employed by Creative Scotland 2009 Limited as chief executive designate immediately before the coming into force of this paragraph, the Scottish Ministers are to make the first appointment of the chief executive of Creative Scotland on such terms and conditions as the Scottish Ministers may determine.
- (5) Each subsequent chief executive is, with the approval of the Scottish Ministers, to be appointed by Creative Scotland on such terms and conditions as Creative Scotland may, with such approval, determine.
- (6) Creative Scotland may (subject to any directions given under sub-paragraph (7)) appoint such other employees on such terms and conditions as Creative Scotland may determine.
- (7) The Scottish Ministers may give directions to Creative Scotland as regards—
- (a) the appointment of employees under sub-paragraph (6), and
 - (b) the terms and conditions of their employment.
- (8) Creative Scotland may, with the approval of the Scottish Ministers—
- (a) pay or make arrangements for the payment,
 - (b) make payments or contributions towards the provision,
 - (c) provide and maintain schemes (whether contributory or not) for the payment,
- of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of Creative Scotland, as it may determine.
- (9) The reference in sub-paragraph (8) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment.

Committees

- 8 (1) Creative Scotland may establish committees for any purpose relating to its functions.

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- (2) Creative Scotland is to determine the composition of its committees.
- (3) Creative Scotland may appoint persons who are not members of Creative Scotland to be members of a committee; but such persons are not entitled to vote at meetings of the committee.
- (4) A committee of Creative Scotland is to comply with any directions given to it by Creative Scotland.

Procedure and meetings

- 9 (1) Creative Scotland may determine its own procedure and that of its committees, including a quorum for meetings.
- (2) The validity of any proceedings of Creative Scotland, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.
- (3) Members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of Creative Scotland or any of its committees, but are not entitled to vote at such meetings.

General powers

- 10 (1) Creative Scotland may do anything which appears to be necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of its functions.
- (2) In particular, Creative Scotland may—
 - (a) engage in any business or undertaking,
 - (b) form, promote or acquire (whether alone or with others) companies (within the meaning of the Companies Act 2006 (c. 46)),
 - (c) form partnerships with others,
 - (d) enter into contracts,
 - (e) accept gifts of money and other property,
 - (f) invest sums not immediately required in relation to the exercise of its functions,
 - (g) undertake or execute any charitable trust,
 - (h) obtain advice or assistance from any person who, in Creative Scotland's opinion, is qualified to give it,
 - (i) commission research,
 - (j) with the consent of the Scottish Ministers—
 - (i) borrow money,
 - (ii) acquire and dispose of land,
 - (iii) establish or take part in the setting up of organisations having functions similar to those of Creative Scotland,
 - (iv) make charges for the provision of goods or advice or other services in such circumstances and of such amounts as Creative Scotland may determine.

- (3) For the purposes of paragraph (g) of sub-paragraph (2), a trust is a charitable trust if all its purposes are within section 7(2) of the [Charities and Trustee Investment \(Scotland\) Act 2005 \(asp 10\)](#).

Delegation of functions

- 11 (1) Creative Scotland may, subject to sub-paragraphs (2) and (3), authorise—
- (a) the chief executive,
 - (b) any other employee,
 - (c) any of its committees,
- to exercise such of its functions, and to such extent, as it may determine.
- (2) Creative Scotland may not authorise any of the following functions to be exercised by any other person—
- (a) the approval of annual reports and accounts,
 - (b) the approval of any budget or other financial plan.
- (3) Sub-paragraph (1) does not affect the responsibility of Creative Scotland for the exercise of its functions.

Location of office

- 12 Creative Scotland's determination of the location of its office premises is subject to the approval of the Scottish Ministers.

Accounts

- 13 (1) Creative Scotland must—
- (a) keep proper accounts and accounting records,
 - (b) prepare in respect of each financial year a statement of accounts, and
 - (c) send a copy of the statement to the Scottish Ministers,
- and must do so in accordance with any directions the Scottish Ministers may give.
- (2) Creative Scotland must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

- 14 (1) As soon as practicable after the end of each financial year, Creative Scotland must prepare a report which is—
- (a) to provide information on the discharge of Creative Scotland's functions during that year, and
 - (b) to include a copy of the statement of accounts for that year audited by the Auditor General for Scotland.
- (2) Creative Scotland must—
- (a) publish the report,
 - (b) lay a copy of the report before the Scottish Parliament,
 - (c) send a copy of the report to the Scottish Ministers.

Status: This is the original version (as it was originally enacted).

- (3) Creative Scotland may publish such other reports and information on matters relevant to the functions of Creative Scotland as it considers appropriate.

SCHEDULE 10

(introduced by section 43)

CREATIVE SCOTLAND: MODIFICATIONS OF ENACTMENTS

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 1 In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies)—
- (a) after the entry relating to a community justice authority insert—
“Creative Scotland”,
 - (b) the entry relating to the Scottish Arts Council is repealed.

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 2 In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities)—
- (a) after paragraph 21B insert—
“21C Creative Scotland.”,
 - (b) paragraphs 36 and 50 are repealed.

Freedom of Information (Scotland) Act 2002 (asp 13)

- 3 In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities)—
- (a) after paragraph 62B insert—
“62C Creative Scotland.”,
 - (b) paragraphs 78 and 98 are repealed.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 4 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities)—
- (a) after the entry relating to the Bòrd na Gàidhlig insert—
“Creative Scotland”,
 - (b) the entries relating to—
 - (i) the Scottish Arts Council, and
 - (ii) Scottish Screen,are repealed.

SCHEDULE 11

(introduced by section 44(4))

SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND: ESTABLISHMENT ETC.

Status

- 1 (1) Social Care and Social Work Improvement Scotland is a body corporate.
- (2) SCSWIS is not to be regarded as a servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants.
- (3) SCSWIS's property is not to be regarded as property of, or held on behalf of, the Crown.

Membership of SCSWIS

- 2 (1) SCSWIS is to consist of the following members—
 - (a) a person appointed by the Scottish Ministers to chair SCSWIS,
 - (b) the person appointed under paragraph 2(1)(a) of Schedule 5A to the National Health Service (Scotland) Act 1978 (c. 29) to chair Healthcare Improvement Scotland,
 - (c) the person appointed under paragraph 2 of schedule 2 to the [Regulation of Care \(Scotland\) Act 2001 \(asp 8\)](#) as convener of the Scottish Social Services Council, and
 - (d) no fewer than 9 nor more than 12 other members appointed by the Scottish Ministers.
- (2) The Scottish Ministers may by order amend sub-paragraph (1)(d) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.
- 3 (1) In appointing members, the Scottish Ministers are to have regard to the desirability of including—
 - (a) persons who have experience of, and have shown capacity and capability in, the provision of any social service,
 - (b) persons who—
 - (i) use, or have used, any social service or services which prospectively are to become social services,
 - (ii) care for, or have cared for, such persons as are mentioned in sub-paragraph (i),
 - (c) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of SCSWIS's functions.
- (2) In appointing members under paragraph 2(1)(d), the Scottish Ministers must appoint at least two persons—
 - (a) one of whom falls within sub-paragraph (i), and one of whom falls within sub-paragraph (ii), of sub-paragraph (1)(b) of this paragraph, or
 - (b) both of whom fall within either sub-paragraph (i), or sub-paragraph (ii), of sub-paragraph (1)(b) of this paragraph.

Status: This is the original version (as it was originally enacted).

Terms of appointment etc.

- 4 (1) Each member of SCSWIS is to be appointed for such period as the Scottish Ministers think fit.
- (2) A member—
- (a) holds and vacates office in accordance with the terms and conditions of appointment, but
 - (b) may, by written notice to the Scottish Ministers, resign office as a member.
- (3) A person is, on ceasing to be a member, eligible for reappointment.

Removal of members

- 5 The Scottish Ministers may, by written notice, remove a member from office if they are satisfied that—
- (a) the member—
 - (i) has been adjudged bankrupt,
 - (ii) has granted a trust deed for creditors or a composition contract,
 - (iii) has proposed a voluntary arrangement which has been approved,
 - (b) the member's estate has been sequestrated,
 - (c) the member has been absent from 3 consecutive meetings of SCSWIS without the permission of SCSWIS,
 - (d) the member is otherwise unfit or unable to discharge the functions of a member.

Disqualification from membership

- 6 A person is disqualified from appointment, and from holding office, as a member of SCSWIS if that person is—
- (a) a member of the Scottish Parliament,
 - (b) a member of the House of Commons,
 - (c) a member of the European Parliament.

Remuneration and allowances for members

- 7 SCSWIS must pay to each of its members such—
- (a) remuneration, and
 - (b) allowances and expenses,
- as the Scottish Ministers may determine.

Chief executive and other employees

- 8 (1) SCSWIS is to employ a chief executive.
- (2) The chief executive may not be a member of SCSWIS.
- (3) The Scottish Ministers are to make the first appointment of the chief executive on such terms and conditions as the Scottish Ministers may determine.

Status: This is the original version (as it was originally enacted).

- (4) Each subsequent chief executive is, with the approval of the Scottish Ministers, to be appointed by SCSWIS on such terms and conditions as SCSWIS may, with such approval, determine.
- (5) SCSWIS may (subject to any directions given under sub-paragraph (6)) appoint such other employees on such terms and conditions as SCSWIS may determine.
- (6) The Scottish Ministers may give directions to SCSWIS as regards—
 - (a) the appointment of employees under sub-paragraph (5), and
 - (b) the terms and conditions of their employment.
- (7) SCSWIS may, with the approval of the Scottish Ministers—
 - (a) pay or make arrangements for the payment,
 - (b) make payments or contributions towards the provision,
 - (c) provide and maintain schemes (whether contributory or not) for the payment, of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of SCSWIS, as it may determine.
- (8) The reference in sub-paragraph (7) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment.

Committees

- 9 (1) SCSWIS may establish committees for any purpose relating to its functions.
- (2) SCSWIS is to determine the composition of its committees.
- (3) SCSWIS may appoint persons who are not members of SCSWIS to be members of a committee; but such persons are not entitled to vote at meetings of the committee.
- (4) A committee of SCSWIS is to comply with any directions given to it by SCSWIS.

Procedure and meetings

- 10 (1) SCSWIS may determine its own procedure and that of its committees, including a quorum for meetings.
- (2) The validity of any proceedings of SCSWIS, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.
- (3) Members of—
 - (a) the Scottish Executive and persons authorised by the Scottish Ministers,
 - (b) Healthcare Improvement Scotland and persons authorised by it,
 - (c) the Scottish Social Services Council and persons authorised by it,may attend and take part in meetings of SCSWIS or any of its committees, but are not entitled to vote at such meetings.

General powers

- 11 (1) SCSWIS may do anything which appears to be necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of its functions.
- (2) In particular, SCSWIS may—

Status: This is the original version (as it was originally enacted).

- (a) enter into contracts,
- (b) with the consent of the Scottish Ministers—
 - (i) borrow money,
 - (ii) acquire and dispose of land,
 - (iii) borrow sums in sterling by way of overdraft for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

Delegation of functions

- 12 (1) SCSWIS may, subject to sub-paragraphs (2) and (3), authorise—
- (a) the chief executive,
 - (b) any other employee,
 - (c) any of its committees,
- to exercise such of its functions, and to such extent, as it may determine.
- (2) SCSWIS may not authorise any of the following functions to be exercised by any other person—
- (a) the approval of annual reports and accounts,
 - (b) the approval of any budget or other financial plan.
- (3) Sub-paragraph (1) does not affect the responsibility of SCSWIS for the exercise of its functions.

Location of office

- 13 SCSWIS's determination of the location of its office premises is subject to the approval of the Scottish Ministers.

Accounts

- 14 (1) SCSWIS must—
- (a) keep proper accounts and accounting records,
 - (b) prepare in respect of each financial year a statement of accounts, and
 - (c) send a copy of the statement to the Scottish Ministers,
- and must do so in accordance with any directions the Scottish Ministers may give.
- (2) SCSWIS must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

- 15 (1) As soon as practicable after the end of each financial year, SCSWIS must prepare a report which is—
- (a) to provide information on the discharge of SCSWIS's functions during that year, and
 - (b) to include a copy of the statement of accounts for that year audited by the Auditor General for Scotland.
- (2) SCSWIS must—
- (a) publish the report,

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- (b) lay a copy of the report before the Scottish Parliament,
 - (c) send a copy of the report to the Scottish Ministers.
- (3) SCSWIS may publish such other reports and information on matters relevant to the functions of SCSWIS as it considers appropriate.

SCHEDULE 12

(introduced by section 47(2))

CARE SERVICES: DEFINITIONS

- 1 (1) A “support service” is a service provided, by reason of a person’s vulnerability or need (other than vulnerability or need arising by reason only of that person being of a young age), to that person or to someone who cares for that person by—
- (a) a local authority;
 - (b) any person under arrangements made by a local authority;
 - (c) a health body; or
 - (d) any person if it includes personal care or personal support.
- (2) But—
- (a) the expression does not include a care home service, an independent health care service (within the meaning of section 10F of the National Health Service (Scotland) Act 1978 (c. 29)), a service which provides overnight accommodation, an adoption service, a fostering service or a service excepted from this definition by regulations;
 - (b) paragraphs (c) and (d) do not apply where the provider is a health body acting in exercise of functions conferred by the National Health Service (Scotland) Act 1978 (c. 29);
 - (c) paragraph (d) does not apply if the provider is an individual who personally and solely gives the care or support in question.
- 2 A “care home service” is a service which provides accommodation, together with nursing, personal care or personal support, for persons by reason of their vulnerability or need; but the expression does not include—
- (a) a hospital;
 - (b) a public, independent or grant-aided school; or
 - (c) a service excepted from this definition by regulations.
- 3 (1) A “school care accommodation service” is a service which—
- (a) consists of the provision of residential accommodation to a pupil in a place in or outwith a public, independent or grant-aided school;
 - (b) is provided (whether or not during term-time) for the purpose of or in connection with the pupil’s attendance at the school (whether current or otherwise); and
 - (c) is provided to the pupil by—
 - (i) an education authority or the managers of an independent or grant-aided school; or
 - (ii) any person under arrangements made between that person and any such authority or managers.
- (2) For the purposes of sub-paragraph (1)(c)(i), a service which—

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- (a) falls within the description given by sub-paragraph (1)(a), (b) and (c)(ii); and
 (b) is provided to the pupil in domestic premises,
 is to be regarded as being provided by that authority or (as the case may be) those managers.
- (3) A service may be excepted from the definition in sub-paragraph (1) by regulations.
- 4 A “nurse agency” is a service which consists of or includes supplying, or introducing to persons who use the service, registered nurses, registered midwives or registered health visitors; but a service may be excepted from this definition by regulations.
- 5 (1) A “child care agency” is a service which consists of or includes supplying, or introducing to persons who use the service, child carers; but the expression does not include a nurse agency and a service may be excepted from this definition by regulations.
- (2) In sub-paragraph (1), “child carer” means a person who—
 (a) whether or not for reward; and
 (b) whether on a day-to-day or on an occasional basis,
 looks after a child wholly or mainly in the home of the child’s parents.
- 6 A “secure accommodation service” is a service which—
 (a) provides accommodation for the purpose of restricting the liberty of children in residential premises where care services are provided; and
 (b) is approved by the Scottish Ministers for that purpose.
- 7 An “offender accommodation service” is a service which consists of giving advice, guidance or assistance to persons who have been provided with accommodation under subsection (1)(b) or (c) of section 27 of the Social Work (Scotland) Act 1968 (c. 49) (supervision and care of persons put on probation or released from prison etc.); but the expression does not include a support service.
- 8 (1) An “adoption service” is any service which is—
 (a) provided by a local authority under subsection (1) of section 1 of the [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#); or
 (b) provided by a person other than a local authority and which consists of, or includes, services mentioned in subsection (4) of that section (the reference in subsection (5) of that section to a local authority being taken, for the purposes of this paragraph, to be a reference to a person other than a local authority), (whether the person functions generally or in relation to a service provided, under that section).
- (2) For the purpose of sub-paragraph (1)(b)—
 (a) the making by a person of arrangements for the adoption of a child by a relevant person; or
 (b) the placing by a person of a child for adoption with a relevant person,
 is not an adoption service.
- (3) In sub-paragraph (2), “relevant person” means—
 (a) a parent of the child;
 (b) any other relative of the child; or
 (c) where a parent of the child is a member of a relevant couple, the other member of the couple.

- (4) In sub-paragraph (3)—
“relative” has the meaning given by section 119(1) of the [Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#);
“relevant couple” is to be construed in accordance with section 29(3) of that Act.
- 9 A “fostering service” is a service which is provided by—
(a) a local authority under paragraph (a) of section 26(1) of the Children (Scotland) Act 1995 (c. 36) (fostering of children looked after by a local authority);
(b) a person other than a local authority and which consists of, or includes, the making of arrangements for or in connection with the performance of functions assigned to a local authority—
(i) under that paragraph; or
(ii) by virtue of section 5(2) to (4) of the Social Work (Scotland) Act 1968 (c. 49) (regulations relating to performance of functions assigned to a local authority under that Act); or
(c) a local authority and which consists of, or includes, the functions assigned to the authority by sections 3 and 8 to 10 of the Foster Children (Scotland) Act 1984 (c. 56) (ensuring well-being etc. of certain privately fostered children).
- 10 The services mentioned—
(a) in paragraph 9(a) and (b) and registered under this Part may be collectively referred to as the “Scottish public fostering service”;
(b) in paragraph 9(c) and so registered may be collectively referred to as the “Scottish private fostering service”.
- 11 An “adult placement service” is a service which consists of, or includes, arranging for the provision of accommodation for an adult (that is to say for a person who has attained the age of sixteen years), together with—
(a) personal care;
(b) personal support; or
(c) counselling, or other help, provided other than as part of a planned programme of care,
by reason of the person’s vulnerability or need, by placing the person with a family or individual; but a service may be excepted from this definition by regulations.
- 12 (1) “Child minding” means, subject to sub-paragraphs (2) and (3) and paragraph 14(a), looking after one or more children on domestic premises for reward and “act as a child minder” is to be construed accordingly; but a service may be excepted from those definitions by regulations.
(2) For the purposes of sub-paragraph (1), a person who—
(a) is the parent, or a relative, of a child;
(b) has parental responsibilities (within the meaning given by section 1(3) of the Children (Scotland) Act 1995 (c. 36)) relating to the child;
(c) is a foster parent with whom a child is placed by a local authority;
(d) maintains a foster child (within the meaning of the Foster Children (Scotland) Act 1984 (c. 56));
(e) a child is required to reside with by virtue of section 70(3)(a) of the Children (Scotland) Act 1995; or

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- (f) is a kinship carer (within the meaning of the Looked After Children (Scotland) Regulations 2009 (S.S.I. 2009/210)), of a child, does not act as a child minder when looking after that child.
- (3) For the purposes of sub-paragraph (1), where a person—
- (a) looks after a child for the parents of the child and the work consists of looking after the child wholly or mainly in the parents' home; or
 - (b) looks after a child for the parents of the child (the “first parents”) and another child for the different parents of that other child (the “second parents”) and the work consists of looking after the children wholly or mainly in the first parents' home or in the second parents' home, or in both those homes, that work is not child minding.
- 13 “Day care of children” means, subject to paragraphs 14(b) to 17, a service which consists of any form of care (whether or not provided to any extent in the form of an educational activity), supervised by a responsible person and not excepted from this definition by regulations, provided for children, on premises other than domestic premises, during the day (whether or not it is provided on a regular basis or commences or ends during the hours of daylight).
- 14 For the purposes of—
- (a) paragraph 12(1), a person does not act as a child minder;
 - (b) paragraph 13, a person does not provide day care of children, unless the period, or the total of periods, during which the service is provided exceeds two hours in any day.
- 15 (1) Where a person provides a service for children in particular premises on less than six days in any year, that provision is not day care of children for the purposes of paragraph 13 if the person has notified SCSWIS in writing, before the first occasion on which the service is so provided in that year, of the intention so to provide it.
- (2) In sub-paragraph (1), “year” means the year beginning with the day on which the service is (after the commencement of this section) first provided in the premises concerned; and thereafter any year beginning with the anniversary of that day.
- 16 For the purposes of paragraph 13, a service which consists of looking after children who are patients in a hospital and is provided as part of the medical treatment which they are receiving there is not day care of children.
- 17 For the purposes of paragraph 13, a person does not provide day care of children where—
- (a) the children are of school age;
 - (b) the service is provided—
 - (i) wholly or mainly in a public, independent or grant-aided school; and
 - (ii) as part of the school’s activities; and
 - (c) the person is—
 - (i) the education authority managing the school;
 - (ii) the person carrying on the school; or
 - (iii) a person employed to work at the school and authorised to provide the service as part of the school’s activities.
- 18 Expressions used in paragraph 2(b), 3 or 17 have the meanings given by section 135(1) of the Education (Scotland) Act 1980 (c. 44).

Status: This is the original version (as it was originally enacted).

- 19 A “housing support service” is a service which provides support, assistance, advice or counselling to a person who has particular needs, with a view to enabling that person to occupy residential accommodation as a sole or main residence; but a service may be excepted from this definition by regulations and such residential accommodation does not include accommodation specified as excepted accommodation in regulations under section 91(9) of the [Housing \(Scotland\) Act 2001 \(asp 10\)](#).
- 20 In this schedule, unless the context otherwise requires—
- “someone who cares for” (or “a person who cares for”) a person, means someone who, being an individual, provides on a regular basis a substantial amount of care for that person, not having contracted to do so and not doing so for payment or in the course of providing a care service;
- “vulnerability or need”, in relation to a person, means vulnerability or need arising by reason of that person—
- (a) being affected by infirmity or ageing;
 - (b) being, or having been, affected by disability, illness or mental disorder;
 - (c) being, or having been, dependent on alcohol or drugs; or
 - (d) being of a young age;
- “personal care” means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash); and
- “personal support” means counselling, or other help, provided as part of a planned programme of care.

SCHEDULE 13

(introduced by section 48)

SOCIAL WORK SERVICES FUNCTIONS: SPECIFIED ENACTMENTS

- Part 4 of the Children and Young Persons (Scotland) Act [1937 \(c. 37\)](#)
Sections 22(2) to (5A) and (8), 26(2) to (4), 43, 45, 47 and 48 of the National Assistance Act [1948 \(c. 29\)](#)
Disabled Persons (Employment) Act [1958 \(c. 33\)](#)
Section 11 of the Matrimonial Proceedings (Children) Act [1958 \(c. 40\)](#)
Social Work (Scotland) Act [1968 \(c. 49\)](#)
Social Work (Scotland) Act 1968 as read with sections 1 and 2(1) of the Chronically Sick and Disabled Persons Act [1970 \(c. 44\)](#) and the Disabled Persons (Services, Consultation and Representation) Act [1986 \(c. 33\)](#)
Children Act [1975 \(c. 72\)](#)
Sections 21 to 23 of the Health and Social Services and Social Security Adjudications Act [1983 \(c. 41\)](#)
Foster Children (Scotland) Act [1984 \(c. 56\)](#)
Sections 38(b) and 235 of the Housing (Scotland) Act [1987 \(c. 26\)](#)
Part 2 of the Children (Scotland) Act [1995 \(c. 36\)](#)
Section 51 of the Criminal Procedure (Scotland) Act [1995 \(c. 46\)](#)
Section 10 of the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#)

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[Community Care and Health \(Scotland\) Act 2002 \(asp 5\)](#)
[Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#)
[Adoption and Children \(Scotland\) Act 2007 \(asp 4\)](#)

SCHEDULE 14

(introduced by section 106)

SOCIAL CARE AND SOCIAL WORK IMPROVEMENT SCOTLAND: MODIFICATIONS OF ENACTMENTS

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 1 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved bodies)—
- (a) the entry relating to the Scottish Commission for the Regulation of Care is repealed,
 - (b) at the appropriate place, in alphabetical order, insert—
“Social Care and Social Work Improvement Scotland”.

Regulation of Care (Scotland) Act 2001 (asp 8)

- 2 The Regulation of Care (Scotland) Act 2001 is amended as follows.
- 3 In section 53(2)(b) (codes of practice), for “the Commission” substitute “Social Care and Social Work Improvement Scotland”.
- 4 In section 59 (general principles)—
- (a) in subsection (1) the words “, the Commission” are repealed,
 - (b) after subsection (4), insert—
“(5) In subsection (2), “care service” means a care service as defined in section 47(1) of the [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#).”.
- 5 In section 60 (grants)—
- (a) in subsection (1), the words “the Commission or to” are repealed,
 - (b) in paragraph (a) of that subsection, for “body in question” substitute “Council”,
 - (c) in paragraph (b) of that subsection, for “that body” substitute “the Council”.
- 6 In section 61 (guarantees)—
- (a) in subsection (1), the words “the Commission or” are repealed,
 - (b) in subsection (4), the words “the Commission, or as the case may be” are repealed.
- 7 In section 62 (duty of consultation)—
- (a) the words “Commission and the” are repealed,
 - (b) the word “each” is repealed,
 - (c) for the words “the other” substitute “Social Care and Social Work Improvement Scotland”,
 - (d) for the words “body exercising the function” substitute “Council”.

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- 8 In section 63 (guidance as to consultation)—
- (a) the words “the Commission and to” are repealed,
 - (b) for the words “body in question” substitute “Council”.
- 9 In section 64 (complaints procedure)—
- (a) in subsection (1)—
 - (i) for the words “The Commission and the Council shall each” substitute “The Council shall”,
 - (ii) for the words “body in question” substitute “Council”,
 - (b) in subsection (2), for the words “body in question” substitute “Council”,
 - (c) in subsection (3), for the words “body in question” substitute “Council”,
 - (d) in subsection (4), for the words “body in question” substitute “Council”.
- 10 In section 65 (inquiries)—
- (a) in subsection (1)—
 - (i) in paragraph (a), the words “by the Commission or” are repealed,
 - (ii) paragraph (b) and the word “or” immediately preceding it are repealed,
 - (b) subsection (2) is repealed,
 - (c) in subsection (4), paragraph (b) is repealed,
 - (d) in subsection (6)—
 - (i) the words “(2) or” are repealed,
 - (ii) paragraph (a) and the word “or” immediately following it are repealed,
 - (e) in subsection (7)—
 - (i) the words “by the Commission or” are repealed,
 - (ii) for the words “(2), or as the case may be (3),” substitute “(3)”,
 - (iii) for the words “body in question” substitute “Council”,
 - (iv) for the words “that body” substitute “the Council”,
 - (v) for the word “body”, in the third place it occurs, substitute “Council”,
 - (f) in subsection (9), paragraph (a) and the word “or” immediately following it are repealed.

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 11 In Part 2 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities)—
- (a) paragraph 38 is repealed,
 - (b) after paragraph 52 insert—

“52A Social Care and Social Work Improvement Scotland.”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 12 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities)—
- (a) the entry relating to the Scottish Commission for the Regulation of Care is repealed,

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- (b) under the heading “Executive bodies” insert, at the appropriate place in alphabetical order—
“Social Care and Social Work Improvement Scotland”.

Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

- 13 The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- 14 In section 7 (duty to bring matters generally to the attention of Scottish Ministers and others), for paragraph (f) substitute—
“(f) Social Care and Social Work Improvement Scotland;”.
- 15 In section 8(3) (duty to bring specific matters to the attention of Scottish Ministers and others etc), for paragraph (k) substitute—
“(k) Social Care and Social Work Improvement Scotland;”.
- 16 In section 9(2) (duty to give advice), for paragraph (e) substitute—
“(e) Social Care and Social Work Improvement Scotland;”.
- 17 In section 17(2) (duties of Scottish Ministers, local authorities and others as respects Commission), for paragraph (i) substitute—
“(i) Social Care and Social Work Improvement Scotland;”.
- 18 In section 34(3) (inquiries under section 33: co-operation), for paragraph (c) substitute—
“(c) Social Care and Social Work Improvement Scotland;”.

Adult Support and Protection (Scotland) Act 2007 (asp 10)

- 19 The Adult Support and Protection (Scotland) Act 2007 is amended as follows.
- 20 In section 5(1) (co-operation), for paragraph (b) substitute—
“(b) SCSWIS;”.
- 21 In section 42(3) (Adult Protection Committees), for paragraph (b) substitute—
“(b) SCSWIS;”.
- 22 In section 43 (membership)—
(a) in subsection (2), for “the Care Commission” substitute “SCSWIS”,
(b) in subsection (3), for “The Care Commission” substitute “SCSWIS”.
- 23 In section 44(2)(c) (Adult Protection Committee procedure), for “the Care Commission” substitute “SCSWIS”.
- 24 In section 45(2)(d) (duty to provide information to Adult Protection Committee), for “the Care Commission” substitute “SCSWIS”.
- 25 In section 46(b)(v) (biennial report), for “the Care Commission” substitute “SCSWIS”.
- 26 In section 53(1) (interpretation of Part 1)—
(a) the definition of the Care Commission is repealed,
(b) after the definition of “removal order” insert—
““SCSWIS” means Social Care and Social Work Improvement Scotland;”.

Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

- 27 The Protection of Vulnerable Groups (Scotland) Act 2007 is amended as follows.
- 28 In section 8 (provision of prescribed information to the Scottish Ministers by certain persons)—
- (a) in subsection (2)—
 - (i) the entry relating to the Scottish Commission for the Regulation of Care in the list of persons to whom the section applies is repealed,
 - (ii) after the entry in that list relating to the Scottish Social Services Council insert—

“Social Care and Social Work Improvement Scotland”,
 - (b) in subsection (3)—
 - (i) in paragraph (c), the words “the Scottish Commission for the Regulation of Care and” are repealed,
 - (ii) in that paragraph, for “the Commission or, as the case may be, the Council” substitute “it”,
 - (iii) the word “and” immediately following that paragraph is repealed,
 - (iv) after that paragraph insert—

“(ca) in relation to Social Care and Social Work Improvement Scotland, such functions as are conferred on it by virtue of the 2010 Act and any other enactment, and”.
- 29 In section 17(5)(c) (information relevant to listing decisions)—
- (a) sub-paragraph (x) is repealed,
 - (b) the word “or” immediately following sub-paragraph (xi) is repealed,
 - (c) after that sub-paragraph add—

“(xii) Social Care and Social Work Improvement Scotland, or”.
- 30 In section 19 (information held by public bodies etc.), in subsection (3)—
- (a) the entry relating to the Scottish Commission for the Regulation of Care in the list of persons who may be required to provide information under subsection (1)(b) of that section is repealed,
 - (b) after the entry in that list relating to the Scottish Social Services Council insert—

“Social Care and Social Work Improvement Scotland”.
- 31 In section 30(7) (notice of listing, etc)—
- (a) the entry relating to the Scottish Commission for the Regulation of Care in the list of persons who are “relevant regulatory bodies” is repealed,
 - (b) after the entry in that list relating to the Scottish Social Services Council insert—

“Social Care and Social Work Improvement Scotland”.
- 32 In section 73(d) (consideration of suitability), for the words “the 2001 Act” substitute “Part 5 of the 2010 Act”.
- 33 In section 94 (meaning of “protected child”)—
- (a) in subsection (1)(a), for the words “Part 1 of the 2001 Act” substitute “Part 5 of the 2010 Act”,

Status: This is the original version (as it was originally enacted).

- (b) in subsection (3), for the words from “paragraphs” to the end of the subsection substitute “—
- (a) paragraph (a) of subsection (1) have the same meaning as in schedule 12 to the 2010 Act,
- (b) paragraph (b)(i) and (ii) of that subsection have the same meaning as in section 105 of that Act.”.
- 34 In section 97(1) (general interpretation)—
- (a) after the definition of “the 2001 Act” insert—
- ““the 2010 Act” means the [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#),”
- (b) in the definition of “care service”, for “the 2001 Act” substitute “Part 5 of the 2010 Act”.
- 35 In schedule 2 (regulated work with children)—
- (a) in paragraph 6, in paragraph (d) of the definition of “responsible person”, for “section 2 of the 2001 Act” substitute “schedule 12 to the 2010 Act”,
- (b) in paragraph 9, for “the 2001 Act” substitute “schedule 12 to the 2010 Act”,
- (c) in paragraph 11, for “section 2 of the 2001 Act” substitute “schedule 12 to the 2010 Act”.
- 36 In schedule 3 (regulated work with adults)—
- (a) in paragraph 6, for “the 2001 Act” substitute “schedule 12 to the 2010 Act”,
- (b) in paragraph 7—
- (i) for “section 25 of the 2001 Act” substitute “Part 5 of the 2010 Act”,
- (ii) after “service”, where it ninth occurs, insert “and”,
- (iii) for the words “the 2001 Act”, where they second occur, substitute “schedule 12 to the 2010 Act”,
- (c) in the heading to that paragraph, for “the Scottish Commission for the Regulation of Care” substitute “Social Care and Social Work Improvement Scotland”.

Repeals

- 37 The enactments mentioned in the first column of the following table are repealed to the extent specified in the second column.

| <i>Enactment</i> | <i>Extent of repeal</i> |
|--|-------------------------------|
| Regulation of Care (Scotland) Act 2001 (asp 8) | Parts 1 and 2. Schedule 1. |
| Joint Inspection of Children’s Services and Inspection of Social Work Services (Scotland) Act 2006 (asp 3) | The whole Act. |
| Adoption and Children (Scotland) Act 2007 (asp 4) | Section 7. |

Status: This is the original version (as it was originally enacted).

SCHEDULE 15

(introduced by section 107)

SCOTTISH SOCIAL SERVICES COUNCIL: MODIFICATIONS OF REGULATION OF CARE (SCOTLAND) ACT 2001

- 1 Part 3 of the [Regulation of Care \(Scotland\) Act 2001 \(asp 8\)](#) (the Scottish Social Services Council) is amended as follows.
- 2 In section 46 (grant or refusal of registration under Part 3)—
- (a) in subsection (2), the words from “or”, where it fourth occurs, to the end of the subsection are repealed,
 - (b) after that subsection insert—
 - “(2A) Where an application is granted unconditionally—
 - (a) the Council shall give the applicant notice of its so granting the application; and
 - (b) registration shall take effect immediately on such notice being given.
 - (2B) If the Council is not satisfied as mentioned in subsection (2), it shall—
 - (a) grant the application subject to such conditions as it thinks fit; or
 - (b) refuse the application.
 - (2C) The Council shall give the applicant notice of its decision under subsection (2B), which shall—
 - (a) give the Council’s reasons for the decision; and
 - (b) explain the right of appeal conferred by section 51 of this Act.
 - (2D) A decision to refuse the application takes effect immediately on notice to that effect being given.
 - (2E) Notice of a decision to grant the application subject to conditions shall state—
 - (a) the conditions; and
 - (b) that, within fourteen days after service of the notice, the applicant may make written representations to the Council concerning any matter which the applicant wishes to dispute.
 - (2F) Subject to subsections (2G) and (2H), a decision to grant the application subject to conditions takes effect at the end of the fourteen day period mentioned in subsection (2E).
 - (2G) Where—
 - (a) the applicant makes such representations as are mentioned in subsection (2E);
 - (b) the Council, having considered the representations, confirms the decision mentioned in subsection (2F); and
 - (c) no appeal is brought under section 51 of this Act,

Status: This is the original version (as it was originally enacted).

the decision takes effect on the expiry of the fourteen day period mentioned in subsection (A1) of that section for bringing such an appeal.

(2H) Where an appeal against a decision mentioned in subsection (2F) is brought under section 51 of this Act (whether or not such representations as are mentioned in subsection (2E) are also made), the decision takes effect only when the appeal is finally determined or abandoned.”

(c) subsection (3) is repealed.

3 In section 47 (variation etc. of conditions in relation to registration under Part 3)—

(a) in subsection (1), for “that it proposes” substitute “of its decision”,

(b) in subsection (2)—

(i) the words from “give” to the end of the subsection become paragraph (a) of the subsection,

(ii) for “proposal” substitute “decision”,

(iii) after paragraph (a) (inserted by paragraph (i) above) add—

“(b) explain the right of appeal conferred by section 51 of this Act; and

(c) state the condition as varied, the condition which is removed or (as the case may be) the additional condition imposed.”.

4 In section 48 (right to make representations to Council as respects proposal)—

(a) in subsection (1), the words “46(2) or” are repealed,

(b) for subsection (2) substitute—

“(2) Subject to subsections (3) and (4), a decision under section 47 of this Act takes effect at the end of the fourteen day period mentioned in subsection (1).

(3) Where—

(a) the person to whom notice under section 47 was given makes such representations as are mentioned in subsection (1);

(b) the Council, having considered the representations, confirms the decision mentioned in that section; and

(c) no appeal is brought under section 51 of this Act,

the decision takes effect on the expiry of the fourteen day period mentioned in subsection (A4) of that section for bringing such an appeal.

(4) Where an appeal against a decision under section 47 is brought under section 51 (whether or not such representations as are mentioned in subsection (1) are also made), the decision takes effect only when the appeal is finally determined or abandoned.”.

5 In the heading to section 48, for “proposal” substitute “decision under section 47”.

6 In section 49 (removal etc. from the Council’s register), in subsection (1)(e), for “proposal” substitute “decision”.

7 In section 50 (notice of Council’s decision)—

Status: This is the original version (as it was originally enacted).

- (a) subsection (1) is repealed,
- (b) in subsection (2), paragraph (a) and the “or” immediately following it are repealed,
- (c) in subsection (3), paragraph (b) is repealed,
- (d) in subsection (4)—
 - (i) at the beginning insert “Subject to subsection (5),”,
 - (ii) the words from “other” to “application” are repealed,
 - (iii) in paragraph (a), for the words “referred to in section 51(1) of this Act” substitute “after the giving of a notice under subsection (2)”,
- (e) after subsection (4) add—

“(5) A decision in accordance with rules under section 49(1) of this Act to suspend a person’s registration in a part of the register maintained under section 44(1) of this Act takes effect immediately on notice of that decision being given.”.

8 In the heading to section 50, at the end, add “under rules under section 49”.

9 In section 51 (appeal against decision of Council)—

- (a) before subsection (1) insert—

“(A1) Where—

 - (a) a person is given notice under subsection (2C) of section 46 of this Act of a decision to grant an application for registration under this Part subject to conditions;
 - (b) the person makes such representations as are mentioned in subsection (2E) of that section; and
 - (c) the Council confirms the decision,

the person may, within fourteen days after such confirmation is given, appeal to the sheriff against the decision.
- (A2) Where—
 - (a) a person is given notice under subsection (2C) of section 46 of this Act of a decision to grant an application for registration under this Part subject to conditions; and
 - (b) no representations such as are mentioned in subsection (2E) of that section are made,

the person may, within fourteen days after service of the notice, appeal to the sheriff against the decision.
- (A3) Where a person is given notice under subsection (2C) of section 46 of this Act of a decision to refuse an application for registration under this Part, the person may, within fourteen days after service of the notice, appeal to the sheriff against the decision.
- (A4) Where—
 - (a) a person is given notice under section 47(1) of this Act of a decision mentioned in that section;
 - (b) the person makes such representations as are mentioned in section 48(1) of this Act; and
 - (c) the Council confirms the decision,

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the person may, within fourteen days after such confirmation is given, appeal to the sheriff against the decision.

(A5) Where—

- (a) a person is given notice under section 47(1) of this Act of a decision mentioned in that section; and
- (b) no representations such as are mentioned in section 48(1) of this Act are made,

the person may, within fourteen days after service of the notice, appeal to the sheriff against the decision.”,

- (b) in subsection (1), for “that notice is given” substitute “service of the notice”,
- (c) in subsection (2)—
 - (i) for “such an appeal” substitute “an appeal under this section”,
 - (ii) the “or” immediately following paragraph (a) is repealed,
 - (iii) after paragraph (b) insert “, or
 - (c) direct that it shall not have effect and make such other order as the sheriff thinks fit”.

10 In section 53 (codes of practice)—

- (a) after subsection (3) insert—

“(3A) A social service worker shall, so far as relevant, have regard to any code published under subsection (1) by the Council.

(3B) An employer of a social service worker, or a person seeking to employ such workers, shall, so far as relevant, have regard to any code published under subsection (1) by the Council.”,

- (b) after subsection (5) insert—

“(6) The Scottish Ministers may give directions (of a general or specific nature) to—

- (a) the persons mentioned in paragraph (a) or (b) of subsection (1);
- (b) the Council,

in relation to any code so published; and such directions must be complied with.

(7) The Scottish Ministers may vary or revoke any direction given under subsection (6).”.

11 In section 64 (complaints procedures)—

- (a) in subsection (2)—

- (i) for “Ministers” substitute “Public Services Ombudsman”,
- (ii) the words from “and” to the end of the subsection are repealed,

- (b) in subsection (3), for “with such consent” substitute “after such consultation”.

Status: This is the original version (as it was originally enacted).

SCHEDULE 16

(introduced by section 110(1))

HEALTHCARE IMPROVEMENT SCOTLAND: ESTABLISHMENT ETC.

After Schedule 5 to the National Health Service (Scotland) Act 1978 (c. 29) there is inserted—

“SCHEDULE 5A

(introduced by section 10A(5))

HEALTHCARE IMPROVEMENT SCOTLAND

Status

- 1 (1) Healthcare Improvement Scotland is a body corporate.
- (2) HIS is not to be regarded as a servant or agent of the Crown, or as having any status, immunity or privilege of the Crown, nor are its members or its employees to be regarded as civil servants.
- (3) HIS’s property is not to be regarded as property of, or held on behalf of, the Crown.

Membership of HIS

- 2 (1) HIS is to consist of the following members—
 - (a) a person appointed by the Scottish Ministers to chair HIS;
 - (b) the person appointed under paragraph 2(1)(a) of schedule 11 to the [Public Services Reform \(Scotland\) Act 2010 \(asp 8\)](#) to chair Social Care and Social Work Improvement Scotland; and
 - (c) no fewer than 10 nor more than 13 other members appointed by the Scottish Ministers.
- (2) The Scottish Ministers may by order amend sub-paragraph (1)(c) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.
- (3) In appointing members, the Scottish Ministers are to have regard to the desirability of including—
 - (a) persons who have experience of, and have shown capacity and capability in, the provision of services provided under the health service or independent health care services;
 - (b) persons who use, or have used services provided under the health service or independent health care services;
 - (c) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of HIS’s functions.

Terms of appointment etc.

- 3 (1) Each member of HIS is to be appointed for such period as the Scottish Ministers think fit.
- (2) A member—

Status: This is the original version (as it was originally enacted).

- (a) holds and vacates office in accordance with the terms and conditions of appointment; but
 - (b) may, by written notice to the Scottish Ministers, resign office as a member.
- (3) A person is, on ceasing to be a member, eligible for reappointment.

Removal of members

- 4 The Scottish Ministers may, by written notice, remove a member from office if they are satisfied that—
- (a) the member—
 - (i) has been adjudged bankrupt;
 - (ii) has granted a trust deed for creditors or a composition contract;
 - (iii) has proposed a voluntary arrangement which has been approved;
 - (b) the member's estate has been sequestrated;
 - (c) the member has been absent from 3 consecutive meetings of HIS without the permission of HIS;
 - (d) the member is otherwise unfit or unable to discharge the functions of a member.

Disqualification from membership

- 5 A person is disqualified from appointment, and from holding office, as a member of HIS if that person is—
- (a) a member of the Scottish Parliament;
 - (b) a member of the House of Commons;
 - (c) a member of the European Parliament.

Remuneration and allowances for members

- 6 HIS must pay to each of its members such—
- (a) remuneration; and
 - (b) allowances and expenses,
- as the Scottish Ministers may determine.

Chief executive and other employees

- 7
- (1) HIS is to employ a chief executive.
 - (2) The chief executive must be a member of HIS.
 - (3) The Scottish Ministers are to make the first appointment of the chief executive on such terms and conditions as the Scottish Ministers may determine.
 - (4) Each subsequent chief executive is, with the approval of the Scottish Ministers, to be appointed by HIS on such terms and conditions as HIS may, with such approval, determine.
 - (5) HIS may (subject to any directions given under sub-paragraph (6)) appoint such other employees on such terms and conditions as HIS may determine.
 - (6) The Scottish Ministers may give directions to HIS as regards—

Status: This is the original version (as it was originally enacted).

- (a) the appointment of employees under sub-paragraph (5); and
 - (b) the terms and conditions of their employment.
- (7) HIS may, with the approval of the Scottish Ministers—
- (a) pay or make arrangements for the payment;
 - (b) make payments or contributions towards the provision;
 - (c) provide and maintain schemes (whether contributory or not) for the payment,
- of such pensions, allowances or gratuities to or in respect of any person who is or has ceased to be an employee of HIS, as it may determine.
- (8) The reference in sub-paragraph (7) to pensions, allowances and gratuities includes a reference to pensions, allowances and gratuities by way of compensation for loss of employment.

Committees

- 8
- (1) HIS may establish committees for any purpose relating to its functions.
 - (2) Subject to section 10Z16, HIS is to determine the composition of its committees.
 - (3) HIS may appoint persons who are not members of HIS to be members of a committee.
 - (4) A committee of HIS is to comply with any directions given to it by HIS.

Procedure and meetings

- 9
- (1) HIS may determine its own procedure and that of its committees, including a quorum for meetings.
 - (2) The validity of any proceedings of HIS, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.
 - (3) Members of—
 - (a) the Scottish Executive and persons authorised by the Scottish Ministers;
 - (b) Social Care and Social Work Improvement Scotland and persons authorised by it,may attend and take part in meetings of HIS or any of its committees, but are not entitled to vote at such meetings.

General powers

- 10
- (1) HIS may do anything which appears to be necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of its functions.
 - (2) In particular, HIS may—
 - (a) enter into contracts;
 - (b) with the consent of the Scottish Ministers—
 - (i) borrow money;
 - (ii) acquire and dispose of land;

Status: This is the original version (as it was originally enacted).

- (iii) borrow sums in sterling by way of overdraft for the purpose of meeting a temporary excess of expenditure over sums otherwise available to meet that expenditure.

Delegation of functions

- 11 (1) HIS may, subject to sub-paragraphs (2) and (3) authorise—
- (a) the chief executive;
 - (b) any other employee;
 - (c) any of its committees,
- to exercise such of its functions, and to such extent, as it may determine.
- (2) HIS may not authorise any of the following functions to be exercised by any other person—
- (a) the approval of annual reports and accounts;
 - (b) the approval of any budget or other financial plan.
- (3) Sub-paragraph (1) does not affect the responsibility of HIS for the exercise of its functions.

Location of office

- 12 HIS's determination of the location of its office premises is subject to the approval of the Scottish Ministers.

Accounts

- 13 (1) HIS must—
- (a) keep proper accounts and accounting records;
 - (b) prepare in respect of each financial year a statement of accounts; and
 - (c) send a copy of the statement to the Scottish Ministers,
- and must do so in accordance with any directions the Scottish Ministers may give.
- (2) HIS must send the statement of accounts to the Auditor General for Scotland for auditing.

Reports

- 14 (1) As soon as practicable after the end of each financial year, HIS must prepare a report which is—
- (a) to provide information on the discharge of HIS's functions during that year; and
 - (b) to include a copy of the statement of accounts for that year audited by the Auditor General for Scotland.
- (2) HIS must—
- (a) publish the report;
 - (b) lay a copy of the report before the Scottish Parliament;
 - (c) send a copy of the report to the Scottish Ministers.
- (3) HIS may publish such other reports and information on matters relevant to the functions of HIS as it considers appropriate.”.

SCHEDULE 17

(introduced by section 110(2))

HEALTHCARE IMPROVEMENT SCOTLAND: MODIFICATIONS OF ENACTMENTS

National Health Service (Scotland) Act 1978 (c. 29)

- 1 The National Health Service (Scotland) Act 1978 is amended as follows.
- 2 In section 2A (duty of Health Boards and others to promote health improvement)—
 - (a) in subsection (1) after “of”, where it second occurs, insert “HIS and”,
 - (b) in subsection (2) for “or the Agency” substitute “the Agency or HIS”,
 - (c) in subsection (3) for “or the Agency” substitute “, the Agency or HIS”.
- 3 In the title to that section, for “and the Agency” substitute “, the Agency and HIS”.
- 4 In section 2D (equal opportunities), in subsection (1), for “and the Agency” substitute “, the Agency and (as respects its health service functions only) HIS”.
- 5 In section 13 (co-operation between Health Boards and other authorities), after “Boards,” insert “HIS (as respects its health service functions only),”.
- 6 In section 13A (co-operation in planning of services for disabled persons, the elderly and others), in subsection (1), after “section” where it third occurs insert “(including HIS)”.
- 7 In section 15 (supply of goods and services to local authorities, etc.)—
 - (a) after subsection (1), insert—

“(1A) Paragraphs (b) to (e) of subsection (1) apply to HIS (in respect of the exercise of its health service functions only) as they apply to a Health Board.”,
 - (b) in subsection (2), after “subsection (1)”, insert “(including paragraph (b) as applied by subsection (1A))”.
- 8 In section 17A (NHS contracts), after subsection (2)(b) insert—

“(ba) HIS;”.
- 9 In section 77 (default powers), in subsection (1)—
 - (a) the word “or” immediately following paragraph (a) is repealed,
 - (b) after paragraph (c) insert “; or
 - (d) HIS;”.
- 10 In section 78A (powers in case of service failure)—
 - (a) in subsection (4)—
 - (i) the word “or” immediately following paragraph (b) is repealed,
 - (ii) after paragraph (c) insert “, or
 - (d) HIS;”,
 - (b) in subsection (5)(a), for “or the Agency” substitute “, the Agency or HIS”.
- 11 In section 79 (purchase of land and moveable property), in subsection (3), for “or the Agency” substitute “, the Agency or (in connection with the exercise of its health service functions only) HIS”.
- 12 In section 83 (power of Health Boards and local health councils to hold property on trust)—
 - (a) in subsection (1), after “Board” insert “, and HIS;”,

Status: This is the original version (as it was originally enacted).

- (b) after that subsection insert—
- “(1ZA) Any reference in subsection (1) to a function of HIS is to be construed as a reference to that body’s health service functions only.”.
- 13 In section 84 (power of trustees to make payments to Health Boards)—
- (a) in subsection (1)—
- (i) after “Board”, where it second occurs, insert “or (in connection with the exercise of its health service functions only) by HIS”,
- (ii) after “concerned” insert “or, as the case may be, to HIS”,
- (b) in subsection (3), after “Board” insert “or to HIS”.
- 14 In section 84A (power to raise money, etc. by appeals, collections, etc.)—
- (a) in subsection (1), after “Board” insert “or (in connection with the exercise of its health service functions only) HIS”,
- (b) in subsection (3), after “power” insert “or, as the case may be, by or for the benefit of HIS”,
- (c) after subsection (4) insert—
- “(4A) Subsection (4) applies (subject to the subsections mentioned there) to HIS in respect of property given in pursuance of this section as it applies to a Health Board in respect of such property given at the instance of the Health Board.”,
- (d) in subsection (5)—
- (i) after “Board”, where it first occurs, insert “or by HIS”,
- (ii) at the end insert “or, as the case may be, of HIS as HIS thinks fit.”,
- (e) in subsection (6)—
- (i) after “Board”, where it first occurs, insert “or by HIS”,
- (ii) in paragraph (a) after “Board” insert “or, as the case may be, HIS”,
- (iii) in paragraph (b) after “Board”, where it first occurs, insert “or by HIS”,
- (iv) at the end insert “or, as the case may be, any of the health service functions of HIS as HIS thinks fit.”,
- (f) in subsection (7), after “Board” insert “or, as the case may be, HIS”.
- 15 In section 85AA (means of meeting expenditure of Health Boards out of public funds)—
- (a) in subsection (3)—
- (i) after “Board”, where it first occurs, insert “and to HIS”,
- (ii) after “Board”, where it second occurs, insert “or, as the case may be, HIS”,
- (b) in subsection (4)(a) after “functions” insert “or, as the case may be, by HIS of its health service functions.”,
- (c) in subsection (6) after “Board” insert “or to HIS”,
- (d) in subsection (8)—
- (i) after “Board”, where it first occurs, insert “or to HIS”,
- (ii) after “subsection” insert “and HIS, when directions are so given to it”.
- 16 In section 85 (expenses of certain bodies)—

Status: This is the original version (as it was originally enacted).

- (a) in subsection (1), after paragraph (e) insert—
 - “(ea) HIS;”;
 - (b) after that subsection insert—
 - “(1A) The reference in subsection (1) to the functions of HIS is to be construed as a reference to that body’s health service functions only.”.
- 17 In section 85A (financial duties of bodies referred to in section 85)—
 - (a) after subsection (1) insert—
 - “(1A) References to “functions” in subsection (1) are, in the application of that subsection to HIS, to be construed as references to HIS’s health service functions only.”;
 - (b) in subsection (4)(a), after “Board” insert “, HIS”.
- 18 In section 85B (schemes for meeting losses and liabilities etc. of certain health service bodies)—
 - (a) in subsection (2), after paragraph (e) insert—
 - “(ea) HIS;”;
 - (b) after that subsection insert—
 - “(2A) The reference—
 - (a) in paragraph (a) of subsection (1) to property of HIS is to be construed as a reference to property held by HIS in connection with the exercise of its health service functions;
 - (b) in paragraph (b) of that subsection to the functions of HIS is to be construed as a reference to the health service functions of that body.”;
 - (c) in subsection (3)(a), after “Agency” insert “HIS”;
 - (d) in subsection (4)(b), after “Agency” insert “, HIS”.
- 19 In section 86 (accounts of Health Boards and the Agency)—
 - (a) in subsection (1)—
 - (i) after paragraph (b) insert—
 - “(ba) HIS;”;
 - (ii) after “them” insert “(in the case of HIS, in connection with the exercise of that body’s health service functions only)”;
 - (b) in each of subsections (3) and (4), for “and (b)” substitute “, (b) and (ba)”.
- 20 In section 87 (regulation of financial arrangements of Health Boards)—
 - (a) in subsection (1), after “Agency” insert “HIS”;
 - (b) after subsection (3) add—
 - “(4) In relation to HIS, the references—
 - (a) in subsection (1) to payments;
 - (b) in subsection (2) to arrangements and affairs; and
 - (c) in subsection (3) to affairs,are to be construed as references to payments, arrangements and affairs for or in connection with the exercise by HIS of its health service functions only.”.
- 21 In section 105 (orders, regulations and directions), in subsection (3)—

Status: This is the original version (as it was originally enacted).

- (a) after “under”, where it first occurs, insert “section 10O, section 10Z7 or”,
 - (b) after “under”, where it second occurs, insert “section 10G, 10Z16(3) or”.
- 22 In section 108 (interpretation and construction), after the definition of “health service hospital” insert—
- ““HIS” has the meaning indicated in section 10A;”.

National Health Service and Community Care Act 1990 (c. 19)

- 23 In the National Health Service and Community Care Act 1990, in subsection (7) of section 60 (removal of Crown immunity), after paragraph (b) insert—
- “(ba) Healthcare Improvement Scotland established under section 10A of that Act;”.

Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)

- 24 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (devolved public bodies)—
- (a) the entry relating to NHS Quality Improvement Scotland is repealed,
 - (b) at an appropriate place, in alphabetical order, insert—
- “Healthcare Improvement Scotland”.

Scottish Public Services Ombudsman Act 2002 (asp 11)

- 25 In Part 1 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (listed authorities), after paragraph 4(f) add—
- “(g) Healthcare Improvement Scotland”.

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4)

- 26 In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities), under the heading “National Health Service bodies”, at the appropriate place in alphabetical order, insert—
- “Healthcare Improvement Scotland”.

Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)

- 27 The Mental Health (Care and Treatment) (Scotland) Act 2003 is amended as follows.
- 28 In section 7 (duty to bring matters generally to the attention of Scottish Ministers and others), after paragraph (e) insert—
- “(ea) Healthcare Improvement Scotland;”.
- 29 In section 8(3) (duty to bring specific matters to the attention of Scottish Ministers and others etc), after paragraph (j) insert—
- “(ja) Healthcare Improvement Scotland;”.
- 30 In section 9(2) (duty to give advice), after paragraph (d) insert—
- “(da) Healthcare Improvement Scotland;”.
- 31 In section 17(2) (duties of Scottish Ministers, local authorities and others as respects Commission), after paragraph (h) insert—
- “(ha) Healthcare Improvement Scotland;”.

Status: This is the original version (as it was originally enacted).

- 32 In section 34(3) (inquiries under section 33: co-operation), after paragraph (b) insert—
“(ba) Healthcare Improvement Scotland;”.

Smoking, Health and Social Care (Scotland) Act 2005 (asp 13)

- 33 In section 30 of the Smoking, Health and Social Care (Scotland) Act 2005 (implementation of certain decisions under the Regulation of Care (Scotland) Act 2001), subsection (2) is repealed.

Human Tissue (Scotland) Act 2006 (asp 4)

- 34 In section 13 of the Human Tissue (Scotland) Act 2006 (preservation for transplantation), in subsection (5), in the definition of registered independent health care services, for the words from “section 2(5)” to the end of the definition substitute “section 10E of the National Health Service (Scotland) Act 1978 (c. 29) registered under section 10P of that Act;”.

Adult Support and Protection (Scotland) Act 2007 (asp 10)

- 35 In the Adult Support and Protection (Scotland) Act 2007—
(a) in section 5 (co-operation), in subsection (1), after paragraph (b) insert—
“(ba) Healthcare Improvement Scotland;”,
(b) in section 42 (Adult Protection Committees), in subsection (3), after paragraph (b) insert—
“(ba) Healthcare Improvement Scotland;”.

Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14)

- 36 In the Protection of Vulnerable Groups (Scotland) Act 2007—
(a) in section 8 (provision of prescribed information to the Scottish Ministers by certain persons)—
(i) in subsection (2), after the entry relating to the General Teaching Council for Scotland in the list of persons to whom the section applies insert—
“Healthcare Improvement Scotland”,
(ii) in subsection (3), after paragraph (a) insert—
“(aa) in relation to Healthcare Improvement Scotland, such functions as are conferred on it by virtue of the National Health Service (Scotland) Act 1978 (c. 29) and any other enactment;”,
(b) in section 19 (information held by public bodies etc.), in subsection (3), after the entry relating to Health Boards and Special Health Boards in the list of persons who may be required to provide information under subsection (1) (b) of that section insert—
“Healthcare Improvement Scotland”,
(c) in section 30 (notice of listing), in subsection (7), after the entry relating to the General Teaching Council for Scotland in the list of persons who are “relevant regulatory bodies” insert—
“Healthcare Improvement Scotland”,

Status: This is the original version (as it was originally enacted).

- (d) in section 94 (meaning of “protected adult”), in subsection (3), after paragraph (b) add—
 - “(c) paragraph (b)(iii) to (vi) of that subsection have the same meanings as in section 10F of the National Health Service (Scotland) Act 1978 (c. 29).”
- (e) in schedule 2 (regulated work with children), in paragraph 10, for “the 2001 Act” substitute “section 10F of the National Health Service (Scotland) Act 1978 (c. 29)”,
- (f) in schedule 3 (regulated work with adults), in paragraph 7—
 - (i) after “of”, where it second occurs, insert “section 10J or 10M of the National Health Service (Scotland) Act 1978 (c. 29) or”,
 - (ii) the words “; and “independent health care service”” are repealed,
 - (iii) at the end add “; and “independent health care service” has the same meaning as in section 10F of the National Health Service (Scotland) Act 1978.”
- (g) in the heading to that paragraph of schedule 3, after the word “Scotland” (inserted by schedule 14), add “and Healthcare Improvement Scotland”.

Public Health etc. (Scotland) Act 2008 (asp 5)

- 37 In the Public Health etc. (Scotland) Act 2008—
- (a) in section 6 (duty of health boards and local authorities to co-operate with certain persons), in subsection (2), after paragraph (d) insert—
 - “(da) Healthcare Improvement Scotland;”
 - (b) in section 117 (disclosure of information), in subsection (8), after paragraph (d) insert—
 - “(da) Healthcare Improvement Scotland;”

SCHEDULE 18

(introduced by section 111)

THE MENTAL WELFARE COMMISSION FOR SCOTLAND: MODIFICATIONS OF
 THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

- 1 In section 326(4)(a) of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), for “3(3)” substitute “2A(2) or 7A(4)”.
- 2 Schedule 1 to that Act is amended as follows.
- 3 Paragraphs 3, 4 and 5 are repealed.
- 4 After paragraph 2 insert—

“Membership

- 2A (1) The Commission is to consist of the following members—
 - (a) a person appointed by the Scottish Ministers to chair the Commission; and
 - (b) no fewer than 6 nor more than 8 other members appointed by the Scottish Ministers.

- (2) The Scottish Ministers may by order amend sub-paragraph (1)(b) by substituting for the minimum or maximum number of members for the time being specified there such other number as they think fit.
- 2B (1) In appointing members, the Scottish Ministers are to have regard to the desirability of including—
- (a) persons who have experience of, and have shown capacity and capability in, the provision of services to those who have a mental disorder;
 - (b) persons who use, or have used, such services;
 - (c) persons who are, or have been, carers of those who have a mental disorder;
 - (d) persons who have such other skills, knowledge or experience as the Scottish Ministers consider to be relevant in relation to the exercise of the Commission's functions.
- (2) In appointing members under paragraph 2A(1)(b), the Scottish Ministers must appoint at least—
- (a) one person who falls within paragraph (b) of sub-paragraph (1) of this paragraph; and
 - (b) one person who falls within paragraph (c) of sub-paragraph (1) of this paragraph.

Terms of appointment etc.

- 2C (1) Each member of the Commission is to be appointed for such period as the Scottish Ministers think fit.
- (2) A member—
- (a) holds and vacates office in accordance with the terms and conditions of appointment; but
 - (b) may, by written notice to the Scottish Ministers, resign office as a member.
- (3) A person is, on ceasing to be a member, eligible for reappointment.

Removal of members

- 2D The Scottish Ministers may, by written notice, remove a member from office if they are satisfied that—
- (a) the member—
 - (i) has been adjudged bankrupt;
 - (ii) has granted a trust deed for creditors or a composition contract;
 - (iii) has proposed a voluntary arrangement which has been approved;
 - (b) the member's estate has been sequestrated;
 - (c) the member has been absent from 3 consecutive meetings of the Commission without the permission of the Commission;
 - (d) the member is otherwise unfit or unable to discharge the functions of a member.

Status: This is the original version (as it was originally enacted).

Disqualification from membership

- 2E A person is disqualified from appointment, and from holding office, as a member of the Commission if that person is—
- (a) a member of the Scottish Parliament;
 - (b) a member of the House of Commons;
 - (c) a member of the European Parliament.”.

5 In paragraph 7—

- (a) in sub-paragraph (1), after “below” insert “and paragraph 10A”,
- (b) in sub-paragraph (1)(a), for “officer” substitute “executive”,
- (c) in sub-paragraph (3), for “officer” substitute “executive”,
- (d) in sub-paragraph (4), for “officer” substitute “executive”.

6 In the title to paragraph 7, for “officer” substitute “executive”.

7 After paragraph 7 insert—

“Commission Visitors

- 7A (1) The Commission must appoint such staff, employed under paragraph 7(1)(a) or (b), to exercise the functions of Commission Visitors; and when doing so those staff are to be known as Commission Visitors.
- (2) The Commission may arrange for such other persons as it thinks fit to be appointed as and exercise the functions of Commission Visitors; and when doing so those persons are to be known as Commission Visitors.
- (3) There may be no more than 10 Commission Visitors appointed by the Commission under sub-paragraph (2).
- (4) The Scottish Ministers may by order amend sub-paragraph (3) by substituting for the maximum number of Commission Visitors for the time being specified there such other number as they think fit.
- (5) In appointing Commission Visitors, the Commission is to have regard to the desirability of appointing—
- (a) persons who have experience of, and have shown capacity and capability in, the provision of services to those who have a mental disorder;
 - (b) persons who use, or have used, such services;
 - (c) persons who are, or have been, carers of those who have a mental disorder;
 - (d) persons who have such other skills, knowledge or experience as the Commission considers to be relevant in relation to the exercise of the functions of Commission Visitors.
- (6) In appointing Commission Visitors, the Commission must appoint at least—
- (a) one person who falls within paragraph (b) of sub-paragraph (5); and
 - (b) one person who falls within paragraph (c) of sub-paragraph (5).

Status: This is the original version (as it was originally enacted).

- (7) In this Act (unless the context otherwise requires), any reference to a function of a Commission Visitor (or the functions of Commission Visitors) is a reference to a function conferred by this Act or any other enactment.

Commission Visitors: further provision

- 7B (1) The arrangements entered into by virtue of paragraph 7A(2) may include provision with respect to the payment of remuneration and allowances to, or amounts in respect of, such persons.
- (2) Persons appointed as Commission Visitors by virtue of paragraph 7A(2) are not members of staff of the Commission.

Medical Visitors

- 7C (1) In appointing Commission Visitors, the Commission must appoint one or more persons who have such qualifications, training and experience as may be prescribed by regulations for the purposes of carrying out the functions of Commission Visitors under section 15 of this Act.
- (2) Persons so appointed may also be known as Medical Visitors.

Committees

- 7D (1) The Commission may establish committees for any purpose relating to its functions.
- (2) Subject to sub-paragraph (7), the Commission is to determine the composition of its committees.
- (3) The Commission may appoint persons who are not members of the Commission to be members of a committee.
- (4) A committee of the Commission is to comply with any directions given to it by the Commission.
- (5) The Commission must establish at least one committee (an “advisory committee”) for the purpose of giving advice to it about matters connected to its functions.
- (6) In considering how to exercise its functions, the Commission must have regard to relevant advice and information given to it by any advisory committee (whether or not given at its request).
- (7) An advisory committee must include persons of a description as may be prescribed by regulations.

Procedure and meetings

- 7E (1) The Commission may determine its own procedure and that of its committees, including a quorum for meetings.

Status: This is the original version (as it was originally enacted).

- (2) The validity of any proceedings of the Commission, or any of its committees, is not affected by a vacancy in membership nor by any defect in the appointment of a member.
- (3) Members of the Scottish Executive and persons authorised by the Scottish Ministers may attend and take part in meetings of the Commission or any of its committees, but are not entitled to vote at such meetings.

Exercise of certain functions etc.

- 7F
- (1) A member of the Commission may not—
 - (a) exercise the functions of a Commission Visitor;
 - (b) be appointed as a Commission Visitor.
 - (2) The chief executive may not be a member of the Commission.
 - (3) A member of staff of the Commission (other than a Commission Visitor) may not exercise the functions of a Commission Visitor.
 - (4) An appointment as a Commission Visitor under paragraph 7A(1) does not affect the appointed person's—
 - (a) status as employed under paragraph 7(1)(a) or (b); or
 - (b) ability to perform the duties of the person as so employed.

Delegation of functions

- 7G
- (1) The Commission may, subject to sub-paragraphs (2), (3) and (4), authorise—
 - (a) the chief executive;
 - (b) any other employee;
 - (c) any of its committees,
 to exercise such of its functions, and to such extent, as it may determine.
 - (2) The Commission may not authorise any of the following functions to be exercised by any other person—
 - (a) the functions of the Commission under section 12 (investigations: further provision);
 - (b) the approval of any acquisition or disposal of land or other property with a value greater than £50,000 or such other amount as the Commission may, with the consent of the Scottish Ministers, determine;
 - (c) the approval of annual reports and accounts;
 - (d) the approval of any budget or other financial plan.
 - (3) Any function conferred on a Commission Visitor may not be delegated by the Commission.
 - (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.
 - (5) The chief executive may, with the consent of the Commission, authorise—

Status: This is the original version (as it was originally enacted).

- (a) any other employee;
 - (b) any of the Commission’s committees,
- to exercise such of the chief executive’s functions, and to such extent, as the chief executive, with such consent, may determine.
- (6) Sub-paragraph (5) does not affect the responsibility of the chief executive for the exercise of the chief executive’s functions.

Mandatory delegation of functions to chief executive

- 7H (1) The Commission must delegate to the chief executive the functions mentioned in sub-paragraph (2).
- (2) The functions are—
- (a) the Commission’s functions relating to the discharge of patients under this Act;
 - (b) the Commission’s functions under section 73 of the [Adults with Incapacity \(Scotland\) Act 2000 \(asp 4\)](#).
- (3) When exercising those functions so delegated, the chief executive must—
- (a) consult the Commission;
 - (b) consult a Commission Visitor in every case in which it appears to the chief executive appropriate to do so;
 - (c) have regard to any relevant guidance issued by the Commission.
- (4) Sub-paragraph (1) does not affect the responsibility of the Commission for the exercise of its functions.

Location of office

7I The Commission’s determination of the location of its office premises is subject to the approval of the Scottish Ministers.”.

8 Paragraph 8 is repealed.

9 After paragraph 10 insert—

“Transitional provision: first chief executive

- 10A (1) The person who, immediately before the coming into force of this paragraph, holds (by virtue of paragraph 7) the post of chief officer of the Commission becomes the first chief executive of the Commission.
- (2) But if—
- (a) there is no person holding that post immediately before the coming into force of this paragraph; or
 - (b) the person holding the post immediately before the coming into force of this paragraph is unwilling or unable to be the chief executive,
- the Scottish Ministers are to make the first appointment of the chief executive of the Commission on such terms and conditions as the Scottish Ministers may determine.

Status: This is the original version (as it was originally enacted).

- (3) Each subsequent chief executive is appointed in accordance with paragraph 7.
- (4) Where sub-paragraph (1) applies, the person becoming the first chief executive of the Commission does so on the terms and conditions which applied to the post of chief officer held by that person.

Transitional provision: Commissioners

- 10B Any person who, immediately before the coming into force of this paragraph, is a member of the Commission (including any ex officio members) by virtue of paragraph 3 ceases automatically to hold office as such a member.”.

SCHEDULE 19

(introduced by section 112)

SCRUTINY FUNCTIONS: PERSONS ETC. SUBJECT TO USER FOCUS DUTY

Accounts Commission for Scotland
 Drinking Water Quality Regulator for Scotland
 Healthcare Improvement Scotland
 Her Majesty’s Chief Inspector of Constabulary and Her Majesty’s Inspectors of Constabulary appointed under section 33 of the Police (Scotland) Act 1967 (c. 77)
 Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5)
 Her Majesty’s Chief Inspector of Prisons for Scotland
 Her Majesty’s Chief Inspector of Prosecution in Scotland
 Her Majesty’s inspectors of schools (that is to say, the inspectors of schools appointed by Her Majesty under the Education (Scotland) Act 1980 (c. 44))
 Mental Welfare Commission for Scotland
 Office of the Scottish Charity Regulator
 Scottish Road Works Commissioner
 Social Care and Social Work Improvement Scotland

SCHEDULE 20

(introduced by section 114)

SCRUTINY FUNCTIONS: PERSONS ETC. SUBJECT TO DUTY OF CO-OPERATION

Accounts Commission for Scotland
 Healthcare Improvement Scotland
 Her Majesty’s Chief Inspector of Constabulary and Her Majesty’s Inspectors of Constabulary appointed under section 33 of the Police (Scotland) Act 1967 (c. 77)
 Her Majesty’s Chief Inspector of Fire and Rescue Authorities, Her Majesty’s Inspectors of Fire and Rescue Authorities and Assistant Inspectors of Fire and Rescue Authorities appointed under section 43 of the Fire (Scotland) Act 2005 (asp 5)
 Her Majesty’s Chief Inspector of Prisons for Scotland

Status: This is the original version (as it was originally enacted).

Her Majesty's Chief Inspector of Prosecution in Scotland
Her Majesty's inspectors of schools (that is to say, the inspectors of schools appointed by
Her Majesty under the Education (Scotland) Act 1980 (c. 44))
Mental Welfare Commission for Scotland
Social Care and Social Work Improvement Scotland