



# Public Services Ombudsman (Wales) Act 2005

## 2005 CHAPTER 10

### PART 3

#### MISCELLANEOUS AND GENERAL

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

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

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

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

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

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

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

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

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### 38 Undetermined complaints

- (1) Subsection (2) applies if—
  - (a) a complaint has been made or referred to an existing Welsh ombudsman before the commencement date, and
  - (b) the complaint has not been determined by that ombudsman before that date.
- (2) On and after the commencement date, the relevant existing enactment continues to apply for the purposes of the complaint despite the other provisions of this Act.
- (3) Subsection (4) applies if—
  - (a) a complaint could (but for the other provisions of this Act) have been made or referred to an existing Welsh ombudsman, and
  - (b) the complaint relates to action taken by a person before the commencement date.
- (4) On and after the commencement date, the relevant existing enactment continues to apply for the purposes of enabling the complaint to be made or referred, and for the purposes of the complaint if made or referred, despite the other provisions of this Act.
- (5) As applied by subsections (2) and (4), the relevant existing enactment has effect as if for references to the existing Welsh ombudsman in relation to which that enactment applies there were substituted references to the Ombudsman.
- (6) In this section—
  - “the commencement date” means the date on which this section comes into force;
  - “existing Welsh ombudsman” means—
    - (a) the Welsh Administration Ombudsman;
    - (b) the Health Service Commissioner for Wales;
    - (c) a Local Commissioner who is a member of the Commission for Local Administration in Wales;
    - (d) the Social Housing Ombudsman for Wales;
  - “the relevant existing enactment”—
    - (a) if the relevant existing Welsh ombudsman is the Welsh Administration Ombudsman, means Schedule 9 to the Government of Wales Act 1998 (c. 38);
    - (b) if the relevant existing Welsh ombudsman is the Health Service Commissioner for Wales, means the Health Service Commissioners Act 1993 (c. 46);
    - (c) if the relevant existing Welsh ombudsman is a Local Commissioner, means Part 3 of the Local Government Act 1974 (c. 7);
    - (d) if the relevant existing Welsh ombudsman is the Social Housing Ombudsman for Wales, means Part 1 of the Housing Act 1996 (c. 52);
  - “the relevant existing Welsh ombudsman”—
    - (a) in relation to a complaint within subsection (1), means the existing Welsh ombudsman to whom the complaint was made or referred;
    - (b) in relation to a complaint within subsection (3), means the existing Welsh ombudsman to whom the complaint could have been made or referred.

## General

### 39 Amendments and repeals

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

### 40 Commencement

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

### 41 Interpretation

- (1) In this Act—

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

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

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

“the Assembly” means the National Assembly for Wales;

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

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

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

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

“family health service provider in Wales” means—

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

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

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

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

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

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

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

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

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

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

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

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

“publicly-funded dwelling” means—

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

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

“social landlord in Wales” means—

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

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

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

“Welsh health service body” means—

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

- (2) For the purposes of the definition of “independent provider in Wales”, arrangements with the Assembly are arrangements with a Welsh health service body only to the

extent that they are made in the discharge of a function of the Assembly relating to the National Health Service.

- (3) The Assembly may by order amend the definitions of “family health service provider in Wales”, “independent provider in Wales” and “social landlord in Wales”.
- (4) Before making an order under subsection (3), the Assembly must consult such persons as it thinks appropriate.
- (5) Section 13 of the National Audit Act 1983 (c. 44) (interpretation of references to the Committee of Public Accounts) applies for the purposes of this Act as it applies for the purposes of that Act.
- (6) For the purposes of this Act, references to action taken by a listed authority include action taken by—
  - (a) a member, co-opted member, committee or sub-committee of the authority acting in the discharge of functions of the authority;
  - (b) an officer or member of staff of the authority, whether acting in the discharge of his own functions or the functions of the authority;
  - (c) any other person acting on behalf of the authority.

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

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

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- (b) subsequently—
  - (i) ceased to be registered as mentioned in paragraph (a)(i) or (ii) (whether or not he later became so registered again), or
  - (ii) ceased to own or manage publicly-funded dwellings (whether or not he later did so again).

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

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

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

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

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

#### **45 Extent**

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

#### **46 Short title**

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