



Public Services Ombudsman (Wales) Act 2019

2019 anaw 3

An Act of the National Assembly for Wales to make provision about the office of the Public Services Ombudsman for Wales; to make provision about the functions of the Public Services Ombudsman for Wales; to make provision about compensation; and for connected purposes. [22 May 2019]

Having been passed by the National Assembly for Wales and having received the assent of Her Majesty, it is enacted as follows:

PART 1

INTRODUCTION

1 Overview

- (1) This Part of the Act is an overview of the main provisions of the Act.
- (2) Part 2 provides for the continuation of the role of the Ombudsman.
- (3) Part 3 makes provision for—
 - (a) the Ombudsman to investigate listed authorities;
 - (b) who can make and refer complaints to the Ombudsman;
 - (c) the matters that may be investigated by the Ombudsman;
 - (d) the procedures that apply to the Ombudsman's investigations;
 - (e) the Ombudsman's powers to deal with obstruction and contempt;
 - (f) the Ombudsman to prepare reports of investigations;
 - (g) the Ombudsman to issue guidance to listed authorities about good administrative practice;
 - (h) listed authorities to compensate persons aggrieved.
- (4) Part 4 makes provision for—

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- (a) the Ombudsman to publish a statement of principles about the complaints-handling procedures of listed authorities, and the Assembly procedure that applies to the statement of principles;
 - (b) the Ombudsman to publish model complaints-handling procedures for listed authorities;
 - (c) requiring a listed authority to comply with a model complaints-handling procedure that applies to the listed authority;
 - (d) the Ombudsman to declare that the complaints-handling procedure of a listed authority does not comply with the model complaints-handling procedure;
 - (e) the Ombudsman to promote best practice in relation to complaints-handling.
- (5) Part 5 makes provision for—
- (a) the Ombudsman to investigate social care providers and palliative care providers;
 - (b) who can make and refer complaints to the Ombudsman about social care and palliative care;
 - (c) the social care and palliative care matters that may be investigated by the Ombudsman;
 - (d) the procedures that apply to the Ombudsman's investigations into social care and palliative care;
 - (e) the Ombudsman to prepare reports of investigations into social care and palliative care.
- (6) Part 6 makes supplementary provision for—
- (a) the Ombudsman to work with other ombudsmen and commissioners etc. in relation to investigations;
 - (b) the disclosure and protection of information and publications in relation to investigations.
- (7) Part 7 makes miscellaneous provision, including adding the Ombudsman to Schedule 6 to the Welsh Language Standards (No. 2) Regulations 2016 and a requirement for the review of the operation of this Act by the Assembly.

Commencement Information

II [S. 1](#) in force at 23.7.2019 by [S.I. 2019/1096](#), [reg. 2](#)

PART 2

THE PUBLIC SERVICES OMBUDSMAN FOR WALES

2 The Public Services Ombudsman for Wales

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

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Commencement Information

I2 S. 2 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

PART 3

INVESTIGATIONS

*Power of investigation***3 Power to investigate complaints**

- (1) The Ombudsman may investigate a complaint under this Part in respect of a matter if the complaint has been—
 - (a) duly made to the Ombudsman, or
 - (b) duly referred to the Ombudsman, andthe matter is one which the Ombudsman is entitled to investigate under sections 11 to 16.
- (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 7 to make the complaint to the Ombudsman, and
 - (b) the requirements of section 8(1) are met in respect of it.
- (3) A complaint is “duly referred” to the Ombudsman if (but only if)—
 - (a) it is referred to the Ombudsman by a listed authority, and
 - (b) the requirements of section 9(1) are met in respect of it.
- (4) The Ombudsman may investigate a complaint under this Part in respect of a matter even if the requirements of section 8(1) or (as the case may be) section 9(1)(b), (c) or (d) are not met in respect of the complaint, if—
 - (a) the matter is one which the Ombudsman is entitled to investigate under sections 11 to 16, and
 - (b) the Ombudsman thinks it reasonable to do so.
- (5) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation (but see section 8(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).
- (6) The Ombudsman may take any action which the Ombudsman 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 (but see section 8(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).

Commencement Information

I3 S. 3 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

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4 Power to investigate on own initiative

- (1) The Ombudsman may investigate a matter under this Part, which the Ombudsman is entitled to investigate under sections 11 to 16, whether a complaint has been duly made or referred to the Ombudsman or not.
- (2) Before the Ombudsman begins an investigation under this section, the Ombudsman must—
 - (a) have regard to the public interest in beginning an investigation,
 - (b) have a reasonable suspicion—
 - (i) that there is systemic maladministration, or
 - (ii) in a case where the matter is one which may be investigated by virtue of section 15(2), that systemic injustice has been sustained as a result of the exercise of professional judgement,
 - (c) consult such persons as the Ombudsman considers appropriate (but see section 66 for further duties around consultation), and
 - (d) have regard to the criteria for own initiative investigations published under section 5.
- (3) Subject to the other provisions of this section—
 - (a) it is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section;
 - (b) the Ombudsman may take any action the Ombudsman thinks may assist in making a decision under subsection (3)(a).

Commencement Information

I4 S. 4 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

5 Criteria for own initiative investigations

- (1) The Ombudsman must publish criteria to be used in determining whether to begin an investigation under section 4.
- (2) The Ombudsman must lay a draft of the first criteria before the Assembly.
- (3) If, before the end of the 40 day period, the Assembly resolves not to approve the draft criteria, the Ombudsman must not publish the criteria in the form of the draft.
- (4) If no such resolution is made before the end of that period, the Ombudsman must publish the criteria in the form of the draft.
- (5) The 40 day period—
 - (a) begins on the day on which the draft is laid before the Assembly, and
 - (b) does not include any time during which the Assembly is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent new draft criteria from being laid before the Assembly.
- (7) Before laying the draft criteria before the Assembly, the Ombudsman must consult—
 - (a) the Welsh Ministers,
 - (b) the listed authorities in Schedule 3, and
 - (c) such other persons as the Ombudsman thinks appropriate.

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- (8) The Ombudsman must, in preparing the draft criteria to be laid before the Assembly, have regard to any representations made during the consultation mentioned in subsection (7).
- (9) The criteria come into force when they are published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the criteria.
- (11) If, in the opinion of the Ombudsman, revisions made under subsection (10) effect any material change to the criteria, the Ombudsman must lay a draft of those revisions before the Assembly.
- (12) Subsections (3) to (9) apply to draft revisions laid before the Assembly under subsection (11) as they apply to the first criteria.
- (13) The Welsh Ministers may by regulations amend the criteria published by the Ombudsman under this section by adding criteria, removing criteria or changing the criteria.
- (14) Where the Welsh Ministers make regulations under subsection (13), the Ombudsman must publish the criteria, as amended by the regulations, on the day the regulations come into force.
- (15) Before making regulations under subsection (13), the Welsh Ministers must consult—
 - (a) the Ombudsman,
 - (b) the listed authorities in Schedule 3, and
 - (c) such other persons as the Welsh Ministers think appropriate.
- (16) No regulations are to be made under subsection (13) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

Commencement Information

I5 S. 5 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

6 Alternative resolution of matters

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

Commencement Information

I6 S. 6 in force at 23.7.2019 by S.I. 2019/1096, reg. 2