



# Health Service Commissioners Act 1993

## 1993 CHAPTER 46

### *Health Service [F1 Commissioner]*

#### Textual Amendments

- F1** Word in cross-heading substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005](#) (c. 10), s. 40, [Sch. 6 para. 28](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

#### 1 [F2 The Commissioner]. **E+W+S**

- (1) For the purpose of conducting investigations in accordance with this Act, there shall continue to be—
- (a) a Health Service Commissioner for England [F3 and]
  - <sup>F4</sup>(b) .....
  - <sup>F5</sup>(c) .....
- (2) References in this Act to [F6 the Commissioner] (or Health Service Commissioner) are, unless the context otherwise requires, to [F7 the Health Service Commissioner for England].
- (3) Schedule 1 has effect with respect to the appointment and remuneration of, and other administrative matters relating to, the Health Service Commissioner <sup>F8</sup>....

#### Textual Amendments

- F2** S. 1 heading substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005](#) (c. 10), s. 40, [Sch. 6 para. 29](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F3** Word in s. 1(1) inserted (14.7.2004) by [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004](#) (S.I. 2004/1823), arts. 1, [17\(2\)\(a\)\(i\)](#)
- F4** S. 1(1)(b) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005](#) (c. 10), s. 40, [Sch. 6 para. 30\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F5** Words in s. 1(1) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004](#) (S.I. 2004/1823), arts. 1, [17\(2\)\(a\)\(ii\)](#)

*Status: Point in time view as at 01/04/2006.*

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- F6** Words in s. 1(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 30(3)(a)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F7** Words in s. 1(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 30(3)(b)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F8** Words in s. 1(3) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 30(4), Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

### *Health service bodies subject to investigation*

## **2 The bodies subject to investigation. E+W+S**

- (1) The bodies subject to investigation by [<sup>F9</sup>the Commissioner] are—
- [<sup>F10</sup>(a) Strategic Health Authorities,]
  - (c) Special Health Authorities to which this section applies [<sup>F11</sup>not exercising functions only or mainly in Wales],
  - (d) National Health Service trusts managing a hospital, or other establishment or facility, in England,
  - [<sup>F12</sup>(da) Primary Care Trusts <sup>F13</sup> . . .]
  - [<sup>F14</sup>(db) NHS foundation trusts,]
  - (e) . . . . .
  - (f) the Dental Practice Board,<sup>F15</sup> . . .
  - <sup>F15</sup>(g) . . . . .
- <sup>F16</sup>(2) . . . . .
- <sup>F17</sup>(3) . . . . .
- (4) References in this Act to a “health service body” are to any of the bodies mentioned above.
- (5) The Special Health Authorities to which this section applies are those—
- (a) established on or before 1st April 1974, or
  - (b) established after that date and designated by Order in Council as ones to which this section applies.
- [<sup>F18</sup>(6) A designation made for the purposes of subsection (5)(b) shall be made by Order in Council; and a statutory instrument containing an Order in Council made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

### **Textual Amendments**

- F9** Words in s. 2(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 31(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F10** S. 2(1)(a) substituted (E.W.) (1.10.2002) by 2002 c. 17, s. 1(3), **Sch. 1 Pt. 2 para. 47**; S.I. 2002/2478, **art. 3(1)(a)** (with savings in **art. 3(3)** and transitional provisions in **art. 4**)
- F11** Words in s. 2(1)(c) substituted (1.4.2004 for W., 1.4.2006 for E.) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 11 para. 61(a)**; S.I. 2004/480, art. 4(2)(aa) (with **art. 6**) (as amended by S.I. 2004/1019 and S.I. 2006/345); S.I. 2005/2925, art. 10(2) (j)

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- F12** S. 2(1)(da) inserted (E.W.) (4.1.2000) by 1999 c. 8, s. 65, **Sch. 4 para. 85(2)(a)**; S.I. 1999/2342, art. 2(3), **Sch.**
- F13** Words in s. 2(1)(da) repealed (E.W.) (1.10.2002) by 2002 c. 17, ss. 2(5), 37(2), Sch. 2 Pt. 2 para. 61(2) (a), **Sch. 9 Pt. 1**; S.I. 2002/2478, **art. 3(1)(a)** (with savings in art. 3(3) and transitional provisions in art. 4)
- F14** S. 2(1)(db) inserted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 4 para. 94**; S.I. 2004/759, art. 2
- F15** S. 2(1)(g) and preceding word repealed (1.4.2005) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), Sch. 13 para. 7, **Sch. 14 Pt. 7**; S.I. 2005/457, art. 2(a)(b)
- F16** S. 2(2) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 31(3), **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F17** S. 2(3) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(3)**
- F18** S. 2(6) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 31(4)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

*[<sup>F19</sup> Persons subject to investigation]*

#### Textual Amendments

- F19** Ss. 2A, 2B and crossheading inserted (1.4.1996) by 1996 c. 5, s. 1; S.I. 1996/970, **art. 2(1)**

#### <sup>F20</sup>2A Health service providers subject to investigation. **E+W+S**

(1) Persons are subject to investigation by [<sup>F21</sup>the Commissioner][<sup>F22</sup>if they are [<sup>F23</sup>or were at the time of the action complained of]—

- [<sup>F24</sup>(a) persons (whether individuals or bodies) providing services under a contract entered into by them with a Primary Care Trust under section 28K or 28Q of the National Health Service Act 1977]
- (b) persons (whether individuals or bodies) undertaking to provide in England general ophthalmic services or pharmaceutical services under Part II of that Act; [<sup>F25</sup>or]
- (c) individuals performing in England [<sup>F26</sup>primary] medical services or [<sup>F26</sup>primary] dental services in accordance with arrangements made under section 28C of that Act (except as employees of, or otherwise on behalf of, a health service body or an independent provider)]

[<sup>F27</sup>or

- (d) individuals providing in England local pharmaceutical services in accordance with arrangements made under a pilot scheme established under section 28 of the Health and Social Care Act 2001 (except as employees of, or otherwise on behalf of, a health service body or an independent provider).]

<sup>F28</sup>(2) .....

<sup>F29</sup>(3) .....

(4) In this Act—

- (a) references to a family health service provider are to any person mentioned in [<sup>F30</sup>subsection (1)];
- (b) references to family health services are to any of the services so mentioned.]

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**Textual Amendments**

- F20** S. 2A and sidenote inserted (1.4.1996) by 1996 c. 5, s. 1; S.I. 1996/970, **art. 2(1)**
- F21** Words in s. 2A(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 32(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F22** S. 2A(1)(a)(b)(c) and words in s. 2A(1) substituted for words in s. 2A(1) (1.4.1998 with effect as mentioned in art. 3(3) of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. I para. 68(2)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F23** Words in s. 2A(1) inserted (23.2.2001) by 2000 c. 28, **ss. 1(1)(2)(a)**, 4(2) (with s. 3)
- F24** S. 2A(1)(a) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 11 para. 62(2)(a)**; S.I. 2004/288, art. 5(2)(w) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345); S.I. 2004/288, art. 5(2)(w) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345)
- F25** Word in s. 2A(1)(b) repealed (E.) (12.12.2002) by S.I. 2002/2861, **art. 26(a)**
- F26** Word in s. 2A(1)(c) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 11 para. 62(2)(b)**; S.I. 2004/288, art. 5(2)(w) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345); S.I. 2004/288, art. 5(2)(w) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345)
- F27** S. 2A(1)(d) and the word preceding it inserted (E.) (12.12.2002) by S.I. 2002/2861, **art. 26(b)**
- F28** S. 2A(2) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 32(3), **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F29** S. 2A(3) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(4)(a)**
- F30** Words in s. 2A(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 32(4)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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

- C1** S. 2A savings for effects of 2003 c. 43, Sch. 11 para. 62-68 (E.S.) (1.4.2004) by The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/865), arts. 1(1), **113** (with art. 1(3))
- C2** S. 2A applied (with modifications) (E.) (1.4.2006) by The National Health Service (Local Pharmaceutical Services etc.) Regulations 2006 (S.I. 2006/552), reg. 1(1), **Sch. 1 para. 11**
- C3** S. 2A(1)(a)(2)(a) modified (E.) (1.4.2004) by The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/865), arts. 1(1), **109(2)(e)**

**2B Independent providers subject to investigation. E+W+S**

- (1) Persons are subject to investigation by [<sup>F31</sup>the Commissioner] if—
  - (a) they are [<sup>F32</sup>or were at the time of the action complained of] persons (whether individuals or bodies) providing services in England under arrangements with health service bodies or family health service providers, and
  - (b) they are not [<sup>F33</sup>or were not at the time of the action complained of] themselves health service bodies or family health service providers.

<sup>F34</sup>(2) .....

<sup>F34</sup>(2A) .....

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<sup>F35</sup>(3) .....

(4) The services provided under arrangements mentioned in [<sup>F36</sup>subsection (1)(a)] may be services of any kind.

(5) In this Act references to an independent provider are to any person providing services as mentioned in [<sup>F37</sup>subsection (1)].

#### Textual Amendments

- F31** Words in s. 2B(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 33(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F32** Words in s. 2B(1)(a) inserted (23.2.2001) by 2000 c. 28, **ss. 1(1)(3)(a)**, 4(2) (with s. 3)
- F33** Words in s. 2B(1)(b) inserted (23.2.2001) by 2000 c. 28, **ss. 1(1)(3)(b)**, 4(2) (with s. 3)
- F34** S. 2B(2)(2A) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 33(3)**, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F35** S. 2B(3) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(5)(a)**
- F36** Words in s. 2B(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 33(4)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F37** Words in s. 2B(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 33(5)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

#### Matters subject to investigation

### 3 General remit of [<sup>F38</sup>Commissioner]. **E+W+S**

(1) On a complaint duly made to [<sup>F39</sup>the Commissioner] by or on behalf of a person that he has sustained injustice or hardship in consequence of—

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

the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.

<sup>F40</sup>(1YA) .....

[<sup>F41</sup>(1ZA) Any failure or maladministration mentioned in subsection (1) may arise from action of—

- (a) the health service body,
- (b) a person employed by that body,
- (c) a person acting on behalf of that body, or
- (d) a person to whom that body has delegated any functions.]

[<sup>F42</sup>(1A) Where a family health service provider has undertaken to provide any family health services and a complaint is duly made to [<sup>F43</sup>the Commissioner] by or on behalf of a person that he has sustained injustice or hardship in consequence of—

- (a) action taken by the family health service provider in connection with the services,

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- (b) action taken in connection with the services by a person employed by the family health service provider in respect of the services,
  - (c) action taken in connection with the services by a person acting on behalf of the family health service provider in respect of the services, or
  - (d) action taken in connection with the services by a person to whom the family health service provider has delegated any functions in respect of the services,
- the Commissioner may, subject to the provisions of this Act, investigate the alleged action.

<sup>F44</sup>(1B) .....

- (1C) Where an independent provider has made an arrangement with a health service body or a family health service provider to provide a service (of whatever kind) and a complaint is duly made to [<sup>F45</sup>the Commissioner] by or on behalf of a person that he has sustained injustice or hardship in consequence of—
- (a) a failure in the service provided by the independent provider,
  - (b) a failure of the independent provider to provide the service, or
  - (c) maladministration connected with any other action taken in relation to the service,
- the Commissioner may, subject to the provisions of this Act, investigate the alleged failure or other action.

- (1D) Any failure or maladministration mentioned in subsection (1C) may arise from action of—
- (a) the independent provider,
  - (b) a person employed by the provider,
  - (c) a person acting on behalf of the provider, or
  - (d) a person to whom the provider has delegated any functions.]

[<sup>F46</sup>(1E) Where a complaint is duly made to [<sup>F47</sup>the Commissioner] by or on behalf of a person that the person has sustained injustice or hardship in consequence of maladministration by any person or body in the exercise of any function under section 113 of the Health and Social Care (Community Health and Standards) Act 2003 (complaints about health care), the Commissioner may, subject to the provisions of this Act, investigate the alleged maladministration.]

- (2) In determining whether to initiate, continue or discontinue an investigation under this Act, [<sup>F48</sup>the Commissioner] shall act in accordance with his own discretion.
- (3) Any question whether a complaint is duly made to [<sup>F49</sup>the Commissioner] shall be determined by him.
- (4) Nothing in this Act authorises or requires [<sup>F50</sup>the Commissioner] to question the merits of a decision taken without maladministration by a health service body in the exercise of a discretion vested in that body.
- [<sup>F51</sup>(5) Nothing in this Act authorises or requires [<sup>F52</sup>the Commissioner] to question the merits of a decision taken without maladministration by—

  - (a) a family health service provider,
  - (b) a person employed by a family health service provider,
  - (c) a person acting on behalf of a family health service provider, or
  - (d) a person to whom a family health service provider has delegated any functions.

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- (6) Nothing in this Act authorises or requires [<sup>F53</sup>the Commissioner] to question the merits of a decision taken without maladministration by—
- (a) an independent provider,
  - (b) a person employed by an independent provider,
  - (c) a person acting on behalf of an independent provider, or
  - (d) a person to whom an independent provider has delegated any functions.]

[<sup>F54</sup>(7) Subsections (4) to (6) do not apply to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.]

#### Textual Amendments

- F38** Word in s. 3 heading substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 34** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F39** Words in s. 3(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F40** S. 3(1YA) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 35(3), **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F41** S. 3(1ZA) inserted (1.4.1998 with effect as mentioned in art. 3(3) of S.I. 1998/631) by 1997 c. 46, s. 41(10), **Sch. 2 Pt. 1 para. 68(5)**; S.I. 1998/631, art. 2(1)(b), **Sch. 2**
- F42** S. 3(1A)-(1D) inserted (1.4.1996 with effect as mentioned in art. 2(2) of S.I. 1996/970) by 1996 c. 5, s. 2(2); S.I. 1996/970, **art. 2(1)(2)**
- F43** Words in s. 3(1A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F44** S. 3(1B) repealed (1.10.1999 for E. and S. and 1.4.2000 for W.) by 1999 c. 8, s. 65, Sch. 4 para. 85(3), **Sch. 5**; S.I. 1999/2540, art. 2, **Sch. 1**; S.I. 1999/90, art. 2(b), **Sch. 2**; S.I. 2000/1041, art. 2(d), **Sch. 2**
- F45** Words in s. 3(1C) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F46** S. 3(1E) inserted (1.6.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), **ss. 118, 199(1)(4)**; S.I. 2004/759, art. 8
- F47** Words in s. 3(1E) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F48** Words in s. 3(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F49** Words in s. 3(3) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F50** Words in s. 3(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F51** S. 3(5)(6) inserted (1.4.1996) by 1996 c. 5, s. 2(3); S.I. 1996/970, **art. 2(1)**
- F52** Words in s. 3(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F53** Words in s. 3(6) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 35(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F54** S. 3(7) inserted (1.4.1996) by 1996 c. 5, s. 6(2); S.I. 1996/970, **art. 2(1)**

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### *Matters excluded from investigation*

#### 4 Availability of other remedy. **E+W+S**

- (1) [<sup>F55</sup>The Commissioner] shall not conduct an investigation in respect of action in relation to which the person aggrieved has or had—
- (a) 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) a remedy by way of proceedings in any court of law,
- unless the Commissioner is satisfied that in the particular circumstances it is not reasonable to expect that person to resort or have resorted to it.
- (2) [<sup>F55</sup>The Commissioner] shall not conduct an investigation in respect of action which has been, or is, the subject of an inquiry under section 84 of the <sup>M1</sup>National Health Service Act 1977 or section 76 of the <sup>M2</sup>National Health Service (Scotland) Act 1978 (general powers to hold inquiries).
- (3) A Commissioner shall not conduct an investigation in respect of action [<sup>F56</sup>by a health service body other than the Mental Welfare Commission for Scotland if it is action] in relation to which the protective functions of the Mental Welfare Commission for Scotland have been, are being or may be exercised under the <sup>M3</sup>Mental Health (Scotland) Act 1984.
- [<sup>F57</sup>(4) Subsection (5) applies where—
- (a) action by reference to which a complaint is made under section 3(1), (1A) or (1C) is action by reference to which a complaint can be made [<sup>F58</sup>under section 113(1) or (2) of the Health and Social Care (Community Health and Standards) Act 2003 or] under a procedure operated by a health service body, a family health service provider or an independent provider, and
  - (b) subsection (1), (2) or (3) does not apply as regards the action.
- (5) In such a case [<sup>F59</sup>the Commissioner] shall not conduct an investigation in respect of the action unless he is satisfied that—
- (a) the other procedure has been invoked and exhausted, or
  - (b) in the particular circumstances it is not reasonable to expect that procedure to be invoked or (as the case may be) exhausted.
- (6) Section 1(2) of the <sup>M4</sup>Hospital Complaints Procedure Act 1985 (which provides that no right of appeal etc. conferred under section 1 of that Act is to preclude an investigation under this Act) shall have effect subject to subsection (5) above.]

#### **Textual Amendments**

**F55** Words in s. 4(1)(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 36(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F56** Words in S. 4(3) inserted (1.4.1996 with application as mentioned in art. 2(2) of S.I. 1996/970) by 1996 c. 5, s. 4(2); S.I. 1996/970, **art. 2(1)**

**F57** S. 4(4)-(6) inserted (1.4.1996) by 1996 c. 5, s. 5; S.I. 1996/970, **art. 2(1)**

**F58** Words in s. 4(4)(a) inserted (1.6.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 9 para. 11(2)**; S.I. 2004/759, art. 7

**F59** Words in s. 4(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 36(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)



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### Marginal Citations

- M1 1977 c. 49.
- M2 1978 c. 29.
- M3 1984 c. 36.
- M4 1985 c. 42.

<sup>F60</sup>5 ..... **E+W+S**

### Textual Amendments

- F60 S. 5 repealed (1.4.1996 with application as mentioned in art. 2(2) of S.I. 1996/970) by 1996 c. 5, ss. 6(1), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**

## 6 General health services and service committees. **E+W+S**

<sup>F61</sup>(1) .....

<sup>F61</sup>(2) .....

(3) [<sup>F62</sup>The Commissioner] shall not conduct an investigation in respect of action taken by a Primary Care Trust <sup>F63</sup>... in the exercise of its functions under the <sup>M5</sup>National Health Service (Service Committees and Tribunal) Regulations 1992, or any instrument amending or replacing those regulations.

(4) A Commissioner shall not conduct an investigation in respect of action taken by a Health Board in the exercise of its functions under the <sup>M6</sup>National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992, or any instrument amending or replacing those regulations.

[<sup>F64</sup>(5) [<sup>F62</sup>The Commissioner] shall not conduct an investigation in respect of action taken by a Primary Care Trust <sup>F63</sup>... in the exercise of its functions under regulations made under section <sup>F65</sup>... [<sup>F66</sup>38, 39, 41 or 42] of the <sup>M7</sup>National Health Service Act 1977 by virtue of section 17 of the <sup>M8</sup>Health and Medicines Act 1988 (investigations of matters relating to services).

(6) A Commissioner shall not conduct an investigation in respect of action taken by a Health Board in the exercise of its functions under regulations made under section 19, 25(2), 26(2) or 27(2) of the <sup>M9</sup>National Health Service (Scotland) Act 1978 by virtue of section 17 of the <sup>M10</sup>Health and Medicines Act 1988.]

### Textual Amendments

- F61 S. 6(1)(2) repealed (1.4.1996) by 1996 c. 5, ss. 7(2), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**
- F62 Words in s. 6(3)(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 37(a)** (with s. 38); S.I. 2005/2800, art. 5(1)(3); S.I. 2005/2800, art. 5(1)(3)
- F63 Words in s. 6(3)(5) repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 37(b)**, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3); S.I. 2005/2800, art. 5(1)(3)
- F64 S. 6(5)(6) inserted (1.4.1996) by 1996 c. 5, s. 7(3); S.I. 1996/970, **art. 2(1)**
- F65 Words in s. 6(5) repealed (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 11 para. 63(a)**, **Sch. 14 Pt. 4**; S.I. 2004/288, arts. 5(2)(w), 6(2)(l) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, arts. 4(2)(aa), 5(2)(l)

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(with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345); S.I. 2004/288, arts. 5(2)(w), 6(2)(l)  
(with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, arts. 4(2)(aa), 5(2)(l)  
(with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345)

**F66** Words in s. 6(5) substituted (1.4.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 11 para. 63(b)**; S.I. 2004/288, art. 5(2)(w) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345); S.I. 2004/288, art. 5(2)(w) (with art. 7) (as amended by S.I. 2004/866 and S.I. 2005/2925); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345)

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

**C4** S. 6(5) savings for effects of 2003 c. 43, Sch. 11 para. 62-68 (E.S.) (1.4.2004) by The General Medical Services and Personal Medical Services Transitional and Consequential Provisions Order 2004 (S.I. 2004/865), arts. 1(1), **113** (with art. 1(3))

#### Marginal Citations

**M5** S.I. 1992/664.  
**M6** S.I. 1992/434.  
**M7** 1977 c. 49.  
**M8** 1988 c. 49.  
**M9** 1978 c. 29.  
**M10** 1988 c. 49.

## 7 Personnel, contracts etc. **E+W+S**

- (1) [<sup>F67</sup>The Commissioner] shall not conduct an investigation in respect of action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service under the <sup>M11</sup>National Health Service Act 1977 or the <sup>M12</sup>National Health Service (Scotland) Act 1978 [<sup>F68</sup>or the <sup>M13</sup>National Health Service and Community Care Act 1990]<sup>F69</sup> ....
- (2) [<sup>F70</sup>The Commissioner] shall not conduct an investigation in respect of action taken in matters relating to contractual or other commercial transactions, except for—
- matters relating to NHS contracts (as defined by section 4 of the <sup>M14</sup>National Health Service and Community Care Act 1990<sup>F71</sup> ..., <sup>F72</sup> . . .
  - matters arising from arrangements between a health service body and [<sup>F73</sup>an independent provider for the provision of services by the provider]<sup>F74</sup>and.
  - matters arising from arrangements between a family health service provider and an independent provider for the provision of services by the independent provider.]
- (3) In determining what matters arise from arrangements mentioned in subsection (2)(b) [<sup>F75</sup>the Commissioner] shall disregard any arrangements for the provision of services at an establishment maintained by a Minister of the Crown mainly for patients who are members of the armed forces of the Crown.
- [<sup>F76</sup>(3A) [<sup>F77</sup>The Commissioner] shall not conduct an investigation in pursuance of a complaint if—
- the complaint is in respect of action taken in any matter relating to arrangements made by a health service body and a family health service provider for the provision of family health services,
  - the action is taken by or on behalf of the body or by the provider, and

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(c) the complaint is made by the provider or the body.]

[<sup>F78</sup>(3B) Nothing in the preceding provisions of this section prevents [<sup>F79</sup>the Commissioner] conducting an investigation in respect of action taken by a health service body in operating a procedure established to examine complaints.]

(4) Her Majesty may by Order in Council amend this section so as to permit the investigation by [<sup>F80</sup>the Commissioner] of any of the matters mentioned in subsection (1) or (2).

(5) A statutory instrument containing an Order in Council made by virtue of subsection (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F67** Words in s. 7(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 38\(2\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F68** Words in s. 7(1) inserted (1.4.1996) by [1996 c. 5](#), s. 8(2); S.I. 1996/970, [art. 2\(1\)](#)
- F69** Words in s. 7(1) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 38\(2\)\(b\)](#), [Sch. 7](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F70** Words in s. 7(2) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 38\(3\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F71** Words in s. 7(2)(a) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(6\)](#)
- F72** Word in s. 7(2)(a) repealed (1.4.1996) by [1996 c. 5](#), ss. 3, 13, [Sch. 1 para. 2\(2\)](#), [Sch. 2](#); S.I. 1996/970, [art. 2\(1\)](#)
- F73** Words in s. 7(2)(b) substituted (1.4.1996) by [1996 c. 5](#), s. 3, [Sch. 1 para. 2\(3\)](#); S.I. 1996/970, [art. 2\(1\)](#)
- F74** S. 7(2)(c) and preceding word “and” inserted (1.4.1996) by [1996 c. 5](#), s. 3, [Sch. 1 para. 2\(4\)](#); S.I. 1996/970, [art. 2\(1\)](#)
- F75** Words in s. 7(3) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 38\(4\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F76** S. 7(3A) inserted (1.4.1996) by [1996 c. 5](#), s. 3, [Sch. 1 para. 2\(5\)](#); S.I. 1996/970, [art. 2\(1\)](#)
- F77** Words in s. 7(3A) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 38\(5\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F78** S. 7(3B) inserted (1.4.1996) by [1996 c. 5](#), s. 8(3); S.I. 1996/970, [art. 2\(1\)](#)
- F79** Words in s. 7(3B) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 38\(6\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F80** Words in s. 7(4) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 38\(6\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

#### Marginal Citations

- M11** [1977 c. 49](#).
- M12** [1978 c. 29](#).
- M13** [1990 c. 19](#).
- M14** [1990 c. 19](#).

[<sup>F81</sup>7A **Certain functions of Mental Welfare Commission for Scotland.** **E+W+S**

A Commissioner shall not conduct an investigation in respect of action taken by the Mental Welfare Commission for Scotland under section 33 (orders for discharge of hospital patients) [<sup>F82</sup>or], 35I (revocation of community care orders) [<sup>F83</sup>or 50 (orders

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discharging patients from guardianship)] of the <sup>M15</sup>Mental Health (Scotland) Act 1984 [<sup>F82</sup>or section 73 of the Adults with Incapacity (Scotland) Act 2000].]

#### Textual Amendments

- F81** S. 7A and sidenote inserted (1.4.1996) by 1996 c. 5, s. 4(3); S.I. 1996/970, art. 2(1)
- F82** Words in s. 7A inserted (S.)(1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 24; S.S.I. 2001/81, art. 3, Sch. 2
- F83** Words in s. 7A repealed (S.)(1.4.2002) by 2000 asp 4, s. 88(2), Sch. 5 para. 24; S.S.I. 2001/81, art. 3 Sch. 2

#### Marginal Citations

- M15** 1984 c. 36.

### Complaints

#### 8 Individuals and bodies entitled to complain. **E+W+S**

- (1) A complaint under this Act may be made by an individual or a body of persons, whether incorporated or not, other than a public authority.
- (2) In subsection (1), “public authority” means—
- (a) a local authority or other authority or body constituted for the purposes of the public service or of local government [<sup>F84</sup>(including the Assembly)],
  - (b) an authority or body constituted for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking, and
  - (c) any other authority or body—
    - (i) whose members are appointed by Her Majesty or any Minister of the Crown or government department [<sup>F85</sup>or by the Assembly], or
    - (ii) whose revenues consist wholly or mainly of money provided by Parliament [<sup>F86</sup>or out of the Scottish Consolidated Fund][<sup>F85</sup>or the Assembly].

#### Textual Amendments

- F84** Words in s. 8(2)(a) inserted (1.4.1999) by 1998 c. 38, s. 112, Sch. 10 para. 7(a) (with ss. 139(2), 143(2)); S.I. 1999/782, art. 2
- F85** Words in s. 8(2)(c)(i)(ii) inserted (1.4.1999) by 1998 c. 38, s. 112, Sch. 10 para. 7(b) (with ss. 139(2), 143(2)); S.I. 1999/782, art. 2
- F86** Words in s. 8(2)(c) inserted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 112(2); S.I. 1998/3178, art. 3

#### 9 Requirements to be complied with. **E+W+S**

- (1) The following requirements apply in relation to a complaint made to [<sup>F87</sup>the Commissioner].
- (2) A complaint must be made in writing.

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- (3) The complaint shall not be entertained unless it is made—
  - (a) by the person aggrieved, or
  - (b) where the person by whom a complaint might have been made has died or is for any reason unable to act for himself, by—
    - (i) his personal representative,
    - (ii) a member of his family, or
    - (iii) some body or individual suitable to represent him.
- (4) The Commissioner shall not entertain the complaint if it is made more than a year after the day on which the person aggrieved first had notice of the matters alleged in the complaint, unless he considers it reasonable to do so.
- [<sup>F88</sup>(4A) In the case of a complaint against a person who is no longer of a description set out in [<sup>F89</sup>section 2A(1)], but was of such a description at the time of the action complained of, the Commissioner shall not entertain the complaint if it is made more than three years after the last day on which the person was a family health service provider.
- (4B) In the case of a complaint against a person falling within [<sup>F90</sup>section 2B(1)] in relation to whom there are no longer any such arrangements as are mentioned there, the Commissioner shall not entertain the complaint if it is made more than three years after the last day on which the person was an independent provider.]
- <sup>F91</sup>(5) .....
- <sup>F92</sup>(6) .....

**Textual Amendments**

- F87** Words in s. 9(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 39(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F88** S. 9(4A)(4B) inserted (23.2.2001) by 2000 c. 28, **ss. 2, 4(2)** (with s. 3)
- F89** Words in s. 9(4A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 39(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F90** Words in s. 9(4B) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 39(4)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F91** S. 9(5) repealed (1.4.1996) by 1996 c. 5, ss. 9(a), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**
- F92** S. 9(6) repealed (1.4.1996) by 1996 c. 5, ss. 9(b), 13, **Sch. 2**; S.I. 1996/970, **art. 2(1)**

**10 Referral of complaint by health service body. E+W+S**

- (1) A health service body may itself refer to [<sup>F93</sup>the Commissioner] a complaint made to that body 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 3(1).
- (2) A complaint may not be so referred unless it was made—
  - (a) in writing,
  - (b) by the person aggrieved or by a person authorised by section 9(3)(b) to complain to the Commissioner on his behalf, and
  - (c) not more than a year after the person aggrieved first had notice of the matters alleged in the complaint, or such later date as the Commissioner considers appropriate in any particular case.

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<sup>F94</sup>(2A) .....

- (3) A health service body may not refer a complaint under this section after the period of one year beginning with the day on which the body received the complaint.
- (4) Any question whether a complaint has been duly referred to [<sup>F93</sup>the Commissioner] under this section shall be determined by him.
- (5) A complaint referred to [<sup>F93</sup>the Commissioner] under this section shall be deemed to be duly made to him.

#### Textual Amendments

- F93** Words in s. 10(1)(4)(5) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 40\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F94** S. 10(2A) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 40\(3\), Sch. 7](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

### Investigations

#### 11 Procedure in respect of investigations. **U.K.**

- (1) Where [<sup>F95</sup>the Commissioner] proposes to conduct an investigation pursuant to a complaint under [<sup>F96</sup>section 3(1)], he shall afford—
  - (a) to the health service body concerned, and
  - (b) to any other 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.
- <sup>F97</sup>(1A) Where [<sup>F98</sup>the Commissioner] proposes to conduct an investigation pursuant to a complaint under section 3(1A), he shall afford—
  - (a) to the family health service provider, and
  - (b) to any person by reference to whose action the complaint is made (if different from the family health service provider),
 an opportunity to comment on any allegations contained in the complaint.
- (1B) Where [<sup>F99</sup>the Commissioner] proposes to conduct an investigation pursuant to a complaint under section 3(1C), he shall afford—
  - (a) to the independent provider concerned, and
  - (b) to any other 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.]
- <sup>F100</sup>(1C) Where [<sup>F101</sup>the Commissioner] proposes to conduct an investigation pursuant to a complaint under section 3(1E), he shall afford to the person or body whose maladministration is complained of an opportunity to comment on any allegations contained in the complaint.]
  - (2) An investigation shall be conducted in private.

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- (3) In other respects, the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case, and in particular—
- (a) he may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and
  - (b) he may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.

- (4) [<sup>F102</sup>The Commissioner] may, if he thinks fit, pay to the person by whom the complaint was made and to any other person who attends or supplies information for the purposes of an investigation—
- (a) sums in respect of expenses properly incurred by them, and
  - (b) allowances by way of compensation for the loss of their time.

Payments [<sup>F103</sup>made by [<sup>F104</sup>the Commissioner]<sup>F105</sup>...] under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by the Treasury <sup>F106</sup>....

- (5) The conduct of an investigation [<sup>F107</sup>pursuant to a complaint under section 3(1)] shall not affect any action taken by the health service body concerned, or any power or duty of that body to take further action with respect to any matters subject to the investigation.

- [<sup>F108</sup>(5A) The conduct of an investigation pursuant to a complaint under section 3(1A) or (1C) shall not affect any action taken by the family health service provider or independent provider concerned, or any power or duty of that provider to take further action with respect to any matters subject to the investigation.]

- (6) Where the person aggrieved has been removed from the United Kingdom under any order in force under the <sup>M16</sup>Immigration Act 1971 he shall, if the Commissioner so directs, be permitted to re-enter and remain in the United Kingdom, subject to such conditions as the Secretary of State may direct, for the purposes of the investigation.

#### Textual Amendments

- F95** Words in s. 11(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 41\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F96** Words in s. 11(1) substituted (1.4.1996) by 1996 c. 5, s. 3, [Sch. 1 para. 3\(2\)](#); S.I. 1996/970, [art. 2\(1\)](#)
- F97** S. 11(1A)(1B) inserted (1.4.1996) by 1996 c. 5, s. 3, [Sch. 1 para. 3\(3\)](#); S.I. 1996/970, [art. 2\(1\)](#)
- F98** Words in s. 11(1A) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 41\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F99** Words in s. 11(1B) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 41\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F100** S. 11(1C) inserted (1.6.2004) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 9 para. 11\(3\)](#); S.I. 2004/759, art. 7
- F101** Words in s. 11(1C) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 41\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F102** Words in s. 11(4) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 41\(3\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F103** Words in s. 11(4) inserted (1.7.1999) by 1998 c. 38, s. 112, [Sch. 10 para. 9\(a\)](#) (with ss. 139(2), 143(2)); S.I. 1999/1290, [art. 4](#)
- F104** Words in s. 11(4) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 41\(3\)\(b\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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**F105** Words in s. 11(4) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, **17(7)**

**F106** Words in s. 11(4) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 41\(3\)\(c\)](#), **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F107** Words in s. 11(5) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 3(4)**; S.I. 1996/970, art. **2(1)**

**F108** S. 11(5A) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 3(5)**; S.I. 1996/970, art. **2(1)**

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

**C5** S. 11(1)(a)(5) modified (1.4.1996) by 1996/709, art. 9(3)(a)(i)(ii)

#### Marginal Citations

**M16** 1971 c. 77.

## 12 Evidence. **U.K.**

(1) For the purposes of an investigation pursuant to a complaint under section 3(1) [<sup>F109</sup>the Commissioner] may require any officer or member of the health service body concerned or any other person who in his opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such document.

[<sup>F110</sup>(1A) For the purposes of an investigation pursuant to a complaint under section 3(1A) (1C) or (1E) [<sup>F111</sup>the Commissioner] may require any person who in his opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such document.]

(2) For the purposes of an investigation [<sup>F112</sup>the Commissioner] shall have the same powers as the Court in respect of—

- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
- (b) the production of documents.

(3) No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied 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 for the purposes of an investigation.

(4) The Crown shall not be entitled in relation to an investigation 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) No person shall be required or authorised by this Act—

- (a) to supply any information or answer any question relating to proceedings of the Cabinet or of any Committee of the Cabinet, or
- (b) to produce so much of any document as relates to such proceedings;

and for the purposes of this subsection a certificate issued by the Secretary of the Cabinet with the approval of the Prime Minister and certifying that any information, question, document or part of a document relates to such proceedings shall be conclusive.

(6) Subject to subsections (3) and (4), no person shall be compelled for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the Court.



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#### Textual Amendments

- F109** Words in s. 12(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 42** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F110** S. 12(1A) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 4(3)**; S.I. 1996/970, art. 2(1)
- F111** Words in s. 12(1A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 42** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F112** Words in s. 12(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 42** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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

- C6** S. 12(1) applied with modifications (1.4.1996) by S.I. 1996/709, art. 9(3)(b)

### 13 **Obstruction and contempt.** **U.K.**

- (1) [<sup>F113</sup>The Commissioner] may certify an offence to the Court where—
- a person without lawful excuse obstructs him or any of his officers in the performance of his functions, or
  - a person is guilty of any act or omission in relation to an investigation which, if that investigation were a proceeding in the Court, would constitute contempt of court.
- (2) Where an offence is so certified the Court may inquire into the matter and after hearing—
- any witnesses who may be produced against or on behalf of the person charged with the offence, and
  - any statement that may be offered in defence,
- the Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the like offence in relation to the Court.
- (3) Nothing in this section shall be construed as applying to the taking of any such action as is mentioned in section 11(5).

#### Textual Amendments

- F113** Words in s. 13(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 43** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

### Reports

### 14 [<sup>F114</sup>Reports by the Commissioner]. **U.K.**

- (1) [<sup>F115</sup>In any case where [<sup>F116</sup>the Commissioner]<sup>F117</sup>... conducts an investigation pursuant to a complaint under section 3(1) he shall send a report of the results of the investigation]—
- to the person who made the complaint,
  - to any member of the House of Commons <sup>F118</sup>... 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),

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- [<sup>F119</sup>(c) to the health service body who at the time the report is made provides the service, or has the function, in relation to which the complaint was made,]  
 (d) to any person who is alleged in the complaint to have taken or authorised the action complained of, [<sup>F120</sup>and]  
<sup>F121</sup>(e) to the Secretary of State.]
- (2) In any case where [<sup>F122</sup>the Commissioner]<sup>F123</sup>... decides not to conduct an investigation [<sup>F124</sup>pursuant to a complaint under section 3(1)] he shall send a statement of his reasons—
- (a) to the person who made the complaint, [<sup>F125</sup>and]  
 (b) to any such member of the House of Commons <sup>F126</sup>... as is mentioned in subsection (1)(b), <sup>F127</sup>...  
<sup>F128</sup>(c) .....
- [<sup>F129</sup>(2A) In any case where [<sup>F130</sup>the Commissioner]<sup>F131</sup>... conducts an investigation pursuant to a complaint under section 3(1A) he shall send a report of the results of the investigation—
- (a) to the person who made the complaint,  
 (b) to any member of the House of Commons <sup>F132</sup>... 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),  
 (c) to any person by reference to whose action the complaint is made,  
 (d) to the family health service provider (if he does not fall within paragraph (c)),  
 (e) to any health service body with whom the family health service provider is subject to an undertaking to provide family health services, and  
 (f) to the Secretary of State.
- (2B) In any case where [<sup>F133</sup>the Commissioner]<sup>F134</sup>... decides not to conduct an investigation pursuant to a complaint under section 3(1A) he shall send a statement of his reasons—
- (a) to the person who made the complaint, and  
 (b) to any such member of the House of Commons <sup>F135</sup>... as is mentioned in subsection (2A)(b).
- (2C) In any case where [<sup>F136</sup>the Commissioner]<sup>F137</sup>... conducts an investigation pursuant to a complaint under section 3(1C) he shall send a report of the results of the investigation—
- (a) to the person who made the complaint,  
 (b) to any member of the House of Commons <sup>F138</sup>... 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),  
 (c) to any person who is alleged in the complaint to have taken or authorised the action complained of,  
 (d) to the independent provider,  
 (e) to the health service body or family health service provider with whom the independent provider made the arrangement to provide the service concerned, and  
 (f) to the Secretary of State.
- (2D) In any case where [<sup>F139</sup>the Commissioner]<sup>F140</sup>... decides not to conduct an investigation pursuant to a complaint under section 3(1C) he shall send a statement of his reasons—
- (a) to the person who made the complaint, and

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- (b) to any such member of the House of Commons <sup>F141</sup>...as is mentioned in subsection (2C)(b).]
- [<sup>F142</sup>(2E) In any case where [<sup>F143</sup>the Commissioner] conducts an investigation pursuant to a complaint under section 3(1E) he shall send a report of the results of the investigation—
- (a) to the person who made the complaint;
  - (b) 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);
  - (c) to the person or body whose maladministration is complained of;
  - (d) to any person or body whose action was complained of in the complaint made to the person or body whose maladministration is complained of;
  - (e) to the Secretary of State.
- (2F) In any case where [<sup>F144</sup>the Commissioner] decides not to conduct an investigation pursuant to a complaint under section 3(1E) he shall send a statement of his reasons—
- (a) to the person who made the complaint; or
  - (b) to any such member of the House of Commons as is mentioned in subsection (2E)(b).]

(3) If after conducting an investigation it appears to [<sup>F145</sup>the Commissioner]<sup>F146</sup>... that—

    - (a) the person aggrieved has sustained such injustice or hardship as is mentioned in section 3(1) [<sup>F147</sup>, (1A) or (1C)], and
    - (b) the injustice or hardship has not been and will not be remedied,

he may if he thinks fit [<sup>F148</sup>lay before each House of Parliament a special report on the case.]

[<sup>F149</sup>(4) [<sup>F150</sup>The Commissioner]<sup>F151</sup>...—

    - (a) shall <sup>F152</sup>...annually lay before each House of Parliament a general report on the performance of his functions under this Act, and
    - (b) may <sup>F153</sup>... from time to time lay before each House of Parliament such other reports with respect to those functions as he thinks fit.]

(5) For the purposes of the law of defamation, the publication of any matter by [<sup>F154</sup>the Commissioner]<sup>F155</sup>... in sending or making a report or statement in pursuance of this section shall be absolutely privileged.

#### Extent Information

- E1** S. 14(5) extends to Northern Ireland see s. 22(2)(a).

#### Textual Amendments

- F114** Words in s. 14 heading substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 44](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F115** Words in s. 14(1) substituted (1.4.1996) by 1996 c. 5, s. 3, [Sch. 1 para. 5\(2\)](#); S.I. 1996/970, [art. 2\(1\)](#)
- F116** Words in s. 14(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\), s. 40, Sch. 6 para. 45\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F117** Words in s. 14(1) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(8\)\(a\)](#)
- F118** Words in s. 14(1)(b) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(8\)\(b\)](#)

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- F119** S. 14(1)(c) substituted (1.4.1996) by 1996 c. 5, s. **10(2)**; S.I. 1996/970, art. **2(1)**
- F120** Word in s. 14(1)(d) inserted (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 126(4)(a)** (with Sch. 2 paras. 6, 16)
- F121** S. 14(e) substituted for s. 14(e)(f) (28.6.1995 for specified purposes and otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 126(4)(b)** (with Sch. 2 paras. 6, 16)
- F122** Words in s. 14(2) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F123** Words in s. 14(2) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F124** Words in s. 14(2) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 5(3)**; S.I. 1996/970, art. **2(1)**
- F125** Word in s. 14(2)(a) inserted (1.4.1996) by 1996 c. 5, s. **10(3)(a)**; S.I. 1996/970, art. **2(1)**
- F126** Words in s. 14(2)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F127** Word in s. 14(2)(b) repealed (1.4.1996) by 1996 c. 5, ss. 10(3)(b), 13, **Sch. 2**; S.I. 1996/970, art. **2(1)**
- F128** S. 14(2)(c) repealed (1.4.1996) by 1996 c. 5, ss. 10(3)(b), 13, **Sch. 2**; S.I. 1996/970, art. **2(1)**
- F129** S. 14(2A)-(2D) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 5(4)**; S.I. 1996/970, art. **2(1)**
- F130** Words in s. 14(2A) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F131** Words in s. 14(2A) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F132** Words in s. 14(2A)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F133** Words in s. 14(2B) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F134** Words in s. 14(2B) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F135** Words in s. 14(2B)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F136** Words in s. 14(2C) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F137** Words in s. 14(2C) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F138** Words in s. 14(2C)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F139** Words in s. 14(2D) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F140** Words in s. 14(2D) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F141** Words in s. 14(2D)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(b)**
- F142** S. 14(2E)(2F) inserted (1.6.2004) by Health and Social Care (Community Health and Standards) Act 2003 (c. 43), s. 199(1)(4), **Sch. 9 para. 11(5)**; S.I. 2004/759, art. 7
- F143** Words in s. 14(2E) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F144** Words in s. 14(2F) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F145** Words in s. 14(3) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F146** Words in s. 14(3) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**
- F147** Words in s. 14(3)(a) inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 5(5)**; S.I. 1996/970, art. **2(1)**
- F148** Words in s. 14(3) substituted (1.4.1996) by 1996 c. 5, s. **10(4)**; S.I. 1996/970, art. **2(1)**
- F149** S. 14(4) substituted (1.4.1996) by 1996 c. 5, s. **10(5)**; S.I. 1996/970, art. **2(1)**

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- F150** Words in s. 14(4) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(3)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F151** Words in s. 14(4) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(c)(i)**
- F152** Word in s. 14(4)(a) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(c)(ii)**
- F153** Word in s. 14(4)(b) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(c)(ii)**
- F154** Words in s. 14(5) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 45(2)** (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F155** Words in s. 14(5) omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), arts. 1, **17(8)(a)**

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

- C7** S. 14(1)(c) applied with modifications (1.4.1996) by S.I. 1996/709, **art. 9(3)(c)**

**F156** **14A Reports by Welsh Commissioner.** **E+W+S**

.....

**Textual Amendments**

- F156** Ss. 14A-14C repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 46, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F156** **14B Action in response to reports by Welsh Commissioner.** **E+W+S**

.....

**Textual Amendments**

- F156** Ss. 14A-14C repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 46, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F156** **14C Reports: supplementary.** **E+W+S**

.....

**Textual Amendments**

- F156** Ss. 14A-14C repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, Sch. 6 para. 46, **Sch. 7** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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### Information and consultation

## 15 Confidentiality of information. U.K.

- (1) Information obtained by [<sup>F157</sup>the Commissioner] or his officers in the course of or for the purposes of an investigation shall not be disclosed except—
- (a) for the purposes of the investigation and any report to be made in respect of it,
  - (b) for the purposes of any proceedings for—
    - (i) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by virtue of this Act by [<sup>F157</sup>the Commissioner] or any of his officers, or
    - (ii) an offence of perjury alleged to have been committed in the course of the investigation,
  - (c) for the purposes of an inquiry with a view to the taking of such proceedings as are mentioned in paragraph (b), <sup>F158</sup> . . .
  - (d) for the purposes of any proceedings under section 13 (offences of obstruction and contempt) [<sup>F159</sup>or
  - (e) [<sup>F160</sup>where the information is to the effect that any person is likely to constitute a threat to the health or safety of patients] as permitted by subsection (1B).]

<sup>F161</sup> [ Subsection (1B) applies where, in the course of an investigation, [<sup>F163</sup>the  
<sup>F162</sup>(1A) Commissioner] or any of his officers obtains information which—

- (a) does not fall to be disclosed for the purposes of the investigation or any report to be made in respect of it, and
- (b) is to the effect that a person is likely to constitute a threat to the health or safety of patients.]

(1B) In [<sup>F164</sup>a case within subsection (1)(e)] the Commissioner may disclose the information to any persons to whom he thinks it should be disclosed in the interests of the health and safety of patients [<sup>F165</sup>; and a person to whom disclosure may be made may, for instance, be a body which regulates the profession to which the person mentioned in subsection (1A)(b) belongs or his employer or any person with whom he has made arrangements to provide services.]

(1C) If [<sup>F166</sup>the Commissioner] discloses information as permitted by subsection (1B) he shall—

- [ where he knows the identity of the person mentioned in subsection (1)(e),  
<sup>F167</sup>(a) inform that person that he has disclosed the information and of the identity of any person to whom he has disclosed it, and
- (b) inform the person from whom the information was obtained that he has disclosed it.]]

(2) Neither [<sup>F168</sup>the Commissioner] nor his officers [<sup>F169</sup>nor his advisers] shall be called on to give evidence in any proceedings, other than proceedings mentioned in subsection (1), of matters coming to his or their knowledge in the course of an investigation under this Act.

<sup>F170</sup>(3) The reference in subsection (2) to [<sup>F171</sup>the Commissioner's] advisers is a reference to persons from whom the Commissioner obtains advice under paragraph 13 of Schedule 1 <sup>F172</sup>....]

<sup>F173</sup>(4) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 shall be treated for the purposes of subsection (1)

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as obtained for the purposes of an investigation and, in relation to such information, the reference in paragraph (a) of that subsection to the investigation shall have effect as a reference to any investigation.]

#### Textual Amendments

- F157** Words in s. 15(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 47\(2\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F158** Word in s. 15(1)(c) repealed (1.4.1996) by 1996 c. 5, ss. 11(2), 13, [Sch. 2](#); S.I. 1996/970, [art. 2\(1\)](#)
- F159** S. 15(1)(e) and preceding word “or” inserted (1.4.1996) by 1996 c. 5, s. 11(2); S.I. 1996/970, [art. 2\(1\)](#)
- F160** Words in s. 15(1)(e) inserted (1.10.1999 for E.W., 1.3.2000 for S.) by 1999 c. 8, s. 43(2); S.S.I. 2000/38, [art. 2](#)
- F161** S. 15(1A)-(1C) inserted (1.4.1996) by 1996 c. 5, s. 11(3); S.I. 1996/970, [art. 2\(1\)](#)
- F162** S. 15(1A) repealed (1.10.1999 for E.W., 1.3.2000 for S.) by 1999 c. 8, ss. 43(3), 65, [Sch. 5](#); S.I. 1999/2540, [art. 2\(1\)\(b\)](#); S.S.I. 2000/38, [art. 2](#)
- F163** Words in s. 15(1A) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 47\(3\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F164** Words in s. 15(1B) substituted (1.10.1999 for E.W., 1.3.2000 for S. otherwise *prosp.*) by 1999 c. 8, s. 43(4)(a); S.I. 1999/2540, [art. 2\(1\)\(b\)](#); S.S.I. 2000/38, [art. 2](#)
- F165** Words in s. 15(1B) repealed (1.10.1999 for E.W., 1.3.2000 for S. otherwise *prosp.*) by 1999 c. 8, ss. 43(4)(b), 65, [Sch. 5](#); S.I. 1999/2540, [art. 2\(1\)\(b\)](#); S.S.I. 2000/38, [art. 2](#)
- F166** Words in s. 15(1C) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 47\(3\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F167** S. 15(1C)(a)(b) substituted (1.10.1999 for E.W., 1.3.2000 for S. otherwise *prosp.*) by 1999 c. 8, s. 43(5); S.I. 1999/2540, [art. 2\(1\)\(b\)](#); S.S.I. 2000/38, [art. 2](#)
- F168** Words in s. 15(2) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 47\(3\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F169** Words in s. 15(2) inserted (1.4.1996) by 1996 c. 5, s. 11(4); S.I. 1996/970, [art. 2\(1\)](#)
- F170** S. 15(3) inserted (1.4.1996) by 1996 c. 5, s. 11(5); S.I. 1996/970, [art. 2\(1\)](#)
- F171** Words in s. 15(3) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 47\(4\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F172** Words in s. 15(3) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 47\(4\)\(b\)](#), [Sch. 7](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F173** S. 15(4) inserted (30.1.2001) by 2000 c. 36, ss. 76(2), 87(2)(b), [Sch. 7 para. 5](#) (with ss. 56, 78)

## 16 Information prejudicial to the safety of the State. **U.K.**

- (1) A Minister of the Crown may give notice in writing to [<sup>F174</sup>the Commissioner] with respect to any document or information specified in the notice that in the Minister’s opinion the disclosure of the document or information would be prejudicial to the safety of the State or otherwise contrary to the public interest.
- (2) Where such a notice is given to [<sup>F174</sup>the Commissioner], nothing in this Act shall be construed as authorising or requiring him or any of his officers to communicate to any person or for any purpose any document or information specified in the notice.
- (3) References above to a document or information include references to a class of document or a class of information.

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**Textual Amendments**

**F174** Words in s. 16(1)(2) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 48](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**17 Use of information by Commissioner in other capacity. E+W+S**

(1) This section applies where [<sup>F175</sup>the Commissioner] also holds <sup>F176</sup>... the office of Parliamentary Commissioner (an “additional office”).

(2) Where—

- (a) a person initiates a complaint to the Commissioner as the holder of the additional office, and
- (b) the complaint relates partly to a matter with respect to which that person has previously initiated, or subsequently initiates, a complaint to the Commissioner in his capacity as such,

information obtained by the Commissioner or his officers in the course of or for the purposes of the investigation of that other complaint may be disclosed for the purposes of carrying out his functions in relation to the complaint initiated to him as the holder of the additional office.

<sup>F177</sup>(3) .....

**Textual Amendments**

**F175** Words in s. 17(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 49\(2\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F176** Words in s. 17(1) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 49\(2\)\(b\)](#), [Sch. 7](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

**F177** S. 17(3) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 49\(3\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)

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

**C8** S. 17 extended (1.7.1999) by [S.I. 1999/1351](#), [art. 17\(5\)\(a\)](#); [S.I. 1998/3178](#), [art. 3](#)

**18 Consultation during investigations. E+W+S**

(1) Where [<sup>F178</sup>the Commissioner], at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly [<sup>F179</sup>or wholly] to a matter which could be the subject of an investigation—

- <sup>F180</sup>(a) .....
- (b) by the Parliamentary Commissioner under the <sup>M17</sup>Parliamentary Commissioner Act 1967,
- <sup>F181</sup>(ba) by the Public Services Ombudsman for Wales under the Public Services Ombudsman (Wales) Act 2005,]
- (c) by a Local Commissioner under Part III of the <sup>M18</sup>Local Government Act 1974, [<sup>F182</sup>or]
- (d) [<sup>F183</sup>by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002], <sup>F184</sup>...



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F184(e) .....

he shall consult about the complaint with the appropriate Commissioner [F185 or F186 ... Ombudsman] and, if he considers it necessary, he shall inform the person initiating the complaint of the steps necessary to initiate a complaint to that Commissioner [F185 or F186 ... Ombudsman].

- (2) Where [F187 the Commissioner] consults with another Commissioner [F188, the Scottish Public Services Ombudsman] or F189 ... [F190 the Public Services Ombudsman for Wales] in accordance with this section, the consultations 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.
- (3) Nothing in section 15 (confidentiality of information) applies in relation to the disclosure of information F191 ... in the course of consultations held in accordance with this section.

#### Textual Amendments

- F178** Words in s. 18(1) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 50\(2\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F179** Words in s. 18(1) inserted (1.4.2004 for W., 1.4.2006 for E.) by [Health and Social Care \(Community Health and Standards\) Act 2003 \(c. 43\)](#), s. 199(1)(4), [Sch. 11 para. 64](#); S.I. 2004/480, art. 4(2)(aa) (with art. 6) (as amended by S.I. 2004/1019 and S.I. 2006/345), S.I. 2005/2925, art. 10(2)(j)
- F180** S. 18(1)(a) repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 50\(2\)\(b\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F181** S. 18(1)(ba) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 50\(2\)\(c\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F182** Word in s. 18(1)(c) repealed (14.7.2005 for W.) by [Housing Act 2004 \(c. 34\)](#), s. 270(4)(5)(f), Sch. 15 para. 37(2)(a), [Sch. 16](#); S.I. 2005/1814, arts. 1(2), 2(f)(iv)
- F183** Words in s. 18(1)(d) substituted (14.7.2004) by [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(9\)\(a\)\(ii\)](#)
- F184** S. 18(1)(e) and word repealed (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 50\(2\)\(d\)](#), [Sch. 7](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F185** Words in s. 18(1) inserted (1.4.1999) by 1998 c. 38, s. 112, [Sch. 10 para. 14\(2\)](#) (with ss. 139(2), 143(2)); S.I. 1999/782, [art. 2](#)
- F186** Word in s. 18(1) omitted (14.7.2004) by virtue of [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(9\)\(a\)\(iii\)](#)
- F187** Words in s. 18(2) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 50\(3\)\(a\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F188** Words in s. 18(2) inserted (14.7.2004) by [The Scottish Public Services Ombudsman Act 2002 \(Consequential Provisions and Modifications\) Order 2004 \(S.I. 2004/1823\)](#), arts. 1, [17\(9\)\(b\)](#)
- F189** Words in s. 18(2) repealed (14.7.2005 for W.) by [Housing Act 2004 \(c. 34\)](#), s. 270(4)(5)(f), Sch. 15 para. 37(3), [Sch. 16](#); S.I. 2005/1814, [arts. 1\(2\)](#), 2(f)(iv)
- F190** Words in s. 18(2) substituted (1.4.2006) by [Public Services Ombudsman \(Wales\) Act 2005 \(c. 10\)](#), s. 40, [Sch. 6 para. 50\(3\)\(b\)](#) (with s. 38); S.I. 2005/2800, art. 5(1)(3)
- F191** Words in s. 18(3) repealed (1.4.1999) by 1998 c. 38, ss. 112, 152, Sch. 10 para. 14(4), [Sch. 18 Pt. I](#) (with ss. 137(1), 139(2), 141(1), 143(2)); S.I. 1999/782, [art. 2](#)

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

- C9** S. 18 extended (1.7.1999) by S.I. 1999/1351, [art. 17\(5\)\(a\)](#); S.I. 1998/3178, [art. 3](#)

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**C10** S. 18(1)(b) extended (1.7.1999) by S.I. 1999/1351, **art. 17(5)(b)**; S.I. 1998/3178, **art. 3**

#### Marginal Citations

**M17** 1967 c. 13.

**M18** 1974 c. 7.

### [<sup>F192</sup>18A Disclosure of information to Information Commissioner. **E+W+S**

- (1) [<sup>F193</sup>The Health Service Commissioner] may disclose to the Information Commissioner any information obtained by, or furnished to, the Health Service Commissioner under or for the purposes of this Act if the information appears to the Health Service Commissioner to relate to—
- (a) a matter in respect of which the Information Commissioner could exercise any power conferred by—
    - (i) Part V of the Data Protection Act 1998 (enforcement),
    - (ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or
    - (iii) Part IV of that Act (enforcement), or
  - (b) the commission of an offence under—
    - (i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or
    - (ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc. records with intent to prevent disclosure).
- (3) Nothing in section 15 (confidentiality of information) applies in relation to the disclosure of information in accordance with this section.]

#### Textual Amendments

**F192** S. 18A and sidenote inserted (30.1.2001) by 2000 c. 36, ss. 76(2), 87(2)(b), **Sch. 7 para. 6** (with ss. 56, 78)

**F193** Words in s. 18A(1) substituted (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 51** (with s. 38); S.I. 2005/2800, art. 5(1)(3)

### Supplementary

## 19 Interpretation. **U.K.**

In this Act—

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

[<sup>F194</sup>[<sup>F195</sup>“allotted sum” shall be construed in accordance with section 15 of the <sup>M19</sup>National Health Service and Community Care Act 1990 or, in Scotland, section 87B of the <sup>M20</sup>National Health Service (Scotland) Act 1978;]]

[<sup>F196</sup>“the Assembly” means the National Assembly for Wales;]

“the Court” means, in relation to England and Wales, the High Court, <sup>F197</sup>...and in relation to Northern Ireland, the High Court in Northern Ireland;

[<sup>F198</sup>“family health services” has the meaning given by section 2A;

“family health service provider” has the meaning given by section 2A;]

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F199  
...

“functions” includes powers and duties;

“health service body” has the meaning given by section 2;

[<sup>F200</sup>“independent provider” has the meaning given by section 2B;]

“local authority” means—

(a) in relation to England <sup>F201</sup> . . . , a county, district or London borough council or the Common Council of the City of London,

[<sup>F202</sup>(aa) in relation to Wales, a county council or county borough council,]

(b) in relation to Scotland, a regional, district or islands council;

“officer” includes employee <sup>F203</sup> . . . ;

“Parliamentary Commissioner” means Parliamentary Commissioner for Administration;

“patient” includes an expectant or nursing mother and a lying-in woman;

<sup>F204</sup> . . .

“person aggrieved” means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 3(1) [<sup>F205</sup>, (1A) or (1C)].

[<sup>F206</sup>[<sup>F207</sup>“recognised fund-holding practice” shall be construed in accordance with section 14 of the National Health Service and Community Care Act 1990 or, in Scotland, section 87A of the National Health Service (Scotland) Act 1978.]]

### Textual Amendments

- F194** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(2)**; S.I. 1996/970, **art. 2(1)**
- F195** Words in s. 19 repealed (1.10.1999 for E.S., 1.4.2000 for W.) by 1999 c. 8, s. 65, **Sch. 4 para. 85(4)**, **Sch. 5**; S.I. 1999/2540, **art. 2, Sch. 1**; S.I. 1999/90, **art. 2, Sch. 2**; S.I. 2000/1026, **art. 2(1), Sch.**
- F196** Words in s. 19 inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 15(2)** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**
- F197** Words in s. 19 omitted (14.7.2004) by virtue of The Scottish Public Services Ombudsman Act 2002 (Consequential Provisions and Modifications) Order 2004 (S.I. 2004/1823), **arts. 1, 17(10)**
- F198** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(3)**; S.I. 1996/970, **art. 2(1)**
- F199** Words in s. 19 repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 52(2), Sch. 7** (with s. 38); S.I. 2005/2800, **art. 5(1)(3)**
- F200** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(4)**; S.I. 1996/970, **art. 2(1)**
- F201** Words in s. 19 repealed (1.4.1996) by 1994 c. 19, s. 66(6)(8), **Sch. 16 para. 108, Sch. 18** (with ss. 54(5)(7), 55(5), **Sch. 17 para. 22(1), 23(2)**); S.I. 1996/396, **art. 4, Sch. 2**
- F202** Words in s. 19 inserted (1.4.1996) by 1994 c. 19, s. 66(6), **Sch. 16 para. 108** (with ss. 54(5)(7), 55(5), **Sch. 17 para. 22(1), 23(2)**); S.I. 1996/396, **art. 4, Sch. 2**
- F203** Words in s. 19 repealed (1.4.2006) by Public Services Ombudsman (Wales) Act 2005 (c. 10), s. 40, **Sch. 6 para. 52(3), Sch. 7** (with s. 38); S.I. 2005/2800, **art. 5(1)(3)**
- F204** Word in s. 19 repealed (1.4.1996) by 1996 c. 5, ss. 3, 13, **Sch. 1 para. 6(5), Sch. 2**; S.I. 1996/970, **art. 2(1)**
- F205** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(6)**; S.I. 1996/970, **art. 2(1)**
- F206** Words in s. 19 inserted (1.4.1996) by 1996 c. 5, s. 3, **Sch. 1 para. 6(7)**; S.I. 1996/970, **art. 2(1)**
- F207** Words in s. 19 repealed (1.10.1999 for E.S., 1.4.2000 for W.) by 1999 c. 8, s. 65, **Sch. 4 para. 85(4)**, **Sch. 5**; S.I. 1999/2540, **art. 2, Sch. 1**; S.I. 1999/90, **art. 2, Sch. 2**; S.I. 2000/1026, **art. 2(1), Sch.**

### Marginal Citations

**M19** 1990 c. 19.

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M20 1978 c. 29.

## 20 Consequential amendments and repeals. **E+W+S**

- (1) Schedule 2 to this Act (which contains amendments consequential on this Act) has effect.
- (2) The enactments set out in Schedule 3 are repealed to the extent specified.

## 21 Transitional provisions. **E+W+S**

- (1) The repeal and re-enactment of provisions in this Act does not affect the continuity of the law.
- (2) Anything done, or having effect as if done, under a provision reproduced in this Act has effect as if done under the corresponding provision of this Act.
- (3) Any reference (express or implied) in this Act or any other enactment, or in any instrument or document, to a provision of this Act shall (so far as the context permits) be construed as (according to the context) being or including in relation to times, circumstances or purposes before the commencement of this Act a reference to the corresponding provision repealed in this Act.
- (4) Any reference (express or implied) in this Act or any other enactment, or in any instrument or document, to a provision repealed in this Act shall (so far as the context permits) be construed as (according to the context) being or including in relation to times, circumstances or purposes after the commencement of this Act a reference to the corresponding provision of this Act.
- (5) Subsection (4) is subject to Schedule 2.

## 22 Short title, extent and commencement. **U.K.**

- (1) This Act may be cited as the Health Service Commissioners Act 1993.
- (2) The following provisions of this Act extend to Northern Ireland—
  - (a) sections 11, 12, 13, 14(5), 15, 16 and this section;
  - (b) section 19 so far as it relates to provisions mentioned in this subsection;
  - (c) Schedule 2 so far as it amends any enactment which extends to Northern Ireland; and
  - (d) Schedule 3 so far as it repeals any enactment which extends to Northern Ireland.
- (3) The Secretary of State may by order provide that this Act shall apply to the Isles of Scilly with such modifications, if any, as are specified in the order.

Any such order shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This Act shall come into force at the end of the period of three months beginning with the day on which it is passed.

**Status:**

Point in time view as at 01/04/2006.

**Changes to legislation:**

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