



Parliamentary and Health Service Commissioners Act 1987

1987 CHAPTER 39

1 Extension of the jurisdiction of the Parliamentary Commissioner.

- (1) The following section shall be substituted for section 4 of the Parliamentary Commissioner Act 1967 (“the 1967 Act”)—

“4 Departments etc. subject to investigation.

- (1) Subject to the provisions of this section and to the notes contained in Schedule 2 to this Act, this Act applies to the government departments, corporations and unincorporated bodies listed in that Schedule; and references in this Act to an authority to which this Act applies are references to any such corporation or body.
- (2) Her Majesty may by Order in Council amend Schedule 2 to this Act by the alteration of any entry or note, the removal of any entry or note or the insertion of any additional entry or note.
- (3) An Order in Council may only insert an entry if—
- (a) it relates—
 - (i) to a government department; or
 - (ii) to a corporation or body whose functions are exercised on behalf of the Crown; or
 - (b) it relates to a corporation or body—
 - (i) which is established by virtue of Her Majesty’s prerogative or by an Act of Parliament or an Order in Council or order made under an Act of Parliament or which is established in any other way by a Minister of the Crown in his capacity as a Minister or by a government department;
 - (ii) at least half of whose revenues derive directly from money provided by Parliament, a levy authorised by an enactment, a

- fee or charge of any other description so authorised or more than one of those sources; and
- (iii) which is wholly or partly constituted by appointment made by Her Majesty or a Minister of the Crown or government department.
- (4) No entry shall be made in respect of a corporation or body whose sole activity is, or whose main activities are, included among the activities specified in subsection (5) below.
- (5) The activities mentioned in subsection (4) above are—
- (a) the provision of education, or the provision of training otherwise than under the Industrial Training Act 1982;
 - (b) the development of curricula, the conduct of examinations or the validation of educational courses;
 - (c) the control of entry to any profession or the regulation of the conduct of members of any profession;
 - (d) the investigation of complaints by members of the public regarding the actions of any person or body, or the supervision or review of such investigations or of steps taken following them.
- (6) No entry shall be made in respect of a corporation or body operating in an exclusively or predominantly commercial manner or a corporation carrying on under national ownership an industry or undertaking or part of an industry or undertaking.
- (7) Any statutory instrument made by virtue of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (8) In this Act—
- (a) any reference to a government department to which this Act applies includes a reference to any of the Ministers or officers of such a department; and
 - (b) any reference to an authority to which this Act applies includes a reference to any members or officers of such an authority.”.
- (2) The Schedule set out in Schedule 1 to this Act shall be substituted for Schedule 2 to the 1967 Act.
- (3) The 1967 Act shall be further amended as follows—
- (a) in section 13(2) (application to Northern Ireland)—
 - (i) after the word “authority”, in the first place where it occurs, there shall be inserted the words “or body”; and
 - (ii) for the words “ or authority”, in the first place where they occur, there shall be substituted the words “authority or body”;
 - (b) in section 14(3) (complaints in respect of matters which arose before commencement) for the words “which arose before the commencement of this Act” there shall be substituted the words “whenever arising”; and
 - (c) in paragraph 10(1) of Schedule 3 (matters not subject to investigation) for the words “listed in Schedule 2 to this Act” there shall be substituted the words “to which this Act applies”.

2 Removal of a Commissioner on grounds of incapacity for medical reasons.

(1) Section 1 of the 1967 Act and section 90 of the National Health Service (Scotland) Act 1978 (“the 1978 Act”) (which deal with the appointment of, and tenure of office by, respectively, the Parliamentary Commissioner and the Health Service Commissioner for Scotland) shall be amended as follows—

- (a) in subsection (2), for the words “subsection (3)” there shall be substituted the words “subsections (3) and (3A)”; and
- (b) after subsection (3), there shall be inserted the following subsection—

“(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.”.

(2) Section 106 of the National Health Service Act 1977 (“the 1977 Act”) (appointment of, and tenure of office by, the Health Service Commissioner for England and the Health Service Commissioner for Wales) shall be amended as follows—

- (a) in subsection (2), for the words “subsection (3)” there shall be substituted the words “subsections (3) and (3A)”; and
- (b) after subsection (3), there shall be inserted the following subsection—

“(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.”.

3 Delegation of Parliamentary Commissioner’s functions to officers.

At the end of section 3(2) of the 1967 Act (which provides that any function of the Commissioner under the Act may be performed by any officer of the Commissioner authorised for that purpose by the Commissioner) there shall be added the words “or may be performed by any officer so authorised—

- (a) of the Health Service Commissioner for England;
- (b) of the Health Service Commissioner for Scotland; or
- (c) of the Health Service Commissioner for Wales”.

4 Consultation and disclosure of information.

(1) In section 11 of the 1967 Act (provision for secrecy of information), the following subsection shall be inserted after subsection (2)—

“(2A) Where the Commissioner also holds office as a Health Service Commissioner and a person initiates a complaint to him in his capacity as such a Commissioner which relates partly to a matter with respect to which that person has previously initiated a complaint under this Act, or subsequently initiates such a complaint, information obtained by the Commissioner or his officers in the course of or for the purposes of investigating the complaint

under this Act may be disclosed for the purposes of his carrying out his functions in relation to the other complaint.”.

(2) The following section shall be inserted after that section—

“11A Consultations between Parliamentary Commissioner and Health Service Commissioners.

- (1) Where, at any stage in the course of conducting an investigation under this Act, the Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of the Health Service Commissioner for England, Wales or Scotland, he shall—
- (a) unless he also holds office as that Commissioner, consult about the complaint with him; and
 - (b) if he considers it necessary, inform the person initiating the complaint under this Act of the steps necessary to initiate a complaint under Part V of the National Health Service Act 1977 (Health Service Commissioner for England and for Wales) or, as the case may be, Part VI of the National Health Service (Scotland) Act 1978 (Health Service Commissioner for Scotland).
- (2) Where by virtue of subsection (1) above the Commissioner consults with the Health Service Commissioner in relation to a complaint under this Act, he may consult him 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) Nothing in section 11(2) of this Act shall apply in relation to the disclosure of information by the Commissioner or any of his officers in the course of consultations held in accordance with this section.”.
- (3) In section 118 of the 1977 Act (consultations between Health Service Commissioners and Local Commissioners)—
- (a) the following subsection shall be inserted after subsection (1)—

“(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 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 opinion 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 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.”; and
 - (c) in subsection (2), for the words from the beginning to “any”, in the first place where it occurs, there shall be substituted the words “Where a Commissioner consults with another Commissioner in accordance with this section, the consultations may extend to”.
- (4) In Schedule 13 to that Act (provisions as to investigations by Health Service Commissioner for England and for Wales), the following paragraph shall be inserted after paragraph 16—
- “16A (1) Where the Commissioner also holds office as a relevant commissioner and a person initiates a complaint to him in his capacity as such a commissioner which relates partly to a matter with respect to which that person has previously initiated a complaint to him in his capacity as the Commissioner, or subsequently initiates such a complaint, information obtained by the Commissioner or his officers in the course of or for the purposes of the investigation under Part V of this Act may be disclosed for the purposes of his carrying out his functions in relation to the other complaint.
- (2) In this paragraph “relevant commissioner”—
- (a) in relation to the Health Service Commissioner for England, means the Parliamentary Commissioner, the Health Service Commissioner for Wales and the Health Service Commissioner for Scotland; and
 - (b) in relation to the Health Service Commissioner for Wales, means the Parliamentary Commissioner, the Health Service Commissioner for England and the Health Service Commissioner for Scotland.”.
- (5) The following section shall be inserted after section 95 of the National Health Service (Scotland) Act 1978—

“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 1967; or
 - (b) Part V of the National Health Service Act 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 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.”.

5 Reports by Health Service Commissioner: further provision.

- (1) In section 119(1) of the 1977 Act (which lists the persons to whom a Health Service Commissioner for England or Wales is required to send a report of the results of his investigation of a complaint) and section 96(1) of the 1978 Act (corresponding provision in relation to the Commissioner for Scotland), the following paragraph shall be inserted after paragraph (a)—
- “(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).”.
- (2) In section 119(2) of the 1977 Act (Commissioner's duty, where he decides not to investigate a complaint, to send a statement of the reasons for his decision to the complainant and the body concerned) after “complaint” there shall be inserted “and to any such member of the House of Commons as is mentioned in subsection (1)(aa) above”.
- (3) In section 96(3) of the 1978 Act (corresponding provision in relation to the Commissioner for Scotland), for the word “and,” in the second place where it occurs, there shall be substituted the word “to”.

6 Appointment of acting Commissioners.

- (1) The following section shall be inserted after section 3 of the 1967 Act—

“3A 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 Treasury may determine.
- (3) A person appointed under this section shall, while he holds office, be treated for all purposes, except those of section 2 of this Act, 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.”

(2) The following section shall be inserted after section 108 of the 1977 Act—

“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.”.

(3) The following section shall be inserted after section 92 of the 1978 Act—

“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.”.

7 Extension of time limit for reference of complaint to Health Service Commissioner for England or Wales.

In section 117(b) of the 1977 Act (which limits the time within which a relevant body (as defined in section 109 of that Act) may refer a complaint against it to the Health Service Commissioner to three months), for the word “three” there shall be substituted the word “twelve”.

8 Time limits in relation to references to Health Service Commissioner for Scotland.

For section 94(5) of the 1978 Act (which allows a body subject to investigation to refer a complaint to the Commissioner), there shall be substituted the following—

- “(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.”.

9 Financial provision.

There shall be paid out of money provided by Parliament any increase attributable to the provisions of this Act in the sums payable out of such money under any other Act.

10 Citation, repeals, commencement and extent.

- (1) This Act may be cited as the Parliamentary and Health Service Commissioners Act 1987.
- (2) The enactments mentioned in Schedule 2 to this Act are repealed to the extent specified in the third column of that Schedule.
- (3) This Act shall come into force at the end of the period of two months beginning with the date on which it is passed.
- (4) For the purposes of subsection (3) of section 6 of the 1967 Act any time elapsing between the date of the passing and the date of the commencement of this Act (but not any time before the first of those dates) shall be disregarded in relation to a complaint against a corporation or body first listed in Schedule 2 to the 1967 Act on the commencement of this Act.
- (5) This Act only extends to Northern Ireland so far as it relates to the 1967 Act and to the repeal of any enactment amending that Act.