



Scottish Commission for Human Rights Act 2006

2006 asp 16

Inquiries

8 Power to conduct inquiries

- (1) The Commission may, in relation to any matter relevant to its general duty, conduct an inquiry into the policies or practices of—
 - (a) a particular Scottish public authority,
 - (b) Scottish public authorities generally, or
 - (c) Scottish public authorities of a particular description,in connection with the matter.
- (2) Subsection (1) is subject to section 9.
- (3) The matter in relation to which an inquiry is conducted is referred to in this Act as the “subject matter” of the inquiry.
- (4) Before taking any step in the conduct of an inquiry, the Commission must—
 - (a) draw up—
 - (i) terms of reference for the proposed inquiry, and
 - (ii) a summary of the procedure to be followed in the conduct of the inquiry,
 - (b) give notice of—
 - (i) the proposed inquiry,
 - (ii) its terms of reference, and
 - (iii) the summary of procedure,to each relevant Scottish public authority, and
 - (c) publicise—
 - (i) the proposed inquiry,
 - (ii) its terms of reference, and
 - (iii) the summary of procedure,in such manner as it considers appropriate to bring them to the attention of any other persons likely to be affected by the inquiry.

- (5) An inquiry is to be conducted in public except to the extent that the Commission considers it necessary or expedient that any part of the inquiry should be conducted in private.
- (6) Otherwise, the procedure to be followed in the conduct of an inquiry is to be such as the Commission may determine.
- (7) In subsection (4)(b), “relevant Scottish public authority” means, in relation to a proposed inquiry, any Scottish public authority—
 - (a) which the Commission considers is likely to be required under section 10(1) to give evidence, produce documents or provide information for the purposes of the inquiry, or
 - (b) any of whose members, officers or staff the Commission considers is likely to be so required.

9 Restrictions as to scope of inquiry

- (1) The Commission may not, in the course of an inquiry (including the report of the inquiry), question the findings of any court or tribunal.
- (2) The Commission may conduct an inquiry into the policies and practices of a particular Scottish public authority only if—
 - (a) the authority is the only Scottish public authority with functions in relation to the subject matter of the inquiry, or
 - (b) the subject matter of the inquiry is about whether the human rights specified in subsection (6) are being respected by the authority.
- (3) The Commission may not conduct an inquiry into the policies and practices of any Scottish public authority in relation to a particular case.
- (4) However, subsection (3) does not prevent the Commission taking such policies and practices into account in the course of an inquiry.
- (5) The Commission may conduct an inquiry in relation to the management or operation of a particular institution only if—
 - (a) the institution is the only one of its kind in Scotland, or
 - (b) the subject matter of the inquiry is about whether the human rights specified in subsection (6) are being respected at the institution.
- (6) The human rights referred to in subsections (2)(b) and (5)(b) are those contained in the following, so far as ratified by the United Kingdom, namely—
 - (a) the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment adopted by Resolution 39/46 (10th December 1984) of the General Assembly of the United Nations,
 - (b) the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, done at Strasbourg on 26th November 1987,
 - (c) any protocol to those Conventions, and
 - (d) such other international conventions, treaties or other international instruments as Her Majesty may by Order in Council specify for the purposes of this section.

- (7) No recommendation to make an Order in Council under subsection (6)(d) is to be made to Her Majesty in Council unless a draft of the Order has been laid before and approved by resolution of the Parliament.
- (8) In this section, “institution” means a prison, hospital, school, college, care home or other such establishment.

10 Evidence

- (1) For the purposes of an inquiry, the Commission may require any person specified in subsection (2) to—
 - (a) give oral evidence,
 - (b) produce documents, or
 - (c) otherwise provide information,relevant to the subject matter of the inquiry.
- (2) Those persons are—
 - (a) any Scottish public authority,
 - (b) any member, officer or member of staff of a Scottish public authority who, in the opinion of the Commission, is able to give the evidence, supply the information or produce the documents.
- (3) The Commission may, in the course of an inquiry, take into account any evidence, information or document which it has obtained otherwise than by virtue of a requirement imposed under subsection (1), provided the evidence, information or document is relevant to the subject matter of the inquiry.
- (4) A person is not required under this section to answer any question, produce any document or provide any information which the person would be entitled to refuse to answer, produce or provide in proceedings in a court in Scotland.
- (5) In section 34(2) of the Legal Aid (Scotland) Act 1986 (c. 47) (which specifies the purposes for which the restriction in section 34(1) of that Act on disclosure of information furnished to the Scottish Legal Aid Board does not apply), after paragraph (d) insert—
 - “(e) for the purposes of an inquiry by the Scottish Commission for Human Rights under section 8 of the Scottish Commission for Human Rights Act 2006 (asp 16).”.
- (6) Schedule 2 makes further provision in connection with requirements under subsection (1).

11 Places of detention: powers of entry, inspection and interview

- (1) For the purposes of an inquiry, the Commission may—
 - (a) enter any place of detention for the purpose of exercising any power under paragraph (b) or (c),
 - (b) inspect the place of detention, and
 - (c) conduct interviews in private with any person detained there, with that person’s consent.

- (2) In this section, “place of detention” means any premises, vehicle or other place in or at which an individual is or may be detained by, or with the authority or consent of, a Scottish public authority.
- (3) For the purposes of subsection (2), an individual is detained in or at a place if he or she is imprisoned there or otherwise deprived (to any extent) of his or her liberty to leave the place.
- (4) For the purposes of subsection (1)(c), an interview is in private if it is outwith the hearing of any person involved in the management or control of the place of detention or working at the place of detention.
- (5) Schedule 3 makes further provision in connection with the exercise of the powers under subsection (1).

12 Report of inquiry

- (1) After completing an inquiry other than an excepted inquiry, the Commission must lay before the Parliament a report of the inquiry.
- (2) The report must, in particular, include—
 - (a) the Commission’s findings as a result of the inquiry, and
 - (b) any recommendations of the Commission in the light of those findings.
- (3) The report must not make reference to the activities of a specified or identifiable person unless the Commission considers that it is necessary to do so in order for the report adequately to reflect the results of the inquiry.
- (4) Before finalising a report containing such a reference, the Commission must—
 - (a) provide the person concerned with—
 - (i) a draft of the proposed report, and
 - (ii) an opportunity to make representations concerning the proposed report, and
 - (b) consider any representations made.
- (5) In subsection (1), “excepted inquiry” means an inquiry the subject matter of which falls within section 9(2)(b) or (5)(b).

13 Confidentiality of information

- (1) Subsection (2) applies to a person who is or has been—
 - (a) a member of the Commission,
 - (b) a member of the Commission’s staff, or
 - (c) otherwise an agent of the Commission.
- (2) The person must not disclose any information which—
 - (a) has been obtained by or on behalf of the Commission for the purposes of an inquiry, and
 - (b) is not at the time of the disclosure, and has not previously been, in the public domain,unless the disclosure is authorised by subsection (3).
- (3) Disclosure is authorised for the purposes of subsection (2) only so far as—

Status: This is the original version (as it was originally enacted).

- (a) it is made with the consent of the person from whom the information was obtained,
 - (b) it is necessary for the purpose of enabling or assisting the exercise by the Commission of any of its functions under this Act, or
 - (c) it is made for the purposes of legal proceedings, whether criminal or civil (including the purposes of the investigation of any offence or suspected offence).
- (4) A person who knowingly contravenes subsection (2) commits an offence.
- (5) A person guilty of an offence under subsection (4) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
 - (b) on conviction on indictment, to a fine.