



Patient Safety Commissioner for Scotland Act 2023

2023 asp 6

Establishment

1 Patient Safety Commissioner for Scotland

- (1) The office of Patient Safety Commissioner for Scotland is established.
- (2) [Schedule 1](#) makes further provision about the office.

Commencement Information

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| 11 | S. 1 not in force at Royal Assent, see s. 24(2) |
| 12 | S. 1 in force at 1.5.2024 by S.S.I. 2024/110 , reg. 2(1) |

Purpose and principles

2 Functions

- (1) The Commissioner's general functions are—
 - (a) to advocate for systemic improvement in the safety of health care, and
 - (b) to promote the importance of the views of patients and other members of the public in relation to the safety of health care.
- (2) In exercising those functions, the Commissioner may in particular—
 - (a) gather information, for example patient feedback, relating to the safety of health care,
 - (b) keep under review, analyse and report on information obtained,
 - (c) make recommendations for systemic improvements in the safety of health care,
 - (d) promote public awareness of safety practices in relation to health care,
 - (e) promote co-ordination among health care providers and public authorities with functions that relate to health care.

Status: Point in time view as at 01/05/2024.

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- (3) It is not the Commissioner’s role to resolve, or facilitate the resolution of, grievances arising from past incidents; accordingly, the Commissioner has no power to—
- (a) make awards, or provide any other form of redress, for harms suffered,
 - (b) assist individuals in seeking redress for harms suffered,
 - (c) opine on the action that another person ought to take in respect of an individual in light of a past incident.
- (4) Nothing in [subsection \(3\)](#) precludes the Commissioner from investigating past incidents in order to inform the actions that the Commissioner, and others, may take to effect systemic improvement in the safety of health care.

Commencement Information

- I3** S. 2 not in force at Royal Assent, see [s. 24\(2\)](#)
I4 S. 2 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

3 Principles

- (1) The Commissioner must—
- (a) have a statement of the principles that are to inform the exercise of the Commissioner’s functions, and
 - (b) make the latest version of the statement publicly available.
- (2) The statement of principles must include the principle that the Commissioner will seek to work co-operatively with other persons where appropriate, having regard to the importance of the Commissioner’s independence.

Commencement Information

- I5** S. 3 not in force at Royal Assent, see [s. 24\(2\)](#)
I6 S. 3 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Strategic planning

4 Duty to have a plan

- (1) The Commissioner must—
- (a) have a strategic plan, and
 - (b) make the latest version of the plan publicly available.
- (2) A strategic plan is a document setting out, for the period of the plan (as defined in [section 5\(2\)](#)), the Commissioner’s—
- (a) strategy for involving the public, and patients in particular, in the Commissioner’s work,
 - (b) objectives,
 - (c) proposals for achieving the objectives,
 - (d) timetable for doing so,
 - (e) estimate of the costs for doing so.

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- (3) The strategy referred to in [subsection \(2\)\(a\)](#) must, in particular, make provision about how the Commissioner will seek to raise awareness of—
 - (a) the Commissioner’s role, and
 - (b) the ways in which the public may communicate with the Commissioner.
- (4) A strategic plan may include any other information the Commissioner considers appropriate.
- (5) As soon as practicable after making a strategic plan, the Commissioner is to lay a copy of it before the Scottish Parliament.

Commencement Information

- I7** S. 4 not in force at Royal Assent, see [s. 24\(2\)](#)
I8 S. 4 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

5 Frequency of planning

- (1) The Commissioner—
 - (a) may make a new strategic plan at any time (having complied with [section 7](#)),
 - (b) must seek to ensure that there is no gap between the period of one plan ending and that of its successor beginning.
- (2) The period of a strategic plan—
 - (a) must not exceed 4 years,
 - (b) begins on the date that the plan states it begins,
 - (c) ends on the earlier of—
 - (i) the date that the plan states it ends, or
 - (ii) the date that the period of the plan’s successor begins.

Commencement Information

- I9** S. 5 not in force at Royal Assent, see [s. 24\(2\)](#)
I10 S. 5 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Charter

6 Patient Safety Charter

- (1) The Commissioner must—
 - (a) have a charter, and
 - (b) make the latest version of the charter publicly available.
- (2) The charter is to set out what the Commissioner expects of health care providers in terms of standards and good practice.
- (3) The charter may, in particular, make provision in relation to the way that health care providers engage with patients and their families.

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- (4) The Commissioner must take the expectations set out in the charter into account when considering a health care provider's handling of an incident.

Commencement Information

- I11** S. 6 not in force at Royal Assent, see [s. 24\(2\)](#)
I12 S. 6 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Consultation on principles, strategic plan and charter

7 Duty to consult on principles, strategic plan and charter

- (1) Before finalising a document mentioned in [subsection \(3\)](#), the Commissioner—
- (a) must consult on a draft of it with—
 - (i) the Parliamentary corporation,
 - (ii) the advisory group established in accordance with [section 16](#), and
 - (iii) any other person the Commissioner considers appropriate having regard to the importance of the document reflecting patients' concerns,
 - (b) may consult on a draft of it with any other person the Commissioner considers appropriate.
- (2) In considering who it would be appropriate to consult for the purposes of [subsection \(1\)](#), the Commissioner is to give particular consideration to groups whose needs are, in the Commissioner's opinion, under-represented or given insufficient weight in discourses around health care.
- (3) The documents are—
- (a) a statement of principles (see [section 3](#)),
 - (b) a strategic plan (see [section 4](#)), and
 - (c) a charter (see [section 6](#)).

Commencement Information

- I13** S. 7 not in force at Royal Assent, see [s. 24\(2\)](#)
I14 S. 7 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

Formal investigations

8 Initiation of formal investigation

- (1) A formal investigation into a health care safety issue begins when the Commissioner first makes the investigation's terms of reference publicly available.
- (2) As soon as practicable after making a formal investigation's terms of reference publicly available, the Commissioner must take reasonable steps to bring them to the attention of any person who, in the Commissioner's opinion, is likely to be—
- (a) required under [section 13](#) to supply information in relation to the investigation, or

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- (b) the addressee of a recommendation in the report produced at the conclusion of the investigation.
- (3) Nothing in [this section](#) precludes the Commissioner from investigating an issue otherwise than by way of a formal investigation.

Commencement Information

I15 S. 8 not in force at Royal Assent, see [s. 24\(2\)](#)

I16 S. 8 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

9 Further provision about terms of reference

- (1) The terms of reference for a formal investigation under [section 8](#) must—
 - (a) describe the issue to be investigated,
 - (b) identify (by name or description) any person to whom the Commissioner expects to address a recommendation in the report produced at the conclusion of the investigation,
 - (c) state whether the Commissioner expects to need access to individuals' information in the course of the investigation,
 - (d) if the Commissioner does expect to need access to individuals' information, state—
 - (i) why that is the Commissioner's expectation, and
 - (ii) why the Commissioner expects to need that information in a form that does, or does not (as the case may be), allow individuals to be identified.
- (2) Before finalising the terms of reference for a formal investigation, the Commissioner—
 - (a) must consult the advisory group established in accordance with [section 16](#),
 - (b) may consult any other person that the Commissioner considers appropriate.

Commencement Information

I17 S. 9 not in force at Royal Assent, see [s. 24\(2\)](#)

I18 S. 9 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

10 Investigation report

- (1) Having concluded a formal investigation under [section 8](#), the Commissioner must—
 - (a) prepare a report on the investigation, and
 - (b) lay a copy of it before the Scottish Parliament.
- (2) The report must state—
 - (a) the Commissioner's findings in relation to the issue investigated and the reasons for them, and
 - (b) the Commissioner's recommendations in light of those findings.
- (3) The Commissioner must give a copy of the report to any person to whom a recommendation in the report is addressed.

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- (4) The Commissioner may address a recommendation to a person in a report on a formal investigation whether or not—
- (a) the person was identified in the investigation's terms of reference as a person to whom the Commissioner expected to address a recommendation,
 - (b) the Commissioner took steps to bring the investigation's terms of reference to the person's attention in accordance with [section 8\(2\)\(b\)](#).

Commencement Information

I19 S. 10 not in force at Royal Assent, see [s. 24\(2\)](#)

I20 S. 10 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

11 Requirement to respond to report

- (1) A person is subject to a requirement to respond to a recommendation in a report under [section 10](#) if—
- (a) the report states—
 - (i) that the recommendation is addressed to the person, and
 - (ii) the period within which the person's response to the recommendation is required, and
 - (b) the Commissioner gives the person a copy of the report.
- (2) A person complies with a requirement to respond to a recommendation by giving the Commissioner a written response to it before the end of the period within which the report states that the person's response is required.
- (3) A written response to a recommendation is a document setting out—
- (a) what the person responding has done, or proposes to do, to give effect to the recommendation, and
 - (b) if the person does not intend to do anything to give effect to the recommendation (wholly or partly), the person's reasons for that.
- (4) The Commissioner may, in whatever manner the Commissioner considers appropriate—
- (a) make publicly available (in full or in part) a person's written response to a recommendation,
 - (b) publicise a person's failure to comply with a requirement to respond to a recommendation.

Commencement Information

I21 S. 11 not in force at Royal Assent, see [s. 24\(2\)](#)

I22 S. 11 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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Gathering and use of information

12 Power to require information

- (1) The Commissioner may require a person to which [subsection \(4\)](#) applies to supply the Commissioner with information that—
 - (a) is in the person’s possession or control,
 - (b) may be relevant to the work of the Commissioner,
 - (c) is not information of a kind that the Commissioner is prohibited by [subsection \(3\)](#) from requiring the person to supply.
- (2) A requirement under this section is imposed on a person when the Commissioner gives the person written notice specifying—
 - (a) the information that the person is required to supply,
 - (b) the way in which the person is required to supply it, and
 - (c) either—
 - (i) the time by which the person is to supply it, or
 - (ii) the period throughout which the person is to supply it and the intervals within that period at which it must be supplied.
- (3) The following are the kinds of information that the Commissioner is prohibited from requiring a person to supply under this section—
 - (a) information that the person would be entitled to refuse to provide in proceedings in a court in Scotland,
 - (b) information about an individual (whether or not it is anonymised).
- (4) This subsection applies to a person who is—
 - (a) a health care provider,
 - (b) a body constituted by virtue of the National Health Service (Scotland) Act 1978.
- (5) In [this section](#), “information” includes unrecorded information.

Commencement Information

I23 S. 12 not in force at Royal Assent, see [s. 24\(2\)](#)

I24 S. 12 in force at 1.5.2024 by [S.S.I. 2024/110, reg. 2\(1\)](#)

13 Further power to require information in a formal investigation

- (1) When carrying out a formal investigation under [section 8](#), the Commissioner may require any person to supply information that—
 - (a) is in the person’s possession or control,
 - (b) may be relevant to the investigation, and
 - (c) is not information that the person would be entitled to refuse to provide in proceedings in a court in Scotland.
- (2) But the Commissioner may only impose a requirement to supply information under [this section](#) if the Commissioner is satisfied that requiring the information to be supplied is proportionate to the seriousness of the issue being investigated.

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- (3) A requirement under [this section](#) is imposed on a person when the Commissioner gives the person written notice specifying—
 - (a) the information that the person is required to supply,
 - (b) the way in which the person is required to supply it, and
 - (c) the time by which the person is to supply it.
- (4) The Commissioner may require a person to supply information under [this section](#) whether or not—
 - (a) the Commissioner stated in a formal investigation’s terms of reference that the Commissioner expected to need access to the information,
 - (b) the Commissioner took steps to bring the investigation’s terms of reference to the person’s attention in accordance with [section 8\(2\)\(a\)](#).
- (5) The Commissioner’s power to require a person to supply information under [this section](#) is without prejudice to the Commissioner’s power to require a person to supply information under [section 12](#).
- (6) In [this section](#), “information” includes unrecorded information.

Commencement Information

I25 S. 13 not in force at Royal Assent, see [s. 24\(2\)](#)

I26 S. 13 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

14 Failure to supply required information

- (1) The Commissioner may take the action mentioned in [subsection \(3\)](#) or [\(4\)](#) (or both actions) where—
 - (a) a requirement to supply information has been imposed on a person by a written notice under [section 12](#) or [13](#), and
 - (b) the person refuses, or fails without reasonable excuse, to supply the information in accordance with the terms of the notice.
- (2) The Commissioner may take the action mentioned in [subsection \(4\)](#) where—
 - (a) a requirement to supply information has been imposed on a person by a written notice under [section 12](#) or [13](#), and
 - (b) the Commissioner suspects the person has deliberately altered the information.
- (3) The Commissioner may publicise the person’s refusal, or failure, to supply the information.
- (4) The Commissioner may report the matter to the Court of Session.
- (5) After receiving a report under [subsection \(4\)](#), and hearing any evidence or representations on the matter, the Court may (either or both)—
 - (a) make any order for enforcement that it considers appropriate,
 - (b) deal with the matter as if it were a contempt of court.

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Commencement Information

- I27** S. 14 not in force at Royal Assent, see [s. 24\(2\)](#)
I28 S. 14 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

15 Confidentiality of information

- (1) A person mentioned in [subsection \(3\)](#) commits an offence if the person knowingly or recklessly makes an unauthorised disclosure of information that—
- has been obtained by or on behalf of the Commissioner for the purposes of exercising the Commissioner’s functions,
 - is not, and has not been, in the public domain when the disclosure is made.
- (2) A disclosure of information is authorised for the purpose of [subsection \(1\)](#) in so far as it is—
- made with the consent of the person from whom the information was obtained,
 - necessary for the purpose of enabling, or assisting, the exercise of the Commissioner’s functions,
 - made for the purpose of legal proceedings, whether civil or criminal (including for the purposes of investigating an offence or suspected offence),
 - made for the purpose of assisting one of the following persons in exercising their statutory functions—
 - Healthcare Improvement Scotland,
 - the Commissioner for Patient Safety in relation to England, which is an office established by section 1 of the Medicines and Medical Devices Act 2021,
 - the Scottish Public Services Ombudsman,
 - required by an enactment or rule of law.
- (3) The persons referred to in [subsection \(1\)](#) are—
- the Commissioner,
 - a member of the Commissioner’s staff,
 - a member of the advisory group established in accordance with [section 16](#),
 - an agent of the Commissioner.
- (4) A person who commits an offence under [subsection \(1\)](#) is liable—
- on summary conviction, to a fine not exceeding the statutory maximum,
 - on conviction on indictment, to a fine.

Commencement Information

- I29** S. 15 not in force at Royal Assent, see [s. 24\(2\)](#)
I30 S. 15 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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Miscellaneous provisions

16 Advisory group

- (1) The Commissioner must establish and maintain an advisory group.
- (2) The purpose of the group is to give advice and information to the Commissioner about matters relating to the Commissioner's functions.
- (3) The members of the group are to be appointed by the Commissioner.
- (4) The Commissioner may only appoint a person as a member of the group if the appointment—
 - (a) has been approved by the Parliamentary corporation,
 - (b) would not result in the number of members of the group exceeding the maximum determined by the Parliamentary corporation,
 - (c) is consistent with the principle that at least half of the group's members are to be persons who appear to the Commissioner to be representative of patients.
- (5) The Commissioner may pay to members of the group such remuneration and allowances (including expenses) as the Commissioner, with the approval of the Parliamentary corporation, determines.
- (6) The advisory group's procedure and terms of membership are to be determined by the Commissioner.
- (7) Nothing in this section precludes the Commissioner from obtaining advice from any other person.

Commencement Information

- I31** S. 16 not in force at Royal Assent, see [s. 24\(2\)](#)
I32 S. 16 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

17 Reports

- (1) Aside from the reports that the Commissioner has a duty to lay before the Scottish Parliament, the Commissioner may lay before the Parliament any other report prepared by the Commissioner if the Commissioner considers it appropriate to do so.
- (2) The Commissioner must ensure that, so far as reasonably practicable having regard to the subject matter, a report does not name or otherwise identify an individual who has—
 - (a) given information to the Commissioner, and
 - (b) not consented to being named in the report.

Commencement Information

- I33** S. 17 not in force at Royal Assent, see [s. 24\(2\)](#)
I34 S. 17 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

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18 Protection from actions of defamation

- (1) For the purposes of the law of defamation—
 - (a) any statement made to the Commissioner has absolute privilege,
 - (b) any statement in the Commissioner’s report on an investigation has absolute privilege,
 - (c) any other statement made by the Commissioner has qualified privilege.
- (2) In [this section](#)—
 - (a) a reference to a statement being made to or by the Commissioner—
 - (i) includes a statement being made to or by (as the case may be) a member of the Commissioner’s staff,
 - (ii) does not include a statement made to or by (as the case may be) an individual when the individual is not acting in the individual’s capacity as the Commissioner or a member of the Commissioner’s staff,
 - (b) “statement” has the same meaning as in the Defamation and Malicious Publication (Scotland) Act 2021.

Commencement Information

- I35** S. 18 not in force at Royal Assent, see [s. 24\(2\)](#)
I36 [S. 18](#) in force at 1.5.2024 by [S.S.I. 2024/110, reg. 2\(1\)](#)

19 Directions about premises and sharing of resources

- (1) The Commissioner must comply with any direction given to the Commissioner by the Parliamentary corporation in relation to—
 - (a) the location of the Commissioner’s office,
 - (b) the sharing of premises, staff, services or other resources.
- (2) The Parliamentary corporation is to make any direction under [this section](#) publicly available.
- (3) A direction under [this section](#) may vary or revoke a previous direction.

Commencement Information

- I37** S. 19 not in force at Royal Assent, see [s. 24\(2\)](#)
I38 [S. 19](#) in force at 1.5.2024 by [S.S.I. 2024/110, reg. 2\(1\)](#)

Final provisions

20 Application of public authorities legislation

[Schedule 2](#) modifies other enactments so that their provisions apply to the office of Commissioner.

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Commencement Information

- I39** S. 20 not in force at Royal Assent, see [s. 24\(2\)](#)
I40 S. 20 in force at 1.5.2024 by [S.S.I. 2024/110](#), [reg. 2\(1\)](#)

21 Interpretation

In this Act—

“Commissioner” means the Patient Safety Commissioner for Scotland,
“forensic medical examination” is to be construed in accordance with section 2(3) of the Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021,

“health care” means—

- (a) services provided for or in connection with the prevention, diagnosis or treatment of illness, and
- (b) forensic medical examinations,

“Parliamentary corporation” means the Scottish Parliamentary Corporate Body,

“patient”—

- (a) is to be construed in accordance with the National Health Service (Scotland) Act 1978, and
- (b) includes a person to whom a forensic medical examination is provided.

Commencement Information

- I41** S. 21 in force at 8.11.2023, see [s. 24\(1\)](#)

22 Ancillary provision

The Scottish Ministers may by regulations make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Act or any provision made under it.

Commencement Information

- I42** S. 22 in force at 8.11.2023, see [s. 24\(1\)](#)

23 Regulation-making powers

- (1) Regulations under this Act may make different provision for different purposes.
- (2) Regulations under [section 22](#) may modify any enactment (including this Act).
- (3) Regulations under [section 22](#)—
 - (a) which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure,
 - (b) otherwise, are subject to the negative procedure.

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Commencement Information

I43 S. 23 in force at 8.11.2023, see [s. 24\(1\)](#)

24 Commencement

- (1) The following provisions come into force the day after Royal Assent: [this section](#) and [sections 21, 22, 23](#) and [25](#).
- (2) The other provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint.

Commencement Information

I44 S. 24 in force at 8.11.2023, see [s. 24\(1\)](#)

25 Short title

The short title of this Act is the Patient Safety Commissioner for Scotland Act 2023.

Commencement Information

I45 S. 25 in force at 8.11.2023, see [s. 24\(1\)](#)

Status:

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Changes to legislation:

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