

SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Supplementary

Section 23 – Interpretation

77. *Subsection (2)* lists various persons, action by whom may constitute action taken by a listed authority.
78. *Subsection (3)* ensures that actions taken by UK Ministers and departments on behalf of the Scottish Ministers under agency arrangements cannot be investigated under the Act.
79. *Subsection (4)* makes provision similar to that made by section 13(3)(b) to reflect the special circumstances of the Scottish Administration.

Section 24 – Orders in Council: general

80. This section makes general provision in relation to Orders in Council under the Act. An Order in Council is made by Her Majesty with the advice of the Privy Council. Conferring the power to make subordinate legislation on Her Majesty emphasises the independence of the Ombudsman from the Scottish Ministers.

Section 25 and schedule 6 – Modification of enactments

81. *Subsection (1) of section 25* introduces *schedule 6*, which makes modifications of various enactments for the purposes of the Act. Many of the modifications consist of repeals of legislation relating to the existing ombudsmen. Her Majesty may, by Order in Council under *subsection (2)*, make such other modifications in any enactment as she considers necessary or expedient for the purposes of the Act.

Section 26 and schedule 7 – Consequential, transitional, transitory and saving provision

82. *Subsection (1) of section 26* introduces *schedule 7*, which makes provision for the transfer to the Ombudsman of staff, property and liabilities and undetermined complaints in consequence of the provisions of the Act. Under *subsection (2)* Her Majesty may, by Order in Council, make further transitional, transitory or saving provision.
83. *Schedule 7* makes arrangements for:
 - the transfer, on the day the schedule comes into force, of staff from the offices of the existing Ombudsmen;
 - the transfer of property and liabilities of the existing Ombudsmen;

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

- how complaints undetermined on the appointed day should be handled.
84. Provision is made for staff transferring to the Ombudsman to transfer on exactly the same terms and conditions as those on which they were previously employed.
85. *Paragraph 4* makes provision for statutory complaints that are undetermined at the time the legislation under which they were made is repealed or revoked to be dealt with by the Ombudsman and for the relevant legislation to continue in force for the purpose of determining such complaints.
86. *Paragraph 5* makes similar provision for undetermined housing complaints.

Section 27 – Commencement, revocation and short title

87. The effect of this section is that sections 1, 23, 24, 26(2) and 27 and schedule 1 come into force on Royal Assent. Provision is made for Her Majesty by Order in Council to appoint days when the other provisions in the Act are to come into force, and the day when the Transitional Maladministration Order is to cease to have effect.