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## 2016 CHAPTER 21

### PART 2

#### The Prison Ombudsman For Northern Ireland

PROSPECTIVE

#### *Supplementary*

#### **Disclosure of information**

**44.—(1)** For the purposes of this section information is protected information if it is obtained by the Ombudsman or an officer of the Ombudsman—

- (a) in carrying out or otherwise in connection with an investigation under this Part; or
  - (b) from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000.
- (2)** Protected information shall not be disclosed except—
- (a) for the purposes of—
    - (i) an investigation under this Part; or
    - (ii) any of the Ombudsman's functions in relation to such an investigation or to matters arising in connection with it;
  - (b) for the purposes of a criminal investigation or proceedings for a criminal offence;

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- (c) to a coroner (or a person acting on behalf of a coroner) for the purposes of an inquest;
  - (d) to the Attorney General for Northern Ireland for the purposes of the exercise of any functions of that office;
  - (e) to the Northern Ireland Public Services Ombudsman for the purposes of the exercise of any functions of that office;
  - (f) to the Chief Inspector of Criminal Justice in Northern Ireland for the purposes of the exercise of any of the functions of that office;
  - (g) to Her Majesty's Chief Inspector of Prisons for the purposes of the exercise of any of the functions of that office;
  - [<sup>F1</sup>(h) to the Department of Health for the purposes of the exercise of any of the functions of that Department in relation to any matter arising in connection with an investigation under this Part;]
  - (i) to the Health and Social Care Regulation and Quality Improvement Authority for the purposes of the exercise of any of the functions of that body;
  - (j) in the case of information to which subsection (3) applies, to the Information Commissioner;
  - (k) in the case of information to which subsection (4) applies, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
  - (l) to such other persons or for such other purposes as may be prescribed.
- (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 [<sup>F2</sup>sections 142 to 154, 160 to 164 or 174 to 176 of, or Schedule 15 to, the Data Protection Act 2018] or section 48 or Part 4 of the Freedom of Information Act 2000; or
  - [<sup>F3</sup>(b) the commission of an offence under—
    - (i) a provision of the Data Protection Act 2018 other than paragraph 15 of Schedule 15 (obstruction of execution of warrant etc); or
    - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).]
- (4) This subsection applies to information if in the opinion of the Ombudsman it reveals or otherwise relates to a serious threat to the health or safety of a person.
- (5) A person to whom this subsection applies shall not be called upon in any proceedings to give evidence of protected information within subsection (1)(a).
- (6) Subsection (5) does not apply in relation to proceedings mentioned in subsection (2)(b) or (c).

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(7) For the purposes of the law of defamation the publication of any matter by the Ombudsman for purposes connected with the functions of the Ombudsman (including functions under this section) is absolutely privileged.

(8) It is an offence for a person to whom this subsection applies to disclose information in contravention of this section.

(9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) Subsections (5) and (8) apply to—

- (a) the Ombudsman;
- (b) an officer of the Ombudsman;
- (c) a person from whom advice is obtained under paragraph 9 of Schedule 3.

#### Textual Amendments

- F1** S. 44(2)(h) substituted (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022](#) (c. 3), s. 8(1)(b), **Sch. 1 para. 254**; S.R. 2022/102, art. 2(b)
- F2** Words in s. 44(3)(a) substituted (25.5.2018) by [Data Protection Act 2018](#) (c. 12), s. 212(1), **Sch. 19 para. 209(a)** (with ss. 117, 209, 210, Sch. 20 para. 47(1)); S.I. 2018/625, reg. 2(1)(g)(but this amendment cannot take effect until the commencement of 2016 c.21 (N.I.), s. 44)
- F3** S. 44(3)(b) substituted (25.5.2018) by [Data Protection Act 2018](#) (c. 12), s. 212(1), **Sch. 19 para. 209(b)** (with ss. 117, 209, 210, Sch. 20 para. 47(2)); S.I. 2018/625, reg. 2(1)(g)(but this amendment cannot take effect until the commencement of 2016 c.21 (N.I.), s. 44)

#### Guidance to Ombudsman in relation to matters connected with national security

**45.—**(1) The Secretary of State may issue guidance to the Ombudsman in relation to any matter connected with national security (including, in particular, any matter mentioned in section 1A(2)(c)(i) to (iii) of the Prison Act (Northern Ireland) 1953).

(2) In carrying out any functions, the Ombudsman and officers of the Ombudsman must have regard to any guidance issued under this section.

#### Interpretation

**46.—**(1) In this Part—

“the Department” means the Department of Justice;

“events” includes any conduct or omission;

“the Ombudsman” means the Prison Ombudsman for Northern Ireland;

“prescribed” means prescribed by regulations;

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“prison” includes a young offenders centre;

“prisoner” means any person held at a prison;

“prison officer” means an individual appointed to a post under section 2(2) of the Prison Act (Northern Ireland) 1953;

“prison rules” means rules under section 13 of the Prison Act (Northern Ireland) 1953.

(2) In this Part references to a prison include a reference to all land and buildings used for the purposes of, or in connection with, that prison.

### **Transitional provision: the Prisoner Ombudsman for Northern Ireland**

**47.**—(1) The person holding office as Prisoner Ombudsman immediately before the appointed day—

- (a) becomes the Prison Ombudsman on that day as if appointed to that office under paragraph 1 of Schedule 3; and
- (b) holds that office for the remainder of the term for which that person was then appointed as Prisoner Ombudsman.

(2) Paragraph 3(2) of Schedule 3 does not apply to that person; but a person shall not hold the offices of Prison Ombudsman and Prisoner Ombudsman for a period which in total exceeds 7 years.

(3) Subsection (4) applies where immediately before the appointed day the Prisoner Ombudsman is under the terms of reference of that office or other arrangements with the Department—

- (a) investigating a complaint (“an existing complaint investigation”);
- (b) investigating a death (“an existing death investigation”); or
- (c) investigating a matter of the kind mentioned in section 39(2) (“an existing custody-related investigation”).

(4) For the purposes of this Part—

- (a) an existing complaint investigation is to be treated as an investigation under section 35;
- (b) an existing death investigation is to be treated as an investigation under section 37; and
- (c) an existing custody-related investigation is to be treated as an investigation under section 39.

(5) For the purposes of any investigation which is to any extent dealt with under this Part by virtue of subsection (4), things done by or in relation to the Prisoner Ombudsman shall be treated as having been done by or in relation to the Ombudsman.

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(6) Except as provided by subsection (4)(b), section 37 does not apply to a death which occurred before the coming into operation of that section.

(7) In applying section 41(1)(b) the Ombudsman may take into account events occurring in the period of 12 months immediately preceding the appointed day (as well as events occurring on or after that day).

(8) In this section “the appointed day” means the day appointed under section 61 for the coming into operation of this section.

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