

SCOTTISH COMMISSION FOR HUMAN RIGHTS ACT 2006

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 9: Restrictions as to scope of inquiry

31. [Section 9](#) sets out various restrictions on the power of the Commission to conduct inquiries.
32. Subsection (1) states that the Commission cannot question the findings of any court or tribunal while conducting an inquiry, including in his or her final report.
33. The remit of the Commission restricts inquiries to the general policies and procedures of public authorities, as opposed to individual cases. However, an inquiry into the policies and practices of a particular Scottish public authority may be conducted if it is the only body exercising the functions being investigated, as set down in subsection (2)(a).
34. Additionally, inquiries may be initiated into the policies and practices of a particular Scottish public authority if the specific subject matter of the inquiry is to assess compliance with particular human rights (as defined in subsection (6)). The Commission, as previously stated, cannot conduct an inquiry into an individual case, although this does not bar the Commission from taking the relevant policies and practices into account during an inquiry.
35. Subsection (5) establishes similar rules for investigating the management and operation of institutions such as prisons, hospitals, schools, colleges and care homes. The Commission may only launch an inquiry into an individual institution if the institution in question is the only one of its kind in Scotland, or if the subject matter of the inquiry is to assess compliance with particular human rights (as defined in subsection (6)) at that institution.
36. Subsection (6) details the particular human rights referred to in subsections (2)(b) and (5)(b). These are contained in two of the international human rights instruments to which the UK is signatory. These instruments relate to the prevention of torture and degrading treatment. Subsections (2)(b) and (5)(b) give the Commission power to conduct inquiries into particular public authorities and institutions to ensure compliance and good practice in relation to these instruments. Provision is also made for further human rights instruments to be added to the list in subsection (6) by an Order in Council. Such an Order would be subject to affirmative procedure in Parliament.