
STATUTORY INSTRUMENTS

2007 No. 1889

REGULATORY REFORM

**The Regulatory Reform (Collaboration
etc. between Ombudsmen) Order 2007**

Approved by both Houses of Parliament

Made - - - - 27th June 2007

Coming into force - - 1st August 2007

This Order is made by the Minister for the Cabinet Office (“the Minister”) in exercise of the powers conferred by section 1 of the Regulatory Reform Act 2001⁽¹⁾.

For the purposes of section 3(1) of that Act, the Secretary of State is of the opinion that this Order does not –

- (a) remove any necessary protection, or
- (b) prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise.

For the purposes of section 3(2) of that Act, the Secretary of State is of the opinion, in relation to any burden created by this Order, that —

- (a) the provisions of this Order, taken as a whole, strike a fair balance between the public interest and the interests of the persons affected by the burden, and
- (b) the extent to which this Order removes or reduces one or more burdens, or has other beneficial effects for persons affected by the burdens imposed by the existing law, makes it desirable for the Order to be made.

The Secretary of State has consulted in accordance with section 5(1) of that Act.

The Secretary of State laid a document before Parliament containing his proposals for this Order in accordance with section 6(1) of that Act.

In accordance with section 8(4) of that Act the Secretary of State has had regard to the representations made during the period for Parliamentary consideration and in particular to the Fifth Report of Session 2006-07 of the Delegated Powers and Regulatory Reform Committee of the House of Lords⁽²⁾ and to the Second Report of Session 2006-07 of the Regulatory Reform Committee of the House of Commons⁽³⁾.

The Secretary of State has laid a draft of this Order before Parliament with a statement as required by section 8(5) of that Act.

The draft has been approved by resolution of each House of Parliament.

(1) 2001 c.6
(2) HL 44.
(3) HC 383.

Accordingly the Minister in exercise of the powers conferred on him by section 1 of the Regulatory Reform Act 2001 makes the following Order—

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 and comes into force on 1st August 2007.

(2) In this Order —

“the 1967 Act” means the Parliamentary Commissioner Act 1967⁽⁴⁾;

“the 1974 Act” means the Local Government Act 1974⁽⁵⁾;

“the 1993 Act” means the Health Service Commissioners Act 1993⁽⁶⁾.

Collaborative working

2. After section 11A of the 1967 Act⁽⁷⁾ insert —

“11ZAA Collaborative working between the Parliamentary Commissioner and other Commissioners

(1) If at any stage in the course of conducting an investigation under this Act the Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of —

- (a) the Health Service Commissioner for England,
- (b) a Local Commissioner, or
- (c) both,

he may, subject to subsection (2) of this section, conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(2) The Commissioner must obtain the consent of the person aggrieved or any person acting on his behalf in accordance with subsection (2) of section 6 of this Act before agreeing to a joint investigation referred to in subsection (1) of this section.

(3) If the Commissioner forms the opinion that a complaint which is being investigated by—

- (a) the Health Service Commissioner for England,
- (b) a Local Commissioner, or
- (c) both,

relates partly to a matter within his jurisdiction, he may, subject to subsection (4) of this section, conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(4) 1967 c. 13.

(5) 1974 c.7.

(6) 1993 c.46.

(7) Inserted by the Parliamentary and Health Service Commissioners Act 1987 (c.39), section 4; amended by the Health Service Commissioners Act 1993 (c.46), Schedule 2, paragraph 1; the Government of Wales Act 1998 (c.38), Schedule 12, paragraph 8; the Housing Act 2004 (c.34), Schedule 15, paragraph 1; the Public Services Ombudsman (Wales) Act 2005 (c.10) Schedule 6, paragraphs 1, 5; and S.I. 2004/1823, article 5.

(4) The Commissioner may not investigate a complaint jointly with another person under subsection (3) of this section unless the complaint has been made in accordance with section 5 of this Act.

(5) If the Commissioner conducts an investigation of a complaint jointly with another person, the requirements of section 10 (so far as relating to a case where the Commissioner conducts an investigation under this Act) may be satisfied by a report made jointly with that person.

(6) Apart from identifying the government department or other authority concerned, a report prepared by virtue of subsection (5) of this section by the Commissioner and a Local Commissioner shall not—

- (a) mention the name of any person, or
- (b) contain any particulars which, in the opinion of the Commissioner and the Local Commissioner, are likely to identify any person,

unless, after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, the Commissioner and the Local Commissioner consider it necessary to mention the name of that person or to include in the report any such particulars.

(7) Nothing in subsection (6) of this section prevents a report—

- (a) mentioning the name of, or
- (b) containing particulars likely to identify,

the Mayor of London or any member of the London Assembly.”.

3. In section 3 of the 1967 Act (administrative provisions)(8), after subsection (2) insert—

“(2A) For the purposes of conducting a joint investigation referred to in section 11ZAA of this Act, any function of the Commissioner under this Act may be performed by any officer or member of staff of the Commission for Local Administration in England authorised for the purpose by the Commissioner.”.

4. After section 33 of the 1974 Act (9), insert—

“33ZA Collaborative working between Local Commissioners and other Commissioners

(1) If at any stage in the course of conducting an investigation under this Act a Local Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of —

- (a) the Parliamentary Commissioner,
- (b) the Health Service Commissioner for England, or
- (c) both,

he may, subject to subsection (2) below, conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(8) Amended by the Parliamentary and Health Service Commissioners Act 1987, s3; and the Government of Wales Act 1998 (c.38), Schedule 12, paragraphs 4, 5; and the Public Services Ombudsman (Wales) Act 2005 (c.10) Schedule 6, paragraphs 1 and 2; and SI 2004/1823, article 5.

(9) Amended by the Health Service Commissioners Act 1993 (c.46), Schedule 2, paragraph 4 and Schedule 3; the Government of Wales Act 1998 (c.38), Schedule 12, paragraph 17; the Housing Act 2004 (c.34), Schedule 15, paragraph 7; the Public Services Ombudsman (Wales) Act 2005 (c.10) Schedule 6, paragraphs 7, 13, 15; and S.I. 2004/1823, article 6.

(2) A Local Commissioner must obtain the consent of the person aggrieved or any person acting on his behalf in accordance with subsection (2) of section 27 of this Act before agreeing to a joint investigation referred to in subsection (1) above.

(3) If a Local Commissioner forms the opinion that a complaint which is being investigated by—

- (a) the Parliamentary Commissioner,
- (b) the Health Service Commissioner, or
- (c) both,

relates partly to a matter within his jurisdiction, he may conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(4) If a Local Commissioner conducts an investigation of a complaint jointly with another person, the requirements of section 30(1) (so far as relating to a case where the Local Commissioner conducts an investigation under this Act) may be satisfied by a report made jointly with that person.

(5) In relation to an investigation which has been conducted jointly with another person a direction given by the Local Commissioner under section 30(7) of this Act may relate only to those parts of a joint report prepared by virtue of subsection (4) above which are specified in the direction.”.

5. In Schedule 4 to the 1974 Act (the Commission), in paragraph 4(10), after sub-paragraph (5) insert—

“(6) For the purposes of conducting a joint investigation referred to in section 33ZA of this Act any function of a Local Commissioner may be performed by—

- (a) any officer of the Parliamentary Commissioner, or
- (b) any officer of the Health Service Commissioner for England,

who is authorised for the purpose by a Local Commissioner.”.

6. After section 18 of the 1993 Act (consultation during investigations)(11), insert —

“18ZA Collaborative working between the Commissioner and other Commissioners

(1) If at any stage in the course of conducting an investigation under this Act the Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of—

- (a) the Parliamentary Commissioner,
- (b) a Local Commissioner, or
- (c) both,

he may, subject to subsection (2), conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(2) The Commissioner must obtain the consent of the person aggrieved or any person acting on his behalf in accordance with section 9(3) before agreeing to a joint investigation referred to in subsection (1).

(10) Repealed in part by the Local Government Act 1988 (c.9), Schedule 3, paragraph 9 and Schedule 7, Part 2; repealed in part and amended by the Public Services Ombudsman (Wales) Act 2005 (c.10), Schedule 6, paragraphs 7, 18 and Schedule 7.

(11) Amended by the Health and Social Care (Community Health and Standards) Act 2003 (c.43), Schedule 11, paragraphs 60, 64; the Government of Wales Act 1998 (c.38), Schedule 10, paragraph 14, Sch 18; the Public Services Ombudsman (Wales) Act 2005 (c.10) Schedule 6, paragraphs 27, 50; the Housing Act 2004, Sch 15, para 37, Sch 16; and S.I. 2004/1823, article 17.

(3) If the Commissioner forms the opinion that a complaint which is being investigated by—

- (a) the Parliamentary Commissioner,
- (b) a Local Commissioner, or
- (c) both,

relates partly to a matter within his jurisdiction, he may conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(4) If the Commissioner conducts an investigation of a complaint jointly with another person, the requirements of section 14 (reports)(12) (so far as relating to a case where the Commissioner conducts an investigation under this Act) may be satisfied by a report made jointly with that person.

(5) Apart from identifying any body or provider investigated, a report prepared by virtue of subsection (4) by the Commissioner and a Local Commissioner shall not—

- (a) mention the name of any person, or
- (b) contain any particulars which, in the opinion of the Commissioner and the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless, after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, the Commissioner and the Local Commissioner consider it necessary to mention the name of that person or to include in the report any such particulars.

(6) Nothing in subsection (5) of this section prevents a report—

- (a) mentioning the name of, or
- (b) containing particulars likely to identify,

the Mayor of London or any member of the London Assembly.”.

7. In Schedule 1 to the 1993 Act (the English Commissioner)(13), after paragraph 12 insert—

“12A. For the purposes of conducting a joint investigation referred to in section 18ZA, any function of the Commissioner under this Act may be performed by any officer or member of staff of the Parliamentary Commissioner or the Commission for Local Administration in England authorised for the purpose by the Commissioner.”.

Disclosure of information

8. In section 11 of the 1967 Act (provision for secrecy of information)(14), in subsection (2), after paragraph (a) insert—

- “(aa) for the purposes of a complaint which is being investigated by the Health Service Commissioner for England or a Local Commissioner (or both);”.

(12) Amended by the Health Authorities Act 1995 (c.17), Schedule 1, paragraph 126; the Health Service Commissioners (Amendment) Act 1996 (c.5), sections 3, 10, 13 and Schedule 1, paragraph 5 and Schedule 2; the Government of Wales Act 1998 (c.38), Schedule 10, paragraph 10; the Health and Social Care (Community Health and Standards) Act 2003 (c.43), Schedule 9, paragraph 11; the Public Services Ombudsman (Wales) Act 2005 (c.10), Schedule 6, paragraphs 27, 44, 45; S.I. 1999/1820, article 4 and Schedule 2; and S.I. 2004/1823, article 17.

(13) Paragraph 12 amended by the Government of Wales Act 1998 (c.38), Schedule 10, paragraph 16; the Public Services Ombudsman (Wales) Act 2005 (c.10) Schedule 6, paragraphs 27, 53; and S.I. 2004/1823, article 17.

(14) Repealed in part by the Official Secrets Act 1989 (c.6), Schedule 2. Amended by the Official Secrets Act 1989 (c.6), Schedule 1, paragraph 1; the Parliamentary and Health Service Commissioners Act 1987 (c.39), section 4; the Government of Wales Act 1998, Sch 12, paras 4, 7; the Public Services Ombudsman (Wales) Act 2005 (c.10), Schedule 6, paragraphs 1, 4; and the Freedom of Information Act 2000, Schedule 7, paragraph 1.

9. In section 32 of the 1974 Act (law of defamation, and disclosure of information)(**15**), in subsection (1), after paragraph (b) insert—

“(ba) the publication of any matter by a Local Commissioner or by any officer of the Commission, in communicating with the Parliamentary Commissioner or the Health Service Commissioner for England or any officer of either such Commissioner for the purposes of this Part of this Act;”.

10. In section 32 of the 1974 Act (law of defamation, and disclosure of information), in subsection (2), after paragraph (a) insert—

“(aa) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner for England (or both); or”.

11. In section 15 of the 1993 Act (confidentiality of information)(**16**), in subsection (1), after paragraph (a) insert—

“(aa) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or a Local Commissioner (or both);”.

Mediation

12. In section 3 of the 1967 Act (administrative provisions), after subsection (1) insert—

“(1A) The Commissioner may appoint and pay a mediator or other appropriate person to assist him in the conduct of an investigation under this Act.”.

13. In section 29 of the 1974 Act (investigations: further provisions)(**17**), after subsection (6) insert—

“(6A) A Local Commissioner may appoint and pay a mediator or other appropriate person to assist him in the conduct of an investigation under this Act.

(6B) Any person or persons appointed under subsection (6A) above shall be deemed to be an officer or officers of the Commission for Local Administration in carrying out his or their functions under that appointment.”.

14. In Schedule 1 to the 1993 Act (the English Commissioner)(**18**), in paragraph 11, after subparagraph (1) insert—

“(1A) The Health Service Commissioner for England may appoint and pay a mediator or other appropriate person to assist him in the conduct of an investigation under this Act.”.

Exhaustion of remedies

15. In section 26 of the 1974 Act (matters subject to investigation)(**19**), in subsection (5), for the words from “the complaint has” to the end substitute—

(15) Amended by the Local Government Planning and Land Act 1980 (c.65), s.184; the Official Secrets Act 1989 (c.6), Schedule 1, paragraph 1; the Local Government and Housing Act 1989 (c.42), Schedule 11, paragraph 40; the Local Government Act 1988 (c.27), schedule 3, paragraph 8; the Government of Wales Act 1998 (c.38), Schedule 12, paragraph 16; the Public Services Ombudsman (Wales) Act 2005 (c.10), Schedule 6, paragraphs 7, 13; and the Freedom of Information Act 2000 (c.36), Schedule 7, paragraph 3.

(16) Amended by the Health Act 1999 (c.8), sections 43 and Schedule 5; the Health Service Commissioners (Amendment) Act 1996 (c.5), sections 11 and 13 and Schedule 2; the Government of Wales Act 1998 (c.38), Schedule 10, paragraph 12; the Freedom of Information Act 2000 (c.36), Schedule 7, paragraph 5; and the Public Services Ombudsman (Wales) Act 2005 (c.10), Schedule 6, paragraphs 27, 47.

(17) Amended by the Government of Wales Act 1998 (c.38), Schedule 12, paragraph 15; the Public Services Ombudsman (Wales) Act 2005 (c.10), Schedule 6, paragraphs 7, 12 and Schedule 7; and the Health Service Commissioners Act 1993 (c.46), Schedule 2, paragraph 3.

(18) Paragraph 11 repealed in part by the Government of Wales Act 1998 (c.38), Schedule 10, paragraph 16 and Schedule 18, Part 1; amended by the Public Services Ombudsman (Wales) Act 2005 (c.10), Schedule 6, paragraphs 27, 53.

(19) Amended by the Local Government Act 1985 (c.51), Schedule 14, paragraph 51; the Local Government Act 1988 (c.9), Schedule 3, paragraph 5; the Leasehold Reform, Housing and Urban Development Act 1993 (c.28), Schedule 21, paragraph

- “(a) the complaint has been brought, by or on behalf of the person aggrieved, to the notice of the authority to which the complaint relates and that that authority has been afforded a reasonable opportunity to investigate, and reply to, the complaint; or
- (b) in the particular circumstances, it is not reasonable to expect the complaint to be brought to the notice of that authority or for that authority to be afforded a reasonable opportunity to investigate, and reply to, the complaint.”.

General

- 16. In section 12(1) of the 1967 Act (interpretation), after the definition of “enactment” insert—
““Local Commissioner” means a Local Commissioner under Part 3 of the Local Government Act 1974;”.
- 17. In section 19 of the 1993 Act (interpretation), after the definition of “local authority” insert—
““Local Commissioner” means a Local Commissioner under Part 3 of the Local Government Act 1974;”.

27 June 2007

Hilary Armstrong
Minister for the Cabinet Office

6; the Environment Act 1995 (c.25), Schedule 7, paragraph 18; the Government of Wales Act 1998 (c.38), Schedule 12, paragraph 13 and Schedule 18, Part 4; and the Public Services Ombudsman (Wales) Act 2005 (c.10) Schedule 6, paragraphs 7, 11 and Schedule 7.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends legislation relating to the Parliamentary Commissioner for Administration (the Parliamentary Commissioner Act 1967 (“the 1967 Act”)), the Health Service Commissioner for England (the Health Service Commissioners Act 1993 (“the 1993 Act”)) and the Local Commissioners of the Commission for Local Administration in England (the Local Government Act 1974 (“the 1974 Act”)). These bodies are referred collectively in this Note as “the Ombudsmen”.

Article 2 adds a new section 11ZAA to the 1967 Act so as to allow the Parliamentary Ombudsman to conduct a joint investigation with the Health Service Ombudsman and/or the Local Government Ombudsman, where a complaint relates to the jurisdiction of more than one of the Ombudsmen. This provision also requires the Parliamentary Ombudsman to obtain the consent of the person who made the complaint (or any person acting on his behalf under s.6(2) of the 1967 Act). Where the Parliamentary Ombudsman conducts an investigation jointly with another person he may make a report jointly with that person.

Article 3 inserts a new subsection (2A) into section 3 of the 1967 Act. For the purposes of carrying out a joint investigation this provision enables an officer or member of staff of the Commission for Local Administration in England to perform any of the Parliamentary Ombudsman’s functions, provided the Parliamentary Ombudsman has authorised him to do so. Section 3(2) already allows any function of the Parliamentary Ombudsman to be performed by any officer of the Health Service Ombudsman.

Article 4 makes effectively the same amendments to the 1974 Act as Article 2 makes to the 1967 Act.

Article 5 makes a similar amendment to the 1974 Act to that which Article 3 makes to the 1967 Act, so as to enable officers of the Parliamentary Ombudsman and/or the Health Service Ombudsmen to perform functions of a Local Commissioner for the purposes of a joint investigation.

Article 6 makes effectively the same amendments to the 1993 Act as Article 2 makes to the 1967 Act and Article 4 makes to the 1974 Act.

Article 7 makes effectively the same amendments to the 1993 Act as Article 5 makes to the 1974 Act.

Article 8 inserts a new paragraph (aa) into subsection (2) of section 11 of the 1967 Act. It enables the Parliamentary Ombudsman to disclose information he has obtained in the course of an investigation to one or both of the other Ombudsmen for the purposes of a complaint which is being investigated by them.

Article 9 inserts a new paragraph (ba) into section 32(1) of the 1974 Act. Publication of matters by a Local Commissioner in communications with the Parliamentary Ombudsman or Health Service Ombudsman will attract absolute privilege for the purposes of the law of defamation.

Articles 10 and 11, respectively, make effectively the same amendments to the 1974 Act and 1993 Act as Article 8 makes to the 1967 Act.

Article 12 inserts a new subsection (1A) into section 3 of the 1967 Act, to allow the Parliamentary Ombudsman to appoint and pay a mediator or other appropriate person to assist him in relation to an investigation of a complaint. Similar provisions are made in Articles 13 and 14 in relation to the 1974 Act and 1993 Act respectively.

Article 15 inserts new provision into section 26(5) of the 1974 Act. Paragraph (a) requires a Local Commissioner before investigating a complaint to satisfy himself that a complainant has given the relevant authority an opportunity to consider and reply to the complaint. New paragraph (b)

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however enables a Local Commissioner to proceed to investigate a complaint where in the particular circumstances he is satisfied that it is not reasonable to expect the complaint to be brought to the notice of the relevant authority or for that authority to be given a reasonable opportunity to investigate and reply.

A Regulatory Impact Assessment has been prepared and placed in the library of each House of Parliament. Copies can be obtained from Cabinet Office, Propriety and Ethics Team, 70 Whitehall, London SW1.