

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
 - (b) by any police authority or any joint police board constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967 (c. 77),for the purposes of or in connection with the investigation or prevention of crime or the protection of the security of the State.
- 2 The commencement or conduct of—
 - (a) civil or criminal proceedings before any court of law, or
 - (b) proceedings before any international court or tribunal.
- 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.
- 7
 - (1) Action taken in matters relating to 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—

Status: This is the original version (as it was originally enacted).

- (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.
- 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.
- 11 Action taken by the Mental Welfare Commission for Scotland under—
- (a) section 33 (orders for discharge of hospital patients) of the Mental Health (Scotland) Act 1984 (c. 36),
 - (b) section 35I (revocation of community care orders) 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.
- 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 19, 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).
- 15 Action relating to the determination of the amount of any rent or service charge.