

*image
not
available*

The Mental Welfare Commission for Scotland (Authorised Persons) Regulations 2005, Scotland, Scotland. Scottish Executive, Stationery Office, 2005, 0110695399, 9780110695396, . Enabling power: Mental Health (Care and Treatment) (Scotland) Act 2003, s. 15 (2) (b). Issued: 11.04.2005. Made: 04.04.2005. Laid before the Scottish Parliament: 07.04.2005. Coming into force: 05.10.2005. Effect: None. Territorial extent & classification: S. General.

DOWNLOAD [HERE](#)

, , , , , .

1. Regulations 2 and 3 prescribe the qualifications, training and experience required for appointment as President and conveners of Tribunals. Regulation 5 provides that persons prescribed as eligible for appointment as President, or who may act as conveners, are disqualified from appointment as members of Tribunals. Given that in terms of the various definitions contained in schedule 1 to the Education (Additional Support for Learning) (Scotland) Act 2004 ("the parent Act") the convener is, and the President may be, a member of a Tribunal, it appeared to the Committee that the drafting of regulation 5 was contradictory and explanation was requested of the Executive.

2. The Executive replied that it had considered the various definitions in schedule 1 to the parent Act which were brought to its attention by the Committee. Nevertheless, the Executive was satisfied that regulation 5 coherently prescribed a description of persons to be disqualified from appointment to a panel of members other than a convener for the purpose of paragraph 3(1)(b) of schedule 1 to the parent Act. The Executive's response is attached at the appendix to this report.

3. The Committee remains of the view that regulation 5 contradicts regulations 2 and 3 in so far as regulation 5 prohibits persons holding the qualifications specified in those regulations from being Tribunal members. In particular, the Committee considered that regulation 5, as drafted, has the effect of prescribing legally qualified persons as ineligible for appointment as members of a Tribunal generally whilst at the same time the terms of schedule 1 to the parent Act make clear that conveners, who must be legally qualified under regulation 3, are in fact members of the tribunal. The Committee therefore reports the Regulations to the lead Committee and Parliament on the grounds that they are defectively drafted and that there are doubts as to whether they are *intra vires*.

1. It appears to the Committee that regulation 5 contradicts regulations 2 and 3 by forbidding persons holding the qualifications specified in those regulations from being Tribunal members. The Committee asks the Executive to explain the drafting of this regulation given that in terms of schedule 1 to the parent Act the convener is and the President may be a member of a Tribunal.

In drafting the provision in regulation 5 the Executive had regard to the definitions of "panel" and "Tribunal member" in paragraph 1 of Schedule 1 to the Education (Additional Support for Learning) (Scotland) Act 2004. The Executive also had regard to the provision of paragraph 4 of schedule 1 on the constitution of Tribunals which in sub-paragraph

(2)(b) refers to two other members selected by the President from the panel referred to in paragraph 3(1)(b) of Schedule 1.

On that basis and under the power in section 34(2)(b), helpfully referred to in the Committee's letter in its second question, along with the power in paragraph 3(2)(c) of schedule 1, regulation 5 prescribed a description of persons disqualified from appointment to the panel of members other than the convener for the purposes of paragraph 3(1)(b). The Executive do not consider that provision to contradict the provisions of regulations 2 and 3 which prescribe the qualifications, training and experience for appointment as President or to the panel of conveners. The intention is to promote a diversity of qualifications, training and experience among those appointed to the Tribunals.

The Executive thanks the Committee for drawing our attention to the power in section 34(2)(b) of the 2004 Act. On reviewing the instrument in the light of the Committee's consideration the Executive agree that it would have been appropriate to cite the specific power. The Executive however consider that the instrument is within vires because of the general enabling provision in the preamble.

The Finance Committee will meet on 12 April 2005 at 10.00 am in Committee Room 6 to discuss: 1. Management of Offenders etc. (Scotland) Bill: The Committee will take evidence on the Financial Memorandum from: Andrew Brown, Bill Team Leader, Reducing Reoffending Division, Scottish Executive; George Burgess, Head of Criminal Justice Group Projects Division, Scottish Executive; Paul Cackette, Head of Civil Justice Division, Scottish Executive; and Sharon Grant, Branch Head, Community Justice Services Division, Scottish Executive. 2. Budget process: The Committee will consider a proposal to update its previous Review of Budgetary Change.

At its next meeting on 19 April, it is expected that the Committee will take oral evidence from the Minister for Finance on the Infrastructure Investment Plan; oral evidence from Executive officials on the Environmental Assessment (Scotland) Bill; and a paper on its cross-cutting inquiry into deprivation. The Committee will continue to take evidence on the Infrastructure Investment Plan and consider the Financial Memoranda of other bills at subsequent meetings.

The Procedures Committee will meet on 12 April 2005 at 10.30 am in Committee Room 2 to discuss: 1. Sewel Convention: The Committee will take evidence from: Bill Aitken MSP, Scottish Conservative and Unionist Party Business Manager; and George Lyon MSP, Scottish Liberal Democrat Business Manager; and then from: Mark Ballard MSP, Business Manager, Scottish Green Party; Carolyn Leckie MSP, Scottish Socialist Party; and Margo MacDonald MSP, Business Manager, Independents Group. 2. Private legislation (in private): The Committee will consider a draft report.

At its next meeting on 26 April, the Committee will take further evidence on the Sewel Convention Inquiry from a number of witnesses, including the Minister for Parliamentary Business. The Committee will also consider a draft report on its Private Bills Inquiry and give initial consideration to a request from the Public Petitions Committee for changes to standing orders to prohibit petitions lodged by MSPs and the re-submission of petitions closed less than a year previously.

The Enterprise and Culture Committee will meet on 12 April 2005 at 2.00 pm in Committee Room 6 to discuss: 1. Inquiry into business growth: The Committee will take evidence from Professor Donald MacRae, Chief Economist, Lloyds TSB Scotland. 2. Inquiry into business growth: The Committee will consider a paper on the proposed methodology and timetable for the inquiry, including details of the Committee's adviser and written evidence received to date. 3. Scottish football: The Committee will consider an interim report and discussion paper.

The Committee will consider a revised draft Stage 1 report on the general principles of the Smoking Health and Social Care (Scotland) Bill at its meeting on 19 April. The Committee will next consider petitions at its meeting on 26 April, including taking oral evidence from the Deputy Minister for Health and Community Care.

The Justice 1 Committee will meet on 12 April 2005 at 2.00 pm in Committee Room 2, to consider jointly, with the Justice 2 Committee, the following item: 1. Justice and Home Affairs in Europe: The Committees will take evidence from: Cathy Jamieson MSP, the Minister for Justice; Valerie Macniven, Head of Civil and International Group; and Fergus McNeil, Criminal Procedure Division, the Scottish Executive.

The Local Government and Transport Committee will meet on 12 April 2005 at 2.00 pm in Committee Room 1 to discuss: 1. Licensing (Scotland) Bill: The Committee will take evidence at Stage 1 from: Panel 1: Paul Waterson, Chief Executive, Scottish Licensed Trade Association (SLTA); and Colin Wilkinson, Secretary, Scottish Licensed Trade Association, (SLTA). Panel 2: Kevin Swoffer, Head of Technical Services, British Retail Consortium; and David Poley, Director of Compliance and Good Practice, Portman Group. Panel 3: Ian McAlpine, Coal Industry Social Welfare Organisation, Committee of Registered Club Associations; Melanie Ward, President, National Union of Students; and Keith Robson, Director, National Union of Students. 2. Prostitution Tolerance Zones (Scotland) Bill: The Committee will consider its approach to further consideration of the Bill. 3. Tendering of Ferry Services in the Clyde and Hebrides: The Committee will consider its approach to further consideration of the issue.

At its next meeting on 19 April, it is expected that the Committee will take evidence on the Licensing (Scotland) Bill at Stage 1 and will begin Stage 2 consideration of the Transport (Scotland) Bill. The Committee expects to continue evidence taking on the Licensing (Scotland) Bill and Stage 2 consideration of the Transport (Scotland) Bill at subsequent meetings.

At its next meeting on 19 April, it is expected that the Committee will consider the written evidence on the Management of Offenders etc (Scotland) Bill and take oral evidence from prison and police; its draft report on the Youth Justice Inquiry and its work programme. The Committee expects to continue to take evidence on the Management of Offenders etc. (Scotland) Bill at subsequent meetings.

At its next meeting on 20 April, it is expected that the Committee will consider the Protection of Children and Prevention of Sexual Offences (Scotland) Bill at Stage 2 (Day 1); and various subordinate legislation. The Committee will continue to consider the Protection of Children and Prevention of Sexual Offences (Scotland) Bill at Stage 2 at subsequent meetings.

The Environment and Rural Development Committee will meet on 13 April 2005 at 12.45 pm in Committee Room 5 to discuss: 1. Inquiry into rural development (in private): The Committee will consider reports from recent fact-finding visits and options for proceeding with its inquiry into rural development. 2. Inquiry into climate change (in private): The Committee will consider a further draft report.

At its next meeting on 20 April, the Committee will begin to take oral evidence as part of its Stage 1 consideration of the Environmental Assessment (Scotland) Bill. The Committee will continue to consider its draft report on its inquiry into climate change (in private). The Committee will continue to take evidence on the Environmental Assessment (Scotland) Bill at subsequent meetings, scheduled for 27 April and 11 and 18 May.

The Finance Committee will meet on 19 April 2005 at 10.00am in Committee Room 1 to discuss: 1. Infrastructure Investment Plan: The Committee will take evidence on the Infrastructure Investment Plan from: Tom McCabe MSP, Minister for Finance and Public Reform; Sandy Rosie, Director, Financial Partnerships Unit, Scottish Executive; Alison Ferguson, Senior Policy Manager, Financial Partnerships Unit, Scottish Executive; and Richard Dennis, Finance Co-ordination Team Leader, Scottish Executive Finance and Central Services Department. 2. Environmental Assessment (Scotland) Bill: The Committee will take evidence on the Financial Memorandum from: Sandy Cameron, Deputy Director, Sustainable Development Directorate, Environment Group, Scottish Executive; Jon Rathjen, Environmental Assessment (Scotland) Bill, Team Leader, Scottish Executive; and Janet Brunton, Environmental Assessment (Scotland) Bill, Deputy Team Leader,

Scottish Executive. 3. Cross-cutting Inquiry into Deprivation: The Committee will consider a paper from its Budget Adviser. 4. Item in private: The Committee will decide whether to consider its draft report on the Financial Memorandum of the Management of Offenders etc. (Scotland) Bill in private at its next meeting.

<http://eduln.org/11980.pdf>

<http://eduln.org/2122.pdf>

<http://eduln.org/8273.pdf>