



# Scottish Public Services Ombudsman Act 2002

2002 asp 11

## *Investigations by the Ombudsman*

### **3 Persons liable to investigation**

- (1) The persons liable to investigation under this Act are the persons specified, or of a class specified, in Parts 1 [<sup>F1</sup>, 2 and 3] of schedule 2; and references in this Act to a listed authority are references to any such person.
- (2) Her Majesty may by Order in Council amend Part 2 of that schedule so as to—
  - (a) modify any entry in it,
  - (b) remove any entry from it, or
  - (c) subject to subsections (3) to (6) and section 4, add any entry to it.
- (3) An entry may be added to that Part of that schedule only if the entry relates to a person who, or a class of persons each of whom, is—
  - (a) a Scottish public authority with mixed functions or no reserved functions,
  - (b) a publicly-owned company, or
  - (c) a person who is neither a Scottish public authority nor a publicly-owned company but who appears to Her Majesty to exercise functions of a public nature.
- (4) An Order in Council under subsection (2) adding an entry to that Part of that schedule in pursuance of subsection (3)(c)—
  - (a) may provide for this Act to apply to any person to whom, or falling within any class of persons to which, the entry relates subject to such modifications or exceptions as may be specified in the Order in Council, and
  - (b) must, in relation to each such person or class of person, specify the functions of a public nature which appear to be exercised by that person or, as the case may be, persons of that class.
- (5) No recommendation to make an Order in Council referred to in subsection (4) is to be made to Her Majesty in Council unless every person to whom the Order relates has been consulted.

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*Changes to legislation: There are currently no known outstanding effects for the Scottish Public Services Ombudsman Act 2002, Section 3. (See end of Document for details)*

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- (6) No entry is to be added to Part 2 of schedule 2 in relation to—
- (a) a person whose sole activity is, or whose main activities are—
    - (i) the provision of education, or the provision of training otherwise than under the Industrial Training Act 1982 (c.10),
    - (ii) the development of curricula, the conduct of examinations or the validation of educational courses,
    - (iii) the control of entry to any profession or the regulation of the conduct of members of any profession, or
    - (iv) the investigation of complaints by members of the public regarding the actions of any person or the supervision or review of such investigations or of steps taken following them, or
  - (b) a person operating in an exclusively or predominantly commercial manner or a person carrying on under national ownership an industry or undertaking or part of an industry or undertaking.

[<sup>F2</sup>(7) Her Majesty may by Order in Council amend Part 3 of schedule 2 so as to—

- (a) modify any entry in it,
- (b) remove any entry from it, <sup>F3</sup>...
- (c) add to it any entry relating to a person, or class of persons, providing fundable further education or fundable higher education (within the meaning of the Further and Higher Education (Scotland) Act 2005 (asp 6)) [<sup>F4</sup>, or
- (d) add to it an entry relating to a regional strategic body (within the meaning of that Act).]

- (8) An Order in Council under subsection (7) adding an entry to that Part of that schedule relating to a person, or class of persons, whose business (whether commercial, charitable or otherwise) includes matters other than the activities which [<sup>F5</sup>post-16 education] bodies (within the meaning of that Act) generally carry on—
- (a) must, as regards that person or class, provide for this Act to apply only in relation to those activities; and
  - (b) may do so subject to such modifications or exceptions as may be specified in the Order in Council.

- (9) No recommendation to make an Order in Council under subsection (7)(c) is to be made to Her Majesty unless every person to whom the Order relates has been consulted.]

#### Textual Amendments

- F1** Words in s. 3(1) substituted (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), [ss. 27\(1\)\(a\)](#), 36(2); S.S.I. 2005/419, art. 2(1)
- F2** S. 3(7)-(9) added (3.10.2005) by [Further and Higher Education \(Scotland\) Act 2005 \(asp 6\)](#), [ss. 27\(1\)\(b\)](#), 36(2); S.S.I. 2005/419, art. 2(1)
- F3** Word in s. 3(7) omitted (3.3.2014) by virtue of [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [sch. para. 5\(2\)\(a\)\(i\)](#); S.S.I. 2014/21, art. 2, sch. 1
- F4** S. 3(7)(d) and word inserted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [sch. para. 5\(2\)\(a\)\(ii\)](#); S.S.I. 2014/21, art. 2, sch. 1
- F5** Words in s. 3(8) substituted (3.3.2014) by [Post-16 Education \(Scotland\) Act 2013 \(asp 12\)](#), s. 23(2), [sch. para. 5\(2\)\(b\)](#); S.S.I. 2014/21, art. 2, sch. 1

**Changes to legislation:**

There are currently no known outstanding effects for the Scottish Public Services Ombudsman Act 2002, Section 3.