

Status: Point in time view as at 01/12/2017.

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[^{F1}SCHEDULE A1

DIRECT PAYMENTS: AFTER-CARE UNDER THE MENTAL HEALTH ACT 1983

Textual Amendments

- F1** Sch. A1 inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(6), 323

General

- 1 Sections 50 (direct payments to meet an adult's needs), 51 (direct payments to meet a child's needs) and 53 (direct payments: further provision) apply in relation to section 117 of the Mental Health Act 1983 but as if the following modifications were made to those sections.

Modifications to section 50

- 2 For subsection (1) of section 50 substitute—
- “(1) Regulations may require or allow a local authority to make payments to an adult to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging for the provision of after-care services for the adult under that section.”
- 3 In subsection (3) of that section—
- (a) in paragraph (a), for “who has needs for care and support (“A”)” substitute “in respect of the provision to the adult (“A”) of after-care services under section 117 of the Mental Health Act 1983 ”, and
- (b) in paragraph (c)(i), for “of meeting A's needs” substitute “of discharging its duty towards A under section 117 of the Mental Health Act 1983 ”.
- 4 In subsection (4) of that section—
- (a) in paragraph (a), for “who has needs for care and support (“A”)” substitute “to whom section 117 of the Mental Health Act 1983 applies (“A”)”, and
- (b) in paragraph (d)(i), for “meeting A's needs” substitute “discharging its duty towards A under section 117 of the Mental Health Act 1983 ”.
- 5 In subsection (5) of that section—
- (a) in paragraph (a), for “A's needs for care and support” substitute “the provision to A of after-care services under section 117 of the Mental Health Act 1983 ”, and
- (b) in paragraph (b), for “towards the cost of meeting A's needs for care and support” substitute “equivalent to the cost of providing or arranging the provision to A of after-care services under section 117 of the Mental Health Act 1983 ”.
- 6 In subsection (6)(b) of that section, for “A's needs for care and support” substitute “the provision to A of after-care services under section 117 of the Mental Health Act 1983 ”.

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Modifications to section 51

- 7 For subsection (1) of section 51 substitute—
- “(1) Regulations may require or allow a local authority to make payments to a person in respect of a child to whom section 117 of the Mental Health Act 1983 (after-care) applies that are equivalent to the cost of providing or arranging the provision of after-care services for the child under that section.”
- 8 In subsection (3)(a) and (b) of that section, for “who has needs for care and support” (in each place it occurs) substitute “to whom section 117 of the Mental Health Act 1983 applies” .
- 9 In subsection (5)(a) of that section, for “meeting the child's needs” substitute “discharging its duty towards the child under section 117 of the Mental Health Act 1983” .

Modifications to section 53

- 10 In subsection (1) of section 53—
- (a) in the opening words, for “50, 51 or 52” substitute “ 50 or 51 ” ,
- (b) omit paragraphs (a), (b) and (c),
- (c) in paragraph (i), for “a local authority's duty or power to meet a person's needs for care and support or a carer's needs for support is displaced” substitute “ a local authority's duty under section 117 of the Mental Health Act 1983 (after-care) is discharged ” , and
- (d) in paragraph (k), for “50 to 52” substitute “ 50 and 51 ” .
- 11 Omit subsections (2) to (8) of that section.
- 12 After subsection (8) of that section insert—
- “(8A) Regulations under sections 50 and 51 must specify that direct payments to meet the cost of providing or arranging for the provision of after-care services under section 117 of the Mental Health Act 1983 (after-care) must be made at a rate that the local authority estimates to be equivalent to the reasonable cost of securing the provision of those services to meet those needs.”
- 13 In subsection (9) of that section—
- (a) for “, 51 or 52” substitute “ or 51 ” , and
- (b) for “care and support (or, in the case of a carer, support)” substitute “ after-care services ” .
- 14 In subsection (10) of that section, for “care and support (or, in the case of a carer, support) to meet needs” substitute “ after-care services ”.]

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SCHEDULE 1

(introduced by section 85)

CONTRIBUTIONS TOWARDS MAINTENANCE OF LOOKED AFTER CHILDREN

Liability to contribute

- 1
- (1) Where a local authority is looking after a child (other than in the cases mentioned in sub-paragraph (8)) it must consider whether it should recover contributions towards the child's maintenance from any person liable to contribute (“a contributor”).
 - (2) An authority may only recover contributions from a contributor if it considers it reasonable to do so.
 - (3) A person is liable to contribute if he or she is an adult with parental responsibility for the child.
 - (4) A person is not liable to contribute during any period when the person is in receipt of a benefit which falls within a category specified in regulations.
 - (5) In sub-paragraph (4) “benefit” includes any allowance, payment, credit or loan.
 - (6) A person is not liable to contribute towards the maintenance of a child in the care of a local authority in respect of any period during which the child is living with a parent of the child under arrangements made by the authority in accordance with section 81.
 - (7) A contributor is not obliged to make any contribution towards a child's maintenance except as agreed or determined in accordance with this Schedule.
 - (8) The cases are those in which the child is looked after by a local authority under—
 - (a) section 76;
 - (b) an interim care order under the Children Act 1989;
 - (c) section 92 of the Powers of Criminal Courts (Sentencing) Act 2000.

Modifications etc. (not altering text)

- C1** Sch. 1 para. 1 excluded by S.I. 2012/2813, regs. 2A(c), 5A (as inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Regulations 2016 \(S.I. 2016/211\)](#), reg. 1(2), Sch. 3 paras. 131, 132)
- C2** Sch. 1 para. 1 excluded by S.I. 2005/1313, reg. 46A(2) (as inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) and Care Planning, Placement and Case Review \(Miscellaneous Amendments\) \(Wales\) Regulations 2016 \(S.I. 2016/216\)](#), regs. 1(2), 5(8))

Commencement Information

- II** Sch. 1 para. 1 in force at 6.4.2016 by [S.I. 2016/412](#), art. 2 (with art. 4, Schs. 1, 2)

Agreed contributions

- 2
- (1) Contributions towards a child's maintenance may only be recovered if the local authority has served a notice (“a contribution notice”) on the contributor specifying—
 - (a) the weekly amount which it considers should be contributed, and
 - (b) arrangements for payment.
 - (2) The contribution notice must be in writing and dated.

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- (3) Arrangements for payment must, in particular, include—
- (a) the date on which liability to contribute begins (which must not be earlier than the date of the notice),
 - (b) the date on which liability under the notice will end (if the child has not, before that date, ceased to be looked after by the authority), and
 - (c) the date on which the first payment is to be made.
- (4) The authority may specify in a contribution notice a weekly amount which is a standard contribution determined by the authority for all children looked after by it.
- (5) The authority may not specify in a contribution notice a weekly amount greater than that which it considers—
- (a) it would normally be prepared to pay if it had placed a similar child with local authority foster parents, and
 - (b) it is reasonably practicable for the contributor to pay (having regard to his or her means).
- (6) An authority may at any time withdraw a contribution notice (without affecting its power to serve another).
- (7) Where the authority and the contributor agree—
- (a) the amount which the contributor is to contribute, and
 - (b) arrangements for payment,
- (whether as specified in the contribution notice or otherwise) and the contributor notifies the authority in writing that he or she so agrees, the authority may recover summarily, as a civil debt, any contribution which is overdue and unpaid.
- (8) Sub-paragraph (7) is without prejudice to any other method of recovery.
- (9) A contributor may, by serving a notice in writing on the authority, withdraw his or her agreement in relation to any period of liability falling after the date of service of the notice.

Commencement Information

I2 Sch. 1 para. 2 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

Contribution orders

- 3 (1) Where a contributor has been served with a contribution notice and has—
- (a) failed to reach any agreement with the local authority as mentioned in paragraph 2(7) within the period of one month beginning with the day on which the contribution notice was served, or
 - (b) served a notice under paragraph 2(9) withdrawing his or her agreement,
- the authority may apply to the court for an order under this paragraph.
- (2) On such an application the court may make an order (“a contribution order”) requiring the contributor to contribute a weekly amount towards the child's maintenance in accordance with arrangements for payment specified by the court.
- (3) A contribution order—

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- (a) may not specify a weekly amount greater than that specified in the contribution notice, and
 - (b) must be made with regard to the contributor's means.
- (4) A contribution order may not—
- (a) take effect before the date specified in the contribution notice,
 - (b) have effect while the contributor is not liable to contribute (by virtue of paragraph 1), or
 - (c) remain in force after the child has ceased to be looked after by the authority which obtained the order.
- (5) An authority may not apply to the court under sub-paragraph (1) in relation to a contribution notice which it has withdrawn.
- (6) Where—
- (a) a contribution order is in force,
 - (b) the authority serves another contribution notice, and
 - (c) the contributor and the authority reach an agreement under paragraph 2(7) in respect of that other contribution notice,
- the effect of the agreement is to discharge the order from the date on which it is agreed that the agreement is to take effect.
- (7) Where an agreement is reached in the circumstances described in sub-paragraph (6) the authority must notify the court—
- (a) of the agreement, and
 - (b) of the date on which it took effect.
- (8) A contribution order may be varied or revoked on the application of the contributor or the authority.
- (9) In proceedings for the variation of a contribution order, the authority must specify—
- (a) the weekly amount which, having regard to paragraph 2, it proposes that the contributor should contribute under the order as varied, and
 - (b) the proposed arrangements for payment.
- (10) Where a contribution order is varied, the order—
- (a) may not specify a weekly amount greater than that specified by the authority in the proceedings for variation, and
 - (b) must be made with regard to the contributor's means.
- (11) An appeal lies in accordance with rules of court from any order made under this paragraph.
- [^{F2}(12) A contribution order in relation to a child, if it would otherwise still be in force, ceases to have effect when the child reaches the age of 18.]

Textual Amendments

- F2** Sch. 1 para. 3(12) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **320**

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Commencement Information

I3 Sch. 1 para. 3 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

Enforcement of contribution orders etc

- 4 ^{F3}(1)
- ^{F3}(2)
- (3) Where a contributor has agreed, or has been ordered, to make contributions to a local authority, any other local authority [^{F4}or a local authority in England] within whose area the contributor is for the time being living may—
- (a) at the request of the local authority which served the contribution notice, and
 - (b) subject to agreement as to any amount to be deducted in respect of services rendered,
- collect from the contributor any contributions due on behalf of the authority which served the notice.
- (4) The power to collect amounts under sub-paragraph (3) includes the power to—
- (a) receive and give a discharge for any contributions due, and
 - (b) (if necessary) enforce payment of any contributions,
- even though those contributions may have fallen due at a time when the contributor was living elsewhere.
- (5) Any contribution collected under sub-paragraph (3) is to be paid (subject to any agreed deduction) to the local authority which served the contribution notice.
- (6) In any proceedings under this paragraph, a document which purports to be—
- (a) a copy of an order made by a court under or by virtue of paragraph 3, and
 - (b) certified as a true copy by the designated officer for the court,
- is to be accepted as evidence of the order.
- (7) In any proceedings under this paragraph, a certificate which—
- (a) purports to be signed by the clerk or some other duly authorised officer of the local authority which obtained the contribution order, and
 - (b) states that any amount due to the authority under the order is overdue and unpaid,
- is to be accepted as evidence that the amount is overdue and unpaid.

Textual Amendments

- F3** Sch. 1 para. 4(1)(2) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [321\(a\)](#)
- F4** Words in Sch. 1 para. 4(3) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), [321\(b\)](#)

Commencement Information

I4 Sch. 1 para. 4 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

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Regulations

- 5 Regulations may provide for—
- (a) the considerations which a local authority must take into account in deciding—
 - (i) whether it is reasonable to recover contributions, and
 - (ii) what the arrangements for payment should be;
 - (b) the procedures a local authority must follow in reaching agreements with—
 - (i) contributors (under paragraphs 2 and 3), and
 - (ii) any other local authority (under paragraph 4).

Commencement Information

I5 Sch. 1 para. 5 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

Service of contribution notice

- 6 (1) A contribution notice required under this Schedule to be served on a contributor may be served on the contributor—
- (a) by being delivered personally to the contributor, or
 - (b) by being sent to the contributor—
 - (i) by a registered post service (as defined by section 125(1) of the Postal Services Act 2000), or
 - (ii) by a postal service which provides for the delivery of the document to be recorded.
- (2) For the purposes of section 7 of the Interpretation Act 1978 in its application to this paragraph, a contributor's proper address is the contributor's last known address.

Commencement Information

I6 Sch. 1 para. 6 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

SCHEDULE 2

(introduced by section 143)

SOCIAL SERVICES FUNCTIONS

Commencement Information

I7 Sch. 2 in force at 6.4.2016 by [S.I. 2016/412](#), [art. 2](#) (with [art. 4](#), [Schs. 1, 2](#))

TABLE 1

| Enactment | Nature of functions |
|---|--|
| Children and Young Persons Act 1933 Sections 34 and 34A | Protection of the young in relation to criminal and summary proceedings. |

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| | |
|---|---|
| <p>Health Services and Public Health Act 1968 Section 65</p> | Financial and other assistance by local authorities to certain voluntary organisations. |
| <p>Children and Young Persons Act 1969 The whole Act</p> | Care and other treatment of children and young persons through court proceedings. |
| <p>Adoption Act 1976</p> | Functions continuing to be exercisable by virtue of any transitional or saving provision made by or under the Adoption and Children Act 2002. |
| <p>Mental Health Act 1983 Parts 2, 3 and 4; Sections 66, 67, 69(1), 114, 115, 116, 117 and 130</p> | Welfare of the mentally disordered; guardianship of persons suffering from mental disorder including such persons removed to England and Wales from Scotland or Northern Ireland; exercise of functions of nearest relative of person so suffering; exercise of functions of nearest relative in relation to applications and references to the First-tier Tribunal or the Mental Health Review Tribunal for Wales; appointment of approved mental health professionals; entry and inspection; welfare of certain hospitals; after-care of detained patients; prosecutions. |
| <p>Public Health (Control of Disease) Act 1984 Section 46(2) and (5)</p> | Burial or cremation of person dying in accommodation provided under [^{F5} Part 4] of this Act and recovery of expenses from the person's estate. |
| <p>Mental Health (Scotland) Act 1984 Section 10</p> | Welfare of certain persons while in hospital in Scotland. |
| <p>Disabled Persons (Services, Consultation and Representation) Act 1986 [^{F6}Sections 1, 2 and 5(5)]</p> | Representation and assessment of disabled persons. |
| <p>Housing (Scotland) Act 1987 Section 38(b)</p> | Co-operation in relation to homeless persons and persons threatened with homelessness. |
| <p>[^{F7}Children Act 1989 The whole Act in so far as it confers functions on a local authority in Wales within the meaning of the Act except— (a) Part 3 and Schedule 2 (local authority support for children and families); (b) section 36 and paragraphs 12 to 19(1) of Schedule 3 (education supervision orders).]</p> | [^{F7} Welfare reports; consent to application for residence order in respect of child in care; functions relating to special guardianship orders; family assistance orders; care and supervision; protection of children; functions in relation to community homes, voluntary homes and voluntary organisations, private children's homes, and private arrangements for fostering children; inspection of children's homes on behalf of the Welsh Ministers; research and returns of information.] |

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| | |
|---|---|
| [^{F8}National Health Service and Community Care Act 1990 Section 47] | [^{F8}Assessment of needs for services under section 117 of the Mental Health Act 1983.] |
| ^{F9} ... | ^{F9} ... |
| Education Act 1996 Section 322 | Help for another local authority in exercising functions under Part 4 of the Act. |
| Adoption (Intercountry Aspects) Act 1999 Sections 1 and 2(4) | Functions under regulations made under section 1 giving effect to the Convention on Protection of Children and Co-operation in respect of Intercountry Adoption, concluded at the Hague on 29th May 1993, and functions under Article 9(a) to (c) of the Convention. |
| Adoption and Children Act 2002 | Maintenance of Adoption Service; functions of local authority as adoption agency. |
| Community Care (Delayed Discharges etc) Act 2003 Part 1 | Functions relating to hospital patients likely to need community care services to be made available in order to be discharged safely. |
| Mental Capacity Act 2005 Sections 39, 39A, 39C, 39D, 49 and Schedule A1 | Instructing independent mental capacity advocate before providing accommodation for person lacking capacity; instructing independent mental capacity advocate when giving an urgent authorisation, or making a request for a standard authorisation, under Schedule A1 to the Act; instructing independent mental capacity advocate when no representative for relevant person under Part 10 of Schedule A1 to the Act; instructing independent mental capacity advocate when representative for relevant person under Part 10 of Schedule A1 to the Act is not being paid; reports in proceedings; functions relating to hospital and care home residents. |
| Children and Families (Wales) Measure 2010 Section 66 | Family social work standards officers. |
| [^{F10}Section 67] | [^{F10}The provision of relevant care services within the meaning of that section.] |
| Mental Health (Wales) Measure 2010 Parts 1 to 3 | Local primary mental health support services, coordination of and care planning for secondary mental health service users, assessments of former users of secondary mental health services. |
| Legal Aid, Sentencing and Punishment of Offenders Act 2012 Section 92 | Functions in relation to a child remanded to local authority accommodation. |

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Care Act 2014

Sections 50 and 52

Temporary duty to meet needs for care and support (or needs for support) where establishment or agency unable to do so because of business failure.

[^{F11}**Housing (Wales) Act 2014** Section 95(2), (3) and (4); but only where those functions apply by virtue of subsection (5)(b) of that section.]

[^{F11}Co-operation and information sharing in relation to homeless persons and persons threatened with homelessness.]

This Act

The whole Act, except the functions under sections 15(4) (in so far as it relates to other functions that are not social services functions), 120(2), 128(1) and (2), 130(1) and (2), 162 and section 164.

Preventative services; care and support; support for carers; looked after and accommodated children; safeguarding adults and children.

Textual Amendments

- F5** Words in Sch. 2 substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **324(a)**
- F6** Words in Sch. 2 substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **324(b)**
- F7** Words in Sch. 2 substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **324(c)**
- F8** Words in Sch. 2 inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **324(d)**
- F9** Words in Sch. 2 omitted (27.4.2015) by virtue of [Housing \(Wales\) Act 2014 \(anaw 7\)](#), s. 145(3), **Sch. 3 para. 22(3)(a)**; S.I. 2015/1272, art. 2, Sch. para. 53; S.I. 2015/1272, art. 2, Sch. para. 53
- F10** Words in Sch. 2 inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/413\)](#), regs. 2(1), **324(e)**
- F11** Words in Sch. 2 inserted (27.4.2015) by [Housing \(Wales\) Act 2014 \(anaw 7\)](#), s. 145(3), **Sch. 3 para. 22(3)(b)**; S.I. 2015/1272, art. 2, Sch. para. 53; S.I. 2015/1272, art. 2, Sch. para. 53

SCHEDULE 3

(introduced by section 179)

INVESTIGATION OF COMPLAINTS ABOUT PRIVATELY ARRANGED OR FUNDED SOCIAL CARE AND PALLIATIVE CARE

PART 1

NEW PARTS 2A AND 2B FOR THE PUBLIC SERVICES OMBUDSMAN (WALES) ACT 2005

1 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.

Commencement Information

- I8** Sch. 3 para. 1 in force at 1.11.2014 by [S.I. 2014/2718](#), **art. 2(b)**

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2 After Part 2 (investigation of complaints) insert—

“PART 2A

INVESTIGATION OF COMPLAINTS RELATING TO OTHER PERSONS: SOCIAL CARE AND PALLIATIVE CARE

Application of this Part

Matters to which this Part applies

34A(1) This Part applies to the following matters—

- (a) action taken by a care home provider in connection with the provision of accommodation, nursing or personal care in a care home in Wales;
- (b) action taken by a domiciliary care provider in connection with the provision of domiciliary care in Wales;
- (c) action taken by an independent palliative care provider in connection with the provision of a palliative care service in Wales.

(2) But this Part does not apply to—

- (a) matters which may be investigated under Part 2, or
- (b) matters described in Schedule 3A.

(3) The Welsh Ministers may by order amend Schedule 3A by—

- (a) adding an entry,
- (b) removing an entry, or
- (c) changing an entry.

(4) Before making an order under subsection (3), the Welsh Ministers must consult the Ombudsman.

(5) No order is to be made under subsection (3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly.

(6) For the meaning of the following terms see sections 34R to 34T—

- “care home”;
- “care home provider”;
- “domiciliary care”;
- “domiciliary care provider”;
- “palliative care service”;
- “independent palliative care provider”.

Investigation of complaints

Power to investigate complaints

34B(1) The Ombudsman may investigate a complaint about a matter to which this Part applies if—

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- (a) the complaint has been duly made or referred to the Ombudsman, and
 - (b) in the case of a complaint which relates to an independent palliative care provider, the condition in subsection (2) is met.
- (2) The condition is that the independent palliative care provider has received public funding, within the three years before the date of the action to which the complaint relates, in respect of a palliative care service that it provides in Wales.
- (3) In subsection (2) “public funding” means funding from—
- (a) the Welsh Ministers,
 - (b) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006,
 - (c) an NHS Trust, or
 - (d) a county council or county borough council in Wales.
- (4) A complaint is “duly made” to the Ombudsman if (but only if)—
- (a) it is made by a person who is entitled under section 34D to make a complaint to the Ombudsman,
 - (b) before the complaint is made—
 - (i) the matter to which it relates has been brought, by or on behalf of the person affected, to the notice of the provider to whom it relates, and
 - (ii) the provider has been given a reasonable opportunity to investigate the matter and to respond, and
 - (c) the requirements of section 34E are met in respect of it.
- (5) A complaint is “duly referred” to the Ombudsman if (but only if)—
- (a) it is made by a person who is entitled under section 34D to make a complaint to the Ombudsman, and
 - (b) the requirements of section 34F are met in respect of it.
- (6) It is for the Ombudsman to determine whether the requirements of subsection (1) have been met in respect of a complaint.
- (7) Where the Ombudsman determines that the requirements of subsection (1) have not been met in respect of a complaint because the requirements of subsection (4)(b), section 34E or section 34F(1)(a)(ii) or (b)(ii) have not been met in respect of that complaint, the Ombudsman may nonetheless investigate the complaint if—
- (a) it relates to a matter to which this Part applies, and
 - (b) the Ombudsman thinks it reasonable to do so.
- (8) It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation.
- (9) The Ombudsman may take any action which he or she thinks may assist in making a decision under subsection (8).
- (10) The Ombudsman may begin or continue an investigation into a complaint even if the complaint has been withdrawn.

Status: Point in time view as at 01/12/2017.

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Alternative resolution of complaints

- 34C (1) The Ombudsman may take any action he or she considers appropriate with a view to resolving a complaint which he or she has the power to investigate under section 34B.
- (2) The Ombudsman may take action under this section in addition to or instead of conducting an investigation into the complaint.
- (3) Any action under this section must be taken in private.

Who can complain

- 34D (1) The persons entitled to make a complaint to the Ombudsman are—
- (a) a member of the public (referred to in this Part as “the person aggrieved”) who claims or claimed to have sustained injustice or hardship as a result of a matter to which this Part applies,
 - (b) a person authorised in writing by the person aggrieved to act on that person's behalf, or
 - (c) if the person aggrieved is not capable of authorising a person to act on his or her behalf (for example because the person has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved.
- (2) “Member of the public” does not include a person acting in his or her capacity as—
- (a) a care home provider,
 - (b) a domiciliary care provider,
 - (c) an independent palliative care provider, or
 - (d) a listed authority.
- (3) It is for the Ombudsman to determine any question of whether a person is entitled under this section to make a complaint.

Requirements: complaints made to the Ombudsman

- 34E (1) The requirements mentioned in section 34B(4)(c) are that the complaint must be made—
- (a) in writing, and
 - (b) before the end of the permitted period.
- (2) In subsection (1)(b) (and in section 34F(1)(a)(ii)) “the permitted period” means—
- (a) where the person aggrieved has notice of the matter before the date on which section 34B comes into force, the period of 12 months beginning with the date on which that section comes into force, and
 - (b) in any other case, the period of 12 months beginning with the day on which the person aggrieved first has notice of the matter.
- (3) It is for the Ombudsman to determine whether the requirements of subsection (1) are met in respect of a complaint.

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Requirements: complaints referred to the Ombudsman

- 34F (1) The requirements mentioned in section 34B(5)(b) are that the complaint—
- (a) must have been made to the provider to whom it relates—
 - (i) by a person who would have been entitled under section 34D to make the complaint to the Ombudsman, and
 - (ii) before the end of the permitted period (within the meaning given by section 34E(2)), and
 - (b) must be referred to the Ombudsman—
 - (i) in writing, and
 - (ii) before the end of the period of 12 months beginning with the day on which the complaint was made to the provider.

Decisions not to investigate etc

Decisions not to investigate complaints or to discontinue investigations

- 34G(1) If the Ombudsman decides under section 34B(8) not to begin an investigation into a complaint or to discontinue an investigation, the Ombudsman must prepare a statement of the reasons for that decision.
- (2) The Ombudsman must send a copy of the statement to—
 - (a) the person who made the complaint, and
 - (b) the provider to whom the complaint relates.
 - (3) The Ombudsman may also send a copy of the statement to any other persons he or she thinks appropriate.
 - (4) The Ombudsman may publish a statement under this section if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.
 - (5) The Ombudsman may supply a copy of the published statement, or part of that statement, to any person who requests it.
 - (6) The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under subsection (5).
 - (7) The following information must not be included in a version of a statement sent to a person under subsection (2)(b) or (3) or published under subsection (4)—
 - (a) the name of a person other than the provider to whom the complaint relates;
 - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the statement.
 - (8) Subsection (7) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the statement.

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Investigation procedure and evidence

Investigation procedure

34H(1) If the Ombudsman decides under section 34B(8) to conduct an investigation into a complaint, he or she must—

- (a) give the provider to whom the complaint relates an opportunity to comment on the allegations contained in the complaint, and
 - (b) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on the allegations relating to that person.
- (2) An investigation must be conducted in private.
- (3) Subject to subsections (1) and (2), the procedure for conducting an investigation is that which the Ombudsman thinks appropriate in the circumstances of the case.
- (4) The Ombudsman may, among other things—
- (a) make any inquiries which he or she thinks appropriate, and
 - (b) determine whether any person may be represented in the investigation by an authorised person or another person.
- (5) In subsection (4) “authorised person” means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act).
- (6) The Ombudsman may pay to the person who made the complaint and to any other person who attends or supplies information for the purposes of the investigation—
- (a) sums in respect of the expenses properly incurred by them, and
 - (b) allowances to compensate for the loss of their time.
- (7) The Ombudsman may attach conditions to those payments.

Information, documents, evidence and facilities

34I (1) This section applies for the purposes of an investigation under this Part.

- (2) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to do so.
- (3) The Ombudsman has the same powers as the High Court in relation to—
 - (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
 - (b) the production of documents.
- (4) The Ombudsman may require a person he or she thinks is able to supply information or produce a document relevant to the investigation to provide any facility the Ombudsman may reasonably require.

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- (5) Subject to subsection (6), no person may be compelled to give any evidence or produce any document which the person could not be compelled to give or produce in civil proceedings before the High Court.
- (6) The Crown 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.
- (7) Where an obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service has been imposed by an enactment or rule of law, the obligation or restriction does not to apply to the disclosure of information for the purposes of the investigation.

Obstruction and contempt

- 34J (1) If the Ombudsman is satisfied that the condition in subsection (2) is met in relation to a person, he or she may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
- (a) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under this Part, or
 - (b) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court.
- (3) If the Ombudsman issues a certificate, the High Court may inquire into the matter.
- (4) If the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with that person in the same manner as it may deal with a person who has committed contempt in relation to the High Court.

Reports about investigations

Investigation reports

- 34K(1) This section applies to investigations under this Part unless section 34N applies.
- (2) The Ombudsman must, after conducting an investigation into a complaint about a matter to which this Part applies—
- (a) prepare a report on the findings of the investigation (“an investigation report”), and
 - (b) send a copy of the report to the appropriate persons.
- (3) The appropriate persons are—
- (a) the person who made the complaint,
 - (b) the provider to whom it relates,
 - (c) any other person who is alleged in the complaint to have taken or authorised the action complained of, and

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- (d) the Welsh Ministers.
- (4) The Ombudsman may also send a copy of the report to any other persons he or she thinks appropriate.
- (5) The Ombudsman may publish the report if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers that it would be in the public interest to do so.
- (6) The Ombudsman may supply a copy of the published report, or part of that report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (6).
- (8) The following information must not be included in a version of a report sent to a person under subsection (3)(b) or (c) or (4) or published under subsection (5)—
 - (a) the name of a person other than the provider to whom the complaint relates;
 - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

Further publicity for investigation reports

- 34L (1) The Ombudsman may arrange for a notice about an investigation report to be published—
- (a) in one or more newspapers, or
 - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example—
- (a) provide a summary of the Ombudsman's findings,
 - (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
 - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether it is appropriate to make arrangements under subsection (1), the Ombudsman must take into account—
- (a) the public interest,
 - (b) the interests of the person aggrieved, and

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- (c) the interests of any other persons the Ombudsman thinks appropriate.

Action following receipt of investigation reports

34M(1) This section applies where the Ombudsman has concluded in an investigation report that the person aggrieved has sustained injustice or hardship as a result of the matter investigated.

- (2) The provider to whom the matter relates must consider the report and notify the Ombudsman before the end of the permitted period of—
- (a) the action the provider has taken or proposes to take in response to the report, and
 - (b) the period before the end of which the provider proposes to take that action (if that action has not already been taken).
- (3) In subsection (2) “the permitted period” means—
- (a) the period of one month beginning on the date on which the authority receives the report, or
 - (b) a longer period specified by the Ombudsman in writing (if any).

Reports: alternative procedure

34N(1) This section applies if, after the Ombudsman has conducted an investigation under this Part—

- (a) the Ombudsman concludes that the person aggrieved has not sustained injustice or hardship as a result of the matter complained of, and
 - (b) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.
- (2) This section also applies if, after the Ombudsman has conducted an investigation under this Part—
- (a) the Ombudsman concludes that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,
 - (b) the provider to whom the complaint relates agrees to implement, before the end of the permitted period, any recommendations that the Ombudsman makes, and
 - (c) the Ombudsman is satisfied that the public interest does not require sections 34K to 34M to apply.
- (3) In subsection (2)(b) “the permitted period” means—
- (a) a period agreed between the Ombudsman, the provider and the person who made the complaint, or
 - (b) if the Ombudsman thinks that no such agreement can be reached, a period specified by him or her in writing.
- (4) The Ombudsman may decide to prepare a report on his or her findings under this section, rather than under section 34K; and if the Ombudsman decides to do so, sections 34K to 34M do not apply.
- (5) If a report is prepared under this section, the Ombudsman—

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- (a) must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates, and
 - (b) may send a copy of the report to any other persons he or she thinks appropriate.
- (6) The Ombudsman may publish the report if, after taking account of the interests of the persons aggrieved and any other persons the Ombudsman thinks appropriate, he or she considers it to be in the public interest to do so.
- (7) The Ombudsman may supply a copy of a report published under subsection (6), or a part of that report, to any person who requests it.
- (8) The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under subsection (7).
- (9) The following information must not be included in a version of the report sent to a person under subsection (5) or published under subsection (6)—
- (a) the name of a person other than the provider to whom the complaint relates;
 - (b) information which, in the opinion of the Ombudsman, is likely to identify such a person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the report.
- (10) Subsection (9) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the report.

Special reports

Circumstances in which special reports may be prepared

- 34O(1) The Ombudsman may prepare a special report under section 34P if case 1, 2 or 3 applies.
- (2) Case 1 applies if—
- (a) the Ombudsman has concluded in an investigation report that the person aggrieved has sustained injustice or hardship as a result of the matter investigated, and
 - (b) one of the circumstances in subsection (3) applies.
- (3) The circumstances are that—
- (a) the Ombudsman has not received the notification required under section 34M before the end of the period permitted under that section;
 - (b) the Ombudsman has received that notification but is not satisfied with—
 - (i) the action which the provider has taken or proposes to take, or
 - (ii) the period before the end of which the provider proposes to have taken that action;

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- (c) the Ombudsman has received that notification but is not satisfied that the provider has, before the end of the permitted period, taken the action that the provider proposed to take.
- (4) In subsection (3)(c) “the permitted period” means—
 - (a) the period referred to in section 34M(2)(b), or
 - (b) a longer period specified by the Ombudsman in writing (if any).
- (5) Case 2 applies if—
 - (a) the Ombudsman has prepared a report under section 34N by virtue of subsection (2) of that section, and
 - (b) he or she is not satisfied that the provider has implemented the Ombudsman's recommendations before the end of the permitted period.
- (6) In subsection (5)(b) “the permitted period” means—
 - (a) the period referred to in section 34N(2)(b), or
 - (b) a longer period specified by the Ombudsman in writing (if any).
- (7) Case 3 applies if—
 - (a) a complaint in respect of a provider has been resolved under section 34C,
 - (b) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship as a result of the matter complained of,
 - (c) the provider has agreed to take particular action before the end of a particular period, and
 - (d) the Ombudsman is not satisfied that the provider has taken that action before the end of the permitted period.
- (8) In subsection (7)(d) “the permitted period” means—
 - (a) the period referred to in subsection (7)(c), or
 - (b) a longer period specified by the Ombudsman in writing (if any).

Special reports

34P (1) A special report must—

- (a) set out the facts which entitle the Ombudsman to prepare the special report (that is, the facts on the basis of which case 1, 2 or 3 of section 34O applies), and
 - (b) make such recommendations as the Ombudsman thinks fit as to the action which, in his or her opinion, should be taken—
 - (i) to remedy the injustice or hardship to the person aggrieved, and
 - (ii) to prevent similar injustice or hardship being caused in the future.
- (2) If the special report is prepared because case 1 of section 34O applies, the Ombudsman must send a copy of the report to each person to whom a copy of the section 34K report was sent under section 34K(2)(b).

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- (3) If the special report is prepared because case 2 or 3 of section 34O applies, the Ombudsman must send a copy of the report to the person who made the complaint and the provider to whom the complaint relates.
- (4) The Ombudsman may send a copy of a special report to any other persons he or she thinks appropriate.
- (5) The Ombudsman may publish a special report.
- (6) The Ombudsman may supply a copy of a published special report, or a part of such a report, to any person who requests it.
- (7) The Ombudsman may charge a reasonable fee for supplying a copy of a special report, or part of such a report, under subsection (6).
- (8) The following information must not be included in a version of a special report sent to a person under subsection (2), (3) or (4) or published under subsection (5)—
 - (a) the name of any person other than the provider in respect of whom the complaint was made;
 - (b) information which, in the opinion of the Ombudsman, is likely to identify any such person and which, in the Ombudsman's opinion, can be omitted without impairing the effectiveness of the special report.
- (9) Subsection (8) does not apply if, after taking account of the interests of the person aggrieved and any other persons the Ombudsman thinks appropriate, the Ombudsman considers that it would be in the public interest to include that information in that version of the special report.

Further publicity for special reports

- 34Q(1) The Ombudsman may arrange for a notice about a special report to be published—
- (a) in one or more newspapers, or
 - (b) by means of broadcast or other electronic media.
- (2) The notice may, for example—
- (a) provide a summary of the Ombudsman's findings,
 - (b) specify an address or addresses at which a copy of the published report can be inspected during ordinary office hours and from which a copy of that report (or part of that report) may be obtained, and
 - (c) specify a website address at which a copy of the published report can be viewed.
- (3) The provider to whom the report relates must, if required to do so by the Ombudsman, reimburse the Ombudsman for the reasonable costs of arranging the publication of the notice.
- (4) In deciding whether to make arrangements under subsection (1), the Ombudsman must take into account—
- (a) the public interest,
 - (b) the interests of the person aggrieved, and

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- (c) the interests of any other person the Ombudsman thinks appropriate.

Interpretation

Meaning of “care home” and “care home provider”

34R (1) This section applies for the purposes of this Act.

- (2) “Care home” has the same meaning as in the Care Standards Act 2000.
- (3) “Care home provider” means a person who carries on a care home.
- (4) Action is to be treated as action taken by a care home provider if it is taken by—
 - (a) a person employed by that provider,
 - (b) a person acting on behalf of that provider, or
 - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by a care home provider if—
 - (a) that provider provides, by means of an arrangement with another person, accommodation, nursing or personal care in a care home in Wales for a person falling within section 3(2) of the Care Standards Act 2000, and
 - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

Meaning of “domiciliary care” and “domiciliary care provider”

34S (1) This section applies for the purposes of this Act.

- (2) “Domiciliary care” means personal care provided in their own homes for persons who by reason of illness, infirmity or disability are unable to provide it for themselves without assistance.
- (3) “Domiciliary care provider” means a person who carries on an activity which involves the provision of domiciliary care, but it does not include an individual who—
 - (a) carries on the activity otherwise than in partnership with others,
 - (b) is not employed by a body corporate or unincorporated association to carry it on,
 - (c) does not employ any other person to carry out the activity, and
 - (d) provides or arranges the provision of domiciliary care to fewer than four persons.
- (4) Action is to be treated as action taken by a domiciliary care provider if it is taken by—
 - (a) a person employed by that provider,
 - (b) a person acting on behalf of that provider, or
 - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by a domiciliary care provider if—
 - (a) that provider provides domiciliary care by means of an arrangement with another person, and

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- (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

Meaning of “palliative care service” and “independent palliative care provider”

34T (1) This section applies for the purposes of this Act.

- (2) “Palliative care service” means a service the main purpose of which is to provide palliative care.
- (3) “Independent palliative care provider” means a person who—
 - (a) provides a palliative care service, and
 - (b) is not a Welsh health service body.
- (4) Action is to be treated as action taken by an independent palliative care provider if it is taken by—
 - (a) a person employed by that provider,
 - (b) a person acting on behalf of that provider, or
 - (c) a person to whom that provider has delegated any functions.
- (5) Action is also to be treated as action taken by an independent palliative care provider if—
 - (a) that provider provides palliative care by means of an arrangement with another person, and
 - (b) the action is taken by or on behalf of the other person in carrying out the arrangement.

PART 2B

INVESTIGATION OF COMPLAINTS: SUPPLEMENTARY

Consultation and co-operation

Consultation and co-operation with other ombudsmen

- 34U (1) This section applies if, in making a decision under section 2(5) or 34B(8) or conducting an investigation under Part 2 or 2A, the Ombudsman forms the opinion that a matter which is the subject of the complaint or investigation could be the subject of an investigation by an ombudsman mentioned in subsection (7).
- (2) The Ombudsman must consult that ombudsman about the matter.
 - (3) The Ombudsman may co-operate with that ombudsman in relation to the matter.
 - (4) Consultation under subsection (2), and co-operation under subsection (3), may extend to anything relating to a matter which is the subject of the complaint or investigation, including (among other things)—
 - (a) the conduct of an investigation into the complaint, and
 - (b) the form, content and publication of a report of the investigation.

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- (5) If the Ombudsman consults an ombudsman about a matter under subsection (2), the Ombudsman and that ombudsman may—
 - (a) conduct a joint investigation into the matter,
 - (b) prepare a joint report in relation to the investigation, and
 - (c) publish the joint report.
- (6) Subsection (5) does not apply if the ombudsman consulted under subsection (2) is the Scottish Public Services Ombudsman.
- (7) The ombudsmen referred to in subsection (1) are—
 - (a) the Parliamentary Commissioner for Administration;
 - (b) the Health Service Commissioner for England;
 - (c) a Local Commissioner;
 - (d) the Scottish Public Services Ombudsman;
 - (e) a housing ombudsman appointed in accordance with a scheme approved under section 51 of the Housing Act 1996;
 - (f) the Children's Commissioner for Wales.
- (8) The Welsh Ministers may by order amend subsection (7) by—
 - (a) adding a person,
 - (b) omitting a person, or
 - (c) changing the description of a person.
- (9) An order under subsection (8) may add a person to subsection (7) only if the person appears to the Welsh Ministers to have functions relating to the investigation of complaints.
- (10) No order is to be made under subsection (8) unless a draft of the statutory instrument containing it has been laid before and approved by a resolution of the Assembly.

Working jointly with other Commissioners

- 34V(1) This section applies where it appears to the Ombudsman that—
- (a) there is a complaint in respect of a matter which he or she is entitled to investigate, and
 - (b) the matter is one which could also be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner.
- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner)—
 - (a) inform the Commissioner about the matter, and
 - (b) consult him or her in relation to it.
 - (3) Where the Ombudsman consults a Commissioner under this section, the Ombudsman and the Commissioner may—
 - (a) co-operate with each other in relation to the matter,
 - (b) conduct a joint investigation into the matter, and
 - (c) prepare and publish a joint report in relation to the investigation.

Status: Point in time view as at 01/12/2017.

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Working collaboratively with other Commissioners

- 34W(1) This section applies where it appears to the Ombudsman that a complaint relates to or raises a matter which could be the subject of an examination by the Commissioner for Older People in Wales or the Welsh Language Commissioner (“the connected matter”).
- (2) Where the Ombudsman considers it appropriate, he or she must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the Commissioner about the connected matter.
- (3) Where the Ombudsman considers that the complaint also relates to or raises a matter into which he or she is entitled to conduct an investigation (“the Ombudsman matter”), the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) also if he or she considers it appropriate—
- (a) inform the Commissioner about the Ombudsman's proposals for conducting an investigation into the complaint, and
 - (b) consult the Commissioner about those proposals.
- (4) Where the Ombudsman and the Commissioner consider that they are entitled to investigate, respectively, the Ombudsman matter and the connected matter, they may—
- (a) co-operate with each other in the separate investigation of each of those matters,
 - (b) act together in the investigation of those matters, and
 - (c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated.
- (5) Where the Ombudsman considers—
- (a) that the complaint does not relate to or raise a matter into which he or she is entitled to conduct an investigation, and
 - (b) that it is appropriate to do so,
- the Ombudsman must (as respects the Commissioner for Older People in Wales) or may (as respects the Welsh Language Commissioner) inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner.

Disclosure

Disclosure of information

- 34X(1) The information to which this section applies is—
- (a) information obtained by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions—
 - (i) in deciding whether to begin an investigation,
 - (ii) in the course of an investigation, or
 - (iii) in resolving a complaint under section 3 or 34C;

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- (b) information obtained from an ombudsman mentioned in section 34U(7) by virtue of any provision of section 34U or a corresponding provision in an enactment relating to any of those ombudsmen;
 - (c) information obtained from the Commissioner for Older People in Wales by virtue of section 34V or 34W of this Act or section 16 or 17 of the Commissioner for Older People (Wales) Act 2006 (working with other ombudsmen);
 - (d) information obtained from the Welsh Language Commissioner by virtue of section 34V or 34W of this Act or section 22 of the Welsh Language (Wales) Measure 2011 (power to disclose information);
 - (e) information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 (disclosure between Information Commissioner and ombudsmen).
- (2) The information must not be disclosed except—
- (a) for the purposes of deciding whether to begin an investigation;
 - (b) for the purposes of an investigation;
 - (c) for the purposes of resolving a complaint under section 3 or 34C;
 - (d) for the purposes of a statement or report made in relation to a complaint or investigation;
 - (e) for the purposes of any provision of section 34U, 34V or 34W;
 - (f) for the purposes of proceedings for—
 - (i) an offence under the Official Secrets Act 1911 to 1989 alleged to have been committed by the Ombudsman, a member of the Ombudsman's staff or other person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - (ii) an offence of perjury alleged to have been committed in the course of an investigation;
 - (g) for the purposes of an inquiry with a view to the taking of proceedings mentioned in paragraph (f);
 - (h) for the purpose of proceedings under section 15 or 34J;
 - (i) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
 - (j) in the case of information to which subsection (3) applies, to the Information Commissioner.
- (3) This subsection applies to information if it appears to the Ombudsman to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in subsection (4), or
 - (b) the commission of an offence mentioned in subsection (5).
- (4) The enactments are—
- (a) Part 5 of the Data Protection Act 1998 (enforcement);

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- (b) section 48 of the Freedom of Information Act 2000 (practice recommendations);
 - (c) Part 4 of that Act.
- (5) The offences are those under—
- (a) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 to that Act (obstruction of execution of warrant);
 - (b) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).
- (6) No person may be called upon to give evidence in any proceedings (other than proceedings mentioned in subsection (2)) of information obtained by that person as mentioned in subsection (1)(a) or (b).

Disclosure prejudicial to safety of State or contrary to public interest

34Y (1) A Minister of the Crown may give notice to the Ombudsman with respect to—

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

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

- (2) If a notice is given under subsection (1), nothing in this Act is to be construed as authorising or requiring the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of his or her functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice.

Protection from defamation claims

34Z (1) For the purposes of the law of defamation, the following are absolutely privileged—

- (a) the publication of a matter, in the discharge of any of the Ombudsman's functions under this Act, by the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
- (b) the publication of a matter by a person in the discharge of functions under section 17;
- (c) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
 - (i) a listed authority, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and

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- (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - (d) the publication of a matter in connection with a complaint made or referred to the Ombudsman under this Act, in communications between—
 - (i) a care home provider, domiciliary care provider or independent palliative care provider, an officer or member of staff of such a provider or another person acting on behalf of such a provider or assisting it in the discharge of any of its functions, and
 - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions;
 - (e) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between a person and an Assembly member;
 - (f) the publication of a matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under this Act, in communications between—
 - (i) the person, and
 - (ii) the Ombudsman, a member of the Ombudsman's staff or another person acting on the Ombudsman's behalf or assisting the Ombudsman in the discharge of any of his or her functions.
- (2) For the purposes of subsection (1)(d)(i) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.”

Commencement Information

I9 Sch. 3 para. 2 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 3 Until the coming into force of Part 5 of the Welsh Language (Wales) Measure 2011, sections 34V and 34W of the Public Services Ombudsman (Wales) Act 2005 have effect with the omission of the following words (wherever occurring)— “ or the Welsh Language Commissioner ”; “ or may (as respects the Welsh Language Commissioner) ”.

Commencement Information

I10 Sch. 3 para. 3 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 4 After Schedule 3 (listed authorities) insert—

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“SCHEDULE
3A

EXCLUDED MATTERS: PART 2A

- 1 The commencement or conduct of proceedings before a court of competent jurisdiction.
- 2 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.”

Commencement Information

I11 Sch. 3 para. 4 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

PART 2

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO THE OMBUDSMAN

Local Government Act 1974

- 5 The Local Government Act 1974 is amended as follows.

Commencement Information

I12 Sch. 3 para. 5 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 6 In section 29 (investigations: further provisions), in subsection (5), for “26” substitute “ 34X ”.

Commencement Information

I13 Sch. 3 para. 6 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 7 In section 33 (consultation between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioners and other Commissioners and Ombudsmen), in subsection (5), for “26” substitute “ 34X ”.

Commencement Information

I14 Sch. 3 para. 7 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 8 In section 34G (investigations: further provisions), in subsection (2), for “26” substitute “ 34X ”.

Commencement Information

I15 Sch. 3 para. 8 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

Status: Point in time view as at 01/12/2017.

Changes to legislation: Social Services and Well-being (Wales) Act 2014 is up to date with all changes known to be in force on or before 03 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- 9 In section 34M (consultation with other Commissioners), in subsection (7), in paragraph (d), for “26” substitute “ 34X ”.

Commencement Information

I16 Sch. 3 para. 9 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

Local Government Act 2000

- 10 The Local Government Act 2000 is amended as follows.

Commencement Information

I17 Sch. 3 para. 10 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 11 Section 67 (consultation with ombudsmen) has effect, until the repeal of that section by Part 5 of Schedule 25 to the Localism Act 2011 is brought fully into force, with the following amendments—
- (a) in subsection (2A), after “Part 2” insert “ or 2A ”, and
 - (b) in subsection (4), for “26” substitute “ 34X ”.

Commencement Information

I18 Sch. 3 para. 11 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 12 In section 70 (investigations: further provisions), in subsection (2), in paragraph (b), for “, 25 to 27 and 32” substitute “ and Part 2B ”.

Commencement Information

I19 Sch. 3 para. 12 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

Public Services Ombudsman (Wales) Act 2005

- 13 The Public Services Ombudsman (Wales) Act 2005 is amended as follows.

Commencement Information

I20 Sch. 3 para. 13 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 14 In the heading to Part 2 (investigation of complaints), after “COMPLAINTS” insert “ RELATING TO LISTED AUTHORITIES ”.

Commencement Information

I21 Sch. 3 para. 14 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 15 In section 2 (power of investigation)—

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- (a) in subsection (1), after “complaint” (in the first place it occurs) insert “ under this Part ”, and
- (b) in subsection (4), after “complaint” (in the first place it occurs) insert “ under this Part ”.

Commencement Information

I22 Sch. 3 para. 15 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 16 In section 4 (who can complain), in subsection (1)—
- (a) in the words before paragraph (a), after “Ombudsman” insert “ under this Part ”, and
 - (b) in paragraph (a), for “Act” substitute “ Part ”.

Commencement Information

I23 Sch. 3 para. 16 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 17 In section 7 (matters which may be investigated), in subsection (1), after “investigate” insert “ under this Part ”.

Commencement Information

I24 Sch. 3 para. 17 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 18 In section 9 (exclusion: other remedies)—
- (a) in subsection (1), after “matter” (in the first place it occurs) insert “ under this Part ”, and
 - (b) in subsection (3), after “matter” (in the first place it occurs) insert “ under this Part ”.

Commencement Information

I25 Sch. 3 para. 18 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 19 In section 10 (other excluded matters), in subsection (1), after “investigate” insert “ under this Part ”.

Commencement Information

I26 Sch. 3 para. 19 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 20 In section 14 (information, documents, evidence and facilities), before subsection (1) insert—
- “(A1) This section applies in relation to investigations conducted under this Part.”

Commencement Information

I27 Sch. 3 para. 20 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

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- 21 In section 23 (special reports: supplementary)—
- (a) in subsection (1), in paragraph (a), after “report” insert “ made under section 22 ”, and
 - (b) in subsection (7), after “report” (in the first place it occurs) insert “ under section 22 ”.

Commencement Information

I28 Sch. 3 para. 21 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 22 Omit the italic cross-heading before section 25 (consultation and co-operation).

Commencement Information

I29 Sch. 3 para. 22 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 23 Omit sections 25 to 25B (consultation and co-operation).

Commencement Information

I30 Sch. 3 para. 23 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 24 Omit the italic cross-heading before section 26 (disclosure).

Commencement Information

I31 Sch. 3 para. 24 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 25 Omit sections 26 and 27 (disclosure of information).

Commencement Information

I32 Sch. 3 para. 25 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 26 Omit section 32 (protection from defamation claims).

Commencement Information

I33 Sch. 3 para. 26 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 27 In section 41 (interpretation), in subsection (1)—
- (a) in the definition of “investigation”, after “section 2” insert “ or 34B ”,
 - (b) in the definition of “the person aggrieved”—
 - (i) after “aggrieved” insert “ in Part 2 ”, and
 - (ii) after “section 4(1)(a)” insert “ and in Part 2A has the meaning given in section 34D(1)(a) ”,
 - (c) in the definition of “special report”—
 - (i) after “report” insert “ in Part 2 ”, and

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- (ii) after “section 22” insert “ and in Part 2A has the meaning given in section 34P ”, and
- (d) insert, in the appropriate places—
- ““care home” has the meaning given by section 34R(2);”;
 - ““care home provider” has the meaning given by section 34R(3);”;
 - ““domiciliary care” has the meaning given by section 34S(2);”;
 - ““domiciliary care provider” has the meaning given by section 34S(3);”;
 - ““independent palliative care provider” has the meaning given by section 34T(3);”;
 - ““palliative care service” has the meaning given by section 34T(2);”.

Commencement Information

I34 Sch. 3 para. 27 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 28 In the heading to section 42 (former health care providers and social landlords: modifications), for “and social landlords” substitute “ social landlords, social care providers and palliative care providers ”.

Commencement Information

I35 Sch. 3 para. 28 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 29 (1) Section 42 (former health care providers and social landlords: modifications) is amended as follows.
- (2) In subsection (1), after paragraph (c) insert—
- “(d) former care home providers in Wales;
 - (e) former domiciliary care providers in Wales;
 - (f) former independent palliative care providers in Wales.”
- (3) After subsection (4) insert—
- “(4A) “Former care home provider in Wales” means a person who—
- (a) at the relevant time, provided accommodation, nursing or personal care of a particular description at a care home (within the meaning given by the Care Standards Act 2000) in Wales, and
 - (b) subsequently ceased to do so (whether or not the person has later started to do so again).
- (4B) “Former domiciliary care provider in Wales” means a person who—
- (a) at the relevant time, provided domiciliary care services of a particular description in Wales, and
 - (b) subsequently ceased to do so (whether or not the person has later started to provide those services again).

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- (4C) “Former independent palliative care provider in Wales” means a person who—
- (a) at the relevant time, provided a palliative care service of a particular description in Wales, and
 - (b) subsequently ceased to do so (whether or not the person has later started to do so again).”

Commencement Information

I36 Sch. 3 para. 29 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

30 (1) Schedule 1 (Public Services Ombudsman for Wales: appointment etc) is amended as follows.

(2) In paragraph 5—

- (a) in sub-paragraph (1), after paragraph (e) insert—
 - “(f) he is a care home provider, domiciliary care provider or independent palliative care provider;
 - (g) he is an officer or member of staff of a provider of that kind.”;
- (b) after sub-paragraph (1) insert—

“(1A) For the purposes of sub-paragraph (1)(g) a person is an officer of a provider if he or she has control or management of a provider which is not an individual or the affairs of such a provider.”

(3) In paragraph 14, in sub-paragraph (7)(a), after “authority” insert “ , care home provider, domiciliary care provider or independent palliative care provider ”.

Commencement Information

I37 Sch. 3 para. 30 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

31 In the title to Schedule 2, after “MATTERS” insert “ : PART 2 ”.

Commencement Information

I38 Sch. 3 para. 31 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

Commissioner for Older People (Wales) Act 2006

32 The Commissioner for Older People (Wales) Act 2006 is amended as follows.

Commencement Information

I39 Sch. 3 para. 32 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

33 In section 18 (power to disclose information), in subsection (1), in paragraph (b), for “25A” substitute “ 34V ”.

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Commencement Information

I40 Sch. 3 para. 33 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

- 34 In Schedule 4 (minor and consequential amendments), in paragraph 2, omit subparagraphs (2) and (3).

Commencement Information

I41 Sch. 3 para. 34 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

Government of Wales Act 2006

- 35 In Schedule 10 to the Government of Wales Act 2006 (minor and consequential amendments), omit paragraph 77.

Commencement Information

I42 Sch. 3 para. 35 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

Welsh Language (Wales) Measure 2011

- 36 (1) Schedule 3 to the Welsh Language (Wales) Measure 2011 (amendments about joint and collaborative working) is amended as follows.
- (2) Omit the italic cross-heading before paragraph 4 (Public Services Ombudsman (Wales) Act 2005).
- (3) Omit paragraphs 4 to 6.

Commencement Information

I43 Sch. 3 para. 36 in force at 1.11.2014 by [S.I. 2014/2718](#), [art. 2\(b\)](#)

Status:

Point in time view as at 01/12/2017.

Changes to legislation:

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