

Status: Point in time view as at 01/02/1991.

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SCHEDULES

SCHEDULE 13

ADDITIONAL PROVISIONS AS TO THE HEALTH SERVICE COMMISSIONER FOR ENGLAND AND THE HEALTH SERVICE COMMISSIONER FOR WALES.

Modifications etc. (not altering text)

C1 Sch. 13 modified by S.I. 1982/295, art. 3(1)

PART I

PROCEDURAL AND OTHER PROVISIONS

Procedure in respect of investigations

- 1 Where the Commissioner proposes to conduct an investigation pursuant to a complaint under Part V of this Act, he shall afford to the relevant body concerned, and to any other 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 for that the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case.
- 3 Without prejudice to the generality of paragraph 2 above, 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.
- 4 The Commissioner may, if he 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 Part V of this Act—
 - (a) sums in respect of expenses properly incurred by them,
 - (b) allowances by way of compensation for the loss of their time,in accordance with such scales and subject to such conditions as may be determined by [F1the Treasury].

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Textual Amendments

F1 Words substituted by virtue of S.I. 1981/1670, arts. 2(1)(c)(d)(2), 3(5)

- 5 The conduct of an investigation under Part V of this Act shall not affect any action taken by the relevant body concerned, or any power or duty of that body to take further action with respect to any matters subject to the investigation.
- 6 Where the person aggrieved has been removed from the United Kingdom under any Order in force under the ^{M1}Immigration Act 1971 he shall, if the Commissioner so directs, be permitted to re-enter and remain in the United Kingdom, subject to such conditions as the Secretary of State may direct, for the purposes of the investigation.

Marginal Citations

M1 1971 c. 77(62).

Evidence

- 7 For the purposes of an investigation under Part V of this Act the Commissioner may require any employee, officer or member of the relevant body concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.
- 8 For the purposes of any such investigation the Commissioner shall have the same powers as the Court (which in this Schedule means, in relation to England and Wales, the High Court, in relation to Scotland, the Court of Session, and in relation to Northern Ireland, the High Court of Northern Ireland) in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.
- 9 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 for the purposes of an investigation under Part V of this Act.
- The Crown shall not be entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings.
- 10 No person shall be required or authorised by Part V of this Act and this Schedule to furnish any information or answer any question relating to proceedings of the

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Cabinet or of any committee of the Cabinet or to produce so much of any document as relates to such proceedings.

For the purposes of this paragraph a certificate issued by the Secretary of the Cabinet with the approval of the Prime Minister and certifying that any information, question, document, or part of a document so relates shall be conclusive.

- 11 Subject to paragraph 9 above, no person shall be compelled for the purposes of an investigation under Part V 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.

Obstruction and contempt

- 12 If any person without lawful excuse obstructs the Commissioner or any officer of the Commissioner in the performance of his functions under Part V of this Act and this Schedule, or is guilty of any act or omission in relation to an investigation under that Part which, if that investigation were a proceeding in the Court, would constitute contempt of court, the Commissioner may certify the offence to the Court.

- 13 Where an offence is certified under paragraph 12 above, the Court 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 could deal with him if he had committed the like offence in relation to the Court.

- 14 Nothing in paragraphs 12 and 13 above shall be construed as applying to the taking of any such action as is mentioned in paragraphs 5 and 6 above.

Secrecy of information

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Textual Amendments

F2 Sch. 13 para. 15 repealed by Official Secrets Act 1989 (c. 6, SIF 39:2), s. 16(4), Sch. 2

- 16 Information obtained by the Commissioner or his officers in the course of or for the purposes of an investigation under Part V of this Act shall not be disclosed except—
 - (a) for the purposes of the investigation and of any report to be made in respect of the investigation under that Part,
 - (b) for the purposes of any proceedings for an offence under [^{F3}the Official Secrets Acts 1911 to 1989] alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue

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of that Part or for an offence of perjury alleged to have been committed in the course of an investigation under that Part or for the purposes of an inquiry with a view to the taking of such proceedings, or

(c) for the purposes of any proceedings under paragraphs 12 and 13 above, and the Commissioner and his officers shall not be called upon to give evidence in any proceedings (other than those mentioned in this paragraph) of matters coming to his or their knowledge in the course of an investigation under that Part.

Textual Amendments

F3 Words substituted by [Official Secrets Act 1989 \(c. 6, SIF 39:2\)](#), s. 16(3), [Sch. 1 para. 1](#)

[^{F4}16A(1) Where the Commissioner also holds office as a relevant commissioner and a person initiates a complaint to him in his capacity as such a commissioner which relates partly to a matter with respect to which that person has previously initiated a complaint to him in his capacity as the Commissioner, or subsequently initiates such a complaint, information obtained by the Commissioner or his officers in the course of or for the purposes of the investigation under Part V of this Act may be disclosed for the purposes of his carrying out his functions in relation to the other complaint.

(2) In this paragraph “relevant commissioner”—

- (a) in relation to the Health Service Commissioner for England, means the Parliamentary Commissioner, the Health Service Commissioner for Wales and the Health Service Commissioner for Scotland; and
- (b) in relation to the Health Service Commissioner for Wales, means the Parliamentary Commissioner, the Health Service Commissioner for England and the Health Service Commissioner for Scotland.]

Textual Amendments

F4 [Para. 16A](#) inserted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. 4(4)

17 A Minister of the Crown 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 Minister’s opinion the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest.

18 Where a notice under paragraph 17 above is given nothing in this Schedule shall be construed as authorising or requiring the Commissioner or any officer of the Commissioner to communicate to any person or for any purpose any document or information specified in the notice, or any document or information of a class so specified.

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