



Local Government (Scotland) Act 1975

1975 CHAPTER 30

PART II

LOCAL ADMINISTRATION

21 Commissioner for Local Administration

- (1) For the purpose of conducting investigations in relation to any authority to which this Part of this Act applies there shall be a commissioner to be known as the Commissioner for Local Administration in Scotland.
- (2) Appointments to the office of Commissioner shall be made by Her Majesty on the recommendation of the Secretary of State after consultation with such bodies representing local authorities as appear appropriate to the Secretary of State, and a person so appointed shall, subject to subsection (3) below, hold office during good behaviour.
- (3) A person appointed to be the 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.
- (4) For each year, the Commissioner—
 - (a) shall submit a general report on the discharge of his functions to the designated body, and
 - (b) shall review the operation of the provisions of this Part of this Act about the investigation of complaints, and shall have power to convey to local authorities or to government departments any recommendations or conclusions reached in the course of his review.
- (5) Schedule 4 to this Act shall have effect as respects the Commissioner.

22 Body to be designated by Secretary of State for purposes of Part II

- (1) For the purposes of this Part of this Act, the Secretary of State shall by order designate a body to be called " the designated body for Scotland ".
- (2) The designated body, on receipt of the report submitted to them under section 21(4) (a) of this Act, shall arrange for its publication.
- (3) All expenses incurred by the designated body under this Part of this Act shall be defrayed by local authorities in accordance with regulations made by the Secretary of State after consultation with such associations of local authorities as appear to him to be concerned.
- (4) The Secretary of State may—
 - (a) require the designated body to keep proper accounts of the expenditure incurred by them in the discharge of their functions;
 - (b) require the designated body to prepare in respect of each financial year a statement of account in such form as the Secretary of State may direct;
 - (c) make arrangements for the audit of such accounts.
- (5) A statutory instrument containing an order under subsection (1) above or regulations under subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

23 Authorities subject to investigation

- (1) This Part of this Act applies to the following authorities—
 - (a) any local authority;
 - (b) any committee, joint committee or joint board the members of which, other than ex officio members, are appointed by one or more local authorities;
 - (c) any education committee, joint committee of education authorities, and any person or body which discharges the functions of an education authority by virtue of an arrangement made under Schedule 10 to the Act of 1973;
 - (d) any water development board within the meaning of the Water (Scotland) Act 1967;
 - (e) any river purification board within the meaning of section 135 of the Act of 1973 ;
 - (f) any person or body which by virtue of section 56(1) of the Act of 1973 discharges any of the functions of a local authority.
- (2) Without prejudice to subsection (1)(f) above, this Part of this Act applies to—
 - (a) any joint committee constituted by an administration scheme under section 36 of the Fire Services Act 1947 ;
 - (b) any joint police committee constituted by an amalgamation scheme made or approved under the Police (Scotland) Act 1967;
 - (c) any social work committee established under section 2 of the Social Work (Scotland) Act 1968 ;
 - (d) any Children's Panel Advisory Committee formed under paragraph 3 of Schedule 3 to the said Act of 1968;
 - (e) any joint committee, for the administration of superannuation schemes for persons employed in local government service or teachers, established by regulations under section 7 or 9 of the Superannuation Act 1972 respectively.

- (3) 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 requisition.
- (4) An Order made by virtue of subsection (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.

24 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 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, the Commissioner may investigate that complaint.
- (2) A complaint shall not be entertained under this Part of this Act unless—
 - (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 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 Commissioner is satisfied that any member of any authority concerned has been requested to refer the complaint to the Commissioner, and has not done so, the 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 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 the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.
- (5) Before proceeding to investigate a complaint, the 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) The 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:

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Provided that the 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) The Commissioner shall not conduct an investigation in respect of any action which in his opinion affects all or most of the inhabitants of the area of the authority concerned.
- (8) Without prejudice to the preceding provisions of this section, the 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 exclude from the provisions of that Schedule 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, the 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 Commissioner.
- (11) In this section references to a person aggrieved include references to his personal representatives.
- (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 16th May 1975, or in respect of any default or alleged default first arising before that date.

25 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.

26 Procedure in respect of investigations

- (1) Where the 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 Commissioner considers appropriate in the circumstances of the case; and, without prejudice to the generality of the preceding provision, the 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 designated body shall, if the Commissioner 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.
- (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.

27 Power of Commissioner to require information and other matters relating to investigations

- (1) For the purposes of an investigation under this Part of this Act the 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 the Commissioner shall have the same powers as the Court of Session in respect of the attendance and examination of witnesses, and in respect of the production of documents.
- (3) The 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 Parliamentary Commissioner Act 1967, on the disclosure of information by the Parliamentary Commissioner or his officers ; or
 - (b) the restriction, imposed by that section (as applied by section 47 of the National Health Service (Scotland) Act 1972), on the disclosure of information by the Health Service Commissioner for Scotland or by his officers.
- (6) To assist him in any investigation, the Commissioner may obtain advice from any person who in his opinion is qualified to give it and, if the Commissioner thinks

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fit, the designated body shall pay to any such person such fees or allowances as the Commissioner may determine.

- (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 Court of Session.
- (8) If any person without lawful excuse obstructs the Commissioner in the performance of his functions under this Part of this Act, or is guilty of any act or omission in relation to an investigation under this Part of this Act which, if that investigation were a proceeding in the Court of Session would constitute contempt of court, the Commissioner may certify the offence to the Court of Session.
- (9) Where an offence is so certified, the Court of Session 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 Court of Session could deal with him if he had committed the like offence in relation to the Court of Session.
- (10) Nothing in subsection (8) above shall be construed as applying to the taking of any such action as is mentioned in section 26(4) of this Act.

28 Reports on investigations

- (1) In any case where the 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 Commissioner in accordance with section 24(2) of this Act, 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 of that authority.
- (3) Apart from identifying the authority or authorities concerned, the report shall not—
 - (a) mention the name of any person, or
 - (b) contain any particulars which, in the opinion of the 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 Commissioner considers it necessary to mention the name of that person or to include in the report any such particulars.
- (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.

- (5) Not later than one week 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 the report will be available for inspection as provided by subsection (4) above, and shall specify the date, being a date after the giving of the public notice, 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 £50.
- (7) The 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) and (5) above about its publication.

29 Reports on investigations: further provisions

- (1) If in the opinion of the Commissioner, as set out in the report, injustice has been caused to the person aggrieved in consequence of maladministration, the report shall be laid before the authority concerned, and it shall be the duty of that authority to consider the report, and to notify the Commissioner of the action which the authority have taken, or propose to take.
- (2) If the Commissioner—
 - (a) does not receive any such notification within a reasonable time; or
 - (b) is not satisfied with the action which the authority concerned have taken ; or
 - (c) does not within a reasonable time receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Commissioner,he shall make a further report setting out those facts ; and section 28 of this Act shall apply, with any necessary modifications, to that further report.

30 Law of defamation and limitation on disclosure of information by Commissioner

- (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 of an authority and the Commissioner, or any of his officers, for the purposes of this Part of this Act;
 - (b) the publication of any matter by the Commissioner or any of his officers, 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 28 or 29 of this Act, or, subject to section 28(7) of this Act, in making a report available to the public;
 - (d) the publication of any matter contained in a report by the Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 21 of this Act.
- (2) Information obtained by the Commissioner, or any of his officers, in the course of or for the purposes of an investigation under this Part of this Act shall not be disclosed except—

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- (a) for the purposes of the investigation and of any report to be made under section 28 or 29 of this Act; 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 the Commissioner or any of his officers 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 27(9) of this Act,
- and the Commissioner and his officers 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 23 of this Act may give notice in writing to the 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 any person 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 27 of this Act.
- (5) Where information is disclosed in accordance with section 27(3) of this Act, being information which is derived from a communication from a government department, and which has not been made public, the 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.

31 Consultation between Commissioner, the Parliamentary Commissioner and the Health Service Commissioner

- (1) If, at any stage in the course of conducting an investigation under this Part of this Act, the 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 Scotland in accordance with section 45 of the Act of 1972,

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 Part VII of the Act of 1972, as the case may be.

- (2) Where, by virtue of subsection (1) above, the Commissioner consults the Parliamentary Commissioner or the Health Service Commissioner 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) Part VII of the Act of 1972,the Parliamentary Commissioner or the Health Service Commissioner conducting the investigation forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part of this Act, he shall consult with the Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint under the Act of 1967 or Part VII of the Act of 1972, 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, the Commissioner is consulted about a complaint under the Act of 1967 or Part VII of the Act of 1972, 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 that section as applied by section 47 of the Act of 1972, or in section 30(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 Parliamentary Commissioner Act 1967 and the " Act of 1972 " means the National Health Service (Scotland) Act 1972.

32 Interpretation of Part II

- (1) In this Part of this Act; unless the context otherwise requires—
 - " action " includes failure to act, and other expressions connoting action shall be construed accordingly ;
 - " the Commissioner " means the Commissioner for Local Administration in Scotland;
 - " person aggrieved " means the person who claims or is alleged to have sustained any such injustice as is mentioned in section 24(1) of this Act;
 - " the Parliamentary Commissioner " means the Parliamentary Commissioner for Administration;
 - " the designated body " means the body designated under section 22 of this Act;
 - " tribunal " includes the person constituting a tribunal consisting of one person.

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- (2) It is hereby declared that nothing in this Part of this Act authorises or requires the Commissioner to question the merits of a decision taken without maladministration by an authority in the exercise of a discretion vested in that authority.