



# 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]

<sup>F1</sup>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:—

### Textual Amendments

- F1** Act repealed (S.) (23.10.2002) by 2002 asp 11, s. 25(1), **Sch. 6 para. 14** (with savings in **Sch. 7**); S.S.I. 2002/467, **art. 2**

### 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** (with art.4(4))

### Commencement Information

- I1** Act not in force at Royal Assent; Act wholly in force at 5. 2. 1994 see s. 22(4).

*Health Service [F2Commissioner]*

### Textual Amendments

- F2** Word in cross-heading substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 28** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

*Status: Point in time view as at 01/10/2012.*

*Changes to legislation: Health Service Commissioners Act 1993 is up to date with all changes known to be in force on or before 29 April 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)*

**1** [<sup>F3</sup>The Commissioner].

- (1) For the purpose of conducting investigations in accordance with this Act, there shall continue to be—
  - (a) a Health Service Commissioner for England [<sup>F4</sup>and]
  - <sup>F5</sup>(b) .....
  - <sup>F6</sup>(c) .....
- (2) References in this Act to [<sup>F7</sup>the Commissioner] (or Health Service Commissioner) are, unless the context otherwise requires, to [<sup>F8</sup>the Health Service Commissioner for England].
- (3) Schedule 1 has effect with respect to the appointment and remuneration of, and other administrative matters relating to, the Health Service Commissioner <sup>F9</sup>....

Textual Amendments	
<b>F3</b>	S. 1 heading substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, <b>Sch. 6 para. 29</b> (with s. 38); S.I. 2005/2800, art. 5(1)(3)
<b>F4</b>	Word in s. 1(1) inserted (14.7.2004) by The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, <b>17(2)(a)(i)</b>
<b>F5</b>	S. 1(1)(b) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, <b>Sch. 6 para. 30(2)</b> (with s. 38); S.I. 2005/2800, art. 5(1)(3)
<b>F6</b>	Words in s. 1(1) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, <b>17(2)(a)(ii)</b>
<b>F7</b>	Words in s. 1(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, <b>Sch. 6 para. 30(3)(a)</b> (with s. 38); S.I. 2005/2800, art. 5(1)(3)
<b>F8</b>	Words in s. 1(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, <b>Sch. 6 para. 30(3)(b)</b> (with s. 38); S.I. 2005/2800, art. 5(1)(3)
<b>F9</b>	Words in s. 1(3) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, <b>Sch. 6 para. 30(4)</b> , <b>Sch. 7</b> (with s. 38); S.I. 2005/2800, art. 5(1)(3)

*Health service bodies subject to investigation*

**2** **The bodies subject to investigation.**

- (1) The bodies subject to investigation by [<sup>F10</sup>the Commissioner] are—
  - <sup>F11</sup>(a) Strategic Health Authorities,]
  - (c) Special Health Authorities to which this section applies [<sup>F12</sup>not exercising functions only or mainly in Wales],
  - (d) National Health Service trusts managing a hospital, or other establishment or facility, in England,
  - <sup>F13</sup>(da) Primary Care Trusts <sup>F14</sup>. . .]
  - <sup>F15</sup>(db) NHS foundation trusts,]
  - <sup>F16</sup>(dc) the National Health Service Commissioning Board,
  - (dd) clinical commissioning groups.]
  - (e) .....
  - <sup>F17</sup>(f) .....
  - <sup>F18</sup>(g) .....

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F19(2) .....

F20(3) .....

(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 by Order in Council as ones to which this section applies.

[F21(6) A designation made for the purposes of subsection (5)(b) shall be made by Order in Council; and a statutory instrument containing an Order in Council made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F10 Words in s. 2(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 31\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F11 S. 2(1)(a) substituted (E.W.) (1.10.2002) by [2002 c. 17](#), s. 1(3), [Sch. 1 Pt. 2 para. 47](#); S.I. 2002/2478, [art. 3\(1\)\(a\)](#) (with savings in [art. 3\(3\)](#) and transitional provisions in [art. 4](#))
- F12 Words in s. 2(1)(c) substituted (1.4.2004 for W., 1.4.2006 for E.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 11 para. 61\(a\)](#); S.I. 2004/480, [art. 4\(2\)\(aa\)](#) (with [art. 6](#)) (as amended by S.I. 2004/1019 and S.I. 2006/345); S.I. 2005/2925, art. 10(2)(j)
- F13 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.](#)
- F14 Words in s. 2(1)(da) repealed (E.W.) (1.10.2002) by [2002 c. 17](#), ss. 2(5), 37(2), [Sch. 2 Pt. 2 para. 61\(2\)\(a\)](#), [Sch. 9 Pt. 1](#); S.I. 2002/2478, [art. 3\(1\)\(a\)](#) (with savings in [art. 3\(3\)](#) and transitional provisions in [art. 4](#))
- F15 S. 2(1)(db) inserted (1.4.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 4 para. 94](#); S.I. 2004/759, art. 2
- F16 S. 2(1)(dc)(dd) inserted (1.10.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), s. 306(4), [Sch. 5 para. 68\(c\)](#); S.I. 2012/1831, art. 2(2)
- F17 S. 2(1)(f) repealed (27.10.2006) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 14 Pt. 4](#); S.I. 2006/2817, art. 2(b)
- F18 S. 2(1)(g) and preceding word repealed (1.4.2005) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 13 para. 7](#), [Sch. 14 Pt. 7](#); S.I. 2005/457, art. 2(a)(b)
- F19 S. 2(2) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 31\(3\)](#), [Sch. 7](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F20 S. 2(3) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(3\)](#)
- F21 S. 2(6) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 31\(4\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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*[<sup>F22</sup> Persons subject to investigation]*

**Textual Amendments**

**F22** Ss. 2A, 2B and crossheading inserted (1.4.1996) by 1996 c. 5, s. 1; S.I. 1996/970, art. 2(1)

**[<sup>F23</sup>2A Health service providers subject to investigation.**

(1) Persons are subject to investigation by [<sup>F24</sup>the Commissioner][<sup>F25</sup>if they are [<sup>F26</sup>or were at the time of the action complained of]—

- (a) persons (whether individuals or bodies) providing services under a contract entered into by them with a Primary Care Trust under [<sup>F27</sup>section 84 [<sup>F28</sup>, 100 or 117] of the National Health Service Act 2006]
- (b) persons (whether individuals or bodies) undertaking to provide in England [<sup>F29</sup>... pharmaceutical services under <sup>F30</sup>... that Act; [<sup>F31</sup>or]
- (c) individuals performing in England [<sup>F32</sup>primary] medical services or [<sup>F32</sup>primary] dental services in accordance with arrangements made under [<sup>F33</sup>section 92 or 107] of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)]

[<sup>F34</sup>or

- (d) individuals providing in England local pharmaceutical services in accordance with arrangements made under a pilot scheme established under [<sup>F35</sup>section 134 of the National Health Service Act 2006] (except as employees of, or otherwise on behalf of, a health service body or an independent provider).]

<sup>F36</sup>(2) .....

<sup>F37</sup>(3) .....

(4) In this Act—

- (a) references to a family health service provider are to any person mentioned in [<sup>F38</sup>subsection (1)];
- (b) references to family health services are to any of the services so mentioned.]

**Textual Amendments**

**F23** S. 2A and sidenote inserted (1.4.1996) by 1996 c. 5, s. 1; S.I. 1996/970, art. 2(1)

**F24** Words in s. 2A(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 32(2) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F25** 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

**F26** Words in s. 2A(1) inserted (23.2.2001) by 2000 c. 28, ss. 1(1)(2)(a), 4(2) (with s. 3)

**F27** Words in s. 2A(1)(a) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), Sch. 1 para. 166(a) (with Sch. 3 Pt. 1)

**F28** Words in s. 2A(1)(a) substituted (1.8.2008) by Health Act 2006 (c. 28), s. 83(7), Sch. 8 para. 33(a); S.I. 2008/1972, art. 2(b)

**F29** Words in s. 2A(1)(b) repealed (1.8.2008) by Health Act 2006 (c. 28), s. 83(7), Sch. 8 para. 33(b), Sch. 9; S.I. 2008/1972, art. 2(b)

**F30** Words in s. 2A(1)(b) omitted (1.3.2007) by virtue of National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), Sch. 1 para. 166(b) (with Sch. 3 Pt. 1)

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- F31** Word in s. 2A(1)(b) repealed (E.) (12.12.2002) by S.I. 2002/2861, **art. 26(a)**
- F32** Word in s. 2A(1)(c) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 11 para. 62(2)(b)**; S.I. 2004/288, art. 5(2)(w) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345); S.I. 2004/288, art. 5(2)(w) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345)
- F33** Words in s. 2A(1)(c) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 166(c)** (with Sch. 3 Pt. 1)
- F34** S. 2A(1)(d) and the word preceding it inserted (E.) (12.12.2002) by S.I. 2002/2861, **art. 26(b)**
- F35** Words in s. 2A(1)(d) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 166(d)** (with Sch. 3 Pt. 1)
- F36** S. 2A(2) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 32(3), **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F37** S. 2A(3) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(4)(a)**
- F38** Words in s. 2A(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 32(4)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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

- C2** S. 2A savings for effects of 2003 c. 43, Sch. 11 para. 62-68 (E.S.) (1.4.2004) by The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/865), arts. 1(1), **113** (with art. 1(3))
- C3** S. 2A applied (with modifications) (E.) (1.4.2006) by The National Health Service (Local Pharmaceutical Services etc.) Regulations 2006 (S.I. 2006/552), reg. 1(1), **Sch. 1 para. 11**
- C4** S. 2A(1)(a)(2)(a) modified (E.) (1.4.2004) by The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/865), arts. 1(1), **109(2)(e)**

**2B Independent providers subject to investigation.**

- (1) Persons are subject to investigation by [<sup>F39</sup>the Commissioner] if—
  - (a) they are [<sup>F40</sup>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
  - (b) they are not [<sup>F41</sup>or were not at the time of the action complained of] themselves health service bodies or family health service providers.

- [<sup>F42</sup>(1A) Persons are subject to investigation by the Commissioner if—
  - (a) they are, or were at the time of the action complained of, providing direct payment services, and
  - (b) they are not, or were not at the time of the action complained of, health service bodies.]

<sup>F43</sup>(2) .....

<sup>F43</sup>(2A) .....

<sup>F44</sup>(3) .....

- (4) The services provided under arrangements mentioned in [<sup>F45</sup>subsection (1)(a)] may be services of any kind.

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- (5) In this Act references to an independent provider are to any person providing services as mentioned in subsection (1) [<sup>F46</sup>or (1A)].

#### Textual Amendments

- F39** Words in s. 2B(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 33\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F40** Words in s. 2B(1)(a) inserted (23.2.2001) by 2000 c. 28, [ss. 1\(1\)\(3\)\(a\)](#), 4(2) (with s. 3)
- F41** Words in s. 2B(1)(b) inserted (23.2.2001) by 2000 c. 28, [ss. 1\(1\)\(3\)\(b\)](#), 4(2) (with s. 3)
- F42** [S. 2B\(1A\)](#) inserted (19.1.2010) by [Health Act 2009 \(c. 21\)](#), [ss. 12\(2\)](#), 40(1); S.I. 2010/30, art. 2(b)
- F43** [S. 2B\(2\)\(2A\)](#) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 33\(3\)](#), [Sch. 7](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F44** [S. 2B\(3\)](#) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(5\)\(a\)](#)
- F45** Words in s. 2B(4) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 33\(4\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F46** Words in s. 2B(5) inserted (19.1.2010) by [Health Act 2009 \(c. 21\)](#), [ss. 12\(3\)](#), 40(1); S.I. 2010/30, art. 2(b)

#### *Matters subject to investigation*

### 3 **General remit of [<sup>F47</sup>Commissioner].**

- (1) On a complaint duly made to [<sup>F48</sup>the 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.

<sup>F49</sup>(1YA) . . . . .

- [<sup>F50</sup>(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.]

- [<sup>F51</sup>(1A) Where a family health service provider has undertaken to provide any family health services and a complaint is duly made to [<sup>F52</sup>the 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,

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- (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.

<sup>F53</sup>(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) [<sup>F54</sup>, or has undertaken to provide direct payment services,] and a complaint is duly made to [<sup>F55</sup>the 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.]

[<sup>F56</sup>(1E) Where a complaint is duly made to [<sup>F57</sup>the Commissioner] by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body in the exercise of any function under section 113 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care), the Commissioner may, subject to the provisions of this Act, investigate the alleged maladministration.]

(2) In determining whether to initiate, continue or discontinue an investigation under this Act, [<sup>F58</sup>the Commissioner ] shall act in accordance with his own discretion.

(3) Any question whether a complaint is duly made to [<sup>F59</sup>the Commissioner] shall be determined by him.

(4) Nothing in this Act authorises or requires [<sup>F60</sup>the 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.

[<sup>F61</sup>(5) Nothing in this Act authorises or requires [<sup>F62</sup>the 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.

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- (6) Nothing in this Act authorises or requires [<sup>F63</sup>the 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.]

[<sup>F64</sup>(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

- F47** Word in s. 3 heading substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 34** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F48** Words in s. 3(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F49** S. 3(1YA) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(3)**, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F50** 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. I para. 68(5)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F51** 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)**
- F52** Words in s. 3(1A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F53** 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. 2**
- F54** Words in s. 3(1C) inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 12(4)**, 40(1); S.I. 2010/30, art. 2(b)
- F55** Words in s. 3(1C) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F56** S. 3(1E) inserted (1.6.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), **ss. 118**, 199(1)(4); S.I. 2004/759, art. 8
- F57** Words in s. 3(1E) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F58** Words in s. 3(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F59** Words in s. 3(3) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F60** Words in s. 3(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F61** S. 3(5)(6) inserted (1.4.1996) by 1996 c. 5, s. 2(3); S.I. 1996/970, **art. 2(1)**
- F62** Words in s. 3(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F63** Words in s. 3(6) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F64** S. 3(7) inserted (1.4.1996) by 1996 c. 5, s. 6(2); S.I. 1996/970, **art. 2(1)**



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### *Matters excluded from investigation*

#### **4 Availability of other remedy.**

- (1) [<sup>F65</sup>The Commissioner] shall not conduct an investigation in respect of action in relation to which the person aggrieved has or had—
  - (a) 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
  - (b) 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) [<sup>F65</sup>The 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 <sup>M1</sup>National Health Service Act 1977 or section 76 of the <sup>M2</sup>National Health Service (Scotland) Act 1978 (general powers to hold inquiries).
- (3) A Commissioner shall not conduct an investigation in respect of action [<sup>F66</sup>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 <sup>M3</sup>Mental Health (Scotland) Act 1984.
- [<sup>F67</sup>(4) Subsection (5) applies where—
  - (a) 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 [<sup>F68</sup>under section 113(1) or (2) of the Health and Social Care (Community Health and Standards) Act 2003 or] under a procedure operated by a health service body, a family health service provider or an independent provider, and
  - (b) subsection (1), (2) or (3) does not apply as regards the action.
- (5) In such a case [<sup>F69</sup>the Commissioner] shall not conduct an investigation in respect of the action unless he is satisfied that—
  - (a) the other procedure has been invoked and exhausted, or
  - (b) 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 <sup>M4</sup>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.]

#### **Textual Amendments**

- F65** Words in s. 4(1)(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 36(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F66** 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)**
- F67** S. 4(4)-(6) inserted (1.4.1996) by 1996 c. 5, s. 5; S.I. 1996/970, **art. 2(1)**
- F68** Words in s. 4(4)(a) inserted (1.6.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 9 para. 11(2)**; S.I. 2004/759, art. 7
- F69** Words in s. 4(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 36(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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**Marginal Citations**

- M1** 1977 c. 49.
- M2** 1978 c. 29.
- M3** 1984 c. 36.
- M4** 1985 c. 42.

<sup>F70</sup>5 .....

**Textual Amendments**

- F70** 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.**

- <sup>F71</sup>(1) .....
- <sup>F71</sup>(2) .....

(3) [<sup>F72</sup>The Commissioner] shall not conduct an investigation in respect of action taken by a Primary Care Trust <sup>F73</sup>... in the exercise of its functions under the <sup>M5</sup>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 <sup>M6</sup>National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992, or any instrument amending or replacing those regulations.

[<sup>F74</sup>(5) [<sup>F72</sup>The Commissioner] shall not conduct an investigation in respect of action taken by a Primary Care Trust <sup>F73</sup>... in the exercise of its functions under regulations made under section <sup>F75</sup>... [<sup>F76</sup>126 or 129 of the National Health Service Act 2006] by virtue of section 17 of the <sup>M7</sup>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 <sup>M8</sup>National Health Service (Scotland) Act 1978 by virtue of section 17 of the <sup>M9</sup>Health and Medicines Act 1988.]

**Textual Amendments**

- F71** 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)**
- F72** Words in s. 6(3)(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 37(a)** (with s. 38); S.I. 2005/2800, art. 5(1)(3); S.I. 2005/2800, art. 5(1)(3)
- F73** Words in s. 6(3)(5) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 37(b)**, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3); S.I. 2005/2800, art. 5(1)(3)
- F74** S. 6(5)(6) inserted (1.4.1996) by 1996 c. 5, s. 7(3); S.I. 1996/970, **art. 2(1)**
- F75** Words in s. 6(5) repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 11 para. 63(a)**, **Sch. 14 Pt. 4**; S.I. 2004/288, arts. 5(2)(w), 6(2)(l) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, arts. 4(2)(aa), 5(2)(l)

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(with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345); S.I. 2004/288, arts. 5(2)(w), 6(2)(l)  
(with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, arts. 4(2)(aa), 5(2)(l)  
(with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345)

**F76** Words in s. 6(5) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 167** (with Sch. 3 Pt. 1)

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

**C5** S. 6(5) savings for effects of 2003 c. 43, Sch. 11 para. 62-68 (E.S.) (1.4.2004) by The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/865), arts. 1(1), **113** (with art. 1(3))

#### Marginal Citations

**M5** S.I. 1992/664.  
**M6** S.I. 1992/434.  
**M7** 1988 c. 49.  
**M8** 1978 c. 29.  
**M9** 1988 c. 49.

## 7 Personnel, contracts etc.

- (1) [<sup>F77</sup>The 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 [<sup>F78</sup>the National Health Service Act 2006 or the National Health Service (Wales) Act 2006]<sup>F79</sup> ....
- (2) [<sup>F80</sup>The 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 [<sup>F81</sup>section 9 of the National Health Service Act 2006]<sup>F82</sup> ...), <sup>F83</sup> ...
  - [<sup>F84</sup>(aa) matters arising from arrangements for the provision of direct payment services,]
  - (b) matters arising from arrangements between a health service body and [<sup>F85</sup>an independent provider for the provision of services by the provider][<sup>F86</sup>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) [<sup>F87</sup>the Commissioner] 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.

- [<sup>F88</sup>(3A) [<sup>F89</sup>The 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.]

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[<sup>F90</sup>(3B) Nothing in the preceding provisions of this section prevents [<sup>F91</sup>the 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 [<sup>F92</sup>the Commissioner] of any of the matters mentioned in subsection (1) or (2).

(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

- F77** Words in s. 7(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 38(2)(a)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F78** Words in s. 7(1) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 168(a)** (with Sch. 3 Pt. 1)
- F79** Words in s. 7(1) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 38(2)(b)**, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F80** Words in s. 7(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 38(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F81** Words in s. 7(2)(a) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), s. 8(2), **Sch. 1 para. 168(b)** (with Sch. 3 Pt. 1)
- F82** Words in s. 7(2)(a) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(6)**
- F83** 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)**
- F84** S. 7(2)(aa) inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 12(5)**, 40(1); S.I. 2010/30, art. 2(b)
- F85** 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)**
- F86** 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)**
- F87** Words in s. 7(3) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 38(4)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F88** 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)**
- F89** Words in s. 7(3A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 38(5)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F90** S. 7(3B) inserted (1.4.1996) by 1996 c. 5, s. 8(3); S.I. 1996/970, **art. 2(1)**
- F91** Words in s. 7(3B) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 38(6)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F92** Words in s. 7(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 38(6)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

#### [<sup>F93</sup>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) [<sup>F94</sup>or], 35I (revocation of community care orders) [<sup>F95</sup>or 50 (orders discharging patients from guardianship)] of the <sup>M10</sup>Mental Health (Scotland) Act 1984 [<sup>F94</sup>or section 73 of the Adults with Incapacity (Scotland) Act 2000].]

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#### Textual Amendments

- F93** S. 7A and sidenote inserted (1.4.1996) by 1996 c. 5, s. 4(3); S.I. 1996/970, art. 2(1)
- F94** Words in s. 7A inserted (S.)(1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 24; S.S.I. 2001/81, art. 3, Sch. 2
- F95** Words in s. 7A repealed (S.)(1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 24; S.S.I. 2001/81, art. 3 Sch. 2

#### Marginal Citations

- M10** 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 [<sup>F96</sup>(including the Assembly)],
  - (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 [<sup>F97</sup>or by the Assembly], or
    - (ii) whose revenues consist wholly or mainly of money provided by Parliament [<sup>F98</sup>or out of the Scottish Consolidated Fund][<sup>F97</sup>or the Assembly].

#### Textual Amendments

- F96** 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
- F97** 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
- F98** 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 [<sup>F99</sup>the 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

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- (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.
- <sup>F100</sup>(4A) In the case of a complaint against a person who is no longer of a description set out in <sup>F101</sup>section 2A(1)], 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 <sup>F102</sup>section 2B(1)] 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.]
- <sup>F103</sup>(5) .....
- <sup>F104</sup>(6) .....

**Textual Amendments**

**F99** Words in s. 9(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 39(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F100** S. 9(4A)(4B) inserted (23.2.2001) by 2000 c. 28, **ss. 2, 4(2)** (with s. 3)

**F101** Words in s. 9(4A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 39(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F102** Words in s. 9(4B) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 39(4)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F103** S. 9(5) repealed (1.4.1996) by 1996 c. 5, ss. 9(a), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**

**F104** 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 <sup>F105</sup>the 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.
- <sup>F106</sup>(2A) .....

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- (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 [F105the Commissioner] under this section shall be determined by him.
- (5) A complaint referred to [F105the Commissioner] under this section shall be deemed to be duly made to him.

#### Textual Amendments

**F105** Words in s. 10(1)(4)(5) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 40\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F106** S. 10(2A) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 40\(3\), Sch. 7](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

### *Investigations*

#### **11 Procedure in respect of investigations.**

- (1) Where [F107the Commissioner] proposes to conduct an investigation pursuant to a complaint under [F108section 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.
- [F109(1A) Where [F110the 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 [F111the 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.]
- [F112(1C) Where [F113the Commissioner] proposes to conduct an investigation pursuant to a complaint under section 3(1E), he shall afford to the person or body whose maladministration is 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—

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- (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) [<sup>F114</sup>The Commissioner] may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or 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 [<sup>F115</sup>made by [<sup>F116</sup>the Commissioner]<sup>F117</sup>...] under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by the Treasury <sup>F118</sup>....

- (5) The conduct of an investigation [<sup>F119</sup>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.
- [<sup>F120</sup>(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 <sup>M11</sup>Immigration Act 1971 he shall, if the Commissioner so directs, be permitted to re-enter and remain in the United Kingdom, subject to such conditions as the Secretary of State may direct, for the purposes of the investigation.

### Textual Amendments

- F107** Words in s. 11(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 41(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F108** 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)
- F109** 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)
- F110** Words in s. 11(1A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 41(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F111** Words in s. 11(1B) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 41(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F112** S. 11(1C) inserted (1.6.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 9 para. 11(3)**; S.I. 2004/759, art. 7
- F113** Words in s. 11(1C) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 41(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F114** Words in s. 11(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 41(3)(a)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F115** 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
- F116** Words in s. 11(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 41(3)(b)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F117** Words in s. 11(4) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(7)**
- F118** Words in s. 11(4) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 41(3)(c)**, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)



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**F119** 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)**

**F120** 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)**

**C6** S. 11(1)(a)(5) modified (1.4.1996) by 1996/709, art. 9(3)(a)(i)(ii)

**Marginal Citations**

**M11** 1971 c. 77.

## 12 Evidence.

(1) For the purposes of an investigation pursuant to a complaint under section 3(1) [<sup>F121</sup>the 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.

[<sup>F122</sup>(1A) For the purposes of an investigation pursuant to a complaint under section 3(1A) (1C) or (1E) [<sup>F123</sup>the 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 [<sup>F124</sup>the 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, 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.

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#### Textual Amendments

- F121** Words in s. 12(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 42** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F122** 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)**
- F123** Words in s. 12(1A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 42** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F124** Words in s. 12(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 42** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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

- C7** S. 12(1) applied with modifications (1.4.1996) by S.I. 1996/709, **art. 9(3)(b)**

### 13 Obstruction and contempt.

- (1) [<sup>F125</sup>The 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).

#### Textual Amendments

- F125** Words in s. 13(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 43** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

### Reports

### 14 [<sup>F126</sup>Reports by the Commissioner].

- (1) [<sup>F127</sup>In any case where [<sup>F128</sup>the Commissioner]<sup>F129</sup>... 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 <sup>F130</sup>... 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),

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- [<sup>F131</sup>(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,]
        - (d) to any person who is alleged in the complaint to have taken or authorised the action complained of, [<sup>F132</sup>and]
        - [<sup>F133</sup>(e) to the Secretary of State.]
- (2) In any case where [<sup>F134</sup>the Commissioner]<sup>F135</sup> ... decides not to conduct an investigation [<sup>F136</sup>pursuant to a complaint under section 3(1)] he shall send a statement of his reasons—
  - (a) to the person who made the complaint, [<sup>F137</sup>and]
  - (b) to any such member of the House of Commons <sup>F138</sup> ... as is mentioned in subsection (1)(b), <sup>F139</sup> . . .
  - <sup>F140</sup>(c) . . . . .
- [<sup>F141</sup>(2A) In any case where [<sup>F142</sup>the Commissioner]<sup>F143</sup> ... 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 <sup>F144</sup> ... 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 [<sup>F145</sup>the Commissioner]<sup>F146</sup> ... 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 <sup>F147</sup> ... as is mentioned in subsection (2A)(b).
- (2C) In any case where [<sup>F148</sup>the Commissioner]<sup>F149</sup> ... 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 <sup>F150</sup> ... 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 [<sup>F151</sup>(in a case within section 2B(1))] made the arrangement to provide the service concerned, and
  - (f) to the Secretary of State.
- (2D) In any case where [<sup>F152</sup>the Commissioner]<sup>F153</sup> ... 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

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- (b) to any such member of the House of Commons <sup>F154</sup>...as is mentioned in subsection (2C)(b).]
- <sup>F155</sup>(2E) In any case where [<sup>F156</sup>the Commissioner] conducts an investigation pursuant to a complaint under section 3(1E) 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 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 the person or body whose maladministration is complained of;
  - (d) to any person or body whose action was complained of in the complaint made to the person or body whose maladministration is complained of;
  - (e) to the Secretary of State.
- (2F) In any case where [<sup>F157</sup>the Commissioner] decides not to conduct an investigation pursuant to a complaint under section 3(1E) he shall send a statement of his reasons—
- (a) to the person who made the complaint; or
  - (b) to any such member of the House of Commons as is mentioned in subsection (2E)(b).]

<sup>F158</sup>(2I) Where the Commissioner is required by this section to send a report or statement of reasons to certain persons, the Commissioner may send the report or statement to such other persons as the Commissioner thinks appropriate.]

(3) If after conducting an investigation it appears to [<sup>F159</sup>the Commissioner]<sup>F160</sup> ... that—

    - (a) the person aggrieved has sustained such injustice or hardship as is mentioned in section 3(1) [<sup>F161</sup>, (1A) or (1C)], and
    - (b) the injustice or hardship has not been and will not be remedied,

he may if he thinks fit [<sup>F162</sup>lay before each House of Parliament a special report on the case.]

<sup>F163</sup>(4) [<sup>F164</sup>The Commissioner]<sup>F165</sup> ...—

    - (a) shall <sup>F166</sup>...annually lay before each House of Parliament a general report on the performance of his functions under this Act, and
    - (b) may <sup>F167</sup>... 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 [<sup>F168</sup>the Commissioner]<sup>F169</sup>... 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

**F126** Words in s. 14 heading substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005](#) (c. 10), s. 40, **Sch. 6 para. 44** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F127** 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)**

**F128** Words in s. 14(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005](#) (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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- F129** Words in s. 14(1) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F130** Words in s. 14(1)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F131** S. 14(1)(c) substituted (1.4.1996) by 1996 c. 5, s. **10(2)**; S.I. 1996/970, **art. 2(1)**
- F132** 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)
- F133** 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)
- F134** Words in s. 14(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F135** Words in s. 14(2) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F136** 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)**
- F137** 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)**
- F138** Words in s. 14(2)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F139** 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)**
- F140** 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)**
- F141** 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)**
- F142** Words in s. 14(2A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F143** Words in s. 14(2A) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F144** Words in s. 14(2A)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F145** Words in s. 14(2B) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F146** Words in s. 14(2B) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F147** Words in s. 14(2B)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F148** Words in s. 14(2C) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F149** Words in s. 14(2C) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F150** Words in s. 14(2C)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F151** Words in s. 14(2C)(e) inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 12(6)**, 40(1); S.I. 2010/30, art. 2(b)
- F152** Words in s. 14(2D) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F153** Words in s. 14(2D) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F154** Words in s. 14(2D)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F155** S. 14(2E)(2F) inserted (1.6.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 9 para. 11(5)**; S.I. 2004/759, art. 7
- F156** Words in s. 14(2E) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F157** Words in s. 14(2F) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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- F158** S. 14(21) inserted (1.7.2012) by Health and Social Care Act 2012 (c. 7), **ss. 201**, 306(4); S.I. 2012/1319, art. 2(3)
- F159** Words in s. 14(3) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F160** Words in s. 14(3) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F161** 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)**
- F162** Words in s. 14(3) substituted (1.4.1996) by 1996 c. 5, **s. 10(4)**; S.I. 1996/970, **art. 2(1)**
- F163** S. 14(4) substituted (1.4.1996) by 1996 c. 5, **s. 10(5)**; S.I. 1996/970, **art. 2(1)**
- F164** Words in s. 14(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F165** Words in s. 14(4) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(c)(i)**
- F166** Word in s. 14(4)(a) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(c)(ii)**
- F167** Word in s. 14(4)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(c)(ii)**
- F168** Words in s. 14(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F169** Words in s. 14(5) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**

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

- C8** S. 14(1)(c) applied with modifications (1.4.1996) by S.I. 1996/709, **art. 9(3)(c)**

**F170** **14A Reports by Welsh Commissioner.**

.....

**Textual Amendments**

- F170** Ss. 14A-14C repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 46, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F170** **14B Action in response to reports by Welsh Commissioner.**

.....

**Textual Amendments**

- F170** Ss. 14A-14C repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 46, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F170** **14C Reports: supplementary.**

.....

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### Textual Amendments

**F170** Ss. 14A-14C repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, Sch. 6 para. 46, [Sch. 7](#) (with s. 38); [S.I. 2005/2800](#), art. 5(1)(3)

## Information and consultation

### 15 Confidentiality of information.

- (1) Information obtained by <sup>F171</sup>the 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,
  - <sup>F172</sup>(aa) for the purposes of <sup>F173</sup>a matter] which is being investigated by the Parliamentary Commissioner or a Local Commissioner (or both),]
  - (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 <sup>F171</sup>the 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), <sup>F174</sup> . . .
  - (d) for the purposes of any proceedings under section 13 (offences of obstruction and contempt) <sup>F175</sup>or
  - (e) <sup>F176</sup>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).]
- <sup>F177</sup>[ Subsection (1B) applies where, in the course of an investigation, <sup>F179</sup>the
- <sup>F178</sup>(1A) Commissioner] or 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 <sup>F180</sup>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 <sup>F181</sup>; 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 <sup>F182</sup>the Commissioner] discloses information as permitted by subsection (1B) he shall—
- <sup>F183</sup>(a) [ where he knows the identity of the person mentioned in subsection (1)(e), 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.]]

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- (2) Neither [<sup>F184</sup>the Commissioner] nor his officers [<sup>F185</sup>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.
- [<sup>F186</sup>(3) The reference in subsection (2) to [<sup>F187</sup>the Commissioner's] advisers is a reference to persons from whom the Commissioner obtains advice under paragraph 13 of Schedule 1 <sup>F188</sup>....]
- [<sup>F189</sup>(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, the reference in paragraph (a) of that subsection to the investigation shall have effect as a reference to any investigation.]

#### Textual Amendments

- F171** Words in s. 15(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 47(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F172** S. 15(1)(aa) inserted (1.8.2007) by The Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 (S.I. 2007/1889), arts. 1(1), **11**
- F173** Words in s. 15(1)(aa) substituted (1.4.2008) by Local Government and Public Involvement in Health Act 2007 (c. 28), s. 245(5), **Sch. 12 para. 15(2)**; S.I. 2008/917, art. 2(1)(n) (with art. 6(5))
- F174** 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)**
- F175** 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)**
- F176** 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**
- F177** S. 15(1A)-(1C) inserted (1.4.1996) by 1996 c. 5, s. **11(3)**; S.I. 1996/970, **art. 2(1)**
- F178** 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**
- F179** Words in s. 15(1A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 47(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F180** 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**
- F181** 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**
- F182** Words in s. 15(1C) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 47(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F183** 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**
- F184** Words in s. 15(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 47(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F185** Words in s. 15(2) inserted (1.4.1996) by 1996 c. 5, s. **11(4)**; S.I. 1996/970, **art. 2(1)**
- F186** S. 15(3) inserted (1.4.1996) by 1996 c. 5, s. **11(5)**; S.I. 1996/970, **art. 2(1)**
- F187** Words in s. 15(3) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 47(4)(a)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F188** Words in s. 15(3) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 47(4)(b)**, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F189** 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)



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

- C9** S. 15 excluded by 1974 c. 7, s. 34M(7)(b) (as inserted (1.10.2010) by Health Act 2009 (c. 21), s. 40(1), Sch. 5 para. 2; S.I. 2010/1863, art. 2)

**16 Information prejudicial to the safety of the State.**

- (1) A Minister of the Crown may give notice in writing to [<sup>F190</sup>the 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 [<sup>F190</sup>the 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.

**Textual Amendments**

- F190** Words in s. 16(1)(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 48 (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**17 Use of information by Commissioner in other capacity.**

- (1) This section applies where [<sup>F191</sup>the Commissioner] also holds <sup>F192</sup>... 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 of carrying out his functions in relation to the complaint initiated to him as the holder of the additional office.

<sup>F193</sup>(3) .....

**Textual Amendments**

- F191** Words in s. 17(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 49(2)(a) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F192** Words in s. 17(1) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 49(2)(b), Sch. 7 (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F193** S. 17(3) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 49(3) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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

C10 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 [<sup>F194</sup>the Commissioner], at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly [<sup>F195</sup>or wholly] to a matter which could be the subject of an investigation—

- <sup>F196</sup>(a) .....
- (b) by the Parliamentary Commissioner under the <sup>M12</sup>Parliamentary Commissioner Act 1967,
- <sup>F197</sup>(ba) by the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,]
- (c) by a Local Commissioner under Part III [<sup>F198</sup>or 3A] of the <sup>M13</sup>Local Government Act 1974, [<sup>F199</sup>or]
- (d) [<sup>F200</sup>by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002], <sup>F201</sup>...
- <sup>F201</sup>(e) .....

he shall consult about the complaint with the appropriate Commissioner [<sup>F202</sup>or <sup>F203</sup>... 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 [<sup>F202</sup>or <sup>F203</sup>... Ombudsman].

(2) Where [<sup>F204</sup>the Commissioner] consults with another Commissioner [<sup>F205</sup>, the Scottish Public Services Ombudsman] or <sup>F206</sup>... [<sup>F207</sup>the Public Services Ombudsman for Wales] 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 <sup>F208</sup>... in the course of consultations held in accordance with this section.

#### Textual Amendments

- F194** Words in s. 18(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 50(2)(a)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F195** Words in s. 18(1) inserted (1.4.2004 for W., 1.4.2006 for E.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 11 para. 64**; S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345), S.I. 2005/2925, art. 10(2)(j)
- F196** S. 18(1)(a) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 50(2)(b)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F197** S. 18(1)(ba) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 50(2)(c)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F198** Words in s. 18(1)(c) inserted (1.10.2010) by Health Act 2009 (c. 21), s. 40(1), **Sch. 5 para. 13**; S.I. 2010/1863, art. 2
- F199** Word in s. 18(1)(c) repealed (14.7.2005 for W.) by Housing Act 2004 (c. 34), s. 270(4)(5)(f), Sch. 15 para. 37(2)(a), **Sch. 16**; S.I. 2005/1814, arts. 1(2), 2(f)(iv)

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- F200** Words in s. 18(1)(d) substituted (14.7.2004) by The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(9)(a)(ii)**
- F201** S. 18(1)(e) and word repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 50(2)(d), Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F202** 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**
- F203** Word in s. 18(1) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(9)(a)(iii)**
- F204** Words in s. 18(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 50(3)(a)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F205** Words in s. 18(2) inserted (14.7.2004) by The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(9)(b)**
- F206** Words in s. 18(2) repealed (14.7.2005 for W.) by Housing Act 2004 (c. 34), s. 270(4)(5)(f), **Sch. 15 para. 37(3), Sch. 16**; S.I. 2005/1814, arts. 1(2), 2(f)(iv)
- F207** Words in s. 18(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 50(3)(b)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F208** 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**

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

- C11** S. 18 extended (1.7.1999) by S.I. 1999/1351, **art. 17(5)(a)**; S.I. 1998/3178, **art. 3**
- C12** 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**

- M12** 1967 c. 13.
- M13** 1974 c. 7.

### **[<sup>F209</sup>18ZA Collaborative working between the Commissioner and other Commissioners**

- (1) If at any stage in the course of conducting an investigation under this Act the Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of—
- the Parliamentary Commissioner,
  - a Local Commissioner, or
  - both,
- he may, subject to subsection (2), conduct an investigation under this Act jointly with that Commissioner or those Commissioners.
- (2) The Commissioner must obtain the consent of the person aggrieved or any person acting on his behalf in accordance with section 9(3) before agreeing to a joint investigation referred to in subsection (1).
- (3) If the Commissioner forms the opinion that [<sup>F210</sup>matters which are the subject of an investigation] by—
- the Parliamentary Commissioner,
  - a Local Commissioner, or
  - both,
- [<sup>F211</sup>include] a matter within his jurisdiction, he may conduct an investigation [<sup>F212</sup>of that matter] under this Act jointly with that Commissioner or those Commissioners.

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- (4) If the Commissioner conducts an investigation <sup>F213</sup>... jointly with another person, the requirements of section 14 (reports) (so far as relating to a case where the Commissioner conducts an investigation under this Act) may be satisfied by a report made jointly with that person.
- (5) Apart from identifying any body or provider investigated, a report prepared by virtue of subsection (4) by the Commissioner and a Local Commissioner shall not—
- (a) mention the name of any person, or
  - (b) contain any particulars which, in the opinion of the Commissioner and the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,
- unless, after taking into account the public interest as well as [<sup>F214</sup>the interests of the complainant (if any) and of other persons], the Commissioner and the Local Commissioner consider it necessary to mention the name of that person or to include in the report any such particulars.
- (6) Nothing in subsection (5) of this section prevents a report—
- (a) mentioning the name of, or
  - (b) containing particulars likely to identify,
- the Mayor of London or any member of the London Assembly.]

#### Textual Amendments

- F209** S. 18ZA inserted (1.8.2007) by [The Regulatory Reform \(Collaboration etc. between Ombudsmen\) Order 2007 \(S.I. 2007/1889\)](#), arts. 1(1), 6
- F210** Words in s. 18ZA(3) substituted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 12 para. 15\(3\)\(a\)\(i\)](#); S.I. 2008/917, art. 2(1)(n) (with art. 6(5))
- F211** Word in s. 18ZA(3) substituted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 12 para. 15\(3\)\(a\)\(ii\)](#); S.I. 2008/917, art. 2(1)(n) (with art. 6(5))
- F212** Words in s. 18ZA(3) inserted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 12 para. 15\(3\)\(a\)\(iii\)](#); S.I. 2008/917, art. 2(1)(n) (with art. 6(5))
- F213** Words in s. 18ZA(4) repealed (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 12 para. 15\(3\)\(b\)](#), [Sch. 18 Pt. 14](#); S.I. 2008/917, art. 2(1)(n)(ii)(v) (with art. 6(5))
- F214** Words in s. 18ZA(5) substituted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 12 para. 15\(3\)\(c\)](#); S.I. 2008/917, art. 2(1)(n) (with art. 6(5))

#### [<sup>F215</sup>18A Disclosure of information to Information Commissioner.

- (1) [<sup>F216</sup>The Health Service Commissioner] 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—

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- (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

- F215** 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)
- F216** Words in s. 18A(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 51** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

### Supplementary

## 19 Interpretation.

In this Act—

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

[<sup>F217</sup>[<sup>F218</sup>“allotted sum” shall be construed in accordance with section 15 of the <sup>M14</sup>National Health Service and Community Care Act 1990 or, in Scotland, section 87B of the <sup>M15</sup>National Health Service (Scotland) Act 1978;]]

[<sup>F219</sup>“the Assembly” means the National Assembly for Wales;]

<sup>F220</sup>“the Court” means, in relation to England and Wales, the High Court, ...and in relation to Northern Ireland, the High Court in Northern Ireland;

[<sup>F221</sup>“direct payment services” means services in respect of which direct payments have been made under section 12A(1), or under regulations under section 12A(4), of the National Health Service Act 2006;]

[<sup>F222</sup>“family health services” has the meaning given by section 2A;

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

<sup>F223</sup> ...

“functions” includes powers and duties;

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

[<sup>F224</sup>“independent provider” has the meaning given by section 2B;]

“local authority” means—

(a) in relation to England <sup>F225</sup> . . . , a county, district or London borough council or the Common Council of the City of London,

(aa) [<sup>F226</sup>in relation to Wales, a county council or county borough council,]

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

[<sup>F227</sup>“Local Commissioner” means a Local Commissioner under Part 3 of the Local Government Act 1974;]

“officer” includes employee <sup>F228</sup> ...;

“Parliamentary Commissioner” means Parliamentary Commissioner for Administration;

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“patient” includes an expectant or nursing mother and a lying-in woman;  
F229 . . .

“person aggrieved” means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 3(1) [F230, (1A) or (1C)].

[F231][F232]“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

- F217** 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)**
- F218** 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. 2**
- F219** 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**
- F220** Words in s. 19 omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(10)**
- F221** Words in s. 19 inserted (19.1.2010) by Health Act 2009 (c. 21), **ss. 12(7)**, 40(1); S.I. 2010/30, art. 2(b)
- F222** 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)**
- F223** Words in s. 19 repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 52(2), **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F224** 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)**
- F225** 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**
- F226** 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**
- F227** Words in s. 19 inserted (1.8.2007) by The Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007 (S.I. 2007/1889), arts. 1(1), **17**
- F228** Words in s. 19 repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 52(3), **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F229** 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)**
- F230** 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)**
- F231** 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)**
- F232** 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. 2**

### Marginal Citations

- M14** 1990 c. 19.  
**M15** 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.

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*Status: Point in time view as at 01/10/2012.*

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## **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.
- (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 [<sup>F233</sup>ENGLISH <sup>F234</sup>...][<sup>F235</sup>COMMISSIONER]

##### Textual Amendments

- F233** 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**
- F234** Words in Sch. 1 heading omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(11)(a)**
- F235** Word in Sch. 1 heading substituted (14.7.2004) by The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(11)(a)**

#### *[<sup>F236</sup> Introductory]*

##### Textual Amendments

- F236** 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**

<sup>F237</sup>A1 .....

##### Textual Amendments

- F237** Sch. 1 para. A1 repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 53(2), **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

#### *Appointment of [<sup>F238</sup> Commissioner]*

##### Textual Amendments

- F238** Word in Sch. 1 para. 1 cross-heading substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 53(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

<sup>F239</sup>1 Her Majesty may by Letters Patent appoint a person to be the Commissioner.

##### Textual Amendments

- F239** Sch. 1 paras. 1-1E substituted for Sch. 1 para. 1 (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by The Employment Equality (Age) Regulations 2006 (S.I. 2006/1031), **reg. 1(1), Sch. 8 para. 15(2)** (with regs. 44-46)



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1A Subject to paragraphs 1C and 1D a person appointed to be the Commissioner shall hold office until the end of the period for which he is appointed.

**Textual Amendments**

**F239** Sch. 1 paras. 1-1E substituted for Sch. 1 para. 1 (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [reg. 1\(1\)](#), [Sch. 8 para. 15\(2\)](#) (with [regs. 44-46](#))

1B That period must be not more than seven years.

**Textual Amendments**

**F239** Sch. 1 paras. 1-1E substituted for Sch. 1 para. 1 (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [reg. 1\(1\)](#), [Sch. 8 para. 15\(2\)](#) (with [regs. 44-46](#))

1C A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request.

**Textual Amendments**

**F239** Sch. 1 paras. 1-1E substituted for Sch. 1 para. 1 (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [reg. 1\(1\)](#), [Sch. 8 para. 15\(2\)](#) (with [regs. 44-46](#))

1D A person appointed to be the Commissioner may be removed from office by Her Majesty, on the ground of misbehaviour, in consequence of Addresses from both Houses of Parliament.

**Textual Amendments**

**F239** Sch. 1 paras. 1-1E substituted for Sch. 1 para. 1 (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [reg. 1\(1\)](#), [Sch. 8 para. 15\(2\)](#) (with [regs. 44-46](#))

1E A person appointed to be the Commissioner is not eligible for re-appointment.]

**Textual Amendments**

**F239** Sch. 1 paras. 1-1E substituted for Sch. 1 para. 1 (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), [reg. 1\(1\)](#), [Sch. 8 para. 15\(2\)](#) (with [regs. 44-46](#))

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### *Appointment of acting <sup>F240</sup>Commissioner]*

#### Textual Amendments

**F240** Word in Sch. 1 para. 2 heading substituted (14.7.2004) by [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(d)**

- 2 (1) [<sup>F241</sup>Where [<sup>F242</sup>the office]] of Commissioner becomes vacant, Her Majesty may, pending the appointment of the new Commissioner, appoint a person under this paragraph to act as [<sup>F243</sup>the] Commissioner at any time during the period of twelve months beginning with the date on which the vacancy arose.
- [<sup>F244</sup>(1A) A person appointed to act as the Commissioner (“an acting Commissioner”) may have held office as the Commissioner.
- (1B) A person appointed as an acting Commissioner is eligible for appointment as the Commissioner unless he has already held office as the Commissioner.]
- (2) A person appointed [<sup>F245</sup>as acting Commissioner,] 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.
- [<sup>F246</sup>(3) A person appointed as an acting Commissioner shall, while he holds office, be treated for all purposes, except for the purposes of paragraphs 1, 4 to 10 and this paragraph, as the Commissioner.]

#### Textual Amendments

- F241** 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](#)
- F242** Words in Sch. 1 para. 2(1) substituted (14.7.2004) by [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(e)(i)**
- F243** Word in Sch. 1 para. 2(1) substituted (14.7.2004) by [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(e)(ii)**
- F244** Sch. 1 para. 2(1A)(1B) inserted (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), **Sch. 8 para. 15(3)(a)** (with regs. 44-46)
- F245** Words in Sch. 1 para. 2(2) substituted (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), **Sch. 8 para. 15(3)(b)** (with regs. 44-46)
- F246** Sch. 1 para. 2(3) substituted (with application in accordance with Sch. 8 para. 16 of the amending S.I.) by [The Employment Equality \(Age\) Regulations 2006 \(S.I. 2006/1031\)](#), reg. 1(1), **Sch. 8 para. 15(3)(c)** (with regs. 44-46)

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

- C13** Sch 1. para. 2: transfer of certain functions (1.4.1995) by [S.I. 1995/269, art. 3, Sch. para. 24](#)

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*Ineligibility of certain persons for appointment*

- 3 (1) A person who is a member of a relevant health service body shall not be appointed [<sup>F247</sup>the 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) <sup>F248</sup> ... a body mentioned in [<sup>F249</sup>section 2(1)]<sup>F250</sup> ...
- <sup>F251</sup>(b) .....

**Textual Amendments**

- F247** Words in Sch. 1 para. 3(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 53\(5\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F248** Words in Sch. 1 para. 3(2) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(f)(i)**
- F249** Words in Sch. 1 para. 3(2) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 53\(5\)\(b\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F250** Word in Sch. 1 para. 3(2) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(f)(ii)**
- F251** Sch. 1 para. 3(2)(b) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(f)(iii)**

- <sup>F252</sup>3A(1) A person who is a relevant family health service provider shall not be appointed [<sup>F253</sup>the 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) <sup>F254</sup> ... a person mentioned in [<sup>F255</sup>section 2A(1)]<sup>F256</sup> ...
- <sup>F257</sup>(b) .....

**Textual Amendments**

- F252** 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)**
- F253** Words in Sch. 1 para. 3A(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 53\(6\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F254** Words in Sch. 1 para. 3A(2) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(g)(i)**
- F255** Words in Sch. 1 para. 3A(2) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 53\(6\)\(b\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F256** Word in Sch. 1 para. 3A(2) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(g)(ii)**
- F257** Sch. 1 para. 3A(2)(b) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(g)(iii)**

*Salaries*

- 4 [<sup>F258</sup>(a)] There shall be paid to the holder of the office of [<sup>F259</sup>the 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

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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.

<sup>F260</sup>(b) .....

#### Textual Amendments

**F258** 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**

**F259** Words in Sch. 1 para. 4 substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 53(7)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F260** Sch. 1 para. 4(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(11)(h)**

- 5 The salary payable to a holder of the office of [<sup>F261</sup>the 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.

#### Textual Amendments

**F261** Words in Sch. 1 para. 5 substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 53(7)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

- 6 (1) Where a person holds—  
 (a) the office of Parliamentary Commissioner, and  
 (b) [<sup>F262</sup>the office] 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.

<sup>F263</sup>(2) .....

#### Textual Amendments

**F262** Words in Sch. 1 para. 6(1)(b) substituted (14.7.2004) by The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(11)(i)(i)**

**F263** Sch. 1 para. 6(2) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(11)(i)(ii)**

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

**C14** 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 <sup>M16</sup>Parliamentary Commissioner Act 1967 (which relates to pensions and other benefits) has effect with respect to persons who hold or have held office as [<sup>F264</sup>the Commissioner] as it has effect with respect to persons who hold or have held office as the Parliamentary Commissioner.

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#### Textual Amendments

**F264** Words in Sch. 1 para. 7 substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 53\(7\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

#### Marginal Citations

**M16** 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 <sup>F265</sup>the office] 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.
- (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.

#### Textual Amendments

**F265** Words in Sch. 1 para. 9(1) substituted (14.7.2004) by [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\), arts. 1, 17\(1\)\(j\)](#)

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

**C15** 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 <sup>M17</sup>Parliamentary Commissioner Act 1967 (as substituted by Part II of

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- Schedule 4 to the <sup>M18</sup>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

**M17** 1967 c. 13.

**M18** 1993 c. 8.

#### Staff and advisers

- 11 (1) [<sup>F266</sup>The Commissioner] may appoint such officers as he may determine with the approval of the Treasury as to numbers and conditions of service.
- [<sup>F267</sup>(1A) The Health Service Commissioner for England may appoint and pay a mediator or other appropriate person to assist him in the conduct of an investigation under this Act.]
- <sup>F268</sup>(2) .....

#### Textual Amendments

- F266** Words in Sch. 1 para. 11(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 53\(8\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F267** Sch. 1 para. 11(1A) inserted (1.8.2007) by [The Regulatory Reform \(Collaboration etc. between Ombudsmen\) Order 2007 \(S.I. 2007/1889\)](#), arts. 1(1), **14**
- F268** 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 [<sup>F269</sup>the 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 <sup>F270</sup>... [<sup>F271</sup>the Parliamentary Commissioner or the Public Services Ombudsman for Wales].

#### Textual Amendments

- F269** Words in Sch. 1 para. 12 substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 53\(9\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F270** Words in Sch. 1 para. 12 omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(11)(k)**
- F271** Words in Sch. 1 para. 12 substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 53\(9\)\(b\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

- [<sup>F272</sup>12A. For the purposes of conducting a joint investigation referred to in section 18ZA, any function of the Commissioner under this Act may be performed by [<sup>F273</sup>—
- (a)] any officer or member of staff of the Parliamentary Commissioner or

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- [<sup>F274</sup>(b) any person discharging or assisting in the discharge of a function of a Local Commissioner,  
who is] authorised for the purpose by the Commissioner.]

#### Textual Amendments

- F272** Sch. 1 para. 12A inserted (1.8.2007) by [The Regulatory Reform \(Collaboration etc. between Ombudsmen\) Order 2007 \(S.I. 2007/1889\)](#), arts. 1(1), 7
- F273** Words in Sch. 1 para. 12A inserted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 12 para. 15\(4\)\(a\)](#); S.I. 2008/917, art. 2(1)(n) (with art. 6(5))
- F274** Words in Sch. 1 para. 12A substituted (1.4.2008) by [Local Government and Public Involvement in Health Act 2007 \(c. 28\)](#), s. 245(5), [Sch. 12 para. 15\(4\)\(b\)](#); S.I. 2008/917, art. 2(1)(n) (with art. 6(5))

- 13 (1) To assist him in any investigation [<sup>F275</sup>the Commissioner] may obtain advice from any person who, in his opinion, is qualified to give it.
- (2) [<sup>F276</sup>The 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.

#### Textual Amendments

- F275** Words in Sch. 1 para. 13(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 53\(10\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F276** Words in Sch. 1 para. 13(2) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 53\(10\)\(b\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

#### *Financial provisions*

- 14 The expenses of [<sup>F277</sup>the Commissioner]<sup>F278</sup> ... 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

- F277** Words in Sch. 1 para. 14 substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 53\(11\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F278** Words in Sch. 1 para. 14 omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(11\)\(l\)](#)

- 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.

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F279 SCHEDULE 1A

Section 1(3).

THE WELSH COMMISSIONER

**Textual Amendments**

**F279** Sch. 1A repealed (12.10.2005 for specified purposes, 1.4.2006 in so far as not already in force) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, Sch. 6 para. 54, **Sch. 7** (with s. 38); S.I. 2005/2800, arts. 3(b), 5(1)(3), Sch. 1 Pt. 2 (with art. 7, Sch. 2)

F280F279 ...

**Textual Amendments**

**F280** 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**

F279F281 .....

**Textual Amendments**

**F281** 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**

F282

**Textual Amendments**

**F282** 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**

F279F283 .....

**Textual Amendments**

**F283** 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**

F284

**Textual Amendments**

**F284** 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**

F279F285 .....



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**Textual Amendments**

**F285** 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**

*F286*

**Textual Amendments**

**F286** 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**

**F279F287** .....

**Textual Amendments**

**F287** 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**

*F288*

**Textual Amendments**

**F288** 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**

**F279F289** .....

**Textual Amendments**

**F289** 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**

*F290*

**Textual Amendments**

**F290** 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**

**F279F291** .....

**Textual Amendments**

**F291** 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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**F292**

**Textual Amendments**

**F292** 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**

F279F293 .....

**Textual Amendments**

**F293** 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**

**F294**

**Textual Amendments**

**F294** 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**

F279F295 .....

**Textual Amendments**

**F295** 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**

**F296**

**Textual Amendments**

**F296** 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**

F279F297 .....

**Textual Amendments**

**F297** 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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**F298**

**Textual Amendments**

**F298** 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**

F279F299

**Textual Amendments**

**F299** 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**

**F300**

**Textual Amendments**

**F300** 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**

F279F301

**Textual Amendments**

**F301** 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**

**F302**

**Textual Amendments**

**F302** 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**

F279F303

**Textual Amendments**

**F303** 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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**F304**

**Textual Amendments**

**F304** 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**

F279F305 .....

**Textual Amendments**

**F305** 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**

**F306**

**Textual Amendments**

**F306** 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**

F279F307 .....

**Textual Amendments**

**F307** 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**

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

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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.
- (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)*

F308<sup>5</sup> .....

**Textual Amendments**

**F308** Sch. 2 para. 5 omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(13)**

F309<sup>6</sup> .....

**Textual Amendments**

**F309** Sch. 2 para. 6 omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(13)**

*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

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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) ”.

## 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.

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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). 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.

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## 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:

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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)

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- 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).

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- 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.

<b>Provision</b>	<b>Derivation</b>
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)



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(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)
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)
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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)
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	

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