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STATUTORY INSTRUMENTS

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**1999 No. 1351**

**The Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of Maladministration) Order 1999**

**Matters which may be investigated**

9.—(1) Subject to the provisions of this article, the Scottish Commissioner may investigate any action taken by or on behalf of an authority subject to investigation if—

- (a) the action was taken in the exercise of administrative functions of that authority;
- (b) a written complaint is duly made to a member of the Parliament by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken (“the person aggrieved”); and
- (c) the complaint is referred to the Scottish Commissioner, with the consent of the person who made it, by a member of the Parliament with a request to conduct an investigation thereon.

(2) The Scottish Commissioner may not question the merits of a decision taken without maladministration by an authority subject to investigation in the exercise of a discretion vested in that authority.

(3) A member of the Scottish Executive is subject to investigation by the Scottish Commissioner only in respect of any action taken by or on behalf of that member in the exercise of functions conferred on the Scottish Ministers or of functions conferred upon the First Minister alone.

(4) A cross-border public authority which is listed in Schedule 2 is subject to investigation by the Scottish Commissioner only in connection with any action concerning Scotland and not relating to reserved matters taken by or on behalf of that authority.

(5) The Scottish Commissioner shall not conduct an investigation in respect of any action in respect of which the person aggrieved has or had—

- (a) a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty’s prerogative; or
- (b) a remedy by way of proceedings in any court of law,

unless the Scottish Commissioner is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to it.

(6) The Scottish Commissioner shall not conduct an investigation in respect of any matter mentioned in Schedule 3 to the 1967 Act and, for this purpose—

- (a) the references in paragraphs 5, 7 and 8 of that Schedule to the Secretary of State shall be read as if they included a reference to a member of the Scottish Executive;
- (b) the definition in paragraph 6B(2) of that Schedule((1) of “relevant tribunal” shall be read as including a listed tribunal; and
- (c) the references in paragraphs 9 and 10 of that Schedule to a government department or authority to which the 1967 Act applies shall be read as if they included references to an authority subject to investigation.

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(1) Paragraph 6B was inserted by the Parliamentary Commissioner Act 1994 (c. 14), section 1(2).

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(7) The Scottish Commissioner shall not conduct an investigation in respect of any action taken by or on behalf of Scottish Homes in respect of any of its actions as a landlord.

(8) For the purposes of this article, administrative functions exercisable by any person appointed as a member of the administrative staff of a listed tribunal—

(a) by an authority subject to investigation; or

(b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such an authority,

shall be taken to be administrative functions of that authority.

(9) In determining whether to initiate, continue or discontinue an investigation, the Scottish Commissioner shall, subject to the preceding provisions of this article, act in accordance with his discretion.