



# Scottish Public Services Ombudsman Act 2002

2002 asp 11

## *Miscellaneous and general*

### **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.
  - [<sup>F1</sup>(e) where subsection (2A) applies, the purposes of a welfare fund review.]
- [<sup>F2</sup>(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.

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- (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) [<sup>F3</sup>or (2B)] is to the effect that any person is likely to constitute a threat to the health or safety of [<sup>F4</sup>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 [<sup>F5</sup>or] safety of [<sup>F6</sup>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.
- [<sup>F7</sup>(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 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.
- [<sup>F8</sup>(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—

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- (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—
- [<sup>F9</sup>(a)] the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (c.36); [<sup>F10</sup>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

- F1** 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)
- F2** 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)
- F3** 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)
- F4** 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)
- F5** 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)
- F6** 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)
- F7** 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)
- F8** 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)
- F9** 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)
- F10** 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)

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**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)

**Changes to legislation:**

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