



# National Health Service Act 1977

## 1977 CHAPTER 49

### PART V

#### HEALTH SERVICE COMMISSIONER FOR ENGLAND AND HEALTH SERVICE COMMISSIONER FOR WALES

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

C1 Pt. V modified by S.I. 1982/295, art. 3

#### **106 Appointment and tenure of office of Commissioners.**

- (1) For the purpose of conducting investigations in accordance with this Part of this Act, there shall be appointed—
    - (a) a Commissioner to be known as the Health Service Commissioner for England; and
    - (b) a Commissioner to be known as the Health Service Commissioner for Wales.
  - (2) Her Majesty may by Letters Patent from time to time appoint a person to be a Commissioner; and a person so appointed shall, subject to <sup>[F1]</sup>subsections (3) and (3A)] below, hold office during good behaviour.
  - (3) A person appointed to be a Commissioner may be relieved of office by Her Majesty at his own request, or may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament, and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five.
- <sup>[F2]</sup>(3A) Her Majesty may declare the office of Health Service Commissioner for England or Health Service Commissioner for Wales to have been vacated if satisfied that the person appointed to be the Commissioner is incapable for medical reasons—
- (a) of performing the duties of his office; and
  - (b) of requesting to be relieved of it.]

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- (4) A person who is a member of a relevant body (within the meaning of section 109 below) shall not be appointed to be a Commissioner; and a Commissioner shall not become a member of a relevant body.

#### Textual Amendments

- F1** Words substituted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. [2\(2\)\(a\)](#)
- F2** [S. 106\(3A\)](#) inserted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. [2\(2\)\(b\)](#)

### 107 Salaries and pensions of Commissioners.

- (1) Subject to subsections (3) and (5) below, there shall be paid to the holder of the office of a Commissioner the same salary as if he were employed in the civil service of the State in such appointment as the House of Commons may by resolution from time to time determine; and any such resolution may take effect from the date on which it is passed, or from such other date as it may specify.
- (2) Subject to subsections (6) and (7) below, Schedule 1 to the <sup>M1</sup>Parliamentary Commissioner Act 1967 (which relates to pensions and other benefits) has effect with respect to persons who have held office as a Commissioner as it has effect with respect to persons who have held office as the Parliamentary Commissioner for Administration.
- (3) The salary payable to a holder of the office of a Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he has previously been appointed or elected.
- (4) In computing the salary of a former holder of the office of Commissioner for the purposes of Schedule 1 to that Act of 1967 there shall be disregarded—
- (a) any abatement of that salary under subsection (3) above;
  - (b) any temporary abatement of that salary in the national interest; and
  - (c) any voluntary surrender of that salary in whole or in part.
- (5) Where—
- (a) a person holds the office of Parliamentary Commissioner for Administration and one or more of the offices of Health Service Commissioner for England, Health Service Commissioner for Scotland and Health Service Commissioner for Wales he shall, so long as he does so, be entitled only to the salary pertaining to the first-mentioned office; and
  - (b) a person holds two or more of those offices other than that of Parliamentary Commissioner for Administration he shall, so long as he does so, be entitled only to the salary pertaining to such one of those offices as he selects.
- (6) A person—
- (a) shall not be entitled to make simultaneously different elections in pursuance of paragraph 1 of Schedule 1 to that Act of 1967 in respect of different offices mentioned in subsection (5) above, and
  - (b) shall, if he has made or is treated as having made an election in pursuance of that paragraph in respect of such an office, be deemed to have made the same

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election in respect of all such other offices to which he is, or is subsequently, appointed,

and no account shall be taken for the purposes of that Schedule of a period of service in such an office if salary in respect of the office was not paid for that period.

- (7) [<sup>F3</sup>The Treasury] may—
- (a) by regulations provide that Schedule 1 to that Act of 1967 shall have effect in relation to persons who have held more than one of the offices mentioned in subsection (5) above, and
  - (b) by those regulations modify that Schedule as he considers necessary in consequence of those persons having held more than one of those offices,
- and different regulations may be made in pursuance of paragraph 4 of that Schedule in relation to different offices as mentioned.

This subsection is subject to subsection (6) above.

- (8) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.

#### Textual Amendments

**F3** Words substituted by virtue of S.I. 1981/1670, arts. 2(1), 3(5)

#### Marginal Citations

**M1** 1967 c. 13(89).

### 108 Administrative provisions.

- (1) A Commissioner may appoint such officers as he may determine with the approval of [<sup>F4</sup>the Treasury] as to numbers and conditions of service; and it is the duty of the Health Service Commissioners for Wales to include among his officers such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.
- (2) Any functions of a Commissioner under this Part of this Act may be performed by any officer of the Commissioner authorised by him for that purpose, or by any officer so authorised of another Commissioner mentioned in section 107(5) above.
- (3) To assist him any investigation, a Commissioner may obtain advice from any person who, in his opinion, is qualified to give it, and may pay such fees or allowances to any such person as he may determine with the approval of [<sup>F4</sup>the Treasury].
- (4) The expenses of a Commissioner under this Part of this Act, to such amount as may be sanctioned by [<sup>F4</sup>the Treasury], shall be defrayed out of money provided by Parliament.

#### Textual Amendments

**F4** Words substituted by virtue of S.I. 1981/1670, arts. 2, 3(5)

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## **[<sup>F5</sup>108A Appointment of acting Commissioners.**

- (1) Where the office of Health Service Commissioner for England or Health Service Commissioner for Wales becomes vacant, Her Majesty may, pending the appointment of a new Commissioner, appoint a person under this section to act as the Commissioner at any time during the period of twelve months beginning with the date on which the vacancy arose.
- (2) A person appointed under this section shall hold office during Her Majesty’s pleasure and, subject to that, shall hold office—
  - (a) until the appointment of a new Commissioner or the expiry of the period of twelve months beginning with the date on which the vacancy arose, whichever occurs first; and
  - (b) in other respects, in accordance with the terms and conditions of his appointment which shall be such as the Secretary of State may, with the approval of the Treasury, determine.
- (3) A person appointed under this section shall, while he holds office, be treated for all purposes, except those of section 107 above, as the Commissioner.
- (4) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.
- (5) A person who is a member of a relevant body (within the meaning of section 109 below) shall not be appointed under this section; and a person so appointed shall not, during his appointment, become a member of a relevant body.]

### **Textual Amendments**

**F5** S. 108A inserted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\), s. 6\(2\)](#)

## **109 Bodies subject to investigation.**

In this Part of this Act “relevant body” means any of the following bodies—

- (a) Regional Health Authorities;
- (b) Area Health Authorities;
- [<sup>F6</sup>(bb) District Health Authorities;]
- (c) any special health authority established on or before 1st April 1974;
- (d) any special health authority established after that 1st April and designated by Order in Council as an authority to which this section applies;
- [<sup>F7</sup>(da) NHS trusts]
- [<sup>F8</sup>(dd) the Dental Practice Board;]
- (e) Family Practitioner Committees; [<sup>F9</sup>and]
- (f) the Public Health Laboratory Service Board; . . . <sup>F10</sup>
- (g) . . . . . <sup>F10</sup>

Except where the context otherwise requires, any reference in this Part of this Act to a relevant body includes a reference to an officer of the body.

### **Textual Amendments**

**F6** S. 109(bb) inserted by [Health Services Act 1980 \(c. 53, SIF 113:2\), Sch. 1, para. 72](#)

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- F7** S. 109(da) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(10)**
- F8** S. 109(dd) inserted by Health and Medicines Act 1988 (c. 49, SIF 113:2), **s. 12(4)**
- F9** Word inserted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 2, para. 7**
- F10** S. 109(g) and the word “and” preceding it repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

## 110 Investigations for England, and for Wales.

The Health Service Commissioner for England shall not conduct an investigation under this Part of this Act in respect of—

- (a) an Area Health Authority of which the area is in Wales,
- [<sup>F11</sup>(aa) a District Health Authority of which the district is in Wales,]
- [<sup>F12</sup>(b) a Family Practitioner Committee whose locality is in Wales, or]
- [<sup>F13</sup>(ba) an NHS trust which is managing a hospital or other establishment or facility which is in Wales]
- (c) a special health authority exercising functions only or mainly in Wales, . . . <sup>F14</sup>
- (d) . . . . . <sup>F14</sup>

and the Health Service Commissioner for Wales shall not conduct such an investigation in respect of a relevant body other than one of those bodies.

### Textual Amendments

- F11** S. 110(aa) inserted by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 1, para. 73**
- F12** S. 110(b) substituted by S.I. 1985/39, **art. 7(20)**
- F13** S. 110(ba) inserted by National Health Service and Community Care Act 1990 (c. 19, SIF 113:2), s. 66(1), **Sch. 9 para. 18(11)**
- F14** S. 110(d) and the word “and” preceding it repealed by Health Services Act 1980 (c. 53, SIF 113:2), **Sch. 7**

## 111 Who may complain.

- (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 money provided by Parliament.
- (2) Where the person by whom a complaint might have been made under the preceding provisions of this Part has died, or is for any reason unable to act for himself, the complaint may be made—
  - (a) by his personal representative, or
  - (b) by a member of his family, or
  - (c) by some body or individual suitable to represent him,

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but, except as aforesaid and as provided by section 117 below, a complaint shall not be entertained under this Part unless made by the person aggrieved himself.

## 112 Reply.

Before proceeding to investigate a complaint—

- (a) a Commissioner shall satisfy himself that the complaint has been brought by or on behalf of the person aggrieved to the notice of the relevant body in question, and that that body had been afforded a reasonable opportunity to investigate and reply to the complaint, but
- (b) a Commissioner shall disregard the provisions of paragraph (a) in relation to a complaint made by an officer of the relevant body in question on behalf of the person aggrieved if the officer is authorised by virtue of section 111(2) above to make the complaint and the Commissioner is satisfied that in the particular circumstances those provisions ought to be disregarded.

## 113 Commissioner's discretion.

- (1) In determining whether to initiate, continue or discontinue an investigation under this Part of this Act, a Commissioner shall, subject to section 110 above and sections 115 and 116 below, act in accordance with his own discretion.
- (2) Any question whether a complaint is duly made to a Commissioner under this Part shall be determined by the Commissioner.

## 114 Procedure, and additional procedural provisions.

- (1) A Commissioner—
  - (a) shall not entertain a complaint under this Part of this Act unless it is made in writing to him by or on behalf of the person aggrieved not later than one year from the day on which the person aggrieved first had notice of the matters alleged in the complaint, but
  - (b) may conduct an investigation pursuant to a complaint not made within that period if he considers it reasonable to do so.
- (2) The additional provisions contained in Part I of Schedule 13 to this Act, which relate to procedure and other matters, have effect for the purposes of this Part.

## 115 Matters subject to investigation.

A Commissioner may investigate—

- (a) an alleged failure in a service provided by a relevant body, or
- (b) an alleged failure of such a body to provide a service which it was a function of the body to provide, or
- (c) any other action taken by or on behalf of such a body,

in a case where a complaint is duly made by or on behalf of any person that he has sustained injustice or hardship in consequence of the failure or in consequence of maladministration connected with the other action.

This section is subject to sections 110 and 113 above and section 116 below.

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## 116 Matters not subject to investigation.

- (1) Except as hereafter provided, a Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters—
- (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 or by virtue of Her Majesty's prerogative, or
  - (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law,
- but a Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy, if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.
- (2) Without prejudice to subsection (1) above—
- (a) a Commissioner shall not conduct an investigation under this Part in respect of any such action as is described in Part II of Schedule 13 to this Act; and
  - (b) nothing in sections 110, 113 and 115 above shall be construed as authorising such an investigation in respect of action taken in connection with any general medical services, general dental services, general ophthalmic services or pharmaceutical services by a person providing the services
- (3) Her Majesty may by Order in Council amend Part II of Schedule 13 so as to exclude from it action described in subparagraph (3) or (4) of paragraph 19 of that Schedule.

## 117 Reference to Commissioner by relevant body.

Notwithstanding anything in sections 111 and 112 and section 114(1) above, a relevant body—

- (a) may itself (excluding its officers) refer to a Commissioner a complaint that a person has, in consequence of a failure or maladministration for which the body is responsible, sustained such injustice or hardship as is mentioned in section 115 above if the complaint—
  - (i) is made in writing to the relevant body by that person, or by a person authorised by virtue of section 111(2) above to make the complaint to the Commissioner on his behalf, and
  - (ii) is so made not later than one year from the day mentioned in section 114(1) above, or within such other period as the Commissioner considers appropriate in any particular case, but
- (b) shall not be entitled to refer a complaint in pursuance of paragraph (a) after the expiry of <sup>[F15]</sup>twelve months beginning with the day on which the body received the complaint.

A complaint referred to a Commissioner in pursuance of this section shall, subject to section 113 above, be deemed to be duly made to him under this Part of this Act.

### Textual Amendments

**F15** Word substituted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. 7

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## 118 Consultations between Commissioners and Local Commissioners.

- (1) Where, at any stage in the course of conducting an investigation under this Part of this Act, the Commissioner conducting the investigation—
- (a) forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under Part III of the <sup>M2</sup>Local Government Act 1974, then
  - (b) he shall consult about the complaint with the appropriate Local Commissioner within the meaning of Part III of that Act of 1974, and
  - (c) if he considers it necessary, inform the person initiating the complaint under this Part of the steps necessary to initiate a complaint under Part III of that Act of 1974.

[<sup>F16</sup>(1A) Where, at any stage in the course of conducting an investigation under this Part of this Act, the Commissioner conducting the investigation forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under the <sup>M3</sup>Parliamentary Commissioner Act 1967, he shall—

- (a) unless he also holds office as the Parliamentary Commissioner, consult about the complaint with the Parliamentary Commissioner; and
- (b) 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 Parliamentary Commissioner Act 1967.

(1B) Where, at any stage in the course of conducting an investigation under this Part of this Act, the Commissioner conducting the investigation forms the opinions that the complaint relates partly to a matter within the jurisdiction of another Health Service Commissioner (whether under this Part of this Act or under Part VI of the <sup>M4</sup>National Health Service (Scotland) Act 1978), he shall—

- (a) unless he also holds office as that other Health Service Commissioner, consult about the complaint with him; and
- (b) 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 to the other Health Service Commissioner.]

(2) [<sup>F17</sup>Where a Commissioner consults with another Commissioner in accordance with this section, the consultations may extend to] 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) Nothing in paragraph 16 of Schedule 13 to this Act applies in relation to the disclosure of information by a Commissioner or his officers in the course of consultations held in accordance with this section.

### Textual Amendments

**F16** S. 118(1A)(1B) inserted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. 4(3)(a)

**F17** Words substituted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. 4(3)(c)



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**Marginal Citations**

M2 1974 c. 7(81:1).

M3 1967 c. 13(89).

M4 1978 c. 29(113:2).

**119 Reports by Commissioners.**

(1) In any case where a Commissioner conducts an investigation under this Part of this Act, he shall send a report of the results of his investigation—

(a) to the person who made the complaint,

[<sup>F18</sup>(aa) to any member of the House of Commons who, to the Commissioner’s knowledge, assisted in the making of the complaint (or if he is no longer a member to such other member as the Commissioner thinks appropriate),]

(b) to the relevant body in question,

(c) to any person who is alleged in the complaint to have taken or authorised the action complained of,

(d) if the relevant body in question is not an Area [<sup>F19</sup>or District] Health Authority for an area [<sup>F19</sup>or district] in England . . . <sup>F20</sup> to the Secretary of State,

(e) if that body is an Area [<sup>F19</sup>or District] Health Authority for an area in England, to the Regional Health Authority of which the region includes that area [<sup>F19</sup>or district], . . . <sup>F21</sup>

(f) . . . . . <sup>F21</sup>

. . . . . <sup>F22</sup>

(2) In any case where a Commissioner decides not to conduct an investigation under this Part, he shall send a statement of his reasons for doing so to the person who made the complaint [<sup>F23</sup>and to any such member of the House of Commons as is mentioned in subsection (1)(aa) above] and to the relevant body in question.

(3) If, after conducting an investigation under this Part, it appears to a commissioner that the person aggrieved has sustained such injustice or hardship as is mentioned in section 115 above, and that the injustice or hardship has not been and will not be remedied, he may if he thinks fit—

(a) . . . . . <sup>F24</sup>

(b) <sup>F22</sup> . . . make a special report to the Secretary of State who shall, as soon as is reasonably practicable, lay a copy of the report before each House of Parliament.

(4) Each of the Commissioners shall—

(a) . . . . . <sup>F25</sup>

(b) annually make to the Secretary of State a report on the performance of his . . . <sup>F26</sup> functions under this Part, and may from time to time make to the Secretary of State such other reports with respect to those functions as the Commissioner thinks fit, and the Secretary of State shall lay a copy of every such report before each House of Parliament.

(5) For the purposes of the law of defamation, the publication of any matter by a Commissioner in sending or making a report in pursuance of subsection (1), (3) or (4) above, or in sending a statement in pursuance of subsection (2) above, shall be absolutely privileged.

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### Textual Amendments

- F18** S. 119(1)(aa) inserted by Parliamentary and Health Service Commissioners Act 1987 (c. 39, SIF 89), s. 5(1)
- F19** Words inserted by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 1, para. 74
- F20** Words repealed by S.I. 1985/39, art. 7(21)(a)
- F21** S. 119(1)(f) and the word “and” preceding it repealed by S.I. 1985/39, art. 7(21)(b)
- F22** Words repealed by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 7
- F23** Words inserted by Parliamentary and Health Service Commissioners Act 1987 (c. 39, SIF 89), s. 5(2)
- F24** S. 119(3)(a) repealed by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 7
- F25** S. 119(4)(a) repealed by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 7
- F26** Word repealed by Health Services Act 1980 (c. 53, SIF 113:2), Sch. 7

## 120 Interpretation of Part V.

(1) In this Part of this Act and in Schedule 13 to this Act—

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

“Commissioner” means the Health Service Commissioner for England or the Health Service Commissioner for Wales, and “Commissioners” means both those persons;

“person aggrieved” means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 115 above; and

“relevant body” has the meaning given by section 109 above, and (except where the context otherwise requires) includes a reference to an officer of the body.

(2) Nothing in this Part of this Act authorises or requires a Commissioner to question the merits of a decision taken without maladministration by a relevant body in the exercise of a discretion vested in that body.

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