Consultation on Proposal to Restructure the Commission for Ethical Standards in Public Life in Scotland:

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

Dear Consultee

PROPOSED RESTRUCTURE OF THE COMMISSION FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND

In accordance with section 26(1) of the Public Services Reform (Scotland) Act 2010, this letter invites your views on proposals to restructure the Commission for Ethical Standards in Public Life in Scotland by replacing the Commission with a single Commissioner, thereby ensuring that the functions of the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland are carried out by a single Commissioner. Details of the proposals are set out in the proposed draft Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013, and the accompanying proposed explanatory document, and Equality Impact Assessment. Copies of all three documents are enclosed. Information on how to respond to this consultation is set out in Annex 2 to this letter.

The proposals would give effect to a request by the Presiding Officer of the Scottish Parliament, on behalf of the Scottish Parliament Corporate Body, that the Scottish Ministers bring forward proposals to make provision by order under section 14 of the Public Services Reform (Scotland) Act 2010 to restructure the Commission for Ethical Standards in Public Life in Scotland (“the Commission”).

The proposed changes would replace the Commission with a single Commissioner, thereby ensuring that the functions of the Public Standards Commissioner for Scotland (which investigates complaints about MSPs, Councillors and members of public bodies) and the Public Appointment Commissioner for Scotland (which regulates how appointments are made to the boards of public bodies) are carried out instead by a single Commissioner. Provision contained in the draft order would, from 1 July 2013, establish a new office of the Commissioner for Ethical Standards in Public Life in Scotland to replace the Commission and its two existing members, the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.

The new Commissioner would take on the functions of the existing Commission and Commissioners and with no dilution in function. The current Public Standards Commissioner
for Scotland (and acting Public Appointments Commissioner for Scotland) would become the first Commissioner.

The proposed draft Order and proposed explanatory document have also been laid before the Scottish Parliament as part of this consultation (in accordance with section 26(2) of the Public Services Reform (Scotland) Act 2010.

Yours faithfully

COLIN MILLER
Head of Public Bodies Unit
Executive NDPBs

Accounts Commission for Scotland
Architecture and Design Scotland
Bòrd na Gàidhlig
Cairngorms National Park Authority
Care Inspectorate
Creative Scotland
Crofting Commission
Highlands and Islands Enterprise
Loch Lomond and The Trossachs National Park Authority
National Galleries of Scotland
National Library of Scotland
National Museums of Scotland
Police Complaints Commissioner for Scotland
Quality Meat Scotland
Risk Management Authority
Royal Botanic Garden, Edinburgh
Royal Commission on the Ancient and Historical Monuments of Scotland
Scottish Agricultural Wages Board
Scottish Children’s Reporter Administration
Scottish Criminal Cases Review Commission
Scottish Enterprise
Scottish Environment Protection Agency
Scottish Funding Council
Scottish Legal Aid Board
Scottish Legal Complaints Commission
Scottish Natural Heritage
Scottish Police Services Authority
Scottish Qualifications Authority
Scottish Social Services Council
Skills Development Scotland
Sportscotland
Visit Scotland
Water Industry Commission for Scotland

Non Ministerial Departments

Office of the Scottish Charity Regulator
Scottish Housing Regulator
Public Corporations
Caledonian Maritime Assets Ltd
David MacBrayne Ltd
Highlands and Islands Airports Ltd
Scottish Canals
Scottish Futures Trust
Scottish Water

Advisory NDPBs
Judicial Appointments Board for Scotland
Local Government Boundary Commission for Scotland
Mobility and Access Committee for Scotland
Public Transport Users Committee for Scotland
Scottish Advisory Committee on Distinction Awards
Scottish Law Commission
Scottish Local Authorities Remuneration Committee

Tribunal NDPB
Children’s Hearings Scotland

Health Bodies
Healthcare Improvement Scotland
Mental Welfare Commission for Scotland
NHS 24
NHS Boards (14 bodies)
NHS Education for Scotland
NHS Health Scotland Board
NHS National Services Scotland
National Waiting Times Centre Board
Scottish Ambulance Service Board
State Hospital Board for Scotland

Chair of the NHS Chairs Group
NHS Ayrshire and Arran
NHS Borders
NHS Dumfries and Galloway
NHS Forth Valley
NHS Fife
NHS Grampian
NHS Greater Glasgow
NHS Highland
NHS Lanarkshire
NHS Lothian
NHS Orkney
NHS Shetland
NHS Tayside
NHS Western Isles
Parliamentary Commissioners and Ombudsmen

Commission for Ethical Standards in Public Life in Scotland
Public Appointments Commissioner for Scotland
Public Standards Commissioner for Scotland
Scotland’s Commissioner for Children and Young People
Scottish Human Rights Commission
Scottish Information Commissioner
Scottish Public Services Ombudsman
Standards Commission for Scotland

Community Justice Authorities

Fife and Forth
Glasgow Community
Lanarkshire
Lothian and Borders
Northern
North Strathclyde
South West Scotland
Tayside

Transport Partnerships, Regional

Highland and Islands
North East of Scotland
Shetland
South East of Scotland
South West Scotland
Strathclyde Partnership
Tayside and Central

Further Education Colleges

Aberdeen College
Adam Smith College
Angus College
Anniesland College
Ayr College
Banff and Buchan College of Further Education
Cardonald College
Carnegie College
City of Glasgow
Clydebank College
Coatbridge College
Cumbernauld College
Dumfries and Galloway
Dundee College
Edinburgh College
Forth Valley College
Glasgow School of Art
Inverness College
James Watt College of Further Education
John Wheatley College
Kilmarnock College
Langside College
Lews Castle College
Moray College
Motherwell College
North Glasgow
North Highland College
Perth College
Reid Kerr College
Stow College
South Lanarkshire College West Lothian College
West Lothian College

Others

Clerk to the Subordinate Legislation Committee
CoSLA
Equality and Human Rights Commission Scotland
Scottish Local Authorities
Scottish MSPs
Scottish MEPs
Scottish Parliamentary Corporate Body
Standards, Procedure and Public Appointments Committee

Scottish Government Library
SPICe library (5 hard copies)

The National Library of Wales, Aberystwyth
The National Library of Scotland, Edinburgh
The Bodleian Library, University of Oxford
Cambridge University Library
The Library of Trinity College, Dublin
The British Library
PROPOSED RESTRUCTURE OF THE COMMISSION FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND

Responding to this consultation.

We are inviting responses to this consultation by 29 March 2013. Please send your response on the Respondent Information Form (see “Handling your Response” below) to:

The Public Bodies Unit mailbox publicbodiesunit@scotland.gsi.gov.uk

or by mail to:

Laura Mulheron
Public Bodies Unit
The Scottish Government
Area 3JSouth 13
Victoria Quay
Edinburgh
EH6 6QQ

If you have any queries please contact Laura Mulheron on 0131 244 0682.

We would be grateful if you would use the consultation questionnaire provided as part of the Respondent Information Form (Annex 3) because this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online at the consultation web pages of the Scottish Government website at http://www.scotland.gov.uk/consultations.

The Scottish Government has an email alert system for consultations, http://register.scotland.gov.uk. This system allows stakeholders, individuals and organisations to register and receive a weekly email containing details of all new consultations (including web links). It complements but in no way replaces Scottish Government distribution lists. It is designed to allow people to keep up to date with all Scottish Government consultation activity and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please ensure that you complete and return the Respondent Information Form as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore need to consider any requests made to it under the Act for information relating to this consultation exercise.
Next steps in the process

Where respondents have given permission for their response to be made public and after we have checked that they contain no politically defamatory material, responses will be made available to the public in the Scottish Government Library. These will be made available to the public by 1 April 2013. You can make arrangements to view responses by contacting the SG Library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision on the proposals to restructure the Commission for Ethical Standards in Public Life in Scotland, and to pursue the next stages in the legislative process.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted then please send them to:

Laura Mulheron
Public Bodies Unit
The Scottish Government
Area 3JS13
Victoria Quay
Edinburgh
EH6 6QQ

The Scottish Government Consultation Process

Consultation is an essential and important aspect of Scottish Government working methods. Given the wide-ranging areas of work of the Scottish Government, there are many varied types of consultation. However, in general, Scottish Government consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Government encourages consultation that is thorough, effective and appropriate to the issue under consideration and the nature of the target audience. Consultation exercises take account of a wide range of factors, and no two exercises are likely to be the same.

Typically Scottish Government consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the issue, and they are also placed on the Scottish Government web site enabling a wider audience to access the paper and submit their responses. Consultation exercises may also involve seeking views in a number of different ways, such as through public meetings, focus groups or questionnaire exercises. Copies of all the written responses received to a consultation exercise (except those where the individual or organisation requested confidentiality) are placed in the Scottish Government library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4565).
All Scottish Government consultation papers and related publications (eg, analysis of response reports) can be accessed at: Scottish Government consultations (http://www.scotland.gov.uk/consultations)

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process, along with a range of other available information and evidence. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

Final decisions on the issues under consideration will also take account of a range of other factors, including other available information and research evidence.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.
Annex 3

PROPOSED RESTRUCTURE OF THE COMMISSION FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND

RESPONDENT INFORMATION FORM

Please Note: this form must be returned with your response to ensure that we handle your response appropriately.

1. Name/Organisation

Organisation Name

Title  Mr  Ms  Mrs  Miss  Dr  Please tick as appropriate

Surname

Forename

2. Postal Address

Postcode  Phone  Email

3. Permissions - I am responding as...

Individual  /  Group/Organisation

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate  Yes  No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

Yes, make my response available, but not my name and address

Yes, make my response and name available, but not my address

(c) The name and address of your organisation will be made available to the public (in the Scottish Government library and/or on the Scottish Government web site). Are you content for your response to be made available?

Please tick as appropriate

Yes  No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate

Yes  No
CONSULTATION QUESTIONS

1. Do you agree with the proposal to replace the Commission for Ethical Standards in Public Life in Scotland with a single Commissioner, thereby ensuring that the functions of the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland are carried out instead by a single Commissioner?

Yes ☐ No ☐

Comments

2. Do you have any other comments about the proposed new arrangements for carrying out these functions?

Yes ☐ No ☐

Comments

Victoria Quay, Edinburgh EH6 6QQ
www.scotland.gov.uk
1 Introduction

1.1 In January 2012, the Presiding Officer of the Scottish Parliament, on behalf of the Scottish Parliamentary Corporate Body (SPCB), requested in writing that the Scottish Ministers bring forward proposals to make provision by order under section 14 of the Public Services Reform (Scotland) Act 2010 (“the Public Services Reform Act”) to restructure the Commission for Ethical Standards in Public Life in Scotland (“the Commission”) so as to improve the exercise of public functions.

1.2 The Scottish Ministers were requested to propose provision to replace the Commission (which comprises the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland) with a single Commissioner having responsibility for taking forward the functions of the former Commission and its two members. These functions include the investigation of complaints about MSPs, Councillors and members of public bodies and the regulation of public appointments.

1.3 Provision in the draft Order would, from 1st July 2013, establish a Commissioner for Ethical Standards in Public Life in Scotland (the “new Commissioner”) to replace the Commission and its two members. It would also confer on the new Commissioner functions equivalent to those of the former Commission and its two members. The current Public Standards Commissioner for Scotland (and acting Public Appointments Commissioner for Scotland) would be appointed as the first new Commissioner.

1.4 The SPCB would have broadly the same responsibilities in relation to the new Commissioner, as it did in relation to the former Commission and its two members. In particular, it would be responsible for making subsequent appointments to the new office, with the approval of the Scottish Parliament.

1.5 Provision contained in the draft Order is made under section 14 of the Public Services Reform Act and, in particular, subsections (1), (3)(a) and (c), (6)(b), (7) and (8).

2 Policy objectives

2.1 The purpose of the provision contained in the draft Order is to improve the exercise of public functions and, in particular, those of the Commission and the Commissioners, having regard to efficiency, effectiveness and economy.

2.2 The Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland (“the Commissioners”) both operate within a statutory framework which promotes ethical standards in public life in Scotland. There is considerable synergy between the Commissioners’ functions. Respective functions in relation to the enforcement of codes of conduct and codes of practice are similar, as are functions in relation to scrutiny and compliance.
2.3 The staff of the Commission who assist the Commissioners to perform their respective functions also work closely. In effect, however, the Commission has two chief executives. Bringing the functions together under a single Commissioner would increase the opportunity for efficiency and economy. It would also offer the prospect of a more effective public service, with a single access point for the public.

2.4 In particular, it is estimated that the proposed restructure would reduce costs by around £64,000 per annum. This is the projected annual amount of expenditure saved in respect of remuneration and other payments (including national insurance and pension contributions) by virtue of abolishing the position of Public Appointments Commissioner for Scotland. When the position of Public Standards Commissioner for Scotland is abolished on 1st July 2013, the person who held that position will instead become the first new Commissioner and will hold the new office till 31st March 2014.

2.5 The new Commissioner will receive remuneration equivalent to the amount that the post-holder received previously as the Public Standards Commissioner for Scotland. Savings will accrue from the amalgamation of the Public Appointment Commissioner’s post with the Public Standards Commissioner’s post. However, the new Commissioner will require some additional support, for example:

- the Senior Investigating Officer working an extra half-day per week,
- the Compliance Manager post re-graded from grade 4 to grade 5, and
- the 5 Investigation Officers working an extra 5 days each per annum.

2.6 Although the additional support might cost about £20,000 per annum, together these changes are likely to provide net savings of up to £44,000 per annum. It is anticipated that remuneration for the Commissioner payable in relation to the next appointment in 2014 will not be increased.

2.7 There are likely to be some small incidental costs arising from changes required to set up the new Commissioner’s website. However, there are no implications for information and communication systems or commercial contracts. The acronym of the new Commissioner will be the same as the predecessor body so no changes are expected to the logo. The cost of rebranding is estimated to be no more than a one off cost of £2,000 which will be met from within the new Commissioner’s overall budget.

2.8 The new Commissioner would be expected to perform the Commissioner’s functions without any detriment to levels or standards of service. The current Public Standards Commissioner (and acting Public Appointments Commissioner for Scotland) has been performing the role of the new Commissioner since June 2012 with the same support staff and with no apparent diminution of levels or standards of service.

3 Provision contained in the draft Order

3.1 The proposed draft Order would amend the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (“the Act”) to establish a new office of Commissioner for Ethical Standards in Public Life in Scotland. The new office would assume the functions of, and replace, the Commission for Ethical Standards in Public Life in Scotland and its two members: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland (the “former Commissioners”).
3.2 Article 3 would substitute a new provision for section 1 of the Act to establish the new Commissioner and set out the Commissioner’s functions. It would also give effect to Schedule 1 which modifies other provisions of the Act so that these apply in relation to the new Commissioner instead of the predecessor body and former Commissioners.

3.3 Schedule 1 would also make the following changes:

- paragraph 3 would substitute a new provision for section 3 of the Act to make it clear that the new Commissioner and members of the Commissioner's staff are not Crown servants or agents, and that holder of the office of Commissioner is to be treated as a separate legal entity, as distinct from the individual who holds it;

- paragraph 5 would substitute a new provision for section 5 of the Act to consolidate provisions which protected the Commission and former Commissioners from actions of defamation and apply it to the new Commissioner;

- paragraph 13 would adjust section 12 of the Act to enable the new Commissioner to do anything which appears necessary or expedient in relation to the performance or efficient administration of any of the new Commissioner’s functions.

3.4 Article 4 would transfer to the new Commissioner the functions of the former Commissioners, dissolve the Commission and abolish the former Commissioners. It would also give effect to Schedule 2 which modifies other enactments so that these apply in relation to the new Commissioner instead of the predecessor body and former Commissioners.

3.5 Paragraph 8(b) of Schedule 2 would also amend paragraph 7 of schedule 1 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 so that the Standards Commission for Scotland can only appoint such staff as it considers necessary to enable it to exercise its own functions (and not also those of the new Commissioner).

3.6 Article 5 and Schedule 3 would transfer to the new Commissioner, the staff, property and liabilities of the Commission and the Commissioners.

3.7 Article 6 and Schedule 4 would make transitional and savings provision.

4 **Why the conditions in section 16 of the Public Services Reform Act are satisfied**

4.1 With reference to provision contained in the draft Order, paragraphs 4.2 to 4.7 explain why the conditions in section 16(2) (where relevant) and 16(10) of the Public Services Reform (Scotland) Act 2010 are considered to be satisfied.

4.2 Subsection (2)(a) is satisfied because the provision will improve the exercise of public functions in relation to ethical standards in public life by conferring such functions on a single Commissioner, with anticipated savings of up to £44,000 per annum and an increased opportunity for realising further efficiency, effectiveness and economy. Provision contained in the draft Order to restructure the way in which these functions are delivered is therefore considered a proportionate means of achieving that policy.

4.3 Subsection (2)(b) is satisfied because the provision does not remove a necessary protection. In particular, the provision does not remove a protection specified in section 16(4) to (6) of the Public Services Reform Act. Even if a function of the Commission or former Commissioners were a protection, the provision would not
remove that protection (necessary or not) since it delivers the same or similar provision in an alternative way (section 16(7) of the Public Services Reform Act).

4.4 Subsection (2)(c) is satisfied because the function of the Standards Commission for Scotland modified by paragraph 8(b) of Schedule 2 will, as modified, remain broadly consistent with the general objects or purpose of that Commission.

4.5 Subsection (2)(d) is not relevant because no new functions are conferred on a person, body or office-holder listed in schedule 5 of the Public Services Reform Act.

4.6 Subsection (2)(e) is satisfied because the functions conferred on the new Commissioner are broadly consistent with the general objects or purposes of the Commission and former Commissioners which would be abolished by the draft Order.

4.7 Section 16(10) is satisfied because the provision does not merely restate an enactment.

5 Consultation

5.1 In addition to laying a copy of the proposed draft Order and this proposed explanatory document before the Scottish Parliament, the Scottish Government will, as part of its consultation arrangements, send a copy to the Commission and the Commissioners, the SPCB and any other organisations as appear to be representative of interests substantially affected by the proposals.

5.2 It is intended that the proposed draft Order and proposed explanatory document will also be published on the Scottish Government’s website and that a public consultation will take place from 19th January to 29th March 2013.

6 Impacts

6.1 Provision contained in the draft Order is not expected to have any significant financial or other impact on the Scottish Government, local government, business, charities or voluntary bodies. As indicated in paragraph 2.6, the provision is likely to provide net savings of up to £44,000 per annum.

Scottish Government
January 2013
The Scottish Ministers make the following Order in exercise of the powers conferred by section 14 of the Public Services Reform (Scotland) Act 2010(a) and all other powers enabling them to do so.

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

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

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

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

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

Citation and commencement

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

Interpretation

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

(a) 2010 asp 8.
(b) Section 25(2)(b)(i) and (c) has been modified by paragraph 5(2) of schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10).
Establishment of Commissioner for Ethical Standards in Public Life in Scotland etc.

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

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

(1) There is to be a Commissioner for Ethical Standards in Public Life in Scotland (the ‘‘Commissioner’’).

(2) The Commissioner is to be an individual appointed by the Parliamentary corporation with the agreement of the Parliament.

(3) The functions of the Commissioner are those conferred on the Commissioner by the following enactments—

(a) the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7),
(b) the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16), and
(c) the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”.

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

Transfer of functions to Commissioner

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

(a) the functions of the Public Standards Commissioner for Scotland under—

(i) the Ethical Standards in Public Life etc. (Scotland) Act 2000; and
(ii) the Scottish Parliamentary Standards Commissioner Act 2002; and

(b) the functions of the Public Appointments Commissioner for Scotland under the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

(2) Accordingly—

(a) the Commission for Ethical Standards in Public Life in Scotland is dissolved; and
(b) the following offices are abolished—

(i) the Public Appointments Commissioner for Scotland; and
(ii) the Public Standards Commissioner for Scotland; and

(c) the modifications to enactments in Schedule 2 have effect.

Transfer of staff, property and liabilities

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

Transitional and savings provision

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

Name
A member of the Scottish Government

St Andrew’s House,
Edinburgh
Date
SCHEDULE 1
Modifications to the Act

1. The Act is amended in accordance with this Schedule.

2. Omit section 2 (functions of the Commissioners) and schedule 1 (consequential amendments).

3. For section 3 (status of Commission and Commissioners) substitute—

“3 Status of Commissioner and Commissioner’s staff
(1) Neither the Commissioner nor any member of the Commissioner’s staff—
   (a) is a servant or agent of the Crown,
   (b) has any status, immunity or privilege of the Crown.
(2) The Commissioner’s property is not to be regarded as property of, or property held on behalf of, the Crown.
(3) The Commissioner is, as such, to be regarded as a juristic person distinct from the natural person holding the office.”.

4. In section 4 (independence of Commissioners)—
   (a) for “their respective functions, the Commissioners are” substitute “the Commissioner’s functions, the Commissioner is”;
   (b) in paragraph (b), for “Executive” substitute “Government”; and
   (c) in the title, for “Commissioners” substitute “Commissioner”.

5. For section 5 (protection of Commission from actions for defamation) substitute—

“5 Protection from actions for defamation
(1) For the purposes of the law of defamation—
   (a) any statement made by the Commissioner or a member of the Commissioner’s staff in pursuance of the Commissioner’s functions under the Ethical Standards Act is absolutely privileged,
   (b) any statement made by the Commissioner or a member of the Commissioner’s staff in pursuance of the Commissioner’s other functions has qualified privilege, and
   (c) any statement made to the Commissioner or any member of the Commissioner’s staff in pursuance of the purposes of the Ethical Standards Act, the Parliamentary Standards Act or the Public Appointments Act has qualified privilege.
(2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31).”.

6. Omit section 6 (designation of Chief Commissioner).

7. In section 7 (appointment of acting Commissioner)—
   (a) in subsection (1), for “a” in the first two places it occurs, substitute “the”;
   (b) omit subsection (3);
   (c) in subsection (4), for “a” in the second place it occurs, substitute “the”;
   (d) in subsection (5) for “Commission’s” substitute “Commissioner’s”;
   (e) omit subsection (6); and
   (f) in subsection (7)(d) omit “in respect of whom the acting Commissioner was appointed”.

3
8. For the cross-heading immediately before section 1 (establishment, members and functions of the Commission for Ethical Standards in Public Life in Scotland) substitute—

“The Commissioner”.

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

(a) for “a Commissioner” substitute “the Commissioner”; and

(b) in paragraph (f), for “Commission” substitute “Commissioner”.

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

(a) in subsections (1) and (5), for “Each” substitute “The”;

(b) in subsections (2) and (3), for “A” substitute “The”;

(c) in subsection (6), for “each” substitute “the”; and

(d) in subsection (9), for “a” substitute “the”.

11. In section 10(1) (pensions etc.)—

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

(b) for “a” substitute “the”.

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

(a) in subsection (1)—

(i) for “a Commissioner” substitute “the Commissioner”;

(ii) in paragraph (a), for “Commission” substitute “Commissioner”; and

(iii) in paragraph (e), for “a” substitute “the”;

(b) in subsection (2)(a), for “a” substitute “the”.

13. In section 12 (general powers)—

(a) in subsection (1)—

(i) for “Commission” substitute “Commissioner”; and

(ii) for “its” in both places it occurs, substitute “the Commissioner’s”;

(b) in subsection (2), for “Commission” substitute “Commissioner”;

(c) in subsection (4)—

(i) for “Commission” substitute “Commissioner”; and

(ii) from “it” to the end, substitute “, or on behalf of, the Commissioner in the performance of, or in connection with, the Commissioner’s functions.”; and

(d) in subsection (5)—

(i) for “Commission” substitute “Commissioner”; and

(ii) omit “by it”.

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

(a) for “Commission” substitute “Commissioner”; and

(b) for “it” substitute “the Commissioner”.

15. In section 14 (strategic plans)—

(a) in subsection (1)—

(i) for “Commission” in the first place it occurs, substitute “Commissioner”; and

(ii) for “Commission and each Commissioner propose to perform their respective” substitute “Commissioner proposes to perform the Commissioner’s”;

(b) in subsection (2)—
(i) in paragraph (a), omit “Commission’s and each”; and
(ii) in paragraph (b), for “Commission and each Commissioner propose” substitute “Commissioner proposes”;
(c) in subsection (3)—
   (i) for “Commission” in the first place it occurs, substitute “Commissioner”; and
   (ii) in paragraph (b), for “Commission think” substitute “Commissioner thinks”; and
(d) in subsections (5), (6) and (7), for “Commission” substitute “Commissioner”.

16. In section 15 (procedure and validity of acts)—
   (a) omit subsections (1), (2) and (4);
   (b) in subsection (3), for “a” in both places it occurs, substitute “the”; and
   (c) in the title, for “Procedure and validity” substitute “Validity”.

17. In section 16 (delegation)—
   (a) omit subsections (1) and (2);
   (b) in subsection (3)—
      (i) for “a Commissioner” substitute “the Commissioner”; and
      (ii) omit “the other Commissioner or”; and
      (iii) for “Commission’s” substitute “Commissioner’s”; and
   (c) in subsection (4)—
      (i) for “either of the Commissioners” substitute “the Commissioner”; and
      (ii) for “that” substitute “the”.

18. In the cross-heading immediately before section 12 (general powers), for “Commission” substitute “Commissioner”.

19. In section 17 (staff)—
   (a) in subsection (1)—
      (i) for “Commission” substitute “Commissioner”; and
      (ii) omit “, for the purposes of section 1(7),”; and
      (iii) for “it” substitute “the Commissioner”; and
   (b) in subsection (2)—
      (i) for “Commission” substitute “Commissioner”; and
      (ii) for “its” substitute “the Commissioner’s”.

20. In section 18 (advisors, assessors and other services)—
   (a) in subsection (1)—
      (i) for “Commission may obtain for itself or for a Commissioner” substitute “Commissioner may obtain”; and
      (ii) for “Commission” in the second place it occurs, substitute “Commissioner”; and
   (b) in subsection (2)—
      (i) for “Commission” substitute “Commissioner”; and
      (ii) for “it” substitute “the Commissioner”.

21. In section 19 (accountable officer)—
   (a) in subsection (1)—
      (i) for “a Commissioner” substitute “the Commissioner”; and
      (ii) for “Commission’s” substitute “Commissioner’s”;

     5
(b) in subsection (2), for “Commission” in the three places it occurs, substitute “Commissioner”; and
(c) in subsection (3)—
   (i) after “officer” in the first place it occurs, insert “is not the Commissioner and”; and
   (ii) in paragraph (a), for “Commission” substitute “Commissioner”.

22. In section 20 (budget)—
   (a) in subsection (1)—
      (i) for “Commission” substitute “Commissioner”; and
      (ii) for “its” substitute “the Commissioner’s”; and
   (b) in subsections (2), (3) and (4), for “Commission” in the four places it occurs, substitute “Commissioner”.

23. In section 21 (funding)—
   (a) in subsection (1)(a), for “each” substitute “the”;  
   (b) in subsection (1)(b)—
      (i) for “Commission” substitute “Commissioner”;  
      (ii) for “its” substitute “the Commissioner’s”; and
      (iii) for “it” substitute “the Commissioner”; 
   (c) in subsection (1)(c)—
      (i) omit “Commission and each”; 
      (ii) for “it or, as the case may be, that” substitute “the”; and
      (iii) for “its or, as the case may be, that” substitute “the”; and
   (d) in subsection (2), for “Commission” substitute “Commissioner”.

24. In section 22 (accounts and audit), for “Commission” in both places it occurs, substitute “Commissioner”.

25. In section 23 (location of office)—
   (a) for “Commission” substitute “Commissioner”; and
   (b) for “Commission’s” substitute “Commissioner’s”.

26. In section 24 (sharing of premises, staff, services and other resources), for “Commission” substitute “Commissioner”.

27. In section 25 (annual reports)—
   (a) in subsection (1)—
      (i) for “Commission” in the first place it occurs, substitute “Commissioner”;  
      (ii) for “by the Commission and each of the Commissioners of their respective” substitute “of the Commissioner’s”;  
   (b) in subsection (2)—
      (i) for “functions of the Public Standards Commissioner for Scotland” substitute “Commissioner’s functions under the Ethical Standards Act and the Parliamentary Standards Act”; and
      (ii) in paragraph (a), for “that” substitute “the”; 
   (c) in subsection (3)—
      (i) for “functions of the Public Appointments Commissioner for Scotland” substitute “Commissioner’s functions under the Public Appointments Act”; and
      (ii) in paragraph (b), for “that” substitute “the”; 
   (d) omit subsection (4); and
(e) in subsections (6) and (7), for “Commission” substitute “Commissioner”.

28. Omit section 26 (Commission and Commissioners to be subject to investigations by Scottish Public Services Ombudsman).

29. Omit section 27 (Commission and Public Appointments Commissioner for Scotland to be subject to Freedom of Information (Scotland) Act).

30. In section 28 (interpretation of Part 1)—
   (a) omit the definition of “Commission”;
   (b) for the definition of “Commissioner” substitute—
       ““Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland,
       “the Ethical Standards Act” means the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7),”;
       and
   (c) after the definition of “Parliamentary corporation” insert—
       ““the Parliamentary Standards Act” means the Scottish Parliamentary Standards Commissioner Act 2002 (asp 16),
       “the Public Appointments Act” means the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”.

31. For the heading to Part 1 substitute—
    “THE COMMISSIONER FOR ETHICAL STANDARDS IN PUBLIC LIFE IN SCOTLAND”.

32. In section 29 (standardising and other enactments)—
   (a) omit subsection (7); and
   (b) after subsection (11) insert—
       “(12) In this section, “the Ethical Standards Act”, “the Parliamentary Standards Act” and “the Public Appointments Act” have the same meanings given by section 28.”.

33. Omit section 30 (interpretation).
SCHEDULE 2  
Article 4(2)(c)  
Modifications to other enactments

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

1. The Ethical Standards in Public Life etc. (Scotland) Act 2000(a) is amended in accordance with paragraphs 2 to 8.

2. In section 9 (Public Standards Commissioner for Scotland to investigate breaches of codes)—
   (a) for “Public Standards Commissioner for Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”; and
   (b) in the title for “Public Standards Commissioner for Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”.

3. In the titles to section 10 and 11, for “Public Standards Commissioner” substitute “Commissioner for Ethical Standards in Public Life”.

4. In section 12 (conduct of Public Standards Commissioner’s investigations)—
   (a) omit subsection (4); and
   (b) in the title, omit “Public Standards”.

5. In the titles to section 13 and 14, omit “Public Standards”.

6. Omit section 27 (protection from actions of defamation).

7. In section 28(1) (definitions), for the definition of “Commissioner” substitute—
   ““Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland;”.

8. In schedule 1 (the Standards Commission for Scotland)—
   (a) in paragraph 5A(1)(b), for the words from “be a member” to “in Scotland” substitute “be, or be an employee or appointee of, the Commissioner”; and
   (b) in paragraph 7(1), from “and the Commissioner” to the end, substitute “to exercise its functions.”.

The Scottish Public Services Ombudsman Act 2002

9. In the Scottish Public Services Ombudsman Act 2002(b), in schedule 2 (listed authorities)—
   (a) for paragraph 21ZA substitute—
       “21ZA The Commissioner for Ethical Standards in Public Life in Scotland in the performance of the Commissioner’s functions under the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) and the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”; and
   (b) omit paragraphs 32B and 32C.

---

(a) 2000 asp 7. Sections 9 to 14, 27 and 28 and paragraphs 5A and 7 of schedule 1 to the Act were relevantly amended by sections 2(5) and 29(2) of, and paragraphs 1, 7(a) and 9 of schedule 1 and paragraph 3 of schedule 2 to, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).

(b) 2002 asp 11. Paragraphs 21ZA, 32B and 32C were inserted by section 26 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).
The Freedom of Information (Scotland) Act 2002

10. In the Freedom of Information (Scotland) Act 2002(a), in schedule 1 (Scottish public authorities)—
   (a) for paragraph 62ZZA substitute—
      “62ZZA The Commissioner for Ethical Standards in Public Life in Scotland in the performance of the Commissioner’s functions under the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (asp 4).”; and
   (b) omit paragraph 75ZA.

The Scottish Parliamentary Standards Commissioner Act 2002

11. The Scottish Parliamentary Standards Commissioner Act 2002(b) is amended in accordance with paragraphs 12 to 15.

12. In section 3(1) (functions of the Commissioner), for “Public Standards Commissioner for Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”.

13. In section 16 (restriction upon disclosure of information)—
   (a) in subsection (1), for “Commission for Ethical Standards in Public Life in Scotland (the “Commission”)” substitute “Commissioner”; and
   (b) in subsection (2)(a)—
      (i) omit “or Commission”; and
      (ii) omit “or, as the case may be, Commission”.

14. Omit section 17 (protection from actions of defamation).

15. In section 20 (interpretation), for the definition of “Commissioner” substitute—
      ““Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland;”.

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

16. In the Public Appointments and Public Bodies etc. (Scotland) Act 2003(c)—
   (a) in section 2(1) (the Commissioner’s functions), for “Public Appointments Commissioner for Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”; and
   (b) in section 20 (interpretation), for the definition of “the Commissioner” substitute—
      ““Commissioner” means the Commissioner for Ethical Standards in Public Life in Scotland;”.

The Public Services Reform (Scotland) Act 2010

17. In the Public Services Reform (Scotland) Act 2010(d), in schedule 5 (improvement of public functions: listed bodies), schedule 6 (Part 2 order-making powers (request and consent): listed bodies) and schedule 8 (information on the exercise of listed bodies: listed public bodies)—

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(a) 2002 asp 13. Paragraphs 62ZZA and 75ZA were inserted by section 27 of the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).
(b) 2002 asp 16. Sections 3(1), 16, 17 and 20 were relevantly amended by sections 2(5) and 29(7) of, and paragraphs 12, 13 and 14(b) of schedule 1 to, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).
(c) 2003 asp 4. Sections 2(1) and 20 were relevantly amended by section 2(5) of, and paragraphs 16 and 17 of schedule 1 to, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).
(d) 2010 asp 8. Schedules 5, 6 and 8 were relevantly amended by section 2(5) of, and paragraphs 20(a) and (b), 21(a) and (b) and 22(b) and (c) of schedule 1 to, the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (asp 11).
(a) for the entry “Commission for Ethical Standards in Public Life in Scotland” in each schedule, substitute “Commissioner for Ethical Standards in Public Life in Scotland”; 
(b) omit the entry “Public Appointments Commissioner for Scotland” in each schedule; and 
(c) omit the entry “Public Standards Commissioner for Scotland” in each schedule.

The Public Records (Scotland) Act 2011

18. In the Public Records (Scotland) Act 2011(a), in the schedule (authorities to which Part 1 applies)—

(a) for the entry “Commission for Ethical Standards in Public Life in Scotland” substitute “Commissioner for Ethical Standards in Public Life in Scotland”; 
(b) omit the entry relating to the Public Appointments Commissioner for Scotland; and 
(c) omit the entry relating to the Public Standards Commissioner for Scotland.

The Public Services Reform (General Teaching Council for Scotland) Order 2011

19. In the Public Services Reform (General Teaching Council for Scotland) Order 2011(b), in paragraph 4(c)(ii) of Schedule 2 (GTCS membership), for “Commission” substitute “Commissioner”.

(a) 2011 asp 12. There are amendments to schedule 1 of the Act which are not relevant for the purposes of this Order. 
(b) S.S.I. 2011/215.
SCHEDULE 3  
Article 5  

Transfer of staff, property and liabilities  

Staff  

1.—(1) On the coming into force of this Order, each person who was, immediately before then,  
a member of the staff of the Commission for Ethical Standards in Public Life in Scotland (“the  
Commission”) transfers to and becomes a member of the staff of the Commissioner for Ethical  
Standards in Public Life in Scotland (“the Commissioner”).  

(2) The contract of employment of a person who becomes a member of staff of the  
Commissioner by virtue of sub-paragraph (1)—  

(a) is not terminated by the transfer; and  

(b) has effect from the coming into force of this Order as if originally made between the  
person and the Commissioner.  

(3) Without prejudice to sub-paragraph (2)—  

(a) all the previous employer’s rights, powers, duties and liabilities under or in connection  
with the person’s contract of employment are, on the coming into force of this Order,  
transferred to the Commissioner; and  

(b) anything done by the Commission before then in respect of that contract or that person is  
to be treated from then as having been done by the Commissioner.  

(4) This paragraph does not prejudice any right of any person to terminate that person’s contract  
of employment if the terms and conditions of employment are changed substantially to the  
detriment of that person, but a change is not to be taken to have occurred by reason only that the  
identity of the person’s employer changes by virtue of this paragraph.  

Property and liabilities  

2.—(1) On the coming into force of this Order, all property (including rights) to which,  
immediately before then, a previous body or officeholder was entitled and liabilities to which,  
immediately before then, a previous body or officeholder was subject transfer to and vest in the  
Commissioner for Ethical Standards in Public Life in Scotland.  

(2) Sub-paragraph (1) has effect in relation to the property (including rights) and liabilities  
referred to in it despite any provision (of whatever nature) which would otherwise prevent,  
penalise or restrict their transfer.  

(3) In sub-paragraph (1), a “previous body or officeholder” means the Public Standards  
Commissioner for Scotland, the Public Appointments Commissioner for Scotland or, as the case  
may be, the Commission for Ethical Standards in Public Life in Scotland.
SCHEDULE 4

Transitional and savings provisions

First appointment to the office of Commissioner

1.—(1) The person who, immediately before this Order comes into force, holds office as the Public Standards Commissioner for Scotland is, by operation of this sub-paragraph (and not section 1(2) of the Act) appointed as the Commissioner for Ethical Standards in Public Life in Scotland on the coming into force of this Order.

(2) An appointment under sub-paragraph (1) is for a period equal to that for which the person was appointed as the Public Standards Commissioner for Scotland reduced by the time for which the person held that office.

Persons appointed by the Commissioner to provide advice, assistance or any other service

2. An appointment made, or regarded as having been made, by the Commission for Ethical Standards in Public Life in Scotland under section 18 (advisers, assessors and other services) of the Act that is current immediately before this Order comes into force is to be regarded as having been made under that section by the Commissioner for Ethical Standards in Public Life in Scotland on the same terms and conditions and with the approval referred to in subsection (3) of that section.

Undetermined processes

3.—(1) When this Order comes into force, anything done or being done by or in relation to—

(a) the Public Standards Commissioner for Scotland under—

(i) the Ethical Standards in Public Life etc. (Scotland) Act 2000(a); or

(ii) the Scottish Parliamentary Standards Commissioner Act 2002(b);

(b) the Public Appointments Commissioner for Scotland under the Public Appointments and Public Bodies etc. (Scotland) Act 2003(c); or

(c) the Commission for Ethical Standards in Public Life in Scotland under the Act,

is to be regarded, for the purposes set out in sub-paragraph (2), as done or being done by or in relation to the Commissioner for Ethical Standards in Public Life in Scotland.

(2) Those purposes are the continuation of any process under one of those Acts begun but not determined or completed when this Order comes into force.

New Commissioner’s first budget

4.—(1) Section 20(1) (budget) of the Act applies in respect of the financial year ending with 31st March 2014 with the modification set out in sub-paragraph (2).

(2) For “before the start of each financial year” there is substituted “as soon as possible after the start of the financial year ending with 31st March 2014 and, in any event, before 30th September 2013”.

(a) 2000 asp 7.
(b) 2002 asp 16.
(c) 2003 asp 4.
Laying of Commission’s last annual report

5. If, when this Order comes into force, a report for the year beginning 1st April 2012 has not yet been laid before Parliament by the Commission for Ethical Standards in Public Life in Scotland in accordance with section 25 (annual reports) of the Act, the report must instead be laid by the Commissioner for Ethical Standards in Public Life in Scotland before 1st November 2013.

New Commissioner’s first annual report

6.—(1) Section 25 (annual reports) of the Act applies in respect of the report for the year beginning 1st April 2013 as if the amendments in paragraph 27(a)(ii), (b), (c) and (d) of Schedule 1 did not apply in relation to the period beginning 1st April 2013 and ending with 30th June 2013.

(2) Accordingly, the report to be laid by the Commissioner for Ethical Standards in Public Life in Scotland for the year beginning 1st April 2013 must also report on the performance by the Commission for Ethical Standards in Public Life in Scotland and each of its Commissioners of their respective functions during the period beginning 1st April 2013 and ending with 30th June 2013.
EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Scottish Parliamentary Commissions and Commissioners etc. Act 2010 (“the Act”) to establish a new office of Commissioner for Ethical Standards in Public Life in Scotland. The new office assumes the functions of, and replaces, the Commission for Ethical Standards in Public Life in Scotland and its two members: the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland (the “former Commissioners”).

Article 3 replaces section 1 of the Act to establish the new office of Commissioner. Schedule 1 modifies other provisions of the Act so that these apply instead to the new Commissioner.

The person who holds the office of Public Standards Commissioner for Scotland immediately before this Order comes into force is appointed instead as the first new Commissioner (Schedule 4, paragraph 1). The Scottish Parliamentary Corporate Body (“the SPCB”) is responsible for making subsequent appointments to the new office with the agreement of the Parliament.

Article 4 transfers to the new Commissioner the functions of the former Commissioners. It also dissolves the Commission and abolishes the former Commissioners. Schedule 2 makes consequential modifications to other enactments.

Other matters for which the new Commissioner assumes responsibility include—

- the power to pay witnesses’ expenses (section 13 of the Act);
- the duty to lay strategic plans before Parliament every 4 years (section 14 of the Act);
- the power to delegate (section 16 of the Act);
- the power to appoint staff (section 17 of the Act);
- the power to obtain advice, assistance or other services (section 18 of the Act);
- the duty to send budget proposals to the SPCB for approval (section 20 of the Act);
- the duty to keep proper accounts and prepare annual accounts (section 22 of the Act);
- the duty to lay an annual report before Parliament and publish it (section 25 of the Act).

Section 12 (general powers) of the Act is adjusted to enable the Commissioner to do anything which appears necessary or expedient in relation to the performance or efficient administration of any of the Commissioner’s functions (and not just those of the former Commission).

Section 8 (disqualification), section 9 (terms of office and remuneration) and section 11 (subsequent appointments etc. of former Commissioner) of the Act are also adjusted so that these apply instead to the new office of Commissioner.

Section 10 (pensions, etc.) of the Act is adjusted so that the SPCB assumes responsibility for making arrangements for the payment of pensions etc. to former Commissioners.

Section 21 (funding) of the Act is adjusted so that the SPCB becomes responsible for paying the remuneration and allowances of the Commissioner and any expenses properly incurred in the performance of the Commissioner’s functions. In addition, it requires the SPCB to indemnify the Commissioner in respect of any liabilities incurred in performing those functions.

Section 23 (location of office) and section 24 (sharing of premises, staff, services and other resources) of the Act are adjusted so that the Commissioner must comply with any direction given by the SPCB as to those matters.

Article 4 and Schedule 3 make provision for the transfer of staff, property and liabilities.

Article 5 and Schedule 4 make transitional and savings provision.
EQUALITY IMPACT ASSESSMENT RECORD

<table>
<thead>
<tr>
<th>Title of policy/practice/ strategy/ legislation etc</th>
<th>The Public Service Reform (Commissioner for Ethical Standards in Public Life in Scotland) Order 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister</td>
<td>Mr Swinney</td>
</tr>
<tr>
<td>Lead official</td>
<td>Lorna Malcolm, Public Bodies Unit</td>
</tr>
<tr>
<td>Officials involved in the EQIA</td>
<td>name</td>
</tr>
<tr>
<td></td>
<td>team</td>
</tr>
<tr>
<td></td>
<td>Colin Miller</td>
</tr>
<tr>
<td></td>
<td>Public Bodies Unit</td>
</tr>
<tr>
<td>Directorate: Division: team</td>
<td>Governance and Communities, Public Bodies and Public Services Reform Division, Public Bodies Unit</td>
</tr>
<tr>
<td>Is this new or revision to an existing policy?</td>
<td>This is a structural rather than a policy change: the functions will remain the same.</td>
</tr>
</tbody>
</table>

Screening

Policy Aim

Describe in this paragraph what the purpose of your policy/strategy/plan is and its desired outcomes and to which National Outcome(s) it contributes.

The proposal would restructure the Commission for Ethical Standards in Public Life in Scotland by replacing the Commission with a single Commissioner, thereby merging the functions of the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland. Details of the proposals are set out in the proposed draft Public Services Reform (Commissioner for Ethical Standards in Public Life in Scotland etc.) Order 2013, and the accompanying proposed explanatory document.

The proposals would give effect to a request by the Presiding Officer of the Scottish Parliament, on behalf of the Scottish Parliament Corporate Body, that the Scottish Ministers bring forward proposals to make provision by order under section 14 of the Public Services Reform (Scotland) Act 2010 to restructure the Commission for Ethical Standards in Public Life in Scotland (“the Commission”).
The proposed changes would replace the Commission with a single Commissioner, thereby ensuring that the functions of the Public Standards Commissioner for Scotland (which investigates complaints about MSPs, Councillors and members of public bodies) and the Public Appointment Commissioner for Scotland (which regulates how appointments are made to the boards of public bodies) are carried out instead by a single Commissioner. Provision contained in the draft order would, from 1 July 2013, establish a new office of the Commissioner for Ethical Standards in Public Life in Scotland to replace the Commission and its two existing members, the Public Standards Commissioner for Scotland and the Public Appointments Commissioner for Scotland.

The new Commissioner would take on the functions of the existing Commission and Commissioners and with no dilution in function. The current Public Standards Commissioner for Scotland (and acting Public Appointments Commissioner for Scotland) would become the first Commissioner.

The changes contribute to National Outcome 16: Our public services are high quality, continually improving, efficient and responsive to local people’s needs.

**Who will it affect?**

Reflect here on how the policy – and the changes it will make in the world - might or will have an impact on people. Include how people – and different groups of people and/or communities - might be affected by this policy, directly or indirectly and who might benefit from the policy and in what ways.

The structural changes proposed are consistent with the Government’s continuing commitment to streamlining the public sector landscape. Both Commissioners’ posts operate within the statutory framework for the promotion of ethical standards in public life in Scotland, and their functions in relation to the regulation of the Codes of Conduct and Code of Practice for Public Appointments have a ready synergy. Their responsibilities in relation to scrutiny and compliance are also very similar as are their operational structures and methods of working. The current model is effectively that of an organisation with two Chief Executives, albeit with their own statutory functions and responsibilities. Staff in both offices are already working closely but the change to a single Commissioner would increase the opportunity for greater flexibility with the prospect of increasing efficiencies. This synergy would be enhanced by bringing the offices together and providing a wholly cohesive public service, effectively a single access point for the public and other stakeholders.

In summary, the changes are designed to promote efficiency effectiveness and economy.
What might prevent the desired outcomes being achieved?

Set out here any factors that might prevent the desired outcomes being achieved.

The proposed structural changes are subject to legislative procedure under section 14 of the Public Services Reform (Scotland) Act 2010, which requires full consultation with such organisations and other persons affected by the proposal, and affirmative procedure.
Stage 1: Framing

Results of framing exercise

Set out here a summary of the initial findings of your framing exercise which helped identify existing evidence and potential impacts.

The proposed structure changes will abolish the Commission and transfer each member of staff of the Commission to the new Commissioner. The transfer of staff will have the effect, from the coming into force of the section 14 order, as if the contract of employment was originally made between the staff transferred and the Commissioner.

Extent/Level of EQIA required

Following gathering and analysing your evidence of the (potential) impacts of your policy on each of the protected characteristics, set out here your consideration of the extent/level of assessment required.

Include any further evidence gathering and external engagement that is required to demonstrate that you are giving “due regard” to the equality duty of eliminating discrimination, promoting equality of opportunity and fostering good relations.

N/A
Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

<table>
<thead>
<tr>
<th>Characteristic</th>
<th>Evidence gathered and Strength/quality of evidence</th>
<th>Source</th>
<th>Gaps identified and action taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGE</td>
<td></td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>DISABILITY</td>
<td></td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>SEX</td>
<td></td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>GENDER REASSIGNMENT</td>
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<td></td>
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</tr>
<tr>
<td>SEXUAL ORIENTATION</td>
<td></td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>RACE</td>
<td></td>
<td></td>
<td>None</td>
</tr>
<tr>
<td>RELIGION OR BELIEF</td>
<td></td>
<td></td>
<td>None</td>
</tr>
</tbody>
</table>

1 Refer to Definitions of Protected Characteristics document for information on the characteristics
Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

<table>
<thead>
<tr>
<th>Age</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination, harassment and victimisation</td>
<td></td>
<td>None</td>
<td></td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td></td>
<td>None</td>
<td></td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Promoting good relations among and between different age groups</td>
<td></td>
<td>None</td>
<td></td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
</tbody>
</table>
Do you think that the policy impacts disabled people?

<table>
<thead>
<tr>
<th>Disability</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination, harassment and victimisation</td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
<td></td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
<td></td>
</tr>
<tr>
<td>Promoting good relations among and between disabled and able bodied people</td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
<td></td>
</tr>
</tbody>
</table>

Do you think that the policy impacts on men and women in different ways?

<table>
<thead>
<tr>
<th>Gender</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
<td></td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
<td></td>
</tr>
<tr>
<td>Promoting good relations between men and women</td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
<td></td>
</tr>
</tbody>
</table>
Do you think the policy impacts on people on the grounds of their race?

<table>
<thead>
<tr>
<th>Race</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td></td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td></td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Promoting good race relations</td>
<td></td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
</tbody>
</table>

Do you think the policy impacts on people because of their religion or belief?

<table>
<thead>
<tr>
<th>Religion and Belief</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td></td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td></td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Promoting good relations</td>
<td></td>
<td></td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
</tbody>
</table>
Do you think your policy impacts on transsexual people?

<table>
<thead>
<tr>
<th>Gender reassignment</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Promoting good relations</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
</tbody>
</table>

Do you think that the policy impacts on people because if they are lesbian, gay or bisexual?

<table>
<thead>
<tr>
<th>Sexual orientation</th>
<th>Positive</th>
<th>Negative</th>
<th>None</th>
<th>Reasons for your decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eliminating unlawful discrimination</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Advancing equality of opportunity</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
<tr>
<td>Promoting good relations</td>
<td>None</td>
<td>None</td>
<td>None</td>
<td>The structural changes and transfer of staff will not affect the rights of stakeholders or employees.</td>
</tr>
</tbody>
</table>
Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

If, following the impact analysis, you have think you have identified any unlawful discrimination – direct or indirect - you must consider and set out what action will be undertaken to mitigate the negative impact. You will need to consult your legal team in SGLD at this point if you have not already done so.

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Have positive or negative impacts been identified for any of the equality groups?</td>
<td>No</td>
</tr>
<tr>
<td>Is the policy directly or indirectly discriminatory under the Equality Act 2010?</td>
<td>No</td>
</tr>
<tr>
<td>If the policy is indirectly discriminatory, how is it justified under the relevant legislation?</td>
<td>N/A</td>
</tr>
<tr>
<td>If not justified, what mitigating action will be undertaken?</td>
<td>N/A</td>
</tr>
</tbody>
</table>

Describing how Equality Impact analysis has shaped the policy making process

In this section, set out a narrative that describes how the equality impact analysis has shaped and informed your policy development. Include, for example:

- Explaining whether any changes have been made to the policy as a result of the impact analysis and clearly identifying those changes. Or, explaining why no changes have had to be made.

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2 See EQIA – Setting the Scene for further information on the legislation.
The EHRC consider that a critical purpose of the EQIA is to achieve better outcomes for people and communities.

- Describing any new steps that have been / will be taken as a result of the data and evidence gathered through the EQIA process, for example: adding a new piece of work to ensure that the policy implementation includes ethnic minorities, or working with delivery partners to ensure they fully understand the equality impacts.

- Explaining if there have been, or will be, any implications on costs, resources etc arising from the EQIA analysis, e.g. has the budget changed because of the EQIA?

- You should also include a paragraph on how the EQIA has helped you develop better outcomes for people and communities.

The EIA has supported thinking on whether stakeholders and the staff of the Commission will be impacted by the proposed structural changes, and to reach the conclusion that they will not be directly or indirectly affected by the changes. The reason for reaching this conclusion is that the new Commissioner would take on the functions of the existing Commission and Commissioners and with no dilution in function. For the staff transfer, the contract of employment of a person who becomes a member of staff of the Commissioner has the effect as if it had originally been made between the person and the Commissioner.

**Monitoring and Review**

In this section, explain how you will monitor and evaluate this policy to measure progress on equality issues identified in the EQIA. Include information on when the monitoring and evaluation will take place, and who is responsible for undertaking it. This should be part of the regular monitoring and evaluation mechanisms you devise for your policy.

The proposed structural changes are subject to statutory consultation and any impact on staff or stakeholders will be monitored as part of that process. It will be for the Scottish Parliament Corporate Body to monitor and review the impact of the structural changes in consultation with the new Commissioner.

**Stage 5 - Authorisation of EQIA**

Please confirm that:

- This Equality Impact Assessment has informed the development of this policy:

  Yes X  No □

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3 The EHRC consider that a critical purpose of the EQIA is to achieve better outcomes for people and communities.
Opportunities to promote equality in respect of age, disability, gender, gender identity/transgender, sexual orientation, race and religion and belief have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people’s different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes X No

Declaration

I am satisfied with the equality impact assessment that has been undertaken for The Public Service Reform (Commissioner for Ethical Standards in Public Life in Scotland) Order 2013 and give my authorisation for the results of this assessment to be published on the Scottish Government’s website.

Name: Lorna Malcolm
Position: Policy Adviser
Authorisation date: 11.1.2013