
Status: This is the original version (as it was originally enacted).

SCHEDULE 1

(introduced by section 1)

THE OFFICE OF SCOTTISH BIOMETRICS COMMISSIONER

Status

- 1 (1) The Commissioner—
 - (a) is not a servant or agent of the Crown, and
 - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) The Commissioner is, as Commissioner, to be regarded as a juristic person distinct from the individual for the time being holding the office.
- (3) The Commissioner's staff are not to be regarded as civil servants.

Appointment

- 2 (1) The office of Commissioner is to be held by an individual appointed by Her Majesty on the nomination of the Scottish Parliament.
- (2) An individual may not be appointed to hold the office of Commissioner if the individual is disqualified under paragraph 3.
- (3) An individual who holds or has held the office of Commissioner may not be reappointed.

Disqualification from appointment

- 3 An individual is disqualified from holding the office of Commissioner if the individual is or, within the year preceding the date on which the appointment is to take effect, has been—
 - (a) a member of the Scottish Parliament,
 - (b) a member of the House of Commons,
 - (c) a member of the House of Lords,
 - (d) a member of the European Parliament,
 - (e) a person who is, or who is a member, employee or appointee of, a person in relation to whom the Commissioner has functions under section 2(1).

Tenure

- 4 Subject to paragraph 5, the Commissioner holds office for such period, not exceeding 8 years, as the Parliamentary corporation determines at the time of appointment.

Early termination

- 5 (1) The Commissioner's appointment ends if—
 - (a) the Commissioner is relieved of office by Her Majesty at the Commissioner's request,
 - (b) the Commissioner becomes disqualified from holding office (see paragraph 3), or
 - (c) the Commissioner is removed from office in accordance with subparagraph (2).

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- (2) The Commissioner may be removed from office by Her Majesty if—
- (a) either of the conditions in sub-paragraph (3) is met, and
 - (b) the number of members voting in favour of the resolution referred to in the condition in question is at least two thirds of the total number of seats for members of the Scottish Parliament.
- (3) The conditions are—
- (a) that—
 - (i) the Parliamentary corporation is satisfied that the Commissioner has breached the Commissioner’s terms and conditions of appointment, and
 - (ii) the Parliament resolves that the Commissioner should be removed from office for that breach,
 - (b) the Parliament resolves that it has lost confidence in the Commissioner’s willingness, suitability or ability to perform the Commissioner’s functions.

Validity of things done

- 6 The validity of anything done by the Commissioner is not affected by—
- (a) a defect in the nomination of the Commissioner,
 - (b) the disqualification of an individual as the Commissioner after appointment.

Remuneration and pensions, etc.

- 7 (1) The Parliamentary corporation may pay the Commissioner such remuneration and allowances (including expenses) as the Parliamentary corporation determines.
- (2) The Parliamentary corporation must indemnify the Commissioner in respect of any liabilities incurred by the Commissioner in the exercise of the Commissioner’s functions.
- (3) The Parliamentary corporation may pay, or make arrangements for the payment of, such pensions, allowances and gratuities to, or in respect of, any individual who holds or has held the office of Commissioner as the Parliamentary corporation determines.
- (4) Those arrangements may include—
- (a) making payments towards the provision of those pensions, allowances and gratuities,
 - (b) providing and maintaining schemes for the payment of those pensions, allowances and gratuities.
- (5) The reference in sub-paragraph (3) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

Subsequent appointments etc.

- 8 (1) A person who has ceased to be the Commissioner may not, without the approval of the Parliamentary corporation—
- (a) be employed or appointed in any other capacity by the Commissioner,
 - (b) be a person who is, or who is a member, employee or appointee of, a person in relation to whom the Commissioner has functions under section 2(1),

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- (c) hold any other office, employment or appointment or engage in any other occupation which, by virtue of paragraph 9(2)(a), that person could not have held or engaged in when Commissioner.
- (2) The restriction in sub-paragraph (1)—
- (a) starts when the person ceases to be the Commissioner, and
 - (b) ends on the expiry of the financial year next following the one in which it started.

Other terms and conditions

- 9 (1) The Parliamentary corporation may, subject to any provision made by this Act, determine the terms and conditions on which the Commissioner is appointed.
- (2) Those terms and conditions may—
- (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,
 - (b) provide that the Commissioner’s holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.
- (3) In sub-paragraph (2)(a), “specified” means specified (by name or description) in the Commissioner’s terms and conditions.

Temporary appointments

- 10 (1) This paragraph applies during any period when—
- (a) the office of Commissioner is vacant, or
 - (b) the individual holding the office is for any reason unable to perform the Commissioner’s functions.
- (2) The Parliamentary corporation may appoint an individual to act as the Commissioner during that period.
- (3) An individual is eligible for appointment under sub-paragraph (2) only if the individual—
- (a) is a member of the Commissioner’s staff, or
 - (b) is not disqualified from holding the office of Commissioner under paragraph 3.
- (4) An individual appointed under sub-paragraph (2)—
- (a) is appointed on such terms and conditions, and for such period, as the Parliamentary corporation determines,
 - (b) while acting as Commissioner is to be treated as the Commissioner for all purposes except those of paragraphs 4, 5 and 7(3).
- (5) An appointment under sub-paragraph (2) ends if—
- (a) the individual is relieved of office by the Parliamentary corporation at the individual’s request, or
 - (b) the individual is removed from office by the Parliamentary corporation by notice in writing.

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Appointment of staff

- 11 The Commissioner may, with the consent of the Parliamentary corporation as to numbers, appoint staff.

Staff terms and conditions

- 12 Staff appointed by the Commissioner are appointed on such terms and conditions as the Commissioner, with the approval of the Parliamentary corporation, determines.

Staff pensions

- 13 (1) The Commissioner may, with the approval of the Parliamentary corporation, pay or make arrangements for the payment of pensions, allowances and gratuities to, or in respect of, any individual who is or has been a member of staff of the Commissioner.
- (2) Those arrangements may include—
- (a) making payments towards the provision of those pensions, allowances and gratuities,
 - (b) providing and maintaining schemes for the payment of those pensions, allowances and gratuities.
- (3) The reference in sub-paragraph (1) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

Authority to perform functions

- 14 (1) The Commissioner may authorise any person to perform such of the Commissioner’s functions (and to such extent) as the Commissioner determines.
- (2) The giving of authority under sub-paragraph (1) does not—
- (a) affect the Commissioner’s responsibility for the performance of the functions,
 - (b) prevent the Commissioner from performing the functions.

SCHEDULE 2

(introduced by section 39)

APPLICATION OF PUBLIC AUTHORITIES LEGISLATION

Scottish Public Services Ombudsman Act 2002

- 1 In Part 2 of schedule 2 of the Scottish Public Services Ombudsman Act 2002 (Scottish public authorities liable to investigation), before paragraph 37 insert—
- “36A The Scottish Biometrics Commissioner.”.

Freedom of Information (Scotland) Act 2002

- 2 In Part 7 of schedule 1 of the Freedom of Information (Scotland) Act 2002 (other Scottish public authorities to which the Act applies), after paragraph 79A insert—
- “79B The Scottish Biometrics Commissioner.”.

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Public Services Reform (Scotland) Act 2010

- 3 In the Public Services Reform (Scotland) Act 2010—
- (a) in schedule 5 (Scottish public authorities with mixed or no reserved functions to which Part 2 order-making powers apply), after the entry relating to the Scottish Agricultural Wages Board insert—
“Scottish Biometrics Commissioner”;
 - (b) in schedule 6 (bodies for which request and consent required for use of Part 2 order-making powers), after the entry relating to the Commissioner for Children and Young People in Scotland insert—
“Scottish Biometrics Commissioner”;
 - (c) in schedule 8 (bodies required to provide information on exercise of public functions), after the entry relating to the Scottish Agricultural Wages Board insert—
“Scottish Biometrics Commissioner”.

Public Records (Scotland) Act 2011

- 4 In the schedule of the Public Records (Scotland) Act 2011 (other authorities to which Part 1 applies), after the entry relating to the Scottish Agricultural Wages Board insert—
“Scottish Biometrics Commissioner”.

Procurement Reform (Scotland) Act 2014

- 5 In Part 3 of the schedule of the Procurement Reform (Scotland) Act 2014 (other contracting authorities to which the Act applies), before paragraph 44 insert—
“43A Scottish Biometrics Commissioner”.