



## LOCAL GOVERNMENT AND REGENERATION COMMITTEE

### AGENDA

#### 2nd Meeting, 2013 (Session 4)

Wednesday 23 January 2013

The Committee will meet at 10.00 am in Committee Room 5.

1. **Decision on taking business in private:** The Committee will decide whether to take item 8 in private.
2. **Subordinate legislation:** The Committee will take evidence on the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 (SSI 2013/draft) from—

Margaret Burgess, Minister for Housing and Welfare, Stephen Jones, Policy Manager, Housing Supply Division, Stuart Law, Project Manager, and Colin Brown, Senior Principal Legal Officer, Scottish Government.

3. **Subordinate legislation:** The Committee will take evidence on the Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338) and the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339) from—

Margaret Burgess, Minister for Housing and Welfare, Stephen Jones, Policy Manager, Housing Supply Division, Stuart Law, Project Manager, and Colin Brown, Senior Principal Legal Officer, Scottish Government.

4. **Subordinate legislation:** Margaret Burgess (Minister for Housing and Welfare) to move—

S4M-5273—That the Local Government and Regeneration Committee recommends that the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 (SSI 2013/draft) be approved.

5. **Subordinate legislation:** Margaret Mitchell to move—

S4M-5393—That the Local Government and Regeneration Committee recommends that the Council Tax (Administration and Enforcement)

(Scotland) Amendment Regulations 2012 (SSI 2012/338) be annulled.

6. **Subordinate legislation:** Margaret Mitchell to move—

S4M-5394—That the Local Government and Regeneration Committee recommends that the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339) be annulled.

7. **Scottish Public Services Ombudsman Annual Report 2011/12:** The Committee will take evidence on the Scottish Public Services Ombudsman Annual Report 2011/12 from—

Jim Martin, Scottish Public Services Ombudsman, Emma Gray, Head of Policy and External Communications, Paul McFadden, Head of Complaints Standards, and Niki Maclean, Director, Scottish Public Services Ombudsman.

8. **Scottish Government's second draft climate change report on proposals and policies 2023-2027:** The Committee will consider its approach to the Scottish Government's second draft climate change report on proposals and policies 2023-2027.

9. **High Hedges (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

10. **Request from the Standards, Procedures and Public Appointments Committee (in private):** The Committee will consider a request from the Standards, Procedures and Public Appointments Committee in relation to its ongoing inquiry work.

11. **Delivery of regeneration in Scotland (in private):** The Committee will consider a draft remit and person-specification for the post of adviser in connection with its forthcoming inquiry on the delivery of regeneration in Scotland.

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The papers for this meeting are as follows—

**Agenda item 2**

Note from the Clerk

LGR/S4/13/2/1

[Council Tax \(Variation for Unoccupied Dwellings\) \(Scotland\) Regulations 2013 \[draft\] SSI 2013/draft](#)

**Agenda item 3**

Note from the Clerk

LGR/S4/13/2/2

[The Council Tax \(Administration and Enforcement\) \(Scotland\) Amendment Regulations 2012](#)

Note from the Clerk

LGR/S4/13/2/3

[The Council Tax \(Exempt Dwellings\) \(Scotland\) Amendment Order 2012](#)

**Agenda item 7**

Submission from SPSO

LGR/S4/13/2/4

SPICe Briefing

LGR/S4/13/2/5

PRIVATE PAPER

LGR/S4/13/2/6 (P)

[SPSO Annual Report 2011-12](#)

**Agenda item 8**

PRIVATE PAPER

LGR/S4/13/2/7 (P)

**Agenda item 9**

PRIVATE PAPER

LGR/S4/13/2/8 (P)

**Agenda item 10**

PRIVATE PAPER

LGR/S4/13/2/9 (P)

**Agenda item 11**

PRIVATE PAPER

LGR/S4/13/2/10 (P)

**Local Government and Regeneration Committee**

**2nd Meeting, 2013 (Session 4), Wednesday, 23 January 2013**

**SSI Cover Note**

**Introduction**

1. This paper seeks to inform members' consideration of the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 (SSI 2013/draft).

**Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013**

*Background*

2. These regulations were laid on 10 December 2012 and the Local Government and Regeneration Committee was designated as lead committee.

3. The Subordinate Legislation Committee considered these regulations at its meeting on 8 January 2013 and agreed to draw the attention of the Parliament to these regulations. Further information from the Subordinate Legislation Committee can be found at Annexe A.

4. The Local Government and Regeneration Committee must report on the regulations by 3 February 2013.

5. These Regulations make provision for council tax variations for dwellings which have no resident. The regulations are subject to affirmative procedure.

6. On 19 December 2012 the Minister for Housing and Welfare lodged motion S4M-5273—

That the Local Government and Regeneration Committee recommends that the Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 [draft] be approved.

7. Margaret Burgess, Minister for Housing and Welfare will move the motion at the meeting.

*Policy objectives*

8. These Regulations replace the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 ('the 2005 Regulations'). They are part of a package of three SSIs and will enable local authorities to charge a

council tax increase for certain long-term unoccupied dwellings. While they replicate much of the effect of the 2005 Regulations, they give local authorities new flexibility to charge a council tax increase of up to 100% (i.e. double the rate of council tax otherwise payable) for certain dwellings which have been unoccupied for one year or more. (The 2005 regulations only allow local authorities to vary the level of discounts, with a minimum discount of 10% for empty and second homes.)

9. This greater flexibility is intended as an additional tool to help local authorities to encourage owners to bring empty properties back into use, both to increase the supply of housing for those who need homes and to reduce the blight on communities caused by houses being left empty and allowed to fall into disrepair.

10. These Regulations will not affect an owner's eligibility to claim council tax exemptions under the Council Tax (Exempt Dwellings) (Scotland) Order 1997 ('the 1997 Order'). There are a number of exemptions in place for unoccupied dwellings, such as where the owner is: in long-term residential care, in hospital long term, in prison, where a dwelling has been repossessed by a lender, where a dwelling is being structurally repaired (for up to one year after it becomes unoccupied) or where the owner has died (in which case the exemption is for up to six months after the owner's estate has been settled). As long as an owner is eligible for an exemption, they would not be charged any council tax, regardless of how long the dwelling has been unoccupied. However where a dwelling becomes no longer eligible for the exemption, but remains unoccupied, it will become subject to the provisions in these Regulations.

#### *Procedure in Committee*

11. As these regulations are subject to affirmative procedure, the Minister will make a brief opening statement, after which members will have the opportunity to ask the Minister and officials for clarification on points of the details of the regulations. The Minister will then be invited to move the motion, at which point members can debate the regulations.

#### **Action**

12. After the Minister has summed up the debate, the Committee will be invited by the Convener to consider whether to agree the motion recommending approval of the regulations.

**Annexe A – Comments from the Subordinate Legislation Committee**

**Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 [draft] (Local Government and Regeneration Committee)**

This instrument makes provision for variations of the amount of council tax due in respect of unoccupied dwellings: regulation 3 provides, as a default position, for a discount of 50% to be given in respect of dwellings which on any given day have no occupant. Regulation 4 goes on to provide that local authorities, within the bounds set by regulations 5 and 6, may vary the discount applicable between the maximum discount of 50%, and no discount, or provide instead for an increase in council tax when dwellings are unoccupied.

The Order is subject to the affirmative procedure, and if approved, is due to come into force on 1 April 2013.

In considering the instrument, the Committee asked the Scottish Government to clarify one of its provisions. The correspondence is reproduced in Appendix 2.

Paragraph 2(9)(a) of Schedule 1 to these Regulations provides a definition of an “associated company”. However, it states that a company is an associated company of another person if certain conditions are met. It appears that the reference to “person” should instead be to “company”. The Scottish Ministers agree that this is the case. There is accordingly a patent error in this provision.

The Committee notes that this provision repeats the wording of an earlier instrument which appears to derive from similar English regulations made in 2003. The Scottish Ministers advise that they are not aware of any difficulty having arisen in operating the provision since 2005 in Scotland, or since 2003 in England. The Committee observes, however, that this does not mean that the matter has not arisen – merely that it has not come to the Ministers’ attention.

On balance, however, the Committee does not think that this error is likely to affect the operation of the instrument. It notes the offer of the Scottish Ministers to amend the reference when an opportunity to do so arises.

The Committee draws the instrument to the attention of the Parliament on the general reporting ground.

There is a drafting error in paragraph 2(9)(a) of Schedule 1. It provides that a company is an associated company of another person if certain conditions are met, when the word “person” should instead read “company”.

## **APPENDIX 2**

### **Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 [draft]**

On 14 December 2012, the Scottish Government was asked:

Paragraph 2(9)(a) of Schedule 1 provides a definition of an “associated company”. However, it states that a company is an associated company of another person if certain conditions are met. It appears that the reference to “person” should instead be to “company”, by analogy with e.g. regulation 16(4) of the Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 and regulation 9(4) of the Regulation of Care (Requirements as to Limited Registration Services) (Scotland) Regulations 2003 (in both of which cases the formulation “In this regulation a company is an associated company of another if [...]” is used). Does the Scottish Government agree that the inclusion of the word “person” is an error, and that it should either be omitted or read “company”? If not, the Scottish Government is asked to explain how a company can be an associated company of another person, particularly standing the fact that one of ways of meeting that test is for both the associated company and, presumably, the person to be “under the control of the same person”.

The Scottish Government responded as follows:

The Scottish Government agrees that the reference should be to a “company”, rather than a “person”.

The text in question is a re-enactment of a definition in the Council Tax (Discount for Unoccupied Dwellings) (Scotland) Regulations 2005 (SSI. 2005/51). It appears in those Regulations at paragraph 2(7) of the Schedule. The Scottish Government suspects that the wording had its origins in the broadly equivalent Council Tax (Prescribed Classes of Dwellings) (England) Regulations 2003 (S.I. 2003/3011), where it appears in paragraph 3 of the Schedule.

The Scottish Government is not aware of any attention having previously been drawn to this point, and the wording appears to have operated in Scotland since April 2005, and rather longer in England, without difficulty. As a company is also a person, it would have to be interpreted in a way that operates as intended. However, the Scottish Government will amend the reference when an opportunity arises.

In looking at this point, the Scottish Government has noticed that paragraph 2(9) refers to “paragraphs (4) to (8)”, which should be “sub-paragraphs”. This also is a result of re-enacting existing provision. The Scottish Government would propose to deal with this as a printing point, unless the Subordinate Legislation Committee has any objection to it so doing.

**Local Government and Regeneration Committee**

**2nd Meeting, 2013 (Session 4), Wednesday, 23 January 2013**

**SSI Cover Note**

**Introduction**

1. This paper seeks to inform members' consideration of the Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338).

**Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338)**

*Background*

2. The instrument was laid on 10 December 2012 and the Local Government and Regeneration Committee was designated as lead committee.

3. The Subordinate Legislation Committee considered the regulations at its meeting on 8 January 2013 and agreed to draw the attention of the Parliament to the regulations. Further information from the Subordinate Legislation Committee can be found at [Annexe A](#).

4. The Local Government and Regeneration Committee must report by 28 January 2013.

5. These Regulations amend the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 as regards dwellings that are unoccupied. This is as a result of changes made by the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012, in particular those which allow for an increase in council tax liability where a dwelling is unoccupied for a period of time.

6. The regulations are subject to negative procedure and a motion to annul has been lodged.

7. On 17 January 2013, Margaret Mitchell lodged motion S4M-5393—

That the Local Government and Regeneration Committee recommends that the Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338) be annulled.

8. Margaret Mitchell will move this motion at the committee meeting.



*Policy objectives*

9. These Regulations are part of a package of three SSIs which will enable local authorities to charge a council tax increase for certain long-term unoccupied homes in order to help encourage owners to bring their empty homes back into use.

10. These Regulations will make a number of changes to the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 to reflect the new powers for local authorities to increase council tax charges for long-term unoccupied homes, which have been enabled by the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012 ('the 2012 Act'). Therefore most of the provisions in these Regulations simply update the existing Regulations to reflect the fact that, if the Scottish Parliament agrees the draft Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013, local authorities will be able to vary council tax charges for certain unoccupied homes (i.e. increase or decrease them) rather than just vary the level of discount provided.

11. However, regulation 3 provides a new power which will place an obligation on owners, residents or managing agents to provide to a local authority on request within 21 days any information they have which the local authority requires to help the authority ascertain whether a discount or an increase in council tax liability should apply as a result of whether or not a home is unoccupied. This will give local authorities explicit powers to require a person to provide information, for example, about how long a home has been occupied or unoccupied or how often it is lived in. This should assist the authority in determining whether a home should be classed as unoccupied or a second home and, if it is unoccupied, whether or not it should be liable for any council tax variation.

12. Alongside this, regulation 9 amends the existing Regulations to ensure that taxpayers are required to let their local authority know about a change in circumstances, rather than waiting until they are specifically asked about it. This amendment is needed as local authorities may only write to taxpayers occasionally to request information (for example, when they are made aware by someone else that a home may be unoccupied). This provision amends the existing requirement for taxpayers to notify their local authority of changes in circumstances by requiring them to let the local authority know within 21 days if they are being undercharged due to the local authority having made incorrect assumptions (e.g. about a home's occupation status). The current Regulations only cover circumstances where someone is incorrectly receiving a discount they are no longer entitled to, so this requires updating to also cover circumstances where the taxpayer is liable for a council tax increase.

13. In addition, regulations 4 and 8 update the existing Regulations to allow for an increased level of penalty of up to £500, introduced by the 2012 Act. This increased penalty can be charged in cases where the taxpayer has failed to provide information requested by a local authority within 21 days in relation to whether or not a home is occupied (or is found to have provided false information). It can also be charged where the taxpayer fails to inform the local authority that there has been a change in circumstances and they are being undercharged council tax due to the local authority making the wrong assumptions.

14. These increased potential penalties, along with the strengthened provisions to require owners and others to provide information, aim to help local authorities to enforce any council tax increase by strengthening their powers to require information to be provided and to penalise owners, where appropriate, who either do not respond to local authority queries, provide false information or fail to let the local authority know about a change in circumstances which leads to them being undercharged for council tax purposes.

15. These Regulations come into force on 9 February 2013, ahead of the ability to impose increases in council tax charges from 1 April 2013. This is to enable local authorities that propose to implement an increase or other changes from 1 April 2013 to make use of the powers to require information to be provided when sending out their bills for the 2013-14 council tax year.

*Procedure in committee*

16. Under negative procedure, an instrument comes into force on the date specified on it (the "coming into force date") unless a motion to annul it is agreed to by the Parliament (within the 40-day period). Any MSP (whether a member of the lead committee or not) may lodge a motion recommending annulment of an SSI at any time during the 40-day period, including after the lead committee has considered the instrument. As a motion to annul this negative instrument has been lodged, the Committee is obliged to formally report to Parliament on the instrument. As with the process associated with affirmative instruments, to inform the debate on the motion for annulment it has become normal practice to take evidence from the Minister and officials prior to the debate.

17. Following evidence from the Minister and officials, the Member who has lodged a motion to annul will then be asked to speak to and move the motion. The Committee will then debate the motion to annul, with other Committee Members given the opportunity to speak and the Minister in charge invited to respond to the points raised. It should be noted that the Minister in charge of the instrument, in this case Margaret Burgess MSP, is

entitled to participate in the Committee's debate, but cannot vote. The Member who has lodged the motion then has an opportunity to respond to the Minister and to "wind up" the debate; in doing so, he/she should indicate whether he/she is pressing the motion or seeking to withdraw it. If the member seeks to withdraw the motion, the Convener must ask whether any member objects. If the member presses the motion (or if there is any objection to it being withdrawn) the convener puts the question "that motion [number] be agreed to – are we all agreed?" If any member says "No", there must be a division, and if there is a tie, the convener must exercise a casting vote. The debate on the motion to annul can last for up to 90 minutes.

**Action**

18. Whatever the outcome of the debate, the committee must subsequently report on the instrument. If the motion to annul is agreed to by the Committee, the Parliamentary Bureau must lodge a motion that the motion be annulled

David Cullum

Clerk to the Committee

January 2013

**Annexe A – Comments from the Subordinate Legislation Committee**

**Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338) (Local Government and Regeneration Committee)**

This instrument amends Part IV of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 (“the principal Regulations”) so that it will apply to variations in council tax charges which may be made by local authorities should the Parliament approve the draft Council Tax (Variation for Unoccupied Dwellings) (Scotland) Regulations 2013 (“the draft Variation Regulations”). This instrument mainly amends Part IV, which will be retitled “VARIATION” instead of “DISCOUNTS”. The other changes to Part IV, on the whole, involve the substitution of “variation” for “discount” wherever it appears.

The Order is subject to the negative procedure, and comes into force on 9 February 2013.

In considering the instrument, the Committee asked the Scottish Government for clarification as to the effect of the amendments it makes. The correspondence is reproduced in Appendix 3.

Part IV of the principal Regulations, at present, makes provision as to the administration of council tax discounts. This instrument amends that Part so that it refers instead to “variations”. At present, regulation 12 applies the ascertainment of entitlement to discounts under section 79 of the Local Government Finance Act 1992 (“the 1992 Act”). As a result of the amendments made by this instrument, it will also apply to the new variations under section 33 of the Local Government in Scotland Act 2003 (“the 2003 Act”) (i.e. variation in respect of unoccupied dwellings).

Section 79 of the 1992 Act is not affected by the Local Government Finance (Unoccupied Properties etc.) (Scotland) Act 2012, and so section 79 continues to provide for discounts, rather than variations which is the terminology used in section 33 of the 2003 Act. However, this instrument substitutes “variation” for “discount” wherever it occurs throughout the remainder of Part IV. Accordingly, regulation 12 makes provision about two different things – discounts under section 79 of the 1992 Act and variations under section 33 of the 2003 Act – but the remainder of Part IV now only contains references to “variation”. A question accordingly arises as to how regulations 13 to 15 will apply in respect of section 79 discounts.

The Scottish Ministers contend that “variation” is wide enough to encompass section 79 discounts. They do not consider that the word variation in regulations 13 to 15 is limited by the fact that regulation 12 refers expressly to variations under section 33 of the 2003 Act. They pray in aid the sense in which “variation” is used elsewhere in the 1992 Act (as amended) in support of this. However, in the final paragraph of their response they acknowledge that there is a tension between the use of “variation” in regulation 12 and its use elsewhere in the principal Regulations.

In the Committee’s view, the use of “variation” in regulations 13 to 15 has to be considered in the context of regulation 12. Regulation 13 makes it clear that local authorities are to do certain things as a result of taking the steps specified in regulation 12. Regulations 14 and 15 operate in dependence on assumptions made under regulation 13. It therefore considers that there is a clear link between this group of provisions, which together with regulation 11, form Part IV of the principal Regulations. It appears that “variation” is necessarily used in a limited sense, because regulation 12 expressly refers to variations under section 33 of the 2003 Act, and not to any other variations. As the Scottish Ministers acknowledge, they did not consider it appropriate to amend the reference to section 79 of the 1992 Act on the basis that it “...continues only to enable discounts...”.

In consequence, it appears to be doubtful whether the Scottish Ministers’ arguments as to the breadth of the definition of “variation” can be sustained. While the Committee considers that the potential consequences of this lack of clarity are limited, it would have been clearer had regulations 13 to 15 continued to refer to discounts as well as referring to variations.

The Committee draws the instrument to the attention of the Parliament on reporting ground (h) as the meaning could be clearer.

The form or meaning of the instrument could be clearer. This instrument amends Part IV of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 by substituting references to “discount” with references to “variation”. However, those provisions are intended to continue to apply to discounts under section 79 of the Local Government Finance Act 1992, and it appears to be doubtful whether, in the context of that Part, “variation” can properly extend to include “discount” standing the drafting of regulation 12 which makes specific reference to “variation under section 33 of the Local Government in Scotland Act 2003”.

**APPENDIX 3**

**Council Tax (Administration and Enforcement) (Scotland) Amendment Regulations 2012 (SSI 2012/338)**

**On 14 December 2012, the Scottish Government was asked:**

Regulation 6 of this instrument amends regulation 12 of the Council Tax (Administration and Enforcement) (Scotland) Regulations 1992 (“the principal Regulations”) to insert references to variations to the amount of council tax payable in terms of section 33 of the Local Government in Scotland Act 2003 (“the 2003 Act”). The effect is that levying authorities are required, before calculating the amount payable in respect of council tax for a dwelling, to take reasonable steps to ascertain whether that amount is subject to any discount under section 79 of the Local Government Finance Act 1992 or variation under section 33 of the 2003 Act, and, if so, the amount of that discount or variation. However, regulations 7 to 10 and 12 of this instrument go on, at various places in the principal Regulations, to substitute for the word “discount” (and related expressions) the word “variation” (or the appropriate related expression). Regulation 13 refers to the steps taken under regulation 12. It accordingly appears that “variation” in regulation 13 and subsequent regulations has the sense given in regulation 12, i.e. the variations in question are those made under section 33 of the 2003 Act.

(a) Does the Scottish Government accept that, by revoking the word “discount” and replacing it in each instance with “variation”, the effect appears to be that regulations 13 to 15 of the principal Regulations apply only to the newly-inserted variations under section 33 of the 2003 Act, and not, as previously, to discounts under section 79 of the Local Government Finance Act 1992?

(b) If the Scottish Government considers that the term “variation” and its related expressions, as inserted into the principal Regulations, have a wider meaning than “variations under section 33 of the Local Government in Scotland Act 2003” as in regulation 12, it is asked to explain the basis for that view, bearing in mind the principle of statutory interpretation that legislation which imposes a tax requires to be strictly construed.

**The Scottish Government responded as follows:**

The Scottish Government does not agree that “variation” in regulations 13 to 15 of the principal Regulations has to be read, or should be read, as “variation under section 33 of the Local Government in Scotland Act 2003”.

The word will carry the meaning that it has in the Act under which the Amendment Regulations are made, and the Local Government Finance

(Unoccupied Properties etc.) (Scotland) Act 2012 (“the 2012 Act”) has amended that Act, the Local Government Finance Act 1992, specifically paragraph 4 of Schedule 2 to that Act and the heading to that paragraph, to substitute “variation” for “discount”. In that context, it is plain that a “variation” encompasses a “discount”, but may also include an increase in a chargeable amount (see specifically sub-paragraph (5A)(b)(ii)).

The background to the amendment is that the 2012 Act for the first time enables increases in liability to council tax for unoccupied dwellings. The legislation it amended, section 33 of the Local Government in Scotland Act 2003 and various provisions of the Local Government Finance Act 1992, previously only enabled discounts to liability when a dwelling was unoccupied.

In consequence, the references in Part 4 of the principal Regulations to “discount” calculations and assumptions will no longer work, as a calculation or assumption may result in an increase in liability. The Amendment Regulations therefore substitute “Variations” for “Discounts” as the heading to Part 4, and in most of that Part make the same change. That approach would not work in regulation 12, as it refers to “discount under section 79 of the Act” (i.e. the Local Government Finance Act 1992), and makes no reference at all to section 33 of the Local Government in Scotland Act 2003. The Scottish Government therefore decided to insert a reference to the possibility of variation under section 33 of the Local Government in Scotland Act 2003, but leave alone the reference to discount under section 79 of the earlier Act. This is on the basis that section 79 continues only to enable discounts, and the possibility of an increased liability only relates to the later Act.

The Scottish Government accepts that this creates a tension between the use of “variation” in regulation 12 of the principal Regulations, where it is linked specifically to section 33 of the Local Government in Scotland Act, and the use of “variation” in later regulations, where it has the more general meaning that it holds in the Local Government Finance Act 1992. However, it considers that users of the legislation (local authorities) will understand how the Regulations are to operate, especially as they will have guidance on the matter, and will interpret the Regulations as they properly fall to be interpreted, in accordance with the usual tenets of statutory construction.

**Local Government and Regeneration Committee**

**2nd Meeting, 2013 (Session 4), Wednesday, 23 January 2013**

**SSI Cover Note**

1. This paper seeks to inform members' consideration of the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339).

**Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339)**

*Background*

2. The instrument was laid on 10 December 2012 and the Local Government and Regeneration Committee was designated as lead committee.

3. The Subordinate Legislation Committee considered the regulations at its meeting on 8 January 2013. No points were raised on this order.

4. The Local Government and Regeneration Committee must report by 28 January 2013.

5. This Order amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997 as regards dwellings that, under that Order, are classed as empty.

6. Dwellings which are both unoccupied and unfurnished are exempt from council tax liability for a period of up to 6 months. The amendment made by article 2 provides that a second claim for the exemption will only be possible after a property has been occupied for a period of at least three months, in place of a requirement of occupation or furnishing for a period of at least six weeks.

7. Article 3 makes transitional provision to preserve the current position in relation to short term periods of occupation that begin during the six weeks before this Order has effect, but end during the six weeks after this Order has effect.

8. The regulations are subject to negative procedure and a motion to annul has been lodged.

9. On 17 January 2013, Margaret Mitchell lodged motion S4M-5394—

That the Local Government and Regeneration Committee recommends that the Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2012 (SSI 2012/339) be annulled.

10. Margaret Mitchell will move this motion at the committee meeting.



*Policy objectives*

11. This Order is part of a package of three SSIs which will enable local authorities to charge a council tax increase for certain long-term unoccupied homes in order to help encourage owners to bring their empty homes back into use.

12. The Order is not intended to affect the categories of homes or owners which are exempt from paying council tax; these will remain unchanged. Instead, the Order makes a minor amendment to the existing Council Tax (Exempt Dwellings) (Scotland) Order 1997 ('the 1997 Order') in order to assist local authorities in enforcing any council tax increase in their area.

13. The Order will make it more difficult for owners to avoid paying a council tax increase or reduced level of discount by repeatedly claiming an empty dwelling exemption. Currently, under Schedule 1 to the 1997 Order, dwellings which are both unoccupied and unfurnished are exempt from council tax for the first six months they are empty. A dwelling has to then be reoccupied or furnished for a period of at least six weeks before an owner can again receive an empty dwelling exemption. Such exemption would be for another six months.

14. This Order will, from 1 April 2013 (subject to transitional provisions for empty dwellings reoccupied or furnished just before 1 April 2013) require dwellings to be reoccupied for at least three months before an owner can receive a further empty dwelling exemption. Just furnishing a dwelling for a period without occupying it will no longer entitle an owner to claim a further empty dwelling exemption.

15. The objectives of these changes are, firstly, to make it harder for owners to occupy their home for a short period of less than three months in order to then claim a further period of council tax exemption and, secondly, to prevent owners from being able to claim further exemptions simply due to having furnished their home for a period. While local authorities have not often experienced problems due to owners seeking to exploit these provisions, if local authorities implement either council tax increases and/or further reduce discounts for unoccupied dwellings, it is possible that some owners will seek to exploit any provisions which would enable them to avoid paying more council tax. In addition, some local authorities have noted that the current six week minimum reoccupation period is too short to allow them to check that a home is genuinely being occupied; a longer minimum period of three months would give the local authority more opportunity to carry out checks.

*Procedure in committee*

16. Under negative procedure, an instrument comes into force on the date specified on it (the "coming into force date") unless a motion to annul it is agreed to by the Parliament (within the 40-day period). Any MSP (whether a member of the lead committee or not) may lodge a motion recommending annulment of an SSI at any time during the 40-day period, including after the lead committee has considered the instrument. As a motion to annul this negative instrument has been lodged, the Committee is obliged to formally report to Parliament on the instrument. As with the process associated with affirmative instruments, to inform the debate on the motion for annulment it has become normal practice to take evidence from the Minister and officials prior to the debate.

17. Following evidence from the Minister and officials, the Member who has lodged a motion to annul will then be asked to speak to and move the motion. The Committee will then debate the motion to annul, with other Committee Members given the opportunity to speak and the Minister in charge invited to respond to the points raised. It should be noted that the Minister in charge of the instrument, in this case Margaret Burgess MSP, is entitled to participate in the Committee's debate, but cannot vote. The Member who has lodged the motion then has an opportunity to respond to the Minister and to "wind up" the debate; in doing so, he/she should indicate whether he/she is pressing the motion or seeking to withdraw it. If the member seeks to withdraw the motion, the Convener must ask whether any member objects. If the member presses the motion (or if there is any objection to it being withdrawn) the convener puts the question "that motion [number] be agreed to – are we all agreed?" If any member says "No", there must be a division, and if there is a tie, the convener must exercise a casting vote. The debate on the motion to annul can last for up to 90 minutes.

**Action**

18. Whatever the outcome of the debate, the committee must subsequently report on the instrument. If the motion to annul is agreed to by the Committee, the Parliamentary Bureau must lodge a motion that the motion be annulled

David Cullum

Clerk to the Committee

January 2013

16 January 2013

Kevin Stewart MSP  
Convener of the Local Government and Regeneration Committee  
The Scottish Parliament  
EDINBURGH  
EH99 1SP

Dear Convener,

I would like to thank the Committee for the opportunity to discuss our 2011-12 annual report and other matters relating to the office. The annual report marked the ten year anniversary of the setting up of the SPSO in October 2002, and, as well as providing the yearly update on casework and financial performance, we took the opportunity to outline the changes to our role and remit that have taken place over the past decade.

Further expansions are in the pipeline for the current year and beyond, and I discuss these in my briefing below. The changes have potential resourcing implications which the Committee may wish to probe. I also invite questions on the work of our Complaints Standards Authority, which has reached a number of milestones since I last gave evidence, not least the development of a standardised complaints handling procedure for all local authorities, which they are well on the way to implementing.

At the previous annual report evidence session in November 2011, a question was raised about the SPSO complaints handling guidance and at the March 2012 evidence session we discussed audit mechanisms. We subsequently provided the Committee with details about both areas (on our Guidance in December 2011 and on internal and external audit in April 2012). As there were no follow-up questions I trust that the information we provided assured the Committee about both areas, but I would be pleased to discuss these further.

In March 2012, we also discussed the Parliamentary procedure for considering 'special reports' laid by this office. I would like to place on record my thanks to the Committee for referring the matter to the Standards Committee. As you will be aware, that Committee discussed this issue late last year and wrote to me for more information, which I will be providing by the end of this month.

I and my colleagues look forward to taking questions from the Committee about these and any other matters you may wish to raise.

## 1. Complaints: rising demand and improved productivity

As the annual report states, we received a record number of complaints in 2011-12 with a total of 3,918 complaints (12% more than the previous year). The increase can mostly be attributed to complaints from the new areas brought under our remit (prisons and water). We also resolved a record number of complaints (3,748, again 12% more than the previous year). I can also provide some initial figures for the first three quarters of the current financial year. We received 3,320 complaints (a rise of 5% compared to the same period the previous year) and resolved 3,298 (a rise of 7% compared to the same period the previous year).

I am pleased that our productivity has risen, and this is a tribute to my staff who have kept pace with demand, despite the additional resources committed to taking on new areas of responsibility. As you know, we radically overhauled our business process in May 2010 and I believe this has paid dividends in terms of shortening timescales with no reduction in the quality of our service. As outlined in the annual report, following a pilot scheme we implemented a revised quality assurance process in April 2011, which was positively reviewed by our internal auditors, the Scottish Legal Aid Board.

We have also continued to ask users of our service about their experience of dealing with our office. Over the past six years we have regularly sought user feedback as a means of informing improvement, and our latest independent customer satisfaction survey was published in August 2012. It is summarised in the annual report and the findings and our action plan are on our website.

In terms of dealing with the increased demand for our service, I am of the view that the revised business process has helped us reach a high productivity level and that there are unlikely to be future significant gains without an increase in resourcing.

Local government complaints numbers and issues are discussed in the dedicated chapter in the annual report (pp 18 – 23), which is attached. In 2011-12 we received 1,527 complaints, a 4% drop compared with the previous year, although this sector still represented 39% of all the complaints we received. In the first three quarters of the current financial year we received proportionately the same as last year (1,117 complaints). There is also no change in the top areas of complaint, with housing, planning and social work topping the list.

In terms of significant trends, 2011-12 saw:

- *An increase in upholds (complaints that were valid for investigation and that we fully or partially upheld).* The overall level of upheld complaints rose from 34% in 2010-11 to 39% in 2011-12. In the health sector – where we can look at clinical decisions as well as administrative processes – the level of upheld complaints rose from 45% to 56%. In the local government sector, where we cannot look at discretionary decisions, it rose from 29% to 32%. I believe the fact that around a third of all duly made complaints reviewed by the SPSO were upheld as a result of public bodies getting decisions wrong clearly demonstrates the need for changes in both the process and culture of public service providers' complaints procedures.
- *A decrease in premature complaints (complaints that came to the SPSO too early).* The overall level of premature complaints we received fell from 51% in 2009-10 to 45% in 2010-11 and 43% in 2011-12. Sectoral differences remained, but it is satisfying that the level of premature complaints received about local government has fallen from 55% in 2010-11 to 52% in 2011-12.

## 2. Expansion of SPSO remit

The increase in overall complaints numbers comes against a backdrop of a number of potential or planned changes to our remit, either incrementally as a result of changes in responsibilities of bodies under jurisdiction or through direct additions or extensions to our remit. There is an additional significant pressure that affects us more widely, in terms of our expanded role in improving complaints standards across the public sector. I will deal with these areas in turn.

### 2.1 Changes to the landscape

I am currently aware of the following potential or confirmed changes:

- *Social Work complaints procedures* These are currently under review by the Government and any change to the current system will have an impact on complaints numbers and the expertise required within the SPSO. The volume and scope of our involvement will depend on the decisions made through the working group in which we are participating and which will meet in early 2013.
- *Health and social care services integration* Changes in the way services are organised and delivered also throw up challenges for users. We are continuing to highlight our concerns about the lack of reference to how complaints should be handled, given the overlapping procedures and legislative routes for complaints under the proposed integration model. There are significant implications for us in terms of how to deal with complaints that come to us through the different routes.
- *Prison health complaints* SPSO automatically assumed responsibility for these in November 2011 following the transfer of responsibility for prison healthcare to the NHS. Numbers coming to SPSO have been low when compared to the volume taken to review by Scottish Ministers under the previous arrangements, and I expect to see them rise in future.
- *Abolition of the UK-based Social Fund scheme and the independent review of the social fund decisions review body (IRS)* Scottish local authorities will take on a new role providing a replacement for the Community Care Grants and Crisis Loans and the current proposal is for local authorities to also provide a second tier review of the decision. This automatically comes within the remit of the SPSO and the impact could be significant.
- *Other structural changes* There is potential impact on us from changes to the powers of bodies under our jurisdiction, or from new bodies. For example we expect that Revenue Scotland, a new tax administration body, will come under the remit of the SPSO in 2015.

The cumulative effect of these changes (if all confirmed) is difficult to predict due to lack of existing equivalent provision or difficulties comparing existing provision. We are considering ways in which we can help address this, including working more intensively with those bodies who, by the nature of their size or their business, bring a higher volume of complaints to this office. However, our ability to achieve this is also subject to resource constraints. We are also considering creating a Scottish panel of advisers, particularly for health complaints, which we believe will bring about further efficiencies by reducing the current timescales involved in accessing independent advice from other parts of the UK.

I would also add, as outlined in the financial performance section of the annual report (p 52), that we have been proactive on the shared services agenda and made significant savings

by sharing office space with, and providing corporate services to, other offices that the SPCB support. Nevertheless, there is a clear picture emerging of increasing demand on our services at a time of reduced resources. I have had discussions with the SPCB and the Government about the potential impact on SPSO of these expansions, and while I fully appreciate the climate of financial constraints, I would be remiss not to lay down a marker with this Committee as well.

## **2.2     *Standardising complaints procedures***

While I am very pleased indeed with the progress our Complaints Standards Authority has made in developing standardised complaints procedures (CHPs) and setting up monitoring arrangements (outlined below), I believe that the key to ensuring that complaints are handled 'right first time' is to provide on-going support. I want us to be able to continue to focus on supporting bodies through direct engagement, training and guidance to improve their investigation and resolution of complaints. There is a real opportunity to improve services through these more accessible, streamlined processes, but there is also a possibility of these processes prompting increased numbers of complaints to us - an unintended consequence of the changes.

## **3.     *Complaints Standards Authority***

The dedicated chapter in the annual report outlines the background to this work and there is much more information on the CSA's website at [www.valuingcomplaints.org.uk](http://www.valuingcomplaints.org.uk). To bring the Committee up to date I outline below the most significant achievements to date in implementing the Sinclair recommendations:

- Standardised CHPs published and currently being implemented across the local government, housing, FE and HE sectors. All local authorities and RSLs have committed to implementing the new 2-stage approach by March 2013, and over a quarter of local authorities and over 40% of RSLs have already confirmed implementation across all services;
- an e-learning platform established providing training to frontline public sector staff to complement the on-going direct delivery of courses by our Training Unit service ;
- complaints handling networks established for key sectors to share best practice, benchmark performance and to provide input on complaints handling issues on a sectoral basis;
- Valuing Complaints website developed to include an online forum for complaints handlers to network and share best practice and to provide good practice guidance electronically, bringing together complaints handlers from across sectors;
- We are on the way to having clear and consistent complaints performance information collected and published by all bodies for the first time in 2013/14, through the requirements of the CHPs and our engagement with Audit Scotland and other regulatory bodies. I am conscious of the Committee's locus in matters of benchmarking and performance management in public services and local government, and trust that standardised definitions and reporting criteria for complaints are a welcome addition.

Our focus for 2013/14 is to publish and implement the model CHP for the remaining (approximately 100) bodies in the 'sector' covering the Scottish Government, Scottish Parliament and associated bodies, including agencies, NDPBs and other sponsored bodies.

On an on-going basis we will also be continuing our support for all bodies to implement the CHPs and to improve handling of complaints through direct support from the CSA, training and the recently established complaints handling networks.

Throughout this period, and on an on-going basis, we will continue to monitor compliance and performance. Compliance, although monitored through the frameworks of the Scottish Housing Regulator, Audit Scotland and Scottish Funding Council, will primarily consist of SPSO assessment of procedures and whether these are operating effectively in practice and it is this that will take up most of the available CSA time.

I believe that by adopting streamlined procedures, ensuring ownership from the top, empowering frontline staff and skilling up investigative staff, public service providers can bring about the culture change envisaged by Lorne Crerar and Douglas Sinclair and use complaints effectively to drive improvements in our public services.

I hope Committee members find this summary useful. I look forward to discussing our work with you in more detail at the meeting.

Yours sincerely

Jim Martin  
Ombudsman

Tel: 0131 240 8850 (Fiona Paterson, Personal Assistant)  
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## **SCOTTISH PUBLIC SERVICES OMBUDSMAN**

This paper provides information to assist the Local Government and Regeneration Committee's evidence session with the Scottish Public Services Ombudsman (SPSO), Jim Martin, on 23 January 2013. The paper gives background information on the SPSO and its relationship with the Scottish Parliamentary Corporate Body (SPCB). The SPCB does not have a role with regard to oversight of the work of the SPSO, that role lies with the relevant Scottish Parliament committee. The paper also considers the SPSO's annual report for 2011-12 and its strategic plan for 2012-16.

### **BACKGROUND – THE SCOTTISH PUBLIC SERVICES OMBUDSMAN**

2012 marked the tenth anniversary of the office of the Scottish Public Services Ombudsman. The SPSO was established in the first session of the Parliament by [the Scottish Public Services Ombudsman Act 2002](#) (asp 11) (the 2002 Act) and the first Ombudsman, Professor Alice Brown, took up her responsibilities on 23 October 2002.

The Ombudsman, and deputy ombudsmen, are appointed by Her Majesty on the nomination of the Scottish Parliament and can hold office for up to eight years and cannot be reappointed.

#### **Bodies covered**

The SPSO combined the functions and responsibilities of existing ombudsman offices:

- The Scottish Parliamentary Commissioner for Administration
- The Health Service Commissioner for Scotland
- The Commissioner for Local Administration in Scotland
- The Housing Association Ombudsman for Scotland

In addition, the SPSO was given responsibility for investigating complaints relating to mental health, and complaints about the two Enterprise bodies in Scotland.

Subsequently, the SPSO's jurisdiction has been extended to include colleges and universities (Further and Higher Education (Scotland) Act 2005), complaints about prisons (Scottish Parliamentary Commissions and Commissioners etc. Act 2010), water and sewerage providers (Public Services Reform (Scotland) Act 2010) and the Scottish canal network (British Waterways Board (Transfer of Functions) Order 2012/1659).



The Ombudsman can also look into the complaint handling of various commissions and regulatory bodies:

- The Care Inspectorate, the Care Commission and the Scottish Social Services Council)
- The Commission for Ethical Standards in Public Life in Scotland
- The Police Complaints Commissioner for Scotland
- The Scottish Information Commissioner
- The Scottish Commission for Human Rights.

However, the SPSO is not an appeal body for the decisions of any of the bodies which it covers, and it cannot change their decisions.

## **Organisation**

According to the 2011-12 Annual Report, 45 members of staff (full time equivalents) are employed in the SPSO, with three quarters of them being directly involved in case handling. There is no indication of the management structure, but as well as the Ombudsman the annual report also names the Director of Corporate Services, the Head of Policy and External Communications and the Head of Complaints Standards.

The Head of Complaints Standards is responsible for the Complaints Standards Authority (CSA). The CSA was established by the SPSO in October 2010 to work closely with public bodies to standardise and simplify complaints handling procedures and to help drive improvement.

There is also an Independent Reviewer whose only role is to look at complaints about the SPSO's service delivery. The Reviewer was introduced at the SPSO's initiative and has no powers to review the Ombudsman's decisions, as the decisions can only be challenged by judicial review. The Reviewer is not a statutory requirement.

In addition, there is an Audit and Advisory Committee (A&AC) which oversees the management of risk and audit issues, and reports to the Ombudsman. The Committee's remit is to work with the Ombudsman as a non-executive group, advising on the discharge of his functions as the SPSO's accountable officer, ensuring high standards of governance and accountability, in accordance with Best Value principles. Best Value principles are a key component of the public service reform agenda in Scotland and include:

- Responsiveness and consultation
- Accountability
- Use of review and options appraisal.

The Audit and Advisory Committee comprises:

- John Vine, Independent Chief Inspector of the UK Border Agency
- Tom Frawley, Northern Ireland Ombudsman

- Anne Seex, Local Government Ombudsman for England.

The committee is not a statutory body. Its duties include:

- Financial reporting:
  - monitoring the integrity of the SPSO's financial statements, including its annual and interim reports
  - reviewing summary financial statements and any financial information contained in certain other documents, such as budget submissions
- Internal controls, performance management, and risk management systems
  - reviewing the effectiveness of the SPSO's internal financial controls, performance management, and risk management systems
- Whistleblowing:
  - reviewing the SPSO's arrangements for its employees to raise concerns, in confidence, about possible wrongdoing in financial reporting or other matters
- Internal audit:
  - advising the Ombudsman on engaging suitable external auditors;
  - reviewing and assessing internal audit requirements and approving annual internal audit work plan
  - reviewing and monitoring the Senior Management Team's responsiveness to the findings and recommendations of the auditor
- External audit:
  - Overseeing the relationship with the external auditor
  - meeting the external auditor at least once a year, without members of the Senior Management Team present, to discuss their remit and any issues arising from the audit.

### **Role: enquiries and complaints**

The key function of the SPSO under the 2002 Act is to undertake independent investigations into complaints from members of the public about service failure and maladministration by Scottish public services.

The information on complaints and enquiries in the following tables was gathered from the SPSO's last three annual reports:

	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>
<b>Enquiries received</b>	903	755	625

<b>Complaints received</b>	3,307	3,489	3,918
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	<b>2009-2010</b>	<b>2010-2011</b>	<b>2011-2012</b>
<b>Enquiries dealt with</b>	906	755	626
<b>Complaints determined</b>	3,524	3,351	3,748
<b>Complaints resolved by providing advice or guidance to the complainant or public body concerned.</b>	2,531	2,678	2,985
<b>Premature complaints, i.e. received before the complaint process had been completed in the organisation concerned.</b>	Not identified as such	1,500 of the resolved complaints	1,612 of the resolved complaints

Annex A reproduces the pie charts from the last three SPSO annual reports which show the total number of enquiries and complaints received by sector.

The 2002 Act requires the SPSO to lay certain reports before the Parliament:

- Reports on investigations based on a complaint or request (Section 15(1)). The SPSO's decisions as set out in its report can only be challenged by judicial review. Details of the reports laid in the past two years are given later in this paper
- Special reports – in certain circumstances i.e. where an aggrieved person has suffered injustice or hardship as a result of maladministration or service failure and the SPSO considers that this has not been, or will not be, remedied (Section 16(1)). Note that the SPSO has not yet had occasion to issue a special report
- Annual report - a general report on the exercise of the Ombudsman's functions (Section 17(1)).

In addition, since June 2011, the SPSO has laid a report of its [decision letters](#) before the Parliament. These reports are not subject to any parliamentary procedure and although the decision letters can be accessed on the website the laid reports do not appear to be accessible electronically in the same way. The Ombudsman does publish on its website a monthly [Ombudsman's Commentary](#) the stated purpose of which is to share learning about complaints.

Annex B reproduces the pie chart from the latest SPSO annual report which shows the outcomes of decision letters and investigation reports. The charts indicate that 50% (28) of investigations resulted in them being fully upheld.

The annual report also states that:

“In 2011–12, the level of upheld complaints for all sectors – those that were valid for SPSO and where we upheld all or part of the complaint – went up to 39% from 34% in 2010–11.”

SPSO 2012a p. 18

## **Role: best practice**

The Public Services Reform (Scotland) Act 2010 gave the SPSO the additional statutory requirement to publish a statement of principles concerning complaints handling procedures of the bodies it can investigate. The 2010 Act also gives the SPSO discretionary powers to publish model complaints handling procedures, thus leading improvement and best practice in complaints handling across the entire public sector.

The Ombudsman published model Complaints Handling Procedures (CHP) for local authorities in March 2012 and for Registered Social Landlords (RSLs) in April 2012. According to the 2011-12 Annual Report the SPSO receives the most enquiries and complaints about local government (35%) but it is the complaints about the National Health Service (NHS) which result in the greatest number of investigation reports, 41 reports (covering 42 complaints), with no such reports relating to local government in the present reporting year.

In its Annual Report, the SPSO states that it aims to support improvement by focussing public bodies on the practice of embedding good complaints procedures and encouraging them to learn from complaints in order to identify and prevent future problems. This emphasis on prevention is one of the cornerstones of the Christie Commission on the Future Delivery of Public Services report, published in June 2011.

According to its annual report (p13) the SPSO uses its website to highlight the cases where authorities have responded well to complaints and have taken action to remedy an injustice before a complaint reached the Ombudsman. It is not clear where on its website these positive cases can be located. There is however a separate website, [Valuing Complaints](#), which is the SPSO's Complaints Standards Authority (CSA) website.

This website includes a community forum which aims to generate discussion and sharing of best practice amongst the professional complaints handling community, both within and between different sectors. The CSA aims to facilitate effective and professional social networking amongst complaints handlers and to create a forum that supports the sharing of experiences and learning in complaints handling.

## **Performance**

The SPSO website lists its KPIs (Key Performance Indicators) for 2011-12:

- KPI 1 measures how quickly it is established whether or not a complaint is suitable for the SPSO and whether it has fully completed the complaints process of the organisation complained about. SPSO want to let people know in 10 working days or less. The target is 95%.
- KPI 2 measures how quickly the SPSO establishes whether it can examine a complaint under the SPSO Act, and where it sees an opportunity for an early resolution of the complaint. The aim is to let people know its decision in 50 working days or less. The target is 95%.

- KPI 3 measures how quickly the SPSO makes a final decision on complaints that it investigates but does not lay as a full investigation before the Scottish Parliament. The target is to complete 85% of these cases within six months or less.
- KPI 4 measures how quickly the SPSO completes all its investigations. The target is to complete 95% of all investigations in 12 months or less, including full investigation reports laid before Scottish Parliament.
- KPI 5 measures how quickly organisations implement its recommendations. The target is that 95% of recommendations are implemented by the target date set.

These KPIs are measured from the date the SPSO receive or reopen a complaint.

Neither the Annual Report, nor the website, appears to provide information on how well the SPSO has performed with regard to these KPIs. So it is not clear if the organisation is meeting the targets it has set for itself or for the bodies it investigates.

## **SPSO and complainants**

In 2012 SPSO sought feedback on four of its service standards – how the SPSO treats people, contact with those using its service, how long it takes to provide a service and how well it meets people's needs.

In previous years SPSO had used the research company Craigforth to undertake customer satisfaction surveys. These previous surveys had been paper-based and electronic and had shown that overall satisfaction with the service received from the SPSO remained broadly consistent.

For the latest survey Craigforth suggested an alternative approach. The 2012 Listening to Complainants research used a qualitative approach (focus group and interview) to gather the views of 33 people who had a case closed by the SPSO between November 2011 and January 2012.

The company produced a summary report (Craigforth 2012) which identified six key messages:

- The desire to see positive change in public sector organisations was the primary motivation behind many people's initial approach to the SPSO
- People value being treated with courtesy and respect, but were particularly pleased when they were treated with kindness and empathy. Face-to-face contact is also highly valued
- The way the SPSO gathers and uses information supplied by both the complainant and the complained about organisation appears to be a key driver of satisfaction
- Written communications can be difficult to get right but the implications of getting them wrong can be considerable
- The speed with which the SPSO reviews a case may be less important than doing a thorough job
- Some people would value access to further, possibly independent, support and advice.

As well as highlighting the six key messages the report also outlines the associated challenges for SPSO together with possible actions or changes.

## **Complaints about the SPSO**

The SPSO has a three stage complaint procedure for dealing with complaints about its own service, but not about the decisions reached:

- Step 1 Complaint is raised with any member of staff. If the complainant remains unhappy they can complete a service complaint form which will be passed to a senior member of staff.
- Step 2 The service complaint form is considered by the Head of Complaints Standards who will contact the complainant within three working days of receipt of the complaint. The Head of Complaints Standards will consider whether SPSO has failed to meet its service standards and commitments when reaching its decision aiming to send a full response within 20 working days.
- Step 3 The Independent Reviewer can look at the complaint if the complainant is still unhappy after complaining to the Head of Complaints Standards. The complainant should contact the Reviewer within one month of receiving the final response. The Reviewer will contact the complainant within three days of their letter and will aim to provide them with a full response within 40 working days.

The annual report indicates that, during the year covered by the report, SPSO referred 13 complaints to the Reviewer. Six of those complaints appear to have been partly upheld by the Reviewer and led to recommendations which SPSO agreed to implement.

## **SPSO and the Scottish Parliament Corporate Body (SPCB)**

The SPSO is one of the bodies supported by the Scottish Parliamentary Corporate Body (SPCB). The 2002 Act was amended by the Scottish Parliamentary Commissions and Commissioners etc. Act 2010, primarily, in order to standardise the SPSO's terms and conditions. The 2010 Act also standardised the accountability and governance arrangements with those of the other officeholders and bodies supported by the SPCB.

Before it is published the SPSO provides the SPCB with a draft of his strategic plan, which covers a four year period, asking for comments before the final plan is laid before Parliament. Under the provisions of the 2002 Act, the Ombudsman may also submit his draft plan to a committee of the Parliament for comment. The SPCB may also give the SPSO direction as to the form and content of the annual report he must lay before the Parliament.

## **SPCB responsibilities**

The SPCB is responsible for determining the terms and conditions of the Ombudsman, including their salaries and their length of service, as long as it does not exceed eight years.

The SPCB is also responsible for approving the Ombudsman's decision on the number of staff to employ and the terms and conditions of such staff. In addition the SPSO must adhere to any decisions made by the SPCB on the possible sharing of staff, offices and other resources with other public bodies or Commissioners.

The SPCB is also responsible for approving the SPSO's annual budget, and any revisions to the budget made during the financial year. The Corporate Body pays for the salaries and allowances of the Ombudsman and any deputies and any expenses incurred by the Ombudsman in carrying out his functions, unless they are not covered in the SPSO's annual or revised budget, in which case the Corporate Body may decide not to pay those expenses.

The SPCB designates an accountable officer for the SPSO, currently the Ombudsman himself, whose functions include ensuring that the SPSO's resources are used economically, efficiently and effectively.

Whilst the 2002 Act gives the SPSO power to acquire and dispose of land, the SPCB must approve the Ombudsman's exercise of such a power. The SPCB also has power to direct the SPSO on the location of its office.

The SPSO may be removed from office if the SPCB is satisfied that the office holder has breached their terms of appointment. Having come to that view, the SPCB would then have to ask the Parliament to resolve that the Ombudsman should be removed from office for the breach. That parliamentary resolution would need to be voted for by at least two thirds of the total number of MSPs.

## **SPSO and the Scottish Parliament**

### **Laid papers**

As stated previously, the 2002 Act requires the SPSO to lay certain reports before the Parliament. In 2010, the SPSO introduced new criteria for deciding which reports would be laid before the Parliament. The criteria for doing so include if the report deals with:

- significant personal injustice
- systemic failure cases
- precedent and test cases
- significant failure in the local complaints procedure.

The use of these criteria has resulted in fewer reports being laid. In 2009-2010, prior to these changes being introduced, the SPSO laid 123 investigation reports relating to 134 complaints (Scottish Public Services Ombudsman 2010 p. 8).

In 2010-11, according to its annual report, the SPSO laid either 58 reports:

- 39 about health
- 16 about local authorities
- 1 about prisons
- 1 about further/higher education
- The topic of the other report is not specified in the annual report.

In 2011-12, according to its annual report, the SPSO laid:

- 41 reports (covering 42 complaints) about the NHS
- 1 report about housing
- 1 report about prisons.

## Decisions

In 2011-12 the Ombudsman started to lay an additional monthly report of decision letters before the Parliament. This takes the form of a monthly report of discontinued investigation, since decision letters are technically 'discontinued investigations'.

The SPSO also publishes on its website monthly [Ombudsman's Commentaries](#) in order to share the learning from complaints.

## Budget

As well as being approved by the SPCB, the SPSO's annual budget is considered by the Finance Committee, as part of the Corporate Body's annual budget submission.

The figures approved by the SPCB in 2011 are shown in the table below, which is an excerpt from Schedule 4 of the SPCB's budget proposals:

### Schedule 4b

<b>Analysis of Officeholders' 2012-13 budget bids</b>			
		<b>SPSO</b>	
		Budget £'000 2011-12	Bid £'000 2012-13
<b>Revenue</b>			
Staff Costs		2,517	2,420
Staff Related/General Costs		88	81
Property Costs		291	292
Professional Fees		179	163
Running Costs		299	271
Income		(35)	(70)
<b>Capital</b>		30	15
Waterwatch functions			120
<b>Total</b>		<b>3,367</b>	<b>3,292</b>

In its report on the draft budget 2011-12, the Session 3 Finance Committee had drawn attention to the expectation of the SPCB that, over the period of the UK spending review, the various parliamentary officeholders would be expected to make the same budget reductions as the SPCB. In future years, the SPCB expected "reasonably significant savings from shared services and the amalgamation of existing property from bringing different bodies together". The report also highlighted the "significant variations in the degree of reductions agreed with the different bodies". The 2012-13 budget proposal for the officeholders again showed variations.

The Session 4 Finance Committee noted that there were no cumulative figures in the budget proposal submitted showing how each officeholder was performing against the baseline year (2010-11). The Committee sought clarification from the witnesses as to the progress being made by each of the officeholders in meeting the target of a real terms decrease of 12.2% by 2014-15 and on the variations in the reduction achieved so far.



The Committee invited the SPCB, in its budget proposals for 2013-14 and 2014-15, to provide a breakdown showing how each officeholder is performing against the expected budget reductions, using 2010-11 as the baseline.

In her written evidence to the Finance Committee in 2012 the Presiding Officer stated that officeholders' budgets have now reduced by 17.4% in real terms against the 2010-11 baseline (Letter from Presiding Officer to the Convener on the SPCB's budget proposal).

## **SPSO - ANNUAL REPORT 2011-12**

The SPSO laid its 2011-12 Annual report before the Scottish Parliament on 23 October 2012.

In the report (p. 4-5) the SPSO states that:

“Since 2002 the SPSO has handled approximately 35,000 enquiries and complaints. Each year has seen a continuing increase in contacts, and in 2011–12 we dealt with a record number of complaints, with a 12% increase in receipts. We achieved this against a background of reduced funding. Over the three year period between 2010–11 and 2013–14 we committed to achieving, as a minimum, a 15% real term decrease in our budget and we remain on target to do so.”

## **SPSO - STRATEGIC PLANS**

As stated previously, the SPSO must prepare a four year strategic plan. This year's annual report covers a cross-over period for the strategic plans for 2008-2011 and 2012-16.

The latest Strategic Plan (2012-16) (Scottish Public Services Ombudsman 2012b) was published in March 2012. It sets out the Ombudsman's five strategic objectives, which are to:

- provide a high quality, user-focussed, independent complaints handling service
- support public service improvement in Scotland
- improve complaint handling by public service providers
- simplify the design and operation of the complaint handling system in Scottish public services
- be an accountable, best value organisation.

Further information on the objectives, including the associated performance measures, can be found in Annex C of this paper.

## **SPSO BUSINESS PLAN**

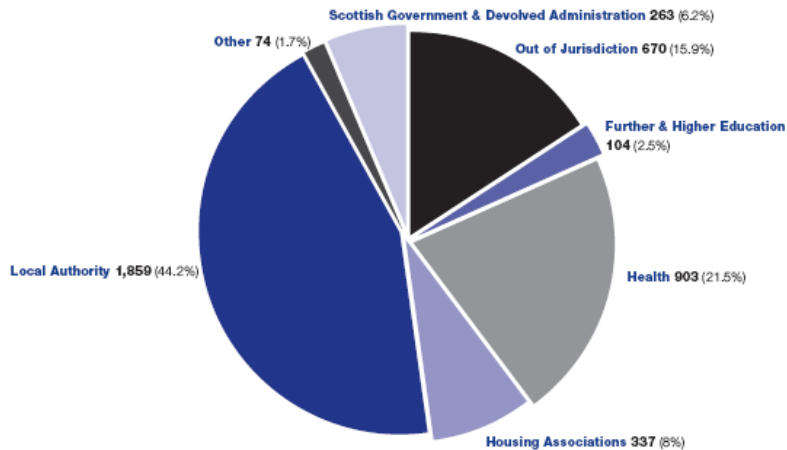
In addition to its Strategic Plan (Scottish Public Services Ombudsman 2012b) the SPSO has also produced a Business Priorities 2012-2013 paper (Scottish Public Services Ombudsman 2012c). The key priorities are given as:

1. Deliver an efficient and effective complaint handling service, working to stretching but achievable targets, continuously building quality and accessibility.
2. Share strategic lessons from our casework with service providers and appropriate scrutiny bodies; ensure service providers implement SPSO recommendations; and use communications tools effectively to promote understanding of the SPSO.
3. Through the Complaints Standards Authority and training and outreach activities, build and coordinate sectoral complaints handling networks and facilitate the sharing of good practice in complaints handling
4. Lead the simplification and standardisation of complaints handling by working in partnership to develop and implement model Complaints Handling Procedures (CHPs), based upon the SPSO Statement of Complaints Handling Principles and Guidance on a Model Complaints Handling Procedure.
5. Deliver operational efficiency, effectiveness and accountability through clearly defined priorities, performance measures and resources that meet business needs, while supporting development of new areas of business.

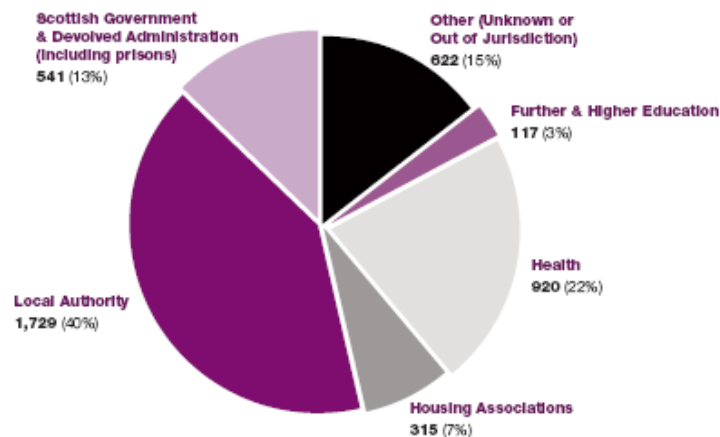
## ANNEX A: TOTAL ENQUIRIES AND COMPLAINTS RECEIVED BY SECTOR

The following charts are reproduced from the last three annual report produced by the SPSO:

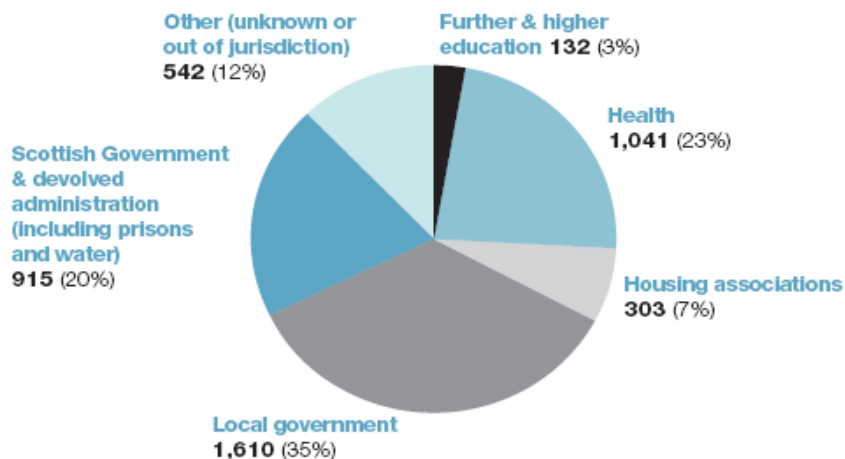
Total contacts received by sector in 2009 – 10



Total contacts received by sector in 2010 – 11



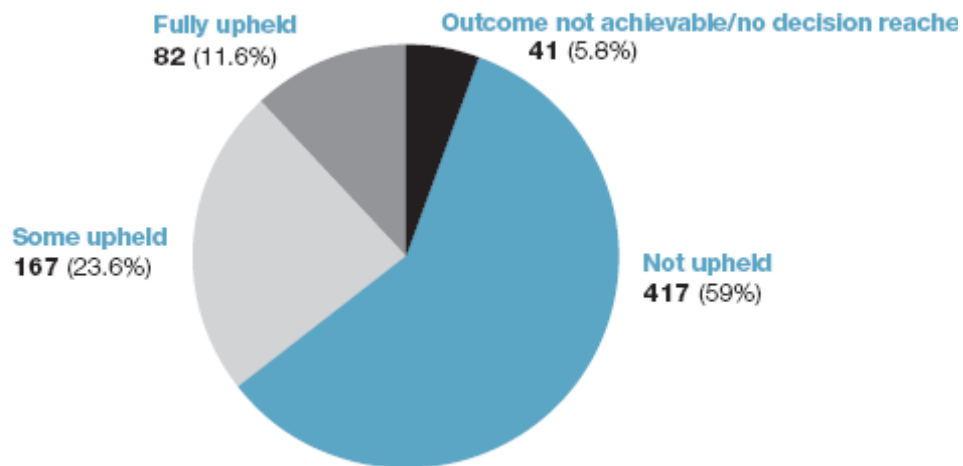
Total enquiries and complaints received by sector in 2011 – 12



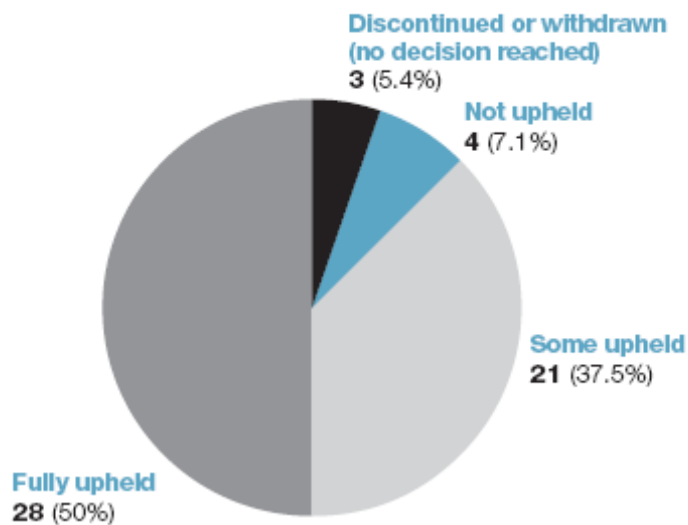
## ANNEX B: OUTCOMES OF DECISION LETTERS AND INVESTIGATION REPORTS

The following charts are reproduced from the latest annual report:

### Decision letter outcomes 2011–12



### Investigation report outcomes 2011–12



## **ANNEX C: SPSO'S STRATEGIC OBJECTIVES AND EQUALITIES COMMITMENTS**

The SPSO has set out

Five strategic objectives with aligned performance measures:

- To provide a high quality, user-focussed, independent complaints handling service

Developing its capacity as complaints handlers to be able to deliver individual benefit to its customers; being accessible and dealing with all enquiries and complaints impartially, consistently, effectively, proportionately and in a timely manner; and producing clear, accurate and influential decisions about complaints.

Performance measures:

- Case time and age profile targets
- Quality assurance measures
- User satisfaction measures

- To support public service improvement in Scotland

Continuing to raise informed awareness of the role of the SPSO and to feed back and capitalise on the learning from its consideration of individual enquiries and complaints, for example, through thematic reports, and by working in partnership with public service deliverers, policy makers, scrutiny bodies and regulators to promote good administrative practice.

Performance measure:

- Meeting its stated commitments to raise awareness of its role and publicise learning from complaints

- To improve complaint handling by public service providers

By using its expertise and resources to monitor, promote and facilitate the sharing of best practice and support service providers in improving their complaints handling.

Performance measures:

- With key partners, build networks of complaints handlers for all sectors
- Develop the Valuing Complaints website as a platform for sharing best practice
- Effectiveness of training provision

- To simplify the design and operation of the complaint handling system in Scottish public services

By working in partnership with service providers, regulators and other key stakeholders to facilitate the development of and compliance with simplified,

standardised and user-focussed Complaints Handling Procedures (CHPs) across the public sector as an integral part of the wider administrative justice system in Scotland.

Performance measures:

- Publish model CHPs for all sectors and support bodies to implement them
  - Establish compliance and performance monitoring measures for all sectors
- To be an accountable, best value organisation

By making best use of its resources and demonstrating continuous improvement in its operational efficiency and supporting the professional development of its staff.

Performance measures:

- Audit findings
- Financial performance measures
- Staff satisfaction
- Workforce statistics
- ICT performance information
- Environmental impact assessments.

In addition the SPSO has five equalities commitments to:

- take proactive steps to identify and reduce potential barriers to ensure that its service is accessible to all
- identify common equality issues (explicit and implicit) within complaints brought to its office and feed back learning from such complaints to all stakeholders
- to ensure that it informs people who are taking forward a complaint of their rights and of any available support, and that it encourages public authorities to do the same
- ensure that it play our part in ensuring that service providers understand their duties to promote equality within their complaints handling procedures
- monitor the diversity of its workforce and supply chain and take positive steps where under-representation exists.

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