



# National Health Service (Scotland) Act 1978

## 1978 CHAPTER 29

### PART VI

#### THE HEALTH SERVICE COMMISSIONER FOR SCOTLAND

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

C1 Pt VI (ss.90-97) applied (with modifications) (1.4.1993) by [S.I. 1993/577](#), art. 5(1), [Sch. 1 Pt. I](#).

#### **90 Appointment of Commissioner and tenure of office.**

- (1) For the purpose of conducting investigations in accordance with the following provisions of this Part, there shall be appointed a Commissioner, to be known as the Health Service Commissioner for Scotland.
- (2) Her Majesty may, by Letters Patent, from time to time appoint a person to be the Commissioner, and any person so appointed shall, subject to [<sup>F1</sup>subsections (3) and (3A)], 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 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 65 years.

[<sup>F2</sup>(3A) Her Majesty may declare the office of Commissioner 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.]

- (4) The Commissioner shall not be a member of the House of Commons, or of the Senate or House of Commons of Northern Ireland, and accordingly the <sup>M1</sup>House of

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Commons Disqualification Act 1975 shall continue to have effect with the following amendments—

- (a) in Part III of Schedule 1 there shall be inserted, at the appropriate point in alphabetical order, the entry “The Health Service Commissioner for Scotland”; and
  - (b) the like amendment shall be made in the Part substituted for the said Part III by Schedule 3 to the said Act in its application to the Senate and House of Commons of Northern Ireland.
- (5) The Commissioner shall not be a member of a body subject to investigation or any management committee thereof.

#### Textual Amendments

- F1** Words substituted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. **2(1)(a)**
- F2** [S. 90\(3A\)](#) inserted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. **2(1)(b)**

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

- C2** [Pt. VI \(ss. 90–97\)](#) applied (1.4.1991) by [S.I. 1990/2639](#), art. 5(1)(2), **Sch. Pt. I**

#### Marginal Citations

- M1** [1975 c. 24](#).

## 91 Salary and pension of Commissioner.

- (1) Subject to the provisions of this section, there shall be paid to the holder of the office of 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 such other date as may be specified therein.
- (2) Subject to the provisions of this section and subsections (5) to (7) of section 107 of the <sup>M2</sup>National Health Service Act 1977, Schedule 1 to the <sup>M3</sup>Parliamentary Commissioner Act 1967 (pensions and other benefits) shall have effect with respect to persons who have held office as Commissioner as it has effect with respect to persons who have held office as Commissioner under that Act of 1967.
- (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);
  - (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,

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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), 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 election in respect of all 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) The Minister for the Civil Service 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), 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 so mentioned.

This subsection is subject to subsection (6).

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

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

C3 Pt. VI (ss. 90–97) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

**Marginal Citations**

M2 1977 c. 49.

M3 1967 c. 13.

**92 Administrative provisions.**

- (1) The Commissioner may appoint such officers as he may determine with the approval of the Minister for the Civil Service as to numbers and conditions of service.
- (2) Any function of the Commissioner under this Part may be performed by any officer of the Commissioner authorised for that purpose by him or by any officer so authorised of another Commissioner mentioned in subsection (5) of section 107 of the <sup>M4</sup>National Health Service Act 1977.
- (3) To assist him in any investigation, the Commissioner may obtain advice from any person who in his opinion is qualified to give it, and such fees or allowances may be

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paid to such person by the Commissioner as he may, with the approval of the Minister for the Civil Service, determine.

- (4) The expenses of the Commissioner under this Part, to such amount as may be sanctioned by the Minister for the Civil Service, shall be defrayed out of moneys provided by Parliament.

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

**C4** Pt. VI (ss. 90–97) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

**Marginal Citations**

**M4** 1977 c. 49.

**[<sup>F3</sup>92A Appointment of acting Commissioner.**

- (1) Where the office of Commissioner 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 91, 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 appointed under this section shall not, during his appointment, be a member of a body subject to investigation or any management committee thereof.]

**Textual Amendments**

**F3** S. 92A inserted by Parliamentary and Health Service Commissioners Act 1987 (c. 39, SIF 89), s. 6(3)

**93 Bodies and action subject to investigation.**

- (1) In this Part a “body subject to investigation” means any of the following bodies—
- (a) Health Boards;
  - (b) the Agency;
  - [<sup>F4</sup>(bb) NHS trusts]
  - [<sup>F5</sup>(bb) the Dental Practice Board;]
  - (c)

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- <sup>F6</sup>(2) Subject to the provisions of this section, the Commissioner may investigate—
- (a) an alleged failure in a service provided by a body subject to investigation, or
  - (b) an alleged failure of a body subject to investigation to provide a service which it was the function of the body to provide, or
  - (c) any other action taken by or on behalf of a body subject to investigation, 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.
- (3) Except as hereafter provided, the Commissioner shall not conduct an investigation under this Part 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;
  - (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 the Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy, if he is satisfied that in the particular circumstances it is not reasonable to expect that person to resort or have resorted to it.
- (4) Without prejudice to subsection (3), the Commissioner shall not conduct an investigation under this Part in respect of any such action as is described in Schedule 14.
- (5) Her Majesty may, by Order in Council, amend the said Schedule 14 so as to exclude from the provisions of that Schedule action described in paragraph 4 or 5 of that Schedule.
- (6) In determining whether to initiate, continue or discontinue an investigation under this Part, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Part shall be determined by the Commissioner.

#### Textual Amendments

- F4** S. 93(1)(bb) inserted by [National Health Service and Community Care Act 1990 \(c. 19, SIF 113:2\)](#), s. 66(1), [Sch. 9 para. 19\(18\)](#)
- F5** S. 93(1)(bb) inserted by [Health and Medicines Act 1988 \(c. 49, SIF 113:2\)](#), s. 12(5)
- F6** S. 93(1)(c) repealed by [Health Services Act 1980 \(c. 53\)](#), [Sch. 7](#)

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

- C5** [Pt. VI \(ss. 90–97\)](#) applied (1.4.1991) by [S.I. 1990/2639, art. 5\(1\)\(2\)](#), [Sch. Pt. I](#)

## 94 Provisions relating to complaints.

- (1) A complaint under this Part 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;

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- (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 foregoing provisions of this Part 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 unless made by the person aggrieved himself.
- (3) A complaint shall not be entertained under this Part unless it is made in writing to the Commissioner by or on behalf of the person aggrieved not later than 12 months from the day on which the matters alleged in the complaint first came to the notice of the person aggrieved; but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers it proper to do so.
- (4) 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 body subject to investigation and that that body has been afforded a reasonable opportunity to investigate and reply to the complaint; but the Commissioner may disregard the preceding provisions of this subsection in relation to a complaint made by an officer of the body subject to investigation on behalf of the person aggrieved if the officer is authorised by virtue of subsection (2) to make the complaint and the Commissioner is satisfied that in the particular circumstances those provisions ought to be disregarded.
- [<sup>F7</sup>(5) Notwithstanding the foregoing provisions of this section, a body subject to investigation—
- (a) may itself (excluding its officers) refer to the 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 93(2) above if the complaint—
- (i) is made in writing to that body by that person, or by a person authorised by virtue of subsection (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 subsection (3) 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) above after the expiry of twelve months beginning with the day on which the body received the complaint;
- and a complaint referred to the Commissioner in pursuance of this subsection shall, subject to section 93(6) above, be deemed to be duly made to him under this Part.]

#### Textual Amendments

F7 S. 94(5) substituted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. 8

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

C6 Pt. VI (ss. 90–97) applied (1.4.1991) by [S.I. 1990/2639](#), art. 5(1)(2), [Sch. Pt. I](#)



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## 95 Application of certain provisions of the Parliamentary Commissioner Act 1967.

The following provisions of the <sup>M5</sup>Parliamentary Commissioner Act 1967 shall, with any necessary modifications, apply to the Commissioner, to his officers and to a body subject to investigation as they apply to the Commissioner under that Act, to his officers and to a department or authority concerned:—

- section 7 (procedure in respect of investigations);
- section 8 (evidence);
- section 9 (obstruction and contempt);
- section 11 (secrecy of information), except subsection (4);

and in sections 7(1) and 8(1) of the said Act of 1967 as applied by this section the words “the principal officer of” and “Minister” shall be omitted.

### Modifications etc. (not altering text)

C7 Pt. VI (ss. 90–97) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

### Marginal Citations

M5 1967 c. 13.

## [<sup>F8</sup>95A Consulting other Commissioners.

- (1) Where, at any stage in the course of conducting an investigation under this Part, the Commissioner forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under—
  - (a) the Parliamentary Commissioner Act <sup>M6</sup>1967; or
  - (b) Part V of the National Health Service Act <sup>M7</sup>1977, he shall, if he considers it necessary, inform the person initiating the complaint of the steps necessary to initiate a complaint under the Parliamentary Commissioner Act 1967 or, as the case may be, Part V of the National Health Service Act 1977.
- (2) In the circumstances described in subsection (1), the Commissioner shall consult the Parliamentary Commissioner or the Health Service Commissioner for England or for Wales, as appropriate, about the complaint (unless he also holds office as that other Commissioner) and such consultation may extend to 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;and the application by section 95 of section 11(2) of the Parliamentary Commissioner Act <sup>M8</sup>1967 shall not extend to the disclosure of information by the Commissioner or any of his officers in the course of such consultations.
- (3) Where the Commissioner also holds office as any of the other Commissioners mentioned in subsection (2) and a person initiates a complaint to him in his capacity as such other Commissioner which relates partly to a matter with respect to which that person has previously initiated a complaint to him under this Part, or subsequently initiates such a complaint, information obtained by him or his officers in the course of or for the purposes of the investigation under this Part may be disclosed for the purposes of his carrying out his functions as such other Commissioner in relation to that person’s complaint.]

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#### Textual Amendments

**F8** S. 95A inserted by [Parliamentary and Health Service Commissioners Act 1987 \(c. 39, SIF 89\)](#), s. 4(5)

#### Marginal Citations

**M6** 1967 c.13(89).

**M7** 1977 c.49(113:2).

**M8** 1967 c.13(89).

## 96 Reports by Commissioner.

- (1) In any case where the Commissioner conducts an investigation under this Part, he shall send a report of the results of his investigation to—
- (a) the person who made the complaint;
  - [<sup>F9</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) the body subject to investigation;
  - (c) any person who is alleged in the complaint to have taken or authorised the action complained of;
  - (d) <sup>F10</sup>, the Secretary of State.
- (2)
- <sup>F11</sup>(3) In any case where the Commissioner decides not to conduct an investigation under this Part, he shall send a statement of his reasons for doing so to the persons and bodies described in paragraphs (a) [<sup>F12</sup>to] (b) of subsection (1).
- (4) If, after an investigation under this Part has been conducted by the Commissioner or an officer authorised by him, it appears to the Commissioner that injustice or hardship has been caused to the person aggrieved in the circumstances described in section 93(2), and that the injustice or hardship has not been or will not be remedied, he may, if he thinks fit—
- (a)
  - <sup>F13</sup>(b) <sup>F10</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.
- (5) The Commissioner shall annually make to the Secretary of State a general report on the performance of his functions under this Part <sup>F10</sup>, 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 any such report before each House of Parliament.
- (6) The Commissioner <sup>F10</sup> may from time to time lay before each House of Parliament such <sup>F10</sup> reports with respect to his <sup>F10</sup> functions under this Part as he thinks fit.
- (7) For the purpose of the law of defamation, any report or statement made, sent or laid in pursuance of this section, shall be absolutely privileged.



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#### Textual Amendments

- F9** S. 96(1)(aa) inserted by Parliamentary and Health Service Commissioners Act 1987 (c. 39, SIF 89), s. 5(1)
- F10** Words repealed by Health Services Act 1980 (c. 53), Sch. 7
- F11** Ss. 16(3), 20(2), 51, 52, 59–63, 65–68, 96(2), Sch. 16 paras. 25, 43 repealed by Health Services Act 1980 (c. 53), Sch. 7
- F12** Word substituted by Parliamentary and Health Service Commissioners Act 1987 (c. 39, SIF 89), s. 5(3)
- F13** S. 96(4)(a) repealed by Health Services Act 1980 (c. 53), Sch. 7

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

- C8** Pt. VI (ss. 90–97) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

## 97 Interpretation of Part VI.

(1) In this Part and in Schedule 14

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

“body subject to investigation” has the meaning assigned to it by section 93(1);

“the Commissioner” means the Health Service Commissioner for Scotland;

“person aggrieved” means a person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 93(2).

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

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

- C9** Pt. VI (ss. 90–97) applied (1.4.1991) by S.I. 1990/2639, art. 5(1)(2), Sch. Pt. I

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