



Health Service Commissioners Act 1993

1993 CHAPTER 46

Information and consultation

15 Confidentiality of information.

- (1) Information obtained by a 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 a 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),^{F1} . . .
 - (d) for the purposes of any proceedings under section 13 (offences of obstruction and contempt) [^{F2}or
 - (e) [^{F3}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).]

^{F4}[Subsection (1B) applies where, in the course of an investigation, a Commissioner or^{F5}(1A) 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 [^{F6}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 [^{F7}; 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.]

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- (1C) If a Commissioner discloses information as permitted by subsection (1B) he shall—
- [where he knows the identity of the person mentioned in subsection (1)(e),
- ^{F8}(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 a Commissioner nor his officers [^{F9}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.
- ^{F10}(3) The reference in subsection (2) to a Commissioner’s advisers is a reference to persons from whom the Commissioner obtains advice under paragraph 13 of Schedule 1 [^{F11}or paragraph 6(6) of Schedule 1A].]
- ^{F12}(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) 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

- F1** 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)**
- F2** 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)**
- F3** 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**
- F4** S. 15(1A)-(1C) inserted (1.4.1996) by 1996 c. 5, **s. 11(3)**; S.I. 1996/970, **art. 2(1)**
- F5** 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**
- F6** 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**
- F7** 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**
- F8** 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**
- F9** Words in s. 15(2) inserted (1.4.1996) by 1996 c. 5, **s. 11(4)**; S.I. 1996/970, **art. 2(1)**
- F10** S. 15(3) inserted (1.4.1996) by 1996 c. 5, **s. 11(5)**; S.I. 1996/970, **art. 2(1)**
- F11** Words in s. 15(3) inserted (1.7.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 12** (with ss. 139(2), 143(2)); S.I. 1999/1290, **art. 4**
- F12** 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.

- (1) A Minister of the Crown may give notice in writing to a 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.

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- (2) Where such a notice is given to a 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.

17 Use of information by Commissioner in other capacity.

- (1) This section applies where a Commissioner also holds either of the other offices of Health Service Commissioner ^{F13}, the office of Welsh Administration Ombudsman] or 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.

Textual Amendments

F13 Words in s. 17(1) inserted (1.4.1999) by 1998 c. 38, s. 112, **Sch. 10 para. 13** (with ss. 139(2), 143(2)); S.I. 1999/782, **art. 2**

Modifications etc. (not altering text)

C1 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.

- (1) Where a Commissioner, at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly ^{F14}or wholly] to a matter which could be the subject of an investigation—
 - (a) ^{F15}by the other Health Service Commissioner] under this Act,
 - (b) by the Parliamentary Commissioner under the ^{M1}Parliamentary Commissioner Act 1967,
 - ^{F16}(ba) by the Welsh Administration Ombudsman under the Government of Wales Act 1998,]
 - (c) by a Local Commissioner under Part III of the ^{M2}Local Government Act 1974, or
 - (d) ^{F17}by the Scottish Public Services Ombudsman under the Scottish Public Services Ombudsman Act 2002],

he shall consult about the complaint with the appropriate Commissioner ^{F18}or ^{F19}...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 ^{F18}or ^{F19}...Ombudsman].

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- (2) Where a Commissioner consults with another Commissioner [^{F20}, the Scottish Public Services Ombudsman][^{F21}or the Welsh Administration Ombudsman] 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 [^{F22}. . .] in the course of consultations held in accordance with this section.

Textual Amendments

- F14** 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)
- F15** Words in s. 18(1)(a) 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\(9\)\(a\)\(i\)](#)
- F16** S. 18(1)(ba) 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](#)
- F17** 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\(9\)\(a\)\(ii\)](#)
- F18** 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](#)
- F19** 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\(9\)\(a\)\(iii\)](#)
- F20** 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\(9\)\(b\)](#)
- F21** Words in s. 18(2) inserted (1.4.1999) by 1998 c. 38, s. 112, [Sch. 10 para. 14\(3\)](#) (with ss. 139(2), 143(2)); S.I. 1999/782, [art. 2](#)
- F22** 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)

- C2** S. 18 extended (1.7.1999) by S.I. 1999/1351, [art. 17\(5\)\(a\)](#); S.I. 1998/3178, [art. 3](#)
- C3** 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

- M1** 1967 c. 13.
- M2** 1974 c. 7.

^{F23}18A Disclosure of information to Information Commissioner.

- (1) The Health Service Commissioner for England or the Health Service Commissioner for Wales 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),

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- (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

F23 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)

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