



## 2016 CHAPTER 21

VALID FROM 01/09/2016

### **PART 2**

#### The Prison Ombudsman For Northern Ireland

PROSPECTIVE

##### *The Ombudsman*

#### **The Prison Ombudsman for Northern Ireland**

**33.**—(1) There shall be an office known as the Prison Ombudsman for Northern Ireland.

(2) The person for the time being holding the office of Prison Ombudsman for Northern Ireland is by that name a corporation sole.

(3) Schedule 3 has effect in relation to the Prison Ombudsman for Northern Ireland (in this Part referred to as “the Ombudsman”).

(4) The Ombudsman shall exercise the powers under this Part in such manner and to such extent as appears to the Ombudsman to be best calculated to secure—

- (a) the efficiency, effectiveness and independence of the office of Ombudsman; and

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- (b) the confidence in the operation of that office of the public, prisoners and prison officers and other persons affected by the exercise of those powers.

### **Main functions of Ombudsman**

**34** The main functions of the Ombudsman are—

- (a) dealing with complaints (see sections 35 and 36);
- (b) investigating deaths in custody (see sections 37 and 38);
- (c) carrying out other investigations at the request of the Department (see sections 39 and 40) or on the Ombudsman's own initiative (see sections 41 and 42).

### *Complaints*

### **Complaints**

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

(2) This section applies to a complaint if—

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

- (i) to the way in which a prisoner has been treated by a prison officer;
- (ii) to the way in which a person visiting a prison has been treated by a prison officer;
- (iii) to the facilities available to a person at a prison (including, in the case of a prisoner, facilities for the welfare of the prisoner);
- (iv) to the cleanliness and adequacy of a prison;

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

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

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

- (a) is a prisoner or visitor to a prison who is directly affected by that matter; or
- (b) where the person mentioned in paragraph (a) is dead or unable to act, appears to the Ombudsman to be an appropriate person to make the complaint.

(4) The relevant internal complaints procedures are exhausted in relation to a complaint where in the opinion of the Ombudsman any procedures for dealing with the complaint set out in prison rules have been exhausted.

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

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who appears to the Ombudsman to be the most appropriate person to receive the notification.

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

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

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

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

#### **Report of investigation of complaint**

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

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

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

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

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

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

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

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

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

### *Deaths in custody*

PROSPECTIVE

#### **Investigations into deaths in custody**

**37.—**(1) The Ombudsman shall carry out an investigation into the death of a person—

- (a) at any prison while the person is being held there;
- (b) while that person is in the custody of a prison officer at a place outside a prison; or
- (c) which the Ombudsman is satisfied should be investigated because it is or may be linked to events which have occurred—
  - (i) at any prison while that person was being held there; or
  - (ii) while that person was in the custody of a prison officer at a place outside a prison.

(2) In carrying out the investigation, the Ombudsman must aim—

- (a) to establish the circumstances surrounding the death;
- (b) to address any concerns of the family of the deceased;
- (c) to determine whether any changes in operational arrangements at a prison would prevent or reduce the risk of deaths occurring under the same or similar circumstances; and
- (d) to discover any facts likely to assist a coroner's inquest into the death.

(3) Subject to subsection (2), it is for the Ombudsman to determine the scope of, and the procedure to be applied to, an investigation under this section.

(4) The Ombudsman may defer an investigation under this section at any time if it appears to the Ombudsman that—

- (a) a criminal investigation might be adversely affected by the Ombudsman's investigation;

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- (b) the exercise of functions under the Health and Safety at Work (Northern Ireland) Order 1978 might be adversely affected by the Ombudsman's investigation;
  - (c) it is appropriate to do so because of any proceedings for judicial review; or
  - (d) it is appropriate to do so for any other reason.
- (5) The Ombudsman may at any time re-open a deferred investigation.
- (6) At any time in the course of an investigation under this section the Ombudsman shall—
- (a) draw to the attention of the police any matter which in the Ombudsman's opinion is relevant to any criminal investigation into the death;
  - (b) draw to the attention of any body or person any matter which in the Ombudsman's opinion calls for action to be taken by that body or person.

#### **Report on investigation into death**

**38.**—(1) Where the Ombudsman has carried out an investigation into a death under section 37, the Ombudsman shall report in writing on the outcome of the investigation to—

- (a) the Department;
  - (b) the coroner who is holding or who is to hold an inquest into the death;
  - (c) the health and social care trust responsible for providing healthcare to the deceased while held in prison; and
  - (d) at least one person who is a personal representative of the deceased or a relative of the deceased at the time of death.
- (2) The Ombudsman may also report on that outcome to any other person the Ombudsman considers should receive the report.
- (3) In a report to the Department or a health and social care trust the Ombudsman may make recommendations about any matter arising from the investigation.
- (4) Where such recommendations are made in a report, the Department or trust must, within the required period, respond in writing to the Ombudsman setting out (with reasons) what it proposes to do about the recommendations.
- (5) The required period is the period of 28 days commencing with the day on which the Department or trust receives the report or such longer period as the Ombudsman may in the case of any report allow.
- (6) The Ombudsman may report on that response to such persons as the Ombudsman may think fit.

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

- (a) enabling the Ombudsman to show any person a draft of the whole or any part of a report;
- (b) enabling the Ombudsman to publish the whole or any part of a report;
- (c) restricting or prohibiting the identification of prescribed persons or persons of a prescribed description in a report or the inclusion of information of a prescribed description.

#### *Investigations requested by Department*

#### **Investigations requested by the Department**

**39.—**(1) The Department—

- (a) shall request the Ombudsman to investigate any custody-related matter if any of the events to which it relates is of such a nature or description, or occurs in such circumstances, as may be prescribed;
- (b) may request the Ombudsman to investigate any other custody-related matter which is specified in the request.

(2) Before making any request under subsection (1) the Department shall consult the Ombudsman.

(3) A custody-related matter is a matter relating to events which have (or may have) occurred—

- (a) at a prison or juvenile justice centre, or
- (b) while a person is in the custody of a prison officer or a member of the staff of a juvenile justice centre,

and any matter the Department considers is (or may be) linked to such events.

(4) Before making any regulations under subsection (1)(a) the Department shall consult—

- (a) the Ombudsman; and
- (b) such other persons as the Department thinks appropriate.

(5) The Ombudsman must—

- (a) decide whether to conduct an investigation in pursuance of a request under this section; and
- (b) notify the Department of that decision.

(6) It is for the Ombudsman to determine the procedures to be applied to an investigation under this section.

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(7) At any time in the course of an investigation under this section the Ombudsman may make recommendations to the Department about any matter arising from the investigation.

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

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

### **Report on investigation under section 39**

**40.**—(1) Where the Ombudsman has carried out an investigation under section 39 the Ombudsman must report in writing on the outcome of the investigation to—

- (a) the Department; and
- (b) such other persons (if any) as the Department may request.

(2) The report may make recommendations about any matter arising from the investigation.

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

- (a) enabling the Ombudsman to show any person a draft of the whole or any part of a report;
- (b) enabling the Ombudsman to publish the whole or any part of a report;
- (c) restricting or prohibiting the identification of prescribed persons or persons of a prescribed description in a report or the inclusion of information of a prescribed description.

### *Own-initiative investigations*

PROSPECTIVE

### **Own-initiative investigations**

**41.**—(1) The Ombudsman may carry out an investigation under this section into a matter if—

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



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- (ii) to the way in which a person visiting a prison has been treated by a prison officer;
  - (iii) to the facilities available to a person at a prison (including, in the case of a prisoner, facilities for the welfare of the prisoner);
  - (iv) to the cleanliness and adequacy of a prison; and
- (b) the Ombudsman has reasonable grounds for believing that, in relation to the matter—
- (i) a number of events of the same or a similar nature have occurred; and
  - (ii) the number or frequency of the events requires the matter to be investigated under this section.
- (2) Before commencing an investigation under this section, the Ombudsman must—
- (a) consult the Department; and
  - (b) inform the Department of the matter proposed to be investigated and of the grounds referred to in subsection (1)(b).
- (3) It is for the Ombudsman to determine the procedures to be applied to an investigation under this section.
- (4) This section applies to a matter whether or not a complaint has been, or could be, made about the matter under section 35.

#### **Report on investigation under section 41**

- 42.**—(1) Where the Ombudsman has carried out an investigation under section 41, the Ombudsman must report in writing on the outcome of the investigation to—
- (a) the Department; and
  - (b) any other person the Ombudsman considers should receive the report.
- (2) In a report to the Department the Ombudsman may make recommendations about any matter arising from the investigation.
- (3) Where such recommendations are made in a report, the Department must, within the required period, respond in writing to the Ombudsman setting out (with reasons) what it proposes to do about the recommendations.
- (4) The required period is the period of 28 days commencing with the day on which the Department receives the report or such longer period as the Ombudsman may in the case of any report allow.
- (5) The Ombudsman may report on that response to such persons as the Ombudsman may think fit.

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

- (a) enabling the Ombudsman to show any person a draft of the whole or any part of a report;
- (b) enabling the Ombudsman to publish the whole or any part of a report;
- (c) restricting or prohibiting the identification of prescribed persons or persons of a prescribed description in a report or the inclusion of information of a prescribed description.

PROSPECTIVE

### *Powers of Ombudsman*

#### **Powers of Ombudsman**

**43.—**(1) For the purposes of an investigation under this Part the Ombudsman may at any time enter—

- (a) any prison;
- (b) any other premises occupied by the Department for the purposes of its functions under the Prison Act (Northern Ireland) 1953.

(2) The Ombudsman may at any time enter any juvenile justice centre for the purposes of an investigation under section 39.

(3) The Ombudsman may, for the purposes of an investigation under this Part, require—

- (a) that documents be produced in a form in which they can be taken away or be made available for inspection and copying,
- (b) that an explanation be given of any document produced or made available, or
- (c) that other information be provided.

(4) A person who intentionally obstructs the Ombudsman in the carrying out of an investigation under this Part commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(5) In this section—

- (a) “document” includes anything in which information is stored in electronic or any other form; and,
- (b) in relation to anything containing information in electronic form, references to production or making available are to production or making available in a form in which the information is readily intelligible.

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PROSPECTIVE

### *Supplementary*

#### **Disclosure of information**

**44.—(1)** For the purposes of this section information is protected information if it is obtained by the Ombudsman or an officer of the Ombudsman—

- (a) in carrying out or otherwise in connection with an investigation under this Part; or
- (b) from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000.

**(2)** Protected information shall not be disclosed except—

- (a) for the purposes of—
  - (i) an investigation under this Part; or
  - (ii) any of the Ombudsman's functions in relation to such an investigation or to matters arising in connection with it;
- (b) for the purposes of a criminal investigation or proceedings for a criminal offence;
- (c) to a coroner (or a person acting on behalf of a coroner) for the purposes of an inquest;
- (d) to the Attorney General for Northern Ireland for the purposes of the exercise of any functions of that office;
- (e) to the Northern Ireland Public Services Ombudsman for the purposes of the exercise of any functions of that office;
- (f) to the Chief Inspector of Criminal Justice in Northern Ireland for the purposes of the exercise of any of the functions of that office;
- (g) to Her Majesty's Chief Inspector of Prisons for the purposes of the exercise of any of the functions of that office;
- [<sup>F1</sup>(h) to the Department of Health for the purposes of the exercise of any of the functions of that Department in relation to any matter arising in connection with an investigation under this Part;]
- (i) to the Health and Social Care Regulation and Quality Improvement Authority for the purposes of the exercise of any of the functions of that body;
- (j) in the case of information to which subsection (3) applies, to the Information Commissioner;

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- (k) in the case of information to which subsection (4) applies, to any person to whom the Ombudsman thinks it should be disclosed in the public interest;
  - (l) to such other persons or for such other purposes as may be prescribed.
- (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 [<sup>F2</sup>sections 142 to 154, 160 to 164 or 174 to 176 of, or Schedule 15 to, the Data Protection Act 2018] or section 48 or Part 4 of the Freedom of Information Act 2000; or
  - [<sup>F3</sup>(b) the commission of an offence under—
    - (i) a provision of the Data Protection Act 2018 other than paragraph 15 of Schedule 15 (obstruction of execution of warrant etc); or
    - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).]
- (4) This subsection applies to information if in the opinion of the Ombudsman it reveals or otherwise relates to a serious threat to the health or safety of a person.
- (5) A person to whom this subsection applies shall not be called upon in any proceedings to give evidence of protected information within subsection (1)(a).
- (6) Subsection (5) does not apply in relation to proceedings mentioned in subsection (2)(b) or (c).
- (7) For the purposes of the law of defamation the publication of any matter by the Ombudsman for purposes connected with the functions of the Ombudsman (including functions under this section) is absolutely privileged.
- (8) It is an offence for a person to whom this subsection applies to disclose information in contravention of this section.
- (9) A person guilty of an offence under subsection (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) Subsections (5) and (8) apply to—
- (a) the Ombudsman;
  - (b) an officer of the Ombudsman;
  - (c) a person from whom advice is obtained under paragraph 9 of Schedule 3.

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### Textual Amendments

- F1** S. 44(2)(h) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 254**; S.R. 2022/102, art. 2(b)
- F2** Words in s. 44(3)(a) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 209(a)** (with ss. 117, 209, 210, Sch. 20 para. 47(1)); S.I. 2018/625, reg. 2(1)(g)(but this amendment cannot take effect until the commencement of 2016 c.21 (N.I.), s. 44)
- F3** S. 44(3)(b) substituted (25.5.2018) by Data Protection Act 2018 (c. 12), s. 212(1), **Sch. 19 para. 209(b)** (with ss. 117, 209, 210, Sch. 20 para. 47(2)); S.I. 2018/625, reg. 2(1)(g)(but this amendment cannot take effect until the commencement of 2016 c.21 (N.I.), s. 44)

### Guidance to Ombudsman in relation to matters connected with national security

**45.—**(1) The Secretary of State may issue guidance to the Ombudsman in relation to any matter connected with national security (including, in particular, any matter mentioned in section 1A(2)(c)(i) to (iii) of the Prison Act (Northern Ireland) 1953).

(2) In carrying out any functions, the Ombudsman and officers of the Ombudsman must have regard to any guidance issued under this section.

### Interpretation

**46.—**(1) In this Part—

“the Department” means the Department of Justice;

“events” includes any conduct or omission;

“the Ombudsman” means the Prison Ombudsman for Northern Ireland;

“prescribed” means prescribed by regulations;

“prison” includes a young offenders centre;

“prisoner” means any person held at a prison;

“prison officer” means an individual appointed to a post under section 2(2) of the Prison Act (Northern Ireland) 1953;

“prison rules” means rules under section 13 of the Prison Act (Northern Ireland) 1953.

(2) In this Part references to a prison include a reference to all land and buildings used for the purposes of, or in connection with, that prison.

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### **Transitional provision: the Prisoner Ombudsman for Northern Ireland**

**47.—**(1) The person holding office as Prisoner Ombudsman immediately before the appointed day—

- (a) becomes the Prison Ombudsman on that day as if appointed to that office under paragraph 1 of Schedule 3; and
- (b) holds that office for the remainder of the term for which that person was then appointed as Prisoner Ombudsman.

(2) Paragraph 3(2) of Schedule 3 does not apply to that person; but a person shall not hold the offices of Prison Ombudsman and Prisoner Ombudsman for a period which in total exceeds 7 years.

(3) Subsection (4) applies where immediately before the appointed day the Prisoner Ombudsman is under the terms of reference of that office or other arrangements with the Department—

- (a) investigating a complaint (“an existing complaint investigation”);
- (b) investigating a death (“an existing death investigation”); or
- (c) investigating a matter of the kind mentioned in section 39(2) (“an existing custody-related investigation”).

(4) For the purposes of this Part—

- (a) an existing complaint investigation is to be treated as an investigation under section 35;
- (b) an existing death investigation is to be treated as an investigation under section 37; and
- (c) an existing custody-related investigation is to be treated as an investigation under section 39.

(5) For the purposes of any investigation which is to any extent dealt with under this Part by virtue of subsection (4), things done by or in relation to the Prisoner Ombudsman shall be treated as having been done by or in relation to the Ombudsman.

(6) Except as provided by subsection (4)(b), section 37 does not apply to a death which occurred before the coming into operation of that section.

(7) In applying section 41(1)(b) the Ombudsman may take into account events occurring in the period of 12 months immediately preceding the appointed day (as well as events occurring on or after that day).

(8) In this section “the appointed day” means the day appointed under section 61 for the coming into operation of this section.

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