

PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2019

EXPLANATORY NOTES

INTRODUCTION

Part 6

Section 65 - Consultation and co-operation with other ombudsmen

246. Sections 65(1) and (2) require the Ombudsman to consult another specified ombudsman whenever the Ombudsman thinks that a matter could be the subject of investigation by that other ombudsman. The other ombudsmen that the Ombudsman is required to consult are specified in section 65(7).
247. There is power for the Welsh Ministers, by regulation, to amend this list of specified ombudsmen. The regulations may only add a person if it appears to the Welsh Ministers that the person to be added has functions relating to the investigation of complaints.
248. Where the Ombudsman is required to consult with another ombudsman on a matter, the Ombudsman may also co-operate with that other ombudsman on that matter (section 65(3)). The consultation and co-operation may extend to anything relating to the matter. Examples of matters on which there may be consultation and co-operation are set out in section 65(4), namely:
- a) how an investigation should be conducted; and
 - b) the form, content and publication of a report following an investigation.
249. Sections 65(5) and (6) provide that, where such consultation takes place, the Ombudsman and any of the specified ombudsmen (other than the Scottish Public Services Ombudsman) can conduct joint investigations and publish joint reports.
250. In cases of consultation on a matter, the Ombudsman will be able to use the supplementary powers in paragraph 21 of Schedule 1 to this Act to forward information to the other ombudsman. Furthermore, the Ombudsman will be able to use those supplementary powers to inform the person who has made the complaint (if any) how that person can make a complaint to the other ombudsman.

Section 66 - Working jointly with specified persons

251. Section 66 deals with situations where the Ombudsman, when dealing with a matter, identifies matters which could be subject to examination by “specified persons” in section 66(2), i.e. various Welsh commissioners and, in respect of health and social care matters, the Welsh Ministers.
252. This section requires the Ombudsman to inform and consult those specified persons about the matter. The Ombudsman and some of the relevant specified persons may then co-operate, conduct a joint investigation, and prepare a joint report about the matter.

253. The Welsh Ministers also have a power to make regulations to amend the list of specified persons.

Section 67 - Working collaboratively with Commissioners

254. **Section 67** contains further provision about collaborative working between the Ombudsman and various Welsh Commissioners in relation to matters could be investigated by both the Ombudsman and the relevant Commissioner.

Section 68 - Working with the Auditor General for Wales

255. This section requires the Ombudsman, if the Ombudsman considers it appropriate, to inform and consult the Auditor General for Wales the Ombudsman's proposals for an investigation and the most effective way of conducting an investigation.
256. The Ombudsman and the Auditor General for Wales may then co-operate, and conduct a joint investigation, and prepare a joint report about the matter.

Section 69 - Disclosure of information

257. **Section 69** provides that information obtained by the Ombudsman (or by the Ombudsman's staff or any other person acting on behalf of the Ombudsman) in relation to an investigation, or obtained from the persons mentioned in subsection (1)(b) to (e) under the provisions mentioned in that subsection, is to be kept confidential except in limited circumstances. Section 69(2) sets out the circumstances in which such information may be disclosed.
258. **Section 69(7)** provides that neither the Ombudsman nor a member of the Ombudsman's staff or other person assisting or acting on the Ombudsman's behalf can be required to give evidence in any proceedings (except proceedings specified in section 69(2)) about:
- a) information obtained to assist the Ombudsman in deciding whether to investigate, during an investigation, in resolving a matter, or in connection with a notification under section 26 or 57; or
 - b) information obtained from another ombudsman in consulting and cooperating with the Ombudsman under section 65.

Section 70 - Disclosure prejudicial to safety of State or contrary to public interest

259. **Section 70(1)** provides that a Minister of the Crown may give notice to the Ombudsman that disclosure of any document or information or class of document or information specified in the notice would, in the opinion of the Minister, be prejudicial to the safety of the United Kingdom or otherwise contrary to the public interest. Where such a notice is given, this Act neither authorises nor requires the Ombudsman, a member of the Ombudsman's staff or any other person assisting or acting on the Ombudsman's behalf, to disclose such specified information.
260. Where the Ombudsman or a member of the Ombudsman's staff etc. is obliged by virtue of some other legal requirement to disclose the information then nothing in this section prevents that person from complying with that obligation.

Section 71 - Protection from defamation claims

261. **Section 71** provides that the following are absolutely privileged for the purposes of defamation, namely:
- a) the publication (which will bear its usual meaning within the law relating to defamation) of any matter by the Ombudsman, a member of the Ombudsman's staff or another person assisting or acting on the Ombudsman's behalf in the discharge of the Ombudsman's functions under this Act;

- b) the publication of any matter in any report published by a person in the discharge of its functions under section 24 of this Act, including section 24 as modified by section 25, and sections 24 and 25 as they apply to special reports by virtue of section 29(6) (requirement on listed authorities to publish the Ombudsman's report of an investigation); and
 - c) the publication of a matter in connection with a complaint, where that matter is published in one of the following communications:
 - i. communications between a listed authority (including a member or co-opted member, officer or member of staff or another person acting on behalf of or assisting in the discharge of the functions of that authority) and the Ombudsman (or the Ombudsman's staff or persons assisting or acting on the Ombudsman's behalf in the discharge of the Ombudsman's functions);
 - ii. communications between a care home provider, domiciliary care provider or independent palliative care provider, (including an officer or member of staff or another person acting on behalf of or assisting in the discharge of the functions of that provider) and the Ombudsman (or the Ombudsman's staff or persons assisting or acting on the Ombudsman's behalf in the discharge of the Ombudsman's functions);
 - iii. communications between a person and an elected member of the National Assembly for Wales; and
 - iv. communications between the person aggrieved or a person making the complaint on behalf of the person aggrieved (if any) and the Ombudsman (or the Ombudsman's staff, persons assisting or acting on the Ombudsman's behalf in the discharge of the Ombudsman's functions).
262. This provision generally replicates similar protection under the legislation relating to other ombudsmen.