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Scottish Commissioner for Human Rights Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide for the appointment and functions of the Scottish Commissioner for Human Rights.

Scottish Commissioner for Human Rights

1 Scottish Commissioner for Human Rights

5 (1) There is to be an officer known as the Scottish Commissioner for Human Rights (and referred to in this Act as the “Commissioner”).

(2) The Commissioner is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament.

(3) Her Majesty may, on the nomination of the Parliament, appoint individuals to be deputy Scottish Commissioners for Human Rights; and references in this Act to a deputy Commissioner are to any such deputy.

(4) There are to be no more than two deputy Commissioners at any time.

(5) The Commissioner’s functions may be exercised by a deputy Commissioner if—

(a) the office of Commissioner is vacant (unless there is an acting Commissioner appointed under paragraph 5 of schedule 1), or

(b) the Commissioner is for any reason unable to act,

and while exercising those functions the deputy Commissioner is to be treated for all purposes, except those of paragraphs 4, 6 and 7(a) of schedule 1, as the Commissioner.

(6) Schedule 1 makes further provision about the Commissioner and deputy Commissioners.

General functions

2 General duty to promote human rights

(1) The Commissioner’s general duty is, through the exercise of the Commissioner’s functions under this Act, to promote awareness and understanding of, and respect for, human rights and, in particular—

(a) to encourage best practice in relation to human rights, and
(b) to encourage Scottish public authorities to comply with section 6 of the Human Rights Act 1998 (c.42) (which provides that it is unlawful for a public authority to act in a way which is incompatible with Convention rights).

(2) In this Act, “human rights” means—

(a) the Convention rights within the meaning of section 1 of the Human Rights Act 1998 (c.42), and

(b) other human rights contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

(3) In deciding what action to take under this Act in pursuance of the Commissioner’s general duty, the Commissioner must have regard, in particular, to the importance of exercising the Commissioner’s functions under this Act in relation to the Convention rights.

3 Duty to monitor law, policy and practice

For the purposes of the Commissioner’s general duty, the Commissioner—

(a) must keep under review—

(i) the law of Scotland, and

(ii) the policies and practices of Scottish public authorities, and

(b) may recommend changes to the law and to those policies or practices.

4 Information, guidance, education etc.

(1) For the purposes of the Commissioner’s general duty, the Commissioner may—

(a) publish or otherwise disseminate information or ideas,

(b) provide advice or guidance,

(c) conduct research,

(d) provide education or training.

(2) The Commissioner may charge reasonable fees in connection with anything done by or on behalf of the Commissioner under subsection (1).

(3) Sums paid to the Commissioner in respect of fees charged under subsection (2) are to be retained by the Commissioner and applied to meet expenses incurred by the Commissioner in doing anything under subsection (1).

5 Power to conduct inquiries

(1) The Commissioner may, in relation to any matter relevant to the Commissioner’s general duty, conduct an inquiry into the policies or practices of—

(a) a particular Scottish public authority,

(b) Scottish public authorities generally, or

(c) Scottish public authorities of a particular description, in connection with the matter.
(2) Subsection (1) is subject to section 6.

(3) The matter in relation to which an inquiry is conducted is referred to in this Act as the “subject matter” of the inquiry.

(4) Before taking any step in the conduct of an inquiry, the Commissioner must—

(a) draw up—

(i) terms of reference for the proposed inquiry, and
(ii) a summary of the procedure to be followed in the conduct of the inquiry,

(b) give notice of—

(i) the proposed inquiry,
(ii) its terms of reference, and
(iii) the summary of procedure,

to each relevant Scottish public authority, and

(c) publicise—

(i) the proposed inquiry,
(ii) its terms of reference, and
(iii) the summary of procedure,

in such manner as the Commissioner thinks appropriate to bring them to the attention of any other persons likely to be affected by the inquiry.

(5) An inquiry is to be conducted in public except to the extent that the Commissioner considers it necessary or expedient that any part of the inquiry should be conducted in private.

(6) Otherwise, the procedure to be followed in the conduct of an inquiry is to be such as the Commissioner may determine.

(7) In subsection (4)(b), “relevant Scottish public authority” means, in relation to a proposed inquiry, any Scottish public authority—

(a) which the Commissioner considers is likely to be required under section 7(1) to give evidence, produce documents or provide information for the purposes of the inquiry, or

(b) any of whose members, officers or staff the Commissioner considers is likely to be so required.

6 Restrictions as to scope of inquiry

(1) The Commissioner may not, in the course of an inquiry (including the report of the inquiry), question the findings of any court or tribunal.

(2) The Commissioner may conduct an inquiry into the policies and practices of a particular Scottish public authority only if—

(a) the authority is the only Scottish public authority with functions in relation to the subject matter of the inquiry, or

(b) the subject matter of the inquiry is about whether the human rights specified in subsection (6) are being respected by the authority.
The Commissioner may not conduct an inquiry into the policies and practices of any Scottish public authority in relation to a particular case.

However, subsection (3) does not prevent the Commissioner taking such policies and practices into account in the course of an inquiry.

The Commissioner may conduct an inquiry in relation to the management or operation of a particular institution only if—

(a) the institution is the only one of its kind in Scotland, or

(b) the subject matter of the inquiry is about whether the human rights specified in subsection (6) are being respected at the institution.

The human rights referred to in subsections (2)(b) and (5)(b) are those contained in the following, so far as ratified by the United Kingdom, namely—

(a) the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by Resolution 39/46 (10th December 1984) of the General Assembly of the United Nations,

(b) the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, done at Strasbourg on 26th November 1987,

(c) any protocol to those Conventions, and

(d) such other international conventions, treaties or other international instruments as Her Majesty may by Order in Council specify for the purposes of this section.

No recommendation to make an Order in Council under subsection (6)(d) is to be made to Her Majesty in Council unless a draft of the Order has been laid before and approved by resolution of the Parliament.

In this section, “institution” means a prison, hospital, school, college, care home or other such establishment.

Evidence

For the purposes of an inquiry, the Commissioner may require any person specified in subsection (2) to—

(a) give oral evidence,

(b) produce documents, or

(c) otherwise provide information,

relevant to the subject matter of the inquiry.

Those persons are—

(a) any Scottish public authority,

(b) any member, officer or member of staff of a Scottish public authority who, in the opinion of the Commissioner, is able to give the evidence, supply the information or produce the documents.

The Commissioner may, in the course of an inquiry, take into account any evidence, information or document which the Commissioner has obtained otherwise than by virtue of a requirement imposed under subsection (1), provided the evidence, information or document is relevant to the subject matter of the inquiry.
(4) A person is not required under this section to answer any question, produce any document or provide any information which the person would be entitled to refuse to answer, produce or provide in proceedings in a court in Scotland.

(5) Schedule 2 makes further provision in connection with requirements under subsection (1).

8 Places of detention: powers of entry, inspection and interview

(1) For the purposes of an inquiry, the Commissioner may—

(a) enter any place of detention for the purpose of exercising any power under paragraph (b) or (c),

(b) inspect the place of detention, and

(c) conduct interviews in private with any person detained there, with that person’s consent.

(2) In this section, “place of detention” means any premises, vehicle or other place in or at which an individual is or may be detained by, or with the authority or consent of, a Scottish public authority.

(3) For the purposes of subsection (2), an individual is detained in or at a place if he or she is imprisoned there or otherwise deprived (to any extent) of his or her liberty to leave the place.

(4) For the purposes of subsection (1)(c), an interview is in private if it is outwith the hearing of any person involved in the management or control of the place of detention or working at the place of detention.

(5) Schedule 3 makes further provision in connection with the exercise of the powers under subsection (1).

9 Report of inquiry

(1) After completing an inquiry other than an excepted inquiry, the Commissioner must lay before the Parliament a report of the inquiry.

(2) The report must, in particular, include—

(a) the Commissioner’s findings as a result of the inquiry, and

(b) any recommendations of the Commissioner in the light of those findings.

(3) The report must not make reference to the activities of a specified or identifiable person unless the Commissioner considers that it is necessary to do so in order for the report adequately to reflect the results of the inquiry.

(4) Before finalising a report containing such a reference, the Commissioner must—

(a) provide the person concerned with—

(i) a draft of the proposed report, and

(ii) an opportunity to make representations concerning the proposed report, and

(b) consider any representations made.

(5) In subsection (1), “excepted inquiry” means an inquiry the subject matter of which falls within section 6(2)(b) or (5)(b).
10 Confidentiality of information

(1) Subsection (2) applies to a person who is or has been—

(a) a Commissioner or deputy Commissioner,
(b) a member of the Commissioner’s staff, or
(c) otherwise an agent of the Commissioner.

(2) The person must not disclose any information which—

(a) has been obtained by or on behalf of the Commissioner for the purposes of an inquiry, and
(b) is not at the time of the disclosure, and has not previously been, in the public domain,

unless the disclosure is authorised by subsection (3).

(3) Disclosure is authorised for the purposes of subsection (2) only so far as—

(a) it is made with the consent of the person from whom the information was obtained,
(b) it is necessary for the purpose of enabling or assisting the exercise by the Commissioner of any of the Commissioner’s functions under this Act, or
(c) it is made for the purposes of legal proceedings, whether criminal or civil (including the purposes of the investigation of any offence or suspected offence).

(4) A person who knowingly contravenes subsection (2) commits an offence.

(5) A person guilty of an offence under subsection (4) is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or
(b) on conviction on indictment, to a fine.

11 Power to intervene

(1) This section applies to civil proceedings before a court, except children’s hearing proceedings.

(2) The Commissioner may—

(a) with leave of the court, or
(b) at the invitation of the court,

intervene in the proceedings for the purpose of making a submission to the court on an issue arising in the proceedings.

(3) The Commissioner may intervene only if it appears to the Commissioner that the issue arising in the proceedings—

(a) is relevant to the Commissioner’s general duty, and
(b) raises a matter of public interest.

(4) An application by the Commissioner for leave under subsection (2)(a) must set out—

(a) the issue arising in the proceedings which the Commissioner intends to address, and
(b) a summary of the submission that the Commissioner intends to make.

(5) An invitation under subsection (2)(b) must set out the issue arising in the proceedings upon which the court seeks a submission.

(6) The court may grant leave for or invite the Commissioner to intervene only if it is satisfied that the intervention of the Commissioner is likely to assist the court.

(7) Further provision as to the procedure in any intervention under this section, including in particular provision as to the form that any submission by the Commissioner is to take, may be prescribed by Act of Sederunt.

(8) This section is without prejudice to the Commissioner’s capacity to intervene in any proceedings before any court or tribunal under an enactment or in accordance with the practice of the court or tribunal.

(9) In subsection (1)—

“civil proceedings” includes inquiries instituted under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c.14),

“children’s hearing proceedings” means any proceedings on an application made to the sheriff, and any other proceedings before the sheriff court or Court of Session (whether on appeal or otherwise), under any provision of Part II of the Children (Scotland) Act 1995 (c.36) in relation to a children’s hearing,

“court” means the Court of Session and sheriff court, both as courts of first instance and appeal, and the Land Court.

Reports

12 Annual report

(1) The Commissioner must lay before the Parliament annually a general report on the exercise of the Commissioner’s functions during the year to which the report relates ("the reporting year").

(2) The report must, in particular, include—

(a) a summary of any inquiries conducted by the Commissioner during the reporting year,

(b) a summary of any other action taken by the Commissioner during that year in pursuance of the Commissioner’s general duty, and

(c) a summary of the action which the Commissioner proposes to take in the next reporting year in pursuance of that duty.

(3) In preparing a report under this section, the Commissioner must comply with any directions given by the Parliamentary corporation as to the form and content of the report.

13 Publication of reports

(1) The Commissioner must arrange for the publication of reports laid by it before the Parliament.

(2) The Commissioner may publish other reports on matters relevant to the Commissioner’s general duty.
General

14 **Power to co-operate etc. with others**

(1) The Commissioner may, in the exercise of any of the Commissioner’s functions—

- consult,
- act jointly with,
- co-operate with, or
- assist,

any other person.

(2) The Commissioner must seek to ensure, so far as practicable, that any activity undertaken by the Commissioner under this Act does not duplicate unnecessarily any activity undertaken by any other person under any other enactment.

15 **Protection from actions for defamation**

(1) For the purposes of the law of defamation—

- any statement made by the Commissioner—
  - in conducting an inquiry,
  - in communicating with any person for the purposes of an inquiry, or
  - in a report of an inquiry,

  has absolute privilege,

- any other statement made by the Commissioner in pursuance of the purposes of this Act has qualified privilege, and

- any statement made to the Commissioner in pursuance of those purposes has qualified privilege.

(2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31).

16 **Giving of notice**

(1) Any notice to be given to any person under any provision of this Act must be given—

- in writing, and
- by one of the means specified in subsection (2).

(2) Those means are—

- delivering the notice to the person,
- sending it by registered post or recorded delivery service addressed to the person at—
  - in the case of an individual, the person’s usual or last known address or the person’s place of business or work,
  - in any other case, the person’s registered or principal office,
(c) sending it to the person by some other means (including electronic means) which
the person giving the notice considers likely to cause it to be delivered on the
same or next day.

(3) A notice which is given by electronic means is to be treated as being in writing if it is
received in a form which is legible and capable of being used for subsequent reference.

(4) A notice given by a means specified in subsection (2)(c) is, unless the contrary is
proved, to be presumed to be delivered on the next working day following the day on
which it is sent.

(5) In subsection (4), “working day” means any day other than a Saturday, a Sunday or a
day which, under the Banking and Financial Dealings Act 1971 (c.80), is a bank holiday
in Scotland.

17  Meaning of “Scottish public authority”
In this Act, “Scottish public authority” means—

(a) any body or office which, or office-holder who, is—

(i) a part of the Scottish Administration, or

(ii) a Scottish public authority with mixed functions or no reserved functions, and

(b) any other person who is a public authority within the meaning of the Human
Rights Act 1998 (c.42), but only in so far as the public functions exercisable by
the person—

(i) are exercisable in or as regards Scotland, and

(ii) do not relate to reserved matters.

18  Interpretation
In this Act, except where the context requires otherwise—

“the Commissioner” means the Scottish Commissioner for Human Rights
(appointed under section 1(1)),

“Convention rights” has the meaning given in section 1 of the Human Rights Act
1998 (c.42),

“deputy Commissioner” means a deputy Scottish Commissioner for Human
Rights (appointed under section 1(3)),

“human rights” has the meaning given in section 2(2),

“inquiry” means an inquiry under section 5,

“Parliament” means the Scottish Parliament,

“Parliamentary corporation” means the Scottish Parliamentary Corporate Body,

“Scottish public authority” has the meaning given in section 17,

“subject matter”, in relation to an inquiry, is to be construed in accordance with
section 5(3).
19 Short title, Crown application and commencement

(1) This Act may be cited as the Scottish Commissioner for Human Rights Act 2005.

(2) This Act binds the Crown.

(3) This Act (except this section) comes into force on such day as Her Majesty may by Order in Council appoint.

(4) An Order in Council under subsection (3) may—

(a) appoint different days for different purposes, and

(b) contain transitional and transitory provision.
SCHEDULE 1
(introduced by section 1(6))

SCOTTISH COMMISSIONER FOR HUMAN RIGHTS

Status
5 1 The Commissioner, deputy Commissioners and the Commissioner’s staff—
   (a) are not servants or agents of the Crown, and
   (b) have no status, immunity or privilege of the Crown.

Independence
2 (1) The Commissioner, in the exercise of the Commissioner’s functions, is not to be subject
to the direction or control of—
   (a) any member of the Parliament,
   (b) any member of the Scottish Executive, or
   (c) the Parliamentary corporation.

2 Sub-paragraph (1) is subject to section 12(3), paragraphs 8(2)(b), 10, 11(2), (3) and (5)
and 14(1) of this schedule and paragraph 5 of schedule 2.

Disqualification
3 (1) A person is disqualified from appointment, and from holding office, as Commissioner or
deputy Commissioner if that person is—
   (a) a member of the House of Commons,
   (b) a member of the Scottish Parliament, or
   (c) a member of the European Parliament.

2 A person is also disqualified from such appointment if that person has, in the year
preceding nomination, held any of the offices set out in sub-paragraph (1)(a) to (c).

Terms of office and remuneration
4 (1) The Commissioner and each deputy Commissioner—
   (a) holds office for such period not exceeding five years as the Parliamentary
corporation, at the time of appointment, may determine, and
   (b) is eligible for reappointment to the same office (whether the reappointment is for a
   consecutive period or otherwise) but reappointment for a third period is not
   competent.

2 A Commissioner and each deputy Commissioner may be—
   (a) relieved of office by Her Majesty at the officer’s request, or
   (b) removed from office by Her Majesty if the Parliament so resolves.
(3) A resolution under sub-paragraph (2)(b), if passed on division, must be voted for by a number of members equivalent to not less than two thirds of the total number of seats for members of the Parliament.

(4) The Commissioner and each deputy Commissioner is entitled to—

(a) a salary of such amount, and

(b) such allowances,

as the Parliamentary corporation may determine.

(5) The Commissioner and each deputy Commissioner, while holding that office, may not hold any other office or employment without the consent of the Parliamentary corporation.

(6) In other respects, the Commissioner and each deputy Commissioner holds office on such terms and conditions as the Parliamentary corporation may determine.

**Acting Commissioner**

(1) Where the office of Commissioner is vacant, the Parliamentary corporation may appoint a person (whether or not a deputy Commissioner or a member of the Commissioner’s staff) to be acting Commissioner until a new Commissioner is appointed.

(2) A person who is disqualified from appointment as Commissioner is also disqualified from appointment as acting Commissioner.

(3) A person appointed to be acting Commissioner—

(a) may be relieved of office at that person’s request,

(b) may be removed from office by the Parliamentary corporation by notice given by it,

(c) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine; and

(d) while holding that office, is to be treated for all purposes, except those of paragraphs 4, 6 and 7(a), as the Commissioner.

**Pensions etc.**

(1) The Parliamentary corporation may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a Commissioner or deputy Commissioner and such arrangements may include, in particular—

(a) the making of contributions or payments towards provision for such pensions, allowances, or gratuities, and

(b) the establishing and administering of one or more pension schemes.

(2) References in sub-paragraph (1) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of office.
Validity of actings

7 The validity of any acts of the Commissioner or a deputy Commissioner is not affected by any—
   (a) defect in the nomination of the Commissioner or, as the case may be, deputy Commissioner, or
   (b) disqualification from appointment as Commissioner or, as the case may be, deputy Commissioner.

General powers

8 (1) The Commissioner may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of the Commissioner’s functions.
   (2) In particular, the Commissioner may—
       (a) enter into contracts, and
       (b) with the consent of the Parliamentary corporation, acquire and dispose of land.

Delegation

9 (1) Any function of the Commissioner may be exercised on the Commissioner’s behalf—
       (a) by any person (whether or not a deputy Commissioner or a member of the Commissioner’s staff) authorised by the Commissioner to do so, and
       (b) to the extent so authorised.
   (2) Sub-paragraph (1) does not affect the Commissioner’s responsibility for the exercise of the Commissioner’s functions.

Location of office

10 The Commissioner’s determination of the location of the Commissioner’s office premises is subject to the approval of the Parliamentary corporation.

Chief executive and staff

11 (1) The Commissioner is to appoint a chief executive.
   (2) The Commissioner may, with the consent of the Parliamentary corporation as to numbers, appoint other staff.
   (3) The appointment of the chief executive and other staff is to be on such terms and conditions as the Commissioner may, with the approval of the Parliamentary corporation, determine.
   (4) The chief executive is responsible to the Commissioner for the general exercise of the Commissioner’s functions.
   (5) The Commissioner may, with the approval of the Parliamentary corporation, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff.
(6) References in sub-paragraph (5) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of employment.

**Accountable officer**

5 12 (1) The chief executive is the accountable officer for the purposes of this paragraph.

(2) The functions of the accountable officer are—

(a) signing the accounts of the expenditure and receipts of the Commissioner,

(b) ensuring the propriety and regularity of the finances of the Commissioner,

(c) ensuring that the resources of the Commissioner are used economically, efficiently and effectively, and

(d) the duty set out in sub-paragraph (3),

and the accountable officer is answerable to the Parliament for the exercise of those functions.

(3) Where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), the accountable officer must—

(a) obtain written authority from the Commissioner before taking the action, and

(b) send a copy of the authority as soon as possible to the Auditor General for Scotland.

**Finance**

13 The Parliamentary corporation is to pay—

(a) the salary and allowances of the Commissioner and any deputy Commissioners,

(b) any expenses incurred by the Commissioner in the exercise of the functions of the Commissioner, so far as those expenses are not met out of sums received and applied by the Commissioner under section 4(3), and

(c) any sums payable by virtue of paragraph 5(3)(c) to, or in respect of, a person who—

(i) is appointed as acting Commissioner, or

(ii) has ceased to hold such office.

**Accounts and audit**

14 (1) The Commissioner must, in accordance with such directions as the Scottish Ministers may give—

(a) keep proper accounts and accounting records,

(b) prepare annual accounts in respect of each financial year, and

(c) send a copy of the annual accounts to the Auditor General for Scotland for auditing.

(2) The financial year of the Commissioner is—
(a) the period beginning with the date on which the first Commissioner is appointed and ending with 31st March next following that date, and
(b) each successive period of 12 months ending with 31st March.

(3) If requested by any person, the Commissioner must make available at any reasonable time, and without charge, in printed or electronic form, the audited accounts, so that they may be inspected by that person.

SCHEDULE 2
(introduced by section 7(5))

INQUIRIES: SUPPLEMENTARY PROVISION AS TO EVIDENCE

Requirements to give evidence etc.

1. The Commissioner may impose a requirement on a person under section 7(1) by giving notice to the person specifying—
   (a) where the person is required to give oral evidence—
      (i) the time and place at which the person is to attend to give evidence, and
      (ii) the particular matter or matters about which the person is required to give evidence,
   (b) where the person is required to produce a document or documents—
      (i) the document, or types of documents, which the person is to produce,
      (ii) the date by which it or they must be produced, and
      (iii) the particular matter or matters in connection with which they are required,
   (c) where the person is required otherwise to provide information—
      (i) the nature of the information required,
      (ii) the date by which it must be provided, and
      (iii) the particular matter or matters in connection with which the information is required.

Cancellation of requirements notified under paragraph 1

2. (1) A person to whom notice has been given under paragraph 1 may apply to the sheriff for cancellation of any requirement imposed by the notice.

(2) On such an application, the sheriff may cancel the requirement if satisfied that the requirement is—
   (a) unnecessary having regard to the purposes of the inquiry to which the notice relates,
   (b) undesirable for reasons of national security, or
   (c) otherwise unreasonable.
Administration of oaths

3 The Commissioner may—
(a) administer an oath to any person giving evidence to the Commissioner for the purposes of an inquiry, and
(b) require any such person to take an oath.

Obstruction and contempt

4 (1) Sub-paragraph (3) applies where any person to whom notice has been given under paragraph 1—
(a) refuses or fails, without reasonable excuse, to comply with any requirement specified in the notice,
(b) refuses or fails, without reasonable excuse, when attending to give evidence as required by the notice—
(i) to take an oath on being required to do so under paragraph 3(b), or
(ii) to answer any question relevant to any matter specified in the notice, or
(c) deliberately alters, suppresses, conceals or destroys any document which the person is required by the notice to produce.

(2) Sub-paragraph (3) also applies where the Commissioner considers that any such person as is mentioned in sub-paragraph (1) is likely to do any of the things specified in paragraphs (a) to (c) of that sub-paragraph.

(3) Where this sub-paragraph applies, the Commissioner may report the matter to the Court of Session.

(4) On such a report, the Court may, after hearing any evidence or representations on the matter, (either or both)—
(a) make such order for enforcement as it sees fit,
(b) deal with the matter as if it were a contempt of the Court.

Allowances and expenses

5 The Commissioner may pay to persons giving evidence, producing documents or providing information pursuant to a notice given under paragraph 1 such allowances and expenses as it may, with the approval of the Parliamentary corporation, determine.

SCHEDULE 3
(introduced by section 8(5))

PLACES OF DETENTION: POWERS OF ENTRY, INSPECTION AND INTERVIEW

Requirement to give notice

1 (1) The powers under section 8(1) may be exercised by the Commissioner in relation to any place of detention only—
(a) after notice has been given in accordance with this paragraph, and
(b) in accordance with the notice.

(2) Notice of intention to exercise the powers must be given by the Commissioner to the person having management and control of the place no later than 14 days before the day on which the Commissioner intends to exercise the powers.

(3) The notice must—
(a) specify—
(i) the place of detention to which it relates, and
(ii) the date on and time at which it is intended to exercise the powers, and
(b) be accompanied by a copy of the terms of reference for the inquiry in connection with which the powers are to be exercised.

Evidence of authority

2 A person (other than the Commissioner) entitled to exercise any power under section 8(1) (referred to in this schedule as “an authorised person”) must, if required to do so, produce written evidence of that entitlement.

Cancellation of notice

3 (1) A person to whom notice has been given under paragraph 1 may apply to the sheriff for cancellation of any power to be exercised by virtue of the notice.

(2) On such an application, the sheriff may cancel the power if satisfied that—
(a) it is unnecessary to exercise the power having regard to the purposes of the inquiry in connection with which the notice is given,
(b) it is undesirable to allow the power to be exercised for reasons of national security, or
(c) it is otherwise unreasonable to allow the power to be exercised.

Obstruction and contempt

4 (1) Where any person intentionally obstructs the Commissioner or an authorised person acting in the exercise of a power under section 8(1), the Commissioner may report the matter to the Court of Session.

(2) On such a report, the Court may, after hearing any evidence or representations on the matter, (either or both)—
(a) make such order for enforcement as it sees fit,
(b) deal with the matter as if it were a contempt of the Court.
Scottish Commissioner for Human Rights Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to provide for the appointment and functions of the Scottish Commissioner for Human Rights.

Introduced by:  Cathy Jamieson
On: 7 October 2005
Supported by:  Robert Brown
Bill type:  Executive Bill