

*Changes to legislation:* There are currently no known outstanding effects for the Local Government and Elections (Wales) Act 2021, SCHEDULE 8. (See end of Document for details)

## SCHEDULE 8

(introduced by section 64)

### CONDUCT OF LOCAL GOVERNMENT MEMBERS: INVESTIGATIONS BY THE PUBLIC SERVICES OMBUDSMAN FOR WALES

#### *Local Government Act 2000 (c. 22)*

1 The 2000 Act is amended as follows.

#### **Commencement Information**

**II** Sch. 8 para. 1 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

2 In section 69 (investigations by the Public Services Ombudsman for Wales), after subsection (5) insert—

“(6) Sections 69A to 69E apply in relation to the exercise of the functions of the Public Services Ombudsman for Wales under this section.”

#### **Commencement Information**

**I2** Sch. 8 para. 2 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

3 After section 69 of the 2000 Act insert—

#### **“69A Possible conflict of interest in an investigation**

(1) If subsection (2) or (4) applies in a case involving a member or co-opted member (or former member or co-opted member) of a relevant authority, the Public Services Ombudsman for Wales (“the Ombudsman”) must exercise the power in paragraph 14 of Schedule 1 to the Public Services Ombudsman (Wales) Act 2019 to delegate—

- (a) the decision as to whether to investigate the case under section 69, and
- (b) any investigation of the case.

(2) This subsection applies if at any time within the period of five years ending with the date mentioned in subsection (3) the Ombudsman was—

- (a) a member,
- (b) a member of a committee, sub-committee, joint committee or joint sub-committee, or
- (c) an officer,

of the relevant authority concerned.

(3) The date is—

- (a) if the case is within section 69(1)(a), the date on which the Ombudsman received the written allegation, or
- (b) if the case is within section 69(1)(b), the date on which the Ombudsman received the written allegation investigated under section 69(1)(a).

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- (4) This subsection applies if the Ombudsman considers that the Ombudsman has, or is likely to have, an interest in the matters which may be investigated or the outcome of any investigation.
- (5) If subsection (4) applies the Ombudsman must disclose the nature of the interest to the person to whom any investigation under section 69 would or does relate, and to any person who has made an allegation as described in section 69(1)(a).
- (6) If the Ombudsman makes a decision as to whether to investigate a case, or investigates a case, in contravention of subsection (1), that contravention does not affect the validity of anything done by the Ombudsman.

### **69B Investigation procedure**

- (1) If the Ombudsman conducts an investigation under section 69, the Ombudsman must give the person to whom the investigation relates an opportunity to comment on whether that person has failed to comply with the code of conduct of the relevant authority of which that person is or was a member or co-opted member.
- (2) An investigation must be conducted in private.
- (3) Subject to subsections (1) and (2), the procedure for conducting an investigation is that which the Ombudsman thinks appropriate in the circumstances of the case.
- (4) The Ombudsman may, among other things—
  - (a) make any inquiries which the Ombudsman thinks appropriate;
  - (b) determine whether any person may be represented in the investigation by an authorised person or another person.
- (5) In subsection (4) “authorised person” means a person who, for the purposes of the Legal Services Act 2007, 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).
- (6) The Ombudsman may pay to the person (if any) who made an allegation as described in section 69(1)(a) 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.
- (7) The Ombudsman may attach conditions to payments under subsection (6).
- (8) The carrying out of an investigation under section 69 does not affect—
  - (a) the validity of any action taken by a relevant authority, or
  - (b) any power or duty of a relevant authority to take further action in respect of any matter under investigation.

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### **69C Information, documents, evidence and facilities**

- (1) The Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to an investigation under section 69 to do so.
- (2) 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.
- (3) The Ombudsman may require a person the Ombudsman thinks is able to supply information or produce a document relevant to an investigation to provide any facility the Ombudsman may reasonably require.
- (4) The Ombudsman may require the relevant authority concerned 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 a rule of law, the obligation or restriction does not apply to the disclosure of information for the purposes of the investigation.

### **69D 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 under section 69 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 that person has taken action such as is mentioned in section 69B(8).
- (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 that person in the same manner as

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it may deal with a person who has committed contempt in relation to the High Court.

### **69E Disclosure of information**

- (1) This section applies to information obtained in the exercise of the Ombudsman's functions under this Part by—
- (a) the Ombudsman;
  - (b) a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf;
  - (c) a person assisting the Ombudsman.
- (2) The information may be disclosed only—
- (a) for the purposes of the Ombudsman's functions under—
    - (i) Chapter 3 or 4 of this Part;
    - (ii) Part 3 or 5 of the Public Services Ombudsman (Wales) Act 2019;
  - (b) for the purposes of the functions of the Adjudication Panel for Wales, including the functions of its President, Deputy President and tribunals, under Chapter 4 of this Part;
  - (c) for the purposes of criminal proceedings or the investigation of a criminal offence;
  - (d) if the disclosure is made to the Auditor General for Wales for the purposes of the Auditor General's functions under Part 2 of the Public Audit (Wales) Act 2004;
  - (e) if the disclosure is made to the Electoral Commission for the purposes of any of its functions.

### **69F Power of the Welsh Ministers to amend this Chapter**

The Welsh Ministers may by regulations amend this Chapter to make further or different provision about the exercise of the functions of the Public Services Ombudsman for Wales under section 69.”

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#### **Commencement Information**

**I3** Sch. 8 para. 3 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

- 4 In section 70 (investigations: further provisions)—
- (a) omit subsections (1) and (2);
  - (b) for the heading substitute “ Ceasing investigations etc. ”.

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#### **Commencement Information**

**I4** Sch. 8 para. 4 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

- 5 For section 74 (law of defamation) substitute—

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*“Law of defamation*

**74 Law of defamation: absolute privilege**

For the purposes of the law of defamation a publication of a matter is absolutely privileged if—

- (a) the publication is made in the exercise of the functions of the Ombudsman under Chapters 3 and 4 of this Part;
- (b) the publication—
  - (i) is made in communications with the Ombudsman or a person exercising a function of the Ombudsman, and
  - (ii) is made for the purposes of, or in connection with, the Ombudsman's functions under Chapters 3 and 4 of this Part.”

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**Commencement Information**

**I5** Sch. 8 para. 5 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

- 6 In section 106(7) (Wales: orders and regulations), before “may not” insert “ or regulations under section 69F ”.

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**Commencement Information**

**I6** Sch. 8 para. 6 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

*Government of Wales Act 2006 (c. 32)*

- 7 In table 1 in paragraph 35(3) of Schedule 11 to the Government of Wales Act 2006 (transitional provisions), omit the entry for section 70(1) of the 2000 Act.

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**Commencement Information**

**I7** Sch. 8 para. 7 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

*Localism Act 2011 (c. 20)*

- 8 In Schedule 4 to the Localism Act 2011 (conduct of local government members: amendments), omit paragraph 38(2).

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**Commencement Information**

**I8** Sch. 8 para. 8 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

*Social Services and Well-being (Wales) Act 2014 (anaw 4)*

- 9 In Schedule 3 to the Social Services and Well-being (Wales) Act 2014 (minor and consequential amendments), omit paragraph 12.

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**Commencement Information**

**I9** Sch. 8 para. 9 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

*Public Services Ombudsman (Wales) Act 2019 (anaw 3)*

10 In Schedule 5 to the Public Services Ombudsman (Wales) Act 2019 (consequential amendments), omit paragraph 20.

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**Commencement Information**

**I10** Sch. 8 para. 10 in force at 5.5.2022 by S.I. 2022/98, art. 2(b) (with art. 3)

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