EXECUTIVE NOTE

DRAFT SSI: THE SCOTTISH PUBLIC SERVICES OMBUDSMAN ACT 2002 (AMENDMENT) ORDER 2009
SSI/2009/

The above instrument is proposed to be made in exercise of powers conferred upon Her Majesty by section 3(2)(b) of the Scottish Public Services Ombudsman Act 2002 ("the 2002 Act"). The instrument is subject to affirmative resolution procedure. In accordance with section 24 of the 2002 Act, no recommendation to make an Order in Council can be made until it has been approved by the Scottish Parliament.

Policy Objectives

The purpose of this instrument is to remove the Criminal Injuries Compensation Appeals Panel ("CICAP") from the list of authorities liable for investigation by the Scottish Public Services Ombudsman ("the Ombudsman"), by amending Part 2 of Schedule 2 to the 2002 Act. The need to remove the entry for CICAP in this list is a consequence of the transfer of CICAP's functions to the First-tier Tribunal under the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act").

Background

Under section 2 of the 2002 Act the Ombudsman has the power to investigate any matter, whenever arising, if:

- the matter consists of action taken by or on behalf of a person liable to investigation under the 2002 Act;
- the matter is one which the Ombudsman is entitled to investigate; and
- a complaint in respect of the matter has been duly made to the Ombudsman.

Schedule 2 of the 2002 Act lists the persons who are liable for investigation by the Ombudsman.

Section 3(2) confers on Her Majesty the power to amend Part 2 of Schedule 2 to the 2002 Act to (a) modify, (b) remove or (c) add an entry to it by an Order in Council.

With the coming into force of the 2007 Act various individual tribunals in England and Wales, and those that are UK-wide, are being abolished, and their functions transferred to the new First-tier Tribunal and Upper Tribunal. One of the bodies affected by this change is CICAP, which was abolished in November 2008, and its functions transferred to the First-tier Tribunal.

The 2002 Act therefore needs to be amended to reflect the abolition of CICAP, as the body no longer exists. The UK Tribunals Service, which provides administrative support for the First-tier and Upper Tribunals, comes within the jurisdiction of the UK Parliamentary and Health Service Ombudsman.

Consultation

We have consulted with the office of the Ombudsman about the change implemented by this instrument, and they are content with our approach.

Financial Effects

We foresee no impact on costs to the Scottish Government, local government, or business.

Regulatory Impact Assessment

No Regulatory Impact Assessment has been prepared for this Order as we believe the change will have no impact on business.

Scottish Government
Constitution, Law and Courts Directorate, April 2009