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PROSPECTIVE

## SCHEDULE 1

(introduced by section 1)

### THE OFFICE OF PATIENT SAFETY COMMISSIONER FOR SCOTLAND

#### PART 1

##### STATUS AND INDEPENDENCE

###### *Legal personality*

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

###### **Commencement Information**

- I1** Sch. 1 para. 1 not in force at Royal Assent, see [s. 24\(2\)](#)

###### *Exclusion of Crown Status*

- 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.
- (3) Individuals working as the Commissioner's staff are not, on that account, to be regarded as civil servants.

###### **Commencement Information**

- I2** Sch. 1 para. 2 not in force at Royal Assent, see [s. 24\(2\)](#)

###### *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—
- (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—
- (a) sections [16\(4\)](#) and [\(5\)](#) and [19\(1\)](#), and

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- (b) paragraphs 6, 7(3), 9, 10(1), 11(1), 14(1), 16(2), 17(1), 19(1) and (2), 21(2) and 22(3) of this schedule.

#### Commencement Information

**I3** Sch. 1 para. 3 not in force at Royal Assent, see [s. 24\(2\)](#)

## PART 2

### APPOINTMENT, TERMINATION AND TERMS AND CONDITIONS

#### *Appointment*

- 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) The Scottish Parliament must make arrangements for inquiring into whether a person whom the Parliament is considering nominating for appointment to the office of Commissioner is, or has been within the year preceding the date on which the appointment is to take effect, an individual of a kind mentioned in [sub-paragraph \(3\)](#).
- (3) The kind of individual referred to in [sub-paragraph \(2\)](#) is an individual with a financial interest in (including by reason of being remunerated by)—
- a health care provider,
  - a body constituted by virtue of the National Health Service (Scotland) Act 1978,
  - a supplier or manufacturer of medicines or medical devices.
- (4) An individual may not be appointed to hold the office of Commissioner if the individual—
- is disqualified under [paragraph 5](#),
  - holds or has held the office of Commissioner.

#### Commencement Information

**I4** Sch. 1 para. 4 not in force at Royal Assent, see [s. 24\(2\)](#)

#### *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—
- a member of the Scottish Parliament,
  - a member of the House of Commons,
  - a member of the House of Lords.

#### Commencement Information

**I5** Sch. 1 para. 5 not in force at Royal Assent, see [s. 24\(2\)](#)

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### *Tenure*

- 6 The Commissioner holds office for such period, not exceeding 8 years, as the Parliamentary corporation determines at the time of appointment (subject to [paragraph 7](#)).

#### **Commencement Information**

**I6** Sch. 1 para. 6 not in force at Royal Assent, see [s. 24\(2\)](#)

### *Early termination*

- 7 (1) The Commissioner's appointment ends if—
- (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—
- (a) the condition in [sub-paragraph \(3\)\(a\)](#) or (b) is met, and
  - (b) the number of members voting in favour of the resolution referred to in the condition in question is at least two thirds of the total number of seats for members of the Scottish Parliament.
- (3) The conditions are—
- (a) that—
    - (i) the Parliamentary corporation is satisfied that the Commissioner has breached the Commissioner's terms and conditions of appointment, and
    - (ii) the Parliament resolves that the Commissioner should be removed from office for that breach,
  - (b) the Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to exercise the Commissioner's functions.

#### **Commencement Information**

**I7** Sch. 1 para. 7 not in force at Royal Assent, see [s. 24\(2\)](#)

### *Validity of things done*

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

#### **Commencement Information**

**I8** Sch. 1 para. 8 not in force at Royal Assent, see [s. 24\(2\)](#)

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### *Remuneration, allowances and pensions*

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

#### **Commencement Information**

**I9** Sch. 1 para. 9 not in force at Royal Assent, see [s. 24\(2\)](#)

### *Subsequent appointments etc.*

- 10 (1) A person who has ceased to be the Commissioner (“the former Commissioner”) may not, without the approval of the Parliamentary corporation—
- (a) be employed or appointed in any capacity by the Commissioner,
  - (b) be an employee or appointee of—
    - (i) any person in relation to whom, or
    - (ii) any body in relation to which,
 an investigation under this Act has been carried out or continued by the former Commissioner when Commissioner, or hold office in any such body, or
  - (c) hold any other office, employment or appointment or engage in any other occupation, that, by virtue of [paragraph 5](#), the former Commissioner could not have held or, as the case may be, engaged in when Commissioner.
- (2) The restriction in [sub-paragraph \(1\)](#)—
- (a) starts when the person ceases to be the Commissioner, and
  - (b) ends with the expiry of the financial year following the one in which it started.

#### **Commencement Information**

**I10** Sch. 1 para. 10 not in force at Royal Assent, see [s. 24\(2\)](#)

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### *Other terms and conditions*

- 11 (1) The Parliamentary corporation may determine other terms and conditions of appointment, in relation to matters not covered by this Act.
- (2) The terms and conditions may—
- (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,
  - (b) provide that the Commissioner’s holding any specified office, employment or appointment or engagement in any specified occupation is subject to the approval of the Parliamentary corporation.
- (3) In sub-paragraph (2), “specified” means specified (by name or description) in the Commissioner’s terms and conditions.

#### **Commencement Information**

**I11** Sch. 1 para. 11 not in force at Royal Assent, see [s. 24\(2\)](#)

### *Acting Patient Safety Commissioner*

- 12 (1) [This paragraph](#) applies during any period when—
- (a) the office of Commissioner is vacant, or
  - (b) the individual holding the office is for any reason unable to carry out the Commissioner’s functions.
- (2) The Parliamentary corporation may appoint an individual to act as the Commissioner during that period.
- (3) An individual appointed under [sub-paragraph \(2\)](#)—
- (a) is appointed on such terms and conditions as the Parliamentary corporation determines,
  - (b) while acting as Commissioner is to be treated for all purposes except those of [paragraphs 6, 7 and 9\(3\)](#), as the Commissioner.

#### **Commencement Information**

**I12** Sch. 1 para. 12 not in force at Royal Assent, see [s. 24\(2\)](#)

## **PART 3**

### **GENERAL POWERS**

#### *General powers*

- 13 (1) The Commissioner may do anything which appears to the Commissioner—
- (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.

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- (2) The Commissioner may, subject to [paragraph 15](#), determine and charge reasonable sums for providing anything in connection with the exercise of the Commissioner’s functions.

**Commencement Information**

**I13** Sch. 1 para. 13 not in force at Royal Assent, see [s. 24\(2\)](#)

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

- 14 (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,
  - (b) a servitude or other right in or over land by the creation of a new right.

**Commencement Information**

**I14** Sch. 1 para. 14 not in force at Royal Assent, see [s. 24\(2\)](#)

*Restriction on charging for services*

- 15 The Commissioner may not charge for providing anything to a body constituted by virtue of the National Health Service (Scotland) Act 1978.

**Commencement Information**

**I15** Sch. 1 para. 15 not in force at Royal Assent, see [s. 24\(2\)](#)

**PART 4**

**STAFF**

*Staff*

- 16 (1) The Commissioner may appoint staff.
- (2) Those staff are appointed on such terms and conditions as the Commissioner, with the approval of the Parliamentary corporation, determines.

**Commencement Information**

**I16** Sch. 1 para. 16 not in force at Royal Assent, see [s. 24\(2\)](#)

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### *Staff pensions*

- 17 (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 person who is or has been a member of the Commissioner's staff.
- (2) Those arrangements may include—
- (a) making payments towards the provision of those pensions, allowances and gratuities,
  - (b) providing and maintaining schemes for the payment of those pensions, allowances and gratuities.
- (3) The reference in [sub-paragraph \(1\)](#) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

#### **Commencement Information**

**I17** Sch. 1 para. 17 not in force at Royal Assent, see [s. 24\(2\)](#)

### *Authority to perform functions*

- 18 (1) The Commissioner may authorise any person to exercise any of the Commissioner's functions (and to such extent) as the Commissioner determines.
- (2) The giving of authority under [sub-paragraph \(1\)](#) in relation to a function does not—
- (a) affect the Commissioner's responsibility for the exercise of the function,
  - (b) prevent the Commissioner from performing the function.

#### **Commencement Information**

**I18** Sch. 1 para. 18 not in force at Royal Assent, see [s. 24\(2\)](#)

## **PART 5**

### **ACCOUNTS AND ACCOUNTABILITY**

#### *Budget*

- 19 (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"),
  - (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 a revised budget, the Commissioner must ensure that the Commissioner's resources will be used economically, efficiently and effectively.
- (4) A budget or a revised budget must contain a statement confirming that the Commissioner has complied with the duty under [sub-paragraph \(3\)](#).

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### Commencement Information

**I19** Sch. 1 para. 19 not in force at Royal Assent, see [s. 24\(2\)](#)

#### *Accountable officer*

- 20 (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 \(2\)](#).

### Commencement Information

**I20** Sch. 1 para. 20 not in force at Royal Assent, see [s. 24\(2\)](#)

#### *Accounts and audit*

- 21 (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-paragraph \(1\)\(a\)](#) and [\(b\)](#).
- (3) The Commissioner must make the audited statement of accounts available, without charge, for inspection at all reasonable times.

### Commencement Information

**I21** Sch. 1 para. 21 not in force at Royal Assent, see [s. 24\(2\)](#)



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### *Annual report*

- 22 (1) The Commissioner must, in respect of each financial year—
- (a) prepare and make publicly available a report on the Commissioner’s activities during that year, and
  - (b) lay a copy of the report before the Scottish Parliament before the expiry of the period of 7 months beginning with the last day of that year.
- (2) The report must include—
- (a) a review of issues identified by the Commissioner in the financial year as being relevant to the Commissioner’s functions,
  - (b) a review of the Commissioner’s activity in that year, including the steps taken in connection with each of the Commissioner’s functions, and
  - (c) any recommendations by the Commissioner arising out of such activity.
- (3) The Commissioner must comply with any direction from the Parliamentary corporation in relation to the form and content of the annual report.

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#### **Commencement Information**

**I22** Sch. 1 para. 22 not in force at Royal Assent, see [s. 24\(2\)](#)

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**Changes and effects yet to be applied to :**

- sch. 1 para. 1 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 2 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 3 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 4 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 5 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 6 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 7 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 8 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 9 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 10 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 11 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 12 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 13 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 14 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 15 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 16 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 17 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 18 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 19 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 20 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 21 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)
- sch. 1 para. 22 coming into force by [S.S.I. 2024/110 reg. 2\(1\)](#)