

ACCOMPANYING DOCUMENTS

Explanatory Notes and an Explanatory Memorandum are printed separately.

# Public Services Ombudsman (Wales) Bill

[AS INTRODUCED]

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# Public Services Ombudsman (Wales) Bill

## [AS INTRODUCED]

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.

5 **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) Part 2 of this Act provides for the continuation of the role of the Ombudsman.
- 10 (2) Part 3 of this Act—
  - (a) sets out the Ombudsman’s powers to investigate listed authorities;
  - (b) makes provision for the procedures that apply to those investigations;
  - (c) makes provision for the procedures that apply to reports of those investigations;
  - (d) makes provision for listed authorities to compensate persons aggrieved.
- 15 (3) Part 4 of this Act makes provisions for complaints-handling procedures of listed authorities.
- (4) Part 5 of this Act—
  - (a) sets out the Ombudsman’s powers to investigate social and palliative care providers;
  - 20 (b) makes provision for the procedures that apply to those investigations;
  - (c) makes provision for the procedures that apply to reports of those investigations;
  - (d) makes provision for various matters relating to social care and palliative care.
- (5) Part 6 of this Act makes supplementary provision relating to investigations, including requirements for the Ombudsman to consult and work jointly with other persons.

- (6) Part 7 of this Act makes miscellaneous provision, including a requirement for the Ombudsman to publish a Welsh language strategy and for the Assembly to review the operation of this Act.

## 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.

## 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 –
- (a) the complaint has been duly made or referred to the Ombudsman, and
- (b) the matter is one which the Ombudsman is entitled to investigate under sections 10 to 14.
- (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 10 to 14, 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.
- (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.

(8) But this section is subject to section 8(5).

#### **4 Power to investigate on own initiative**

(1) The Ombudsman may investigate a matter under this Part, in respect of which the Ombudsman is entitled to investigate under sections 10 to 14, whether a complaint has been duly made or referred to the Ombudsman or not.

(2) The matter may relate to action taken before or after this Act receives Royal Assent.

(3) Subject to section 5, it is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section but the Ombudsman must consult such persons as the Ombudsman considers appropriate when making such a decision.

(4) The Ombudsman may take any action the Ombudsman thinks may assist in making a decision under subsection (3).

#### **5 Criteria for own initiative investigations**

(1) Before the Ombudsman begins an investigation under section 4, the Ombudsman must be satisfied that beginning an investigation is in the public interest and that one or more of the criteria in subsection (2) is met.

(2) The criteria are –

(a) any vulnerable or disadvantaged person (for example, a person who would have particular difficulty in making a complaint to the Ombudsman or a listed authority) is likely to sustain injustice or hardship in consequence of the matter that is being considered for investigation;

(b) having regard to complaints received by the Ombudsman, the matter being considered for investigation is likely to amount to a systemic failure that may cause any person to sustain injustice or hardship.

(3) The Welsh Ministers may by regulations amend the criteria in subsection (2) by adding criteria, removing criteria or changing the criteria.

(4) Before making regulations under subsection (3), the Welsh Ministers must consult the Ombudsman and any other persons they think appropriate.

(5) No regulations are to be made under subsection (3) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

#### **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.

### *Complaints*

#### 5 7 **Who can complain**

- (1) The persons entitled to make a complaint to the Ombudsman under this Part are—
  - (a) a member of the public (in this Part 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 10 to 14;
  - 10 (b) a person authorised by the person aggrieved to act on his or her behalf;
  - (c) if the person aggrieved is not capable of authorising a person to act on his or her behalf (for example because the person aggrieved 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.
- 15 (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint to the Ombudsman.

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

- (1) The requirements mentioned in section 3(2)(b) are that the complaint must—
  - 20 (a) be in a form specified by the Ombudsman in guidance;
  - (b) contain such information as specified by the Ombudsman in guidance;
  - (c) be made to the Ombudsman before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matter.
- (2) The Ombudsman must publish the guidance referred to in subsection (1).
- 25 (3) It is for the Ombudsman to determine any question of whether the requirements of subsection (1) are met in respect of a complaint.
- (4) If a complaint which meets the requirements of subsection (1) is made orally, the Ombudsman must—
  - 30 (a) explain to the person aggrieved that a complaint has been duly made under this Act and the implications of making such a complaint, and
  - (b) ask the person aggrieved whether he or she wishes the complaint to continue to be treated as a complaint that has been duly made.
- (5) If the person does not wish the complaint to continue to be treated as being duly made, the Ombudsman must not use the power in section 3 to investigate the matter.
- 35 (6) If the person wishes the complaint to continue to be treated as being duly made, the Ombudsman must ask the person whether he or she wishes the complaint to be confirmed in writing.

- (7) If the person wishes the complaint to be confirmed in writing, the Ombudsman must make such arrangements as are necessary for the complaint to be confirmed in writing.
- (8) If the person does not wish the complaint to be confirmed in writing the Ombudsman must record this in writing.
- 5 (9) The Ombudsman must maintain a register of all oral complaints.
- (10) In this section, “in writing” includes in electronic form.

## 9 Requirements: complaints referred to the Ombudsman

- (1) The requirements mentioned in section 3(3)(b) are that the complaint—
- 10 (a) must have been made to the listed authority by a person who would have been entitled under section 7 to make the complaint to the Ombudsman;
- (b) 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;
- 15 (c) must be referred to the Ombudsman in a form and contain such information as specified by the Ombudsman in guidance;
- (d) 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) The Ombudsman must publish the guidance referred to in subsection (1)(c).
- (3) It is for the Ombudsman to determine any question of whether the requirements of
- 20 subsection (1) are met in respect of a complaint.

### *Matters which may be investigated*

## 10 Matters which may be investigated

- (1) The matters which the Ombudsman is entitled to investigate under this Part are—
- 25 (a) alleged maladministration by a listed authority other than a private health services provider in connection with relevant action;
- (b) an alleged failure in a relevant service provided by a listed authority other than a private health services provider;
- (c) an alleged failure by a listed authority other than a private health services provider to provide a relevant service;
- 30 (d) where subsection (2) applies, matters relating to private health services.
- (2) This subsection applies where in the Ombudsman’s opinion—
- (a) a person has received medical treatment by way of relevant action taken by a listed authority other than a private health services provider,
- (b) the person has also received private health services from a private health services
- 35 provider, and

(c) matters relating to the relevant action cannot be investigated effectively or completely without also investigating matters relating to the private health services.

(3) Subsection (1) is subject to sections 11 to 14.

5 (4) 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;

10 (b) in the case of a listed authority which is a social landlord in Wales or a Welsh health service body other than the Welsh Ministers, action taken by the authority in the discharge of any of its functions;

15 (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 regulations under section 30(2) adding it to Schedule 3, action taken by the authority in the discharge of any of its specified functions;

20 (e) in any other case, action taken by the authority in the discharge of any of its administrative functions.

(5) A relevant service is –

25 (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 investigation, 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;

30 (c) in the case of a listed authority falling within subsection (4)(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 subsection;

(d) in the case of a listed authority falling within subsection (4)(d), any service which it was, at that time, the authority's function to provide in the discharge of any of its specified functions;

35 (e) in any other case, any service which it was, at that time, the authority's function to provide.

(6) For the purposes of subsections (4)(d) and (5)(d), a listed authority's specified functions are the functions specified in relation to the authority in regulations under section 30(2) as falling within the Ombudsman's remit.

(7) 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 (4) 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).

## 11 Exclusion: matters not relating to Wales

(1) The Ombudsman may not investigate a matter arising in connection with the discharge or provision by a listed authority of any of the authority's functions or services otherwise than in relation to Wales.

(2) Subsection (1) does not apply in relation to the Welsh Government.

(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.

## 12 Exclusion: other remedies

(1) The Ombudsman may not investigate a matter under section 3 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, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Government, 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 under section 3 only if the Ombudsman is satisfied that –

(a) the matter has been brought to the attention of the listed authority to which the matter 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 the Ombudsman is satisfied that it is reasonable in the particular circumstances for the Ombudsman to investigate the matter despite the fact that the requirements of that subsection have not been met.

## 13 Other excluded matters

(1) The Ombudsman may not investigate under this Part a matter specified in Schedule 2.

(2) The Welsh Ministers may by regulations amend Schedule 2 by –

- (a) adding an entry;
- (b) removing an entry;
- (c) changing an entry.

5 (3) Before making regulations under subsection (2), the Welsh Ministers must consult the Ombudsman.

(4) No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

10 (5) 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.

#### 14 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.

15 (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*

#### 15 Decisions not to investigate or to discontinue investigation

20 (1) If the Ombudsman decides under section 3(5) or section 4(3) –

- (a) not to begin an investigation, or
- (b) to discontinue an investigation,

the Ombudsman must prepare a statement of the reasons for the decision.

(2) The Ombudsman must send a copy of the statement to –

- 25 (a) the person aggrieved (if any), and
- (b) the listed authority to which the matter relates.

(3) The Ombudsman may send a copy of the statement to any other persons the Ombudsman thinks appropriate.

30 (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman 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.

35 (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 to which the matter relates, or

(b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's 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 (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the statement.

#### *Investigation procedure and evidence*

### **16 Investigation procedure**

(1) If the Ombudsman conducts an investigation under section 3, the Ombudsman 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) If the Ombudsman conducts an investigation under section 4, the Ombudsman must –

(a) prepare an investigation proposal, and

(b) submit the investigation proposal to the listed authority being investigated.

(3) But if –

(a) the Ombudsman has begun to investigate a matter under section 3 or has prepared an investigation proposal in respect of an investigation under section 4 (in either case, "the original investigation"), and

(b) the Ombudsman is conducting another investigation ("the related investigation") under section 4 that relates to the original investigation,

subsection (2) does not apply to the related investigation.

(4) An investigation relates to an original investigation if the matter investigated in the related investigation has a substantial connection with the matter investigated in the original investigation.

(5) An investigation proposal must include –

(a) the reasons for the investigation, and

(b) how the criteria specified in section 5 have been met.

(6) The Ombudsman must specify and publish procedural requirements the Ombudsman must follow (in addition to the requirements specified in subsection (2)) when conducting an investigation under section 4.

(7) The requirements in subsection (6) must include procedures giving—

(a) where there is an investigation proposal—

(i) the listed authority an opportunity to comment on the investigation proposal;

(ii) any person other than the listed authority who is identified in the investigation proposal in a negative way an opportunity to comment on the investigation proposal (as far as the investigation proposal relates to that person);

(b) where there is no investigation proposal—

(i) the listed authority an opportunity to comment on the investigation;

(ii) any person other than the listed authority who is identified by the Ombudsman in relation to the investigation in a negative way an opportunity to comment on the investigation (as far as the investigation relates to that person).

(8) An investigation must be conducted in private.

(9) Subject to the other provisions of this section, the procedure for conducting an investigation is to be such as the Ombudsman thinks appropriate in the circumstances of the case.

(10) In particular, the Ombudsman may—

(a) make such inquiries as the Ombudsman thinks appropriate;

(b) determine whether any person may be represented in the investigation by an authorised person or otherwise.

(11) In subsection (10) “authorised person” means a person who, for the purposes of the Legal Services Act 2007 (c.29), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).

(12) The Ombudsman may pay to the person aggrieved (if any) and to any other person who attends or supplies information for the purposes of the investigation—

(a) such sums as the Ombudsman may determine in respect of expenses properly incurred by the person, and

(b) such allowances as the Ombudsman may determine by way of compensation for the loss of the person’s time,

subject to such conditions as the Ombudsman may determine.

(13) 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.

## 17 Information, documents, evidence and facilities

(1) This section applies in relation to investigations conducted under this Part.

- (2) For the purposes of an investigation the Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to do so.
- (3) 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.
- (4) For the purposes of an investigation the Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.
- (5) Subject to subsection (7), no person is to be compelled for the purposes of an investigation to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (6) 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.
- (7) 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.

## 18 Obstruction and contempt

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, the Ombudsman 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 the person has taken action such as is mentioned in section 16(13).
- (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 the person in any manner in which it could have if the person had committed contempt in relation to the High Court.

*Power to demand costs from private health services providers***19 Power to demand costs from private health services providers**

- 5 (1) This section applies where the Ombudsman investigates a listed authority which is a private health services provider and the Ombudsman is satisfied that the condition in subsection (2) is met.
- (2) The condition is that the private health services provider –
- (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
- 10 (b) has done an act in relation to the 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 provider merely because the provider has taken action such as is mentioned in section 16(13).
- (4) The Ombudsman may serve a notice ("costs recovery notice") on the provider as a means of recovering costs incurred by the Ombudsman as a result of any obstruction or action referred to in the condition in subsection (2).
- 15 (5) The costs referred to in subsection (4) include (but are not limited to) the costs of obtaining expert advice (including legal advice).
- (6) A costs recovery notice must –
- (a) set out the total costs the Ombudsman seeks to recover under subsection (4), including a detailed breakdown of those costs,
- 20 (b) set out the date by which payment must be made, and
- (c) explain the right of appeal in subsection (9).
- (7) The date referred to in subsection (6)(b) must be at least 28 days later than the date on which the costs recovery notice is served on the provider.
- 25 (8) The costs must be paid by the provider by the date specified in the costs recovery notice (but this is subject to the remaining provisions of this section).
- (9) The provider may appeal to the magistrates' court against a costs recovery notice within 21 days beginning with the date of the notice.
- (10) An appeal is to be by way of a complaint for an order, and in accordance with the Magistrates' Court Act 1980 (c.43).
- 30 (11) For the purposes of the time limit for making an appeal, the making of a complaint is to be treated as the making of an appeal.
- (12) On appeal, the magistrates' court may confirm, quash or vary the notice and may make such order as to costs as it thinks fit.
- 35 (13) Where on appeal under this section a magistrates' court quashes or varies a notice, it may order the Ombudsman to compensate the provider for loss suffered as a result of the service of the notice.
- (14) If a costs recovery notice is appealed under this section, then to the extent that the notice is upheld, the provider must pay the costs within 28 days of the day on which the appeal is determined.
- 40

- (15) Costs recoverable under this section are recoverable as a debt.

*Reports of investigations*

**20 Reports of investigations**

- (1) The Ombudsman must, after conducting an investigation—

- 5 (a) prepare a report on the Ombudsman's findings, and  
(b) send a copy of the report to the persons listed in subsection (2),  
but this is subject to section 26.

- (2) The persons referred to in subsection (1)(b) are—

- 10 (a) the person aggrieved (if any);  
(b) the listed authority to which the report relates;  
(c) any other person who is alleged in the complaint (if any) to have taken or  
authorised the action complained of or is identified in the report by the  
Ombudsman in a negative way;  
(d) if the listed authority is a family health service provider in Wales—

- 15 (i) any Local Health Board with whom the authority had, at the time of the  
action which is the subject of the investigation, 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;  
20 (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—

- 25 (i) any Welsh health service body with whom the authority had, at the time of  
the action which is the subject of the investigation, 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 First Minister for Wales (unless the listed authority is itself the Welsh  
Government or is a local authority in Wales).

- 30 (3) The Ombudsman may send a copy of the report to any other persons the Ombudsman  
thinks appropriate.

- (4) The Ombudsman may publish a report prepared under this section if, after taking  
account of the interests of the person aggrieved (if any) and any other persons the  
Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest  
35 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).
- 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 report was made, or
  - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman’s opinion, can be omitted
- 10 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 (if any) and any other persons the Ombudsman
- 15 thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

## 21 Publicising reports

- (1) If a listed authority receives a copy of a report under section 20(1)(b), the authority must make copies of that version of the report available for a period of at least three weeks –
- 20 (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 –
- (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
- 25 payment;
- (c) require the listed authority to supply the person with a copy of the report or any part of it, on payment of a reasonable sum if requested;
  - (d) view the copy of the report on the website (if any) without payment.
- 30 (3) Not later than two weeks after the copy of the report is received, the listed authority 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
- 35 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) the person wilfully obstructs a person in the exercise of a right conferred by subsection (2)(a), (b) or (d), or
  - (b) the person 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 (if any), and
  - (c) the interests of any other persons the Ombudsman thinks appropriate.

## 22 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 21 has effect with the modifications specified in subsections (2) to (4).
- (2) For subsection (1) substitute –
- “(1) A person who has received a copy of a report under section 20 by virtue of section 20(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 21 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 20 by virtue of section 20(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.

### **23 Action following receipt of a report: investigation of a listed authority**

(1) This section applies if, in a report under section 20 of an investigation in respect of a listed authority, the Ombudsman concludes that any person 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.

### **24 Action following receipt of a report: investigation of a private health services provider**

Where a listed authority other than a private health services provider is considering whether to enter into a contract for services with a private health services provider, the listed authority must have regard to any report published under section 20(4) in respect of the private health services provider and any action taken by the private health services provider in response to the report.

### **25 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, the Ombudsman may issue a certificate to that effect to the High Court.

(2) The condition is that the listed authority has wilfully disregarded the Ombudsman’s report without lawful excuse.

**26 Reports: alternative procedure**

- (1) This section applies if, after the Ombudsman has conducted an investigation –
- (a) the Ombudsman concludes that no person has sustained injustice or hardship in consequence of the matter investigated, and
  - (b) the Ombudsman is satisfied that the public interest does not require sections 20 to 23 to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation –
- (a) the Ombudsman concludes that any person 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 the Ombudsman makes, and
  - (c) the Ombudsman is satisfied that the public interest does not require sections 20 to 23 to apply.
- (3) The permitted period is –
- (a) a period agreed between the Ombudsman, the listed authority and the person aggrieved (if any), or
  - (b) if the Ombudsman thinks that no such agreement can be reached, the period specified by the Ombudsman in writing.
- (4) The Ombudsman may decide to prepare a report on the Ombudsman’s findings under this section instead of under section 20.
- (5) If the Ombudsman decides to prepare a report under this section –
- (a) sections 20 to 23 do not apply;
  - (b) the Ombudsman must send a copy of the report to –
    - (i) the person aggrieved (if any);
    - (ii) the listed authority in respect of which the report was made;
  - (c) the Ombudsman may send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (6) The Ombudsman may publish a report prepared under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman 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 report was made, or

(b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's 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 (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

### *Special reports*

## **27 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 20, the Ombudsman has concluded that any person has sustained injustice or hardship in consequence of the matter investigated, and—

(a) the Ombudsman has not received the notification required under section 23 before the end of the period permitted under that section,

(b) the Ombudsman has received that notification but 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,

(c) the Ombudsman has received that notification but 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 23(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 26(2), and

(b) is not satisfied that the listed authority has implemented the Ombudsman's 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 26(2)(b), or

(b) any longer period specified by the Ombudsman in writing.

(6) This subsection applies if—

- (a) a matter in respect of which the Ombudsman is entitled to investigate has been resolved,
- (b) in resolving the matter, the Ombudsman has concluded that any person has sustained injustice or hardship in consequence of the matter,
- 5 (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 –

- 10 (a) the period referred to in subsection (6)(c), or
- (b) any longer period specified by the Ombudsman in writing.

(8) A special report must –

- 15 (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 the Ombudsman's opinion, should be taken –
  - (i) to remedy the injustice or hardship to the person, and
  - (ii) to prevent similar injustice or hardship being caused in the future.

(9) The Ombudsman must send a copy of a special report –

- 20 (a) if the special report is prepared because subsection (2) applies, to each person to whom a copy of the report under section 20 was sent under section 20(1)(b);
- (b) if the special report is prepared because subsection (4) or (6) applies, to the person aggrieved (if any) and the listed authority in respect of which the report was made.

(10) The Ombudsman may send a copy of a special report to any other persons the Ombudsman thinks appropriate.

## 28 Special reports: supplementary

(1) The Ombudsman may –

- 30 (a) publish a special report made under section 27;
- (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 –

- 35 (a) mentions the name of any person other than the listed authority in respect of which the report was made, or

(b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report,

5 that information must not be included in a version of the report sent to a person under section 27(9) or (10) or published under subsection (1) of this section, subject to subsection (5).

10 (5) Subsection (4) does not apply in relation to a version of the special report if, after taking account of the interests of any person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the special report.

(6) Sections 21 and 22 (publicising reports under section 20) apply in relation to a special report under section 27 as they apply in relation to a report under section 20.

15 (7) Where a listed authority other than a private health services provider is considering whether to enter into a contract for services with a private health services provider, the listed authority must have regard to any report published under this section in respect of the private health services provider.

## 29 **Special reports relating to the Welsh Government and the National Assembly for Wales Commission**

20 (1) This section applies if a special report is made in a case where the investigation was made in respect of the Welsh Government or the National Assembly for Wales Commission.

(2) The relevant person must lay a copy of the report before the Assembly.

(3) In subsection (2) "the relevant person" means –

(a) if the investigation was made in respect of the Welsh Government, the First Minister for Wales, and

25 (b) if the investigation was made in respect of the National Assembly for Wales Commission, a member of that Commission.

### *Listed authorities*

## 30 **Listed authorities**

(1) The persons specified in Schedule 3 are listed authorities for the purposes of this Act.

30 (2) The Welsh Ministers may by regulations amend Schedule 3 by –

(a) adding a person,

(b) omitting a person, or

(c) changing the description of a person.

35 (3) Regulations 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 regulations.

(4) Before making regulations under subsection (2), the Welsh Ministers must consult the Ombudsman and any other persons they think appropriate.

- (5) No regulations are to be made under subsection (2) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
- (6) Sections 31 and 32 contain further restrictions on the power in subsection (2).

5 **31 Restrictions on power to amend Schedule 3**

- (1) Regulations under section 30(2) may not omit the Welsh Government or the National Assembly for Wales Commission from Schedule 3.
- (2) Regulations under section 30(2) may add a person to Schedule 3 only if –
- 10 (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 Welsh Ministers have, or the First Minister or the Counsel General to the Welsh Government has, functions, and
- 15 (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 Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or another listed authority,
- 20 (b) it is a body wholly or partly constituted by appointment made by Her Majesty, a Minister of the Crown, a government department, the Welsh Ministers, the First Minister for Wales, the Counsel General to the Welsh Government or another listed authority, and
- 25 (c) at least half of its expenditure on the discharge of its functions in relation to Wales is met out of the Welsh Consolidated Fund or is met directly from payments made by other listed authorities.
- (4) A person falls within this subsection if –
- (a) it is a body established by or under an enactment, and
- 30 (b) it has power to issue a precept or a levy.
- (5) A person falls within this subsection if –
- (a) it appears to the Welsh Ministers that the person discharges functions of a public nature, and
- 35 (b) at least half of the person's expenditure on the discharge of those functions in relation to Wales is met out of the Welsh Consolidated Fund or directly or indirectly from payments made by other listed authorities.
- (6) Regulations under section 30(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.

### 32 Provisions in regulations adding persons to Schedule 3

If the Welsh Ministers propose to make regulations under section 30(2) adding a person to Schedule 3, they must also specify in the regulations –

- (a) whether all or only some of the person's functions are to fall within the remit of the Ombudsman under this Part;
- (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.

### 33 Power to issue guidance

- (1) The Ombudsman may issue to one or more listed authorities such guidance about good administrative practice as the Ombudsman thinks appropriate.
- (2) Before issuing guidance under this section the Ombudsman must consult such listed authorities, or persons appearing to the Ombudsman to represent them, as the Ombudsman 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 the Ombudsman 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 which has been investigated under this Part, or
  - (b) include any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's 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 the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in the guidance.

*Compensation***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 this Part.
- (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 4****LISTED AUTHORITIES: COMPLAINTS-HANDLING PROCEDURES****35 Complaints-handling: statement of principles**

- (1) The Ombudsman must publish a statement of principles concerning complaints-handling procedures of listed authorities.
- (2) A listed authority must ensure—
- (a) it has a complaints-handling procedure in respect of action taken by the listed authority, and
  - (b) any such procedure complies with the statement of principles.
- (3) A listed authority which is responsible, by virtue of any enactment, for a complaints-handling procedure—
- (a) in relation to, or
  - (b) operated by,
- another listed authority, must ensure the procedure complies with the statement of principles.
- (4) The first statement of principles under subsection (1) is not to be published unless a draft of the statement has been laid before, and approved by a resolution of, the Assembly.
- (5) The Assembly may not approve the draft later than two months after being laid.

- (6) In calculating any period of two months for the purposes of subsection (5), no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than four days.
- (7) Before laying a draft statement of principles before the Assembly in accordance with subsection (4) the Ombudsman must consult –
- (a) the Welsh Ministers, and
  - (b) such listed authorities and other persons as the Ombudsman thinks appropriate.
- (8) The Ombudsman must, in preparing the draft statement of principles to be laid before the Assembly in accordance with subsection (4), have regard to any representations made during the consultation mentioned in subsection (7).
- (9) The statement of principles comes into force when it is published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the statement of principles.
- (11) Where the Ombudsman considers that any revision of the statement of principles under subsection (10) is material, subsections (4) to (8) apply to that statement of principles as they do to the first statement of principles.
- (12) In this section and sections 36 to 39, “complaints-handling procedures” means procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one in respect of which a complaint to the Ombudsman can be made and investigated under section 3.

### **36 Model complaints-handling procedures**

- (1) The Ombudsman may publish model complaints-handling procedures for listed authorities.
- (2) A model complaints-handling procedure (referred to in this Act as a “model CHP”) must comply with the statement of principles.
- (3) The Ombudsman may publish different model CHPs for different purposes.
- (4) Before publishing a model CHP the Ombudsman must consult such listed authorities or groups of listed authorities as the Ombudsman thinks fit.
- (5) The Ombudsman may from time to time revise and re-publish any model CHP; and in doing so subsection (4) applies.
- (6) Where a model CHP is revised and re-published by virtue of subsection (5), section 37 has effect with the following modifications –
- (a) any specification under subsection (1) of that section in relation to the model CHP continues in effect as a specification in relation to the revised and re-published model CHP,
  - (b) any other reference to a model CHP is to the model CHP as revised and re-published, and
  - (c) subsection (3) of that section is omitted.

- (7) The Ombudsman may withdraw any model CHP at any time; and any specification under section 37(1) in relation the model CHP ceases to have effect.

**37 Model complaints-handling procedures: specification of listed authorities**

- 5 (1) The Ombudsman may specify any listed authority to which a model CHP is relevant; and must notify the authority accordingly.
- (2) Where a model CHP is relevant to a listed authority by virtue of a specification under subsection (1), the authority must ensure there is a complaints-handling procedure which complies with the model CHP for the purposes of the specification.
- 10 (3) Where subsection (2) applies the authority must submit a description of the complaints-handling procedure, having taken account of the relevant model CHP, within six months of the specification mentioned in that subsection.
- (4) A listed authority may, with the consent of the Ombudsman, modify the application of the model CHP which is relevant to it but only to the extent that is necessary for the effective operation of the procedure by the authority.
- 15 (5) The Ombudsman may revoke any specification under subsection (1) at any time.

**38 Declarations of non-compliance**

- 20 (1) Where a model CHP is relevant to a listed authority by virtue of a specification under section 37(1) the Ombudsman may declare that the complaints-handling procedure of the authority, a description of which was submitted by the authority under section 37(3) or otherwise, does not comply with the model CHP.
- (2) Where there is no specification under section 37(1) in relation to a listed authority the Ombudsman may declare that the complaints-handling procedure of the authority, a description of which was submitted by the authority under section 39 or otherwise, does not comply with the statement of principles.
- 25 (3) Where a declaration is made under subsection (1) or (2) the Ombudsman—
- (a) must give reasons in writing, and
  - (b) may specify such modifications to the complaints-handling procedure as would result in the declaration being withdrawn.
- 30 (4) Where a declaration is made under subsection (1) or (2) the listed authority must submit a description of its complaints-handling procedure, having taken account of the reasons given under subsection (3)(a) and any modifications specified in subsection (3)(b), within two months of the declaration.
- (5) The Ombudsman may withdraw a declaration of non-compliance made under subsection (1) or (2) at any time if the Ombudsman thinks fit.

**39 Submission of description of complaints-handling procedure: general**

- (1) A listed authority must submit a description of its complaints-handling procedure if the Ombudsman so directs; and must do so within three months of being so directed or such other period as the Ombudsman may direct.
- (2) Sections 37(3) and 38(4) are subject to any direction given under this section.
- (3) When a listed authority has submitted a description of its complaints-handling procedure to the Ombudsman under this Act or otherwise, the authority must provide such additional information in relation to that procedure as the Ombudsman may reasonably request; and must do so within such period as the Ombudsman directs.

**40 Complaints-handling procedures: promotion of best practice etc**

- (1) The Ombudsman must—
- (a) monitor practice and identify any trends in practice as respects the way in which listed authorities handle complaints,
  - (b) promote best practice in relation to such complaints-handling, and
  - (c) encourage co-operation and the sharing of best practice among listed authorities in relation to complaints-handling.
- (2) A listed authority must co-operate with the Ombudsman in the exercise of the function in subsection (1).
- (3) The duty in subsection (2) does not apply to the extent that—
- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duty, or
  - (b) the duty is inconsistent with any other enactment.

**41 Complaints-handling procedures: application and interpretation**

- (1) The duties in sections 35(2) and (3) and 37(2) do not apply to the extent that—
- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duties, or
  - (b) the duties are inconsistent with any other enactment.
- (2) In sections 35 to 40, references to listed authorities, or to specified listed authorities, do not include references to private health services providers.

## PART 5

INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE  
AND PALLIATIVE CARE*Application of this Part*5 **42 Matters to which this Part applies**

(1) This Part applies to the following matters—

(a) action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales;

10 (b) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales;

(c) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales.

(2) But this Part does not apply to—

(a) matters which may be investigated under Part 3, or

15 (b) matters described in Schedule 4.

(3) The Welsh Ministers may by regulations amend Schedule 4 by—

(a) adding an entry,

(b) removing an entry, or

(c) changing an entry.

20 (4) Before making regulations under subsection (3), the Welsh Ministers must consult the Ombudsman.

(5) No regulations are to be made under subsection (3) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

25 (6) For the meaning of the following terms see sections 61 to 63—

“care home” (“*cartref gofal*”);

“care home provider” (“*darparwr cartref gofal*”);

“domiciliary care” (“*gofal cartref*”);

“domiciliary care provider” (“*darparwr gofal cartref*”);

30 “palliative care service” (“*gwasanaeth gofal lliniarol*”);

“independent palliative care provider” (“*darparwr gofal lliniarol annibynnol*”).

*Investigation of complaints***43 Power to investigate complaints**

(1) The Ombudsman may investigate a complaint about a matter to which this Part applies if—

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- (a) the complaint has been duly made or referred to the Ombudsman, and
- (b) in the case of a complaint which relates to an independent palliative care provider, the condition in subsection (2) is met.
- (2) The condition is that the independent palliative care provider has received public funding, within the three years before the date of the action to which the investigation relates, in respect of a palliative care service that it provides in Wales.
- (3) In subsection (2) “public funding” means funding from –
- (a) the Welsh Ministers,
- (b) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 (c.42),
- (c) an NHS Trust, or
- (d) a county council or county borough council in Wales.
- (4) A complaint is “duly made” to the Ombudsman if (but only if) –
- (a) it is made by a person who is entitled under section 47 to make a complaint to the Ombudsman,
- (b) before the complaint is made –
- (i) the matter to which it relates has been brought, by or on behalf of the person affected, to the notice of the provider to whom it relates, and
- (ii) the provider has been given a reasonable opportunity to investigate the matter and to respond, and
- (c) the requirements of section 48 are met in respect of it.
- (5) A complaint is “duly referred” to the Ombudsman if (but only if) –
- (a) it is made by a person who is entitled under section 47 to make a complaint to the Ombudsman, and
- (b) the requirements of section 49 are met in respect of it.
- (6) It is for the Ombudsman to determine whether the requirements of subsection (1) have been met in respect of a complaint.
- (7) Where the Ombudsman determines that the requirements of subsection (1) have not been met in respect of a complaint because the requirements of subsection (4)(b), section 48 or section 49(1)(b), (c) or (d) have not been met in respect of that complaint, the Ombudsman may nonetheless investigate the complaint if –
- (a) it relates to a matter to which this Part applies, and
- (b) the Ombudsman thinks it reasonable to do so.
- (8) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.
- (9) The Ombudsman may take any action which the Ombudsman thinks may assist in making a decision under subsection (8).
- (10) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.

**44 Power to investigate on own initiative**

- (1) The Ombudsman may investigate a matter to which this Part applies whether a complaint has been duly made or referred to the Ombudsman or not.
- (2) But if the matter relates to an independent palliative care provider, the power in subsection (1) may only be used if the condition in section 43(2) is met.
- (3) The matter may relate to action taken before or after this Act receives Royal Assent.
- (4) Subject to section 45, it is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section but the Ombudsman must consult such persons as the Ombudsman considers appropriate when making such a decision.
- (5) The Ombudsman may take any action the Ombudsman thinks may assist in making a decision under subsection (4).

**45 Criteria for own initiative investigations**

- (1) Before the Ombudsman begins an investigation under section 44, the Ombudsman must be satisfied that beginning an investigation is in the public interest and that one or more of the criteria in subsection (2) is met.
- (2) The criteria are –
- (a) any vulnerable or disadvantaged person (for example, a person who would have particular difficulty in making a complaint to the Ombudsman or a provider) is likely to sustain injustice or hardship in consequence of the matter that is being considered for investigation;
  - (b) having regard to complaints received by the Ombudsman, the matter being considered for investigation is likely to amount to a systemic failure that may cause any person to sustain injustice or hardship.
- (3) The Welsh Ministers may by regulations amend the criteria in subsection (2) by adding criteria, removing criteria or changing the criteria.
- (4) Before making regulations under subsection (3), the Welsh Ministers must consult the Ombudsman and any other persons they think appropriate.
- (5) No regulations are to be made under subsection (3) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

**46 Alternative resolution of matters**

- (1) The Ombudsman may take any action the Ombudsman considers appropriate with a view to resolving a matter which the Ombudsman has the 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.

**47 Who can complain**

- (1) The persons entitled to make a complaint to the Ombudsman are—
- (a) a member of the public (referred to in this Part as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship as a result of a matter to which this Part applies,
  - (b) a person authorised in writing by the person aggrieved to act on that person’s behalf, or
  - (c) if the person aggrieved is not capable of authorising a person to act on his or her behalf (for example because the person 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” does not include a person acting in his or her capacity as—
- (a) a care home provider,
  - (b) a domiciliary care provider,
  - (c) an independent palliative care provider, or
  - (d) a listed authority.
- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

**48 Requirements: complaints made to the Ombudsman**

- (1) The requirements mentioned in section 43(4)(c) are that the complaint must—
- (a) be in a form specified by the Ombudsman in guidance;
  - (b) contain such information as specified by the Ombudsman in guidance;
  - (c) be made before the end of the period of one year beginning with the day on which the person aggrieved first has notice of the matter.
- (2) The Ombudsman must publish the guidance referred to in subsection (1).
- (3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.
- (4) If a complaint which meets the requirements of subsection (1) is made orally, the Ombudsman must—
- (a) explain to the person aggrieved that a complaint has been duly made under this Act and the implications of making such a complaint, and
  - (b) ask the person aggrieved whether he or she wishes the complaint to continue to be treated as a complaint that has been duly made.
- (5) If the person does not wish the complaint to continue to be treated as being duly made, the Ombudsman must not use the power in section 43 to investigate the matter.
- (6) If the person wishes the complaint to continue to be treated as being duly made, the Ombudsman must ask the person whether he or she wishes the complaint to be confirmed in writing.

- (7) If the person wishes the complaint to be confirmed in writing, the Ombudsman must make such arrangements as are necessary for the complaint to be confirmed in writing.
- (8) If the person does not wish the complaint to be confirmed in writing the Ombudsman must record this in writing.
- 5 (9) The Ombudsman must maintain a register of all oral complaints.
- (10) In this section, “in writing” includes in electronic form.

#### 49 Requirements: complaints referred to the Ombudsman

- (1) The requirements mentioned in section 43(5)(b) are that the complaint—
- 10 (a) must have been made to the provider to whom it relates by a person who would have been entitled under section 47 to make the complaint to the Ombudsman;
- (b) must have been made to the provider to whom it relates before the end of the period of one year beginning with the day on which the person aggrieved first has notice of the matter;
- 15 (c) must be referred to the Ombudsman in a form and contain such information as specified by the Ombudsman in guidance;
- (d) must be referred to the Ombudsman before the end of the period of one year beginning with the day on which the complaint was made to the provider.
- (2) The Ombudsman must publish the guidance referred to in subsection (1)(c).
- (3) It is for the Ombudsman to determine any question of whether the requirements of
- 20 subsection (1) are met in respect of a complaint.

#### *Decisions not to investigate etc*

#### 50 Decisions not to investigate complaints or to discontinue investigations

- (1) If the Ombudsman decides under section 43(8) or section 44(4) —
- 25 (a) not to begin an investigation, or
- (b) to discontinue an investigation,
- the Ombudsman must prepare a statement of the reasons for that decision.
- (2) The Ombudsman must send a copy of the statement to —
- (a) the person aggrieved (if any), and
- (b) the provider to whom the matter relates.
- 30 (3) The Ombudsman may also send a copy of the statement to any other persons the Ombudsman thinks appropriate.
- (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to
- 35 do so.
- (5) The Ombudsman may supply a copy of the published statement, or part of that 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) The following information must not be included in a version of a statement sent to a person under subsection (2)(b) or (3) or published under subsection (4) –
- 5           (a) the name of a person other than the provider to whom the matter relates;
- (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the statement.
- (8) Subsection (7) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the statement.
- 10

*Investigation procedure and evidence*

**51 Investigation procedure**

- 15 (1) If the Ombudsman conducts an investigation under section 43, the Ombudsman must –
- (a) give the provider to whom the investigation relates an opportunity to comment on the investigation, and
- (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 the allegations relating to that person.
- 20 (2) If the Ombudsman conducts an investigation under section 44, the Ombudsman must –
- (a) prepare an investigation proposal, and
- (b) submit the investigation proposal to the provider being investigated.
- (3) But if –
- 25           (a) the Ombudsman has begun to investigate a matter under section 43 or has prepared an investigation proposal in respect of an investigation under section 44 (in either case, “the original investigation”), and
- (b) the Ombudsman is conducting another investigation (“the related investigation”) under section 44 that relates to the original investigation,
- 30 subsection (2) does not apply to the related investigation.
- (4) An investigation relates to an original investigation if the matter investigated in the related investigation has a substantial connection with the matter investigated in the original investigation.
- (5) An investigation proposal must include –
- 35           (a) the reasons for the investigation, and
- (b) how the criteria in section 45 have been met.
- (6) The Ombudsman must specify and publish procedural requirements the Ombudsman must follow (in addition to the requirements specified in subsection (2)) when conducting an investigation under section 44.

- (7) The requirements in subsection (6) must include procedures giving—
- (a) where there is an investigation proposal—
    - (i) the provider an opportunity to comment on the investigation proposal, and
    - (ii) any person, other than the provider, who is identified in the investigation proposal in a negative way an opportunity to comment on the investigation proposal (as far as the investigation proposal relates to that person);
  - (b) where there is no investigation proposal—
    - (i) the provider an opportunity to comment on the investigation, and
    - (ii) any person, other than the provider, who is identified by the Ombudsman in relation to the investigation in a negative way an opportunity to comment on the investigation (as far as the investigation relates to that person).
- (8) An investigation must be conducted in private.
- (9) Subject to the other provisions of this section, the procedure for conducting an investigation is that which the Ombudsman thinks appropriate in the circumstances of the case.
- (10) The Ombudsman may, among other things—
- (a) make any inquiries which the Ombudsman thinks appropriate, and
  - (b) determine whether any person may be represented in the investigation by an authorised person or another person.
- (11) In subsection (10) “authorised person” means a person who, for the purposes of the Legal Services Act 2007 (c.29), is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).
- (12) The Ombudsman may pay to the person aggrieved (if any) and to any other person who attends or supplies information for the purposes of the investigation—
- (a) sums in respect of the expenses properly incurred by them, and
  - (b) allowances to compensate for the loss of their time.
- (13) The Ombudsman may attach conditions to those payments.

30 **52 Information, documents, evidence and facilities**

- (1) This section applies for the purposes of an investigation under this Part.
- (2) The Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to do so.
- (3) The Ombudsman has the same powers as the High Court in relation to—
  - (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.

- (4) The Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.
- (5) Subject to subsection (6), no person may be compelled to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (6) The Crown is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings.
- (7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or rule of law, the obligation or restriction does not apply to the disclosure of information for the purposes of the investigation.

### 53 Obstruction and contempt

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, the Ombudsman 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) If the Ombudsman issues a certificate, the High Court may inquire into the matter.
- (4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.

#### *Reports about investigations*

### 54 Investigation reports

- (1) This section applies to investigations under this Part unless section 57 applies.
- (2) The Ombudsman must, after conducting an investigation into a matter to which this Part applies—
- (a) prepare a report on the findings of the investigation ("an investigation report"), and
  - (b) send a copy of the report to the appropriate persons.
- (3) The appropriate persons are—
- (a) the person aggrieved (if any),
  - (b) the provider to whom the report relates,

(c) any other person who is alleged in the complaint (if any) to have taken or authorised the action complained of or is identified in the report by the Ombudsman in relation to the matter in a negative way, and

(d) the Welsh Ministers.

5 (4) The Ombudsman may also send a copy of the report to any other persons the Ombudsman thinks appropriate.

(5) The Ombudsman may publish the report if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to do so.

10 (6) The Ombudsman may supply a copy of the published report, or part of that report, to any person who requests it.

(7) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (6).

15 (8) The following information must not be included in a version of a report sent to a person under subsection (3)(b) or (c) or (4) or published under subsection (5) –

(a) the name of a person other than the provider to whom the investigation relates;

(b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.

20 (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

## 55 Further publicity for investigation reports

25 (1) The Ombudsman may arrange for a notice about an investigation report to be published –

(a) in one or more newspapers, or

(b) by means of broadcast or other electronic media.

(2) The notice may, for example –

30 (a) provide a summary of the Ombudsman's findings,

(b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and

(c) specify a website address at which a copy of the published report can be viewed.

35 (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.

(4) In deciding whether it is appropriate to make arrangements under subsection (1), the Ombudsman must take into account –

- (a) the public interest,
- (b) the interests of the person aggrieved (if any), and
- (c) the interests of any other persons the Ombudsman thinks appropriate.

## **56 Action following receipt of investigation reports**

- 5 (1) This section applies where the Ombudsman has concluded in an investigation report that any person has sustained injustice or hardship as a result of the matter investigated.
- (2) The provider to whom the matter relates must consider the report and notify the Ombudsman before the end of the permitted period of –
- 10 (a) the action the provider has taken or proposes to take in response to the report, and
- (b) the period before the end of which the provider proposes to take that action (if that action has not already been taken).
- (3) In subsection (2) “the permitted period” means –
- 15 (a) the period of one month beginning on the date on which the authority receives the report, or
- (b) a longer period specified by the Ombudsman in writing (if any).

## **57 Reports: alternative procedure**

- (1) This section applies if, after the Ombudsman has conducted an investigation under this Part –
- 20 (a) the Ombudsman concludes that no person has sustained injustice or hardship as a result of the matter investigated, and
- (b) the Ombudsman is satisfied that the public interest does not require sections 54 to 56 to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation under this Part –
- 25 (a) the Ombudsman concludes that any person has sustained injustice or hardship as a result of the matter investigated,
- (b) the provider to whom the investigation relates agrees to implement, before the end of the permitted period, any recommendations that the Ombudsman makes, and
- 30 (c) the Ombudsman is satisfied that the public interest does not require sections 54 to 56 to apply.
- (3) In subsection (2)(b) “the permitted period” means –
- 35 (a) a period agreed between the Ombudsman, the provider and the person aggrieved (if any), or
- (b) if the Ombudsman thinks that no such agreement can be reached, a period specified by the Ombudsman in writing.

- (4) The Ombudsman may decide to prepare a report on the Ombudsman's findings under this section, rather than under section 54; and if the Ombudsman decides to do so, sections 54 to 56 do not apply.
- (5) If a report is prepared under this section, the Ombudsman –
- 5           (a) must send a copy of the report to the person aggrieved (if any) and the provider to whom the report relates, and
- (b) may send a copy of the report to any other persons the Ombudsman thinks appropriate.
- (6) The Ombudsman may publish the report if, after taking account of the interests of the persons aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to do so.
- 10           (7) The Ombudsman may supply a copy of a report published under subsection (6), or a part of that 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).
- 15           (9) The following information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6) –
- (a) the name of a person other than the provider to whom the investigation relates;
- (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.
- 20           (10) Subsection (9) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.
- 25

#### *Special reports*

### **58           Circumstances in which special reports may be prepared**

- (1) The Ombudsman may prepare a special report under section 59 if case 1, 2 or 3 applies.
- (2) Case 1 applies if –
- 30           (a) the Ombudsman has concluded in an investigation report that any person has sustained injustice or hardship as a result of the matter investigated, and
- (b) one of the circumstances in subsection (3) applies.
- (3) The circumstances are that –
- (a) the Ombudsman has not received the notification required under section 56 before the end of the period permitted under that section;
- 35           (b) the Ombudsman has received that notification but is not satisfied with –

- (i) the action which the provider has taken or proposes to take, or
- (ii) the period before the end of which the provider proposes to have taken that action;
- (c) the Ombudsman has received that notification but is not satisfied that the provider has, before the end of the permitted period, taken the action that the provider proposed to take.

(4) In subsection (3)(c) “the permitted period” means –

- (a) the period referred to in section 56(2)(b), or
- (b) a longer period specified by the Ombudsman in writing (if any).

(5) Case 2 applies if –

- (a) the Ombudsman has prepared a report under section 57 by virtue of subsection (2) of that section, and
- (b) the Ombudsman is not satisfied that the provider has implemented the Ombudsman’s recommendations before the end of the permitted period.

(6) In subsection (5)(b) “the permitted period” means –

- (a) the period referred to in section 57(2)(b), or
- (b) a longer period specified by the Ombudsman in writing (if any).

(7) Case 3 applies if –

- (a) a matter (which the Ombudsman is entitled to investigate) in respect of a provider has been resolved,
- (b) in resolving the matter, the Ombudsman has concluded that any person has sustained injustice or hardship as a result of the matter,
- (c) the provider has agreed to take particular action before the end of a particular period, and
- (d) the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.

(8) In subsection (7)(d) “the permitted period” means –

- (a) the period referred to in subsection (7)(c), or
- (b) a longer period specified by the Ombudsman in writing (if any).

## 59 Special reports

(1) A special report must –

- (a) set out the facts which entitle the Ombudsman to prepare the special report (that is, the facts on the basis of which case 1, 2 or 3 of section 58 applies), and
- (b) make such recommendations as the Ombudsman thinks fit as to the action which, in the Ombudsman’s opinion, should be taken –
  - (i) to remedy the injustice or hardship to the person, and
  - (ii) to prevent similar injustice or hardship being caused in the future.

- (2) If the special report is prepared because case 1 of section 58 applies, the Ombudsman must send a copy of the report to each person to whom a copy of the section 54 report was sent under section 54(2)(b).
- (3) If the special report is prepared because case 2 or 3 of section 58 applies, the Ombudsman must send a copy of the report to the person aggrieved (if any) and the provider to whom the report relates.
- (4) The Ombudsman may send a copy of a special report to any other persons the Ombudsman thinks appropriate.
- (5) The Ombudsman may publish a special report.
- (6) The Ombudsman may supply a copy of a published special report, or a part of such a report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a special report, or part of such a report, under subsection (6).
- (8) The following information must not be included in a version of a special report sent to a person under subsection (2), (3) or (4) or published under subsection (5) –
- (a) the name of any person other than the provider in respect of whom the report was made;
  - (b) information which, in the opinion of the Ombudsman, is likely to identify any such person and which, in the Ombudsman’s opinion, can be omitted without impairing the effectiveness of the special report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the special report.

## 60 Further publicity for special reports

- (1) The Ombudsman may arrange for a notice about a special report to be published –
- (a) in one or more newspapers, or
  - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example –
- (a) provide a summary of the Ombudsman’s findings,
  - (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
  - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether to make arrangements under subsection (1), the Ombudsman must take into account –
- (a) the public interest,

- (b) the interests of the person aggrieved (if any), and
- (c) the interests of any other person the Ombudsman thinks appropriate.

*Interpretation*

**61 Meaning of “care home” and “care home provider”**

- 5 (1) This section applies for the purposes of this Act.
- (2) “Care home” means premises at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2), is provided wholly or mainly to persons aged 18 or over.
- 10 (3) “Care home provider” means a person who is a service provider of a care home service within the meaning of Part 1 of that Act where the service is provided wholly or mainly to persons aged 18 or over.
- (4) Action is to be treated as action taken by a care home provider if it is taken by –
- (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - 15 (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by a care home provider if –
- (a) that provider provides, by means of an arrangement with another person, accommodation, nursing or care in a care home in Wales for an individual because of the individual’s vulnerability or need, and
  - 20 (b) the action is taken by or on behalf of the other person in carrying out the arrangement.
- (6) “Care” has the same meaning as in Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).

**62 Meaning of “domiciliary care” and “domiciliary care provider”**

- 25 (1) This section applies for the purposes of this Act.
- (2) “Domiciliary care” means personal care provided in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- 30 (3) “Domiciliary care provider” means a person who carries on an activity which involves the provision of domiciliary care, but it does not include an individual who –
- (a) carries on the activity otherwise than in partnership with others,
  - (b) is not employed by a body corporate or unincorporated association to carry it on,
  - (c) does not employ any other person to carry out the activity, and
  - (d) provides or arranges the provision of domiciliary care to fewer than four persons.

- (4) Action is to be treated as action taken by a domiciliary care provider if it is taken by –
- (a) a person employed by that provider,
  - (b) a person acting on behalf of that provider, or
  - (c) a person to whom that provider has delegated any functions.

- 5 (5) Action is also to be treated as action taken by a domiciliary care provider if –
- (a) that provider provides domiciliary care by means of an arrangement with another person, and
  - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

10 **63 Meaning of “palliative care service” and “independent palliative care provider”**

- (1) This section applies for the purposes of this Act.
- (2) “Palliative care service” means a service the main purpose of which is to provide palliative care.
- (3) “Independent palliative care provider” means a person who –
- 15 (a) provides a palliative care service, and
- (b) is not a Welsh health service body.
- (4) Action is to be treated as action taken by an independent palliative care provider if it is taken by –
- (a) a person employed by that provider,
- 20 (b) a person acting on behalf of that provider, or
- (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by an independent palliative care provider if –
- (a) that provider provides palliative care by means of an arrangement with another person, and
- 25 (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

**PART 6****INVESTIGATIONS: SUPPLEMENTARY***Consultation and co-operation***64 Consultation and co-operation with other ombudsmen**

- 5 (1) This section applies if, in making a decision under section 3(5), 4(3), 43(8), 44(4) or in conducting an investigation under Part 3 or 5, the Ombudsman forms the opinion that a 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.
- 10 (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 a matter which is the subject of the complaint or investigation, including (among other things) –
- 15 (a) the conduct of an investigation into the complaint, and
- (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 –
- 20 (a) conduct a joint investigation into the matter,
- (b) prepare a joint report in relation to the investigation, and
- (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 –
- 25 (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).
- 30 (8) The Welsh Ministers may by regulations amend subsection (7) by –
- (a) adding a person,
- (b) omitting a person, or
- (c) changing the description of a person.

(9) Regulations under subsection (8) may add a person to subsection (7) only if the person appears to the Welsh Ministers to have functions relating to the investigation of complaints.

5 (10) No regulations are to be made under subsection (8) unless a draft of the statutory instrument containing them has been laid before and approved by a resolution of the Assembly.

## 65 Working jointly with specified persons

(1) This section applies if it appears to the Ombudsman that –

(a) there is a matter which the Ombudsman is entitled to investigate, and

10 (b) the matter is one which could also be the subject of an examination by a person specified in subsection (2) (“specified person”).

(2) The following are specified persons –

(a) the Children’s Commissioner for Wales;

(b) the Commissioner for Older People in Wales;

15 (c) the Future Generations Commissioner for Wales;

(d) the Welsh Language Commissioner;

(e) any other commissioner or statutory adviser created at any time by an Act of the Assembly;

(f) any person exercising regulatory functions in Wales.

20 (3) Where the Ombudsman considers it appropriate, the Ombudsman must –

(a) inform the relevant specified person about the matter, and

(b) consult the specified person in relation to it.

25 (4) Where the Ombudsman consults the Children’s Commissioner for Wales, the Commissioner for Older People in Wales, the Future Generations Commissioner for Wales or the Welsh Language Commissioner under this section, the Ombudsman and the specified person may –

(a) co-operate with each other in relation to the matter,

(b) conduct a joint investigation into the matter, and

(c) prepare and publish a joint report in relation to the investigation.

30 (5) Regulations may amend subsection (2) by –

(a) adding or removing a specified person to or from the list, or

(b) varying a reference to a type or description of specified person for the time being contained in that subsection.

35 (6) No regulations are to be made under subsection (5) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

**66 Working collaboratively with Commissioners**

(1) This section applies if it appears to the Ombudsman that a matter could be the subject of an examination by the Children’s Commissioner for Wales, the Commissioner for Older People in Wales or the Welsh Language Commissioner (the “connected matter”).

(2) If the Ombudsman considers it appropriate, the Ombudsman must inform the relevant Commissioner about the connected matter.

(3) If the Ombudsman considers that the matter is also a matter into which the Ombudsman is entitled to conduct an investigation (the “Ombudsman matter”), the Ombudsman must also, if the Ombudsman considers it appropriate –

(a) inform the relevant Commissioner about the Ombudsman’s proposals for conducting an investigation, and

(b) consult the relevant Commissioner about those proposals.

(4) If the Ombudsman and the relevant Commissioner consider that they are entitled to investigate, respectively, the Ombudsman matter and the connected matter, they may –

(a) co-operate with each other in the separate investigation of each of those matters,

(b) act together in the investigation of those matters, and

(c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.

(5) If the Ombudsman considers –

(a) that the matter is not a matter into which the Ombudsman is entitled to conduct an investigation, and

(b) that it is appropriate to do so,

the Ombudsman must inform the person who initiated the complaint (if any) about how to secure the referral of the connected matter to the relevant Commissioner.

**67 Working with the Auditor General for Wales**

(1) If the Ombudsman considers it appropriate, the Ombudsman must –

(a) inform the Auditor General for Wales about the Ombudsman’s proposals for conducting an investigation, and

(b) consult the Auditor General for Wales with regard to the most effective way of conducting an investigation.

(2) If the Ombudsman consults the Auditor General for Wales under this section, the Ombudsman and the Auditor General for Wales may –

(a) co-operate with each other in relation to the matter,

(b) conduct a joint investigation into the matter, and

(c) prepare and publish a joint report in relation to the investigation.

*Disclosure***68 Disclosure of information**

(1) The information to which this section applies is—

- 5 (a) information obtained by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of the Ombudsman's functions—
- (i) in deciding whether to begin an investigation,
- (ii) in the course of an investigation,
- 10 (iii) in resolving a matter under section 6 or 46, or
- (iv) in connection with a notification received under section 23;
- (b) information obtained from an ombudsman mentioned in section 64(7) by virtue of any provision of section 64 or a corresponding provision in an enactment relating to any of those ombudsmen;
- 15 (c) information obtained from a specified person in section 65(2) by virtue of any provision of section 65 or 66 or a corresponding provision in an enactment relating to any of those specified persons;
- (d) information obtained from the Auditor General for Wales by virtue of section 67 of this Act or section 29A of the Public Audit (Wales) Act 2013 (anaw 3);
- 20 (e) 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;
- 25 (c) for the purposes of resolving a complaint under section 6 or 46;
- (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 64, 65, 66 or 67;
- (f) for the purposes of proceedings for—
- 30 (i) an offence under the Official Secrets Act 1911 (c.28) to 1989 (c.6) alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;
- (ii) an offence of perjury alleged to have been committed in the course of an
- 35 investigation;
- (g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);

- (h) for the purpose of proceedings under section 18 or 53;
- (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;
- 5 (j) in the case of information to which subsection (3) applies, to the Information Commissioner;
- (k) for the purposes of an investigation and of any report to be made under section 69 of the Local Government Act 2000 (c.22).

(3) This subsection applies to information if it appears to the Ombudsman to relate to—

- 10 (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—

- 15 (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.

(5) The offences are those under—

- 20 (a) any provision of the Data Protection Act 1998 (c.29) 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 (c.36) (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 that person as mentioned in subsection (1)(a) or (b).

## 69 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,

30 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 the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of the Ombudsman's functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

**70 Protection from defamation claims**

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

5 (a) the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;

(b) the publication of a matter by a person in the discharge of functions under section 21;

10 (c) the publication of a matter in connection with an investigation, 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

15 (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;

(d) the publication of a matter in connection with an investigation, in communications between—

20 (i) a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and

25 (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions;

(e) the publication of a matter in connection with an investigation, in communications between a person and an Assembly member;

30 (f) the publication of a 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 Act, in communications between—

(i) the person, and

35 (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of the Ombudsman's functions.

(2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if the person has control or management of a provider which is not an individual or the affairs of such a provider.

40 (3) In this section, reference to matters in connection with an investigation include matters in connection with the Ombudsman's decision whether to investigate or not.

**PART 7****MISCELLANEOUS AND GENERAL***Welsh language strategy***71 Welsh language strategy**

- 5 (1) The Ombudsman must prepare and publish a Welsh language strategy.
- (2) The strategy must include –
- 10 (a) an assessment of the need for the functions of the Ombudsman to be carried out in the Welsh language,
- (b) a statement setting out the steps the Ombudsman proposes to take to meet that need, and
- (c) any other information the Ombudsman considers appropriate.
- (3) The Ombudsman must publish the strategy no later than the end of the period of one year starting with the day this Act receives Royal Assent.
- (4) The Ombudsman may review the strategy at any time.
- 15 (5) Where the Ombudsman reviews the strategy and considers that a change is needed, the Ombudsman must –
- (a) revise the strategy, and
- (b) publish the revised strategy.

*Review of Act***20 72 Review of Act**

- (1) The Assembly may carry out a review of the operation of this Act at any time.
- (2) But the Assembly must carry out a review of the operation of this Act over the period of five years from the date this Act receives Royal Assent.
- 25 (3) The Assembly must prepare and publish a report of any review of the operation of this Act, which must be laid before the Assembly.
- (4) The Assembly may by standing orders provide that the exercise of the Assembly's functions under this section is to be delegated to a committee of the Assembly.

*Application of the 2005 Act to certain investigations***73 Investigations commenced before sections 3, 4, 43 and 44 come into force**

- 30 (1) Subsection (2) applies if the Ombudsman has commenced an investigation into a matter before the date on which sections 3, 4, 43 and 44 come into force and the investigation has not been determined by the Ombudsman or the matter has not been resolved by that date.
- 35 (2) On and after that date, the Public Services Ombudsman (Wales) Act 2005 (c.10) continues to apply for the purposes of the investigation despite the other provisions of this Act.

*General***74 Repeals and consequential amendments**

- (1) The Public Services Ombudsman (Wales) Act 2005 (c.10) is repealed, but –
- 5 (a) see section 73 (investigations commenced before sections 3, 4, 43 and 44 come into force);
- (b) section 35 of the 2005 Act continues to have effect.
- (2) Schedule 5 (consequential amendments) has effect.

**75 Commencement**

- 10 (1) The preceding provisions of this Act come into force in accordance with provision made by the Welsh Ministers by regulations.
- (2) Regulations under subsection (1) may –
- (a) appoint different days for different purposes;
- (b) make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

**76 Interpretation**

- 15 (1) In this Act –
- “act” (“*gweithredu*”) and “action” (“*camau gweithredu*”) include a failure to act (and related expressions must be construed accordingly);
- 20 “annual report” (“*adroddiad blynyddol*”) has the meaning given in paragraph 14 of Schedule 1;
- “the Assembly” (“*y Cynulliad*”) means the National Assembly for Wales;
- “care home” (“*gofal cartref*”) has the meaning given by section 61(2);
- “care home provider” (“*darparwr gofal cartref*”) has the meaning given by section 61(3);

“co-opted member” (*“aelod cyfetholedig”*), 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;

“domiciliary care” (*“gofal cartref”*) has the meaning given by section 62(2);

“domiciliary care provider” (*“darparwr gofal cartref”*) has the meaning given by section 62(3);

“extraordinary report” (*“adroddiad eithriadol”*) has the meaning given in paragraph 14 of Schedule 1;

“family health service provider in Wales” (*“darparwr gwasanaeth iechyd teulu yng Nghymru”*) means –

- (a) a person who, at the time of action which is the subject of investigation under Part 3, provided services under a contract entered into by that person with a Local Health Board under section 42 or section 57 of the National Health Service (Wales) Act 2006 (c.42);
- (b) a person who, at that time, had undertaken to provide in Wales general ophthalmic services or pharmaceutical services under that Act;
- (c) an individual who, at that time, provided in Wales primary medical services or primary dental services in accordance with arrangements made under section 50 or 64 of that Act (except as an employee of, or otherwise on behalf of, a Welsh health service body or an independent provider in Wales);

and includes employees of persons referred to in paragraphs (a), (b) and (c) where those persons are acting in a capacity referred to in paragraphs (a), (b) or (c);

“family health services” (*“gwasanaethau iechyd teulu”*) means services mentioned in any of paragraphs (a) to (c) of the definition of “family health service provider in Wales”;

“financial year” (*“blwyddyn ariannol”*) means the 12 months ending on 31 March;

“independent palliative care provider” (*“darparwr gofal lliniarol annibynnol”*) has the meaning given by section 63(3);

“independent provider in Wales” (*“darparwr annibynnol yng Nghymru”*) 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” (*“ymchwiliad”*)—

(a) in relation to the Ombudsman, means an investigation under section 3, 4, 43 or 44 (and cognate expressions must be construed accordingly);

(b) in relation to other persons, includes an examination (and cognate expressions must be construed accordingly);

“listed authority” (*“awdurdod rhestredig”*) has the meaning given in section 30;

“local authority in Wales” (*“awdurdod lleol yng Nghymru”*) means a county council, county borough council or community council in Wales;

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

“NHS trust” (*“Ymddiriedolaeth y GIG”*) has the same meaning as in the National Health Service (Wales) Act 2006 (c.42);

“the Ombudsman” (*“yr Ombwdsmon”*) has the meaning given in section 2;

“palliative care service” (*“gwasanaeth gofal lliniarol”*) has the meaning given by section 63(2);

“the person aggrieved” (*“y person a dramgwyddwyd”*) in Part 3 has the meaning given in section 7(1)(a) and in Part 5 has the meaning given in section 47(1)(a);

“private health services” (“*gwasanaethau iechyd preifat*”) includes medical treatment and nursing care;

“private health services provider” (“*darparwr gwasanaethau iechyd preifat*”) means –

5 (a) an independent hospital within the meaning of section 2 of the Care Standards Act 2000 (c.14) which, at the time of the action subject to investigation, provided private health services;

(b) a health professional who, at the time of the action subject to investigation –

10 (i) had access to national health service staff and facilities otherwise than by virtue of national health service contracts of employment, and

(ii) provided private health services;

“publicly-funded dwelling” (“*annedd a ariennir yn gyhoeddus*”) means –

15 (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);

20 (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 (c.52));

“relevant tribunal” (“*tribiwnlys perthnasol*”) means a tribunal (including a tribunal consisting of only one person) specified by regulations made by the Welsh Ministers;

“social landlord in Wales” (“*landlord cymdeithasol yng Nghymru*”) means –

25 (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 Welsh Ministers under section 1 of the Housing Act 1996 (c.52) (or in the register previously maintained under that section by the Assembly constituted by the Government of Wales Act 1998 (c.38), the Secretary of State or Housing for Wales);

30 (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, the Assembly constituted by the Government of Wales Act 1998 (c.38) or the Welsh Ministers and owned or managed publicly-funded dwellings;

35 “special report” (“*adroddiad arbennig*”) in Part 3 has the meaning given in section 27 and in Part 5 has the meaning given in section 59;

“Wales” (“*Cymru*”) has the meaning given in section 158(1) of the Government of Wales Act 2006 (c.32);

“Welsh health service body” (*“corff gwasanaeth iechyd yng Nghymru”*) means –

- (a) the Welsh Ministers;
- (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 Welsh Ministers are arrangements with a Welsh health service body only to the extent that they are made in the discharge of a function of the Welsh Ministers relating to the National Health Service.

(3) The Welsh Ministers may by regulations amend the definitions of “family health service provider in Wales”, “independent provider in Wales” and “social landlord in Wales”.

(4) Before making regulations under subsection (1) or (3), the Welsh Ministers must consult such persons as they think appropriate.

(5) No regulations are to be made under subsection (1) or (3) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

(6) 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.

(7) 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 or her own functions or the functions of the authority;
- (c) any other person acting on behalf of the authority.

## **77 Former health care providers, social landlords, social care providers and palliative care providers: modifications**

(1) The Welsh Ministers 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;
- (d) former care home providers in Wales;
- (e) former domiciliary care providers in Wales;
- (f) former independent palliative care providers 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 the person has later started to provide them again).
- 5 (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,
- 10 (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 the person has later started to provide them again).
- (4) “Former social landlord in Wales” means a person who –
- (a) at the relevant time –
- 15 (i) was registered as a social landlord in the register maintained by the Welsh Ministers under section 1 of the Housing Act 1996 (c.52) (or in the register previously maintained under that section by the Assembly constituted by the Government of Wales Act 1998 (c.38), the Secretary of State or Housing for Wales), or
- 20 (ii) was registered with Housing for Wales, the Secretary of State, the Assembly constituted by the Government of Wales Act 1998 (c.38) or the Welsh Ministers 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 the person later became so registered again), or
- 25 (ii) ceased to own or manage publicly-funded dwellings (whether or not the person later did so again).
- (5) “Former care home provider in Wales” means a person who –
- (a) at the relevant time, provided accommodation, nursing or care of a particular description at a care home in Wales (see section 61), and
- 30 (b) subsequently ceased to do so (whether or not the person has later started to do so again).
- (6) “Former domiciliary care provider in Wales” means a person who –
- (a) at the relevant time, provided domiciliary care services of a particular description in Wales, and
- 35 (b) subsequently ceased to do so (whether or not the person has later started to provide those services again).
- (7) “Former independent palliative care provider in Wales” means a person who –

- (a) at the relevant time, provided a palliative care service of a particular description in Wales, and
- (b) subsequently ceased to do so (whether or not the person has later started to do so again).

5 (8) “The relevant time” is the time of action which is the subject of a complaint under this Act.

(9) No regulations are to be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

## 10 78 Consequential, transitional provisions etc

(1) The Welsh Ministers may by regulations make –

- (a) such consequential, incidental or supplemental provision, and
- (b) such transitory, transitional or saving provision,

15 as they think necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.

(2) No regulations are to be made under subsection (1) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

20 (3) A reference in any enactment to the Public Services Ombudsman for Wales established under the Public Services Ombudsman (Wales) Act 2005 (c.10) is a reference to the office of the Public Services Ombudsman for Wales which continues under this Act.

## 79 Regulations and directions

(1) A power of the Welsh Ministers to make regulations under this Act is exercisable by statutory instrument.

25 (2) Regulations made by the Welsh Ministers under this Act may –

- (a) make different provision for different purposes;
- (b) make consequential, incidental, supplemental, transitory, transitional or saving provision.

(3) A direction given under this Act –

- 30
- (a) may be amended or revoked by the person who gave it;
  - (b) may make different provision for different purposes.

## 80 Short title

This Act may be cited as the Public Services Ombudsman (Wales) Act 2018.

SCHEDULE 1  
(introduced by section 2)

PUBLIC SERVICES OMBUDSMAN FOR WALES: APPOINTMENT ETC

*Appointment*

5 1 The Ombudsman is to be appointed by Her Majesty on the nomination of the Assembly.

*Status*

- 2 (1) The Ombudsman is a corporation sole.
- (2) The Ombudsman holds office under Her Majesty and discharges his or her functions on behalf of the Crown.
- 10 (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 (1) A person's term of office as the Ombudsman is seven years (subject to sub-paragraphs (3) and (4) and paragraph 5).
- 15 (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 or her request, or
- (b) on Her Majesty being satisfied that the person is incapable for medical reasons of performing the duties of the office.
- 20 (4) Her Majesty may remove a person from office as the Ombudsman on the making of a recommendation, on the ground of the person's misbehaviour, that Her Majesty should do so.
- (5) A recommendation for the removal of a person from office as the Ombudsman may not be made unless—
- 25 (a) the Assembly has resolved that the recommendation should be made, and
- (b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

30 *Acting Public Services Ombudsman for Wales*

- 4 (1) If the office of the Ombudsman becomes vacant, Her Majesty may, on the nomination of the Assembly, appoint a person to act as the Ombudsman.
- (2) A person appointed to act as the Ombudsman ("an acting Ombudsman") may have held office as the Ombudsman.
- 35 (3) A person appointed as an acting Ombudsman is eligible for appointment as the Ombudsman (unless he or she has already held office as the Ombudsman).

- (4) 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.
- (5) An acting Ombudsman holds office in accordance with the terms of his or her appointment, subject to sub-paragraph (6) (and paragraph 2, as applied by sub-paragraph (7)).
- (6) 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.
- (7) While an acting Ombudsman holds office he or she is to be regarded (except for the purposes of paragraphs 1, 3, 5 to 9 and this paragraph) as the Ombudsman.

#### *Disqualification*

- (1) A person is disqualified from being the Ombudsman or an acting Ombudsman if any of the following applies –
- (a) the person is a member of the House of Commons;
  - (b) the person is a listed authority;
  - (c) the person is a member, co-opted member, officer or member of staff of a listed authority;
  - (d) the person is disqualified from being a member of the Assembly (other than by virtue of paragraph 6 of this Schedule or section 16(1)(d) of the Government of Wales Act 2006 (c.32));
  - (e) the person is disqualified from being a member of a local authority in Wales (other than by virtue of paragraph 6 of this Schedule);
  - (f) the person is a care home provider, domiciliary care provider or independent palliative care provider;
  - (g) the person is an officer or member of staff of a provider of that kind.
- (2) For the purposes of sub-paragraph (1)(g) a person is an officer of a provider if the person has control or management of a provider which is not an individual or the affairs of such a provider.
- (3) The appointment of a person as the Ombudsman or an acting Ombudsman is not valid if the person is disqualified under sub-paragraph (1).
- (4) If a person who has been appointed as the Ombudsman or an acting Ombudsman becomes disqualified under sub-paragraph (1), the person ceases to hold office on becoming so disqualified.
- (5) But the validity of anything done by a person appointed as the Ombudsman or an acting Ombudsman is not affected by the fact that the person is or becomes disqualified under sub-paragraph (1).

- 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;
  - 5 (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 –
- 10 (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;
- unless the National Assembly for Wales Commission approves otherwise.
- (2) The relevant period –
- 15 (a) starts when the person ceases to hold office as the Ombudsman or, as the case may be, an acting Ombudsman, and
  - (b) ends on the expiry of the financial year following the financial year in which the Ombudsman or, as the case may be, the acting Ombudsman, ceased to hold such office.
- 20 (3) But sub-paragraph (1) does not disqualify a person from –
- (a) being a member of the Assembly or the National Assembly for Wales Commission;
  - (b) holding the office of presiding officer or deputy presiding officer of the Assembly or of First Minister for Wales, Welsh Minister appointed under section 48 of the Government of Wales Act 2006 (c.32), Counsel General to the Welsh Government or Deputy Welsh Minister;
  - 25 (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.
- 30 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 (1) The Assembly must –
- 35 (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 or her,
- as may be provided for by or under the terms of his or her 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,
- 5 as may have been provided for by or under the terms of his or her 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.
- 10 (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 or she may direct, such sums as he or she 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).
- 15 (6) Sums required for the making of payments under sub-paragraphs (1), (2) and (5) are to be charged on the Welsh Consolidated Fund.

20 *Special financial provisions*

- 10 (1) Any sums payable by the Ombudsman in consequence of a breach, in the performance of any of the Ombudsman’s functions, of any contractual or other duty are to be charged on the Welsh Consolidated Fund.
- (2) And sub-paragraph (1) applies whether the breach occurs by reason of an act or omission
- 25 of—
- (a) the Ombudsman,
  - (b) a member of the Ombudsman’s staff, or
  - (c) any other person acting on the Ombudsman’s behalf or assisting the Ombudsman in the exercise of functions.
- 30 (3) The Ombudsman may retain income derived from fees charged by virtue of sections 15(6), 20(6), 26(8) and 28(2) (rather than pay it into the Welsh Consolidated Fund) for use in connection with the exercise of the functions conferred or imposed by this Act.

*Staff*

- 35 (1) The Ombudsman may appoint such staff as he or she thinks necessary for assisting him or her in the discharge of his or her functions, on such terms and conditions as he or she 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.



*Annual and extraordinary reports*

- 14 (1) The Ombudsman—
- (a) must annually prepare a general report on the discharge of the Ombudsman's functions (an "annual report");
  - 5 (b) may prepare any other report with respect to the Ombudsman's functions that the Ombudsman 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 the Ombudsman's functions.
- 10 (3) The Ombudsman must lay a copy of each report prepared under this paragraph before the Assembly and at the same time send a copy to the Welsh Government and (if the report is an extraordinary report) must send a copy of it to any listed authorities (other than the Welsh Government) he or she thinks appropriate.
- (4) The Ombudsman may also send a copy of any report prepared under this paragraph to  
15 any other persons the Ombudsman thinks appropriate.
- (5) The Ombudsman must, and the Assembly may, publish any report laid before the Assembly under this paragraph.
- (6) The Ombudsman must comply with any directions given by the Assembly with respect to an annual report.
- 20 (7) If a report prepared under this paragraph—
- (a) mentions the name of any person other than a listed authority, care home provider, domiciliary care provider or independent palliative care provider in respect of a matter which may be investigated by the Ombudsman under this Act, or
  - 25 (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's 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  
30 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 or she thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

*Estimates*

- 35 15 (1) For each financial year other than the first financial year, the Ombudsman must prepare an estimate of the income and expenses of the Ombudsman's office.
- (2) The Ombudsman must submit the estimate at least five months before the beginning of  
40 the financial year to which it relates to the committee or committees of the Assembly specified in the standing orders of the Assembly.

- (3) The committee or committees must examine an estimate submitted in accordance with sub-paragraph (2) and must then lay the estimate before the Assembly with any modifications thought appropriate.
- 5 (4) Before laying before the Assembly with modifications an estimate submitted in accordance with sub-paragraph (2), the committee or committees must –
- (a) consult the Ombudsman, and
  - (b) take into account any representations which the Ombudsman may make.
- (5) The first financial year is the financial year during which the first person to be appointed as the Ombudsman is appointed.

10 *Accounts*

16 (1) The Ombudsman must –

- (a) keep proper accounting records, and
- (b) for each financial year, prepare accounts in accordance with directions given to him or her by the Treasury.

15 (2) The directions which the Treasury may give under sub-paragraph (1)(b) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Ombudsman.

(3) The directions which the Treasury may give under sub-paragraph (1)(b) include, in particular, directions as to –

- 20
- (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.

25 *Audit*

17 (1) The accounts prepared by the Ombudsman for a financial year must be submitted by the Ombudsman to the Auditor General for Wales no later than 30 November in the following financial year.

(2) The Auditor General for Wales must –

- 30
- (a) examine, certify and report on each set of accounts submitted to the Auditor General for Wales 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 the Auditor General for Wales together with the Auditor General for Wales's report on them.

35 (3) In examining accounts submitted to the Auditor General for Wales under this paragraph the Auditor General for Wales must, in particular, satisfy himself or herself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

*Accounting officer*

- 18 (1) The Ombudsman is the accounting officer for the office of the Ombudsman.
- (2) If the Ombudsman is incapable of discharging his or her responsibilities as accounting officer, the Audit Committee may designate a member of his or her staff to be the accounting officer for as long as he or she is so incapable.
- 5 (3) If the office of the Ombudsman is vacant and there is no acting Ombudsman, the Audit Committee 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.
- 10 (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 Audit Committee.
- (5) In this paragraph references to responsibilities include in particular –
- (a) responsibilities in relation to the signing of accounts,
- 15 (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 –
- 20 (a) the Assembly, the Welsh Ministers 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 –
- 25 (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer, and
- (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

*Examinations into the use of resources*

- 30 19 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Ombudsman has used the Ombudsman's resources in discharging the Ombudsman's 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.
- 35 (3) In determining how to discharge the Auditor General for Wales's functions under this paragraph, the Auditor General for Wales must take into account the views of the Audit Committee as to the examinations which the Auditor General for Wales 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 the Auditor General for Wales under this paragraph.

*Supplementary powers*

20 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 the Ombudsman's functions.

5 *Previous Ombudsman to continue to be Ombudsman*

21 (1) This paragraph applies to the person who is the Ombudsman immediately before the appointed day.

(2) On and after the appointed day the person—

10

(a) continues to be the Ombudsman and is treated as having been appointed to that office under this Act;

(b) holds the office for seven years less a period equal to that during which the person was the Ombudsman before the appointed day.

(3) In this paragraph "the appointed day" means the day on which this paragraph comes into force.

SCHEDULE 2  
(introduced by section 13)

EXCLUDED MATTERS: PART 3

- 1           Action taken by or with the authority of the Welsh Ministers, the First Minister for Wales,  
5           the Counsel General to the Welsh Government or a police and crime commissioner 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.
- 10   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  
            or her capacity as a member of the tribunal.
- 4           Action taken in respect of appointments, removals, pay, discipline, superannuation or  
15           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  
20           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,  
25           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.
- 30
- 7           Action under –
- (a) the National Health Service Act 1977 (c.49),
  - (b) Part 1 of the National Health Service and Community Care Act 1990 (c.19),
  - (c) Part 1 of the Health Act 1999 (c.8) (with the exception of sections 33 to 38), or

(d) Part 1 of the Health and Social Care (Community Health and Standards) Act 2003 (c.43),

where the action is or has been the subject of an inquiry under the Inquiries Act 2005 (c.12).

5 8 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 (S.I.1992/664) or any instrument replacing those regulations;

10 (b) regulations made under section 38, 39, 41 or 42 of the National Health Service Act 1977 (c.49) by virtue of section 17 of the Health and Medicines Act 1988 (c.49) (investigations of matters relating to services).

SCHEDULE 3  
(introduced by section 30)

LISTED AUTHORITIES

*Government of Wales*

- 5           The Welsh Government.  
          The National Assembly for Wales Commission.

*Local government, fire and police*

- A local authority in Wales.  
          A joint board the constituent authorities of which are all local authorities in Wales.  
10          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 and crime commissioner for a police area in Wales.  
          A strategic planning panel.

*Environment*

- 15          The Committee on Climate Change.  
          A National Park authority for a National Park in Wales.  
          The Natural Resources Body for Wales.  
          The Environment Agency.  
          The Forestry Commissioners.  
20          The Flood and Coastal Erosion Committee.

*Health and social care*

- Social Care Wales.  
          The Board of Community Health Councils in Wales.  
          A Local Health Board.  
25          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.  
          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).

The Welsh Health Specialised Services Committee.

A private health services provider.

5 *Housing*

A social landlord in Wales.

*Education and training*

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.

10 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).

15 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 (c.31).

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

Qualifications Wales.

20 *Arts and leisure*

The Arts Council of Wales.

The Sports Council for Wales.

*Tax*

The Welsh Revenue Authority.

25 *Miscellaneous*

The Building Regulations Advisory Committee for Wales.

Coity Walia Board for Conservators.

Comisiynydd y Gymraeg (The Welsh Language Commissioner).

30 Harbour authorities in Wales (and "harbour authority" has the meaning given in section 313(1) of the Merchant Shipping Act 1995 (c.21)) and port authorities in Wales (and "port authority" means a harbour authority or, if there is no such authority, the person having control of the operation of the port) –

- (a) used or required wholly or mainly for the fishing industry, for recreation, or for communication between places in Wales (or for two or more of those purposes);
- (b) so far as acting in connection with protecting human, animal or plant health, animal welfare or the environment.

5 The Local Democracy and Boundary Commission for Wales.  
Towyn Trewan Board for Conservators.  
Wales Audit Office.

SCHEDULE 4  
*(introduced by section 42)*

EXCLUDED MATTERS: PART 5

- 1 The commencement or conduct of proceedings before a court of competent jurisdiction.
- 5 2 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.

SCHEDULE 5  
(introduced by section 74)

CONSEQUENTIAL AMENDMENTS

*Care Standards Act 2000 (c.14)*

5 1 In section 75ZA, after subsection (5), insert—

“(6) The Welsh Ministers may by order provide that this section is to apply where it appears to the Commissioner that a case could be the subject of an investigation by the Public Services Ombudsman for Wales as if references in this section to the Commissioner for Older People in  
10 Wales were references to the Ombudsman.”

2 Insert new section 75ZB—

**“75ZB Working jointly with the Public Services Ombudsman for Wales**

(1) This section applies where it appears to the Commissioner that a case which he is—

15 (a) examining in accordance with regulations made under section 74, or

(b) considering whether to examine in accordance with such regulations,

20 relates to or raises a matter which could be the subject of an investigation by the Public Services Ombudsman for Wales.

(2) Where the Commissioner considers it appropriate, he must—

(a) inform the Ombudsman about the case, and

(b) consult him in relation to it.

25 (3) Where the Commissioner consults the Ombudsman under this section, he and the Ombudsman may—

(a) co-operate with each other in relation to the case;

(b) conduct a joint examination into the case;

(c) prepare and publish a joint report in relation to the case.”

3 In section 118, after subsection (3), insert—

30 “(3A) No order is to be made under section 75ZA(6) unless a draft of the statutory instrument containing the order has been laid before, and approved by a resolution of, the National Assembly for Wales.”

*Public Audit (Wales) Act 2013 (anaw 3)*

4           Insert new section 29A –

**“29A Working with the Public Services Ombudsman for Wales**

5           (1) Where the Public Services Ombudsman for Wales consults the Auditor General under section 67 of the Public Services Ombudsman (Wales) Act 2018 (anaw 0), the Ombudsman and the Auditor General may –

- 10                   (a) co-operate with each other in relation to the matter,  
                      (b) conduct a joint investigation into the matter, and  
                      (c) prepare and publish a joint report in relation to the investigation.”

*Well-being of Future Generations (Wales) Act 2015 (anaw 2)*

5           In section 25, after subsection 1(c), insert –

15                   “(d) an investigation under the Public Services Ombudsman (Wales) Act 2018 (anaw 0) by the Public Services Ombudsman for Wales (and references in this section to the other Commissioner or the Commissioners include the Ombudsman).”