



Parliamentary Commissioner Act 1967

1967 CHAPTER 13

Investigation by the Commissioner

5 Matters subject to investigation.

- (1) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where—
- (a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and
 - (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.

[^{F1}(1A) Subsection (1C) of this section applies if—

- (a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims that a person has failed to perform a relevant duty owed by him to the member of the public, and
- (b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of the House of Commons with a request to conduct an investigation into it.

(1B) For the purposes of subsection (1A) of this section a relevant duty is a duty imposed by any of these—

- (a) a code of practice issued under section 32 of the Domestic Violence, Crime and Victims Act 2004 (code of practice for victims), or
- (b) sections 35 to 44 of that Act (duties of local probation boards in connection with victims of sexual or violent offences).

(1C) If this subsection applies, the Commissioner may investigate the complaint.]

- (2) Except as hereinafter provided, the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say—

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- (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.

[^{F2}(2A) Subsection (2)(a) of this section shall have effect in relation to the right of a person to make a complaint of unlawful discrimination under the Fair Employment and Treatment (Northern Ireland) Order 1998 as if it were such a right of appeal, reference or review as is mentioned in that subsection.]

(3) Without prejudice to subsection (2) of this section, the Commissioner shall not conduct an [^{F3}investigation under subsection (1) of this section] in respect of any such action or matter as is described in Schedule 3 to this Act.

(4) Her Majesty may by Order in Council amend the said Schedule 3 so as to exclude from the provisions of that Schedule such actions or matters as may be described in the Order; 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.

[^{F4}(4A) Without prejudice to subsection (2) of this section, the Commissioner shall not conduct an investigation pursuant to a complaint under subsection (1A) of this section in respect of—

- (a) action taken by or with the authority of the Secretary of State for the purposes of protecting the security of the State, including action so taken with respect to passports, or
- (b) any action or matter described in any of paragraphs 1 to 4 and 6A to 11 of Schedule 3 to this Act.

(4B) Her Majesty may by Order in Council amend subsection (4A) of this section so as to exclude from paragraph (a) or (b) of that subsection such actions or matters as may be described in the Order.

(4C) Any statutory instrument made by virtue of subsection (4B) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

(5) In determining whether to initiate, continue or discontinue an investigation under 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 Act shall be determined by the Commissioner.

[^{F5}(5A) For the purposes of this section, administrative functions of a government department to which this Act applies include functions exercised by the department on behalf of the Scottish Ministers by virtue of section 93 of the Scotland Act 1998.

(5B) The Commissioner shall not conduct an investigation under this Act in respect of any action concerning Scotland and not relating to reserved matters which is taken by or on behalf of a cross-border public authority within the meaning of the Scotland Act 1998.]

[^{F6}(6) For the purposes of this section, administrative functions exercisable by any person appointed by the Lord Chancellor as a member of the administrative staff of any

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court or tribunal shall be taken to be administrative functions of the [^{F7}Ministry of Justice]^{F8}....]

[^{F9}(7) For the purposes of this section, administrative functions exercisable by any person appointed as a member of the administrative staff of a relevant tribunal—

- (a) by a government department or authority to which this Act applies; or
- (b) with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such a department or authority,

shall be taken to be administrative functions of that department or authority.

(8) In subsection (7) of this section, “relevant tribunal” means a tribunal listed in Schedule 4 to this Act.

(9) Her Majesty may by Order in Council amend the said Schedule 4 by the alteration or removal of any entry or the insertion of any additional entry; 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.]

[^{F10}(9A) No entry shall be made in the said Schedule 4 in respect of the holder of any office in the Scottish Administration which is not a ministerial office or in respect of any Scottish public authority with mixed functions or no reserved functions within the meaning of the Scotland Act 1998.]

Textual Amendments

- F1** S. 5(1A)-(1C) inserted (18.10.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 47, 60, **Sch. 7 para. 2(2)**; S.I. 2005/2848, **art. 2**
- F2** S. 5(2A) inserted (N.I.) (1.3.1999) by S.I. 1998/3162 (N.I. 21), art. 1(2), **Sch. 3**; S.R. 1999/81, **art. 3**
- F3** Words in s. 5(3) substituted (18.10.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 47, 60, **Sch. 7 para. 2(3)**; S.I. 2005/2848, **art. 2**
- F4** S. 5(4A)-(4C) inserted (18.10.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 47, 60, **Sch. 7 para. 2(4)**; S.I. 2005/2848, **art. 2**
- F5** S. 5(5A)(5B) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 39(3)(a)**
- F6** S. 5(6) added by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), **s. 110(1)**
- F7** Words in s. 5(6) substituted (22.8.2007) by The Secretary of State for Justice Order 2007 (S.I. 2007/2128), art. 8, **Sch. para. 4(2)**
- F8** Words in s. 5(6) omitted (N.I.) (12.4.2010) by virtue of The Northern Ireland Court Service (Abolition and Transfer of Functions) Order (Northern Ireland) 2010 (S.R. 2010/133), art. 1, **Sch. para. 2(2)** (with arts. 5-7)
- F9** S. 5(7)-(9) inserted (5.9.1994) by 1994 c. 14, **ss. 1(1), 3(2)**
- F10** S. 5(9A) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 39(3)(b)**

Modifications etc. (not altering text)

- C1** S. 5 modified (1.10.1998) by 1998 c. 31, ss. 25, 145(3), **Sch. 5 para. 9** (with ss. 138(9), 144(6)); S.I. 1998/2212, art. 2, **Sch. 1 Pt. I**
- C2** S. 5(2)(a) extended by Fair Employment (Northern Ireland) Act 1976 (c. 25, SIF 43:1), **s. 58(2)(a)**
- C3** S. 5(2)(b) excluded by Northern Ireland Constitution Act 1973 (c. 36, SIF 29:3), **s. 22**
S. 5(2)(b) excluded (2.12.1999) by 1998 c. 47, **s. 78(2)(a)**; S.I. 1999/3209, art. 2, **Sch.**
- C4** S. 5(5B) modified (E.W.S.) (30.6.2006 for S. and 6.7.2006 for E.W.) by Private Security Industry Act 2001 (c. 12), s. 2A (as inserted by Serious Organised Crime and Police Act 2005 (c. 15), ss. 171, 178, **Sch. 15 para. 3**; S.S.I. 2006/381, **art. 2**)

Status:

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Changes to legislation:

There are currently no known outstanding effects for the Parliamentary Commissioner Act 1967, Section 5.