

SCHEDULES

SCHEDULE 12

Section 228(3)

NEW SCHEDULE 2A TO THE HOUSING ACT 1996

“SCHEDULE 2A

Section 51A(7)

FURTHER PROVISION ABOUT THE SOCIAL HOUSING OMBUDSMAN FOR WALES

Status

- 1 The Social Housing Ombudsman for Wales (“the Ombudsman”) shall be a corporation sole.

Remuneration, etc.

- 2 The National Assembly for Wales may pay to or in respect of the Ombudsman such amounts, by way of remuneration, pensions, allowances or gratuities or by way of provision for any such benefits, as it considers appropriate.
- 3 If a person ceases to be the Ombudsman and it appears to the National Assembly for Wales that there are special circumstances which make it right that the person should receive compensation, the National Assembly for Wales may pay to that person a sum of such amount as it considers appropriate.

Staff and advisers

- 4 (1) The Ombudsman may appoint such staff as he considers necessary for assisting him in the exercise of his functions.
(2) The Ombudsman shall include among his staff such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.
(3) To assist him in the exercise of his functions, the Ombudsman may obtain advice from any person who, in his opinion, is qualified to give it.
(4) The Ombudsman may pay to any person from whom he obtains advice under subparagraph (3) such fees or allowances as he may determine.

Delegation of functions

- 5 (1) Any function of the Ombudsman may be exercised by—
 - (a) a member of his staff, or
 - (b) a member of the staff of the Commission for Local Administration in Wales, if authorised by the Ombudsman for that purpose.

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- (2) The Ombudsman may, with the approval of the National Assembly for Wales, make arrangements with persons under which they, or members of their staff, may perform functions of the Ombudsman.
- (3) References in any provision made by or under an enactment to a member of staff of the Ombudsman include any person exercising any function of his by virtue of sub-paragraph (1)(b).

Reports and determinations

- 6 (1) The Ombudsman—
 - (a) shall annually prepare and lay before the National Assembly for Wales a general report on the performance of his functions; and
 - (b) may from time to time prepare and lay before the National Assembly for Wales such other reports with respect to his functions as he thinks fit.
- (2) The National Assembly for Wales shall, and the Ombudsman may, publish reports laid before the National Assembly for Wales under sub-paragraph (1).
- 7 The Ombudsman may, subject to any provision made by regulations under section 51B, publish his determination on any complaint.
- 8 (1) The Ombudsman may include in any report or determination published under paragraph 6 or 7 statements, communications, reports, papers or other documentary evidence obtained in the exercise of his functions.
- (2) In publishing any report or determination, the Ombudsman shall have regard to the need for excluding so far as practicable—
 - (a) any matter which relates to the private affairs of an individual, where publication would seriously and prejudicially affect the interests of that individual, and
 - (b) any matter which relates specifically to a social landlord in Wales, where publication would seriously and prejudicially affect its interests,unless inclusion of the matter concerned is necessary for the purposes of the report or determination.

Expenses

- 9 (1) The expenses of the Ombudsman shall, so far as they cannot be met out of income received by him, be met by the National Assembly for Wales.
- (2) Those expenses include any sums payable by the Ombudsman in consequence of a breach, in the course of the performance of any of his functions, of any contractual or other duty (whether that breach occurs by reason of his act or omission or that of a member of his staff or any other person assisting him in the exercise of his functions).

Absolute privilege for communications etc.

- 10 For the purposes of the law of defamation, absolute privilege attaches to—
 - (a) any communication between the Ombudsman and any person by or against whom a complaint is made to him;
 - (b) any determination by the Ombudsman; and

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- (c) the publication by him of any report or such a determination under paragraph 6, 7 or 8.

Disclosure of information

- 11 (1) Information obtained by the Ombudsman in the course of or for the purposes of an investigation of a complaint must not be disclosed except—
 - (a) for the purposes of the investigation, of any determination made in respect of the complaint or of the publication of a determination under paragraph 7;
 - (b) as provided in paragraph 12 or 17 or any regulations under section 51B;
 - (c) for the purposes of any proceedings for an offence of perjury alleged to have been committed in the course of an investigation of a complaint by the Ombudsman; or
 - (d) for the purposes of an inquiry with a view to the taking of any proceedings as mentioned in paragraph (c).
- (2) The Ombudsman shall not be called upon to give evidence in any proceedings (other than proceedings within sub-paragraph (1)(c)) of matters coming to his knowledge in the course of an investigation of a complaint.
- (3) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 shall be treated for the purposes of sub-paragraph (1) as obtained for the purposes of an investigation and, in relation to such information, the reference in paragraph (a) of that sub-paragraph to the investigation shall have effect as a reference to any investigation.
- 12 The Ombudsman may disclose to the Information Commissioner any information obtained by, or furnished to, the Ombudsman by virtue of or for the purposes of section 51A or 51B if the information appears to him to relate to—
 - (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
 - (i) Part V of the Data Protection Act 1998 (enforcement),
 - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
 - (iii) Part IV of that Act (enforcement), or
 - (b) the commission of an offence under—
 - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
 - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).

Accounts and audit

- 13 (1) The Ombudsman shall keep proper accounting records.
- (2) The Ombudsman shall, for each financial year, prepare accounts in accordance with directions given to him by the Treasury.
- (3) The directions which the Treasury may give under sub-paragraph (2) include, in particular, directions as to—
 - (a) the information to be contained in the accounts and the manner in which it is to be presented,

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- (b) the methods and principles in accordance with which the accounts are to be prepared, and
 - (c) the additional information (if any) that is to accompany the accounts.
- (4) In this paragraph and in paragraph 14, “financial year” means the twelve months ending with 31st March.
- 14 (1) The accounts prepared by the Ombudsman for any financial year shall be submitted by him to the Auditor General for Wales no later than the 30th November of the following year.
- (2) The Auditor General for Wales shall—
- (a) examine and certify any accounts submitted to him under this paragraph, and
 - (b) no later than four months after the accounts are submitted to him, lay before the National Assembly for Wales a copy of them as certified by him together with his report on them.
- (3) In examining any accounts submitted to him under this paragraph, the Auditor General for Wales shall, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

Accounting officer

- 15 (1) The accounting officer for the Office of the Ombudsman shall be the Ombudsman.
- (2) But where—
- (a) the Ombudsman is incapable of discharging his responsibilities as accounting officer, or
 - (b) the office of the Ombudsman is vacant (and there is no acting Ombudsman),
- the Treasury may designate a member of the Ombudsman’s staff to be the accounting officer for so long as paragraph (a) or (b) applies.
- (3) The accounting officer for the Office of the Ombudsman shall have, in relation to—
- (a) the accounts of the Ombudsman, and
 - (b) the finances of the Office of the Ombudsman,
- the responsibilities which are from time to time specified by the Treasury.
- (4) In this paragraph references to responsibilities include in particular—
- (a) responsibilities in relation to the signing of accounts,
 - (b) responsibilities for the propriety and regularity of the finances of the Office of the Ombudsman, and
 - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Office of the Ombudsman are used.
- (5) The responsibilities which may be specified under this paragraph include responsibilities owed to—
- (a) the National Assembly for Wales, the executive committee or the Audit Committee, or
 - (b) the House of Commons or its Committee of Public Accounts.

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- (6) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee may—
 - (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Office of the Ombudsman, and
 - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.
- (7) In this paragraph and paragraphs 16 and 17, “the Office of the Ombudsman” means the Ombudsman and the members of his staff.
- (8) Section 13 of the National Audit Act 1983 (interpretation of references to the Committee of Public Accounts) applies for the purposes of this paragraph as for those of that Act.

Examinations into use of resources

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 - (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Ombudsman has used the resources of the Office of the Ombudsman in discharging his functions.
 - (2) Sub-paragraph (1) shall not be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Ombudsman.
 - (3) In determining how to exercise his functions under this paragraph, the Auditor General for Wales shall take into account the views of the Audit Committee as to the examinations which he should carry out under this paragraph.
 - (4) The Auditor General for Wales may lay before the National Assembly for Wales a report of the results of any examination carried out by him under this paragraph.
 - (5) Section 7 of the National Audit Act 1983 (economy, efficiency and effectiveness examinations by Comptroller and Auditor General) applies to the Ombudsman.
 - (6) The Auditor General for Wales and the Comptroller and Auditor General may cooperate with, and give assistance to, each other in connection with the carrying out of examinations in respect of the Ombudsman under this paragraph or section 7 of the National Audit Act 1983.
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 - (1) For the purpose of enabling him to carry out examinations into, and report to Parliament on, the finances of the Office of the Ombudsman, the Comptroller and Auditor General—
 - (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Ombudsman, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
 - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
 - (2) The Comptroller and Auditor General shall—
 - (a) consult the Auditor General for Wales, and
 - (b) take into account any relevant work done or being done by the Auditor General for Wales,

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before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Ombudsman under section 7 of the National Audit Act 1983 (economy etc. examinations).”