

Public Services Ombudsman (Wales) Act 2019

2019 anaw 3

PART 3

INVESTIGATIONS

Power of investigation

3 Power to investigate complaints

- (1) The Ombudsman may investigate a complaint under this Part in respect of a matter if the complaint has been—
 - (a) duly made to the Ombudsman, or
 - (b) duly referred to the Ombudsman, andthe matter is one which the Ombudsman is entitled to investigate under sections 11 to 16.
- (2) A complaint is “duly made” to the Ombudsman if (but only if)—
 - (a) it is made by a person who is entitled under section 7 to make the complaint to the Ombudsman, and
 - (b) the requirements of section 8(1) are met in respect of it.
- (3) A complaint is “duly referred” to the Ombudsman if (but only if)—
 - (a) it is referred to the Ombudsman by a listed authority, and
 - (b) the requirements of section 9(1) are met in respect of it.
- (4) The Ombudsman may investigate a complaint under this Part in respect of a matter even if the requirements of section 8(1) or (as the case may be) section 9(1)(b), (c) or (d) are not met in respect of the complaint, if—
 - (a) the matter is one which the Ombudsman is entitled to investigate under sections 11 to 16, and
 - (b) the Ombudsman thinks it reasonable to do so.

Changes to legislation: Public Services Ombudsman (Wales) Act 2019, Cross Heading: Power of investigation is up to date with all changes known to be in force on or before 29 August 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (5) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation (but see section 8(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).
- (6) The Ombudsman may take any action which the Ombudsman thinks may assist in making a decision under subsection (5).
- (7) The Ombudsman may begin or continue an investigation into a complaint even if the complaint, or the referral of the complaint, has been withdrawn (but see section 8(5)(a) for a restriction on the power to begin an investigation under subsection (1)(a)).

Commencement Information

II S. 3 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

4 Power to investigate on own initiative

- (1) The Ombudsman may investigate a matter under this Part, which the Ombudsman is entitled to investigate under sections 11 to 16, whether a complaint has been duly made or referred to the Ombudsman or not.
- (2) Before the Ombudsman begins an investigation under this section, the Ombudsman must—
 - (a) have regard to the public interest in beginning an investigation,
 - (b) have a reasonable suspicion—
 - (i) that there is systemic maladministration, or
 - (ii) in a case where the matter is one which may be investigated by virtue of section 15(2), that systemic injustice has been sustained as a result of the exercise of professional judgement,
 - (c) consult such persons as the Ombudsman considers appropriate (but see section 66 for further duties around consultation), and
 - (d) have regard to the criteria for own initiative investigations published under section 5.
- (3) Subject to the other provisions of this section—
 - (a) it is for the Ombudsman to decide whether to begin, continue or discontinue an investigation under this section;
 - (b) the Ombudsman may take any action the Ombudsman thinks may assist in making a decision under subsection (3)(a).

Commencement Information

I2 S. 4 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

5 Criteria for own initiative investigations

- (1) The Ombudsman must publish criteria to be used in determining whether to begin an investigation under section 4.
- (2) The Ombudsman must lay a draft of the first criteria before the Assembly.

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- (3) If, before the end of the 40 day period, the Assembly resolves not to approve the draft criteria, the Ombudsman must not publish the criteria in the form of the draft.
- (4) If no such resolution is made before the end of that period, the Ombudsman must publish the criteria in the form of the draft.
- (5) The 40 day period—
 - (a) begins on the day on which the draft is laid before the Assembly, and
 - (b) does not include any time during which the Assembly is dissolved or is in recess for more than four days.
- (6) Subsection (3) does not prevent new draft criteria from being laid before the Assembly.
- (7) Before laying the draft criteria before the Assembly, the Ombudsman must consult—
 - (a) the Welsh Ministers,
 - (b) the listed authorities in Schedule 3, and
 - (c) such other persons as the Ombudsman thinks appropriate.
- (8) The Ombudsman must, in preparing the draft criteria to be laid before the Assembly, have regard to any representations made during the consultation mentioned in subsection (7).
- (9) The criteria come into force when they are published by the Ombudsman.
- (10) The Ombudsman may from time to time revise and re-publish the criteria.
- (11) If, in the opinion of the Ombudsman, revisions made under subsection (10) effect any material change to the criteria, the Ombudsman must lay a draft of those revisions before the Assembly.
- (12) Subsections (3) to (9) apply to draft revisions laid before the Assembly under subsection (11) as they apply to the first criteria.
- (13) The Welsh Ministers may by regulations amend the criteria published by the Ombudsman under this section by adding criteria, removing criteria or changing the criteria.
- (14) Where the Welsh Ministers make regulations under subsection (13), the Ombudsman must publish the criteria, as amended by the regulations, on the day the regulations come into force.
- (15) Before making regulations under subsection (13), the Welsh Ministers must consult—
 - (a) the Ombudsman,
 - (b) the listed authorities in Schedule 3, and
 - (c) such other persons as the Welsh Ministers think appropriate.
- (16) No regulations are to be made under subsection (13) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the Assembly.

Commencement Information

I3 S. 5 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

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6 Alternative resolution of matters

- (1) The Ombudsman may take any action the Ombudsman thinks appropriate with a view to resolving a matter which the Ombudsman has power to investigate under this Part.
- (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation.
- (3) Any action under this section must be taken in private.

Commencement Information

I4 S. 6 in force at 23.7.2019 by S.I. 2019/1096, reg. 2

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 16(4)(a) omitted by [2020 asc 1 Sch. 3 para. 17\(2\)\(a\)](#)
- s. 16(4)(e) omitted by [2020 asc 1 Sch. 3 para. 17\(2\)\(b\)](#)
- s. 16(4)(ia) inserted by [2020 asc 1 Sch. 3 para. 17\(2\)\(c\)](#)