



# THE SCOTTISH HOUSING REGULATOR

## GUIDANCE NOTE

**To:** All Registered Social Landlords (RSLs)

**Subject:** The Scottish Public Services Ombudsman Act 2002 Impact on Scottish RSLs

**Issued by:** The Scottish Housing Regulator

**Ref no:** SHR 10

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### Summary

The Scottish Public Services Ombudsman Act 2002 establishes a new complaints system for public services in Scotland. Headed by the Scottish Public Services Ombudsman and assisted by three deputies, a new one-stop shop will deal with complaints formerly dealt with by the Scottish Parliamentary and Health Service Ombudsman, Local Government Ombudsman, and the Housing Association Ombudsman for Scotland.

The Act will be commenced on 23 October 2002. From this date, the arrangements for the existing Housing Association Ombudsman for Scotland will be discontinued and registered social landlords will have a statutory duty to comply with the new Act.

The Scottish Government has issued a circular "Scottish Public Services Ombudsman Act 2002", attached to this guidance. The circular provides guidance on the 2002 Act. Due to the statutory obligations now placed on them, it is essential that all RSLs fully familiarise themselves with the content of the circular as well as paying due regard to the detailed terms of the Act itself.

This guidance note provides RSLs with additional information about how the new

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arrangements for complaints will differ from the existing ones and must be read in conjunction with the Scottish Government circular. This guidance note replaces Scottish Homes Guidance Note 94/03.

For any references to Communities Scotland (or Scottish Homes) please read the Scottish Housing Regulator.

If you have any questions about this guidance, you should direct them to:

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## INTRODUCTION

1. The Scottish Public Service Ombudsman Act 2002 introduces a new complaints system in Scotland. Under the provisions of the 2002 Act, which will be commenced on 23 October 2002, the existing Housing Association Ombudsman for Scotland will cease to operate and a new Scottish Public Services Ombudsman will inherit complaints formerly dealt with by that office. The 2002 Act places statutory requirements on all listed authorities within the jurisdiction of the new Ombudsman.
2. The categories of listed authorities covered by the new Ombudsman are:
  - Scottish public authorities;
  - cross-border public authorities;
  - publicly owned companies; and
  - other persons exercising functions of a public nature, e.g. family health service providers and independent providers and registered social landlords, but only in respect to those functions.
3. The Scottish Executive has included RSLs in the new Public Services Ombudsman service because it recognizes that although RSLs are not public bodies they undertake similar activities to public sector landlords. The issues which concern RSL tenants are very similar to those which concern public sector tenants. In addition, for tenants involved in the transfer of their houses from the local authority to the RSL sector, a one-stop shop approach brings a simpler and more consistent route for complaints.
4. From the commencement date, all new complaints about RSLs will be handled by the Scottish Public Services Ombudsman along with any undetermined complaints which will be transferred to the new office. The new Ombudsman will decide whether to continue any enquiry that the Housing Association Ombudsman for Scotland has begun.
5. The new Act retains many of the features of the existing Housing Association Ombudsman service although some changes have been introduced. This guidance highlights the main changes to and similarities with the current arrangements for RSLs. The guidance note must be read in conjunction with the information contained in the circular “Scottish Public Services Ombudsman Act 2002”, issued by the Scottish Executive Legal and Parliamentary Services Department and included with this guidance note, which provides guidance on the 2002 Act for all listed authorities.

## MAIN CHANGES INTRODUCED BY THE 2002 ACT

6. While RSLs will recognise and will already be implementing many of the features of the new Act, these are some of the key changes it will bring:

- a) **Statutory duty:** There is now a statutory Ombudsman service. RSLs are “listed authorities” covered by the new Ombudsman service.

This means that RSLs have a statutory duty to comply with the terms of the legislation. Some of the processes and procedures currently undertaken as good practice by RSLs are now legal requirements. In particular, RSLs should be aware of new requirements relating to publicising the investigation and special reports;

- b) **Complaints against other landlords:** The new Act restricts the investigation of complaints against the categories of listed authorities referred to at paragraph 2 and removes the Ombudsman’s ability to admit other landlords who voluntarily apply into his scheme;
- c) **Complaints from members of the public:** The complaint can be about any function carried out by or on behalf of an RSL. This definition appears wider than that contained in the Housing Association Ombudsman’s Terms of Reference, which state that complainants must have a contractual relationship i.e. tenancy agreement, shared ownership agreement or a service or factoring agreement with an RSL or have submitted a housing application. Although the Act does not specify exactly the relationship of the complainant with the RSL, the main principle of the complaints system will still apply, that is, that the complainant must have experienced some unremedied personal injustice as a result of maladministration, therefore, indicating the existence of some form of relationship with the RSL;
- d) **Requests from a listed authority:** The 2002 Act introduces a new provision allowing listed authorities, including RSLs, to request an investigation by the Ombudsman. This is intended as a means of addressing cases where there has been public criticism of an RSL but there has been no complaint made to the Ombudsman. It is expected that such occasions will be rare and the Ombudsman will have complete discretion in his or her decision to investigate. RSLs should ensure that they have taken all reasonable steps to resolve the problem prior to requesting an investigation;
- e) **Matters for investigation:** The new arrangements require complaints to relate to maladministration only. After careful consideration the Executive concluded that there was no requirement for the new Ombudsman to retain the Housing Association Ombudsman’s ability to investigate complaints not relating to maladministration;
- f) **Payment of expenses or compensation:** The Ombudsman will retain the discretion to suggest redress to be offered to the complainant, e.g. apology or compensation. However, the 2002 Act also introduces the payment of expenses and compensation for loss of time to other persons involved in any investigation such as solicitors or independent witnesses. The level of these payments will be determined by the Scottish Parliamentary Corporate Body (SPCB);

- g) Investigation reports:** The 2002 Act introduces a new requirement for listed authorities, including RSLs, to make copies of investigation reports available for inspection or purchase and to publicise those arrangements, unless the Ombudsman directs that a report shall not be made available, taking account of the public interest and the interest of the complainant and other persons;
- h) Special reports:** The 2002 Act enables the Ombudsman to make a special report on any case where he considers that the complainant has suffered an injustice or hardship, which has not been, or will not be, remedied. This is similar to the existing arrangements whereby the Housing Association Ombudsman may place a special report to Communities Scotland in the event that an RSL does not accept the recommendations made by the Ombudsman but under the 2002 Act, such reports must be laid before the Parliament. Under the 2002 Act, the Ombudsman retains the right to make special reports available to the public in a way in which he or she determines. However, the RSL is now required to reimburse the Ombudsman for any expenses incurred in publishing the report;
- i) Annual reports:** The Housing Association Ombudsman currently issues an annual report on his activities for the year for noting by Scottish Homes and has responsibility for publishing this report. Similar arrangements exist in the 2002 Act, except that the report will be laid before the Parliament.

## **SIMILARITIES WITH THE CURRENT SYSTEM**

- 7. These features of the new system largely mirror the current Housing Association Ombudsman scheme:

  - a) Power to investigate:** The Ombudsman will have the discretion to decide whether to initiate, continue or discontinue investigations into any eligible matter and will normally expect the RSLs own complaints procedure to be exhausted and RSLs given all reasonable opportunities to examine any matter before the Ombudsman will become involved;
  - b) Informal resolution:** Complaints can be resolved on an informal basis with the co-operation of the RSL concerned;
  - c) Matters for investigation:** Complaints from members of the public of personal injustice or hardship caused as a consequence of maladministration or any other action appropriate under the 2002 Act, taken by or **on behalf of** an RSL. This means that contractors and other bodies acting on behalf of RSLs are still subject to examination by the Ombudsman;

- d) **Investigation procedures:** The new Scottish Public Services Ombudsman will have responsibility for determining detailed investigation procedures but the 2002 Act retains a requirement for investigations to be conducted in private and for the RSL to be given an opportunity to comment on allegations contained in the complaint;
- e) **Restrictions and Exclusion:** The matters that the Housing Association Ombudsman was specifically prevented from dealing with remain broadly the same and are included in the list of restrictions and inclusion contained in the Scottish Executive circular;
- f) **Who can complain?:** An aggrieved person or their representative. Complaints can be received in writing, electronically or, in special circumstances, verbally;
- g) **Time limits:** The complaint must be submitted within 12 months after the day on which the person aggrieved first had notice of the matter complained of, unless the Ombudsman decides that there are special circumstances;
- h) **Confidentiality:** The Ombudsman will continue to seek to protect the confidentiality of the complainant while being able to disclose information necessary to consider the complaint;
- i) **Provision of investigation reports:** These will be sent to the complainant, or their representative, the RSL and any party alleged to have taken action relevant to the complaint and the Scottish Ministers. The Report will also be laid before the Parliament.

## CONCLUSION

- 8. The new Scottish Public Services Ombudsman may at some point introduce revised business processes. However, on commencement of the Act the Housing Association Ombudsman for Scotland's existing staff will transfer to become employees of the new Ombudsman and until any new arrangements are put in place, it is expected that the way in which the service is carried out will be largely familiar to RSLs.
- 9. While this guidance note highlights the main features of the Act, as stated previously, RSLs will need to refer to the Public Services Ombudsman Act 2002 and to the circular on the Act issued by the Scottish Executive in order to draw detailed distinctions between how the current and the new systems differ.