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WELSH STATUTORY INSTRUMENTS

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**2005 No. 2800 (W.199) (C.116)**

**WELSH PUBLIC SERVICES OMBUDSMAN**

The Public Services Ombudsman (Wales)  
Act 2005 (Commencement No. 1 and  
Transitional Provisions and Savings) Order 2005

Made - - - - 11 October 2005

The National Assembly for Wales, in exercise of the powers conferred upon it by sections 40, 43(1) (b), 44(1) and 44(2) of the Public Services Ombudsman (Wales) Act 2005(1), hereby makes the following Order:

**Title and interpretation**

1. The name of this Order is the Public Services Ombudsman (Wales) Act 2005 (Commencement No.1 and Transitional Provisions and Savings) Order 2005.

2.—(1) In this Order—

“a Local Commissioner in Wales” (“*Comisiynydd Lleol yng Nghymru*”) means a Local Commissioner (within the meaning of Part 3 of the Local Government Act 1974(2)) who is a member of the Commission,

“the Act” (“*y Ddeddf*”) means the Public Services Ombudsman (Wales) Act 2005,

“the Commission” (“*Y Comisiwn*”) means the Commission for Local Administration in Wales established by section 23(1)(b) of the Local Government Act 1974,

“the Ombudsman” (“*yr Ombwdsmon*”) means the Public Services Ombudsman for Wales, and

“the 2000 Act” (“*Deddf 2000*”) means the Local Government Act 2000(3).

(2) In this Order references to sections and Schedules are, unless otherwise stated, references to sections of and Schedules to the Act.

**Provisions coming into force on 12 October 2005**

3. The following provisions come into force on 12 October 2005 for the purposes referred to—

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(1) 2005 c. 10.  
(2) 1974 c. 7.  
(3) 2000 c. 22.

- (a) the provisions specified in the first column of the Table in Part 1 of Schedule 1 to this Order come into force for the purposes specified in the second column of that Table, and
- (b) the provisions specified in the first column of the Table in Part 2 of Schedule 1 to this Order come into force for the purposes specified in the second column of that Table.

4.—(1) Section 35 and the following paragraphs of Schedule 4 come into force in accordance with paragraphs (2) and (3) below—

- (a) 1, 2, 4,
- (b) 11(a) and (c) to (e),
- (c) 14(a), and
- (d) 23.

(2) Save as provided for in paragraph (3) below, the provisions referred to in paragraph (1) above come into force on 12 October 2005 for the purpose of making orders and regulations (as the case may be) relating to the functions of the Ombudsman under Part 3 of the 2000 Act.

(3) Until 1 April 2006 the provisions referred to in sub-paragraph (a) below continue to have effect, for the purpose referred to in sub-paragraph (b) below, as if the amendments made by the provisions referred to in paragraph (1) above did not have effect—

- (a) the provisions referred to above are the following sections of the 2000 Act—
  - (i) 49,
  - (ii) 53,
  - (iii) 68(1), (3) and (4),
  - (iv) 70(2)(b), and
  - (v) 82.
- (b) the purpose referred to above is the purpose of making orders and regulations (as the case may be) relating to the functions of the Commission or a Local Commissioner in Wales under Part 3 of the 2000 Act.

#### **Provisions coming into force on 1 April 2006**

5.—(1) Save as provided for in paragraph (2) below, and except as provided for in paragraph (3) below, the provisions of the Act, insofar as they are not already in force, come into force on 1 April 2006.

- (2) For the purposes of the financial year ending 31 March 2006—
  - (a) subject to sub-paragraph (b) below and despite the coming into force of section 39 and Schedule 7, the provisions of the Acts referred to in the first column of the Table in Schedule 2 to this Order continue to have effect as if those provisions had not been repealed by the Act, and
  - (b) those provisions continue to have effect in accordance with sub-paragraph (a) above subject to the modifications specified in the second column of the Table in Schedule 2 to this Order.
- (3) The following provisions do not come into force on 1 April 2006—
  - (a) section 20, and
  - (b) paragraph 15(5) of Schedule 1.

### **Complaints spanning commencement date**

6.—(1) Where this article applies the Ombudsman must consider the complaint in accordance with the provisions of Part 2 of the Act.

(2) This article applies where—

- (a) a complaint has been duly made or referred to the Ombudsman in respect of a matter which relates to events that occurred before 1 April 2006 and events that occurred after that date, and
- (b) as regards the events that occurred before 1 April 2006 a complaint could (but for the other provisions of the Act) have been but has not been made to an existing Welsh Ombudsman under the relevant existing enactment.

(3) For the purposes of this article the Ombudsman is not prevented from investigating a matter (or part of a matter) in accordance with Part 2 of the Act only because it relates to events that occurred before 1 April 2006.

(4) For the purposes of paragraph (2) above—

- (a) “existing Welsh Ombudsman”, and
- (b) “the relevant existing enactment”,

have the same meanings as in section 38(6).

### **Transitional Provision — estimates**

7.—(1) The following provisions of this article apply to the Ombudsman in relation to the financial year ending 31 March 2007.

(2) The Ombudsman must prepare an estimate of the income and expenses of that office for that financial year and submit it to the Assembly Cabinet not later than one month before the beginning of that financial year.

(3) The Assembly Cabinet must examine the estimate and then lay it before the Assembly with any modifications it thinks appropriate.

(4) If the Assembly Cabinet proposes to lay the estimate before the Assembly with modifications, it must first consult the Secretary of State.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(4).

11 October 2005

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

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## SCHEDULE 1

Article 3

**PROVISIONS COMING INTO FORCE ON 12 OCTOBER 2005****Part 1**

<b>Provisions</b>	<b>Purpose</b>
Section 1 and paragraphs 1, 2, 3, 5(1) to (3), 6 and 8 of Schedule 1	For the purpose of appointing the Ombudsman.
Section 10 and Schedule 2	All purposes.
Subsections (7) to (9) of section 25	All purposes.
Section 28 and Schedule 3	All purposes.
Section 29	All purposes.
Section 30	All purposes.
Section 39 and paragraphs 61 to 63 of Schedule 6	For the purpose of appointing the Ombudsman.

**Part 2**

<b>Provisions</b>	<b>Purpose</b>
Section 39 and paragraph 18(11) and (13) of Schedule 6	For the purpose of removing the duty on the Commission for Local Administration in Wales to prepare and submit an estimate of the expenses it will incur in the financial year ending 31 March 2007.
Section 39 and the entry in Schedule 7 for the “Health Service Commissioners Act 1993 <sup>(5)</sup> ” but only to effect the repeal of paragraph 9 of Schedule 1A to that Act	For the purpose of removing the duty on the Health Service Commissioner for Wales to prepare and submit an estimate of the income and expenses of his or her office for the financial year ending 31 March 2007.
Section 39 and the entry in Schedule 7 for the “Government of Wales Act 1998” but only to effect the repeal of paragraph 8 of Schedule 9 to that Act	For the purpose of removing the duty on the Welsh Administration Ombudsman to prepare and submit an estimate of the income and expenses of his office for the financial year ending 31 March 2007.

(5) 1993 c. 46.

## SCHEDULE 2

Article 5

## SAVINGS

<b>Provisions</b>	<b>Modifications</b>
Section 1(3) of and paragraphs 10 to 14 of Schedule 1A to the Health Service Commissioners Act 1993	For the purposes of paragraph 12 of that Schedule to that Act, the Ombudsman shall be regarded as the accounting officer.
Section 111(2) of and paragraphs 9 to 13 of Schedule 9 to the Government of Wales Act 1998	For the purposes of paragraph 11 of that Schedule to that Act, the Ombudsman shall be regarded as the accounting officer.
Section 51A(7) of and paragraphs 13 to 17 of Schedule 2A to the Housing Act 1996(6)	For the purposes of paragraph 15 of that Schedule to that Act, the Ombudsman shall be regarded as the accounting officer.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force the provisions of the Public Services Ombudsman (Wales) Act 2005 (“the Act”), except section 20 and paragraph 15(5) of Schedule 1 to the Act.

Article 3 and Part 1 of Schedule 1 to this Order bring into force on 12 October 2005 various provisions of the Act for the purpose of appointing the Public Services Ombudsman for Wales (“the Ombudsman”), including the provisions relating to persons who are to be disqualified from holding the office of the Ombudsman.

Those provisions also bring into force on 12 October 2005 various powers (vested in the National Assembly for Wales (“the Assembly”)) to make orders and regulations relating to the functions of the Ombudsman under Part 2 of the Act.

Article 3 and Part 2 of Schedule 1 bring into force on 12 October 2005 the provisions of the Act that remove the duties on the Welsh Administration Ombudsman and the Health Service Commissioner for Wales to prepare and submit to the Assembly Cabinet estimates of the income and expenditure of each office for the financial year ending 31 March 2007.

Those provisions also bring into force on 12 October 2005 the provisions of the Act that remove the duty on the Commission for Local Administration in Wales to prepare and submit to the Assembly an estimate of the expenses that it will incur for the financial year ending 31 March 2007. Although paragraph 7(1) of Schedule 4 to the Local Government Act 1974 requires that the Commission for Local Administration in Wales submit its estimate to the Secretary of State, article 2(a) of and Schedule 1 to the [National Assembly for Wales \(Transfer of Functions\) Order 1999 \(SI 1999 No. 672\)](#) has effect so that the Commission must submit the estimate to the Assembly instead.

Schedule 4 amends Part 3 of the Local Government Act 2000 (“the 2000 Act”) which relates to the conduct of local government members and employees. In this respect Schedule 4 makes the necessary amendments to bring Part 3 of the 2000 Act fully into accord with the Act. Essentially,

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(6) [1996 c. 52.](#)

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when Schedule 4 comes fully into force, functions of the Commission for Local Administration in Wales (“the Commission”) and those of the Local Commissioner in Wales (“the Commissioner”) under Part 3 of the 2000 Act become functions of the Ombudsman.

Broadly speaking, in relation to relevant authorities in England (as defined in the 2000 Act) and police authorities in Wales the powers in Part 3 of the 2000 Act to make orders and regulations relating to such bodies are vested in the Secretary of State. As regards relevant authorities in Wales (other than police authorities in Wales) those powers are vested in the Assembly. The powers to make orders and regulations relating to the functions of the Commission and the Commissioner under Part 3 of the 2000 Act are vested in the Assembly.

Articles 4(1) and (2) of this Order bring into force, on 12 October 2005, those provisions of Schedule 4 which amend the powers in Part 3 of the 2000 Act to make orders and regulations (as the case may be) in connection with the conduct of members and employees of relevant authorities (within the meaning of Part 3 of the 2000 Act) bringing those provisions, where necessary, fully into accord with the Act.

Until section 35 and Schedule 4 come fully into force on 1 April 2006 the Ombudsman has no functions under Part 3 of the 2000 Act. However, articles 4(1) and (2) of this Order enable orders and regulations to be made in preparation for the Ombudsman taking over, on 1 April 2006, the functions of the Commission and the Commissioner under that Part of that Act.

However, until section 35 and Schedule 4 come fully into force on 1 April 2006, the Commission and the Commissioner will continue to have functions under that Part of that Act. Article 4(3) of this Order, therefore, provides that the provisions of Part 3 of the 2000 Act that would otherwise be affected by the amendments made by the provisions of the Act brought into force by article 4(1) and (2) of this Order continue to have effect (as if they had not been so amended) for the purpose of making orders and regulations relating to the ongoing functions of the Commission and the Commissioner under Part 3 of the 2000 Act.

Article 5(1) brings the remaining provisions of the Act (except section 20 and paragraph 15(5) of Schedule 1) into force on 1 April 2006.

Article 5(2) and Schedule 2 to this Order contain saving provisions. These provisions relate to the accounts and resources of the Welsh Administration Ombudsman, the Health Service Commissioner for Wales and the Social Housing Ombudsman for Wales. Each of those offices are currently held by the same person.

The effect of these provisions is that, for the financial year ending 31 March 2006, the requirements in relation to those offices to prepare accounts and to have those accounts audited etc. continue to apply. Insofar as those provisions continue to apply, the Ombudsman will be regarded as the accounting officer in relation to each of those offices for the purposes of, for example, signing the accounts.

Article 6 of this Order makes provision in relation to any complaint that is duly made or referred to the Ombudsman about a matter which relates to events that occurred before 1 April 2006 and events that occurred after that date. Section 38 (undetermined complaints) only applies where the action complained of takes place before 1 April 2006. Where a complaint relates to action that occurs on or after that date the provisions of Part 2 will apply to that complaint.

For the purposes of article 6 the Ombudsman is not prevented from investigating a matter only because the matter relates to events that occurred before 1 April 2006 (article 6(3)).

However, for the purposes of article 6 the Ombudsman can investigate such a matter insofar as it relates to events that occurred before that date only if certain conditions are met (article 6(2)). Those conditions are that:

- (a) the complaint must otherwise have been duly made or duly referred to the Ombudsman, and
- (b) the complaint in respect of the events that occurred before 1 April 2006 could (but for the other provisions of the Act) have been, but has not been, made to the Welsh Administration

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Ombudsman, the Local Commissioner for Wales, the Health Service Commissioner for Wales or the Social Housing Ombudsman for Wales (“the existing Welsh ombudsmen”).

For example, if, after 1 April 2006, a body is added to Schedule 3 (listed authorities) by Assembly order under section 28(2) but it is not a body that, prior to that date, is within the jurisdiction of one of the existing Welsh ombudsmen then article 6 will not apply. Article 6 only applies where the matter spans 1 April 2006 and where the body concerned is, after that date, within the jurisdiction of the Ombudsman and before that date within the jurisdiction of one of the existing Welsh ombudsmen.

Article 7 of this Order makes transitional provision requiring the Ombudsman to prepare and submit to the Assembly Cabinet an estimate of the income and expenses of that office for the financial year ending 31 March 2007.

The Ombudsman must submit that estimate to the Assembly Cabinet no later than one month before the beginning of that financial year. The Assembly Cabinet must consider that estimate and then lay it before the Assembly with such modifications as it thinks appropriate. However, if the Assembly Cabinet proposes to lay that estimate before the Assembly with modifications, the Assembly Cabinet must first consult the Secretary of State.