

The Rt Hon Alun Cairns MP  
Secretary of State for Wales

17 January 2019

Dear Secretary of State

**Public Services Ombudsman (Wales) Bill – consequential amendments and extent**

The Public Services Ombudsman (Wales) Bill (**the Bill**)<sup>1</sup> is a Finance Committee Bill of which I am the Member in Charge. The Bill makes provision regarding the Public Services Ombudsman for Wales, by restating and repealing the Public Services Ombudsman (Wales) Act 2005 (**the 2005 Act**),<sup>2</sup> while including new provision around, for example, own initiative investigations, investigating private healthcare in certain circumstances and complaints-handling.

Many Acts contain references to the 2005 Act, and those Acts will need to refer to the Public Services Ombudsman (Wales) Act 2019 (**the 2019 Act**), should the Bill be passed by the Assembly. The Bill proposes to achieve this by making consequential amendments on the face of the Bill.

Annex 1 to this letter sets out the consequential amendments the Bill proposes to make to various Acts of the United Kingdom Parliament.<sup>3</sup> These include Acts that extend to:

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<sup>1</sup> The Bill was introduced on 2 October 2017 and the Assembly vote on the general principles of the Bill took place on 21 March 2018. It is the last Bill to proceed under the conferred powers model.

<sup>2</sup> With saving provision regarding investigations already commenced under the 2005 Act at the time the 2019 Act comes into force.

<sup>3</sup> Some amendments **replace** references to the 2005 Act with references to the 2019 Act, and some add references to the 2019 Act while **keeping** references to the 2005 Act. This is because some Acts need to refer to both the 2005 Act and the 2019 Act over a transitional period while the Ombudsman completes investigations commenced under the 2005 Act. When the last investigation under the 2005 Act is complete



- England and Wales,
- England and Wales, and Scotland,
- the United Kingdom.

The consequential amendments extend to England and Wales only, in accordance with the Assembly's legislative competence around extent. This means that, where an Act extends beyond England and Wales, a practical problem could arise.

Annex 2 to this letter is divided into four Parts, each dealing with any practical problems that could arise from the fact that the proposed consequential amendments in the Bill extend to England and Wales only.

In brief, the four Parts of Annex 2 deal with:

- **Part 1:** Acts that extend to Scotland only and Northern Ireland only, meaning the Assembly has no legislative competence to make the consequential amendments.
- **Part 2:** Acts that extend to the United Kingdom, meaning the Assembly has legislative competence to make consequential amendments that extend to England and Wales only, and where a practical problem seems to arise from that.
- **Part 3:** Acts that extend to the United Kingdom (or England and Wales, and Scotland), meaning the Assembly has legislative competence to make consequential amendments that extend to England and Wales only, and where no practical problem seems to arise from that.
- **Part 4:** Acts that extend to England and Wales only, meaning there are no issues with regard to extent and the Assembly's legislative competence to make the consequential amendments.

Where there is a practical problem that needs to be addressed, I ask whether the UK Government would be prepared to use its powers<sup>4</sup> to fill the gaps that will be left by the fact that the Assembly's legislative competence is confined to the England and Wales jurisdiction.

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(which could be years after the 2019 Act comes into force), the Welsh Ministers can make regulations to tidy up the statute book by removing all references to the 2005 Act.

<sup>4</sup> For example, powers under section 150 of the Government of Wales Act 2006 and section 104 of the Scotland Act 1998.



With regard to timing, I hope the Bill will receive Royal Assent around April/May. The substantive provisions of the 2019 Act will come into force by regulations made by the Welsh Ministers, though I do not yet know when the Welsh Ministers will want to commence the 2019 Act.

I hope this leaves plenty of time for you to draft the subordinate legislation required to make the consequential amendments, but if you require any assistance from my side, please contact Gareth Howells, the Finance Committee's legal adviser on the Bill, on [gareth.howells@cynulliad.cymru](mailto:gareth.howells@cynulliad.cymru) or 0300 200 6430.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Llyr', is centered on a light yellow rectangular background.

Llyr Gruffydd



## **Annex 1**

### **Proposed consequential amendments (that extend to England and Wales only)**

#### *Parliamentary Commissioner Act 1967 (c.13)*

- 1 In section 4 (departments etc. subject to investigation), in subsection (3A), for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”.
- 2 In section 11A (consultations between Parliamentary Commissioner and other Commissioners or Ombudsmen), in subsection (1)(b), for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”.

#### *Local Government Act 1974 (c.7)*

- 3 In section 34M (consultation with other Commissioners), in subsection (1)(d), at the end insert “or the PSOWA 2019”.
- 4 In section 34T (interpretation of Part 3A), in subsection (1), after the definition of “the PSOWA 2005” insert –

““the PSOWA 2019” means the Public Services Ombudsman (Wales) Act 2019”.

#### *Ancient Monuments and Archaeological Areas Act 1979 (c.46)*

- 5 In Schedule A2 (decisions on reviews by person appointed by Welsh Ministers), in paragraph 7, for “the Public Services (Ombudsman) Wales Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2005 and the Public Services Ombudsman (Wales) Act 2019”.

#### *Local Government and Housing Act 1989 (c.42)*

- 6 In section 5 (designation and reports of monitoring officer) –
  - (a) in subsection (2)(c), at the end insert “or the Public Services Ombudsman (Wales) Act 2019”;
  - (b) in subsection (2AA), after “the Public Services Ombudsman (Wales) Act 2005” insert “or the Public Services Ombudsman (Wales) Act 2019”.



- 7 In section 5A (reports of monitoring officer – local authorities operating executive arrangements) –
- (a) in subsection (3)(c), at the end insert “or the Public Services Ombudsman (Wales) Act 2019”;
  - (b) in subsection (4A), after “the Public Services Ombudsman (Wales) Act 2005” insert “or the Public Services Ombudsman (Wales) Act 2019”

*Planning (Listed Buildings and Conservation Areas) Act 1990 (c.9)*

- 8 In Schedule 1B (decisions on reviews by person appointed by Welsh Ministers), in paragraph 7, after “the Public Services Ombudsman (Wales) Act 2005” insert “and the Public Services Ombudsman (Wales) Act 2019”.
- 9 In Schedule 3 (determination of certain appeals by person appointed by Secretary of State), in paragraph 7(3), after “the Public Services Ombudsman (Wales) Act 2005” insert “and the Public Services Ombudsman (Wales) Act 2019”.

*Health Service Commissioners Act 1993 (c.46)*

- 10 In section 18 (consultation during investigations), in subsection (1)(ba), at the end insert “or the Public Services Ombudsman (Wales) Act 2019”.

*Housing Act 1996 (c.52)*

- 11 In section 50C (grounds for giving notice), in subsection (10), at the end insert “or section 21 of the Public Services Ombudsman (Wales) Act 2019”.
- 12 In section 51 (schemes for investigation of complaints), in subsection (7), for “section 41 of the Public Services Ombudsman (Wales) Act 2005” substitute “section 75 of the Public Services Ombudsman (Wales) Act 2019”.

*Freedom of Information Act 2000 (c.36)*

- 13 In section 76 (disclosure of information between Commissioner and ombudsmen), in the second column of the row that refers to the Public Services Ombudsman for Wales in the table in subsection (1), at the end insert “or Part 3 of the Public Services Ombudsman (Wales) Act 2019”.

*Local Government Act 2000 (c.22)*



- 14 In section 68 (Public Services Ombudsman for Wales), in subsection (3), for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”.
- 15 In section 70 (investigations: further provisions), in subsection (2)(b), for “sections 13 to 15 and Part 2B of the Public Services Ombudsman (Wales) Act 2005” substitute “sections 18 to 20 and Part 6 of the Public Services Ombudsman (Wales) Act 2019”.

*Health and Social Care (Community Health and Standards) Act 2003 (c.43)*

- 16 In section 113 (complaints about health care), in subsection (4)(aa) –
- (a) for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”;
  - (b) for “section 2(3)” substitute “section 3(3)”.

*National Health Service (Wales) Act 2006 (c.42)*

- 17 In section 187 (independent advocacy services), in subsection (3) –
- (a) in the definition of “health service body”, for “the Public Services Ombudsman (Wales) Act 2005 (c.10)” substitute “the Public Services Ombudsman (Wales) Act 2019”;
  - (b) in the definition of “independent palliative care provider”, for “section 34T of the Public Services Ombudsman (Wales) Act 2005” substitute “section 62 of the Public Services Ombudsman (Wales) Act 2019”;
  - (c) in the definition of “independent provider”, for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”.

*Commissioner for Older People (Wales) Act 2006 (c.30)*

- 18 In section 18 (power to disclose information), in subsection (1)(b), at the end insert “or section 64 of the Public Services Ombudsman (Wales) Act 2019 (working jointly with specified persons)”.

*Government of Wales Act 2006 (c.32)*

- 19 In Schedule 8 (Auditor General for Wales), in paragraph 17(8)(ba), for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”.



*Local Government and Public Involvement in Health Act 2007 (c.28)*

- 20 In section 223A (independent advocacy services), in subsection (10) –
- (a) in the definition of “health service body”, for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”;
  - (b) in the definition of “independent provider”, for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”;
  - (c) in the definition of “Welsh health body”, for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”.

*Social Services and Well-being (Wales) Act 2014 (anaw 4)*

- 21 In section 171 (complaints about social services), in subsection (3)(a) –
- (a) for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”;
  - (b) for “section 2(3)” substitute “section 3(3)”.
- 22 In section 177 (further consideration of representations), in subsection (4)(a) –
- (a) for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”;
  - (b) for “section 2(3)” substitute “section 3(3)”.

*Data Protection Act 2018 (c.12)*

- 23 In Schedule 2 (exemptions etc from the GDPR), in paragraph 10(2)(c)(iv), at the end insert “or Part 3 of the Public Services Ombudsman (Wales) Act 2019”.



## ANNEX 2

### **PART 1 – CONSEQUENTIAL AMENDMENTS TO ACTS THAT EXTEND TO SCOTLAND ONLY OR NORTHERN IRELAND ONLY**

The Scottish Public Services Ombudsman Act 2002 extends to Scotland only and the Public Services Ombudsman Act (Northern Ireland) 2016 extends to Northern Ireland only. The Bill cannot make consequential amendments to these two Acts because of extent.

It is essential for these amendments to be made because, without them, the Scottish Ombudsman and the Northern Ireland Ombudsman will not have express power to consult the Public Services Ombudsman for Wales in respect of investigations under the 2019 Act.

<b>Act</b>	<b>Section or Schedule that needs to refer to the 2019 Act</b>	<b>Comment</b>
Scottish Public Services Ombudsman Act 2002	Section 21(1)(c)	<p>Section 21 extends to Scotland only. The Bill cannot amend section 21(1)(c). There does seem to be a practical problem if amendment is not made (as described above).</p> <p><b>Suggested amendment</b></p> <p>In section 21 (consultation and co-operation with other Commissioners and Ombudsmen), in subsection (1)(c), at the end insert “or the Public Services Ombudsman (Wales) Act 2019”.</p>
Public Services Ombudsman Act (Northern Ireland) 2016	Section 51(4)(d)	<p>Section 51(4)(d) extends to Northern Ireland only. The Bill cannot amend section 51(4)(d). There</p>





		<p>does seem to be a practical problem if amendment is not made (as described above).</p> <p><b>Suggested amendment</b></p> <p>In section 51 (consultation and co-operation with other ombudsmen), in subsection (4)(d), at the end insert "or the Public Services Ombudsman (Wales) Act 2019".</p>
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## PART 2 – CONSEQUENTIAL AMENDMENTS TO ACTS THAT EXTEND TO THE UNITED KINGDOM THAT RAISE A PRACTICAL PROBLEM

The Data Protection Act 2018 extends to the United Kingdom. In this case, there does seem to be a practical problem if the consequential amendment extends to England and Wales only.

Paragraph 10(2)(c)(iv) of Schedule 2 to the Data Protection Act 2018 refers to the 2005 Act but it will also need to refer to the 2019 Act. In this case, the consequential amendment must extend to the whole of the United Kingdom. Not extending the amendment to Scotland and Northern Ireland seems to cause a practical problem that must be addressed (i.e. the listed GDPR provisions need to be excluded in their application to personal data processed for the purposes of the PSOW's functions under the 2019 Act) across the whole of the United Kingdom.

The UK Government may wish to make the suggested consequential amendment for the whole of the United Kingdom, in which case the consequential amendment to the Data Protection Act 2018 can be removed from the Bill.

<b>Act</b>	<b>Section or Schedule that needs to refer to the 2019 Act</b>	<b>Comment</b>
Data Protection Act 2018	Paragraph 10(2)(c)(iv) of Schedule 2	<p>Paragraph 10(2)(c)(iv) extends to the UK. There does seem to be a practical problem if amendment extends to England and Wales only (as described above).</p> <p><b>Suggested amendment</b></p> <p>In Schedule 2 (exemptions etc from the GDPR), in paragraph 10(2)(c)(iv), at the end insert "or Part 3 of the Public Services Ombudsman (Wales)</p>



		Act 2019".
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**PART 3 – CONSEQUENTIAL AMENDMENTS TO ACTS THAT EXTEND TO THE UNITED KINGDOM (OR ENGLAND AND WALES, AND SCOTLAND) THAT DO NOT SEEM TO RAISE PRACTICAL PROBLEMS**

The Acts listed below extend to the United Kingdom (or England and Wales, and Scotland). There does not seem to be a practical problem if the consequential amendments extend to England and Wales only.

However, the UK Government may nevertheless wish to make the suggested consequential amendments to extend to Scotland and Northern Ireland (or, indeed, the whole of the United Kingdom (or England and Wales, and Scotland), in which case the consequential amendments to these Acts can be removed from the Bill).

<b>Act</b>	<b>Section or Schedule that needs to refer to the 2019 Act</b>	<b>Comment</b>
Parliamentary Commissioner Act 1967	Section 4(3A)	<p>Section 4(3A) extends to the UK. Does not seem to be a practical problem if consequential amendment extends to England and Wales only (given the nature of the Order in Council power).</p> <p><b>Suggested amendment:</b></p> <p>In section 4 (departments etc. subject to investigation), in subsection (3A), for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”.</p>



<p>Parliamentary Commissioner Act 1967</p>	<p>Section 11A(1)(b)</p>	<p>Section 11A(1)(b) extends to the UK. Does not seem to be a practical problem if amendment extends to England and Wales only (Parliamentary Commissioner could inform persons about the 2019 Act under the England and Wales jurisdiction).</p> <p><b>Suggested amendment</b></p> <p>In section 11A (consultations between Parliamentary Commissioner and other Commissioners or Ombudsmen), in subsection (1)(b), for "the Public Services Ombudsman (Wales) Act 2005" substitute "the Public Services Ombudsman (Wales) Act 2019".</p>
<p>Local Government and Housing Act 1989</p>	<p>Sections 5(2)(c) and 5(2AA)</p>	<p>Section 5(2)(c) extends to England and Wales, and Scotland. Does not seem to be a practical problem if amendment extends to England and Wales only (there are no Scotland monitoring officers).</p> <p><b>Suggested amendment</b></p>



		<p>In section 5 (designation and reports of monitoring officer)—</p> <p>(a) in subsection (2)(c), at the end insert “or the Public Services Ombudsman (Wales) Act 2019”;</p> <p>(b) in subsection (2AA), after “the Public Services Ombudsman (Wales) Act 2005” insert “or the Public Services Ombudsman (Wales) Act 2019”.</p>
<p>Freedom of Information Act 2000</p>	<p>Section 76(1)</p>	<p>Section 76(1) extends to the UK. Does not seem to be a practical problem if amendment extends to England and Wales only (ICO could disclose information to the Public Services Ombudsman for Wales under the England and Wales jurisdiction).</p> <p><b>Suggested amendment</b></p> <p>In section 76 (disclosure of information between Commissioner and</p>



		ombudsmen), in the second column of the row that refers to the Public Services Ombudsman for Wales in the table in subsection (1), at the end insert “or Part 3 of the Public Services Ombudsman (Wales) Act 2019”.
Government of Wales Act 2006 (see paragraph 7(2)(d)(v) of Schedule 7B to the 2006 Act for competence to modify Schedule 8)	Paragraph 17(8)(ba) of Schedule 8	<p>Paragraph 17(8)(ba) extends to the UK. Does not seem to be a practical problem if amendment extends to England and Wales only.</p> <p><b>Suggested amendment</b></p> <p>In Schedule 8 (Auditor General for Wales), in paragraph 17(8)(ba), for “the Public Services Ombudsman (Wales) Act 2005” substitute “the Public Services Ombudsman (Wales) Act 2019”.</p>



## PART 4 – CONSEQUENTIAL AMENDMENTS THAT RAISE NO PROBLEMS BECAUSE OF EXTENT

Consequential amendments to the Acts listed below do not create practical problems because the Acts extend to England and Wales only.

<b>Act</b>	<b>Section or Schedule that needs to refer to the 2019 Act</b>	<b>Comment</b>
Local Government Act 1974	Section 34M(1)(d)	Section 34M(1)(d) extends to England and Wales only.
Local Government Act 1974	Section 34T(1)	Section 34T(1) extends to England and Wales only.
Ancient Monuments and Archaeological Areas Act 1979	Paragraph 7 of Schedule A2	Paragraph 7 extends to England and Wales, and Scotland. But not in force in respect of England and Scotland.
Local Government and Housing Act 1989	Section 5A(3)(c)	Section 5A(3)(c) extends to England and Wales only.
Local Government and Housing Act 1989	Section 5A(4A)	Section 5A(4A) extends to England and Wales only.
Planning (Listed Buildings and Conservation Areas) Act 1990	Paragraph 7 of Schedule 1B	Paragraph 7 extends to England and Wales only.
Planning (Listed Buildings and Conservation Areas) Act 1990	Paragraph 7(3) of Schedule 3	Paragraph 7(3) extend to England and Wales only.
Health Service Commissioners Act 1993	Section 18(1)(ba)	Section 18(1)(ba) extends to England and Wales only (repealed in Scotland).
Housing Act 1996	Section 50C(10)	Section 50C(10) extends





		to England and Wales only.
Housing Act 1996	Section 51(7)	Section 51(7) extends to England and Wales only.
Local Government Act 2000	Section 68(3)	Section 68(3) extends to England and Wales only,
Local Government Act 2000	Section 70(2)(b)	Section 70(2)(b) extends to England and Wales only.
Health and Social Care (Community Health and Standards) Act 2003	Section 113(4)(aa)	Section 113(4)(aa) extends to England and Wales only.
National Health Service (Wales) Act 2006	Section 187(3)	Section 187(3) extends to England and Wales only.
Commissioner for Older People (Wales) Act 2006	Section 18(1)(b)	Section 18(1)(b) extends to England and Wales only.
Local Government and Public Involvement in Health Act 2007	Section 223A(10)	Section 223A(10) extends to England and Wales only.
Social Services and Well-being (Wales) Act 2014	Section 171(3)(a)	Section 171(3)(a) extends to England and Wales only.
Social Services and Well-being (Wales) Act 2014	Section 177(4)(a)	Section 177(4)(a) extends to England and Wales only.



