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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to Scottish Public Services Ombudsman Act 2002. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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## SCHEDULE 1

(introduced by section 1)

### THE SCOTTISH PUBLIC SERVICES OMBUDSMAN

#### *Disqualification*

- 1 (1) A person is disqualified from appointment, and from holding office, as Ombudsman or deputy Ombudsman if that person is—
- (a) a member of the House of Commons,
  - (b) a member of the Scottish Parliament,
  - (c) a listed authority (within the meaning of section 3(1)),
  - (d) a member, officer or member of staff of a listed authority,
  - (e) disqualified from election as a member of the Scottish Parliament or as a member of a local authority.
- (2) A person holding office as Ombudsman or deputy Ombudsman—
- (a) is disqualified from appointment or, as the case may be, election as—
    - (i) the holder of any office which is a listed authority, or
    - (ii) a member, officer or member of staff of a listed authority,
  - (b) is not entitled to become a family health service provider or an independent provider (within the meaning of paragraph 5 or, as the case may be, 6 of schedule 2), and
  - (c) is disqualified from appointment to any paid office by a listed authority.
- [<sup>F1</sup>(3) A person who has ceased to hold office as Ombudsman or deputy Ombudsman may not, without the approval of the Parliamentary corporation—
- (a) be appointed or, as the case may be, elected 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) be appointed to any paid office by a listed authority, or
  - (c) hold any other office, employment, or appointment or engage in any other occupation, being an office, employment, appointment or occupation which, by virtue of paragraph 4(2E)(a), that person could not have held or, as the case may be, engaged in when Ombudsman or, as the case may be, Deputy Ombudsman.
- (3A) The restriction in sub-paragraph (3)—
- (a) starts when the person ceases to hold office as Ombudsman or, as the case may be, deputy Ombudsman, and
  - (b) ends on the expiry of the financial year following the one in which it started.
- (3B) In sub-paragraph (3), a “paid office” is one where the holder is entitled to remuneration or expenses or any combination of them.]
- (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.

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- (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.

#### Textual Amendments

- F1** Sch. 1 para. 1(3)-(3B) substituted for sch. 1 para. 1(3) (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 11** (with s. 31(6), sch. 7)

#### 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,
  - (b) any member of the Scottish Executive,
  - (c) the Parliamentary corporation.
- [<sup>F2</sup>(2A) The Ombudsman is, as such, to be regarded as a juristic person distinct from the natural person holding the office.]
- (3) Sub-paragraph (2) is subject to section 17(3) and [<sup>F3</sup>paragraphs 9(4), 10(3), 12(3), 12A, 12B, 12D and] 15(1) of this schedule.

#### Textual Amendments

- F2** Sch. 1 para. 2(2A) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 12(a)** (with s. 31(6), sch. 7)
- F3** Words in sch. 1 para. 2(3) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 12(b)** (with s. 31(6), sch. 7)

#### 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 [<sup>F4</sup>eight] 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,

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<sup>F5</sup>(c) .....

[<sup>F6</sup>(d) may be removed from office by Her Majesty if sub-paragraph (2C) applies.]

(e) in other respects, holds office on such terms and conditions as the Parliamentary corporation may determine.

[<sup>F7</sup>(2A) A person who has held office as Ombudsman or deputy Ombudsman is ineligible for reappointment at any time.

(2B) Such a person is, however, eligible for appointment to the other office, but may not hold that office beyond the expiry of the period for which the person was first appointed.]

[<sup>F8</sup>(2C) This sub-paragraph applies if—

- (a) the Parliamentary corporation is satisfied that the Ombudsman has breached the terms and conditions of office and the Parliament resolves that the Ombudsman should be removed from office for that breach, or
- (b) the Parliament resolves that it has lost confidence in the Ombudsman's willingness, suitability or ability to perform the functions of the Ombudsman,

and, in either case, the resolution is voted for by a number of members not fewer than two thirds of the total number of seats for members of the Parliament.

(2D) Sub-paragraph (2C) applies in respect of a deputy Ombudsman as it applies in respect of the Ombudsman.

(2E) The terms and conditions of office referred to in sub-paragraph (1)(e) may, without prejudice to paragraph 1—

- (a) prohibit the Ombudsman or deputy Ombudsman from holding any other specified office, employment or appointment or engaging in any other specified occupation,
- (b) provide that the Ombudsman's or deputy Ombudsman's holding of any such office, employment or appointment or engagement in any such occupation is subject to the approval of the Parliamentary corporation.

(2F) In sub-paragraph (2E), “specified” means specified in the terms and conditions of office or within a description so specified.]

<sup>F7</sup>(3) .....

#### Textual Amendments

- F4** Word in sch. 1 para. 4(1)(a) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\), s. 31\(5\), sch. 3 para. 13\(a\)\(i\)](#) (with s. 31(6), sch. 7)
- F5** Sch. 1 para. 4(1)(c) repealed (1.10.2006) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\), reg. 1\(1\), Sch. 9](#) (with regs. 44-46)
- F6** Sch. 1 para. 4(1)(d) substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\), s. 31\(5\), sch. 3 para. 13\(a\)\(ii\)](#) (with s. 31(6), sch. 7)
- F7** Sch. 1 para. 4(2A)(2B) substituted for sch. 1 para. 4(2)(3) (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\), s. 31\(5\), sch. 3 para. 13\(b\)](#) (with s. 31(6), sch. 7)
- F8** Sch. 1 para. 4(2C)-(2F) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\), s. 31\(5\), sch. 3 para. 13\(c\)](#) (with s. 31(6), sch. 7)

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### *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,
  - (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.

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- (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—
- (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 and other services*

- [<sup>F9</sup>10 (1) The Ombudsman may obtain advice, assistance or any other service from any person who, in the opinion of the Ombudsman, is qualified to give it.
- (2) The Ombudsman may pay to that person such fees and allowances as the Ombudsman determines.
- (3) Any payment under sub-paragraph (2) is subject to the approval of the Parliamentary corporation.]

#### **Textual Amendments**

- F9** Sch. 1 para. 10 substituted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 3 para. 14](#) (with s. 31(6), sch. 7)

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### *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—
- (a) acquire and dispose of land and other property, and
  - (b) enter into contracts.
- [<sup>F10</sup>(3) The exercise of the power to acquire or dispose of land is subject to the approval of the Parliamentary corporation.]

#### **Textual Amendments**

**F10** Sch. 1 para. 12(3) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 3 para. 15](#) (with s. 31(6), sch. 7)

### *Location of office*

- [<sup>F11</sup>12A The Ombudsman must comply with any direction given by the Parliamentary corporation as to the location of the Ombudsman's office.

#### **Textual Amendments**

**F11** Sch. 1 paras. 12A-12C inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 3 para. 16](#) (with s. 31(6), sch. 7)

### *Sharing of premises, staff, services and other resources*

- 12B The Ombudsman must comply with any direction given by the Parliamentary corporation as to the sharing of premises, staff, services or other resources with any other officeholder or any public body.

#### **Textual Amendments**

**F11** Sch. 1 paras. 12A-12C inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), [sch. 3 para. 16](#) (with s. 31(6), sch. 7)

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### Charges for services

- 12C (1) The Ombudsman may determine and charge reasonable sums for anything done or provided by the Ombudsman in the performance of, or in connection with, the Ombudsman's functions.
- (2) Any sums received by the Ombudsman by virtue of sub-paragraph (1) are to be retained by the Ombudsman and applied to meet expenditure incurred in doing or providing whatever is charged for.]

#### Textual Amendments

**F11** Sch. 1 paras. 12A-12C inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 16** (with s. 31(6), sch. 7)

### Budget

- [<sup>F12</sup>12D] (1) The Ombudsman must, before the start of each financial year, prepare proposals for the Ombudsman's use of resources and expenditure during the year (a “budget”) and, by such date as the Parliamentary corporation determines, send the budget to the Parliamentary corporation for approval.
- (2) The Ombudsman may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- (3) In preparing a budget or revised budget, the Ombudsman must ensure that the resources of the Ombudsman will be used economically, efficiently and effectively.
- (4) A budget or revised budget must contain a statement that the Ombudsman has complied with the duty under sub-paragraph (3).]

#### Textual Amendments

**F12** Sch. 1 para. 12D inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 17** (with s. 31(6), sch. 7)

### Financial provision

- 13 [<sup>F13</sup>(1) The Parliamentary corporation is to pay—
- (a) the salary and allowances of the Ombudsman and any deputy Ombudsman,
  - (b) any expenses [<sup>F14</sup>properly] incurred by the Ombudsman in the exercise of the functions of the Ombudsman [<sup>F15</sup>so far as those expenses are not met out of sums received and applied by the Ombudsman under paragraph 12C(2)] ,
  - (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.]
- [<sup>F16</sup>(2) Sub-paragraph (1)(b) does not require the Parliamentary corporation to pay any expenses which exceed or are otherwise not covered by a budget or, as the case may be, a revised budget approved under paragraph 12D.

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- (3) However, the Parliamentary corporation may pay those expenses.
- (4) The Parliamentary corporation is to indemnify the Ombudsman in respect of any liabilities incurred in the exercise of the functions of the Ombudsman.]

#### Textual Amendments

- F13** Sch. 1 para. 13 renumbered as sch. 1 para. 13(1) (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 19** (with s. 31(6), sch. 7)
- F14** Word in sch. 1 para. 13(1)(b) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 18(a)** (with s. 31(6), sch. 7)
- F15** Words in sch. 1 para. 13(1)(b) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 18(b)** (with s. 31(6), sch. 7)
- F16** Sch. 1 para. 13(2)-(4) inserted (1.4.2011) by [Scottish Parliamentary Commissions and Commissioners etc. Act 2010 \(asp 11\)](#), s. 31(5), **sch. 3 para. 19** (with s. 31(6), sch. 7)

#### *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.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Sch. 2 para. 37A inserted by [2007 asp 3 Sch. 5 para. 27](#) (This amendment not applied to legislation.gov.uk. Sch. 5 para. 27 repealed (31.1.2011) by 2010 asp 8, sch. 4 Pt. 2; S.S.I. 2011/30, art. 3(1), Sch. 1)
- sch. 2 para. 32ZA inserted by [2023 asp 6 sch. 2 para. 1\(2\)](#)