

SCHEDULE 3

(introduced by section 179)

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED SOCIAL CARE AND PALLIATIVE CARE

PART 1

NEW PARTS 2A AND 2B FOR THE PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2005

- 1 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.
- 2 After Part 2 (investigation of complaints) insert—

“PART 2A

INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE AND PALLIATIVE CARE

Application of this Part

34A 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;
 - (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 2, or
 - (b) matters described in Schedule 3A.
- (3) The Welsh Ministers may by order amend Schedule 3A by—
 - (a) adding an entry,
 - (b) removing an entry, or
 - (c) changing an entry.
- (4) Before making an order under subsection (3), the Welsh Ministers must consult the Ombudsman.
- (5) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.
- (6) For the meaning of the following terms see sections 34R to 34T—
 - “care home”;
 - “care home provider”;

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“domiciliary care”;
“domiciliary care provider”;
“palliative care service”;
“independent palliative care provider”.

Investigation of complaints

34B Power to investigate complaints

- (1) The Ombudsman may investigate a complaint about a matter to which this Part applies if—
 - (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 complaint 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) 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 34D 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 34E 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 34D to make a complaint to the Ombudsman, and
 - (b) the requirements of section 34F 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 34E or section 34F(1)(a)(ii) or (b)(ii) have not

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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 he or she 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.

34C Alternative resolution of complaints

- (1) The Ombudsman may take any action he or she considers appropriate with a view to resolving a complaint which he or she has the power to investigate under section 34B.
- (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.
- (3) Any action under this section must be taken in private.

34D 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.

34E Requirements: complaints made to the Ombudsman

- (1) The requirements mentioned in section 34B(4)(c) are that the complaint must be made—
 - (a) in writing, and

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- (b) before the end of the permitted period.
- (2) In subsection (1)(b) (and in section 34F(1)(a)(ii)) “the permitted period” means—
 - (a) where the person aggrieved has notice of the matter before the date on which section 34B comes into force, the period of 12 months beginning with the date on which that section comes into force, and
 - (b) in any other case, the period of 12 months beginning with the day on which the person aggrieved first has notice of the matter.
- (3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.

34F Requirements: complaints referred to the Ombudsman

- (1) The requirements mentioned in section 34B(5)(b) are that the complaint—
 - (a) must have been made to the provider to whom it relates—
 - (i) by a person who would have been entitled under section 34D to make the complaint to the Ombudsman, and
 - (ii) before the end of the permitted period (within the meaning given by section 34E(2)), and
 - (b) must be referred to the Ombudsman—
 - (i) in writing, and
 - (ii) before the end of the period of 12 months beginning with the day on which the complaint was made to the provider.

Decisions not to investigate etc

34G Decisions not to investigate complaints or to discontinue investigations

- (1) If the Ombudsman decides under section 34B(8) not to begin an investigation into a complaint or 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 who made the complaint, and
 - (b) the provider to whom the complaint relates.
- (3) The Ombudsman may also send a copy of the statement to any other persons he or she thinks appropriate.
- (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to 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).

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- (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)—
- (a) the name of a person other than the provider to whom the complaint 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 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.

Investigation procedure and evidence

34H Investigation procedure

- (1) If the Ombudsman decides under section 34B(8) to conduct an investigation into a complaint, he or she must—
- (a) give the provider to whom the complaint relates an opportunity to comment on the allegations contained in the complaint, 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.
- (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 he or she thinks appropriate, and
 - (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 who made the complaint 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 those payments.

34I 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 he or she 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 he or she 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 to apply to the disclosure of information for the purposes of the investigation.

34J Obstruction and contempt

- (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, he or she 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

34K Investigation reports

- (1) This section applies to investigations under this Part unless section 34N applies.
- (2) The Ombudsman must, after conducting an investigation into a complaint about 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 who made the complaint,
 - (b) the provider to whom it relates,
 - (c) any other person who is alleged in the complaint to have taken or authorised the action complained of, and
 - (d) the Welsh Ministers.
- (4) The Ombudsman may also send a copy of the report to any other persons he or she thinks appropriate.
- (5) The Ombudsman may publish the report if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.
- (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).
- (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 complaint 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.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved 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.

34L Further publicity for investigation reports

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

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- (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 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, and
 - (c) the interests of any other persons the Ombudsman thinks appropriate.

34M Action following receipt of investigation reports

- (1) This section applies where the Ombudsman has concluded in an investigation report that the person aggrieved 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—
- (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—
- (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).

34N Reports: alternative procedure

- (1) This section applies if, after the Ombudsman has conducted an investigation under this Part—
- (a) the Ombudsman concludes that the person aggrieved has not sustained injustice or hardship as a result of the matter complained of, and
 - (b) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation under this Part—

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- (a) the Ombudsman concludes that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,
 - (b) the provider to whom the complaint relates agrees to implement, before the end of the permitted period, any recommendations that the Ombudsman makes, and
 - (c) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.
- (3) In subsection (2)(b) “the permitted period” means—
- (a) a period agreed between the Ombudsman, the provider and the person who made the complaint, or
 - (b) if the Ombudsman thinks that no such agreement can be reached, a period specified by him or her in writing.
- (4) The Ombudsman may decide to prepare a report on his or her findings under this section, rather than under section 34K; and if the Ombudsman decides to do so, sections 34K to 34M do not apply.
- (5) If a report is prepared under this section, the Ombudsman—
- (a) must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates, and
 - (b) may send a copy of the report to any other persons he or she thinks appropriate.
- (6) The Ombudsman may publish the report if, after taking account of the interests of the persons aggrieved and any other persons the Ombudsman thinks appropriate, he or she 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 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).
- (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 complaint 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.
- (10) Subsection (9) does not apply if, after taking account of the interests of the person aggrieved 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.

Special reports

34O Circumstances in which special reports may be prepared

- (1) The Ombudsman may prepare a special report under section 34P if case 1, 2 or 3 applies.

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- (2) Case 1 applies if—
- (a) the Ombudsman has concluded in an investigation report that the person aggrieved 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 34M 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 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 34M(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 34N by virtue of subsection (2) of that section, and
 - (b) he or she 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 34N(2)(b), or
 - (b) a longer period specified by the Ombudsman in writing (if any).
- (7) Case 3 applies if—
- (a) a complaint in respect of a provider has been resolved under section 34C,
 - (b) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,
 - (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).

34P 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 34O applies), and
 - (b) make such recommendations as the Ombudsman thinks fit as to the action which, in his or her opinion, should be taken—
 - (i) to remedy the injustice or hardship to the person aggrieved, 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 34O applies, the Ombudsman must send a copy of the report to each person to whom a copy of the section 34K report was sent under section 34K(2)(b).
- (3) If the special report is prepared because case 2 or 3 of section 34O applies, the Ombudsman must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates.
- (4) The Ombudsman may send a copy of a special report to any other persons he or she 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 complaint 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 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.

34Q 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.

Status: This is the original version (as it was originally enacted).

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

Interpretation

34R Meaning of “care home” and “care home provider”

- (1) This section applies for the purposes of this Act.
- (2) “Care home” has the same meaning as in the Care Standards Act 2000.
- (3) “Care home provider” means a person who carries on a care home.
- (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
 - (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 personal care in a care home in Wales for a person falling within section 3(2) of the Care Standards Act 2000, and
 - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

34S Meaning of “domiciliary care” and “domiciliary care provider”

- (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.

Status: This is the original version (as it was originally enacted).

- (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) 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.

34T 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—
- (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,
 - (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
 - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

PART 2B

INVESTIGATION OF COMPLAINTS: SUPPLEMENTARY

Consultation and co-operation

34U Consultation and co-operation with other ombudsmen

- (1) This section applies if, in making a decision under section 2(5) or 34B(8) or conducting an investigation under Part 2 or 2A, 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.
- (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)—
 - (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—
 - (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—
 - (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;
 - (f) the Children’s Commissioner for Wales.
- (8) The Welsh Ministers may by order amend subsection (7) by—
 - (a) adding a person,
 - (b) omitting a person, or
 - (c) changing the description of a person.

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- (9) An order 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.
- (10) No order is to be made under subsection (8) unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the Assembly.

34V Working jointly with other Commissioners

- (1) This section applies where it appears to the Ombudsman that—
 - (a) there is a complaint in respect of a matter which he or she is entitled to investigate, and
 - (b) the matter is one which could also be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner.
- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner)—
 - (a) inform the Commissioner about the matter, and
 - (b) consult him or her in relation to it.
- (3) Where the Ombudsman consults a Commissioner under this section, the Ombudsman and the Commissioner 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.

34W Working collaboratively with other Commissioners

- (1) This section applies where it appears to the Ombudsman that a complaint relates to or raises a matter which could be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner (“the connected matter”).
- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the Commissioner about the connected matter.
- (3) Where the Ombudsman considers that the complaint also relates to or raises a matter into which he or she is entitled to conduct an investigation (“the Ombudsman matter”), the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) also if he or she considers it appropriate—
 - (a) inform the Commissioner about the Ombudsman’s proposals for conducting an investigation into the complaint, and
 - (b) consult the Commissioner about those proposals.

Status: This is the original version (as it was originally enacted).

- (4) Where the Ombudsman and the 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) Where the Ombudsman considers—
- (a) that the complaint does not relate to or raise a matter into which he or she is entitled to conduct an investigation, and
 - (b) that it is appropriate to do so,
- the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner.

Disclosure

34X Disclosure of information

- (1) The information to which this section applies is—
- (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 his or her functions—
 - (i) in deciding whether to begin an investigation,
 - (ii) in the course of an investigation, or
 - (iii) in resolving a complaint under section 3 or 34C;
 - (b) information obtained from an ombudsman mentioned in section 34U(7) by virtue of any provision of section 34U or a corresponding provision in an enactment relating to any of those ombudsmen;
 - (c) information obtained from the Commissioner for Older People in Wales by virtue of section 34V or 34W of this Act or section 16 or 17 of the Commissioner for Older People (Wales) Act 2006 (working with other ombudsmen);
 - (d) information obtained from the Welsh Language Commissioner by virtue of section 34V or 34W of this Act or section 22 of the Welsh Language (Wales) Measure 2011 (power to disclose information);
 - (e) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (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;
 - (c) for the purposes of resolving a complaint under section 3 or 34C;

Status: This is the original version (as it was originally enacted).

- (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 34U, 34V or 34W;
 - (f) for the purposes of proceedings for—
 - (i) an offence under the Official Secrets Act 1911 to 1989 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 his or her functions;
 - (ii) an offence of perjury alleged to have been committed in the course of an 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 15 or 34J;
 - (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;
 - (j) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (3) This subsection applies to information if it appears to the Ombudsman to relate to—
- (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—
- (a) Part 5 of the Data Protection Act 1998 (enforcement);
 - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations);
 - (c) Part 4 of that Act.
- (5) The offences are those under—
- (a) any provision of the Data Protection Act 1998 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 (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).

34Y 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,

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 his or her functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

34Z Protection from defamation claims

- (1) For the purposes of the law of defamation, the following are absolutely privileged—
- (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 his or her functions;
 - (b) the publication of a matter by a person in the discharge of functions under section 17;
 - (c) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, 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
 - (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 his or her functions;
 - (d) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
 - (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
 - (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 his or her functions;
 - (e) 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 a person and an Assembly member;

Status: This is the original version (as it was originally enacted).

- (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
 - (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 his or her functions.

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

3 Until the coming into force of Part 5 of the Welsh Language (Wales) Measure 2011, sections 34V and 34W of the Public Services Ombudsman (Wales) Act 2005 have effect with the omission of the following words (wherever occurring)—

“or the Welsh Language Commissioner”;

“or may (as respects the Welsh Language Commissioner)”.

4 After Schedule 3 (listed authorities) insert—

“SCHEDULE
3A

EXCLUDED MATTERS: PART 2A

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

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO THE OMBUDSMAN

Local Government Act 1974

- 5 The Local Government Act 1974 is amended as follows.
- 6 In section 29 (investigations: further provisions), in subsection (5), for “26” substitute “34X”.
- 7 In section 33 (consultation between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioners and other Commissioners and Ombudsmen), in subsection (5), for “26” substitute “34X”.
- 8 In section 34G (investigations: further provisions), in subsection (2), for “26” substitute “34X”.
- 9 In section 34M (consultation with other Commissioners), in subsection (7), in paragraph (d), for “26” substitute “34X”.

Local Government Act 2000

- 10 The Local Government Act 2000 is amended as follows.
- 11 Section 67 (consultation with ombudsmen) has effect, until the repeal of that section by Part 5 of Schedule 25 to the Localism Act 2011 is brought fully into force, with the following amendments—
- (a) in subsection (2A), after “Part 2” insert “or 2A”, and
 - (b) in subsection (4), for “26” substitute “34X”.
- 12 In section 70 (investigations: further provisions), in subsection (2), in paragraph (b), for “, 25 to 27 and 32” substitute “and Part 2B”.

Public Services Ombudsman (Wales) Act 2005

- 13 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.
- 14 In the heading to Part 2 (investigation of complaints), after “COMPLAINTS” insert “RELATING TO LISTED AUTHORITIES”.
- 15 In section 2 (power of investigation)—
- (a) in subsection (1), after “complaint” (in the first place it occurs) insert “under this Part”, and
 - (b) in subsection (4), after “complaint” (in the first place it occurs) insert “under this Part”.
- 16 In section 4 (who can complain), in subsection (1)—
- (a) in the words before paragraph (a), after “Ombudsman” insert “under this Part”, and
 - (b) in paragraph (a), for “Act” substitute “Part”.
- 17 In section 7 (matters which may be investigated), in subsection (1), after “investigate” insert “under this Part”.
- 18 In section 9 (exclusion: other remedies)—
- (a) in subsection (1), after “matter” (in the first place it occurs) insert “under this Part”, and
 - (b) in subsection (3), after “matter” (in the first place it occurs) insert “under this Part”.
- 19 In section 10 (other excluded matters), in subsection (1), after “investigate” insert “under this Part”.
- 20 In section 14 (information, documents, evidence and facilities), before subsection (1) insert—
- “(A1) This section applies in relation to investigations conducted under this Part.”
- 21 In section 23 (special reports: supplementary)—
- (a) in subsection (1), in paragraph (a), after “report” insert “made under section 22”, and
 - (b) in subsection (7), after “report” (in the first place it occurs) insert “under section 22”.
- 22 Omit the italic cross-heading before section 25 (consultation and co-operation).
- 23 Omit sections 25 to 25B (consultation and co-operation).

Status: This is the original version (as it was originally enacted).

- 24 Omit the italic cross-heading before section 26 (disclosure).
- 25 Omit sections 26 and 27 (disclosure of information).
- 26 Omit section 32 (protection from defamation claims).
- 27 In section 41 (interpretation), in subsection (1)—
- (a) in the definition of “investigation”, after “section 2” insert “or 34B”,
 - (b) in the definition of “the person aggrieved”—
 - (i) after “aggrieved” insert “in Part 2”, and
 - (ii) after “section 4(1)(a)” insert “and in Part 2A has the meaning given in section 34D(1)(a)”,
 - (c) in the definition of “special report”—
 - (i) after “report” insert “in Part 2”, and
 - (ii) after “section 22” insert “and in Part 2A has the meaning given in section 34P”, and
 - (d) insert, in the appropriate places—
 - ““care home” has the meaning given by section 34R(2);”;
 - ““care home provider” has the meaning given by section 34R(3);”;
 - ““domiciliary care” has the meaning given by section 34S(2);”;
 - ““domiciliary care provider” has the meaning given by section 34S(3);”;
 - ““independent palliative care provider” has the meaning given by section 34T(3);”;
 - ““palliative care service” has the meaning given by section 34T(2);”.
- 28 In the heading to section 42 (former health care providers and social landlords: modifications), for “and social landlords” substitute “social landlords, social care providers and palliative care providers”.
- 29 (1) Section 42 (former health care providers and social landlords: modifications) is amended as follows.
- (2) In subsection (1), after paragraph (c) insert—
- “(d) former care home providers in Wales;
 - (e) former domiciliary care providers in Wales;
 - (f) former independent palliative care providers in Wales.”
- (3) After subsection (4) insert—
- “(4A) “Former care home provider in Wales” means a person who—
- (a) at the relevant time, provided accommodation, nursing or personal care of a particular description at a care home (within the meaning given by the Care Standards Act 2000) in Wales, and
 - (b) subsequently ceased to do so (whether or not the person has later started to do so again).
- (4B) “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
 - (b) subsequently ceased to do so (whether or not the person has later started to provide those services again).

Status: This is the original version (as it was originally enacted).

- (4C) “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).”
- 30 (1) Schedule 1 (Public Services Ombudsman for Wales: appointment etc) is amended as follows.
- (2) In paragraph 5—
- (a) in sub-paragraph (1), after paragraph (e) insert—
- “(f) he is a care home provider, domiciliary care provider or independent palliative care provider;
- (g) he is an officer or member of staff of a provider of that kind.”;
- (b) after sub-paragraph (1) insert—
- “(1A) For the purposes of sub-paragraph (1)(g) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.”
- (3) In paragraph 14, in sub-paragraph (7)(a), after “authority” insert “, care home provider, domiciliary care provider or independent palliative care provider”.
- 31 In the title to Schedule 2, after “MATTERS” insert “: PART 2”.

Commissioner for Older People (Wales) Act 2006

- 32 The Commissioner for Older People (Wales) Act 2006 is amended as follows.
- 33 In section 18 (power to disclose information), in subsection (1), in paragraph (b), for “25A” substitute “34V”.
- 34 In Schedule 4 (minor and consequential amendments), in paragraph 2, omit sub-paragraphs (2) and (3).

Government of Wales Act 2006

- 35 In Schedule 10 to the Government of Wales Act 2006 (minor and consequential amendments), omit paragraph 77.

Welsh Language (Wales) Measure 2011

- 36 (1) Schedule 3 to the Welsh Language (Wales) Measure 2011 (amendments about joint and collaborative working) is amended as follows.
- (2) Omit the italic cross-heading before paragraph 4 (Public Services Ombudsman (Wales) Act 2005).
- (3) Omit paragraphs 4 to 6.