

Disability Commissioner (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 43-EN), a Financial Memorandum (SP Bill 43-FM), a Policy
Memorandum (SP Bill 43-PM) and statements on legislative competence (SP Bill 43-LC).**

Disability Commissioner (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide for the establishment and functions of a Disability Commissioner for Scotland; and for connected purposes.

Establishment

1 Disability Commissioner for Scotland

- 5
- (1) The office of the Disability Commissioner for Scotland is established.
 - (2) Schedule 1 makes further provision about the office.

Functions

2 Function

- 10
- (1) The Commissioner's general function is to promote and safeguard the rights of disabled people.
 - (2) In exercising the general function, the Commissioner is to—
 - (a) promote awareness and understanding of the rights of disabled people,
 - (b) keep under review the law, policy and practice relating to the rights of disabled people with a view to assessing the adequacy and effectiveness of such law, policy and practice,
 - (c) promote best practice by service providers, and
 - (d) promote, commission, undertake and publish research on matters relating to the rights of disabled people.
 - (3) For the purposes of this Act, the terms disability and disabled person have the meanings given to them by section 6 (disability) and Schedule 1 (disability: supplementary provisions) of the Equality Act 2010 and any regulations made or guidance issued under those provisions.
- 15
- 20

3 United Nations Convention and equal opportunities

- 25
- (1) In exercising functions under this Act, the Commissioner must comply with subsections (2) to (4).
 - (2) The Commissioner must have regard to any relevant provisions of the United Nations Convention on the Rights of Persons with Disabilities.

- (3) The Commissioner must, in particular, have regard to, and encourage others to have regard to, the following principles—
- (a) respect for the inherent dignity of disabled people, their individual autonomy including the freedom to make their own choices, and their independence,
 - (b) full and effective participation and inclusion of disabled people in society, and
 - (c) close consultation and active involvement of disabled people in decision-making processes concerning issues relating to them.
- (4) The Commissioner must act in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.

Communicating with and involving disabled people

4 Inclusive communication

- (1) The Commissioner must have regard to the importance of communicating in a way that ensures that disabled people who have difficulty communicating or accessing information in relation to speech, language or otherwise can express themselves and access or receive information in ways that best meets their needs.
- (2) Any reports published by the Commissioner shall, so far as practicable, be available in a range of formats accessible by disabled people regardless of their disability.

5 Involving disabled people in the work of the Commissioner

- (1) The Commissioner must encourage the involvement of disabled people in the work of the Commissioner.
- (2) The Commissioner must, in particular, take reasonable steps to—
- (a) ensure that disabled people are made aware of—
 - (i) the functions of the Commissioner,
 - (ii) the ways in which they may communicate with the Commissioner,
 - (iii) the ways in which the Commissioner may respond to any issues which they raise,
 - (b) consult disabled people on the work to be undertaken by the Commissioner, and
 - (c) consult organisations working with and for disabled people on the work to be undertaken by the Commissioner.
- (3) In carrying out the duties under subsections (1) and (2) the Commissioner must pay particular attention to groups of disabled people—
- (a) who may not have other adequate means by which they can make their views known, or
 - (b) who, because of the nature or impact of their disability, may find it difficult to form, articulate or communicate their views.
- (4) The Commissioner must prepare and keep under review a strategy for involving disabled people in the work of the Commissioner in accordance with this section.

*Investigations***6 Carrying out investigations**

- (1) The Commissioner may carry out general investigations and individual investigations within the limitations imposed by this section and section 7.
- 5 (2) The Commissioner may not carry out an investigation if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the investigation is properly the function of another person.
- (3) Subsection (2) does not apply if the Commissioner—
- 10 (a) consults with the other person or persons within whose proper function the investigation would be, and
- (b) considers that, in the circumstances, the matter would most effectively or expediently be investigated by the Commissioner.
- (4) The Commissioner may not carry out an investigation—
- 15 (a) if it would relate to a reserved matter,
- (b) so far as it would relate to—
- (i) the making of decisions or taking of action in particular legal proceedings before a court or tribunal, or
- (ii) a matter which is the subject of legal proceedings before a court or tribunal.

7 General and individual investigations

- 20 (1) A general investigation is an investigation into whether, by what means and to what extent a service provider has regard to the rights, interests and views of disabled people in making decisions or taking actions that affect those disabled people.
- 25 (2) The Commissioner may carry out a general investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to—
- 30 (a) disabled people generally,
- (b) people with particular disabilities, or
- (c) particular groups of disabled people.
- (3) An individual investigation is an investigation into whether, by what means and to what extent a service provider had regard to the rights, interests and views of a disabled person in making a decision or taking an action that affected that disabled person.
- 35 (4) Subsection (5) applies in relation to a matter about which the Commissioner may carry out an individual investigation.
- (5) Where the Commissioner considers that the matter may be capable of being resolved without an investigation, the Commissioner may with a view to securing that outcome take such steps as the Commissioner considers appropriate.
- (6) In this Act—
- 40 “excluded provider” means a person providing services for disabled people or a disabled person who does not principally provide those services for remuneration or as part of their employment but because of their existing family relationship,

community or neighbourhood links, or friendship with the disabled person or disabled people concerned,

“service provider” means any person providing services for disabled people or a disabled person other than an excluded provider.

5 **8 Initiation and conduct of investigation**

- (1) Before taking any steps in the conduct of an investigation, the Commissioner must—
 - (a) draw up terms of reference for the investigation, and
 - (b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the investigation and terms of reference to the attention of persons likely to be affected by it.
- (2) A general investigation is to be conducted in public except to the extent that the Commissioner considers that the taking of evidence in private is necessary or appropriate.
- (3) An individual investigation is to be conducted in private.

15 **9 Investigations: witnesses and documents**

- (1) The Commissioner may require any person—
 - (a) to give evidence on any matter within the terms of reference of an investigation, or
 - (b) to produce documents in the custody or control of that person which have a bearing on any such matter.
- (2) The Commissioner may not impose such a requirement on any person whom the Scottish Parliament could not require, under section 23 of the Scotland Act, to attend its proceedings for the purpose of giving evidence or to produce documents.
- (3) Schedule 2 makes further provision with respect to witnesses and documents and the sanctions for non-compliance with a requirement under this section.

25 **10 Reports on investigations**

- (1) The Commissioner must, at the conclusion of any investigation, prepare a report of the investigation.
- (2) The report must state—
 - (a) the Commissioner’s findings in relation to the issue investigated, and
 - (b) the Commissioner’s recommendations in light of those findings.
- (3) A report of an investigation into the activities of a person named in, or identifiable from, the report may be finalised only if that person has, where this is reasonable and practicable, been given a copy of the draft report and an opportunity to make representations on it.
- (4) The Commissioner must lay before the Scottish Parliament the report of a general investigation.
- (5) The Commissioner may lay before the Scottish Parliament the report of an individual investigation.

- (6) If the Commissioner lays the report of an investigation before the Scottish Parliament, the Commissioner must publish that report as soon as is practicable after laying the report before the Scottish Parliament.

11 Requirement to respond

- 5 (1) In relation to any recommendation made in an investigation report, the Commissioner may include a requirement to respond.
- (2) A requirement to respond is a requirement that a person provides, within such period as the Commissioner reasonably requires, a statement in writing to the Commissioner setting out—
- 10 (a) what the person has done or proposes to do in response to the recommendation, or
- (b) if the person does not intend to do anything in response to the recommendation, the reasons for that.
- (3) If a report of an investigation includes a requirement to respond, the Commissioner must give a copy of the report to the person who is required to respond.
- 15 (4) If a report of a general investigation includes a requirement to respond, the Commissioner must, in whatever manner the Commissioner considers appropriate—
- (a) make publicly available, in part or in full, a person's written response to a recommendation, or
- 20 (b) publicise a person's failure to comply with a requirement to respond to a recommendation.
- (5) Subsection (4)(a) does not apply if, or to the extent that, the Commissioner considers publication to be inappropriate.
- (6) If a report of an individual investigation includes a requirement to respond, the Commissioner may take either of the actions mentioned in subsection (4).
- 25

Strategic plan, annual reports and other reports

12 Strategic plans

- (1) The Commissioner must, in respect of each 4 year period—
- 30 (a) prepare and publish a strategic plan, and
- (b) lay a copy of the plan before the Scottish Parliament before the beginning of the 4 year period to which it relates.
- (2) Before publishing a strategic plan, the Commissioner must consult on a draft of it with—
- (a) the Parliamentary corporation, and
- (b) such other persons as the Commissioner thinks appropriate.
- 35 (3) The reference in subsection (2)(b) to other persons includes a committee of the Scottish Parliament.
- (4) A strategic plan is a plan setting out how the Commissioner proposes to perform the Commissioner's functions during the period covered by the plan and, in particular, setting out—
- 40 (a) what the Commissioner's objectives and priorities are for that period,

- (b) how the Commissioner proposes to achieve them,
- (c) what the timetable is for doing so, and
- (d) estimates of the costs of doing so.

(5) The Commissioner may, at any time, review and revise a strategic plan.

5 (6) If the Commissioner reviews and revises a strategic plan—

- (a) subsections (1) to (5) apply to a revised strategic plan as they do to a strategic plan, and
- (b) the reference in subsection (1) to the 4 year period is to be read as a reference to the period to which the revised strategic plan relates.

10 (7) In this section, “4 year period” means—

- (a) the period of 4 years beginning on 1 April next following the coming into force of this section, and
- (b) each subsequent period of 4 years.

15 (8) The Commissioner may vary the start date and length of the period mentioned at subsection (7)(a) if—

- (a) the period as varied is more than 3 years and less than 5 years,
- (b) the period as varied ends on 31 March of the relevant year, and
- (c) the Parliamentary corporation has approved the variation.

13 Annual Report

20 (1) The Commissioner must, in respect of each reporting year—

- (a) prepare and publish an annual report on the exercise of the Commissioner’s functions during the reporting year, and
- (b) lay a copy of the report before the Scottish Parliament within 7 months after the end of that reporting year.

25 (2) The annual report must include—

- (a) a review of issues identified by the Commissioner in the reporting year as being relevant to disabled people,
- (b) a review of the Commissioner’s activity in the reporting year, including the steps taken to fulfil each of the Commissioner’s functions,
- (c) any recommendations by the Commissioner arising out of such activity, and
- (d) an overview of work to be undertaken by the Commissioner in the year following the reporting year, including the strategy for involving disabled people in the work of the Commissioner.

30 (3) In preparing the report, the Commissioner must comply with any direction given by the Parliamentary corporation as to the form and content of the report.

35 (4) In this section “reporting year” means the year beginning on 1 April.

14 Other reports

- (1) The Commissioner may lay before the Scottish Parliament any report, in addition to reports under sections 10 and 13, prepared by the Commissioner if the Commissioner considers it appropriate to do so.
- (2) If the Commissioner lays a report before the Scottish Parliament under this section, the Commissioner must publish that report as soon as is practicable after laying the report before the Scottish Parliament.

*Protection from actions of defamation***15 Protection from actions of defamation**

- (1) For the purposes of the law of defamation—
- (a) any statement made to the Commissioner has absolute privilege,
 - (b) any statement made by the Commissioner has absolute privilege if it is made—
 - (i) in conducting an investigation under this Act,
 - (ii) in communicating with any person for the purposes of such an investigation,
 - (iii) in a report published under this Act,
 - (c) any other statement made by the Commissioner has qualified privilege.
- (2) In this section—
- (a) a reference to a statement being made to or by the Commissioner—
 - (i) includes a statement being made to or by (as the case may be) a member of the Commissioner’s staff,
 - (ii) does not include a statement made to or by (as the case may be) an individual when the individual is not acting in the individual’s capacity as the Commissioner or a member of the Commissioner’s staff,
 - (b) “statement” has the same meaning as in the Defamation and Malicious Publication (Scotland) Act 2021.

*Final provisions***16 Application of public authorities legislation**

Schedule 3 modifies other enactments so that their provisions apply to the office of Commissioner.

17 Interpretation

- (1) In this Act—
- “action” includes failure to act and related expressions are to be construed accordingly,
 - “best practice” means such practice in relation to the rights of disabled people as appears to the Commissioner to be desirable,
 - “Commissioner” means the Disability Commissioner for Scotland,
 - “disabled people” has the meaning given to it by section 2(3) of this Act,

“equal opportunities” and “equal opportunity requirements” have the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act,

“excluded provider” has the meaning given to it by section 7(6) of this Act,

“Parliamentary corporation” means the Scottish Parliamentary Corporate Body,

5 “Scotland Act” means the Scotland Act 1998 (c. 46),

“Scottish Law Officer” means the Lord Advocate or the Solicitor General for Scotland,

“service provider” has the meaning given to it by section 7(6) of this Act.

10 (2) Any reference in this Act to the United Nations Convention on the Rights of Persons with Disabilities is to that Convention read subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

18 Commencement

(1) Sections 1 to 16 come into force at the end of a period of 6 months beginning with the day of Royal Assent.

15 (2) The other provisions of this Act come into force on the day after Royal Assent.

19 Short title

The short title of this Act is the Disability Commissioner (Scotland) Act 2024.

SCHEDULE 1
(introduced by section 1)

THE OFFICE OF DISABILITY COMMISSIONER FOR SCOTLAND

PART 1

STATUS AND INDEPENDENCE

Legal personality

- 1 The Commissioner is, as Commissioner, to be regarded as a juristic person distinct from the individual holding the office.

Exclusion of Crown Status

- 10 2 (1) The Commissioner—
 (a) is not a servant or agent of the Crown, and
 (b) does not enjoy any status, immunity or privilege of the Crown.
(2) The Commissioner's property is not to be regarded as property of, or property held on behalf of, the Crown.
15 (3) Individuals working as the Commissioner's staff are not, on that account, to be regarded as civil servants.

Independence

- 3 (1) The Commissioner is not, except as provided in the provisions listed in sub-paragraph (2), subject to the direction or control of—
20 (a) any member of the Scottish Parliament,
 (b) the Scottish Ministers, or
 (c) the Parliamentary corporation.
(2) The provisions referred to in sub-paragraph (1) are—
25 (a) section 12(8), 13(3), and
 (b) paragraphs 6, 7(3), 9, 10(2), 10(4), 13(1), 14, 15, 17(1), 18(1) and (2), 19(1), and 20(2) and (3) of this schedule and paragraph 8 of schedule 2.

PART 2

APPOINTMENT, TERMINATION AND TERMS AND CONDITIONS

Appointment

- 30 4 (1) The office of Commissioner is to be held by an individual appointed by His Majesty on the nomination of the Scottish Parliament.
(2) An individual may not be appointed to hold the office of Commissioner if the individual is disqualified under paragraph 5.
(3) An individual who holds or has held the office of Commissioner may not be reappointed.

Disqualification from appointment

5 An individual is disqualified from holding the office of Commissioner if the individual is or, within the year preceding the date on which the appointment is to take effect, has been—

- 5
- (a) a member of the Scottish Parliament,
 - (b) a member of the House of Commons, or
 - (c) a member of the House of Lords.

Tenure

10 6 Subject to paragraph 7, the Commissioner holds office for such period, not exceeding 8 years, as the Parliamentary corporation determines at the time of appointment.

Early termination

7 (1) The Commissioner's appointment ends if—

- 15
- (a) the Commissioner is relieved of office by His Majesty at the Commissioner's request,
 - (b) the Commissioner becomes disqualified from holding office (see paragraph 5), or
 - (c) the Commissioner is removed from office in accordance with sub-paragraph (2).

(2) The Commissioner may be removed from office by His Majesty if—

- 20
- (a) either of the conditions in sub-paragraph (3) is met, and
 - (b) the number of members voting in favour of the resolution referred to in the condition in question is at least two thirds of the total number of seats for members of the Scottish Parliament.

(3) The conditions are—

- 25
- (a) that—
 - (i) the Parliamentary corporation is satisfied that the Commissioner has breached the Commissioner's terms and conditions of appointment, and
 - (ii) the Scottish Parliament resolves that the Commissioner should be removed from office for that breach, or
 - (b) that the Scottish Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to perform the Commissioner's functions.
- 30

Validity of things done

8 The validity of things done by the Commissioner is not affected by—

- (a) a defect in the nomination of the Commissioner, or
- (b) the disqualification of an individual as the Commissioner after appointment.

Remuneration, allowances and pensions

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

Acting Disability Commissioner

- 10 (1) This paragraph applies during any period when—
- (a) the office of Commissioner is vacant, or
- 20 (b) the individual holding the office of Commissioner is for any reason unable to perform the Commissioner's functions.
- (2) The Parliamentary corporation may appoint an individual to act as the Commissioner during that period.
- (3) An individual is eligible for appointment under sub-paragraph (2) only if the individual is not—
- 25 (a) prevented from being reappointed to the office of Commissioner by virtue of paragraph 4(3),
- (b) disqualified from holding the office of Commissioner under paragraph 5.
- (4) An individual appointed under sub-paragraph (2)—
- 30 (a) is appointed on such terms and conditions, and for such period, as the Parliamentary corporation determines,
- (b) while acting as Commissioner is to be treated as the Commissioner for all purposes except those of paragraphs 6, 7, and 9(3).

PART 3

GENERAL POWERS

General powers

- 11 The Commissioner may do anything which appears to the Commissioner—
- 5 (a) necessary or expedient in order to achieve, or in connection with the exercise of the Commissioner's functions, or
- (b) to be otherwise conducive to the exercise of those functions.
- 12 (1) The Commissioner may determine and charge reasonable sums for anything done or provided by the Commissioner in the performance of, or in connection with, the Commissioner's functions.
- 10 (2) Any sums received by the Commissioner by virtue of sub-paragraph (1) are to be retained by the Commissioner and applied to meet expenditure incurred in doing or providing whatever is charged for.

Restrictions on general powers in relation to the acquisition or disposal of land

- 15 13 (1) The Commissioner may not acquire or dispose of land without the approval of the Parliamentary corporation.
- (2) In sub-paragraph (1), the reference to acquiring or disposing of land includes acquiring or disposing of—
- (a) any right or interest in or over land,
- 20 (b) a servitude or other right in or over land by the creation of a new right.

PART 4

STAFF AND OFFICES

Appointment of staff

- 14 (1) The Commissioner may, with the consent of the Parliamentary corporation as to numbers, appoint staff.
- 25 (2) Staff appointed by the Commissioner are appointed on such terms and conditions as the Commissioner, with the approval of the Parliamentary corporation, determines.

Staff pensions

- 15 (1) The Commissioner may, with the approval of the Parliamentary corporation, pay or make arrangements for the payment of pensions, allowances and gratuities to, or in respect of, any individual who is or has been a member of staff of the Commissioner.
- 30 (2) Those arrangements may include—
- (a) making payments towards the provision of those pensions, allowances and gratuities,
- 35 (b) providing and maintaining schemes for the payment of those pensions, allowances and gratuities.

- (3) The reference in sub-paragraph (1) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

Authority to perform functions

5 16 (1) The Commissioner may authorise any person to perform such of the Commissioner's functions (and to such extent) as the Commissioner determines.

- (2) The giving of authority under sub-paragraph (1) does not—
(a) affect the Commissioner's responsibility for the performance of the functions,
(b) prevent the Commissioner from performing the functions.

Duty to comply with directions

10 17 (1) The Commissioner must comply with any direction given to the Commissioner by the Parliamentary corporation in relation to—

- (a) the location of the Commissioner's office,
(b) the sharing of premises, staff, services or other resources with any other officeholder of any public body.

15 (2) A direction under this section may vary or revoke a previous direction.

- (3) The Parliamentary corporation is to make any direction under this section publicly available.

PART 5

ACCOUNTS AND ACCOUNTABILITY

20 *Budget*

18 (1) The Commissioner must, before the start of each financial year—

- (a) prepare proposals for the Commissioner's use of resources and expenditure during the year (a "budget"), and,
(b) by such date as the Parliamentary corporation determines, send the budget to it for approval.

(2) The Commissioner may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.

(3) In preparing a budget or revised budget, the Commissioner must ensure that the Commissioner's resources will be used economically, efficiently and effectively.

30 (4) A budget or revised budget must contain a statement confirming that the Commissioner has complied with the duty under sub-paragraph (3).

Accountable officer

19 (1) The Parliamentary corporation must designate the Commissioner or a member of the Commissioner's staff as the accountable officer.

- (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) where the accountable officer is not the Commissioner, the duty set out in sub-paragraph (3).
- (3) The duty referred to in sub-paragraph (2)(d) is a duty, where the accountable officer is required to act in a way that the accountable officer considers would be inconsistent with the proper performance of the functions specified in sub-paragraph (2)(a) to (c), to—
- (a) obtain written authority from the Commissioner before taking the action, and
 - (b) send a copy of that authority as soon as possible to the Auditor General for Scotland.
- (4) The accountable officer is answerable to the Scottish Parliament for the performance of the functions specified in sub-paragraph (2).

Accounts and audit

- 20 (1) The Commissioner must—
- (a) keep proper accounts and accounting records,
 - (b) prepare in respect of each financial year a statement of accounts, and
 - (c) send a copy of the statement to the Auditor General for Scotland for auditing.
- (2) The Commissioner must comply with any direction from the Scottish Ministers in relation to the matters mentioned in sub-paragraphs (1)(a) and (b).
- (3) The Commissioner must make the audited statement of accounts available, without charge, for inspection by any person at all reasonable times.

SCHEDULE 2 (introduced by section 9)

INVESTIGATIONS: SUPPLEMENTARY PROVISIONS ON WITNESSES AND DOCUMENTS

Requirement to give evidence or produce documents

- 30 1 (1) A requirement under section 9 is imposed by the Commissioner giving the person in question notice in writing specifying—
- (a) the time and place at which the person is to attend before the Commissioner and the particular subjects concerning which that person is required to give evidence, or
 - (b) the documents, or types of documents, which that person is to produce, the date by which that person is to produce them, and the particular subjects concerning which they are required.
- 35

(2) Such notice must be given—

(a) in the case of an individual, by sending it, by registered post or the recorded delivery service, addressed to that person at the person's usual or last known address or, where the person has given an address for service, at that address,

(b) in any other case, by sending it, by registered post or the recorded delivery service, addressed to the person at the person's registered or principal office.

Privileges

2 (1) A person is not obliged under this Act to answer any question or to produce any document which that person would be entitled to refuse to answer or produce in proceedings in a court in Scotland.

(2) A Scottish Law Officer or a procurator fiscal is not obliged under this Act to answer any question or to produce any document which that officer would be entitled to decline to answer or to produce in accordance with section 27(3) or, as the case may be, section 23(10) of the Scotland Act.

Evidence on oath or affirmation

3 (1) The Commissioner may—

(a) administer an oath to any person giving evidence to the Commissioner, and

(b) require that person to take an oath.

(2) Any person who refuses to take an oath when required to do so under this paragraph is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

(3) In this paragraph, "oath" includes "affirmation".

Admissibility of statements in subsequent criminal proceedings

4 Any statement made by a person in answer to any question which that person was obliged under this Act to answer is not admissible in any criminal proceedings against that person, except where the proceedings are in respect of perjury relating to that statement.

Offences

5 (1) A person commits an offence if the following three conditions are met.

(2) The first condition is that the person has been given a notice under paragraph 1.

(3) The second condition is that the person is not privileged under paragraph 2.

(4) The third condition is that the person—

(a) refuses or fails to attend before the Commissioner as required by the notice,

(b) refuses or fails, when attending before the Commissioner as required by the notice, to answer any question concerning the subjects specified in the notice,

(c) deliberately alters, suppresses, conceals or destroys any document which that person is required to produce by the notice, or

(d) refuses or fails to produce any such document.

5 (5) It is a defence for a person charged with an offence under sub-paragraph (4)(a), (b) or (d) to prove that there was a reasonable excuse for the refusal or failure.

(6) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

Offences by bodies corporate and partnerships

10 6 (1) This paragraph applies if a body corporate has committed an offence under paragraph 5.

(2) A person commits the same offence if the following two conditions are met.

(3) The first condition is that the person is—

(a) a director, manager, secretary or other similar officer of the body corporate,

15 (b) a member of a body corporate with management functions where the body corporate is managed by its members,

(c) a partner of a body corporate which is a partnership, or

(d) any person who was purporting to act in any capacity mentioned at sub-paragraph (3)(a) to (c).

20 (4) The second condition is that the person—

(a) consented to, or connived in, the offence committed by the body corporate, or

(b) the offence committed by the body corporate was attributable to any neglect by the person.

25 (5) A person who commits an offence under this paragraph is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a period not exceeding three months.

Producing copies or extracts

7 For the purposes of section 9 and this schedule a person complies with a requirement to produce a document if that person produces a copy of, or an extract of the relevant part of, the document.

Allowances and expenses

8 The Commissioner may pay such allowances and expenses to persons giving evidence before the Commissioner or producing documents which they have been required or requested to produce as the Commissioner may, with the agreement of the Parliamentary corporation, determine.

SCHEDULE 3
(introduced by section 16)

PUBLIC AUTHORITIES LEGISLATION

Freedom of Information (Scotland) Act 2002

- 5 1 In Part 7 of schedule 1 of the Freedom of Information (Scotland) Act 2002 (Scottish public authorities to which the Act applies), after paragraph 63A, insert—
 “63B The Disability Commissioner for Scotland.”

Public Services Reform (Scotland) Act 2010

- 10 2 In schedule 5 of the Public Services Reform (Scotland) Act 2010 (Scottish public authorities with mixed or no reserved functions to which Part 2 order-making powers apply), after the entry relating to David MacBrayne Ltd, insert—
 “Disability Commissioner for Scotland”.

Public Records (Scotland) Act 2011

- 15 3 In the schedule of the Public Records (Scotland) Act 2011 (other authorities to which Part 1 applies), after the entry relating to David MacBrayne Ltd, insert—
 “Disability Commissioner for Scotland”.

Procurement Reform (Scotland) Act 2014

- 20 4 In Part 3 of the schedule of the Procurement Reform (Scotland) Act 2014 (other contracting authorities to which the Act applies), after paragraph 30 insert—
 “30A Disability Commissioner for Scotland”.

Disability Commissioner (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to provide for the establishment and functions of a Disability Commissioner for Scotland; and for connected purposes.

Introduced by: Jeremy Balfour
On: 8 February 2024
Bill type: Member's Bill

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