

PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2: Excluded Matters

Investigation procedure and evidence

Section 13: Investigation procedure

46. **Section 13(3)** provides that, subject to the requirements in subsections (1) and (2) of that section, it is for the Ombudsman to decide the procedure for conducting an investigation. The Ombudsman could, for example, establish different procedures for different types of complaints and he/she could, in any particular case, depart from any such established procedures if he/she considered it appropriate.
47. **Section 13(4)(a)** makes it clear that the Ombudsman may make such inquiries as he/she thinks appropriate. **Section 13(4)(b)** provides that it is for the Ombudsman to decide whether a person may be legally represented or be represented in some other way (e.g. by an independent advocate).
48. **Section 13(5)** empowers the Ombudsman to make payments towards the expenses of persons assisting him/her in an investigation, provided that they are properly incurred, and to pay certain allowances. It is for the Ombudsman to determine whether it is appropriate to make such payments or to impose any conditions on such payments.
49. **Section 13(6)** puts beyond doubt that the fact that the Ombudsman is investigating a matter does not affect the validity of any action taken by the listed authority in relation to the matter under investigation. Nor is any power or duty of the authority to take further action with respect to that matter affected.

Section 14: Information, documents and evidence

50. The Ombudsman has wide powers to require the production of information or documents in relation to an investigation (section 14(1) and (2)) and to require certain persons to provide him/her with any facilities he/she may reasonably require (section 14(3)). The latter provision may be needed, for example, if the Ombudsman were to require the use of certain computer hardware or software to view documents or information provided.
51. The Ombudsman has the same powers as the High Court in relation, amongst other things, to the taking of evidence from witnesses (section 14(2)).
52. **Section 14(4)** provides protection for those from whom the Ombudsman may require evidence or the production of information or documents. Such a person cannot be required by the Ombudsman to give any evidence or produce any documents which that person could not be compelled to give or produce before the High Court.

53. **Section 14(5)** prevents information from being withheld by the Crown on the ground that it is subject to an obligation to keep it secret or a restriction on its disclosure.
54. The effect of section 14(6) is that, in relation to the Ombudsman's power to require evidence or the production of information or documents, the Crown cannot rely on either its special privileges or immunities to defeat the Ombudsman's right of access to such information or on the protection that would otherwise be afforded by section 14(4).

Section 15: Obstruction and contempt

55. **Section 15(1)** and (2) enable the Ombudsman to certify to the High Court that, in his/her opinion, a person has without lawful excuse obstructed him/her (or a member of his/her staff etc.) in the discharge of his/her functions under Part 2 or that the person has acted in a way that, if the act was done in relation to High Court proceedings, would amount to a contempt of court.
56. The Ombudsman cannot issue such a certificate if the alleged obstruction or contempt arises merely because the person concerned has taken some further action in respect of the matter under investigation (see section 15(3) and section 13(6)).
57. If the Ombudsman issues such a certificate then the High Court may inquire into the matter and if the High Court finds that the person concerned has obstructed the Ombudsman, the High Court may deal with the person as if he/she had committed contempt in relation to the High Court (section 15(5)).