



Cabinet Office

# Draft Public Service Ombudsman Bill

Presented to Parliament  
by the Parliamentary Secretary, Cabinet Office  
by Command of Her Majesty

December 2016



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by the Parliamentary Secretary, Cabinet Office  
by Command of Her Majesty

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## Foreword

This Government is committed to a vibrant democratic society where public services work for everyone.

When something goes wrong, we want it to be as simple as possible for people to pursue a complaint and to achieve rapid and effective redress. Wherever possible this should be provided by the organisation concerned, which also needs to learn from their mistake and take swift action to repair any wider failings. Complaints should be welcomed as an opportunity to restore the confidence of its users, and to learn how to improve its service. There are times when matters cannot be resolved like this. Those times are when citizens need access to an independent and strong ombudsman who can launch an impartial investigation.

The Government is today publishing draft legislation to modernise the public service ombudsmen. The measures in this draft Bill will ensure that anyone who makes a justified complaint can expect a rapid, effective remedy and that their voice will be heard. Our proposals acknowledge the recommendations of the Public Administration Select Committee's 2014 report "Time for a People's Ombudsman Service", reflect the conclusions of Robert Gordon's Review, "Better to Serve the Public", and are informed by the public's response to the Cabinet Office's consultation in 2015.

At the heart of our proposals is the creation of a new Public Service Ombudsman. Access to the new Ombudsman will be simpler, removing unnecessary barriers to making a complaint. The Ombudsman's reach will be broad, extending to government departments and a range of other public bodies in the UK, local government, adult social care, and the NHS in England.

The core role of the Ombudsman will continue to be the investigation of complaints where a public body has not acted properly or fairly or has provided a poor service. We will also give the Ombudsman a wider and more explicit role in championing improvements in complaints handling and promoting good practice. To enable the Ombudsman to carry out their work effectively and efficiently they will be supported by a modern governance structure, including a statutory Board with strengthened accountability to Parliament.

I believe this is the right approach to ensure every citizen knows their voice matters and bring the Ombudsman framework into the 21st century. I look forward to scrutiny over the coming months, and to working closely with the Parliamentary and Health Service Ombudsman, the Local Government Ombudsman, and all those with an interest in this matter to deliver these reforms

A handwritten signature in black ink, appearing to read "Chris Skidmore", with a long horizontal line underneath it.

**CHRIS SKIDMORE MP**  
**MINISTER FOR THE CONSTITUTION**



# Draft Public Service Ombudsman Bill

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**B I L L**

TO

Establish and make provision about the office of Public Service Ombudsman and about the Board of the Public Service Ombudsman; to abolish the Parliamentary Commissioner for Administration, the Health Service Commissioner for England and the Commission for Local Administration in England; and for connected purposes.

**B**E IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

*Introduction*

**1 Overview of Act**

- (1) This Act establishes—
  - (a) the office of Public Service Ombudsman (see section 2), and
  - (b) a body corporate called the Board of the Public Service Ombudsman (see section 3). 5
- (2) The Ombudsman’s role is to investigate, on behalf of Parliament, complaints made by or on behalf of members of the public or referred to the Ombudsman: see sections 4, 5 and 18.
- (3) The Ombudsman may investigate a complaint if it relates to action taken by a designated authority, that is to say a body or individual designated for the purposes of this Act. 10  
See in particular—
  - (a) sections 6 to 8, for more about the kinds of matters that the Ombudsman may investigate, and 15
  - (b) sections 21 to 24, for provision about designated authorities.
- (4) The purpose of an investigation by the Ombudsman is to establish—
  - (a) whether the matter complained of involved maladministration or a failure on the part of the authority to which the complaint relates, and

- (b) if it did, whether the person by or on behalf of whom the complaint was made suffered injustice or hardship as a result of the maladministration or failure.
- (5) Following an investigation, the Ombudsman is required to make a written statement setting out – 5
  - (a) the Ombudsman’s findings, and
  - (b) any recommendations made by the Ombudsman.
 See section 14.
- (6) The Ombudsman also has functions involving the provision of information, advice and training to designated authorities, including for the purpose of promoting best practice in complaints handling (see section 27). 10
- (7) Sections 30 to 32 contain definitions and other provision about the interpretation of key terms in this Act.

*The Ombudsman and the Board*

- 2 The Public Service Ombudsman** 15
  - (1) The office of Public Service Ombudsman is established.
  - (2) The person appointed to the office (see paragraph 1 of Schedule 1) is referred to in this Act as “the Ombudsman”.
  - (3) Schedule 1 contains further provision about the Ombudsman.
- 3 The Board of the Public Service Ombudsman** 20
  - (1) A body corporate called the Board of the Public Service Ombudsman (referred to in this Act as “the Board”) is established.
  - (2) The Board’s principal duty is to provide staff and other resources for the Ombudsman.
  - (3) In performing its principal duty, the Board must have regard to the need to secure that the Ombudsman is able to carry out his or her functions independently. 25
  - (4) The functions referred to in subsection (3) include, in particular –
    - (a) those involving the exercise by the Ombudsman of a discretion relating to any of the following – 30
      - (i) whether to investigate a complaint;
      - (ii) how to carry out an investigation;
      - (iii) how and when to conclude an investigation;
      - (iv) what action to take following an investigation, and
    - (b) the Ombudsman’s functions under section 27 (promotion of best practice in complaints handling). 35
  - (5) Schedule 2 contains further provision about the Board.
  - (6) Schedule 3 contains provision for a code of practice dealing with the relationship between the Ombudsman and the Board.

*Power to investigate complaints***4 Power to investigate complaints**

- (1) The Ombudsman may investigate a complaint relating to a designated authority if the complaint –
- (a) is properly made to the Ombudsman, and 5
  - (b) relates to a matter which the Ombudsman is entitled to investigate (see section 6).
- (2) A complaint is properly made to the Ombudsman if –
- (a) the complaint is made by a person who is entitled under section 5 to make the complaint to the Ombudsman, 10
  - (b) it is made in writing or in any other way approved by the Ombudsman, and
  - (c) it is made to the Ombudsman before the end of the 12-month period beginning with the day on which the affected person first became aware of the matter alleged in the complaint. 15
- (3) The Ombudsman may determine that the time limit in subsection (2)(c) does not apply in the case of –
- (a) a particular complaint, or
  - (b) complaints falling within a description determined by the Ombudsman. 20
- (4) It is for the Ombudsman to determine –
- (a) whether a complaint has been properly made, and
  - (b) whether to begin, continue or discontinue an investigation.
- (5) The Ombudsman may begin or continue an investigation into a complaint even if the complaint is withdrawn. 25
- (6) The Ombudsman may re-open an investigation, or begin a new investigation, into a complaint if the Ombudsman considers that doing so is in the interests of fairness to –
- (a) the designated authority to which the complaint relates,
  - (b) the affected person (see section 5(a)), and 30
  - (c) any person who is alleged in the complaint to be responsible for the matter complained of.
- (7) The Ombudsman must consult those mentioned in subsection (6)(a) to (c) before re-opening an investigation or beginning a new one.
- (8) See also section 18, which confers power on the Ombudsman to investigate complaints referred to the Ombudsman by designated authorities. 35

**5 Who can make a complaint**

The following are entitled to make a complaint to the Ombudsman –

- (a) a member of the public (referred to in this Act as “the affected person”) who claims to have suffered injustice or hardship in consequence of a matter which the Ombudsman is entitled to investigate (see sections 6 to 8); 40

- (b) a person (for example, a member of the House of Commons or of an elected local authority) who is authorised by the affected person to act on the affected person's behalf;
- (c) where the affected person has died or is otherwise unable to make a complaint or to authorise another person to act on the affected person's behalf –
  - (i) a personal representative of the affected person, or
  - (ii) any other person whom the Ombudsman considers appropriate.

*Matters which may be investigated etc* 10

## 6 Matters which may be investigated

- (1) The matters which the Ombudsman is entitled to investigate, in relation to a designated authority, are –
  - (a) alleged maladministration by the authority in connection with action taken by the authority; 15
  - (b) an alleged failure in a relevant service provided by the authority;
  - (c) an alleged failure by the authority to provide a relevant service;
  - (d) where the authority is an adult social care provider, an allegation relating to action taken by the authority in connection with the provision of adult social care; 20
  - (e) where a relevant duty under the Domestic Violence, Crime and Victims Act 2004 is imposed on the authority, an alleged failure by the authority to perform the duty.
- (2) “Relevant service” means –
  - (a) where a designated authority is an independent provider, any service which the authority had, at the relevant time, made arrangements with a health service body or primary care provider to provide; 25
  - (b) where a designated authority is a primary care provider, any of the services which the authority had, at the relevant time, entered into a contract or made arrangements to provide; 30
  - (c) in any other case, any service which it was, at the relevant time, the authority's function to provide.
- (3) In the case of a primary care provider or an independent provider, the reference in subsection (1)(a) to action taken by a designated authority is to action taken by the provider in connection with the provision of a relevant service. 35
- (4) In subsection (2), “the relevant time” means the time of the action which is the subject of the complaint.
- (5) For the purposes of subsection (1)(e), a duty is a relevant duty under the Domestic Violence, Crime and Victims Act 2004 if it is imposed by –
  - (a) a code of practice issued under section 32 of that Act (code of practice for victims), or
  - (b) any of sections 35 to 44B of that Act (duties of local probation boards in connection with victims of sexual or violent offences). 40
- (6) Subsection (1) is subject to sections 7 and 8. 45

## 7 Matters which cannot be investigated: other remedies available

- (1) The Ombudsman may not investigate a matter in relation to which the affected person has or had –
  - (a) a right of appeal, reference or review to or before a tribunal constituted under an enactment or by virtue of Her Majesty’s prerogative, 5
  - (b) a right of appeal to a Minister of the Crown, or
  - (c) a remedy by way of proceedings in a court of law.
- (2) Subsection (1) does not apply in a particular case if the Ombudsman is satisfied –
  - (a) that it is not reasonable to expect the affected person to resort, or to have resorted, to the right or remedy, or 10
  - (b) that it is appropriate for the matter to be investigated despite the fact that the affected person has resorted to the right or remedy.
- (3) For the purposes of subsection (2)(b), it does not matter whether proceedings following the affected person’s resort to the right or remedy in question have been completed. 15
- (4) The Ombudsman may investigate a complaint only if satisfied that –
  - (a) the complaint has been brought to the attention of the designated authority to which it relates by or on behalf of the affected person, and
  - (b) the designated authority has been given a reasonable opportunity to investigate and respond to it. 20
- (5) But the Ombudsman may investigate a matter, despite the fact that the requirements of subsection (4) have not been met, if satisfied that it is appropriate in the circumstances for the matter to be investigated.
- (6) The Ombudsman may transfer a complaint to the designated authority to which the complaint relates if – 25
  - (a) in considering the complaint, the Ombudsman forms the opinion that a matter alleged in the complaint has not been brought to the authority’s attention, and
  - (b) the person who made the complaint consents to the transfer of the complaint. 30

## 8 Specified matters which cannot be investigated

- (1) The Ombudsman may not investigate a matter specified in Schedule 4.
- (2) The Minister may by regulations amend Schedule 4.
- (3) Before making regulations under this section, the Minister must consult the Ombudsman. 35
- (4) The power to make regulations under this section is exercisable by statutory instrument.
- (5) Where a statutory instrument containing regulations under this section adds a matter to those specified in Schedule 4, the instrument may not be made unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament. 40

- (6) Any other statutory instrument containing regulations under this section is subject to annulment in pursuance of a resolution of either House of Parliament.

## 9 Decisions taken without maladministration

- (1) The Ombudsman may not question the merits of a decision taken without maladministration by a designated authority in the exercise of a discretion. 5
- (2) Subsection (1) does not apply to the extent that a decision was taken in consequence of the exercise of clinical judgement.

### *Investigations*

## 10 Investigation procedure 10

- (1) The Ombudsman—
- (a) must prepare a statement setting out, in general terms, the procedures that the Ombudsman expects to follow in carrying out investigations, and
  - (b) must keep the statement under review and revise it as appropriate. 15
- (2) The Ombudsman must publish a statement prepared under subsection (1), and any revision, in whatever way the Ombudsman considers appropriate.
- (3) The rest of this section deals with the procedure for an investigation relating to a particular complaint.
- (4) The investigation must be carried out in private. 20
- (5) Subject to that, the procedure for the investigation is to be such as the Ombudsman considers best suited to enabling the complaint to be dealt with as fairly, quickly, efficiently and cost-effectively as possible.
- (6) The Ombudsman may, amongst other things—
- (a) give the designated authority or any other person an opportunity to comment on any allegations contained in the complaint; 25
  - (b) make any inquiries the Ombudsman considers appropriate;
  - (c) consult any persons the Ombudsman considers appropriate;
  - (d) determine whether any person may be represented in the investigation by an authorised person or otherwise; 30
  - (e) appoint and pay, or recommend the appointment of, a mediator or other person (whether for the purposes of the investigation or otherwise).
- (7) “Authorised person” means—
- (a) a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity that constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act), or 35
  - (b) a person who is an advocate or who is qualified to practise as a solicitor in Scotland. 40

- (8) The Ombudsman may pay to the person who made the complaint, and to any other person who attends or provides information for the purposes of an investigation –
- (a) amounts to cover expenses incurred by the person, and
  - (b) amounts by way of compensation for loss of time. 5
- (9) The carrying out of the investigation does not affect –
- (a) any action taken by the designated authority to which the complaint relates or by any other person, or
  - (b) any power or duty of the designated authority or of any other person to take further action with respect to any matters to which the investigation relates. 10

## 11 Information and evidence

- (1) The Ombudsman may require a designated authority, or any person mentioned in subsection (2), to provide information in the authority's or person's possession or control where the Ombudsman requires the information – 15
- (a) for the purposes of deciding whether to begin or re-open an investigation, or
  - (b) for the purposes of an investigation.
- (2) The persons referred to in subsection (1) are – 20
- (a) a member, officer or member of staff of the designated authority, and
  - (b) any other person who, in the Ombudsman's opinion, is able to provide the information.
- (3) The Ombudsman has the same powers as the High Court (or, in Scotland, the Court of Session), for the purposes of an investigation, in respect of – 25
- (a) the attendance and examination of witnesses (including the examination of witnesses abroad), and
  - (b) the production of documents.
- (4) A designated authority or a person mentioned in subsection (2) may not be compelled for the purposes of an investigation to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings in the High Court (or, in Scotland, in the Court of Session). This is subject to subsections (5) and (6). 30
- (5) Information obtained by or provided to a designated authority may be disclosed for the purposes of an investigation despite any enactment or rule of law that imposes – 35
- (a) an obligation to maintain secrecy, or
  - (b) any other restriction on the disclosure of the information.
- (6) A designated authority or a person mentioned in subsection (2)(a) is not entitled to any privilege in relation to the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings. 40
- (7) A person may not be required or authorised by virtue of this section to provide information or to answer any question relating to proceedings of the Cabinet or of any Cabinet committee. 45

For this purpose, a certificate issued by the Cabinet Secretary, to the effect that any information, question, document or part of a document relates to such proceedings, is conclusive.

## 12 Obstruction and contempt

- (1) This section applies if a person – 5
- (a) without lawful excuse, obstructs the discharge of any of the Ombudsman’s functions relating to an investigation, or
  - (b) does any act in relation to an investigation that would constitute contempt of court if the investigation were proceedings in the High Court (or, in Scotland, in the Court of Session). 10
- (2) The Ombudsman may certify the obstruction or act to the High Court (or Court of Session).
- (3) The court may inquire into the certified obstruction or act.
- (4) If the court is satisfied, having heard any witness on behalf of or against the person and any statement in the person’s defence, that the person – 15
- (a) without lawful excuse, obstructed the discharge of any of the Ombudsman’s functions relating to the investigation, or
  - (b) did the act referred to in subsection (1)(b),
- the court may deal with the person in any way in which it could deal with a person who had committed contempt in relation to the court. 20

## 13 Other matters coming to Ombudsman’s attention

- (1) Where, in the course of investigating a complaint –
- (a) a matter comes to the Ombudsman’s attention (an “additional matter”), and
  - (b) conditions 1 to 4 are met, 25
- the Ombudsman may widen the investigation so as to cover the additional matter.
- (2) Condition 1 is that the Ombudsman considers that the additional matter relates to facts which are the same, or substantially the same, as the facts to which the matter alleged in the complaint relates. 30
- (3) Condition 2 is that the additional matter relates to action taken by one or more designated authorities.
- For this purpose the matter need not relate to action taken by the designated authority to which the complaint relates.
- (4) Condition 3 is that the additional matter is one that the Ombudsman is entitled to investigate (see section 6). 35
- (5) Condition 4 is that it appears to the Ombudsman that –
- (a) the additional matter arose, or is likely to have arisen, at the same or substantially the same time as the matter alleged in the complaint,
  - (b) the affected person or any other member of the public may have suffered injustice or hardship in consequence of the additional matter, and 40
  - (c) it would be appropriate for the additional matter to be investigated at the same time as the matter alleged in the complaint.

- (6) Where an investigation is widened under this section, the additional matter is to be treated for the purposes of this Act as if it had been alleged in the complaint.

*Statements and reports*

- 14 Statements about investigations etc** 5
- (1) The Ombudsman must prepare a written statement where the Ombudsman—
- (a) decides not to investigate a complaint,
  - (b) decides to discontinue an investigation into a complaint, or
  - (c) completes an investigation into a complaint.
- (2) In a case within subsection (1)(a) or (b), the statement must set out the Ombudsman’s reasons for the decision. 10
- (3) In a case within subsection (1)(c), the statement must set out—
- (a) the Ombudsman’s findings, and
  - (b) the Ombudsman’s recommendations (if any) in connection with those findings. 15
- (4) The Ombudsman—
- (a) must send a copy of a statement under subsection (1) to the persons listed in subsection (5) (subject to subsection (7)), and
  - (b) may send a copy of the statement to any other persons the Ombudsman considers appropriate. 20
- (5) The persons referred to in subsection (4)(a) are—
- (a) the affected person,
  - (b) the designated authority to which the complaint relates,
  - (c) any person alleged in the complaint to be responsible for the action complained of, 25
  - (d) any person (for example, a member of the House of Commons or of an elected local authority) who is authorised by the person who made the complaint for the purposes of the complaint,
  - (e) where the affected person has died or is otherwise unable to make a complaint or to authorise another person to act on his or her behalf— 30
    - (i) a personal representative of the affected person, or
    - (ii) any other person whom the Ombudsman considers appropriate, and
  - (f) where an investigation is widened under section 13, any member of the public (other than the affected person) who the Ombudsman considers has, or may have, suffered injustice or hardship in consequence of a matter referred to in subsection (1)(a) of that section. 35
- (6) The duty to send a copy of a statement to a person mentioned in subsection (5)(c) is to be treated as having been discharged where the designated authority to which the complaint relates agrees to send a copy of the statement to the person concerned. 40
- (7) In a case within subsection (1)(a), the Ombudsman need not send a statement to a person mentioned in subsection (5)(b) or (c) if the Ombudsman considers it appropriate not to do so.

- (8) A designated authority must have regard to any recommendations contained in a statement under subsection (1)(c) in respect of the authority (but is not required by virtue of anything in this Act to give effect to any such recommendations).
- (9) If— 5
- (a) the Ombudsman begins an investigation but does not complete it before the end of the 12-month period beginning with the date on which the Ombudsman received the complaint, and
  - (b) the investigation has not been discontinued,
- the Ombudsman must send a written statement to the person who made the complaint explaining why the investigation has not yet been completed. 10
- (10) The Ombudsman may publish all or part of a statement under this section if, after taking account of the interests of the person who made the complaint and any other persons the Ombudsman considers appropriate, the Ombudsman considers it in the public interest to do so. 15
- (11) The Ombudsman may lay a statement under subsection (1)(c) before Parliament.
- 15 Special statements**
- (1) This section applies where —
- (a) a statement under section 14(1)(c) (statement following completed investigation) contains a finding that the affected person has suffered injustice or hardship in consequence of any matter investigated, and
  - (b) the Ombudsman considers that the injustice or hardship has not been, or will not be, remedied.
- (2) The Ombudsman may require the designated authority to which the complaint relates to give the Ombudsman information about what the authority has done, or proposes to do, in response to the finding. 25
- (3) The designated authority must give the Ombudsman the information referred to in subsection (2) by such time as may be specified by the Ombudsman.
- (4) The Ombudsman may prepare a statement (a “special statement”) containing the information given to him or her by virtue of subsection (3) together with any comments of the Ombudsman relating to that information. 30
- (5) The Ombudsman may bring a special statement to the attention of any persons the Ombudsman considers appropriate, and may do so by —
- (a) laying it before Parliament, 35
  - (b) sending a copy of it to any persons (for example, members of an elected local authority) the Ombudsman considers appropriate, or
  - (c) requiring the designated authority to which the statement relates to publish it.
- 16 Other reports** 40
- (1) The Ombudsman may prepare such reports as the Ombudsman considers appropriate in connection with any issues arising from investigations that the Ombudsman has carried out.

- (2) A report under this section may include any general recommendations the Ombudsman considers appropriate arising in connection with the carrying out of his or her functions.
- (3) The Ombudsman—
  - (a) must lay a report under this section before Parliament, and 5
  - (b) may send a copy of the report to any persons the Ombudsman considers appropriate.

## 17 Defamation

- (1) For the purposes of the law of defamation, the publication by the Ombudsman, or by a person mentioned in subsection (2), of any matter— 10
  - (a) in connection with a complaint, or
  - (b) for the purposes of or in connection with an investigation, is absolutely privileged.
- (2) The persons referred to in subsection (1) are— 15
  - (a) a member of the Board's staff, or
  - (b) another person acting on the Ombudsman's behalf or assisting the Ombudsman in carrying out his or her functions.
- (3) Subsection (1) does not apply if the publication is shown to have been done with malice.

*Referred complaints* 20

## 18 Complaints referred by designated authorities

- (1) The Ombudsman may investigate a complaint which— 25
  - (a) is properly referred to the Ombudsman, and
  - (b) relates to a matter which the Ombudsman is entitled to investigate (see section 6).
- (2) A complaint is properly referred to the Ombudsman if— 30
  - (a) a designated authority refers the complaint to the Ombudsman,
  - (b) the complaint was made to the authority by a person who would have been entitled under section 5 to make a complaint to the Ombudsman,
  - (c) it was made to the authority before the end of the 12-month period beginning with the day on which the affected person first became aware of the matter alleged in the complaint, and
  - (d) it is referred to the Ombudsman in writing or in any other way approved by the Ombudsman.
- (3) The Ombudsman may determine that the time limit in subsection (2)(c) does not apply in the case of— 35
  - (a) a particular complaint, or
  - (b) complaints falling within a description determined by the Ombudsman.
- (4) It is for the Ombudsman to determine whether a complaint has been properly referred. 40

- (5) The Ombudsman may begin, re-open or continue an investigation into a complaint even if the designated authority withdraws its referral of the complaint.
- (6) The provisions of this Act apply in a case where the Ombudsman investigates a complaint by virtue of this section as in a case where the Ombudsman investigates a complaint by virtue of section 4, but as if – 5
- (a) references to the making of the complaint were to its referral, and
- (b) in section 7, for subsection (4) there were substituted –
- “(4) The Ombudsman may investigate a complaint only if satisfied that the designated authority to which the complaint relates has considered the complaint and reasonably concluded that it should be referred to the Ombudsman.” 10

*Co-operation and disclosure*

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

- (1) The Ombudsman may consult a relevant ombudsman if, when considering or investigating a complaint, the Ombudsman forms the opinion that the complaint, or any part of it, may relate to a matter which is within the relevant ombudsman’s jurisdiction. 15
- (2) Where the Ombudsman determines that a complaint or any part of a complaint relates to a matter which is within the jurisdiction of a relevant ombudsman, the Ombudsman may, after obtaining the required consent – 20
- (a) transfer the handling of the complaint, or of the relevant part, to the relevant ombudsman, or
- (b) investigate the complaint jointly with that ombudsman.
- (3) For the purposes of subsection (2), “the required consent” is the consent of the person who made the complaint and also (in a subsection (2)(a) case) the consent of the relevant ombudsman. 25
- (4) For the purposes of subsection (2)(a), the Ombudsman may, with the consent of the person who made the complaint, disclose information relating to the complaint (or the relevant part of it) to the relevant ombudsman. 30
- (5) Where the Ombudsman transfers the handling of all or part of a complaint to a relevant ombudsman, any procedural requirements relating to the making of a complaint to that ombudsman are to be treated as having been complied with.
- (6) Where the Ombudsman carries out an investigation jointly with a relevant ombudsman, the requirements of section 14(1)(b) or (c) (statement about discontinued or completed investigations) may be satisfied by a statement made jointly with the relevant ombudsman. 35
- (7) Each of the following is a “relevant ombudsman” for the purposes of this section – 40
- (a) the Public Services Ombudsman for Wales;
- (b) the Northern Ireland Public Services Ombudsman;
- (c) the Scottish Public Services Ombudsman;
- (d) a housing ombudsman appointed in accordance with a scheme approved under Schedule 2 to the Housing Act 1996; 45

- (e) any other person with functions under or by virtue of primary legislation concerning the handling of complaints by members of the public in relation to the matter in question.

## 20 Disclosure of information

Schedule 5 contains provision about the disclosure of information obtained by the Ombudsman and others. 5

### *Designated authorities*

## 21 Designated authorities

- (1) A person who is designated by the Minister under this subsection, or who is within a description of persons so designated, is a designated authority for the purposes of this Act (and references in this Act to a “designated authority” are to be read accordingly). 10
- (2) The Minister may only make a designation under subsection (1) –
- (a) in relation to a person, if the person is within the scope of the Ombudsman’s jurisdiction; 15
  - (b) in relation to a description of persons, if all persons within that description are within the scope of the Ombudsman’s jurisdiction, (and see section 22 as regards whether a person is within the scope of the Ombudsman’s jurisdiction).
- (3) Before making a designation, the Minister – 20
- (a) must consult the Board and the Public Accounts Commission, and
  - (b) must give any other persons who appear to the Minister to have an interest in the proposed designation an opportunity to comment on it.
- (4) Where a person or description of persons is designated under subsection (1), the designation relates (subject to subsection (5)) to all of the person’s functions and activities or, as the case may be, to all of the functions and activities of persons within the description. 25
- (5) When designating a person or (description of persons), the Minister may determine that the designation is to relate only to specified functions or activities of the person (or of persons within the description). 30
- (6) Before making a determination under subsection (5), the Minister must consult the Board.
- (7) The Minister may revoke a designation under subsection (1).
- (8) Before revoking a designation, the Minister – 35
- (a) must consult the Board and the Public Accounts Commission, and
  - (b) must give any other persons who appear to the Minister to have an interest in the proposed revocation an opportunity to comment on it.
- (9) The Board may recommend to the Minister – 40
- (a) that a particular person or description of persons should be designated under this section, or
  - (b) that a designation that has effect under subsection (1) should be revoked.

- (10) This section is subject to the restrictions in sections 23 and 24.

## 22 Persons within scope of Ombudsman’s jurisdiction

- (1) For the purposes of section 21, a person is within the scope of the Ombudsman’s jurisdiction if the person is within one or more of the following paragraphs – 5
- (a) a central government authority;
  - (b) a local authority;
  - (c) a person (other than a local authority) who exercises public functions, or provides services in the exercise of such functions, in relation to a particular local area; 10
  - (d) a person with functions relating to the provision of health services or health-related services in England;
  - (e) a person who provides services in England under arrangements made with a person within paragraph (d);
  - (f) a person who provides adult social care. 15
- (2) In subsection (1)(a), “central government authority” means –
- (a) a department of Her Majesty’s Government,
  - (b) a person who exercises functions on behalf of the Crown, or
  - (c) a person – 20
    - (i) who is established by or under legislation or by virtue of Her Majesty’s prerogative or in any other way by a Minister of the Crown,
    - (ii) at least half of whose funding derives from public funds, and
    - (iii) who is wholly or partly constituted by appointment made by Her Majesty, a Minister of the Crown or a government department. 25
- (3) In subsection (1)(d) –
- “health services” means services provided as part of the the comprehensive health service in England continued under section 1(1) of the National Health Service Act 2006; 30
- “health-related services” means services which may have an effect on the health of individuals but which are not –
- (a) health services, or
  - (b) services provided in the exercise of social services functions (as defined by section 1A of the Local Authority Social Services Act 1970). 35

## 23 Restrictions on power to make designations under section 21

- (1) The Minister must not designate a person under section 21 if the person’s main or only activities are –
- (a) the provision of education or training otherwise than under the Industrial Training Act 1982, 40
  - (b) the development of curricula, the conduct of examinations or the validation of educational courses,
  - (c) the control of entry to any profession or the regulation of the conduct of members of any profession, or 45

- (d) the investigation of complaints by members of the public in relation to the actions of any person, or the supervision or review of such investigations or of steps taken following them.
- (2) Subsection (1)(a) does not prevent the designation under section 21 of—
- (a) the admission authority for a school, where the authority is the school’s governing body (see Chapter 1 of Part 3 of the School Standards and Framework Act 1998), or 5
  - (b) the proprietor of an Academy school, so far as relating to its functions as the admission authority (and “proprietor” and “Academy school” have the meanings given by section 579(1) of the Education Act 1996). 10
- (3) The Minister must not designate a person under section 21 if or to the extent that the person provides commercial services otherwise than in the exercise of functions of a public nature.
- (4) Subsection (3) does not prevent the designation under section 21 of—
- (a) a person who is registered in the General Practitioner Register kept by the General Medical Council, or 15
  - (b) an adult social care provider.
- (5) The Minister must not designate a person under section 21 if or to the extent that the person is one in respect of whom an investigation may be carried out by— 20
- (a) the Public Services Ombudsman for Wales,
  - (b) the Northern Ireland Public Services Ombudsman, or
  - (c) the Scottish Public Services Ombudsman.
- (6) Subsections (1), (3) and (5) also apply to the designation of a description of persons under section 21 (and in such a case references in those subsections to a person are to be read as references to all the persons within the description). 25
- (7) The Minister may by regulations made by statutory instrument amend this section by—
- (a) altering or removing a restriction imposed by this section on the power to make a designation under section 21 (other than the restriction imposed by subsection (5)), or 30
  - (b) creating an additional restriction on that power.
- (8) Before making regulations under subsection (7) the Minister—
- (a) must consult the Board and the Public Accounts Commission, and
  - (b) must give any other persons who appear to the Minister to have an interest in the proposed regulations an opportunity to comment on them. 35
- (9) Regulations under subsection (7) may include consequential provision (including provision amending this Act).
- (10) A statutory instrument containing regulations under subsection (7) may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 40

## 24 Deemed designations under section 21

- (1) Where, immediately before the commencement date, a person was one in respect of whom an investigation could be carried out— 45

- (a) by the Parliamentary Commissioner for Administration under the Parliamentary Commissioner Act 1967,
- (b) by the Health Service Commissioner for England under the Health Service Commissioners Act 1993, or
- (c) by a member of the Commission for Local Administration in England under Part 3 or 3A of the Local Government Act 1974, 5
- the person is to be treated as having been designated under section 21(1) on the commencement date.
- (2) Where, immediately before the commencement date, a function was one in respect of which an investigation could be carried out as mentioned in subsection (1), a person carrying out the function is to be treated as having been designated under section 21(1) – 10
- (a) on the commencement date, and
- (b) so far as relating to that function.
- (3) Where at any time on or after the commencement date – 15
- (a) a function previously exercisable by a designated authority becomes exercisable by another person (“the transferee”),
- (b) the transferee is not a designated authority, and
- (c) the transferee is within the scope of the Ombudsman’s jurisdiction, 20
- the transferee is to be treated as having been designated under section 21(1) so far as relating to that function.
- (4) References in this Act to a designation under section 21(1) include references to a deemed designation by virtue of this section.
- (5) In this section, “the commencement date” means the date on which this section comes into force. 25

## 25 List of designations

- (1) The Minister –
- (a) must publish a list of designations made under section 21(1) (and must keep the published list up-to-date), and
- (b) must lay the up-to-date list before Parliament at least once every year. 30
- (2) In publishing the list, the Minister must have regard to the need to ensure that it is readily available to –
- (a) designated authorities, and
- (b) members of the public.
- (3) Where – 35
- (a) a determination under section 21(5) has effect in relation to a person or description of persons, or
- (b) a designation by virtue of section 24 has effect only so far as relating to particular functions of a person,
- the entry in the list in relation to the person or description must indicate the extent of the designation. 40
- (4) The Minister may arrange for the duty under subsection (1)(a) to be performed by another person (and in such a case subsection (2) has effect accordingly).

**26 Housing complaints**

- (1) The Minister may by regulations made by statutory instrument make provision for the purpose of bringing social landlords (other than local authorities) within the scope of the Ombudsman’s jurisdiction so far as relating to their housing activities. 5
- (2) Before making regulations under subsection (1), the Minister must consult—
- (a) the Board,
  - (b) the Public Accounts Commission,
  - (c) the housing ombudsman under an approved scheme,
  - (d) the Regulator of Social Housing, and 10
  - (e) any other persons who appear to the Minister to have an interest in the proposed regulations.
- (3) Subsection (4) applies where, as a result of regulations under subsection (1), all social landlords are, or are to be brought, within the scope of the Ombudsman’s jurisdiction. 15
- (4) The Minister may by regulations repeal section 51 of, and Schedule 2 to, the Housing Act 1996 (schemes for investigation of housing complaints).
- (5) Regulations under this section—
- (a) may make consequential, transitional, supplementary or saving provision; 20
  - (b) may amend, repeal or revoke any provision made by or under an Act (including this Act).
- (6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 25
- (7) In this section—
- “approved scheme” means a scheme approved for the purposes of Schedule 2 to the Housing Act 1996 (social rented sector: housing complaints);
  - “housing activities” has the meaning given by section 63(1) of that Act; 30
  - “social landlord” means a person who is required by paragraph 1(1) or (1A) of Schedule 2 to that Act to be a member of one or more approved schemes.

*Oversight and code of practice***27 Promotion of best practice in complaints handling etc** 35

- (1) The Ombudsman must provide information, advice and training to designated authorities with a view to promoting best practice in the handling by such authorities of relevant complaints.
- (2) “Relevant complaint” means a complaint of a kind that could be made to the Ombudsman under this Act. 40
- (3) Information, advice or training provided under subsection (1) may in particular be framed by reference to lessons learnt from complaints made to, and investigations carried out by, the Ombudsman.

- (4) A designated authority must, in handling a relevant complaint made in respect of it, have regard to applicable information, advice and training provided under subsection (1).
- (5) The duty in subsection (4) does not apply to the extent that it is inconsistent with any other legislation. 5
- (6) The Ombudsman may provide information about complaints made to, and investigations carried out by, the Ombudsman to –
- (a) designated authorities, and
  - (b) such other persons as the Ombudsman considers appropriate, with a view to the information being applied for the purpose of improving the way in which services are delivered to those who use them. 10
- (7) The Ombudsman must arrange for information and advice provided under subsection (1) and information provided under subsection (6) to be made available to members of the public.
- 28 Information about recourse to Ombudsman 15**
- (1) A designated authority must make information available to the public about –
- (a) the right to make complaints to the Ombudsman in respect of the authority,
  - (b) the time limits for making complaints to the Ombudsman, and
  - (c) how to contact the Ombudsman. 20
- (2) The duty imposed by subsection (1) may be discharged by –
- (a) making information about the matters mentioned in that subsection available on the authority’s website, or
  - (b) if the designated authority does not have a website, taking reasonable steps to bring information about those matters to the attention of persons who might be entitled to make a complaint in respect of the authority. 25
- (3) A designated authority must provide information about the matters mentioned in subsection (1) when responding to a complaint made to the authority by a person who might be entitled to make the complaint to the Ombudsman. 30

*Abolition of existing ombudsman*

**29 Abolition of existing ombudsmen**

- (1) The following are abolished –
- (a) the office of Parliamentary Commissioner for Administration; 35
  - (b) the office of Health Service Commissioner for England;
  - (c) the Commission for Local Administration in England.
- (2) The Minister may by regulations made by statutory instrument make transitional or consequential provision in connection with subsection (1).
- (3) A statutory instrument containing regulations under subsection (2) is subject to annulment in pursuance of a resolution of either House of Parliament. 40

*General***30 Interpretation**

## (1) In this Act –

- “act” and “action” include a failure to act (and related expressions are to be construed accordingly); 5
- “adult social care” and “adult social care provider” have the meaning given by section 31(2) and (3) respectively;
- “the affected person” has the meaning given by section 5(a);
- “the Board” means the Board of the Public Service Ombudsman;
- “designated authority” has the meaning given in section 21; 10
- “health service body” has the meaning given by section 31(1);
- “independent provider” has the meaning given by section 31(5);
- “investigation” means an investigation under section 4;
- “legislation” means primary or secondary legislation;
- “local authority” means – 15
- (a) a county council in England,
  - (b) a district council in England,
  - (c) a London borough council,
  - (d) a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009, 20
  - (e) a parish council,
  - (f) the Common Council of the City of London (in its capacity as a local authority),
  - (g) the Broads Authority, and 25
  - (h) the Council of the Isles of Scilly;
- “member of the public” has the meaning given by section 32;
- “the Minister” means the Minister for the Cabinet Office;
- “Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975; 30
- “the Ombudsman” has the meaning given by section 2(2);
- “primary care provider” has the meaning given by section 31(4);
- “primary legislation” means –
- (a) an Act,
  - (b) an Act of the Scottish Parliament, 35
  - (c) an Act or Measure of the National Assembly for Wales, and
  - (d) Northern Ireland legislation;
- “secondary legislation” means an instrument made under primary legislation;
- “statutory body” and “statutory office” means a body or office established under any legislation. 40

- (2) For the purposes of this Act, references to action taken by a designated authority include action taken by –
- (a) a member of the authority,
  - (b) an officer or member of staff of the authority, whether acting in the discharge of his or her own functions or the functions of the authority, or 45

- (c) any other person acting on behalf of, or in pursuance of arrangements made with, the authority.

### 31 Definitions: persons providing health or social care

- (1) “Health service body” means—
- (a) a Special Health Authority (other than one that exercises functions only or mainly in Wales), 5
  - (b) a National Health Service trust which manages a hospital, or other establishment or facility, in England,
  - (c) an NHS foundation trust,
  - (d) the National Health Service Commissioning Board, and 10
  - (e) a clinical commissioning group.
- (2) “Adult social care provider” means a person who carries on an activity which—
- (a) involves, or is connected with, the provision of adult social care, and
  - (b) is a regulated activity within the meaning of Part 1 of the Health and Social Care Act 2008. 15
- (3) For the purposes of this Act, “adult social care” means social care (within the meaning of Part 1 of the Health and Social Care Act 2008) which is provided to persons aged 18 or over.
- (4) “Primary care provider” means a person who, at the time of the action which is the subject of the complaint, provided services under any of the following kinds of contract or arrangements— 20
- (a) a general medical services contract made under section 84 of the National Health Service Act 2006;
  - (b) a primary medical services under arrangements made under section 83(2) or 92 of that Act; 25
  - (c) a general dental services contract made under section 100 of that Act;
  - (d) primary dental services under arrangements made under section 107 of that Act;
  - (e) a general ophthalmic services contract made under section 117 of that Act; 30
  - (f) pharmaceutical services under arrangements made under section 126 of that Act;
  - (g) additional pharmaceutical services under arrangements made pursuant to section 127 of that Act; 35
  - (h) local pharmaceutical services under a scheme established under paragraph 1 of Schedule 12 to that Act (LPS schemes).
- (5) “Independent provider” means a person, other than a health service body or a primary care provider—
- (a) who provides services in England under arrangements with a health service body or a primary care provider, or 40
  - (b) who provides direct payment services.
- (6) In subsection (5)(b), “direct payment services” means services in respect of which direct payments have been made under—
- (a) section 12A(1) of the National Health Service Act 2006, or 45
  - (b) regulations under section 12A(4) of that Act.

**32 Meaning of “member of the public”**

- (1) In this Act, “member of the public” means any person other than—
  - (a) a designated authority acting in its capacity as such, or
  - (b) a public authority that is not a designated authority.
- (2) In subsection (1)(b), “public authority” means— 5
  - (a) a person appointed, or whose members are appointed, by a person within subsection (3), or
  - (b) a person at least half of whose funding derives from public funds.
- (3) The persons within this subsection are— 10
  - a Minister of the Crown;
  - a member of the Scottish Government;
  - a member of the Welsh Government;
  - a Northern Ireland Minister or a Northern Ireland department;
  - a local authority.

**33 Extent, commencement and short title** 15

- (1) This Act extends to England and Wales, Scotland and Northern Ireland.
- (2) This Act (other than this section) comes into force on such day or days as the Minister may by regulations made by statutory instrument appoint.
- (3) This section comes into force on the day on which this Act is passed.
- (4) Regulations under subsection (2)— 20
  - (a) may make different provision for different purposes;
  - (b) may contain transitional and saving provision.
- (5) This Act may be cited as the Public Service Ombudsman Act 2017.

## SCHEDULES

## SCHEDULE 1

Section 2

## THE PUBLIC SERVICE OMBUDSMAN

*Appointment*

- |   |   |    |
|---|---|----|
| 1 | (1) It is for Her Majesty by Letters Patent to appoint a person as Ombudsman.   | 5  |
|   | (2) Her Majesty’s power is exercisable on an address of the House of Commons.   |    |
|   | (3) It is for the Prime Minister to move the motion for the address.  |    |
|   | (4) The Prime Minister may only move the motion for the address if –  |    |
|   | (a) the Prime Minister has the agreement of the Public Accounts Commission, and   | 10 |
|   | (b) the person who is proposed to be appointed has been recommended for appointment by the person who chairs the Board.                               |    |
|   | (5) A person may only be recommended for appointment as Ombudsman if the person has been selected on merit on the basis of fair and open competition. |    |
|   | (6) The person appointed holds office for not more than 7 years (and may not be appointed again).   | 15 |

*Resignation, removal and temporary cover*

- |   |  |    |
|---|--|----|
| 2 | (1) The Ombudsman may resign from office by giving written notice to the chair of the Board.   |    |
|   | (2) The chair must notify the Public Accounts Commission following receipt of a notice as mentioned in sub-paragraph (1).  | 20 |
|   | (3) Her Majesty may remove the Ombudsman from office on an address of both Houses of Parliament.   |    |
|   | (4) If the Ombudsman is unable or unwilling to carry out the Ombudsman’s functions (including the function of authorising other people under paragraph 5), the Board may appoint a person to act as the Ombudsman (an “acting Ombudsman”). | 25 |
|   | (5) A person appointed as acting Ombudsman holds office until –  |    |
|   | (a) the appointment of a new Ombudsman, or   |    |
|   | (b) if sooner, the end of the period of 12 months beginning with the person’s appointment as acting Ombudsman.   | 30 |
|   | (6) Where, on the end of the period for which a person (“P”) is acting Ombudsman, P is appointed as Ombudsman, the period for which P held   |    |

office as acting Ombudsman counts towards the period for which P holds office as Ombudsman.

#### *Remuneration*

- 3 (1) Before a person is appointed as Ombudsman, remuneration arrangements in relation to that office are to be made jointly by the Prime Minister and the Public Accounts Commission. 5
- (2) The remuneration arrangements may make provision for a salary, allowances, arrangements for a pension and other benefits.
- (3) No element of the remuneration arrangements is to be performance-based.
- (4) The amount of a salary is to be set by reference to the salary payable to – 10
- (a) a puisne judge of the High Court, or
  - (b) such other holder of judicial office as the Prime Minister and the Public Accounts Commission consider appropriate.
- (5) Sub-paragraphs (1) to (4) apply to an acting Ombudsman as they apply to the Ombudsman. 15
- (6) Amounts payable as a result of this section are to be charged on, and paid out of, the Consolidated Fund.

#### *Disqualification*

- 4 (1) A person is disqualified from being the Ombudsman or an acting Ombudsman if – 20
- (a) the person is a member of the House of Commons,
  - (b) the person is, or is a member of, a designated authority, or
  - (c) the person is employed by, or is an officer of, a designated authority.
- (2) The appointment of a person as the Ombudsman or as an acting Ombudsman is not valid if the person is disqualified under sub-paragraph (1). 25
- (3) If a person who has been appointed as the Ombudsman or as an acting Ombudsman becomes disqualified under sub-paragraph (1), the person ceases to hold office on becoming so disqualified.
- (4) The validity of anything done by a person appointed as the Ombudsman or as an acting Ombudsman is not affected by the fact that the person is or becomes disqualified under sub-paragraph (1). 30

#### *Delegation of functions*

- 5 (1) Any function of the Ombudsman may be discharged on the Ombudsman's behalf – 35
- (a) by any employee of the Board or any other person the Ombudsman considers appropriate, if the employee or other person is authorised by the Ombudsman for that purpose, and
  - (b) to the extent so authorised.
- (2) An authorisation under this paragraph in relation to a function – 40
- (a) does not prevent the Ombudsman from carrying out the function, and

- (b) does not affect the Ombudsman’s liability in respect of the carrying out of the function.

*Annual report*

- 6 (1) The Ombudsman must, for each financial year, prepare a report (an “annual report”) on the performance during the year of the Ombudsman’s functions. 5
- (2) An annual report must contain –
- (a) information about complaints made to the Ombudsman during the financial year to which the report relates, and
- (b) an account, in general terms, of how the Ombudsman has dealt with those complaints. 10
- (3) The information referred to in sub-paragraph (2)(a) may in particular include information about –
- (a) how many complaints were received by the Ombudsman during the financial year,
- (b) how many of those complaints were properly made or referred to the Ombudsman (see sections 4 and 18), 15
- (c) how many of the complaints mentioned in paragraph (b) were investigated by the Ombudsman during the financial year,
- (d) how designated authorities have responded to reports made under section 14(1)(c) in respect of them, and 20
- (e) any other matters the Ombudsman considers appropriate.
- (4) The Ombudsman must lay an annual report before Parliament as soon as reasonably practicable after the end of the financial year to which it relates.
- (5) An annual report may include any general recommendations which the Ombudsman considers appropriate arising from the discharge of his or her functions. 25
- (6) The Ombudsman must take appropriate steps to bring annual reports to the attention of –
- (a) designated authorities, and
- (b) any other persons the Ombudsman considers appropriate. 30
- (7) In this paragraph, “financial year” means –
- (a) the period beginning with the day on which this Schedule comes into force and ending with the following 31 March, and
- (b) each successive period of 12 months.

*Information about complaints* 35

- 7 (1) The Ombudsman must publish information of the kind specified in sub-paragraph (2) in relation to each complaint made to the Ombudsman.
- (2) That information is –
- (a) the name of the designated authority to which the complaint relates;
- (b) information (in general terms) about the nature of the complaint; 40
- (c) the constituency in which the person who made the complaint lives;
- (d) any other information the Ombudsman considers appropriate.

- (3) The Ombudsman must publish the information in whatever way the Ombudsman considers appropriate.
- (4) The Ombudsman must not publish information in a form that enables the person who made the complaint to be identified.

## SCHEDULE 2

Section 3(5)

5

### THE BOARD OF THE PUBLIC SERVICE OMBUDSMAN

#### PART 1

#### MEMBERSHIP

##### *Membership*

- 1 (1) The Board is to consist of— 10
  - (a) persons who are not employees of the Board (“non-executive members”) (see Part 2),
  - (b) the Ombudsman (see paragraph 10), and
  - (c) persons who are employees of the Board (“employee members”) (see paragraphs 11 to 13). 15
- (2) The number of members of the Board is to be determined by the person appointed under paragraph 2(2) to chair the Board (“the chair”) with the agreement of the Public Accounts Commission.
- (3) The majority of members of the Board must be non-executive members.
- (4) The following are executive members of the Board— 20
  - (a) the Ombudsman;
  - (b) the chief executive (if different from the Ombudsman);
  - (c) the employee members.

#### PART 2

#### NON-EXECUTIVE MEMBERS

25

##### *Appointment of non-executive members (including the chair)*

- 2 (1) One of the persons who is a non-executive member of the Board is to be the chair.
- (2) It is for Her Majesty by Letters Patent to appoint the chair.
- (3) Her Majesty’s power is exercisable on an address of the House of Commons. 30
- (4) It is for the Prime Minister to move the motion for the address.
- (5) To do so, the Prime Minister must have the agreement of the Public Accounts Commission.
- (6) The Commission may only give its agreement for the purposes of subparagraph (5) if the person proposed to be appointed has been selected on merit on the basis of fair and open competition. 35

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- (7) Her Majesty may by Letters Patent extend an appointment under sub-paragraph (2) on the recommendation of the Prime Minister.
- (8) To make a recommendation, the Prime Minister must have the agreement of the Public Accounts Commission.
- 3 (1) An appointment under paragraph 2(2), or an extension under paragraph 2(7), is for a period of not more than 3 years. 5
- (2) An appointment under paragraph 2(2) may not be extended more than once.
- 4 (1) Other non-executive members are to be appointed by the Public Accounts Commission as follows.
- (2) If there is a vacancy, the chair must recommend a person to the Commission for appointment. 10
- (3) The chair may only make a recommendation for the purposes of sub-paragraph (2) if the person proposed to be appointed has been selected on merit on the basis of fair and open competition.
- (4) The Commission may – 15
- (a) appoint the person who has been recommended, or
- (b) require the chair to recommend another person (in which event this sub-paragraph applies again and so on until someone is appointed).
- (5) A person may not be appointed under this paragraph more than twice.
- 5 An appointment under paragraph 4 is for a period of not more than 3 years. 20

*Remuneration*

- 6 (1) Before a person is appointed as the chair, the Prime Minister and the Public Accounts Commission must jointly make remuneration arrangements in relation to the chair.
- (2) Amounts payable as a result of sub-paragraph (1) are to be charged on, and paid out of, the Consolidated Fund. 25
- (3) The Public Accounts Commission may make remuneration arrangements in relation to any other non-executive member.
- (4) Amounts payable as a result of sub-paragraph (3) are to be paid by the Board. 30
- (5) Remuneration arrangements under this paragraph may make provision for a salary, allowances and benefits, but not for a pension.

*Other terms of appointment*

- 7 (1) The Public Accounts Commission may determine other terms for an appointment under this Part of this Schedule. 35
- (2) These terms may include restrictions as to –
- (a) the offices or positions that a person may hold, and
- (b) the agreements or other arrangements to which a person may be a party,

while the person is a non-executive member or during the two-year period beginning with the day on which the person ceases to be a non-executive member (or both).

- (3) The reference in sub-paragraph (2)(a) to offices or positions includes offices or positions to which persons may be appointed, or recommended for appointment, by or on behalf of the Crown. 5
- (4) The reference in sub-paragraph (2)(b) to agreements or other arrangements includes agreements and arrangements with the Crown or bodies or other persons acting on behalf of the Crown.

*Termination of appointments* 10

8 Any non-executive member (including the chair) may resign by giving written notice to the Public Accounts Commission.

9 (1) Her Majesty may terminate the appointment of the chair on an address of both Houses of Parliament.

(2) The Public Accounts Commission may terminate the appointment of any other non-executive member by giving the member written notice if— 15

(a) the member has missed three consecutive meetings of the Board without the Board’s permission,

(b) the member has become bankrupt or has made an arrangement with creditors, 20

(c) the member’s estate has been sequestrated in Scotland or the member has entered into a debt arrangement programme under Part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002 (asp 17) as the debtor or has, under Scots law, made a composition or arrangement with, or granted a trust deed for, the member’s creditors, 25

(d) the member is unfit to continue the appointment because of misconduct,

(e) the member has failed to comply with the terms of the appointment, or 30

(f) the member is otherwise unable, unfit or unwilling to carry out the member’s functions.

(3) Before it exercises the power under sub-paragraph (2) to terminate a non-executive member’s appointment, the Public Accounts Commission must consult the chair. 35

PART 3

EXECUTIVE MEMBERS

*Chief executive*

10 (1) The chief executive of the Board is the Ombudsman unless the non-executive members appoint an employee of the Board as the chief executive. 40

(2) The appointment of a person other than the Ombudsman as the chief executive requires the approval of the Public Accounts Commission.

(3) The chief executive is the Board’s accounting officer.

*Appointment of employee members*

- 11 (1) The employee members are to be appointed by the non-executive members as follows.
- (2) If there is a vacancy, the chief executive must recommend a person to the non-executive members for appointment. 5
- (3) The non-executive members may –
- (a) appoint the person who has been so recommended, or
- (b) require the chief executive to recommend another person (in which event this sub-paragraph applies again and so on until someone is appointed). 10
- (4) The terms of an employee member’s appointment are to be determined by the non-executive members.

*Termination of appointment of employee members*

- 12 A person’s appointment as an employee member ends –
- (a) if the terms of the appointment provide for it to expire at the end of a period, at the end of that period, and 15
- (b) in any event, when the person ceases to be an employee of the Board.
- 13 An employee member may resign by giving written notice to the Board.

PART 4

EMPLOYEES 20

- 14 (1) The Board may employ staff.
- (2) In determining the terms of employment of any staff, the Board must have regard to the desirability of keeping the terms broadly in line with those applying to civil servants.
- (3) A person may not be employed by the Board if the person is employed by, or is an officer of, a designated authority. 25
- (4) No member of the Board’s staff is to be regarded –
- (a) as the servant or agent of the Crown, or
- (b) as enjoying any status, immunity or privilege of the Crown.
- (5) But each member of staff is to be treated as a Crown servant for the purposes of the Official Secrets Act 1989. 30

PART 5

PROCEDURE AND OTHER MATTERS

*General*

- 15 The Board must make rules for the purpose of regulating the procedure to be followed by the Board in carrying out its functions. 35

*Committees and delegation of functions*

- 16 The Board may set up committees.
- 17 (1) The Board may delegate functions to any of its committees.
- (2) A delegation under this paragraph in relation to a function –
- (a) does not prevent the Board from carrying out the function itself; 5
  - (b) does not affect the Board’s liability in respect of the carrying out of the function.

*Provision of services etc*

- 18 (1) The Board –
- (a) may provide services to any person under agreements or other arrangements entered into by the Board, and 10
  - (b) may charge a person to whom the Board provides services under such agreements or arrangements.
- (2) Sub-paragraph (1)(a) does not enable the Ombudsman to consider a complaint made in respect of a person who is not within the scope of the Ombudsman’s jurisdiction or relating to a matter which the Ombudsman is not entitled to investigate under this Act. 15
- (3) The Board may pay for the provision of services to the Board under agreements or other arrangements made by the Board with another person.

*Accounts, audit and annual report* 20

- 19 (1) The chief executive must, for each financial year, prepare in respect of the Board resource accounts of the kind mentioned in section 5 of the Government Resources and Accounts Act 2000.
- (2) The accounts must be prepared in accordance with any directions given to the Board by the Treasury. 25
- (3) The chief executive must send a copy of the accounts for a financial year to the Comptroller and Auditor General.
- (4) The Comptroller and Auditor General must –
- (a) examine, certify and report on the accounts for a financial year, and
  - (b) send a copy of the accounts and the report to the Public Accounts Commission. 30
- (5) The Public Accounts Commission must lay the copy of the accounts and the Comptroller’s report before Parliament.
- (6) The Public Accounts Commission may request the Comptroller to carry out an examination into the economy, efficiency and effectiveness with which the Board has carried out its functions. 35
- (7) The Comptroller must send a report of the results of an examination under sub-paragraph (6) to the Public Accounts Commission.
- (8) In this paragraph, “financial year” means –
- (a) the period beginning with the day on which this Schedule comes into force and ending with the following 31 March, and 40

- (b) each successive period of 12 months.
- 20 (1) The Comptroller and Auditor General may require access at any reasonable time to any document in the custody or under the control of the Board where the Comptroller thinks it necessary for the purposes of an examination under paragraph 19(4) or (6). 5
- (2) The Comptroller may require any person holding or accountable for any document to provide any information or explanation that the Comptroller thinks necessary for those purposes.
- 21 (1) The chief executive must, for each financial year, prepare a report of the performance by the Board of its functions during that year (an “annual report”). 10
- (2) The chief executive must send an annual report to the Public Accounts Commission as soon as reasonably practicable after the end of the financial year to which the report relates.
- (3) An annual report must include information about – 15
- (a) how long investigations that were completed in the financial year in question took to be completed,
- (b) how many of those investigations took more than 12 months to be completed, and
- (c) the action being taken with a view to securing that all investigations 20  
are completed within 12 months.
- (4) An annual report must contain a statement by the Ombudsman on the question of whether the Ombudsman has been able to carry out his or her functions under this Act independently.
- (5) In this paragraph, “financial year” has the same meaning as in paragraph 19. 25

*Estimates and strategy*

- 22 (1) The Board must, for each financial year, prepare an estimate of its expenditure.
- (2) The Board must submit each estimate to the Public Accounts Commission.
- (3) The Board must – 30
- (a) prepare a functions and resources strategy, and
- (b) review the strategy (and revise it as appropriate) at least once every 12 months.
- (4) A “functions and resources strategy” is a document setting out – 35
- (a) how the Board proposes to carry out its functions during the period for the time being covered by the strategy, and
- (b) how it proposes to use its resources for the purposes of those functions during that period.
- (5) The first functions and resources strategy must be prepared before the first estimate for the Board is submitted under sub-paragraph (2). 40
- (6) The Board must submit the functions and resources strategy, or any revision, to the Public Accounts Commission.
- (7) The Board –

- (a) must send a copy of an estimate and of a strategy (or revision) to the Treasury, and
  - (b) must give the Treasury such information as the Treasury reasonably require in order to carry out their functions in relation to the estimate and strategy. 5
- (8) The Public Accounts Commission –
  - (a) must examine an estimate or strategy (or revision) submitted to it under this paragraph, and
  - (b) must lay the estimate or strategy (or revision) before Parliament with such modifications as the Commission considers appropriate. 10
- (9) Before laying the estimate before Parliament, the Commission must consult the Treasury and take into account any representations made by the Treasury.
- (10) In this paragraph, “financial year” has the same meaning as in paragraph 19.

*Monitoring service provided by Ombudsman* 15

- 23 (1) The Board must monitor the carrying out of the Ombudsman’s functions under this Act, with particular reference to the quality and efficiency of the service provided by the Ombudsman and the desirability of securing improvements in that service.
- (2) The Board must perform the duty under sub-paragraph (1) in accordance with a scheme prepared by the Board. 20
- (3) The Board –
  - (a) must submit a scheme under sub-paragraph (2) to the Public Accounts Commission, and
  - (b) must revise the scheme in accordance with any representations made by the Commission. 25
- (4) The Board must inform the Commission about any findings the Board makes in performing its duty under sub-paragraph (1).
- (5) Nothing in this paragraph entitles the Commission to question the merits of action taken by the Ombudsman in a particular case. 30

*Review of operation of Act*

- 24 (1) The Board must, before the end of each review period, carry out a review of the operation of this Act.
- (2) Each of the following is a review period –
  - (a) the period of three years beginning with the date on which section 2 comes into force, and
  - (b) each successive period of three years. 35
- (3) After each review, the Board must prepare a report on the review.
- (4) A report under sub-paragraph (3) must contain any recommendations or conclusions the Board considers appropriate. 40
- (5) The Board must submit a report under sub-paragraph (3) to the Public Accounts Commission.

- (6) The Board –
- (a) must send a copy of a report under sub-paragraph (3) to the Minister, and
  - (b) may send a copy to any designated authority the Board considers appropriate. 5
- (7) The Public Accounts Commission must lay a report submitted to it under sub-paragraph (5) before Parliament.

#### *Expenditure*

- 25 Expenditure incurred by the Board is to be paid out of money provided by Parliament. 10

#### *Supplementary*

- 26 The Board may do anything calculated to facilitate, or incidental or conducive to, the carrying out of any of its functions.

### SCHEDULE 3

Section 3(6)

#### RELATIONSHIP BETWEEN OMBUDSMAN AND BOARD 15

- 1 (1) The Board must prepare a code of practice dealing with the relationship between the Ombudsman and the Board.
- (2) The Board must review the code from time to time and revise it as appropriate.
- (3) When preparing or revising a code, the Board – 20
- (a) must consult the Ombudsman and the Minister, and
  - (b) must consider any proposals for revisions of the code made by the Public Accounts Commission from time to time.
- 2 (1) The Board must submit the code or any revision to the Public Accounts Commission for the Commission’s approval. 25
- (2) If the Commission approves the code or any revision, the Commission must lay it before Parliament (stating the time from which it has effect).
- 3 The Board and the Ombudsman must each comply with the code.
- 4 (1) The code – 30
- (a) must set out how the Board is expected to have regard to the matter mentioned in section 3(3) (requirement, in performing its principal duty, to have regard to Ombudsman’s independence);
  - (b) must include provision about how the documents listed in sub-paragraph (2) are to be prepared, reviewed and revised (including provision about the matters to be covered by those documents); 35
  - (c) may make provision about –
    - (i) the management of the Board’s affairs, having regard in particular to any general guidance on the management of the affairs of public bodies, and
    - (ii) such other matters as the Board considers appropriate. 40

- (2) The documents referred to in sub-paragraph (1)(b) are –
- (a) the annual report prepared by the chief executive of the Board under paragraph 21 of Schedule 2;
  - (b) the Board’s estimate for a financial year (see paragraph 22 of Schedule 2); 5
  - (c) the Board’s functions and resources strategy (see paragraph 22 of Schedule 2);
  - (d) the scheme prepared under paragraph 23 of Schedule 2 (scheme for monitoring service provided by Ombudsman);
  - (e) the report prepared by the Board under paragraph 24(3) of Schedule 2 (report following review of operation of Act). 10

#### SCHEDULE 4

Section 8

#### EXCLUDED MATTERS

##### *Local authority and housing matters etc*

- 1 (1) Action taken by a local authority relating to – 15
- (a) the provision of education, or
  - (b) conduct, curriculum, internal management or discipline, in a school or other educational establishment maintained by the authority.
- (2) Sub-paragraph (1) does not apply so far as action relates to special educational needs (within the meaning given by section 579(1) of the Education Act 1996). 20
- 2 (1) Action which is –
- (a) taken by or on behalf of a local authority in its capacity as a registered provider of social housing, and
  - (b) in connection with the authority’s housing activities so far as they relate to the provision or management of social housing. 25
- (2) Action taken by or on behalf of a local authority in connection with the management of dwellings owned by the authority and let on a long lease (as defined by section 59(3) of the Landlord and Tenant Act 1987).
- (3) In this paragraph – 30
- “dwelling” and “housing activities” have the meaning given by section 63(1) of the Housing Act 1996;
  - “social housing” has the same meaning as in Part 2 of the Housing and Regeneration Act 2008.
- 3 Action taken by or on behalf of a development corporation established for the purposes of a new town, where the action is in connection with – 35
- (a) functions relating to social housing (within the meaning of Part 2 of the Housing and Regeneration Act 2008), or
  - (b) functions relating to anything other than housing.
- 4 (1) Action taken by or on behalf of a relevant authority, except in connection with functions relating to town and country planning. 40
- (2) “Relevant authority” means –

- (a) an urban development corporation established under section 135 of the Local Government, Planning and Land Act 1980, or
- (b) the Homes and Communities Agency.

*International matters*

- |   |  |    |
|---|--|----|
| 5 | Action taken in a matter that is certified by a Minister of the Crown to affect relations or dealings between the UK government and any other government or any international organisation of states or governments.   | 5  |
| 6 | (1) Action taken, in any country or territory outside the United Kingdom, by or on behalf of—  |    |
|   | (a) any officer representing or acting under Her Majesty’s authority in respect of the United Kingdom, or  | 10 |
|   | (b) any other officer of the UK government.  |    |
|   | (2) Sub-paragraph (1) does not apply to—   |    |
|   | (a) action taken by an officer (other than an honorary consular officer) in carrying out a consular function on behalf of the UK government,   | 15 |
|   | (b) action taken by an officer within a control zone or a supplementary control zone, or   |    |
|   | (c) action taken by a British sea-fishery officer.   |    |
|   | (3) In this paragraph—   |    |
|   | “control zone” has the meaning given collectively by Schedule 1 to the Channel Tunnel (International Arrangements) Order 1993 (S.I. 1993/1813), Schedule 1 to the Channel Tunnel (Miscellaneous Provisions) Order 1994 (S.I. 1994/1405) and regulation 2 of the Nationality, Immigration and Asylum Act (Juxtaposed Controls) Order 2003 (S.I. 2003/2818); | 20 |
|   | “supplementary control zone” has the meaning given by Schedule 1 to the Channel Tunnel (International Arrangements) Order 1993;  | 25 |
|   | “British sea-fishery officer” has the meaning given by section 7 of the Sea Fisheries Act 1968.  |    |
| 7 | Action taken in connection with the administration of the government of a country or territory outside the United Kingdom which forms part of Her Majesty’s dominions or in which Her Majesty has jurisdiction.  | 30 |
| 8 | Action taken by the Secretary of State under the Extradition Act 2003.   |    |

*Legal and administrative matters*

- |    |  |    |
|----|--|----|
| 9  | Action taken by or with the authority of the Secretary of State or the Treasury for the purposes of—               | 35 |
|    | (a) the investigation or prevention of crime, or   |    |
|    | (b) the protection of the security of the State (including action taken with respect to passports).                |    |
| 10 | The commencement or conduct of proceedings before a court of competent jurisdiction.                               | 40 |
| 11 | Action taken by or on behalf of a local policing body in connection with the investigation or prevention of crime. |    |

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- 12 Any exercise of the prerogative of mercy or of the power of a Secretary of State to make a reference in respect of any person to the High Court of Justiciary or the Court Martial Appeal Court.
- 13 Action taken by a member of the administrative staff of a court or tribunal, so far as taken at the direction, or on the authority (whether express or implied), of a person acting in a judicial capacity or in the capacity of a member of the court or tribunal. 5
- 14 (1) Action taken in the course of administrative functions exercised at the direction, or on the authority (whether express or implied), of a judge of any court established under the law of England and Wales or Northern Ireland. 10
- (2) In this paragraph, “judge” includes –
- (a) a person appointed under section 89 of, and Part 2 or 3 of Schedule 2 to, the Senior Courts Act 1981, and
  - (b) a Master or District Judge appointed under section 70 of, and Schedule 3 to, the Judicature (Northern Ireland) Act 1978. 15

*Audit matters*

- 15 (1) Action taken by the Comptroller and Auditor General in the course of providing services within sub-paragraph (2).
- (2) Those services are services provided by the Comptroller –
- (a) to the National Audit Office by virtue of Schedule 2 to the Budget Responsibility and National Audit Act 2011, 20
  - (b) which are part of, or are incidental to, the Comptroller’s functions under the following Acts –
    - (i) the Exchequer and Audit Departments Act 1866,
    - (ii) the Exchequer and Audit Departments Act 1921, 25
    - (iii) the National Loans Act 1968,
    - (iv) the National Audit Act 1983, and
    - (v) the Government Resources and Accounts Act 2000, or
  - (c) which consist of, or are incidental to, an audit, examination or inspection which the Comptroller is required or authorised to carry out by legislation. 30
- (3) The reference in sub-paragraph (2)(c) to legislation does not include section 1226 of the Companies Act 2006 (eligibility for appointment as a statutory auditor) or any provision of Part 2 of the Budget Responsibility and National Audit Act 2011. 35

*Health matters*

- 16 Action under –
- (a) Part 1 of the National Health Service and Community Care Act 1990,
  - (b) Part 1 of the Health Act 1999 (with the exception of sections 33 to 38),
  - (c) Part 1 of the Health and Social Care (Community Health and Standards) Act 2003, or 40
  - (d) the National Health Service Act 2006,
- where the action is or has been the subject of an inquiry under the Inquiries Act 2005.

*Employment matters*

- 17 (1) Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to –
- (a) service in an office or employment under the Crown or under a designated authority, or 5
  - (b) service in an office or employment, or under a contract for services, in respect of which power to take action in personnel matters, or to determine or approve action to be taken in such matters, vests in Her Majesty, a Minister of the Crown or a designated authority.
- (2) Sub-paragraph (1) does not apply to action (not otherwise excluded from investigation by this Schedule) taken by the Secretary of State in connection with the provision of an allowance, grant, supplement or benefit under –
- (a) the Naval, Military and Air Forces etc. (Disablement and Death) Service Pensions Order 2006 (S.I. 2006/606), or 10
  - (b) the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 (S.I. 2011/517). 15
- (3) Sub-paragraph (1)(b) does not apply to action (not otherwise excluded from investigation by this Schedule) taken by the Secretary of State in connection with –
- (a) the provision of information relating to the terms and conditions of any employment covered by an agreement entered into by the Secretary of State under section 12(1) of the Overseas Development and Co-operation Act 1980 or pursuant to the exercise of the Secretary of State's powers under Part 1 of the International Development Act 2002, or 20
  - (b) the provision of an allowance, grant or supplement or a benefit (other than those relating to superannuation) arising from the designation of a person in accordance with an agreement of a kind mentioned in paragraph (a). 25

*Commercial matters* 30

- 18 (1) Action taken by a designated authority in connection with commercial transactions entered into by the authority, whether in the United Kingdom or elsewhere.
- (2) Sub-paragraph (1) does not apply to transactions in connection with any of the following –
- (a) the acquisition or disposal of land;
  - (b) the acquisition or disposal of moorings which are not provided in connection with a dock or harbour undertaking;
  - (c) NHS contracts (as defined by section 9 of the National Health Service Act 2006); 40
  - (d) arrangements for the provision of direct payment services;
  - (e) arrangements between an independent provider and a health service body or a primary care provider for the provision of services by the independent provider.
- (3) Sub-paragraph (1) does not apply to any of the following – 45

- (a) transactions relating to procurement activities of a designated authority (including activities in preparation for entering into contracts and in connection with the management of contracts);
  - (b) action taken by or on behalf of the London Transport Users Committee in operating a procedure for examining complaints or reviewing decisions; 5
  - (c) transactions relating to the licensing of a pitch or stall in a fair or market.
- (4) In sub-paragraph (2)(d), “direct payment services” means services in respect of which direct payments have been made under – 10
- (a) section 12A(1) of the National Health Service Act 2006, or
  - (b) regulations under section 12A(4) of that Act.
- (5) In determining whether a transaction concerning arrangements between an independent provider and a health service body falls within sub-paragraph (2)(e), the Ombudsman must disregard arrangements for the provision of services at an establishment maintained by a Minister of the Crown mainly for patients who are members of the armed forces of the Crown. 15

*Honours*

- 19 The grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters. 20

*Interpretation*

- 20 In this Schedule, “the UK government” means Her Majesty’s government in the United Kingdom.

SCHEDULE 5

Section 20

DISCLOSURE OF INFORMATION 25

*“Relevant information”*

- 1 In this Schedule, “relevant information” means –
- (a) information obtained (whether under section 11 or otherwise) by the Ombudsman, a member of the Board’s staff or another person acting on the Ombudsman’s behalf or assisting the Ombudsman in carrying out his or her functions, 30
  - (b) information obtained by the Ombudsman from a relevant ombudsman (within the meaning of section 19), and
  - (c) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000. 35

*Prohibition on disclosure*

- 2 Relevant information must not be disclosed except in accordance with this Schedule.

*Permitted disclosures*

- 3 (1) Relevant information may be disclosed –
- (a) in connection with the transfer of a complaint to a designated authority by virtue of section 7(6),
  - (b) for the purposes of an investigation (including for the purposes of deciding whether to begin an investigation), 5
  - (c) for the purposes of proceedings under section 12 (proceedings for obstruction and contempt),
  - (d) for the purposes of a statement under section 14 or 15 or a report under section 16, 10
  - (e) for the purpose of enabling a designated authority’s response to a statement under section 14 to be monitored,
  - (f) for the purposes of section 19 (consultation and co-operation with other ombudsmen),
  - (g) for the purposes of the provision of information, advice and training under section 27 (promotion of best practice in complaints handling), 15
  - (h) for the purposes of proceedings for –
    - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of relevant information within paragraph 1(a), or 20
    - (ii) an offence of perjury alleged to have been committed in the course of an investigation, or
  - (i) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (h).
- (2) Relevant information may be disclosed – 25
- (a) to a statutory body or the holder of a statutory office, for the purposes of the exercise of any functions of the body or office-holder in relation to a particular designated authority, or
  - (b) in the case of information to the effect that a person has threatened, or 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. 30
- (3) Where it appears to the Ombudsman that relevant information relates to –
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by a relevant enactment, or 35
  - (b) the commission of a relevant offence,
- the Ombudsman may disclose the information to the Information Commissioner.
- (4) In sub-paragraph (3) –
- “relevant enactment” means – 40
    - (a) Part 5 of the Data Protection Act 1998 (enforcement),
    - (b) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
    - (c) Part 4 of that Act (enforcement);
  - “relevant offence” means an offence under – 45
    - (a) any provision of the Data Protection Act 1998, other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of warrant), or

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

*Personal or confidential information*

- 4 (1) The Ombudsman may only include personal or confidential information in anything to which sub-paragraph (2) applies if the public interest requirement is met in relation to the information. 5
- (2) This sub-paragraph applies to –
- (a) a statement under section 14 or 15 (or a copy) which is sent to a person, published or laid before Parliament under that section, 10
  - (b) a report under section 16, and
  - (c) information to which section 27(7) applies (information about best practice in complaints handling).
- (3) The public interest requirement is met in relation to information if the Ombudsman, after taking account of the interests of the person who made the complaint and of any other person the Ombudsman considers appropriate, considers it to be in the public interest to include it in the relevant statement, report or information. 15
- (4) For the purposes of this paragraph –
- (a) information is personal if it – 20
    - (i) mentions the name of any person other than the designated authority to which a complaint relates, or
    - (ii) includes any particulars that, in the Ombudsman’s opinion, are likely to identify any such person;
  - (b) information is confidential if it was provided to the Ombudsman, or a person mentioned in section 11(2), by virtue of section 11(5). 25
- (5) The public interest requirement is to be treated as having been met for the purposes of sub-paragraph (1) so far as personal information contained in anything to which sub-paragraph (2) applies relates to –
- (a) a senior member of staff of the designated authority to which a complaint relates or of any body alleged in the complaint to be responsible for the action complained of, 30
  - (b) a member of such an authority or body, or
  - (c) the Mayor of London or any member of the Greater London Assembly.
- (6) In a case where a designated authority is required by virtue of section 15(5)(c) to publish information provided to the Ombudsman under section 15, sub-paragraph (1) applies to the authority (instead of to the Ombudsman). 35

*Privileged information*

- 5 Where the Ombudsman obtains relevant information from a designated authority or other person by virtue of section 11(6) (which prevents a designated authority from relying on privilege in relation to the production of documents or the giving of evidence), the Ombudsman must not disclose –
- (a) the fact that the Ombudsman has obtained such information, or 45
  - (b) the information itself,

unless the designated authority consents to the disclosure.

*Disclosures contrary to public interest*

- 6 (1) A Minister of the Crown may give notice to the Ombudsman that, in the Minister's opinion, the disclosure of information specified in the notice would be contrary to the public interest. 5
- (2) Where a notice is given under sub-paragraph (1), nothing in this Act is to be read as authorising or requiring the Ombudsman or any other person to disclose the information –
- (a) to any person, or
- (b) for any purpose. 10
- (3) The Ombudsman may apply to the High Court (or, in Scotland, the Court of Session) for permission to ignore a notice given under sub-paragraph (1).

*Evidence in proceedings*

- 7 A person may not be required to give evidence in any proceedings (other than proceedings mentioned in paragraph 3(1)(h) or proceedings under section 12) of relevant information obtained by that person as mentioned in paragraph 1(a) or (b). 15

*Restriction on further disclosure*

- 8 A person to whom relevant information is disclosed by virtue of paragraph 3(2) – 20
- (a) must not use the information except for the purpose for which it was disclosed, and
- (b) must not disclose the information to any other person unless the designated authority to which the information relates consents to the disclosure. 25

# **PUBLIC SERVICE OMBUDSMAN BILL**

## **EXPLANATORY NOTES**

### **What these notes do**

These Explanatory Notes relate to the Public Service Ombudsman Bill as published in Draft on 5 December 2016.

- These Explanatory Notes have been prepared by the Cabinet Office in order to assist the reader of the Bill and to help inform debate on it.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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# Overview of the Bill

## 1 The Bill:

- establishes the office of a Public Service Ombudsman to investigate complaints from members of the public that they have suffered injustice or harm as a result of the actions of UK government departments and their agencies, the NHS and providers of adult social care in England, local government in England and other designated public bodies;
- abolishes the Parliamentary Commissioner for Administration, the Health Service Commissioner for England, and the Commission for Local Administration in England;
- creates a statutory body, known as the Board of the Public Service Ombudsman, to provide staff and resources for the Public Service Ombudsman to carry out her functions effectively and independently;
- provides for Parliamentary oversight and scrutiny of the Board and its work; and
- equips the Public Service Ombudsman with powers to investigate complaints and to promote good practice in complaints handling.

## Policy background

### The present situation

- 2 Ombudsmen for public services support Parliament and other democratically elected bodies to hold those delivering public services to account. Their broad remit is to investigate and report on complaints from individuals that they have suffered injustice or harm in consequence of maladministration, service failure or failure to provide a service by a public body within their jurisdiction.
- 3 The first “public service” ombudsman in the UK - the Parliamentary Commissioner for Administration - was established in 1967. This was followed by the establishment of the Health Service Commissioner in 1973, and the Commission for Local Administration in England in 1974.
- 4 The offices of the Parliamentary Commissioner for Administration and the Health Service Commissioner for England have always been held by the same person, who is known as the Parliamentary and Health Service Ombudsman (the “PHSO”). The PHSO is appointed by the Queen and her remuneration is paid through the Consolidated Fund, like the Comptroller and Auditor General, to protect her independence. The appointment process has evolved over time, and both Parliament and Government were represented on the panel who recommended the present incumbent.
- 5 The PHSO’s jurisdiction covers UK government departments and their agencies, the NHS in England and other designated public bodies. Parliament has chosen the Public Administration and Constitutional Affairs Committee to examine the reports of the PHSO and matters arising. In 2014-15, the PHSO received 29,000 complaints from individuals and completed 5,058 investigations.
- 6 The PHSO’s office is funded by Parliament through the general system for authorising public expenditure. In 2014/15, the PHSO’s net operating costs were £37m and they employed approximately 446 staff (full time equivalent).

These Explanatory Notes relate to the Public Service Ombudsman Bill as published in draft 5 December 2016

- 7 The Commission for Local Administration in England (known as the Local Government Ombudsman – the “LGO”) consists of Local Commissioners and the Parliamentary Commissioner for Administration as an ex-officio member. Appointments to the office of Local Commissioner are made by the Queen on the recommendation of the Secretary of State for Communities and Local Government. The Secretary of State designates one of the Local Commissioners as chair of the Commission.
- 8 The LGO’s jurisdiction covers the administration of local government in its widest sense, including local authorities and others who provide services at a local level, such as the fire service. It also captures local authorities’ general power of competence which goes beyond those services delivered under a statutory duty to include non-statutory services, such as libraries and leisure centres.
- 9 From 2010 the LGO’s jurisdiction was extended to all adult social care providers in England who are registered with the Care Quality Commission. In 2014-15, the LGO received 20,000 complaints from individuals and completed 4,780 investigations.
- 10 The LGO is funded by Grant-in-Aid from the Department of Communities and Local Government. In March 2015, the LGO employed approximately 158 full-time staff and its net operating costs for 2014/15 were £11.9m.
- 11 The Housing Ombudsman was established in 1996. Its current role is to resolve disputes involving the tenants and leaseholders of social landlords and other voluntary members (including private landlords and letting agents). It is an executive non-departmental body sponsored by the Department of Communities and Local Government, and the Housing Ombudsman is appointed by the Secretary of State.
- 12 Northern Ireland, Scotland and Wales all have ombudsmen covering public services devolved to those administrations.

## Policy development

- 13 In 2014, the House of Commons’ Public Administration Select Committee reported on its inquiry into the present arrangements for public service ombudsmen in “Time for a People’s Ombudsman Service”. In that report, the Committee recommended the Government bring forward legislation “to enable citizens to have a simpler and more straightforward Ombudsman service that is responsive to citizens and their expectations”. They further recommended that the legislation should:
  - include provision to end the ‘MP filter’ by allowing all types of complaints to be made directly to the Ombudsman;
  - allow complaints to be made other than in writing, such as in person, by telephone or online;
  - grant the Ombudsman the power to investigate matters where no complaint had been received (“own-initiative investigations”);
  - grant the Ombudsman the power to oversee complaints processes across its area of jurisdiction, and a formal role in setting standards and training in complaints handling;
  - abolish the provision that restricts the Ombudsman to laying reports only when Parliament is sitting;
  - grant the Ombudsman the freedom to publish not only more information about its work, but also as and when it sees fit; and

These Explanatory Notes relate to the Public Service Ombudsman Bill as published in draft 5 December 2016

- enable the Public Accounts Commission, or a similar body to take primary responsibility for scrutiny of the Ombudsman’s office, including examining corporate plans, budget and resources.

The Committee also recommended that the Government consult on proposals to create a single Public Service Ombudsman for England and how to deliver an effective ombudsman service for UK non-devolved matters.

### The MP filter

The PHSO cannot accept complaints about government departments, their agencies, or any other public bodies listed in the Parliamentary Commissioner Act 1967, unless they are referred to her by a Member of Parliament. This is known as the ‘MP filter’. There is no equivalent filter for complaints made to the PHSO under the Health Service Commissioners Act 1993 or for any complaints made to the LGO.

### Own-initiative investigations

The ability for an ombudsman to launch an investigation without first receiving a complaint from an individual is known as ‘own-initiative’. In the UK only the Northern Ireland Public Services Ombudsman has the power to launch an own-initiative investigation, where specific requirements are met.

- 14 In its response to the Committee’s report, the Government confirmed that it would commission a review of the public service ombudsmen, including the case for a single Public Service Ombudsman for England. The review was conducted by Robert Gordon CB and his subsequent report, “Better to serve the public: proposals to restructure, reform and reinvigorate the public service ombudsmen”, highlighted the benefits to be gained from a move to a single Public Service Ombudsman including improved customer experience and the opportunities to improve public service systems. Gordon recommended that the new Ombudsman should, at the least, encompass the PHSO and the LGO, with a question mark over the inclusion of the Housing Ombudsman Service. He further recommended that the new Ombudsman:
- provides an integrated service and facilitates ‘open door’ complaint routing;
  - has a modern accountability, governance and leadership structure;
  - continues to follow the devolution settlement, working closely with other public service ombudsmen in the UK; and
  - is accessible and enhanced with the necessary powers and presence.
- 15 In May 2015, the Government announced its intention to bring forward draft legislation to reform and modernise the public service ombudsman sector providing a more effective and accessible final tier of complaints redress within the public sector.
- 16 In December 2015, the Government published its response to a consultation the Cabinet Office had run between March and June that year. The consultation tested Gordon’s recommendations with a wider audience including charities, local authorities, ombudsmen, professional bodies, academics and members of the public who had direct

experience of the current system. In response to those representations, the Government confirmed its intention to create a Public Service Ombudsman encompassing the existing jurisdictions of the PHSO and the LGO only but with a framework that would allow other jurisdictions to be added over time. In doing so the new Public Service Ombudsman would cover UK reserved matters as well as those public services delivered solely in England. The Government proposed giving the Ombudsman greater powers to investigate and report, but said it would not be creating a power of own-initiative because it did not wish to detract from the Ombudsman's role in putting things right for the individual citizen.

## **What this draft Bill does**

### **A new organisation with strengthened governance and accountability**

- 17 The draft Bill abolishes the offices of the Parliamentary Commissioner for Administration, the Health Service Commissioner for England and the Commission for Local Authority in England; and replaces them with a new office – the Public Service Ombudsman (the Ombudsman).
- 18 The Ombudsman's main function will be to investigate and report on complaints from members of the public that they have suffered injustice or hardship in consequence of the actions of designated public bodies.
- 19 To support the Ombudsman in the performance of her functions the draft Bill also creates a corporate body – the Board of the Public Service Ombudsman – led by a statutory chair. It will be for the Board to provide the staff and resources needed by the Ombudsman to carry out her functions independently.
- 20 Oversight of the operation of the Board – its strategy, finances and quality of service – will be provided by Parliament through the Public Accounts Commission. The Commission will also play a lead role in the recruitment of the Ombudsman and the Chair, recommending the preferred candidates to the Prime Minister for appointment by the Queen.

### **Access to the Ombudsman's services**

- 21 The Government's priority is for complaints to be resolved quickly and effectively at a local level. However, once the local complaints procedure has been exhausted there will be a statutory duty on organisations to make individuals aware of their right to take their complaint to the Ombudsman.
- 22 Individual members of the public will be able to choose whether they want to make their complaint directly to the Ombudsman or to seek assistance in doing so from a Member of Parliament, a local councillor or another representative. The Ombudsman will be able to accept complaints through a variety of channels, including in writing, by telephone and through electronic communication.
- 23 The jurisdiction of the Ombudsman will be broad, spanning UK government departments and agencies, local government in England, the NHS and adult social care in England, and other designated public bodies. If a complaint has been wrongly directed, the Ombudsman will be given the powers to consult and co-operate with the public service ombudsmen in the devolved administrations and other complaints handlers, to help individuals find the right source of redress.

## New powers

- 24 The Bill equips the Ombudsman with additional powers designed to allow her to carry out her work effectively and efficiently. It builds upon the powers already at the PHSO and the LGO's disposal by enabling the Ombudsman to widen the scope of an investigation where she is satisfied that the injustice suffered as a result of the maladministration may extend beyond the individual. It also gives the Ombudsman greater powers to share information with others, including regulators, who have oversight of particular services and where there may be a threat to public health and safety.
- 25 The Ombudsman will continue to support Parliament and local councils in holding those delivering public services both at a national and a local level to account. She will be able to report the outcomes of her investigations widely, including bringing Parliament and local councillors' attention to those cases where she believes the injustice or harm suffered has not been remedied.
- 26 The Ombudsman is to be given an explicit role in championing improvements in complaints handling and good administration through the publication of guidance and training materials promoting best practice. She will also be under a duty to publish real-time information about the volume and nature of the types of complaints coming to her.

## Legal background

### The Parliamentary Commissioner for Administration

- 27 The Parliamentary Commissioner for Administration, known as the Parliamentary Ombudsman, was set up by the *Parliamentary Commissioner Act 1967*. Although this piece of legislation has been heavily amended since its enactment the basic functions of the Parliamentary Ombudsman have remained the same.
- 28 The Parliamentary Ombudsman can investigate claims against bodies which are listed in a schedule. As originally enacted, this schedule consisted of government departments and bodies exercising functions on behalf of the Crown only. Amendments made by the *Parliamentary and Health Service Commissioners Act 1987* expanded the reach of the Ombudsman to other public bodies, specifically those:
  - established by government;
  - who receive at least half of their revenue from Parliament, levies or fees; and
  - who are wholly or partially constituted by appointment of Her Majesty, Ministers of the Crown or government departments.

The core jurisdiction is therefore central government departments and their arm's length bodies.

- 29 The 1987 Act also made provision for information to be shared between the Parliamentary Ombudsman and the Health Service Ombudsman (see below). Although these offices have as a matter of practice always been held by the same individual, the new powers allowed for barriers to be removed which helped integrate the two offices which in practice are run as a single entity.
- 30 The *Parliamentary Commissioner Act 1994* extended the Ombudsman's role to investigating the administration of tribunals.

- 31 When the *Government of Wales Act 1998* created a Welsh Administration Ombudsman to handle complaints made against Welsh public bodies, the 1967 Act was amended to remove from the Parliamentary Ombudsman's jurisdiction matters that could now be investigated by the Welsh Administration Ombudsman (now the Public Services Ombudsman for Wales).
- 32 The *Scotland Act (Consequential Modifications) (No.2) Order 1999* carved out of the Parliamentary Ombudsman's jurisdiction matters which could be dealt with by the Scottish Parliamentary Commissioner for Administration (whose functions now sit with the Scottish Public Services Ombudsman).
- 33 From time to time the Government has asked the PHSO to oversee the operation of specific codes of practice. Currently the PHSO may look at complaints made by victims of crime under the *Domestic Violence, Crime and Victims Act 2004*. It brings into the PHSO's jurisdiction many bodies in England and Wales whose actions would otherwise be outside of her reach, for example the actions of police authorities.

## The Health Service Commissioner for England

- 34 The Health Service Commissioner for England, known as the Health Service Ombudsman, was first established under the *National Health Service Reorganisation Act 1973* to investigate complaints about health service bodies. That Act was variously amended to expand its remit to District Health Authorities (*Health Services Act 1980*), NHS Trusts (*National Health Service and Community Care Act 1990*) and the Dental Practice Board (*Health and Medicines Act 1988*).
- 35 This legislation was replaced and consolidated by the *Health Service Commissioners Act 1993* which still provides the legislative framework for the Health Service Ombudsman.
- 36 The Health Service Commissioners Act 1993 originally provided for a Health Service Commissioner for England, Scotland and Wales (the Northern Ireland Commissioner being set up under separate legislation), but jurisdiction of complaints in Scotland and Wales has now been devolved to the Scottish Public Services Ombudsman and the Public Services Ombudsman for Wales.
- 37 The *Health Service Commissioners (Amendment) Act 1996* extended the Ombudsman's remit to cover complaints about family health service providers and independent providers carrying out NHS services. It therefore includes GPs and dentists who are the most frequent point of contact between the public and the NHS.
- 38 The *Health Act 2009* further extended the Commissioner's remit to include bodies providing payment services for direct payments for healthcare.
- 39 The *Scottish Public Services Ombudsman Act 2002* and the *Consequential Provisions and Modifications Order 2004* removed from the Ombudsman's jurisdiction complaints that now sit within the devolved competence of the Scottish Parliament. The *Public Services Ombudsman (Wales) Act 2005* did the same for matters devolved to the Welsh Assembly.
- 40 The *Health Service Commissioner for England (Complaint Handling) Act 2015* placed a statutory duty on the Ombudsman to notify a complainant of the reason for the delay if an investigation is not concluded within a twelve-month period. It also requires the Ombudsman to lay before Parliament an annual report giving details of how long investigations of complaints have taken and the progress made towards meeting a target of concluding all investigations within a twelve-month period.

## The Commission for Local Administration in England

- 41 The Commission for Local Administration in England, known as the Local Government Ombudsman, was established by Part 3 of the *Local Government Act 1974*. The Local Government Ombudsman's remit originally included Wales but this was devolved to the Public Services Ombudsman for Wales by the *Public Services Ombudsman (Wales) Act 2005*. A Commission for Local Administration in Scotland was established by the *Local Government (Scotland) Act 1975* which has since been repealed with the Scottish Public Services Ombudsman now having jurisdiction.
- 42 The *Local Government Act 1988* amended the 1974 Act to provide for direct access to the Local Government Ombudsman where previously complaints were referred by a member of the authority being complained about.
- 43 The *Local Government and Housing Act 1989* re-wrote the part of the legislation that dealt with the obligations of a local authority when it is the subject of an adverse report by the Ombudsman.
- 44 Since October 2010 the LGO's remit has included complaints from people who fund their own adult social care (see the *Health Act 2009*).
- 45 In 2012-13, the LGO's remit was reduced with responsibility for complaints about local authority housing from tenants passing to the newly-established Housing Ombudsman Service (*Localism Act 2011*). Furthermore, internal matters in schools, which had been given to the LGO as part of a trial, returned to the Secretary of State for Education (*Education Act 2011*).

## Collaboration between ombudsmen

- 46 There are requirements in the present statutory framework for the ombudsmen to consult other ombudsmen where there is a matter that crosses jurisdictions. The *Parliamentary and Health Service Commissioners Act 1987* made these requirements to be equal across the PHSO and the LGO. The *Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007* made further amendments to the Parliamentary Commissioner Act 1967, the Local Government Act 1974 and the Health Service Commissioners Act 1993, empowering the ombudsmen to conduct investigations jointly where a matter partly engages another ombudsman's jurisdiction.

## **Territorial extent and application**

- 47 The Bill extends to the United Kingdom. The Ombudsman's powers to investigate are UK-wide but follow devolution boundaries where a matter has been devolved.
- 48 There are public service ombudsmen in each devolved administration. This Bill carries forward and rationalises existing powers for the Ombudsman to consult and co-operate with devolved ombudsmen.
- 49 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

### **Scotland**

- 50 The Bill does not contain any provisions falling within the terms of the Sewel Convention. If there are amendments relating to such matters which trigger the consent of the Scottish Parliament, and because the Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters, the consent of the Scottish Parliament will be sought for them.

### **Wales**

- 51 The Bill does not contain any provisions relating to devolved matters. If there are amendments which relate to such matters, the consent of the National Assembly for Wales will be sought for them.

### **Northern Ireland**

- 52 The Bill does not contain any provisions relating to devolved matters. If there are amendments which relate to such matters, the consent of the Northern Ireland Assembly will be sought for them.

# Commentary on provisions of the Bill

## Clause 1: Overview of the Act

53 Clause 1 gives an overview of the structure of the Bill and its provisions.

## Clause 2: The Public Service Ombudsman

54 Clause 2 creates the office of the Public Service Ombudsman and introduces Schedule 1 which sets out further provisions about how the Ombudsman is to be appointed and the functions of the office. The primary role of the Ombudsman is to investigate and report on claims of injustice in consequence of the actions of central government, local government and the NHS in England, and other designated public authorities.

## Clause 3: The Board of the Public Service Ombudsman

55 Clause 3 creates a new corporate body, the Board of the Public Service Ombudsman. The Board's main duty is to provide the staff and resources needed by the Ombudsman to carry out her functions.

56 Subsection (3) requires the Board, when it carries out its main duty, to have regard to the need for the Ombudsman to be able to carry out her functions independently.

57 This clause also introduces two schedules: Schedule 2, which sets out more detail about the constitution of the Board, including how appointments are made to it and how it is to operate; and Schedule 3, which provides for a code of practice that deals with the relationship between the Ombudsman and the Board.

## Clause 4: Power to investigate complaints

58 The Ombudsman can investigate a complaint if i) it has been properly made and ii) it relates to a matter which the Ombudsman is entitled to investigate. This clause sets out what is needed for a complaint to be properly made. Clause 6 deals with the matters the Ombudsman may investigate.

59 For a complaint to be properly made, it must meet the conditions in subsection (2). These conditions require that the complaint must:

- a. be made by a person who is entitled to make a complaint (see notes on Clause 5);
- b. be made in writing or in some other form which the Ombudsman has approved; and
- c. be made to the Ombudsman within twelve months of the affected person becoming aware of the substance of the complaint.

60 Subsection (2)(b) would allow the Ombudsman to accept as properly made a complaint made in writing or any other format he or she has approved.

61 The rule is that a complaint must be made to the Ombudsman within twelve months of the affected person becoming aware of the matters that gave rise to the complaint (subsection 2(c)). This time limit can be disregarded at the Ombudsman's discretion. This recognises that the matter which forms the subject of a complaint may emerge over a period of time, or there may be circumstances which would make it unreasonable or unfair to impose the time-bar; for example, where the affected person has been too ill to pursue the matter or where there has been a lengthy investigation of the complaint at a local level.

62 Subsection (3) allows the Ombudsman to disregard the time-limit if she considers the circumstances are such that it would be appropriate for her to do so.

- 63 Subsection (4) sets out that it will be for the Ombudsman to decide whether or not a complaint has been properly made and whether to begin, continue or discontinue an investigation.
- 64 Subsections (6) and (7) allow the Ombudsman to re-open or start a new investigation into a complaint that has already been investigated if it is in the interests of fairness to do so. This power might be used, for example, if an investigation turned out to have been flawed because a procedural requirement was not followed. Without this provision, the Ombudsman would have to apply to the courts to set aside the first investigation.
- 65 Subsection (8) cross-refers to clause 18 which provides a different route for a complaint to reach the Ombudsman. Instead of being “made” under clause 4, a complaint can in certain circumstances be “referred” to the Ombudsman by the designated authority.

## **Clause 5: Who can make a complaint**

- 66 Clause 5 provides that a complaint may be made by a member of the public who claims to have suffered injustice or hardship as a result of an action or omission by a designated authority. A member of the public is defined at clause 32 and can be any private individual, including a minor; and, for example, partnerships, companies, trade unions, and professional institutions. For the purposes of this Bill, a person claiming injustice or hardship is known as the ‘affected person’.
- 67 The complaint must be made by the affected person unless he has authorised someone else to act on his behalf; has died; or is otherwise unable to act for himself.
- 68 Subsection (1)(b) provides that a complaint may be made by someone other than the affected person if they have that person’s authority to do so. It allows the Ombudsman to accept a complaint where the affected person has asked a Member of the House of Commons or a local councillor to represent their case. Equally it allows the Ombudsman to accept a complaint referred by a family member, trusted friend or adviser where the affected person has given their authority.
- 69 Where the affected person is dead or otherwise unable to act on their own behalf, subsection (1)(c) permits the complaint to be made by a personal representative of that person – for example an executor or next of kin – or any other body or individual who the Ombudsman considers suitable.

## **Clause 6: Matters which may be investigated**

- 70 Clause 6 sets out the matters which may be investigated. The main power of the Ombudsman is to investigate claims of maladministration, service failure or failure to provide a service by designated bodies. The process for designating bodies is set out in clause 21 and those within the scope of the Ombudsman’s jurisdiction at clause 22.
- 71 As in the current ombudsman legislation, there is no definition of maladministration, service failure or failure to provide a service within the draft Bill. Examples of actions which may amount to maladministration, service failure or failure to provide a service have been given by ministers, the ombudsmen and the courts in the years since 1967. On any particular complaint, it will be for the Ombudsman to use her judgment to decide whether or not an action or omission has the qualities necessary to make such a finding.

## Maladministration, service failure and failure to provide a service

Maladministration has always been interpreted widely and includes such matters as showing bias, delay, giving misleading or inadequate advice and failing to inform people of their rights. Even so, it is doubtful that the term 'maladministration' on its own is wide enough to cover those situations where a service, such as the treatment of an illness or care of a vulnerable adult, is defective or where a service should and could have been provided but was not. The Bill therefore allows the Ombudsman to investigate claims of all three.

- 72 Subsection (1)(e) enables the Ombudsman to investigate complaints made under the Code of Practice issued under the Domestic Violence, Crime and Victims Act 2004. This replicates the power presently held by the Parliamentary Ombudsman.

## **Clause 7: Matters which cannot be investigated: other remedies available**

- 73 Not every action by designated authorities can be investigated by the Ombudsman. Clauses 7 and 8 and Schedule 4 set out those matters which are beyond the Ombudsman's reach.
- 74 Subsection (1) stops the Ombudsman from investigating a complaint where the affected person could appeal or has appealed to a tribunal, has a right of appeal to a government minister or could institute or has instituted legal proceedings. This gives effect to the principle that the Ombudsman complements rather than replaces existing procedures that already give protection or avenues of remedy for individuals.
- 75 Subsection (2) allows the Ombudsman to set aside the rule in subsection (1) if she is satisfied in the particular circumstances that it is either not reasonable for the affected person to seek or have sought remedy through a tribunal or a court or that despite the affected person seeking a remedy through those routes the matter should still be investigated.
- 76 Subsection (4) stops the Ombudsman from investigating a matter unless it has been brought to the attention of the designated authority and that authority has had the opportunity to investigate and respond. This reinforces the principle that the Ombudsman is the final tier of the complaints system and encourages designated authorities to resolve complaints quickly, efficiently and fairly at a local level.
- 77 Subsection (5) enables the Ombudsman to investigate a matter which has not completed a local resolution process if she is satisfied that it would be appropriate to do so. For example, this power would enable the Ombudsman to investigate a matter prematurely where the provision of a remedy is time-critical.
- 78 Subsection (6) allows the Ombudsman to transfer complaints which have not first been made to the designated authority directly to that authority where the individual consents to her doing so. The experience of the present ombudsmen is that they receive many queries from members of the public asking how to complain and who to complain to. This provision will allow the Ombudsman to send the details of those complaints directly to the relevant service provider.

## **Clause 8: Specified matters which cannot be investigated**

- 79 Clause 8 introduces Schedule 4 which lists those specific matters which are to be outside

the Ombudsman's jurisdiction from the commencement of the Act. It also sets out the process to be followed to amend those matters. That is done by regulations made by the Minister for the Cabinet Office after consulting the Ombudsman. If regulations contain provisions that add to the list of excluded matters, they must be approved in draft by both Houses of Parliament (the "affirmative procedure").

## **Clause 9: Decisions taken without maladministration**

- 80 Clause 9 clarifies that the Ombudsman is not permitted to question the merits of any decision, unless she had found the decision to be faulty. Similar provisions can be found in the predecessor legislation (see, for example, section 12(3) of the Parliamentary Commissioner Act 1967).
- 81 Subsection (2) provides that subsection (1) does not apply to decisions that are taken on the basis of clinical judgements. Without such a provision, the Ombudsman could not investigate any action, including wrong diagnosis, or failure to provide care and treatment, that had been taken in consequence of a clinical judgment. That would severely limit her ability to investigate complaints about the actions taken by or on behalf of the NHS in England.

## **Clause 10: Investigation procedure**

- 82 Clause 10 gives the Ombudsman a broad discretion on how to investigate complaints, subject to three express requirements. These are:
- that the Ombudsman must publish a statement which sets out the general procedures she will follow when investigating complaints;
  - that her investigations must be carried out in private; and
  - that when deciding how to investigate, she must consider how the complaint can be dealt with as fairly, quickly, efficiently and cost-effectively as possible.

This clause allows the Ombudsman to make payments in respect of expenses incurred or time lost by any person involved in the investigations, and it makes sure that the fact the Ombudsman is investigating a matter does not stop the designated authority from taking any actions in relation to that matter.

- 83 Subsection (1) places a duty on the Ombudsman to produce and publish a statement which sets out the general procedures she will follow when investigating complaints. The intention is to give members of the public a general understanding of what they can expect when they take a complaint to the Ombudsman, including broad outlines of how the Ombudsman will apply her discretion.
- 84 Subsection (4) provides that the Ombudsman's investigations must be carried out in private. This is a key feature of ombudsman legislation throughout the UK. It helps ensure that those who give the Ombudsman information for the purpose of an investigation are not inhibited from telling the Ombudsman the full facts as they know or believe them to be by the possibility of further disclosure. It provides a balance between allowing the Ombudsman wide powers of access to information and protecting the interests of the holders of that information.
- 85 Provisions later in the Bill (clause 20 and Schedule 5) allow the Ombudsman to disclose information in certain circumstances, including for the purposes of the investigation and for the publication of a report. Clause 10 does not, therefore, prevent the Ombudsman from keeping parties to the investigation informed of progress in her investigation or sharing with those parties the information on which the findings of her report are to be

based at an appropriate juncture, for example in the form of a draft report.

- 86 Subsection (5) sets out that it will be for the Ombudsman to decide how best to investigate complaints so that they are dealt with as fairly, quickly, efficiently and cost-effectively as possible. Subsection (6) gives examples of how those objectives may be achieved.
- 87 Subsection (6)(d), read alongside subsection (7) allows for legal representation at the Ombudsman's discretion.
- 88 Subsection (8) gives the Ombudsman the discretion to make payments to persons who properly incur expense, or lose remunerative time, in attending or furnishing information for her investigations.
- 89 Subsection (9) makes it clear that where a matter is under investigation by the Ombudsman, the designated authority may (if it has the power) and must (if it has the duty) continue with actions in the matter. The provision of public services are not to be disrupted or delayed by claims to the Ombudsman.

## **Clause 11: Information and evidence**

- 90 This clause deals with the Ombudsman's ability to obtain information and evidence for the purposes of her investigations. As under the current legislation, those powers are extensive, giving her similar powers as the Courts to obtain oral or documentary evidence.
- 91 Subsections (1) and (2) give the Ombudsman the general authority to require information which she thinks would be relevant to her investigations from any person whom she thinks would be able to produce it. This includes information that may help the Ombudsman decide whether or not to begin an investigation.
- 92 Subsection (3) gives the Ombudsman the same powers as the High Court or the Court of Session to compel persons to attend and be examined and to produce documents.
- 93 Subsection (4) provides that persons who are compelled to give evidence or produce documents are given the equivalent rights of witnesses before the High Court or the Court of Session. In particular, a person cannot be compelled to give evidence or produce documents which they could not be compelled to do in those courts.
- 94 Subsection (5) lifts legal restrictions on designated authorities on the disclosure of information, including an obligation to maintain secrecy where it is for the purposes of an investigation by the Ombudsman.
- 95 Subsection (6) provides that designated authorities may not rely on legal or other privilege as a basis to refuse to produce documents or information that the Ombudsman requires for an investigation. This restriction is complemented by restrictions which prevent the Ombudsman from disclosing privileged information obtained under this clause unless the designated authority consents: see Schedule 5, paragraph (5).
- 96 Subsection (7) replicates section 12(4) of the Parliamentary Commissioner Act 1967. It stops the Ombudsman from obtaining documents or information relating to the Cabinet or Cabinet Committee proceedings. This includes not only the Cabinet and Cabinet Committee papers but also departmental papers giving information concerning proceedings in the Cabinet or Cabinet Committee. Where there is doubt about whether or not this absolute bar applies to a specific document or information it will be for the Cabinet Secretary to determine the matter and, if necessary, issue a certificate confirming that it cannot be disclosed.

## **Clause 12: Obstruction and contempt**

- 97 Clause 12 gives the Ombudsman a sanction which she can use if anyone without a lawful excuse obstructs an investigation, for example by refusing information which she is entitled to require. The sanction is also available if anyone does something in relation to an investigation which would amount to a contempt of court were the investigation court proceedings.
- 98 The process is for the Ombudsman to certify the matter to the High Court (or Court of Session in Scotland). The court may inquire into the certified act or obstruction and hear witnesses. The matter may then be dealt with as if a contempt had arisen in relation to the court itself. There is a similar provision in section 9 of the Parliamentary Commissioner Act 1967.

## **Clause 13: Other matters coming to Ombudsman's attention**

- 99 Clause 13 enables the Ombudsman to investigate matters that come to her attention during the course of an investigation where certain requirements are met. It allows the Ombudsman to widen an existing investigation within defined limits where certain conditions are met.
- 100 Those conditions are:
- that the additional matter relates to facts which are the same, or substantially the same, as the facts to which the matter alleged in the original complaint relates;
  - that the additional matter relates to action taken by one or more designated authorities;
  - that the matter is one that the Ombudsman is entitled to investigate; and
  - that it appears to the Ombudsman that (a) the additional matter arose, or is likely to have arisen, at the same or substantially the same as the matter alleged in the original complaint; (b) the affected person or another member of the public may have suffered injustice or hardship in consequence of the additional matter; and (c) it would be appropriate for the additional matter to be investigated at the same time as the matter alleged in the original complaint.

## **Clause 14: Statements about investigations etc**

- 101 Clause 14 sets out in subsection (1) a requirement for the Ombudsman to prepare written statements where she completes an investigation, discontinues an investigation, or decides not to investigate.
- 102 Subsection (2) provides that a statement on a decision not to investigate a complaint or to discontinue an investigation into a complaint must set out reasons for that decision.
- 103 Where the Ombudsman has completed an investigation into a complaint, the statement must set out the Ombudsman's findings and any recommendations made in connection with those findings (subsection (3)).
- 104 Subsection (4) sets out that the Ombudsman must send her statement to the persons listed in subsection (5) – including the affected person, the designated authority, and an authorised representative. She may also send her statement to any other persons she considers appropriate – for example, it may be that the investigation has highlighted matters which the Ombudsman believes should be brought to the attention of a regulator.

- 105 Subsection (6) allows for the duty under subsection (5)(c) to be discharged by the designated authority where, for example, staff, former employees or sub-contractors are named in the complaint.
- 106 The Ombudsman does not have to send a statement with her reasons for not investigating a complaint to either the designated authority or a another person alleged to be responsible for the matter complained of, if she thinks it would not be appropriate to do so (subsection (7)).
- 107 Under subsection (8) the designated authority must have regard to any recommendations in respect of the authority contained in a statement under this clause. This Act does not require the designated authority to carry out those recommendations.
- 108 Subsection (9) provides that, where the Ombudsman has not completed her investigation of a complaint within twelve months of receiving that complaint, she must send a statement to the affected person explaining why. This replicates and extends the provisions contained in the Health Service Commissioner for England (Complaint Handling) Act 2015.
- 109 Subsection (10) allows the Ombudsman to publish all or part of a statement if she considers it in the public interest to do so. Before doing so, she must take into account the interests of the person who made the complaint and any other appropriate persons.
- 110 Subsection (11) allows the Ombudsman to lay a statement under this clause before Parliament. For complaints about local government it may be more appropriate for the Ombudsman to bring the statement to the attention of the elected members of the relevant local authority. The Bill does not give a separate power to the Ombudsman to do that which is already permitted by subsection (4)(b).

## **Clause 15: Special statements**

- 111 Clause 15 applies where there has been a finding of injustice or hardship in a matter investigated by the Ombudsman and the Ombudsman considers that the injustice or hardship has not been or will not be remedied.
- 112 It gives the Ombudsman the power to bring wider attention to those cases where (i) she considers that injustice or harm has been caused to the affected person in consequence of the designated authority's maladministration, service failure, or failure to provide a service; and (ii) the designated authority has either declined to put matters right, or is unable to do so, or the Ombudsman is not satisfied that they will do so.
- 113 Subsection (2) allows the Ombudsman to require a designated authority to provide information about how it has or will respond to the Ombudsman's finding. By subsection (3), the authority must provide that information within the time specified by the Ombudsman.
- 114 Subsection (4) allows the Ombudsman to bring that information to the attention of any person the Ombudsman considers appropriate, with comments, in the form of a "special statement". This might be done, for example, by laying the report before Parliament, sending it to the members of a local authority (so that it is brought to the attention of the elected members as well as their officials), or by requiring the designated authority to publish it.
- 115 By making a special statement the Ombudsman may exert pressure on a designated authority to remedy the injustice or hardship if it is possible to do so; or the statement may draw attention to the fact that the designated authority cannot or will not provide a

remedy for example because it believes itself to be debarred from doing so, whether because of the policy or by the law.

- 116 The Ombudsman is given no formal power to require designated authorities to act on the basis of her recommendations, or sanctions or powers to fine. Instead the Ombudsman has this power to publicise unremedied hardship or injustice and to draw it to the attention of national and local elected representatives and lawmakers.

## **Clause 16: Other reports**

- 117 Subsection (1) gives the Ombudsman the power to prepare and share reports which highlight any issues arising from her casework.
- 118 Subsection (2) provides that a report under this section may include any general recommendations arising from the Ombudsman's work.
- 119 It may be that these reports highlight themes and trends in a particular class or classes of investigations, or focus on a single investigation where the Ombudsman believes there is a public interest in reporting its findings and/or recommendations more widely. By subsection (3) such reports are to be laid before Parliament. The Ombudsman may also send the report directly to anyone she thinks appropriate.

## **Clause 17: Defamation**

- 120 Clause 17 gives the Ombudsman and those carrying out investigations for her absolute privilege in relation to libel or slander in connection with a complaint or an investigation. This provides them with protection against defamation claims as they go about their work.
- 121 Subsection (3) provides that there is no protection if publication is done with malice.
- 122 This absolute privilege does not extend beyond the Ombudsman and those carrying out her functions.

## **Clause 18: Complaints referred by designated authorities**

- 123 Clause 18 allows the designated authority to refer a complaint to the Ombudsman. An example of where a complaint may be referred is when, during the course of the local investigation of the complaint relations between the designated authority and the person irretrievably break down and there is no prospect of the complaint being resolved between the parties. It is for the Ombudsman to decide whether or not to accept a complaint which is referred by the designated authority.
- 124 Subsection (2) sets out the requirements for a complaint to be "properly referred".
- 125 Subsection (6) provides that, before investigating a complaint referred by a designated authority, the Ombudsman must be satisfied that the authority has considered the complaint itself and that the decision to refer is reasonable. The intention is that designated authorities should normally complete their initial consideration of a matter, so referred complaints are an exception that should only be used sparingly.

## **Clause 19: Consultation and co-operation with other ombudsmen**

- 126 Clause 19 deals with consultation and co-operation between the Ombudsman, other ombudsmen, and statutory complaint handlers in the United Kingdom. Its purpose is to allow the Ombudsman to consult her counterparts, including in the devolved administrations, if she considers that a complaint or part of a complaint may fall within their jurisdiction.

127 Subsection (2) provides that where a complaint falls wholly or partly for consideration by another ombudsman or complaint handler, the Ombudsman may, with the consent of the person who made the complaint, transfer all or part of the complaint including information held by the Ombudsman relating to the complaint. Alternatively, the clause allows for the Ombudsman and her counterpart to work together and jointly investigate the complaint.

## **Clause 20: Disclosure of information**

128 Clause 20 introduces Schedule 5 which sets out when the Ombudsman can and cannot disclose information she has obtained.

## **Clause 21: Designated authorities**

129 The Ombudsman may only investigate complaints that relate to a designated authority. Clause 21 sets out the process for designating an authority. It also sets out the process for revoking those designations.

130 By subsection (1), where a person is designated by the Minister for the Cabinet Office under that subsection, the person becomes a designated authority for the purposes of this Act.

131 Subsection (2) provides that a person must fall within the scope of the Ombudsman's jurisdiction as set out in Clause 22 before they can be designated. A person can be designated individually or by class.

132 By subsection (3), before making a designation the Minister must consult key parties, including the Board and the Public Accounts Commission and provide anyone else who appears to have an interest with an opportunity to comment. The Board will be able to provide the Minister with an expert view on whether or not an authority fits within the Ombudsman's jurisdiction and advice on the strategic and budgetary implications for the Board of admitting the body into jurisdiction. The requirement for the Public Accounts Commission to be consulted reflects Parliament's sponsorship of the Ombudsman and will provide a parliamentary check on whether the purpose of this Bill is being met by the designation of an authority or class of authority.

133 Subsection (4) provides that all the designated authorities functions and activities will be within jurisdiction unless the Minister has determined that, following consultation with the Board, the designation only relates to specific functions and activities (subsections 5 and 6).

134 Subsections (7) and (8) set out the process for revoking a designation, including a deemed designation (for which see clause 24). Revocation is subject to the same consultation requirements as making a designation.

135 Subsection (9) allows the Board to recommend where they believe adjustments to the Ombudsman's jurisdiction should be made.

## **Clause 22: Persons within scope of Ombudsman's jurisdiction**

136 Clause 22 sets out the scope of the Ombudsman's jurisdiction by providing what sort of persons and bodies are eligible for designation. That scope includes central government authorities, those providing health services in England, local authorities, and those providing adult social care. As such it covers the combined jurisdictions of the Parliamentary Commissioner for Administration, the Health Service Commissioner for England and the Commission for Local Administration in England.

137 If a person or body does not fall within the scope set out here, they may not be made subject to investigation by the Ombudsman by being designated under clause 21. The clause therefore limits how the designation power in that clause may be used.

138 Subsection (2) sets out the meaning of a central government authority and provides that it includes government departments, any person who exercises functions on behalf of the Crown, and other persons who meet specified criteria set out in paragraph (c). The criteria include that 'at least half' of the person's funding must derive from public funds and so excludes those bodies which raise most of their funds from other sources.

## **Clause 23: Restrictions on power to make designations under section 21**

139 Clause 23 sets out that a Minister must not designate a person under clause 21 if they meet certain criteria. Those criteria are set out in subsections (1), (3) and (5) and follow those that already exist in the legislative framework for the PHSO and the LGO.

140 Subsection (1) places restrictions on designating providers of education, training, and related activities; regulators of the professions and complaints resolution organisations.

141 Subsection (2) disapplies subsection (1) to the extent that the Minister may make designations in relation to the admission authorities of certain types of schools.

142 Subsection (3) places restrictions on designating persons who operate in a commercial manner and do not provide services of a public nature.

143 Subsection (4) disapplies subsection (3) to the extent that the Minister may make designations in relation to registered General Practitioners and adult social care providers.

144 Subsection (5) places restrictions on designating persons who are within the jurisdiction of a devolved ombudsman.

145 Subsections (7), (8), (9) and (10) allow the Minister to amend this section by secondary legislation but only after any revisions have been approved by Parliament under the "affirmative procedure".

## **Clause 24: Deemed designations under section 21**

146 Clause 24(1) provides that all those bodies that are within the jurisdictions of the PHSO and the LGO immediately before the new Ombudsman starts operations will automatically fall to be investigated by her.

147 Subsection (3) provides continuity where a function transfers from a designated authority to a person who is not designated. The person to whom the functions transfers is deemed, in these circumstances, to have been designated if they still satisfy the requirements in clause 22.

## **Clause 25: List of designations**

148 Clause 25 provides for the Minister to maintain and publish an up-to-date list of designated authorities, and to lay that list before Parliament at least once a year.

149 This obligation provides transparency and certainty both to those who wish to complain and those who may be complained about, as to whether or not they fall within the Ombudsman's jurisdiction. That will help minimise disputes about that jurisdiction. Laying the list before Parliament under subsection (1)(b) will allow for further accountability.

150 Subsection (4) enables the Minister to delegate the publication of the list to another person, for example to the Board.

## **Clause 26: Housing complaints**

151 Clause 26 makes provision for the Minister to bring social landlords fully within the scope of the jurisdiction of the Ombudsman and to repeal corresponding provision relating to the Housing Ombudsman under the Housing Act 1996. This would be done by secondary legislation.

152 Subsection (2) sets out who the Minister would need to consult before making this change. These include the Board of the Public Service Ombudsman, the Public Accounts Commission, any housing ombudsman under an approved scheme, the Regulator of Social Housing and anyone else the Minister considers may have an interest in the proposed regulations.

153 If all social landlords were brought within the scope of the Ombudsman's jurisdiction, subsections (3) and (4) allow for the Minister to repeal, through secondary legislation, those parts of the Housing Act 1996 that provide for schemes for the investigation of housing complaints by a housing ombudsman.

154 Subsection (5) allows for regulations under this clause to make consequential, transitional, supplementary or saving provision, including amendments to relevant legislation.

155 Subsection (6) states that any secondary legislation under the powers of this clause must follow the affirmative procedure.

## **Clause 27: Promotion of best practice in complaints handling etc**

156 Clause 27 requires the Ombudsman to promote best practice in the handling of complaints by providing information, advice and training to designated authorities. It also seeks to build on the practice of both the PHSO and the LGO in publishing general and targeted information which draws on their expertise and insight with a view to others using that information to improve services, for example the PHSO's "Principles of good administration".

157 By subsections (4) and (5), designated authorities must have regard to the relevant material provided by the Ombudsman when handling a complaint, unless they lack the necessary powers to do so or to do so would be inconsistent with any other legislation.

158 Subsection (6) provides that the Ombudsman may provide information to designated authorities and others about complaints and investigations that have been handled by the Ombudsman. The intention is to allow lessons learned from complaints to be used more effectively by designated authorities to improve the way they deliver services to the public.

159 Subsection (7) requires that all the materials produced by the Ombudsman under this clause are published.

## **Clause 28: Information about recourse to the Ombudsman**

160 Clause 28 introduces a new statutory duty on designated authorities to make sure that individuals are made aware of their right of redress to the Ombudsman, including the time limits for escalating their complaint to the Ombudsman and the relevant contact details.

161 In most cases this duty will be met through making such information available on the

designated authority's website. Where that is not possible the designated authority will need to take reasonable steps to bring that information to the attention of those who may be entitled to make a complaint.

## **Clause 29: Abolition of existing ombudsmen**

162 Clause 28 abolishes the offices of the Parliamentary Commissioner for Administration, the Health Service Commissioner for England and the Commission for Local Administration in England. It also allows the Minister to make transitional or consequential provisions in connection with that by secondary legislation following the negative procedure in Parliament.

## **Clause 30: Interpretation**

163 This clause defines certain terms included in this Bill, or shows where in the Bill the meaning of terms may be found.

164 Subsection (2) provides that actions taken by a designated authority include actions taken on or behalf of the authority by members of the authority, members of its staff, and or any other body or individual. Its purpose is to allow the actions of those who deliver services on behalf of designated authorities to be investigable as if they had been performed by the authority itself.

## **Clause 31: Definitions: persons providing health or social care**

165 Clause 31 sets out which persons providing health or social care are within the scope of the Ombudsman's jurisdiction.

## **Clause 32: Meaning of "member of the public"**

166 Clause 32 defines a "member of the public" as any person other than a designated authority or another public authority which is not a designated authority. Its effect is that while complaints can be made by individuals, businesses and associations, a complaint cannot be made by a designated authority or another public authority. This is to ensure that the Ombudsman remains a redress mechanism for the ordinary man or woman rather than a source of alternative dispute resolution for counter-claims by bodies of the executive.

## **Clause 33: Extent, commencement and short title**

167 The Bill is to be commenced by regulations made by the Minister for the Cabinet Office (except for this clause which comes into force on Royal Assent).

## **Schedule 1: The Public Service Ombudsman**

168 This Schedule makes provision for the appointment, conditions of tenure and functions of the office of the Public Service Ombudsman.

### **Paragraph 1: Appointment**

169 Paragraph 1 sets out that the Ombudsman will be appointed by Her Majesty by Letters Patent following an address presented by the House of Commons. The Prime Minister moves the motion for that address with the agreement of the Public Accounts Commission and on the recommendation of the chair of the Board. Subparagraph (5) limits the term of office to a single term of up to seven years, as is the case now for the PHSO and the LGO.

### **Paragraph 2: Resignation, removal and temporary cover**

170 Paragraph 2 provides that the Ombudsman can be relieved from office either at her own

These Explanatory Notes relate to the Public Service Ombudsman Bill as published in draft 5 December 2016

request or following an address of both Houses of Parliament to Her Majesty.

- 171 Subparagraphs (4) to (6) deal with a situation where an Ombudsman is unable or unwilling to carry out her functions. In such circumstances the Board may appoint a person to act as the Ombudsman. That person will be known as the acting Ombudsman and will hold office until a new Ombudsman has been appointed or, if sooner, twelve months after her appointment. Should the acting Ombudsman be appointed as the new Ombudsman her time as acting Ombudsman will count towards the period for which she holds office as Ombudsman.

### Paragraph 3: Remuneration

- 172 This paragraph sets out that the remuneration arrangements for the Ombudsman are to be made by the Prime Minister and the Public Accounts Commission in advance of the appointment. These arrangements may cover such matters as salary, allowances, access to a pension and the provision of other benefits.
- 173 By subparagraph (3), performance-based incentives are not permitted since they could constrain the operational independence of the Ombudsman.
- 174 The Ombudsman's salary is to be set by reference to a high court judge or any other holder of judicial office that the Prime Minister and the Public Accounts Commission consider appropriate. Having regard to that point of reference, there is flexibility over the specific level of remuneration and other terms and conditions.
- 175 Subparagraph (5) also applies the remuneration provisions to an acting Ombudsman.
- 176 Subparagraph (6) provides that the remuneration arrangements are to be charged on and paid out of the Consolidated Fund. This replicates the arrangements already in place for the PHSO.

### Paragraph 4: Disqualification

- 177 Paragraph 4 sets out that the Ombudsman or an acting Ombudsman may not be a member of the House of Commons, may not be a designated authority, or be employed or hold office in a designated authority. The purpose of this provision is to protect and demonstrate the political impartiality of the Ombudsman and her independence from those she can investigate. If an Ombudsman or an acting Ombudsman becomes disqualified during her term of office, she ceases to hold office. However, subparagraph (4) clarifies that any actions or functions carried out by an Ombudsman or acting Ombudsman who is disqualified under this provision remain valid.

### Paragraph 5: Delegation of functions

- 178 The Ombudsman has absolute responsibility for carrying out the functions vested in that office. It is envisaged that, as now, the Ombudsman will be supported in the discharge of those functions by others. This paragraph gives the Ombudsman the ability to delegate her functions as she or he believes is appropriate. In most cases this delegation will be to employees of the Board, however sub-paragraph (1) allows the Ombudsman to delegate her functions to any person she considers appropriate. For example, it may be that a complaint raises specialist matters that the Ombudsman feels are most appropriately investigated by an expert in that field and that expertise is not held by a member of staff.

### Paragraph 6: Annual report

- 179 Paragraph 6 requires the Ombudsman to report to Parliament annually on the performance of her functions during a financial year. Because the functions of the

Ombudsman will relate to her investigations, the report will cover the complaints that have come to her and how she resolved them. It will serve as an overview for Parliament and others of which public services are attracting complaints and whether or not those complaints are warranted. The Board will report separately on the administration of the organisation which supports the Ombudsman (see paragraph 21 of Schedule 2).

#### Paragraph 7: Information about complaints

180 Paragraph 7 requires the Ombudsman to publish aggregated data about all complaints. The Ombudsman is given discretion about how the information is published. This provision would allow the Ombudsman to publish up-to-date information on the types of complaints she receives, the designated authorities complained about and the geographical location of those making the complaints.

### **Schedule 2: The Board of the Public Service Ombudsman**

181 The corporate Board of the Public Service Ombudsman is established under clause 3 with the principal duty of providing staff and resources to the Ombudsman. It is a separate legal entity whose governance structure and constitution are set out in this Schedule. These structures are based on established public sector models, adapted for the role of the Ombudsman.

#### Part 1: Membership

182 The members appointed under sub-paragraph (1) together constitute the Board of the Public Service Ombudsman. It is led by a non-executive chair. It will be for the chair to decide on the number of members and to gain agreement to the composition of the Board from the Public Accounts Commission. Whatever the size of the Board, sub-paragraph (3) requires that the majority of the Board must be non-executive members, that is, members who are neither employees nor the Ombudsman.

#### Part 2: Non-executive members

183 Paragraphs 2, 3 and 4 set out the process to be followed for the appointment of the non-executive members. One of the non-executive members will chair the Board. The chair will be appointed by Her Majesty by Letters Patent following an address of the House of Commons. It will be for the Prime Minister to move the motion for the address after gaining the agreement of the Public Accounts Commission. The chair will hold office for a term of not more than three years, and may serve no more than two such terms.

184 The other non-executive members will be appointed by the Public Accounts Commission on the recommendation of the chair. The Bill does not set out any requirements with regard to the non-executive members' knowledge or expertise, leaving it to the chair and the Public Accounts Commission to determine the criteria that best fits the needs of the Board at any particular juncture. As with the chair, non-executive appointments can be made for no longer than a term of three years and may only be renewed once.

185 Paragraph 6 makes provision for the remuneration of non-executive members. In the case of the chair the remuneration arrangements must be agreed between the Prime Minister and the Public Accounts Commission before appointment, and any amount payable will be paid out of the Consolidated Fund. That arrangement recognises the importance of the position and gives the chair greater financial independence from Parliament and the executive. Any remuneration of other non-executive members will be set by the Public Accounts Commission and be paid by the Board from voted resources. None of the non-executive members, including the chair, will be entitled to a

pension.

186 Paragraph 7 allows the Public Accounts Commission to make other terms for the appointment of non-executive members, including restrictions relating to other offices or positions or contractual arrangements that that member may hold during their tenure. Such restrictions may also apply for no more than two years after the appointment ends. The purpose of this provision is to prevent conflicts of interest between a person's role as a non-executive of the Board and any other work or role they perform.

187 Paragraph 8 enables a non-executive member, including the chair, to resign by giving notice to the Public Accounts Commission.

188 Removal of the chair, by paragraph 9(1), requires an address of both Houses of Parliament. Paragraph 9 (2) makes provision for the Public Accounts Commission to terminate the appointment of a non-executive member by giving written notice in a range of circumstances.

### Part 3: Executive members

189 It is anticipated that the Ombudsman will usually also perform the functions of the chief executive of the Board, including that of accounting officer. However, paragraph 10 allows the Board to appoint another person to perform that role where it believes it is in the best interests of the Board to do so. Any such appointment must be approved by the Public Accounts Commission. A chief executive who does not also hold the office of ombudsman will be an employee of the Board. Where under paragraph 10, the Board has appointed a chief executive who is not the Ombudsman, that person will automatically become an executive member.

190 Paragraph 11 provides otherwise for the appointment of employees as executive members of the Board. It is for the non-executive members to appoint the executive members, on a recommendation by the chief executive. The terms of appointment for executive members are set by the non-executive members.

191 Paragraph 12 provides that executive member's appointment shall terminate either at the end of any period set for the appointment, or when the employee ceases to be employed by the Board.

192 Paragraph 13 provides that an executive member may resign by giving written notice to the Board.

### Part 4: Employees

193 Paragraph 14 gives the Board power to employ staff. The terms of employment for staff are to be kept broadly in line with those of civil servants. Employees are barred from holding any office or position in a designated authority.

194 Sub-paragraphs (4) and (5) clarify that staff are not to be treated as servants or agents of the Crown other than for the purposes of the Official Secrets Act 1989.

### Part 5: Procedure and other matters

195 Paragraph 15 requires the Board to make internal procedural rules.

196 Paragraphs 16 and 17 enable the Board to set up such Committees as it believes appropriate to help it carry out its statutory functions and to delegate its functions to those Committees. This does not impact on the ability of the Board to carry out those functions or remove the Board's liability.

197 Paragraph 18 gives the Board a general power to enter into agreements and

arrangements to provide services and to commission services from other persons. These powers are additional to the specific powers which the Board has under this legislation.

- 198 The effect of sub-paragraph (2) is to rule out the possibility of the Board offering a service which would amount to the Ombudsman taking on a voluntary complaints jurisdiction. Any addition to the Ombudsman's jurisdiction is to be decided by a designation in accordance with the procedure set out in clause 21.
- 199 Paragraph 19 sets out the arrangements for the preparation, audit and publication of the Board's accounts.
- 200 The Board will be funded from money voted annually by Parliament for that purpose (see paragraph 25). There are two exceptions to that; the remuneration packages of the Ombudsman and the chair of the Board will be paid directly from the Consolidated Fund.
- 201 Under sub-paragraph (1) of paragraph 19 the chief executive must prepare the annual accounts of the Board and submit them to the Comptroller and Auditor General. The accounts must be of the kind set out in section 5 of the Government Resources and Accounts Act 2000 and prepared in accordance with any direction given by HM Treasury (sub-paragraph (2)).
- 202 Paragraph 20 enables the Comptroller and Auditor General to access documentation held by the Board in order to carry out an examination of the accounts or a value for money examination.
- 203 Paragraph 21 provides for the chief executive to prepare an annual report for each financial year on the Board's performance. The report is to be sent to the Public Accounts Commission. It must include information about how long investigations completed in the relevant year took, including how many of those investigations took more than twelve months to complete.
- 204 It must also include a statement by the Ombudsman on whether she has been able to perform her functions independently. The report is designed to allow the Public Accounts Commission to hold the Board to account.
- 205 Paragraph 22 sets out the arrangements for the Board's estimate and strategy
- 206 Subparagraphs (1) and (2) provide that the Board must, for each financial year, prepare an estimate of the resources it will require and submit that estimate to the Public Accounts Commission.
- 207 Subparagraphs (3) and (4) provide that the Board must also prepare a document setting out its functions and resources strategy and submit it to the Public Accounts Commission. This document must be reviewed annually and any revisions also submitted to the Public Accounts Commission.
- 208 Sub-paragraph (7) sets out that the Board must send the estimate and strategy to the Treasury as well as such information that the Treasury reasonably requires in connection with those documents. This is to enable the Treasury to make informed representations to the Public Accounts Commission. The Commission must consult the Treasury on the estimate and take into account any representation it makes before it lays the estimate (sub-paragraph (9)).
- 209 Paragraph 23 gives the Board a duty to monitor the quality and efficiency of the service provided by the Ombudsman, in accordance with a scheme prepared by the Board, and

to report its findings to the Public Accounts Commission.

210 Paragraph 24 places a duty on the Board to review the operation of the Act every three years and to report with any recommendations it considers appropriate to the Public Accounts Commission. These reviews will enable the Board to bring to Parliament's attention any issues that have arisen with the operation of this Act.

211 Paragraph 25 sets out that any expenditure incurred by the Board will be met by money provided by Parliament.

212 Paragraph 26 enables the Board to do anything calculated to facilitate, or incidental or conducive to the carrying out of its functions.

### **Schedule 3: Relationship between Ombudsman and Board**

213 Schedule 3, which is introduced by Clause 3(6), contains provisions that govern the operating details of the relationship between the Ombudsman and the Board. These include the process for preparing, reviewing, reporting and revising a code of practice. The Board is required to prepare such a code under paragraph 1. It must set out: (a) how the Board is going to perform its principal duty of providing resources and staff without impinging on the independence of the Ombudsman, and (b) how it will prepare, review and revise specified documents including the annual report, estimate and strategy. The Code may also include provisions for the management of the Board's affairs and any other matters the Board considers appropriate.

### **Schedule 4: Excluded matters**

214 Schedule 4, which is introduced by Clause 8, specifies matters into which the Ombudsman may not conduct an investigation even though they relate to the actions and/or functions of a designated authority.

215 In the main these excluded matters replicate those present in the legislative framework for the PHSO and the LGO. The reasons for their exclusion include: where such matters are within the jurisdiction of another Ombudsman or are more appropriately resolved in another forum; where they are governed by international law or take place outside the UK; where they relate to the criminal justice system, national security and the exercise of judicial authority; and where the matter is within the personal prerogative of the sovereign.

216 Paragraph 15 clarifies that the Ombudsman shall not have jurisdiction over any of the statutory functions carried out by the Comptroller and Auditor General.

### **Schedule 5: Disclosure of information**

217 Schedule 5, which is introduced by Clause 20, sets out when the Ombudsman can and cannot disclose "relevant information".

218 Paragraph 1 gives the meaning of "relevant information". It includes information the Ombudsman, her staff and those acting on her behalf have obtained in the course of carrying out her functions; information obtained from another Ombudsman; and information obtained from the Information Commissioner under section 76 of the Freedom of Information Act 2000.

219 Paragraph 2 provides that the Ombudsman may only disclose relevant information in accordance with this Schedule.

220 Paragraph 3 (1) allows relevant information to be disclosed for the purposes of the Ombudsman's complaint handling, investigatory and reporting functions as set out.

The circumstances in which disclosure is permitted include:

- for the purposes of an investigation (paragraph (b));
- for statements and reports about investigations, including any decisions not to investigate a complaint or to discontinue a complaint (paragraph (d));
- for the purposes of consulting and co-operating with other ombudsmen under clause 19 (paragraph (f)); and
- for the purposes of the provision of information, advice and training under clause 26 (paragraph (g)).

221 She will also be able to disclose relevant information in other circumstances specified in sub-paragraphs (2) and (3):

- to a statutory body or office holder, such as a regulator, for that body or office holder to carry out their functions in relation to the authority which is the subject of the complaint;
- where a person has threatened or is likely to constitute a threat to health or safety of one or more persons, information may be disclosed to a person where the Ombudsman thinks it is in the public interest to do so; and
- to the Information Commissioner, where the information relates to a matter where the Commissioner has statutory powers to act.

222 Paragraph 4 sets out how the Ombudsman must approach information which is personal or confidential for the purposes of reports and statements under clauses 14, 15 and 16 and information about best practice in complaints handling in clause 27. By sub-paragraph (1), such information may only be included in a qualifying document where a public interest test is satisfied.

223 In this paragraph, “personal information” means a person’s name or particulars that allow a person to be identified. “Confidential information” means information whose disclosure would normally be prevented by law but which is permitted to be disclosed for the purposes of an investigation by the Ombudsman because of clause 11(5) (see sub-paragraph (5)).

224 The public interest test is set out in sub-paragraph (3). Its effect is to allow the Ombudsman to include personal or confidential information in the specified reports and statements where, having taken into account the interests of the person who made the complaint (and the interests of any other appropriate person), she considers it is in the public interest to include that information. It operates, therefore, as a safeguard against the unnecessary disclosure of personal and confidential information in material published by the Ombudsman.

225 Sub-paragraph (5) provides that the public interest test for personal information is to be treated as having been met where the name or identifying particulars relate to a senior member of staff at a designated authority; a member of a designated authority and the Mayor and members of the Greater London Assembly. This means that senior staff cannot use the protection for personal information to remain anonymous in reports and statements issued by the Ombudsman.

226 Paragraph 5 relates to information obtained by the Ombudsman which is protected by legal and other forms of privilege. Legal procedural rules usually protect such information from disclosure in order to protect a person’s litigation rights, including the

ability to seek and act on legal advice. Clause 11(6) sets aside that rule of law for the purposes of an Ombudsman investigation to allow her full access to information held by a designated authority for the purposes of an investigation. It operates as a statutory waiver, for limited purposes. Paragraph 5 prevents the Ombudsman from disclosing whether she has received privileged information under clause 11(6), and the privileged information itself, in each case unless the designated authority consents to her doing so.

227 Paragraph 6 maintains the provision in the Parliamentary Commissioner Act 1967 for a Minister of the Crown to prevent the disclosure of information by the Ombudsman which may harm the public interest. The Minister does so by giving notice to the Ombudsman under sub-paragraph (1). The Ombudsman is thereby prevented from disclosing such information to any person for any purpose. She may, however, apply to the court for permission to ignore such a notice. Such notices could be used, for example, to protect material relating to national security.

## Commencement

228 The provisions are to be commenced by Order made by the Minister for the Cabinet Office. In accordance with usual practice, the Bill will not be commenced until at least two months after Royal Assent.

## Financial implications of the Bill

229 The remuneration of the Ombudsman under paragraph 3 of Schedule 1 and of the Chair of the Board of the Public Service Ombudsman under paragraph 6 of Schedule 2 are chargeable on the Consolidated Fund. The Parliamentary Ombudsman's remuneration is already charged to that Fund. Any increase in the remuneration paid to the Ombudsman under this Bill, and the remuneration costs of the Chair represent an increase in the amount charged on the Fund. The remuneration is to be agreed between the Prime Minister and the Public Accounts Commission so a precise figure cannot yet be given.

230 The Public Service Ombudsman will be a new corporate entity which will take on the existing functions of two organisations (PHSO and LGO) without significantly adding to those. Its establishment should not therefore create additional expenditure beyond transition costs and the government expects economies of scale to be gained from merging the staffing and resourcing.

231 The PSO will be a parliamentary body. To provide assurance that it will manage public money efficiently and effectively the Bill proposes stronger governance of the organisation itself (a statutory Board and Accounting Officer and auditing of accounts by NAO) and greater accountability to Parliament for its estimate, strategy and spending (through the Public Accounts Commission).

## Compatibility with the European Convention on Human Rights

232 The Minister for the Constitution considers that the provision in the draft Bill are compatible with the Convention rights such that were the Bill to be introduced in its current form he would be able to make a statement under section 19(1)(a) of the Human Rights Act 1998.

## Related documents

233 The following documents are relevant to the Bill and can be read at the stated locations:

- *"Time for a People's Ombudsman Service"*, Public Administration Select Committee, Fourteenth Report of Session 2013-14 HC655
- *"More Complaints Please!"*, Public Administration Select Committee, Twelfth Report of Session 2013-14 2013-14 HC229

These Explanatory Notes relate to the Public Service Ombudsman Bill as published in draft 5 December 2016

- “Better to serve the Public: Proposals to restructure, reform, renew and reinvigorate public services ombudsmen”, by Robert Gordon CB, October 2014
- “A Public Service Ombudsman: A consultation”, Cabinet Office, March 2015
- “A Public Service Ombudsman: Government response to the Consultation”, Cabinet Office, December 2015

## Annex A - Territorial extent and application in the United Kingdom

1. All the provisions in the Bill extend to and apply to England and Wales, Scotland and Northern Ireland<sup>1</sup>
2. This Bill establishes a Public Service Ombudsman and a related body corporate, the Board of the Public Service Ombudsman, to investigate exclusively complaints about non-devolved public services. If a complaint relates to a matter within the competence of a devolved ombudsman, that ombudsman has exclusive competence for that matter. The Ombudsman established by this Bill works on behalf of and is accountable to Parliament.
3. The Ombudsman is given powers to consult and co-operate with other ombudsmen, including devolved ombudsmen, under clause 19. The purpose of that provision is to help ensure that complaints are investigated by the appropriate ombudsman. If a complaint relates to matters some of which are devolved and some not, the Ombudsman is given powers to investigate jointly with a devolved ombudsman. The Bill does not confer additional powers or functions on devolved ombudsmen in this respect.

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<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

<b>Provision</b>	<b>Extends to E &amp; W and applies to England?</b>	<b>Extends to E &amp; W and applies to Wales?</b>	<b>Would corresponding provision be within the competence of the National Assembly for Wales?</b>	<b>Extends and applies to Scotland?</b>
1 The Ombudsman, Board etc  Clauses 1- 31 (except clause 19);  Schedules 1 - 5	Y	Y	N/A	Y
2 Consultation with other ombudsmen  Clause 19	Y	Y	N/A	Y
<b>Provision</b>	<b>Would corresponding provision be within the competence of the Scottish Parliament?</b>	<b>Extends and applies to Northern Ireland?</b>	<b>Would corresponding provision be within the competence of the Northern Ireland Assembly?</b>	<b>Legislative Consent Motion needed?</b>
1 The Ombudsman, Board etc  Clauses 1- 31 (except clause 19);  Schedules 1 - 5	N/A	Y	N/A	N
2 Consultation with other ombudsmen  Clause 19	N/A	Y	N/A	N

## **Minor or consequential effects<sup>2</sup>**

The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

There are none.

The following provisions that apply to England and Wales have effects outside that area, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

There are none.

## **Subject matter and legislative competence of devolved legislatures**

Devolved legislatures have legislative competence to establish and regulate public service ombudsmen to investigate complaints from members of the public about the provision of devolved public services.

This Bill deals exclusively with complaints about non-devolved public services.

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<sup>2</sup> References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

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