

ELIZABETH II

c. 10



# Public Services Ombudsman (Wales) Act 2005

## 2005 CHAPTER 10

An Act to establish and make provision about the office of Public Services Ombudsman for Wales; to make provision about the functions of the Public Services Ombudsman for Wales; to make provision about compensation; to abolish the Commission for Local Administration in Wales and the offices of Welsh Administration Ombudsman, Health Service Commissioner for Wales and Social Housing Ombudsman for Wales; and for connected purposes. [7th April 2005]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART 1

#### THE PUBLIC SERVICES OMBUDSMAN FOR WALES

#### **1 The Public Services Ombudsman for Wales**

- (1) There is to be a Public Services Ombudsman for Wales or Ombwdsmon Gwasanaethau Cyhoeddus Cymru (in this Act referred to as “the Ombudsman”).
- (2) Schedule 1 makes further provision about the Ombudsman.

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## PART 2

### INVESTIGATION OF COMPLAINTS

#### *Power of investigation*

#### **2 Power of investigation**

- (1) The Ombudsman may investigate a complaint in respect of a matter if—
  - (a) the complaint has been duly made or referred to him, and
  - (b) the matter is one which he is entitled to investigate under sections 7 to 11.
- (2) A complaint is “duly made” to the Ombudsman if (but only if)—
  - (a) it is made by a person who is entitled under section 4 to make the complaint to the Ombudsman, and
  - (b) the requirements of section 5 are met in respect of it.
- (3) A complaint is “duly referred” to the Ombudsman if (but only if)—
  - (a) it is referred to him by a listed authority, and
  - (b) the requirements of section 6 are met in respect of it.
- (4) The Ombudsman may investigate a complaint in respect of a matter even if the requirements of section 5(1) or (as the case may be) section 6(1)(b) or (d) are not met in respect of the complaint, if—
  - (a) the matter is one which he is entitled to investigate under sections 7 to 11, and
  - (b) he thinks it reasonable to do so.
- (5) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.
- (6) The Ombudsman may take any action which he thinks may assist in making a decision under subsection (5).
- (7) The Ombudsman may begin or continue an investigation into a complaint even if the complaint, or the referral of the complaint, has been withdrawn.

#### **3 Alternative resolution of complaints**

- (1) The Ombudsman may take any action he thinks appropriate with a view to resolving a complaint which he has power to investigate under section 2.
- (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.
- (3) Any action under this section must be taken in private.

#### *Complaints*

#### **4 Who can complain**

- (1) The persons entitled to make a complaint to the Ombudsman are—

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- (a) a member of the public (in this Act referred to as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship in consequence of a matter which the Ombudsman is entitled to investigate under sections 7 to 11;
  - (b) a person authorised by the person aggrieved to act on his behalf;
  - (c) if the person aggrieved is not capable of authorising a person to act on his behalf (for example because he has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved.
- (2) “Member of the public” means any person other than a listed authority acting in its capacity as such.
- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint to him.

## **5 Requirements: complaints made to the Ombudsman**

- (1) The requirements mentioned in section 2(2)(b) are that—
- (a) the complaint must be made in writing;
  - (b) the complaint must be made to the Ombudsman before the end of the period of one year starting on the day on which the person aggrieved first has notice of the matters alleged in the complaint.
- (2) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

## **6 Requirements: complaints referred to the Ombudsman**

- (1) The requirements mentioned in section 2(3)(b) are that—
- (a) the complaint must have been made to the listed authority by a person who would have been entitled under section 4 to make the complaint to the Ombudsman;
  - (b) the complaint must have been made to the listed authority before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matters alleged in the complaint;
  - (c) the complaint must be referred to the Ombudsman in writing;
  - (d) the complaint must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the listed authority.
- (2) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.

### *Matters which may be investigated*

## **7 Matters which may be investigated**

- (1) The matters which the Ombudsman is entitled to investigate are—
- (a) alleged maladministration by a listed authority in connection with relevant action;
  - (b) an alleged failure in a relevant service provided by a listed authority;
  - (c) an alleged failure by a listed authority to provide a relevant service.

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- (2) Subsection (1) is subject to sections 8 to 11.
- (3) Relevant action is—
- (a) in the case of a listed authority which is a family health service provider in Wales or an independent provider in Wales, action taken by the authority in connection with the provision of a relevant service;
  - (b) in the case of a listed authority which is a social landlord in Wales or a Welsh health service body other than the Assembly, action taken by the authority in the discharge of any of its functions;
  - (c) in the case of a listed authority which is a person with functions conferred by regulations made under section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43), action taken by the authority in the discharge of any of those functions;
  - (d) in the case of a listed authority which is a listed authority by virtue of an order under section 28(2) adding it to Schedule 3, action taken by the authority in the discharge of any of its specified functions;
  - (e) in any other case, action taken by the authority in the discharge of any of its administrative functions.
- (4) A relevant service is—
- (a) in the case of a listed authority which is a family health service provider in Wales, any of the family health services which the authority had, at the time of the action which is the subject of the complaint, entered into a contract, undertaken, or made arrangements, to provide;
  - (b) in the case of a listed authority which is an independent provider in Wales, any service which the authority had, at that time, made arrangements with a Welsh health service body or a family health service provider in Wales to provide;
  - (c) in the case of a listed authority falling within subsection (3)(c), any service which it was, at that time, the authority's function to provide in the discharge of any of the functions mentioned in that paragraph;
  - (d) in the case of a listed authority falling within subsection (3)(d), any service which it was, at that time, the authority's function to provide in the discharge of any of its specified functions;
  - (e) in any other case, any service which it was, at that time, the authority's function to provide.
- (5) For the purposes of subsections (3)(d) and (4)(d), a listed authority's specified functions are the functions specified in relation to the authority in an order under section 28(2) as falling within the Ombudsman's remit.
- (6) An administrative function which may be discharged by a person who is a member of the administrative staff of a relevant tribunal is to be treated as an administrative function of a listed authority for the purposes of subsection (3) if—
- (a) the person was appointed by the authority, or
  - (b) the person was appointed with the consent of the authority (whether as to remuneration and other terms and conditions of service or otherwise).

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## **8 Exclusion: matters not relating to Wales**

- (1) The Ombudsman may not investigate a matter arising in connection with the discharge by a listed authority of any of the authority's functions otherwise than in relation to Wales.
- (2) Subsection (1) does not apply in relation to the Assembly.
- (3) To the extent that a function of a listed authority is discharged in relation to the Welsh language or any other aspect of Welsh culture, it is to be regarded for the purposes of subsection (1) as discharged in relation to Wales.

## **9 Exclusion: other remedies**

- (1) The Ombudsman may not investigate a matter if the person aggrieved has or had—
  - (a) a right of appeal, reference or review to or before a tribunal constituted under an enactment or by virtue of Her Majesty's prerogative,
  - (b) a right of appeal to a Minister of the Crown or the Assembly, or
  - (c) a remedy by way of proceedings in a court of law.
- (2) But subsection (1) does not apply if the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person to resort, or to have resorted, to the right or remedy.
- (3) The Ombudsman may investigate a matter only if he is satisfied that—
  - (a) the matter has been brought to the attention of the listed authority to which it relates by or on behalf of the person aggrieved, and
  - (b) the authority has been given a reasonable opportunity to investigate and respond to it.
- (4) But subsection (3) does not prevent the Ombudsman from investigating a matter if he is satisfied that it is reasonable in the particular circumstances for him to investigate the matter despite the fact that the requirements of that subsection have not been met.

## **10 Other excluded matters**

- (1) The Ombudsman may not investigate a matter specified in Schedule 2.
- (2) The Assembly may by order amend Schedule 2 by—
  - (a) adding an entry;
  - (b) removing an entry;
  - (c) changing an entry.
- (3) Before making an order under subsection (2), the Assembly must consult the Ombudsman.
- (4) Subsection (1) does not prevent the Ombudsman from investigating action of a listed authority in operating a procedure established to examine complaints or review decisions.

## **11 Decisions taken without maladministration**

- (1) The Ombudsman may not question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion.

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- (2) Subsection (1) does not apply to the merits of a decision to the extent that the decision was taken in consequence of the exercise of professional judgement which appears to the Ombudsman to be exercisable in connection with the provision of health or social care.

*Decisions not to investigate etc.*

**12 Decisions not to investigate or to discontinue investigation**

- (1) If the Ombudsman decides under section 2(5)—
- (a) not to begin an investigation into a complaint in respect of a listed authority, or
  - (b) to discontinue such an investigation,
- he must prepare a statement of the reasons for his decision.
- (2) The Ombudsman must send a copy of the statement to—
- (a) the person who made the complaint, and
  - (b) the listed authority.
- (3) The Ombudsman may send a copy of the statement to any other persons he thinks appropriate.
- (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so.
- (5) The Ombudsman may supply a copy of a statement published under subsection (4), or any part of such a statement, to any person who requests it.
- (6) The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under subsection (5).
- (7) If a statement prepared under subsection (1)—
- (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the statement,
- that information must not be included in a version of the statement sent to a person under subsection (2) or (3) or published under subsection (4), subject to subsection (8).
- (8) Subsection (7) does not apply in relation to a version of the statement if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the statement.
- (9) If the Ombudsman would otherwise send a copy of a statement (or part of a statement) to the Assembly under subsection (2), (3) or (5), he must send the copy to the Assembly First Secretary instead.

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### *Investigation procedure and evidence*

#### **13 Investigation procedure**

- (1) If the Ombudsman conducts an investigation into a complaint in respect of a listed authority, he must—
  - (a) give the listed authority an opportunity to comment on any allegations contained in the complaint;
  - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on any allegations relating to that person.
- (2) An investigation must be conducted in private.
- (3) Subject to subsections (1) and (2), the procedure for conducting an investigation is to be such as the Ombudsman thinks appropriate in the circumstances of the case.
- (4) In particular, the Ombudsman may—
  - (a) make such inquiries as he thinks appropriate;
  - (b) determine whether any person may be represented in the investigation by counsel, solicitor or otherwise.
- (5) The Ombudsman may pay to the person who made the complaint and to any other person who attends or supplies information for the purposes of the investigation—
  - (a) such sums as he may determine in respect of expenses properly incurred by them, and
  - (b) such allowances as he may determine by way of compensation for the loss of their time,subject to such conditions as he may determine.
- (6) The conduct of an investigation in respect of a listed authority does not affect—
  - (a) the validity of any action taken by the listed authority, or
  - (b) any power or duty of the listed authority to take further action with respect to any matter under investigation.

#### **14 Information, documents, evidence and facilities**

- (1) For the purposes of an investigation the Ombudsman may require a person he thinks is able to supply information or produce a document relevant to the investigation to do so.
- (2) For the purposes of an investigation the Ombudsman has the same powers as the High Court in respect of—
  - (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
  - (b) the production of documents.
- (3) For the purposes of an investigation the Ombudsman may require a person he thinks is able to supply information or produce a document relevant to the investigation to provide any facility he may reasonably require.
- (4) Subject to subsection (6), no person is to be compelled for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.

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- (5) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment or rule of law, is to apply to the disclosure of information for the purposes of an investigation.
- (6) The Crown is not entitled in relation to an investigation to any privilege in respect of the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.

## **15 Obstruction and contempt**

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, he may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
  - (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
  - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) But the condition in subsection (2) is not met in relation to a person merely because he has taken action such as is mentioned in section 13(6).
- (4) If the Ombudsman issues a certificate under subsection (1), the High Court may inquire into the matter.
- (5) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with him in any manner in which it could have dealt with him if he had committed contempt in relation to the High Court.

### *Reports of investigations*

## **16 Reports of investigations**

- (1) The Ombudsman must, after conducting an investigation into a complaint in respect of a listed authority—
  - (a) prepare a report on his findings, and
  - (b) send a copy of the report to all the appropriate persons.

This is subject to section 21.

- (2) The appropriate persons are—
  - (a) the person who made the complaint;
  - (b) the listed authority;
  - (c) any other person who is alleged in the complaint to have taken or authorised the action complained of;
  - (d) if the listed authority is a family health service provider in Wales—
    - (i) any Local Health Board with whom the authority had, at the time of the action which is the subject of the complaint, entered into a contract to provide the family health services which are under investigation;
    - (ii) any person to whom the authority had, at that time, undertaken to provide those services;



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- (iii) any person with whom the authority had, at that time, made arrangements for the provision of those services;
  - (e) if the listed authority is an independent provider in Wales—
    - (i) any Welsh health service body with whom the authority had, at the time of the action which is the subject of the complaint, made arrangements for the provision of the services under investigation;
    - (ii) any family health service provider in Wales with whom the authority had, at that time, made arrangements for the provision of those services;
  - (f) the Assembly First Secretary (unless the listed authority is itself the Assembly or is a local authority in Wales).
- (3) The Ombudsman may send a copy of the report to any other persons he thinks appropriate.
- (4) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so.
- (5) The Ombudsman may supply a copy of a report published under subsection (4), or any part of such a report, to any person who requests it.
- (6) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (5).
- (7) If a report prepared under this section—
  - (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report,that information must not be included in a version of the report sent to a person under subsection (1)(b) or (3) or published under subsection (4), subject to subsection (8).
- (8) Subsection (7) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.
- (9) If the Ombudsman would otherwise send a copy of a report (or part of a report) to the Assembly under subsection (1)(b), (3) or (5), he must send the copy to the Assembly First Secretary instead.

## **17 Publicising reports**

- (1) If an investigation is conducted in respect of a listed authority and the authority receives a copy of a report under section 16(1)(b), the authority must make copies of that version of the report available for a period of at least three weeks—
  - (a) at one or more of the authority's offices, and
  - (b) if the authority has a website, on the website.
- (2) Throughout that period of three weeks, any person may—

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- (a) inspect the copy of the report at the office or offices concerned at any reasonable time without payment;
  - (b) make a copy of the report or any part of it at any reasonable time without payment;
  - (c) require the authority to supply him with a copy of the report or any part of it, on payment of a reasonable sum if requested;
  - (d) if the authority has a website, view the copy of the report on the website without payment.
- (3) Not later than two weeks after the copy of the report is received by the listed authority it must ensure that a notice is published in a newspaper circulating in the part of Wales in which the matter which is the subject of the report arose.
- (4) The notice must specify—
- (a) the date on which the period of three weeks referred to in subsection (1) will begin,
  - (b) the office or offices at which a copy of the report can be inspected, and
  - (c) the address of the authority’s website (if any).
- (5) The Ombudsman may give directions to listed authorities with regard to the discharge of their functions under this section.
- (6) Directions under subsection (5) may relate—
- (a) to a particular listed authority in respect of a particular report, or
  - (b) generally to the discharge of functions under this section by all or any listed authorities.
- (7) A person commits an offence if—
- (a) he wilfully obstructs a person in the exercise of a right conferred by subsection (2)(a), (b) or (d), or
  - (b) he refuses to comply with a requirement under subsection (2)(c).
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (9) The Ombudsman may direct that subsections (1) to (4) are not to apply in relation to a particular report.
- (10) In deciding whether to give a direction under subsection (9), the Ombudsman must take into account—
- (a) the public interest,
  - (b) the interests of the person aggrieved, and
  - (c) the interests of any other persons he thinks appropriate.

## **18 Publicising reports: health care providers**

- (1) If an investigation is conducted in respect of a listed authority which is a family health service provider in Wales, section 17 has effect with the modifications specified in subsections (2) to (4).
- (2) For subsection (1) substitute—

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“(1) A person who has received a copy of a report under section 16 by virtue of section 16(2)(d) must make copies of the report available for a period of at least three weeks—

- (a) at one or more of the person’s offices, and
- (b) if the person has a website, on the website.”

- (3) The references to the listed authority are to be taken to be references to that person.
- (4) The references to listed authorities, or to a particular listed authority, are to be taken to be references to persons, or a particular person, of the same description as that person.
- (5) If an investigation is conducted in respect of a listed authority which is an independent provider in Wales, section 17 has effect with the modifications specified in subsections (6) to (8).
- (6) For subsection (1) substitute—

“(1) A person who has received a copy of a report under section 16 by virtue of section 16(2)(e) must make copies of the report available for a period of at least three weeks—

- (a) at one or more of the person’s offices, and
- (b) if the person has a website, on the website.”

- (7) The references to the listed authority are to be taken to be references to that person.
- (8) The references to listed authorities, or to a particular listed authority, are to be taken to be references to persons, or a particular person, of the same description as that person.

## **19 Action following receipt of a report**

- (1) This section applies if, in a report under section 16 of an investigation in respect of a listed authority, the Ombudsman concludes that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated.
- (2) The listed authority must consider the report and notify the Ombudsman before the end of the permitted period of—
  - (a) the action it has taken or proposes to take in response to it, and
  - (b) the period before the end of which it proposes to have taken that action (if it has not already done so).
- (3) The permitted period is—
  - (a) the period of one month beginning on the date on which the authority receives the report, or
  - (b) any longer period specified by the Ombudsman in writing.

## **20 Non-action following receipt of a report**

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a listed authority, he may issue a certificate to that effect to the High Court.
- (2) The condition is that the listed authority has wilfully disregarded his report without lawful excuse.

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## **21 Reports: alternative procedure**

- (1) This section applies if, after the Ombudsman has conducted an investigation into a complaint in respect of a listed authority—
  - (a) he concludes that the person aggrieved has not sustained injustice or hardship in consequence of the matter investigated, and
  - (b) he is satisfied that the public interest does not require sections 16 to 19 to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation into a complaint in respect of a listed authority—
  - (a) he concludes that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated,
  - (b) the listed authority agrees to implement, before the end of the permitted period, any recommendations he makes, and
  - (c) he is satisfied that the public interest does not require sections 16 to 19 to apply.
- (3) The permitted period is—
  - (a) a period agreed between the Ombudsman, the listed authority and the person who made the complaint, or
  - (b) if the Ombudsman thinks that no such agreement can be reached, the period specified by him in writing.
- (4) The Ombudsman may decide to prepare a report on his findings under this section instead of under section 16.
- (5) If the Ombudsman decides to prepare a report under this section—
  - (a) sections 16 to 19 do not apply;
  - (b) he must send a copy of the report to—
    - (i) the person who made the complaint;
    - (ii) the listed authority;
  - (c) he may send a copy of the report to any other persons he thinks appropriate.
- (6) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so.
- (7) The Ombudsman may supply a copy of a report published under subsection (6), or any part of such a report, to any person who requests it.
- (8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).
- (9) If a report prepared under this section—
  - (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report,
 that information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6), subject to subsection (10).
- (10) Subsection (9) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate,

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the Ombudsman considers it to be in the public interest to include that information in that version of the report.

- (11) If the Ombudsman would otherwise send a copy of a report (or part of a report) to the Assembly under subsection (5) or (7), he must send the copy to the Assembly First Secretary instead.

### *Special reports*

## **22 Special reports**

- (1) The Ombudsman may prepare a report under this section (a “special report”) if subsection (2), (4) or (6) applies.
- (2) This subsection applies if, in a report under section 16, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated and—
- (a) the Ombudsman has not received the notification required under section 19 before the end of the period permitted under that section,
  - (b) he has received that notification but he is not satisfied with—
    - (i) the action which the listed authority has taken or proposes to take, or
    - (ii) the period before the end of which it proposes to have taken that action, or
  - (c) he has received that notification but he is not satisfied that the listed authority has, before the end of the permitted period, taken the action it proposed to take.
- (3) The permitted period for the purposes of subsection (2)(c) is—
- (a) the period referred to in section 19(2)(b), or
  - (b) any longer period specified by the Ombudsman in writing.
- (4) This subsection applies if the Ombudsman—
- (a) has prepared a report under section 21 by virtue of subsection (2) of that section, and
  - (b) is not satisfied that the listed authority has implemented his recommendations before the end of the permitted period.
- (5) The permitted period for the purposes of subsection (4)(b) is—
- (a) the period referred to in section 21(2)(b), or
  - (b) any longer period specified by the Ombudsman in writing.
- (6) This subsection applies if—
- (a) a complaint in respect of a listed authority has been resolved under section 3,
  - (b) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship in consequence of the matter which is the subject of the complaint,
  - (c) the listed authority has agreed to take particular action before the end of a particular period, and
  - (d) the Ombudsman is not satisfied that the listed authority has taken that action before the end of the permitted period.
- (7) The permitted period for the purposes of subsection (6)(d) is—
- (a) the period referred to in subsection (6)(c), or

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- (b) any longer period specified by the Ombudsman in writing.
- (8) A special report must—
  - (a) set out the facts on the basis of which subsection (2), (4) or (6) applies, and
  - (b) make such recommendations as the Ombudsman thinks fit with respect to the action which, in his opinion, should be taken—
    - (i) to remedy the injustice or hardship to the person aggrieved, and
    - (ii) to prevent similar injustice or hardship being caused in the future.
- (9) The Ombudsman must send a copy of a special report—
  - (a) if the special report is prepared because subsection (2) applies, to each person to whom a copy of the report under section 16 was sent under section 16(1)(b);
  - (b) if the special report is prepared because subsection (4) or (6) applies, to the person who made the complaint and the listed authority.
- (10) The Ombudsman may send a copy of a special report to any other persons he thinks appropriate.

### **23 Special reports: supplementary**

- (1) The Ombudsman may—
  - (a) publish a special report;
  - (b) supply a copy of the published report or any part of it to any person who requests it.
- (2) The Ombudsman may charge a reasonable fee for supplying a copy of a report (or part of a report) under subsection (1)(b).
- (3) The listed authority in respect of which a special report is made must reimburse the Ombudsman for the cost of publishing a special report if requested to do so by the Ombudsman.
- (4) If a special report—
  - (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report,
 that information must not be included in a version of the report sent to a person under section 22(9) or (10) or published under subsection (1) of this section, subject to subsection (5).
- (5) Subsection (4) does not apply in relation to a version of the special report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the special report.
- (6) If the Ombudsman would otherwise send a copy of a special report (or part of a special report) to the Assembly under section 22(9) or (10) or subsection (1) of this section, he must send the copy to the Assembly First Secretary instead.
- (7) Sections 17 and 18 (publicising reports under section 16) apply in relation to a special report as they apply in relation to a report under section 16.

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## **24 Special reports relating to the Assembly**

- (1) This section applies if a special report is made in a case where the complaint was made in respect of the Assembly.
- (2) The Assembly First Secretary must—
  - (a) lay a copy of the report before the Assembly, and
  - (b) unless action to the satisfaction of the Ombudsman has been taken or proposed, give the Assembly notice of his intention to move that the Assembly resolve to approve the recommendations contained in it.
- (3) The standing orders of the Assembly must make provision for any motion of which notice has been given pursuant to subsection (2) to be moved as soon as is reasonably practicable, unless action to the satisfaction of the Ombudsman has been taken or proposed.

### *Consultation and co-operation*

## **25 Consultation and co-operation with other ombudsmen**

- (1) This section applies if, in making a decision under section 2(5) or conducting an investigation, the Ombudsman forms the opinion that any matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman mentioned in subsection (7).
- (2) The Ombudsman must consult that ombudsman about the matter.
- (3) The Ombudsman may co-operate with that ombudsman in relation to the matter.
- (4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to any matter the subject of the complaint or investigation, including in particular—
  - (a) the conduct of an investigation into the complaint;
  - (b) the form, content and publication of a report of the investigation.
- (5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may—
  - (a) conduct a joint investigation into the matter;
  - (b) prepare a joint report in relation to the investigation;
  - (c) publish the joint report.
- (6) Subsection (5) does not apply if the ombudsman consulted under subsection (2) is the Scottish Public Services Ombudsman.
- (7) The ombudsmen referred to in subsection (1) are—
  - (a) the Parliamentary Commissioner for Administration;
  - (b) the Health Service Commissioner for England;
  - (c) a Local Commissioner;
  - (d) the Scottish Public Services Ombudsman;
  - (e) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the Housing Act 1996 (c. 52);
  - (f) the Children's Commissioner for Wales.

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- (8) The Assembly may by order amend subsection (7) by—
- (a) adding a person;
  - (b) omitting a person;
  - (c) changing the description of a person.
- (9) An order under subsection (8) may add a person to subsection (7) only if the person appears to the Assembly to have functions relating to the investigation of complaints.

### *Disclosure*

## **26 Disclosure of information**

- (1) The information to which this section applies is—
- (a) information obtained by the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions—
    - (i) in deciding whether to begin an investigation,
    - (ii) in the course of an investigation, or
    - (iii) in resolving a complaint under section 3;
  - (b) information obtained from an ombudsman mentioned in section 25(7) by virtue of any provision of section 25 or a corresponding provision in an enactment relating to any of those ombudsmen;
  - (c) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (c. 36) (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except—
- (a) for the purposes of deciding whether to begin an investigation;
  - (b) for the purposes of an investigation;
  - (c) for the purposes of resolving a complaint under section 3;
  - (d) for the purposes of a statement or report made in relation to a complaint or investigation;
  - (e) for the purposes of any provision of section 25;
  - (f) for the purposes of proceedings for—
    - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed by the Ombudsman, a member of his staff or other person acting on his behalf or assisting him in the discharge of any of his functions;
    - (ii) an offence of perjury alleged to have been committed in the course of an investigation;
  - (g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);
  - (h) for the purposes of proceedings under section 15 (obstruction and contempt);
  - (i) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
  - (j) in the case of information to which subsection (3) applies, to the Information Commissioner.



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- (3) This subsection applies to information if it appears to the Ombudsman to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
  - (b) the commission of an offence mentioned in subsection (5).
- (4) The enactments are—
- (a) Part 5 of the Data Protection Act 1998 (c. 29) (enforcement);
  - (b) section 48 of the Freedom of Information Act 2000 (c. 36) (practice recommendations);
  - (c) Part 4 of that Act (enforcement).
- (5) The offences are those under—
- (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of warrant);
  - (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by him as mentioned in subsection (1)(a) or (b).

## **27 Disclosure prejudicial to safety of State or contrary to public interest**

- (1) A Minister of the Crown may give notice to the Ombudsman with respect to—
- (a) any document or information specified in the notice, or
  - (b) any class of document or information so specified,
- that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

### *Listed authorities*

## **28 Listed authorities**

- (1) The persons specified in Schedule 3 are listed authorities for the purposes of this Act.
- (2) The Assembly may by order amend Schedule 3 by—
- (a) adding a person;
  - (b) omitting a person;
  - (c) changing the description of a person.
- (3) An order under subsection (2) adding a person to Schedule 3 may provide for this Act to apply to the person with the modifications specified in the order.

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- (4) Before making an order under subsection (2), the Assembly must consult the Ombudsman and any other persons it thinks appropriate.
- (5) Sections 29 and 30 contain further restrictions on the power in subsection (2).

## **29 Restrictions on power to amend Schedule 3**

- (1) An order under section 28(2) may not omit the Assembly from Schedule 3.
- (2) An order under section 28(2) may add a person to Schedule 3 only if—
  - (a) the person has functions dischargeable in relation to Wales or a part of Wales (whether or not the functions are also dischargeable otherwise than in relation to Wales),
  - (b) all or some of the person’s functions are in a field in which the Assembly has functions, and
  - (c) the person falls within subsection (3), (4) or (5).
- (3) A person falls within this subsection if—
  - (a) it is a body established by or under an enactment or by virtue of Her Majesty’s prerogative or in any other way by a Minister of the Crown, a government department, the Assembly or another listed authority,
  - (b) it is a body wholly or partly constituted by appointment made by Her Majesty, a Minister of the Crown, a government department, the Assembly or another listed authority, and
  - (c) at least half of its expenditure on the discharge of its functions in relation to Wales is met directly from payments made by the Assembly or other listed authorities.
- (4) A person falls within this subsection if—
  - (a) it is a body established by or under an enactment, and
  - (b) it has power to issue a precept or a levy.
- (5) A person falls within this subsection if—
  - (a) it appears to the Assembly that the person discharges functions of a public nature, and
  - (b) at least half of the person’s expenditure on the discharge of those functions in relation to Wales is met directly or indirectly from payments by the Assembly or other listed authorities.
- (6) An order under section 28(2) may not add to Schedule 3—
  - (a) a Special Health Authority discharging functions only or mainly in England;
  - (b) a person who carries on under national ownership an industry or undertaking or part of an industry or undertaking.

## **30 Provisions in orders adding persons to Schedule 3**

- (1) If the Assembly proposes to make an order under section 28(2) adding a person to Schedule 3, it must also specify in the order—
  - (a) whether all or only some of the person’s functions are to fall within the remit of the Ombudsman under this Part;

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- (b) if only some of the person's functions are to fall within the remit of the Ombudsman under this Part, which those functions are.
- (2) If the person is to be added to Schedule 3 on the basis that the person falls within section 29(3) or (4), the order may specify a function under subsection (1) only if the function is in a field in which the Assembly has functions.
- (3) If the person is to be added to Schedule 3 on the basis that the person falls within section 29(5), the order may specify a function under subsection (1) only if—
  - (a) the function is in a field in which the Assembly has functions, and
  - (b) the function appears to the Assembly to be a function of a public nature.
- (4) The order may specify all a person's functions under subsection (1) only if all the person's functions satisfy the requirements of subsection (2) or (as the case may be) subsection (3).

#### *Miscellaneous*

### **31 Power to issue guidance**

- (1) The Ombudsman may issue to one or more listed authorities such guidance about good administrative practice as he thinks appropriate.
- (2) Before issuing guidance under this section the Ombudsman must consult such listed authorities, or persons appearing to him to represent them, as he thinks appropriate.
- (3) If guidance issued under this section is applicable to a listed authority, the authority must have regard to the guidance in discharging its functions.
- (4) In conducting an investigation in respect of a listed authority, the Ombudsman may have regard to the extent to which the authority has complied with any guidance issued under this section which is applicable to the authority.
- (5) The Ombudsman may publish any guidance issued under this section in any manner that he thinks appropriate, including in particular by putting the guidance in an annual or extraordinary report.
- (6) Guidance issued under this section may contain different provision for different purposes.
- (7) Subject to subsection (8), guidance issued under this section must not—
  - (a) mention the name of any person other than the listed authorities to which it is applicable or a listed authority in respect of which a complaint has been made or referred to the Ombudsman under this Act, or
  - (b) include any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the guidance.
- (8) Subsection (7) does not apply if, after taking account of the interests of any persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in the guidance.

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### **32 Protection from defamation claims**

For the purposes of the law of defamation, the following are absolutely privileged—

- (a) the publication of a matter by the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions, in the discharge of any of the Ombudsman’s functions under this Act;
- (b) the publication of a matter by a person in the discharge of functions under section 17;
- (c) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Part, in communications between—
  - (i) a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and
  - (ii) the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions;
- (d) the publication of any matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Part, in communications between a person and an Assembly member;
- (e) the publication of any matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Part, in communications between the person and the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions.

### **33 Publicity for complaints procedures**

- (1) A listed authority must take reasonable steps to provide information to the public about —
  - (a) the right to make a complaint to the Ombudsman in respect of the authority,
  - (b) the right of the authority to refer a complaint to the Ombudsman,
  - (c) the time limits for making and referring complaints to the Ombudsman, and
  - (d) how to contact the Ombudsman.
- (2) In particular, information about the matters specified in subsection (1) must be included in or provided with—
  - (a) any document published by the listed authority which contains information about—
    - (i) relevant services provided by the authority to members of the public, or
    - (ii) the procedures of the authority for dealing with complaints, and
  - (b) any document issued by the listed authority in responding to a complaint made to it by a person who might be entitled to make the complaint to the Ombudsman.
- (3) The Ombudsman may issue guidance to listed authorities with respect to the discharge of their functions under this section.
- (4) A listed authority must have regard to guidance given by the Ombudsman under subsection (3).
- (5) “Relevant service” has the meaning given in section 7.

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### **34 Compensation for the person aggrieved**

- (1) This section applies if—
  - (a) a complaint in respect of a matter is made or referred to the Ombudsman, and
  - (b) the complaint is one which the Ombudsman has power to investigate under section 2.
- (2) The listed authority in respect of which the complaint is made may make a payment to, or provide any other benefit for, the person aggrieved in respect of the matter which is the subject of the complaint.
- (3) It is immaterial for the purposes of this section that the Ombudsman has decided not to investigate the complaint, has discontinued an investigation of the complaint, has not yet completed an investigation of the complaint or has not upheld the complaint.
- (4) The power in subsection (2) does not affect any other power of the listed authority to make the payment or provide the benefit.

## **PART 3**

### **MISCELLANEOUS AND GENERAL**

#### *Conduct of local government members and employees*

### **35 Conduct of local government members and employees**

Schedule 4 (which confers functions on the Ombudsman in relation to the conduct of local government members and employees) has effect.

#### *Abolition of existing bodies and offices*

### **36 Abolition of existing bodies and offices**

- (1) The Commission for Local Administration in Wales is abolished.
- (2) The office of Welsh Administration Ombudsman is abolished.
- (3) The office of Health Service Commissioner for Wales is abolished.
- (4) The office of Social Housing Ombudsman for Wales is abolished.

### **37 Transfer of property, staff etc.**

Schedule 5 (which provides for the transfer of property, staff etc. to the Ombudsman) has effect.

### **38 Undetermined complaints**

- (1) Subsection (2) applies if—
  - (a) a complaint has been made or referred to an existing Welsh ombudsman before the commencement date, and
  - (b) the complaint has not been determined by that ombudsman before that date.

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- (2) On and after the commencement date, the relevant existing enactment continues to apply for the purposes of the complaint despite the other provisions of this Act.
- (3) Subsection (4) applies if—
- (a) a complaint could (but for the other provisions of this Act) have been made or referred to an existing Welsh ombudsman, and
  - (b) the complaint relates to action taken by a person before the commencement date.
- (4) On and after the commencement date, the relevant existing enactment continues to apply for the purposes of enabling the complaint to be made or referred, and for the purposes of the complaint if made or referred, despite the other provisions of this Act.
- (5) As applied by subsections (2) and (4), the relevant existing enactment has effect as if for references to the existing Welsh ombudsman in relation to which that enactment applies there were substituted references to the Ombudsman.
- (6) In this section—
- “the commencement date” means the date on which this section comes into force;
- “existing Welsh ombudsman” means—
- (a) the Welsh Administration Ombudsman;
  - (b) the Health Service Commissioner for Wales;
  - (c) a Local Commissioner who is a member of the Commission for Local Administration in Wales;
  - (d) the Social Housing Ombudsman for Wales;
- “the relevant existing enactment”—
- (a) if the relevant existing Welsh ombudsman is the Welsh Administration Ombudsman, means Schedule 9 to the Government of Wales Act 1998 (c. 38);
  - (b) if the relevant existing Welsh ombudsman is the Health Service Commissioner for Wales, means the Health Service Commissioners Act 1993 (c. 46);
  - (c) if the relevant existing Welsh ombudsman is a Local Commissioner, means Part 3 of the Local Government Act 1974 (c. 7);
  - (d) if the relevant existing Welsh ombudsman is the Social Housing Ombudsman for Wales, means Part 1 of the Housing Act 1996 (c. 52);
- “the relevant existing Welsh ombudsman”—
- (a) in relation to a complaint within subsection (1), means the existing Welsh ombudsman to whom the complaint was made or referred;
  - (b) in relation to a complaint within subsection (3), means the existing Welsh ombudsman to whom the complaint could have been made or referred.

### *General*

## **39 Amendments and repeals**

- (1) Schedule 6 (which contains amendments consequential on this Act) has effect.
- (2) Schedule 7 (which contains repeals) has effect.

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#### **40 Commencement**

The preceding provisions of this Act come into force in accordance with provision made by the Assembly by order.

#### **41 Interpretation**

(1) In this Act—

“act” and “action” include a failure to act (and related expressions must be construed accordingly);

“annual report” has the meaning given in paragraph 14 of Schedule 1;

“Assembly Cabinet” means the committee of the Assembly established under section 56(1) of the Government of Wales Act 1998 (c. 38);

“the Assembly” means the National Assembly for Wales;

“co-opted member”, in relation to an authority, means a person who is not a member of the authority but who—

- (a) is a member of a committee or sub-committee of the authority, or
- (b) is a member of, and represents the authority on, a joint committee on which the authority is represented or a sub-committee of such a committee,

and who is entitled to vote on any question which falls to be decided at a meeting of the committee or sub-committee;

“extraordinary report” has the meaning given in paragraph 14 of Schedule 1;

“family health service provider in Wales” means—

- (a) a person who, at the time of action which is the subject of a complaint under this Act, provided services under a contract entered into by that person with a Local Health Board under section 28Q of the National Health Service Act 1977 (c. 49);
- (b) a person who, at that time, had undertaken to provide in Wales general ophthalmic services or pharmaceutical services under Part 2 of that Act;
- (c) an individual who, at that time, provided in Wales primary medical or dental services in accordance with arrangements made under section 28C of that Act (except as an employee of, or otherwise on behalf of, a Welsh health service body or an independent provider in Wales);
- (d) an individual who, at that time, had undertaken to provide in Wales general dental services under Part 2 of that Act;

“family health services” means services mentioned in any of paragraphs (a) to (d) of the definition of “family health service provider in Wales”;

“financial year” means the 12 months ending on 31 March;

“independent provider in Wales” means a person who, at the time of action which is the subject of a complaint under this Act—

- (a) provided services of any kind in Wales under arrangements with a Welsh health service body or a family health service provider in Wales, and
- (b) was not a Welsh health service body or a family health service provider in Wales;

“investigation” means an investigation under section 2 (and related expressions must be construed accordingly);

“listed authority” has the meaning given in section 28;

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“local authority in Wales” means a county council, county borough council or community council in Wales;

“Local Commissioner” has the meaning given in section 23(3) of the Local Government Act 1974 (c. 7);

“NHS trust” has the same meaning as in the National Health Service Act 1977 (c. 49);

“the Ombudsman” has the meaning given in section 1;

“the person aggrieved” has the meaning given in section 4(1)(a);

“publicly-funded dwelling” means—

- (a) a dwelling which was provided by means of a grant under—
  - (i) section 18 of the Housing Act 1996 (c. 52) (social housing grant), or
  - (ii) section 50 of the Housing Act 1988 (c. 50), section 41 of the Housing Associations Act 1985 (c. 69), or section 29 or 29A of the Housing Act 1974 (c. 44) (housing association grant);
- (b) a dwelling which was acquired on a disposal by a public sector landlord (within the meaning of Part 1 of the Housing Act 1996);

“relevant tribunal” means a tribunal (including a tribunal consisting of only one person) specified by order made by the Assembly;

“social landlord in Wales” means—

- (a) a body which was at the time of action which is the subject of a complaint under this Act registered as a social landlord in the register maintained by the Assembly under section 1 of the Housing Act 1996 (or in the register previously maintained under that section by the Secretary of State or Housing for Wales);
- (b) any other body which at the time of action which is the subject of a complaint under this Act was registered with Housing for Wales, the Secretary of State or the Assembly and owned or managed publicly-funded dwellings;

“special report” has the meaning given in section 22;

“Wales” has the meaning given in section 155(1) of the Government of Wales Act 1998 (c. 38);

“Welsh health service body” means—

- (a) the Assembly;
- (b) a Local Health Board;
- (c) an NHS trust managing a hospital or other establishment or facility in Wales;
- (d) a Special Health Authority not discharging functions only or mainly in England.

- (2) For the purposes of the definition of “independent provider in Wales”, arrangements with the Assembly are arrangements with a Welsh health service body only to the extent that they are made in the discharge of a function of the Assembly relating to the National Health Service.
- (3) The Assembly may by order amend the definitions of “family health service provider in Wales”, “independent provider in Wales” and “social landlord in Wales”.
- (4) Before making an order under subsection (3), the Assembly must consult such persons as it thinks appropriate.



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- (5) Section 13 of the National Audit Act 1983 (c. 44) (interpretation of references to the Committee of Public Accounts) applies for the purposes of this Act as it applies for the purposes of that Act.
- (6) For the purposes of this Act, references to action taken by a listed authority include action taken by—
  - (a) a member, co-opted member, committee or sub-committee of the authority acting in the discharge of functions of the authority;
  - (b) an officer or member of staff of the authority, whether acting in the discharge of his own functions or the functions of the authority;
  - (c) any other person acting on behalf of the authority.

#### **42 Former health care providers and social landlords: modifications**

- (1) The Assembly may by regulations provide for this Act to apply with the modifications specified in the regulations to persons who are—
  - (a) former family health service providers in Wales;
  - (b) former independent providers in Wales;
  - (c) former social landlords in Wales.
- (2) “Former family health service provider in Wales” means a person who—
  - (a) at the relevant time, provided family health services of a particular description, and
  - (b) subsequently ceased to provide services of that description (whether or not he has later started to provide them again).
- (3) “Former independent provider in Wales” means a person who—
  - (a) at the relevant time, provided services of a particular description in Wales under arrangements with a Welsh health service body or a family health service provider in Wales,
  - (b) was not a Welsh health service body or a family health service provider in Wales at that time, and
  - (c) subsequently ceased to provide services of that description (whether or not he has later started to provide them again).
- (4) “Former social landlord in Wales” means a person who—
  - (a) at the relevant time—
    - (i) was registered as a social landlord in the register maintained by the Assembly under section 1 of the Housing Act 1996 (c. 52) (or in the register previously maintained under that section by the Secretary of State or Housing for Wales), or
    - (ii) was registered with Housing for Wales, the Secretary of State or the Assembly and owned or managed publicly-funded dwellings, and
  - (b) subsequently—
    - (i) ceased to be registered as mentioned in paragraph (a)(i) or (ii) (whether or not he later became so registered again), or
    - (ii) ceased to own or manage publicly-funded dwellings (whether or not he later did so again).
- (5) “The relevant time” is the time of action which is the subject of a complaint under this Act.

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#### **43 Consequential, transitional provisions etc.**

- (1) The Assembly may by order make—
  - (a) such consequential, incidental or supplemental provision, and
  - (b) such transitory, transitional or saving provision,as it thinks necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) An order under subsection (1) may in particular amend, repeal or revoke any enactment other than one contained in an Act passed in a Session after that in which this Act is passed.
- (3) The amendments that may be made by virtue of subsection (2) are in addition to those made by or under any other provision of this Act.

#### **44 Orders, regulations and directions**

- (1) A power of the Assembly to make an order or regulations under this Act is exercisable by statutory instrument.
- (2) An order or regulations made by the Assembly under this Act may—
  - (a) make different provision for different purposes;
  - (b) make consequential, incidental, supplemental, transitory, transitional or saving provision.
- (3) An order made by the Assembly under this Act is, and regulations made by the Assembly under this Act are, to be regarded as Assembly general subordinate legislation for the purposes of the Government of Wales Act 1998 (c. 38).
- (4) A direction given under this Act—
  - (a) may be amended or revoked by the person who gave it;
  - (b) may make different provision for different purposes.

#### **45 Extent**

- (1) Subject to subsection (2), this Act extends to England and Wales only.
- (2) An amendment or repeal made by this Act has the same extent as the provision amended or repealed.

#### **46 Short title**

This Act may be cited as the Public Services Ombudsman (Wales) Act 2005.

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## SCHEDULES

### SCHEDULE 1

Section 1

#### PUBLIC SERVICES OMBUDSMAN FOR WALES: APPOINTMENT ETC.

##### *Appointment*

#### **1** *Appointment*

- (1) The Ombudsman is to be appointed by Her Majesty on the recommendation of the Secretary of State.
- (2) The Secretary of State may recommend that a person be appointed as the Ombudsman only after consulting the Assembly.

##### *Status*

#### **2** *Status*

- (1) The Ombudsman is a corporation sole.
- (2) The Ombudsman holds office under Her Majesty and discharges his functions on behalf of the Crown.
- (3) The Ombudsman is a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6).
- (4) But service as the Ombudsman is not service in the civil service of the Crown.

##### *Term of office*

#### **3** *Term of office*

- (1) A person's term of office as the Ombudsman is seven years (subject to subparagraphs (3) and (4) and paragraph 5).
- (2) A person appointed as the Ombudsman is not eligible for re-appointment.
- (3) Her Majesty may relieve a person of office as the Ombudsman—
  - (a) at his request, or
  - (b) if the Secretary of State recommends that Her Majesty should do so on the ground that he is incapable for medical reasons of performing the duties of the office.
- (4) Her Majesty may remove a person from office as the Ombudsman if the Secretary of State recommends that Her Majesty should do so on the ground of misbehaviour.
- (5) The Secretary of State may recommend that a person should be relieved of, or removed from, office as the Ombudsman only after consulting the Assembly.

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### *Acting Public Services Ombudsman for Wales*

#### **4** *Acting Public Services Ombudsman for Wales*

- (1) If the office of the Ombudsman becomes vacant, Her Majesty may, on the recommendation of the Secretary of State, appoint a person to act as the Ombudsman.
- (2) The Secretary of State may recommend that a person be appointed to act as the Ombudsman only after consulting the Assembly.
- (3) A person appointed to act as the Ombudsman (“an acting Ombudsman”) may have held office as the Ombudsman.
- (4) A person appointed as an acting Ombudsman is eligible for appointment as the Ombudsman (unless he has already held office as the Ombudsman).
- (5) The power to appoint a person as an acting Ombudsman is not exercisable after the end of the period of two years starting with the date on which the vacancy arose.
- (6) An acting Ombudsman holds office in accordance with the terms of his appointment, subject to sub-paragraph (7) (and paragraph 2, as applied by sub-paragraph (8)).
- (7) An acting Ombudsman must not hold office after—
  - (a) the appointment of a person as the Ombudsman, or
  - (b) if sooner, the end of the period of two years starting with the date on which the vacancy arose.
- (8) While an acting Ombudsman holds office he is to be regarded (except for the purposes of paragraphs 1, 3, 5 to 9 and this paragraph) as the Ombudsman.

### *Disqualification*

#### **5** *Disqualification*

- (1) A person is disqualified from being the Ombudsman or an acting Ombudsman if any of the following applies—
  - (a) he is a member of the House of Commons;
  - (b) he is a listed authority;
  - (c) he is a member, co-opted member, officer or member of staff of a listed authority;
  - (d) he is disqualified from being a member of the Assembly (other than by virtue of paragraph 6 of this Schedule or section 12(1)(ca) of the Government of Wales Act 1998 (c. 38));
  - (e) he is disqualified from being a member of a local authority in Wales (other than by virtue of paragraph 6 of this Schedule).
- (2) The appointment of a person as the Ombudsman or an acting Ombudsman is not valid if the person is disqualified under sub-paragraph (1).
- (3) If a person who has been appointed as the Ombudsman or an acting Ombudsman becomes disqualified under sub-paragraph (1), he ceases to hold office on becoming so disqualified.
- (4) But the validity of anything done by a person appointed as the Ombudsman or an acting Ombudsman is not affected by the fact that he is or becomes disqualified under sub-paragraph (1).

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- 6** (1) A person who holds office as the Ombudsman or an acting Ombudsman is disqualified from—
- (a) being a listed authority;
  - (b) being a member, co-opted member, officer or member of staff of a listed authority;
  - (c) holding a paid office to which appointment is by a listed authority.
- (2) A person is not disqualified under sub-paragraph (1) from being a member of the Assembly.
- 7** (1) A person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified for the relevant period from—
- (a) holding an office which is a listed authority;
  - (b) being a member, co-opted member, officer or member of staff of a listed authority;
  - (c) holding a paid office to which appointment is by a listed authority.
- (2) The relevant period is the period of three years starting on the date on which the person ceased to hold office as the Ombudsman or (as the case may be) as an acting Ombudsman.
- (3) But sub-paragraph (1) does not disqualify a person from—
- (a) being a member of the Assembly;
  - (b) holding the office of presiding officer or deputy presiding officer of the Assembly or of Assembly First Secretary or Assembly Secretary;
  - (c) being a member or co-opted member of a local authority in Wales;
  - (d) holding the office of chairman, vice-chairman or elected mayor of a local authority in Wales.
- 8** The references in paragraphs 6 and 7 to a paid office include an office the holder of which is entitled only to the reimbursement of expenses.

*Remuneration etc.*

- 9** *Remuneration etc.*
- (1) The Assembly must —
- (a) pay a person who is the Ombudsman or an acting Ombudsman such salary and allowances, and
  - (b) make such payments towards the provision of superannuation benefits for or in respect of him,
- as may be provided for by or under the terms of his appointment.
- (2) The Assembly must pay to or in respect of a person who has ceased to hold office as the Ombudsman or an acting Ombudsman—
- (a) such amounts by way of pensions and gratuities, and
  - (b) such amounts by way of provision for those benefits,
- as may have been provided for by or under the terms of his appointment.
- (3) If a person ceases to be the Ombudsman or an acting Ombudsman and it appears to the Assembly that there are special circumstances which make it right that the person should receive compensation, the Assembly may pay to that person a sum of such amount as it thinks appropriate.

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- (4) In Schedule 1 to the Superannuation Act 1972 (c. 11) (offices etc. to which section 1 of that Act applies) in the list of “Offices” at the appropriate places insert—
- “Public Services Ombudsman for Wales”
- “Acting Public Services Ombudsman for Wales”.
- (5) The Assembly must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (4) in the sums payable out of money provided by Parliament under the Superannuation Act 1972 (c. 11).

### *Expenses*

#### **10** *Expenses*

- (1) The expenses of the Ombudsman, so far as they cannot be met out of income received by him, are to be met by the Assembly.
- (2) The expenses that fall within sub-paragraph (1) include any sums payable by the Ombudsman in consequence of a breach, in the course of the discharge of any of his functions, of any contractual or other duty.
- (3) Sub-paragraph (2) applies whether that breach occurs by reason of action of the Ombudsman or a member of his staff or other person acting on his behalf or assisting him in the discharge of any of his functions.

### *Staff*

#### **11** *Staff*

- (1) The Ombudsman may appoint such staff as he thinks necessary for assisting him in the discharge of his functions, on such terms and conditions as he may determine.
- (2) No member of staff of the Ombudsman is to be regarded as holding office under Her Majesty or as discharging any functions on behalf of the Crown.
- (3) But each member of his staff is to be treated as being a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6).
- (4) In Schedule 1 to the Superannuation Act 1972 (offices etc. to which section 1 of that Act applies) in the list of “other bodies” at the appropriate place insert—
- “Employment as a member of the staff of the Public Services Ombudsman for Wales.”
- (5) The Assembly must pay to the Minister for the Civil Service, at such times as he may direct, such sum as he may determine in respect of any increase attributable to sub-paragraph (4) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

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### *Advisers*

#### **12** *Advisers*

- (1) The Ombudsman may obtain advice from any person who, in his opinion, is qualified to give it, to assist him in the discharge of his functions.
- (2) The Ombudsman may pay to any person from whom he obtains advice under sub-paragraph (1) such fees or allowances as he may determine.

### *Delegation*

#### **13** *Delegation*

- (1) Any function of the Ombudsman may be discharged on his behalf—
  - (a) by any person authorised by the Ombudsman to do so, and
  - (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the responsibility of the Ombudsman for the discharge of any such function.
- (3) A person authorised by the Ombudsman under sub-paragraph (1) is to be treated as being a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6).
- (4) No arrangements may be made—
  - (a) for any of the functions of the Ombudsman or of the Assembly to be discharged by the other or by a member of the other's staff;
  - (b) for the provision of administrative, professional or technical services by the Ombudsman or the Assembly for the other.
- (5) Sub-paragraph (4) applies despite any provision that would otherwise permit such arrangements to be made.

### *Annual and extraordinary reports*

#### **14** *Annual and extraordinary reports*

- (1) The Ombudsman—
  - (a) must annually prepare a general report on the discharge of his functions (an “annual report”);
  - (b) may prepare any other report with respect to his functions that he thinks appropriate (an “extraordinary report”).
- (2) A report prepared under this paragraph may include any general recommendations which the Ombudsman may have arising from the discharge of his functions.
- (3) The Ombudsman must lay a copy of each report prepared under this paragraph before the Assembly and at the same time (if the report is an extraordinary report) must send a copy of it to any listed authorities (other than the Assembly) he thinks appropriate.
- (4) The Ombudsman may also send a copy of any report prepared under this paragraph to any other persons he thinks appropriate.
- (5) The Ombudsman must, and the Assembly may, publish any report laid before the Assembly under this paragraph.

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- (6) The Ombudsman must comply with any directions given by the Assembly with respect to an annual report.
- (7) If a report prepared under this paragraph—
  - (a) mentions the name of any person other than a listed authority in respect of which a complaint has been made or referred under this Act, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report,
 that information must not be included in a version of the report laid before the Assembly under sub-paragraph (3), sent to a person under sub-paragraph (3) or (4) or published by the Ombudsman under sub-paragraph (5), subject to sub-paragraph (8).
- (8) Sub-paragraph (7) does not apply in relation to a version of the report if, after taking account of the interests of any persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

### *Estimates*

#### **15** *Estimates*

- (1) For each financial year other than the first financial year, the Ombudsman must prepare an estimate of the income and expenses of his office.
- (2) The Ombudsman must submit the estimate to the Assembly Cabinet at least five months before the beginning of the financial year to which it relates.
- (3) The Assembly Cabinet must examine an estimate submitted to it in accordance with sub-paragraph (2) and must then lay the estimate before the Assembly with any modifications it thinks appropriate.
- (4) If the Assembly Cabinet proposes to lay an estimate before the Assembly with modifications, it must first consult the Secretary of State.
- (5) The first financial year is the financial year during which the first person to be appointed as the Ombudsman is appointed.

### *Accounts*

#### **16** *Accounts*

- (1) The Ombudsman must—
  - (a) keep proper accounting records; and
  - (b) for each financial year, prepare accounts in accordance with directions given to him by the Treasury.
- (2) The directions which the Treasury may give under sub-paragraph (1)(b) include, in particular, directions as to—
  - (a) the information to be contained in the accounts and the manner in which it is to be presented;
  - (b) the methods and principles in accordance with which the accounts are to be prepared;
  - (c) the additional information (if any) that is to accompany the accounts.



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## *Audit*

### **17** *Audit*

- (1) The accounts prepared by the Ombudsman for a financial year must be submitted by him to the Auditor General for Wales no later than 30 November in the following financial year.
- (2) The Auditor General for Wales must—
  - (a) examine, certify and report on each set of accounts submitted to him under this paragraph, and
  - (b) no later than four months after the accounts are so submitted, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining accounts submitted to him under this paragraph the Auditor General for Wales must, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

## *Accounting officer*

### **18** *Accounting officer*

- (1) The Ombudsman is the accounting officer for the office of the Ombudsman.
- (2) If the Ombudsman is incapable of discharging his responsibilities as accounting officer, the Treasury may designate a member of his staff to be the accounting officer for as long as he is so incapable.
- (3) If the office of the Ombudsman is vacant and there is no acting Ombudsman, the Treasury may designate a member of the Ombudsman's staff to be the accounting officer for as long as the office of the Ombudsman is vacant and there is no acting Ombudsman.
- (4) The accounting officer has, in relation to the accounts and the finances of the Ombudsman, the responsibilities which are from time to time specified by the Treasury.
- (5) In this paragraph references to responsibilities include in particular—
  - (a) responsibilities in relation to the signing of accounts,
  - (b) responsibilities for the propriety and regularity of the finances of the Ombudsman, and
  - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Ombudsman are used.
- (6) The responsibilities which may be specified under this paragraph include responsibilities owed to—
  - (a) the Assembly, the Assembly Cabinet or the Audit Committee, or
  - (b) the House of Commons or its Committee of Public Accounts.
- (7) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
  - (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer, and

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- (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

*Examinations into the use of resources*

**19** *Examinations into the use of resources*

- (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Ombudsman has used his resources in discharging his functions.
- (2) Sub-paragraph (1) is not to be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Ombudsman.
- (3) In determining how to discharge his functions under this paragraph, the Auditor General for Wales must take into account the views of the Audit Committee as to the examinations which he should carry out.
- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this paragraph.

*Examinations by the Comptroller and Auditor General*

**20** *Examinations by the Comptroller and Auditor General*

- (1) For the purposes of enabling him to carry out examinations into, and report to Parliament on, the finances of the Ombudsman, the Comptroller and Auditor General
  - (a) has a right of access at all reasonable times to all such documents in the custody or under the control of the Ombudsman, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
  - (b) is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General must—
  - (a) consult the Auditor General for Wales, and
  - (b) take account of any relevant work done or being done by the Auditor General for Wales,
 before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Ombudsman under section 7 of the National Audit Act 1983 (c. 44) (economy etc. examinations).

*Supplementary powers*

**21** *Supplementary powers*

The Ombudsman may do anything (including acquire or dispose of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of his functions.

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## SCHEDULE 2

Section 10

### EXCLUDED MATTERS

- 1** Action taken by or with the authority of the Assembly or a police authority for a police area in Wales for the purpose of—
  - (a) the investigation or prevention of crime, or
  - (b) the protection of the security of the State.
- 2** The commencement or conduct of proceedings before a court of competent jurisdiction.
- 3** Action taken by a member of the administrative staff of a relevant tribunal so far as taken at the direction, or on the authority (whether express or implied), of a person acting in his capacity as a member of the tribunal.
- 4** Action taken in respect of appointments, removals, pay, discipline, superannuation or other personnel matters (apart from procedures for recruitment and appointment) in relation to—
  - (a) service in an office or employment under the Crown or under a listed authority;
  - (b) service in an office or employment, or under a contract for services, in respect of which power to take action in personnel matters, or to determine or approve action to be taken in personnel matters, is vested in Her Majesty or a listed authority.
- 5** Action relating to the determination of the amount of rent.
- 6** (1) Action taken by an authority specified in sub-paragraph (2) and relating to—
  - (a) the giving of instruction, or
  - (b) conduct, curriculum, internal organisation, management or discipline, in a school or other educational establishment maintained by a local authority in Wales.(2) The authorities are—
  - (a) a local authority in Wales;
  - (b) an admission appeal panel;
  - (c) the governing body of a community, foundation or voluntary school;
  - (d) an exclusion appeal panel.
- 7** Action taken by the National Council for Education and Training for Wales by virtue of paragraph 11 or 12 of Schedule 10 to the Learning and Skills Act 2000 (c. 21) (legal proceedings and agreements etc. to which the Further Education Funding Council for Wales was a party).
- 8** Action which is or has been the subject of an inquiry under section 84 of the National Health Service Act 1977 (c. 49).
- 9** Action taken by a Local Health Board in the discharge of its functions under—
  - (a) the National Health Service (Service Committees and Tribunal) Regulations 1992 or any instrument replacing those regulations;
  - (b) regulations made under section 38, 39, 41 or 42 of the National Health Service Act 1977 by virtue of section 17 of the Health and Medicines Act 1988 (c. 49) (investigations of matters relating to services).
- 10** Action relating to arrangements for the provision of family health services made by a Welsh health service body and a family health service provider in Wales, where—
  - (a) the action is taken by the body or the provider, and

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- (b) a complaint in respect of the action is made by the provider or the body.

### SCHEDULE 3

Section 28

#### LISTED AUTHORITIES

##### *Government of Wales*

The Assembly.

##### *Local government, fire and police*

A local authority in Wales.

A joint board the constituent authorities of which are all local authorities in Wales.

A fire and rescue authority in Wales constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 (c. 21) or a scheme to which section 4 of that Act applies.

A police authority for a police area in Wales.

##### *Environment*

A National Park authority for a National Park in Wales.

The Countryside Council for Wales.

The Environment Agency.

The Forestry Commissioners.

A regional flood defence committee for an area wholly or partly in Wales.

An internal drainage board for an internal drainage district wholly or partly in Wales.

##### *Health and social care*

The Care Council for Wales.

A Local Health Board.

An NHS trust managing a hospital or other establishment or facility in Wales.

A Special Health Authority not discharging functions only or mainly in England.

The Wales Centre for Health.

A Community Health Council.

An independent provider in Wales.

A family health service provider in Wales.

A person with functions conferred by regulations made under section 113(2) of the Health and Social Care (Community Health and Standards) Act 2003 (c. 43).

##### *Housing*

A social landlord in Wales.

##### *Education and training*

The National Council for Education and Training for Wales.

The Office of Her Majesty's Chief Inspector of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru.

The Higher Education Funding Council for Wales.

An admission appeal panel constituted in accordance with regulations under section 94(5) or 95(3) of the School Standards and Framework Act 1998 (c. 31).

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The governing body of any community, foundation or voluntary school so far as acting in connection with the admission of pupils to the school or otherwise discharging any of their functions under Chapter 1 of Part 3 of the School Standards and Framework Act 1998.

An exclusion appeal panel constituted in accordance with regulations under section 52 of the Education Act 2002 (c. 32).

*Arts and leisure*

The Arts Council of Wales.  
The Sports Council for Wales.  
The Wales Tourist Board.

*Miscellaneous*

The Welsh Development Agency.  
The Welsh Language Board.

SCHEDULE 4

Section 35

CONDUCT OF LOCAL GOVERNMENT MEMBERS AND EMPLOYEES

- 1 The Local Government Act 2000 (c. 22) is amended as follows.
- 2 In section 49 (principles governing conduct of members of relevant authorities)—
  - (a) in subsection (4)(b), for “the Commission for Local Administration in Wales” substitute “the Public Services Ombudsman for Wales”;
  - (b) in subsection (5)(c), for “the Commission for Local Administration in Wales” substitute “the Public Services Ombudsman for Wales”.
- 3 In section 51 (duty of relevant authorities to adopt codes of conduct) in subsection (6)(c) (ii), for “Commission for Local Administration in Wales” substitute “Public Services Ombudsman for Wales”.
- 4 In section 53 (standards committees), in subsection (11)(k), for “the Commission for Local Administration in Wales” substitute “the Public Services Ombudsman for Wales”.
- 5 In section 62 (investigations: further provisions) in subsection (7)—
  - (a) in paragraph (b), omit “or the Commission for Local Administration in Wales”;
  - (b) in paragraph (c), for “or the Health Service Commissioner for Wales, or by their officers” substitute “or by his officers”;
  - (c) at the end insert “, or
  - (d) the restriction imposed by section 26 of the Public Services Ombudsman (Wales) Act 2005.”
- 6 In section 63 (restrictions on disclosure of information) in subsection (1)(a), for “the Commission for Local Administration in Wales, a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.
- 7 In the heading to section 67, for “Local Commissioner” substitute “ombudsmen”.
- 8 In section 67—
  - (a) after subsection (1) insert—

“(1A) If, at any stage in the course of conducting an investigation under section 59, an ethical standards officer forms the opinion that the

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matters which are the subject of the investigation relate partly to a matter which could be the subject of an investigation under Part 2 of the Public Services Ombudsman (Wales) Act 2005, he may consult the Public Services Ombudsman for Wales about the investigation and, if he considers it necessary, inform any person who made the allegation which gave rise to the investigation of the steps necessary to initiate a complaint under Part 2 of that Act.”

- (b) in subsection (2), for “that Act” substitute “the Local Government Act 1974”;
- (c) after subsection (2) insert—

“(2A) If, at any stage in the course of conducting an investigation under Part 2 of the Public Services Ombudsman (Wales) Act 2005, the Public Services Ombudsman for Wales forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under section 59 of this Act, he may consult the Standards Board for England about the investigation and, if he considers it necessary, inform the person initiating the complaint of the steps necessary to make an allegation under section 58.”

- (d) in subsection (3), for “subsection (1) or (2)” substitute “any of subsections (1) to (2A)”;
- (e) in subsection (4), after “Local Government Act 1974” insert “, section 26 of the Public Services Ombudsman (Wales) Act 2005”.

**9** For the italic heading immediately preceding section 68 substitute “Public Services Ombudsman for Wales”.

**10** For the heading to section 68 substitute “Public Services Ombudsman for Wales”.

**11** In section 68—

- (a) in subsection (1), for “A Local Commissioner in Wales” substitute “The Public Services Ombudsman for Wales”;
- (b) in subsection (2), for “The Commission for Local Administration in Wales” substitute “The Public Services Ombudsman for Wales”;
- (c) for subsection (3) substitute—

“(3) The National Assembly for Wales may by regulations make provision which, for the purpose of any provisions of the Public Services Ombudsman (Wales) Act 2005 specified in the regulations, treats—

- (a) functions of the Public Services Ombudsman for Wales under that Act as including his functions under this Part, or
- (b) expenses of the Public Services Ombudsman for Wales under that Act as including his expenses under this Part.”
- (d) in subsection (4), omit “Part 3 of”;
- (e) omit subsection (5).

**12** For the heading to section 69 substitute “Investigations by the Public Services Ombudsman for Wales”.

**13** In section 69—

- (a) in subsection (1), for “A Local Commissioner in Wales” substitute “The Public Services Ombudsman for Wales”;
- (b) in subsection (2), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”;

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- (c) in subsection (5), for “a Local Commissioner in Wales who reaches a finding under subsection (4)(c)” substitute “if the Public Services Ombudsman for Wales reaches a finding under subsection (4)(c) he”.
- 14** In section 70 (investigations: further provisions)—
- (a) in subsection (2), for paragraph (b) substitute—
- “(b) any provisions of sections 13 to 15, 25 to 27 and 32 of the Public Services Ombudsman (Wales) Act 2005.”
- (b) in subsection (3), for “A Local Commissioner in Wales” substitute “The Public Services Ombudsman for Wales”;
- (c) in subsections (4) and (5), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.
- 15** In section 71 (reports etc.)—
- (a) in subsections (1) to (3), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”;
- (b) in subsection (4)(b), for “a Local Commissioner in Wales who reaches a finding under section 69(4)(c)” substitute “if the Public Services Ombudsman for Wales reaches a finding under section 69(4)(c) he”;
- (c) in subsection (6), for “A Local Commissioner in Wales” substitute “The Public Services Ombudsman for Wales”.
- 16** In section 72 (interim reports), in subsections (1), (3) and (4), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.
- 17** In section 73 (matters referred to monitoring officers) in subsection (7), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.
- 18** In section 74 (law of defamation), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.
- 19** In section 78 (decisions of interim case tribunals) in subsection (5), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.
- 20** In section 79 (decisions of case tribunals) in subsection (12)(a)(ii), for “the Commission for Local Administration in Wales” substitute “the Public Services Ombudsman for Wales”.
- 21** In section 80 (recommendations by case tribunals) in subsection (6)(b), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.
- 22** In section 81 (disclosure and registration of members' interests etc.) in subsection (7)—
- (a) in paragraph (b) insert at the beginning “if it is a relevant authority in England or a police authority in Wales,”;
- (b) at the end insert—
- “(c) if it is a relevant authority in Wales, inform the Public Services Ombudsman for Wales that copies of the register are so available.”
- 23** In section 82 (code of conduct for local government employees) in subsections (5)(b) and (6)(c), for “the Commission for Local Administration in Wales” substitute “the Public Services Ombudsman for Wales”.
- 24** In section 83 (interpretation of Part 3) in subsection (1)—
- (a) omit the definition of “Local Commissioner in Wales”;

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- (b) in the definition of “the relevant Adjudication Panel” in paragraph (b), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.

## SCHEDULE 5

Section 37

### TRANSFER OF STAFF, PROPERTY ETC.

#### *Interpretation*

#### **1** *Interpretation*

In this Schedule—

“the commencement date” means the date on which this Schedule comes into force;

“existing authority” means each of—

- (a) the Welsh Administration Ombudsman;
- (b) the Health Service Commissioner for Wales;
- (c) the Commission for Local Administration in Wales;
- (d) a Local Commissioner who is a member of the Commission for Local Administration in Wales;
- (e) the Social Housing Ombudsman for Wales;

“relevant employee” means a person who, immediately before the commencement date, was an officer or member of staff of an existing authority;

“the relevant existing authority”, in relation to a relevant employee, means the existing authority of which he was an officer or member of staff immediately before the commencement date.

#### *Transfer of staff*

#### **2** *Transfer of staff*

On the commencement date each relevant employee transfers to and becomes a member of the staff of the Ombudsman.

#### **3** The contract of employment of a relevant employee transferred under paragraph 2—

- (a) is not terminated by the transfer;
- (b) has effect on and after the commencement date as if originally made between the employee and the Ombudsman.

#### **4** Accordingly—

- (a) all rights, powers, duties and liabilities of the relevant existing authority under or in connection with the contract of employment are transferred to the Ombudsman on the commencement date;
- (b) anything done before that date by or in relation to the relevant existing authority in respect of that contract or the relevant employee is to be treated on and after that date as having been done by or in relation to the Ombudsman.

#### **5** But if a relevant employee informs the relevant existing authority or the Ombudsman before the commencement date that he objects to the transfer—



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- (a) paragraphs 2 to 4 do not apply; and
  - (b) the contract of employment is terminated immediately before the commencement date but the relevant employee is not to be treated, for any purpose, as having been dismissed by the relevant existing authority.
- 6** Paragraph 5 does not affect any right of a relevant employee to terminate his contract of employment if (apart from the change of employer) a substantial change is made to his detriment in his working conditions.

*Transfer of property, rights and liabilities*

**7** *Transfer of property, rights and liabilities*

On the commencement date all property, rights and liabilities to which each existing authority was entitled or subject immediately before that date transfer to and vest in the Ombudsman.

- 8** The reference in paragraph 7 to rights and liabilities does not include any rights and liabilities under a contract of employment transferred to the Ombudsman under paragraph 2.
- 9** Paragraph 7 has effect in relation to any property, rights and liabilities to which it applies despite any provision (of whatever nature) which would otherwise prevent, penalise or restrict their transfer.
- 10** Anything (including legal proceedings) which is in the process of being done by or in relation to an existing authority immediately before the commencement date and which relates to—
- (a) any function of that existing authority, or
  - (b) any property, rights or liabilities of that existing authority transferred to the Ombudsman under paragraph 7,
- may, on and after the commencement date, be continued by or in relation to the Ombudsman.
- 11** Anything done by an existing authority for the purpose of, or in connection with—
- (a) any function of that existing authority, or
  - (b) any property, rights or liabilities of that existing authority transferred to the Ombudsman under paragraph 7,
- and which is in effect immediately before the commencement date is to have effect on and after the commencement date as if done by the Ombudsman.
- 12** On and after the commencement date, the Ombudsman is to be substituted for each existing authority in any instruments, contracts or legal proceedings which relate to—
- (a) any function of that existing authority, or
  - (b) any property, rights or liabilities of that existing authority transferred to the Ombudsman under paragraph 7,
- and which are made or commenced before the commencement date.

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## SCHEDULE 6

Section 39

## CONSEQUENTIAL AMENDMENTS

*Parliamentary Commissioner Act 1967 (c. 13)***1** *Parliamentary Commissioner Act 1967 (c. 13)*

The Parliamentary Commissioner Act 1967 is amended as follows.

- 2** In section 3 (administrative provisions) in subsection (2), for “of the Welsh Administration Ombudsman or of the Health Service Commissioner for Wales” substitute “of the Public Services Ombudsman for Wales”.
- 3** In section 4 (departments etc. subject to investigation) in subsection (3A), for “by the Welsh Administration Ombudsman under Schedule 9 to the Government of Wales Act 1998” substitute “by the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005”.
- 4** In section 11 (provision for secrecy of information) in subsection (2A)—
  - (a) for “holds office as Welsh Administration Ombudsman or a Health Service Commissioner” substitute “holds office as the Health Service Commissioner for England”;
  - (b) for “in his capacity as Welsh Administration Ombudsman or a Health Service Commissioner” substitute “in his capacity as the Health Service Commissioner for England”.
- 5** (1) Section 11A is amended as follows.
  - (2) In subsection (1)—
    - (a) for the words from “the Welsh Administration Ombudsman” to “the Health Service Commissioner for England or Wales” substitute “the Public Services Ombudsman for Wales, the Scottish Public Services Ombudsman or the Health Service Commissioner for England”;
    - (b) in paragraph (b), for the words from “Government of Wales” to “Health Service” substitute “Public Services Ombudsman (Wales) Act 2005 or the Health Service”.
  - (3) In subsection (2), for the words from “Welsh Administration Ombudsman” to “Health Service Commissioner” substitute “Public Services Ombudsman for Wales, the Scottish Public Services Ombudsman or the Health Service Commissioner for England”.

*Superannuation Act 1972 (c. 11)***6** *Superannuation Act 1972 (c. 11)*

In Schedule 1 to the Superannuation Act 1972 (kinds of employment etc. referred to in section 1)—

- (a) omit “Health Service Commissioner for Wales”;
- (b) omit “The Local Commissioner for Wales”;
- (c) omit “Welsh Administration Ombudsman”.

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*Local Government Act 1974 (c. 7)*

**7** *Local Government Act 1974 (c. 7)*

The Local Government Act 1974 is amended as follows.

- 8** (1) Section 23 (the Commissions for Local Administration) is amended as follows.
- (2) In subsection (1)—
- (a) omit paragraph (b) and the word “and” immediately preceding it;
  - (b) for “each of the Commissions” substitute “the Commission”.
- (3) In subsection (2), for “each of the Commissions” substitute “the Commission”.
- (4) In subsection (3), for “one of the Commissions” substitute “the Commission”.
- (5) Omit subsection (3A).
- (6) In subsection (7), omit the words from “and, in the event” to the end.
- (7) In subsection (8), omit the words from “; and where the” to “similar way in Wales”.
- (8) In subsection (10)—
- (a) for “Each of the Commissions” substitute “The Commission”;
  - (b) in paragraph (a), omit the words from “including” to “that other Commission”.
- (9) In subsection (11)—
- (a) for the words from “his Commission” to “submit it to the other Commission”, substitute “the Commission”;
  - (b) omit “to the appropriate Commission”.
- (10) In subsection (12)—
- (a) for “the Commissions” substitute “the Commission”;
  - (b) omit “or the National Assembly for Wales”.
- (11) In subsection (12A), for “Each of the Commissions” substitute “The Commission”.
- (12) In subsection (12B), in paragraph (a) omit the words “in England or, as the case may be, authorities in Wales”.
- (13) In subsection (13), for “the Commissions” substitute “the Commission”.
- 9** (1) Section 23A (annual reports for representatives etc.) is amended as follows.
- (2) In subsection (1)—
- (a) for “each of the Commissions” substitute “the Commission”;
  - (b) in paragraph (a), omit the words “in England or, as the case may be, authorities in Wales”.
- (3) In subsection (2), for “each Commission” substitute “the Commission”.
- (4) In subsection (3), for “Each Commission” substitute “The Commission”.
- (5) In subsection (4), for “the Commission concerned” substitute “the Commission”.
- (6) Omit subsection (6).
- 10** In section 25(1) (authorities subject to investigation)—

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- (a) in paragraph (ab), at the end insert “for a National Park in England”;
  - (b) in paragraph (bd), at the end insert “for an urban development area in England”;
  - (c) in paragraph (be), at the end insert “for a designated area in England”;
  - (d) in paragraph (bg), after “fire and rescue authority” insert “in England”;
  - (e) in paragraph (ca), after “Police Act 1996” insert “for a police area in England”;
  - (f) in paragraph (d), at the end insert “for an area wholly or partly in England”.
- 11** (1) Section 26 (matters subject to investigation) is amended as follows.
- (2) In subsection (6)(b), omit “or the National Assembly for Wales”.
- (3) After subsection (6) insert—
- “(6A) A Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any action taken in connection with the discharge by an authority of any of the authority’s functions otherwise than in relation to England.”
- 12** (1) Section 29 (investigations: further provisions) is amended as follows.
- (2) In subsection (3), omit “or the National Assembly for Wales”.
- (3) in subsection (5)—
- (a) omit paragraph (aa);
  - (b) in paragraph (b), for “or the Health Service Commissioner for Wales, or by any of their officers” substitute “or by any of his officers”;
  - (c) after paragraph (b) insert “, or
  - (c) the restriction imposed by section 26 of the Public Services Ombudsman (Wales) Act 2005.”
- 13** (1) Section 32 (law of defamation and disclosure of information) is amended as follows.
- (2) In subsection (1) in paragraphs (a) and (b), for “either Commission” substitute “the Commission”.
- (3) In subsection (2)—
- (a) for “either Commission” (in both places) substitute “the Commission”;
  - (b) for “his Commission” substitute “the Commission”.
- (4) In subsection (3), for “a Commission” substitute “the Commission”.
- (5) In subsection (5)—
- (a) omit “or the National Assembly for Wales”;
  - (b) omit “or a member of the Assembly’s staff”;
  - (c) omit “or the Assembly”.
- 14** Omit section 32A (use of information by Local Commissioner in other capacity).
- 15** (1) Section 33 (consultation between Local Commissioner and other commissioners and ombudsmen) is amended as follows.
- (2) In subsection (1)—
- (a) omit paragraphs (aa) and (aza);
  - (b) in paragraph (b), omit “or the Health Service Commissioner for Wales”;
  - (c) after paragraph (b) insert—

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- “(ba) by the Public Services Ombudsman for Wales, in accordance with the Public Services Ombudsman (Wales) Act 2005;”
- (d) omit “under the Housing Act 1996, under the Government of Wales Act 1998,”;
- (e) after “the Act of 1993” insert “, the Public Services Ombudsman (Wales) Act 2005”.
- (3) In subsection (2)—
- (a) for the words from “the Social” to “Welsh Administration Ombudsman” substitute “the Public Services Ombudsman for Wales”;
- (b) for “one of the Health Service Commissioners” substitute “the Health Service Commissioner for England”.
- (4) In subsection (5)—
- (a) omit “in paragraph 13(1) of Schedule 2A to the Housing Act 1996”;
- (b) for “paragraph 25(1) of Schedule 9 to the Government of Wales Act 1998” substitute “section 26 of the Public Services Ombudsman (Wales) Act 2005”.
- 16** (1) Section 34(1) (interpretation of Part 3) is amended as follows.
- (2) For the definition of “the Commissions” substitute—
- ““the Commission” means the Commission for Local Administration in England,”
- (3) In the definition of “local authority”—
- (a) after “a county council” insert “in England”;
- (b) omit “a Welsh county council, a county borough council”.
- 17** For the title to Schedule 4, substitute “The Commission”.
- 18** (1) Schedule 4 is amended as follows.
- (2) in paragraph 1(3) (disqualifications), omit the words “or in the office of Social Housing Ombudsman for Wales”.
- (3) In paragraph 2(2), omit the words from “and, if the Commissioner for Local Administration in Wales” to the end.
- (4) In paragraph 3—
- (a) in sub-paragraph (1), for “Each Commission” substitute “The Commission”;
- (b) in sub-paragraph (2), for “the appropriate Commission” substitute “the Commission”.
- (5) In paragraph 4—
- (a) in sub-paragraph (1), for “Each of the Commissions” substitute “The Commission”;
- (b) in sub-paragraph (2), for “Each of the Commissions” substitute “The Commission”;
- (c) in sub-paragraph (3), for “a Commission” substitute “the Commission”;
- (d) omit sub-paragraph (4).

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- (6) In the heading before paragraph 5, for “the Commissions” substitute “the Commission”.
- (7) In paragraph 5—
  - (a) in sub-paragraph (1), for “The Commissions” substitute “The Commission”;
  - (b) in sub-paragraph (2), for “either Commission” substitute “the Commission”;
  - (c) in sub-paragraph (3), for “Each of the Commissions” substitute “The Commission”.
- (8) In the heading before paragraph 6, for “the Commissions” substitute “the Commission”.
- (9) In paragraph 6, in sub-paragraphs (1), (2) and (3), omit “for Local Administration in England”.
- (10) Omit paragraph 6A.
- (11) In paragraph 7, in sub-paragraphs (1), (2) and (4), for “Each Commission” substitute “The Commission”.
- (12) In paragraph 8, omit “for Local Administration in England”.
- (13) Omit paragraph 8A.

*House of Commons Disqualification Act 1975 (c. 24)*

**19** *House of Commons Disqualification Act 1975 (c. 24)*

In Schedule 1 to the House of Commons Disqualification Act 1975 (offices disqualifying for membership)—

- (a) in Part 2, omit “The Commission for Local Administration in Wales.”;
- (b) in Part 3—
  - (i) omit “Health Service Commissioner for Wales.”;
  - (ii) at the appropriate place insert “Public Services Ombudsman for Wales.”;
  - (iii) omit “Welsh Administration Ombudsman.”.

*National Health Service Act 1977 (c. 49)*

**20** *National Health Service Act 1977 (c. 49)*

- (1) Section 19A of the National Health Service Act 1977 (independent advocacy services) is amended as follows.
- (2) In subsection (2)(b), for “the Health Service Commissioner for Wales” substitute “the Public Services Ombudsman for Wales”.
- (3) For subsection (3) substitute—
  - “(3) In subsection (2)—
  - “health service body” means—
  - (a) in relation to England, a body which, under section 2(1) of the Health Service Commissioners Act 1993, is subject

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- to investigation by the Health Service Commissioner for England;
- (b) in relation to Wales, a Welsh health service body (within the meaning of the Public Services Ombudsman (Wales) Act 2005);
- “independent provider” means—
- (a) in relation to England, a person who, under section 2B(1) of the Health Service Commissioners Act 1993, is subject to investigation by the Health Service Commissioner for England;
- (b) in relation to Wales, a person who is an independent provider in Wales (within the meaning of the Public Services Ombudsman (Wales) Act 2005)”

*Mental Health Act 1983 (c. 20)*

**21** *Mental Health Act 1983 (c. 20)*

In section 134 of the Mental Health Act 1983 (correspondence of patients), in subsection (3)(c)—

- (a) for “the Welsh Administration Ombudsman” substitute “the Public Services Ombudsman for Wales”;
- (b) omit “, the Health Service Commissioner for Wales”.

*Finance Act 1989 (c. 26)*

**22** *Finance Act 1989 (c. 26)*

In section 182 of the Finance Act 1989 (disclosure of information)—

- (a) in subsection (4)(a), for sub-paragraph (iv) substitute—  
“(iv) of the Public Services Ombudsman for Wales and any member of his staff, or”
- (b) in subsection (6), for “the Welsh Administration Ombudsman” substitute “the Public Services Ombudsman for Wales”;
- (c) in subsection (11)(c), omit “, the Health Service Commissioner for Wales”.

*Local Government and Housing Act 1989 (c. 42)*

**23** *Local Government and Housing Act 1989 (c. 42)*

The Local Government and Housing Act 1989 is amended as follows.

- 24** (1) Section 5 (designation and reports of monitoring officer) is amended as follows.
- (2) In subsection (2), after paragraph (b) insert “; or
- (c) a matter which the Public Services Ombudsman for Wales would be entitled to investigate under the Public Services Ombudsman (Wales) Act 2005,”
- (3) After subsection (2A) insert—
- “(2AA) No duty shall arise by virtue of subsection (2)(c) above unless the Public Services Ombudsman for Wales has conducted an investigation under the

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Public Services Ombudsman (Wales) Act 2005 in relation to the proposal, decision or omission concerned.”

- 25** (1) Section 5A (reports of monitoring officer: local authorities operating executive arrangements) is amended as follows.
- (2) In subsection (3), after paragraph (b) insert “; or
- (c) a matter which the Public Services Ombudsman for Wales would be entitled to investigate under the Public Services Ombudsman (Wales) Act 2005.”
- (3) After subsection (4) insert—
- “(4A) No duty shall arise by virtue of subsection (3)(c) above unless the Public Services Ombudsman for Wales has conducted an investigation under the Public Services Ombudsman (Wales) Act 2005 in relation to the proposal, decision or omission concerned.”

*Social Security Administration Act 1992 (c. 5)*

**26** *Social Security Administration Act 1992 (c. 5)*

In section 123 of the Social Security Administration Act 1992 (unauthorised disclosure of information relating to particular persons) in subsection (8)—

- (a) omit paragraphs (f), (hb) and (hd);
- (b) before paragraph (i) insert—
- “(he) the Public Services Ombudsman for Wales and any member of his staff;”
- (c) in paragraph (k), for “(hb)” substitute “(ha)”.

*Health Service Commissioners Act 1993 (c. 46)*

**27** *Health Service Commissioners Act 1993 (c. 46)*

The Health Service Commissioners Act 1993 is amended as follows.

- 28** In the heading before section 1, for “Commissioners” substitute “Commissioner”.
- 29** For the heading to section 1, substitute “The Commissioner”.
- 30** (1) Section 1 is amended as follows.
- (2) In subsection (1), omit paragraph (b).
- (3) In subsection (2)—
- (a) for “a Commissioner” substitute “the Commissioner”;
- (b) for “any of the Commissioners” substitute “the Health Service Commissioner for England”.
- (4) In subsection (3), omit the words from “for England” to the end.
- 31** (1) Section 2 (the bodies subject to investigation) is amended as follows.
- (2) In subsection (1), for “the Health Service Commissioner for England” substitute “the Commissioner”.
- (3) Omit subsection (2).



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- (4) For subsection (6) substitute—
- “(6) A designation made for the purposes of subsection (5)(b) shall be made by Order in Council; and a statutory instrument containing an Order in Council made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 32** (1) Section 2A (health service providers subject to investigation) is amended as follows.
- (2) In subsection (1), for “the Health Service Commissioner for England” substitute “the Commissioner”.
- (3) Omit subsection (2).
- (4) In subsection (4), for “subsection (1) or (2)” substitute “subsection (1)”.
- 33** (1) Section 2B (independent providers subject to investigation) is amended as follows.
- (2) In subsection (1), for “the Health Service Commissioner for England” substitute “the Commissioner”.
- (3) Omit subsections (2) and (2A).
- (4) In subsection (4), for “subsection (1)(a) or (2)(a)” substitute “subsection (1)(a)”.
- (5) In subsection (5), for “subsection (1) or (2)” substitute “subsection (1)”.
- 34** In the heading to section 3, for “Commissioners” substitute “Commissioner”.
- 35** (1) Section 3 is amended as follows.
- (2) In subsections (1), (1A), (1C), (1E), (2), (3), (4), (5) and (6), for “a Commissioner” substitute “the Commissioner”.
- (3) Omit subsection (1YA).
- 36** (1) Section 4 (availability of other remedy) is amended as follows.
- (2) In subsections (1) and (2), for “A Commissioner” substitute “The Commissioner”.
- (3) In subsection (5), for “a Commissioner” substitute “the Commissioner”.
- 37** In section 6 (general health services and service committees) in subsections (3) and (5)—
- (a) for “A Commissioner” substitute “The Commissioner”;
- (b) omit “or Health Authority”.
- 38** (1) Section 7 (personnel, contracts etc.) is amended as follows.
- (2) In subsection (1)—
- (a) [EmSpace]for “A Commissioner” substitute “The Commissioner”;
- (b) omit “or service as a member of the staff of the Assembly”.
- (3) In subsection (2), for “A Commissioner” substitute “The Commissioner”.
- (4) In subsection (3), for “the Health Service Commissioners for England and for Wales” substitute “the Commissioner”.
- (5) In subsection (3A), for “A Commissioner” substitute “The Commissioner”.
- (6) In subsections (3B) and (4), for “a Commissioner” substitute “the Commissioner”.

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- 39** (1) Section 9 (requirements to be complied with) is amended as follows.
- (2) In subsection (1), for “a Commissioner” substitute “the Commissioner”.
- (3) In subsection (4A), for “section 2A(1) or (2)” substitute “section 2A(1)”.
- (4) In subsection (4B), for “section 2B(1) or (2)” substitute “section 2B(1)”.
- 40** (1) Section 10 (referral of complaint by health service body) is amended as follows.
- (2) In subsections (1), (4) and (5), for “a Commissioner” substitute “the Commissioner”.
- (3) Omit subsection (2A).
- 41** (1) Section 11 (procedure in respect of investigations) is amended as follows.
- (2) In subsections (1), (1A), (1B), and (1C), for “a Commissioner” substitute “the Commissioner”.
- (3) In subsection (4)—
- (a) for “A Commissioner” substitute “The Commissioner”;
  - (b) for “the Health Service Commissioner for England” substitute “the Commissioner”;
  - (c) omit the words from “and payments made by the Health Service Commissioner for Wales” to the end.
- 42** In section 12 (evidence) in subsections (1), (1A) and (2), for “a Commissioner” substitute “the Commissioner”.
- 43** In section 13 (obstruction and contempt), in subsection (1), for “A Commissioner” substitute “The Commissioner”.
- 44** For the heading to section 14 substitute “Reports by the Commissioner”.
- 45** (1) Section 14 is amended as follows.
- (2) In subsections (1), (2), (2A), (2B), (2C), (2D), (2E), (2F), (3) and (5), for “the Health Service Commissioner for England” substitute “the Commissioner”.
- (3) In subsection (4), for “The Health Service Commissioner for England” substitute “The Commissioner”.
- 46** Omit sections 14A to 14C (reports by the Welsh Commissioner).
- 47** (1) Section 15 (confidentiality of information) is amended as follows.
- (2) In subsection (1), for each occurrence of “a Commissioner” substitute “the Commissioner”.
- (3) In subsections (1A), (1C) and (2), for “a Commissioner” substitute “the Commissioner”.
- (4) In subsection (3)—
- (a) for “a Commissioner's” substitute “the Commissioner's”;
  - (b) omit “or paragraph 6(6) of Schedule 1A”.
- 48** In section 16 (information prejudicial to the safety of the State) in subsections (1) and (2), for “a Commissioner” substitute “the Commissioner”.
- 49** (1) Section 17 (use of information by Commissioner in other capacity) is amended as follows.

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- (2) In subsection (1)—
- (a) for “a Commissioner” substitute “the Commissioner”;
  - (b) omit the words from “any of the other offices” to “Welsh Administration Ombudsman or”.
- (3) Omit subsection (3).
- 50** (1) Section 18 (consultation during investigations) is amended as follows.
- (2) In subsection (1)—
- (a) for “a Commissioner” substitute “the Commissioner”;
  - (b) omit paragraph (a);
  - (c) for paragraph (ba) substitute—
    - “(ba) by the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,”
  - (d) omit paragraph (e) and the word “or” immediately preceding it.
- (3) In subsection (2)—
- (a) for “a Commissioner” substitute “the Commissioner”;
  - (b) for “the Ombudsman” substitute “the Public Services Ombudsman for Wales”.
- 51** In section 18A (disclosure of information to Information Commissioner) in subsection (1) for “The Health Service Commissioner for England or the Health Service Commissioner for Wales” substitute “The Health Service Commissioner”.
- 52** (1) Section 19 (interpretation) is amended as follows.
- (2) Omit the definitions of “financial year” and “first financial year of the Assembly”.
- (3) In the definition of “officer” omit “and, in the case of the Health Service Commissioner for Wales, any member of his staff”.
- 53** (1) Schedule 1 is amended as follows.
- (2) Omit paragraph A1.
- (3) In the heading before paragraph 1, for “Commissioners” substitute “Commissioner”.
- (4) In paragraph 1(1) and (2), for “a Commissioner” substitute “the Commissioner”.
- (5) In paragraph 3—
- (a) in sub-paragraph (1), for “a Commissioner” substitute “the Commissioner”;
  - (b) in sub-paragraph (2), for “section 2(1) or (2)” substitute “section 2(1)”.
- (6) In paragraph 3A—
- (a) in sub-paragraph (1), for “a Commissioner” substitute “the Commissioner”;
  - (b) in sub-paragraph (2), for “section 2A(1) or (2)” substitute “section 2A(1)”.
- (7) In paragraphs 4, 5 and 7, for “a Commissioner” substitute “the Commissioner”.
- (8) In paragraph 11(1), for “A Commissioner” substitute “The Commissioner”.
- (9) In paragraph 12—
- (a) for “a Commissioner” substitute “the Commissioner”;

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- (b) for “the Health Service Commissioner for Wales, the Parliamentary Commissioner or the Welsh Administration Ombudsman” substitute “the Parliamentary Commissioner or the Public Services Ombudsman for Wales”.

(10) In paragraph 13—

- (a) in sub-paragraph (1), for “a Commissioner” substitute “the Commissioner”;
- (b) in sub-paragraph (2), for “A Commissioner” substitute “The Commissioner”.

(11) In paragraph 14, for “a Commissioner” substitute “the Commissioner”.

**54** Omit Schedule 1A (the Welsh Commissioner).

*Deregulation and Contracting Out Act 1994 (c. 40)*

**55** *Deregulation and Contracting Out Act 1994 (c. 40)*

In section 79(1) of the Deregulation and Contracting Out Act 1994 (interpretation of Part 2), in the definition of “office-holder”—

- (a) for “the Welsh Administration Ombudsman” substitute “the Public Services Ombudsman for Wales”;
- (b) omit “or for Wales”.

*Housing Act 1996 (c. 52)*

**56** *Housing Act 1996 (c. 52)*

The Housing Act 1996 is amended as follows.

**57** In section 51(7) (schemes for investigation of housing complaints), for “section 51C” substitute “section 41 of the Public Services Ombudsman (Wales) Act 2005”.

**58** Omit sections 51A to 51C and Schedule 2A (the Social Housing Ombudsman for Wales).

*Audit Commission Act 1998 (c. 18)*

**59** *Audit Commission Act 1998 (c. 18)*

In section 49(1) of the Audit Commission Act 1998 (restriction on disclosure of information), for the second paragraph (dd) substitute—

- “(de) for the purposes of the functions of an ethical standards officer or the Public Services Ombudsman for Wales under Part 3 of the Local Government Act 2000;”

*Data Protection Act 1998 (c. 29)*

**60** *Data Protection Act 1998 (c. 29)*

In section 31 of the Data Protection Act 1998 (regulatory activity), in subsection (4)(a)—

- (a) in sub-paragraph (ii), omit “or, the Commission for Local Administration in Wales”;
- (b) in sub-paragraph (iii), omit “or, the Health Service Commissioner for Wales”;
- (c) for sub-paragraph (iv) substitute—  
“(iv) the Public Services Ombudsman for Wales,”

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*Government of Wales Act 1998 (c. 38)*

**61** *Government of Wales Act 1998 (c. 38)*

The Government of Wales Act 1998 is amended as follows.

- 62** In section 12(1) (disqualification from being Assembly member)—
- (a) in paragraph (c), omit “or the office of Welsh Administration Ombudsman”;
  - (b) after paragraph (c) insert—  
“(ca) he holds the office of Public Services Ombudsman for Wales;”
- 63** In section 13(3) (exceptions and relief from disqualification), for “or (c)” substitute “, (c) or (ca)”.
- 64** In section 70 (openness), in subsection (5)(a) for “the Welsh Administration Ombudsman and the Health Service Commissioner for Wales” substitute “the Public Services Ombudsman for Wales”.
- 65** Omit section 111 (Welsh Administration Ombudsman).
- 66** In section 144 (accounts, audit and reports), in subsection (8)(a)—
- (a) for “the Welsh Administration Ombudsman” substitute “the Public Services Ombudsman for Wales”;
  - (b) omit “the Health Service Commissioner for Wales,”.
- 67** In section 146 (transfer etc. of functions from Comptroller and Auditor General), in subsection (2)(b)—
- (a) for “the Welsh Administration Ombudsman” substitute “the Public Services Ombudsman for Wales”;
  - (b) omit “the Health Service Commissioner for Wales,”.
- 68** In section 156 (defined expressions), omit the entry for the Welsh Administration Ombudsman.
- 69** Omit Schedule 9 (Welsh Administration Ombudsman).

*Freedom of Information Act 2000 (c. 36)*

**70** *Freedom of Information Act 2000 (c. 36)*

The Freedom of Information Act 2000 is amended as follows.

- 71** In section 76(1) (disclosure of information between Information Commission and ombudsmen), in the table—
- (a) omit the entries relating to the Health Service Commissioner for Wales and the Social Housing Ombudsman for Wales;
  - (b) for the entry relating to the Welsh Administration Ombudsman substitute—  

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|---|--|
| “The Public Services Ombudsman<br>for Wales | Part 2 of the Public Services<br>Ombudsman (Wales) Act 2005” |
|---|--|
- 72** In Schedule 1 (public authorities), in Part 6—
- (a) omit “The Commission for Local Administration in Wales”, “The Health Service Commissioner for Wales” and “The Welsh Administration Ombudsman”;
  - (b) at the appropriate place, insert “The Public Services Ombudsman for Wales”.

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*Scottish Public Services Ombudsman Act 2002 (asp 11)*

**73** *Scottish Public Services Ombudsman Act 2002 (asp 11)*

In section 21(1) of the Scottish Public Services Ombudsman Act 2002 (consultation and co-operation with other commissioners and ombudsmen)—

- (a) in paragraph (b), for “either of the Health Service Commissioners” substitute “the Health Service Commissioner”;
- (b) for paragraph (c) substitute—
  - “(c) by the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,”

*Health and Social Care (Community Health and Standards) Act 2003 (c. 43)*

**74** *Health and Social Care (Community Health and Standards) Act 2003 (c. 43)*

The Health and Social Care (Community Health and Standards) Act 2003 is amended as follows.

**75** In section 113 (complaints about health care) in subsection (4)—

- (a) in paragraph (a), at the beginning insert “in the case of regulations under subsection (1),”;
- (b) after paragraph (a) insert—
  - “(aa) in the case of regulations under subsection (2), to be referred to the Public Services Ombudsman for Wales for him to consider whether to investigate the complaint or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by him as a complaint duly referred to him under section 2(3) of that Act);”

**76** In section 114 (complaints about social services) in subsection (5)—

- (a) in paragraph (a), omit “who is a member of the Commission for Local Administration in England”;
- (b) for paragraph (b) substitute—
  - “(b) in the case of regulations under subsection (3), to be referred to the Public Services Ombudsman for Wales for him to consider whether to investigate the complaint or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by him as a complaint duly referred to him under section 2(3) of that Act).”

*Public Audit (Wales) Act 2004 (c. 23)*

**77** *Public Audit (Wales) Act 2004 (c. 23)*

In section 54 of the Public Audit (Wales) Act 2004 (restriction on disclosure of information) in subsection (2)(d), for “a Local Commissioner in Wales” substitute “the Public Services Ombudsman for Wales”.

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## SCHEDULE 7

Section 39

### REPEALS

| <i>Short title and chapter</i>   | <i>Extent of repeal</i>  |
|----------------------------------|--|
| Superannuation Act 1972 (c. 11)  | In Schedule 1, the words “Health Service Commissioner for Wales”, “The Local Commissioner for Wales” and “Welsh Administration Ombudsman”.   |
| Local Government Act 1974 (c. 7) | <p>In section 23—</p> <ul style="list-style-type: none"><li>(a) in subsection (1), paragraph (b) and the word “and” immediately preceding it;</li><li>(b) subsection (3A);</li><li>(c) in subsection (7), the words from “and, in the event” to the end;</li><li>(d) in subsection (8), the words from “; and where the” to “similar way in Wales”;</li><li>(e) in subsection (10)(a), the words from “including” to “that other Commission”;</li><li>(f) in subsection (11), the words “to the appropriate Commission”;</li><li>(g) in subsection (12), the words “or the National Assembly for Wales”;</li><li>(h) in subsection (12B), the words “in England or, as the case may be, authorities in Wales”.</li></ul> <p>In section 23A—</p> <ul style="list-style-type: none"><li>(a) in subsection (1)(a), the words “in England or, as the case may be, authorities in Wales”;</li><li>(b) subsection (6).</li></ul> <p>In section 26(6)(b), the words “or the National Assembly for Wales”.</p> <p>In section 29—</p> <ul style="list-style-type: none"><li>(a) in subsection (3), the words “or the National Assembly for Wales”;</li><li>(b) subsection (5)(aa).</li></ul> <p>In section 32(5), the words “or the National Assembly for Wales”, “or a member of the Assembly’s staff” and “or the Assembly”.</p> <p>Section 32A.</p> <p>In section 33(1)—</p> <ul style="list-style-type: none"><li>(a) paragraphs (aa) and (aza);</li><li>(b) in paragraph (b), the words “or the Health Service Commissioner for Wales”;</li><li>(c) the words “under the Housing Act 1996, under the Government of Wales Act 1998,”.</li></ul> |

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*Short title and chapter**Extent of repeal*

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|  | In section 33(5), the words “in paragraph 13(1) of Schedule 2A to the Housing Act 1996”.                                |
|  | In section 34(1), in the definition of “local authority”, the words “a Welsh county council, a county borough council”. |
|  | In Schedule 4—  |
|  | (a) in paragraph 1(3), the words “or in the office of Social Housing Ombudsman for Wales”;                              |
|  | (b) in paragraph 2(2), the words from “and, if the Commissioner for Local Administration in Wales” to the end;          |
|  | (c) paragraph 4(4);   |
|  | (d) in paragraph 6, in sub-paragraphs (1), (2) and (3), the words “for Local Administration in England”;                |
|  | (e) paragraph 6A;   |
|  | (f) in paragraph 8, the words “for Local Administration in England”;  |
|  | (g) paragraph 8A.   |
| House of Commons Disqualification Act 1975 (c. 24) | In Schedule 1—  |
|  | (a) in Part 2, the words “The Commission for Local Administration in Wales.”;   |
|  | (b) in Part 3, the words “Health Service Commissioner for Wales.” and “Welsh Administration Ombudsman.”.                |
| Mental Health Act 1983 (c. 20)                     | In section 134(3)(c), the words “, the Health Service Commissioner for Wales”.  |
| Finance Act 1989 (c. 26)                           | In section 182(11)(c), the words “, the Health Service Commissioner for Wales”.   |
| Social Security Administration Act 1992 (c. 5)     | In section 123(8), paragraphs (f), (hb) and (hd).   |
| Health Service Commissioners Act 1993 (c. 46)      | In section 1—   |
|  | (a) subsection (1)(b);  |
|  | (b) in subsection (3), the words from “for England” to the end.   |
|  | Section 2(2).   |
|  | Section 2A(2).  |
|  | Section 2B(2) and (2A).   |
|  | Section 3(1YA).   |
|  | In section 6, in subsections (3) and (5), the words “or Health Authority”.  |
|  | In section 7(1), the words “or service as a member of the staff of the Assembly”.                                       |
|  | Section 10(2A).   |
|  | In section 11(4), the words from “and payments made by the Health Service Commissioner for Wales” to the end.           |



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*Short title and chapter*

*Extent of repeal*

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|   | Sections 14A to 14C.<br>In section 15(3), the words “or paragraph 6(6) of Schedule 1A”.<br>In section 17(1), the words from “any of the other offices” to “Welsh Administration Ombudsman or”.<br>Section 17(3).<br>In section 18(1)—<br>(a) paragraph (a);<br>(b) paragraph (e) and the word “or” immediately preceding it.<br>In section 19—<br>(a) the definitions of “financial year” and “first financial year of the Assembly”;<br>(b) in the definition of “officer”, the words “and, in the case of the Health Service Commissioner for Wales, any member of his staff”.<br>In Schedule 1, paragraph A1.<br>Schedule 1A. |
| Deregulation and Contracting Out Act 1994 (c. 40) | In section 79(1) in the definition of “office-holder”, the words “or for Wales”.   |
| Local Government (Wales) Act 1994 (c. 19)         | In Schedule 16, paragraph 108.   |
| Health Authorities Act 1995 (c. 17)               | In Schedule 1, paragraph 126(2)(b) and (3).  |
| Housing Act 1996 (c. 52)                          | Sections 51A to 51C.<br>Schedule 2A.   |
| Data Protection Act 1998 (c. 29)                  | In section 31(4)(a)—<br>(a) in sub-paragraph (ii), the words “or, the Commission for Local Administration in Wales”;<br>(b) in sub-paragraph (iii), the words “or, the Health Service Commissioner for Wales”.   |
| Government of Wales Act 1998 (c. 38)              | In section 12(1)(c), the words “or the office of Welsh Administration Ombudsman”.<br>Section 111.<br>In section 144(8)(a), the words “the Health Service Commissioner for Wales,”.<br>In section 146(2)(b), the words “the Health Service Commissioner for Wales,”.<br>In section 156, the entry for the Welsh Administration Ombudsman.<br>Schedule 9.<br>In Schedule 10—<br>(a) paragraph 3(2);<br>(b) paragraphs 4 to 6;<br>(c) paragraph 8;<br>(d) paragraph 9(b);   |

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| <i>Short title and chapter</i>  | <i>Extent of repeal</i>  |
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|   | (e) paragraphs 11 and 12;<br>(f) paragraph 15(3) and (4);<br>(g) paragraph 16(3);<br>(h) paragraph 17.   |
|   | In Schedule 12—<br>(a) paragraph 12(4);<br>(b) paragraph 15(2) and (3);<br>(c) paragraph 16;<br>(d) paragraph 32(b).   |
| Health Act 1999 (c. 8)  | In Schedule 4, paragraph 85(2)(b).   |
| Care Standards Act 2000 (c. 14)   | In Schedule 1, paragraph 27(c).  |
| Government Resources and Accounts Act 2000 (c. 20)                          | In Schedule 1—<br>(a) paragraph 19;<br>(b) paragraph 23(d) and the word “and” immediately preceding it.  |
| Local Government Act 2000 (c. 22)   | In section 62(7)(b), the words “or the Commission for Local Administration in Wales”.<br>In section 68—<br>(a) in subsection (4), the words “Part 3 of”;<br>(b) subsection (5).<br>In section 83(1), the definition of “Local Commissioner in Wales”.  |
| Health Service Commissioners (Amendment) Act 2000 (c. 28)                   | In section 1, subsections (2)(b) and (3)(c) and (d).   |
| Freedom of Information Act 2000 (c. 36)                                     | In section 76(1) in the table, the entries relating to the Health Service Commissioner for Wales and the Social Housing Ombudsman for Wales.<br>In Schedule 1 in Part 6, the words “The Commission for Local Administration in Wales”, “The Health Service Commissioner for Wales” and “The Welsh Administration Ombudsman”.<br>In Schedule 7, paragraphs 7 and 8. |
| National Health Service Reform and Health Care Professions Act 2002 (c. 17) | In Schedule 5, paragraph 38.   |
| Local Government Act 2003 (c. 26)   | In Schedule 7, paragraph 5(3) and (5).   |
| Health and Social Care (Community Health and Standards) Act 2003 (c. 43)    | In section 114(5)(a), the words “who is a member of the Commission for Local Administration in England”.<br>In Schedule 11, paragraphs 61(b) and 62(3).  |
| Housing Act 2004 (c. 34)  | Section 228(2) to (4) and Schedule 12.<br>In Schedule 15, paragraphs 1, 7, 37, 45 and 46.  |