

SCHEDULES

SCHEDULE 10

Section 112.

AMENDMENTS OF HEALTH SERVICE COMMISSIONERS ACT 1993

- 1 The Health Service Commissioners Act 1993 has effect subject to the following amendments.
- 2 In section 1(3) (which introduces Schedule 1), for “the Commissioners and other administrative matters” substitute “, and other administrative matters relating to, the Health Service Commissioner for England and the Health Service Commissioner for Scotland; and Schedule 1A has effect with respect to the appointment and remuneration of, and other administrative matters relating to, the Health Service Commissioner for Wales”.
- 3 (1) Section 2 (bodies subject to investigation by Health Service Commissioners) is amended as follows.
 - (2) In subsection (2) (bodies subject to investigation by Health Service Commissioner for Wales), after paragraph (c) insert “and
 - (ca) the National Assembly for Wales (“the Assembly”).”
 - (3) In subsection (5)(b) (Special Health Authorities which are subject to investigation by Health Service Commissioner), omit “by Order in Council”.
 - (4) For subsection (6) (procedure for Order in Council) substitute—

“(6) A designation for the purposes of subsection (5)(b) shall be made—
 - (a) in the case of a Special Health Authority exercising functions only or mainly in Wales, by order made by the Assembly by statutory instrument, and
 - (b) in any other case, by Order in Council;and a statutory instrument containing an Order in Council made by virtue of paragraph (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.”
- 4 In section 2B (independent providers subject to investigation), after subsection (2) insert—

“(2A) Arrangements with the Assembly are not arrangements with a health service body for the purposes of this Act unless they are made in the exercise of a function of the Assembly relating to the National Health Service.”
- 5 In section 3 (remit of Commissioners), after subsection (1) insert—

“(1YA) In the case of the Assembly the Health Service Commissioner for Wales may only conduct an investigation in respect of—
 - (a) a failure in a service provided by the Assembly in the exercise of a function of the Assembly relating to the National Health Service (an “Assembly health service function”),

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- (b) a failure of the Assembly to provide a service the provision of which is an Assembly health service function, or
 - (c) maladministration connected with any other action taken by or on behalf of the Assembly in the exercise of an Assembly health service function.”
- 6 In section 7(1) (exception of action taken in respect of personnel matters), at the end insert “or service as a member of the staff of the Assembly”.
- 7 In section 8(2) (authorities not entitled to make a complaint)—
- (a) in paragraph (a), after “government” insert “(including the Assembly)”, and
 - (b) in paragraph (c), after “department” insert “or by the Assembly” and after “Parliament” insert “or the Assembly”.
- 8 In section 10 (referral of complaints by health service bodies), after subsection (2) insert—
- “(2A) The Assembly may only refer a complaint under this section if it is in respect of a matter which the Health Service Commissioner for Wales can investigate by virtue of section 3(1YA).”
- 9 In section 11(4) (payment of expenses etc. by Commissioner)—
- (a) after “Payments” insert “made by the Health Service Commissioner for England or the Health Service Commissioner for Scotland”, and
 - (b) at the end insert “; and payments made by the Health Service Commissioner for Wales under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by him.”
- 10 (1) Section 14 (reports by Commissioners) is amended as follows.
- (2) For “a Commissioner” (in each place) substitute “the Health Service Commissioner for England or the Health Service Commissioner for Scotland”.
- (3) In subsection (4) (annual reports)—
- (a) for “Each of the Commissioners” substitute “The Health Service Commissioner for England and the Health Service Commissioner for Scotland”, and
 - (b) after “shall” and “may” insert “each”.
- (4) In the sidenote, after “by” insert “English and Scottish”.
- 11 After that section insert—

“14A Reports by Welsh Commissioner.

- (1) In any case where the Health Service Commissioner for Wales has conducted an investigation pursuant to a complaint under section 3(1), (1A) or (1C) he shall prepare a report of the results of the investigation and send copies of it—
- (a) to the person who made the complaint,
 - (b) to any Assembly member who to the Commissioner’s knowledge assisted in the making of the complaint (or, if he is no longer an Assembly member, to such Assembly member as the Commissioner thinks appropriate), and

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

14B Action in response to reports by Welsh Commissioner.

- (1) Where the Assembly First Secretary receives a copy of a report under section 14A(1), he shall send a copy of it to any Assembly Secretary who is accountable to the Assembly (in accordance with section 56 of the Government of Wales Act 1998) for the exercise of any functions of the Assembly relating to the National Health Service.
- (2) Where in a report under section 14A(1) the Health Service Commissioner for Wales states that the person aggrieved has sustained such injustice or hardship as is mentioned in section 3(1), (1A) or (1C), any body or provider subject to the investigation shall consider the report and within—
 - (a) the period of three months beginning with the date on which the body or provider received the report, or
 - (b) such longer period as the Commissioner may agree in writing,shall notify the Commissioner of the action taken or proposed to be taken.

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

14C Reports: supplementary.

- (1) Apart from identifying any body or provider investigated, a report under section 14A(1), a further report under section 14B(3) or a report under paragraph 7 of Schedule 1A shall not—
- (a) mention the name of any person, or
 - (b) include any particulars which, in the opinion of the Health Service Commissioner for Wales, are likely to identify any person and can be omitted without impairing the effectiveness of the report or further report,
- unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Commissioner

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considers it necessary for the report or further report to mention his name or include such particulars.

(2) For the purposes of the law of defamation, the following are absolutely privileged—

- (a) the publication of any matter by the Health Service Commissioner for Wales in a report or statement under section 14A, a further report under section 14B(3) or a report under paragraph 7 of Schedule 1A,
- (b) the publication of any matter in communications between—
 - (i) an Assembly member or a member of the Assembly’s staff or a member or an officer or member of the staff of any other body or provider subject to investigation by the Commissioner, and
 - (ii) the Commissioner or a member of his staff,in connection with a complaint to the Commissioner,
- (c) the publication of any matter in communications between any person and an Assembly member in connection with a complaint by the person to the Commissioner, and
- (d) the publication of any matter in communications between any person and the Commissioner or a member of his staff in connection with a complaint by the person to the Commissioner.”

12 In section 15(3) (interpretation of reference to a Commissioner’s advisers), insert at the end “or paragraph 6(6) of Schedule 1A”.

13 In section 17(1) (use of information by Commissioner in other capacity), after “Health Service Commissioner” insert “, the office of Welsh Administration Ombudsman”.

14 (1) Section 18 (consultation with other Commissioners) is amended as follows.

(2) In subsection (1) (duty to consult), after paragraph (b) insert—

“(ba) by the Welsh Administration Ombudsman under the Government of Wales Act 1998,”, and after “Commissioner”, in both places where it appears in the words following paragraph (d), insert “or the Ombudsman”.

(3) In subsection (2) (matters which may be covered by consultation), after “another Commissioner” insert “or the Welsh Administration Ombudsman”.

(4) In subsection (3) (confidentiality), omit “by a Commissioner or his officers”.

15 (1) Section 19 (interpretation) is amended as follows.

(2) After the definition of “allotted sum” insert—

““the Assembly” means the National Assembly for Wales;”.

(3) After the definition of “family health service provider” insert—

““financial year” and “first financial year of the Assembly” have the same meanings as in the Government of Wales Act 1998;”.

(4) In the definition of “officer”, insert at the end “and, in the case of the Health Service Commissioner for Wales, any member of his staff;”.

16 (1) Schedule 1 (the Commissioners) is amended as follows.

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- (2) In the heading, before “COMMISSIONERS” insert “ENGLISH AND SCOTTISH”.
- (3) Before paragraph 1 insert—

“Introductory

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

- (4) In paragraph 2(1) (acting Commissioners), for “Where any” substitute “Where either”.
- (5) In paragraphs 3(2)(a) and 3A(2)(a) (ineligibility of certain persons for appointment), omit “or for Wales”.
- (6) In paragraph 6 (salary of person holding more than one office)—
- (a) in sub-paragraph (1)(b), for “one or more” substitute “either or both”, and
 - (b) in sub-paragraph (2), for “two or more” substitute “both”.
- (7) Omit paragraph 11(2) (staff of Welsh Commissioner).
- (8) In paragraph 12 (performance of functions of Commissioner by officers of another Commissioner), for “another Commissioner or the Parliamentary Commissioner” substitute “the other Commissioner, the Health Service Commissioner for Wales, the Parliamentary Commissioner or the Welsh Administration Ombudsman”.
- 17 After that Schedule insert—

“SCHEDULE
1A

Section 1(3).

THE WELSH COMMISSIONER

Appointment

- 1 (1) The Health Service Commissioner for Wales shall be appointed by Her Majesty.
- (2) Subject to sub-paragraphs (3) and (4), the Health Service Commissioner for Wales shall hold office until the end of the year of service in which he attains the age of 65.
- (3) Her Majesty may relieve the Health Service Commissioner for Wales of office before the end of that year of service—
- (a) at his request, or
 - (b) on Her Majesty being satisfied that he is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.
- (4) Her Majesty may remove the Health Service Commissioner for Wales from office before the end of the year of service in which he attains the age of 65 if, on the ground of misbehaviour, the Secretary of State

recommends that Her Majesty should do so; but the Secretary of State shall not so recommend without consulting the Assembly.

Status

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

Appointment of acting Commissioner

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

Ineligibility of certain persons for appointment

- 4 (1) A person who is a member of a body mentioned in section 2(1) or (2) shall not be appointed as Health Service Commissioner for Wales or acting Health Service Commissioner for Wales; and a person so

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appointed shall not, during his appointment, become a member of such a body.

- (2) A person mentioned in section 2A(1) or (2) shall not be appointed as Health Service Commissioner for Wales or acting Health Service Commissioner for Wales; and a person so appointed shall not, during his appointment, become a person so mentioned.

Remuneration

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

Staff and advisers

- 6 (1) The Health Service Commissioner for Wales may appoint such staff as he considers necessary for assisting him in the exercise of his functions.
- (2) The Health Service Commissioner for Wales shall include among his staff such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.

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

Reports

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

Expenses

- 8 (1) The expenses of the Health Service Commissioner for Wales shall, so far as they cannot be met out of income received by him, be met by the Assembly.

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- (2) Those expenses include any sums payable by the Health Service Commissioner for Wales in consequence of a breach, in the course of the performance of any of his functions, of any contractual or other duty (whether that breach occurs by reason of his act or omission or that of a member of his staff or any other person assisting him in the exercise of his functions).

Estimates

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

Accounts

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

Audit

- 11 (1) The accounts prepared by the Health Service Commissioner for Wales for any financial year shall be submitted by him to the Auditor General for Wales no later than five months after the end of that financial year.
- (2) The Auditor General for Wales shall—

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- (a) examine and certify any accounts submitted to him under this paragraph, and
 - (b) no later than four months after the accounts are submitted to him, lay before the Assembly a copy of them as certified by him together with his report on them.
- (3) In examining any accounts submitted to him under this paragraph, the Auditor General for Wales shall, in particular, satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it.

Accounting officer

- 12 (1) The accounting officer for the Office of the Health Service Commissioner for Wales shall be the Health Service Commissioner for Wales.
- (2) But where—
- (a) the Health Service Commissioner for Wales is incapable of discharging his responsibilities as accounting officer, or
 - (b) the office of Health Service Commissioner for Wales is vacant (and there is no acting Health Service Commissioner for Wales),
- the Treasury may designate a member of the staff of the Health Service Commissioner for Wales to be the accounting officer for so long as paragraph (a) or (b) applies.
- (3) The accounting officer for the Office of the Health Service Commissioner for Wales shall have, in relation to the accounts of the Health Service Commissioner for Wales and the finances of the Office of the Health Service Commissioner for Wales, the responsibilities which are from time to time specified by the Treasury.
- (4) In this paragraph references to responsibilities include in particular—
- (a) responsibilities in relation to the signing of accounts,
 - (b) responsibilities for the propriety and regularity of the finances of the Office of the Health Service Commissioner for Wales, and
 - (c) responsibilities for the economy, efficiency and effectiveness with which the resources of the Office of the Health Service Commissioner for Wales are used.
- (5) The responsibilities which may be specified under this paragraph include responsibilities owed to—
- (a) the Assembly, the executive committee or the Audit Committee of the Assembly, or
 - (b) the House of Commons or its Committee of Public Accounts.
- (6) If requested to do so by the House of Commons Committee of Public Accounts, the Audit Committee of the Assembly may—
- (a) on behalf of the Committee of Public Accounts take evidence from the accounting officer for the Office of the Health Service Commissioner for Wales, and
 - (b) report to the Committee of Public Accounts and transmit to that Committee any evidence so taken.

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- (7) In this paragraph and paragraphs 13 and 14 “the Office of the Health Service Commissioner for Wales” means the Health Service Commissioner for Wales and the members of his staff; and in this paragraph “the executive committee” has the same meaning as in paragraph 9.

Examinations into use of resources

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

Examinations by the Comptroller and Auditor General

- 14 (1) For the purpose of enabling him to carry out examinations into, and report to Parliament on, the finances of the Office of the Health Service Commissioner for Wales, the Comptroller and Auditor General—
- (a) shall have a right of access at all reasonable times to all such documents in the custody or under the control of the Health Service Commissioner for Wales, or of the Auditor General for Wales, as he may reasonably require for that purpose, and
- (b) shall be entitled to require from any person holding or accountable for any of those documents any assistance, information or explanation which he reasonably thinks necessary for that purpose.
- (2) The Comptroller and Auditor General shall—
- (a) consult the Auditor General for Wales, and
- (b) take into account any relevant work done or being done by the Auditor General for Wales,
- before he acts in reliance on sub-paragraph (1) or carries out an examination in respect of the Health Service Commissioner for Wales under section 7 of the National Audit Act 1983 (economy etc. examinations).”