

REGULATORY APPRAISAL

LOCAL GOVERNMENT, WALES

THE PUBLIC SERVICES OMBUDSMAN FOR WALES (STANDARDS INVESTIGATIONS) ORDER 2006

Purpose and intended effect of the measure

1. The purpose of this Order is to revoke the ‘Local Commissioner in Wales (Standards Investigations) Order 2001 (SI 2001 No. 2286 (W.174))’ and to make similar provision in relation to the Public Services Ombudsman for Wales (PSOW).
2. Section 70(1) of the Local Government Act 2000 provides that the National Assembly for Wales may, by order, make provision with respect to investigations under section 69 of that Act by the Commission for Local Administration in Wales (“the Local Government Ombudsman”). Such investigations concern allegations that an elected or co-opted member, of a relevant authority in Wales may have failed to comply with the authority’s code of conduct.
3. Section 70(2) of the Local Government Act 2000 provides that any provision made by virtue of section 70(1) may apply or reproduce (with or without modifications) any of the provisions of sections 60-63 of that Act, or sections 28, 29, 32 or 33 of the Local Government Act 1974.
4. The ‘Local Commissioner in Wales (Standards Investigations) Order 2001 was made by the National Assembly for Wales on 21 June 2001, in exercise of these powers.
5. From 1 April 2006, the investigation of allegations of misconduct under Part III of the Local Government Act 2000 will become the responsibility of the PSOW. As a consequence, it is necessary to revoke the Local Commissioner in Wales (Standards Investigations) Order 2001 and to replace it with similar provision in respect of the PSOW. The Public Services Ombudsman (Wales) Act 2005 amends subsection 70(2)(b) of the Local Government Act 2000 so that the National Assembly may apply or reproduce (with or without modification) any of the provisions of sections 13-15, 25-27 and 32 of the Public Services Ombudsman (Wales) Act 2005, as referred to in paragraph 7.
6. This Order deals with practical matters relating to the conduct of investigations by the PSOW. These are:

Local Government Act 2000

- Section 60 – conduct of investigations, including arranging for assistance and restrictions on undertaking an investigation where the PSOW has a conflict of interest;

- Section 61 – procedures in respect of investigations, including payment for persons who attend or furnish information for the purposes of an investigation;
- Section 62 – access to information and co-operation with an investigation; and
- Section 63 – restrictions on disclosure of information obtained during an investigation of misconduct.

Public Services Ombudsman (Wales) Act 2005

- Section 26 – restrictions on disclosure of information obtained during an investigation of maladministration. This, together with application of section 63 of the Local Government Act 2000, will enable the PSOW to use information obtained in the course of one type of investigation for the purposes of the other.
7. This Order does not use the powers available to apply the following sections of the Public Services Ombudsman (Wales) Act 2005, as similar provisions are contained in sections 61-63 and 74 of the Local Government Act 2000:
- Sections 13-15 – investigation procedure and evidence;
 - Section 25 – consultation and co-operation with other Ombudsmen;
 - Section 27 – disclosure of information contrary to public interest; and
 - Section 32 – protection from defamation.

Risk Assessment

8. The absence of an appropriate Order could frustrate the effective investigation of allegations of misconduct by the PSOW from 1 April 2006. While the PSOW would be empowered by the Part III of the Local Government Act 2000 to undertake such investigations, the full range of powers would not be available to the PSOW. For example, the PSOW would not have the force of law in requiring persons to co-operate or provide information in connection with an investigation. Similarly, no provision would exist to prevent the PSOW from undertaking an investigation where he had a potential conflict of interest. In some instances, this might leave the PSOW's investigations open to challenge.

Options

Option 1: Do nothing

9. This is not acceptable given the risk set out above. If the Order is not made, the PSOW would not have the full ambit of legislative provisions at his disposal to facilitate the efficient, effective and judicious investigation of allegations of misconduct.

Option 2: Make the Legislation

10. Repealing and replacing the existing Order will ensure that appropriate provisions are in place for the proper conduct of investigations by the PSOW of alleged misconduct by local government members.

Benefits

11. The Order will benefit those making allegations of misconduct by ensuring that the PSOW is properly equipped to undertake investigations. It will also benefit those subject to investigation by ensuring that the PSOW can access all appropriate information needed for a fair and thorough investigation and provide safeguards where there is a potential conflict of interest.

Costs

12. There are no new financial implications for the Welsh Assembly Government, the PSOW or others arising from the Order as the Order is a consequence of the transfer of the Commission for Local Administration for Wales' existing responsibility for investigating misconduct by local government members to the Public Services Ombudsman for Wales. Whilst there are costs associated with such investigations, the new Order does not impose any additional costs.

Consultation

With Stakeholders

13. The Assembly Government has consulted all appropriate stakeholders on the draft Order ie: the All-Wales Monitoring Officer Group, the Commission for Local Administration in England (CLAE), One Voice Wales, the Parliamentary and Health Service Ombudsman, the Public Services Ombudsman for Wales and the Welsh Local Government Association.

14. Consultation began on 28 November 2005 and ended on 9 January 2006. Five responses were received, including one after the closing date, from the PSOW, CLAE, One Voice Wales, the North Wales Fire Authority Standards Committee and Carmarthenshire County Council. There were no adverse comments on the main thrust of the Order. Carmarthenshire County Council simply confirmed that it had no comments on the draft Order. The remaining respondents made a small number of, in some instances, similar detailed drafting points on the Order. These included:

- making it clear in the Order who would undertake an investigation of misconduct, where the PSOW has a potential conflict of interest;
- the requirement on the PSOW to disclose the nature of such an interest to the person making an allegation and the relevant local authority, should be extended to include the member or members subject to investigation;
- references to "such an officer" should be amended to read "that Ombudsman"

These have been considered with lawyers and are reflected in the final version of the Order where appropriate. More substantive comments on the proposals are covered below.

15. During consultation, it was proposed that the draft Order should apply, in part, section 62(7) of the Local Government Act 2000 to investigations by the PSOW. This provides that the wider provisions of section 62 (namely, the powers of the PSOW to require information to be provided to him) do not affect restrictions on disclosure of information imposed in primary legislation on other Ombudsmen. Both the PSOW and the CLAE expressed concern that the application of section 62(7) might have the unintended effect of restricting their ability to consult and co-operate in appropriate cases. Section 62(7) is not currently applied by the Local Commissioner in Wales (Standards Investigations) Order 2001 to investigations by the Local Government Ombudsman. Given the strength of the Ombudsmen's concerns, this provision has been removed from the draft Order.
16. Section 63(4) of the Local Government Act 2000 provides that a person disclosing information obtained by the PSOW during a misconduct investigation is guilty of a criminal offence. This section is not applied by the Local Commissioner in Wales (Standards Investigations) Order 2001 to investigations by the Local Government Ombudsman. This followed concern that a criminal offence might be created should disclosure be taken to include transfer of information between Ombudsman staff undertaking different types of investigation (maladministration investigations on the one hand and misconduct investigations on the other). The consultation paper signalled that the Assembly Government similarly did not intend to apply section 63(4) to investigations by the PSOW. One respondent thought that it was insufficient to rely on disciplinary procedures and that section 63(4) should apply. The PSOW did not comment on this aspect. There is no equivalent provision in the Public Services Ombudsman (Wales) Act 2005 relating to the PSOW's maladministration role. The Assembly Government remains of the view that it is unnecessary to apply a criminal sanction in this instance.

With Subject Committee

17. This Order was first notified to the Local Government and Public Services Committee via the list of forthcoming legislation on 21 September 2005 (LGPS 08-05(p.7) – Item PS04) and has remained on the list ever since, but was not selected for detailed scrutiny.

Review

18. The impact of this Order is predictable in that it makes similar provision relating to the investigation of misconduct by the PSOW, to that which has been in place since 2001 for the conduct of such investigations by the Local Government Ombudsman. It is not likely to need review in the short to medium term. The PSOW can be expected to report any unforeseen difficulties arising from the operation of this Order.

Summary

19. This Order will impact on the conduct of investigations by the PSOW into allegations of misconduct by local government members, from 1 April 2006. The Order revokes and replaces the existing Order, which makes similar provision relating to the conduct of such investigations by the Commission for Local Administration in Wales.

