



Scottish Public Services Ombudsman Act 2002

2002 asp 11

Miscellaneous and general

17 Annual reports etc.

- (1) The Ombudsman must lay before the Parliament annually a general report on the exercise of the Ombudsman's functions [^{F1}during the reporting year] .
- (2) Such a report may include, in particular, any general recommendations which the Ombudsman may have arising from the exercise of those functions in the [^{F2}reporting year] .
- [^{F3}(2A) A report under subsection (1) must be laid before the Parliament within seven months after the end of the reporting year.]
- (3) The [^{F4}Parliamentary corporation] may give the Ombudsman directions as to the form and content of a report under subsection (1); and the Ombudsman must comply with any such direction.
- [^{F5}(3A) The Ombudsman must arrange for the publication of each report under subsection (1).]
- (4) The Ombudsman may from time to time lay before the Parliament such other reports with respect to the exercise of the Ombudsman's functions as the Ombudsman thinks fit.
- [^{F6}(5) In this section, "reporting year" means the year beginning on 1 April.]

Textual Amendments

- F1** Words in s. 17(1) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 3 para. 6\(a\)](#) (with s. 31(6), sch. 7)
- F2** Words in s. 17(2) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 3 para. 6\(b\)](#) (with s. 31(6), sch. 7)
- F3** S. 17(2A) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 3 para. 6\(c\)](#) (with s. 31(6), sch. 7)

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- F4** Words in s. 17(3) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 6(d)** (with s. 31(6), sch. 7)
- F5** S. 17(3A) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 6(e)** (with s. 31(6), sch. 7)
- F6** S. 17(5) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 6(f)** (with s. 31(6), sch. 7)

[^{F7}17A Strategic plans

- (1) The Ombudsman must, in respect of each 4 year period, lay before the Parliament a plan (referred to in this section as a “strategic plan”) setting out how the Ombudsman proposes to perform the Ombudsman's functions during the 4 year period.
- (2) A strategic plan must, in particular, set out—
 - (a) the Ombudsman's objectives and priorities during the 4 year period,
 - (b) how the Ombudsman proposes to achieve them,
 - (c) a timetable for doing so, and
 - (d) estimates of the costs of doing so.
- (3) Before laying a strategic plan before the Parliament, the Ombudsman must provide a draft of it to and invite, and (if any are given) consider, comments on it from—
 - (a) the Parliamentary corporation, and
 - (b) such other persons as the Ombudsman thinks appropriate.
- (4) The reference in subsection (3)(b) to other persons includes a reference to a committee of the Parliament.
- (5) The Ombudsman must lay each strategic plan before the Parliament not later than the beginning of the 4 year period to which the plan relates.
- (6) The Ombudsman must arrange for the publication of each strategic plan laid before the Parliament.
- (7) The Ombudsman may, at any time during a 4 year period, review the strategic plan for the period and lay a revised strategic plan before the Parliament.
- (8) Subsections (2) to (7) apply to a revised strategic plan as they apply to a strategic plan.
- (9) In that application, the reference in subsection (5) to the 4 year period is a reference to the period to which the revised strategic plan relates.
- (10) In this section, “4 year period” means the period of 4 years beginning on 1 April next following the coming into force of this section and each subsequent period of 4 years.]

Textual Amendments

- F7** S. 17A inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 7** (with s. 31(6), sch. 7)

18 Protection from actions for defamation

- (1) For the purposes of the law of defamation, the following are absolutely privileged—

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- (a) any statement made by the Ombudsman in pursuance of section 11, 15, 16 or 17,
 - (b) any statement made by—
 - (i) the person aggrieved,
 - (ii) a person authorised for the purpose of subsection (1)(b) of section 9,
 - (iii) a person falling within subsection (3) of that section, or
 - (iv) a listed authority,in communicating with the Ombudsman for the purposes of this Act, or by the Ombudsman in communicating with any such person or authority for those purposes,
 - (c) any statement made in pursuance of arrangements under section 15(4) or 16(5).
 - [^{F8}(d) any statement made by the Ombudsman in pursuance of section 11 of the 2015 Act,
 - (e) any statement made by the Ombudsman in communicating with any person for the purposes of a welfare fund review,
 - (f) any statement made by any person in communicating with the Ombudsman for the purposes of such a review.]
- (2) In subsection (1), “statement” has the same meaning as in the Defamation Act 1996 (c.31).

Textual Amendments

- F8** S. 18(1)(d)-(f) inserted (1.4.2016) by [Welfare Funds \(Scotland\) Act 2015 \(asp 5\)](#), ss. **13(4)**, 14(2); S.S.I. 2015/428, art. 2(2)

19 Confidentiality of information

- (1) Information obtained by the Ombudsman or any of the Ombudsman’s advisers in connection with any matter in respect of which a complaint or a request has been made must not be disclosed except for any of the purposes specified in subsection (2) or as permitted by subsection (3).
- (2) Those purposes are—
- (a) the purposes of—
 - (i) any consideration of the complaint or request (including any statement under section 11),
 - (ii) any investigation of the matter (including any report of such an investigation),
 - (b) the purposes of any proceedings for—
 - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,
 - (ii) an offence of perjury alleged to have been committed in the course of any investigation of the matter,
 - (c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),
 - (d) the purposes of any proceedings under section 14.

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[^{F9}(e) where subsection (2A) applies, the purposes of a welfare fund review.]

[^{F10}(2A) This subsection applies if—

- (a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and
- (b) the welfare fund review relates to the decision made by the authority on that application.

(2B) Information obtained by the Ombudsman or any of the Ombudsman's advisers in connection with a welfare fund review must not be disclosed except for any of the purposes specified in subsection (2C) or as permitted by subsection (3).

(2C) Those purposes are—

- (a) the purposes of the review,
- (b) the purposes of any proceedings for—
 - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,
 - (ii) an offence of perjury alleged to have been committed in the course of the review,
- (c) the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in paragraph (b),
- (d) where subsection (2D) applies, the purposes of any consideration of a complaint or request in respect of a matter, or the investigation of the matter.

(2D) This subsection applies if—

- (a) the matter in respect of which the complaint or request has been made relates to an exercise of a function by a local authority on an application to receive assistance in pursuance of section 2 of the 2015 Act, and
- (b) the welfare fund review relates to the decision made by the authority on that application.]

(3) Where information referred to in subsection (1) [^{F11}or (2B)] is to the effect that any person is likely to constitute a threat to the health or safety of [^{F12}individuals (in particular or in general)], the Ombudsman may disclose the information to any person to whom the Ombudsman thinks it should be disclosed in the interests of the health [^{F13}or] safety of [^{F14}the particular individuals or, as the case may be, individuals in general].

(4) In relation to information disclosed under subsection (3), the Ombudsman must—

- (a) where the Ombudsman knows the identity of the person to whom the information relates, inform that person of the disclosure of the information and of the identity of the person to whom it has been disclosed, and
- (b) inform the person from whom the information was obtained of the disclosure.

[^{F15}(4A) The duty under subsection (4)(a) to inform a person about the identity of a person to whom information has been disclosed does not apply where informing the former person is likely to constitute a threat to the health or safety of the latter person.]

(5) It is not competent to call upon the Ombudsman or the Ombudsman's advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2)) of

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matters coming to the knowledge of the Ombudsman or advisers in connection with any matter in respect of which a complaint or request has been made.

[^{F16}(5A) It is not competent to call upon the Ombudsman or the Ombudsman's advisers to give evidence in any proceedings (other than proceedings referred to in subsection (2C)) of matters coming to the knowledge of the Ombudsman or advisers in connection with a welfare fund review.]

(6) A member of the Scottish Executive may give notice in writing to the Ombudsman with respect to—

- (a) any document or information specified in the notice, or
- (b) any class of document or information so specified,

that, in the opinion of the member of the Scottish Executive, the disclosure of the document or information, or of documents or information of that class, would be contrary to the public interest.

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

(8) Information obtained from—

- [^{F17}(a)] the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (c.36); [^{F18}or
- (b) the Scottish Information Commissioner by virtue of section 63 of the Freedom of Information (Scotland) Act 2002 (asp 13),]

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.

(9) In relation to such information, subsection (2)(a) has effect as if—

- (a) the reference in sub-paragraph (i) to the complaint or request were a reference to any complaint or request, and
- (b) the reference in sub-paragraph (ii) to the matter were a reference to any matter.

(10) In this section and section 20 references to the Ombudsman's advisers are to persons from whom the Ombudsman obtains advice under paragraph 10 of schedule 1.

Textual Amendments

- F9** S. 19(2)(e) inserted (1.4.2016) by [Welfare Funds \(Scotland\) Act 2015 \(asp 5\)](#), **ss. 13(5)(a)**, 14(2); [S.S.I. 2015/428](#), art. 2(2)
- F10** S. 19(2A)-(2D) inserted (1.4.2016) by [Welfare Funds \(Scotland\) Act 2015 \(asp 5\)](#), **ss. 13(5)(b)**, 14(2); [S.S.I. 2015/428](#), art. 2(2)
- F11** Words in s. 19(3) inserted (1.4.2016) by [Welfare Funds \(Scotland\) Act 2015 \(asp 5\)](#), **ss. 13(5)(c)**, 14(2); [S.S.I. 2015/428](#), art. 2(2)
- F12** Words in s. 19(3) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 8(a)(i)** (with s. 31(6), sch. 7)
- F13** Word in s. 19(3) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 8(a)(ii)** (with s. 31(6), sch. 7)
- F14** Words in s. 19(3) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 8(a)(iii)** (with s. 31(6), sch. 7)
- F15** S. 19(4A) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 8(b)** (with s. 31(6), sch. 7)

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- F16** S. 19(5A) inserted (1.4.2016) by [Welfare Funds \(Scotland\) Act 2015 \(asp 5\)](#), **ss. 13(5)(d)**, 14(2); S.S.I. 2015/428, art. 2(2)
- F17** Words in s. 19(8) renumbered as s. 19(8)(a) (1.1.2005) by [Freedom of Information \(Scotland\) Act 2002 \(asp 13\)](#), s. 75(1), **sch. 4 para. 1(a)**; S.S.I. 2004/203, art. 3(2)
- F18** S. 19(8)(b) and word inserted (1.1.2005) by [Freedom of Information \(Scotland\) Act 2002 \(asp 13\)](#), s. 75(1), **sch. 4 para. 1(b)**; S.S.I. 2004/203, art. 3(2)

Modifications etc. (not altering text)

- C1** S. 19 excluded by 1974 c. 7, s. 34M(7)(c) (as inserted (1.10.2010) by [Health Act 2009 \(c. 21\)](#), s. 40(1), **Sch. 5 para. 2**; S.I. 2010/1863, art. 2)

20 Disclosure of information by the Ombudsman

- (1) This section applies to any information (referred to in this section as “relevant information”) obtained by, or supplied to, the Ombudsman or any of the Ombudsman’s advisers under or for the purposes of this Act [^{F19}or the 2015 Act].
- (2) The Ombudsman may disclose relevant information to a person or body specified in the first column of schedule 5 if the information appears to the Ombudsman to relate to any matter specified in relation to that person or body in the second column of that schedule.
- (3) Nothing in section 19(1) applies in relation to the disclosure of information in accordance with this section.

Textual Amendments

- F19** Words in s. 20(1) inserted (1.4.2016) by [Welfare Funds \(Scotland\) Act 2015 \(asp 5\)](#), **ss. 13(6)**, 14(2); S.S.I. 2015/428, art. 2(2)

21 Consultation and co-operation with other Commissioners and Ombudsmen

- (1) Where the Ombudsman, at any stage in the course of considering a complaint or request, forms the opinion that the complaint or request relates partly to a matter which could be the subject of an investigation—
 - (a) by the Parliamentary Commissioner for Administration under the Parliamentary Commissioner Act 1967 (c.13),
 - (b) by [^{F20}the Health Service Commissioner] under the Health Service Commissioners Act 1993 (c.46) (as that Act has effect in England and Wales),
 - [^{F21}(c) by the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,]
 - (d) by a Local Commissioner under Part III [^{F22}or 3A] of the Local Government Act 1974 (c.7), or
 - (e) by a housing ombudsman in accordance with a scheme approved under section 51 of the Housing Act 1996 (c.52),
 the Ombudsman must consult the appropriate Commissioner or other Ombudsman about the complaint or request.
- (2) If the Ombudsman considers it necessary, the Ombudsman must inform the person who made the complaint or request of the steps necessary to initiate a complaint to that Commissioner or other Ombudsman.

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- (3) Where the Ombudsman consults a Commissioner or other Ombudsman in accordance with this section, the consultations may extend to any matter relating to the complaint or request, including—
 - (a) the conduct of any investigation into the matter to which the complaint or request relates, and
 - (b) the form, content and publication of any report of the result of such an investigation.
- (4) Where a listed authority is also an authority to which the Parliamentary Commissioner Act 1967 (c.13) applies, the Ombudsman must co-operate with the Parliamentary Commissioner to such extent as appears appropriate when exercising any function in relation to that authority.
- (5) Nothing in section 19(1) applies in relation to the disclosure of information in the course of consultation or co-operation under this section.

Textual Amendments

- F20** Words in s. 21(1)(b) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 73\(a\)](#)
- F21** S. 21(1)(c) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 73\(b\)](#)
- F22** Words in s. 21(1)(d) inserted (1.10.2010) by [Health Act 2009 \(c. 21\), s. 40\(1\), Sch. 5 para. 15; S.I. 2010/1863, art. 2](#)

22 Information about right to make complaint

- (1) A listed authority must take reasonable steps to publicise the application and effect of this Act in relation to the authority including, in particular, providing information about—
 - (a) the right conferred by this Act to make a complaint,
 - (b) the time limit for doing so, and
 - (c) how to contact the Ombudsman.
- (2) Information about the matters specified in subsection (1)(a) to (c) must be included in or provided with—
 - (a) any document published by the listed authority and containing information about services provided by the authority to members of the public or about the procedures of the authority for dealing with complaints,
 - (b) any document issued by the listed authority responding to a complaint made to it by any person who might be entitled to make a complaint to the Ombudsman.
- (3) The Ombudsman may issue guidance with respect to the performance by listed authorities of their duties under this section.

Changes to legislation:

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