

**Changes to legislation:** Scottish Public Services Ombudsman Act 2002, SCHEDULE 4 is up to date with all changes known to be in force on or before 03 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

## SCHEDULE 4

(introduced by section 8)

### MATTERS WHICH THE OMBUDSMAN MUST NOT INVESTIGATE

- 1 Action taken—
- (a) by or with the authority of a member of the Scottish Executive, or
  - <sup>F1</sup>(b) .....
  - <sup>F2</sup>(c) by the Police Investigations and Review Commissioner,]
- for the purposes of or in connection with the investigation or prevention of crime or the protection of the security of the State.

#### Textual Amendments

- F1** Sch. 4 para. 1(b) repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 8 Pt. 1](#); [S.S.I. 2013/51](#), [art. 2](#) (with transitional provisions and savings in [S.S.I. 2013/121](#))
- F2** Sch. 4 para. 1(c) substituted (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 7 para. 19\(3\)](#); [S.S.I. 2013/51](#), [art. 2](#) (with transitional provisions and savings in [S.S.I. 2013/121](#))

- 2 <sup>F3</sup>(1) The commencement or conduct of—
- (a) civil or criminal proceedings before any court of law, or
  - (b) proceedings before any international court or tribunal.]
- (2) The reference in sub-paragraph (1) to civil proceedings includes a reference to inquiries under the <sup>F4</sup>[Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016](#)].

#### Textual Amendments

- F3** Sch. 4 para. 2 renumbered as sch. 4 para. 2(1) (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 3 para. 21\(a\)](#) (with s. 31(6), [sch. 7](#))
- F4** Words in sch. 4 para. 2(2) substituted (15.6.2017) by [Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Act 2016 \(asp 2\)](#), s. 42(2), [sch. 2 para. 9](#); [S.S.I. 2017/155](#), [reg. 2](#) (with [regs. 4\(2\), 5](#))

- 3 Action taken by any office-holder in, or member of the staff of, the Scottish Administration appointed to be an officer, or a member of the administrative staff, of any court or tribunal, so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in a judicial capacity or in the capacity of a member of the tribunal.
- 4 Action taken by a member of the administrative staff of any tribunal specified in schedule 3 so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in the capacity of a member of the tribunal.
- 5 Action taken by a person appointed under section 5(3)(c) of the Criminal Injuries Compensation Act 1995 (c.53), so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in the capacity of an adjudicator appointed under that section to determine appeals.
- 6 Any exercise of the prerogative of mercy or of the power of a member of the Scottish Executive to make a reference in respect of any person to the High Court of Justiciary.

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- 7 (1) Action taken in matters [<sup>F5</sup>arising from concluded] contractual or other commercial transactions of a listed authority.
- (2) The action referred to in sub-paragraph (1) does not include any action taken by or on behalf of a health service body, a family health service provider or an independent provider in matters—
- (a) relating to NHS contracts (as defined by section 17A of the National Health Service (Scotland) Act 1978 (c.29)),
  - (b) arising from arrangements between a health service body and an independent provider for the provision of services by the provider,
  - (c) arising from arrangements between a family health service provider and an independent provider for the provision of services by the independent provider.
- (3) The transactions referred to in sub-paragraph (1) include, in particular, transactions relating to the operation of public passenger transport, the carrying on of a dock or harbour undertaking, the provision of entertainment, or the provision and operation of industrial establishments and of markets.
- (4) The transactions referred to in sub-paragraph (1) do not include—
- (a) any transaction relating to the acquisition or disposal of land,
  - (b) any transaction (not being a transaction mentioned in sub-paragraph (3)) in the discharge of functions exercisable under any public general Act, other than a transaction required for the procurement of the goods or services necessary to discharge those functions.

#### Textual Amendments

**F5** Words in sch. 4 para. 7(1) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 21(b)** (with s. 31(6), sch. 7)

- 8 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.
- 9 The grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters.
- 10 Action concerning—
- (a) the giving of instruction, whether secular or religious, or
  - (b) conduct, curriculum or discipline,
- in any educational establishment under the management of an education authority.
- [<sup>F6</sup>10A Action taken by or on behalf of any body falling within Part 3 of schedule 2 in the exercise of academic judgement relating to an educational or training matter.]

#### Textual Amendments

**F6** Sch. 4 para. 10A inserted (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), **ss. 27(4), 36(2)**; [S.S.I. 2005/419](#), **art. 2(1)**

- 11 Action taken by the Mental Welfare Commission for Scotland under—

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- [<sup>F7</sup>(a) section 51 (Commission’s power to revoke short term detention certificate or extension certificate) of the Mental Health (Care and Treatment) (Scotland) Act 2003;
- (b) section 81 (Commission’s power to revoke order) of that Act;
- (ba) section 143 (Commission’s power to revoke compulsion order) of that Act;]
- (c) section 50 (orders discharging patients from guardianship) of that Act (before the repeal of that section by the Adults with Incapacity (Scotland) Act 2000 (asp 4)), or
- (d) section 73 (recall of powers of guardian) of that Act of 2000.

#### Textual Amendments

- F7** Sch. 4 para. 11(a)-(ba) substituted for Sch. 4 para. 11(a)(b) (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [Sch. 1 para. 31\(2\)](#)

- 12 Action which has been, or is, the subject of an inquiry under section 76 of the National Health Service (Scotland) Act 1978 (c.29) (general powers to hold inquiries).
- 13 Action taken by a Health Board in the exercise of its functions under the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 (S.I. 1992/434), or any instrument amending or replacing those regulations.
- 14 Action taken by a Health Board in the exercise of its functions under regulations made under section [<sup>F8</sup>17P], 25(2), 26(2) or 27(2) of the National Health Service (Scotland) Act 1978 (c.29) by virtue of section 17 of the Health and Medicines Act 1988 (c.49).

#### Textual Amendments

- F8** Word in sch. 4 para. 14 substituted (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 4\(3\)](#); S.S.I. 2004/58, art. 2(3)

- 15 Action relating to the determination of the amount of any rent or service charge.

<sup>F9</sup>16 .....

#### Textual Amendments

- F9** Sch. 4 para. 16 repealed (1.4.2013) by [Police and Fire Reform \(Scotland\) Act 2012 \(asp 8\)](#), s. 129(2), [sch. 8 Pt. 1](#); S.S.I. 2013/51, art. 2 (with transitional provisions and savings in S.S.I. 2013/121)

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

- sch. 4 para. 14 words substituted by [2005 asp 13 sch. 2 para. 6](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 2 para. 37A inserted by [2007 asp 3 Sch. 5 para. 27](#) (This amendment not applied to [legislation.gov.uk](#). Sch. 5 para. 27 repealed (31.1.2011) by 2010 asp 8, sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1), Sch. 1)