



National Health Service (Scotland) Act 1972

1972 CHAPTER 58

PART VII

THE HEALTH SERVICE COMMISSIONER FOR SCOTLAND

42 Appointment of Commissioner and tenure of office

- (1) For the purpose of conducting investigations in accordance with the following provisions of this Part of this Act, there shall be appointed a Commissioner, to be known as the Health Service Commissioner for Scotland.
- (2) Her Majesty may, by Letters Patent, from time to time appoint a person to be the Commissioner, and any person so appointed shall, subject to subsection (3) below, hold office during good behaviour.
- (3) A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request, or may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament, and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five years.
- (4) The Commissioner shall not be a member of the House of Commons, or of the Senate or House of Commons of Northern Ireland, and accordingly—
 - (a) in Part III of Schedule 1 to the House of Commons Disqualification Act 1957, there shall be inserted, at the appropriate point in alphabetical order, the entry " The Health Service Commissioner for Scotland "; and
 - (b) the like amendment shall be made in the Part substituted for the said Part III by Schedule 3 to that Act in its application to the Senate and House of Commons of Northern Ireland.
- (5) The Commissioner shall not be a member of a body subject to investigation or any management committee thereof.

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43 Salary and pension

- (1) Subject to the provisions of this section, there shall be paid to the holder of the office of Commissioner such salary as the House of Commons may, by resolution, from time to time determine, and any such resolution may take effect from the date on which it is passed or such other date as may be specified therein.
- (2) Subject to the provisions of this section, Schedule 1 to the Parliamentary Commissioner Act 1967 (pensions and other benefits) shall have effect with respect to persons who have held office as Commissioner as it has effect with respect to persons who have held office as Commissioner under that Act.
- (3) The salary payable to a holder of the office of Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he had previously been appointed or elected; but any such abatement shall be disregarded in computing that salary for the purposes of the said Schedule 1.
- (4) If one person holds both the offices of Parliamentary Commissioner for Administration and Commissioner, he shall, so long as he does so, be entitled only to the salary, pension and other benefits pertaining to the former office.
- (5) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.

44 Administrative provisions, 45. Bodies and action subject to investigation

- (1) The Commissioner may appoint such officers as he may determine with the approval of the Minister for the Civil Service as to numbers and conditions of service.
- (2) Any function of the Commissioner under this Part of this Act may be performed by any officer of the Commissioner authorised for that purpose by the Commissioner or by any officer of the Parliamentary Commissioner for Administration so authorised.
- (3) To assist him in any investigation, the Commissioner may obtain advice from any person who in his opinion is qualified to give it, and such fees or allowances may be paid to such person by the Commissioner as he may, with the approval of the Minister for the Civil Service, determine.
- (4) The expenses of the Commissioner under this Part of this Act, to such amount as may be sanctioned by the Minister for the Civil Service, shall be defrayed out of moneys provided by Parliament.

45 Bodies and action subject to investigation.

- (1) In this Part of this Act, a " body subject to investigation " means any of the following bodies—
 - (a) Regional Hospital Boards ;
 - (b) Boards of Management;
 - (c) Executive Councils;
 - (d) Health Boards;
 - (e) the Agency.
- (2) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a body subject to investigation in any case where a complaint is

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duly made that a person claims to have sustained injustice or hardship in consequence of maladministration in connection with the action so taken, or in consequence of a failure in a service which was or ought to have been provided for him by or on behalf of the body subject to investigation, or in consequence of having been unfairly or unreasonably treated.

- (3) Except as hereinafter provided, the Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters—
- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of Her Majesty's prerogative ;
 - (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that the Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy, if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.

- (4) Without prejudice to subsection (3) above, the Commissioner shall not conduct an investigation under this Part of this Act in respect of any such action as is described in Schedule 5 to this Act.
- (5) Her Majesty may, by Order in Council, amend the said Schedule so as to exclude from the provisions of that Schedule action described in paragraph 4 or 5 of that Schedule ; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) In determining whether to initiate, continue or discontinue an investigation under this Part of this Act, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Part of this Act shall be determined by the Commissioner.

46 Provisions relating to complaints

- (1) A complaint under this Part of this Act may be made by any individual or by any body of persons, whether incorporated or not, not being—
- (a) a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking;
 - (b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.
- (2) Where the person by whom a complaint might have been made under the foregoing provisions of this Part of this Act has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained under this Act unless made by the person aggrieved himself.
- (3) A complaint shall not be entertained under this Part of this Act unless it is made in writing to the Commissioner by or on behalf of the person aggrieved not later than twelve months from the day on which the matters alleged in the complaint first came to

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the notice of the person aggrieved; but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers proper to do so.

- (4) Before proceeding to investigate a complaint, the Commissioner shall satisfy himself that the complaint has been brought by or on behalf of the person aggrieved to the notice of the body subject to investigation and that that body has been afforded a reasonable opportunity to investigate and reply to the complaint.
- (5) Notwithstanding the foregoing provisions of this section, a body subject to investigation may itself refer to the Commissioner a complaint made against it by or on behalf of a person aggrieved, and the provisions of subsection (3) above regarding time limits shall apply to such a reference as it applies to a complaint.

47 Application of certain provisions of the Parliamentary Commissioner Act 1967

The following provisions of the Parliamentary Commissioner Act 1967 shall, with any necessary modifications, apply to the Commissioner, his officers and to a body subject to investigation as they apply to the Commissioner under that Act, his officers and to a department or authority concerned—

- (1) section 7 (procedure in respect of investigations);
- (2) section 8 (evidence), except subsection (4);
- (3) section 9 (obstruction and contempt);
- (4) section 11 (secrecy of information), except subsection (4).

48 Reports by Commissioner

- (1) In any case where the Commissioner conducts an investigation under this Part of this Act, he shall send a report of the results of his investigation to—
 - (a) the person who made the complaint;
 - (b) the body subject to investigation ;
 - (c) any person who is alleged in the complaint to have taken or authorised the action complained of ;
 - (d) the Secretary of State.
- (2) In any case where the Commissioner decides not to conduct an investigation under this Part of this Act, he shall send a statement of his reasons for doing so to the persons and bodies described in paragraphs (a) and (b) of subsection (1) above.
- (3) If, after conducting an investigation under this Part of this Act, it appears to the Commissioner that injustice or hardship has been caused to the person aggrieved in the circumstances described in section 45(2) of this Act, and that the injustice or hardship has not been or will not be remedied, he may, if he thinks fit, make a special report to the Secretary of State who shall, as soon as is reasonably practicable, lay before each House of Parliament a copy of the report.
- (4) The Commissioner shall annually make to the Secretary of State a general report on the performance of his functions under this Part of this Act, and may from time to time make to the Secretary of State such other reports with respect to those functions as the Commissioner thinks fit, and the Secretary of State shall lay a copy of any such report before each House of Parliament.

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- (5) For the purpose of the law of defamation, any report or statement made, sent or laid in pursuance of this section, shall be absolutely privileged.

49 Transitional provisions

- (1) Notwithstanding the dissolution by this Act of any body subject to investigation, the Commissioner may continue any investigation in relation to such a body commenced by him before the date of dissolution, and may after that date commence an investigation under this Part of this Act in relation to such a body provided that the time limits mentioned in section 46(3) of this Act are observed.
- (2) As regards any investigation mentioned in subsection (1) above, the Commissioner may adopt such procedure in relation thereto, and to the report resulting therefrom, as in the circumstances he thinks fit.

50 Interpretation of Part VII

- (1) In this Part of this Act—
- " action " includes failure to act, and other expressions connoting action shall be construed accordingly;
 - " the Commissioner " means the Health Service Commissioner for Scotland;
 - " person aggrieved " means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 45(2) of this Act.
- (2) It is hereby declared that nothing in this Part of this Act authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a body subject to investigation in the exercise of a discretion vested in that body.