SCHEDULE 1

(introduced by section 2)

PUBLIC SERVICES OMBUDSMAN FOR WALES: APPOINTMENT ETC

Appointment

1 The Ombudsman is to be appointed by Her Majesty on the nomination of the Assembly.

Status

2 (1) The Ombudsman is a corporation sole.

(2) The Ombudsman holds office under Her Majesty and discharges functions on behalf of the Crown.

(3) The Ombudsman is a Crown servant for the purposes of the Official Secrets Act 1989 (c.6).

(4) But service as the Ombudsman is not service in the civil service of the Crown.

Term of office

3 (1) A person's term of office as the Ombudsman is seven years (subject to sub-paragraphs (3) and (4) and paragraph 6).

(2) A person appointed as the Ombudsman is not eligible for re-appointment.

(3) Her Majesty may relieve a person of office as the Ombudsman—

(a) at the Ombudsman's request, or

(b) on Her Majesty being satisfied that the person is incapable for medical reasons of performing the duties of the office.

(4) Her Majesty may remove a person from office as the Ombudsman on the making of a recommendation, on the ground of the person's misbehaviour, that Her Majesty should do so.

(5) A recommendation for the removal of a person from office as the Ombudsman may not be made unless—

(a) the Assembly has resolved that the recommendation should be made, and

(b) the resolution of the Assembly is passed on a vote in which the number of Assembly members voting in favour of it is not less than two-thirds of the total number of Assembly seats.

Acting Public Services Ombudsman for Wales

4 (1) If the office of the Ombudsman becomes vacant, Her Majesty may, on the nomination of the Assembly, appoint a person to act as the Ombudsman.

(2) A person appointed to act as the Ombudsman ("an acting Ombudsman") may have held office as the Ombudsman.

(3) A person appointed as an acting Ombudsman is eligible for appointment as the Ombudsman (unless the person has already held office as the Ombudsman).

(4) The power to appoint a person as an acting Ombudsman is not exercisable after the end of the period of two years starting with the date on which the vacancy arose.

(5) An acting Ombudsman holds office in accordance with the terms of the acting Ombudsman's appointment, subject to sub-paragraph (6) (and paragraph 2, as applied by sub-paragraph (7)).

(6) An acting Ombudsman must not hold office after—

(a) the appointment of a person as the Ombudsman, or

(b) if sooner, the end of the period of two years starting with the date on which the vacancy arose.

(7) While an acting Ombudsman holds office, the acting Ombudsman is to be regarded (except for the purposes of paragraphs 1, 3, 6 to 10 and this paragraph) as the Ombudsman.

Further provision: appointment

5 The Assembly must determine the terms that apply to an appointment made under paragraph 1 or paragraph 4(1).

Disqualification

6 (1) A person is disqualified from being the Ombudsman or an acting Ombudsman if any of the following applies—

(a) the person is a member of the House of Commons;

(b) the person is a listed authority;

(c) the person is a member, co-opted member, officer or member of staff of a listed authority;

(d) the person is disqualified from being a member of the Assembly (other than by virtue of paragraph 7 of this Schedule or section 16(1)(d) of the Government of Wales Act 2006 (c.32));

(e) the person is disqualified from being a member of a local authority in Wales (other than by virtue of paragraph 7 of this Schedule);

(f) the person is a care home provider, domiciliary care provider or independent palliative care provider;

(g) the person is an officer or member of staff of a provider of that kind.

(2) For the purposes of sub-paragraph (1)(g) a person is an officer of a provider if the person has control or management of a provider which is not an individual or the affairs of such a provider.

(3) The appointment of a person as the Ombudsman or an acting Ombudsman is not valid if the person is disqualified under sub-paragraph (1).

(4) If a person who has been appointed as the Ombudsman or an acting Ombudsman becomes disqualified under sub-paragraph (1), the person ceases to hold office on becoming so disqualified.

(5) But the validity of anything done by a person appointed as the Ombudsman or an acting Ombudsman is not affected by the fact that the person is or becomes disqualified under sub-paragraph (1).

7 (1) A person who holds office as the Ombudsman or an acting Ombudsman is disqualified from—

(a) being a listed authority;

(b) being a member, co-opted member, officer or member of staff of a listed authority;

(c) holding a paid office to which appointment is by a listed authority.

(2) A person is not disqualified under sub-paragraph (1) from being a member of the Assembly.

8 (1) A person who has ceased to hold office as the Ombudsman or as an acting Ombudsman is disqualified for the relevant period from—

(a) holding an office which is a listed authority;

(b) being a member, co-opted member, officer or member of staff of a listed authority;

(c) holding a paid office to which appointment is by a listed authority;

unless the Assembly approves otherwise.

(2) The relevant period—

(a) starts when the person ceases to hold office as the Ombudsman or, as the case may be, an acting Ombudsman, and

(b) ends on the expiry of the financial year following the financial year in which the Ombudsman or, as the case may be, the acting Ombudsman, ceased to hold such office.

(3) But sub-paragraph (1) does not disqualify a person from—

(a) being a member of the Assembly or the National Assembly for Wales Commission;

(b) holding the office of presiding officer or deputy presiding officer of the Assembly or of First Minister for Wales, Welsh Minister appointed under section 48 of the Government of Wales Act 2006 (c.32), Counsel General to the Welsh Government or Deputy Welsh Minister;

(c) being a member or co-opted member of a local authority in Wales;

(d) holding the office of chairman, vice-chairman or elected mayor of a local authority in Wales.

9 The references in paragraphs 7 and 8 to a paid office include an office the holder of which is entitled only to the reimbursement of expenses.

Remuneration etc

10 (1) The Assembly must—

(a) pay a person who is the Ombudsman or an acting Ombudsman such salary and allowances, and

(b) make such payments towards the provision of superannuation benefits for or in respect of the Ombudsman or an acting Ombudsman,

as may be provided for by or under the terms of appointment of the Ombudsman or the acting Ombudsman.

(2) The Assembly must pay to or in respect of a person who has ceased to hold office as the Ombudsman or an acting Ombudsman—

(a) such amounts by way of pensions and gratuities, and

(b) such amounts by way of provision for those benefits,

as may have been provided for by or under the terms of appointment of the Ombudsman or the acting Ombudsman.

(3) If a person ceases to be the Ombudsman or an acting Ombudsman and it appears to the Assembly that there are special circumstances which make it right that the person should receive compensation, the Assembly may pay to that person a sum of such amount as it thinks appropriate.

(4) The Assembly must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as the Minister may determine in respect of any increase attributable to paragraph 9(4) of Schedule 1 to the 2005 Act in the sums payable out of money provided by Parliament under the Superannuation Act 1972 (c.11).

(5) Sums required for the making of payments under sub-paragraphs (1), (2) and (4) are to be charged on the Welsh Consolidated Fund.

Special financial provisions

11 (1) Any sums payable by the Ombudsman in consequence of a breach, in the performance of any of the Ombudsman's functions, of any contractual or other duty are to be charged on the Welsh Consolidated Fund.

(2) And sub-paragraph (1) applies whether the breach occurs by reason of an act or omission of—

(a) the Ombudsman,

(b) a member of the Ombudsman's staff, or

(c) any other person acting on the Ombudsman's behalf or assisting the Ombudsman in the exercise of functions.

(3) The Ombudsman may retain income derived from fees charged by virtue of sections 17(6), 23(6), 27(8), 29(2), 51(6), 55(7), 58(8) and 60(7) (rather than pay it into the Welsh Consolidated Fund) for use in connection with the exercise of the functions conferred or imposed by this Act.

(4) The Ombudsman may retain costs paid to the Ombudsman under a costs recovery notice (see sections 21 and 22) (rather than pay them in to the Welsh Consolidated Fund) for use in connection with the exercise of the functions conferred or imposed by this Act.

Staff

12 (1) The Ombudsman may appoint such staff as is necessary for assisting in the discharge of the Ombudsman's functions, on such terms and conditions as the Ombudsman may determine.

(2) No member of staff of the Ombudsman is to be regarded as holding office under Her Majesty or as discharging any functions on behalf of the Crown.

(3) But each member of the Ombudsman's staff is to be treated as being a Crown servant for the purposes of the Official Secrets Act 1989 (c.6).

(4) The Ombudsman must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sum as the Minister may determine in respect of any

increase attributable to paragraph 11(4) of Schedule 1 to the 2005 Act in the sums payable out of money provided by Parliament under the Superannuation Act 1972 (c.11).

Advisers

13 (1) The Ombudsman may obtain advice from any person who, in the Ombudsman's opinion, is qualified to give it, to assist the Ombudsman in the discharge of the Ombudsman's functions.

(2) The Ombudsman may pay to any person from whom the Ombudsman obtains advice under sub-paragraph (1) such fees or allowances as the Ombudsman may determine.

Delegation

14 (1) Any function of the Ombudsman may be discharged on the Ombudsman's behalf—

(a) by any person authorised by the Ombudsman to do so, and

(b) to the extent so authorised.

(2) Sub-paragraph (1) does not affect the responsibility of the Ombudsman for the discharge of any such function.

(3) A person authorised by the Ombudsman under sub-paragraph (1) is to be treated as being a Crown servant for the purposes of the Official Secrets Act 1989 (c.6).

(4) No arrangements may be made between the Ombudsman, on the one hand, and the Welsh Ministers (or the First Minister for Wales or the Counsel General to the Welsh Government), on the other, for—

(a) any functions of one of them to be exercised by the other,

(b) any functions of the Welsh Ministers (or the First Minister for Wales or the Counsel General to the Welsh Government) to be exercised by members of staff of the Ombudsman,

(c) any functions of the Ombudsman to be exercised by members of the staff of the Welsh Government, or

(d) the provision of administrative, professional or technical services by one of them for the other.

(5) Sub-paragraph (4) applies despite any provision that would otherwise permit such arrangements to be made.

Annual and extraordinary reports

15 (1) The Ombudsman—

(a) must annually prepare a general report on the discharge of the Ombudsman's functions (an "annual report");

(b) may prepare any other report with respect to the Ombudsman's functions that the Ombudsman thinks appropriate (an "extraordinary report").

(2) A report prepared under this paragraph may include any general recommendations which the Ombudsman may have arising from the discharge of the Ombudsman's functions.

(3) The Ombudsman must lay a copy of each report prepared under this paragraph before the Assembly and at the same time send a copy to the Welsh Government and (if

the report is an extraordinary report) must send a copy of it to any listed authorities (other than the Welsh Government) the Ombudsman thinks appropriate.

(4) The Ombudsman may also send a copy of any report prepared under this paragraph to any other persons the Ombudsman thinks appropriate.

(5) The Ombudsman must, and the Assembly may, publish any report laid before the Assembly under this paragraph.

(6) The Ombudsman must comply with any directions given by the Assembly with respect to an annual report.

(7) If a report prepared under this paragraph—

(a) mentions the name of any person other than a listed authority, care home provider, domiciliary care provider or independent palliative care provider in respect of which—

(i) a complaint has been made or referred to the Ombudsman under this Act, or

(ii) the Ombudsman has begun to investigate under section 4 or 44, or

(b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report,

that information must not be included in a version of the report laid before the Assembly under sub-paragraph (3), sent to a person under sub-paragraph (3) or (4) or published by the Ombudsman under sub-paragraph (5), subject to sub-paragraph (8).

(8) Sub-paragraph (7) does not apply in relation to a version of the report if, after taking account of the interests of any persons the Ombudsman thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report.

Estimates

16 (1) For each financial year, the Ombudsman must prepare an estimate of the income and expenses of the Ombudsman's office.

(2) The Ombudsman must submit the estimate at least five months before the beginning of the financial year to which it relates to the committee or committees of the Assembly specified in the standing orders of the Assembly.

(3) The committee or committees must examine an estimate submitted in accordance with sub-paragraph (2) and must then lay the estimate before the Assembly with any modifications thought appropriate.

(4) Before laying before the Assembly with modifications an estimate submitted in accordance with sub-paragraph (2), the committee or committees must—

(a) consult the Ombudsman, and

(b) take into account any representations which the Ombudsman may make.

(5) The first financial year is the financial year during which the first person to be appointed as the Ombudsman is appointed.

Accounts

17 (1) The Ombudsman must—

(a) keep proper accounting records, and

(b) for each financial year, prepare accounts in accordance with directions given to the Ombudsman by the Treasury.

(2) The directions which the Treasury may give under sub-paragraph (1)(b) include directions to prepare accounts relating to financial affairs and transactions of persons other than the Ombudsman.

(3) The directions which the Treasury may give under sub-paragraph (1)(b) include, in particular, directions as to—

(a) the information to be contained in the accounts and the manner in which it is to be presented;

(b) the methods and principles in accordance with which the accounts are to be prepared;

(c) the additional information (if any) that is to accompany the accounts.

Audit

18 (1) The accounts prepared by the Ombudsman for a financial year must be submitted by the Ombudsman to the Auditor General for Wales no later than 30 November in the following financial year.

(2) The Auditor General for Wales must—

(a) examine, certify and report on each set of accounts submitted to the Auditor General for Wales under this paragraph, and

(b) subject to sub-paragraph (3), no later than four months after the accounts are so submitted, lay before the Assembly a copy of them as certified by the Auditor General for Wales together with the Auditor General for Wales's report on them ("a copy of the certified accounts and report").

(3) The Auditor General for Wales may lay a copy of the certified accounts and report before the Assembly after the four-month deadline mentioned in sub-paragraph (2)(b) where it is not reasonably practicable for the Auditor General for Wales to meet that deadline.

(4) Where sub-paragraph (3) applies, the Auditor General for Wales must—

(a) before the four-month deadline mentioned in sub-paragraph (2)(b), lay before the Assembly a statement explaining why it is not reasonably practicable for the Auditor General for Wales to lay a copy of the certified accounts and report before the Assembly before that deadline, and

(b) lay a copy of the certified accounts and report before the Assembly as soon as reasonably practicable after that deadline.

(5) In examining accounts submitted to the Auditor General for Wales under this paragraph the Auditor General for Wales must, in particular, be satisfied that—

(a) the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it, and

(b) the Ombudsman has made appropriate arrangements for the economic, efficient and effective use of the Ombudsman's resources.

Accounting officer

19 (1) The Ombudsman is the accounting officer for the office of the Ombudsman.

(2) If the Ombudsman is incapable of discharging the Ombudsman's responsibilities as accounting officer, the Audit Committee may designate a member of the Ombudsman's staff to be the accounting officer for as long as the Ombudsman is so incapable.

(3) If the office of the Ombudsman is vacant and there is no acting Ombudsman, the Audit Committee may designate a member of the Ombudsman's staff to be the accounting officer for as long as the office of the Ombudsman is vacant and there is no acting Ombudsman.

(4) The accounting officer has, in relation to the accounts and the finances of the Ombudsman, the responsibilities which are from time to time specified by the Audit Committee.

(5) In this paragraph references to responsibilities include in particular—
   (a) responsibilities in relation to the signing of accounts,
   (b) responsibilities for the propriety and regularity of the finances of the Ombudsman, and
   (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Ombudsman are used.

(6) The responsibilities which may be specified under this paragraph include responsibilities owed to—
   (a) the Assembly, the Welsh Ministers or the Audit Committee, or
   (b) the House of Commons or its Committee of Public Accounts.

(7) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
   (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer, and
   (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

Examinations into the use of resources

20 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Ombudsman has used the Ombudsman's resources in discharging the Ombudsman's functions.

(2) Sub-paragraph (1) is not to be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Ombudsman.

(3) In determining how to discharge the Auditor General for Wales's functions under this paragraph, the Auditor General for Wales must take into account the views of the Audit Committee as to the examinations which the Auditor General for Wales should carry out.

(4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by the Auditor General for Wales under this paragraph.

Supplementary powers

21 The Ombudsman may do anything (including acquire or dispose of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the Ombudsman's functions.

Previous Ombudsman to continue to be Ombudsman

22 (1) This paragraph applies to the person who is the Ombudsman immediately before the appointed day.

(2) On and after the appointed day the person—

(a) continues to be the Ombudsman and is treated as having been appointed to that office under this Act;

(b) holds the office for seven years less a period equal to that during which the person was the Ombudsman before the appointed day.

(3) In this paragraph "the appointed day" means the day on which this paragraph comes into force.