SCOTTISH COMMISSIONER FOR HUMAN RIGHTS BILL

[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES

CONTENTS

1. As required under Rule 9.7.8A of the Parliament’s Standing Orders, these revised Explanatory Notes are published to accompany the Scottish Commissioner for Human Rights Bill as amended at Stage 2.

INTRODUCTION

2. These Explanatory Notes have been prepared by the Human Rights and Law Reform Branch on behalf of the Scottish Executive. Their purpose is to assist the reader of the Bill and to help inform debate on it. As such they do not form part of the Bill and have not been endorsed by the Parliament.

3. The notes should be read in conjunction with the Bill. They are not, and are not intended to be, a comprehensive description of the Bill itself. Wherever a section or schedule, or part of a schedule does not seem to require any explanation or comment, none is given.

SUMMARY AND BACKGROUND TO THE BILL

4. The Bill establishes a Scottish Commissioner for Human Rights (SCHR) (and provides for there to be up to two deputy Commissioners). The Commissioner will be independent, with the ability to choose which issues are investigated and reported upon. The Commissioner will be accountable to the Scottish Parliament and will submit annual reports summarising the actions and inquiries undertaken in the previous year. The Commissioner will also periodically submit strategic plans to the Parliament.

5. The Commissioner’s general duty, as set out in section 2, is to promote awareness and understanding of, and respect for, human rights. The Bill gives the Commissioner certain other specific functions (see sections 4, 4A, 5 and 11) in support of the general duty. These include: monitoring law, policy and practice; providing information, advice, guidance, and education; carrying out inquiries; and intervening in civil court proceedings.
6. The Commissioner will be able to conduct inquiries into general human rights issues, but will not be able to investigate, support or rule on individual cases. The Commissioner will have the ability to require information in support of inquiries and a right of entry to places of detention in certain cases.

7. The Commissioner will deal only with human rights issues relating to devolved matters. However, this remit will include the full range of human rights instruments to which the UK is signatory.

8. The SCHR will be able to liaise with the proposed Commission for Equality and Human Rights (CEHR) for Great Britain. The CEHR will begin operating in October 2007 and will not be able to act on human rights in relation to matters that are devolved to the Scottish Parliament, unless it has the consent of the Commissioner.

COMMENTARY ON SECTIONS

Section 1: Scottish Commissioner for Human Rights

9. Section 1 establishes the office of the Scottish Commissioner for Human Rights. He or she is to be an individual appointed by Her Majesty on the nomination of the Scottish Parliament.

10. Subsections (3) and (4) allow for up to two deputy Commissioners to be appointed at any time.

11. Subsection (5) allows a deputy Commissioner to perform the Commissioner’s functions in the Commissioner’s absence. In doing so, a deputy Commissioner is to be treated like the Commissioner in all respects (except in relation to terms of office and pensions).

12. Further detail about the Commissioner and the deputy Commissioners is contained in schedule 1 to the Bill.

Section 2: General duty to promote human rights

13. Subsection (1) stipulates that the general duty of the Commissioner is to promote human rights. This is supplemented by subsection (2A) which makes clear that the duty is to promote awareness and understanding of and respect for human rights.

14. Subsection (2) defines the phrase “human rights” in two parts. “Convention rights” means all Articles and Protocols of the European Convention on Human Rights listed in section 1 of the Human Rights Act 1998. This includes the right to life and the prohibition of torture, slavery and forced labour, amongst other rights. “Other human rights” are (non-Convention) human rights contained in any international instrument (e.g. an instrument enacted by the United Nations, the Council of Europe or the European Union) which have been ratified by the UK.
15. Subsection (3) stipulates that the Commissioner’s priority will be Convention rights and human rights of those groups in society whose human rights are not, in the Commissioner’s opinion, otherwise being sufficiently promoted. Convention rights are important because, as a result of the Human Rights Act 1998 and the Scotland Act 1998, they are directly enforceable through the domestic courts.

Section 4: Information, guidance, education, etc.

16. Subsection (1)(a) and (b) provides that the Commissioner may, in pursuing the general duty set out in section 2(1), publish or otherwise disseminate information or ideas and provide advice or guidance.

17. Under these subsections, the Commissioner could, for example, publish information leaflets, internet resources, or educational materials; send group emails; make presentations at conferences; set up awareness-raising campaigns; issue guidance material; or offer advice through correspondence or by telephone.

18. As detailed in subsection (1)(c), the Commissioner will be able to conduct research. The Commissioner could, for instance, conduct statistical research on court cases with human rights aspects.

19. Subsection (1)(d) provides that the Commissioner can provide education and training.

20. Subsection (2) states that the Commissioner can charge reasonable fees for providing any of the services described in the previous subsection. Any fees paid to the Commissioner are to be put towards the costs of doing the things in paragraphs (a) to (d) of subsection (1).

Section 4A: Monitoring of law, policies and practices

21. The Commissioner is empowered by section 4A to review any area of the law of Scotland and the policies and practices of any Scottish public authorities. This function will allow a process of reviewing and reporting, and the Commissioner will be free to choose which issues he or she examines, provided that those issues are within his or her remit. The term ‘Scottish public authority’ is defined in section 17.

22. Section 4A also empowers the Commissioner to recommend changes to the law and to the policies and practices of public authorities. These recommendations will not be legally binding and there will be no obligation upon public authorities to seek guidance from the Commissioner, nor will there be any compulsion upon public authorities to implement the Commissioner’s recommendations.

23. Subsection (2) requires the Commissioner to consult the Scottish Law Commission before undertaking any such review of the law.
Section 14: Power to co-operate etc. with others

24. This section empowers the Commissioner to consult, act jointly with, co-operate with or assist any other person. Subsection (2) further states that the Commissioner must attempt to ensure so far as practicable that activity undertaken does not unnecessarily duplicate the work of other statutory agencies with shared interests or remits that overlap with that of the Commissioner.

Section 4B: Strategic plans

25. The Commissioner is required by subsection (1) to lay a strategic plan before the Parliament once every four years detailing his or her proposals for fulfilling the Commissioner’s general duty. Subsection (7) defines such periods as beginning with the day on which section 2, which describes the Commissioner’s general duty, comes into force, and each subsequent period of four years thereafter.

26. In terms of subsection (2) the plan will set out the Commissioner’s objectives and priorities for the period. It must also provide details of any areas of the law the Commissioner intends to review, and any other activities relating to the Commissioner’s general duty, alongside a timetable for these activities.

27. Subsection (3) requires the Commissioner, before laying the strategic plan before the Parliament, to provide draft copies to the Parliamentary corporation and any other person that the Commissioner considers appropriate, and to invite them to submit comments.

28. Subsection (4) requires the Commissioner to arrange for the publication of each plan laid before the Parliament.

29. Under subsection (5) the Commissioner can review the strategic plan at any time and lay a revised plan for the period before the Parliament. Subsection (6) provides that in that event the provisions in subsections (3) to (5) about consultation, publication and review will apply in relation to that revised plan.

Section 5: Power to conduct inquiries

30. Subsection (1) states that the Commissioner can conduct inquiries into the policies or practices of a particular Scottish public authority, Scottish public authorities generally or Scottish public authorities of a particular description. Section 6 establishes certain restrictions upon these powers.

31. Subsection (4) sets out the procedure before starting an inquiry, requiring the Commissioner to draw up terms of reference and a summary of the procedure to be followed. The Commissioner must give notice of the proposed inquiry and its terms of reference and procedure to the relevant Scottish public authorities, and publicise such details in a manner that the Commissioner feels is appropriate to bring them to the attention of others affected by the inquiry.
32. ‘Relevant Scottish public authority’ is defined in subsection (7) to mean any public body which the Commissioner believes is likely to be required to give evidence or provide other information, or which has members, officers or staff who are likely to be so required.

33. Subsection (5) states that inquiries should be conducted in public but reserves to the Commissioner the ability to hear evidence in private.

Section 6: Restrictions as to scope of inquiry

34. Section 6 sets out various restrictions on the power of the Commissioner to conduct inquiries.

35. Subsection (1) states that the Commissioner cannot question the findings of any court or tribunal while conducting an inquiry, including in his or her final report.

36. The remit of the Commissioner restricts inquiries to the general policies and procedures of public authorities, as opposed to individual cases. However, an inquiry into the policies and practices of a particular Scottish public authority may be conducted if it is the only body exercising the functions being investigated, as set down in subsection (2)(a).

37. Additionally, inquiries may be initiated into the policies and practices of a particular Scottish public authority if the specific subject matter of the inquiry is to assess compliance with particular human rights (as defined in subsection (6)). The Commissioner, as previously stated, cannot conduct an inquiry into an individual case, although this does not bar the Commissioner from taking the relevant policies and practices into account during an inquiry.

38. Subsection (5) establishes similar rules for investigating the management and operation of institutions such as prisons, hospitals, schools, colleges and care homes. The Commissioner may only launch an inquiry into an individual institution if the institution in question is the only one of its kind in Scotland, or if the subject matter of the inquiry is to assess compliance with particular human rights (as defined in subsection (6)) at that institution.

39. Subsection (6) details the particular human rights referred to in subsections (2)(b) and (5)(b). These are contained in two of the international human rights instruments to which the UK is signatory. These instruments relate to the prevention of torture and degrading treatment. Subsections (2)(b) and (5)(b) give the Commissioner power to conduct inquiries into particular public authorities and institutions to ensure compliance and good practice in relation to these instruments. Provision is also made for further human rights instruments to be added to the list in subsection (6) by an Order in Council. Such an Order would be subject to affirmative procedure in Parliament.

Section 7: Evidence

40. Subsections (1) and (2) permit the Commissioner to require any Scottish public authority or member, officer or staff member of such an authority to give oral evidence, produce documents or to provide any other form of information deemed relevant to an inquiry.
41. Subsection (3) allows the Commissioner to consider information freely volunteered by public authorities or members of the public, provided that information is relevant to the inquiry.

42. Subsection (4) states that those required to give evidence by the Commissioner are not required to answer any question, produce any document or provide any information which those persons would be entitled to refuse to (as the case may be) answer, produce or provide in proceedings in a court in Scotland.

43. Subsection (4A) amends the Legal Aid (Scotland) Act 1986 to provide that disclosure by the Scottish Legal Aid Board to the Commissioner of information obtained by Board in the exercise of its functions will not be a criminal offence.

44. Further provision in relation to the requirement to provide evidence is made in Schedule 2.

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

45. This section empowers the Commissioner to enter places of detention during the conduct of an inquiry. In terms of this Bill, ‘places of detention’ means any premises, vehicle or other place where a person can be detained on the authority or consent of a Scottish public authority. Subsection (3) clarifies this point by defining a person as being detained in a place “if he or she is imprisoned there or otherwise deprived (to any extent) of his or her liberty to leave the place”.

46. Specifically, subsection (1) empowers the Commissioner to inspect such places of detention and to conduct private interviews with any person detained there, subject to that person’s consent. Subsection (4) states that an interview is “in private” if it is conducted outwith the hearing of anyone involved in the management or control of, or working at, the place of detention. Schedule 3 makes further provision in relation to these powers.

Section 9: Report of inquiry

47. Upon completion of an inquiry, subsection (1) requires the Commissioner to lay a report of his or her findings before the Parliament. Section 13(1) further stipulates that such reports must be published by the Commissioner.

48. Subsection (2) states that the report must include the Commissioner’s findings and any resultant recommendations. Subsection (3) prohibits reporting upon the activities of a specified or identifiable person, unless the Commission considers that it is necessary to do so in order for the report to adequately reflect the results of the inquiry.

49. If the Commissioner chooses to exercise the capacity to identify individuals then it must furnish those persons with a draft of the proposed report and provide them with an opportunity to make representation concerning the proposed report. The Commissioner must consider any such representations before proceeding with publication.
50. The contents of the Commissioner’s reports are otherwise left to the judgement of the Commissioner.

Section 10: Confidentiality of information

51. This section states that neither the Commissioner, nor any agent of the Commissioner, past or present, shall disclose any information obtained in the course of the Commissioner’s activities unless such a disclosure is authorised by subsection (3).

52. Subsection (3)(a) authorises disclosure of information provided that it is made with the consent of the person who provided it. Subsections (3)(b) and (c) further allow disclosure of information if the Commissioner deems it necessary for the furtherance of his or her functions or if it is made for the purposes of civil or criminal legal proceedings.

53. Subsection (2) identifies information that is subject to these rules. Information which has been obtained by or on behalf of the Commissioner for the purposes of an inquiry should not be disclosed unless at least one of the conditions described above are met. But subsection (2)(b) states that information which has previously been in the public domain is not covered by these restrictions.

54. As stated in subsection (4), a person who knowingly discloses information that should not be made public in terms of this section commits an offence. Subsection (5) details the penalties that can be imposed for an unauthorised disclosure of information.

Section 11: Power to intervene

55. This section describes the process by which the Commissioner may intervene in civil proceedings before a court, with the exception of children’s hearing proceedings. The Commissioner may only make a submission to the court on an issue arising in proceedings which the Commissioner considers are relevant to his or her general duty and raise a matter of public interest.

56. Such interventions can only be made with leave of or at the invitation of the court – the Commissioner has no power to intervene in proceedings without the court’s permission.

57. When applying for leave to intervene, the Commissioner must inform the court of the issue arising in the proceedings which the Commissioner believes to be relevant to his or her general duty. The Commissioner is further required to provide the court with a summary of the submission that he or she intends to make.

58. If the Commissioner is invited to intervene, then the court must set out the issue arising in the proceedings upon which the court seeks a submission. The court may only grant leave for or invite the Commissioner to intervene if it is satisfied that such an intervention is likely to assist the court.
59. Further rules relating to the procedure to be followed in an intervention can be made by the Court of Session in an Act of Sederunt.

60. As stated in subsection (8), this section is without prejudice to any capacity of the Commissioner to intervene in any proceedings before any court or tribunal in terms of any existing enactment or the practice of the court or tribunal.

Section 12: Annual report

61. In addition to issuing reports upon the completion of its inquiries, the Commissioner must also provide the Parliament with an annual report.

62. The report will include a summary of any inquiries that the Commissioner has conducted in the past year and a summary of any other activities undertaken.

63. Subsection (3) obliges the Commissioner to comply with any directions given by the Parliamentary corporation regarding the form and content of the report. As with reports on inquiries, the Commissioner must publish the annual reports.

Section 13: Publication of reports

64. Subsection (1) requires the Commissioner to arrange for the publication of all reports submitted to the Parliament. It is likely that any reports would be published in either electronic format or hard copy.

65. Subsection (2) enables the Commissioner to publish any other report relating to his or her functions.

Section 15: Protection from actions for defamation

66. Subsection (1)(a) provides the Commissioner with absolute privilege for all reports of inquiries, and any other statements and communications in relation to those inquiries. The provision of absolute privilege places a bar on a person’s right to pursue an action of defamation in respect of such statements made by the Commissioner.

67. Subsection (1)(b) provides the Commissioner with qualified privilege for any other statement made in pursuance of the purposes of the Bill, and subsection (1)(c) confers the same protection upon any statement made to the Commissioner for the same purposes. Under qualified privilege the Commissioner can make statements without fear of action provided that such statements are not motivated by malice or intent to injure. ‘Statement’ has the same meaning as in the Defamation Act 1996 (c.31) and therefore includes words, pictures, visual images, gestures or any other method of signifying meaning.

Section 16: Giving of notice

68. This section sets out the processes that the Commissioner must follow when giving notices.
69. Any notice to be given to any person under any provision of the Bill must be given in writing, and must be either delivered in person or sent by registered post, recorded delivery, email or some other means which the person giving the notice considers likely to cause it to be delivered on the same or the following day. In the case of an individual, notice should be served at the person’s usual or last known address, or the person’s place of business or work. In any other case, notice should be served at the person’s registered or principal office.

70. If notice is given by electronic means such as email, it will be treated as being in writing if it is received in a form which is legible and can be subsequently used for reference. Unless evidence to the contrary is provided, notice given by a means described in subsection (2)(c) is presumed to be delivered on the next working day following the day on which it is sent. In the Bill “working day” means any day apart from a Saturday, a Sunday or an official bank holiday in Scotland.

Section 17: Meaning of “Scottish public authority”

71. This section defines “Scottish public authority”. Any body, office or office holder who is a part of the Scottish Administration is considered a Scottish public authority. Also included is any Scottish public authority (within the meaning of the Scotland Act 1998) with mixed, i.e. devolved and reserved functions, or no reserved functions.

72. Additionally, any other person defined as a public authority within the meaning of the Human Rights Act 1998 is considered a “Scottish public authority” but only insofar as the functions of that person relate to Scotland and do not relate to reserved matters.

Section 19: Short title, Crown application and commencement

73. The Act that results from this Bill will be cited as the Scottish Commissioner for Human Rights Act 2006. It will bind the Crown and, excepting this section, come into force on such a day as Her Majesty may by Order in Council appoint.

74. Such an Order in Council may appoint days for different purposes and contain transitional and transitory provision.

Schedule 1: Scottish Commissioner for Human Rights

75. Schedule 1 makes detailed provision concerning the status, independence, remuneration, terms of appointment and general powers of the Commissioner. The Schedule also details various administrative and procedural matters.

76. Paragraph 1 of the Schedule makes clear that neither the Commissioner, nor any deputy Commissioner or staff member, should be regarded as a servant or agent of the Crown or have the status, immunity or privilege of the Crown.

77. The second paragraph states that the Commissioner, in the exercise of his or her functions, is not subject to the direction or control of any member of the Parliament, the Scottish Executive or the Parliamentary corporation. This is qualified because certain other provisions
(section 12(3) and paragraphs 8(2)(b), 10, 11(2), (3) and (5)) allow the Parliamentary corporation some control over the Commissioner, including the form of the Commissioner’s annual report and the location of the Commissioner’s principal office, and sub-paragraph (1) of paragraph 14 requires that the Commissioner comply with such directions as the Scottish Ministers may give regarding accounts and accounting records.

78. Paragraph 3 deals with circumstances which would disqualify a person from appointment and holding office as Commissioner or deputy Commissioner. No person may become Commissioner or deputy Commissioner if that person is a member of the House of Commons, the Scottish Parliament or the European Parliament. Persons who have held any of these offices in the year preceding nomination are also disqualified, as would be any Commissioner or deputy Commissioner who was elected to such a post during his or her tenure.

79. Paragraph 4 lists details of terms of office and remuneration for Commissioners and Deputy Commissioners, stating that each may hold office for a period of up to five years and is eligible for reappointment when that period expires. A Commissioner or deputy Commissioner may be appointed for two terms of up to five years each but may not be reappointed for a third period.

80. Paragraph 4 also provides that the Commissioner or deputy Commissioner can be removed from office by Her Majesty or at his or her request, or if one of two conditions is met.

81. The first condition, in sub-paragraph (3A), states that a Commissioner or deputy Commissioner may be removed from office if the Parliamentary corporation is satisfied that the office holder has breached his or her terms of appointment and the Parliament resolves that the Commissioner or deputy Commissioner should be removed.

82. The second condition, in sub-paragraph (3B), states that the Parliament may remove a Commissioner or deputy Commissioner from office if it resolves that it has lost confidence in him or her. In both cases, if passed on division, such a resolution must be voted for by not less than two thirds of those voting.

83. Paragraph 4 also contains details regarding the Commissioner’s and deputy Commissioner’s salaries, to the effect that each is entitled to such remuneration and allowances as are determined by the Parliamentary corporation. Other terms and conditions of holding office are to be determined by the Parliamentary corporation.

84. Paragraph 5 establishes the procedure to be followed if the office of the Commissioner is vacant. The Parliamentary corporation may appoint any person to be the acting Commissioner until a new Commissioner is appointed. The role of acting Commissioner is subject to the same basic strictures relating to appointment as a Commissioner or deputy Commissioner, in that he or she cannot hold any of the offices described in paragraph 3, nor have held any such office in the preceding year.

85. Sub-paragraph (3) sets out the terms on which a person can be appointed as acting Commissioner. An acting Commissioner can be relieved from office at that person’s request and
may also be removed from office on notice from the Parliamentary corporation. Otherwise, the Parliamentary corporation may determine the terms and conditions by which the acting Commissioner holds office.

86. With the exception of certain provisions relating to terms of office and the validity of actings contained in paragraphs 4, 6 and 7(a), the acting Commissioner is to be treated as the Commissioner.

87. Paragraph 6 makes provision for financial matters including payment of pensions, allowances and gratuities to persons who have ceased to be Commissioners or deputy Commissioners. The Parliamentary corporation has responsibility for arranging such payments. The pensions, allowances or gratuities arranged under this section may be in compensation for loss of office.

88. Paragraph 7 states that no act of the Commissioner or a deputy Commissioner is to be considered invalid on grounds of any defect in his or her nomination, nor by disqualification from appointment as Commissioner or deputy Commissioner.

89. Paragraph 8 empowers the Commissioner to do anything which appears necessary or expedient for the purpose of, or in connection with or conducive to, the exercise of his or her functions. Paragraph 8 also confers upon the Commissioner the specific power to enter into contracts and, with the consent of the Parliamentary corporation, to acquire and dispose of land.

90. The Commissioner can delegate any function to any person he or she authorises to act upon his or her behalf. The Commissioner still retains ultimate responsibility for carrying out his or her functions, whether delegated or not.

91. Paragraph 10(1) states that the Commissioner’s choice of location for his or her office is subject to the approval of the Parliamentary corporation. Paragraph 10(2) requires the Commissioner to have regard to the desirability of sharing premises with another public body, with a view to ensuring economy, efficiency and effectiveness in the use of resources.

92. Paragraph 11 allows the Commissioner to appoint staff on such terms and conditions as the Commissioner determines. The number of staff and their terms and conditions are subject to the approval of the Parliamentary corporation.

93. Sub-paragraph (5) makes provision for payment of pensions, allowances or gratuities to former staff. As read with sub-paragraph (6) this gives authority to the Commissioner to make arrangements, which may include pensions, allowances and gratuities made in compensation for loss of employment. Approval of such arrangements must be obtained from the Parliamentary corporation.

94. Paragraph 12 requires the Parliamentary corporation to designate the Commissioner, a deputy Commissioner or a member of the Commissioner’s staff as the accountable officer and states that he or she is accountable to the Parliament for exercise of those functions. It is the duty of the accountable officer to ensure that the finances of the Commissioner are kept in good
order and that the resources of the Commissioner are used economically, efficiently and effectively. If the accountable officer is required to act in a manner that he or she considers inconsistent with these responsibilities, the accountable officer must obtain written authority from the Commissioner and send a copy of this to the Auditor General for Scotland.

95. In terms of paragraph 13, the Parliamentary corporation is responsible for payment of any remuneration, allowances and expenses of the Commissioner and any deputy Commissioners. The Parliamentary corporation is also responsible for any sums payable to a person who is appointed as acting Commissioner or who has ceased to hold that office.

96. Paragraph 13 also requires the Commissioner to prepare budget proposals before the start of each financial year and send these proposals to the Parliamentary corporation for approval. The Commissioner may revise these proposals during the year in question and send the revised proposals to the Parliamentary corporation for approval. The Parliamentary corporation is not required to pay any expenses incurred by the Commissioner which exceed or are not covered by these proposals although it has power to do so.

97. Paragraph 14 requires the Commissioner to keep proper accounts and accounting records, prepare annual accounts for each financial year and send copies of the annual accounts to the Auditor General for Scotland. The Commissioner must comply with any directions given by the Scottish Ministers in relation to these requirements.

98. The Commissioner must make a copy of the audited accounts available, free of charge, to anyone who requests them.

99. By virtue of paragraphs 15 and 16, the Commissioner is to be subject to the jurisdiction of the Scottish Public Services Ombudsman and the Scottish Information Commissioner.

**Schedule 2: Inquiries: supplementary provision as to evidence**

100. Paragraph 1 expands upon the ability of the Commissioner to require a person to give evidence. Where oral evidence is required, the Commissioner must give notice specifying the time and place the person should attend. In cases where persons are requested to provide documents or other information, the Commissioner must specify the documents (or type of documents or other information) requested and the date by which they should be produced. In all cases, the Commissioner is required to inform the person in question of the matters to which the request relates.

101. Any person required to give any form of evidence to the Commissioner may apply to the sheriff for cancellation of any requirement imposed by the notice. The sheriff may allow this only if he or she is satisfied that the requirement is unnecessary – i.e. it is unconnected to the matter being investigated, undesirable for reasons of national security or considered by the sheriff to be otherwise unreasonable.

102. Paragraph 3 empowers the Commissioner to administer an oath to any person giving evidence and to require any such person to take an oath.
103. The fourth paragraph allows the Commissioner, following the service of a notice under paragraph 1, to refer uncooperative or obstructive persons to the Court of Session. The Commissioner could take this action where a person refuses or fails to comply with any requirement specified in the notice without reasonable excuse including failing to attend at a hearing, where a person refuses to take an oath when so required or to answer questions relevant to the matter at hand, or where a person deliberately destroys, conceals, alters or withholds documents.

104. On hearing any evidence or representations on a report of obstruction, the Court of Session may make such an order for enforcement as it deems necessary or deal with the matter as if it were a contempt of the court.

105. In accordance with paragraph 5, the Commissioner can pay allowances and expenses to any individual giving information of any kind in response to a notice under paragraph 1, subject to the approval of the Parliamentary corporation.

Schedule 3: Places of detention: powers of entry, inspection and interview

106. Schedule 3 expands upon the powers of entry, inspection and review granted to the Commissioner in section 8 and sets out procedures for the exercise of these powers.

107. The Commissioner may delegate these powers to another person, but paragraphs 2 and 2A provide that, before their exercise, anyone who is entitled to exercise the powers must produce written evidence of that entitlement, if required to do so,

108. Paragraph 4 allows the Commissioner to report any person intentionally obstructing the Commissioner or authorised person from exercising this power to the Court of Session. After hearing any evidence or representations on the matter, the Court of Session may make such an order for enforcement as it sees fit or may deal with the matter as a contempt of court.
This document relates to the Scottish Commissioner for Human Rights Bill as amended at Stage 2 (SP Bill 48A)

SCOTTISH COMMISSIONER FOR HUMAN RIGHTS BILL
[AS AMENDED AT STAGE 2]

REVISED EXPLANATORY NOTES


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