
STATUTORY INSTRUMENTS

1996 No. 1298

The Ombudsman (Northern Ireland) Order 1996 (revoked)

Investigations by the Ombudsman

F1 functions transf. by SR 1999/481

Authorities subject to investigation

8.—(1) Subject to the provisions of this Article and to the notes contained in Schedule 2, this Order applies to the departments and other authorities listed in Schedule 2.

(2) The Department may by order amend Schedule 2 by the alteration of any entry or note, the removal of any entry or note or the insertion of any additional entry or note.

(3) Nothing in paragraph (2) authorises the inclusion in Schedule 2 of any authority unless it is—

- (a) a department; or
- (b) an authority whose functions are exercised on behalf of the Crown.

(4) In this Order—

- (a) any reference to a department to which this Order applies includes a reference to the head of that department and the officers of that department;
- (b) any reference to any other authority to which this Order applies includes a reference to the members and officers of that authority.

Matters subject to investigation

9.—(1) Subject to the provisions of this Order, the Ombudsman may investigate any action taken—

- (a) by or on behalf of a department or other authority to which this Order applies; and
- (b) in the exercise of administrative functions of that department or authority.

(2) The Ombudsman may investigate any action taken as mentioned in paragraph (1) only if—

- (a) a written complaint is duly made to a member of the Assembly by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and
- (b) the complaint is referred to the Ombudsman, with the consent of the person who made it, by a member of the Assembly with a request to conduct an investigation into it.

(3) In this Order “person aggrieved” means the person who claims or is alleged to have sustained such injustice as is mentioned in paragraph (2)(a).

(4) For the purposes of this Article, administrative functions exercisable by any person appointed or assigned to serve as a member of the administrative staff of a tribunal listed in Schedule 3 —

- (a) by a department or authority to which this Order applies; or

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- (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such a department or authority,
shall be taken to be administrative functions of that department or authority.
- (5) The Department may by order amend Schedule 3 by the alteration or removal of any entry or the insertion of any additional entry.

Matters not subject to investigation

10.—(1) The Ombudsman shall not conduct an investigation under this Order in respect of any such actions or matters as are described in Schedule 4.

(2) The Department may by order amend Schedule 4 so as to exclude from the provisions of that Schedule any such action or matter as is described in that order.

(3) Subject to paragraph (4) and to^{F1} section 78 of the Northern Ireland Act 1998], the Ombudsman shall not conduct an investigation under this Order in respect of—

- (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 otherwise;
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.

(4) The Ombudsman may conduct an investigation—

- (a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in paragraph (3), if the Ombudsman is satisfied that in the particular circumstances it is not reasonable to expect him to resort to or have resorted to it; or
- (b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in paragraph (3)(a), if he complains that the injustice sustained by him remains unremedied thereby and the Ombudsman is satisfied that there are reasonable grounds for that complaint.

(5) Nothing in this Order authorises or requires the Ombudsman to question the merits of a decision taken without maladministration by a department or authority to which this Order applies in the exercise of a discretion vested in that department or authority.

F1 1998 c. 47

Provisions relating to complaints

11.—(1) A complaint under this Order may be made by—

- (a) any individual; or
- (b) any body (whether incorporated or not), other than a body to which paragraph (2) applies.

(2) This paragraph applies to—

- (a) a district council or other body constituted for the purposes of local government;
- (b) a body constituted for the purposes of—
 - (i) the public service; or
 - (ii) carrying on under national or public ownership any industry or undertaking or part thereof;
- (c) any other body—

- (i) whose members are appointed by Her Majesty, a Minister of the Crown, a department of the Government of the United Kingdom, the head of a department or a department; or
 - (ii) whose revenues consist wholly or mainly of moneys appropriated by Measure or provided by the Parliament of the United Kingdom.
- (3) Except as provided by paragraph (4), a complaint shall not be entertained under this Order unless made by the person aggrieved himself.
- (4) Where the person by whom a complaint might have been made under this Order—
- (a) has died; or
 - (b) is for any reason unable to act for himself,
- the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him.
- (5) Except as provided by paragraph (6) a complaint shall not be entertained under this Order unless it is made to a member of the Assembly not later than 12 months from the day on which the person aggrieved first had knowledge of the matters alleged in the complaint.
- (6) The Ombudsman may conduct an investigation pursuant to a complaint not made within the period mentioned in paragraph (5) if he considers that there are special circumstances which make it proper to do so.
- (7) A complaint shall not be entertained under this Order unless—
- (a) the person aggrieved is resident in Northern Ireland or (if he is dead) was so resident at his death; or
 - (b) the complaint relates to action taken in relation to the person aggrieved while he was present in Northern Ireland or in relation to rights or obligations which accrued or arose in Northern Ireland.
- (8) Any question whether a complaint is duly made under this Order shall be determined by the Ombudsman.

Purposes of investigation

- 12.** The purposes of the investigation by the Ombudsman shall be—
- (a) to ascertain if the matters alleged in the complaint—
 - (i) may properly warrant investigation by him under this Order;
 - (ii) are, in substance, true; and
 - (iii) disclose any maladministration by or on behalf of the department or authority concerned; and
 - (b) where it appears to the Ombudsman to be desirable—
 - (i) to effect a settlement of the matter complained of; or
 - (ii) if that is not possible, to state what action should in his opinion be taken by the department or authority concerned to effect a fair settlement of that matter or by that department or authority or by the person aggrieved to remove, or have removed, the cause of complaint.

Procedure in respect of investigations

13.—(1) In determining whether to initiate, continue or discontinue an investigation under this Order, the Ombudsman shall, subject to the foregoing provisions, act in accordance with his own discretion.

(2) Where the Ombudsman proposes to conduct an investigation pursuant to a complaint under this Order, he shall afford to—

- (a) the principal officer of the department or authority concerned; and
- (b) 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 contained in the complaint.

(3) Every investigation under this Order shall be conducted in private.

(4) Except as otherwise provided by this Order, the procedure for conducting an investigation shall be such as the Ombudsman considers appropriate in the circumstances of the case.

(5) The Ombudsman may—

- (a) obtain information from such persons and in such manner, and make such enquiries, as he thinks fit;
- (b) determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.

(6) The Ombudsman may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation under this Order—

- (a) sums in respect of expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time,

in accordance with such scales and subject to such conditions as the Department may determine.

(7) An investigation under this Order shall not affect—

- (a) any action taken by the department or authority concerned;
- (b) any power or duty of that department or authority to take further action with respect to any matters subject to the investigation.

Evidence

14.—(1) For the purposes of an investigation under this Order the Ombudsman may require—

- (a) the head of any department concerned or an officer of any such department;
- (b) any officer or member of any other authority concerned; or
- (c) any other person who in his opinion is able to furnish such information or produce such documents,

to furnish information or produce documents relevant to the investigation.

(2) For the purposes of an investigation under this Order the Ombudsman shall have 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.

(3) Any obligation to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to persons in the service of the Crown, whether imposed by any statutory

provision or by any rule of law, shall not apply to the disclosure of information for the purposes of an investigation under this Order.

(4) The Crown shall not be entitled in relation to any investigation under this Order to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.

(5) A person shall not be required or authorised by virtue of this Order to furnish any information or answer any question relating to any proceedings of the[F² 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.

(6) For the purpose of paragraph (5) a certificate issued by the secretary of the[F² Executive Committee of the Assembly] with the approval of the[F² 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 paragraph shall be conclusive.

(7) Subject to paragraphs (3) and (4), a person shall not be compelled for the purposes of any investigation under this Order to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings in the High Court.

F2 SI 1999/663

Obstruction and contempt

15.—(1) If any person without lawful excuse—

- (a) obstructs the Ombudsman or any officer of the Ombudsman in the performance of his functions under this Order; or
- (b) is guilty of any act in relation to an investigation under this Order 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 Article, 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 him if he had committed the like offence in relation to the court.

(3) This Article does not apply to the taking of any action mentioned in Article 13(7).

Reports on investigations

16.—(1) In any case where the Ombudsman—

- (a) conducts an investigation under this Order; or
- (b) decides not to conduct an investigation,

he shall send a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation to the member of the Assembly by whom the request for an investigation was made, or if he is no longer a member of the Assembly to such member of the Assembly as the Ombudsman thinks appropriate.

(2) In any case where the Ombudsman conducts an investigation under this Order, he shall also send a report of the results of the investigation to—

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- (a) the principal officer of the department or authority concerned;
- (b) any other person who is alleged in the relevant complaint to have taken or authorised the action complained of.

Reports to the Assembly

17.—(1) The Ombudsman shall annually lay before the Assembly a general report on the performance of his functions under this Order and may from time to time lay before the Assembly such other reports with respect to those functions as he thinks fit.

(2) If, after conducting an investigation under this Order, it appears to the Ombudsman that—

- (a) injustice has been sustained by the person aggrieved consequence of maladministration; and
- (b) the injustice has not been, or will not be, remedied,

he may, if he thinks fit, lay before the Assembly a special report upon the case.

Privilege for certain publications

18.—(1) For the purposes of the law of defamation, any publication to which this Article applies shall be absolutely privileged.

(2) This Article applies to—

- (a) the publication of any matter by the Ombudsman in making a report to the Assembly for the purposes of this Order;
- (b) the publication of any matter by a member of the Assembly in communicating with the Ombudsman or his officers for those purposes or by the Ombudsman or his officers in communicating with such a member for those purposes;
- (c) the publication by a member of the Assembly to the person by whom a complaint was made under this Order of a report or statement sent to the member in respect of the complaint in pursuance of Article 16(1);
- (d) the publication by the Ombudsman to such a person as is mentioned in paragraph (2) of Article 16 of a report sent to that person in pursuance of that paragraph.

Disclosure of information by Ombudsman

19.—(1) Information obtained by the Ombudsman or his officers in the course of, or for the purposes of, an investigation under this Order shall not be disclosed except for the purposes of—

- (a) the investigation and any report to be made thereon under this Order;
- (b) any 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 or any of his officers by virtue of this Order;
- (c) any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Order;
- (d) an inquiry with a view to the taking of proceedings of the kind mentioned in subparagraphs (b) and (c); or
- (e) any proceedings under Article 15.

(2) The Ombudsman and his officers shall not be called upon to give evidence in any proceedings (other than the proceedings mentioned in paragraph (1)(b) and (c)) of matters coming to his or their knowledge in the course of an investigation under this Order.

(3) The Secretary of State or the head of a department may give notice in writing to the Ombudsman with respect to any document or information specified in the notice, or any class of documents or information so specified, that in his opinion the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of Northern Ireland or the United Kingdom or otherwise contrary to the public interest.

(4) Where a notice is given under paragraph (3) nothing in this Order shall authorise or require the Ombudsman or any officer of the Ombudsman to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

[^{F3}(5) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 shall be treated for the purposes of paragraph (1) as obtained for the purposes of an investigation under this Order and, in relation to such information, the reference in paragraph (1)(a) to the investigation shall have effect as a reference to any investigation.]

F3 2000 c. 36

[^{F4}Disclosure of information to Information Commissioner

19A.—(1) The Ombudsman may disclose to the Information Commissioner any information obtained by, or furnished to, the Ombudsman under or for the purposes of this Order if the information appears to the Ombudsman to relate to—

- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
 - (i) Part V of the Data Protection Act 1998 (enforcement),
 - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
 - (iii) Part IV of that Act (enforcement), or
- (b) the commission of an offence under—
 - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
 - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).

(2) Nothing in Article 19(1) applies in relation to the disclosure of information in accordance with this Article.]

F4 2000 c. 36

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