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Health and Sport Committee Comataidh Slàinte is Spòrs

Subordinate legislation considered by the Health and Sport Committee on 19 November 2019



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Health and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Health and Sport.



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Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 [draft]

1. Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 [draft] was laid before the Scottish Parliament on 28 October 2019 and referred to the Health and Sport Committee.
2. Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 [draft] is subject to affirmative procedure (Rule 10.6). It is for the Health and Sport Committee to recommend to Parliament whether the Regulations should be approved.
3. The purposes of the provisions contained in the draft Order are to improve the exercise of public functions of health service bodies (other than the Scottish Dental Practice Board) having regard to efficiency, effectiveness and economy.
4. The instrument amends the Scottish Public Services Ombudsman Act 2002 ('the 2002 Act') to extend the ability of the Scottish Public Services Ombudsman (SPSO) to investigate complaints made about healthcare whistleblowing matters, to improve the exercise of public functions.
5. The instrument also amends the 2002 Act to provide power to the SPSO to investigate whether a relevant body or provider has handled a whistleblower's complaint properly in accordance with the SPSO's model complaint handling procedure for whistleblowing complaints, and any action taken by or on behalf of the body or provider in respect of that complaint, including the treatment of any person including the whistleblower.
6. By doing so, the Order confers the role and functions of an Independent National Whistleblowing Officer for NHS Scotland (INWO), upon the Scottish Public Services Ombudsman.
7. An Equalities Impact Assessment (EqIA) has been developed for this draft order. This includes consideration of whether a Children's Rights and Wellbeing Assessment is required. The Scottish Ministers do not foresee any discrimination against equality groups arising from this new role.
8. A Privacy Impact Assessment has not been completed for this draft order, as this is a matter for the SPSO to consider for the relevant bodies that would be within the jurisdiction of the INWO. A Business and Regulatory Impact Assessment has not been prepared for this draft order, as it has no impact on the cost of business.
9. The Committee held a formal evidence session with stakeholders on 28 May 2019, followed by evidence from the Cabinet Secretary for Health and Sport. The Committee issued its report [Scottish Public Services Ombudsman \(SPSO\) \(Healthcare Whistleblowing\) Order 2019](#) on its findings, including recommendations to the Scottish Government, on 25 June 2019. The Cabinet Secretary for Health and Sport responded on 2 September 2019.

10. The Committee report called for:
 - The Order to include the definition of what constitutes whistleblowing,
 - the Care Inspectorate to be included within the scope of information sharing provisions set out in the order,
 - early extension of the INWOs function to include jurisdiction over social work whistleblowing complaints, subject to consultation with local authorities,
 - the final version of the SPSO's whistleblowing standards to be available for scrutiny at the same time as the Order is laid in Scottish Parliament, and
 - Scottish Government to make representations to the UK Government to have MSPs added as "prescribed persons" and for the SPCB to consider how the position MSPs are in can be brought to the attention of all Members.
11. The Scottish Government responded that:
 - A definition of whistleblowing would be set out within the draft legislation,
 - by virtue of the Public Services Reform (Social Work Complaints Procedure) (Scotland) Order 2016/157, the Care Inspectorate is already listed within schedule 5 of the Scottish Public Services Ombudsman Act 2002 and there are provisions in place to facilitate sharing of information with the Care Inspectorate,
 - the final version of the standards is to be made available at the same time as the laying of the Order in Scottish Parliament, and
 - the Order cannot amend the list of prescribed people and bodies to include MSPs. the Scottish Government noted that MPs are listed as prescribed bodies and as all Scottish constituents have access to an MP this may be considered a duplication of a role. However, it agreed to pursue this further with the UK department for Business, Innovation and Skills (BEIS).
12. The revised order is now accompanied by Whistleblowing Principles and Draft National Whistleblowing Standards which set out how the SPSO expects the NHS to deal with concerns that are raised with them and meet the definition of a 'whistleblowing concern'.
13. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 5 November 2019. The Committee determined that it did not need to draw the attention of the Parliament to this instrument on any grounds within its remit.

[Delegated Powers and Law Reform Committee, 55th report, 2019 \(Session 5\)](#)
14. At the Health and Sport Committee's twenty-seventh meeting on 19 November 2019, the Committee took evidence on Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 [draft] from –
 - Jeane Freeman, Cabinet Secretary for Health and Sport
 - Rosemary Agnew, Scottish Public Services Ombudsman

- Stephen Lea-Ross, Head of Workforce Planning, Scottish Government
 - John Paterson, Divisional Solicitor, Scottish Government
15. Motion S5M-19757 was lodged by Jeane Freeman, Cabinet Secretary for Health and Sport and supported by Joe FitzPatrick, Minister for Public Health, Sport and Wellbeing.
 16. Following the evidence session, Jeane Freeman moved motion S5M-19757 that the Health and Sport Committee recommends Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 [draft] be approved.
 17. The motion was agreed to without division.
 18. The evidence taken and the debate held can be found in the Official Report for 19 November 2019.

The Health and Sport Committee recommends Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 [draft] be approved.

Public Services Reform (The Scottish Public Services Ombudsman)(Healthcare Whistleblowing) Order 2020 - Statement of Principles

19. Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 - Statement of Principles was laid before the Scottish Parliament on 28 October 2019 and referred to the Health and Sport Committee.
20. Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 - Statement of Principles is not a statutory instrument but is a document subject to parliamentary approval under section 16A of the Public Services Ombudsman Act 2002.
21. On 12 January 2011, the Scottish Parliament approved [complaints handling principles](#) under section 16A of the Scottish Public Services Ombudsman Act 2002 (the Act).
22. Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 [draft] details changes to Whistleblowing arrangements for the NHS in Scotland; specifically the creation of an Independent National Whistleblowing Officer for the NHS (the INWO). The existing principles were appropriate for complaints about the service received by members of the public. However, revisions to the principles were made to reflect the proposed new INWO function.
23. As these changes amounted to material revisions to the principles, they were laid under section 16A for approval. They do not make any material changes to the existing (service) complaint handling principles which remain in force.
24. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 5 November 2019. The Committee determined that it did not need to draw the attention of the Parliament to this instrument on any grounds within its remit.

[Delegated Powers and Law Reform Committee, 55th report, 2019 \(Session 5\)](#)

25. At the Health and Sport Committee's twenty-seventh meeting on 19 November 2019, the Committee took evidence on Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 - Statement of Principles from –
 - Jeane Freeman, Cabinet Secretary for Health and Sport
 - Rosemary Agnew, Scottish Public Services Ombudsman
 - Stephen Lea-Ross, Head of Workforce Planning, Scottish Government
 - John Paterson, Divisional Solicitor, Scottish Government

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26. Motion S5M-19770 was lodged by Jeane Freeman, Cabinet Secretary for Health and Sport and supported by Joe FitzPatrick, Minister for Public Health, Sport and Wellbeing.
27. Following the evidence session, Jeane Freeman moved motion S5M-19770 that the Health and Sport Committee recommends Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 - Statement of Principles be approved.
28. The motion was agreed to without division.
29. The evidence taken and the debate held can be found in the Official Report for 19 November 2019.

The Health and Sport Committee recommends Public Services Reform (The Scottish Public Services Ombudsman) (Healthcare Whistleblowing) Order 2020 - Statement of Principles be approved.

