

2004 No. 1823 (S. 4)

CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND
SCOTTISH PUBLIC SERVICES OMBUDSMAN

**The Scottish Public Services Ombudsman Act 2002
(Consequential Provisions and Modifications) Order 2004**

Made

13th July 2004

Coming into force

14th July 2004

Whereas a draft of this Order has been laid before and approved by a resolution of each House of Parliament in accordance with section 115 of, and paragraphs 1, 2 and 3 of Schedule 7 to, the Scotland Act 1998(a);

Now, therefore, the Secretary of State, in exercise of the powers conferred upon him by sections 104, 112(1) and 113 of that Act and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 and shall come into force on the day after the day on which it is made.

Interpretation

2. In this Order—

“the Act” means the Scottish Public Services Ombudsman Act 2002(b);

“the Cabinet” means the Cabinet of the UK Government; and

“Ombudsman” means the Scottish Public Services Ombudsman appointed under section 1 of the Act.

Evidence

3.—(1) No person shall be required or authorised by virtue of the Act to furnish any information or answer any questions relating to the proceedings of the Cabinet or any committee of the Cabinet or to produce so much of any document as relates to such proceedings.

(2) For the purposes of paragraph (1), a certificate issued by the Secretary of the Cabinet, with the approval of the Prime Minister, and certifying that any information, question, document or part of a document so relates shall be conclusive.

Confidentiality of information

4.—(1) A Minister of the Crown may give notice in writing to the Ombudsman with respect to—

(a) 1998 c.46.
(b) 2002 asp 11.

- (a) any document or information specified in the notice, requested by virtue of an investigation under the Act; or
 - (b) any class of documents or information so specified,
- that, in the opinion of the Minister, the disclosure of the document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.

(2) Where such a notice is given nothing in the Act shall be construed as authorising or requiring the Ombudsman or any of the Ombudsman's advisers to communicate to any person for any purpose any document or information specified in the notice, or any document or information of a class so specified.

Parliamentary Commissioner Act 1967 (c.13)

5.—(1) The Parliamentary Commissioner Act 1967 is amended as follows.

(2) In section 3(2) (administrative provisions)(a) omit “or of the Health Service Commissioner for Scotland”.

(3) In section 11A (consultations between the Parliamentary Commissioner and Welsh Administration Ombudsman or Health Service Commissioners)(b)–

- (a) in subsection (1)–
 - (i) after the words “Welsh Administration Ombudsman”, insert “, the Scottish Public Services Ombudsman”;
 - (ii) for “, Wales or Scotland” substitute “or Wales”; and
 - (iii) in paragraph (b) after “1998”, insert “,” and after “1993”, insert “, or the Scottish Public Services Ombudsman Act 2002”;
- (b) in subsection (2) after “Ombudsman” insert “, the Scottish Public Services Ombudsman”; and
- (c) after that subsection insert–

“(2A) Where an authority to which this Act applies is also a listed authority to which the Scottish Public Services Ombudsman Act 2002 applies, the Commissioner must co-operate with the Scottish Public Services Ombudsman to such an extent as appears appropriate when exercising any function in relation to that authority.”.

Local Government Act 1974 (c.7)

6. In section 33 of the Local Government Act 1974 (consultation between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioner)(c)–

- (a) in subsection (1)–
 - (i) in paragraph (aa) omit “or”;
 - (ii) after paragraph (b), insert–
 - “or
 - (c) by the Scottish Public Services Ombudsman in accordance with the Act of 2002,”;
 - (iii) after “appropriate Commissioner or” omit “the”; and
 - (iv) for “or under the Act of 1993” substitute “, the Act of 1993 or under the Act of 2002”;
- (b) in subsection (2)–
 - (i) after “Welsh Administration Ombudsman” insert “, the Scottish Public Services Ombudsman”; and
 - (ii) for “the Ombudsman”, substitute “that Ombudsman”;
- (c) in subsection (5) after “the Government of Wales Act 1998” insert “, in section 19 of the Act of 2002”; and

(a) Section 3(2) was amended by the Government of Wales Act 1998 (c.38), section 125 and Schedule 12, paragraph 5.

(b) Section 11A was amended by the Government of Wales Act 1998 (c.38), section 125 and Schedule 12, paragraph 8.

(c) Section 33 was amended by the Government of Wales Act 1998 (c.38), sections 125 and 152 and Schedule 12, paragraph 17 and Schedule 18, Part 1 and the Health Service Commissioners Act 1993 (c.46), section 20 and Schedule 2, paragraph 4, and Schedule 3.

- (d) in subsection (6) after “Act 1993” insert “and the Act of 2002” means the Scottish Public Services Ombudsman Act 2002”.

House of Commons Disqualification Act 1975 (c.24)

7. In Part 3 of Schedule 1 to the House of Commons Disqualification Act 1975 (other disqualifying offices)(a) omit “Commissioner for Local Administration in Scotland.” and “Health Service Commissioner for Scotland.” and insert at the appropriate place “Scottish Public Services Ombudsman.”.

Northern Ireland Assembly Disqualification Act 1975 (c.25)

8. In Part 3 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (other disqualifying offices)(b) omit “Commissioner for Local Administration in Scotland” and “Health Service Commissioner for Scotland”, and insert at the appropriate place “Scottish Public Services Ombudsman”.

Mental Health Act 1983 (c.20)

9. In section 134(3)(c) of the Mental Health Act 1983 (correspondence of patients)(c), after “the Parliamentary Commissioner for Administration,” insert “the Scottish Public Services Ombudsman,”.

Finance Act 1989 (c.26)

10. In section 182 of the Finance Act 1989 (disclosure of information)(d)–
- (a) in subsection (4)(a)(iii) omit “or”;
 - (b) after subsection (4)(a)(iv) insert–
“or
 - (v) of the Scottish Public Services Ombudsman and any member of his staff,”;
 - (c) in subsection (6) for “or the Welsh Administration Ombudsman” substitute “, the Welsh Administration Ombudsman or the Scottish Public Services Ombudsman”; and
 - (d) in subsection (11)(c) omit “the Health Service Commissioner for Scotland.”.

Official Secrets Act 1989 (Prescription) Order 1990 (S.I. 1990/200)

11. In Schedule 2 to the Official Secrets Act 1989 (Prescription) Order 1990 (prescriptions)(e)–
- (a) in column 2 omit “or Scotland” where it occurs in the reference to the Parliamentary Commissioner for Administration;
 - (b) in column 1 insert “Scottish Public Services Ombudsman” after the reference to Northern Ireland Parliamentary Commissioner for Administration; and
 - (c) in column 2 opposite the entry inserted by paragraph (b) above, insert–
“The officers of the Ombudsman who are not otherwise Crown servants”.

Social Security Administration Act 1992 (c.5)

12. In section 123(8) of the Social Security Administration Act 1992 (unauthorised disclosure of information relating to particular persons)(f)–
- (a) in paragraph (g) for “the Health Service Commissioner for Scotland” substitute “the Scottish Public Services Ombudsman”;
 - (b) paragraph (hc) is omitted in its entirety; and

(a) There are amendments to Part 3 of Schedule 1 which are not relevant to this Order.
(b) There are amendments to Part 3 of Schedule 1 which are not relevant to this Order.
(c) Section 134(3)(c) was extended by S.I. 1999/1351 and amended by the Government of Wales Act 1998 (c.38), section 125 and Schedule 12, paragraph 22.
(d) Section 182 was amended by the Government of Wales Act 1998 (c.38), section 125 and 152, Schedule 12, paragraph 31 and Schedule 18, Part 1, the Employment Act 2002 (c.22), section 53 and Schedule 7, paragraph 1 and S.I. 1996/1298. There are also other amendments to section 182 which are not relevant to this Order.
(e) Schedule 2 was amended by S.I. 1999/1042 and S.I. 1999/1351.
(f) Section 123(8) was amended by the Social Security Administration (Fraud) Act 1997 (c.47), sections 4 and 22 and Schedule 2, the Government of Wales Act 1998 (c.38), section 125 and Schedule 12, paragraph 32.

- (c) in paragraph (k)–
 - (i) after “the Commissioners” insert “, Ombudsman”; and
 - (ii) for “(hc)” substitute “(hb)”.

Social Security Administration (Northern Ireland) Act 1992 (c.8)

13. In section 117(8) of the Social Security Administration (Northern Ireland) Act 1992 (unauthorised disclosure of information relating to particular persons)(a)–

- (a) in paragraph (h) for “, Wales or Scotland” substitute “or Wales”;
- (b) in paragraph (hc) for “the Commissioner for Local Administration in Scotland” substitute “the Scottish Public Services Ombudsman”; and
- (c) in paragraph (i)–
 - (i) for “(hc)” substitute “(hb)”;
 - (ii) after “above” where it first occurs insert “, or of the Scottish Public Services Ombudsman”.

Tribunals and Inquiries Act 1992 (c.53)

14. In section 2(3) of the Tribunals and Inquiries Act 1992 (composition of the Council and the Scottish Committee)(b) for “shall, by virtue of his office, be a member” substitute “and the Scottish Public Services Ombudsman shall by virtue of their offices be members”.

Judicial Pensions and Retirement Act 1993 (c.8)

15. In section 25 of the Judicial Pensions and Retirement Act 1993 (the Comptroller and Auditor General and the Parliamentary and Health Service Commissioners etc.)(c) omit paragraph (d).

Child Support (Information, Evidence and Disclosure) Regulations (S.I. 1992/1812)

16. In regulation 11(e) of the Child Support (Information, Evidence and Disclosure) Regulations 1992 (employment to which section 50 of the Act applies)–

- (a) in paragraph (e) for “the Health Service Commissioner for Scotland” substitute “the Scottish Public Services Ombudsman”; and
- (b) in paragraph (h) after “Commissioners” insert “or of the Ombudsman”.

Health Service Commissioners Act 1993 (c.46)

17.—(1) The Health Service Commissioners Act 1993(d) is amended as follows.

- (2) In section 1 (the Commissioners)(e)–
 - (a) in subsection (1)–
 - (i) after “England,” insert “and”; and
 - (ii) omit “, and (c) a Health Service Commissioner for Scotland”; and
 - (b) in subsection (3) omit “and the Health Service Commissioner for Scotland”.
- (3) In section 2 (bodies subject to investigation)(f) omit subsection (3).
- (4) In section 2A (health service providers subject to investigation)(g)–
 - (a) omit subsection (3); and
 - (b) in subsection (4)(a) for “, (2) or (3)” substitute “or (2)”.

(a) Section 117(8) was amended by S.I. 1997/1182.

(b) Section 2 was amended by S.I. 1997/1747.

(c) There are amendments to section 25 which are not relevant to this Order.

(d) The Health Service Commissioners Act 1993 was repealed in respect of Scotland by the Scottish Public Services Ombudsman Act 2002 (asp 11), section 25 and Schedule 6, paragraph 14.

(e) Section 1 was amended by the Government of Wales Act 1998 (c.38), section 112 and Schedule 10, paragraph 2.

(f) Section 2 was amended by the Health Service Commissioners (Amendment) Act 1996 (c.5), section 4. There are other amendments to section 2 which are not relevant to this Order.

(g) Section 2A was inserted by the Health Service Commissioners (Amendment) Act 1996 (c.5), section 1. There are other amendments to section 2A which are not relevant to this Order.

- (5) In section 2B (independent providers subject to investigation)(a)–
- (a) omit subsection (3);
 - (b) in subsection (4) for “, (2)(a) or (3)(a)” substitute “or (2)(a)”; and
 - (c) in subsection (5), for “, (2) or (3)” substitute “or (2)”.
- (6) In section 7(2)(a) (personnel, contracts etc)(b) omit “and, in relation to Scotland, by section 17A of the National Health Service (Scotland) Act 1978”.
- (7) In section 11(4) (procedure in respect of investigations)(c) omit “or the Health Service Commissioner for Scotland”.
- (8) In section 14 (reports by English and Scottish Commissioners)(d)–
- (a) in subsections (1), (2), (2A), (2B), (2C), (2D), (3) and (5), omit “or the Health Service Commissioner for Scotland”;
 - (b) in subsections (1)(b), (2)(b), (2A)(b), (2B)(b), (2C)(b) and (2D)(b) omit “or member of the Scottish Parliament”;
 - (c) in subsection (4)–
 - (i) omit “and the Health Service Commissioner for Scotland”; and
 - (ii) in paragraphs (a) and (b) omit “each” where it first occurs; and
 - (d) in the heading omit “and Scottish”, and for “Commissioners” substitute “Commissioner”.
- (9) In section 18 (consultation during investigations)(e)–
- (a) in subsection (1)–
 - (i) in paragraph (a) for “by either of the other Health Service Commissioners” substitute “by the other Health Service Commissioner”;
 - (ii) in paragraph (d) for “by the Commissioner for Local Administration in Scotland under Part II of the Local Government (Scotland) Act 1975” substitute “by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002”; and
 - (iii) after paragraph (d) omit “the” where it occurs after “appropriate Commissioner or” and where it occurs after “that Commissioner or”; and
 - (b) in subsection (2) after “another Commissioner” insert “, the Scottish Public Services Ombudsman”.
- (10) In section 19 (interpretation)(f) in the definition of “the Court”, omit “in relation to Scotland, the Court of Session,”.
- (11) In Schedule 1 (the English and Scottish Commissioners)–
- (a) in the heading(g) omit “and Scottish”, and for “Commissioners” substitute “Commissioner”;
 - (b) in paragraph A1 (introductory)(h) omit the words from “or” to the end of the paragraph;
 - (c) in paragraph 1 (appointment of Commissioners)(i)–
 - (i) in sub-paragraph (2)(b) omit “except in the case of the Health Service Commissioner for Scotland” and “or”; and
 - (ii) omit sub-paragraph (2)(c);
 - (d) in the heading to paragraph 2, for “Commissioners” substitute “Commissioner”;

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- (a) Section 2B was inserted by the Health Service Commissioners (Amendment) Act 1996 (c.5), section 1. There are other amendments to section 2B which are not relevant to this Order.
- (b) Section 7(2) was amended by the Health Service Commissioners (Amendment) Act 1996 (c.5), Schedule 1, paragraph 2, and Schedule 2, and the Government of Wales Act 1998 (c.38), section 112 and Schedule 10, paragraph 6.
- (c) Section 11(4) was amended by the Government of Wales Act 1998 (c.38), section 112 and Schedule 10, paragraph 9.
- (d) Section 14 was amended by the Health Service Commissioners (Amendment) Act 1995 (c.5), sections 3, 10, 13 and Schedule 1, paragraph 5 and Schedule 2 and the Government of Wales Act 1998 (c.38), section 112 and Schedule 10, paragraph 10 and S.I. 1999/1820.
- (e) Section 18 was amended by the Government of Wales Act 1998 (c.38), section 112 and 152 and Schedule 10, paragraph 14, and Schedule 18, Part 1.
- (f) There are amendments to section 19 which are not relevant to this Order.
- (g) The heading to Schedule 1 was amended by the Government of Wales Act 1998 (c.38), section 112 and Schedule 10, paragraph 16(2).
- (h) Paragraph A1 of Schedule 1 was inserted by the Government of Wales Act 1998 (c.38), Schedule 10, paragraph 16(3).
- (i) Paragraph 1 was amended by S.I. 1999/1820.

- (e) in paragraph 2(1) (appointment of acting Commissioners)(a)–
 - (i) for “either of the offices” substitute “the office”; and
 - (ii) for “that” substitute “the”;
 - (f) in paragraph 3(2) (ineligibility of certain persons for appointment)(b)–
 - (i) after “means” omit “(a) in relation to the Health service Commissioner for England or a person appointed to act as such,”;
 - (ii) omit “, and” at the end of head (a); and
 - (iii) omit head (b);
 - (g) in paragraph (3A)(2) (ineligibility of certain persons for appointment)(c)–
 - (i) after “means” omit “(a) in relation to the Health Service Commissioner for England or a person appointed to act as such,”;
 - (ii) omit “, and” to the end of head (a); and
 - (iii) omit head (b);
 - (h) in paragraph 4 (salaries)(d) omit head (b);
 - (i) in paragraph 6(e)–
 - (i) in sub-paragraph (1)(b) for “either or both of the offices” substitute “the office”; and
 - (ii) omit sub-paragraph (2);
 - (j) in paragraph 9(1) (pensions and other benefits) for “any of the offices” substitute “the office”;
 - (k) in paragraph 12 (staff and advisers)(f) omit “the other Commissioner,”; and
 - (l) in paragraph 14 (financial provisions) omit “except the Health Service Commissioner for Scotland”.
- (12) In Schedule 1A (the Welsh Commissioner)(g)–
- (a) in paragraph 5(3) (remuneration) for “either or both of the other offices” substitute “the other office”; and
 - (b) in paragraph 6(5)(c) (staff and advisers) for “another” substitute “the other”.
- (13) In Schedule 2 (consequential amendments) omit paragraphs 5 and 6.

Deregulation and Contracting Out Act 1994 (c.40)

18. In section 79(1) of the Deregulation and Contracting Out Act 1994 (interpretation of Part 2)(h) in the definition of “office-holder” omit from “or” where it first occurs to “Scotland” where it first occurs and substitute “, the Health Service Commissioner for England or for Wales or the Scottish Public Services Ombudsman”.

Data Protection Act 1998 (c.29)

- 19.** In paragraph (a) of section 31(4) of the Data Protection Act 1998 (regulatory activity)(i)–
- (a) in subsection (ii)–
 - (i) after “England” insert “or”; and
 - (ii) omit “or the Commissioner for Local Administration in Scotland”;
 - (b) in subsection (iii)–
 - (i) after “England” insert “or”; and

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- (a) Paragraph 2 was amended by the Government of Wales Act 1998 (c.38), section 112 and Schedule 10, paragraph 16(4).
 - (b) Paragraph 3 was amended by the Government of Wales Act 1998 (c.38), sections 112 and 152, Schedule 10, paragraph 16(5) and Schedule 18, Part 1.
 - (c) Paragraph 3A was inserted by the Health Service Commissioners (Amendment) Act 1996 (c.5), section 3 and Schedule 1, paragraph 7 and amended by the Government of Wales Act 1998 (c.38), section 112 and 152, Schedule 10, paragraph 16(5) and Schedule 18, Part 1.
 - (d) Paragraph 4 was amended by S.I. 1999/1820.
 - (e) Paragraph 6 was amended by the Government of Wales Act 1998 (c.38), section 112 and Schedule 10, paragraph 16(6).
 - (f) Paragraph 12 was amended by the Government of Wales Act 1998 (c.38) Schedule 10, paragraph 16(8).
 - (g) Schedule 1A was inserted by the Government of Wales Act 1998 (c.38) section 112 and Schedule 10, paragraph 17.
 - (h) Section 79(1) was amended by the Government of Wales Act 1998 (c.38), section 125 and Schedule 12, paragraph 36 and S.I. 1999/1351. There are amendments to section 79(1) which are not relevant to this Order.
 - (i) Section 31 was amended by S.I. 1999/3145. There are amendments to section 31 which are not relevant to this Order.

- (ii) omit “or the Health Service Commissioner for Scotland”;
- (c) in subsection (v) omit “or”;
- (d) in subsection (vi) for “and” substitute “or”; and
- (e) after that paragraph insert “(vii) the Scottish Public Services Ombudsman, and”.

Government of Wales Act 1998 (c.38)

20. In paragraph 27 of Schedule 9 to the Government of Wales Act 1998 (consultation and co-operation with other Ombudsmen)–

- (a) in sub-paragraph (1)–
 - (i) in paragraph (b) omit “or”;
 - (ii) after paragraph (c) insert “or
 - (d) by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002,”;
 - (iii) after “appropriate Commissioner” insert “or Scottish Public Services Ombudsman as the case may require”; and
 - (iv) after “that Commissioner” insert “or the Scottish Public Services Ombudsman”; and
- (b) in sub-paragraph (2) after “Commissioner” insert “or the Scottish Public Services Ombudsman”.

ANNE C McGUIRE
 Parliamentary Under Secretary of State,
 Scotland Office,
 Department for Constitutional Affairs

Dover House,
 London
 13th July 2004

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision consequential on the Scottish Public Services Ombudsman Act 2002 (“the 2002 Act”).

Section 13(7) and (8) of the 2002 Act ensure that the Ombudsman cannot require any person to supply information, or answer questions, relating to proceedings of the Scottish Cabinet. Article 3 of the Order makes the same provision in respect of the UK Cabinet.

Section 19(6) and (7) of the 2002 Act provides that where a member of the Scottish Executive gives the Ombudsman notice that disclosure of any document or information would be contrary to the public interest, the Ombudsman is prevented from communicating such documents or information for any purpose. Article 4 of the Order makes equivalent provision for Ministers of the Crown.

Section 21 of the 2002 Act makes provision for the Scottish Public Services Ombudsman to consult with other national Ombudsmen, Parliamentary and Health Commissioners. Articles 5, 6, 17 and 20 accordingly update references and existing legislation to take account of section 21 of the 2002 Act.

Articles 7 to 19 make other consequential modifications required as a result of the 2002 Act.

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