

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

COMMENTARY

Part V: Miscellaneous and General SECTION 91: Maladministration

Purpose and Effect

This section imposes a duty on the Scottish Parliament to provide for the investigation of certain complaints of maladministration in connection with action taken by or on behalf of members of the Scottish Administration. In making such provision, the Parliament is required to take account of the Parliamentary Commissioner Act 1967. It also provides that the Parliament may make provision for the investigation of complaints in respect of office-holders in the Scottish Administration, the Scottish Parliamentary Corporate Body, Scottish public authorities and action taken by cross-border public authorities in connection with devolved matters.

General

This section imposes a duty on the Parliament to provide for the investigation of certain complaints of maladministration, and provides that the Parliament may make further provision. Prior to the Parliament making its own provision, the office of Scottish Parliamentary Commissioner for Administration was created to investigate complaints made against members of the Scottish Administration, Scottish public authorities, cross-border public authorities (in connection with devolved matters), and the Scottish Parliamentary Corporate Body under the Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of Maladministration) Order 1999 ([S.I. 1999/1351](#)), as amended by [S.I. 1999/1595](#).

As a consequence, devolved public authorities were removed from the jurisdiction of the Parliamentary Commissioner for Administration by amendments made to the Parliamentary Commissioner Act 1967 by [S.I. 1999/1820](#).

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	4-Mar-98	1140
CR	19-May-98	774
LC	6-Oct-98	397
LR	2-Nov-98	11
L3	9-Nov-98	586

Details of Provisions

Subsection (1) requires the Parliament to make provision for the investigation of “relevant” complaints made to members about any action taken by or on behalf of a member of the Scottish Executive in the exercise of functions conferred on the Scottish Ministers, or by or on behalf of any other office-holder in the Scottish Administration.

Subsection (2) defines what is a “relevant complaint”. The Parliament’s duty extends to providing for the investigation of those kinds of complaints which could be investigated under the Parliamentary Commissioner Act 1967. This, for example, specifically excludes complaints relating to the commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom.

Subsection (3) provides that the Parliament may make provision for the investigation of complaints in respect of:

- (a) any action taken by or on behalf of an office-holder in the Scottish Administration;
- (b) any action taken by or on behalf of the Parliamentary corporation;
- (c) any action taken by or on behalf of a Scottish public authority with mixed functions or no reserved functions; and
- (d) any action concerning Scotland and not relating to reserved matters which is taken by or on behalf of a cross-border public authority.

Subsection (4) read together with subsection (6) requires the Parliament, in making provision under subsection (1), to have regard among other things to the provisions of the Parliamentary Commissioner Act 1967 as it has effect on the commencement of this section.

Subsection (5) provides that certain sections of the Act related to the transfer of functions to the Scottish Ministers will not apply to functions conferred by or under the Parliamentary Commissioner Act 1967. The relevant sections are:

53	General transfer of functions;
117	Ministers of the Crown;
118	Subordinate legislation;
119	Consolidated Fund, etc.;
121	Requirements to lay reports etc. before Parliament.

Subsection (6) defines “action” in this context as including failure to act, and defines “provision” in this context as provision by an Act of the Scottish Parliament.