

*Status: Point in time view as at 02/08/2005.*

*Changes to legislation: There are currently no known outstanding effects for the Scottish Public Services Ombudsman Act 2002, SCHEDULE 7. (See end of Document for details)*

## SCHEDULE 7

*(introduced by section 26)*

### TRANSFER OF STAFF, PROPERTY AND LIABILITIES AND UNDETERMINED COMPLAINTS

#### *Interpretation*

- 1 (1) In this schedule—
  - “the 1975 Act” means the Local Government (Scotland) Act 1975 (c.30),
  - “the 1993 Act” means the Health Service Commissioners Act 1993 (c.46),
  - “the 1999 Order” means the Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of Maladministration) Order 1999 (S.I. 1999/1351),
  - “the HAOS” means the employee of Scottish Homes appointed by it to be the Housing Association Ombudsman for Scotland,
  - “the Terms of Reference” means the Terms of Reference for the exercise of the functions of the HAOS adopted by Scottish Homes on 7th March 1994 and as amended from time to time.
- (2) References in this schedule to an existing Commissioner are references to any of the following office-holders, namely—
  - (a) the Commissioner for Local Administration in Scotland, established by section 21 of the 1975 Act,
  - (b) the Health Service Commissioner for Scotland, continued in existence by section 1 of the 1993 Act,
  - (c) the Scottish Parliamentary Commissioner for Administration appointed under article 4 of the 1999 Order.
- (3) References in this schedule to an existing complaints enactment are references to any of the following enactments, namely—
  - (a) Part II of the 1975 Act,
  - (b) the 1993 Act,
  - (c) the 1999 Order.

#### *Transfer of staff of existing Commissioners and Scottish Homes*

- 2 (1) On the date on which this schedule comes into force, each person who was, immediately before that date—
  - (a) employed as an officer or member of staff of an existing Commissioner, or
  - (b) an employee of Scottish Homes assigned to assist the HAOS in the exercise of the functions of the HAOS,transfers to and becomes a member of the staff of the Ombudsman.
- (2) The contract of employment of such a person—
  - (a) is not terminated by the transfer, and
  - (b) has effect from the date of transfer as if originally made between that person and the Ombudsman.
- (3) Without prejudice to sub-paragraph (2), where a person becomes a member of the staff of the Ombudsman under sub-paragraph (1)—
  - (a) all the rights, powers, duties and liabilities of the transferor under or in connection with that person’s contract of employment are by virtue of this

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sub-paragraph transferred to the Ombudsman on the date on which this schedule comes into force, and

- (b) anything done before that date by or in relation to the transferor in respect of that contract of employment or that person is to be treated from that date as having been done by, or in relation to, the Ombudsman.

- (4) This paragraph does not prejudice any right of any person to terminate that person's contract of employment if the terms and conditions of employment are changed substantially to the detriment of the person; but such a change is not to be taken to have occurred by reason only that the identity of that person's employer changes by virtue of this paragraph.

- (5) In this paragraph, "transferor" in relation to a person who is transferred to the Ombudsman by virtue of sub-paragraph (1), means (as the case may be)—

- (a) the existing Commissioner from whom that person is so transferred, or
- (b) Scottish Homes, where that person is so transferred from Scottish Homes.

*Transfer of property etc. of existing Commissioners and Scottish Homes*

- 3 (1) On the date on which this schedule comes into force, all property and liabilities—
  - (a) to which an existing Commissioner was entitled or subject immediately before that date, or
  - (b) to which Scottish Homes was entitled or subject immediately before that date and which were held, used or, as the case may be, incurred by Scottish Homes wholly for the purposes of or in connection with the functions of the HAOS,
 transfer to and vest in the Ombudsman.
- (2) Sub-paragraph (1) has effect in relation to property and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict the transfer of the property or liabilities.

*Transfer of undetermined statutory complaints*

- 4 (1) This paragraph applies in relation to any complaint (an "undetermined statutory complaint")—
  - (a) made to an existing Commissioner under an existing complaints enactment in relation to a person who is a listed authority for the purposes of this Act, and
  - (b) which has not been determined by the Commissioner before the repeal or revocation of the enactment by or by virtue of this Act.
- (2) For the purpose of enabling an undetermined statutory complaint to continue to be dealt with, the existing complaints enactment under which the complaint was made continues in force despite its repeal or revocation and has effect as it had effect immediately before its repeal or revocation but—
  - (a) as if any reference in it to the existing Commissioner were a reference to the Ombudsman, and
  - (b) subject to such further modifications (if any) as may be made by virtue of section 24(1) or 26(2).
- (3) For the purposes of this paragraph—

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- (a) a complaint is determined by an existing Commissioner if the Commissioner—
    - (i) has decided to conduct an investigation pursuant to the complaint and the investigation is concluded, or
    - (ii) has decided not to conduct an investigation pursuant to the complaint,
  - (b) an investigation is concluded if the existing Commissioner has reported the results of that investigation in accordance with the existing complaints enactment under which the complaint was made.
- (4) Nothing in this paragraph affects the validity of anything done (or having effect as if done) by or in relation to an undetermined statutory complaint by an existing Commissioner under an existing complaints enactment before that enactment's repeal or revocation by or by virtue of this Act.
- (5) Anything (including legal proceedings) which, at that time, is in the process of being done by or in relation to an existing Commissioner may, so far as it relates to an undetermined statutory complaint, be continued by or in relation to the Ombudsman.
- (6) Anything done (or having effect as if done) by or in relation to an existing Commissioner for the purposes of or in connection with an undetermined statutory complaint, if in force at that time, has effect as if done by or in relation to the Ombudsman in so far as that is required for continuing its effect on or after that time.

*Transfer of undetermined housing complaints*

- 5 (1) This paragraph applies in relation to any complaint (an “undetermined housing complaint”)—
- (a) made to the HAOS under the Terms of Reference in relation to a registered social landlord, and
  - (b) which has not been determined by the HAOS before the date on which this schedule comes into force.
- (2) For the purpose of enabling an undetermined housing complaint to continue to be dealt with, the Terms of Reference (other than any provision relating to the appointment of the HAOS) continue in force and have effect after the date on which this schedule comes into force as they had effect immediately before that date but—
- (a) as if any reference to the HAOS were a reference to the Ombudsman, and
  - (b) subject to such further modifications (if any) as may be made by virtue of section 24(1) or 26(2).
- (3) For the purposes of this paragraph—
- (a) a complaint is determined by the HAOS if the HAOS—
    - (i) has decided to conduct an investigation pursuant to the complaint and the investigation is concluded, or
    - (ii) has decided not to conduct an investigation pursuant to the complaint,
  - (b) an investigation is concluded if the HAOS has reported the results of that investigation in accordance with the Terms of Reference.
- (4) Nothing in this paragraph affects the validity of anything done (or having effect as if done) by or in relation to an undetermined housing complaint by the HAOS under the Terms of Reference before the date on which this schedule comes into force.

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- (5) Anything (including legal proceedings) which, at that date, is in the process of being done by or in relation to the HAOS may, so far as it relates to an undetermined housing complaint, be continued by or in relation to the Ombudsman.
- (6) Anything done (or having effect as if done) by or in relation to the HAOS for the purposes of or in connection with an undetermined housing complaint, if in force at that date, has effect as if done by or in relation to the Ombudsman in so far as that is required for continuing its effect on or after that time.

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