

PUBLIC SERVICES REFORM (SCOTLAND) ACT 2010

EXPLANATORY NOTES

THE ACT

Part 8 – Scrutiny and Complaints

Complaints handling procedures

Section 119 - Complaint handling procedures

314. This section amends the Scottish Public Services Ombudsman Act 2002 by inserting the following sections 16A to 16G into that Act.

Section 16A – Statement of principles

315. This section requires the Ombudsman to publish a statement of principles concerning complaints handling procedures of the “listed authorities” in schedule 2 to the Scottish Public Services Ombudsman Act 2002. The Ombudsman must consult on the first such statement and any material changes and must obtain Parliamentary approval before publishing these.
316. Subsection (12) defines “complaints handling procedures” to mean procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one in respect of which a complaint to the Ombudsman can be made and investigated under that Act.
317. Subsection (2) requires every listed authority to have a complaints handling procedure (or procedures) in respect of action taken by that listed authority, and these procedures must comply with the published statement of principles. Subsection (3) also requires a listed authority which has statutory responsibility for a complaints handling procedure in relation to, or operated by, another listed authority, to ensure that these procedures comply with the statement of principles.

Section 16B - Model complaints handling procedures

318. This section enables the Ombudsman to publish model complaints handling procedures (“model CHPs”) for listed authorities. Model CHPs must also comply with the statement of principles published by the Ombudsman. Subsection (6) ensures that listed authorities specified under section 16C(1) must comply with any published changes to the relevant model CHP, but it is left to the Ombudsman to decide whether to direct the listed authority to resubmit a description if its complaints handling procedure under section 16E(1). If the Ombudsman withdraws a model CHP, any related specifications under section 16C(1) cease to have effect.

Section 16C - Model complaint handling procedures: power to specify

319. This section enables the Ombudsman to specify any listed authority to which a model CHP is relevant. A specified listed authority must have a complaints handling procedure that complies with the relevant model CHP. On being specified, a listed authority must submit a description of its complaints handling procedure which takes account of the model CHP within 6 months. The listed authority may, with the Ombudsman's consent, disapply aspects of the model CHP if this is necessary for its effective operation. Specifications can be revoked at any time.

Section 16D - Declarations of non-compliance

320. This section enables the Ombudsman to declare that a complaints handling procedure of a specified listed authority does not comply with the relevant model CHP, and if not specified, that the procedure does not comply with the statement of principles. The Ombudsman must give reasons in writing and may also specify changes that would allow the declaration to be withdrawn. The listed authority must send a description of its complaints handling procedure to the Ombudsman within 2 months of the declaration, having taken account of the reasons for non-compliance and any changes specified by the Ombudsman.

Section 16E - Submission of description of complaints handling procedure

321. This section gives the Ombudsman a power to require a listed authority to submit a description of its complaints handling procedure within 3 months or such other period as the Ombudsman thinks fit. A shorter period has effect even if the period given in section 16C(3) or 16D(4) has not yet expired. A listed authority is also required to provide additional information on request. This enables the Ombudsman to get an adequate description of a listed authority's complaints handling procedure.

Section 16F - Complaint handling procedures: application of other enactments

322. This section provides that the duties in sections 16A(2) and (3) and 16C(2) do not apply to the extent that the relevant listed authority lacks the necessary powers to ensure compliance with the duties, for example, where another body is responsible for determining or approving the procedures to be followed. In addition, the duties in sections 16A(2) and (3) and 16C(2) do not apply to the extent that they are inconsistent with any other enactment. The latter applies to the extent, for example, that another piece of legislation expressly provides on the face of that legislation that the relevant procedures of a listed authority must apply in a way, or contain provision, that is inconsistent with these duties.

Section 16G – Complaints handling procedure: promotion of best practice etc.

323. This section imposes duties on the Ombudsman in relation to complaints handling by listed authorities to (1) monitor practice, (2) promote best practice and (3) encourage co-operation and the sharing of best practice. Listed authorities must co-operate with the Ombudsman in the exercise of these duties except to the extent that they lack the necessary powers to ensure compliance with the duty, or the duty is inconsistent with any other enactment.