

# **PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2019**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 3**

#### ***Section 18 - Investigation procedure***

83. [Section 18\(1\)](#) sets out the requirements for investigations under section 3 (i.e. investigations following a complaint).
84. [Sections 18\(2\) to 18\(7\)](#) set out the requirements for investigations under section 4 (i.e. investigations using the own initiative power), which include a requirement for the Ombudsman to prepare an ‘investigation proposal’ and to send the investigation proposal to the listed authority being investigated and any person identified in the investigation proposal in a negative way. The Ombudsman must also give the listed authority and other persons opportunity to comment on the investigation proposal.
85. The Ombudsman does not have to prepare an investigation proposal in the circumstances set out in section 18(3) and (4). This means that if the Ombudsman has begun investigating a matter (either in response to a complaint under section 3 or on the Ombudsman’s own initiative under section 4), referred to as the “original investigation, and the Ombudsman has subsequently begun another investigation into a matter under section 4 that has a substantial connection with the original investigation, known as the related investigation then the Ombudsman does not have to prepare an investigation proposal in relation to the related investigation.
86. However, even if the Ombudsman does not have to prepare an investigation proposal, section 18(6) still requires the Ombudsman to bring the investigation to the attention of those being investigated and give them an opportunity to comment.
87. Under section 18(7), an investigation proposal must set out the reasons for the investigation and how the section 5 criteria have been met (i.e. the criteria for own initiative investigations).
88. [Section 18\(8\)](#) requires all investigations to be conducted in private.
89. [Section 18\(9\)](#) provides that, subject to the above requirements, 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 could, in any particular case, depart from any such established procedures if the Ombudsman considered it appropriate.
90. [Section 18\(10\)\(a\)](#) provides that the Ombudsman may make such inquiries as the Ombudsman thinks appropriate. [Section 18\(10\)\(b\)](#) 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).

*These notes refer to the Public Services Ombudsman (Wales)  
Act 2019 (c.3) which received Royal Assent on 22 May 2019*

91. [Section 18\(12\)](#) empowers the Ombudsman to make payments towards the expenses of persons assisting 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.
92. [Section 18\(13\)](#) requires the Ombudsman to publish the procedures to be followed in conducting investigations under sections 3 and 4.
93. [Section 18\(14\)](#) 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.