



Health Service Commissioners Act 1993

1993 CHAPTER 46

An Act to consolidate the enactments relating to the Health Service Commissioners for England, for Wales and for Scotland with amendments to give effect to recommendations of the Law Commission and the Scottish Law Commission. [5th November 1993]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

- C1** Act applied (1.4.1999) by [S.I. 1999/686](#), art. 5(1), **Sch. Pt. II**
Act applied (with modifications)(1.4.1999) by [S.I. 1999/726](#), art. 5(1)(2), **Sch. Pt. II**
Act applied (6.4.2001) by [S.I. 2001/137](#), art. 5, **Sch. Pt. II**
Act applied (S.) (31.3.2002) by [S.S.I. 2002/103](#), art. 6, **Sch. Pt. II** (with art. 4(4))
Act applied (S.) (27.6.2002) by [S.S.I. 2002/305](#), art. 5, **Sch. Pt. II**

Commencement Information

- II** Act not in force at Royal Assent; Act wholly in force at 5. 2. 1994 see [s. 22\(4\)](#).

Health Service Commissioners

1 The Commissioners.

- (1) For the purpose of conducting investigations in accordance with this Act, there shall continue to be—
- (a) a Health Service Commissioner for England,
 - (b) a Health Service Commissioner for Wales, and
 - (c) a Health Service Commissioner for Scotland.

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) References in this Act to a Commissioner (or Health Service Commissioner) are, unless the context otherwise requires, to any of the Commissioners.
- (3) Schedule 1 has effect with respect to the appointment and remuneration of ^[F1], and other administrative matters relating to, the Health Service Commissioner for England and the Health Service Commissioner for Scotland; and Schedule 1A has effect with respect to the appointment and remuneration of, and other administrative matters relating to, the Health Service Commissioner for Wales].

Textual Amendments

F1 Words in s. 1(3) substituted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 2** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Health service bodies subject to investigation

2 The bodies subject to investigation.

- (1) The bodies subject to investigation by the Health Service Commissioner for England are—
- ^[F2](a) Health Authorities whose areas are in England,]
 - (c) Special Health Authorities to which this section applies exercising functions only or mainly in England, ^[F3]and
 - (ca) the National Assembly for Wales (“the Assembly”).]
 - (d) National Health Service trusts managing a hospital, or other establishment or facility, in England,
 - ^[F4](da) Primary Care Trusts established for areas in England]
 - (e)
 - (f) the Dental Practice Board, and
 - (g) the Public Health Laboratory Service Board.
- (2) The bodies subject to investigation by the Health Service Commissioner for Wales are—
- ^[F5](a) Health Authorities whose areas are in Wales,]
 - (b) Special Health Authorities to which this section applies exercising functions only or mainly in Wales ^[F6]and],
 - (c) National Health Service trusts managing a hospital, or other establishment or facility, in Wales, ^{F7}. . .
 - ^{F8}(d)
- (3) The bodies subject to investigation by the Health Service Commissioner for Scotland are—
- (a) Health Boards,
 - (b) National Health Service trusts established under section 12A of the ^{M1}National Health Service (Scotland) Act 1978,
 - (c) the Common Services Agency for the Scottish Health Service, ^{F9}. . .
 - (d) the Scottish Dental Practice Board ^[F10]and
 - (e) the Mental Welfare Commission for Scotland]

Status: Point in time view as at 01/04/2001.

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(4) References in this Act to a “health service body” are to any of the bodies mentioned above.

(5) The Special Health Authorities to which this section applies are those—

- (a) established on or before 1st April 1974, or
- (b) established after that date and designated ^{F11} . . . as ones to which this section applies.

[^{F12}(6) A designation for the purposes of subsection (5)(b) shall be made—

- (a) in the case of a Special Health Authority exercising functions only or mainly in Wales, by order made by the Assembly by statutory instrument, and
- (b) in any other case, by Order in Council;

and a statutory instrument containing an Order in Council made by virtue of paragraph (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Textual Amendments

- F2** S. 2(1)(a) substituted for s. 2(1)(a)(b) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III**, para. 126(2)(a) (with Sch. 2 paras. 6, 16)
- F3** S. 2(2)(ca) and preceding word “and” inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 3(2)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**
- F4** S. 2(1)(da) inserted (E.W.) (4.1.2000) by 1999 c. 8, s. 65, **Sch. 4 para. 85(2)(a)**; S.I. 1999/2342, art. 2(3), **Sch.**
- F5** S. 2(2)(a) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 126(2)(b)** (with Sch. 2 paras. 6, 16)
- F6** Word in S. 2(2)(b) repealed (1.4.1999) by 1998 c.38, s. 152, **Sch. 18 Pt. I** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1999/782, **art. 2**
- F7** Word in S. 2(2)(c) repealed (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5, 8, **Sch. 1 Pt. III para. 126(2)(b)**, **Sch. 3** (with Sch. 2 paras. 6, 16)
- F8** S. 2(2)(d) repealed (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 5, 8, **Sch. 1 Pt. III para. 126(2)(a)**, **Sch. 3** (with Sch. 2 paras. 6, 16)
- F9** Word in s. 2(3)(c) repealed (1.4.1996) by 1996 c. 5, ss. 4(1), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**
- F10** S. 2(3)(e) and preceding word “and” inserted (1.4.1996) by 1996 c. 5, s. 4(1); S.I. 1996/970, **art. 2(1)**
- F11** Words in s. 2(5)(b) repealed (1.7.1999) by 1998 c. 38, ss. 112, 152, **Sch. 10 para. 3(3)**, **Sch. 18 Pt. I** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1999/1290, **art. 4**
- F12** S. 2(6) substituted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 3(4)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Marginal Citations

- M1** 1978 c. 29.

[^{F13} *Persons subject to investigation*]

Textual Amendments

- F13** Ss. 2A, 2B and crossheading inserted (1.4.1996) by 1996 c. 5, s. 1; S.I. 1996/970, **art. 2(1)**

Status: Point in time view as at 01/04/2001.

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[^{F14}2A Health service providers subject to investigation.

- (1) Persons are subject to investigation by the Health Service Commissioner for England [^{F15}if they are [^{F16}or were at the time of the action complained of]—
- (a) individuals undertaking to provide in England general medical services or general dental services under Part II of the National Health Service Act 1977;
 - (b) persons (whether individuals or bodies) undertaking to provide in England general ophthalmic services or pharmaceutical services under Part II of that Act; or
 - (c) individuals performing in England personal medical services or personal dental services in accordance with arrangements made under section 28C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)]
- (2) Persons are subject to investigation by the Health Service Commissioner for Wales [^{F17}if they are [^{F18}or were at the time of the action complained of]—
- (a) individuals undertaking to provide in Wales general medical services or general dental services under Part II of the National Health Service Act 1977;
 - (b) persons (whether individuals or bodies) undertaking to provide in Wales general ophthalmic services or pharmaceutical services under Part II of that Act; or
 - (c) individuals performing in Wales personal medical services or personal dental services in accordance with arrangements made under section 28C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)]
- (3) Persons are subject to investigation by the Health Service Commissioner for Scotland [^{F19}if they are—
- (a) individuals undertaking to provide in Scotland general medical services or general dental services under Part II of the ^{M2}National Health Service (Scotland) Act 1978;
 - (b) persons (whether individuals or bodies) undertaking to provide in Scotland general ophthalmic services or pharmaceutical services under Part II of that Act; or
 - (c) individuals performing in Scotland personal medical services or personal dental services in accordance with arrangements made under section 17C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)]
- (4) In this Act—
- (a) references to a family health service provider are to any person mentioned in subsection (1), (2) or (3);
 - (b) references to family health services are to any of the services so mentioned.]

Textual Amendments

F14 S. 2A and sidenote inserted (1.4.1996) by 1996 c. 5, s. 1; S.I. 1996/970, art. 2(1)

F15 S. 2A(1)(a)(b)(c) and words in s. 2A(1) substituted for words in s. 2A(1) (1.4.1998 with effect as mentioned in art. 3(3) of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 68(2)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**

F16 Words in s. 2A(1) inserted (23.2.2001) by 2000 c. 28, **ss. 1(1)(2)(a), 4(2)** (with s. 3)

Status: Point in time view as at 01/04/2001.

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- F17** S. 2A(2)(a)(b)(c) and words in s. 2A(2) substituted for words in s. 2A(2) (1.4.1998 with effect as mentioned in art. 3(3) of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. 1 para. 68(3)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F18** Words in s. 2A(2) inserted (23.2.2001) by 2000 c. 28, **ss. 1(1)(2)(b)**, 4(2) (with s. 3)
- F19** S. 2A(3)(a)(b)(c) and words in s. 2A(3) substituted for words in s. 2A(3) (1.4.1998 with effect as mentioned in art. 3(3) of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. 1 para. 68(4)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**

Marginal Citations

- M2** 1978 c. 29.

[^{F20}2B Independent providers subject to investigation.

- (1) Persons are subject to investigation by the Health Service Commissioner for England if—
- they are [^{F21}or were at the time of the action complained of] persons (whether individuals or bodies) providing services in England under arrangements with health service bodies or family health service providers, and
 - they are not [^{F22}or were not at the time of the action complained of] themselves health service bodies or family health service providers.
- (2) Persons are subject to investigation by the Health Service Commissioner for Wales if—
- they are [^{F23}or were at the time of the action complained of] persons (whether individuals or bodies) providing services in Wales under arrangements with health service bodies or family health service providers, and
 - they are not [^{F24}or were not at the time of the action complained of] themselves health service bodies or family health service providers.

[Arrangements with the Assembly are not arrangements with a health service body
^{F25}(2A) for the purposes of this Act unless they are made in the exercise of a function of the Assembly relating to the National Health Service.]

- (3) Persons are subject to investigation by the Health Service Commissioner for Scotland if—
- they are persons (whether individuals or bodies) providing services in Scotland under arrangements with health service bodies or family health service providers, and
 - they are not themselves health service bodies or family health service providers.
- (4) The services provided under arrangements mentioned in subsection (1)(a), (2)(a) or (3)(a) may be services of any kind.
- (5) In this Act references to an independent provider are to any person providing services as mentioned in subsection (1), (2) or (3).]

Textual Amendments

- F20** S. 2B and sidenote inserted (1.4.1996) by 1996 c. 5, s. 1; S.I. 1996/970, art. 2(1)
- F21** Words in s. 2B(1)(a) inserted (23.2.2001) by 2000 c. 28, **ss. 1(1)(3)(a)**, 4(2) (with s. 3)
- F22** Words in s. 2B(1)(b) inserted (23.2.2001) by 2000 c. 28, **ss. 1(1)(3)(b)**, 4(2) (with s. 3)

Status: Point in time view as at 01/04/2001.

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- F23** Words in s. 2B(2)(a) inserted (23.2.2001) by 2000 c. 28, ss. 1(1)(3)(c), 4(2) (with s. 3)
F24 Words in s. 2B(2)(b) inserted (23.2.2001) by 2000 c. 28, ss. 1(1)(3)(d), 4(2) (with s. 3)
F25 S.2B(2A) inserted (1.4.1999) by 1998 c. 38, s. 112, Sch. 10 para. 4 (with ss. 139(2), 143(2)); S.I. 1999/782, art. 2

Matters subject to investigation

3 General remit of Commissioners.

(1) On a complaint duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of—

- (a) a failure in a service provided by a health service body,
- (b) a failure of such a body to provide a service which it was a function of the body to provide, or
- (c) maladministration connected with any other action taken by or on behalf of such a body,

the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.

[^{F26}(1YA) In the case of the Assembly the Health Service Commissioner for Wales may only conduct an investigation in respect of—

- (a) a failure in a service provided by the Assembly in the exercise of a function of the Assembly relating to the National Health Service (an “Assembly health service function”),
- (b) a failure of the Assembly to provide a service the provision of which is an Assembly health service function, or
- (c) maladministration connected with any other action taken by or on behalf of the Assembly in the exercise of an Assembly health service function.]

[^{F27}(1ZA) Any failure or maladministration mentioned in subsection (1) may arise from action of—

- (a) the health service body,
- (b) a person employed by that body,
- (c) a person acting on behalf of that body, or
- (d) a person to whom that body has delegated any functions.]

[^{F28}(1A) Where a family health service provider has undertaken to provide any family health services and a complaint is duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of—

- (a) action taken by the family health service provider in connection with the services,
- (b) action taken in connection with the services by a person employed by the family health service provider in respect of the services,
- (c) action taken in connection with the services by a person acting on behalf of the family health service provider in respect of the services, or
- (d) action taken in connection with the services by a person to whom the family health service provider has delegated any functions in respect of the services,

the Commissioner may, subject to the provisions of this Act, investigate the alleged action.

Status: Point in time view as at 01/04/2001.

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^{F29}(1B)

(1C) Where an independent provider has made an arrangement with a health service body or a family health service provider to provide a service (of whatever kind) and a complaint is duly made to a Commissioner by or on behalf of a person that he has sustained injustice or hardship in consequence of—

- (a) a failure in the service provided by the independent provider,
- (b) a failure of the independent provider to provide the service, or
- (c) maladministration connected with any other action taken in relation to the service,

the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.

(1D) Any failure or maladministration mentioned in subsection (1C) may arise from action of—

- (a) the independent provider,
- (b) a person employed by the provider,
- (c) a person acting on behalf of the provider, or
- (d) a person to whom the provider has delegated any functions.]

(2) In determining whether to initiate, continue or discontinue an investigation under this Act, a Commissioner shall act in accordance with his own discretion.

(3) Any question whether a complaint is duly made to a Commissioner shall be determined by him.

(4) Nothing in this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by a health service body in the exercise of a discretion vested in that body.

[^{F30}(5) Nothing in this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by—

- (a) a family health service provider,
- (b) a person employed by a family health service provider,
- (c) a person acting on behalf of a family health service provider, or
- (d) a person to whom a family health service provider has delegated any functions.

(6) Nothing in this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by—

- (a) an independent provider,
- (b) a person employed by an independent provider,
- (c) a person acting on behalf of an independent provider, or
- (d) a person to whom an independent provider has delegated any functions.]

[^{F31}(7) Subsections (4) to (6) do not apply to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.]

Textual Amendments

F26 S. 3(1YA) inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 5** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Status: Point in time view as at 01/04/2001.

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- F27** S. 3(1ZA) inserted (1.4.1998 with effect as mentioned in art. 3(3) of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. 1 para. 68(5)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F28** S. 3(1A)-(1D) inserted (1.4.1996 with effect as mentioned in art. 2(2) of S.I. 1996/970) by 1996 c. 5, s. 2(2); S.I. 1996/970, **art. 2(1)(2)**
- F29** S. 3(1B) repealed (1.10.1999 for E. and S. and 1.4.2000 for W.) by 1999 c. 8, s. 65, Sch. 4 para. 85(3), **Sch. 5**; S.I. 1999/2540, art. 2, **Sch. 1**; S.I. 1999/90, art. 2(b), **Sch. 2**; S.I. 2000/1041, art. 2(d), **Sch.**
- F30** S. 3(5)(6) inserted (1.4.1996) by 1996 c. 5, s. 2(3); S.I. 1996/970, **art. 2(1)**
- F31** S. 3(7) inserted (1.4.1996) by 1996 c. 5, s. 6(2); S.I. 1996/970, **art. 2(1)**

Matters excluded from investigation

4 Availability of other remedy.

- (1) A Commissioner shall not conduct an investigation in respect of action in relation to 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, or
 - a remedy by way of proceedings in any court of law,
- unless the Commissioner is satisfied that in the particular circumstances it is not reasonable to expect that person to resort or have resorted to it.
- (2) A Commissioner shall not conduct an investigation in respect of action which has been, or is, the subject of an inquiry under section 84 of the ^{M3}National Health Service Act 1977 or section 76 of the ^{M4}National Health Service (Scotland) Act 1978 (general powers to hold inquiries).
- (3) A Commissioner shall not conduct an investigation in respect of action [^{F32}by a health service body other than the Mental Welfare Commission for Scotland if it is action] in relation to which the protective functions of the Mental Welfare Commission for Scotland have been, are being or may be exercised under the ^{M5}Mental Health (Scotland) Act 1984.
- [^{F33}(4) Subsection (5) applies where—
- action by reference to which a complaint is made under section 3(1), (1A) or (1C) is action by reference to which a complaint can be made under a procedure operated by a health service body, a family health service provider or an independent provider, and
 - subsection (1), (2) or (3) does not apply as regards the action.
- (5) In such a case a Commissioner shall not conduct an investigation in respect of the action unless he is satisfied that—
- the other procedure has been invoked and exhausted, or
 - in the particular circumstances it is not reasonable to expect that procedure to be invoked or (as the case may be) exhausted.
- (6) Section 1(2) of the ^{M6}Hospital Complaints Procedure Act 1985 (which provides that no right of appeal etc. conferred under section 1 of that Act is to preclude an investigation under this Act) shall have effect subject to subsection (5) above.]

Status: Point in time view as at 01/04/2001.

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Textual Amendments

- F32** Words in S. 4(3) inserted (1.4.1996 with application as mentioned in art. 2(2) of S.I. 1996/970) by 1996 c. 5, s. 4(2); S.I. 1996/970, art. 2(1)
- F33** S. 4(4)-(6) inserted (1.4.1996) by 1996 c. 5, s. 5; S.I. 1996/970, art. 2(1)

Marginal Citations

- M3** 1977 c. 49.
- M4** 1978 c. 29.
- M5** 1984 c. 36.
- M6** 1985 c. 42.

F34 5

Textual Amendments

- F34** S. 5 repealed (1.4.1996 with application as mentioned in art. 2(2) of S.I. 1996/970) by 1996 c. 5, ss. 6(1), 13, Sch. 2; S.I. 1996/970, art. 2(1)

6 General health services and service committees.

F35(1)

F35(2)

(3) A Commissioner shall not conduct an investigation in respect of action taken by a [^{F36}Health Authority] in the exercise of its functions under the ^{M7}National Health Service (Service Committees and Tribunal) Regulations 1992, or any instrument amending or replacing those regulations.

(4) A Commissioner shall not conduct an investigation in respect of action taken by a Health Board in the exercise of its functions under the ^{M8}National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992, or any instrument amending or replacing those regulations.

[^{F37}(5) A Commissioner shall not conduct an investigation in respect of action taken by a Health Authority in the exercise of its functions under regulations made under section 29, 36, 39 or 42 of the ^{M9}National Health Service Act 1977 by virtue of section 17 of the ^{M10}Health and Medicines Act 1988 (investigations of matters relating to services).

(6) A Commissioner shall not conduct an investigation in respect of action taken by a Health Board in the exercise of its functions under regulations made under section 19, 25(2), 26(2) or 27(2) of the ^{M11}National Health Service (Scotland) Act 1978 by virtue of section 17 of the ^{M12}Health and Medicines Act 1988.]

Textual Amendments

- F35** S. 6(1)(2) repealed (1.4.1996) by 1996 c. 5, ss. 7(2), 13, Sch. 2; S.I. 1996/970, art. 2(1)
- F36** Words in s. 6(3) substituted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8 Sch. 1 Pt. III para. 126(3) (with Sch. 2 paras. 6, 16)

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F37 S. 6(5)(6) inserted (1.4.1996) by 1996 c. 5, s. 7(3); S.I. 1996/970, art. 2(1)

Marginal Citations

M7 S.I. 1992/664.
M8 S.I. 1992/434.
M9 1977 c. 49.
M10 1988 c. 49.
M11 1978 c. 29.
M12 1988 c. 49.

7 Personnel, contracts etc.

- (1) A Commissioner shall not conduct an investigation in respect of action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service under the ^{M13}National Health Service Act 1977 or the ^{M14}National Health Service (Scotland) Act 1978 [^{F38}or the ^{M15}National Health Service and Community Care Act 1990][^{F39}or service as a member of the staff of the Assembly].
- (2) A Commissioner shall not conduct an investigation in respect of action taken in matters relating to contractual or other commercial transactions, except for—
 - (a) matters relating to NHS contracts (as defined by section 4 of the ^{M16}National Health Service and Community Care Act 1990 and, in relation to Scotland, by section 17A of the National Health Service (Scotland) Act 1978), ^{F40} . . .
 - (b) matters arising from arrangements between a health service body and [^{F41}an independent provider for the provision of services by the provider][^{F42}and.
 - (c) matters arising from arrangements between a family health service provider and an independent provider for the provision of services by the independent provider.]
- (3) In determining what matters arise from arrangements mentioned in subsection (2)
 - (b) the Health Service Commissioners for England and for Wales shall disregard any arrangements for the provision of services at an establishment maintained by a Minister of the Crown mainly for patients who are members of the armed forces of the Crown.
- [^{F43}(3A) A Commissioner shall not conduct an investigation in pursuance of a complaint if—
 - (a) the complaint is in respect of action taken in any matter relating to arrangements made by a health service body and a family health service provider for the provision of family health services,
 - (b) the action is taken by or on behalf of the body or by the provider, and
 - (c) the complaint is made by the provider or the body.]
- [^{F44}(3B) Nothing in the preceding provisions of this section prevents a Commissioner conducting an investigation in respect of action taken by a health service body in operating a procedure established to examine complaints.]
- (4) Her Majesty may by Order in Council amend this section so as to permit the investigation by a Commissioner of any of the matters mentioned in subsection (1) or (2).

Status: Point in time view as at 01/04/2001.

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- (5) A statutory instrument containing an Order in Council made by virtue of subsection (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F38** Words in s. 7(1) inserted (1.4.1996) by 1996 c. 5, s. 8(2); S.I. 1996/970, art. 2(1)
- F39** Words in s. 7(1) inserted (1.4.1999) by 1998 c. 38, s. 112, Sch. 10 para. 6 (with ss. 139(2), 143(2)); S.I. 1999/782, art. 2
- F40** Word in s. 7(2)(a) repealed (1.4.1996) by 1996 c. 5, ss. 3, 13, Sch. 1 para. 2(2), Sch. 2; S.I. 1996/970, art. 2(1)
- F41** Words in s. 7(2)(b) substituted (1.4.1996) by 1996 c. 5, s. 3, Sch. 1 para. 2(3); S.I. 1996/970, art. 2(1)
- F42** S. 7(2)(c) and preceding word “and” inserted (1.4.1996) by 1996 c. 5, s. 3, Sch. 1 para. 2(4); S.I. 1996/970, art. 2(1)
- F43** S. 7(3A) inserted (1.4.1996) by 1996 c. 5, s. 3, Sch. 1 para. 2(5); S.I. 1996/970, art. 2(1)
- F44** S. 7(3B) inserted (1.4.1996) by 1996 c. 5, s. 8(3); S.I. 1996/970, art. 2(1)

Marginal Citations

- M13** 1977 c. 49.
- M14** 1978 c. 29.
- M15** 1990 c. 19.
- M16** 1990 c. 19.

[^{F45}7A Certain functions of Mental Welfare Commission for Scotland.

A Commissioner shall not conduct an investigation in respect of action taken by the Mental Welfare Commission for Scotland under section 33 (orders for discharge of hospital patients), 35I (revocation of community care orders) or 50 (orders discharging patients from guardianship) of the ^{M17}Mental Health (Scotland) Act 1984.]

Textual Amendments

- F45** S. 7A and sidenote inserted (1.4.1996) by 1996 c. 5, s. 4(3); S.I. 1996/970, art. 2(1)

Marginal Citations

- M17** 1984 c. 36.

Complaints

8 Individuals and bodies entitled to complain.

- (1) A complaint under this Act may be made by an individual or a body of persons, whether incorporated or not, other than a public authority.
- (2) In subsection (1), “public authority” means—
- (a) a local authority or other authority or body constituted for the purposes of the public service or of local government [^{F46}(including the Assembly)],

Status: Point in time view as at 01/04/2001.

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- (b) an authority or body constituted for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking, and
- (c) any other authority or body—
 - (i) whose members are appointed by Her Majesty or any Minister of the Crown or government department [^{F47}or by the Assembly], or
 - (ii) whose revenues consist wholly or mainly of money provided by Parliament [^{F48}or out of the Scottish Consolidated Fund][^{F47}or the Assembly].

Textual Amendments

F46 Words in s. 8(2)(a) inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 7(a)** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**

F47 Words in s. 8(2)(c)(i)(ii) inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 7(b)** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**

F48 Words in s. 8(2)(c) inserted (1.7.1999) by S.I. 1999/1820, **art. 4, Sch. 2 Pt. I para. 112(2)**; S.I. 1998/3178, **art. 3**

9 Requirements to be complied with.

- (1) The following requirements apply in relation to a complaint made to a Commissioner.
- (2) A complaint must be made in writing.
- (3) The complaint shall not be entertained unless it is made—
 - (a) by the person aggrieved, or
 - (b) where the person by whom a complaint might have been made has died or is for any reason unable to act for himself, by—
 - (i) his personal representative,
 - (ii) a member of his family, or
 - (iii) some body or individual suitable to represent him.
- (4) The Commissioner shall not entertain the complaint if it is made more than a year after the day on which the person aggrieved first had notice of the matters alleged in the complaint, unless he considers it reasonable to do so.

[^{F49}(4A) In the case of a complaint against a person who is no longer of a description set out in section 2A(1) or (2), but was of such a description at the time of the action complained of, the Commissioner shall not entertain the complaint if it is made more than three years after the last day on which the person was a family health service provider.

(4B) In the case of a complaint against a person falling within section 2B(1) or (2) in relation to whom there are no longer any such arrangements as are mentioned there, the Commissioner shall not entertain the complaint if it is made more than three years after the last day on which the person was an independent provider.]

^{F50}(5)

^{F51}(6)

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Textual Amendments

- F49** S. 9(4A)(4B) inserted (23.2.2001) by 2000 c. 28, ss. 2, 4(2) (with s. 3)
F50 S. 9(5) repealed (1.4.1996) by 1996 c. 5, ss. 9(a), 13, Sch. 2; S.I. 1996/970, art. 2(1)
F51 S. 9(6) repealed (1.4.1996) by 1996 c. 5, ss. 9(b), 13, Sch. 2; S.I. 1996/970, art. 2(1)

10 Referral of complaint by health service body.

- (1) A health service body may itself refer to a Commissioner a complaint made to that body 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 3(1).
- (2) A complaint may not be so referred unless it was made—
 - (a) in writing,
 - (b) by the person aggrieved or by a person authorised by section 9(3)(b) to complain to the Commissioner on his behalf, and
 - (c) not more than a year after the person aggrieved first had notice of the matters alleged in the complaint, or such later date as the Commissioner considers appropriate in any particular case.
- [^{F52}(2A) The Assembly may only refer a complaint under this section if it is in respect of a matter which the Health Service Commissioner for Wales can investigate by virtue of section 3(1YA).]
- (3) A health service body may not refer a complaint under this section after the period of one year beginning with the day on which the body received the complaint.
- (4) Any question whether a complaint has been duly referred to a Commissioner under this section shall be determined by him.
- (5) A complaint referred to a Commissioner under this section shall be deemed to be duly made to him.

Textual Amendments

- F52** S. 10(2A) inserted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 8 (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

Investigations

11 Procedure in respect of investigations.

- (1) Where a Commissioner proposes to conduct an investigation pursuant to a complaint under [^{F53}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.

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- [^{F54}(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
 - (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 [^{F55}made by the Health Service Commissioner for England or the Health Service Commissioner for Scotland] under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by the Treasury [^{F56}; and payments made by the Health Service Commissioner for Wales under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by him.]
- (5) The conduct of an investigation [^{F57}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.
- [^{F58}(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 ^{M18}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.

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Textual Amendments

- F53** 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)**
- F54** 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)**
- F55** Words in s. 11(4) inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 9(a)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**
- F56** Words in s. 11(4) inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 9(b)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**
- F57** 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)**
- F58** 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)

- C2** S. 11(1)(a)(5) modified (1.4.1996) by 1996/709, art. 9(3)(a)(i)(ii)

Marginal Citations

- M18** 1971 c. 77.

12 Evidence.

(1) For the purposes of an investigation [^{F59}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.

[^{F60}(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—

- (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,

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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

F59 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)**

F60 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)

C3 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.
- (3) Nothing in this section shall be construed as applying to the taking of any such action as is mentioned in section 11(5).

Reports

14 Reports by [^{F61}English and Scottish] Commissioners.

- (1) [^{F62}In any case where [^{F63}the Health Service Commissioner for England or the Health Service Commissioner for Scotland] conducts an investigation pursuant to a complaint under section 3(1) he shall send a report of the results of the investigation]—
- (a) to the person who made the complaint,
 - (b) to any member of the House of Commons [^{F64}or member of the Scottish Parliament] who to the Commissioner's knowledge assisted in the making of the complaint (or if he is no longer a member to such other member as the Commissioner thinks appropriate),
 - [^{F65}(c) to the health service body who at the time the report is made provides the service, or has the function, in relation to which the complaint was made.]

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- (d) to any person who is alleged in the complaint to have taken or authorised the action complained of, ^{F66}and]
 - ^{F67}(e) to the Secretary of State.]
- (2) In any case where ^{F63}the Health Service Commissioner for England or the Health Service Commissioner for Scotland] decides not to conduct an investigation ^{F68}pursuant to a complaint under section 3(1)]he shall send a statement of his reasons—
- (a) to the person who made the complaint, ^{F69}and]
 - (b) to any such member of the House of Commons ^{F64}or member of the Scottish Parliament] as is mentioned in subsection (1)(b), ^{F70} . . .
 - ^{F71}(c)
- ^{F72}(2A) In any case where ^{F63}the Health Service Commissioner for England or the Health Service Commissioner for Scotland] conducts an investigation pursuant to a complaint under section 3(1A) he shall send a report of the results of the investigation—
- (a) to the person who made the complaint,
 - (b) to any member of the House of Commons ^{F64}or member of the Scottish Parliament] who to the Commissioner’s knowledge assisted in the making of the complaint (or if he is no longer a member to such other member as the Commissioner thinks appropriate),
 - (c) to any person by reference to whose action the complaint is made,
 - (d) to the family health service provider (if he does not fall within paragraph (c)),
 - (e) to any health service body with whom the family health service provider is subject to an undertaking to provide family health services, and
 - (f) to the Secretary of State.
- (2B) In any case where ^{F63}the Health Service Commissioner for England or the Health Service Commissioner for Scotland] decides not to conduct an investigation pursuant to a complaint under section 3(1A) he shall send a statement of his reasons—
- (a) to the person who made the complaint, and
 - (b) to any such member of the House of Commons ^{F64}or member of the Scottish Parliament] as is mentioned in subsection (2A)(b).
- (2C) In any case where ^{F63}the Health Service Commissioner for England or the Health Service Commissioner for Scotland] conducts an investigation pursuant to a complaint under section 3(1C) he shall send a report of the results of the investigation—
- (a) to the person who made the complaint,
 - (b) to any member of the House of Commons ^{F64}or member of the Scottish Parliament] who to the Commissioner’s knowledge assisted in the making of the complaint (or if he is no longer a member to such other member as the Commissioner thinks appropriate),
 - (c) to any person who is alleged in the complaint to have taken or authorised the action complained of,
 - (d) to the independent provider,
 - (e) to the health service body or family health service provider with whom the independent provider made the arrangement to provide the service concerned, and
 - (f) to the Secretary of State.

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- (2D) In any case where [^{F63}the Health Service Commissioner for England or the Health Service Commissioner for Scotland] decides not to conduct an investigation pursuant to a complaint under section 3(1C) he shall send a statement of his reasons—
- (a) to the person who made the complaint, and
 - (b) to any such member of the House of Commons [^{F64}or member of the Scottish Parliament] as is mentioned in subsection (2C)(b).]
- (3) If after conducting an investigation it appears to [^{F63}the Health Service Commissioner for England or the Health Service Commissioner for Scotland] that—
- (a) the person aggrieved has sustained such injustice or hardship as is mentioned in section 3(1) [^{F73}, (1A) or (1C)], and
 - (b) the injustice or hardship has not been and will not be remedied,
- he may if he thinks fit [^{F74}lay before each House of Parliament a special report on the case.].
- [^{F75}(4) [^{F76}The Health Service Commissioner for England and the Health Service Commissioner for Scotland]—
- (a) shall [^{F77}each] annually lay before each House of Parliament a general report on the performance of his functions under this Act, and
 - (b) may [^{F77}each] from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit.]
- (5) For the purposes of the law of defamation, the publication of any matter by [^{F63}the Health Service Commissioner for England or the Health Service Commissioner for Scotland] in sending or making a report or statement in pursuance of this section shall be absolutely privileged.

Extent Information

E1 S. 14(5) extends to Northern Ireland see s. 22(2)(a).

Textual Amendments

- F61** Words in sidenote to s. 14 inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 10(4)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**
- F62** Words in s. 14(1) substituted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 5(2)**; S.I. 1996/970, **art. 2(1)**
- F63** Words in s. 14(1)(2)(2A)(2B)(2C)(2D)(3)(5) substituted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 10(2)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**
- F64** Words in s. 14(1)(b)(2)(b)(2A)(b)(2B)(b)(2C)(b)(2D)(b) inserted (1.7.1999) by S.I. 1999/1820, **art. 4, Sch. 2 Pt. I para. 112(3)**; S.I. 1998/3178, **art. 3**
- F65** S. 14(1)(c) substituted (1.4.1996) by 1996 c. 5, s. 10(2); S.I. 1996/970, **art. 2(1)**
- F66** Word in s. 14(1)(d) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 126(4)(a)** (with Sch. 2 paras. 6, 16)
- F67** S. 14(e) substituted for s. 14(e)(f) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 126(4)(b)** (with Sch. 2 paras. 6, 16)
- F68** Words in s. 14(2) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 5(3)**; S.I. 1996/970, **art. 2(1)**
- F69** Word in s. 14(2)(a) inserted (1.4.1996) by 1996 c. 5, s. 10(3)(a); S.I. 1996/970, **art. 2(1)**
- F70** Word in s. 14(2)(b) repealed (1.4.1996) by 1996 c. 5, ss. 10(3)(b), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**
- F71** S. 14(2)(c) repealed (1.4.1996) by 1996 c. 5, ss. 10(3)(b), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**
- F72** S. 14(2A)-(2D) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 5(4)**; S.I. 1996/970, **art. 2(1)**
- F73** Words in s. 14(3)(a) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 5(5)**; S.I. 1996/970, **art. 2(1)**
- F74** Words in s. 14(3) substituted (1.4.1996) by 1996 c. 5, s. 10(4); S.I. 1996/970, **art. 2(1)**
- F75** S. 14(4) substituted (1.4.1996) by 1996 c. 5, s. 10(5); S.I. 1996/970, **art. 2(1)**

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F76 Words in s. 14(4) substituted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 10(3)(a)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

F77 Words in s. 14(4) inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 10(3)(b)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Modifications etc. (not altering text)

C4 S. 14(1)(c) applied with modifications (1.4.1996) by S.I. 1996/709, **art. 9(3)(c)**

[^{F78}**14A Reports by Welsh Commissioner.**

- (1) In any case where the Health Service Commissioner for Wales has conducted an investigation pursuant to a complaint under section 3(1), (1A) or (1C) he shall prepare a report of the results of the investigation and send copies of it—
 - (a) to the person who made the complaint,
 - (b) to any Assembly member who to the Commissioner's knowledge assisted in the making of the complaint (or, if he is no longer an Assembly member, to such Assembly member as the Commissioner thinks appropriate), and
 - (c) to the Assembly First Secretary.
- (2) He shall also send a copy of the report—
 - (a) in the case of a complaint under section 3(1)—
 - (i) to the health service body who at the time of the report provides the service, or has the function, in relation to which the complaint was made, and
 - (ii) to any person who is alleged in the complaint to have taken or authorised the action complained of,
 - (b) in the case of a complaint under section 3(1A)—
 - (i) to any person by reference to whose action the complaint is made,
 - (ii) to the family health service provider (if he does not fall within subparagraph (i)), and
 - (iii) to any health service body with whom the family health service provider is subject to an undertaking to provide family health services, and
 - (c) in the case of a complaint under section 3(1C)—
 - (i) to any person who is alleged in the complaint to have taken or authorised the action complained of,
 - (ii) to the independent provider, and
 - (iii) to the health service body or family health service provider with whom the independent provider made the arrangement to provide the service concerned.
- (3) In any case where the Health Service Commissioner for Wales decides not to conduct an investigation pursuant to a complaint under section 3(1), (1A) or (1C) he shall prepare a statement of his reasons for not conducting an investigation and shall send copies of it—
 - (a) to the person who made the complaint, and
 - (b) to any Assembly member who to the Commissioner's knowledge assisted in the making of the complaint (or, if he is no longer an Assembly member, to such Assembly member as the Commissioner thinks appropriate).]

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Textual Amendments

F78 S. 14A and sidenote inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 11** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

[^{F79}14B Action in response to reports by Welsh Commissioner.

- (1) Where the Assembly First Secretary receives a copy of a report under section 14A(1), he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56 of the Government of Wales Act 1998) for the exercise of any functions of the Assembly relating to the National Health Service.
- (2) Where in a report under section 14A(1) the Health Service Commissioner for Wales states that the person aggrieved has sustained such injustice or hardship as is mentioned in section 3(1), (1A) or (1C), any body or provider subject to the investigation shall consider the report and within—
 - (a) the period of three months beginning with the date on which the body or provider received the report, or
 - (b) such longer period as the Commissioner may agree in writing,
 shall notify the Commissioner of the action taken or proposed to be taken.
- (3) The Health Service Commissioner for Wales shall prepare a further report if he—
 - (a) does not receive the notification required by subsection (2) within the period allowed by or under that subsection,
 - (b) is not satisfied with the action taken or proposed to be taken, or
 - (c) does not within the period of three months beginning with the end of the period allowed by or under subsection (2), or such longer period as the Commissioner may agree in writing, receive confirmation from the body or provider that action has been taken, as proposed, to his satisfaction.
- (4) The further report shall set out those facts and make such recommendations as the Health Service Commissioner for Wales thinks fit to make with respect to action which, in his opinion, should be taken—
 - (a) to remedy the injustice or hardship to the person aggrieved, and
 - (b) to prevent similar injustice or hardship being caused in the future;
 and a copy of the further report shall be sent to each of the persons to whom a copy of the report under section 14A(1) was sent.
- (5) Where the Assembly First Secretary receives a copy of a further report, he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56 of the Government of Wales Act 1998) for the exercise of any functions of the Assembly relating to the National Health Service.
- (6) Where the Assembly First Secretary receives a copy of a further report arising from an investigation relating to the Assembly, he shall also—
 - (a) lay a copy of it before the Assembly, and
 - (b) (unless action to the satisfaction of the Health Service Commissioner for Wales has been taken or proposed) give to the Assembly notice of his intention to move that the Assembly resolve to approve the recommendations specified in it.

Status: Point in time view as at 01/04/2001.

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- (7) The standing orders of the Assembly must make provision for any motion of which notice has been given pursuant to subsection (6)(b) to be moved as soon as is reasonably practicable (unless action to the satisfaction of the Health Service Commissioner for Wales has been taken or proposed).]

Textual Amendments

F79 S. 14B and sidenote inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 11** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

[^{F80}14C Reports: supplementary.

- (1) Apart from identifying any body or provider investigated, a report under section 14A(1), a further report under section 14B(3) or a report under paragraph 7 of Schedule 1A shall not—
- (a) mention the name of any person, or
 - (b) include any particulars which, in the opinion of the Health Service Commissioner for Wales, are likely to identify any person and can be omitted without impairing the effectiveness of the report or further report,
- unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Commissioner considers it necessary for the report or further report to mention his name or include such particulars.
- (2) For the purposes of the law of defamation, the following are absolutely privileged—
- (a) the publication of any matter by the Health Service Commissioner for Wales in a report or statement under section 14A, a further report under section 14B(3) or a report under paragraph 7 of Schedule 1A,
 - (b) the publication of any matter in communications between—
 - (i) an Assembly member or a member of the Assembly's staff or a member or an officer or member of the staff of any other body or provider subject to investigation by the Commissioner, and
 - (ii) the Commissioner or a member of his staff,in connection with a complaint to the Commissioner,
 - (c) the publication of any matter in communications between any person and an Assembly member in connection with a complaint by the person to the Commissioner, and
 - (d) the publication of any matter in communications between any person and the Commissioner or a member of his staff in connection with a complaint by the person to the Commissioner.]

Textual Amendments

F80 S. 14C and sidenote inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 11** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

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Information and consultation

15 Confidentiality of information.

- (1) Information obtained by a Commissioner or his officers in the course of or for the purposes of an investigation shall not be disclosed except—
- (a) for the purposes of the investigation and any report to be made in respect of it,
 - (b) for the purposes of any proceedings for—
 - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by virtue of this Act by a Commissioner or any of his officers, or
 - (ii) an offence of perjury alleged to have been committed in the course of the investigation,
 - (c) for the purposes of an inquiry with a view to the taking of such proceedings as are mentioned in paragraph (b),^{F81} . . .
 - (d) for the purposes of any proceedings under section 13 (offences of obstruction and contempt) [^{F82}or
 - (e) [^{F83}where the information is to the effect that any person is likely to constitute a threat to the health or safety of patients]as permitted by subsection (1B).]

^{F84} [Subsection (1B) applies where, in the course of an investigation, a Commissioner or^{F85}(1A) any of his officers obtains information which—

- (a) does not fall to be disclosed for the purposes of the investigation or any report to be made in respect of it, and
- (b) is to the effect that a person is likely to constitute a threat to the health or safety of patients.]

(1B) In [^{F86}a case within subsection (1)(e)] the Commissioner may disclose the information to any persons to whom he thinks it should be disclosed in the interests of the health and safety of patients [^{F87}; and a person to whom disclosure may be made may, for instance, be a body which regulates the profession to which the person mentioned in subsection (1A)(b) belongs or his employer or any person with whom he has made arrangements to provide services.]

(1C) If a Commissioner discloses information as permitted by subsection (1B) he shall—

- [where he knows the identity of the person mentioned in subsection (1)(e),^{F88}(a) inform that person that he has disclosed the information and of the identity of any person to whom he has disclosed it, and
- (b) inform the person from whom the information was obtained that he has disclosed it.]]

(2) Neither a Commissioner nor his officers [^{F89}nor his advisers] shall be called on to give evidence in any proceedings, other than proceedings mentioned in subsection (1), of matters coming to his or their knowledge in the course of an investigation under this Act.

^{F90}(3) The reference in subsection (2) to a Commissioner's advisers is a reference to persons from whom the Commissioner obtains advice under paragraph 13 of Schedule 1 [^{F91}or paragraph 6(6) of Schedule 1A].]

^{F92}(4) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 shall be treated for the purposes of subsection (1) as obtained for the purposes of an investigation and, in relation to such information,

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the reference in paragraph (a) of that subsection to the investigation shall have effect as a reference to any investigation.]

Textual Amendments

- F81** Word in s. 15(1)(c) repealed (1.4.1996) by 1996 c. 5, ss. 11(2), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**
- F82** S. 15(1)(e) and preceding word “or” inserted (1.4.1996) by 1996 c. 5, **s. 11(2)**; S.I. 1996/970, **art. 2(1)**
- F83** Words in s. 15(1)(e) inserted (1.10.1999 for E.W., 1.3.2000 for S.) by 1999 c. 8, **s. 43(2)**; S.S.I. 2000/38, **art. 2**
- F84** S. 15(1A)-(1C) inserted (1.4.1996) by 1996 c. 5, **s. 11(3)**; S.I. 1996/970, **art. 2(1)**
- F85** S. 15(1A) repealed (1.10.1999 for E.W., 1.3.2000 for S.) by 1999 c. 8, ss. 43(3), 65, **Sch. 5**; S.I. 1999/2540, **art. 2(1)(b)**; S.S.I. 2000/38, **art. 2**
- F86** Words in s. 15(1B) substituted (1.10.1999 for E.W., 1.3.2000 for S. otherwise *prosp.*) by 1999 c. 8, **s. 43(4)(a)**; S.I. 1999/2540, **art. 2(1)(b)**; S.S.I. 2000/38, **art. 2**
- F87** Words in s. 15(1B) repealed (1.10.1999 for E.W., 1.3.2000 for S. otherwise *prosp.*) by 1999 c. 8, ss. 43(4)(b), 65, **Sch. 5**; S.I. 1999/2540, **art. 2(1)(b)**; S.S.I. 2000/38, **art. 2**
- F88** S. 15(1C)(a)(b) substituted (1.10.1999 for E.W., 1.3.2000 for S. otherwise *prosp.*) by 1999 c. 8, **s. 43(5)**; S.I. 1999/2540, **art. 2(1)(b)**; S.S.I. 2000/38, **art. 2**
- F89** Words in s. 15(2) inserted (1.4.1996) by 1996 c. 5, **s. 11(4)**; S.I. 1996/970, **art. 2(1)**
- F90** S. 15(3) inserted (1.4.1996) by 1996 c. 5, **s. 11(5)**; S.I. 1996/970, **art. 2(1)**
- F91** Words in s. 15(3) inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 12** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**
- F92** S. 15(4) inserted (30.1.2001) by 2000 c. 36, ss. 76(2), 87(2)(b), **Sch. 7 para. 5** (with ss. 56, 78)

16 Information prejudicial to the safety of the State.

- (1) A Minister of the Crown may give notice in writing to a Commissioner with respect to any document or information specified in the notice that in the Minister’s opinion the disclosure of the document or information would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (2) Where such a notice is given to a Commissioner, nothing in this Act shall be construed as authorising or requiring him or any of his officers to communicate to any person or for any purpose any document or information specified in the notice.
- (3) References above to a document or information include references to a class of document or a class of information.

17 Use of information by Commissioner in other capacity.

- (1) This section applies where a Commissioner also holds either of the other offices of Health Service Commissioner [^{F93}, the office of Welsh Administration Ombudsman] or the office of Parliamentary Commissioner (an “additional office”).
- (2) Where—
 - (a) a person initiates a complaint to the Commissioner as the holder of the additional office, and
 - (b) the complaint relates partly to a matter with respect to which that person has previously initiated, or subsequently initiates, a complaint to the Commissioner in his capacity as such,information obtained by the Commissioner or his officers in the course of or for the purposes of the investigation of that other complaint may be disclosed for the purposes

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of carrying out his functions in relation to the complaint initiated to him as the holder of the additional office.

Textual Amendments

F93 Words in s. 17(1) inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 13** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**

Modifications etc. (not altering text)

C5 S. 17 extended (1.7.1999) by S.I. 1999/1351, **art. 17(5)(a)**; S.I. 1998/3178, **art. 3**

18 Consultation during investigations.

(1) Where a Commissioner, at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation—

- (a) by either of the other Health Service Commissioners under this Act,
- (b) by the Parliamentary Commissioner under the ^{M19}Parliamentary Commissioner Act 1967,
- ^{F94}(ba) by the Welsh Administration Ombudsman under the Government of Wales Act 1998,]
- (c) by a Local Commissioner under Part III of the ^{M20}Local Government Act 1974, or
- (d) by the Commissioner for Local Administration in Scotland under Part II of the ^{M21}Local Government (Scotland) Act 1975,

he shall consult about the complaint with the appropriate Commissioner [^{F95}or the Ombudsman] and, if he considers it necessary, he shall inform the person initiating the complaint of the steps necessary to initiate a complaint to that Commissioner [^{F95}or the Ombudsman].

(2) Where a Commissioner consults with another Commissioner [^{F96}or the Welsh Administration Ombudsman] in accordance with this section, the consultations may extend to 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.

(3) Nothing in section 15 (confidentiality of information) applies in relation to the disclosure of information [^{F97}. . .] in the course of consultations held in accordance with this section.

Textual Amendments

F94 S. 18(1)(ba) inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 14(2)** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**

F95 Words in s. 18(1) inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 14(2)** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**

F96 Words in s. 18(2) inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 14(3)** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**

F97 Words in s. 18(3) repealed (1.4.1999) by 1998 c. 38, ss. 112, 152, Sch. 10 para. 14(4), **Sch. 18 Pt. I** (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1999/782, **art. 2**

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Modifications etc. (not altering text)

C6 S. 18 extended (1.7.1999) by S.I. 1999/1351, **art. 17(5)(a)**; S.I. 1998/3178, **art. 3**

C7 S. 18(1)(b) extended (1.7.1999) by S.I. 1999/1351, **art. 17(5)(b)**; S.I. 1998/3178, **art. 3**

Marginal Citations

M19 1967 c. 13.

M20 1974 c. 7.

M21 1975 c. 30.

[^{F98}18A Disclosure of information to Information Commissioner.

- (1) The Health Service Commissioner for England or the Health Service Commissioner for Wales may disclose to the Information Commissioner any information obtained by, or furnished to, the Health Service Commissioner under or for the purposes of this Act if the information appears to the Health Service Commissioner to relate to—
 - (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
 - (i) Part V of the Data Protection Act 1998 (enforcement),
 - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
 - (iii) Part IV of that Act (enforcement), or
 - (b) the commission of an offence under—
 - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
 - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (3) Nothing in section 15 (confidentiality of information) applies in relation to the disclosure of information in accordance with this section.]

Textual Amendments

F98 S. 18A and sidenote inserted (30.1.2001) by 2000 c. 36, ss. 76(2), 87(2)(b), **Sch. 7 para. 6** (with ss. 56, 78)

Supplementary

19 Interpretation.

In this Act—

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

[^{F99}[^{F100}“allotted sum” shall be construed in accordance with section 15 of the ^{M22}National Health Service and Community Care Act 1990 or, in Scotland, section 87B of the ^{M23}National Health Service (Scotland) Act 1978;]]

[^{F101}“the Assembly” means the National Assembly for Wales;]

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“the Court” 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 in Northern Ireland;

[^{F102}“family health services” has the meaning given by section 2A;

“family health service provider” has the meaning given by section 2A;]

[^{F103}“financial year” and “first financial year of the Assembly” have the same meanings as in the Government of Wales Act 1998;]

“functions” includes powers and duties;

“health service body” has the meaning given by section 2;

[^{F104}“independent provider” has the meaning given by section 2B;]

“local authority” means—

(a) in relation to England ^{F105} . . . , a county, district or London borough council or the Common Council of the City of London,

[^{F106}(aa) in relation to Wales, a county council or county borough council,]

(b) in relation to Scotland, a regional, district or islands council;

“officer” includes employee [^{F107}and, in the case of the Health Service Commissioner for Wales, any member of his staff;]

“Parliamentary Commissioner” means Parliamentary Commissioner for Administration;

“patient” includes an expectant or nursing mother and a lying-in woman;
^{F108} . . .

“person aggrieved” means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 3(1) [^{F109}, (1A) or (1C)].

[^{F110}[^{F111}“recognised fund-holding practice” shall be construed in accordance with section 14 of the National Health Service and Community Care Act 1990 or, in Scotland, section 87A of the National Health Service (Scotland) Act 1978.]]

Textual Amendments

- F99** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(2)**; S.I. 1996/970, **art. 2(1)**
- F100** Words in s. 19 repealed (1.10.1999 for E.S., 1.4.2000 for W.) by 1999 c. 8, s. 65, **Sch. 4 para. 85(4)**, **Sch. 5**; S.I. 1999/2540, **art. 2, Sch. 1**; S.I. 1999/90, **art. 2, Sch. 2**; S.I. 2000/1026, **art. 2(1), Sch.**
- F101** Words in s. 19 inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 15(2)** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**
- F102** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(3)**; S.I. 1996/970, **art. 2(1)**
- F103** S. 19: definition of “financial year” inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 15(3)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**
- F104** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(4)**; S.I. 1996/970, **art. 2(1)**
- F105** Words in s. 19 repealed (1.4.1996) by 1994 c. 19, s. 66(6)(8), **Sch. 16 para. 108, Sch. 18** (with ss. 54(5)(7), 55(5), **Sch. 17 para. 22(1), 23(2)**); S.I. 1996/396, **art. 4, Sch. 2**
- F106** Words in s. 19 inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 108** (with ss. 54(5)(7), 55(5), **Sch. 17 para. 22(1), 23(2)**); S.I. 1996/396, **art. 4, Sch. 2**
- F107** S. 19: words in definition of “officer” inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 15(4)** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**
- F108** Word in s. 19 repealed (1.4.1996) by 1996 c. 5, ss. 3, 13, **Sch. 1 para. 6(5), Sch. 2**; S.I. 1996/970, **art. 2(1)**
- F109** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(6)**; S.I. 1996/970, **art. 2(1)**
- F110** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(7)**; S.I. 1996/970, **art. 2(1)**

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F111 Words in s. 19 repealed (1.10.1999 for E.S., 1.4.2000 for W.) by 1999 c. 8, s. 65, Sch. 4 para. 85(4), Sch. 5; S.I. 1999/2540, art. 2, Sch. 1; S.I. 1999/90, art. 2, Sch. 2; S.I. 2000/1026, art. 2(1), Sch.

Marginal Citations

M22 1990 c. 19.

M23 1978 c. 29.

20 Consequential amendments and repeals.

- (1) Schedule 2 to this Act (which contains amendments consequential on this Act) has effect.
- (2) The enactments set out in Schedule 3 are repealed to the extent specified.

21 Transitional provisions.

- (1) The repeal and re-enactment of provisions in this Act does not affect the continuity of the law.
- (2) Anything done, or having effect as if done, under a provision reproduced in this Act has effect as if done under the corresponding provision of this Act.
- (3) Any reference (express or implied) in this Act or any other enactment, or in any instrument or document, to a provision of this Act shall (so far as the context permits) be construed as (according to the context) being or including in relation to times, circumstances or purposes before the commencement of this Act a reference to the corresponding provision repealed in this Act.
- (4) Any reference (express or implied) in this Act or any other enactment, or in any instrument or document, to a provision repealed in this Act shall (so far as the context permits) be construed as (according to the context) being or including in relation to times, circumstances or purposes after the commencement of this Act a reference to the corresponding provision of this Act.
- (5) Subsection (4) is subject to Schedule 2.

22 Short title, extent and commencement.

- (1) This Act may be cited as the Health Service Commissioners Act 1993.
- (2) The following provisions of this Act extend to Northern Ireland—
 - (a) sections 11, 12, 13, 14(5), 15, 16 and this section;
 - (b) section 19 so far as it relates to provisions mentioned in this subsection;
 - (c) Schedule 2 so far as it amends any enactment which extends to Northern Ireland; and
 - (d) Schedule 3 so far as it repeals any enactment which extends to Northern Ireland.
- (3) The Secretary of State may by order provide that this Act shall apply to the Isles of Scilly with such modifications, if any, as are specified in the order.

Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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- (4) This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.

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SCHEDULES

SCHEDULE 1

Section 1(3).

THE ^{F112}ENGLISH AND SCOTTISH] COMMISSIONERS

Textual Amendments

F112 Sch. 1: words in heading inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 16(2)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

^{F113} *Introductory*

Textual Amendments

F113 Sch. 1 para A1 and crossheading inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 16(3)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

^{F114}A1 In this Schedule references to a Commissioner (or Health Service Commissioner) are to the Health Service Commissioner for England or the Health Service Commissioner for Scotland or to either of those Commissioners (as the context requires).]

Textual Amendments

F114 Sch. 1 para. A1 inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 16(3)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Appointment of Commissioners

- 1 (1) Her Majesty may by Letters Patent appoint a person to be a Commissioner and a person so appointed shall hold office during good behaviour.
- (2) A person appointed to be a Commissioner—
 - (a) may at his own request be relieved of office by Her Majesty, or
 - (b) ^{F115}except in the case of the Health Service Commissioner for Scotland]may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament; ^{F116}or
 - (c) in the case of the Health Service Commissioner for Scotland may be removed from office by Her Majesty in consequence of a resolution of the Scottish Parliament;]

and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five.

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- (3) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed to be the Commissioner is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.

Textual Amendments

F115 Words in Sch. 1 para. 1(2)(b) inserted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 112(4)(a); S.I. 1998/3178, art. 3

F116 Sch. 1 para. 1(2)(c) and preceding “or” inserted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 112(4)(b); S.I. 1998/3178, art. 3

Appointment of acting Commissioners

- 2 (1) [^{F117}Where either] of the offices of Commissioner becomes vacant, Her Majesty may, pending the appointment of the new Commissioner, appoint a person under this paragraph to act as that Commissioner at any time during the period of twelve months beginning with the date on which the vacancy arose.
- (2) A person appointed under this paragraph shall hold office during Her Majesty’s pleasure and, subject to that, shall hold office—
- (a) until the appointment of the new Commissioner or the expiry of the period of twelve months beginning with the date on which the vacancy arose, whichever occurs first, and
 - (b) in other respects, in accordance with the terms and conditions of his appointment which shall be such as the Secretary of State may, with the approval of the Treasury, determine.
- (3) A person appointed under this paragraph shall, while he holds office, be treated for all purposes except those of paragraphs 4 to 10 as the Commissioner.

Textual Amendments

F117 Words in Sch. 1 para. 2(1) substituted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 16(4) (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

Modifications etc. (not altering text)

C8 Sch 1. para. 2: transfer of certain functions (1.4.1995) by S.I. 1995/269, art. 3, Sch. para. 24

Ineligibility of certain persons for appointment

- 3 (1) A person who is a member of a relevant health service body shall not be appointed a Commissioner or acting Commissioner; and a person so appointed shall not, during his appointment, become a member of such a body.
- (2) For this purpose a “relevant health service body” means—
- (a) in relation to the Health Service Commissioner for England^{F118} . . . or a person appointed to act as such, a body mentioned in section 2(1) or (2), and
 - (b) in relation to the Health Service Commissioner for Scotland or a person appointed to act as such, a body mentioned in section 2(3) or any management committee of such a body.

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F118 Words in [Sch. 1 para. 3\(2\)\(a\)](#) repealed (1.7.1999) by [1998 c. 38, ss. 112, 152, Sch. 10 para. 16\(5\)](#), [Sch. 18 Pt. I](#) (with [ss. 137\(1\), 139\(2\), 141\(1\), 143\(2\)](#)); [S.I. 1999/1290, art. 4](#)

[^{F119}3A(1) A person who is a relevant family health service provider shall not be appointed a Commissioner or acting Commissioner; and a person so appointed shall not, during his appointment, become a relevant family health service provider.

- (2) For this purpose a “relevant family health service provider” means—
- (a) in relation to the Health Service Commissioner for England ^{F120} . . . or a person appointed to act as such, a person mentioned in [section 2A\(1\) or \(2\)](#), and
 - (b) in relation to the Health Service Commissioner for Scotland or a person appointed to act as such, a person mentioned in [section 2A\(3\)](#).]

Textual Amendments

F119 [Sch. 1 para. 3A](#) inserted (1.4.1996) by [1996 c. 5, s. 3, Sch. 1 para. 7](#); [S.I. 1996/970, art. 2\(1\)](#)

F120 Words in [Sch. 1 para. 3A\(2\)\(a\)](#) repealed (1.7.1999) by [1998 c. 38, ss. 112, 152, Sch. 10 para. 16\(5\)](#), [Sch. 18 Pt. I](#) (with [ss. 137\(1\), 139\(2\), 141\(1\), 143\(2\)](#)); [S.I. 1999/1290, art. 4](#)

Salaries

4 [^{F121}(a)] There shall be paid to the holder of the office of a Commissioner the same salary as if he were employed in the civil service of the State in such appointment 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 such other date as may be specified in it.

[^{F122}(b) in relation to the Health Service Commissioner for Scotland the reference in subparagraph (a) above to the House of Commons shall be construed as a reference to the Scottish Parliament.]

Textual Amendments

F121 [Sch. 1 para. 4](#): “(a)” inserted (1.7.1999) by [S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 112\(4\)\(c\)\(i\)](#); [S.I. 1998/3178, art. 3](#)

F122 [Sch. 1 para. 4\(b\)](#) inserted (1.7.1999) by [S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 112\(4\)\(c\)\(ii\)](#); [S.I. 1998/3178, art. 3](#)

5 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.

6 (1) Where a person holds—

- (a) the office of Parliamentary Commissioner, and
- (b) [^{F123}either or both] of the offices of Health Service Commissioner,

he shall, so long as he does so, be entitled only to the salary pertaining to the office of Parliamentary Commissioner.

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Where a person holds [^{F124}both] of the offices of Health Service Commissioner he shall, so long as he does so, be entitled only to the salary pertaining to such one of those offices as he selects.

Textual Amendments

F123 Words in Sch. 1 para. 6(1)(b) substituted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 16(6)(a) (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

F124 Words in Sch. 1 para. 6(2) substituted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 16(6)(b) (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

Modifications etc. (not altering text)

C9 Sch. 1 para. 6 extended (1.7.1999) by S.I. 1999/1351, art. 17(5)(a); S.I. 1998/3178, art. 3

Pensions and other benefits

- 7 Schedule 1 to the ^{M24}Parliamentary Commissioner Act 1967 (which relates to pensions and other benefits) has effect with respect to persons who hold or have held office as a Commissioner as it has effect with respect to persons who hold or have held office as the Parliamentary Commissioner.

Marginal Citations

M24 1967 c. 13.

- 8 In computing the salary of a former holder of the office of Commissioner for the purposes of Schedule 1 to the 1967 Act, there shall be disregarded—
- (a) any abatement of that salary under paragraph 5,
 - (b) any temporary abatement of that salary in the national interest, and
 - (c) any voluntary surrender of that salary in whole or in part.
- 9 (1) In this paragraph, “relevant office” means the office of Parliamentary Commissioner or any of the offices of Health Service Commissioner.
- (2) The Treasury may by regulations provide that Schedule 1 to the Parliamentary Commissioner Act 1967 shall have effect, in relation to persons who have held more than one relevant office, with such modifications as it considers necessary in consequence of those persons having held more than one such office; and different regulations may be made in pursuance of paragraph 4 of Schedule 1 to the 1967 Act in relation to different relevant offices.
- (3) A person shall not be entitled to make simultaneously different elections in pursuance of paragraph 1 or 2 of Schedule 1 to the 1967 Act in respect of different relevant offices.
- (4) Where a person has made or is treated as having made an election in pursuance of paragraph 1 or 2 of Schedule 1 to the 1967 Act in respect of any relevant office, he shall be deemed to have made the same election in respect of all such other offices to which he is, or is subsequently, appointed.

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (5) No account shall be taken for the purposes of Schedule 1 to the 1967 Act of a period of service in a relevant office if salary in respect of the office was not paid for that period.
- (6) Regulations under this paragraph may make such incidental or supplementary provision as the Treasury considers necessary.
- (7) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C10 Sch. 1 para. 9: transfer of certain functions (1.4.1995) by S.I. 1995/269, art. 3, Sch. para. 24

- 10 In any case where a person makes an election under paragraph 2(1)(a) of Schedule 1 to the ^{M25}Parliamentary Commissioner Act 1967 (as substituted by Part II of Schedule 4 to the ^{M26}Judicial Pensions and Retirement Act 1993) so that Schedule 1 to the 1967 Act continues to have effect in relation to him as it did before the coming into force of Part II of Schedule 4 to the 1993 Act, this Schedule shall have effect—
- (a) as if in paragraph 7 the words “hold or” (in both places) and in paragraph 9(3) and (4) the words “or 2” (in both places) were omitted, and
 - (b) as if for the reference in paragraph 9(2) to paragraph 4 of Schedule 1 to the 1967 Act there were substituted a reference to paragraph 8 of that Schedule.

Marginal Citations

M25 1967 c. 13.

M26 1993 c. 8.

Staff and advisers

- 11 (1) A Commissioner may appoint such officers as he may determine with the approval of the Treasury as to numbers and conditions of service.
- ^{F125}(2)

Textual Amendments

F125 Sch. 1 para. 11(2) repealed (1.7.1999) by 1998 c. 38, ss. 112, 152, Sch. 10 para. 16(7), Sch. 18 Pt. I (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1999/1290, art. 4

- 12 Any functions of a Commissioner under this Act may be performed by any officer of the Commissioner authorised by him for that purpose, or by any officer so authorised of [^{F126}the other Commissioner, the Health Service Commissioner for Wales, the Parliamentary Commissioner or the Welsh Administration Ombudsman].

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F126 Words in Sch. 1 para. 12 substituted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 16(8)** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- 13 (1) To assist him in any investigation a Commissioner may obtain advice from any person who, in his opinion, is qualified to give it.
- (2) A Commissioner may pay to any such person from whom he obtains advice under this paragraph such fees or allowances as he may determine with the approval of the Treasury.

Financial provisions

- 14 The expenses of a Commissioner [^{F127}except the Health Service Commissioner for Scotland] under this Act—
- (a) shall be paid out of money provided by Parliament, and
- (b) shall not exceed such amount as the Treasury may sanction.

Textual Amendments

F127 Words in Sch. 1 para. 14 inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 112(4)(d)**; S.I. 1998/3178, **art. 3**

- 15 Any salary, pension or other benefit payable by virtue of paragraph 2 and paragraphs 4 to 9 shall be charged on and issued out of the Consolidated Fund.

[^{F128}SCHEDULE 1A

Section 1(3).

THE WELSH COMMISSIONER

Textual Amendments

F128 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

^{F129} *Appointment*

Textual Amendments

F129 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- ^{F130}1 (1) The Health Service Commissioner for Wales shall be appointed by Her Majesty.
- (2) Subject to sub-paragraphs (3) and (4), the Health Service Commissioner for Wales shall hold office until the end of the year of service in which he attains the age of 65.

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (3) Her Majesty may relieve the Health Service Commissioner for Wales of office before the end of that year of service—
- (a) at his request, or
 - (b) on Her Majesty being satisfied that he is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.
- (4) Her Majesty may remove the Health Service Commissioner for Wales from office before the end of the year of service in which he attains the age of 65 if, on the ground of misbehaviour, the Secretary of State recommends that Her Majesty should do so; but the Secretary of State shall not so recommend without consulting the Assembly.

Textual Amendments

F130 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 17 (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

F131 Status

Textual Amendments

F131 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 17 (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

- F132** (1) The Health Service Commissioner for Wales shall be regarded as holding office under Her Majesty and as exercising his functions on behalf of the Crown.
- (2) Service as the Health Service Commissioner for Wales shall not be service in Her Majesty's Home Civil Service but he shall be taken to be a Crown servant for the purposes of the ^{M27}Official Secrets Act 1989.

Textual Amendments

F132 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 17 (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

Marginal Citations

M27 1989 c. 6.

F133 Appointment of acting Commissioner

Textual Amendments

F133 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 17 (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

- F134** (1) Where the office of Health Service Commissioner for Wales becomes vacant, Her Majesty may, at any time during the period of twelve months beginning with the date on which the vacancy arose, appoint a person to act as that Commissioner.

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Subject to sub-paragraphs (3) to (5), an acting Health Service Commissioner for Wales shall hold office in accordance with the terms of his appointment.
- (3) An acting Health Service Commissioner for Wales shall not hold office after—
- (a) the appointment of a new Health Service Commissioner for Wales, or
 - (b) the end of the period of twelve months beginning with the date on which the vacancy arose,
- whichever occurs first.
- (4) Her Majesty may at any time relieve an acting Health Service Commissioner for Wales of office—
- (a) at his request, or
 - (b) on Her Majesty being satisfied that he is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.
- (5) Her Majesty may remove an acting Health Service Commissioner for Wales from office at any time if, on the ground of misbehaviour, the Secretary of State recommends that Her Majesty should do so; but the Secretary of State shall not so recommend without consulting the Assembly.
- (6) A person appointed under this paragraph shall, while he holds office, be regarded for all purposes (except those of paragraph 1 and this paragraph) as the Health Service Commissioner for Wales.

Textual Amendments

F134 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

F135 Ineligibility of certain persons for appointment

Textual Amendments

F135 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- ^{F136}4 (1) A person who is a member of a body mentioned in section 2(1) or (2) shall not be appointed as Health Service Commissioner for Wales or acting Health Service Commissioner for Wales; and a person so appointed shall not, during his appointment, become a member of such a body.
- (2) A person mentioned in section 2A(1) or (2) shall not be appointed as Health Service Commissioner for Wales or acting Health Service Commissioner for Wales; and a person so appointed shall not, during his appointment, become a person so mentioned.

Textual Amendments

F136 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

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^{F137}Remuneration

Textual Amendments

F137 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- ^{F138}5 (1) The Assembly shall—
- (a) pay the Health Service Commissioner for Wales such salary and any such allowances, and
 - (b) make any such payments towards the provision of superannuation benefits for or in respect of him,
- as may be provided for by or under the terms of his appointment.
- (2) But where the Health Service Commissioner for Wales is also—
- (a) Parliamentary Commissioner, or
 - (b) Welsh Administration Ombudsman,
- he shall not be entitled to any salary as Health Service Commissioner for Wales.
- (3) Where the Health Service Commissioner for Wales also holds either or both of the other offices of Health Service Commissioner, he shall be entitled only to the salary pertaining to such one of the offices of Health Service Commissioner as he selects.
- (4) The Assembly shall pay to or in respect of a person who has ceased to hold office as Health Service Commissioner for Wales such amounts (if any) by way of—
- (a) pension or gratuities, or
 - (b) provision for those benefits,
- as may have been provided for by or under the terms of his appointment.
- (5) In Schedule 1 to the ^{M28}Superannuation Act 1972 (offices etc. to which section 1 of that Act applies), in the list of “Offices” insert—
- “Health Service Commissioner for Wales.”
- (6) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to subparagraph (5) in the sums payable out of money provided by Parliament under the ^{M29}Superannuation Act 1972.

Textual Amendments

F138 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Marginal Citations

M28 1972 c. 11.

M29 1972 c. 11.

Status: Point in time view as at 01/04/2001.

Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 11 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F139 Staff and advisers

Textual Amendments

F139 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- F140** 6 (1) The Health Service Commissioner for Wales may appoint such staff as he considers necessary for assisting him in the exercise of his functions.
- (2) The Health Service Commissioner for Wales shall include among his staff such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.
- (3) Service as a member of the staff of the Health Service Commissioner for Wales shall be service in Her Majesty's Home Civil Service.
- (4) The Assembly shall pay to the Minister for the Civil Service, at such times as he may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (3) in the sums payable out of money provided by Parliament under the ^{M30}Superannuation Act 1972.
- (5) Any function of the Health Service Commissioner for Wales may be exercised by—
- (a) a member of his staff,
 - (b) a member of the staff of the Welsh Administration Ombudsman, or
 - (c) an officer of the Parliamentary Commissioner or of another Health Service Commissioner,
- if authorised by the Health Service Commissioner for Wales for that purpose; and references in any enactment to a member of the staff of the Health Service Commissioner for Wales include any person exercising any function of his by virtue of paragraph (b) or (c).
- (6) To assist him in the exercise of his functions the Health Service Commissioner for Wales may obtain advice from any person who, in his opinion, is qualified to give it.
- (7) The Health Service Commissioner for Wales may pay to any person from whom he obtains advice under sub-paragraph (6) any such fees or allowances as he may determine.
- (8) No arrangements shall be made—
- (a) for any of the functions of the Health Service Commissioner for Wales or of the Assembly to be exercised by the other or by a member of the other's staff, or
 - (b) for the provision of any administrative, professional or technical services by the Health Service Commissioner for Wales or the Assembly for the other.

Textual Amendments

F140 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Marginal Citations

M30 1972 c. 11.

Status: Point in time view as at 01/04/2001.

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F141 Reports

Textual Amendments

F141 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- F1427** (1) The Health Service Commissioner for Wales—
- (a) shall annually prepare and lay before the Assembly a general report on the performance of his functions, and
 - (b) may from time to time prepare and lay before the Assembly such other reports with respect to his functions as he thinks fit.
- (2) The Assembly shall, and the Health Service Commissioner for Wales may, publish reports laid before the Assembly under this paragraph.

Textual Amendments

F142 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

F143 Expenses

Textual Amendments

F143 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- F1448** (1) The expenses of the Health Service Commissioner for Wales shall, so far as they cannot be met out of income received by him, be met by the Assembly.
- (2) Those expenses include any sums payable by the Health Service Commissioner for Wales in consequence of a breach, in the course of the performance of any of his functions, of any contractual or other duty (whether that breach occurs by reason of his act or omission or that of a member of his staff or any other person assisting him in the exercise of his functions).

Textual Amendments

F144 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

F145 Estimates

Textual Amendments

F145 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Status: Point in time view as at 01/04/2001.

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- F146**9 (1) For each financial year after the first financial year of the Assembly the Health Service Commissioner for Wales shall prepare, and submit to the executive committee, an estimate of the income and expenses of his office.
- (2) Each such estimate shall be submitted to the executive committee at least five months before the beginning of the financial year to which it relates.
- (3) The executive committee shall examine each such estimate submitted to it and, after having done so, shall lay the estimate before the Assembly with any such modifications as the committee thinks fit.
- (4) Where the executive committee proposes to lay such an estimate before the Assembly with modifications, the committee shall first consult the Secretary of State and have regard to any advice which he may give.
- (5) In this paragraph “the executive committee” means the committee of the Assembly referred to as the executive committee in the Government of Wales Act 1998.

Textual Amendments

F146 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

F147 Accounts

Textual Amendments

F147 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- F148**10 (1) The Health Service Commissioner for Wales shall keep proper accounting records.
- (2) The Health Service Commissioner for Wales shall, for each financial year, prepare accounts in accordance with directions given to him by the Treasury.
- (3) The directions which the Treasury may give under sub-paragraph (2) include, in particular, directions as to—
- (a) the information to be contained in the accounts and the manner in which it is to be presented,
 - (b) the methods and principles in accordance with which the accounts are to be prepared, and
 - (c) the additional information (if any) that is to accompany the accounts.

Textual Amendments

F148 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Status: Point in time view as at 01/04/2001.

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F149 Audit

Textual Amendments

F149 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- F150** 11 (1) The accounts prepared by the Health Service Commissioner for Wales for any financial year shall be submitted by him to the Auditor General for Wales [^{F151}no later than 30th November of the following financial year].
- (2) The Auditor General for Wales shall—
- (a) examine and certify any accounts submitted to him under this paragraph, and
 - (b) no later than four months after the accounts are submitted to him, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining any accounts submitted to him under this paragraph, the Auditor General for Wales shall, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

Textual Amendments

F150 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

F151 Words in Sch. 1A para. 11(1) substituted (1.4.2001) by 2000 c. 20, s. 29, **Sch. 1 para. 19**; S.I. 2000/3349, **art. 3(1)(a)** (subject to transitional provisions in arts. 4, 5)

Modifications etc. (not altering text)

C11 Sch. 1A para. 11(1): power to amend conferred (1.4.2001) by 2000 c. 20, s. 29, Sch. 1 paras. 19, 27; S.I. 2000/3349, **art. 3(1)(a)** (subject to transitional provisions in arts. 4, 5)

F152 Accounting officer

Textual Amendments

F152 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- F153** 12 (1) The accounting officer for the Office of the Health Service Commissioner for Wales shall be the Health Service Commissioner for Wales.
- (2) But where—
- (a) the Health Service Commissioner for Wales is incapable of discharging his responsibilities as accounting officer, or
 - (b) the office of Health Service Commissioner for Wales is vacant (and there is no acting Health Service Commissioner for Wales),

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the Treasury may designate a member of the staff of the Health Service Commissioner for Wales to be the accounting officer for so long as paragraph (a) or (b) applies.

- (3) The accounting officer for the Office of the Health Service Commissioner for Wales shall have, in relation to the accounts of the Health Service Commissioner for Wales and the finances of the Office of the Health Service Commissioner for Wales, the responsibilities which are from time to time specified by the Treasury.
- (4) In this paragraph references to responsibilities include in particular—
- (a) responsibilities in relation to the signing of accounts,
 - (b) responsibilities for the propriety and regularity of the finances of the Office of the Health Service Commissioner for Wales, and
 - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Office of the Health Service Commissioner for Wales are used.
- (5) The responsibilities which may be specified under this paragraph include responsibilities owed to—
- (a) the Assembly, the executive committee or the Audit Committee of the Assembly, or
 - (b) the House of Commons or its Committee of Public Accounts.
- (6) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee of the Assembly may—
- (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Office of the Health Service Commissioner for Wales, and
 - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.
- (7) In this paragraph and paragraphs 13 and 14 “the Office of the Health Service Commissioner for Wales” means the Health Service Commissioner for Wales and the members of his staff; and in this paragraph “the executive committee” has the same meaning as in paragraph 9.

Textual Amendments

F153 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

^{F154}Examinations into use of resources

Textual Amendments

F154 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- ^{F155}13 (1) The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Health Service Commissioner for Wales

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has used the resources of the Office of the Health Service Commissioner for Wales in discharging his functions.

- (2) Sub-paragraph (1) shall not be construed as entitling the Auditor General for Wales to question the merits of the policy objectives of the Health Service Commissioner for Wales.
- (3) In determining how to exercise his functions under this paragraph, the Auditor General for Wales shall take into account the views of the Audit Committee of the Assembly as to the examinations which he should carry out under this paragraph.
- (4) The Auditor General for Wales may lay before the Assembly a report of the results of any examination carried out by him under this paragraph.
- (5) The Auditor General for Wales and the Comptroller and Auditor General may co-operate with, and give assistance to, each other in connection with the carrying out of examinations in respect of the Health Service Commissioner for Wales under this paragraph or section 7 of the ^{M31}National Audit Act 1983 (economy etc. examinations).

Textual Amendments

F155 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

Marginal Citations

M31 1983 c. 44.

^{F156}*Examinations by the Comptroller and Auditor General*

Textual Amendments

F156 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 17** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**

- ^{F157}14 (1) For the purpose of enabling him to carry out examinations into, and report to Parliament on, the finances of the Office of the Health Service Commissioner for Wales, the Comptroller and Auditor General—
- (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Health Service Commissioner for Wales, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
 - (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General shall—
- (a) consult the Auditor General for Wales, and
 - (b) take into account any relevant work done or being done by the Auditor General for Wales,

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before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Health Service Commissioner for Wales under section 7 of the ^{M32}National Audit Act 1983 (economy etc. examinations).]

Textual Amendments

F157 Sch. 1A inserted (1.7.1999) by 1998 c. 38, s. 112, Sch. 10 para. 17 (with ss. 139(2), 143(2)); S.I. 1999/1290, art. 4

Marginal Citations

M32 1983 c. 44.

SCHEDULE 2

Section 20.

CONSEQUENTIAL AMENDMENTS

The Parliamentary Commissioner Act 1967 (c.13)

- 1 In section 11A of the Parliamentary Commissioner Act 1967 (consultations between Parliamentary Commissioner and Health Service Commissioners) in subsection (1)(b) for the words “Part V of the National Health Service Act 1977” to the end there shall be substituted “ the Health Service Commissioners Act 1993. ”
- 2 In paragraph 8 of Schedule 3 to that Act (action taken by certain health service bodies not subject to investigation by the Parliamentary Commissioner) after the words “Scottish Health Service” there shall be inserted “ by the Dental Practice Board or the Scottish Dental Practice Board ”.

The Local Government Act 1974 (c.7)

- 3 In section 29(5)(b) of the Local Government Act 1974 (restriction on disclosure of information by Health Service Commissioners in relation to investigations by Local Commissioners) for the words “paragraph 16 of Schedule 13 to the National Health Service Act 1977” there shall be substituted “ section 15 of the Health Service Commissioners Act 1993 ”.
- 4 (1) Section 33 of that Act (consultation between Local Commissioners, Parliamentary Commissioner and Health Service Commissioners) shall be amended as follows.
 - (2) In subsection (1) for the words “sections 109” to the end of paragraph (b) and for the words “Part V of the Act of 1977” there shall be substituted “ the Act of 1993, ”.
 - (3) In subsection (3)—
 - (a) for the words from the beginning to “Commissioner conducting the investigation” there shall be substituted—

“(3) If, at any stage in the course of conducting an investigation under the Act of 1967, the Parliamentary Commissioner”; and
 - (b) the words “under the Act of 1967 or Part V of the Act of 1977, as the case may be,” shall be omitted.
 - (4) In subsection (4) the words “or Part V of the Act of 1977” shall be omitted.

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- (5) In subsection (5) for the words “paragraph 16 of Schedule 13 to the National Health Service Act 1977” there shall be substituted “ section 15 of the Act of 1993 ”.
- (6) In subsection (6) for the words “the Act of 1977” onwards there shall be substituted “ the “Act of 1993” means the Health Service Commissioners Act 1993. ”

The Local Government (Scotland) Act 1975 (c.30)

- 5 In section 27(5)(b) of the Local Government (Scotland) Act 1975 (restriction on disclosure of information by Health Service Commissioner for Scotland in relation to investigations by Commissioner for Local Administration in Scotland) for the words “that section (as applied by section 95 of the National Health Service (Scotland) Act 1978)” there shall be substituted “ section 15 of the Health Service Commissioners Act 1993 ”.
- 6 (1) Section 31 of that Act (consultation between Commissioner for Local Administration in Scotland, Parliamentary Commissioner and Health Service Commissioner for Scotland) shall be amended as follows.
 - (2) In subsection (1) for the words “section 93 of the Act of 1978” and “Part VI of the Act of 1978” there shall be substituted “ the Act of 1993 ”.
 - (3) In subsection (3)—
 - (a) for the words from the beginning to “Commissioner conducting the investigation” there shall be substituted—

“(3) If, at any stage in the course of conducting an investigation under the Act of 1967, the Parliamentary Commissioner”; and
 - (b) the words “under the Act of 1967 or Part VI of the Act of 1978, as the case may be,” shall be omitted.
 - (4) In subsection (4) the words “or Part VI of the Act of 1978” shall be omitted.
 - (5) In subsection (5) for the words “in that section as applied by section 95 of the Act of 1978” there shall be substituted “ in section 15 of the Act of 1993 ”.
 - (6) In subsection (6) for the words “the“ Act of 1978”” onwards there shall be substituted “ the “Act of 1993” means the Health Service Commissioners Act 1993. ”

The Hospital Complaints Procedure Act 1985 (c.42)

- 7 In section 1(2) of the Hospital Complaints Procedure Act 1985 for the words “under Part V” to “Commissioners)” there shall be substituted “ under the Health Service Commissioners Act 1993 ”.

The Parliamentary and Health Service Commissioners Act 1987 (c.39)

- 8 In section 2(1) of the Parliamentary and Health Service Commissioners Act 1987 (removal of a Commissioner on medical grounds) for the words from the beginning to “for Scotland)” there shall be substituted “ Section 1 of the 1967 Act (which deals with the appointment and tenure of office by the Parliamentary Commissioner) ”.

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SCHEDULE 3

Section 20.

REPEALS

Chapter	Short title	Extent of repeal
1974 c. 7.	The Local Government Act 1974.	In section 33(3), the words “under the Act of 1967 or Part V of the Act of 1977 as the case may be”. In section 33(4), the words “or Part V of the Act of 1977”.
1975 c. 30.	The Local Government (Scotland) Act 1975.	In section 31(3), the words “under the Act of 1967 or Part VI of the Act of 1978 as the case may be”. In section 31(4), the words “or Part VI of the Act of 1978”.
1977 c. 49.	The National Health Service Act 1977.	Sections 106 to 120. Section 130(3)(c). Schedule 13. In Schedule 14, paragraph 17. In Schedule 15, paragraphs 60 and 61.
1978 c. 29.	The National Health Service (Scotland) Act 1978.	Sections 90 to 97. Schedule 14. In Schedule 15, paragraph 12.
1980 c. 53.	The Health Services Act 1980.	In Schedule 1, paragraphs 72 to 74. In Schedule 2, paragraphs 7, 8 and 9 and sub-paragraphs (a) to (f) of paragraph 11.
1984 c. 36.	The Mental Health (Scotland) Act 1984.	In Schedule 3, paragraph 42.
1987 c. 39.	The Parliamentary and Health Service Commissioners Act 1987.	Section 2(2). Section 4(3) to (5). Section 5. Section 6(2) and (3).

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		Section 7.
		Section 8.
1988 c. 49.	The Health and Medicines Act 1988.	Section 12(4) and (5).
1989 c. 6.	The Official Secrets Act 1989.	In Schedule 1, paragraph 1(h).
1990 c. 19.	The National Health Service and Community Care Act 1990.	In Schedule 9, paragraphs 18(10) and (11) and 19(18).
1993 c. 8.	The Judicial Pensions and Retirement Act 1993.	Part III of Schedule 4.

TABLE OF DERIVATIONS

Notes:

- 1 This Table shows the derivation of the provisions of the Bill.
- 2 The following abbreviations are used in this Table:

1967	= The Parliamentary Commissioner Act 1967 (c.13)
1977	= The National Health Service Act 1977 (c.49)
1978	= The National Health Service (Scotland) Act 1978 (c.29)
1980	= The Health Services Act 1980 (c.53)
1987	= The Parliamentary and Health Service Commissioners Act 1987 (c.39)
1990	= The National Health Service and Community Care Act 1990 (c.19)

- 3 The abbreviation “Law Comm R” followed by a number refers to the recommendation set out in the paragraph of that number in the Appendix to the Report of the Law Commission and the Scottish Law Commission (Cm. 2255).
- 4 Certain functions of the Minister for the Civil Service were transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670 Articles 2(1),(2) and 3(5)). References to the Minister for the Civil Service in the National Health Service Act 1977 and the National Health Service (Scotland) Act 1978 are therefore reproduced in the Bill as references to the Treasury.

Provision

Derivation

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1(1)	1977 s.106(1); 1978 s.90(1)
(2),(3)	drafting
2(1),(2)	1977 s.109, s.110; 1980 Sch.1 paras.72,73, Sch.2 para.7; Health and Medicines Act 1988 (c.49) s.12(4); 1990 s.2(1), Sch.9 para.18(10),(11); Family Practitioner Committees (Consequential Modifications) Order 1985 (S.I. 1985/39) art.7(20)
(3)	1978 s.93(1); Health and Medicines Act 1988 (c.49) s.12(5); 1990 Sch.9 para.19(18)
(4)	drafting
(5)	1977 s.109(c),(d)
(6)	1977 s.126(1)
3(1)	1977 s.115; 1978 s.93(2)
(2)	1977 s.113(1); 1978 s.93(6)
(3)	1977 s.113(2); 1978 s.93(6)
(4)	1977 s.120(2); 1978 s.97(2)
4(1)	1977 s.116(1); 1978 s.93(3)
(2)	1977 Sch.13 para.19(5); 1978 s.93(4), Sch.14 para.6
(3)	1978 s.93(4), Sch.14 para.7; Mental Health (Scotland) Act 1984 (c.36) Sch.3 para.42; Law Comm R2
5(1)	1977 Sch.13 para.19(1); 1978 s.93(4), Sch.14 para.2
(2)	1977 s.128(1); 1978 s.108(1); Mental Health Act 1983 (c.20) Sch.4 para.47(d); Mental Health (Scotland) Act 1984 (c.36) Sch.3 para.41
6(1)	1977 s.116(2)(b)
(2)	1978 s.93(4), Sch.14 para.1
(3)	1977 Sch.13 para.19(2); 1990 s.2(1)
(4)	1978 s.93(4), Sch.14 para.3
7(1)—(3)	1977 Sch.13 para.19(3),(4); 1978 s.93(4), Sch.14 paras.4,5
(4)	1977 s.116(3); 1978 s.93(5)
(5)	1977 s.126(1); 1978 s.105(2)
8	1977 s.111(1); 1978 s.94(1)

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9	1977 s.111(2), s.112, s.114(1); 1978 s.94(2)—(4)
10	1977 s.113(2), s.117; 1978 s.93(6), s.94(5); 1987 s.7, s.8
11	1967 s.7; 1977 Sch.13 paras.1-6; 1978 s.95
12	1967 s.8; Civil Evidence Act 1968 (c.64) s.17(1)(b); 1977 Sch.13 paras.7-11; 1978 s.95
13	1967 s.9; 1977 Sch.13 paras.12-14; 1978 s.95
14(1)	1977 s.119(1); 1978 s.96(1); 1987 s.5(1)
(2)	1977 s.119(2); 1978 s.96(3); 1987 s.5(2),(3)
(3)	1977 s.119(3); 1978 s.96(4); 1980 Sch.2 paras.9,11
(4)	1977 s.119(4)(b); 1978 s.96(5); 1980 Sch.2 paras.9,11
(5)	1977 s.119(5); 1978 s.96(7)
15	1967 s.11(2); 1977 Sch.13 para.16; 1978 s.95; Official Secrets Act 1989 (c.6) Sch.1 para.1
16	1967 s.11(3); 1977 Sch.13 para.17,18; 1978 s.95
17	1977 Sch.13 para.16A; 1978 s.95A(3); 1987 s.4(4),(5)
18	Local Government (Scotland) Act 1975 (c.30) s.31(3)—(4); 1977 s.118(1)—(3); 1978 s.95A(1),(2); 1987 s.4(3),(5); Law Comm R4
19	1977 s.120(1), s.128(1); 1978 s.97(1), s.108(1)
20	
21	
22	1977 s.130(3),(4)
Sch. 1 para.1	1977 s.106(2)—(3A); 1978 s.90(2)—(3A); 1987 s.2(1),(2)
para.2	1977 s.108A(1)—(3); 1978 s.92A(1)—(3); 1987 s.6(2),(3)
para.3	1977 s.106(4), s.108A(5); 1978 s.90(5), s.92A(5); 1987 s.6(2),(3)

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para.4	1977 s.107(1); 1978 s.91(1)
para.5	1977 s.107(3); 1978 s.91(3)
para.6	1977 s.107(5); 1978 s.91(5)
para.7	1977 s.107(2); 1978 s.91(2)
para.8	1977 s.107(4); 1978 s.91(4)
para.9(1)	drafting
(2)	1977 s.107(7); 1978 s.91(7)
(3)—(5)	1977 s.107(6); 1978 s.91(6); Judicial Pensions and Retirement Act 1993 (c.8) Sch.4 Part III
(6)	1977 s.126(4); 1978 s.105(7)
(7)	1977 s.126(1); 1978 s.105(1),(2)
para.10	Judicial Pensions and Retirement Act 1993 (c.8) Sch.4 Part III
para.11	1977 s.108(1); 1978 s.92(1)
para.12	1977 s.108(2); 1978 s.92(2)
para.13	1977 s.108(3); 1978 s.92(3)
para.14	1977 s.108(4); 1978 s.92(4)
para.15	1977 s.107(8), s.108A(4); 1978 s.91(8), s.92A(4); 1987 s.6(2),(3)
Sch. 2	Para 2, Law Comm R1
Sch. 3	

Status:

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