



# Local Government Act 1974

## 1974 CHAPTER 7

### PART III

#### LOCAL GOVERNMENT ADMINISTRATION

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

- C1 Pt. III (ss. 23-34) applied (with modifications) (1.4.1998) by S.I. 1998/633, art. L
- C2 Power to make provision about matters of the kind dealt with by Pt. III (ss. 23-34) conferred (1.9.1997) by 1997 c. 50, s. 44(1), Sch. 4 para. (b); S.I. 1997/1930, art. 3(1)(2)(m)
- C3 Pt. III (ss. 23-34) applied (*temp.* from 4.5.1995 to 31.3.1996) by S.I. 1995/1042, art. 4(1)
- C4 Pt. III (ss. 23-34) restricted (30.7.1993) by S.I. 1993/1975, art. 10, Sch. 2 para. 4(2).
- C5 Pt. III (ss. 23-34) power to extend, modify, apply or reproduce (with or without modifications) conferred (W.) (1.11.2000) and (E.) (28.7.2001) by 2000 c. 22, ss. 68(3), 108(4)-(6); S.I. 2000/2948, art. 2  
Pt. III (ss. 23-34) extended (W.) (28.7.2001) by S.I. 2001/2275, reg. 2

## 23 The Commissions for Local Administration.

- (1) For the purpose of conducting investigations in accordance with this Part of this Act, there shall be—
  - (a) a body of commissioners to be known as the Commission for Local Administration in England, and
  - (b) a body consisting of two or more commissioners to be known as the Commission for Local Administration in Wales

[<sup>F1</sup>but each of the Commissions may include persons appointed to act as advisers, not exceeding the number appointed to conduct investigations.]
- (2) The Parliamentary Commissioner shall be a member of each of the Commissions.
- (3) In the following provisions of this Part of this Act the expression “Local Commissioner” means a person, other than the Parliamentary Commissioner [<sup>F2</sup>or an advisory member], who is a member of one of the Commissions.

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- (4) Appointments to the office of . . . <sup>F3</sup>Commissioner shall be made by Her Majesty on the recommendation of the Secretary of State after consultation with the [<sup>F4</sup>such persons as appear to the Secretary of State to represent authorities in England or, as the case may be, authorities in Wales to which this Part of this Act applies], and a person so appointed shall, subject to subsection (6) below, hold office during good behaviour.
- (5) . . . . . <sup>F5</sup>Commissioners may be appointed to serve either as full-time commissioners or as part-time commissioners.
- (6) A . . . <sup>F5</sup>Commissioner may be relieved of office by Her Majesty at his own request or may be removed from office by Her Majesty on grounds of incapacity or misbehaviour, and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five years.
- (7) The Secretary of State shall designate two of the Local Commissioners for England as chairman and vice-chairman respectively of the Commission for Local Administration in England and, in the event of there being more than one Local Commissioner for Wales, shall designate one of them as chairman of the Commission for Local Administration in Wales.
- (8) The Commission for Local Administration in England shall divide England into areas and shall provide, in relation to each area, for one or more of the Local Commissioners to be responsible for the area; and where the Commission for Local Administration in Wales consist of more than one Local Commissioner they may, if they think fit, act in a similar way in Wales.
- A Local Commissioner may, by virtue of this subsection, be made responsible for more than one area.
- (9) It shall be the duty of the Commission for Local Administration in England to ensure that any Local Commissioner made responsible for an area which includes the county of Cornwall is made responsible for an area which also includes the Isles of Scilly.
- (10) Each of the Commissions—
- (a) shall make arrangements for Local Commissioners to accept cases for which they are not responsible including, where the other Commission so request, a case arising in the country of that other Commission, and
  - (b) shall publish information about the procedures for making complaints under this Part of this Act.
- (11) For the year ending on 31st March 1975, and for each subsequent financial year, every Local Commissioner shall prepare a general report on the discharge of his functions and shall submit it to his Commission; and where he has discharged functions at the request of the other Commission he shall prepare a general report on the discharge of those functions and shall submit it to the other Commission.
- Any such report shall be submitted to the appropriate Commission not later than two months after the end of the year to which it relates.
- (12) [<sup>F6</sup>In the financial year beginning on 1st April 1990, and in every third financial year afterwards, the Commissions shall review the operation (since the last review was made under this subsection) of the provisions of this Part of this Act about the investigation of complaints, and shall have power to convey to authorities to which this Part of this Act applies] . . . <sup>F7</sup>, or to government departments, any recommendations or conclusions reached in the course of their reviews [<sup>F8</sup>and shall send copies of

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those recommendations or conclusions to the representative persons and authorities concerned].

[<sup>F9</sup>(12A) Each of the Commissions may, after consultation with the representative persons and authorities concerned, provide to the authorities or any of the authorities to which this Part of this Act applies such advice and guidance about good administrative practice as appears to the Commission to be appropriate and may arrange for it to be published for the information of the public.

(12B) The representative persons and authorities concerned are—

- (a) for the purposes of subsection (12) above, such persons appearing to the Commission to represent authorities in England or, as the case may be, authorities in Wales to which this Part of this Act applies, and in the case of such authorities as are not so represented, those authorities; and
- (b) for the purposes of subsection (12A) above, such of those persons and authorities as the Commission think appropriate.]

(13) Schedule 4 to this Act shall have effect as respects the Commissions.

#### Textual Amendments

- F1** Words added by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), [s. 22\(2\)](#)
- F2** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), [s. 22\(3\)](#)
- F3** Word repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), ss. 22(4), 194(4), [Sch. 12 Pt. II](#)
- F4** Words substituted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 194(1), [Sch. 11 para. 37](#)
- F5** Word repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), ss. 22(4), 194(4), [Sch. 12 Pt. II](#)
- F6** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 2\(1\)](#)
- F7** Words repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. 194(1)(4), [Sch. 11 para. 38](#), [Sch. 12 Pt. II](#)
- F8** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. 194(1), [Sch. 11 para. 38](#)
- F9** [S. 23\(12A\)\(12B\)](#) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), [s. 23\(1\)](#)

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

- C6** [S. 23\(12\)](#) restricted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 2\(2\)](#)

#### [<sup>F10</sup>23A Annual reports for representatives etc.

- (1) For the financial year ending in 1990 and for each subsequent financial year, each of the Commissions shall prepare a general report on the discharge of their functions and shall submit it—
  - (a) to such persons as appear to the Commission to represent authorities in England or, as the case may be, authorities in Wales to which this Part of this Act applies, and
  - (b) in the case of such authorities as are not so represented, to those authorities.
- (2) The report shall be submitted as soon as may be after the Commission have received the reports for the year from Local Commissioners under section 23(11) above, and each Commission shall submit copies of those reports, together with their own report.

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- (3) Each Commission shall arrange for the publication of the report submitted by them under subsection (1) above and of the reports of which copies are submitted by them under subsection (2) above.
- (4) Before arranging for the publication of a report under subsection (3) above the Commission concerned shall give a reasonable opportunity for the representative persons and authorities to whom the report was submitted to comment on it.
- (5) Without prejudice to the generality of subsection (4) above, comments made by the representative persons and authorities by virtue of that subsection may relate to particular classes of authorities to which this Part of this Act applies.
- (6) Where the Commission for Local Administration in Wales consist of only one Local Commissioner, section 23(11) above and subsection (2) above shall have effect with the necessary modifications.]

**Textual Amendments**  
**F10** S. 23A inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1\)](#), s. 25(2)

**Modifications etc. (not altering text)**  
**C7** S. 23A extended (W.) (28.7.2001) by [S.I. 2001/2275, reg. 3](#)

24 ..... F11

**Textual Amendments**  
**F11** S. 24 repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), ss. 25(1), 194(4), [Sch. 12 Pt. II](#)

**25 Authorities subject to investigation.**

- (1) This Part of this Act applies to [<sup>F12</sup>the following authorities]—
  - (a) any local authority,
  - [<sup>F13</sup>(aa) the Land Authority for Wales . . . <sup>F14</sup>]
  - (b) any joint board the constituent authorities of which are all local authorities,
  - [<sup>F15</sup>(ba) the Commission for the New Towns,
  - (bb) any development corporation established for the purposes of a new town,
  - (bc) the Development Board for Rural Wales,
  - (bd) any urban development corporation established by an order under section 135 of the Local Government, Planning and Land Act 1980,]
  - [<sup>F16</sup>(be) any housing action trust established under Part III of the Housing Act 1988]
  - [<sup>F17</sup>(c) any joint authority established by Part IV of the Local Government Act 1985;
  - (ca) any other police authority, except the Secretary of State;
  - (cb) ..... <sup>F18</sup>]
  - [<sup>F19</sup>(d) in relation to the flood defence functions of the National Rivers Authority (that is to say, its functions by virtue of Chapter III of Part III of the Water

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Act 1989, including all its functions under the Land Drainage Act 1976), the National Rivers Authority and any regional flood defence committee.]

- (2) Her Majesty may by Order in Council provide that this Part of this Act shall also apply, subject to any modifications or exceptions specified in the Order, to any authority specified in the Order, being an authority which is established by or under an Act of Parliament, and which has power to levy a rate, or to issue a precept.
- (3) An Order made by virtue of subsection (2) above may be varied or revoked by a subsequent Order so made and shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) Any reference to an authority to which this Part of this Act applies includes a reference—
- (a) to the members and officers of that authority, and
  - (b) to any person or body of persons acting for the authority under section 101 . . .<sup>F20</sup>, or
  - (c) any committee mentioned in section 101(9) of the said Act.
- [<sup>F21</sup>(5) Any reference to an authority to which this Part of this Act applies also includes a reference to any appeal committee constituted in accordance with paragraph 1 of Schedule 2 to the<sup>M1</sup> Education Act 1980.]

#### Textual Amendments

- F12** Words inserted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 4**
- F13** S. 25(1)(aa) inserted by Community Land Act 1975 (c. 77), **Sch. 10 para. 9(1)** (continued as amended by Local Government, Planning and Land Act 1980 (c. 65), **Sch. 22 para. 14(1)(2)**)
- F14** Words repealed by Local Government, Planning and Land Act 1980 (c. 65), **Sch. 34 Pt. XI**
- F15** S. 25(1)(ba)–(bd) inserted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 4**
- F16** S. 25(1)(be) inserted by Housing Act 1988 (c. 50, SIF 61), s. 140(1), **Sch. 17 para. 19**
- F17** S. 25(1)(c)(ca)(cb) substituted for s. 25(1)(c) by Local Government Act 1985 (c. 51, SIF 81:1), s. 84, **Sch. 14 Pt. II para. 51(a)**
- F18** S. 25(1)(cb) repealed by Education Reform Act 1988 (c. 40, SIF 41:1), ss. 231(7), 235(6), 237(2), **Sch. 13 Pt. I**
- F19** S. 25(1)(d) substituted by Water Act 1989 (c. 15, SIF 130), ss. 1(6), 58(7), 101(1), 141(6), 160(1)(2) (4), 163, 189(4)–(10), 190, 193(1), Sch. 1 para. 12, Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), **58**
- F20** Words repealed by Local Government and Housing Act 1989 (c. 42, SIF 81:1), s. 194(4), **Sch. 12 Pt. II**
- F21** S. 25(5) inserted with saving by Education Act 1980 (c. 20), s. 7(7) and S.I. 1980/959, **Sch. 3 para. 1**

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

- C8** S. 25(1)(c) amended by S.I. 1985/1884, art. 10, **Sch. 3 para. 4(k)** and by S.I. 1989/1815, art. 2, **Sch. 1 para. 6(b)**
- C9** S. 25(1)(c) extended by S.I. 1987/2110, art. 2(2), **Sch. 2 para. 8(h)**

#### Marginal Citations

- M1** 1980 c. 20.

## 26 Matters subject to investigation.

- (1) Subject to the provisions of this Part of this Act where a written complaint is made by or on behalf of a member of the public who claims to have sustained injustice in

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consequence of maladministration in connection with action taken by or on behalf of an authority to which this Part of this Act applies, being action taken in the exercise of administrative functions of that authority, a Local Commissioner may investigate that complaint.

- (2) A complaint shall not be entertained under this Part of this Act unless [<sup>F22</sup>it is made in writing to the Local Commissioner specifying the action alleged to constitute maladministration or]—
- (a) it is made in writing to a member of the authority, or of any other authority concerned, specifying the action alleged to constitute maladministration, and
  - (b) it is referred to the Local Commissioner, with the consent of the person aggrieved, or of a person acting on his behalf, by that member, or by any other person who is a member of any authority concerned, with a request to investigate the complaint.
- (3) If the Local Commissioner is satisfied that any member of any authority concerned has been requested to refer the complaint to a Local Commissioner, and has not done so, the Local Commissioner may, if he thinks fit, dispense with the requirements in subsection (2)(b) above.
- (4) A complaint shall not be entertained unless it was made to [<sup>F23</sup>the Local Commissioner or] a member of any authority concerned within twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint, but a Local Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that [<sup>F24</sup>it is reasonable] to do so.
- (5) Before proceeding to investigate a complaint, a Local Commissioner shall satisfy himself that the complaint has been brought, by or on behalf of the person aggrieved, to the notice of the authority to which the complaint relates and that that authority has been afforded a reasonable opportunity to investigate, and reply to, the complaint.
- (6) A Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters, that is to say,—
- (a) any action in respect of which the person aggrieved has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment;
  - (b) any action in respect of which the person aggrieved has or had a right of appeal to a Minister of the Crown; or
  - (c) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that a Local Commissioner may conduct an investigation notwithstanding the existence of such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect the person aggrieved to resort or have resorted to it.

- (7) A Local Commissioner shall not conduct an investigation in respect of any action which in his opinion affects all or most of the inhabitants of the [<sup>F25</sup>following area—
- (a) where the complaint relates to the Commission for the New Towns, the area of the new town or towns to which the complaint relates;
  - (b) where the complaint relates to the Development Board for Rural Wales, the area in Wales for which the Board is for the time being responsible;
  - (c) in any other case, the area of the authority concerned.]

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- (8) Without prejudice to the preceding provisions of this section, a Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any such action or matter as is described in Schedule 5 to this Act.
- (9) Her Majesty may by Order in Council amend the said Schedule 5 so as to <sup>[F26]</sup>add to or exclude from the provisions of that Schedule (as it has effect for the time being) such actions or matters as may be described in the Order; and any Order made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) In determining whether to initiate, continue or discontinue an investigation, a Local Commissioner shall, subject to the preceding provisions of this section, act at discretion; and any question whether a complaint is duly made under this Part of this Act shall be determined by the Local Commissioner.
- <sup>[F27]</sup>(11) In this section—
- (a) references to a person aggrieved include references to his personal representatives; and
  - (b) references to a member of an authority concerned include, in the case of a complaint relating to a joint authority established by Part IV of the Local Government Act 1985, references to a member of a constituent council of that authority.]
- (12) A complaint shall not be entertained under this Part of this Act if and so far as it is in respect of anything done before 1st April 1974, or in respect of any default or alleged default first arising before that date.
- <sup>[F28]</sup>(13) A complaint as regards an authority mentioned in section 25(1)(ba), (bb), (bc) or (bd) above shall not be entertained under this Part of this Act if and so far as it is in respect of anything done before the coming into force of Schedule 3 to the Local Government Act 1988, or in respect of any default or alleged default first arising before its coming into force; and subsection (12) above shall have effect subject to this.]

#### Textual Amendments

- F22** Words inserted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 5(2)**
- F23** Words inserted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 5(3)(7)**
- F24** Words substituted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 5(3)(7)**
- F25** S. 26(7)(a)–(c) and words substituted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 5(4)**
- F26** Words substituted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 5(5)**
- F27** S. 26(11) substituted by Local Government Act 1985 (c. 51, SIF 81:1), s. 84, **Sch. 14 Pt. II para. 51(b)**
- F28** S. 26(13) inserted by Local Government Act 1988 (c. 9, SIF 81:1, 2), s. 29, **Sch. 3 para. 5(6)**

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

- C10** S. 26 modified by S.I. 1986/452, **art. 8(3)(5)**
- C11** S. 26(11)(b) amended by S.I. 1985/1884, **art. 10, Sch. 3 para. 4(k)**
- C12** S. 26(11)(b) extended by S.I. 1987/2110, **art. 2(2), Sch. 1 para. 8(k)**

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## 27 Provisions relating to complaints.

- (1) A complaint under this Part of this Act may be made by any individual, or by any body of persons whether incorporated or not, not being—
  - (a) a local authority or other authority or body constituted for purposes of the public service or of local government, or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking;
  - (b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.
- (2) Where the person by whom a complaint might have been made under the preceding provisions of this Part of this Act has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or by some body or individual suitable to represent him; but except as aforesaid a complaint shall not be entertained under this Part of this Act unless made by the person aggrieved himself.

### Modifications etc. (not altering text)

C13 Ss. 27–30 modified by S.I. 1986/452, art. 8(3)

## 28 Procedure in respect of investigations.

- (1) Where a Local Commissioner proposes to conduct an investigation pursuant to a complaint, he shall afford to the authority concerned, and to any person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint.
- (2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Local Commissioner considers appropriate in the circumstances of the case; and without prejudice to the generality of the preceding provision the Local Commissioner may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented (by counsel or solicitor or otherwise) in the investigation.
- (3) The Local Commissioner may, if he thinks fit, pay to the person by whom the complaint was made, and to any other person who attends or furnishes information for the purposes of an investigation under this Part of this Act—
  - (a) sums in respect of the expenses properly incurred by them;
  - (b) allowances by way of compensation for the loss of their time,
 in accordance with such scales and subject to such conditions as may be determined by [<sup>F29</sup>the Treasury].
- (4) The conduct of an investigation under this Part of this Act shall not affect any action taken by the authority concerned, or any power or duty of that authority to take further action with respect to any matters subject to the investigation.



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### Textual Amendments

**F29** Words substituted by virtue of S.I. 1981/1670, arts. 2(3), 3(5)

### Modifications etc. (not altering text)

**C14** Ss. 27–30 modified by S.I. 1986/452, art. 8(3)

## 29 Investigations: further provisions.

- (1) For the purposes of an investigation under this Part of this Act a Local Commissioner may require any member or officer of the authority concerned, or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation, to furnish any such information or produce any such documents.
- (2) For the purposes of any such investigation a Local Commissioner shall have the same powers as the High Court in respect of the attendance and examination of witnesses, and in respect of the production of documents.
- (3) A Local Commissioner may, under subsection (1) above, require any person to furnish information concerning communications between the authority concerned and any Government department, or to produce any correspondence or other documents forming part of any such written communications.
- (4) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished 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 in accordance with subsection (3) above; and where that subsection applies the Crown shall not be entitled 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) Nothing in subsection (1) or subsection (3) above affects—
  - (a) the restriction, imposed by section 11(2) of the <sup>M2</sup>Parliamentary Commissioner Act 1967, on the disclosure of information by the Parliamentary Commissioner or his officers; or
  - (b) the restriction, imposed by [<sup>F30</sup>paragraph 16 of Schedule 13 to the <sup>M3</sup>National Health Service Act 1977], on the disclosure of information by the Health Service Commissioner for England or the Health Service Commissioner for Wales, or by their officers.
- (6) To assist him in any investigation, a Local Commissioner may obtain advice from any person who in his opinion is qualified to give it and may pay to any such person such fees or allowances as he may determine with the approval of [<sup>F31</sup>the Treasury].
- (7) Subject to subsection (4) above, no person shall be compelled for the purposes of an investigation under this Part of this Act to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.
- (8) If any person without lawful excuse obstructs a Local Commissioner in the performance of his functions under this Part of this Act, or any officer of the Commission assisting in the performance of those functions, or is guilty of any act or omission in relation to an investigation under this Part of this Act which, if that

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investigation were a proceeding in the High Court, would constitute contempt of court, the Local Commissioner may certify the offence to the High Court.

- (9) Where an offence is so certified, the High Court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the High Court could deal with him if he had committed the like offence in relation to the High Court.
- (10) Nothing in subsection (8) above shall be construed as applying to the taking of any such action as is mentioned in section 28(4) above.

#### Textual Amendments

- F30** Words substituted by [National Health Service Act 1977 \(c. 49\)](#), [Sch. 15 para. 60](#)  
**F31** Words substituted by virtue of [S.I. 1981/1670](#), [arts. 2\(3\)](#), 3(5)

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

- C15** [Ss. 27–30](#) modified by [S.I. 1986/452](#), [art. 8\(3\)](#)

#### Marginal Citations

- M2** [1967 c. 13](#).  
**M3** [1977 c. 49](#).

### 30 Reports on investigations.

- (1) In any case where a Local Commissioner conducts an investigation, or decides not to conduct an investigation, he shall send a report of the results of the investigation, or as the case may be a statement of his reasons for not conducting an investigation—
- (a) to the person, if any, who referred the complaint to the Local Commissioner in accordance with section 26(2) above, and
  - (b) to the complainant, and
  - (c) to the authority concerned, and to any other authority or person who is alleged in the complaint to have taken or authorised the action complained of.
- (2) Where the complaint was referred by a person who was a member of an authority but who has since ceased to be a member of that authority, the report or statement shall be sent to the chairman, or, as the case may be, mayor of that authority.
- [<sup>F32</sup>(2A) Where the complaint related to the Land Authority for Wales, the Local Commissioner shall also send the report or statement to the Secretary of State.]
- (3) Apart from identifying the authority or authorities concerned, the report shall not [<sup>F33</sup>, except where subsection (3A) below applies,]—
- (a) mention the name of any person, or
  - (b) contain any particulars which, in the opinion of 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 the interests of the complainant and of persons other than the complainant, the Local Commissioner considers it necessary to mention the name of that person or to include in the report any such particulars.

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- [<sup>F34</sup>(3A) Where the Local Commissioner is of the opinion—
- (a) that action constituting maladministration was taken which involved a member of the authority concerned, and
  - (b) that the member’s conduct constituted a breach of the National Code of Local Government Conduct,
- then, unless the Local Commissioner is satisfied that it would be unjust to do so, the report shall name the member and give particulars of the breach.]
- (4) Subject to the provisions of subsection (7) below, the authority concerned shall for a period of three weeks make copies of the report available for inspection by the public without charge at all reasonable hours at one or more of their offices; and any person shall be entitled to take copies of, or extracts from, the report when so made available.
- [<sup>F35</sup>(4A) Subject to subsection (7) below, the authority concerned shall supply a copy of the report to any person on request if he pays such charge as the authority may reasonably require.]
- (5) Not later than [<sup>F36</sup>two weeks] after the report is received by the authority concerned, the proper officer of the authority shall give public notice, by advertisement in newspapers and such other ways as appear to him appropriate, that [<sup>F37</sup>copies of the report will be available as provided by subsections (4) and (4A)] above, and shall specify the date, being a date [<sup>F38</sup>not more than one week after the public notice is first given], from which the period of three weeks will begin.
- (6) If a person having the custody of a report made available for inspection as provided by subsection (4) above obstructs any person seeking to inspect the report, or to make a copy of, or extract from, the report, he shall be liable on summary conviction to a fine not exceeding [<sup>F39</sup>level 3 on the standard scale].
- (7) The Local Commissioner may, if he thinks fit after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, direct that a report specified in the direction shall not be subject to the provisions of subsections (4) [<sup>F40</sup>, (4A) and (5) above].

#### Textual Amendments

- F32** S. 30(2A) inserted by [Community Land Act 1975 \(c. 77\)](#), [Sch. 10 para. 9\(2\)](#) (continued by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [Sch. 22 para. 14\(3\)](#))
- F33** Words inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), [s. 32\(1\)\(a\)](#)
- F34** S. 30(3A) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), [s. 32\(1\)\(b\)](#)
- F35** S. 30(4A) inserted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 6\(2\)\(5\)](#)
- F36** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 6\(3\)\(a\)\(5\)](#)
- F37** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 6\(3\)\(b\)\(5\)](#)
- F38** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 6\(3\)\(c\)\(5\)](#)
- F39** Words substituted by virtue of [Criminal Justice Act 1982 \(c. 48, SIF 39:1\)](#), [ss. 38, 46](#)
- F40** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 6\(4\)\(5\)](#)

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

- C16** [Ss. 27–30](#) modified by [S.I. 1986/452](#), [art. 8\(3\)](#)

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### **31 Reports on investigations: further provisions.**

[<sup>F41</sup>(1) This section applies where a Local Commissioner reports that injustice has been caused to a person aggrieved in consequence of maladministration.

(2) The report shall be laid before the authority concerned and it shall be the duty of that authority to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Local Commissioner may agree in writing, to notify the Local Commissioner of the action which the authority have taken or propose to take.

(2A) If the Local Commissioner—

- (a) does not receive the notification required by subsection (2) above within the period allowed by or under that subsection, or
- (b) is not satisfied with the action which the authority concerned have taken or propose to take, or
- (c) does not within a period of three months beginning with the end of the period so allowed, or such longer period as the Local Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Local Commissioner,

he shall make a further report setting out those facts and making recommendations.

(2B) Those recommendations are such recommendations as the Local Commissioner thinks fit to make with respect to action which, in his opinion, the authority concerned should take to remedy the injustice to the person aggrieved and to prevent similar injustice being caused in the future.

(2C) Section 30 above, with any necessary modifications, and subsection (2) above shall apply to a report under subsection (2A) above as they apply to a report under that section.

(2D) If the Local Commissioner—

- (a) does not receive the notification required by subsection (2) above as applied by subsection (2C) above within the period allowed by or under that subsection or is satisfied before the period allowed by that subsection has expired that the authority concerned have decided to take no action, or
- (b) is not satisfied with the action which the authority concerned have taken or propose to take, or
- (c) does not within a period of three months beginning with the end of the period allowed by or under subsection (2) above as applied by subsection (2C) above, or such longer period as the Local Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Local Commissioner,

he may, by notice to the authority, require them to arrange for a statement to be published in accordance with subsections (2E) and (2F) below.

(2E) The statement referred to in subsection (2D) above is a statement, in such form as the authority concerned and the Local Commissioner may agree, consisting of—

- (a) details of any action recommended by the Local Commissioner in his further report which the authority have not taken;
- (b) such supporting material as the Local Commissioner may require; and
- (c) if the authority so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.

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- (2F) The requirements for the publication of the statement are that—
- (a) publication shall be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the Local Commissioner or, in default of agreement, nominated by him; and
  - (b) publication in the first such edition shall be arranged for the earliest practicable date.
- (2G) If the authority concerned—
- (a) fail to arrange for the publication of the statement in accordance with subsections (2E) and (2F) above, or
  - (b) are unable, within the period of one month beginning with the date on which they received the notice under subsection (2D) above, or such longer period as the Local Commissioner may agree in writing, to agree with the Local Commissioner the form of the statement to be published,
- the Local Commissioner shall arrange for such a statement as is mentioned in subsection (2E) above to be published in any two editions within a fortnight of a newspaper circulating within the authority's area.
- (2H) The authority concerned shall reimburse the Commission on demand any reasonable expenses incurred by the Local Commissioner in performing his duty under subsection (2G) above.]
- [<sup>F42</sup>(3) In any case where—
- (a) a report is laid before an authority under subsection [<sup>F43</sup>(2) or (2C)] above, and
  - (b) on consideration of the report, it appears to the authority that a payment should be made to, or some other benefit should be provided for, a person who has suffered injustice in consequence of maladministration [<sup>F44</sup>to which the report relates],
- the authority may incur such expenditure as appears to them to be appropriate in making such a payment or providing such a benefit.]

#### Textual Amendments

- F41** S. 31 subsections (1)–(2H) substituted for subsections (1)(2) by virtue of [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. 26(1)(2)
- F42** S. 31(3) added by [Local Government Act 1978 \(c. 39\)](#), s. 1
- F43** Words substituted by virtue of [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. 194(1), [Sch. 11 para. 39\(1\)\(2\)](#)
- F44** Words substituted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 7\(1\)\(4\)\(5\)](#)

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

- C17** Ss. 31–34 modified by [S.I. 1986/452](#), art. 8(3)

### [<sup>F45</sup>31A Consideration of adverse reports.

- (1) Subject to subsection (3) below, any power of an authority to have their functions discharged by any person or body of persons acting for the authority shall, as respects the consideration of a further report of the Local Commissioner under section 31(2A) above, be subject to the restriction that, if it is proposed that the authority should take no action on, or not the action recommended in, the report, consideration of the report shall be referred to the authority.

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- (2) Consideration of a further report of the Local Commissioner under section 31(2A) above by any such committee of a local authority as is referred to in an enactment specified in section 101(9) of the Local Government Act 1972 or by any appeal committee constituted in accordance with paragraph 1 of Schedule 2 to the Education Act 1980 shall be subject to a corresponding restriction.
- (3) The restriction imposed by subsections (1) and (2) above does not apply where the report recommends action to be taken by—
  - (a) a joint committee established under the said section 101, or
  - (b) any committee referred to in an enactment specified in paragraph (c), (d) or (h) of the said section 101(9).
- (4) If an authority considering a further report of the Local Commissioner under section 31(2A) above take into consideration a report by a person or body with an interest in the Local Commissioner's report, they shall not conclude their consideration of the Local Commissioner's report without also having taken into consideration a report by a person or body with no interest in the Local Commissioner's report.
- (5) No member of an authority to which this Part of this Act applies or of a committee mentioned in subsection (2) or (3) above shall vote on any question with respect to a report or further report under this Part of this Act in which he is named and criticised by a Local Commissioner.
- (6) Section 25(4) and (5) above do not apply to this section.]

#### Textual Amendments

**F45** S. 31A inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), **s. 28**

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

**C18** Ss. 31–34 modified by [S.I. 1986/452](#), **art. 8(3)**

## 32 Law of defamation, and disclosure of information.

- (1) For the purposes of the law of defamation, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—
  - (a) the publication of any matter in communications between a member [<sup>F46</sup>or officer] of an authority and a Local Commissioner, or any officer of either Commission, for the purposes of this Part of this Act;
  - (b) the publication of any matter by a Local Commissioner or by any officer of either Commission, in communicating with a complainant for the purposes of this Part of this Act;
  - (c) the publication of any matter in preparing, making and sending a report or statement in accordance with section 30 or section 31 above, or, subject to section 30(7) above, in making a report available to the public [<sup>F47</sup>or in supplying a copy under section 30(4A) above];
  - (d) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 24 above.
  - [<sup>F48</sup>(e) the publication of any matter by inclusion in a statement published in accordance with section 31(2D), (2E) and (2F) or (2G) above.]

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- (2) Information obtained by a Local Commissioner, or any officer of either Commission, in the course of or for the purposes of an investigation under this Part of this Act shall not be disclosed except—
- (a) for the purposes of the investigation and of any report to be made under section 30 or section 31 above; or
  - (b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained, by virtue of this Part of this Act, by a Local Commissioner or by an officer of either Commission or for an offence of perjury alleged to have been committed in the course of an investigation under this Part of this Act or for the purposes of an inquiry with a view to the taking of such proceedings, or
  - (c) for the purpose of any proceedings under section 29(9) above,
- and a Local Commissioner and the officers of his Commission shall not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) above) of matters coming to his or their knowledge in the course of an investigation under this Part of this Act.
- (3) A Minister of the Crown or any of the authorities mentioned in section 25(1) above may give notice in writing to a Local Commissioner with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister, or as the case may be of the authority, the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest; and where such a notice is given nothing in this Part of this Act shall be construed as authorising or requiring <sup>F49</sup>the Local Commissioner or any member of the staff of a Commission who is allocated to assist him] to communicate to any other person, or for any purpose, any document or information specified in the notice, or any document or information of a class so specified:
- Provided that a notice given under this subsection by any authority may be discharged by the Secretary of State.
- (4) Nothing in subsection (3) above shall affect the obligations imposed by subsections (3) and (4) of section 29 above.
- (5) Where information is disclosed in accordance with section 29(3) above, being information which is derived from a communication from a government department, and which has not been made public, a Local Commissioner shall not without the written consent of an officer of the government department make a report which includes all or any of that information unless he has given the department not less than one month's notice in writing of his intention.
- (6) The provisions of this section shall apply to the Commissioners of Customs and Excise and Commissioners of Inland Revenue as they apply to a Minister of the Crown.

#### Textual Amendments

- F46** Words inserted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 8\(2\)\(4\)](#)
- F47** Words inserted by [Local Government Act 1988 \(c. 9, SIF 81:1, 2\)](#), s. 29, [Sch. 3 para. 8\(3\)\(4\)](#)
- F48** [S. 32\(1\)\(e\)](#) inserted by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. 194(1), [Sch. 11 para. 40](#)
- F49** Words substituted by [Local Government, Planning and Land Act 1980 \(c. 65\)](#), [s. 184\(1\)](#)

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

**C19** Ss. 31–34 modified by S.I. 1986/452, art. 8(3)

**C20** S. 32(2)(b) amended by Official Secrets Act 1989 (c. 6, SIF 39:2), s. 16(3), Sch. 1 para. 1(e)

**33 Consultation between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioners.**

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

- (a) by the Parliamentary Commissioner, in accordance with section 5 of the Act of 1967, or
- (b) by the Health Service Commissioner for England or the Health Service Commissioner for Wales, in accordance with [<sup>F50</sup>sections 109, 110, 113, 115 and 116 of the <sup>M4</sup>National Health Service Act 1977],

he shall consult with the appropriate Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint under this Part of this Act of the steps necessary to initiate a complaint under the Act of 1967 or under [<sup>F50</sup>Part V of the Act of 1977], as the case may be.

(2) Where, by virtue of subsection (1) above, a Local Commissioner consults the Parliamentary Commissioner or one of the Health Service Commissioners in relation to a complaint under this Part of this Act, he may consult that Commissioner about 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) If, at any stage in the course of conducting an investigation under—

- (a) the Act of 1967, or
- (b) [<sup>F51</sup>Part V of the Act of 1977],

the Commissioner conducting the investigation forms the opinion that the complaint relates partly to a matter which could be the subject of investigation under this Part of this Act, he shall consult with the appropriate Local Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint under the Act of 1967 or [<sup>F51</sup>Part V of the Act of 1977], as the case may be, of the steps necessary to initiate a complaint under this Part of this Act.

(4) Where, by virtue of subsection (3) above, a Local Commissioner is consulted about a complaint under the Act of 1967 or [<sup>F52</sup>Part V of the Act of 1977], subsection (2) above shall apply (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (1) above.

(5) Nothing in section 11(2) of the Act of 1967, in [<sup>F53</sup>paragraph 16 of Schedule 13 to the Act of 1977], or in section 32(2) of this Act (restrictions of disclosure of information) shall apply in relation to the disclosure of information by any of the Commissioners mentioned in this section, or by any of their officers, in the course of consultations held in accordance with this section.

(6) In this section the “Act of 1967” means the <sup>M5</sup>Parliamentary Commissioner Act 1967 and [<sup>F54</sup>the “Act of 1977” means the <sup>M6</sup>National Health Service Act 1977].



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#### Textual Amendments

- F50** Words substituted by [National Health Service Act 1977 \(c. 49\)](#), [Sch. 15 para. 61\(a\)](#)  
**F51** Words substituted by [National Health Service Act 1977 \(c. 49\)](#), [Sch. 15 para. 61\(b\)](#)  
**F52** Words substituted by [National Health Service Act 1977 \(c. 49\)](#), [Sch. 15 para. 61\(c\)](#)  
**F53** Words substituted by [National Health Service Act 1977 \(c. 49\)](#), [Sch. 15 para. 61\(d\)](#)  
**F54** Words substituted by [National Health Service Act 1977 \(c. 49\)](#), [Sch. 15 para. 61\(e\)](#)

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

- C21** [Ss. 31–34](#) modified by [S.I. 1986/452](#), [art. 8\(3\)](#)

#### Marginal Citations

- M4** [1977 c. 49](#).  
**M5** [1967 c. 13](#).  
**M6** [1977 c. 49](#).

VALID FROM 30/01/2001

### [<sup>F55</sup>33A Disclosure of information by Local Commissioner to Information Commissioner.

- (1) A Local Commissioner may disclose to the Information Commissioner any information obtained by, or furnished to, the Local Commissioner under or for the purposes of this Part of this Act if the information appears to the Local Commissioner to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
    - (i) Part V of the Data Protection Act 1998 (enforcement),
    - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
    - (iii) Part IV of that Act (enforcement), or
  - (b) the commission of an offence under—
    - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
    - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (2) Nothing in section 32(2) of this Act shall apply in relation to the disclosure of information in accordance with this section.]

#### Textual Amendments

- F55** [S. 33A](#) inserted (30.1.2001) by [2000 c. 36](#), [ss. 76\(2\)](#), [87\(2\)](#), [Sch. 7 para. 4](#) (with [ss. 56](#), [78](#))

## 34 Interpretation of Part III.

- (1) In this Part of this Act, unless the context otherwise requires—

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“action” includes failure to act, and other expressions connoting action shall be construed accordingly,

“the Commissions” means the Commission for Local Administration in England and the Commission for Local Administration in Wales,

“local authority” means a county council, . . . <sup>F56</sup> a district council, [<sup>F57</sup> the Broads Authority], a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly,

“member”, in relation to a joint board, includes a member of any of the constituent authorities of the joint board,

“person aggrieved” means the person who claims or is alleged to have sustained any such injustice as is mentioned in section 26(1) above,

“Parliamentary Commissioner” means the Parliamentary Commissioner for Administration,

..... <sup>F58</sup>  
“tribunal” includes the person constituting a tribunal consisting of one person.

- (2) Section 269 of the <sup>M7</sup>Local Government Act 1972 (which relates to the meaning of “England” and “Wales” in Acts passed after 1st April 1974) shall apply to this Part of this Act as if it had been passed after that date.
- (3) It is hereby declared that nothing in this Part of this Act authorises or requires a Local Commissioner to question the merits of a decision taken without maladministration by an authority in the exercise of a discretion vested in that authority.

#### Textual Amendments

- F56** Words repealed by [Local Government Act 1985 \(c. 51, SIF 81:1\)](#), ss. 1, 102, **Sch. 17**
- F57** Words inserted by [Norfolk and Suffolk Broads Act 1988 \(c. 4, SIF 81:1\)](#), ss. 21, 23(2), 27(2), **Sch. 6 para. 12**
- F58** Definition repealed by [Local Government and Housing Act 1989 \(c. 42, SIF 81:1, 2\)](#), s. 194(4), **Sch. 12 Pt. II**

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

- C22** Ss. 31–34 modified by [S.I. 1986/452](#), **art. 8(3)**

#### Marginal Citations

- M7** [1972 c. 70](#).

**Status:**

Point in time view as at 01/02/1991. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

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