



# Health Service Commissioners (Amendment) Act 1996

## 1996 CHAPTER 5

### *Other matters*

#### **4 Mental Welfare Commission for Scotland**

- (1) In section 2(3) of the 1993 Act (bodies subject to investigation by Health Service Commissioner for Scotland) the word “and” at the end of paragraph (c) shall be omitted and after paragraph (d) there shall be inserted “and  
(e) the Mental Welfare Commission for Scotland”.
- (2) In section 4(3) of the 1993 Act (no investigation where protective functions of Mental Welfare Commission for Scotland applicable) after “action” there shall be inserted “by a health service body other than the Mental Welfare Commission for Scotland if it is action”.
- (3) After section 7 of the 1993 Act there shall be inserted—

#### **“7A Certain functions of Mental Welfare Commission for Scotland**

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

#### **5 Availability of other remedy**

In section 4 of the 1993 Act (availability of other remedy) after subsection (3) there shall be inserted—

“(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 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 a 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 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.”

## **6 Exercise of clinical judgment**

- (1) Section 5 of the 1993 Act (no investigation to be conducted of action taken in consequence of exercise of clinical judgment) shall be omitted.
- (2) In section 3 of the 1993 Act (general remit of Commissioners) after subsection (6) (inserted by section 2 above) there shall be inserted—
- “(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.”

## **7 General health services**

- (1) Section 6 of the 1993 Act (general health services etc.) shall be amended as follows.
- (2) The following provisions shall be omitted—
- (a) subsection (1) (no investigation to be conducted of action taken by person providing general medical services etc. under National Health Service Act 1977);
  - (b) subsection (2) (no investigation to be conducted of action taken by medical practitioners etc. in pursuance of contracts under Part II of National Health Service (Scotland) Act 1978).
- (3) After subsection (4) there shall be inserted—
- “(5) A Commissioner shall not conduct an investigation in respect of action taken by a Health Authority in the exercise of its functions under regulations made under section 29, 36, 39 or 42 of the National Health Service Act 1977 by virtue of section 17 of the 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 National Health Service (Scotland) Act 1978 by virtue of section 17 of the Health and Medicines Act 1988.”

## **8 Personnel matters**

- (1) Section 7 of the 1993 Act (personnel, contracts etc.) shall be amended as follows.
- (2) In subsection (1) (Commissioner not to investigate personnel matters) after “1978” there shall be inserted “or the National Health Service and Community Care Act 1990”.
- (3) After subsection (3A) (inserted by Schedule 1 to this Act) there shall be inserted—
  - “(3B) Nothing in the preceding provisions of this section prevents a Commissioner conducting an investigation in respect of action taken by a health service body in operating a procedure established to examine complaints.”

## **9 Complaints: requirements to be met**

- In section 9 of the 1993 Act (requirements to be complied with as regards complaints) the following subsections shall be omitted—
- (a) subsection (5) (Commissioner must be satisfied that health service body has been afforded reasonable opportunity to investigate complaint);
  - (b) subsection (6) (subsection (5) to be disregarded in certain circumstances).

## **10 Reports**

- (1) Section 14 of the 1993 Act (reports by Commissioners) shall be amended as follows.
- (2) In subsection (1) for paragraph (c) there shall be substituted—
  - “(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.”
- (3) In subsection (2)—
  - (a) the word “and” shall be inserted at the end of paragraph (a);
  - (b) paragraph (c) and the word “and” at the end of paragraph (b) shall be omitted.
- (4) In subsection (3) for the words from “make a special report” to the end of the subsection there shall be substituted “lay before each House of Parliament a special report on the case.”
- (5) For subsection (4) there shall be substituted—
  - “(4) Each of the Commissioners—
    - (a) shall annually lay before each House of Parliament a general report on the performance of his functions under this Act, and
    - (b) may from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit.”

## **11 Information**

- (1) Section 15 of the 1993 Act (information) shall be amended as follows.
- (2) In subsection (1) (information not to be disclosed except for certain purposes) the word “or” at the end of paragraph (c) shall be omitted and after paragraph (d) there shall be inserted “or

---

*Status: This is the original version (as it was originally enacted).*

---

(e) as permitted by subsection (1B).”

(3) After subsection (1) there shall be inserted—

“(1A) Subsection (1B) applies where, in the course of an investigation, a 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 such a case 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; and a person to whom disclosure may be made may, for instance, be a body which regulates the profession to which the person mentioned in subsection (1A)(b) belongs or his employer or any person with whom he has made arrangements to provide services.

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

- (a) inform the person mentioned in subsection (1A)(b) that he has disclosed it, and
- (b) inform him of the identity of any person to whom he has disclosed it.”

(4) In subsection (2) (neither a Commissioner nor his officers to be called on to give evidence) after “nor his officers” there shall be inserted “nor his advisers”.

(5) After subsection (2) there shall be inserted—

“(3) The reference in subsection (2) to a Commissioner’s advisers is a reference to persons from whom the Commissioner obtains advice under paragraph 13 of Schedule 1.”