

# SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *The Scottish Public Services Ombudsman*

#### *Section 1 and schedule 1 – The Scottish Public Services Ombudsman*

7. *Section 1* creates the offices of the Ombudsman and deputy Ombudsmen; provides for the making of the appointment of the Ombudsman and the Ombudsman's deputies; and provides the basis on which these appointments are held.
8. *Subsections (1) to (3)* provide for the appointment of a Scottish Public Services Ombudsman, and up to 3 deputies, by Her Majesty on the nomination of the Parliament.
9. *Subsection (4)* enables a deputy Ombudsman to exercise the Ombudsman's functions, either when the post of Ombudsman is vacant and there is no acting Ombudsman appointed (under paragraph 5(1) of schedule 1 – see paragraph 15 below); or when the Ombudsman is for any reason unable to act. A deputy acting in such circumstances is to be treated as the Ombudsman, except with regard to the following matters which are not applicable in such a situation:
  - paragraph 3(a) of schedule 1 – the validity of actings not being affected by a defect in the nomination by the Parliament for appointment of Ombudsman;
  - paragraph 4 of schedule 1 – term of office and tenure;
  - paragraph 7 of schedule 1 – remuneration;
  - paragraph 8 of schedule 1 – pensions etc.
10. *Subsection (5)* introduces *schedule 1*, which makes detailed provision concerning the appointment, status, etc of the appointments made under this section and the administrative matters in connection with such appointments.
11. *Paragraph 1(1)* of the schedule sets out various persons who are disqualified from appointment, or from holding office, as Ombudsman or deputy Ombudsman.
12. *Sub-paragraphs (2) and (3) of paragraph 1* set out various offices and appointments which a person is disqualified from while holding office as Ombudsman or deputy Ombudsman or for a period of 3 years after they ceased to hold office. This does not prevent a former Ombudsman or deputy Ombudsman from resuming employment as a family health service provider or as an independent provider.
13. Provision is made under *paragraph 2* of the schedule as to the status of the Ombudsman, Deputy Ombudsman and staff of the Ombudsman office. Specific provision is made for the Ombudsman not to be subject to the control or direction of the Scottish Parliament or Scottish Executive unless where otherwise indicated in the Act.

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

14. Under *paragraph 4* the Ombudsman and deputy Ombudsmen are appointed by Her Majesty on the nomination of Parliament. They will hold office for a term not exceeding 5 years, and for no longer than 2 consecutive terms, unless re-appointment for a third is desirable in the public interest. They may resign and may be removed from office, and cease to hold office at the end of the year when they become 65. The Parliamentary corporation will determine the Ombudsman's other terms and conditions.
15. *Paragraphs 5 and 6* provide for the Parliamentary corporation to appoint an acting Ombudsman or acting deputy Ombudsman where the office of the Ombudsman or a deputy Ombudsman is vacant.