



# Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997

## 1997 CHAPTER 35

### PART I

#### SCOTTISH LEGAL SERVICES OMBUDSMAN

#### **1 Functions and powers of ombudsman.**

- (1) Section 34 of the 1990 Act (Scottish legal services ombudsman: institution and functions) shall be amended as follows.
- (2) In subsection (1), for the words from “to examine” to the end there shall be substituted the words “ for the purpose of conducting investigations under this Act ”.
- (3) After subsection (1) there shall be inserted—
  - “(1A) Subject to subsection (1E) below, the ombudsman may investigate any written complaint (a “handling complaint”) made to him by or on behalf of any person which relates to the manner in which a conduct complaint made by or on behalf of that person has been dealt with by the professional organisation concerned.
  - (1B) Subsection (1A) above applies whether or not the professional organisation concerned have treated the conduct complaint as a conduct complaint.
  - (1C) The ombudsman may decide—
    - (a) not to investigate a handling complaint; or
    - (b) to discontinue his investigation of a handling complaint.
  - (1D) If the ombudsman decides not to investigate a handling complaint or decides to discontinue his investigation of such a complaint he shall notify—
    - (a) the person who made the handling complaint; and

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**Changes to legislation:** There are currently no known outstanding effects for the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997, Section 1. (See end of Document for details)

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(b) the professional organisation concerned,  
of his decision and the reason for it.

(1E) The ombudsman shall not investigate a handling complaint where—

- (a) the professional organisation concerned have not completed their investigation of the conduct complaint to which it relates; or
- (b) it is made after the expiry of such period of time as may be specified for the purpose of this subsection in directions given by the Secretary of State by virtue of paragraph 2 of Schedule 3 to this Act.

(1F) Paragraph (a) of subsection (1E) above does not apply if—

- (a) the handling complaint is that the professional organisation concerned—
  - (i) have acted unreasonably in failing to start an investigation into the complaint; or
  - (ii) having started such an investigation, have failed to complete it within a reasonable time; or
- (b) the ombudsman considers that, even though the complaint is being investigated by that organisation, an investigation by him is justified.”.

(4) In subsection (2), the words from “; and” to the end shall cease to have effect.

(5) After subsection (2) there shall be inserted—

“(2A) Where the ombudsman is conducting an investigation under this Act, he may require the professional organisation concerned—

- (a) to provide him with such information, being information which is within the knowledge of the professional organisation, as he considers relevant to his investigation; or
- (b) to produce to him such documents, being documents which are within the possession or control of the organisation, as he considers relevant to his investigation,

(including any information or, as the case may be, documents obtained by the organisation from the practitioner concerned while investigating the conduct complaint to which the handling complaint relates); and, notwithstanding any duty of confidentiality owed to any person by the professional organisation as respects any such information or, as the case may be, documents, the organisation shall comply with such a requirement.

(2B) Where any information requested by the ombudsman under subsection (2A) above is not within the knowledge of the professional organisation concerned, or any documents so requested are not within their possession or control, the ombudsman may require the practitioner concerned in the conduct complaint to which the handling complaint relates—

- (a) to provide him with that information, in so far as it is within the knowledge of the practitioner; or
- (b) to produce to him those documents, if they are within the possession or control of the practitioner;

and, notwithstanding any duty of confidentiality owed to any person by the practitioner as respects any such information or, as the case may be, documents, the practitioner shall comply with such a requirement.”.

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(6) Subsection (3) shall cease to have effect.

(7) For subsection (4) there shall be substituted—

“(4) Where the ombudsman is conducting an investigation under this Act, he may at any time make a written interim report in relation to the investigation and shall send a copy of any such report to—

- (a) the person who made the handling complaint; and
- (b) the professional organisation concerned.”.

**Changes to legislation:**

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