

SCHEDULES

SCHEDULE 1

Section 1

PUBLIC SERVICES OMBUDSMAN FOR WALES: APPOINTMENT ETC.

Appointment

- 1 (1) The Ombudsman is to be appointed by Her Majesty on the recommendation of the Secretary of State.
- (2) The Secretary of State may recommend that a person be appointed as the Ombudsman only after consulting the Assembly.

Status

- 2 (1) The Ombudsman is a corporation sole.
- (2) The Ombudsman holds office under Her Majesty and discharges his functions on behalf of the Crown.
- (3) The Ombudsman is a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6).
- (4) But service as the Ombudsman is not service in the civil service of the Crown.

Term of office

- 3 (1) A person's term of office as the Ombudsman is seven years (subject to subparagraphs (3) and (4) and paragraph 5).
- (2) A person appointed as the Ombudsman is not eligible for re-appointment.
- (3) Her Majesty may relieve a person of office as the Ombudsman—
 - (a) at his request, or
 - (b) if the Secretary of State recommends that Her Majesty should do so on the ground that he is incapable for medical reasons of performing the duties of the office.
- (4) Her Majesty may remove a person from office as the Ombudsman if the Secretary of State recommends that Her Majesty should do so on the ground of misbehaviour.
- (5) The Secretary of State may recommend that a person should be relieved of, or removed from, office as the Ombudsman only after consulting the Assembly.

Acting Public Services Ombudsman for Wales

- 4 (1) If the office of the Ombudsman becomes vacant, Her Majesty may, on the recommendation of the Secretary of State, appoint a person to act as the Ombudsman.

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- (2) The Secretary of State may recommend that a person be appointed to act as the Ombudsman only after consulting the Assembly.
- (3) A person appointed to act as the Ombudsman (“an acting Ombudsman”) may have held office as the Ombudsman.
- (4) A person appointed as an acting Ombudsman is eligible for appointment as the Ombudsman (unless he has already held office as the Ombudsman).
- (5) The power to appoint a person as an acting Ombudsman is not exercisable after the end of the period of two years starting with the date on which the vacancy arose.
- (6) An acting Ombudsman holds office in accordance with the terms of his appointment, subject to sub-paragraph (7) (and paragraph 2, as applied by sub-paragraph (8)).
- (7) An acting Ombudsman must not hold office after—
 - (a) the appointment of a person as the Ombudsman, or
 - (b) if sooner, the end of the period of two years starting with the date on which the vacancy arose.
- (8) While an acting Ombudsman holds office he is to be regarded (except for the purposes of paragraphs 1, 3, 5 to 9 and this paragraph) as the Ombudsman.

Disqualification

- 5 (1) A person is disqualified from being the Ombudsman or an acting Ombudsman if any of the following applies—
 - (a) he is a member of the House of Commons;
 - (b) he is a listed authority;
 - (c) he is a member, co-opted member, officer or member of staff of a listed authority;
 - (d) he is disqualified from being a member of the Assembly (other than by virtue of paragraph 6 of this Schedule or section 12(1)(ca) of the Government of Wales Act 1998 (c. 38));
 - (e) he is disqualified from being a member of a local authority in Wales (other than by virtue of paragraph 6 of this Schedule).
- (2) The appointment of a person as the Ombudsman or an acting Ombudsman is not valid if the person is disqualified under sub-paragraph (1).
- (3) If a person who has been appointed as the Ombudsman or an acting Ombudsman becomes disqualified under sub-paragraph (1), he ceases to hold office on becoming so disqualified.
- (4) But the validity of anything done by a person appointed as the Ombudsman or an acting Ombudsman is not affected by the fact that he is or becomes disqualified under sub-paragraph (1).
- 6 (1) A person who holds office as the Ombudsman or an acting Ombudsman is disqualified from—
 - (a) being a listed authority;
 - (b) being a member, co-opted member, officer or member of staff of a listed authority;
 - (c) holding a paid office to which appointment is by a listed authority.

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- (2) A person is not disqualified under sub-paragraph (1) from being a member of the Assembly.
- 7 (1) A person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified for the relevant period from—
- (a) holding an office which is a listed authority;
 - (b) being a member, co-opted member, officer or member of staff of a listed authority;
 - (c) holding a paid office to which appointment is by a listed authority.
- (2) The relevant period is the period of three years starting on the date on which the person ceased to hold office as the Ombudsman or (as the case may be) as an acting Ombudsman.
- (3) But sub-paragraph (1) does not disqualify a person from—
- (a) being a member of the Assembly;
 - (b) holding the office of presiding officer or deputy presiding officer of the Assembly or of Assembly First Secretary or Assembly Secretary;
 - (c) being a member or co-opted member of a local authority in Wales;
 - (d) holding the office of chairman, vice-chairman or elected mayor of a local authority in Wales.
- 8 The references in paragraphs 6 and 7 to a paid office include an office the holder of which is entitled only to the reimbursement of expenses.

Remuneration etc.

- 9 (1) The Assembly must —
- (a) pay a person who is the Ombudsman or an acting Ombudsman such salary and allowances, and
 - (b) make such payments towards the provision of superannuation benefits for or in respect of him,
- as may be provided for by or under the terms of his appointment.
- (2) The Assembly must pay to or in respect of a person who has ceased to hold office as the Ombudsman or an acting Ombudsman—
- (a) such amounts by way of pensions and gratuities, and
 - (b) such amounts by way of provision for those benefits,
- as may have been provided for by or under the terms of his appointment.
- (3) If a person ceases to be the Ombudsman or an acting Ombudsman and it appears to the Assembly that there are special circumstances which make it right that the person should receive compensation, the Assembly may pay to that person a sum of such amount as it thinks appropriate.
- (4) In Schedule 1 to the Superannuation Act 1972 (c. 11) (offices etc. to which section 1 of that Act applies) in the list of “Offices” at the appropriate places insert—
- “Public Services Ombudsman for Wales”
 - “Acting Public Services Ombudsman for Wales”.
- (5) The Assembly must pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-

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paragraph (4) in the sums payable out of money provided by Parliament under the Superannuation Act 1972 (c. 11).

Expenses

- 10 (1) The expenses of the Ombudsman, so far as they cannot be met out of income received by him, are to be met by the Assembly.
- (2) The expenses that fall within sub-paragraph (1) include any sums payable by the Ombudsman in consequence of a breach, in the course of the discharge of any of his functions, of any contractual or other duty.
- (3) Sub-paragraph (2) applies whether that breach occurs by reason of action of the Ombudsman or a member of his staff or other person acting on his behalf or assisting him in the discharge of any of his functions.

Staff

- 11 (1) The Ombudsman may appoint such staff as he thinks necessary for assisting him in the discharge of his functions, on such terms and conditions as he may determine.
- (2) No member of staff of the Ombudsman is to be regarded as holding office under Her Majesty or as discharging any functions on behalf of the Crown.
- (3) But each member of his staff is to be treated as being a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6).
- (4) In Schedule 1 to the Superannuation Act 1972 (offices etc. to which section 1 of that Act applies) in the list of “other bodies” at the appropriate place insert—
- “Employment as a member of the staff of the Public Services Ombudsman for Wales.”
- (5) The Assembly must pay to the Minister for the Civil Service, at such times as he may direct, such sum as he may determine in respect of any increase attributable to sub-paragraph (4) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Advisers

- 12 (1) The Ombudsman may obtain advice from any person who, in his opinion, is qualified to give it, to assist him in the discharge of his functions.
- (2) The Ombudsman may pay to any person from whom he obtains advice under sub-paragraph (1) such fees or allowances as he may determine.

Delegation

- 13 (1) Any function of the Ombudsman may be discharged on his behalf—
- (a) by any person authorised by the Ombudsman to do so, and
- (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the responsibility of the Ombudsman for the discharge of any such function.

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- (3) A person authorised by the Ombudsman under sub-paragraph (1) is to be treated as being a Crown servant for the purposes of the Official Secrets Act 1989 (c. 6).
- (4) No arrangements may be made—
 - (a) for any of the functions of the Ombudsman or of the Assembly to be discharged by the other or by a member of the other’s staff;
 - (b) for the provision of administrative, professional or technical services by the Ombudsman or the Assembly for the other.
- (5) Sub-paragraph (4) applies despite any provision that would otherwise permit such arrangements to be made.

Annual and extraordinary reports

- 14 (1) The Ombudsman—
- (a) must annually prepare a general report on the discharge of his functions (an “annual report”);
 - (b) may prepare any other report with respect to his functions that he thinks appropriate (an “extraordinary report”).
- (2) A report prepared under this paragraph may include any general recommendations which the Ombudsman may have arising from the discharge of his functions.
 - (3) The Ombudsman must lay a copy of each report prepared under this paragraph before the Assembly and at the same time (if the report is an extraordinary report) must send a copy of it to any listed authorities (other than the Assembly) he thinks appropriate.
 - (4) The Ombudsman may also send a copy of any report prepared under this paragraph to any other persons he thinks appropriate.
 - (5) The Ombudsman must, and the Assembly may, publish any report laid before the Assembly under this paragraph.
 - (6) The Ombudsman must comply with any directions given by the Assembly with respect to an annual report.
 - (7) If a report prepared under this paragraph—
 - (a) mentions the name of any person other than a listed authority in respect of which a complaint has been made or referred under this Act, or
 - (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report,that information must not be included in a version of the report laid before the Assembly under sub-paragraph (3), sent to a person under sub-paragraph (3) or (4) or published by the Ombudsman under sub-paragraph (5), subject to sub-paragraph (8).
 - (8) Sub-paragraph (7) does not apply in relation to a version of the report if, after taking account of the interests of any persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

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Estimates

- 15 (1) For each financial year other than the first financial year, the Ombudsman must prepare an estimate of the income and expenses of his office.
- (2) The Ombudsman must submit the estimate to the Assembly Cabinet at least five months before the beginning of the financial year to which it relates.
- (3) The Assembly Cabinet must examine an estimate submitted to it in accordance with sub-paragraph (2) and must then lay the estimate before the Assembly with any modifications it thinks appropriate.
- (4) If the Assembly Cabinet proposes to lay an estimate before the Assembly with modifications, it must first consult the Secretary of State.
- (5) The first financial year is the financial year during which the first person to be appointed as the Ombudsman is appointed.

Accounts

- 16 (1) The Ombudsman must—
- (a) keep proper accounting records; and
 - (b) for each financial year, prepare accounts in accordance with directions given to him by the Treasury.
- (2) The directions which the Treasury may give under sub-paragraph (1)(b) include, in particular, directions as to—
- (a) the information to be contained in the accounts and the manner in which it is to be presented;
 - (b) the methods and principles in accordance with which the accounts are to be prepared;
 - (c) the additional information (if any) that is to accompany the accounts.

Audit

- 17 (1) The accounts prepared by the Ombudsman for a financial year must be submitted by him to the Auditor General for Wales no later than 30 November in the following financial year.
- (2) The Auditor General for Wales must—
- (a) examine, certify and report on each set of accounts submitted to him under this paragraph, and
 - (b) no later than four months after the accounts are so submitted, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining accounts submitted to him under this paragraph the Auditor General for Wales must, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

Accounting officer

- 18 (1) The Ombudsman is the accounting officer for the office of the Ombudsman.

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- (2) If the Ombudsman is incapable of discharging his responsibilities as accounting officer, the Treasury may designate a member of his staff to be the accounting officer for as long as he is so incapable.
- (3) If the office of the Ombudsman is vacant and there is no acting Ombudsman, the Treasury may designate a member of the Ombudsman's staff to be the accounting officer for as long as the office of the Ombudsman is vacant and there is no acting Ombudsman.
- (4) The accounting officer has, in relation to the accounts and the finances of the Ombudsman, the responsibilities which are from time to time specified by the Treasury.
- (5) In this paragraph references to responsibilities include in particular—
 - (a) responsibilities in relation to the signing of accounts,
 - (b) responsibilities for the propriety and regularity of the finances of the Ombudsman, and
 - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Ombudsman are used.
- (6) The responsibilities which may be specified under this paragraph include responsibilities owed to—
 - (a) the Assembly, the Assembly Cabinet or the Audit Committee, or
 - (b) the House of Commons or its Committee of Public Accounts.
- (7) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
 - (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer, and
 - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

Examinations into the use of resources

- 19 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Ombudsman has used his resources in discharging his functions.
- (2) Sub-paragraph (1) is not to be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Ombudsman.
- (3) In determining how to discharge his functions under this paragraph, the Auditor General for Wales must take into account the views of the Audit Committee as to the examinations which he should carry out.
- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this paragraph.

Examinations by the Comptroller and Auditor General

- 20 (1) For the purposes of enabling him to carry out examinations into, and report to Parliament on, the finances of the Ombudsman, the Comptroller and Auditor General—

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- (a) has a right of access at all reasonable times to all such documents in the custody or under the control of the Ombudsman, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
 - (b) is entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General must—
- (a) consult the Auditor General for Wales, and
 - (b) take account of any relevant work done or being done by the Auditor General for Wales,
- before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Ombudsman under section 7 of the National Audit Act 1983 (c. 44) (economy etc. examinations).

Supplementary powers

- 21 The Ombudsman may do anything (including acquire or dispose of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of his functions.