
STATUTORY INSTRUMENTS

1999 No. 1351

**CONSTITUTIONAL LAW
DEVOLUTION, SCOTLAND**

The Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of Maladministration) Order 1999

Made - - - - 12th May 1999

Laid before Parliament 13th May 1999

Coming into force in accordance with article 1

The Secretary of State, in exercise of the powers conferred on him by section 112(1), 113, 114(1) and 129(1) of the Scotland Act 1998((1) and of all other powers enabling him in that behalf, hereby makes the following Order:

Citation and commencement

1. This Order may be cited as the Scotland Act 1998 (Transitory and Transitional Provisions) (Complaints of Maladministration) Order 1999 and shall come into force on the principal appointed day((2)

Interpretation

2.—(1) In this Order—

“the 1967 Act” means the Parliamentary Commissioner Act 1967((3)

“the Act” means the Scotland Act 1998;

“action” includes failure to act and related expressions shall be construed accordingly;

“authority subject to investigation” shall be construed in accordance with article 8;

“listed tribunal” means a tribunal which is either a Scottish public authority which is listed in Schedule 1 or a cross-border public authority which is listed in Schedule 2;

“officer” includes employee;

“Parliamentary Commissioner” means the Parliamentary Commissioner for Administration;

(1) 1998 c. 46.

(2) Article 3 of the Scotland Act 1998 (Commencement) Order 1998 (S.I.1998/3178) specifies 1st July 1999 as the principal appointed day for the purposes of the Act.

(3) 1967 c. 13.

“person aggrieved” shall be construed in accordance with article 9(1)(b);

“the Scottish Commissioner” means the Scottish Parliamentary Commissioner for Administration appointed in accordance with article 4,

and action taken in the exercise of functions of an authority subject to investigation includes a reference to action taken by any of its members or officers or any members of its staff.

(2) Unless otherwise provided, any reference in this Order to a numbered article or Schedule is a reference to an article or Schedule bearing that number in or to this Order and any reference in an article to a numbered paragraph is to a paragraph bearing that number in that article.

Duration of this Order

3. This Order, unless previously revoked by the Secretary of State, shall cease to have effect on the day appointed by or under an Act of the Scottish Parliament, and different days may be appointed for different purposes.

Scottish Commissioner

4.—(1) For the purpose of conducting investigations in accordance with the following provisions of this Order, there shall be appointed a Scottish Commissioner.

(2) Her Majesty may from time to time appoint a person to be the Scottish Commissioner.

(3) Subject to the following paragraphs, the Scottish Commissioner shall hold office during good behaviour.

(4) A person appointed to be the Scottish Commissioner may be relieved of office by Her Majesty at his own request, or may be removed from office by Her Majesty in consequence of a resolution of the Parliament that he should be removed from office on the ground of misbehaviour, and shall in any case vacate office on completing the year of service in which he attains the age of 65 years.

(5) Her Majesty may declare the office of Scottish Commissioner to have been vacated if Her Majesty is satisfied that the person appointed to be the Scottish Commissioner is incapable for medical reasons of performing the duties of the office and of requesting to be relieved of it.

Status

5.—(1) The Scottish Commissioner shall be regarded as holding office under Her Majesty and as exercising his functions on behalf of the Crown.

(2) Service as the Scottish Commissioner or as a member of staff of the Scottish Commissioner shall not be service in the Home Civil Service.

Remuneration, allowances and pension

6.—(1) Subject to paragraphs (2) and (3), there shall be payable to the Scottish Commissioner—

(a) such salary; and

(b) such allowances in respect of his expenses under this Order (including his expenses under articles 7 and 11(3)),

as the Parliament may, by resolution, from time to time determine and a resolution under this paragraph may take effect from the date on which it is passed or from such other date as may be specified in the resolution.

(2) Where a person is both Parliamentary Commissioner and Scottish Commissioner, he shall not be entitled to any salary as Scottish Commissioner.

(3) The salary payable to a holder of the office of Scottish Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he had previously been appointed or elected.

(4) The Parliament may make provision for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to hold the office of Scottish Commissioner and such provision may, in particular, include provision for—

- (a) contributions or payments towards provision for such pensions, gratuities or allowances; and
- (b) the establishment and administration (whether by the Parliamentary corporation or otherwise) of a pension scheme.

(5) The Parliamentary corporation shall determine the other terms and conditions of appointment of the Scottish Commissioner.

(6) The amounts payable to the Scottish Commissioner under paragraph (1) and any amounts payable by virtue of paragraph (4) shall be paid by the Parliamentary corporation.

Staff

7.—(1) The Scottish Commissioner may appoint such staff as he considers necessary to assist him in the exercise of his functions.

(2) It is for the Scottish Commissioner to determine the terms and conditions of appointment of his staff, including arrangements for the payment of pensions, gratuities or allowances to, or in respect of, any person who has ceased to be a member of his staff.

(3) In particular, the Scottish Commissioner may make provision for—

- (a) contributions or payments towards the provision for such pensions, gratuities or allowances; and
- (b) the establishment and administration (whether by the Parliamentary corporation or otherwise) of a pension scheme.

(4) Any function of the Scottish Commissioner may be exercised by—

- (a) a member of his staff;
- (b) an officer of the Parliamentary Commissioner; or
- (c) an officer of the Health Service Commissioner for Scotland, of the Health Service Commissioner for England or of the Health Service Commissioner for Wales,

if authorised by the Scottish Commissioner for that purpose; and references in any enactment (including this Order) to a member of the staff of the Scottish Commissioner include any person exercising any function of his by virtue of sub-paragraph (b) or (c).

Authorities subject to investigation

8. The persons, bodies and authorities subject to investigation by the Scottish Commissioner are—

- (a) any member of the Scottish Executive;
- (b) any other office-holder in the Scottish Administration;
- (c) the Parliamentary corporation;
- (d) any Scottish public authority with mixed functions or no reserved functions which is listed in Schedule 1;

(e) any cross-border public authority⁽⁴⁾ which is listed in Schedule 2, and references in this Order to an authority subject to investigation are references to any such person, body or authority.

Matters which may be investigated

9.—(1) Subject to the provisions of this article, the Scottish Commissioner may investigate any action taken by or on behalf of an authority subject to investigation if—

- (a) the action was taken in the exercise of administrative functions of that authority;
- (b) a written complaint is duly made to a member of the Parliament by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken (“the person aggrieved”); and
- (c) the complaint is referred to the Scottish Commissioner, with the consent of the person who made it, by a member of the Parliament with a request to conduct an investigation thereon.

(2) The Scottish Commissioner may not question the merits of a decision taken without maladministration by an authority subject to investigation in the exercise of a discretion vested in that authority.

(3) A member of the Scottish Executive is subject to investigation by the Scottish Commissioner only in respect of any action taken by or on behalf of that member in the exercise of functions conferred on the Scottish Ministers or of functions conferred upon the First Minister alone.

(4) A cross-border public authority which is listed in Schedule 2 is subject to investigation by the Scottish Commissioner only in connection with any action concerning Scotland and not relating to reserved matters taken by or on behalf of that authority.

(5) The Scottish Commissioner shall not conduct an investigation in respect of any action in respect of which the person aggrieved has or had—

- (a) a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty’s prerogative; or
- (b) a remedy by way of proceedings in any court of law,

unless the Scottish Commissioner is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to it.

(6) The Scottish Commissioner shall not conduct an investigation in respect of any matter mentioned in Schedule 3 to the 1967 Act and, for this purpose—

- (a) the references in paragraphs 5, 7 and 8 of that Schedule to the Secretary of State shall be read as if they included a reference to a member of the Scottish Executive;
- (b) the definition in paragraph 6B(2) of that Schedule⁽⁵⁾ of “relevant tribunal” shall be read as including a listed tribunal; and
- (c) the references in paragraphs 9 and 10 of that Schedule to a government department or authority to which the 1967 Act applies shall be read as if they included references to an authority subject to investigation.

(7) The Scottish Commissioner shall not conduct an investigation in respect of any action taken by or on behalf of Scottish Homes in respect of any of its actions as a landlord.

(8) For the purposes of this article, administrative functions exercisable by any person appointed as a member of the administrative staff of a listed tribunal—

(4) A “cross border public authority” means any body, government department, office or office-holder specified in an Order in Council made by Her Majesty under section 88(5) of the Scotland Act 1998, namely the Scotland Act 1998 (Cross-Border Public Authorities) (Specification) Order 1999 (S.I. 1999/).

(5) Paragraph 6B was inserted by the Parliamentary Commissioner Act 1994 (c. 14), section 1(2).

- (a) by an authority subject to investigation; or
- (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such an authority,

shall be taken to be administrative functions of that authority.

(9) In determining whether to initiate, continue or discontinue an investigation, the Scottish Commissioner shall, subject to the preceding provisions of this article, act in accordance with his discretion.

Complaints

10.—(1) A complaint may be made under article 9(1)(b) by any individual or body of persons (whether or not incorporated) except—

- (a) the Parliamentary corporation;
- (b) a local authority or other authority or body constituted for purposes of the public service or of local government;
- (c) a body constituted for the purposes of carrying on under national ownership an industry or undertaking or part of an industry or undertaking;
- (d) any other authority or body whose members are appointed by Her Majesty or by any Minister of the Crown or government department or by a member of the Scottish Executive, or whose revenues consist wholly or mainly of money provided by Parliament or sums payable out of the Scottish Consolidated Fund (whether directly or indirectly).

(2) A complaint shall not be entertained by the Scottish Commissioner unless made by the person aggrieved himself, except that—

- (a) where an individual by whom a complaint might have been made has died, or is for any reason unable to act for himself, the complaint may be made by his personal representatives or a member of his family or any other individual or any body suitable to represent him; and
- (b) where a body by whom a complaint might have been made is for any reason unable to act for itself, the complaint may be made by an individual, or another body, suitable to represent it.

(3) A complaint shall not be entertained by the Scottish Commissioner unless—

- (a) it is made to a member of the Parliament not later than 12 months after the day on which the person aggrieved first had notice of the matters alleged in the complaint, but the Scottish Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so; and
- (b) the person aggrieved is resident in the United Kingdom (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in the United Kingdom or on an installation in a designated area within the meaning of the Continental Shelf Act 1964⁽⁶⁾ or on a ship registered in the United Kingdom or an aircraft so registered, or in relation to rights or obligations which accrued or arose in the United Kingdom or on such an installation, ship or aircraft.

(4) Any question whether a complaint is duly made or referred to the Scottish Commissioner shall be determined by him.

(6) 1964 c. 29.

Investigation procedure

11.—(1) Where the Scottish Commissioner proposes to conduct an investigation pursuant to a complaint referred to him, he shall afford to—

- (a) the particular authority subject to investigation; and
- (b) any person who is alleged in the complaint to have taken or authorised the action complained of,

an opportunity to comment on any allegations contained in the complaint.

(2) The investigation shall be conducted in private but in other respects the procedure for conducting the investigation shall be such as the Scottish Commissioner considers appropriate in the circumstances of the case, and, in particular, the Scottish Commissioner—

- (a) may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit; and
- (b) may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.

(3) The Scottish Commissioner may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or supplies information for the purposes of an investigation such sums in respect of expenses properly incurred by them, and such allowances by way of compensation for the loss of their time, in accordance with such scales and subject to such conditions as may be determined by the Parliamentary corporation.

(4) The conduct of an investigation shall not affect—

- (a) any action taken by the authority concerned; or
- (b) any power or duty of that authority to take further action with respect to any matter subject to the investigation.

Evidence

12.—(1) For the purposes of an investigation, the Scottish Commissioner may require any of the following persons to supply information or produce documents relevant to the investigation—

- (a) any member, or officer or member of the staff, of the authority subject to investigation, including, in particular, where that authority is an authority mentioned in article 8(a) or (b), any office-holder in the Scottish Administration or member of the staff of the part of the Scottish Administration concerned; or
- (b) any other person,

who in his opinion is able to supply such information or produce such documents.

(2) For the purposes of any investigation the Scottish Commissioner shall have the same powers as the Court of Session in respect of—

- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad); and
- (b) the production of documents.

(3) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information for the purposes of an investigation by the Scottish Commissioner.

(4) The Crown (whether in right of Her Majesty's Government in the United Kingdom or in right of the Scottish Administration) shall not be entitled in relation to any investigation by the Scottish

Commissioner to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(5) No person shall be required or authorised by virtue of this Order to supply any information or answer any question relating to proceedings of the Cabinet or of any committee of the Cabinet, or to produce so much of any document as relates to such proceedings; and for the purposes of this paragraph a certificate issued by the Secretary of the Cabinet with the approval of the Prime Minister and certifying that any information, question, document or part of a document so relates shall be conclusive.

(6) Subject to paragraphs (3) to (5), no person shall be compelled for the purposes of an investigation by the Scottish Commissioner to give any evidence or produce any document which he could not be compelled to give or to produce in civil proceedings before the Court of Session.

Obstruction and contempt

13.—(1) Where—

- (a) a person, without lawful excuse, obstructs the Scottish Commissioner or any member of his staff in the performance of his functions; or
- (b) a person does any act or fails to take any action in relation to an investigation which, if that investigation were a proceeding in the Court of Session, would constitute contempt of court,

the Scottish Commissioner may apply by petition to the Court of Session for that person to be dealt with for contempt.

(2) Where such a petition is presented, the Court of Session may inquire into the matter and after hearing—

- (a) any witnesses who may be produced against or on behalf of the person alleged to have committed the contempt; and
- (b) any statement that may be offered in defence,

may, if satisfied that a contempt has been committed, deal with that person in any manner in which it would deal with him if he had committed the same contempt in relation to the Court of Session.

(3) Nothing in this article shall be construed as applying to the taking of any such action as is mentioned in article 11(4).

Reports

14.—(1) Where the Scottish Commissioner conducts an investigation or decides not to conduct an investigation, he shall send to the member of the Parliament by whom the request for investigation was made (or, if he is no longer a member of the Parliament, to such member as the Scottish Commissioner thinks appropriate) a report of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation.

(2) Where the Scottish Commissioner conducts an investigation, he shall also send a report of the investigation to the authority subject to investigation and to any other person who is alleged in the complaint to have taken or authorised the action complained of.

(3) If, after conducting an investigation, it appears to the Scottish Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before the Parliament a special report on the case.

(4) The Scottish Commissioner shall annually lay before the Parliament a general report on the performance of his functions and may from time to time lay before the Parliament such other reports with respect to those functions as he thinks fit.

- (5) For the purposes of the law of defamation, the following are absolutely privileged—
- (a) the publication of any matter by the Scottish Commissioner in making a report to the Parliament for the purposes of this Order;
 - (b) the publication of any matter by a member of the Parliament in communicating with the Scottish Commissioner or any member of his staff for those purposes or by the Scottish Commissioner or any member of his staff in communicating with such a member for those purposes;
 - (c) the publication by the Scottish Commissioner to a member of the Parliament or by that member to the person by whom a complaint was made of a report or statement under paragraph (1); and
 - (d) the publication by the Scottish Commissioner to the authority or other person mentioned in paragraph (2) of a report sent to that authority or that person under that paragraph.

Confidentiality of information

15.—(1) Information obtained by the Scottish Commissioner or a member of his staff in the course of or for the purposes of an investigation shall not be disclosed except—

- (a) for the purposes of the investigation and of any report of it under this Order;
- (b) for the purposes of any proceedings for—
 - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Scottish Commissioner or a member of his staff; or
 - (ii) an offence of perjury alleged to have been committed in the course of an investigation by him;
- (c) for the purposes of an inquiry with a view to the taking of any of the proceedings mentioned in sub-paragraph (b);
- (d) for the purposes of any proceedings under article 13.

(2) Neither the Scottish Commissioner nor any member of his staff shall be called upon to give evidence in any proceedings (other than proceedings referred to in paragraph (1)) of matters coming to his or their knowledge in the course of an investigation.

(3) A member of the Scottish Executive or, as the case may be, a Minister of the Crown may give notice in writing to the Scottish Commissioner with respect to—

- (a) any document or information specified in the notice; or
- (b) any class of document or information so specified,

that, in the opinion of that member of the Scottish Executive or of that Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest. In this paragraph references to a Minister of the Crown include references to the Treasury, the Commissioners of Customs and Excise and the Commissioners of Inland Revenue.

(4) Where such a notice is given neither the Scottish Commissioner nor any member of his staff shall be authorised or required to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

(5) Where—

- (a) the Scottish Commissioner also holds office as the Parliamentary Commissioner or as a Health Service Commissioner (“a Commissioner”); and

- (b) a person initiates a complaint to him in his capacity as a Commissioner which relates partly to a matter with respect to which that person has previously initiated, or subsequently initiates, a complaint to him in his capacity as the Scottish Commissioner,

information obtained by the Scottish Commissioner or a member of his staff in the course of, or for the purposes of, investigating a complaint to him in his capacity as Scottish Commissioner may be disclosed for the purposes of his carrying out his functions in relation to the other complaint.

Consultation and co-operation with other Commissioners

16.—(1) Where the Scottish Commissioner, at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation—

- (a) by the Commissioner for Local Administration in Scotland under the Local Government (Scotland) Act 1975⁽⁷⁾ or
- (b) by any of the Health Service Commissioners under the Health Service Commissioners Act 1993⁽⁸⁾ or
- (c) by the Parliamentary Commissioner under the 1967 Act,

he shall consult the appropriate Commissioner about the complaint and, if he considers it necessary, he shall inform the person initiating the complaint of the steps necessary to initiate a complaint to that Commissioner.

(2) Where a Commissioner consults with another Commissioner in accordance with this article, the consultations may extend to any matter relating to the complaint, including—

- (a) the conduct of any investigation into the complaint; and
- (b) the form, content and publication of any report of the result of such an investigation.

(3) Where an authority which is subject to investigation by the Scottish Commissioner is also an authority to which the 1967 Act applies, the Scottish Commissioner and the Parliamentary Commissioner shall co-operate with each other to any such extent as appears appropriate when exercising any function in relation to the authority.

(4) Nothing in article 15 applies in relation to the disclosure of information in the course of consultation or co-operation under this article.

Modifications of enactments

17.—(1) In the 1967 Act—

- (a) in subsection (2) of section 3 (administrative provisions) the reference to any officer of the Health Service Commissioner for Scotland authorised as mentioned in that subsection shall be read as if it included a reference to any member of staff so authorised of the Scottish Commissioner;
- (b) in section 11(2A)⁽⁹⁾ (provision for secrecy of information), the reference to a Health Service Commissioner shall be read as if it included a reference to the Scottish Commissioner;
- (c) in section 11A⁽¹⁰⁾ (consultations between Parliamentary Commissioner and Health Service Commissioners), the references in subsections (1)(b) and (2) to the Health Service Commissioner for Scotland shall be read as if they included references to the Scottish

(7) 1975 c. 30.

(8) 1993 c. 46.

(9) Section 11(2A) was inserted by the Parliamentary and Health Service Commissioners Act 1987 (c. 39), section 4(1).

(10) Section 11A was inserted by the Parliamentary and Health Service Commissioners Act 1987, section 4(2).

Commissioner and the reference in subsection (2) to the Health Service Commissioners Act 1993 shall be read as if it included a reference to this Order; and

- (d) in section 11B((**11**)) (the criminal injuries compensation scheme), the reference to the Secretary of State in subsection (3)(a) shall be read as if it included a reference to the Scottish Ministers.

(2) The following enactments shall be read as if references to the Parliamentary Commissioner included references to the Scottish Commissioner:—

- (a) Part III of Schedule 1 to the House of Commons Disqualification Act 1975((**12**));
 (b) section 134(3)(c) of the Mental Health Act 1983((**13**));
 (c) section 115(3)(c) of the Mental Health (Scotland) Act 1984((**14**));
 (d) section 123(8)(c) of the Social Security Administration Act 1992((**15**));
 (e) section 117(8)(e) of the Social Security Administration (Northern Ireland) Act 1992((**16**));
 (f) section 79(1) of the Deregulation and Contracting Out Act 1994((**17**));
 (g) rule 62B of the Prisons and Young Offenders Institutions (Scotland) Rules 1994((**18**));
 (h) Part I of the Schedule to the Scottish Parliament (Disqualification) Order 1999((**19**)).

(3) In the Local Government (Scotland) Act 1975((**20**))—

- (a) in section 31(1) to (4), the references to the Parliamentary Commissioner and to any provision of the 1967 Act shall be read as if they included references to the Scottish Commissioner and to this Order; and
 (b) in section 31(5), the reference to section 11(2) of the 1967 Act shall be read as if it included a reference to article 15(1) of this Order.

(4) In section 2(3) of the Tribunals and Inquiries Act 1992((**21**)), the reference to the Parliamentary Commissioner being, by virtue of his office, a member of the Council on Tribunals and of Scottish Committee of that Council shall be read as if it included a reference to the Scottish Commissioner.

(5) In the Health Service Commissioners Act 1993—

- (a) in sections 17 and 18 and paragraph 6 of Schedule 1, the references to the Parliamentary Commissioner shall be read as if they included references to the Scottish Commissioner; and
 (b) in section 18(1)(b) the reference to the 1967 Act shall be read as if it included a reference to this Order.

(6) In Schedule 1 to the Public Supply Contracts Regulations 1995((**22**)) the reference to the office of the Parliamentary Commissioner for Administration and the Health Service Commissioners shall be read as if it included a reference to the office of the Scottish Commissioner.

(7) In each of the following enactments the reference to the 1967 Act shall be read as if it were a reference to this Order:—

(11) Section 11B was inserted by Criminal Injuries Compensation Act 1995 (c. 53), section 10.
 (12) 1975 c. 24.
 (13) 1983 c. 20.
 (14) 1984 c. 36.
 (15) 1992 c. 5.
 (16) 1992 c. 8.
 (17) 1994 c. 40.
 (18) S.I. 1994/1931. Rule 62B was inserted by S.I. 1998/1589.
 (19) S.I. 1999/680
 (20) 1975 c. 30.
 (21) 1992 c. 53.
 (22) S.I. 1995/201, to which there are amendments not relevant to this Order.

- (a) paragraph 8 of Schedule 4 to the Town and Country Planning (Scotland) Act 1997((23);
- (b) paragraph 7 of Schedule 3 to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997((24); and
- (c) paragraph 7 of Schedule 1 to the Planning (Hazardous Substances) (Scotland) Act 1997((25).

(8) In Schedule 2 to the Official Secrets Act 1989 (Prescription) Order 1990((26), the reference to the Parliamentary Commissioner shall be read as if it included a reference to the Scottish Commissioner, and the reference to the officers of the Commissioner shall be read as if it included a reference to the staff of the Scottish Commissioner.

Transitional and savings provisions

18.—(1) On the principal appointed day, there shall be transferred to the Scottish Commissioner—

- (a) any complaint made in relation to any of the authorities mentioned in article 8(d) which has been referred to the Parliamentary Commissioner under section 5(1) of the 1967 Act and which has not been determined by him before that day; and
- (b) any investigation pursuant to any such complaint.

(2) On the principal appointed day, there shall be transferred to the Scottish Commissioner—

- (a) any complaint made in relation to any of the authorities mentioned in article 8(e) which concerns such action as is mentioned in article 9(4) and which has been referred to the Parliamentary Commissioner under section 5(1) of the 1967 Act but which has not been determined by him before that day; and
- (b) any investigation pursuant to any such complaint.

(3) For the purposes of this article—

- (a) a complaint is determined by the Parliamentary Commissioner if he has decided—
 - (i) to conduct an investigation pursuant to the complaint and the investigation is concluded; or
 - (ii) not to conduct an investigation into the complaint; and
- (b) an investigation is concluded if he has reported the results of that investigation as mentioned in section 10(1) of the 1967 Act.

(4) Where a complaint or an investigation is transferred by virtue of paragraph (1) or (2), the Scottish Commissioner shall send to the member of Parliament by whom the complaint was referred and the request for an investigation was made (or if he is no longer a member of Parliament, to such member as the Scottish Commissioner thinks appropriate) a report of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation and article 14(5)(b) and (c) shall apply to a member of Parliament as it applies to a member of the Parliament.

(5) A transfer by virtue of paragraph (1) or (2) shall not affect the validity of anything done (or having effect as if done) by or in relation to a complaint or an investigation by the Parliamentary Commissioner before the principal appointed day.

(6) Anything (including legal proceedings) which, on the principal appointed day, is in the process of being done by or in relation to the Parliamentary Commissioner may, so far as it relates to anything transferred by virtue of paragraph (1) and (2), be continued by or in relation to the Scottish Commissioner.

(23) 1997 c. 8.

(24) 1997 c. 9.

(25) 1997 c. 10.

(26) S.I. 1990/200. Schedule 2 is amended by paragraph 18 of Part II of Schedule 2 to the Scotland Act 1998 (Consequential Modifications) Order 1999 (S.I. 1999/1042).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(7) Anything done (or having effect as if done) by or in relation to the Parliamentary Commissioner for the purposes of or in connection with anything transferred by virtue of paragraph (1) or (2) shall, if in force on the principal appointed day, have effect as if done by or in relation to the Scottish Commissioner in so far as that is required for continuing its effect on or after the principal appointed day.

St Andrew's House,
Edinburgh
12th May 1999

Henry McLeish
Minister of State, Scottish Office

SCHEDULE 1

Articles 2(1) and 8(d)

SCOTTISH PUBLIC AUTHORITIES SUBJECT TO
INVESTIGATION BY THE SCOTTISH COMMISSIONER

Accounts Commission for Scotland
Community Learning Scotland
Court of the Lord Lyon
Crofters Commission
Dairy Produce Quota Tribunal for Scotland
Deer Commission for Scotland
General Teaching Council for Scotland
Independent Schools Tribunals for Scotland
Lands Tribunal for Scotland
Local Government Boundary Commission for Scotland
Meat Hygiene Appeals Tribunal any of whose members was appointed by the Secretary of State for Scotland or by the Scottish Ministers
National Galleries of Scotland
National Library of Scotland
National Museums of Scotland
Parole Board for Scotland
Rent Assessment Committees for Scotland
Royal Botanic Garden, Edinburgh
Royal Commission on the Ancient and Historical Monuments of Scotland
Scottish Agricultural Wages Board
Scottish Arts Council
Scottish Children's Reporter Administration
Scottish Consultative Council on the Curriculum
Scottish Council for Educational Technology
Scottish Environment Protection Agency
Scottish Further Education Funding Council
Scottish Further Education Unit
Scottish Higher Education Funding Council
Scottish Homes
Scottish Land Court
Scottish Legal Aid Board
Scottish Medical Practices Committee
Scottish Natural Heritage
Scottish Qualifications Authority
Scottish Screen
Scottish Sports Council
Scottish Studentship Selection Committee

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Scottish Tourist Board
Scottish Water and Sewerage Customers Council

SCHEDULE 2

Articles 2(1), 8(e) and 9(4)

CROSS-BORDER PUBLIC AUTHORITIES SUBJECT TO
INVESTIGATION BY THE SCOTTISH COMMISSIONER

British Library Board
British Potato Council
British Tourist Authority
Central Bureau for Educational Visits and Exchanges
Clinical Standards Advisory Group
Committee of Investigation for Great Britain
Community Development Foundation
Construction Industry Training Board
Consumers' Committee for Great Britain
The Criminal Injuries Compensation Appeals Panel
Criminal Injuries Compensation Authority
Design Council
Engineering Construction Industry Training Board
Food from Britain
Forestry Commissioners
Home-Grown Cereals Authority
Horticultural Development Council
Intervention Board for Agricultural Produce
Joint Nature Conservation Committee
Meat and Livestock Commission
Milk Development Council
Museums and Galleries Commission
National Consumer Council
National Radiological Protection Board
Plant Varieties and Seeds Tribunal
Police Information Technology Organisation
Rail Users' Consultative Committee for Scotland
Sea Fish Industry Authority
United Kingdom Sports Council
Unrelated Live Transplant Regulatory Authority

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes transitory and transitional provisions for the investigation by a Scottish Parliamentary Commissioner for Administration (“Scottish Commissioner”) of complaints of maladministration in connection with action taken in exercise of administrative functions by any member of the Scottish Executive and certain other persons, bodies and authorities.

Article 3 provides that the Order unless previously revoked by the Secretary of State, ceases to have effect on the day appointed by or under an Act of the Scottish Parliament.

Articles 4 to 6 make provision for the appointment of the Scottish Commissioner, his status and his remuneration, allowances and pension. Article 7 makes provision about the staff of the Scottish Commissioner.

Articles 8 to 16 make similar provision to that contained in the Parliamentary Commissioner Act 1967 (c. 13). In particular—

- (a) article 8 makes provision for the authorities subject to investigation by the Scottish Commissioner. In addition to any member of the Scottish Executive, they include any other office holder in the Scottish Administration, the Scottish Parliamentary Corporate Body, certain Scottish public authorities listed in Schedule 1 and any cross-border public authority listed in Schedule 2;
- (b) article 9 makes provision with regards to the matters being investigated by the Scottish Commissioner;
- (c) articles 10 to 13 make provision with regard to the complaints, the investigation procedures, the evidence and obstruction and contempt;
- (d) article 14 makes provision with regard to reports;
- (e) article 15 makes provision with regard to the confidentiality of information; and
- (f) article 16 makes provision with regard to consultation and co-operation with regard to other Commissioners.

Article 17 modifies various enactments as a consequence of the Order.

Article 18 makes transitional and savings provisions.