



Patient Safety Commissioner for Scotland Act 2023

2023 asp 6

The Bill for this Act of the Scottish Parliament was passed by the Parliament on 27th September 2023 and received Royal Assent on 7th November 2023

An Act of the Scottish Parliament to provide for the establishment and functions of a Patient Safety Commissioner for Scotland.

Establishment

1 Patient Safety Commissioner for Scotland

- (1) The office of Patient Safety Commissioner for Scotland is established.
- (2) [Schedule 1](#) makes further provision about the office.

Commencement Information

- | | |
|-----------|--|
| 11 | S. 1 not in force at Royal Assent, see s. 24(2) |
| 12 | S. 1 in force at 1.5.2024 by S.S.I. 2024/110 , reg. 2(1) |

Purpose and principles

2 Functions

- (1) The Commissioner's general functions are—
 - (a) to advocate for systemic improvement in the safety of health care, and
 - (b) to promote the importance of the views of patients and other members of the public in relation to the safety of health care.
- (2) In exercising those functions, the Commissioner may in particular—
 - (a) gather information, for example patient feedback, relating to the safety of health care,
 - (b) keep under review, analyse and report on information obtained,

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- (c) make recommendations for systemic improvements in the safety of health care,
 - (d) promote public awareness of safety practices in relation to health care,
 - (e) promote co-ordination among health care providers and public authorities with functions that relate to health care.
- (3) It is not the Commissioner’s role to resolve, or facilitate the resolution of, grievances arising from past incidents; accordingly, the Commissioner has no power to—
- (a) make awards, or provide any other form of redress, for harms suffered,
 - (b) assist individuals in seeking redress for harms suffered,
 - (c) opine on the action that another person ought to take in respect of an individual in light of a past incident.
- (4) Nothing in [subsection \(3\)](#) precludes the Commissioner from investigating past incidents in order to inform the actions that the Commissioner, and others, may take to effect systemic improvement in the safety of health care.

Commencement Information

- I3** S. 2 not in force at Royal Assent, see [s. 24\(2\)](#)
I4 S. 2 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

3 Principles

- (1) The Commissioner must—
- (a) have a statement of the principles that are to inform the exercise of the Commissioner’s functions, and
 - (b) make the latest version of the statement publicly available.
- (2) The statement of principles must include the principle that the Commissioner will seek to work co-operatively with other persons where appropriate, having regard to the importance of the Commissioner’s independence.

Commencement Information

- I5** S. 3 not in force at Royal Assent, see [s. 24\(2\)](#)
I6 S. 3 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Strategic planning

4 Duty to have a plan

- (1) The Commissioner must—
- (a) have a strategic plan, and
 - (b) make the latest version of the plan publicly available.
- (2) A strategic plan is a document setting out, for the period of the plan (as defined in [section 5\(2\)](#)), the Commissioner’s—
- (a) strategy for involving the public, and patients in particular, in the Commissioner’s work,

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- (b) objectives,
 - (c) proposals for achieving the objectives,
 - (d) timetable for doing so,
 - (e) estimate of the costs for doing so.
- (3) The strategy referred to in [subsection \(2\)\(a\)](#) must, in particular, make provision about how the Commissioner will seek to raise awareness of—
- (a) the Commissioner’s role, and
 - (b) the ways in which the public may communicate with the Commissioner.
- (4) A strategic plan may include any other information the Commissioner considers appropriate.
- (5) As soon as practicable after making a strategic plan, the Commissioner is to lay a copy of it before the Scottish Parliament.

Commencement Information

- I7** S. 4 not in force at Royal Assent, see [s. 24\(2\)](#)
I8 S. 4 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

5 Frequency of planning

- (1) The Commissioner—
- (a) may make a new strategic plan at any time (having complied with [section 7](#)),
 - (b) must seek to ensure that there is no gap between the period of one plan ending and that of its successor beginning.
- (2) The period of a strategic plan—
- (a) must not exceed 4 years,
 - (b) begins on the date that the plan states it begins,
 - (c) ends on the earlier of—
 - (i) the date that the plan states it ends, or
 - (ii) the date that the period of the plan’s successor begins.

Commencement Information

- I9** S. 5 not in force at Royal Assent, see [s. 24\(2\)](#)
I10 S. 5 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Charter

6 Patient Safety Charter

- (1) The Commissioner must—
- (a) have a charter, and
 - (b) make the latest version of the charter publicly available.

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- (2) The charter is to set out what the Commissioner expects of health care providers in terms of standards and good practice.
- (3) The charter may, in particular, make provision in relation to the way that health care providers engage with patients and their families.
- (4) The Commissioner must take the expectations set out in the charter into account when considering a health care provider's handling of an incident.

Commencement Information

- I11** S. 6 not in force at Royal Assent, see [s. 24\(2\)](#)
I12 S. 6 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Consultation on principles, strategic plan and charter

7 **Duty to consult on principles, strategic plan and charter**

- (1) Before finalising a document mentioned in [subsection \(3\)](#), the Commissioner—
 - (a) must consult on a draft of it with—
 - (i) the Parliamentary corporation,
 - (ii) the advisory group established in accordance with [section 16](#), and
 - (iii) any other person the Commissioner considers appropriate having regard to the importance of the document reflecting patients' concerns,
 - (b) may consult on a draft of it with any other person the Commissioner considers appropriate.
- (2) In considering who it would be appropriate to consult for the purposes of [subsection \(1\)](#), the Commissioner is to give particular consideration to groups whose needs are, in the Commissioner's opinion, under-represented or given insufficient weight in discourses around health care.
- (3) The documents are—
 - (a) a statement of principles (see [section 3](#)),
 - (b) a strategic plan (see [section 4](#)), and
 - (c) a charter (see [section 6](#)).

Commencement Information

- I13** S. 7 not in force at Royal Assent, see [s. 24\(2\)](#)
I14 S. 7 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Formal investigations

8 **Initiation of formal investigation**

- (1) A formal investigation into a health care safety issue begins when the Commissioner first makes the investigation's terms of reference publicly available.

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- (2) As soon as practicable after making a formal investigation's terms of reference publicly available, the Commissioner must take reasonable steps to bring them to the attention of any person who, in the Commissioner's opinion, is likely to be—
 - (a) required under [section 13](#) to supply information in relation to the investigation, or
 - (b) the addressee of a recommendation in the report produced at the conclusion of the investigation.
- (3) Nothing in [this section](#) precludes the Commissioner from investigating an issue otherwise than by way of a formal investigation.

Commencement Information

- I15** S. 8 not in force at Royal Assent, see [s. 24\(2\)](#)
I16 S. 8 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

9 Further provision about terms of reference

- (1) The terms of reference for a formal investigation under [section 8](#) must—
 - (a) describe the issue to be investigated,
 - (b) identify (by name or description) any person to whom the Commissioner expects to address a recommendation in the report produced at the conclusion of the investigation,
 - (c) state whether the Commissioner expects to need access to individuals' information in the course of the investigation,
 - (d) if the Commissioner does expect to need access to individuals' information, state—
 - (i) why that is the Commissioner's expectation, and
 - (ii) why the Commissioner expects to need that information in a form that does, or does not (as the case may be), allow individuals to be identified.
- (2) Before finalising the terms of reference for a formal investigation, the Commissioner—
 - (a) must consult the advisory group established in accordance with [section 16](#),
 - (b) may consult any other person that the Commissioner considers appropriate.

Commencement Information

- I17** S. 9 not in force at Royal Assent, see [s. 24\(2\)](#)
I18 S. 9 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

10 Investigation report

- (1) Having concluded a formal investigation under [section 8](#), the Commissioner must—
 - (a) prepare a report on the investigation, and
 - (b) lay a copy of it before the Scottish Parliament.
- (2) The report must state—

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- (a) the Commissioner’s findings in relation to the issue investigated and the reasons for them, and
 - (b) the Commissioner’s recommendations in light of those findings.
- (3) The Commissioner must give a copy of the report to any person to whom a recommendation in the report is addressed.
- (4) The Commissioner may address a recommendation to a person in a report on a formal investigation whether or not—
- (a) the person was identified in the investigation’s terms of reference as a person to whom the Commissioner expected to address a recommendation,
 - (b) the Commissioner took steps to bring the investigation’s terms of reference to the person’s attention in accordance with [section 8\(2\)\(b\)](#).

Commencement Information

I19 S. 10 not in force at Royal Assent, see [s. 24\(2\)](#)

I20 S. 10 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

11 Requirement to respond to report

- (1) A person is subject to a requirement to respond to a recommendation in a report under [section 10](#) if—
- (a) the report states—
 - (i) that the recommendation is addressed to the person, and
 - (ii) the period within which the person’s response to the recommendation is required, and
 - (b) the Commissioner gives the person a copy of the report.
- (2) A person complies with a requirement to respond to a recommendation by giving the Commissioner a written response to it before the end of the period within which the report states that the person’s response is required.
- (3) A written response to a recommendation is a document setting out—
- (a) what the person responding has done, or proposes to do, to give effect to the recommendation, and
 - (b) if the person does not intend to do anything to give effect to the recommendation (wholly or partly), the person’s reasons for that.
- (4) The Commissioner may, in whatever manner the Commissioner considers appropriate—
- (a) make publicly available (in full or in part) a person’s written response to a recommendation,
 - (b) publicise a person’s failure to comply with a requirement to respond to a recommendation.

Commencement Information

I21 S. 11 not in force at Royal Assent, see [s. 24\(2\)](#)

I22 S. 11 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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Gathering and use of information

12 Power to require information

- (1) The Commissioner may require a person to which [subsection \(4\)](#) applies to supply the Commissioner with information that—
 - (a) is in the person’s possession or control,
 - (b) may be relevant to the work of the Commissioner,
 - (c) is not information of a kind that the Commissioner is prohibited by [subsection \(3\)](#) from requiring the person to supply.
- (2) A requirement under this section is imposed on a person when the Commissioner gives the person written notice specifying—
 - (a) the information that the person is required to supply,
 - (b) the way in which the person is required to supply it, and
 - (c) either—
 - (i) the time by which the person is to supply it, or
 - (ii) the period throughout which the person is to supply it and the intervals within that period at which it must be supplied.
- (3) The following are the kinds of information that the Commissioner is prohibited from requiring a person to supply under this section—
 - (a) information that the person would be entitled to refuse to provide in proceedings in a court in Scotland,
 - (b) information about an individual (whether or not it is anonymised).
- (4) This subsection applies to a person who is—
 - (a) a health care provider,
 - (b) a body constituted by virtue of the National Health Service (Scotland) Act 1978.
- (5) In [this section](#), “information” includes unrecorded information.

Commencement Information

I23 S. 12 not in force at Royal Assent, see [s. 24\(2\)](#)

I24 S. 12 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

13 Further power to require information in a formal investigation

- (1) When carrying out a formal investigation under [section 8](#), the Commissioner may require any person to supply information that—
 - (a) is in the person’s possession or control,
 - (b) may be relevant to the investigation, and
 - (c) is not information that the person would be entitled to refuse to provide in proceedings in a court in Scotland.
- (2) But the Commissioner may only impose a requirement to supply information under [this section](#) if the Commissioner is satisfied that requiring the information to be supplied is proportionate to the seriousness of the issue being investigated.

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- (3) A requirement under [this section](#) is imposed on a person when the Commissioner gives the person written notice specifying—
 - (a) the information that the person is required to supply,
 - (b) the way in which the person is required to supply it, and
 - (c) the time by which the person is to supply it.
- (4) The Commissioner may require a person to supply information under [this section](#) whether or not—
 - (a) the Commissioner stated in a formal investigation’s terms of reference that the Commissioner expected to need access to the information,
 - (b) the Commissioner took steps to bring the investigation’s terms of reference to the person’s attention in accordance with [section 8\(2\)\(a\)](#).
- (5) The Commissioner’s power to require a person to supply information under [this section](#) is without prejudice to the Commissioner’s power to require a person to supply information under [section 12](#).
- (6) In [this section](#), “information” includes unrecorded information.

Commencement Information

I25 S. 13 not in force at Royal Assent, see [s. 24\(2\)](#)

I26 S. 13 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

14 Failure to supply required information

- (1) The Commissioner may take the action mentioned in [subsection \(3\)](#) or [\(4\)](#) (or both actions) where—
 - (a) a requirement to supply information has been imposed on a person by a written notice under [section 12](#) or [13](#), and
 - (b) the person refuses, or fails without reasonable excuse, to supply the information in accordance with the terms of the notice.
- (2) The Commissioner may take the action mentioned in [subsection \(4\)](#) where—
 - (a) a requirement to supply information has been imposed on a person by a written notice under [section 12](#) or [13](#), and
 - (b) the Commissioner suspects the person has deliberately altered the information.
- (3) The Commissioner may publicise the person’s refusal, or failure, to supply the information.
- (4) The Commissioner may report the matter to the Court of Session.
- (5) After receiving a report under [subsection \(4\)](#), and hearing any evidence or representations on the matter, the Court may (either or both)—
 - (a) make any order for enforcement that it considers appropriate,
 - (b) deal with the matter as if it were a contempt of court.

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Commencement Information

- I27** S. 14 not in force at Royal Assent, see [s. 24\(2\)](#)
I28 S. 14 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

15 Confidentiality of information

- (1) A person mentioned in [subsection \(3\)](#) commits an offence if the person knowingly or recklessly makes an unauthorised disclosure of information that—
- has been obtained by or on behalf of the Commissioner for the purposes of exercising the Commissioner’s functions,
 - is not, and has not been, in the public domain when the disclosure is made.
- (2) A disclosure of information is authorised for the purpose of [subsection \(1\)](#) in so far as it is—
- made with the consent of the person from whom the information was obtained,
 - necessary for the purpose of enabling, or assisting, the exercise of the Commissioner’s functions,
 - made for the purpose of legal proceedings, whether civil or criminal (including for the purposes of investigating an offence or suspected offence),
 - made for the purpose of assisting one of the following persons in exercising their statutory functions—
 - Healthcare Improvement Scotland,
 - the Commissioner for Patient Safety in relation to England, which is an office established by section 1 of the Medicines and Medical Devices Act 2021,
 - the Scottish Public Services Ombudsman,
 - required by an enactment or rule of law.
- (3) The persons referred to in [subsection \(1\)](#) are—
- the Commissioner,
 - a member of the Commissioner’s staff,
 - a member of the advisory group established in accordance with [section 16](#),
 - an agent of the Commissioner.
- (4) A person who commits an offence under [subsection \(1\)](#) is liable—
- on summary conviction, to a fine not exceeding the statutory maximum,
 - on conviction on indictment, to a fine.

Commencement Information

- I29** S. 15 not in force at Royal Assent, see [s. 24\(2\)](#)
I30 S. 15 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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Miscellaneous provisions

16 Advisory group

- (1) The Commissioner must establish and maintain an advisory group.
- (2) The purpose of the group is to give advice and information to the Commissioner about matters relating to the Commissioner's functions.
- (3) The members of the group are to be appointed by the Commissioner.
- (4) The Commissioner may only appoint a person as a member of the group if the appointment—
 - (a) has been approved by the Parliamentary corporation,
 - (b) would not result in the number of members of the group exceeding the maximum determined by the Parliamentary corporation,
 - (c) is consistent with the principle that at least half of the group's members are to be persons who appear to the Commissioner to be representative of patients.
- (5) The Commissioner may pay to members of the group such remuneration and allowances (including expenses) as the Commissioner, with the approval of the Parliamentary corporation, determines.
- (6) The advisory group's procedure and terms of membership are to be determined by the Commissioner.
- (7) Nothing in this section precludes the Commissioner from obtaining advice from any other person.

Commencement Information

- I31** S. 16 not in force at Royal Assent, see [s. 24\(2\)](#)
I32 S. 16 in force at 1.5.2024 by [S.S.I. 2024/110, reg. 2\(1\)](#)

17 Reports

- (1) Aside from the reports that the Commissioner has a duty to lay before the Scottish Parliament, the Commissioner may lay before the Parliament any other report prepared by the Commissioner if the Commissioner considers it appropriate to do so.
- (2) The Commissioner must ensure that, so far as reasonably practicable having regard to the subject matter, a report does not name or otherwise identify an individual who has—
 - (a) given information to the Commissioner, and
 - (b) not consented to being named in the report.

Commencement Information

- I33** S. 17 not in force at Royal Assent, see [s. 24\(2\)](#)
I34 S. 17 in force at 1.5.2024 by [S.S.I. 2024/110, reg. 2\(1\)](#)

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18 Protection from actions of defamation

- (1) For the purposes of the law of defamation—
- (a) any statement made to the Commissioner has absolute privilege,
 - (b) any statement in the Commissioner’s report on an investigation has absolute privilege,
 - (c) any other statement made by the Commissioner has qualified privilege.
- (2) In [this section](#)—
- (a) a reference to a statement being made to or by the Commissioner—
 - (i) includes a statement being made to or by (as the case may be) a member of the Commissioner’s staff,
 - (ii) does not include a statement made to or by (as the case may be) an individual when the individual is not acting in the individual’s capacity as the Commissioner or a member of the Commissioner’s staff,
 - (b) “statement” has the same meaning as in the Defamation and Malicious Publication (Scotland) Act 2021.

Commencement Information

- I35** S. 18 not in force at Royal Assent, see [s. 24\(2\)](#)
I36 S. 18 in force at 1.5.2024 by [S.S.I. 2024/110, reg. 2\(1\)](#)

19 Directions about premises and sharing of resources

- (1) The Commissioner must comply with any direction given to the Commissioner by the Parliamentary corporation in relation to—
- (a) the location of the Commissioner’s office,
 - (b) the sharing of premises, staff, services or other resources.
- (2) The Parliamentary corporation is to make any direction under [this section](#) publicly available.
- (3) A direction under [this section](#) may vary or revoke a previous direction.

Commencement Information

- I37** S. 19 not in force at Royal Assent, see [s. 24\(2\)](#)
I38 S. 19 in force at 1.5.2024 by [S.S.I. 2024/110, reg. 2\(1\)](#)

Final provisions

20 Application of public authorities legislation

[Schedule 2](#) modifies other enactments so that their provisions apply to the office of Commissioner.

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- I39** S. 20 not in force at Royal Assent, see [s. 24\(2\)](#)
I40 S. 20 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

21 Interpretation

In this Act—

“Commissioner” means the Patient Safety Commissioner for Scotland,
“forensic medical examination” is to be construed in accordance with section 2(3) of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021,

“health care” means—

- (a) services provided for or in connection with the prevention, diagnosis or treatment of illness, and
- (b) forensic medical examinations,

“Parliamentary corporation” means the Scottish Parliamentary Corporate Body,

“patient”—

- (a) is to be construed in accordance with the National Health Service (Scotland) Act 1978, and
- (b) includes a person to whom a forensic medical examination is provided.

Commencement Information

- I41** S. 21 in force at 8.11.2023, see [s. 24\(1\)](#)

22 Ancillary provision

The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.

Commencement Information

- I42** S. 22 in force at 8.11.2023, see [s. 24\(1\)](#)

23 Regulation-making powers

- (1) Regulations under this Act may make different provision for different purposes.
- (2) Regulations under [section 22](#) may modify any enactment (including this Act).
- (3) Regulations under [section 22](#)—
 - (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
 - (b) otherwise, are subject to the negative procedure.

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Commencement Information

I43 S. 23 in force at 8.11.2023, see [s. 24\(1\)](#)

24 Commencement

- (1) The following provisions come into force the day after Royal Assent: [this section](#) and [sections 21, 22, 23](#) and [25](#).
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

Commencement Information

I44 S. 24 in force at 8.11.2023, see [s. 24\(1\)](#)

25 Short title

The short title of this Act is the Patient Safety Commissioner for Scotland Act 2023.

Commencement Information

I45 S. 25 in force at 8.11.2023, see [s. 24\(1\)](#)

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SCHEDULE 1

(introduced by section 1)

THE OFFICE OF PATIENT SAFETY COMMISSIONER FOR SCOTLAND

PART 1

STATUS AND INDEPENDENCE

Legal personality

- 1 The Commissioner is, as such, to be regarded as a juristic person distinct from the individual holding the office.

Commencement Information

- I46** Sch. 1 para. 1 not in force at Royal Assent, see [s. 24\(2\)](#)
I47 [Sch. 1 para. 1](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Exclusion of Crown Status

- 2 (1) The Commissioner—
- (a) is not a servant or agent of the Crown, and
 - (b) does not enjoy any status, immunity or privilege of the Crown.
- (2) The Commissioner’s property is not to be regarded as property of, or property held on behalf of, the Crown.
- (3) Individuals working as the Commissioner’s staff are not, on that account, to be regarded as civil servants.

Commencement Information

- I48** Sch. 1 para. 2 not in force at Royal Assent, see [s. 24\(2\)](#)
I49 [Sch. 1 para. 2](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Independence

- 3 (1) The Commissioner is not, except as provided in the provisions listed in [sub-paragraph \(2\)](#), subject to the direction or control of—
- (a) any member of the Scottish Parliament,
 - (b) the Scottish Ministers, or
 - (c) the Parliamentary corporation.
- (2) The provisions referred to in [sub-paragraph \(1\)](#) are—
- (a) sections [16\(4\)](#) and [\(5\)](#) and [19\(1\)](#), and
 - (b) [paragraphs 6](#), [7\(3\)](#), [9](#), [10\(1\)](#), [11\(1\)](#), [14\(1\)](#), [16\(2\)](#), [17\(1\)](#), [19\(1\)](#) and [\(2\)](#), [21\(2\)](#) and [22\(3\)](#) of this schedule.

Status: Point in time view as at 01/05/2024. This version of this Act contains provisions that are prospective.
Changes to legislation: Patient Safety Commissioner for Scotland Act 2023 is up to date with all changes known to be in force on or before 18 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

- I50** Sch. 1 para. 3 not in force at Royal Assent, see [s. 24\(2\)](#)
I51 Sch. 1 para. 3 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

PART 2

APPOINTMENT, TERMINATION AND TERMS AND CONDITIONS

Appointment

- 4 (1) The office of Commissioner is to be held by an individual appointed by His Majesty on the nomination of the Scottish Parliament.
- (2) The Scottish Parliament must make arrangements for inquiring into whether a person whom the Parliament is considering nominating for appointment to the office of Commissioner is, or has been within the year preceding the date on which the appointment is to take effect, an individual of a kind mentioned in [sub-paragraph \(3\)](#).
- (3) The kind of individual referred to in [sub-paragraph \(2\)](#) is an individual with a financial interest in (including by reason of being remunerated by)—
- (a) a health care provider,
 - (b) a body constituted by virtue of the National Health Service (Scotland) Act 1978,
 - (c) a supplier or manufacturer of medicines or medical devices.
- (4) An individual may not be appointed to hold the office of Commissioner if the individual—
- (a) is disqualified under [paragraph 5](#),
 - (b) holds or has held the office of Commissioner.

Commencement Information

- I52** Sch. 1 para. 4 not in force at Royal Assent, see [s. 24\(2\)](#)
I53 Sch. 1 para. 4 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Disqualification from appointment

- 5 An individual is disqualified from holding the office of Commissioner if the individual is or, within the year preceding the date on which the appointment is to take effect, has been—
- (a) a member of the Scottish Parliament,
 - (b) a member of the House of Commons,
 - (c) a member of the House of Lords.

Commencement Information

- I54** Sch. 1 para. 5 not in force at Royal Assent, see [s. 24\(2\)](#)
I55 Sch. 1 para. 5 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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Tenure

- 6 The Commissioner holds office for such period, not exceeding 8 years, as the Parliamentary corporation determines at the time of appointment (subject to [paragraph 7](#)).

Commencement Information

- I56** Sch. 1 para. 6 not in force at Royal Assent, see [s. 24\(2\)](#)
I57 [Sch. 1 para. 6](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Early termination

- 7 (1) The Commissioner's appointment ends if—
- (a) the Commissioner is relieved of office by His Majesty at the Commissioner's request,
 - (b) the Commissioner becomes disqualified from holding office (see [paragraph 5](#)), or
 - (c) the Commissioner is removed from office in accordance with [sub-paragraph \(2\)](#).
- (2) The Commissioner may be removed from office by His Majesty if—
- (a) the condition in [sub-paragraph \(3\)\(a\)](#) or (b) is met, and
 - (b) the number of members voting in favour of the resolution referred to in the condition in question is at least two thirds of the total number of seats for members of the Scottish Parliament.
- (3) The conditions are—
- (a) that—
 - (i) the Parliamentary corporation is satisfied that the Commissioner has breached the Commissioner's terms and conditions of appointment, and
 - (ii) the Parliament resolves that the Commissioner should be removed from office for that breach,
 - (b) the Parliament resolves that it has lost confidence in the Commissioner's willingness, suitability or ability to exercise the Commissioner's functions.

Commencement Information

- I58** Sch. 1 para. 7 not in force at Royal Assent, see [s. 24\(2\)](#)
I59 [Sch. 1 para. 7](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Validity of things done

- 8 The validity of things done by the Commissioner is not affected by—
- (a) a defect in the nomination or the appointment of the Commissioner,
 - (b) the disqualification of an individual as the Commissioner after appointment.

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Commencement Information

- I60** Sch. 1 para. 8 not in force at Royal Assent, see [s. 24\(2\)](#)
I61 Sch. 1 para. 8 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Remuneration, allowances and pensions

- 9 (1) The Parliamentary corporation may pay the Commissioner such remuneration and allowances (including expenses) as the Parliamentary corporation determines.
- (2) The Parliamentary corporation must indemnify the Commissioner in respect of any liabilities incurred by the Commissioner in the exercise of the Commissioner's functions.
- (3) The Parliamentary corporation may pay, or make arrangements for the payment of, such pensions, allowances and gratuities to, or in respect of, any individual who holds or has held the office of Commissioner as the Parliamentary corporation determines.
- (4) Those arrangements may include—
- (a) making payments towards the provision of those pensions, allowances and gratuities,
 - (b) providing and maintaining schemes for the payment of those pensions, allowances and gratuities.
- (5) The reference in [sub-paragraph \(3\)](#) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

Commencement Information

- I62** Sch. 1 para. 9 not in force at Royal Assent, see [s. 24\(2\)](#)
I63 Sch. 1 para. 9 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Subsequent appointments etc.

- 10 (1) A person who has ceased to be the Commissioner (“the former Commissioner”) may not, without the approval of the Parliamentary corporation—
- (a) be employed or appointed in any capacity by the Commissioner,
 - (b) be an employee or appointee of—
 - (i) any person in relation to whom, or
 - (ii) any body in relation to which,an investigation under this Act has been carried out or continued by the former Commissioner when Commissioner, or hold office in any such body, or
 - (c) hold any other office, employment or appointment or engage in any other occupation, that, by virtue of [paragraph 5](#), the former Commissioner could not have held or, as the case may be, engaged in when Commissioner.
- (2) The restriction in [sub-paragraph \(1\)](#)—
- (a) starts when the person ceases to be the Commissioner, and
 - (b) ends with the expiry of the financial year following the one in which it started.

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Commencement Information

I64 Sch. 1 para. 10 not in force at Royal Assent, see [s. 24\(2\)](#)

I65 [Sch. 1 para. 10](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Other terms and conditions

- 11 (1) The Parliamentary corporation may determine other terms and conditions of appointment, in relation to matters not covered by this Act.
- (2) The terms and conditions may—
- (a) prohibit the Commissioner from holding any other specified office, employment or appointment or engaging in any other specified occupation,
 - (b) provide that the Commissioner’s holding any specified office, employment or appointment or engagement in any specified occupation is subject to the approval of the Parliamentary corporation.
- (3) In sub-paragraph (2), “specified” means specified (by name or description) in the Commissioner's terms and conditions.

Commencement Information

I66 Sch. 1 para. 11 not in force at Royal Assent, see [s. 24\(2\)](#)

I67 [Sch. 1 para. 11](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Acting Patient Safety Commissioner

- 12 (1) [This paragraph](#) applies during any period when—
- (a) the office of Commissioner is vacant, or
 - (b) the individual holding the office is for any reason unable to carry out the Commissioner’s functions.
- (2) The Parliamentary corporation may appoint an individual to act as the Commissioner during that period.
- (3) An individual appointed under [sub-paragraph \(2\)](#)—
- (a) is appointed on such terms and conditions as the Parliamentary corporation determines,
 - (b) while acting as Commissioner is to be treated for all purposes except those of [paragraphs 6, 7 and 9\(3\)](#), as the Commissioner.

Commencement Information

I68 Sch. 1 para. 12 not in force at Royal Assent, see [s. 24\(2\)](#)

I69 [Sch. 1 para. 12](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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PART 3

GENERAL POWERS

General powers

- 13 (1) The Commissioner may do anything which appears to the Commissioner—
- (a) necessary or expedient in order to achieve, or in connection with the exercise of the Commissioner’s functions, or
 - (b) to be otherwise conducive to the exercise of those functions.
- (2) The Commissioner may, subject to [paragraph 15](#), determine and charge reasonable sums for providing anything in connection with the exercise of the Commissioner’s functions.

Commencement Information

I70 Sch. 1 para. 13 not in force at Royal Assent, see [s. 24\(2\)](#)

I71 Sch. 1 para. 13 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Restrictions on general powers in relation to the acquisition or disposal of land

- 14 (1) The Commissioner may not acquire or dispose of land without the approval of the Parliamentary corporation.
- (2) In [sub-paragraph \(1\)](#), the reference to acquiring or disposing of land includes acquiring or disposing of—
- (a) any right or interest in or over land,
 - (b) a servitude or other right in or over land by the creation of a new right.

Commencement Information

I72 Sch. 1 para. 14 not in force at Royal Assent, see [s. 24\(2\)](#)

I73 Sch. 1 para. 14 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Restriction on charging for services

- 15 The Commissioner may not charge for providing anything to a body constituted by virtue of the National Health Service (Scotland) Act 1978.

Commencement Information

I74 Sch. 1 para. 15 not in force at Royal Assent, see [s. 24\(2\)](#)

I75 Sch. 1 para. 15 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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PART 4

STAFF

Staff

- 16 (1) The Commissioner may appoint staff.
- (2) Those staff are appointed on such terms and conditions as the Commissioner, with the approval of the Parliamentary corporation, determines.

Commencement Information

I76 Sch. 1 para. 16 not in force at Royal Assent, see [s. 24\(2\)](#)

I77 [Sch. 1 para. 16](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Staff pensions

- 17 (1) The Commissioner may, with the approval of the Parliamentary corporation, pay or make arrangements for the payment of pensions, allowances and gratuities to, or in respect of, any person who is or has been a member of the Commissioner's staff.
- (2) Those arrangements may include—
- making payments towards the provision of those pensions, allowances and gratuities,
 - providing and maintaining schemes for the payment of those pensions, allowances and gratuities.
- (3) The reference in [sub-paragraph \(1\)](#) to pensions, allowances and gratuities includes pensions, allowances and gratuities by way of compensation for loss of office.

Commencement Information

I78 Sch. 1 para. 17 not in force at Royal Assent, see [s. 24\(2\)](#)

I79 [Sch. 1 para. 17](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Authority to perform functions

- 18 (1) The Commissioner may authorise any person to exercise any of the Commissioner's functions (and to such extent) as the Commissioner determines.
- (2) The giving of authority under [sub-paragraph \(1\)](#) in relation to a function does not—
- affect the Commissioner's responsibility for the exercise of the function,
 - prevent the Commissioner from performing the function.

Commencement Information

I80 Sch. 1 para. 18 not in force at Royal Assent, see [s. 24\(2\)](#)

I81 [Sch. 1 para. 18](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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PART 5

ACCOUNTS AND ACCOUNTABILITY

Budget

- 19 (1) The Commissioner must, before the start of each financial year—
- (a) prepare proposals for the Commissioner’s use of resources and expenditure during the year (a “budget”),
 - (b) by such date as the Parliamentary corporation determines, send the budget to it for approval.
- (2) The Commissioner may, in the course of a financial year, prepare a revised budget for the remainder of the year and send it to the Parliamentary corporation for approval.
- (3) In preparing a budget or a revised budget, the Commissioner must ensure that the Commissioner’s resources will be used economically, efficiently and effectively.
- (4) A budget or a revised budget must contain a statement confirming that the Commissioner has complied with the duty under [sub-paragraph \(3\)](#).

Commencement Information

182 Sch. 1 para. 19 not in force at Royal Assent, see [s. 24\(2\)](#)

183 Sch. 1 para. 19 in force at 1.5.2024 by [S.S.I. 2024/110, reg. 2\(1\)](#)

Accountable officer

- 20 (1) The Parliamentary corporation must designate the Commissioner or a member of the Commissioner’s staff as the accountable officer.
- (2) The functions of the accountable officer are—
- (a) signing the accounts of the expenditure and receipts of the Commissioner,
 - (b) ensuring the propriety and regularity of the finances of the Commissioner,
 - (c) ensuring that the resources of the Commissioner are used economically, efficiently and effectively, and
 - (d) where the accountable officer is not the Commissioner, the duty set out in [sub-paragraph \(3\)](#).
- (3) The duty referred to in [sub-paragraph \(2\)\(d\)](#) is a duty, where the accountable officer is required to act in a way that the accountable officer considers would be inconsistent with the proper performance of the functions specified in [sub-paragraph \(2\)\(a\)](#) to [\(c\)](#), to—
- (a) obtain written authority from the Commissioner before taking the action, and
 - (b) send a copy of that authority as soon as possible to the Auditor General for Scotland.
- (4) The accountable officer is answerable to the Scottish Parliament for the performance of the functions specified in [sub-paragraph \(2\)](#).

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Commencement Information

I84 Sch. 1 para. 20 not in force at Royal Assent, see [s. 24\(2\)](#)

I85 Sch. 1 para. 20 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Accounts and audit

- 21 (1) The Commissioner must—
- (a) keep proper accounts and accounting records,
 - (b) prepare in respect of each financial year a statement of accounts, and
 - (c) send a copy of the statement to the Auditor General for Scotland for auditing.
- (2) The Commissioner must comply with any direction from the Scottish Ministers in relation to the matters mentioned in [sub-paragraph \(1\)\(a\)](#) and [\(b\)](#).
- (3) The Commissioner must make the audited statement of accounts available, without charge, for inspection at all reasonable times.

Commencement Information

I86 Sch. 1 para. 21 not in force at Royal Assent, see [s. 24\(2\)](#)

I87 Sch. 1 para. 21 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Annual report

- 22 (1) The Commissioner must, in respect of each financial year—
- (a) prepare and make publicly available a report on the Commissioner’s activities during that year, and
 - (b) lay a copy of the report before the Scottish Parliament before the expiry of the period of 7 months beginning with the last day of that year.
- (2) The report must include—
- (a) a review of issues identified by the Commissioner in the financial year as being relevant to the Commissioner’s functions,
 - (b) a review of the Commissioner’s activity in that year, including the steps taken in connection with each of the Commissioner’s functions, and
 - (c) any recommendations by the Commissioner arising out of such activity.
- (3) The Commissioner must comply with any direction from the Parliamentary corporation in relation to the form and content of the annual report.

Commencement Information

I88 Sch. 1 para. 22 not in force at Royal Assent, see [s. 24\(2\)](#)

I89 Sch. 1 para. 22 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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SCHEDULE 2
(introduced by section 20)

PUBLIC AUTHORITIES LEGISLATION

Scottish Public Services Ombudsman Act 2002

- 1 (1) The Scottish Public Services Ombudsman Act 2002 is modified as follows.
- (2) In schedule 2, after paragraph 32 insert—
“32ZA The Patient Safety Commissioner for Scotland.”
- (3) In schedule 5, after the entry relating to NHS Education for Scotland insert—

“The Patient Safety Commissioner for
Scotland

A matter of relevance to the Commissioner’s
general functions as defined in [section 2](#) of
the Patient Safety Commissioner for Scotland
Act 2023”.

Commencement Information

I90 Sch. 2 para. 1 not in force at Royal Assent, see [s. 24\(2\)](#)

I91 Sch. 2 para. 1 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

PROSPECTIVE

Freedom of Information (Scotland) Act 2002

- 2 (1) The Freedom of Information (Scotland) Act 2002 is modified as follows.
- (2) In schedule 1, after paragraph 74 insert—
“74A The Patient Safety Commissioner for Scotland.”

Commencement Information

I92 Sch. 2 para. 2 not in force at Royal Assent, see [s. 24\(2\)](#)

Public Services Reform (Scotland) Act 2010

- 3 (1) The Public Services Reform (Scotland) Act 2010 is modified as follows.
- (2) In schedule 5, after the entry relating to the Parole Board for Scotland insert—
“Patient Safety Commissioner for Scotland”.
- (3) In schedule 6, after the entry relating to the Commissioner for Children and Young People in Scotland insert— “Patient Safety Commissioner for Scotland”.
- (4) In schedule 8, after the entry relating to the Parole Board for Scotland insert—
“Patient Safety Commissioner for Scotland”.

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Commencement Information

- I93** Sch. 2 para. 3 not in force at Royal Assent, see [s. 24\(2\)](#)
I94 [Sch. 2 para. 3](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

PROSPECTIVE

Public Records (Scotland) Act 2011

- 4 (1) The Public Records (Scotland) Act 2011 is modified as follows.
(2) In the schedule, after the entry relating to the Parole Board for Scotland insert—
“Patient Safety Commissioner for Scotland”.

Commencement Information

- I95** Sch. 2 para. 4 not in force at Royal Assent, see [s. 24\(2\)](#)

Procurement Reform (Scotland) Act 2014

- 5 (1) The Procurement Reform (Scotland) Act 2014 is modified as follows.
(2) In the schedule, after paragraph 40 insert—
“40A Patient Safety Commissioner for Scotland”.

Commencement Information

- I96** Sch. 2 para. 5 not in force at Royal Assent, see [s. 24\(2\)](#)
I97 [Sch. 2 para. 5](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Health and Care (Staffing) (Scotland) Act 2019

- 6 (1) The Health and Care (Staffing) (Scotland) Act 2019 is modified as follows.
(2) In section 2(3), after “Ministers” insert “and the Patient Safety Commissioner for Scotland”.

Commencement Information

- I98** Sch. 2 para. 6 not in force at Royal Assent, see [s. 24\(2\)](#)
I99 [Sch. 2 para. 6](#) in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Status:

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