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## SCHEDULE 1 **S**

*(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.

**SCHEDULE 2** **S**  
*(introduced by section 3)*

LISTED AUTHORITIES

**PART 1** **S**

ENTRIES NOT AMENDABLE BY ORDER IN COUNCIL

*Scottish Parliament and Scottish Administration*

- 1 The Parliamentary corporation.
- 2 Any member of the Scottish Executive.
- 3 Any other office-holder in the Scottish Administration.

*Health service*

- 4 Any health service body, that is to say—
  - (a) any Health Board,
  - (b) any Special Health Board,
  - (c) any National Health Service trust,
  - (d) the Common Services Agency for the Scottish Health Service,
  - (e) the Scottish Dental Practice Board,
  - (f) the Mental Welfare Commission for Scotland.
- 5 Any person who is, or was at the time of the matter complained of, a family health service provider, that is to say—
  - <sup>[F1]</sup>(a) a person (whether an individual or a body) providing primary medical services under a general medical services contract (within the meaning of the National Health Service (Scotland) Act 1978) or general dental services under Part II of that Act,]
  - (b) a person (whether an individual or a body) undertaking to provide in Scotland general ophthalmic services or pharmaceutical services under that Part of that Act, or
  - (c) an individual performing in Scotland [<sup>F2</sup>primary medical services] or personal dental services in accordance with—
    - (i) arrangements made under section 17C of that Act, or

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- (ii) a pilot scheme under Part I of the National Health Service (Primary Care) Act 1997 (c.46),  
(except as an employee of, or otherwise on behalf of, a health service body or an independent provider).

#### Textual Amendments

- F1** Sch. 2 para. 5(a) substituted (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 4\(2\)\(a\)](#); S.S.I. 2004/58, art. 2(3)
- F2** Words in sch. 2 para. 5(c) substituted (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 4\(2\)\(b\)](#); S.S.I. 2004/58, art. 2(3)

- 6 Any person who is, or was at the time of the matter complained of, an independent provider, that is to say a person (whether an individual or a body)—
- (a) providing services of any kind in Scotland under arrangements with a health service body or family health service provider, and
- (b) not being a health service body or a family health service provider.

#### Local government etc.

- 7 Any local authority.
- 8 Any committee, joint committee or joint board the members of which, other than ex officio members, are appointed by one or more local authorities.
- 9 Any person who, by virtue of section 56(1) of the Local Government (Scotland) Act 1973 (c.65), discharges any of the functions of a local authority.
- 10 Any licensing board within the meaning of the Licensing (Scotland) Act 1976 (c.66).
- 11 The Strathclyde Passenger Transport Authority.
- [<sup>F3</sup>11A Any Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)]

#### Textual Amendments

- F3** Sch. 2 para. 11A inserted (10.10.2005) by [Transport \(Scotland\) Act 2005 \(asp 12\)](#), s. 54(2), [sch. 1 para. 19](#); S.S.I. 2005/454, art. 2, Sch. 2

- 12 Any National Park authority.
- [<sup>F4</sup>13 A joint fire and rescue board constituted by an amalgamation scheme made under section 2(1) of the Fire (Scotland) Act 2005 (asp 5).]

#### Textual Amendments

- F4** Sch. 2 para. 13 substituted (2.8.2005) by [Fire \(Scotland\) Act 2005 \(asp 5\)](#), s. 90, [sch. 3 para. 21](#) (with s. 77); S.S.I. 2005/392, art. 2(k)

- 14 Any joint police board constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967 (c.77).

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- 15 Any Children’s Panel Advisory Committee formed under paragraph 3, or joint advisory committee formed under paragraph 8, of Schedule 1 to the Children (Scotland) Act 1995 (c.36).
- 16 Any joint committee, for the administration of superannuation schemes for persons employed in local government service or teachers, established by regulations under section 7 or 9 of the Superannuation Act 1972 (c.11) respectively.

### *Housing*

- 17 Any person who is, or was at the time of the matter complained of, a registered social landlord.

## **PART 2 S**

### ENTRIES AMENDABLE BY ORDER IN COUNCIL

#### *Scottish public authorities*

- 18 The Accounts Commission for Scotland.
- 19 Audit Scotland.
- 20 The Auditor General for Scotland.
- 21 The Chief Investigating Officer established by section 9(1) of the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7).
- 22 The Crofters Commission.
- 23 The Deer Commission for Scotland.
- 24 The General Teaching Council for Scotland.
- 25 Highlands and Islands Enterprise.
- 26 Learning and Teaching Scotland.
- 27 Any local enterprise company, that is to say any company (within the meaning of the Companies Act 1985 (c.6))—
- (a) which is a wholly owned subsidiary (within the meaning of that Act) of Scottish Enterprise or Highlands and Islands Enterprise, and
  - (b) with which an agreement (not being one which has terminated) has been made in pursuance of section 19 of the Enterprise and New Towns (Scotland) Act 1990 (c.35) by Scottish Enterprise or Highlands and Islands Enterprise for the discharge by that company of any of the functions of Scottish Enterprise or, as the case may be, Highlands and Islands Enterprise.
- 28 The Local Government Boundary Commission for Scotland.
- 29 The Board of Trustees for the National Galleries of Scotland.
- 30 The Trustees of the National Library of Scotland.
- 31 The Board of Trustees of the National Museums of Scotland.
- 32 The Parole Board for Scotland.
- 33 The Board of Trustees of the Royal Botanic Garden, Edinburgh.

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- 34 The Royal Commission on the Ancient and Historical Monuments of Scotland.
- 35 The Scottish Agricultural Wages Board.
- 36 The Scottish Arts Council.
- 37 The Scottish Children’s Reporter Administration.
- 38 The Scottish Commission for the Regulation of Care.
- 39 Scottish Enterprise.
- 40 The Scottish Environment Protection Agency.
- [<sup>F5</sup>40A The Scottish Further and Higher Education Funding Council.]

**Textual Amendments**

**F5** Sch. 2 para. 40A inserted (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [sch. 3 para. 11\(a\)](#); S.S.I. 2005/419, art. 2(1)

<sup>F6</sup>41 .....

**Textual Amendments**

**F6** Sch. 2 para. 41 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [sch. 3 para. 11\(b\)](#); S.S.I. 2005/419, art. 2(1)

42 The Scottish Further Education Unit.

<sup>F7</sup>43 .....

**Textual Amendments**

**F7** Sch. 2 para. 43 repealed (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), s. 36(2), [sch. 3 para. 11\(b\)](#); S.S.I. 2005/419, art. 2(1)

44 Scottish Homes.

45 The Scottish Hospital Endowments Research Trust.

[<sup>F8</sup>45A The Scottish Information Commissioner.]

**Textual Amendments**

**F8** Sch. 2 Pt. II para. 45A inserted (30.9.2002) by [Freedom of Information \(Scotland\) Act 2002 \(asp 13\)](#), s. 71(1); S.S.I. 2002/437, art. 2

46 The Scottish Legal Aid Board.

<sup>F9</sup>47 .....

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#### Textual Amendments

**F9** Words in Sch. 2 Pt. 2 repealed (1.4.2004) by [Public Appointments and Public Bodies etc. \(Scotland\) Act 2003 \(asp 4\)](#), s. 21(2), [Sch. 4 para. 16\(a\)](#); S.S.I. 2004/148, art. 2(c)

- 48 Scottish Natural Heritage.
- 49 The Scottish Qualifications Authority.
- 50 Scottish Screen.
- 51 The Scottish Social Services Council.
- 52 The Scottish Sports Council.
- 53 The Scottish Tourist Board.
- 54 The Standards Commission for Scotland.
- 55 The Water Industry [<sup>F10</sup>Commission] for Scotland.

#### Textual Amendments

**F10** Word in Sch. 2 para. 55 substituted (1.7.2005) by [Water Services etc. \(Scotland\) Act 2005 \(asp 3\)](#), s. 37(2), [sch. 5 para. 8\(b\)](#) (with s. 36); S.S.I. 2005/351, art. 2, sch. 2 (with art. 3(3))

- 56 Any holder of an office—
  - (a) established by or under any enactment, and
  - (b) appointments to, or designations of, which are made by a listed authority mentioned in paragraph 7 or 8 of Part 1 of this schedule.

#### *Cross-border public authorities*

- 57 British Library Board.
- 58 British Potato Council.
- 59 British Tourist Authority.
- 60 British Wool Marketing Board.
- 61 Central Bureau for Educational Visits and Exchanges.
- 62 Committee of Investigation for Great Britain.
- 63 Community Development Foundation.
- 64 Construction Industry Training Board.
- 65 Consumers' Committee for Great Britain.
- 66 The Criminal Injuries Compensation Appeals Panel.
- 67 The Criminal Injuries Compensation Authority.
- 68 Design Council.
- 69 Engineering Construction Industry Training Board.
- 70 Food from Britain.
- 71 Forestry Commissioners.

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- 72 Home-Grown Cereals Authority.
- 73 Horticultural Development Council.
- 74 Intervention Board for Agricultural Produce.
- 75 Joint Nature Conservation Committee.
- 76 The licensing authority designated under section 1(1) of the Activity Centres (Young Persons' Safety) Act 1995 (c.15).
- 77 Meat and Livestock Commission.
- 78 Milk Development Council.
- 79 National Consumer Council.
- <sup>F11</sup>80 .....

**Textual Amendments**

**F11** Sch. 2 para. 80 repealed (1.4.2005) by [Health Protection Agency Act 2004 \(c. 17\)](#), s. 12(1), **Sch. 4**; [S.I. 2005/121](#), art. 2(2)

- 81 Police Information Technology Organisation.
- <sup>F12</sup>82 .....

**Textual Amendments**

**F12** Sch. 2 para. 82 repealed (24.7.2005) by [Railways Act 2005 \(c. 14\)](#), s. 60(2), **Sch. 13 Pt. 1** (with s. 14(4)(5), [Sch. 11 para. 11\(2\)](#)); [S.I. 2005/1909](#), art. 2, [Sch.](#)

- 83 Scottish Consumer Council.
- 84 Sea Fish Industry Authority.
- 85 The Theatres Trust.
- 86 <sup>F13</sup> .....

**Textual Amendments**

**F13** Sch. 2 Pt. 2: entry relating to "Traffic Commissioner for the Scottish Traffic Area" omitted (23.10.2002) by virtue of [S.S.I. 2002/468](#), **art. 2**

- 87 The Trustees of the National Heritage Memorial Fund.
- 88 United Kingdom Sports Council.
- 89 Unrelated Live Transplant Regulatory Authority.

*Other bodies*

- [<sup>F14</sup>90 The Health Protection Agency.]

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### Textual Amendments

- F14** Sch. 7 para. 90 and cross-heading inserted (1.4.2005) by [Health Protection Agency Act 2004 \(c. 17\), s. 12\(1\)](#), [Sch. 3 para. 18\(3\)](#); S.I. 2005/121, art. 2(2)

## [<sup>F15</sup>PART 3 S

### OTHER ENTRIES AMENDABLE BY ORDER IN COUNCIL

### Textual Amendments

- F15** Sch. 2 Pt. 3 added (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\), ss. 27\(3\), 36\(2\)](#); S.S.I. 2005/419, art. 2(1)

#### *Further and Higher Education*

- 92 (1) Any fundable body within the meaning of the Further and Higher Education (Scotland) Act 2005 (asp 6).
- (2) Sub-paragraph (1) does not include the Open University (so far as it is a fundable body).
- 93 The Scottish Agricultural College.]

## SCHEDULE 3 S

*(introduced by sections 6 and 7)*

### SPECIFIED TRIBUNALS FOR THE PURPOSES OF SECTIONS 6 AND 7

- 1 The Dairy Produce Quota Tribunal for Scotland.
- 2 Any Independent Schools Tribunal constituted in accordance with Schedule 2 to the Education (Scotland) Act 1980 (c.44).
- 3 The Lands Tribunal for Scotland.
- 4 Any Meat Hygiene Appeals Tribunal constituted under—
- (a) the Fresh Meat (Hygiene and Inspection) Regulations 1995 (S.I. 1995/539),
  - (b) the Poultry Meat, Farmed Game Birds Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995 (S.I. 1995/540), or
  - (c) the Wild Game Meat (Hygiene and Inspection) Regulations 1995 (S.I. 1995/2148),
- any of whose members was appointed by the Secretary of State for Scotland or by a member of the Scottish Executive.
- [<sup>F16</sup>4A The Mental Health Tribunal for Scotland.]

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### Textual Amendments

**F16** Sch. 3 para. 4A inserted (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [sch. 4 para. 13](#); S.S.I. 2005/161, art. 3 (as substituted (1.7.2005) by S.S.I. 2005/375, art. 2 and as amended (22.9.2005) by S.S.I. 2005/459, art. 2)

- 5 Any rent assessment committee constituted under section 44 of the Rent (Scotland) Act 1984 (c.58).
- 6 The Plant Varieties and Seeds Tribunal.
- 7 The Scottish Land Court.

## SCHEDULE 4 **S**

(introduced by section 8)

### MATTERS WHICH THE OMBUDSMAN MUST NOT INVESTIGATE

- 1 Action taken—
- (a) by or with the authority of a member of the Scottish Executive, or
  - (b) by any police authority or any joint police board constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967 (c.77),
- for the purposes of or in connection with the investigation or prevention of crime or the protection of the security of the State.
- 2 The commencement or conduct of—
- (a) civil or criminal proceedings before any court of law, or
  - (b) proceedings before any international court or tribunal.
- 3 Action taken by any office-holder in, or member of the staff of, the Scottish Administration appointed to be an officer, or a member of the administrative staff, of any court or tribunal, so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in a judicial capacity or in the capacity of a member of the tribunal.
- 4 Action taken by a member of the administrative staff of any tribunal specified in schedule 3 so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in the capacity of a member of the tribunal.
- 5 Action taken by a person appointed under section 5(3)(c) of the Criminal Injuries Compensation Act 1995 (c.53), so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in the capacity of an adjudicator appointed under that section to determine appeals.
- 6 Any exercise of the prerogative of mercy or of the power of a member of the Scottish Executive to make a reference in respect of any person to the High Court of Justiciary.
- 7 (1) Action taken in matters relating to contractual or other commercial transactions of a listed authority.
- (2) The action referred to in sub-paragraph (1) does not include any action taken by or on behalf of a health service body, a family health service provider or an independent provider in matters—

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- (a) relating to NHS contracts (as defined by section 17A of the National Health Service (Scotland) Act 1978 (c.29)),
  - (b) arising from arrangements between a health service body and an independent provider for the provision of services by the provider,
  - (c) arising from arrangements between a family health service provider and an independent provider for the provision of services by the independent provider.
- (3) The transactions referred to in sub-paragraph (1) include, in particular, transactions relating to the operation of public passenger transport, the carrying on of a dock or harbour undertaking, the provision of entertainment, or the provision and operation of industrial establishments and of markets.
- (4) The transactions referred to in sub-paragraph (1) do not include—
- (a) any transaction relating to the acquisition or disposal of land,
  - (b) any transaction (not being a transaction mentioned in sub-paragraph (3)) in the discharge of functions exercisable under any public general Act, other than a transaction required for the procurement of the goods or services necessary to discharge those functions.
- 8 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.
- 9 The grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters.
- 10 Action concerning—
- (a) the giving of instruction, whether secular or religious, or
  - (b) conduct, curriculum or discipline,
- in any educational establishment under the management of an education authority.
- 11 Action taken by the Mental Welfare Commission for Scotland under—
- [<sup>F17</sup>(a) section 51 (Commission’s power to revoke short term detention certificate or extension certificate) of the Mental Health (Care and Treatment) (Scotland) Act 2003;
  - (b) section 81 (Commission’s power to revoke order) of that Act;
  - (ba) section 143 (Commission’s power to revoke compulsion order) of that Act;]
  - (c) section 50 (orders discharging patients from guardianship) of that Act (before the repeal of that section by the Adults with Incapacity (Scotland) Act 2000 (asp 4)), or
  - (d) section 73 (recall of powers of guardian) of that Act of 2000.

#### **Textual Amendments**

**F17** Sch. 4 para. 11(a)-(ba) substituted for Sch. 4 para. 11(a)(b) (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [Sch. 1 para. 31\(2\)](#)

- 12 Action which has been, or is, the subject of an inquiry under section 76 of the National Health Service (Scotland) Act 1978 (c.29) (general powers to hold inquiries).

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- 13 Action taken by a Health Board in the exercise of its functions under the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992 (S.I. 1992/434), or any instrument amending or replacing those regulations.
- 14 Action taken by a Health Board in the exercise of its functions under regulations made under section [F18 17P], 25(2), 26(2) or 27(2) of the National Health Service (Scotland) Act 1978 (c.29) by virtue of section 17 of the Health and Medicines Act 1988 (c.49).

#### Textual Amendments

**F18** Word in sch. 4 para. 14 substituted (1.4.2004) by [Primary Medical Services \(Scotland\) Act 2004 \(asp 1\)](#), s. 9(1), [sch. para. 4\(3\)](#); [S.S.I. 2004/58](#), art. 2(3)

- 15 Action relating to the determination of the amount of any rent or service charge.

## SCHEDULE 5 **S** (introduced by section 20)

### DISCLOSURE OF INFORMATION BY THE OMBUDSMAN

<i>Person or body</i>	<i>Matter</i>
The Information Commissioner	<ol style="list-style-type: none"><li>1. A matter in respect of which the Commissioner could exercise any power conferred by—<ol style="list-style-type: none"><li>(a) Part V (enforcement) of the Data Protection Act 1998 (c.29),</li><li>(b) section 48 (practice recommend-ations) of the Freedom of Information Act 2000 (c.36), or</li><li>(c) Part IV (enforcement) of that Act</li></ol></li><li>2. The commission of an offence under—<ol style="list-style-type: none"><li>(a) any provision of the Data Protection Act 1998 (c.29) other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or</li><li>(b) section 77 of the Freedom of Information Act 2000 (c.36) (offence of altering etc. records with intent to prevent disclosure)</li></ol></li></ol>
[F19]The Scottish Information Commissioner]	<ol style="list-style-type: none"><li>[F19]1. A matter in respect of which the Commissioner could exercise any power conferred by—<ol style="list-style-type: none"><li>(a) section 44 (recommendations as to good practice) of the Freedom of Information (Scotland) Act 2002 (asp 13); or</li><li>(b) Part 4 (enforcement) of that Act</li></ol></li><li>2. The commission of an offence under section 65 (offence of altering etc. records with intent to prevent disclosure) of that Act]</li></ol>

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The Auditor General for Scotland	<ol style="list-style-type: none"> <li>1. The audit of an account under sections 21 and 22 of the Public Finance and Accountability (Scotland) Act 2000 (asp 1) (“the 2000 Act”)</li> <li>2. A matter in respect of which the Auditor General could exercise the power conferred by subsection (1) (power to initiate economy, efficiency and effectiveness examinations) of section 23 of that Act</li> <li>3. An examination under that section</li> </ol>
A person appointed to audit an account under sections 21 and 22 of the 2000 Act	The audit of an account under those sections
A person appointed to carry out an examination under section 23 of the 2000 Act	An examination under that section
The Scottish Commission for Public Audit	A matter in respect of which the Commission could exercise the power conferred by section 25(4) (power to initiate economy, efficiency and effectiveness examinations in relation to Audit Scotland) of the 2000 Act
A person appointed to audit an account of Audit Scotland under subsection (1) of section 25 of the 2000 Act	The audit of an account under that subsection
A person appointed to carry out an examination under subsection (4) of section 25 of the 2000 Act	An examination under that subsection
The Accounts Commission for Scotland	A matter in respect of which the Commission could exercise any function conferred by section 97A (studies for improving economy etc. in services), 102(1) (power of Commission to require Controller of Audit to make a report), 103 (action by Commission on reports by Controller of Audit) or 105A (studies of benefit administration at request of Secretary of State) of the Local Government (Scotland) Act 1973 (c.65) (“the 1973 Act”)
The Controller of Audit appointed under section 97(4) of the 1973 Act	A matter in respect of which the Controller of Audit could exercise any function conferred by section 102 (reports to Commission by Controller of Audit) of the 1973 Act
An auditor within the meaning of section 97(6) of the 1973 Act	The audit of an account under Part VII of the 1973 Act

#### **Textual Amendments**

**F19** Words in sch. 5 inserted (1.1.2005) by [Freedom of Information \(Scotland\) Act 2002 \(asp 13\), s. 75\(1\), sch. 4 para. 2](#); [S.S.I. 2004/203, art. 3\(2\)](#)

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## SCHEDULE 6 **S**

(introduced by section 25)

### MODIFICATION OF ENACTMENTS

#### *Local Government (Scotland) Act 1975 (c.30)*

- 1 Part II (local administration) of, and Schedules 4 and 5 to, the Local Government (Scotland) Act 1975 are repealed.

#### *Local Government (Scotland) Act 1978 (c.4)*

- 2 Section 4 (payments to Commissioner for Local Administration in Scotland and his officers) of the Local Government (Scotland) Act 1978 is repealed.

#### *Local Government Act 1978 (c.39)*

- 3 In section 1 (power for authorities to incur expenditure to remedy injustices caused by maladministration) of the Local Government Act 1978, the words “and section 29 of the Local Government (Scotland) Act 1975” are repealed.

#### *Local Government, Planning and Land Act 1980 (c.65)*

- 4 Section 184(2) (disclosure of information to Commissioner for Local Administration in Scotland) of the Local Government, Planning and Land Act 1980 is repealed.

#### *Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c.23)*

- 5 Schedule 1 (powers of Commissioner for Local Administration in Scotland) to the Local Government (Miscellaneous Provisions) (Scotland) Act 1981 is repealed.

#### *Mental Health (Scotland) Act 1984 (c.36)*

<sup>F20</sup>6 .....

#### **Textual Amendments**

- F20** Sch. 6 para. 6 repealed (5.10.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(asp 13\)](#), s. 333(2), [sch. 5 Pt. 1](#); [S.S.I. 2005/161](#), art. 3 (as substituted (1.7.2005) by [S.S.I. 2005/375](#), art. 2 and as amended (22.9.2005) by [S.S.I. 2005/459](#), art. 2)

#### *Hospital Complaints Procedure Act 1985 (c.42)*

- 7 In section 1 (hospital complaints procedure) of the Hospital Complaints Procedure Act 1985, in subsection (2), for “Health Service Commissioners Act 1993” substitute “Scottish Public Services Ombudsman Act 2002 (asp 11)”.

#### *Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73)*

- 8 Section 55 (power of Commissioner to investigate SSHA and new town development corporations) of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 is repealed.

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*Legal Aid (Scotland) Act 1986 (c.47)*

- 9 In section 34 (confidentiality of information) of the Legal Aid (Scotland) Act 1986, in subsection (2), after paragraph (c) insert—
- “(d) for the purposes of any investigation by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002 (asp 11).”

*Local Government Act 1988 (c.9)*

- 10 In Schedule 3 (local government administration) to the Local Government Act 1988, paragraphs 11 to 17 are repealed.

*Housing (Scotland) Act 1988 (c.43)*

- 11 In Schedule 2 (amendments consequential on establishing of Scottish Homes and abolition of SSHA) to the Housing (Scotland) Act 1988, paragraph 4 is repealed.

*Official Secrets Act 1989 (c.6)*

- 12 In Schedule 1 (consequential amendments) to the Official Secrets Act 1989, paragraph 1(f) is repealed.

*Local Government and Housing Act 1989 (c.42)*

- 13 In the Local Government and Housing Act 1989, the following provisions are repealed—
- (a) section 23(2) (advice and guidance by Commissioner),
  - (b) section 27 (implementation of recommendations of Commissioner),
  - (c) section 29 (consideration of adverse reports: Scotland), and
  - (d) in Schedule 11 (minor and consequential amendments), paragraphs 44 to 46.

*Health Service Commissioners Act 1993 (c.46)*

- 14 The Health Service Commissioners Act 1993 is repealed.

*Local Government etc. (Scotland) Act 1994 (c.39)*

- 15 In Schedule 13 (minor and consequential amendments) to the Local Government etc. (Scotland) Act 1994, in paragraph 100, sub-paragraphs (6) and (7) are repealed.

*Children (Scotland) Act 1995 (c.36)*

- 16 In Schedule 4 (minor and consequential amendments) to the Children (Scotland) Act 1995, paragraph 25 is repealed.

*Town and Country Planning (Scotland) Act 1997 (c.8)*

- 17 In Schedule 4 (determination of certain appeals by person appointed by Scottish Ministers) to the Town and Country Planning (Scotland) Act 1997, in paragraph 8(2), for the words from “an officer” to the end substitute “ a member of the staff of the Scottish Administration shall be treated for the purposes of the Scottish Public

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Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers.”

*Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 (c.9)*

- 18 In Schedule 3 (determination of certain appeals by person appointed by Scottish Ministers) to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997, in paragraph 7(2), for the words from “an officer” to the end substitute “ a member of the staff of the Scottish Administration shall be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers. ”

*Planning (Hazardous Substances) (Scotland) Act 1997 (c.10)*

- 19 In the Schedule (determination of certain appeals by person appointed by Scottish Ministers) to the Planning (Hazardous Substances) (Scotland) Act 1997, in paragraph 7(2), for the words from “an officer” to the end substitute “ a member of the staff of the Scottish Administration shall be treated for the purposes of the Scottish Public Services Ombudsman Act 2002 (asp 11) as functions conferred on the Scottish Ministers. ”

*Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 (c.35)*

- 20 Part II (Commissioner for Local Administration in Scotland) of the Scottish Legal Services Ombudsman and Commissioner for Local Administration in Scotland Act 1997 is repealed.

*Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7)*

- 21 In section 8 (Standards Commission for Scotland) of the Ethical Standards in Public Life etc. (Scotland) Act 2000, in subsection (8)—
- (a) for paragraph (b) substitute—  
“(b) the Scottish Public Services Ombudsman,”
- and
- (b) for “Commissioner” in the second place where it occurs substitute “ Ombudsman ”.

*National Parks (Scotland) Act 2000 (asp 10)*

- 22 In schedule 5 (modification of enactments) to the National Parks (Scotland) Act 2000, paragraph 5 is repealed.

*Freedom of Information Act 2000 (c.36)*

- 23 (1) The Freedom of Information Act 2000 is amended as follows.
- (2) In section 76(1)(disclosure of information between Commissioner and ombudsmen), in the table—
- (a) the entries relating to—
    - (i) the Health Service Commissioner for Scotland,

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- (ii) the Commissioner for Local Administration in Scotland, and
  - (iii) the Scottish Parliamentary Commissioner for Administration,
- are repealed,
- (b) after the entry relating to a Local Commissioner as defined by section 23(3) of the Local Government Act 1974, insert—

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“The Scottish Public Services  
Ombudsman

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The Scottish Public Services  
Ombudsman Act 2002 (asp 11)”.

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- (3) In Schedule 7 (disclosure of information by ombudsmen), paragraph 13 is repealed.

#### *Regulation of Care (Scotland) Act 2001 (asp 8)*

- 24 Section 66 (maladministration) of the Regulation of Care (Scotland) Act 2001 is repealed.

### SCHEDULE 7 S *(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.

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### *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 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.

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*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.

*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.

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- (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.

**Status:**

Point in time view as at 10/10/2005.

**Changes to legislation:**

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