

PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2019

EXPLANATORY NOTES

INTRODUCTION

Part 3

Section 3 - Power to investigate complaints

21. By virtue of section 3(1) the Ombudsman may investigate a complaint relating to a matter if:
 - a) the complaint has been duly made or referred to the Ombudsman, and
 - b) the Ombudsman is entitled to investigate that matter.
22. [Sections 11 to 16](#) set out the matters that the Ombudsman is entitled to investigate.
23. [Section 3\(2\)](#) sets out the requirements which must be met in order for a complaint to be duly made to the Ombudsman. [Section 3\(3\)](#) sets out the requirements which must be met in order for a complaint to be duly referred to the Ombudsman.
24. [Section 3\(4\)](#) enables the Ombudsman to investigate a complaint, even if those requirements have not been met, as long as it is a matter the Ombudsman is entitled to investigate under sections 11 to 16 and the Ombudsman considers it reasonable to do so.
25. [Section 3\(5\)](#) and [\(6\)](#) provide the Ombudsman with a wide discretion as to whether to begin, continue or discontinue an investigation.
26. [Section 3\(7\)](#) makes it clear that the Ombudsman may begin or continue an investigation even if the complaint has been withdrawn. This covers the situation, for example, where a complaint has been made in relation to a listed authority's action which affects more than one person but where the complaint that has been withdrawn was put forward as the 'lead' complaint. In such cases, where the 'lead' complaint has been withdrawn, it will be open to the Ombudsman to begin or to continue an investigation as the Ombudsman sees fit (subject to the restriction in [section 8\(5\)\(a\)](#)).

Section 4 - Power to investigate on own initiative

27. This power allows the Ombudsman to investigate a matter whether the Ombudsman has received a complaint or not, so it allows the Ombudsman to initiate an investigation.
28. This has a significant effect on the interpretation of the Act – when the word “investigation” is used in Part 3, it can mean either an investigation under section 3 or an investigation under section 4. For example, [section 19](#) applies “in relation to an investigation conducted under this Part”. Therefore, [section 19](#) applies in relation to an investigation of a complaint under section 3 and an own initiative investigation under section 4.

29. Like the power under section 3, the power in section 4 can only be used to investigate matters the Ombudsman is entitled to investigate under Part 3. Sections 11 to 16 set out the matters which may be investigated.
30. [Section 4\(2\)](#) sets out requirements that must be met before the Ombudsman can begin an own initiative investigation. The requirements are:
- a) the Ombudsman must have regard to whether it is in the public interest to begin an own initiative investigation;
 - b) the Ombudsman must have a reasonable suspicion that there is systemic maladministration or a reasonable suspicion that systemic injustice has been sustained as a result of the exercise of professional judgement in connection with the provision of health or social care;
 - c) the Ombudsman must consult such persons the Ombudsman thinks appropriate; and
 - d) the Ombudsman must have regard to the own initiative criteria published under section 5.

Section 5 - Criteria for own initiative investigations

31. The Ombudsman must publish the criteria that be used by the Ombudsman when deciding whether to carry out an own initiative investigation.
32. Before publishing the criteria, the Ombudsman must lay a draft of the criteria before the Assembly. The draft criteria will be subject to a negative resolution procedure. This means that the Assembly has 40 days to object to the criteria. If the Assembly does not object within those 40 days, the Ombudsman must publish the criteria in the form of the draft laid before the Assembly. If the Assembly resolves not to approve the draft criteria, the Ombudsman must not publish the criteria in the form of the draft, but the Ombudsman may instead lay new draft criteria before the Assembly.
33. Once the criteria have been published the Ombudsman can revise and republish the criteria. But if a revision makes any material changes to the criteria, then the draft revision must be laid before the Assembly and negative resolution procedure will apply to the revision as it applied to the initial criteria
34. The Welsh Ministers may make regulations to amend the criteria published by the Ombudsman. Such regulations follow an affirmative resolution procedure. This means the regulations must be approved by the Assembly – if the Assembly does not approve the regulations then they do not take effect. But if the Assembly does approve the regulations, the Ombudsman must republish the criteria to reflect the changes made by the regulations.
35. Both the Ombudsman and the Welsh Ministers must consult before proposing criteria (or proposing material changes to criteria) under this section.

Section 6 - Alternative resolution of matters

36. This section provides the Ombudsman with a wide power to take steps to resolve matters without proceeding to a formal investigation. The power is available to the Ombudsman to use instead of, or in addition to, the power to investigate.

Section 7 - Who can complain

37. [Section 7](#) lists the categories of persons who are entitled to make a complaint to the Ombudsman. Those persons are:

- a) a member of the public who claims, or has claimed to have sustained injustice or hardship in consequence of the matters the Ombudsman is entitled to investigate under Part 3. This person is described as the person aggrieved,
 - b) a person authorised, in writing, by the person aggrieved to make the complaint on their behalf, or
 - c) where the person aggrieved cannot give such authorisation, a person the Ombudsman considers appropriate on behalf of the person aggrieved.
38. It is not only individuals who can complain to the Ombudsman. The term “person” has a wider meaning (see Schedule 1 to the Interpretation Act 1978). So, for example, companies or other corporate bodies could complain to the Ombudsman on behalf of a member of the public
39. Listed authorities acting in their capacity as listed authorities cannot complain to the Ombudsman (section 7(2)).
40. However, this does not prevent someone who is, for example, an employee of a listed authority from making a complaint, provided the person is making the complaint in their personal capacity.
41. Listed authorities are listed in Schedule 3.
42. It is for the Ombudsman to determine whether a person is entitled to make a complaint.

Section 8 - Requirements: complaints made to the Ombudsman

43. If a person wishes to make a complaint to the Ombudsman, the complaint must satisfy the requirements of section 8(1) (though the Ombudsman has discretion under section 3(4) to investigate matters where these requirements are not met).
44. [Section 8\(1\)](#) provides that a complaint must be in a form specified by the Ombudsman and contain the information specified by the Ombudsman in order to meet the requirements of section 3(2)(b). The complaint must also be made within 1 year of date when the person aggrieved first had notice of the matter which is the subject of the complaint. The form and content will be specified in guidance published by the Ombudsman. Therefore, persons who wish to make a complaint should read that guidance in order to help them make the complaint. Whether a complaint meets the requirements of section 8(1) is determined by the Ombudsman.
45. [Section 8\(4\)](#) provides for circumstances where a complaint is made other than in writing (for example, a complaint made orally or in British Sign Language). Subsections (4) to (7) set out additional requirements for a complaint made other than in writing. This includes explaining to the person what it means for a complaint to be duly made (i.e. that when a complaint is duly made, it could lead to the Ombudsman beginning an investigation), and checking with the person whether they wish the complaint to continue to be one that is duly made. If the person does not wish the complaint to be treated as one that is duly made the Ombudsman cannot begin a section 3 investigation into the matter (but if the Ombudsman has already begun an investigation into the matter and the person subsequently withdraws the oral complaint, the Ombudsman has discretion as to whether to continue the investigation).
46. Where a person has confirmed that they do not wish a complaint to continue to be treated as duly made the Ombudsman can nonetheless investigate the matter under the own initiative power in section 4 provided that the requirements of that section are met.

Section 9 - Requirements: complaints referred to the Ombudsman

47. This section sets out the requirements that must be met in order for a complaint to be duly referred within the meaning of section 3(3)(b). It provides that a listed authority can

refer a complaint to the Ombudsman but only if it was made to the listed authority by a person who would have been entitled to make that complaint directly to the Ombudsman in accordance with section 7.

48. The complaint must have been made to the authority within a year from the day that the person aggrieved first became aware of the matter complained of. The referral by the listed authority to the Ombudsman must be made before the end of one year beginning on the day on which the complaint was made to the listed authority.
49. In addition, the referral must be in whatever form, and contain whatever information, the Ombudsman specifies in guidance published under section 9(2). Therefore, listed authorities who wish to refer a complaint should read that guidance in order to help them refer a complaint.
50. Under section 3(4) the Ombudsman has discretion to accept a referral even if either (or both) of the time limits are not met, or the referral is not in the required form or the referral does not contain the required information.

Section 10 - Records of complaints

51. **Section 10** requires the Ombudsman to keep a register of all complaints made or referred to the Ombudsman that the Ombudsman is entitled to investigate under Part 3.
52. This register will include all written complaints (including complaints made in electronic form) and all complaints made other than in writing (including those made orally).

Section 11 - Matters which may be investigated

53. **Section 11(1)** provides that the Ombudsman is entitled (subject to sections 12 to 15) to investigate:
 - a) alleged maladministration by a listed authority in connection with ‘relevant action’;
 - b) an alleged failure in a ‘relevant service’ provided by a listed authority; or
 - c) an alleged failure by a listed authority to provide a ‘relevant service’.
54. ‘Relevant action’ is defined in section 11(4) and ‘relevant service’ is defined in section 11(5). The definitions are designed to ensure that it is only matters relating to the actions taken by listed authorities in their public capacity that can be investigated.
55. In the case of a listed authority that falls within section 11(4)(e), the Ombudsman is entitled to investigate alleged maladministration in the discharge of that authority’s administrative functions. The Welsh Government is one such authority, so the Ombudsman is entitled to investigate alleged maladministration on the Welsh Government’s part in discharging any of its administrative functions. However, the Ombudsman is not entitled to investigate any alleged failures in the Welsh Government’s exercise of its legislative or judicial functions.
56. In the case of a person added to Schedule 3 (“listed authorities”), by regulations under section 31(2), section 11(4)(d) and section 11(5)(d) provide that the Ombudsman is only entitled to investigate action which that person takes or a service which that person provides in the discharge of that person’s functions which have been specified in the regulations as falling within the Ombudsman’s remit.
57. The effect of subsection (7) is that where a listed authority appoints a person as a member of staff of a ‘relevant tribunal’, an administrative function which may be discharged by that person is treated as being an administrative function of the listed authority and so will fall within the remit of the Ombudsman. A ‘relevant tribunal’

is defined in section 78(1) as a tribunal specified by regulations made by the Welsh Ministers.

Section 12 - Exclusion: matters not relating to Wales

58. **Section 12(1)** provides that the Ombudsman cannot investigate a matter relating to the discharge by a listed authority of its functions otherwise than in relation to Wales. Section 12(2) makes it clear that this restriction does not apply in relation to the Welsh Government, which has certain functions which are exercisable beyond Wales (for example, functions relating to fisheries or water supply).
59. **Section 12(3)** puts beyond doubt that any function of a listed authority in relation to the Welsh language or any other aspect of Welsh culture is to be regarded as being discharged in relation to Wales and is, therefore, not excluded from the Ombudsman's jurisdiction by section 12(1).

Section 13 - Exclusion: other remedies

60. In general, the Ombudsman cannot investigate a complaint about a matter if the person aggrieved has (or had) a right of appeal, reference or review (as specified) or a remedy by way of proceedings in a court of law (section 13(1)). However, if the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to take up (or to have taken up) that right of appeal, reference, review or remedy, then the exclusion in 13(1) does not apply and the Ombudsman is entitled to investigate the complaint (section 13(2)).
61. **Section 13(3)** provides that, in general, the Ombudsman may not investigate a matter, unless the Ombudsman is satisfied that
- a) the person aggrieved (or someone acting on that person's behalf) has brought the matter to the attention of the listed authority concerned, and
 - b) the listed authority has been given a reasonable opportunity to investigate and respond to the complaint.
62. However, section 13(4) gives the Ombudsman a discretion to investigate a matter, despite the fact that the requirements in subsection (3) have not been met, if the Ombudsman is satisfied that it is reasonable to do so in the particular circumstances.

Section 14 - Other excluded matters

63. **Section 14(1)** prohibits the Ombudsman from investigating the excluded matters set out in Schedule 2. Section 14(2) allows the Welsh Ministers, by regulations, to add to, remove or alter the entries appearing, from time to time, in Schedule 2. Before making such regulations, the Assembly must consult the Ombudsman (section 14(3)).
64. **Section 14(5)** puts beyond doubt that, despite the exclusions in Schedule 2, the Ombudsman may investigate the operation by a listed authority of any procedure established to examine complaints or review decisions. So, for example, the Ombudsman is excluded from investigating a matter that relates to the determination of the amount of rent (paragraph 5 of Schedule 2). But section 14(5) ensures that this does not prevent the Ombudsman from investigating the manner in which a complaint about the determination of rent was considered under an authority's complaints procedure.

Schedule 2

65. This Schedule makes provision as to matters that are excluded from the Ombudsman's jurisdiction.

Section 15: Decisions taken without maladministration

66. **Section 15(1)** provides that the Ombudsman cannot question the merits of any decision taken by a listed authority in the exercise of any discretion if that decision was taken without maladministration. Consequently, unless there has been delay, bias, neglect, turpitude etc. on the listed authority's part, the Ombudsman cannot question that decision. So where a listed authority has, without maladministration, reached a policy decision in which it has weighed up all relevant matters (including, for example, resources), the Ombudsman is not entitled to question that decision.
67. **Section 15(2)** sets out an exception to the rule in section 15(1). It allows the Ombudsman to question the merits of a decision taken without maladministration if the decision is taken in consequence of the exercise of professional judgement which appears to the Ombudsman to be exercisable in connection with the provision of:
- a) health care, or
 - b) social care.

Section 16 - Power to investigate other health-related services

68. **Section 16** allows the Ombudsman to carry out ancillary investigations into health-related services (i.e. certain health-related services not provided by listed authorities), but only where the Ombudsman is also investigating a listed authority.
69. **Section 16(1)** sets out the scope of section 16. Section 16 applies where:
- a) the Ombudsman has power under Part 3 to investigate alleged maladministration or alleged failure by a "relevant listed authority" (defined in section 16(4) to include Local Health Boards, NHS Trusts, GPs in Wales etc.) in respect of a person, and
 - b) a "health-related service" which is not a relevant service (i.e. which is not a service provided by a listed authority) has also been provided to the person.
70. If, in those circumstances, the Ombudsman considers that the alleged maladministration or alleged failure of the listed authority cannot be investigated effectively or completely without also investigating the health-related service, then, under section 16(2), the Ombudsman may investigate that health-related service as part of the investigation into the relevant listed authority.
71. For example, if a person has received private medical treatment and the person has also received medical treatment from a Local Health Board, then the Ombudsman can investigate the private medical treatment if the Ombudsman thinks that doing so is necessary to investigate effectively or completely the actions of the Local Health Board.
72. **Section 16(3)** sets out a list of provisions in which any reference to "listed authority" are to be interpreted as including a reference to the person who provided the health-related service. This means that, for example, where the Ombudsman is required to send a copy of an investigation report to a listed authority, the Ombudsman must also send a copy to a provider of a health-related service (where the Ombudsman investigates such a provider under section 16(2)).
73. **Section 16(4)** defines "health-related service" to include any medical, dental, ophthalmic, nursing, midwifery and pharmaceutical service, plus any other service provided in connection with physical or mental health (but excludes acupuncture, body piercing, electrolysis and tattooing, all of which are regulated under the Public Health (Wales) Act 2017). Therefore, the private medical treatment example above would also include private dental treatment, private ophthalmic treatment etc.
74. **Section 16(4)** also defines "relevant listed authority" as including the Board of Community Councils in Wales, Local Health Boards, Community Health Councils etc

Section 17 - Power to investigate other health-related services

75. Section 17(1) provides that the Ombudsman must prepare a statement of reasons where the Ombudsman decides, not to begin or to discontinue an investigation. This situation may arise, for example, where the Ombudsman resolves a matter under section 6 and therefore decides not to undertake an investigation.
76. (The requirement in section 17(1) does not apply in relation to an own initiative investigation unless the Ombudsman has consulted a person under section 4(2)(c) about that investigation.)
77. Under section 17(2), the Ombudsman must send a copy of the statement of reasons to:
- a) any person who made a complaint to the Ombudsman in respect of the matter to which the statement refers; and
 - b) the listed authority to which the matter relates.
78. Under section 17(3), the Ombudsman may send a copy of the statement to any other person the Ombudsman considers appropriate.
79. The Ombudsman may publish such a statement if the Ombudsman considers that it is in the public interest to do so. In reaching this view, the Ombudsman must take account of the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate.
80. Sections 17(7) and (8) provide that when the Ombudsman prepares a statement that:
- a) names any person (other than the listed authority concerned); or
 - b) includes anything which, in the opinion of the Ombudsman, is likely to identify any person and which, in the opinion of the Ombudsman, can be omitted from the statement without impairing its effectiveness,
81. The Ombudsman may only include such information in the version of the statement that is sent or published under this section if it is in the public interest to include such a name or identifying particulars. In reaching this view, the Ombudsman must have regard to the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate.
82. In the case of the version of the statement that the Ombudsman is required to send, under section 17(2), to any person who made a complaint and the listed authority, it is not anticipated that it would be difficult for the Ombudsman to show that it is in the public interest to include such information. This is because, in such cases, there is likely to be a strong public interest in those parties knowing the names and identities of persons that the Ombudsman considers it necessary to refer to in the statement. Indeed, in many cases such a statement is likely to name or identify only the person aggrieved, the listed authority that took the action which is the subject of the investigation, and those of its employees who are relevant (e.g. if the employee of the listed authority took the action complained of).

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).
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.

Section 19 - Information, documents, evidence and facilities

94. The Ombudsman has wide powers to require the production of information or documents in relation to an investigation (sections 19(2)).
95. The Ombudsman has the same powers as the High Court in relation, amongst other things, to the taking of evidence from witnesses (section 19(3)).
96. The Ombudsman has a power to require certain persons to provide the Ombudsman with any facilities the Ombudsman may reasonably require (section 19(4)). The power may be exercised, for example, to require the use of certain computer hardware or software to enable the Ombudsman to view documents or information.
97. [Section 19\(5\)](#) 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.

98. [Section 19\(6\)](#) disappplies any obligations to maintain secrecy or to otherwise restrict access to information obtained by or supplied to Crown servants.
99. The effect of section 19(7) is that 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 19(5).

Section 20 - Obstruction and contempt

100. [Sections 20\(1\)](#) and [20\(2\)](#) enable the Ombudsman to certify to the High Court that, in the Ombudsman's opinion, a person has
- a) without lawful excuse obstructed the Ombudsman (or a member of the Ombudsman's staff etc.) in the discharge of the Ombudsman's functions under Part 3, or
 - b) that the person has acted in a way, in relation to an investigation, that, if the act was done in relation to High Court proceedings, would amount to a contempt of court.
101. 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 20(3) and section 18(14)).
102. 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 the person had committed contempt in relation to the High Court (section 20(5)).

Section 21 - Obstruction and contempt: costs recovery

103. [Section 21](#) gives the Ombudsman power to serve a costs recovery notice on a provider of health-related service where, in the course an investigation the Ombudsman has exercised the power under section 16 to investigate a health-related service and that provider has:
- a) obstructed the Ombudsman; or
 - b) done something which would amount to contempt of court if the investigation were proceedings in the High Court.
104. A costs recovery notice requires the provider of the health-related service to pay the Ombudsman any costs incurred by the Ombudsman as a result of the obstruction or act that would amount to contempt. The costs that the Ombudsman can recover under this section include the costs of obtaining any expert advice (section 21(5)).
105. [Section 21](#) sets out a series of requirements in relation to the costs recovery process. These include requirements about the content of the notice, timescales for payment, and the right of appeal to the magistrates' court. Section 21(12) sets out the grounds for appealing against a costs recovery notice.

Section 22 - Serving a costs recovery notice

106. [Section 22](#) sets out the requirements that apply to the service of a costs recovery notice under section 21.

Section 23 - Reports of investigations

107. [Section 23\(1\)](#) provides that after conducting an investigation the Ombudsman must prepare a report on the findings of the investigation and send a copy of that report to the persons specified in section 23(2). (This requirement does not apply if the Ombudsman decides to prepare a report under section 27 (alternative procedure) instead).

108. **Section 23(2)** specifies those persons to whom the report must be sent. Those persons include the person who made the complaint, the listed authority to which the report relates, and any other person who is alleged to have taken or authorised the action complained of or is identified in the report in a negative way. Where the listed authority to whom the report relates is a family health service provider in Wales or an independent provider in Wales, the report must also be sent to the persons mentioned in section 23(2) (d) and (e). The Ombudsman may also send the report to any other persons he considers appropriate (section 23(3)).
109. The Ombudsman may publish the report if the Ombudsman considers that it is in the public interest to do so (section 23(4)). In reaching this view, the Ombudsman must have regard to the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate.
110. **Sections 23(7) and (8)** provide that when the Ombudsman prepares a report that:
- a) names any person (other than the listed authority concerned); or
 - b) includes anything which, in the opinion of the Ombudsman, is likely to identify any person and which, in the opinion of the Ombudsman, can be omitted from the report without impairing its effectiveness,
- the Ombudsman may only include such information in the version of the report that is sent, or published, if it is in the public interest to include such a name or identifying particulars. In reaching this view, the Ombudsman must have regard to the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate.
111. In the case of the version of the report that is sent, under section 23(1)(b), to the person aggrieved (if any) and the listed authority etc., it is not anticipated that it would be difficult for the Ombudsman to show that it is in the public interest to include such information. This is because, in such cases, there is likely to be a strong public interest in those parties knowing the names and identities of persons that the Ombudsman considers it necessary to refer to in the report. Indeed, in many cases such a report is likely to name or identify only the person aggrieved (if any), the listed authority that took the action which is the subject of the report and those of its employees that are relevant (e.g. because it is the employee who took the action that is the subject of the report).

Section 24 - Publicising reports

112. **Section 24(1) to (4)** requires listed authorities that receive a copy of a report under section 23(1)(b) to make specified arrangements for publicising such reports.
113. The listed authority is required to make copies of the report available at one or more of its offices and via its website (if any) for a minimum of 3 weeks. Members of the public have a right, free of charge, to inspect, make copies of and view the report via the authority's website (if applicable). The right to take copies would include downloading an electronic copy via the authority's website. Members of the public also have the right to require the listed authority to supply copies of the report, for which the authority can charge a reasonable sum. It is an offence for any person wilfully to obstruct a member of the public in the exercise of these rights (section 24(7) and (8)).
114. The Ombudsman may, after taking account of the public interest and the interests of the person aggrieved (if any) and any other persons the Ombudsman thinks appropriate, direct that the publicity requirements are not to apply in relation to a particular report (section 23(9) and (10)).
115. The Ombudsman also has the power to give directions with regard to the discharge by listed authorities of their functions under section 23 (section 23(5) and (6)).

Section 25 - Publicising reports: health care providers

116. **Section 25** makes provision for the application of section 24 with modifications where investigations are carried out in relation to listed authorities which are family health service providers in Wales or independent providers in Wales. The effect of the modifications is to ensure that the publishing requirements under section 24 apply to each person who has received a report in accordance with section 23(2)(d) or (e), rather than to the listed authority itself.

Section 26 - Action following receipt of a report

117. **Section 26** applies if, following an investigation, the Ombudsman concludes in a section 23 report that any person has sustained injustice or hardship as a consequence of the action investigated. In these circumstances, the listed authority concerned is required to consider the Ombudsman's report and notify the Ombudsman of the action that it has taken or proposes to take in response and also of the time within which it will take such action. The listed authority must make the notification within one month starting on the day that it receives the report or such longer period as the Ombudsman specifies.

Section 27 - Reports: alternative procedure

118. The full reporting procedure under sections 23 to 26 does not apply if the Ombudsman decides to report under the alternative procedure set out in section 27.
119. The Ombudsman may apply the alternative procedure if, after an investigation, the Ombudsman concludes that:
- a) no person has sustained injustice or hardship as a consequence of the matter investigated; or
 - b) a person has sustained such injustice or hardship and the listed authority concerned agrees within the permitted period (as defined in section 27(3)) to implement the Ombudsman's recommendations, and the Ombudsman is satisfied that the public interest does not require the full reporting procedure set out in sections 23 to 26 to be applied.
120. A copy of a report under the alternative procedure must be sent to the persons mentioned in section 27(5)(b) and may also be sent to any other persons the Ombudsman thinks appropriate. A report of this kind is subject to similar restrictions to those that apply to a report under section 23 with respect to naming or identifying individuals (section 27(9) and (10)).

Section 28 - Special reports

121. Under section 28, the Ombudsman may issue a special report if the listed authority has failed to take the action required or agreed, in response to: (a) a report made under section 23, (b) a report made under section 27, or (c) the Ombudsman's resolution of a matter.
122. For example, a listed authority may fail to notify the Ombudsman, within one month of receiving a section 23 report, of the action that it has taken or proposes to take in response to the report. In such cases, the Ombudsman may issue a special report (section 28(2)(a)).
123. The Ombudsman may also issue a special report if a listed authority has given the notification under section 26 within the time-scale set out there but the Ombudsman is not satisfied:
- a) with the action taken or proposed to be taken by the listed authority; or

- b) with the period within which the listed authority has stated that it will take that action; or
 - c) that the listed authority has taken the action that it stated it would take within the specified period.
124. Where section 28 applies the Ombudsman has a discretion as to whether to issue a special report. If the Ombudsman does so, the special report must set out the facts that entitle the Ombudsman to issue a report of this kind and must make such recommendations as the Ombudsman thinks appropriate with respect to the action the Ombudsman thinks should be taken to remedy or prevent the injustice or hardship and to prevent similar injustice or hardship being caused again (section 28(8)(b)).
125. [Section 28\(9\)](#) sets out the persons to whom the Ombudsman is required to send a copy of a special report. The requirement varies according to whether the special report was preceded by a full report under section 23, or by a report made under section 27 or an agreement made following the resolution of a matter.

Section 29 - Special reports: supplementary

126. [Section 29](#) makes further provision with regard to special reports. In particular, a special report is subject to the same restrictions with respect of naming or identifying individuals as a report under section 23 (section 29(4) and (5)) and section 29(6) applies sections 24 and 25 (requirements as to publicising reports) to special reports.

Section 30 - Special reports relating to the Welsh Government and the National Assembly for Wales Commission

127. A special report relating to an investigation in respect of the Welsh Ministers or the National Assembly for Wales Commission must be laid before the Assembly.

Section 31 - Listed authorities

128. This section introduces Schedule 3, which lists the persons (in the Act referred to as “listed authorities”) who are liable to investigation by the Ombudsman.
129. [Section 31\(2\)](#) gives the Welsh Ministers power, by regulations, to amend Schedule 3 by adding or removing listed authorities or changing their entries. Before doing so the Welsh Ministers must consult the Ombudsman and any other persons they think appropriate (section 31(4)). Section 31(3) provides that an order adding a person to Schedule 3 as a listed authority may apply the Act to that person with modifications.
130. The power to make an order under this section is subject to certain restrictions set out in sections 32 and 33.

Schedule 3

131. This Schedule lists the persons subject to the remit of the Ombudsman.

Section 32 - Restrictions on power to amend Schedule 3

132. [Section 32\(1\)](#) prevents regulations under section 31(2) from changing the status of the Welsh Government or the National Assembly for Wales as listed authorities.
133. [Section 32\(2\)](#) says that the Welsh Ministers can only add listed authorities to Schedule 3 if doing so would be within the legislative competence of the National Assembly for Wales.

Section 33: Provisions in regulations adding persons to Schedule 3

134. **Section 33** provides that when adding a person to the list, the Welsh Ministers must, in the regulations, specify which of the person's functions fall within the Ombudsman's remit.

Section 34 - Power to issue guidance

135. **Section 34(1)** gives the Ombudsman power to issue guidance to listed authorities about good administrative practices. This will enable the Ombudsman to set bench marks for listed authorities.
136. **Section 34(3)** provides that listed authorities are required to have regard to the Ombudsman's guidance under section 34 when discharging their functions. Listed authorities should not depart from that guidance unless there is good reason to do so. When discharging investigation functions under this Act, the Ombudsman can take into account whether or not and to what extent a listed authority has complied with the guidance issued under section 34.

Section 35 - Compensation for the person aggrieved

137. This section confers a power on listed authorities to pay compensation to a person by or on behalf of whom a complaint has been made to the Ombudsman in respect of the matter, which is the subject of the complaint.
138. Some listed authorities may have existing powers that would be wide enough for this purpose (see for example the power available to various local government bodies acting under section 92 of the Local Government Act 2000). Section 35 ensures that all listed authorities have such a power. The power can be exercised even if the Ombudsman is not actually investigating and reporting on the complaint and so, for example, could be used where the Ombudsman is assisting in negotiating an amicable resolution of the matter.