
EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the provisions of the Public Services Ombudsman (Wales) Act 2005 (“the Act”), except section 20 and paragraph 15(5) of Schedule 1 to the Act.

Article 3 and Part 1 of Schedule 1 to this Order bring into force on 12 October 2005 various provisions of the Act for the purpose of appointing the Public Services Ombudsman for Wales (“the Ombudsman”), including the provisions relating to persons who are to be disqualified from holding the office of the Ombudsman.

Those provisions also bring into force on 12 October 2005 various powers (vested in the National Assembly for Wales (“the Assembly”)) to make orders and regulations relating to the functions of the Ombudsman under Part 2 of the Act.

Article 3 and Part 2 of Schedule 1 bring into force on 12 October 2005 the provisions of the Act that remove the duties on the Welsh Administration Ombudsman and the Health Service Commissioner for Wales to prepare and submit to the Assembly Cabinet estimates of the income and expenditure of each office for the financial year ending 31 March 2007.

Those provisions also bring into force on 12 October 2005 the provisions of the Act that remove the duty on the Commission for Local Administration in Wales to prepare and submit to the Assembly an estimate of the expenses that it will incur for the financial year ending 31 March 2007. Although paragraph 7(1) of Schedule 4 to the Local Government Act 1974 requires that the Commission for Local Administration in Wales submit its estimate to the Secretary of State, article 2(a) of and Schedule 1 to the [National Assembly for Wales \(Transfer of Functions\) Order 1999 \(SI 1999 No. 672\)](#) has effect so that the Commission must submit the estimate to the Assembly instead.

Schedule 4 amends Part 3 of the Local Government Act 2000 (“the 2000 Act”) which relates to the conduct of local government members and employees. In this respect Schedule 4 makes the necessary amendments to bring Part 3 of the 2000 Act fully into accord with the Act. Essentially, when Schedule 4 comes fully into force, functions of the Commission for Local Administration in Wales (“the Commission”) and those of the Local Commissioner in Wales (“the Commissioner”) under Part 3 of the 2000 Act become functions of the Ombudsman.

Broadly speaking, in relation to relevant authorities in England (as defined in the 2000 Act) and police authorities in Wales the powers in Part 3 of the 2000 Act to make orders and regulations relating to such bodies are vested in the Secretary of State. As regards relevant authorities in Wales (other than police authorities in Wales) those powers are vested in the Assembly. The powers to make orders and regulations relating to the functions of the Commission and the Commissioner under Part 3 of the 2000 Act are vested in the Assembly.

Articles 4(1) and (2) of this Order bring into force, on 12 October 2005, those provisions of Schedule 4 which amend the powers in Part 3 of the 2000 Act to make orders and regulations (as the case may be) in connection with the conduct of members and employees of relevant authorities (within the meaning of Part 3 of the 2000 Act) bringing those provisions, where necessary, fully into accord with the Act.

Until section 35 and Schedule 4 come fully into force on 1 April 2006 the Ombudsman has no functions under Part 3 of the 2000 Act. However, articles 4(1) and (2) of this Order enable orders and regulations to be made in preparation for the Ombudsman taking over, on 1 April 2006, the functions of the Commission and the Commissioner under that Part of that Act.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

However, until section 35 and Schedule 4 come fully into force on 1 April 2006, the Commission and the Commissioner will continue to have functions under that Part of that Act. Article 4(3) of this Order, therefore, provides that the provisions of Part 3 of the 2000 Act that would otherwise be affected by the amendments made by the provisions of the Act brought into force by article 4(1) and (2) of this Order continue to have effect (as if they had not been so amended) for the purpose of making orders and regulations relating to the ongoing functions of the Commission and the Commissioner under Part 3 of the 2000 Act.

Article 5(1) brings the remaining provisions of the Act (except section 20 and paragraph 15(5) of Schedule 1) into force on 1 April 2006.

Article 5(2) and Schedule 2 to this Order contain saving provisions. These provisions relate to the accounts and resources of the Welsh Administration Ombudsman, the Health Service Commissioner for Wales and the Social Housing Ombudsman for Wales. Each of those offices are currently held by the same person.

The effect of these provisions is that, for the financial year ending 31 March 2006, the requirements in relation to those offices to prepare accounts and to have those accounts audited etc. continue to apply. Insofar as those provisions continue to apply, the Ombudsman will be regarded as the accounting officer in relation to each of those offices for the purposes of, for example, signing the accounts.

Article 6 of this Order makes provision in relation to any complaint that is duly made or referred to the Ombudsman about a matter which relates to events that occurred before 1 April 2006 and events that occurred after that date. Section 38 (undetermined complaints) only applies where the action complained of takes place before 1 April 2006. Where a complaint relates to action that occurs on or after that date the provisions of Part 2 will apply to that complaint.

For the purposes of article 6 the Ombudsman is not prevented from investigating a matter only because the matter relates to events that occurred before 1 April 2006 (article 6(3)).

However, for the purposes of article 6 the Ombudsman can investigate such a matter insofar as it relates to events that occurred before that date only if certain conditions are met (article 6(2)). Those conditions are that:

- (a) the complaint must otherwise have been duly made or duly referred to the Ombudsman, and
- (b) the complaint in respect of the events that occurred before 1 April 2006 could (but for the other provisions of the Act) have been, but has not been, made to the Welsh Administration Ombudsman, the Local Commissioner for Wales, the Health Service Commissioner for Wales or the Social Housing Ombudsman for Wales (“the existing Welsh ombudsmen”).

For example, if, after 1 April 2006, a body is added to Schedule 3 (listed authorities) by Assembly order under section 28(2) but it is not a body that, prior to that date, is within the jurisdiction of one of the existing Welsh ombudsmen then article 6 will not apply. Article 6 only applies where the matter spans 1 April 2006 and where the body concerned is, after that date, within the jurisdiction of the Ombudsman and before that date within the jurisdiction of one of the existing Welsh ombudsmen.

Article 7 of this Order makes transitional provision requiring the Ombudsman to prepare and submit to the Assembly Cabinet an estimate of the income and expenses of that office for the financial year ending 31 March 2007.

The Ombudsman must submit that estimate to the Assembly Cabinet no later than one month before the beginning of that financial year. The Assembly Cabinet must consider that estimate and then lay it before the Assembly with such modifications as it thinks appropriate. However, if the Assembly Cabinet proposes to lay that estimate before the Assembly with modifications, the Assembly Cabinet must first consult the Secretary of State.