

SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Investigations by the Ombudsman

Section 13 – Evidence

50. This section gives the Ombudsman a wide range of powers to require information to be supplied or documents to be produced, which are relevant to an investigation. Under *subsections (1) and (2)*, the persons who may be required to supply information or documents are:
- the listed authority; and
 - any member, officer or member of staff of the listed authority and any other person, who the Ombudsman considers is able to supply the information or document.
51. To reflect the special circumstances of the Scottish Administration, *subsection (3)* provides that where the listed authority in question is an office-holder in the Scottish Administration, the persons who may be required to supply information or documents also include other office-holders in the Scottish Administration and members of staff of the Scottish Administration assigned to work for the office-holder under investigation.
52. *Subsection (4)* provides that for the purposes of investigations the Ombudsman has the same powers as the Court of Session in respect of:
- the attendance and examination of witnesses (including the administration of oaths and the examination of witnesses abroad), and
 - the production of documents.
53. *Subsection (5)* prevents any obligation to maintain secrecy or other restriction on the disclosure of information in relation to persons in Her Majesty's service from applying to the disclosure of information for the purposes of an investigation by the Ombudsman.
54. *Subsection (6)* precludes the Crown from enjoying any privilege in respect of the production of documents or the giving of evidence (as is allowed by law in legal proceedings) in relation to any investigation by the Ombudsman.
55. *Subsection (7)* exempts any person, in consequence of the Act, from being required or authorised to supply any information or answer any question relating to Scottish Cabinet proceedings, or to proceedings of any committee of the Scottish Cabinet. *Subsection (8)* provides for certification that any information, question, document or part of document is a Scottish Cabinet document for the purposes of subsection (7).

*These notes relate to the Scottish Public Services Ombudsman
Act 2002 (asp 11) which received Royal Assent on 23 April 2002*

56. *Subsection (9)* provides that subject to subsections (5) and (6) no person can be compelled, in respect of an investigation by the Ombudsman, to give evidence or produce documents that they could not be compelled to give or produce in civil proceedings before the Court of Session.