

*Status: Point in time view as at 23/04/2002.*

*Changes to legislation: There are currently no known outstanding effects for the Scottish Public Services Ombudsman Act 2002, SCHEDULE 1. (See end of Document for details)*

## SCHEDULE 1

*(introduced by section 1)*

### THE SCOTTISH PUBLIC SERVICES OMBUDSMAN

#### *Disqualification*

- 1 (1) A person is disqualified from appointment, and from holding office, as Ombudsman or deputy Ombudsman if that person is—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a listed authority (within the meaning of section 3(1)),
  - (d) a member, officer or member of staff of a listed authority,
  - (e) disqualified from election as a member of the Scottish Parliament or as a member of a local authority.
- (2) A person holding office as Ombudsman or deputy Ombudsman—
- (a) is disqualified from appointment or, as the case may be, election 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) is not entitled to become a family health service provider or an independent provider (within the meaning of paragraph 5 or, as the case may be, 6 of schedule 2), and
  - (c) is disqualified from appointment to any paid office by a listed authority.
- (3) A person who has ceased to hold office as Ombudsman or deputy Ombudsman is, during the period of 3 years beginning with the date on which that person ceased to hold that office, disqualified—
- (a) from appointment or, as the case may be, election as—
    - (i) the holder of any office which is a listed authority,
    - (ii) a member, officer or member of staff of a listed authority, and
  - (b) from appointment to any paid office by a listed authority.
- (4) Sub-paragraph (3)(a)(ii) does not disqualify any person who has ceased to hold office as Ombudsman or deputy Ombudsman from election as a member of any local authority.
- (5) In this paragraph, references to a member of a listed authority include any member by co-option of any committee of a listed authority.
- (6) For the purposes of sub-paragraphs (2)(c) and (3)(b) an office is a paid office where the holder of the office is entitled to remuneration or expenses.

#### *Status*

- 2 (1) The Ombudsman, deputy Ombudsmen and Ombudsman's staff are not to be regarded as servants or agents of the Crown or as having any status, immunity or privilege of the Crown; and the Ombudsman's property is not to be regarded as property of, or property held on behalf of, the Crown.
- (2) The Ombudsman, in the exercise of that officer's functions, is not subject to the direction or control of—
- (a) any member of the Parliament,

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- (b) any member of the Scottish Executive,
- (c) the Parliamentary corporation.

(3) Sub-paragraph (2) is subject to section 17(3) and paragraph 15(1) of this schedule.

#### *Validity of actings*

- 3 The validity of any actings of the Ombudsman or a deputy Ombudsman is not affected by—
- (a) any defect in the nomination by the Parliament for that officer’s appointment, or
  - (b) any disqualification from appointment as Ombudsman or, as the case may be, deputy Ombudsman.

#### *Term of office and tenure*

- 4 (1) The Ombudsman and a deputy Ombudsman each—
- (a) holds office for such period not exceeding five years as the Parliamentary corporation, at the time of appointment, may determine,
  - (b) may be relieved of office by Her Majesty at the request of the officer in question,
  - (c) vacates office on 31st December in the year of service in which the officer in question attains the age of 65,
  - (d) may be removed from office by Her Majesty in pursuance of a resolution of the Parliament which, if passed on a division, must be voted for by a number of members equivalent to not less than two thirds of the total number of seats for members of the Parliament, and
  - (e) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine.
- (2) A person whose period of office as Ombudsman or deputy Ombudsman expires under sub-paragraph (1)(a) is eligible for reappointment; but reappointment to the same office for a third consecutive period is competent only if, by reason of special circumstances, such reappointment is desirable in the public interest.
- (3) Subject to sub-paragraph (2), nothing in this paragraph prevents a person who previously held office as Ombudsman or deputy Ombudsman (except such a person who ceased to hold office by virtue of sub-paragraph (1)(c)) from being appointed again to that office or to the other office.

#### *Vacancy in office of Ombudsman*

- 5 (1) Where the office of Ombudsman is vacant, the Parliamentary corporation may appoint a person (whether or not a deputy Ombudsman or a member of the Ombudsman’s staff) to discharge the Ombudsman’s functions until a new Ombudsman is appointed; and a person so appointed is referred to in this Act as an “acting Ombudsman”.
- (2) A person who is disqualified from appointment as Ombudsman is also disqualified from appointment as acting Ombudsman.
- (3) A person appointed to be acting Ombudsman—
- (a) may be relieved of office at that person’s request,

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- (b) may be removed from office by the Parliamentary corporation by notice in writing given by it,
- (c) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine,
- (d) while holding that office, is to be treated for all purposes, except those of paragraphs 3(a), 4, 7 and 8, as the Ombudsman.

#### *Vacancy in office of deputy Ombudsman*

- 6 (1) Where there is a vacancy in the office of deputy Ombudsman, the Parliamentary corporation may appoint a person (whether or not a member of the Ombudsman's staff) to be an acting deputy Ombudsman until a deputy Ombudsman is appointed to fill the vacancy.
- (2) For the purposes of sub-paragraph (1), there is a vacancy in the office of deputy Ombudsman if—
- (a) there are fewer than 3 deputy Ombudsmen (whether or not as a consequence of one or more deputies ceasing to hold office as such), and
  - (b) the Parliamentary corporation reasonably believes that the Parliament is likely to nominate a person for appointment by Her Majesty as a deputy Ombudsman.
- (3) A person who is disqualified from appointment as a deputy Ombudsman is also disqualified from appointment as an acting deputy Ombudsman.
- (4) A person appointed to be an acting deputy Ombudsman—
- (a) may be relieved of office at that person's request,
  - (b) may be removed from office by the Parliamentary corporation by notice in writing given by it,
  - (c) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine,
  - (d) while holding that office, is to be treated for all purposes, except those of paragraphs 3(a), 4, 7 and 8, as a deputy Ombudsman.

#### *Remuneration*

- 7 (1) The Ombudsman and a deputy Ombudsman are each entitled to—
- (a) a salary of such amount, and
  - (b) such allowances,
- as the Parliamentary corporation may determine.
- (2) The salary payable to a person holding office as Ombudsman or deputy Ombudsman is to be abated by the amount of any pension payable to that person in respect of any public office in the United Kingdom or elsewhere to which that person was previously elected or appointed.

#### *Pensions etc.*

- 8 (1) The Parliamentary corporation may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to hold office as Ombudsman or deputy Ombudsman and (without prejudice to that generality) may—

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- (a) make contributions or payments towards provision for such pensions, allowances or gratuities, and
  - (b) establish and administer one or more pension schemes.
- (2) The references in sub-paragraph (1) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of office.

### *Staff*

- 9 (1) The Ombudsman may appoint such staff, on such terms and conditions, as the Ombudsman may determine.
- (2) The Ombudsman may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff and (without prejudice to that generality) may—
- (a) make contributions or payments towards provision for such pensions, allowances or gratuities, and
  - (b) establish and administer one or more pensions schemes.
- (3) References in sub-paragraph (2) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of employment.
- (4) A determination under sub-paragraph (1) and arrangements under sub-paragraph (2) require the approval of the Parliamentary corporation.

### *Advisers*

- 10 (1) The Ombudsman may, in connection with a complaint or request under this Act, obtain advice from any person who, in the Ombudsman's opinion, is qualified to give it.
- (2) The Ombudsman may pay to any such person from whom advice is obtained such fees and allowances as the Ombudsman may, with the approval of the Parliamentary corporation, determine.

### *Delegation*

- 11 (1) Any function of the Ombudsman may be exercised on the Ombudsman's behalf—
- (a) by any person (whether or not a deputy Ombudsman or a member of the Ombudsman's staff) authorised by the Ombudsman to do so, and
  - (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the responsibility of the Ombudsman for the exercise of that officer's functions.

### *General powers*

- 12 (1) The Ombudsman may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of the Ombudsman's functions.
- (2) Without prejudice to that generality, the Ombudsman may in particular—

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- (a) acquire and dispose of land and other property, and
- (b) enter into contracts.

#### *Financial provision*

- 13 The Parliamentary corporation is to pay—
- (a) the salary and allowances of the Ombudsman and any deputy Ombudsman,
  - (b) any expenses incurred by the Ombudsman in the exercise of the functions of the Ombudsman,
  - (c) any sums payable by virtue of paragraph 5(3)(a) to (c) or 6(4)(a) to (c) to, or in respect of, a person who—
    - (i) is appointed as acting Ombudsman or, as the case may be, acting deputy Ombudsman, or
    - (ii) has ceased to hold such office.

#### *Accountable officer*

- 14 (1) The Parliamentary corporation is to designate the Ombudsman, a deputy Ombudsman or a member of the Ombudsman's staff as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
- (a) those specified in sub-paragraph (3), and
  - (b) where the accountable officer is not the Ombudsman, the duty set out in sub-paragraph (4),
- and the accountable officer is answerable to the Parliament for the exercise of those functions.
- (3) The functions referred to in sub-paragraph (2)(a) are—
- (a) signing the accounts of the expenditure and receipts of the Ombudsman,
  - (b) ensuring the propriety and regularity of the finances of the Ombudsman,
  - (c) ensuring that the resources of the Ombudsman are used economically, efficiently and effectively.
- (4) The duty referred to in sub-paragraph (2)(b) is a duty, where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (3), to—
- (a) obtain written authority from the Ombudsman before taking the action, and
  - (b) send a copy of that authority as soon as possible to the Auditor General for Scotland.

#### *Accounts and audit*

- 15 (1) The Ombudsman must—
- (a) keep accounts, and
  - (b) prepare annual accounts in respect of each financial year,
- in accordance with such directions as the Scottish Ministers may give.
- (2) The Ombudsman must send a copy of the annual accounts to the Auditor General for Scotland for auditing.

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- (3) The financial year of the Ombudsman is—
- (a) the period beginning with the date on which the first Ombudsman is appointed and ending with 31st March next following that date, and
  - (b) each successive period of twelve months ending with 31st March.
- (4) If requested by any person, the Ombudsman must make available at any reasonable time, and without charge, in printed or in electronic form, the audited accounts, so that they may be inspected by that person.

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