

SCHEDULES

SCHEDULE 9

WELSH ADMINISTRATION OMBUDSMAN

PART II

INVESTIGATION OF COMPLAINTS

Bodies subject to investigation

- 14 (1) The bodies subject to investigation by the Welsh Administration Ombudsman are—
- (a) the Assembly, and
 - (b) subject to any notes in paragraph 15(1), the bodies listed in sub-paragraph (2).
- (2) The bodies referred to in sub-paragraph (1) are—
- (a) the Arts Council of Wales,
 - (b) the Countryside Council for Wales,
 - (c) the Environment Agency,
 - (d) the Forestry Commissioners,
 - (e) the Office of Her Majesty's Chief Inspector of Schools in Wales,
 - (f) the Sports Council for Wales,
 - (g) urban development corporations established for urban development areas wholly in Wales,
 - (h) the Wales Tourist Board,
 - (i) the Welsh Development Agency, and
 - (j) the Welsh Language Board.
- (3) Subject to paragraph 16, the Assembly may by order amend sub-paragraph (2) by—
- (a) adding any body,
 - (b) omitting any body, or
 - (c) altering the description of any body.
- (4) For the purposes of this paragraph and paragraphs 15 and 16 references to a body include an unincorporated body (as well as a body corporate); and references in this Schedule to a body subject to investigation by the Welsh Administration Ombudsman shall be construed accordingly.
- (5) References in the following provisions of this Schedule to action taken in the exercise of functions of a body subject to investigation by the Welsh Administration Ombudsman include action taken in the exercise of any functions of—
- (a) any of its members, or
 - (b) any of its officers or members of its staff.

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- 15 (1) The notes referred to in paragraph 14(1)(b) are—
- 1 In the case of a body which has functions exercisable otherwise than in relation to Wales (as well as in relation to Wales or a part of Wales) no investigation may be conducted by the Welsh Administration Ombudsman in respect of action in connection with the exercise of the body’s functions otherwise than in relation to Wales.
- 2 In the case of the Environment Agency no investigation may be conducted by the Welsh Administration Ombudsman in respect of action in connection with the exercise of its flood defence functions (within the meaning of the Water Resources Act 1991).
- 3 In the case of an urban development corporation no investigation may be conducted by the Welsh Administration Ombudsman in respect of action in connection with the exercise of its functions in relation to town and country planning.
- (2) Subject to paragraph 16, the Assembly may by order amend sub-paragraph (1) by—
- (a) adding any note,
 - (b) omitting any note, or
 - (c) amending any note.
- (3) If and to the extent that a function is exercisable in relation to the Welsh language or any other aspect of Welsh culture it shall be regarded for the purposes of this paragraph and paragraph 16 as exercisable in relation to Wales.
- 16 (1) An order under paragraph 14(3) may only add a body to paragraph 14(2) if—
- (a) the body has functions exercisable in relation to Wales or a part of Wales (whether or not they are also exercisable otherwise than in relation to Wales),
 - (b) some or all of those functions are in a field in which the Assembly has functions, and
 - (c) the body falls within sub-paragraph (2).
- (2) A body falls within this sub-paragraph if—
- (a) it is established under an enactment or by virtue of Her Majesty’s prerogative or is established in any other way by a Minister of the Crown or government department or by the Assembly,
 - (b) at least half of its expenditure on the exercise of functions in relation to Wales (or, where its functions relate only to a part of Wales, in relation to the part of Wales to which they relate) is met directly from payments made by the Assembly, and
 - (c) it is wholly or partly constituted by appointment made by Her Majesty, a Minister of the Crown or government department or the Assembly.
- (3) An order under paragraph 14(3) shall not add to paragraph 14(2) a body whose sole activity is, or whose main activities are, included among any one or more of the following—
- (a) the provision of education,
 - (b) the development of curricula, the conduct of examinations or the validation of educational courses,
 - (c) the provision of training otherwise than under the Industrial Training Act 1982,
 - (d) the control of entry to any profession or the regulation of the conduct of members of any profession, and

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- (e) the investigation of complaints by members of the public regarding the actions of any person or body or the supervision or review of, or of steps taken following, such an investigation,
or a body operating in an exclusively or predominantly commercial manner or carrying on under national ownership an industry or undertaking or part of an industry or undertaking.
- (4) The Assembly may not make an order under paragraph 15(2) if the result would be that the Welsh Administration Ombudsman could investigate action in connection with the exercise of a body's functions otherwise than in relation to Wales.
- (5) In the case of a body which has functions exercisable in a field in which the Assembly does not have functions (as well as in a field in which it does)—
- (a) where the Assembly by order under paragraph 14(3) adds the body to paragraph 14(2) it shall (by order under paragraph 15(2)) add to paragraph 15(1) a note relating to the body, and
 - (b) the Assembly may not make an order under paragraph 15(2) if the result would be that the Welsh Administration Ombudsman could investigate action in connection with the exercise of the body's functions in a field in which the Assembly does not have functions.
- (6) In the case of a body which is an authority to which the Parliamentary Commissioner Act 1967 applies—
- (a) where the Assembly by order under paragraph 14(3) adds the body to paragraph 14(2) it shall (by order under paragraph 15(2)) add to paragraph 15(1) a note relating to the body, and
 - (b) the Assembly may not make an order under paragraph 15(2) if the result would be that the Welsh Administration Ombudsman could investigate action which can be investigated under the Parliamentary Commissioner Act 1967.

Matters which may be investigated

- 17 (1) The Welsh Administration Ombudsman may investigate any action taken by or on behalf of a body subject to investigation by him if—
- (a) the action was taken in the exercise of administrative functions of that body, and
 - (b) a written complaint is duly made to him (in accordance with paragraph 18) by or on behalf of a person who claims to have sustained injustice in consequence of maladministration in connection with the action (“the person aggrieved”).
- (2) For the purposes of this Schedule administrative functions exercisable by any person appointed as a member of the administrative staff of a relevant tribunal—
- (a) by a body subject to investigation by the Welsh Administration Ombudsman, or
 - (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such a body,
- shall be taken to be administrative functions of the body.
- (3) The Welsh Administration Ombudsman shall not conduct an investigation in respect of any action in respect of which the person aggrieved has or had—

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- (a) a right of appeal, reference or review to or before a tribunal constituted under any enactment or by virtue of Her Majesty’s prerogative, or
 - (b) a remedy by way of proceedings in any court of law,
- unless the Welsh Administration Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to it.
- (4) The Welsh Administration Ombudsman shall not conduct an investigation in respect of any action if the person aggrieved has or had the opportunity to make a complaint under a procedure operated by the body in the exercise of whose functions the action was taken unless he is satisfied—
- (a) that the procedure has been invoked and exhausted, or
 - (b) that, in the particular circumstances, it is not reasonable to expect the procedure to be or have been invoked or exhausted.
- (5) The Welsh Administration Ombudsman shall not conduct an investigation in respect of—
- (a) action taken by or with the authority of a body for the purposes of investigating crime,
 - (b) the commencement or conduct of any civil or criminal proceedings before any court of law in the United Kingdom,
 - (c) action which could be investigated under the Health Service Commissioners Act 1993,
 - (d) action taken by any 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 any person acting in his capacity as a member of the tribunal,
 - (e) action taken in matters relating to contractual or other commercial transactions, other than compulsory land transactions, or
 - (f) action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to relevant service.
- (6) In sub-paragraph (5)—
- “compulsory land transactions” means transactions for or relating to—
- (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily, or
 - (b) the disposal as surplus of land acquired compulsorily or in such circumstances, and
- “relevant service” means service—
- (a) in any office or employment under the Crown or under any body subject to investigation by the Welsh Administration Ombudsman, or
 - (b) in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in personnel matters is vested in Her Majesty or any such body.
- (7) The Assembly may by order amend sub-paragraph (5) or (6) so as to exclude any actions or matters from the provisions of sub-paragraph (5).
- (8) In determining whether to initiate, continue or discontinue an investigation, the Welsh Administration Ombudsman shall (subject to the preceding provisions of this paragraph) act in accordance with his own discretion; but the Welsh

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Administration Ombudsman may not question the merits of a decision taken without maladministration in the exercise of a discretion.

- (9) In this paragraph “relevant tribunal” means a tribunal specified by order made by the Secretary of State; and references to a tribunal include the person constituting a tribunal consisting of one person.
- (10) References in this Schedule to “action” include failure to act (and related expressions shall be construed accordingly).

Complaints

- 18 (1) A complaint may be made to the Welsh Administration Ombudsman by any individual or body of persons (whether or not incorporated) except—
- (a) the Assembly,
 - (b) a local authority or other authority or body constituted for purposes of the public service or of local government,
 - (c) a body constituted for the purposes of carrying on under national ownership an industry or undertaking or part of an industry or undertaking, and
 - (d) any other authority or body whose members are appointed by Her Majesty, any Minister of the Crown or government department or the Assembly or whose revenues consist wholly or mainly of money provided by Parliament or the Assembly.
- (2) Subject to sub-paragraphs (3) and (4), a complaint shall not be entertained by the Welsh Administration Ombudsman unless made by the person aggrieved himself.
- (3) Where an individual by whom a complaint might have been made to the Welsh Administration Ombudsman has died, or is for any reason unable to act for himself, the complaint may be made by—
- (a) his personal representatives,
 - (b) a member of his family, or
 - (c) another individual, or any body, suitable to represent him.
- (4) Where a body by whom a complaint might have been made to the Welsh Administration Ombudsman is for any reason unable to act for itself, the complaint may be made by an individual, or another body, suitable to represent it.
- (5) A complaint to the Welsh Administration Ombudsman shall not be entertained unless it is made to him not later than twelve months after the day on which the person aggrieved first had notice of the matters alleged in the complaint; but the Welsh Administration Ombudsman may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.
- (6) A body subject to investigation by the Welsh Administration Ombudsman may itself refer to him a complaint made to the body about action taken by or on behalf of the body in the exercise of administrative functions of the body if the complaint was made—
- (a) in writing,
 - (b) by a person who could have made a complaint to the Welsh Administration Ombudsman about the action, and

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- (c) not more than twelve months after the day on which the person aggrieved first had notice of the matters alleged in the complaint or such later day as the Welsh Administration Ombudsman considers appropriate in any particular case.
- (7) But a body subject to investigation by the Welsh Administration Ombudsman may not refer a complaint under sub-paragraph (6) more than twelve months after the day on which the body received the complaint.
- (8) Any question whether a complaint is duly made or referred to the Welsh Administration Ombudsman shall be determined by him; but a complaint duly referred to him shall be deemed to be duly made to him.

Investigation procedure

- 19 (1) Where the Welsh Administration Ombudsman proposes to conduct an investigation pursuant to a complaint made to him, he shall afford to—
- (a) the body concerned, and
 - (b) any person who is alleged in the complaint to have taken or authorised the action complained of,
- an opportunity to comment on any allegations contained in the complaint.
- (2) The investigation shall be conducted in private but in other respects the procedure for conducting the investigation shall be such as the Welsh Administration Ombudsman considers appropriate in the circumstances of the case; and, in particular, the Welsh Administration Ombudsman—
- (a) may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and
 - (b) may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.
- (3) The Welsh Administration Ombudsman may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or supplies information for the purposes of an investigation—
- (a) sums in respect of expenses properly incurred by them, and
 - (b) allowances by way of compensation for the loss of their time,
- in accordance with such scales, and subject to such conditions, as may be determined by the Welsh Administration Ombudsman.
- (4) The conduct of an investigation shall not affect—
- (a) any action taken, or
 - (b) any power or duty to take further action with respect to any matters subject to the investigation.

Evidence

- 20 (1) For the purposes of an investigation by the Welsh Administration Ombudsman he may require—
- (a) any member of, or any officer or member of the staff of, the body concerned, or
 - (b) any other person who in his opinion is able to supply information or produce documents relevant to the investigation,

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to supply such information or produce such documents.

- (2) For the purposes of any such investigation the Welsh Administration Ombudsman shall have the same powers as the High Court in respect of—
 - (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
 - (b) the production of documents.
- (3) 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 by any rule of law, shall apply to the disclosure of information for the purposes of an investigation by the Welsh Administration Ombudsman.
- (4) The Crown shall not be entitled in relation to any investigation by the Welsh Administration Ombudsman to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
- (5) Subject to sub-paragraph (4), no person shall be compelled for the purposes of an investigation by the Welsh Administration Ombudsman to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.

Obstruction and contempt

- 21 (1) The Welsh Administration Ombudsman may certify an offence to the High Court where—
 - (a) a person, without lawful excuse, obstructs him or any member of his staff in the performance of his functions, or
 - (b) a person is guilty of any act or omission in relation to an investigation which, if that investigation were proceedings in the High Court, would constitute contempt of court.
- (2) Where an offence is so certified the High Court may inquire into the matter; and after hearing—
 - (a) any witnesses who may be produced against or on behalf of the person charged with the offence, and
 - (b) any statement that may be offered in defence,the High Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the same offence in relation to the High Court.
- (3) Nothing in this paragraph shall be construed as applying to the taking of any such action as is mentioned in paragraph 19(4).

Reports

- 22 (1) Where the Welsh Administration Ombudsman has conducted an investigation pursuant to a complaint made to him, he shall prepare a report of the results of the investigation and shall send copies of it to—
 - (a) the person who made the complaint,
 - (b) any Assembly member who, to the Welsh Administration Ombudsman's knowledge, assisted that person in making the complaint (or, if he is

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- no longer an Assembly member, such Assembly member as the Welsh Administration Ombudsman thinks appropriate),
- (c) the body concerned,
 - (d) any person who is alleged in the complaint to have taken or authorised the action complained of, and
 - (e) the Assembly First Secretary.
- (2) Where the Welsh Administration Ombudsman decides not to conduct an investigation pursuant to a complaint made to him, he shall prepare a statement of his reasons for not conducting an investigation and shall send copies of it to—
- (a) the person who made the complaint, and
 - (b) any Assembly member who, to the Welsh Administration Ombudsman’s knowledge, assisted that person in making the complaint (or, if he is no longer an Assembly member, such Assembly member as the Welsh Administration Ombudsman thinks appropriate).

Action in response to reports

- 23 (1) Where the Assembly First Secretary receives a copy of a report under paragraph 22(1) of the results of an investigation of any action taken in the exercise of a function, he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56) for the exercise of the Assembly’s functions in any fields in which the function falls.
- (2) Where in a report under paragraph 22(1) the Welsh Administration Ombudsman states that injustice to the person aggrieved has been caused in consequence of maladministration, the body concerned shall consider the report and within—
- (a) the period of three months beginning with the date on which the body received the report, or
 - (b) such longer period as the Welsh Administration Ombudsman may agree in writing,
- shall notify the Welsh Administration Ombudsman of the action taken or proposed to be taken.
- (3) The Welsh Administration Ombudsman shall prepare a further report if he—
- (a) does not receive the notification required by sub-paragraph (2) within the period allowed by or under that sub-paragraph,
 - (b) is not satisfied with the action taken or proposed to be taken, or
 - (c) does not within the period of three months beginning with the end of the period allowed by or under sub-paragraph (2), or such longer period as the Welsh Administration Ombudsman may agree in writing, receive confirmation from the body that action has been taken, as proposed, to his satisfaction.
- (4) The further report shall set out those facts and make such recommendations as the Welsh Administration Ombudsman thinks fit to make with respect to action which, in his opinion, should be taken—
- (a) to remedy the injustice to the person aggrieved, and
 - (b) to prevent similar injustice being caused in the future;
- and a copy of the further report shall be sent to each of the persons to whom a copy of the report under paragraph 22(1) was sent.

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- (5) Where the Assembly First Secretary receives a copy of a further report arising from an investigation of any action taken in the exercise of a function, he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56) for the exercise of the Assembly's functions in any fields in which the function falls.
- (6) Where the Assembly First Secretary receives a copy of a further report arising from an investigation of any action taken in the exercise of functions of the Assembly, he shall also—
 - (a) lay a copy of it before the Assembly, and
 - (b) (unless action to the satisfaction of the Welsh Administration Ombudsman has been taken or proposed) give to the Assembly notice of his intention to move that the Assembly resolve to approve the recommendations specified in it.
- (7) The standing orders must make provision for any motion of which notice has been given pursuant to sub-paragraph (6)(b) to be moved as soon as is reasonably practicable (unless action to the satisfaction of the Welsh Administration Ombudsman has been taken or proposed).

Reports: supplementary

- 24 (1) Apart from identifying any body investigated, a report under paragraph 22(1), a further report under paragraph 23(3) or a report under paragraph 6 shall not—
- (a) mention the name of any person, or
 - (b) include any particulars which, in the opinion of the Welsh Administration Ombudsman, are likely to identify any person and can be omitted without impairing the effectiveness of the report or further report,
- unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Welsh Administration Ombudsman considers it necessary for the report or further report to mention his name or include such particulars.
- (2) For the purposes of the law of defamation, the following are absolutely privileged—
- (a) the publication of any matter by the Welsh Administration Ombudsman in a report or statement under paragraph 22, a further report under paragraph 23(3) or a report under paragraph 6,
 - (b) the publication of any matter in communications between—
 - (i) an Assembly member or member of the Assembly's staff, a member of any other body subject to investigation by the Welsh Administration Ombudsman or an officer or member of the staff of any such body, and
 - (ii) the Welsh Administration Ombudsman or a member of his staff, in connection with a complaint to the Welsh Administration Ombudsman,
 - (c) the publication of any matter in communications between any person and an Assembly member in connection with a complaint by the person to the Welsh Administration Ombudsman, and
 - (d) the publication of any matter in communications between any person and the Welsh Administration Ombudsman or a member of his staff in connection with a complaint by the person to the Welsh Administration Ombudsman.

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Confidentiality of information

- 25 (1) Information obtained by the Welsh Administration Ombudsman or a member of his staff in the course of or for the purposes of an investigation shall not be disclosed except—
- (a) for the purposes of the investigation and of any report of it,
 - (b) for the purposes of any proceedings for—
 - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by him or a member of his staff, or
 - (ii) an offence of perjury alleged to have been committed in the course of an investigation by him,
 - (c) for the purposes of an inquiry with a view to the taking of proceedings within paragraph (b),
 - (d) for the purposes of any proceedings under paragraph 21, or
 - (e) in accordance with paragraph 26.
- (2) Neither the Welsh Administration Ombudsman nor any members of his staff shall be called upon to give evidence in any proceedings (other than proceedings referred to in sub-paragraph (1)) of matters coming to his or their knowledge in the course of an investigation.
- (3) A Minister of the Crown may give notice in writing to the Welsh Administration Ombudsman with respect to—
- (a) any document or information specified in the notice, or
 - (b) any class of document or information so specified,
- that in the opinion of the Minister the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (4) Where such a notice is given neither the Welsh Administration Ombudsman nor any member of his staff shall be required or authorised to disclose to any person or for any purpose any document or information specified in the notice or any document or information of a class so specified.
- 26 (1) Sub-paragraph (2) applies where—
- (a) the Welsh Administration Ombudsman also holds office as the Parliamentary Commissioner for Administration or a Health Service Commissioner (“a Commissioner”), and
 - (b) a person initiates a complaint to him in his capacity as a Commissioner which relates partly to a matter with respect to which that person has previously initiated, or subsequently initiates, a complaint to him as Welsh Administration Ombudsman.
- (2) Information obtained by the Welsh Administration Ombudsman or a member of his staff in the course of or for the purposes of investigating the complaint made to him in his capacity as Welsh Administration Ombudsman may be disclosed for the purposes of his carrying out his functions in relation to the other complaint.

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Consultation and co-operation with other Ombudsmen

- 27 (1) Where the Welsh Administration Ombudsman, at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation—
- (a) by the Parliamentary Commissioner for Administration under the Parliamentary Commissioner Act 1967,
 - (b) by a Health Service Commissioner under the Health Service Commissioners Act 1993, or
 - (c) by a Local Commissioner under Part III of the Local Government Act 1974,
- he shall consult about the complaint with the appropriate Commissioner and, if he considers it necessary, he shall inform the person who made the complaint of the steps necessary to make a complaint to that Commissioner.
- (2) Where the Welsh Administration Ombudsman consults with a Commissioner in accordance with sub-paragraph (1), the consultations may extend to any matter relating to the complaint, including—
- (a) the conduct of any investigation pursuant to the complaint, and
 - (b) the form, content and publication of any report of such an investigation.
- (3) Where a body subject to investigation by the Welsh Administration Ombudsman is also—
- (a) an authority to which the Parliamentary Commissioner Act 1967 applies,
 - (b) a body subject to investigation by a Health Service Commissioner under the Health Service Commissioners Act 1993, or
 - (c) an authority to which Part III of the Local Government Act 1974 applies,
- the Welsh Administration Ombudsman and the Parliamentary Commissioner for Administration, the Health Service Commissioner concerned or the Local Commissioner concerned shall co-operate with each other to any such extent as appears appropriate when exercising any function in relation to the body.
- (4) Nothing in paragraph 25(1) applies in relation to the disclosure of information in the course of consultations or other co-operation under this paragraph.