



Scottish Public Services Ombudsman Act 2002

2002 asp 11

^{F1}Listed authorities: complaints handling procedures

Textual Amendments

- F1** Ss. 16A-16G and cross-heading inserted (1.8.2010) by [Public Services Reform \(Scotland\) Act 2010](#) (asp 8), **ss. 119**, 134(7); S.S.I. 2010/221, art. 3(2), sch.

16A Statement of principles

- (1) The Ombudsman must publish a statement of principles (referred to in this Act as “the statement of principles”) concerning complaints handling procedures of listed authorities.
- (2) A listed authority must ensure—
 - (a) it has a complaints handling procedure in respect of action taken by the listed authority, and
 - (b) any such procedure complies with the statement of principles.
- (3) A listed authority which is responsible, by virtue of any enactment, for a complaints handling procedure—
 - (a) in relation to, or
 - (b) operated by,another listed authority, must ensure the procedure complies with the statement of principles.
- (4) The first statement of principles under subsection (1) is not to be published unless a draft of the statement has been laid before, and approved by a resolution of, the Parliament.
- (5) Where a draft is laid in accordance with subsection (4), the Parliament may approve the draft no later than 2 months after being laid.

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- (6) In calculating any period of 2 months for the purposes of subsection (5), no account is to be taken of any time during which the Parliament is dissolved or is in recess for more than 4 days.
- (7) Before laying a draft statement of principles before the Parliament in accordance with subsection (4) the Ombudsman must consult—
 - (a) the Scottish Ministers, and
 - (b) such listed authorities and other persons as the Ombudsman thinks fit.
- (8) The Ombudsman must, in preparing the draft statement of principles to be laid before the Parliament in accordance with subsection (4), have regard to any representations made during the consultation mentioned in subsection (7).
- (9) The statement of principles comes into force when it is published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the statement of principles.
- (11) Where the Ombudsman considers that any revision of the statement of principles under subsection (10) is material, subsections (4) to (8) apply to that statement of principles as they do to the first statement of principles.
- (12) In this section and sections 16B to 16E, “complaints handling procedures” means procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one in respect of which a complaint to the Ombudsman can be made and investigated under this Act.

16B Model complaints handling procedures

- (1) The Ombudsman may publish model complaints handling procedures for listed authorities.
- (2) A model complaints handling procedure (referred to in this Act as a “model CHP”) must comply with the statement of principles.
- (3) The Ombudsman may publish different model CHPs for different purposes.
- (4) Before publishing a model CHP the Ombudsman must consult such listed authorities or groups of listed authorities as the Ombudsman thinks fit.
- (5) The Ombudsman may from time to time revise and re-publish any model CHP; and in doing so subsection (4) applies.
- (6) Where a model CHP is revised and re-published by virtue of subsection (5), section 16C has effect with the following modifications—
 - (a) any specification under subsection (1) of that section in relation to the model CHP continues in effect as a specification in relation to the revised and re-published model CHP,
 - (b) any other reference to a model CHP is to the model CHP as revised and re-published,
 - (c) subsection (3) of that section is omitted.
- (7) The Ombudsman may withdraw any model CHP at any time; and any specification under section 16C(1) in relation the model CHP ceases to have effect.

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I_{F2}16BA Model complaints handling procedure: healthcare whistleblowing

- (1) The Ombudsman must publish, under section 16B, a model CHP for whistleblowers' complaints to—
- (a) a health service body, other than the Scottish Dental Practice Board,
 - (b) an independent provider,
 - (c) a family health service provider.
- (2) The Ombudsman may publish different model CHPs in accordance with this section for different purposes.
- (3) Any model CHP published in accordance with this section must include the following definition of whistleblowing—
- “Whistleblowing is when a person who delivers services or used to deliver services on behalf of a health service body, family health service provider or independent provider (as defined in section 23 of the Scottish Public Services Ombudsman Act 2002) raises a concern that relates to speaking up, in the public interest, about an NHS service, where an act or omission has created, or may create, a risk of harm or wrong doing.”]

Textual Amendments

- F2** S. 16BA inserted (8.1.2020) by [The Public Services Reform \(The Scottish Public Services Ombudsman\) \(Healthcare Whistleblowing\) Order 2020 \(S.S.I. 2020/5\)](#), arts. 2, **3(5)**

16C Model complaints handling procedures: specification of listed authorities

- (1) The Ombudsman may specify any listed authority to which a model CHP is relevant; and must notify the authority accordingly.
- (2) Where a model CHP is relevant to a listed authority by virtue of a specification under subsection (1), the authority must ensure there is a complaints handling procedure which complies with the model CHP for the purposes of the specification.
- (3) Where subsection (2) applies the authority must submit a description of the complaints handling procedure, having taken account of the relevant model CHP, within 6 months of the specification mentioned in that subsection.
- (4) A listed authority may, with the consent of the Ombudsman, modify the application of the model CHP which is relevant to it but only to the extent that is necessary for the effective operation of the procedure by the authority.
- (5) The Ombudsman may revoke any specification under subsection (1) at any time.

16D Declarations of non-compliance

- (1) Where a model CHP is relevant to a listed authority by virtue of a specification under section 16C(1) the Ombudsman may declare that the complaints handling procedure of the authority, a description of which was submitted by the authority under section 16C(3) or otherwise, does not comply with the model CHP.
- (2) Where there is no specification under section 16C(1) in relation to a listed authority the Ombudsman may declare that the complaints handling procedure of the authority,

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a description of which was submitted by the authority under section 16E or otherwise, does not comply with the statement of principles.

- (3) Where a declaration is made under subsection (1) or (2) the Ombudsman—
 - (a) must give reasons in writing,
 - (b) may specify such modifications to the complaints handling procedure as would result in the declaration being withdrawn.
- (4) Where a declaration is made under subsection (1) or (2) the listed authority must submit a description of its complaints handling procedure, having taken account of the reasons given under subsection (3)(a) and any modifications specified in subsection (3)(b), within 2 months of the declaration.
- (5) The Ombudsman may withdraw a declaration of non-compliance made under subsection (1) or (2) at any time if the Ombudsman thinks fit.

16E Submission of description of complaints handling procedure: general

- (1) A listed authority must submit a description of its complaints handling procedure if the Ombudsman so directs; and must do so within 3 months of being so directed or such other period as the Ombudsman may direct.
- (2) Sections 16C(3) and 16D(4) are subject to any direction given under this section.
- (3) Where a listed authority has submitted a description of its complaints handling procedure to the Ombudsman under this Act or otherwise, the authority must provide such additional information in relation to that procedure as the Ombudsman may reasonably request; and must do so within such period as the Ombudsman directs.

16F Complaints handling procedures: application of other enactments

The duties in sections 16A(2) and (3) and 16C(2) do not apply to the extent that—

- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duties, or
- (b) the duties are inconsistent with any other enactment.]

Changes to legislation:

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