

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

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 4**

#### ***Section 36 - Complaints-handling: statement of principles***

139. This section requires the Ombudsman to publish a statement of principles concerning complaints handling procedures of the ‘listed authorities’ in Schedule 3 (section 36(1)). Listed authorities must have complaints-handling procedures that comply with the statement of principles (section 36(2)).
140. Before publishing the first statement of principles, the Ombudsman must lay a draft statement of principles before the Assembly. The draft statement of principles will be subject to a negative resolution procedure. This means that the Assembly has 40 days to object to the draft. If the Assembly does not object within those 40 days, the Ombudsman must publish the statement of principles in the form of the draft laid before the Assembly. If the Assembly objects to the statement of principles as drafted, the Ombudsman must not publish the statement in the form of the draft but subsection (7) permits the Ombudsman may lay a new draft statement before the Assembly.
141. Once the statement of principles has been published, the Ombudsman can revise the statement of principles. But if a proposed revision would make any material changes to the statement of principles, then the negative resolution procedure will apply to the draft revision
142. The Ombudsman must consult before laying the first draft statement of principles (or any draft revisions to it) before the Assembly under this section.
143. **Section 36(14)** defines “complaints handling procedures” to mean procedures of listed authorities which examine complaints or review decisions in respect of action taken by a listed authority where the matter in question is one which the Ombudsman can investigate under Part 3.

#### ***Section 37 - Model complaints-handling procedures***

144. This section enables the Ombudsman (after consultation) to publish model complaints handling procedures (“model CHPs”) for listed authorities. Model CHPs must also comply with the statement of principles published by the Ombudsman under section 36.
145. A model CHP published by the Ombudsman may not require a listed authority to do something if the listed authority lacks powers (other than by virtue of the Act) to comply with the requirement (section 37(5)(a)).
146. Also, a model CHP published by the Ombudsman may not conflict with any enactment (including codes, guidance and schemes etc. made under an enactment) that applies

to the listed authority (section 37(5)(b)). For example, a model CHP could not be inconsistent with the statutory requirements set out in the Putting Things Right complaints regime that applies to NHS bodies in Wales.

147. Subsection (6) permits the Ombudsman to revise and republish any model CHP but requires the Ombudsman to notify certain listed authorities before doing so. Subsection (7) sets out the effect of a revision and republication on any specification made under section 38(1) in relation to the model CHP.
148. If the Ombudsman withdraws a model CHP, any related specifications under section 38(1) cease to have effect (section 37(9)(b)(I)).

### ***Section 38 - Model complaints-handling procedures: specification of listed authorities***

149. This section enables the Ombudsman to specify any listed authority to which a model CHP is relevant. A specified listed authority must have a complaints handling procedure that complies with the relevant model CHP. A listed authority must submit its complaints handling procedure to the Ombudsman, within 6 months of being specified under section 38(1).
150. The listed authority may, with the Ombudsman's consent, modify aspects of the model CHP if this is necessary for its effective operation (section 38(4)).
151. A specification can be revoked by the Ombudsman at any time (section 38(6)).

### ***Section 39 - Declarations of non-compliance***

152. This section enables the Ombudsman to declare that a complaints-handling procedure of a specified listed authority does not comply with the relevant model CHP which the Ombudsman has specified (under section 38) as being relevant to that authority. It also enables the Ombudsman to declare, in those circumstances where no model CHP has been specified in relation to a listed authority, that the authority's complaints-handling procedure does not comply with the statement of principles.
153. Before publishing a declaration under this section, the Ombudsman must give reasons for making the declaration and may also specify changes that would result in the declaration being withdrawn.
154. The listed authority must send its complaints-handling procedure to the Ombudsman within 2 months of the declaration, having taken account of the reasons given by the Ombudsman for making the declaration and any changes specified by the Ombudsman as being ones which would result in the declaration being withdrawn.
155. The Ombudsman must publish declarations made under subsections (1) and (2) on the Ombudsman's website (section 39(3)) and may withdraw such declarations at any time (section 39(6)).

### ***Section 40 - Submission of complaints-handling procedures: general***

156. This section gives the Ombudsman a power to require a listed authority to submit its complaints-handling procedure within 3 months or such other period as the Ombudsman thinks fit. The listed authority must submit its procedure within that period even if the period allowed for the submission of the procedure under section 387(3) or 398(5) has not yet expired.
157. A listed authority is also required to provide additional information on request. This enables the Ombudsman to get a full picture of a listed authority's complaints-handling procedure.

***Section 41 - Complaints-handling procedures: promotion of best practice etc.***

158. This section imposes duties on the Ombudsman to: (1) monitor listed authorities' practice in handling complaints, (2) promote best practice in relation to the handling of such complaints and (3) encourage cooperation and the sharing of best practice about these matters. This section applies to all complaints, not just complaints the Ombudsman can investigate under Part 3.
159. Listed authorities must co-operate with the Ombudsman in the exercise of these duties unless they lack the necessary powers (other than by virtue of the Act) or where co-operating is inconsistent with any other enactment that applies to the listed authority.