

*Status: Point in time view as at 01/09/2016.*

*Changes to legislation: There are currently no known outstanding effects for the Justice Act (Northern Ireland) 2016, Cross Heading: Complaints. (See end of Document for details)*



## 2016 CHAPTER 21

### **PART 2**

#### The Prison Ombudsman For Northern Ireland

##### *Complaints*

##### **Complaints**

**35.—(1)** Subject to subsection (6), the Ombudsman shall carry out an investigation into a complaint to which this section applies.

(2) This section applies to a complaint if—

(a) the complaint is about a matter which relates—

(i) to the way in which a prisoner has been treated by a prison officer;

(ii) to the way in which a person visiting a prison has been treated by a prison officer;

(iii) to the facilities available to a person at a prison (including, in the case of a prisoner, facilities for the welfare of the prisoner);

(iv) to the cleanliness and adequacy of a prison;

(b) the complaint is made to the Ombudsman by a person entitled to make it; and

(c) the relevant internal complaints procedures have been exhausted in relation to the complaint.

(3) A person is entitled to make a complaint about a matter if that person—

(a) is a prisoner or visitor to a prison who is directly affected by that matter; or

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- (b) where the person mentioned in paragraph (a) is dead or unable to act, appears to the Ombudsman to be an appropriate person to make the complaint.
- (4) The relevant internal complaints procedures are exhausted in relation to a complaint where in the opinion of the Ombudsman any procedures for dealing with the complaint set out in prison rules have been exhausted.
- (5) Regulations may—
  - (a) amend the list of matters set out in subsection (2)(a) or provide that subsection (2)(a) does not apply to a prescribed matter;
  - (b) amend subsection (3) so as to provide for a prescribed person or a person of a prescribed description also to be entitled to make a complaint;
  - (c) make any amendments to this Part which are consequential on or incidental to provision made under paragraph (a) or (b).
- (6) Where a complaint to which this section applies is made to the Ombudsman, the Ombudsman may decide not to investigate the complaint if the Ombudsman considers that the complaint—
  - (a) is frivolous, vexatious or raises no substantial issue; or
  - (b) has not been made within a reasonable time from the exhaustion of the internal complaints procedures.
- (7) The Ombudsman may defer an investigation under this section at any time if it appears to the Ombudsman that—
  - (a) a criminal investigation might be adversely affected by the Ombudsman's investigation;
  - (b) the exercise of functions under the Health and Safety at Work (Northern Ireland) Order 1978 might be adversely affected by the Ombudsman's investigation;
  - (c) it is appropriate to do so because of any proceedings for judicial review; or
  - (d) it is appropriate to do so for any other reason.
- (8) The Ombudsman may at any time re-open a deferred investigation.
- (9) The Ombudsman shall decide the extent of an investigation under this section.
- (10) If the Ombudsman decides—
  - (a) not to investigate a complaint, or to investigate it only to a limited extent,
  - (b) to defer the investigation of a complaint, or
  - (c) to re-open an investigation which has been deferred,the Ombudsman shall notify the complainant (with a brief statement of the reasons for the decision) and may notify such other persons as the Ombudsman thinks fit.

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(11) Notification under subsection (10) may be given orally.

(12) If the complainant has died or is unable to act, the reference in subsection (10) to the complainant is to be read as a reference to the person who appears to the Ombudsman to be the most appropriate person to receive the notification.

(13) Regulations may make provision for the procedures to be followed in connection with the making and investigation of a complaint to which this section applies.

(14) Subject to the provisions of any such regulations and to any other provision of this Part, it is for the Ombudsman to determine the procedures applicable to anything which is to be done in relation to a complaint or the investigation of the complaint.

(15) At any time in the course of an investigation under this section the Ombudsman shall—

- (a) draw to the attention of the police any matter which in the Ombudsman's opinion is relevant to any criminal investigation;
- (b) draw to the attention of any body or person any matter which in the Ombudsman's opinion calls for action to be taken by that body or person.

#### Commencement Information

**II** S. 35(5)(13) in operation at 1.9.2016 for specified purposes by S.R. 2016/248, art. 3(a)

#### Report of investigation of complaint

**36.—(1)** Where the Ombudsman has carried out an investigation into a complaint to which section 35 applies, the Ombudsman shall report in writing on the outcome of the investigation to—

- (a) the Department, and
- (b) the complainant.

(2) The Ombudsman may also report in writing on that outcome to any other person the Ombudsman considers should receive the report.

(3) In a report to the Department the Ombudsman may make recommendations about any matter arising from the complaint or investigation.

(4) Where such recommendations are made in a report, the Department must, within the required period, respond in writing to the Ombudsman setting out (with reasons) what it proposes to do about the recommendations.

(5) The required period is the period of 28 days commencing with the day on which the Department receives the report or such longer period as the Ombudsman may in the case of any report allow.

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(6) The Ombudsman may report on that response to such persons as the Ombudsman may think fit.

(7) Regulations may make provision as to the procedures to be followed in relation to reports under this section and may in particular include provision—

- (a) enabling the Ombudsman to show any person a draft of the whole or any part of a report;
- (b) restricting or prohibiting the identification of prescribed persons or persons of a prescribed description in a report or the inclusion of information of a prescribed description;
- (c) providing for cases where the complainant has died or is unable to act.

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**Commencement Information**

**I2** S. 36(7) in operation at 1.9.2016 for specified purposes by S.R. 2016/248, art. 3(b)

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