



Health Service Commissioners Act 1993

1993 CHAPTER 46

Investigations

11 Procedure in respect of investigations.

- (1) Where a Commissioner proposes to conduct an investigation pursuant to a complaint under [^{F1}section 3(1)], he shall afford—
- (a) to the health service body concerned, and
 - (b) 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.

- [^{F2}(1A) Where a Commissioner proposes to conduct an investigation pursuant to a complaint under section 3(1A), he shall afford—

- (a) to the family health service provider, and
- (b) to any person by reference to whose action the complaint is made (if different from the family health service provider),

an opportunity to comment on any allegations contained in the complaint.

- (1B) Where a Commissioner proposes to conduct an investigation pursuant to a complaint under section 3(1C), he shall afford—

- (a) to the independent provider concerned, and
- (b) 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) An investigation shall be conducted in private.

- (3) In other respects, the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case, and in particular—

- (a) he may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and

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- (b) he may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.
- (4) A Commissioner may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or supplies information for the purposes of an investigation—
- (a) sums in respect of expenses properly incurred by them, and
 - (b) allowances by way of compensation for the loss of their time.
- Payments under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by the Treasury.
- (5) The conduct of an investigation [^{F3}pursuant to a complaint under section 3(1)] shall not affect any action taken by the health service body concerned, or any power or duty of that body to take further action with respect to any matters subject to the investigation.
- [^{F4}(5A) The conduct of an investigation pursuant to a complaint under section 3(1A) or (1C) shall not affect any action taken by the family health service provider or independent provider concerned, or any power or duty of that provider 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.

Textual Amendments

- F1** Words in s. 11(1) substituted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 3(2)**; S.I. 1996/970, **art. 2(1)**
- F2** S. 11(1A)(1B) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 3(3)**; S.I. 1996/970, **art. 2(1)**
- F3** Words in s. 11(5) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 3(4)**; S.I. 1996/970, **art. 2(1)**
- F4** S. 11(5A) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 3(5)**; S.I. 1996/970, **art. 2(1)**

Modifications etc. (not altering text)

- C1** S. 11(1)(a)(5) applied with modifications (E.W.) (1.4.1996) by S.I. 1996/709, **art. 9(3)(a)(i)**

Marginal Citations

- M1** 1971 c. 77.

12 Evidence.

- (1) For the purposes of an investigation [^{F5}pursuant to a complaint under section 3(1)] a Commissioner may require any officer or member of the health service body concerned or any other person who in his opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such document.
- [^{F6}(1A) For the purposes of an investigation pursuant to a complaint under section 3(1A) or (1C) a Commissioner may require any person who in his opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such document.]
- (2) For the purposes of an investigation a Commissioner shall have the same powers as the Court in respect of—

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- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
 - (b) the production of documents.
- (3) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied 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.
- (4) The Crown shall not be entitled in relation to an 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.
- (5) No person shall be required or authorised by this Act—
 - (a) to supply any information or answer any question relating to proceedings of the Cabinet or of any Committee of the Cabinet, or
 - (b) to produce so much of any document as relates to such proceedings;and for the purposes of this subsection 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 relates to such proceedings shall be conclusive.
- (6) Subject to subsections (3) and (4), no person shall be compelled for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Court.

Textual Amendments

- F5** Words in s. 12(1) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 4(2)**; S.I. 1996/970, **art. 2(1)**
F6 S. 12(1A) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 4(3)**; S.I. 1996/970, **art. 2(1)**

Modifications etc. (not altering text)

- C2** S. 12(1) applied with modifications (1.4.1996) by S.I. 1996/709, **art. 9(3)(b)**

13 Obstruction and contempt.

- (1) A Commissioner may certify an offence to the Court where—
 - (a) a person without lawful excuse obstructs him or any of his officers in the performance of his functions, or
 - (b) a person is guilty of any act or omission in relation to an investigation which, if that investigation were a proceeding in the Court, would constitute contempt of court.
- (2) Where an offence is so certified the Court may inquire into the matter and after hearing—
 - (a) any witnesses who may be produced against or on behalf of the person charged with the offence, and
 - (b) any statement that may be offered in defence,the Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the like offence in relation to the Court.

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- (3) Nothing in this section shall be construed as applying to the taking of any such action as is mentioned in section 11(5).

Status:

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