

# SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Investigations by the Ombudsman*

##### *Section 5 – Matters which may be investigated*

24. **Section 5** makes provision for the matters covered by the Ombudsman’s power to investigate. **Subsection (1)** sets out what matters the Ombudsman may investigate. For listed authorities other than health service bodies, independent providers, family health service providers and registered social landlords, the Ombudsman can investigate any service failure and action taken in the exercise of administrative functions of that authority. For health service bodies and independent providers the Ombudsman can investigate any service failure and any action taken by or on behalf of the body or authority. For family health service providers the Ombudsman is able to investigate any action taken by or on behalf of the provider in connection with the provision of family health services. For registered social landlords the Ombudsman is entitled to investigate any action taken by or on behalf of the landlord.
25. **Subsection (2)** defines the term “service failure” for the purposes of subsection (1) as any failure in a service provided by the authority, or any failure of the authority to provide a service which it was a function of the authority to provide.
26. **Subsection (3)** provides that the Ombudsman may investigate a complaint about the matters specified in subsection (1) only where a member of the public claims to have sustained injustice or hardship in consequence of:
- maladministration in connection with:
- any action taken by or on behalf of a listed authority (other than a health service body, independent provider, family health service provider or registered social landlord) in the exercise of administrative functions of that authority;
  - any action taken by or on behalf of a health service body, an independent provider or a registered social landlord;
  - any service failure by a listed authority (apart from a family health service provider or a registered social landlord);
  - any action taken by or on behalf of a family health service provider in connection with any family health services provided by that provider.
27. **Subsection (4)** defines a person making a claim of injustice or hardship under subsection (3) as the *person aggrieved*.

*These notes relate to the Scottish Public Services Ombudsman  
Act 2002 (asp 11) which received Royal Assent on 23 April 2002*

28. *Subsection (5)* provides that the Ombudsman may investigate a request (under section 2(2)(b)) relating to the matters specified in subsection (1) only if he or she is satisfied that:
- it has been alleged publicly that one or more members of the public have sustained injustice or hardship as mentioned in subsection (2); and,
  - the listed authority in question has taken all reasonable steps to deal with the matter to which the allegation relates.
29. *Subsection (6)* defines the term “member of the public” for the purposes of this section as any individual or body of persons (whether incorporated or not) other than the various bodies and authorities listed.
30. *Subsection (7)* provides that all provisions in section 5 are subject to sections 6 to 8 which provide for the application of section 5 to certain tribunals and set out restrictions and exclusions in relation to matters which the Ombudsman may investigate.