



# Local Government (Scotland) Act 1975

## 1975 CHAPTER 30

### PART II

#### LOCAL ADMINISTRATION

##### Modifications etc. (not altering text)

- C1** Pt. II (ss. 21-31) extended (6.4.1995) by 1994 c. 39, s. 180(1), **Sch. 3 para. 18** (with s. 128(2)); S.I. 1995/702, art. 4(1), **Sch. 2** (subject to art. 4(2) and to saving and transitional provision in art. 7)  
Pt. II (ss. 21-31) applied (with modifications) (6.4.1995) (*temp.* until 1.4.1996) by S.I. 1995/789, art. 2, **Sch. para. 4**

#### **21 Commissioner for Local Administration.**

- (1) For the purpose of conducting investigations in relation to any authority to which this Part of this Act applies there shall be a commissioner to be known as the Commissioner for Local Administration in Scotland.
- (2) Appointments to the office of Commissioner shall be made by Her Majesty on the recommendation of the Secretary of State after consultation with such bodies representing local authorities as appear appropriate to the Secretary of State, and a 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 on grounds of incapacity or misbehaviour, and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five years.
- (4) For each year, the Commissioner—
  - (a) shall submit a general report on the discharge of his functions to the designated body [<sup>F1</sup>and arrange for the publication of such report;], and
  - (b) shall review the operation of the provisions of this Part of this Act about the investigation of complaints, and shall have power to convey to

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local authorities or to government departments any recommendations or conclusions reached in the course of his review.

[<sup>F2</sup>(4A) The Commissioner may, after consultation with such associations of local authorities as appear to him to be appropriate, provide to the authorities to which this Part of this Act applies such advice and guidance about good administrative practice as appears to him to be appropriate and may arrange for it to be published for the information of the public.]

(5) Schedule 4 to this Act shall have effect as respects the Commissioner.

**Textual Amendments**  
**F1** Words inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\), Sch. 1\(a\)](#)  
**F2** [S. 21\(4A\)](#) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\), s. 23\(2\)](#)

**22 Body to be designated by Secretary of State for purposes of Part II.**

(1) For the purposes of this Part of this Act, the Secretary of State shall by order designate a body to be called “the designated body for Scotland”.

(2) ..... <sup>F3</sup>

(3) All expenses incurred by the designated body under this Part of this Act shall be defrayed by local authorities in accordance with regulations made by the Secretary of State after consultation with such associations of local authorities as appear to him to be concerned.

(4) The Secretary of State may—  
(a) require the designated body to keep proper accounts of the expenditure incurred by them in the discharge of their functions;  
(b) require the designated body to prepare in respect of each financial year a statement of account in such form as the Secretary of State may direct;  
(c) make arrangements for the audit of such accounts.

(5) A statutory instrument containing an order under subsection (1) above or regulations under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

**Textual Amendments**  
**F3** [S. 22\(2\)](#) repealed by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\), Sch. 4](#)

**23 Authorities subject to investigation.**

(1) This Part of this Act applies to the following authorities—  
(a) any local authority;  
(b) any committee, joint committee or joint board the members of which, other than ex officio members, are appointed by one or more local authorities;  
<sup>F4</sup>(c) .....

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- F4(d) .....
- F5(e) .....
- F6(ee) .....
- (f) any person or body which by virtue of section 56(1) of the Act of 1973 discharges any of the functions of a local authority.
- [<sup>F7</sup>F8(g) Scottish Homes, in respect only of any of its actions as a landlord;]
- F9(h) .....
- [<sup>F10</sup>(i) any licensing board within the meaning of the Licensing (Scotland) Act 1976.]]
- [<sup>F11</sup>(j) the Strathclyde Passenger Transport Authority]
- [<sup>F12</sup>and any reference in the Part to any such authority (or to any authority mentioned in subsection (2) below) includes a reference to any member or officer of that authority.]

- (2) Without prejudice to subsection (1)(f) above, this Part of this Act applies to—
- [<sup>F13</sup>(a) any joint board constituted by an administration scheme under section 36 of the <sup>M1</sup>Fire Services Act 1947 or section 147 of the Act of 1973]
  - (b) any joint police [<sup>F14</sup>board] constituted by an amalgamation scheme made or approved under the <sup>M2</sup>Police (Scotland) Act 1967;
  - F15(c) .....
  - [<sup>F16</sup>(d) any Children's Panel Advisory Committee formed under paragraph 3, or joint advisory committee formed under paragraph 8, of Schedule 1 to the Children (Scotland) Act 1995;]
  - (e) any joint committee, for the administration of superannuation schemes for persons employed in local government service or teachers, established by regulations under section 7 or 9 of the <sup>M3</sup>Superannuation Act 1972 respectively.

F17(2A) .....

- (3) Her Majesty may by Order in Council provide that this Part of this Act shall also apply, subject to any modifications or exceptions specified in the Order, to any authority specified in the Order, being an authority which is established by or under an Act of Parliament, and which has power to levy a rate, or to issue a requisition.
- (4) An Order made by virtue of subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F4** S. 23(1)(c)(d) repealed (1.4.1996) by 1994 c. 39, s. 180(2), **Sch. 14** (with s. 128(2)); S.I. 1996/323, art. 4(1)(d), **Sch. 2**
- F5** S. 23(1)(e) repealed (1.4.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F6** S. 23(1)(ee) repealed (21.5.1997) by 1997 c. 35, ss. 8(2)(a), 10, 11(2), **Sch.**
- F7** S. 23(1)(g)(h) added by Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73, SIF 57), **s. 55(1)(a)**
- F8** S. 23(1)(g) substituted by Housing (Scotland) Act 1988 (c. 43, SIF 61), ss. 1, 3(1)(3), **Sch. 2 para. 4**
- F9** S. 23(1)(h) repealed (1.4.1998) by 1997 c. 35, ss. 8(2)(a), 10, **Sch.**; S.I. 1998/252, **art. 2**
- F10** S. 23(1)(i) inserted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 12**

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- F11** S. 23(1)(j) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 100(6)(a)(ii)** (with s. 128(2)); S.I. 1996/323, **art. 4(1)(c)**
- F12** Words in s. 23(1) added (21.5.1997) by 1997 c. 35, **ss. 7(1), 11(2)**
- F13** S. 23(2)(a) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 100(6)(b)(i)** (with s. 128(2)); S.I. 1996/323, **art. 4(1)(c)**
- F14** Word in s. 23(2)(b) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 100(6)(b)(ii)** (with s. 128(2)); S.I. 1996/323, **art. 4(1)(c)**
- F15** S. 23(2)(c) repealed (1.4.1996) by 1994 c. 39, s. 180(1)(2), Sch. 13 para. 100(6)(b)(iii), **Sch. 14** (with s. 128(2)); S.I. 1996/323, **art. 4(1)(d), Sch. 2**
- F16** S. 23(2)(d) substituted (1.4.1997) by 1995 c. 36, s. 105(4), **Sch. 4 para. 25** (with s. 103); S.I. 1996/3201, **art. 3(7)**
- F17** S. 23(2A) repealed (1.4.1998) by 1997 c. 35, ss. 8(2)(b), 10, **Sch.**; S.I. 1998/252, **art. 2**

#### Marginal Citations

- M1** 1947 c. 41.  
**M2** 1967 c. 77.  
**M3** 1972 c. 11.

## 24 Matters subject to investigation.

- (1) Subject to the provisions of this Part of this Act, where a written complaint is made by or on behalf of a member of the public who claims to have sustained injustice in consequence of maladministration in connection with action taken by or on behalf of an authority to which this Part of this Act applies, being action taken in the exercise of administrative functions of that authority, the Commissioner may investigate that complaint.
- (2) A complaint shall not be entertained under this Part of this Act unless [<sup>F18</sup>it is made in writing to the Commissioner specifying the action alleged to constitute maladministration or]—
- it is made in writing to a member of the authority, or of any other authority concerned, specifying the action alleged to constitute maladministration, and
  - it is referred to the Commissioner, with the consent of the person aggrieved, or of a person acting on his behalf, by that member, or by any other person who is a member of any authority concerned, with a request to investigate the complaint.
- (3) If the Commissioner is satisfied that any member of any authority concerned has been requested to refer the complaint to the Commissioner, and has not done so, the Commissioner may, if he thinks fit, dispense with the requirements in subsection (2) (b) above.
- [<sup>F19</sup>(3A) Subsections (2) and (3) above do not apply in relation to the Scottish Special Housing Association <sup>F20</sup> . . . ]
- (4) A complaint shall not be entertained unless it was made to [<sup>F21</sup>the Commissioner or] to a member of any authority concerned [<sup>F22</sup>or, in the case of the Scottish Special Housing Association <sup>F23</sup> . . . , to the Commissioner] within twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint, but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that [<sup>F24</sup>it is reasonable] to do so.

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- (5) 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 authority to which the complaint relates and that that authority has been afforded a reasonable opportunity to investigate, and reply to, the complaint.
- (6) The Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters, that is to say,—
- (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;
  - (b) any action in respect of which the person aggrieved has or had a right of appeal to a Minister of the Crown; or
  - (c) 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 the existence of such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort or have resorted to it.

- (7) The Commissioner shall not conduct an investigation in respect of any action which in his opinion affects all or most of the inhabitants of the area of the authority concerned.
- (8) Without prejudice to the preceding provisions of this section, the Commissioner shall not conduct an investigation under this Part of this Act in respect of any such action or matter as is described in Schedule 5 to this Act.
- (9) Her Majesty may by Order in Council amend the said Schedule 5 so as to <sup>F25</sup>add to or exclude from the provisions of that Schedule (as it has effect for the time being) such actions or matters as may be described in the Order; and any Order made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In determining whether to initiate, continue or discontinue an investigation, the Commissioner shall, subject to the preceding provisions of this section, act at discretion; and any question whether a complaint is duly made under this Part of this Act shall be determined by the Commissioner.
- (11) In this section references to a person aggrieved include references to his personal representatives.
- (12) A complaint shall not be entertained under this Part of this Act if and so far as it is in respect of anything done before 16th May 1975, or in respect of any default or alleged default first arising before that date.

#### Textual Amendments

- F18** Words inserted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, **Sch. 3 para. 13(1)(a)**
- F19** [S. 24\(3A\)](#) inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 57\)](#), **ss. 55(2)(a), 60(3)(d)**
- F20** Words in [s. 24\(3A\)](#) repealed (1.4.1998) by 1997 c. 35, ss. 8(3), 10, **Sch.**; S.I. 1998/252, **art. 2**
- F21** Words inserted by [Local Government Act 1988 \(c. 9, SIF 81:2\)](#), s. 29, **Sch. 3 para. 13(1)(b)(2)**
- F22** Words inserted by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1985 \(c. 73, SIF 57\)](#), **ss. 55(2)(b), 60(3)(d)**
- F23** Words in [s. 24\(4\)](#) repealed (1.4.1998) by 1997 c. 35, ss. 8(3), 10, **Sch.**; S.I. 1998/252, **art. 2**

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- F24** Words substituted by Local Government Act 1988 (c. 9, SIF 81:2), s. 29, Sch. 3 para. 13(1)(b)(2)  
**F25** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:2\), s. 29, Sch. 3 para. 13\(1\)\(2\)\(c\)](#)

## 25 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 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 a complaint shall not be entertained under this Part of this Act unless made by the person aggrieved himself.

## 26 Procedure in respect of investigations.

- (1) Where the Commissioner proposes to conduct an investigation pursuant to a complaint, he shall afford to the authority concerned, and to any person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint.
- (2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case; and, without prejudice to the generality of the preceding provision, the Commissioner may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented (by counsel or solicitor or otherwise) in the investigation.
- (3) The designated body shall, if the Commissioner thinks fit, pay to the person by whom the complaint was made, and to any other person who attends or furnishes information for the purposes of an investigation under this Part of this Act—
- (a) sums in respect of the expenses properly incurred by them;
  - (b) allowances by way of compensation for the loss of their time.
- (4) The conduct of an investigation under this Part of this Act shall not affect any action taken by the authority concerned, or any power or duty of that authority to take further action with respect to any matters subject to the investigation.

## 27 Power of Commissioner to require information and other matters relating to investigations.

- (1) For the purposes of an investigation under this Part of this Act the Commissioner may require any member or officer of the authority concerned, or any other person who

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- in his opinion is able to furnish information or produce documents relevant to the investigation, to furnish any such information or produce any such documents.
- (2) For the purposes of any such investigation the Commissioner shall have the same powers as the Court of Session in respect of the attendance and examination of witnesses, and in respect of the production of documents.
  - (3) The Commissioner may, under subsection (1) above, require any person to furnish information concerning communications between the authority concerned and any Government department, or to produce any correspondence or other documents forming part of any such written communications.
  - (4) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, shall apply to the disclosure of information in accordance with subsection (3) above; and where that subsection applies the Crown shall not be entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
  - (5) Nothing in subsection (1) or subsection (3) above affects—
    - (a) the restriction, imposed by section 11(2) of the <sup>M4</sup>Parliamentary Commissioner Act 1967, on the disclosure of information by the Parliamentary Commissioner or his officers; or
    - (b) the restriction, imposed by [<sup>F26</sup>section 15 of the Health Service Commissioners Act 1993], on the disclosure of information by the Health Service Commissioner for Scotland or by his officers.
  - (6) To assist him in any investigation, the Commissioner may obtain advice from any person who in his opinion is qualified to give it and, if the Commissioner thinks fit, the designated body shall pay to any such person such fees or allowances as the Commissioner may determine.
  - (7) Subject to subsection (4) above, no person shall be compelled for the purposes of an investigation under this Part of this Act to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Court of Session.
  - (8) If any person without lawful excuse obstructs the Commissioner in the performance of his functions under this Part of this Act, or is guilty of any act or omission in relation to an investigation under this Part of this Act which, if that investigation were a proceeding in the Court of Session would constitute contempt of court, the Commissioner may certify the offence to the Court of Session.
  - (9) Where an offence is so certified, the Court of Session may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the Court of Session could deal with him if he had committed the like offence in relation to the Court of Session.
  - (10) Nothing in subsection (8) above shall be construed as applying to the taking of any such action as is mentioned in section 26(4) of this Act.

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#### Textual Amendments

**F26** Words in s. 27(5)(b) substituted (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 2 para. 5** (with s. 3(4)).

#### Marginal Citations

**M4** 1967 c. 13.

## 28 Reports on investigations.

- (1) In any case where the Commissioner conducts an investigation, or decides not to conduct an investigation, he shall send a report of the results of the investigation, or as the case may be a statement of his reasons for not conducting an investigation—
- (a) to the person, if any, who referred the complaint to the Commissioner in accordance with section 24(2) of this Act, and
  - (b) to the complainant, and
  - (c) to the authority concerned, and to any other authority or person who is alleged in the complaint to have taken or authorised the action complained of.

- (2) Where the complaint was referred by a person who was a member of an authority but who has since ceased to be a member of that authority, the report or statement shall be sent to the [<sup>F27</sup>convener] of that authority.

- (3) Apart from identifying the authority or authorities concerned, the report shall not [<sup>F28</sup>, except where subsection (3A) below applies,]—
- (a) mention the name of any person, or
  - (b) contain any particulars which, in the opinion of the Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless, after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, the Commissioner considers it necessary to mention the name of that person or to include in the report any such particulars.

[<sup>F29</sup>(3A) Where the Commissioner is of the opinion—

- (a) that action constituting maladministration was taken which involved a member of the authority concerned, and
- (b) that the member's conduct constituted a breach of the National Code of Local Government Conduct,

then, unless the Commissioner is satisfied that it would be unjust to do so, the report shall name the member and give particulars of the breach.]

- (4) Subject to the provisions of subsection (7) below, the authority concerned shall for a period of three weeks make copies of the report available [<sup>F30</sup>—
- (a) without charge, for inspection and the taking of copies thereof or extracts therefrom; and
  - (b) at a reasonable charge, for purchase,
- by any person at all reasonable hours at one or more of the authority's offices.]

- (5) Not later than [<sup>F31</sup>two weeks] after the report is received by the authority concerned, the proper officer of the authority shall give public notice, by advertisement in newspapers and such other ways as appear to him appropriate, that the report will be available . . .



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<sup>F32</sup> as provided by subsection (4) above, and shall specify the date, being a date [<sup>F33</sup>not more than one week] after the giving of the public notice, from which the period of three weeks will begin.

- (6) If a person having the custody of a report made available . . . <sup>F32</sup> as provided by subsection (4) above obstructs any person seeking to inspect [<sup>F34</sup>or purchase] the report, or to make a copy of, or extract from, the report, he shall be liable on summary conviction to a fine not exceeding [<sup>F35</sup>level 3 on the standard scale].
- (7) The Commissioner may, if he thinks fit after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, direct that a report specified in the direction shall not be subject to the provisions of subsections (4) and (5) above . . . <sup>F36</sup>

#### Textual Amendments

- F27** Word in s. 28(2) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 100(7)** (with s. 128(2)); S.I. 1996/323, **art. 4(1)(c)**
- F28** Words inserted by **Local Government and Housing Act 1989** (c. 42, SIF 81:2), **s. 32(2)(a)**
- F29** S. 28(3A) inserted by **Local Government and Housing Act 1989** (c. 42, SIF 81:1, 2), **s. 32(2)(b)**
- F30** Words substituted by **Local Government (Miscellaneous Provisions) (Scotland) Act 1981** (c. 23, SIF 81:2), **Sch. 1(c)(i)**
- F31** Words substituted by **Local Government (Miscellaneous Provisions) (Scotland) Act 1981** (c. 23, SIF 81:2), **Sch. 1(c)(ii)**
- F32** Words repealed by **Local Government (Miscellaneous Provisions) (Scotland) Act 1981** (c. 23, SIF 81:2), **Sch. 4**
- F33** Words inserted by **Local Government (Miscellaneous Provisions) (Scotland) Act 1981** (c. 23, SIF 81:2), **Sch. 1(c)(ii)**
- F34** Words inserted by **Local Government (Miscellaneous Provisions) (Scotland) Act 1981** (c. 23, SIF 81:2), **Sch. 1(c)(iii)**
- F35** Words substituted by virtue of **Criminal Procedure (Scotland) Act 1975** (c. 21, SIF 39:1), **ss. 289F, 289G** (as inserted by **Criminal Justice Act 1982** (c. 48, SIF 39:1), **s. 54**)
- F36** Words repealed by **Local Government Act 1988** (c. 9, SIF 81:1, 2) ss. 29, 41, Sch. 3 para. 14, Sch. 7 Pt. II

## 29 Reports on investigations: further provisions.

- [<sup>F37</sup>(1) This section applies where the Commissioner reports that injustice has been caused to a person aggrieved in consequence of maladministration.
- (2) The report shall be laid before the authority concerned and it shall be the duty of that authority to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Commissioner may agree in writing, to notify the Commissioner of the action which the authority have taken or propose to take.
- (2A) If the Commissioner—
- does not receive the notification required by subsection (2) above within the period allowed by or under that subsection, or
  - is not satisfied with the action which the authority concerned have taken or propose to take, or
  - does not within a period of three months beginning with the end of the period so allowed, or such longer period as the Commissioner may agree in writing,

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receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Commissioner,

he shall make a further report setting out those facts and making recommendations.

(2B) Those recommendations are such recommendations as the Commissioner thinks fit to make with respect to the action which, in his opinion, the authority concerned should take to remedy the injustice to the person aggrieved and to prevent similar injustice being caused in the future.

(2C) Section 28 of this Act, with any necessary modifications, and subsection (2) above shall apply to a report under subsection (2A) above as they apply to a report under that section.

(2D) If the Commissioner—

- (a) does not receive the notification required by subsection (2) above as applied by subsection (2C) above within the period allowed by or under that subsection or is satisfied before the period allowed by that subsection has expired that the authority concerned have decided to take no action; or
- (b) is not satisfied with the action which the authority concerned have taken or propose to take; or
- (c) does not within a period of three months beginning with the end of the period allowed by or under subsection (2) above as applied by subsection (2C) above, or such longer period as the Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Commissioner,

he may, by notice to the authority, require them to arrange for a statement to be published in accordance with subsections (2E) and (2F) below.

(2E) The statement referred to in subsection (2D) above is a statement, in such form as the authority concerned and the Commissioner may agree, consisting of—

- (a) details of any action recommended by the Commissioner in his further report which the authority have not taken;
- (b) such supporting material as the Commissioner may require; and
- (c) if the authority so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.

(2F) The requirements for the publication of the statement are that—

- (a) publication shall be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the Commissioner or, in default of agreement, nominated by him; and
- (b) publication in the first such edition shall be arranged for the earliest practicable date.

(2G) If the authority concerned—

- (a) fail to arrange for the publication of the statement in accordance with subsections (2E) and (2F) above, or
- (b) are unable, within the period of one month beginning with the date on which they received the notice under subsection (2D) above, or such longer period as the Commissioner may agree in writing, to agree with the Commissioner the form of the statement to be published,

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the Commissioner shall arrange for such a statement as is mentioned in subsection (2E) above to be published in any two editions within a fortnight of a newspaper circulating within the authority's area.

(2H) The authority concerned shall reimburse the Commissioner on demand any reasonable expenses incurred by the Commissioner in performing his duty under subsection (2G) above.]

[<sup>F38</sup>(3) In any case where—

- (a) a report is laid before an authority under subsection [<sup>F39</sup>(2) or (2C)] above, and
- (b) on consideration of the report, it appears to the authority that a payment should be made to, or some other benefit should be provided for, a person who has suffered injustice in consequence of maladministration [<sup>F40</sup>to which the report relates],

the authority may incur such expenditure as appears to them to be appropriate in making such a payment or providing such a benefit.]

#### Textual Amendments

**F37** S. 29 subsections (1)–(2H) substituted for subsections (1) to (2A) by [Local Government and Housing Act 1989 \(c. 42, SIF 81:2\), s. 27\(1\)\(3\)](#)

**F38** S. 29(3) added by [Local Government Act 1978 \(c. 39, SIF 81:1\), s. 1](#)

**F39** Words substituted by virtue of [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\), s. 194\(1\), Sch. 11 para. 44](#)

**F40** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:1\), s. 29, Sch. 3 para. 15\(b\)](#)

#### [<sup>F41</sup>29A Consideration of adverse reports.

- (1) Subject to subsection (3) below, any power of an authority to have their functions discharged by any person or body of persons acting for the authority shall, as respects the consideration of a further report of the Commissioner under section 29(2A) of this Act, be subject to the restriction that, if it is proposed to take no action on, or not the action recommended in, the report, consideration of the report shall be referred to the authority.
- (2) Consideration of a further report of the Commissioner under section 29(2A) of this Act by—
  - (a) any such committee as is mentioned in [<sup>F42</sup>section 23(2)(d)] of this Act; or
  - (b) an education committee appointed under section 124 of the Act of 1973;shall be subject to a corresponding restriction.
- (3) The restriction imposed by subsections (1) and (2) above does not apply where the report recommends action to be taken by <sup>F43</sup>. . . —
  - (a) [<sup>F44</sup>a joint committee] established under section 56 of the Act of 1973 <sup>F45</sup>. . . ; or
  - [<sup>F46</sup>(b) a joint board referred to in paragraph (a) or (b) of subsection (2) of section 23 of this Act (fire and police joint boards) or a joint committee referred to in paragraph (e) of that subsection (local government and teachers' superannuation joint committees)]
- (4) If an authority considering a further report of the Commissioner under section 29(2A) of this Act take into consideration a report by a person or body with an interest in the Commissioner's report, they shall not conclude their consideration of the

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Commissioner's report without also having taken into consideration a report by a person or body with no interest in the Commissioner's report.

- (5) No member of an authority to which this Part of this Act applies or of a committee [<sup>F47</sup>or board] mentioned in subsection (2) or (3) above shall vote on any question with respect to a report or further report under this Part of this Act in which he is named and criticised by the Commissioner.]

#### Textual Amendments

- F41** S. 29A inserted by Local Government and Housing Act 1989 (c. 42, SIF 81:2), s. 29
- F42** Words in s. 29A(2)(a) substituted (21.5.1997) by 1997 c. 35, ss. 8(4)(a), 11(2)
- F43** Words in s. 29A(3) repealed (21.5.1997) by 1997 c. 35, ss. 8(4)(b)(i), 10, 11(2), Sch.
- F44** Words in s. 29A(3)(a) inserted (21.5.1997) by 1997 c. 35, ss. 8(4)(b)(ii), 11(2)
- F45** Words in s. 29A(3)(a) repealed (1.4.1996) by 1994 c. 39, s. 180(2), Sch. 14 (with s. 128(2)); S.I. 1996/323, art. 4(1)(d), Sch. 2
- F46** S. 29A(3)(b) substituted (21.5.1997) by 1997 c. 35, ss. 8(4)(b)(iii), 11(2)
- F47** Word in s. 29A(5) inserted (21.5.1997) by 1997 c. 35, ss. 8(4)(c), 11(2)

### 30 Law of defamation and limitation on disclosure of information by Commissioner.

- (1) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—
- (a) the publication of any matter in communications between a member [<sup>F48</sup>or officer] of an authority and the Commissioner, or any of his officers, for the purposes of this Part of this Act;
  - (b) the publication of any matter by the Commissioner or any of his officers, in communicating with a complainant for the purposes of this Part of this Act;
  - (c) the publication of any matter in preparing, making and sending a report or statement in accordance with section 28 or 29 of this Act, or, subject to section 28(7) of this Act, in making [<sup>F49</sup>copies of a report available as provided by section 28(4) above];
  - (d) the publication of any matter contained in a report by the Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 21 of this Act.
  - [<sup>F50</sup>(e) the publication of any matter by inclusion in a statement published in accordance with section 29(2D), (2E) and (2F) or (2G) of this Act.]
- (2) Information obtained by the Commissioner, or any of his officers, in the course of or for the purposes of an investigation under this Part of this Act shall not be disclosed except—
- (a) for the purposes of the investigation and of any report to be made under section 28 or 29 of this Act; or
  - (b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained, by virtue of this Part of this Act, by the Commissioner or any of his officers or for an offence of perjury alleged to have been committed in the course of an investigation under this Part of this Act or for the purposes of an inquiry with a view to the taking of such proceedings, or
  - (c) for the purpose of any proceedings under section 27(9) of this Act,

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and the Commissioner and his officers shall not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) above) of matters coming to his or their knowledge in the course of an investigation under this Part of this Act.

- (3) A Minister of the Crown or any of the authorities mentioned in section 23 of this Act may give notice in writing to the Commissioner with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister, or as the case may be of the authority, the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest; and where such a notice is given nothing in this Part of this Act shall be construed as authorising or requiring [<sup>F51</sup>the Commissioner or any member of his staff] to communicate to any other person, or for any purpose, any document or information specified in the notice, or any document or information of a class so specified:

Provided that a notice given under this subsection by any authority may be discharged by the Secretary of State.

- (4) Nothing in subsection (3) above shall affect the obligations imposed by subsections (3) and (4) of section 27 of this Act.
- (5) Where information is disclosed in accordance with section 27(3) of this Act, being information which is derived from a communication from a government department, and which has not been made public, the Commissioner shall not without the written consent of an officer of the government department make a report which includes all or any of that information unless he has given the department not less than one month's notice in writing of his intention.
- (6) The provisions of this section shall apply to the Commissioners of Customs and Excise and Commissioners of Inland Revenue as they apply to a Minister of the Crown.

#### Textual Amendments

- F48** Words inserted by [Local Government \(Miscellaneous Provisions\) \(Scotland\) Act 1981 \(c. 23, SIF 81:2\)](#), [Sch. 1\(e\)](#)
- F49** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:2\)](#), s. 29, [Sch. 3 para. 16](#)
- F50** [S. 30\(1\)\(e\)](#) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(1), [Sch. 11 para. 45](#)
- F51** Words substituted by [Local Government, Planning and Land Act 1980 \(c. 65, SIF 81:2\)](#), s. 184(2)

#### Modifications etc. (not altering text)

- C2** [S. 30\(2\)\(b\)](#) amended by [Official Secrets Act 1989 \(c. 6, SIF 39:2\)](#), s. 16(3), [Sch. 1 para. 1\(f\)](#)

### 31 Consultation between Commissioner, the Parliamentary Commissioner and the Health Service Commissioner.

- (1) If, at any stage in the course of conducting an investigation under this Part of this Act, the Commissioner forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation—
- (a) by the Parliamentary Commissioner, in accordance with section 5 of the Act of 1967, or

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- (b) by the Health Service Commissioner for Scotland in accordance with [<sup>F52</sup>the Act of 1993],
- he shall consult with the appropriate Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint under this Part of this Act of the steps necessary to initiate a complaint under the Act of 1967 or under [<sup>F52</sup>the Act of 1993], as the case may be.
- (2) Where, by virtue of subsection (1) above, the Commissioner consults the Parliamentary Commissioner or the Health Service Commissioner in relation to a complaint under this Part of this Act, he may consult that Commissioner about any matter relating to the complaint, including—
- (a) the conduct of any investigation into the complaint, and
  - (b) the form, content and publication of any report of the results of such an investigation.
- [<sup>F53</sup>(3) If, at any stage in the course of conducting an investigation under the Act of 1967, the Parliamentary Commissioner] forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part of this Act, he shall consult with the Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint <sup>F54</sup>. . . of the steps necessary to initiate a complaint under this Part of this Act.
- (4) Where, by virtue of subsection (3) above, the Commissioner is consulted about a complaint under the Act of 1967 <sup>F55</sup>. . ., subsection (2) above shall apply (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (1) above.
- (5) Nothing in section 11(2) of the Act of 1967, [<sup>F56</sup>in section 15 of the Act of 1993], or in section 30(2) of this Act (restrictions of disclosure of information) shall apply in relation to the disclosure of information by any of the Commissioners mentioned in this section, or by any of their officers, in the course of consultations held in accordance with this section.
- (6) In this section the “<sup>M5</sup>Act of 1967” means the Parliamentary Commissioner Act 1967 and [<sup>F57</sup>the “Act of 1993” means the Health Service Commissioners Act 1993.]

#### Textual Amendments

- F52** Words in s. 31(1) substituted (5.2.1994) by virtue of 1993 c. 46, ss. 20, 22(4), **Sch. 2 para. 6(2)** (with s. 3(4)).
- F53** Words in s. 31(3) substituted (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 2 para. 6(3)(a)** (with s. 3(4)).
- F54** Words in s. 31(3) repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 2 para. 6(3)(b) Sch. 3** (with s. 3(4)).
- F55** Words in s. 31(4) repealed (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 2 para. 6(4)**(with s. 3(4)).
- F56** Words in s. 31(5) substituted (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 2 para. 6(5)**(with s. 3(4)).
- F57** Words in s. 31(6) substituted (5.2.1994) by 1993 c. 46, ss. 20, 22(4), **Sch. 2 para. 6(6)**(with s. 3(4)).

#### Modifications etc. (not altering text)

- C3** S. 31(1)-(5) extended (1.7.1999) by S.I. 1999/1351, **arts. 1, 17(3)**; S.I. 1998/3178, **art. 3**

#### Marginal Citations

- M5** 1967 c. 13.

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## 32 Interpretation of Part II.

(1) In this Part of this Act, unless the context otherwise requires—

“action” includes failure to act, and other expressions connoting action shall be construed accordingly;

“the Commissioner” means the Commissioner for Local Administration in Scotland;

“person aggrieved” means the person who claims or is alleged to have sustained any such injustice as is mentioned in section 24(1) of this Act;

“the Parliamentary Commissioner” means the Parliamentary Commissioner for Administration;

“the designated body” means the body designated under section 22 of this Act;

“tribunal” includes the person constituting a tribunal consisting of one person.

[<sup>F58</sup>(1A) In this Part of this Act (other than section 24), references to the authority concerned are—

- (a) in relation to action taken by a person who is discharging by virtue of section 56(1) of the Act of 1973 any of the functions of a local authority, references to the local authority whose functions that person is discharging;
- (b) in relation to action taken by a member or officer of a body which is discharging by virtue of section 56(1) of the Act of 1973 any of the functions of a local authority, references to the local authority whose functions that body is discharging;
- (c) in relation to action taken by a member or officer of an authority to which this Part of this Act applies, (and except where paragraph (a) or (b) above applies) references to the authority of which he is a member or officer.]

(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 an authority in the exercise of a discretion vested in that authority.

<sup>F59</sup>(2A) .....

### Textual Amendments

**F58** S. 32(1A) inserted (21.5.1997) by 1997 c. 35, ss. 8(5)(a), 11(2)

**F59** S. 32(2A) repealed (21.5.1997) by 1997 c. 35, ss. 8(5)(b), 10, 11(2), Sch.

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