

Status: Point in time view as at 01/04/2011.

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SCHEDULE 3

(introduced by section 29(3))

AMENDMENTS OF THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002 (ASP 11)

Investigations and reports

- 1 In section 5(1)(a) (matters which may be investigated) after “or”, where it second occurs, there is inserted “ on ”.
- 2 In section 11 (decisions not to investigate)—
 - (a) in subsection (1) the passage from “after” to “complaint”, where it second occurs, becomes paragraph (a) of the subsection and after it there is inserted “, or
 - (b) decides to discontinue an investigation following a complaint.”,
 - (b) after subsection (3) there is inserted—

“(3A) Where the Ombudsman decides to discontinue an investigation following a complaint, any reference in paragraphs (b), (f) and (g) of subsection (2) to the listed authority in question or to the listed authority is to be construed as including a reference to a listed authority—

 - (a) which was not mentioned in the complaint, but
 - (b) whose action was investigated by the Ombudsman in connection with the investigation.”,
 - (c) after subsection (4) there is inserted—

“(5) Subsection (4) applies where the Ombudsman decides to discontinue an investigation following a request as it applies where the Ombudsman decides not to conduct such an investigation.”,
 - (d) accordingly, the title to the section becomes “**Decisions not to investigate or to discontinue investigations**”.
- 3 After subsection (6) of section 12 (investigation procedure) there is inserted—

“(7) Any reference in subsections (2)(a) and (6)(a) and (b) to the listed authority in question or to the listed authority includes, in relation to an investigation following a complaint, references to a listed authority—

 - (a) which is not mentioned in the complaint, but
 - (b) whose action is investigated by the Ombudsman in connection with the investigation.”
- 4 In section 13 (evidence) after subsection (9) there is inserted—

“(10) Any reference in subsections (1) to (3) to the listed authority in question or to the listed authority includes, in relation to an investigation following a complaint, a reference to a listed authority—

 - (a) which is not mentioned in the complaint, but
 - (b) whose action is investigated by the Ombudsman in connection with the investigation.”
- 5 In section 15 (reports on investigations)—
 - (a) at the beginning of subsection (1) there is inserted “ Subject to subsection (1A), ”,

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- (b) after that subsection there is inserted—
- “(1A) Where the Ombudsman decides to discontinue an investigation, the Ombudsman may—
- (a) send a report of the investigation to the Scottish Ministers, and
- (b) lay a copy of the report before the Parliament.”,
- (c) in subsection (4)(a)(i) after “report” there is inserted “ sent to it by virtue of subsection (1) ”,
- (d) after subsection (7) there is inserted—
- “(8) Any reference in subsections (3) to (5) to the listed authority in question or to the listed authority includes, in relation to a complaint following which the investigation was conducted, a reference to a listed authority—
- (a) which was not mentioned in the complaint, but
- (b) whose action was investigated by the Ombudsman in connection with the investigation.”

Annual reports

- 6 In section 17—
- (a) at the end of subsection (1) (duty to lay annual reports) there is inserted “ during the reporting year ”,
- (b) in subsection (2) (Ombudsman's recommendations) for “period in question” there is substituted “ reporting year ”,
- (c) after subsection (2) there is inserted—
- “(2A) A report under subsection (1) must be laid before the Parliament within seven months after the end of the reporting year.”,
- (d) in subsection (3) (directions as to form and content of reports) for “Parliament” there is substituted “ Parliamentary corporation ”,
- (e) after that subsection there is inserted—
- “(3A) The Ombudsman must arrange for the publication of each report under subsection (1).”,
- (f) after subsection (4) there is inserted—
- “(5) In this section, “reporting year” means the year beginning on 1 April.”

Strategic plans

- 7 After section 17 there is inserted—
- “17A Strategic plans**
- (1) The Ombudsman must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Ombudsman proposes to perform the Ombudsman's functions during the 4 year period.
- (2) A strategic plan must, in particular, set out—

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- (a) the Ombudsman's objectives and priorities during the 4 year period,
 - (b) how the Ombudsman proposes to achieve them,
 - (c) a timetable for doing so, and
 - (d) estimates of the costs of doing so.
- (3) Before laying a strategic plan before the Parliament, the Ombudsman must provide a draft of it to and invite, and (if any are given) consider, comments on it from—
 - (a) the Parliamentary corporation, and
 - (b) such other persons as the Ombudsman thinks appropriate.
- (4) The reference in subsection (3)(b) to other persons includes a reference to a committee of the Parliament.
- (5) The Ombudsman must lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.
- (6) The Ombudsman must arrange for the publication of each strategic plan laid before the Parliament.
- (7) The Ombudsman may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Subsections (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of 4 years beginning on 1 April next following the coming into force of this section and each subsequent period of 4 years.”

Confidentiality of information

- 8 In section 19 (confidentiality of information)—
- (a) in subsection (3)—
 - (i) for “patients”, where it first occurs, there is substituted “ individuals (in particular or in general) ”,
 - (ii) for “and” there is substituted “ or ”,
 - (iii) for “patients”, where it second occurs, there is substituted “ the particular individuals or, as the case may be, individuals in general ”,
 - (b) after subsection (4) there is inserted—

“(4A) The duty under subsection (4)(a) to inform a person about the identity of a person to whom information has been disclosed does not apply where informing the former person is likely to constitute a threat to the health or safety of the latter person.”
- 9 In section 23(1) (interpretation) the definition of “patient” is repealed.

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Application of paragraphs 11 to 19

- 10 Paragraphs 11 to 19 relate to schedule 1 to the Scottish Public Services Ombudsman Act 2002 (asp 11).

Disqualification, terms of office, status, removal etc.

- 11 For paragraph 1(3) (disqualification of former Ombudsman from certain posts) there is substituted—

“(3) A person who has ceased to hold office as Ombudsman or deputy Ombudsman may not, without the approval of the Parliamentary corporation—

- (a) be appointed or, as the case may be, elected as—
 - (i) the holder of any office which is a listed authority, or
 - (ii) a member, officer or member of staff of a listed authority,
- (b) be appointed to any paid office by a listed authority, or
- (c) hold any other office, employment, or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of paragraph 4(2E)(a), that person could not have held or, as the case may be, engaged in when Ombudsman or, as the case may be, Deputy Ombudsman.

(3A) The restriction in sub-paragraph (3)—

- (a) starts when the person ceases to hold office as Ombudsman or, as the case may be, deputy Ombudsman, and
- (b) ends on the expiry of the financial year following the one in which it started.

(3B) In sub-paragraph (3), a “paid office” is one where the holder is entitled to remuneration or expenses or any combination of them.”

- 12 In paragraph 2 (status of Ombudsman)—

(a) after sub-paragraph (2) there is inserted—

“(2A) The Ombudsman is, as such, to be regarded as a juristic person distinct from the natural person holding the office.”,

(b) in sub-paragraph (3) (respects in which Ombudsman is subject to direction or control) for “paragraph” there is substituted “ paragraphs 9(4), 10(3), 12(3), 12A, 12B, 12D and ”.

- 13 In paragraph 4 (period of office, tenure etc.)—

(a) in sub-paragraph (1)—

- (i) in paragraph (a) for “five” there is substituted “ eight ”, and
- (ii) for paragraph (d) there is substituted—

“(d) may be removed from office by Her Majesty if sub-paragraph (2C) applies,”

(b) for sub-paragraphs (2) and (3) there is substituted—

“(2A) A person who has held office as Ombudsman or deputy Ombudsman is ineligible for reappointment at any time.

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- (2B) Such a person is, however, eligible for appointment to the other office, but may not hold that office beyond the expiry of the period for which the person was first appointed.”
- (c) after sub-paragraph (2B) (as inserted by this paragraph) there is inserted—
- “(2C) This sub-paragraph applies if—
- (a) the Parliamentary corporation is satisfied that the Ombudsman has breached the terms and conditions of office and the Parliament resolves that the Ombudsman should be removed from office for that breach, or
- (b) the Parliament resolves that it has lost confidence in the Ombudsman's willingness, suitability or ability to perform the functions of the Ombudsman,
- and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.
- (2D) Sub-paragraph (2C) applies in respect of a deputy Ombudsman as it applies in respect of the Ombudsman.
- (2E) The terms and conditions of office referred to in sub-paragraph (1) (e) may, without prejudice to paragraph 1—
- (a) prohibit the Ombudsman or deputy Ombudsman from holding any other specified office, employment or appointment or engaging in any other specified occupation,
- (b) provide that the Ombudsman's or deputy Ombudsman's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.
- (2F) In sub-paragraph (2E), “specified” means specified in the terms and conditions of office or within a description so specified.”

Advisers and other services

14 For paragraph 10 there is substituted—

“Advisers and other services

- 10 (1) The Ombudsman may obtain advice, assistance or any other service from any person who, in the opinion of the Ombudsman, is qualified to give it.
- (2) The Ombudsman may pay to that person such fees and allowances as the Ombudsman determines.
- (3) Any payment under sub-paragraph (2) is subject to the approval of the Parliamentary corporation.”

Land, location of office, sharing of resources and charges

15 At the end of paragraph 12 (Ombudsman's general powers) there is inserted—

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“(3) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.”

16 After paragraph 12 there is inserted—

“Location of office

12A The Ombudsman must comply with any direction given by the Parliamentary corporation as to the location of the Ombudsman's office.

Sharing of premises, staff, services and other resources

12B The Ombudsman must comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other officeholder or any public body.

Charges for services

12C (1) The Ombudsman may determine and charge reasonable sums for anything done or provided by the Ombudsman in the performance of, or in connection with, the Ombudsman's functions.

(2) Any sums received by the Ombudsman by virtue of sub-paragraph (1) are to be retained by the Ombudsman and applied to meet expenditure incurred in doing or providing whatever is charged for.”

Budget

17 After paragraph 12C (as inserted by paragraph 16 above) there is inserted—

“Budget

12D(1) The Ombudsman must, before the start of each financial year, prepare proposals for the Ombudsman's use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.

(2) The Ombudsman 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 revised budget, the Ombudsman must ensure that the resources of the Ombudsman will be used economically, efficiently and effectively.

(4) A budget or revised budget must contain a statement that the Ombudsman has complied with the duty under sub-paragraph (3).”

Finance

18 In paragraph 13(b) (Parliamentary corporation to pay Ombudsman's expenses)—

(a) before “incurred” there is inserted “ properly ”, and

(b) at the end there is inserted “ so far as those expenses are not met out of sums received and applied by the Ombudsman under paragraph 12C(2) ”.

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19 Paragraph 13 (as amended by paragraph 18 above) is renumbered as sub-paragraph (1) of paragraph 13 and after it there is inserted—

“(2) Sub-paragraph (1)(b) does not require the Parliamentary corporation to pay any expenses which exceed or are otherwise not covered by a budget or, as the case may be, a revised budget approved under paragraph 12D.

(3) However, the Parliamentary corporation may pay those expenses.

(4) The Parliamentary corporation is to indemnify the Ombudsman in respect of any liabilities incurred in the exercise of the functions of the Ombudsman.”

Prison management etc.

20 In Part 1 of schedule 2 (list of persons liable to investigation), after paragraph 17 there is inserted—

“Prisons

- 17A Any person who is, or was at the time of the matter complained of—
- (a) the governor of a prison appointed under section 3 of the Prisons (Scotland) Act 1989 (c. 45),
 - (b) a medical officer of a prison appointed under section 3A or (if appointed before 1 January 1998) section 3(1) of that Act, or
 - (c) in relation to a contracted out prison (within the meaning of section 106(4) of the Criminal Justice and Public Order Act 1994 (c. 33)—
 - (i) the director appointed under section 107(1) of that Act, or
 - (ii) a registered medical practitioner or other person providing appropriate medical services under section 107(6) of that Act,
- (but only to the extent that the action taken by or on behalf of that person is not a matter liable to investigation under this Act by virtue of paragraph 2 of this schedule).”

Matters excluded from investigation

21 In schedule 4—

- (a) paragraph 2 (exclusion of civil, criminal and international proceedings from investigation) is renumbered as sub-paragraph (1) of that paragraph and after it there is inserted—

“(2) The reference in sub-paragraph (1) to civil proceedings includes a reference to inquiries under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (c. 14).”, and

- (b) in paragraph 7(1) (exclusion of certain contractual and commercial transactions) for “relating to” there is substituted “arising from concluded”.

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