



National Health Service Reorganisation Act 1973

1973 CHAPTER 32

PART III

THE HEALTH SERVICE COMMISSIONERS FOR ENGLAND AND FOR WALES

31 Appointment and tenure of office

- (1) For the purpose of conducting investigations in accordance with this Part of this Act, there shall be appointed a Commissioner to be known as the Health Service Commissioner for England and a Commissioner to be known as the Health Service Commissioner for Wales.
- (2) Her Majesty may by Letters Patent from time to time appoint a person to be a Commissioner, and a person so appointed shall, subject to the following subsection, hold office during good behaviour.
- (3) A person appointed to be a 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) A person who is a member of a relevant body shall not be appointed to be a Commissioner, and a Commissioner shall not become a member of a relevant body.

32 Salaries and pensions

- (1) Subject to subsections (3) and (4) of this section, there shall be paid to the holder of the office of a 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 from another date specified in the resolution.
- (2) Subject to subsections (5) and (6) of this section, Schedule 1 to the Parliamentary Commissioner Act 1967 (which relates to pensions and other benefits) shall have

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effect with respect to persons who have held office as a Commissioner as it has effect with respect to persons who have held office as the Parliamentary Commissioner for Administration.

- (3) The salary payable to a holder of the office of a 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 has 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) A person holding the office of Parliamentary Commissioner for Administration and one or more of the offices of Health Service Commissioner for England, Health Service Commissioner for Scotland and Health Service Commissioner for Wales shall so long as he does so be entitled only to the salary pertaining to the first-mentioned office; and a person holding two or more of those offices other than that of Parliamentary Commissioner for Administration shall so long as he does so be entitled only to the salary pertaining to such one of those offices as he selects.
- (5) A person—
 - (a) shall not be entitled to make simultaneously different elections in pursuance of paragraph 1 of the said Schedule 1 in respect of different offices mentioned in the preceding subsection ; and
 - (b) shall, if he has made or is treated as having made an election in pursuance of that paragraph in respect of such an office, be deemed to have made the same election in respect of all such other offices to which he is or is subsequently appointed;

and no account shall be taken for the purposes of that Schedule of a period of service in such an office if salary in respect of the office was not paid for that period.
- (6) Subject to the preceding subsection, the Minister for the Civil Service may by regulations provide that the said Schedule 1 shall have effect, in relation to persons who have held more than one of the offices mentioned in subsection (4) of this section, with such modifications as the said Minister considers necessary in consequence of their having held more than one of those offices; and it is hereby declared that different regulations may be made in pursuance of paragraph 4 of that Schedule in relation to different offices so mentioned.
- (7) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.

33 Administrative provisions

- (1) A 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; and it shall be the duty of the Health Service Commissioner for Wales to include among his officers such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.
- (2) Any function of a Commissioner under this Part of this Act may be performed by any officer of the Commissioner authorised for that purpose by him or by any officer so authorised of another Commissioner mentioned in subsection (4) of the preceding section.

- (3) To assist him in any investigation a Commissioner may obtain advice from any person who in his opinion is qualified to give it and may pay such fees or allowances to any such person as he may determine with the approval of the said Minister.
- (4) The expenses of a Commissioner under this Part of this Act, to such amount as may be sanctioned by the said Minister, shall be defrayed out of money provided by Parliament.

34 Matters subject to investigation

- (1) In this Part of this Act " relevant body " means any of the following bodies, namely—
 - (a) Regional Hospital Boards ;
 - (b) Boards of Governors ;
 - (c) Hospital Management Committees ;
 - (d) Executive Councils;
 - (e) Regional Health Authorities ;
 - (f) Area Health Authorities;
 - (g) any special health authority established on or before the appointed day;
 - (h) any special health authority which is established after that day and is designated by Order in Council as an authority to which this paragraph applies ;
 - (i) Family Practitioner Committees ; and
 - (j) the Public Health Laboratory Service Board ;and, except where the context otherwise requires, any reference in this Part of this Act to a relevant body includes a reference to an officer of the body.
- (2) The Health Service Commissioner for England shall not conduct an investigation under this Part of this Act in respect of the Welsh Hospital Board, any Hospital Management Committee responsible for hospitals in Wales, any Executive Council or Area Health Authority of which the area is in Wales, the Family Practitioner Committee established by such an Authority, or a special health authority exercising functions only or mainly in Wales, and the Health Service Commissioner for Wales shall not conduct such an investigation in respect of a relevant body other than one of the bodies aforesaid.
- (3) Subject to the provisions of this section, a Commissioner may investigate—
 - (a) an alleged failure in a service provided by a relevant body; or
 - (b) an alleged failure of a relevant body to provide a service which it was a function of the body to provide ; or
 - (c) any other action taken by or on behalf of a relevant body,in a case where a complaint is duly made by or on behalf of any person that he has sustained injustice or hardship in consequence of the failure or in consequence of maladministration connected with the other action.
- (4) Except as hereafter provided, a 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;

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- (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 a 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.

- (5) Without prejudice to the preceding subsection, a Commissioner shall not conduct an investigation under this Part of this Act in respect of any such action as is described in Schedule 3 to this Act; and nothing in this section shall be construed as authorising such an investigation in respect of action taken in connection with any general medical services, general dental services, general ophthalmic services or pharmaceutical services by a person providing the services.
- (6) Her Majesty may by Order in Council amend the said Schedule 3 so as to exclude from the provisions of that Schedule action described in paragraph 3 or 4 of the Schedule.
- (7) In determining whether to initiate, continue or discontinue an investigation under this Part of this Act, a Commissioner shall, subject to the preceding provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made to a Commissioner under this Part of this Act shall be determined by the Commissioner.

35 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 money provided by Parliament.
- (2) Where the person by whom a complaint might have been made under the preceding 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 by some body or individual suitable to represent him; but except as aforesaid and as provided by subsection (5) of this section a complaint shall not be entertained under this Part of this Act unless made by the person aggrieved himself.
- (3) A complaint shall not be entertained under this Part of this Act by a Commissioner unless it is made in writing to him by or on behalf of the person aggrieved not later than one year from the day on which the person aggrieved first had notice of the matters alleged in the complaint; but a Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers it reasonable to do so.
- (4) Before proceeding to investigate a complaint a Commissioner shall satisfy himself that the complaint has been brought by or on behalf of the person aggrieved to the notice of the relevant body in question and that that body has been afforded a reasonable opportunity to investigate and reply to the complaint; but a Commissioner shall disregard the preceding provisions of this subsection in relation to a complaint made by an officer of the relevant body in question on behalf of the person aggrieved

if the officer is authorised by virtue of subsection (2) of this section to make the complaint and the Commissioner is satisfied that in the particular circumstances those provisions ought to be disregarded.

- (5) Notwithstanding anything in the preceding provision of this section, a relevant body—
- (a) may itself (excluding its officers) refer to a Commissioner a complaint that a person has, in consequence of a failure or maladministration for which the body is responsible, sustained such injustice or hardship as is mentioned in section 34(3) of this Act if the complaint—
 - (i) is made in writing to the relevant body by that person or by a person authorised by virtue of subsection (2) of this section to make the complaint to the Commissioner on his behalf, and
 - (ii) is so made not later than one year from the day mentioned in subsection (3) of this section or within such other period as the Commissioner considers appropriate in any particular case ; but
 - (b) shall not be entitled to refer a complaint in pursuance of the preceding paragraph after the expiration of three months beginning with the day on which the body received the complaint;

and a complaint referred to a Commissioner in pursuance of this subsection shall, subject to section 34(7) of this Act, be deemed to be duly made to him under this Part of this Act.

36 Application of certain provisions of Parliamentary Commissioner Act 1967

The following provisions of the Parliamentary Commissioner Act 1967 shall, with any necessary modifications, apply to the Commissioners, their officers and a relevant body as they apply to the Parliamentary Commissioner for Administration, his officers and a department concerned, namely—

- (a) section 7 (procedure in respect of investigations);
- (b) section 8 (evidence);
- (c) section 9 (obstruction and contempt);
- (d) section 11 (secrecy of information), except subsection (4);

but in sections 7(1) and 8(1) of that Act as applied by this section the words " the principal officer of " and " Minister " shall be omitted.

37 Reports by Commissioners

- (1) In any case where a Commissioner conducts an investigation under this Part of this Act, he shall send a report of the results of his investigation—
- (a) to the person who made the complaint;
 - (b) to the relevant body in question ;
 - (c) to any person who is alleged in the complaint to have taken or authorised the action complained of;
 - (d) if the relevant body in question is not an Area Health Authority for an area in England, a Hospital Management Committee or a Family Practitioner Committee, to the Secretary of State ;
 - (e) if that body is an Area Health Authority for an area in England, to the Regional Health Authority of which the region includes that area ;
 - (f) if that body is a Hospital Management Committee, to the Regional Hospital Board by which the Committee was appointed; and

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- (g) if that body is a Family Practitioner Committee, to the Area Health Authority by which the Committee was established.
- (2) In any case where a 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 person who made the complaint and to the relevant body in question.
- (3) If, after conducting an investigation under this Part of this Act, it appears to a Commissioner that the person aggrieved has sustained such injustice or hardship as is mentioned in section 34(3) of this Act and that the injustice or hardship has not been and 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 a copy of the report before each House of Parliament.
- (4) Each of the Commissioners shall annually make to the Secretary of State a 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 every such report before each House of Parliament.
- (5) For the purposes of the law of defamation, the publication of any matter by a Commissioner in sending or making a report in pursuance of subsection (1), (3) or (4) of this section or in sending a statement in pursuance of subsection (2) of this section shall be absolutely privileged.

38 Transitional provisions

Regulations may provide that, where a relevant body is abolished in pursuance of this Act, any prescribed provisions of this Part of this Act and Schedule 3 to this Act shall apply, with or without prescribed modifications, in relation to a complaint in respect of the body which was duly made to a Commissioner under this Part of this Act before the date of the abolition or is made in accordance with the regulations within the period of one year beginning with that date.

39 Interpretation of Part III

- (1) In this Part of this Act and Schedule 3 to this Act—
 - " action " includes failure to act, and other expressions connoting action shall be construed accordingly;
 - " a Commissioner " means the Health Service Commissioner for England or the Health Service Commissioner for Wales and " the Commissioners " means both those persons;
 - " person aggrieved " means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 34(3) of this Act; and
 - " relevant body " has the meaning assigned to it by section 34(1) of this Act.
- (2) It is hereby declared that nothing in this Part of this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by a relevant body in the exercise of a discretion vested in that body.