

SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Miscellaneous and general

Section 17 – Annual reports etc.

61. This section requires the Ombudsman to lay before the Parliament each year a general report on the exercise of his/her functions. Under *subsection (2)* the Ombudsman may use the annual report to comment and/or offer advice on best practice in relation to the Ombudsman's activities.
62. Under *subsection (3)* the Parliament can stipulate, and amend if and when necessary, the format and content of annual reports.
63. *Subsection (4)* allows the Ombudsman to report on his/her functions to Parliament outwith the parameters of an annual report. For example, it will enable a significant matter which comes to the Ombudsman's notice directly after the publication of an annual report to be published straight away.

Section 18 – Protection from actions of defamation

64. This section specifies various statements (within the meaning of the Defamation Act 1996) made by:
 - the Ombudsman for the purposes of the Act, or
 - any person by way of communication with the Ombudsman in respect of matters relevant to the Act,which are to be absolutely privileged for the purposes of the law of defamation. This effectively places a bar on a person's right to pursue an action for defamation in respect of those statements.

Section 19 – Confidentiality of information

65. This section requires information provided to the Ombudsman to be kept confidential except in certain limited circumstances.
66. *Subsection (1)* provides that information obtained by the Ombudsman or any of his/her advisers in connection with any matter in respect of which a complaint or request has been made (relevant information) must not be disclosed.
67. *Subsection (2)* provides for exceptions to subsection (1) whereby relevant information may be disclosed for:

- the purposes of either considering complaints or requests, undertaking an investigation, reporting on an investigation, or making a statement of reasons for not undertaking an investigation;
 - any proceedings for, or preliminary inquiries into, offences alleged under the Official Secrets Acts or in respect of perjury alleged to have been committed in the course of any investigation;
 - the purposes of proceedings under section 14 of the Act relating to a person's obstruction of the Ombudsman's performance of his/her functions or a person's action or failure to act in relation to an investigation.
68. The section also makes provision as to when relevant information may be disclosed in the interests of the health and safety of patients, exempts the Ombudsman or the Ombudsman's advisers from providing relevant information in proceedings other than those detailed in subsection (2), and that relevant information must not be disclosed when its disclosure is deemed to be against the public interest.
69. *Subsection (8)* provides that information obtained by the Ombudsman from the UK Information Commissioner is to be treated for the purposes of subsection (1) as obtained in connection with any matter in respect of which a complaint or request has been made.
70. *Subsection (9)* modifies the effect of subsection (2)(a)(i) in relation to information obtained by the Ombudsman from the UK Information Commissioner, so that such information may be disclosed for the purposes of any complaint or request or the investigation of any matter.

Section 20 – Disclosure of Information by the Ombudsman

71. This section enables the Ombudsman to disclose information obtained under the Act to the UK Information Commissioner, auditors and examiners as listed in the first column of *schedule 5* to the Act, if the information appears to the Ombudsman to relate to matters set out in the second column of *schedule 5*.
72. *Subsection (3)* ensures that section 19(1) does not prevent the disclosure of information for the purposes of this section.

Section 21 – Consultation and co-operation with other Commissioners and Ombudsmen

73. This section makes provision for the Ombudsman, where he or she considers that a complaint or request he or she has received relates partly to a matter which could be the subject of an investigation by other Commissioners and Ombudsmen, to consult those Commissioners and Ombudsmen. The Commissioners and Ombudsmen covered by this section are specified in *subsection (1)*.
74. *Subsection (4)* requires the Ombudsman to co-operate with the Parliamentary Commissioner for Administration where the complaint relates to an authority which is also subject to investigation by that Commissioner.
75. *Subsection (5)* ensures that section 19(1) does not prevent the disclosure of information for the purposes of this section.

Section 22 – Information about right to make complaint

76. This section imposes a duty on listed authorities to provide information to the public on the right conferred by the Act to make complaints to the Ombudsman, the time limit for making a complaint and how to contact the Ombudsman.