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## 2016 CHAPTER 4

### PART 1

#### THE NORTHERN IRELAND PUBLIC SERVICES OMBUDSMAN

##### **The Northern Ireland Public Services Ombudsman**

1.—(1) There is to be a Northern Ireland Public Services Ombudsman (in this Act “the Ombudsman”).

(2) The principal purpose of the Ombudsman is to investigate alleged maladministration in listed authorities.

(3) Schedule 1 makes further provision about the Ombudsman.

##### **Independence**

2.—(1) The Ombudsman is not subject to the direction or control of—

- (a) a Minister,
- (b) the Secretary of State,
- (c) a Northern Ireland department,
- (d) the Assembly, or
- (e) the Assembly Commission.

(2) But this is subject to—

- (a) the power of the Assembly Commission to determine the salary, pension and terms of appointment of the Ombudsman under paragraphs 6, 7 and 8 of Schedule 1,
- (b) the power of the Assembly to request Her Majesty to remove the Ombudsman from office under paragraph 9 of Schedule 1,

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- (c) the power of the Department of Finance and Personnel to direct the form of accounts the Ombudsman must prepare, under paragraph 7 of Schedule 2, or sections 9 to 13 of the Government Resources and Accounts Act (Northern Ireland) 2001.
- [<sup>F1</sup>(d) the power of the Department of Finance under sections 8A and 8B of the Government Resources and Accounts Act (Northern Ireland) 2001 to issue directions in relation to estimates for the Ombudsman.]

#### Textual Amendments

- F1** S. 2(2)(d) inserted (31.3.2022) by [Financial Reporting \(Departments and Public Bodies\) Act \(Northern Ireland\) 2022 \(c. 8\), ss. 1\(5\), 3](#)

### Appointment

**3.—**(1) The Ombudsman is to be appointed by Her Majesty, on the nomination of the Assembly.

- (2) Appointment is for a term of 7 years.
- (3) A person appointed as the Ombudsman is not eligible for re-appointment.
- (4) The Assembly Commission is to make arrangements for—
  - (a) determining the criteria for appointment, and
  - (b) ensuring that the person to be appointed has been identified by fair and open competition.

(5) The validity of the exercise of any function of the Ombudsman is not affected by any defect in appointment.

### Abolition of existing offices

- 4.—**(1) The offices of—
- (a) Assembly Ombudsman for Northern Ireland, and
  - (b) Northern Ireland Commissioner for Complaints,

are abolished.

(2) In this Act those offices are referred to as “existing offices”.

(3) Schedule 2 (which provides for the transfer of assets, liabilities, staff etc. of the existing offices to the Ombudsman, and which makes other transitional and savings arrangements) has effect.

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## PART 2

### INVESTIGATIONS

#### *Power of investigation*

##### **Power to investigate complaints made by a person aggrieved**

5.—(1) The Ombudsman may investigate a complaint, made by a member of the public who claims to have sustained an injustice (in this Act referred to as “a person aggrieved”), if the requirements of this section are met.

(2) The complaint must relate to action taken by a listed authority (see sections 12 and 13).

(3) The complaint must relate to a matter which can be investigated (see sections 14 to 23).

(4) The procedural requirements of sections 24 to 27 must have been followed.

(5) In this section “member of the public” means any individual or any incorporated or unincorporated body other than—

- (a) a listed authority acting in its capacity as such, or
- (b) a member or officer, at the time of the action complained of and acting in that capacity, of the listed authority against which the complaint is made.

##### **Power to investigate complaints referred by a listed authority**

6.—(1) The Ombudsman may investigate a complaint referred by a listed authority if the requirements of this section are met.

(2) The complaint must have been made to the listed authority by a person aggrieved.

(3) The listed authority must have been unable to resolve the complaint.

(4) The complaint must relate to action taken by the listed authority (see sections 12 and 13).

(5) The complaint must relate to a matter which can be investigated (see sections 14 to 23).

(6) The procedural requirements of section 28 must have been followed.

##### **Acting on behalf of a person aggrieved**

7.—(1) A member of the Assembly may act on behalf of a person aggrieved if authorised to act by the person.

(2) The following may act on behalf of a person aggrieved who has died, or is unable for any reason to act—

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- (a) a member of the Assembly,
  - (b) a personal representative,
  - (c) a family member, or
  - (d) any other person the Ombudsman considers appropriate.
- (3) Any other person may act on behalf of a person aggrieved if—
- (a) that person is authorised in writing to act by the person aggrieved, and
  - (b) the Ombudsman considers that person appropriate.
- (4) In the case of a complaint referred by a listed authority to the Ombudsman, the requirement in subsection (2) and (3) that the Ombudsman considers a person appropriate has no effect.
- (5) Where, under this section, another person acts on behalf of a person aggrieved, references in any other provision of this Act to a person aggrieved are to be construed as including that other person.

#### **Power to investigate on own initiative**

- 8.**—(1) The Ombudsman may investigate a matter in respect of which—
- (a) no complaint has been made, or
  - (b) one or more complaints have been made (even if these complaints do not satisfy the requirements set out in sections 24 to 27),
- if the requirements of this section are met.
- (2) The matter must relate to action taken by one or more listed authorities (see sections 12 and 13).
- (3) The matter must be one which can be investigated (see sections 14 to 23).
- (4) The Ombudsman must have a reasonable suspicion—
- (a) that there is systemic maladministration, or
  - (b) in a case where the matter is one which falls to be investigated under section 15(2)(b), 16(2)(b) or 17(2)(b), that systemic injustice has been sustained as a result of the exercise of professional judgement.
- (5) The procedural requirements of section 29 must have been followed.
- (6) The matter may relate to action taken before as well as after the day this section comes into operation.

#### **Criteria for own initiative investigations**

- 9.**—(1) The Ombudsman must establish (and may from time to time amend) criteria to be used in determining whether to commence an investigation under section 8.
- (2) The Ombudsman must publish and have regard to these criteria.

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### Alternative resolution of complaints

**10.—(1)** The Ombudsman may take any action which the Ombudsman considers appropriate with a view to resolving a complaint which could be investigated under section 5 or 6.

(2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.

(3) Any action under this section must be taken in private.

### Purposes of investigation

**11** The purposes of an investigation are—

- (a) to ascertain if—
  - (i) the matter properly warrants investigation, and
  - (ii) the allegations contained in a complaint are in substance true,
- (b) where it appears to the Ombudsman to be desirable, to bring about a settlement, including by recommending that—
  - (i) action be taken by the person aggrieved or listed authority, or
  - (ii) the listed authority make a payment to the person aggrieved, and
- (c) in the case of an investigation under—
  - (i) section 8(4)(a), to ascertain if there is systemic maladministration,
  - (ii) section 8(4)(b), to ascertain if there is systemic injustice.

#### Commencement Information

- II** S. 11 wholly in operation at 1.4.2018; s. 11(a)(b) in operation at 1.4.2016 see s. 64(1); s. 11(c) in operation at 1.4.2018 see s. 64(5)(c)

### *Listed authorities*

#### Listed authorities

**12.—(1)** Each of the authorities listed in Schedule 3 is a listed authority for the purposes of this Act.

(2) The Office of the First Minister and deputy First Minister may by order amend Schedule 3 by—

- (a) adding or omitting an authority, or
- (b) altering its description.

(3) But an order under subsection (2) may not add an authority unless the authority—

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- (a) exercises functions on behalf of the Crown,
  - (b) is a body whose members, in whole or in part, are public appointees,
  - (c) is substantially financed out of public funds, or
  - (d) exercises functions conferred by a statutory provision.
- (4) For the purposes of this section, a public appointee is a person appointed by—
- (a) the Crown,
  - (b) a Minister,
  - (c) a Minister of the Crown,
  - (d) a Northern Ireland department,
  - (e) a department of the Government of the United Kingdom,
  - (f) the Assembly, or
  - (g) the Assembly Commission.
- (5) For the purposes of this section, a body is financed out of public funds if—
- (a) its expenses are defrayed out of moneys appropriated by Act of the Assembly,
  - (b) its expenses are defrayed out of moneys appropriated by Act of Parliament,
  - (c) its expenses are charged on and issued out of the Consolidated Fund, or
  - (d) its expenses are charged on and issued out of the Consolidated Fund of the United Kingdom.
- (6) Before making an order under this section, the Office of the First Minister and deputy First Minister must consult the Ombudsman, the authority concerned, and any other person it thinks appropriate.

### **Meaning of action taken by a listed authority**

**13.—**(1) For the purposes of this Act, action is taken by a listed authority if it is taken by—

- (a) that authority,
- (b) a member, officer or member of staff of the authority acting in the discharge of functions of the authority,
- (c) a person to whom the authority has delegated any function, in the discharge of that function,
- (d) any other person acting on behalf of the authority.

(2) In this Act references to action taken by a listed authority include a failure to act on the part of the authority; and such other expressions connoting action are to be construed accordingly.

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### *Matters which may be investigated*

#### **Matters which may be investigated: general**

**14.—(1)** The Ombudsman may investigate alleged maladministration through action taken in the exercise of administrative functions by a listed authority.

- (2) This section does not apply to—
- (a) health and social care bodies,
  - (b) general health care providers,
  - (c) independent providers,
  - (d) the universities referred to in section 18.

#### **Modifications etc. (not altering text)**

- C1** S. 14(2)(a) modified (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(c), [Sch. 2 para. 9\(c\)](#); S.R. 2022/102, art. 2(c)

#### **Commencement Information**

- I2** S. 14 wholly in operation at 1.10.2016; s. 14(1)(2)(a)-(c) in operation at 1.4.2016 see s. 64(1); s. 14(2)(d) in operation at 1.10.2016 see s. 64(3)(a)

#### **Matters which may be investigated: health and social care bodies**

**15.—(1)** This section applies where a listed authority is a health and social care body.

- (2) The Ombudsman may investigate—
- (a) alleged maladministration through action taken in the exercise of administrative functions by the health and social care body,
  - (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement exercisable in connection with the provision of health or social care.

#### **Modifications etc. (not altering text)**

- C2** S. 15(1) modified (1.4.2022) by [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(c), [Sch. 2 para. 9\(c\)](#); S.R. 2022/102, art. 2(c)

#### **Matters which may be investigated: general health care providers**

**16.—(1)** This section applies where a listed authority is a general health care provider.

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- (2) The Ombudsman may investigate—
- (a) alleged maladministration through action taken in the exercise of administrative functions by the general health care provider in connection with general health care services,
  - (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement in connection with general health care services.
- (3) In this Act, a general health care provider is—
- (a) an individual undertaking to provide primary medical services or general dental services under Part 6 of the Health and Personal Social Services (Northern Ireland) Order 1972,
  - (b) a person undertaking to provide general ophthalmic services or pharmaceutical services under Part 6 of that Order, or
  - (c) an individual performing primary medical services or personal dental services in accordance with arrangements made under Article 15B of that Order (except as employees of, or otherwise on behalf of, a health and social care body or an independent provider).
- (4) In this Act, general health care services are the services mentioned in subsection (3).

**Matters which may be investigated: independent providers of health and social care**

**17.—**(1) This section applies where the listed authority is an independent provider of health and social care.

- (2) The Ombudsman may investigate—
- (a) alleged maladministration through action taken in the exercise of administrative functions by the independent provider in connection with an arrangement with a health and social care body or a general health care provider to provide a service,
  - (b) the merits of a decision of that body to the extent that it was taken in consequence of the exercise of professional judgement exercisable in connection with the provision of health or social care under that arrangement.
- (3) In this Act, an independent provider of health and social care is a person—
- (a) providing services (of any kind) under an arrangement with a health and social care body or a general health care provider, and
  - (b) who is not a health and social care body or a general health care provider.



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### **Matters which may be investigated: universities**

**18.—**(1) This section applies where the listed authority is—

- (a) The Queen's University of Belfast,
- (b) University of Ulster.

(2) The Ombudsman may investigate alleged maladministration through action taken by a university in the exercise of administrative functions, in respect of students enrolled in courses provided or validated by the university.

(3) Where the investigation is under section 5 or 6, the complaint must have been made by a student, or a person who has been a student.

(4) But the Ombudsman has no jurisdiction to investigate a matter to the extent that it relates to a matter of academic judgement.

(5) If the Ombudsman has jurisdiction in respect of a complaint, the visitor of a university has no jurisdiction in respect of that complaint.

(6) Where, before this section has come into operation, a complaint has been made to the visitor but has not been resolved by the visitor, the visitor has jurisdiction to deal with that complaint as if the other provisions of this section had not come into operation.

(7) In this Act, references to a university include references to a constituent college, school or hall or other institution of a university.

### **Administrative functions of staff of tribunals**

**19.—**(1) For the purposes of section 14, administrative functions exercisable by any person appointed or assigned by the Department of Justice to serve as a member of the administrative staff of any court or tribunal are to be taken to be administrative functions of that Department.

(2) For the purposes of section 14, administrative functions exercisable by any person appointed or assigned to serve as a member of the administrative staff of a tribunal listed in Schedule 4—

- (a) by a listed authority, or
- (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of a listed authority,

are to be taken to be administrative functions of that listed authority.

(3) The Office of the First Minister and deputy First Minister may by order amend Schedule 4 by—

- (a) adding or omitting an entry, or
- (b) altering its description.

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(4) Before making an order under this section, the Office of the First Minister and deputy First Minister must consult the Ombudsman and any other person it thinks appropriate.

#### **Exclusion: public sector employment**

**20** The Ombudsman must not investigate action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to—

- (a) service in any office or employment under a listed authority,
- (b) service in any office or employment under the Crown,
- (c) service—

(i) in any office or employment; or

(ii) under any contract for services,

in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in a listed authority.

#### **Exclusion: other remedies available**

**21.—**(1) The Ombudsman must not investigate—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or by virtue of Her Majesty's prerogative,
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.

(2) But this is subject to—

- (a) section 78 of the Northern Ireland Act 1998 (investigations involving discrimination or making oaths or declarations), and
- (b) subsection (3).

(3) The Ombudsman may investigate—

- (a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in subsection (1), if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort to or have resorted to it, or
- (b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in subsection (1)(a), if the person aggrieved complains that the injustice sustained remains unremedied thereby and the Ombudsman is satisfied that there are reasonable grounds for that complaint.

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### **Other excluded matters**

**22.—**(1) The Ombudsman must not investigate any actions or matters that are described in Schedule 5 otherwise than as authorised by paragraph 4(2) of that Schedule.

(2) The Office of the First Minister and deputy First Minister may by order amend Schedule 5 so as to exclude from the provisions of that Schedule any action or matter that is described in that order.

(3) Before making an order under this section, the Office of the First Minister and deputy First Minister must consult the Ombudsman and any other person it thinks appropriate.

### **Decisions taken without maladministration**

**23.—**(1) Nothing in this Act authorises the Ombudsman to question the merits of a decision taken without maladministration by a listed authority in the exercise of a discretion.

(2) But this is subject to—

- (a) section 15(2)(b),
- (b) section 16(2)(b), and
- (c) section 17(2)(b).

#### *Procedure for making complaint to the Ombudsman*

### **Complaints handling procedure to be invoked and exhausted**

**24.—**(1) The Ombudsman may investigate a complaint under section 5 only if satisfied that the person aggrieved has invoked and exhausted the listed authority's complaints handling procedure.

(2) But the Ombudsman may investigate a complaint despite the requirements of this section not being met, if there are special circumstances which make it proper to do so.

### **Duty to inform person aggrieved about the Ombudsman**

**25.—**(1) This section applies where a listed authority's complaints handling procedure is exhausted.

(2) The authority must, within 2 weeks of the day on which the complaints handling procedure is exhausted give the person aggrieved a written notice stating—

- (a) that the complaints handling procedure is exhausted, and
- (b) that the person aggrieved may, if dissatisfied, refer the complaint to the Ombudsman.

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- (3) A notice under subsection (2) must—
- (a) inform the person aggrieved of the time limit for referring the complaint to the Ombudsman, and
  - (b) provide details of how to contact the Ombudsman.

### **Form and time limit for making complaint**

**26.**—(1) The Ombudsman may specify—

- (a) the form in which complaints must be made, and
- (b) any particulars which complaints must contain.

(2) Where the complaints handling procedure has been exhausted, the complaint must be made to the Ombudsman within 6 months of the day that the notice under section 25 is sent.

(3) Where the complaints handling procedure has not been exhausted but section 24(2) applies, the complaint must be made to the Ombudsman within 12 months of the day on which the person aggrieved first has notice of the matters alleged in the complaint.

(4) But the Ombudsman may investigate a complaint, despite the requirements of subsections (1) to (3) not being met, if there are special circumstances which make it proper to do so.

### **Meaning of exhausting the complaints handling procedure**

**27** A complaints handling procedure is exhausted when—

- (a) a final decision is made on the complaint,
- (b) it is determined not to deal with the complaint, or
- (c) it is determined not to deal any further with the complaint.

#### *Procedure for complaint referred to the Ombudsman*

### **Procedure for complaint referred to the Ombudsman**

**28.**—(1) Complaints referred to the Ombudsman must—

- (a) have been made to the listed authority within 12 months of the day on which the person aggrieved first had notice of the matters alleged in the complaint, and
- (b) be referred to the Ombudsman within six months of the day on which the complaint was made to the listed authority.

(2) But the Ombudsman may investigate a complaint, despite the requirements of this section not being met, if there are special circumstances which make it proper to do so.

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### *Procedure for own initiative investigations*

#### **Procedure for own initiative investigations**

**29.**—(1) Before commencing an investigation under section 8, the Ombudsman must—

- (a) prepare an investigation proposal, and
  - (b) submit that proposal to any listed authority which it is proposed be investigated.
- (2) The investigation proposal must set out—
- (a) the reasons for the proposed investigation, and
  - (b) how the criteria referred to in section 9 have been met.

### *Conduct of investigations*

#### **Investigation procedure**

**30.**—(1) It is for the Ombudsman—

- (a) to decide whether to begin, continue or discontinue an investigation,
  - (b) to determine if the requirements of sections 5, 6 or 8 have been met.
- (2) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.
- (3) If the Ombudsman conducts an investigation into a complaint in respect of a listed authority, the Ombudsman must—
- (a) give the listed authority an opportunity to comment on any allegations contained in the complaint,
  - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on any allegations relating to that person.
- (4) If the Ombudsman conducts an investigation into a listed authority under section 8, the Ombudsman must—
- (a) give the listed authority an opportunity to comment on any evidence of systemic maladministration or systemic injustice, as the case may be,
  - (b) give any person who appears to have taken part in or authorised systemic maladministration or systemic injustice, as the case may be, an opportunity to comment on any evidence of that.
- (5) An investigation must be conducted in private.
- (6) Subject to subsections (3) to (5), the procedure for conducting an investigation is to be such as the Ombudsman considers appropriate in the circumstances of the case.

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- (7) In particular the Ombudsman may—
- (a) make such inquiries as are appropriate, and
  - (b) determine whether any person may be represented in the investigation by counsel, solicitor or otherwise.
- (8) The Ombudsman may pay to a person aggrieved and to any other person who attends or provides information for the purposes of an investigation—
- (a) such sums as the Ombudsman may determine in respect of expenses properly incurred by them,
  - (b) such allowances as the Ombudsman may determine by way of compensation for the loss of their time.
- (9) In exercising powers under subsection (8), the Ombudsman must have regard to the desirability of keeping the sums and allowances payable broadly in line with those payable in respect of persons attending, or providing information to, a tribunal constituted under any statutory provision or by virtue of Her Majesty's prerogative.
- (10) The conduct of an investigation in respect of a listed authority does not affect—
- (a) the validity of any action taken by the listed authority, or
  - (b) any power or duty of the listed authority to take further action with respect to any matter under investigation.

**Modifications etc. (not altering text)**

- C3** S. 30(5) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(1\)\(2\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C4** S. 30(5) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(2\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C5** S. 30(7)(a) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(1\)\(2\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C6** S. 30(7)(a) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(2\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C7** S. 30(7)(b) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(9\)\(a\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C8** S. 30(8) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(9\)\(b\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))

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#### Commencement Information

- I3** S. 30 wholly in operation at 1.4.2018; s. 30(1)-(3)(5)-(10) in operation at 1.4.2016 see s. 64(1); s. 30(4) in operation at 1.4.2018 see s. 64(5)(e)

#### Information, documents, evidence and facilities

**31.—(1)** For the purposes of an investigation, the Ombudsman may require the listed authority being investigated and any of the persons mentioned in subsection (2) to provide information or produce documents relevant to the investigation.

(2) Those persons are—

- (a) any member, officer or member of staff of the listed authority, and
- (b) any other person, who in the Ombudsman's opinion is able to provide this information or produce these documents.

(3) For the purposes of an investigation, the Ombudsman has the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad, and
- (b) the production of documents.

(4) For the purposes of an investigation, the Ombudsman may require a person who is able to provide information or produce a document relevant to the investigation, to provide any facility the Ombudsman may reasonably require.

(5) Subject to section 32(1) and (2), no person is compelled, for the purposes of an investigation, to give any evidence or produce any document which that person could not be compelled to give or to produce in civil proceedings in the High Court.

#### Modifications etc. (not altering text)

- C9** S. 31 (except s. 31(2)(a)(4)) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(1)(3)(b)(c) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, [Sch. 7 para. 5](#) (with ss. 23, 50(3), [Sch. 2 para. 9](#)))
- C10** S. 31 (except s. 31(2)(a)(4)) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(3)(a) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, [Sch. 7 para. 5](#) (with ss. 23, 50(3), [Sch. 2 para. 9](#)))
- C11** S. 31(3) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(9)(c) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, [Sch. 7 para. 5](#) (with ss. 23, 50(3), [Sch. 2 para. 9](#)))

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### **Privileged and confidential information**

**32.—**(1) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in the service of the Crown, whether imposed by any statutory provision or any rule of law, applies to the disclosure of information for the purposes of an investigation.

(2) A listed authority is not entitled in relation to any investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(3) No person is or may be required or authorised by virtue of this Act to provide any information or answer any question relating to proceedings of the Executive Committee of the Assembly or of a sub-committee of that Committee, or to produce so much of any document as relates to such proceedings.

(4) For the purpose of subsection (3) a certificate issued by the secretary of the Executive Committee of the Assembly with the approval of the First Minister and deputy First Minister acting jointly and certifying that any information, question, document or part of a document relates to any proceedings mentioned in that subsection is conclusive.

### **Obstruction and contempt**

**33.—**(1) If any person without lawful excuse“

- (a) obstructs the Ombudsman, any member of staff of the Ombudsman or any person authorised in accordance with paragraph 14(2) of Schedule 1 in the performance of functions under this Act, or
- (b) is guilty of any act in relation to an investigation under this Act which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Ombudsman may certify the offence to the High Court.

(2) Where an offence is certified under this section, the High Court may inquire into the matter and, after hearing“

- (a) any witnesses who may be produced against or on behalf of the person charged with the offence, and
- (b) any statement that may be offered in defence,

may deal with the person charged with the offence in any manner in which the court could deal with the person if the person had committed the like offence in relation to the court.

(3) This section does not apply to the taking of any action mentioned in section 30(10).



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#### **Modifications etc. (not altering text)**

- C12** S. 33(1) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(1\)\(4\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C13** S. 33(1) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(4\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C14** S. 33(1) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(9\)\(d\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C15** S. 33(2) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(1\)\(4\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C16** S. 33(2) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(4\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))
- C17** S. 33(2) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(9\)\(d\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))

## **PART 3**

### **COMPLAINTS HANDLING PROCEDURE**

#### **Meaning of complaints handling procedure**

**34** In this Act “complaints handling procedure” is the procedure of a listed authority for examining complaints in respect of matters which the Ombudsman may investigate.

#### **Statement of principles**

**35.—(1)** The Ombudsman must publish a statement of principles concerning complaints handling procedures of listed authorities.

(2) The first statement of principles is not to be published unless a draft of the statement has been laid before, and approved by a resolution of, the Assembly.

(3) Before laying a draft statement of principles before the Assembly, the Ombudsman must consult—

- (a) Ministers of Northern Ireland departments, and
- (b) such listed authorities and other persons as the Ombudsman thinks fit.

*Status: Point in time view as at 01/04/2022.*

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(4) The Ombudsman must, in preparing the draft statement of principles, have regard to any representations made during the consultation.

(5) The statement of principles comes into force when it is published by the Ombudsman.

(6) The Ombudsman may from time to time revise and re-publish the statement of principles.

(7) Where the Ombudsman considers that any revision of the statement of principles is material, subsections (2) to (5) apply to that statement of principles as they do to the first statement of principles.

**Commencement Information**

**I4** S. 35 in operation at 24.5.2021 by S.R. 2021/113, art. 3

**Obligation for listed authority to have complaints handling procedure**

**36.—**(1) A listed authority must ensure—

- (a) it has a complaints handling procedure in respect of action taken by the listed authority, and
- (b) any such procedure complies with the statement of principles.

(2) A listed authority which is responsible for a complaints handling procedure—

- (a) in relation to, or
- (b) operated by,

another listed authority, must ensure the procedure complies with the statement of principles.

**Commencement Information**

**I5** S. 36 in operation at 24.5.2021 by S.R. 2021/113, art. 3

**Model complaints handling procedures**

**37.—**(1) The Ombudsman may publish model complaints handling procedures for listed authorities.

(2) A model complaints handling procedure (referred to in this Act as a “model CHP”) must comply with the statement of principles.

(3) The Ombudsman may publish different model CHPs for different purposes.

*Status: Point in time view as at 01/04/2022.*

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(4) Before publishing a model CHP the Ombudsman must consult such listed authorities and other persons as the Ombudsman thinks fit.

(5) The Ombudsman may from time to time revise and re-publish any model CHP; and in doing so, subsection (4) applies.

(6) Where a model CHP is revised and re-published, section 38 has effect with the following modifications—

- (a) any specification under section 38(1) in relation to the model CHP continues in effect as a specification in relation to the revised and re-published model CHP,
- (b) any other reference to a model CHP is to the model CHP as revised and re-published,
- (c) section 38(2)(b) is omitted.

(7) The Ombudsman may withdraw any model CHP at any time; and any specification under section 38(1) in relation to the model CHP ceases to have effect upon that withdrawal.

#### Commencement Information

**I6** S. 37 in operation at 24.5.2021 by S.R. 2021/113, art. 3

#### Obligation for listed authority to comply with model CHPs

**38.—(1)** The Ombudsman may specify a listed authority to which a model CHP is relevant, and must notify the authority accordingly.

(2) Where a listed authority has been notified in accordance with subsection (1)—

- (a) the listed authority must ensure that there is a complaints handling procedure which complies with the model CHP,
- (b) the authority must submit a description of the complaints handling procedure, having taken account of the relevant model CHP, within 6 months of the specification.

(3) A listed authority may, with the consent of the Ombudsman, modify the application of the model CHP which is relevant to it, but only to the extent that is necessary for the effective operation of the procedure by the authority.

(4) The Ombudsman may revoke a specification at any time.

#### Commencement Information

**I7** S. 38 in operation at 24.5.2021 by S.R. 2021/113, art. 3

*Status: Point in time view as at 01/04/2022.*

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### **Declaration of non-compliance of complaints handling procedure**

**39.—**(1) The Ombudsman may make a declaration of non-compliance in relation to a complaints handling procedure if subsection (2) or (3) applies.

(2) This subsection applies where the Ombudsman—

- (a) has specified that a model CHP is relevant to a listed authority, and
- (b) is of the opinion that a listed authority's complaints handling procedure does not comply with the model CHP.

(3) This subsection applies where the Ombudsman—

- (a) has not specified that a model CHP is relevant to a listed authority, and
- (b) is of the opinion that a listed authority's complaints handling procedure does not comply with the statement of principles.

(4) Where a declaration is made, the Ombudsman—

- (a) must give reasons in writing,
- (b) may specify such modifications to the complaints handling procedure as would result in the declaration being withdrawn.

(5) Where a declaration is made, the listed authority must submit a description of its complaints handling procedure to the Ombudsman, having taken account of the reasons given under subsection (4)(a) and any modifications specified under subsection (4)(b), within 2 months of the declaration.

(6) The Ombudsman may withdraw a declaration at any time if the Ombudsman thinks fit.

#### **Commencement Information**

**18** S. 39 in operation at 24.5.2021 by S.R. 2021/113, art. 3

### **Submission of description of complaints handling procedure: general**

**40.—**(1) A listed authority must submit a description of its complaints handling procedure to the Ombudsman if the Ombudsman so directs.

(2) The description must be submitted within three months of being so directed, or such other period as the Ombudsman may direct.

(3) Sections 38(2)(b) and 39(5) are subject to any direction given under this section.

(4) Where a listed authority has submitted a description of its complaints handling procedure to the Ombudsman under this Act or otherwise, the authority must provide such additional information in relation to that procedure as the Ombudsman may reasonably request.

*Status: Point in time view as at 01/04/2022.*

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(5) The additional information must be provided within such period as the Ombudsman directs.

**Commencement Information**

**I9** S. 40 in operation at 24.5.2021 by S.R. 2021/113, art. 3

**Application of other enactments**

- 41** The duties in sections 36 and 38(2)(a) do not apply to the extent that—
- (a) the listed authority lacks necessary powers (other than by virtue of this Act) to ensure compliance with the duties, or
  - (b) the duties are inconsistent with any other statutory provision.

**Commencement Information**

**I10** S. 41 in operation at 24.5.2021 by S.R. 2021/113, art. 3

**Promotion of best practice etc.**

- 42.**—(1) The Ombudsman must—
- (a) monitor practice and identify any trends in practice as respects the way in which listed authorities handle complaints,
  - (b) promote best practice in relation to such complaints handling,
  - (c) encourage co-operation and the sharing of best practice among listed authorities in relation to complaints handling.
- (2) A listed authority must co-operate with the Ombudsman in the exercise of the function in subsection (1).
- (3) The duty in subsection (2) does not apply to the extent that—
- (a) the listed authority lacks the necessary powers (other than by virtue of this Act) to ensure compliance with the duty, or
  - (b) the duty is inconsistent with any other statutory provision.

**Commencement Information**

**I11** S. 42 in operation at 24.5.2021 by S.R. 2021/113, art. 3

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## PART 4

### MISCELLANEOUS AND GENERAL

#### *Reports*

##### **Reports on investigations**

**43.—**(1) The Ombudsman must send a report of—

- (a) an investigation,
- (b) the reasons for discontinuing an investigation,
- (c) the reasons for not investigating a complaint,

as the case may be, to the persons referred to in subsection (2).

(2) Those persons are—

- (a) a person aggrieved,
- (b) the listed authority investigated, or which it was proposed be investigated,
- (c) any other person alleged to have taken the action to which a complaint relates, and
- (d) any other person that the Ombudsman considers appropriate.

(3) A report of the reasons for not investigating a complaint need only be sent to a person referred to in subsection (2)(b) or (c) if the Ombudsman considers it appropriate to do so.

(4) Where a report is to be sent to a person referred to in subsection (2)(c), the Ombudsman may determine to only send to that person the part of the report which relates to that person, if the Ombudsman considers it appropriate to do so.

##### **Publication of reports on investigations in the public interest**

**44.—**(1) This section—

- (a) applies where the Ombudsman proposes to publish a report of a type referred to in section 43(1), but
- (b) does not apply in respect of an investigation conducted under section 8.

(2) The Ombudsman must give notice of this proposal to the persons referred to in section 43(2).

(3) The notice must set out why the Ombudsman believes it would be in the public interest to publish the report.

(4) The Ombudsman may publish the report if, after taking account of the interests of any person aggrieved and any other person considered appropriate, the Ombudsman considers it to be in the public interest to do so.

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(5) The Ombudsman may, for a reasonable fee, supply a copy of the report, or any part of it, to any person who requests it.

### **Publication of reports on own initiative investigations**

**45.—**(1) The Ombudsman must publish a report of an investigation conducted under section 8.

(2) The Ombudsman may, for a reasonable fee, supply a copy of the report, or any part of it, to any person who requests it.

### **Reports to the Assembly**

**46.—**(1) The Ombudsman must lay before the Assembly annually a general report on the exercise of the Ombudsman's functions.

(2) If, after conducting an investigation (other than one under section 8) it appears to the Ombudsman that—

(a) an injustice has been sustained by a person aggrieved, and

(b) the injustice has not been, or will not be, remedied or adequately remedied,

the Ombudsman may lay before the Assembly a special report on the investigation.

(3) Where the Ombudsman has conducted an investigation under section 8, the Ombudsman must lay the report on that investigation before the Assembly.

(4) The Ombudsman may lay before the Assembly such other reports on the exercise of the Ombudsman's functions as the Ombudsman thinks fit.

#### **Modifications etc. (not altering text)**

**C18** S. 46(1) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(1\)\(5\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))

**C19** S. 46(1) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(5\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))

**C20** S. 46(4) applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(1\)\(5\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))

**C21** S. 46(4) applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\), s. 63\(5\)](#) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\), s. 64, Sch. 7 para. 5](#) (with ss. 23, 50(3), Sch. 2 para. 9))

*Status: Point in time view as at 01/04/2022.*

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#### Commencement Information

- I12** S. 46 wholly in operation at 1.4.2018; s. 46(1)(2)(4) in operation at 1.4.2016 see s. 64(1); s. 46(3) in operation at 1.4.2018 see s. 64(5)(g)

#### Reports and privileged information

**47.—**(1) This section applies where the Ombudsman has obtained documents or evidence under section 31(1) by virtue of section 32(2).

(2) A report made by the Ombudsman under sections 43 to 46—

- (a) may disclose that documents or evidence of this nature were obtained, but
- (b) must not disclose the content of those documents or that evidence.

#### *Protection from defamation*

#### Privilege for certain publications

**48.—**(1) For the purposes of the law of defamation, any publication to which this section applies is absolutely privileged.

(2) This section applies to—

- (a) publication by the Ombudsman of a report under this Act,
- (b) publication by the Ombudsman of any statement made in communication with any person, in connection with an investigation,
- (c) publication by a person aggrieved, in the course of communication with the Ombudsman, of any statement made by the person aggrieved in connection with an investigation,
- (d) publication by the Ombudsman of any other matter in the discharge of the Ombudsman's functions under this Act.

(3) In this section "statement" has the meaning given in the Defamation Act 1996.

#### Modifications etc. (not altering text)

- C22** S. 48 applied (with modifications) by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(1)(6) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, [Sch. 7 para. 5](#) (with ss. 23, 50(3), [Sch. 2 para. 9](#)))
- C23** S. 48 applied by [Local Government Act \(Northern Ireland\) 2014 \(c. 8\)](#), s. 63(6) (as substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(c. 4\)](#), s. 64, [Sch. 7 para. 5](#) (with ss. 23, 50(3), [Sch. 2 para. 9](#)))



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## Disclosure

### Disclosure of information

- 49.—(1) The information to which this section applies is—
- (a) information obtained by the Ombudsman—
    - (i) in deciding whether to begin an investigation,
    - (ii) in the course of an investigation,
    - (iii) in resolving a complaint under section 10,
  - (b) information obtained by the Ombudsman which is obtained from a person mentioned in section 51(4),
  - (c) information obtained by the Ombudsman which is obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except—
- (a) for the purposes of deciding whether to begin an investigation,
  - (b) for the purposes of an investigation,
  - (c) for the purposes of resolving a complaint under section 10,
  - (d) for the purposes of a statement or report made in relation to a complaint or investigation,
  - (e) for the purposes of any provision of section 51,
  - (f) for the purposes of proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Ombudsman,
  - (g) for the purposes of proceedings for an offence of perjury alleged to have been committed in the course of an investigation,
  - (h) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f) and (g),
  - (i) for the purposes of proceedings under section 33 or sections 54 and 55,
  - (j) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest,
  - (k) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (3) This subsection applies to information if it appears to the Ombudsman to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or

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(b) the commission of an offence mentioned in subsection (5).

(4) The enactments are—

[<sup>F2</sup>(a) sections 142 to 154, 160 to 164 and 174 to 176 of, or Schedule 15 to, the Data Protection Act 2018 (certain provisions relating to enforcement),]

(b) section 48 of the Freedom of Information Act 2000 (practice recommendations),

(c) Part 4 of that Act (enforcement).

[<sup>F3</sup>(5) The offences are those under—

(a) any provision of the Data Protection Act 2018 other than paragraph 15 of Schedule 15 (powers of entry and inspection: offences),

(b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).]

(6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1).

[<sup>F4</sup>(7) In this section, “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).]

#### Textual Amendments

**F2** S. 49(4)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 204(2)** (with ss. 117, 209, 210, Sch. 20 para. 47(1)); S.I. 2018/625, reg. 2(1)(g)

**F3** S. 49(5) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 204(3)** (with ss. 117, 209, 210, Sch. 20 para. 47(2)); S.I. 2018/625, reg. 2(1)(g)

**F4** S. 49(7) inserted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 204(4)** (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

#### Modifications etc. (not altering text)

**C24** S. 49 applied (with modifications) by Local Government Act (Northern Ireland) 2014 (c. 8), s. 63(1)(7) (as substituted (1.4.2016) by Public Services Ombudsman Act (Northern Ireland) 2016 (c. 4), s. 64, **Sch. 7 para. 5** (with ss. 23, 50(3), Sch. 2 para. 9))

**C25** S. 49 applied by Local Government Act (Northern Ireland) 2014 (c. 8), s. 63(7)(a) (as substituted (1.4.2016) by Public Services Ombudsman Act (Northern Ireland) 2016 (c. 4), s. 64, **Sch. 7 para. 5** (with ss. 23, 50(3), Sch. 2 para. 9))

**C26** S. 49 applied (with modifications) by Local Government Act (Northern Ireland) 2014 (c. 8), s. 63(7)(b)(c)(d) (as substituted (1.4.2016) by Public Services Ombudsman Act (Northern Ireland) 2016 (c. 4), s. 64, **Sch. 7 para. 5** (with ss. 23, 50(3), Sch. 2 para. 9))

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### **Disclosure contrary to public interest**

**50.**—(1) A person to whom subsection (2) applies may give written notice to the Ombudsman with respect to—

- (a) any document or information specified in the notice, or
- (b) any class of document or information so specified,

that in the opinion of that person, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to public safety or otherwise contrary to the public interest.

(2) This subsection applies to—

- (a) the First Minister and deputy First Minister acting jointly,
- (b) a Northern Ireland Minister, and
- (c) the Secretary of State.

(3) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

(4) The Ombudsman and the Secretary of State must enter into, and may from time to time revise, a memorandum of understanding concerning the exercise of their functions in relation to this section.

(5) The Ombudsman must lay before the Assembly a copy of this memorandum and any revisions to it.

### *Consultation and co-operation with other ombudsmen*

### **Consultation and co-operation with other ombudsmen**

**51.**—(1) This section applies if, at any stage in the course of considering a complaint or conducting an investigation, the Ombudsman forms the opinion that the matter could be the subject of an investigation by a person mentioned in subsection (4).

(2) The Ombudsman must consult that person about the matter.

(3) The Ombudsman may co-operate with that person, including co-operation—

- (a) by way of disclosure of information relating to the complaint or investigation,
- (b) in the conduct of the investigation,
- (c) in the form, content and publication of a report.

(4) The persons referred to in subsection (1) are—

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- (a) the Parliamentary Commissioner for Administration under the Parliamentary Commissioner Act 1967,
- (b) the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002,
- (c) the Commissioner for Children and Young People for Northern Ireland under the Commissioner for Children and Young People (Northern Ireland) Order 2003,
- (d) the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,
- (e) the Commissioner for Older People for Northern Ireland under the Commissioner for Older People Act (Northern Ireland) 2011,
- (f) the Equality Commission for Northern Ireland under the Northern Ireland Act 1998,
- (g) the Northern Ireland Human Rights Commission under the Northern Ireland Act 1998,
- (h) the Ombudsman in the Republic of Ireland, in respect of complaints about or investigations into an implementation body to which the North/South Co-operation (Implementation Bodies) (Northern Ireland) Order 1999 applies,
- (i) a local government auditor within the meaning of Article 4 of the Local Government (Northern Ireland) Order 2005,
- (j) the Comptroller and Auditor General, and
- (k) the Health and Social Care Regulation and Quality Improvement Authority under the Health and Social Care (Reform) Act (Northern Ireland) 2009.

#### *Court proceedings*

#### **Application to county court by person aggrieved**

**52.—**(1) This section applies where, following a complaint under section 5 or 6, the Ombudsman reports that—

- (a) the requirements of section 5 or 6 (as the case may be) have been satisfied, and
- (b) the person aggrieved has sustained an injustice.

(2) The person aggrieved may apply to the county court for relief under section 53.

(3) The application must be made in accordance with county court rules and upon notice to the listed authority.

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### **Relief granted by county court**

**53.—**(1) Following an application under section 52, the county court may award damages to be paid by the listed authority concerned to the person aggrieved.

(2) Damages must be of an amount which the court thinks just in all the circumstances to compensate the person for any loss or injury which the person may have suffered on account of—

- (a) expenses reasonably incurred by the person in connection with the injustice, and
- (b) the person's loss of opportunity of acquiring the benefit which the person might reasonably be expected to have had but for the injustice.

(3) In calculating the amount of damages to be awarded by virtue of subsection (2)(b) the court must apply the same rule concerning the duty of a person to mitigate loss as applies in relation to damages recoverable at common law.

(4) Where it appears to the court that justice could only be done to the person by directing the listed authority to take, or refrain from taking, any particular action, the court may, if satisfied that in all the circumstances it is reasonable to do so, make an order containing such a direction.

(5) Where an order under subsection (4) is duly served on the listed authority, disobedience to that order by that authority or any member or officer of that authority may be treated as contempt of court to which Article 55 of the County Courts (Northern Ireland) Order 1980 applies.

(6) Without prejudice to Articles 61 and 65 of that Order, the listed authority or the person aggrieved may, if dissatisfied with an order of the court under this section, appeal from that order as if it had been made in the exercise of the jurisdiction conferred by Part 3 of that Order and the appeal were brought under Article 60 of that Order.

(7) The powers conferred on the court by this section may be exercised notwithstanding anything to the contrary in any statutory provision which imposes limitations on its jurisdiction by reference to an amount claimed or to the value of property.

### **Application to High Court by Attorney General**

**54.—**(1) This section applies where the Ombudsman is of the opinion, following an investigation, that—

- (a) there is systemic maladministration in a listed authority, and
- (b) that systemic maladministration is likely to continue unless the High Court grants relief under section 55.

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(2) This section also applies where the Ombudsman is of the opinion, following an investigation carried out in accordance with section 15(2)(b), 16(2)(b), or 17(2)(b), that—

- (a) systemic injustice has been sustained as a result of the exercise of professional judgement, and
- (b) that systemic injustice is likely to continue unless the High Court grants relief under section 55.

(3) The Attorney General for Northern Ireland may, at the request of the Ombudsman, apply to the High Court for relief under section 55.

### **Relief granted by High Court**

**55.**—(1) This section applies where the High Court is satisfied as to the matters mentioned in section 54(1) or (2).

(2) The court may grant such mandatory or other injunction or such declaration or other relief as appears to it to be proper in all the circumstances.

(3) Without prejudice to the generality of the foregoing, the court may grant an injunction restraining the listed authority, or any member or officer of the listed authority, from engaging in, or permitting others to engage in—

- (a) the systemic maladministration (in the case of an application in respect of section 54(1)), or
- (b) the professional judgement causing the systemic injustice (in the case of an application in respect of section 54(2)).

(4) The court may, in determining whether the matters mentioned in section 54(1) or (2) are satisfied, take into account not only the matters investigated by the Ombudsman under section 5, 6 or 8, but also any other matters which appear to the court to be relevant.

### **Court proceedings and privileged information**

**56** Documents or evidence obtained by the Ombudsman under section 31(1) by virtue of section 32(2) for the purposes of an investigation are not admissible for the purposes of any proceedings under sections 52 to 55.

### **Supplementary provision in relation to court proceedings**

**57.**—(1) For the purposes of any proceedings under sections 52 to 55—

- (a) a report of the Ombudsman relating to an investigation is to be accepted as evidence of the facts stated within it, unless the contrary is proven, and
- (b) the authenticity of the report may be proved by production of a certificate of its authenticity signed by the Ombudsman.

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(2) Nothing in sections 52 to 55 affects the right to bring any proceedings, whether civil or criminal, which may be brought otherwise than under those sections.

## **PART 5**

### THE NORTHERN IRELAND JUDICIAL APPOINTMENTS OMBUDSMAN

#### **Ombudsman to be Judicial Appointments Ombudsman**

**58.—**(1) For section 9A(2) of the Justice (Northern Ireland) Act 2002 (appointment of Northern Ireland Judicial Appointments Ombudsman) substitute—

“(2) The Northern Ireland Public Services Ombudsman is, by virtue of holding that office, the Northern Ireland Judicial Appointments Ombudsman.”

(2) Schedule 6 (which makes amendments consequent upon the Ombudsman being the Northern Ireland Judicial Appointments Ombudsman) has effect.

(3) The person holding office as Northern Ireland Judicial Appointments Ombudsman immediately before the coming into operation of this section ceases to hold that office upon the coming into operation of this section.

## **PART 6**

### SUPPLEMENTARY PROVISIONS

#### **Interpretation**

**59** In this Act—

“action taken by a listed authority” has the meaning given in section 13,

“Assembly Commission” means the Northern Ireland Assembly Commission,

“complaints handling procedure” has the meaning given in section 34,

“the Crown” means the Crown in right of Her Majesty's Government in Northern Ireland, except—

(a) in the expression “Minister of the Crown”, and

(b) in paragraphs 1 and 15 of Schedule 1,

“existing offices” has the meaning given in section 4,

“general health care provider” has the meaning given in section 16,

“health and social care body” means any of the following bodies—

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- (a) health and social care trusts,
- (b) special health and social care agencies,
- (c) <sup>F5</sup> ...
- (d) the Regional Agency for Public Health and Social Well-being,
- (e) the Regional Business Services Organisation, and
- (f) the Health and Social Care Regulation and Quality Improvement Authority,

“independent provider of health and social care” has the meaning given in section 17,

“Minister” means—

- (a) Minister of a Northern Ireland department, and
- (b) junior Minister,

“model CHP” has the meaning given in section 37,

“Northern Ireland Minister” has the same meaning as in the Northern Ireland Act 1998,

“Ombudsman” means the Northern Ireland Public Services Ombudsman,

“person aggrieved” has the meaning given in section 5(1),

“statement of principles” has the meaning given in section 35,

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954, and

“tribunal” includes any authority, body or person having power to determine any matter.

#### Textual Amendments

- F5** Words in s. 59 omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 250\(2\)](#); S.R. 2022/102, art. 2(b)

#### Power to make further provision

**60** The Assembly Commission may by order make such supplementary, incidental, consequential or transitional provision as it considers necessary or expedient for the purposes of, or in consequence of, or for giving full effect to, any provision made by or under this Act.

#### Orders

**61.**—(1) No order to which subsection (2) applies is to be made unless a draft of the order has been laid before, and approved by resolution of, the Assembly.



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(2) This subsection applies to an order under section 12(2), 19(3), 22(2) or 60.

(3) Orders under paragraph 6(1) of Schedule 1 are subject to negative resolution.

(4) Orders mentioned in this section may contain such incidental, consequential, supplementary, transitional and savings provisions as appear to the authority making them to be necessary or expedient.

### **Amendments to Part 9 of the Local Government Act (Northern Ireland) 2014**

**62** Schedule 7 (which makes amendments to Part 9 of the Local Government Act (Northern Ireland) 2014) (conduct of councillors) has effect.

### **Other minor and consequential amendments**

**63** Schedule 8 (which makes other minor and consequential amendments) has effect.

### **Commencement**

**64.**—(1) Except as provided below, the provisions of this Act come into operation on 1 April 2016.

(2) The following provisions come into operation on the day after this Act receives Royal Assent—

- (a) section 1 (including Schedule 1),
- (b) section 3,
- (c) section 34,
- (d) section 59,
- (e) section 60,
- (f) section 61,
- (g) this section,
- (h) section 66,
- (i) in Schedule 2, paragraphs 5, 11 and 13.

(3) The following provisions come into operation on 1 October 2016—

- (a) section 14(2)(d),
- (b) section 18,
- (c) in Schedule 3, the entries relating to—
  - (i) an institution of further education,
  - (ii) University of Ulster,
  - (iii) The Queen's University of Belfast,

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(d) in Schedule 9—

(i) in the entry relating to the Commissioner for Children and Young People (Northern Ireland) Order 2003, the repeal of paragraph 7 of Schedule 1 (institutions of further education),

(ii) in the entry relating to the Commissioner for Older People Act (Northern Ireland) 2011, the repeal of paragraph 4 of Schedule 3 (institutions of further education).

(4) The following provision comes into operation on 1 April 2017—

(a) in Schedule 3, the entry relating to the board of governors of a grant-aided school,

(b) in Schedule 9, in the entry relating to the Commissioner for Children and Young People (Northern Ireland) Order 2003, the repeal of paragraph 5 of Schedule 1 (the board of governors of grant-aided schools).

(5) The following provisions come into operation on 1 April 2018—

(a) section 8,

(b) section 9,

(c) section 11(c),

(d) section 29,

(e) section 30(4),

(f) section 45,

(g) section 46(3).

(6) Part 3 (other than section 34) comes into operation on such day as the Assembly Commission may by order appoint.

### **Repeals**

**65** The statutory provisions mentioned in Schedule 9 are repealed to the extent specified in the second column of that Schedule.

### **Short title**

**66** This Act may be cited as the Public Services Ombudsman Act (Northern Ireland) 2016.

**Status:**

Point in time view as at 01/04/2022.

**Changes to legislation:**

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