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## SCHEDULE 1

*(introduced by section 1)*

### THE SCOTTISH PUBLIC SERVICES OMBUDSMAN

#### *Disqualification*

- 1 (1) A person is disqualified from appointment, and from holding office, as Ombudsman or deputy Ombudsman if that person is—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a listed authority (within the meaning of section 3(1)),
  - (d) a member, officer or member of staff of a listed authority,
  - (e) disqualified from election as a member of the Scottish Parliament or as a member of a local authority.
- (2) A person holding office as Ombudsman or deputy Ombudsman—
- (a) is disqualified from appointment or, as the case may be, election as—
    - (i) the holder of any office which is a listed authority, or
    - (ii) a member, officer or member of staff of a listed authority,
  - (b) is not entitled to become a family health service provider or an independent provider (within the meaning of paragraph 5 or, as the case may be, 6 of schedule 2), and
  - (c) is disqualified from appointment to any paid office by a listed authority.
- (3) A person who has ceased to hold office as Ombudsman or deputy Ombudsman is, during the period of 3 years beginning with the date on which that person ceased to hold that office, disqualified—
- (a) from appointment or, as the case may be, election as—
    - (i) the holder of any office which is a listed authority,
    - (ii) a member, officer or member of staff of a listed authority, and
  - (b) from appointment to any paid office by a listed authority.
- (4) Sub-paragraph (3)(a)(ii) does not disqualify any person who has ceased to hold office as Ombudsman or deputy Ombudsman from election as a member of any local authority.
- (5) In this paragraph, references to a member of a listed authority include any member by co-option of any committee of a listed authority.
- (6) For the purposes of sub-paragraphs (2)(c) and (3)(b) an office is a paid office where the holder of the office is entitled to remuneration or expenses.

#### *Status*

- 2 (1) The Ombudsman, deputy Ombudsmen and Ombudsman's staff are not to be regarded as servants or agents of the Crown or as having any status, immunity or privilege of the Crown; and the Ombudsman's property is not to be regarded as property of, or property held on behalf of, the Crown.
- (2) The Ombudsman, in the exercise of that officer's functions, is not subject to the direction or control of—
- (a) any member of the Parliament,

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- (b) any member of the Scottish Executive,
- (c) the Parliamentary corporation.

(3) Sub-paragraph (2) is subject to section 17(3) and paragraph 15(1) of this schedule.

#### *Validity of actings*

- 3 The validity of any actings of the Ombudsman or a deputy Ombudsman is not affected by—
- (a) any defect in the nomination by the Parliament for that officer’s appointment, or
  - (b) any disqualification from appointment as Ombudsman or, as the case may be, deputy Ombudsman.

#### *Term of office and tenure*

- 4 (1) The Ombudsman and a deputy Ombudsman each—
- (a) holds office for such period not exceeding five years as the Parliamentary corporation, at the time of appointment, may determine,
  - (b) may be relieved of office by Her Majesty at the request of the officer in question,
  - (c) vacates office on 31st December in the year of service in which the officer in question attains the age of 65,
  - (d) may be removed from office by Her Majesty in pursuance of a resolution of the Parliament which, if passed on a division, must be voted for by a number of members equivalent to not less than two thirds of the total number of seats for members of the Parliament, and
  - (e) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine.
- (2) A person whose period of office as Ombudsman or deputy Ombudsman expires under sub-paragraph (1)(a) is eligible for reappointment; but reappointment to the same office for a third consecutive period is competent only if, by reason of special circumstances, such reappointment is desirable in the public interest.
- (3) Subject to sub-paragraph (2), nothing in this paragraph prevents a person who previously held office as Ombudsman or deputy Ombudsman (except such a person who ceased to hold office by virtue of sub-paragraph (1)(c)) from being appointed again to that office or to the other office.

#### *Vacancy in office of Ombudsman*

- 5 (1) Where the office of Ombudsman is vacant, the Parliamentary corporation may appoint a person (whether or not a deputy Ombudsman or a member of the Ombudsman’s staff) to discharge the Ombudsman’s functions until a new Ombudsman is appointed; and a person so appointed is referred to in this Act as an “acting Ombudsman”.
- (2) A person who is disqualified from appointment as Ombudsman is also disqualified from appointment as acting Ombudsman.
- (3) A person appointed to be acting Ombudsman—
- (a) may be relieved of office at that person’s request,

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- (b) may be removed from office by the Parliamentary corporation by notice in writing given by it,
- (c) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine,
- (d) while holding that office, is to be treated for all purposes, except those of paragraphs 3(a), 4, 7 and 8, as the Ombudsman.

#### *Vacancy in office of deputy Ombudsman*

- 6
- (1) Where there is a vacancy in the office of deputy Ombudsman, the Parliamentary corporation may appoint a person (whether or not a member of the Ombudsman's staff) to be an acting deputy Ombudsman until a deputy Ombudsman is appointed to fill the vacancy.
  - (2) For the purposes of sub-paragraph (1), there is a vacancy in the office of deputy Ombudsman if—
    - (a) there are fewer than 3 deputy Ombudsmen (whether or not as a consequence of one or more deputies ceasing to hold office as such), and
    - (b) the Parliamentary corporation reasonably believes that the Parliament is likely to nominate a person for appointment by Her Majesty as a deputy Ombudsman.
  - (3) A person who is disqualified from appointment as a deputy Ombudsman is also disqualified from appointment as an acting deputy Ombudsman.
  - (4) A person appointed to be an acting deputy Ombudsman—
    - (a) may be relieved of office at that person's request,
    - (b) may be removed from office by the Parliamentary corporation by notice in writing given by it,
    - (c) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine,
    - (d) while holding that office, is to be treated for all purposes, except those of paragraphs 3(a), 4, 7 and 8, as a deputy Ombudsman.

#### *Remuneration*

- 7
- (1) The Ombudsman and a deputy Ombudsman are each entitled to—
    - (a) a salary of such amount, and
    - (b) such allowances,as the Parliamentary corporation may determine.
  - (2) The salary payable to a person holding office as Ombudsman or deputy Ombudsman is to be abated by the amount of any pension payable to that person in respect of any public office in the United Kingdom or elsewhere to which that person was previously elected or appointed.

#### *Pensions etc.*

- 8
- (1) The Parliamentary corporation may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to hold office as Ombudsman or deputy Ombudsman and (without prejudice to that generality) may—

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- (a) make contributions or payments towards provision for such pensions, allowances or gratuities, and
  - (b) establish and administer one or more pension schemes.
- (2) The references in sub-paragraph (1) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of office.

### *Staff*

- 9 (1) The Ombudsman may appoint such staff, on such terms and conditions, as the Ombudsman may determine.
- (2) The Ombudsman may make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of staff and (without prejudice to that generality) may—
- (a) make contributions or payments towards provision for such pensions, allowances or gratuities, and
  - (b) establish and administer one or more pensions schemes.
- (3) References in sub-paragraph (2) to pensions, allowances and gratuities include references to, as the case may be, pensions, allowances or gratuities by way of compensation for loss of employment.
- (4) A determination under sub-paragraph (1) and arrangements under sub-paragraph (2) require the approval of the Parliamentary corporation.

### *Advisers*

- 10 (1) The Ombudsman may, in connection with a complaint or request under this Act, obtain advice from any person who, in the Ombudsman's opinion, is qualified to give it.
- (2) The Ombudsman may pay to any such person from whom advice is obtained such fees and allowances as the Ombudsman may, with the approval of the Parliamentary corporation, determine.

### *Delegation*

- 11 (1) Any function of the Ombudsman may be exercised on the Ombudsman's behalf—
- (a) by any person (whether or not a deputy Ombudsman or a member of the Ombudsman's staff) authorised by the Ombudsman to do so, and
  - (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the responsibility of the Ombudsman for the exercise of that officer's functions.

### *General powers*

- 12 (1) The Ombudsman may do anything which appears necessary or expedient for the purpose of, or in connection with, or which appears conducive to, the exercise of the Ombudsman's functions.
- (2) Without prejudice to that generality, the Ombudsman may in particular—

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- (a) acquire and dispose of land and other property, and
- (b) enter into contracts.

#### *Financial provision*

- 13 The Parliamentary corporation is to pay—
- (a) the salary and allowances of the Ombudsman and any deputy Ombudsman,
  - (b) any expenses incurred by the Ombudsman in the exercise of the functions of the Ombudsman,
  - (c) any sums payable by virtue of paragraph 5(3)(a) to (c) or 6(4)(a) to (c) to, or in respect of, a person who—
    - (i) is appointed as acting Ombudsman or, as the case may be, acting deputy Ombudsman, or
    - (ii) has ceased to hold such office.

#### *Accountable officer*

- 14 (1) The Parliamentary corporation is to designate the Ombudsman, a deputy Ombudsman or a member of the Ombudsman's staff as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
- (a) those specified in sub-paragraph (3), and
  - (b) where the accountable officer is not the Ombudsman, the duty set out in sub-paragraph (4),
- and the accountable officer is answerable to the Parliament for the exercise of those functions.
- (3) The functions referred to in sub-paragraph (2)(a) are—
- (a) signing the accounts of the expenditure and receipts of the Ombudsman,
  - (b) ensuring the propriety and regularity of the finances of the Ombudsman,
  - (c) ensuring that the resources of the Ombudsman are used economically, efficiently and effectively.
- (4) The duty referred to in sub-paragraph (2)(b) is a duty, where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions specified in sub-paragraph (3), to—
- (a) obtain written authority from the Ombudsman before taking the action, and
  - (b) send a copy of that authority as soon as possible to the Auditor General for Scotland.

#### *Accounts and audit*

- 15 (1) The Ombudsman must—
- (a) keep accounts, and
  - (b) prepare annual accounts in respect of each financial year,
- in accordance with such directions as the Scottish Ministers may give.
- (2) The Ombudsman must send a copy of the annual accounts to the Auditor General for Scotland for auditing.

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- (3) The financial year of the Ombudsman is—
  - (a) the period beginning with the date on which the first Ombudsman is appointed and ending with 31st March next following that date, and
  - (b) each successive period of twelve months ending with 31st March.
- (4) If requested by any person, the Ombudsman must make available at any reasonable time, and without charge, in printed or in electronic form, the audited accounts, so that they may be inspected by that person.

VALID FROM 23/10/2002

**SCHEDULE 2**  
*(introduced by section 3)*  
**LISTED AUTHORITIES**

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VALID FROM 23/10/2002

**SCHEDULE 3**  
*(introduced by sections 6 and 7)*  
**SPECIFIED TRIBUNALS FOR THE PURPOSES OF SECTIONS 6 AND 7**

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VALID FROM 23/10/2002

**SCHEDULE 4**  
*(introduced by section 8)*  
**MATTERS WHICH THE OMBUDSMAN MUST NOT INVESTIGATE**

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## SCHEDULE 5

*(introduced by section 20)*

### DISCLOSURE OF INFORMATION BY THE OMBUDSMAN

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VALID FROM 23/10/2002

## SCHEDULE 6

*(introduced by section 25)*

### MODIFICATION OF ENACTMENTS

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VALID FROM 23/10/2002

## 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,

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(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 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



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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—
- (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.

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*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.
- (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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