



# Public Services Ombudsman (Wales) Act 2019

2019 anaw 3

## PART 7

### MISCELLANEOUS AND GENERAL

#### *Welsh language standards*

#### **72 Authorisation to give compliance notice to the Ombudsman in relation to Welsh language standards**

- (1) In Schedule 6 to the [Welsh Language Standards \(No. 2\) Regulations 2016 \(S.I. 2016/182 \(W.76\)\)](#) (“the 2016 Regulations”), insert in the appropriate place—

“The Public Services Ombudsman for Wales (“*Ombwdsmon Gwasanaethau Cyhoeddus Cymru*”).

- (2) The amendment made by this section does not affect the power to make further regulations amending or revoking the 2016 Regulations.

#### *Review of Act*

#### **73 Review of Act**

- (1) The Assembly must, as soon as practicable after the end of the 5 year period, prepare and publish a report on the operation and effect of this Act during the 5 year period.
- (2) The Assembly may prepare and publish a report on the operation and effect of this Act at any time.
- (3) In preparing a report under this section, the Assembly must consult such persons as it considers appropriate.

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- (4) In this section, “the 5 year period” means the period of 5 years beginning with the day this Act receives Royal Assent.

*Application of the 2005 Act to certain investigations*

**74 Investigations commenced before sections 3, 4, 43 and 44 come into force**

- (1) Subsection (2) applies if the Ombudsman has commenced an investigation into a matter before the date on which sections 3, 4, 43 and 44 come into force and the investigation has not been determined by the Ombudsman or the matter has not been resolved by that date.
- (2) On and after that date, the [Public Services Ombudsman \(Wales\) Act 2005 \(c.10\)](#) continues to apply for the purposes of the investigation despite the other provisions of this Act.

*General*

**75 Repeals, savings and consequential amendments**

- (1) The [Public Services Ombudsman \(Wales\) Act 2005 \(c.10\)](#) is repealed.
- (2) But—
- (a) see section 74 of this Act (investigations commenced before sections 3, 4, 43 and 44 of this Act come into force);
  - (b) subsection (1) does not apply to—
    - (i) paragraphs 9(4) and 11(4) of Schedule 1 to the 2005 Act (which amend the [Superannuation Act 1972 \(c.11\)](#)) and section 1 of the 2005 Act (to the extent that it gives effect to paragraphs 9(4) and 11(4) of the 2005 Act);
    - (ii) Schedule 4 to the 2005 Act (which amends the [Local Government Act 2000 \(c.22\)](#)) and section 35 of the 2005 Act (which gives effect to Schedule 4 to the 2005 Act);
    - (iii) Schedule 6 to the 2005 Act (consequential amendments) and section 39(1) of the 2005 Act (which gives effect to Schedule 6 to the 2005 Act);
    - (iv) the extent that it would revoke any subordinate legislation (within the meaning of section 21(1) of the [Interpretation Act 1978 \(c.30\)](#)) made under the 2005 Act.
- (3) Schedule 5 (which makes consequential amendments of primary legislation in consequence of this Act) has effect.

**76 Functions of the Assembly**

- (1) The Assembly may by standing orders make provision regarding the exercise of the functions conferred upon it by or under this Act.
- (2) Such provision includes, but is not limited to, delegating functions to a committee or sub-committee of the Assembly or the chair of such a committee or sub-committee.

- (3) But the Assembly may not delegate functions conferred upon it by or under this Act other than the functions conferred by—
- (a) sections 73(1), (2) and (3), and
  - (b) paragraphs 5 and 8(1) of Schedule 1.

## 77 Commencement

- (1) The preceding provisions of this Act, and the Schedules to this Act, come into force in accordance with provision made by the Welsh Ministers by regulations.
- (2) This section and sections 78 to 82 come into force on the day this Act receives Royal Assent.
- (3) Regulations under subsection (1) may—
- (a) appoint different days for different purposes;
  - (b) make transitional, transitory or saving provision in connection with the coming into force of a provision of this Act.

## 78 Interpretation

- (1) In this Act—

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

“annual report” (“*adroddiad blynyddol*”) has the meaning given in paragraph 15 of Schedule 1;

“the Assembly” (“*y Cynulliad*”) means the National Assembly for Wales;

“care home” (“*cartref gofal*”) has the meaning given by section 62(2);

“care home provider” (“*darparwr gofal cartref*”) has the meaning given by section 62(3);

“co-opted member” (“*aelod cyfetholedig*”), 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;

“domiciliary care” (“*gofal cartref*”) has the meaning given by section 63(2);

“domiciliary care provider” (“*darparwr gofal cartref*”) has the meaning given by section 63(3);

“enactment” (“*deddfiad*”) means an enactment (whenever enacted or made) which is, or contained in—

- (a) an Act or a Measure of the Assembly,
- (b) an Act of Parliament, or
- (c) subordinate legislation (within the meaning of section 21(1) of the [Interpretation Act 1978 \(c.30\)](#)) made under—
  - (i) an Act or a Measure of the Assembly, or
  - (ii) an Act of Parliament.

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“extraordinary report” (“*adroddiad eithriadol*”) has the meaning given in paragraph 15 of Schedule 1;

“family health service provider in Wales” (“*darparwr gwasanaeth iechyd teulu yng Nghymru*”) means—

- (a) a person who, at the time of action which is the subject of investigation under Part 3 of this Act, provided services under a contract entered into by that person with a Local Health Board under section 42 or section 57 of the [National Health Service \(Wales\) Act 2006 \(c.42\)](#);
- (b) a person who, at that time, had undertaken to provide in Wales general ophthalmic services or pharmaceutical services under that Act;
- (c) an individual who, at that time, provided in Wales primary medical services or primary dental services in accordance with arrangements made under section 50 or 64 of that Act (except as an employee of, or otherwise on behalf of, a Welsh health service body or an independent provider in Wales);

“family health services” (“*gwasanaethau iechyd teulu*”) means services mentioned in any of paragraphs (a) to (c) of the definition of “family health service provider in Wales”;

“financial year” (“*blwyddyn ariannol*”) means the 12 months ending on 31 March;

“in writing” (“*yn ysgrifenedig*”) includes in electronic form;

“independent palliative care provider” (“*darparwr gofal lliniarol annibynnol*”) has the meaning given by section 64(3);

“independent provider in Wales” (“*darparwr annibynnol yng Nghymru*”) means a person who, at the time of action which is the subject of an investigation under Part 3 of this Act—

- (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” (“*ymchwiliad*”)—

- (a) in relation to the Ombudsman, means an investigation under section 3, 4, 43 or 44 (and cognate expressions must be construed accordingly);
- (b) in relation to other persons, includes an examination, inquiry or review (and cognate expressions must be construed accordingly);

“listed authority” (“*awdurdod rhestredig*”) has the meaning given in section 31;

“local authority in Wales” (“*awdurdod lleol yng Nghymru*”) means a county council, county borough council or community council in Wales;

“Local Commissioner” (“*Comisiynydd Lleol*”) has the meaning given in section 23(3) of the [Local Government Act 1974 \(c.7\)](#);

“NHS trust” (“*Ymddiriedolaeth y GIG*”) has the same meaning as in the [National Health Service \(Wales\) Act 2006 \(c.42\)](#);

“the Ombudsman” (“*yr Ombwdsmon*”) has the meaning given in section 2;

“palliative care service” (“*gwasanaeth gofal lliniarol*”) has the meaning given by section 64(2);

“the person aggrieved” (“*y person a dramgwyddwyd*”) in Part 3 has the meaning given in section 7(1)(a) and in Part 5 has the meaning given in section 47(1)(a);

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“publicly-funded dwelling” (“*annedd a ariennir yn gyhoeddus*”) 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 \(c.52\)](#));

“relevant tribunal” (“*tribiwnlys perthnasol*”) means a tribunal (including a tribunal consisting of only one person) specified by regulations made by the Welsh Ministers;

“social landlord in Wales” (“*landlord cymdeithasol yng Nghymru*”) 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 Welsh Ministers under section 1 of the [Housing Act 1996 \(c.52\)](#) (or in the register previously maintained under that section by the Assembly constituted by the [Government of Wales Act 1998 \(c.38\)](#), 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, the Assembly constituted by the [Government of Wales Act 1998 \(c.38\)](#) or the Welsh Ministers and owned or managed publicly-funded dwellings;

“special report” (“*adroddiad arbennig*”) in Part 3 has the meaning given in section 28 and in Part 5 has the meaning given in section 60;

“Wales” (“*Cymru*”) has the meaning given in section 158(1) of the [Government of Wales Act 2006 \(c.32\)](#);

“Welsh health service body” (“*corff gwasanaeth iechyd yng Nghymru*”) means—

- (a) the Welsh Ministers;
- (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 Welsh Ministers are arrangements with a Welsh health service body only to the extent that they are made in the discharge of a function of the Welsh Ministers relating to the National Health Service.
- (3) The Welsh Ministers may by regulations amend the definitions of “family health service provider in Wales”, “independent provider in Wales” and “social landlord in Wales”.
- (4) Before making regulations under subsection (1) or (3), the Welsh Ministers must consult such persons as they think appropriate.

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- (5) No regulations are to be made under subsection (1) or (3) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.
- (6) 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.
- (7) 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 their own functions or the functions of the authority;
  - (c) any other person acting on behalf of the authority.

## **79 Former health care providers, social landlords, social care providers and palliative care providers: modifications**

- (1) The Welsh Ministers 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;
  - (d) former care home providers in Wales;
  - (e) former domiciliary care providers in Wales;
  - (f) former independent palliative care providers 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 the person 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 the person 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 Welsh Ministers under section 1 of the [Housing Act 1996 \(c.52\)](#) (or in the register previously maintained under that section by the Assembly constituted by the [Government of Wales Act 1998 \(c.38\)](#), the Secretary of State or Housing for Wales), or

- (ii) was registered with Housing for Wales, the Secretary of State, the Assembly constituted by the [Government of Wales Act 1998 \(c.38\)](#) or the Welsh Ministers and owned or managed publicly-funded dwellings, and
  - (b) subsequently—
    - (i) ceased to be registered as mentioned in paragraph (a)(i) or (ii) (whether or not the person later became so registered again), or
    - (ii) ceased to own or manage publicly-funded dwellings (whether or not the person later did so again).
- (5) “Former care home provider in Wales” means a person who—
  - (a) at the relevant time, provided accommodation, nursing or care of a particular description at a care home in Wales (see section 62), and
  - (b) subsequently ceased to do so (whether or not the person has later started to do so again).
- (6) “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).
- (7) “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).
- (8) “The relevant time” is the time of action which is the subject of a complaint under this Act.
- (9) No regulations are to be made under this section unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

## **80 Consequential, transitional provisions etc**

- (1) The Welsh Ministers may by regulations make—
  - (a) such consequential, incidental or supplemental provision, and
  - (b) such transitory, transitional or saving provision,as they think necessary or expedient for the purposes of, in consequence of, or for giving full effect to, any provision of this Act.
- (2) Regulations under subsection (1) may amend, revoke or repeal any enactment (including any enactment contained in or made under this Act).
- (3) No regulations are to be made under subsection (1) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

**81 Regulations and directions**

- (1) A power of the Welsh Ministers to make regulations under this Act is exercisable by statutory instrument.
- (2) Regulations made by the Welsh Ministers under this Act may—
  - (a) make different provision for different purposes;
  - (b) make consequential, incidental, supplemental, transitory, transitional or saving provision.
- (3) 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.

**82 Short title**

This Act may be cited as the Public Services Ombudsman (Wales) Act 2019.