



Health Service Commissioners Act 1993

1993 CHAPTER 46

Matters excluded from investigation

4 Availability of other remedy.

- (1) A 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) A 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 ^{M1}National Health Service Act 1977 or section 76 of the ^{M2}National Health Service (Scotland) Act 1978 (general powers to hold inquiries).
- (3) A Commissioner shall not conduct an investigation in respect of action [^{F1}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 ^{M3}Mental Health (Scotland) Act 1984.
- [^{F2}(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 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 a 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

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- (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 ^{M4}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

F1 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)

F2 S. 4(4)-(6) inserted (1.4.1996) by 1996 c. 5, s. 5; S.I. 1996/970, art. 2(1)

Marginal Citations

M1 1977 c. 49.

M2 1978 c. 29.

M3 1984 c. 36.

M4 1985 c. 42.

F3 5

Textual Amendments

F3 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.

- ^{F4}(1)
- ^{F4}(2)
- (3) A Commissioner shall not conduct an investigation in respect of action taken by a [^{F5}Primary Care Trust or][^{F6}Health Authority] in the exercise of its functions under the ^{M5}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 ^{M6}National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992, or any instrument amending or replacing those regulations.
- ^{F7}(5) A Commissioner shall not conduct an investigation in respect of action taken by a [^{F5}Primary Care Trust or] Health Authority in the exercise of its functions under regulations made under section ^{F8}... [^{F9}38, 39, 41 or 42] of the ^{M7}National Health Service Act 1977 by virtue of section 17 of the ^{M8}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 ^{M9}National Health Service (Scotland) Act 1978 by virtue of section 17 of the ^{M10}Health and Medicines Act 1988.]

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Textual Amendments

- F4** 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)**
- F5** Words in s. 6(3)(5) inserted (E.W.) (1.10.2002) by 2002 c. 17, s. 2(5), **Sch. 2 Pt. 2 para. 61(3)**; S.I. 2002/2478, **art. 3(1)(a)** (with savings in **art. 3(3)** and transitional provisions in **art. 4**)
- F6** Words in s. 6(3) substituted (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(3) (with Sch. 2 paras. 6, 16)
- F7** S. 6(5)(6) inserted (1.4.1996) by 1996 c. 5, s. 7(3); S.I. 1996/970, **art. 2(1)**
- F8** 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) (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)
- F9** 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)

- C1** 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.

- (1) A 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 ^{M11}National Health Service Act 1977 or the ^{M12}National Health Service (Scotland) Act 1978 [^{F10}or the ^{M13}National Health Service and Community Care Act 1990][^{F11}or service as a member of the staff of the Assembly].
- (2) A 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 ^{M14}National Health Service and Community Care Act 1990 and, in relation to Scotland, by section 17A of the National Health Service (Scotland) Act 1978), ^{F12} . . .
 - matters arising from arrangements between a health service body and [^{F13}an independent provider for the provision of services by the provider][^{F14}and.

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- (c) 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) the Health Service Commissioners for England and for Wales 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.
- [^{F15}(3A) A Commissioner shall not conduct an investigation in pursuance of a complaint if—
- (a) 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,
 - (b) the action is taken by or on behalf of the body or by the provider, and
 - (c) the complaint is made by the provider or the body.]
- [^{F16}(3B) Nothing in the preceding provisions of this section prevents a 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 a 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

- F10** Words in s. 7(1) inserted (1.4.1996) by 1996 c. 5, s. 8(2); S.I. 1996/970, art. 2(1)
- F11** Words in s. 7(1) inserted (1.4.1999) by 1998 c. 38, s. 112, Sch. 10 para. 6 (with ss. 139(2), 143(2)); S.I. 1999/782, art. 2
- F12** 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)
- F13** 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)
- F14** 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)
- F15** 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)
- F16** S. 7(3B) inserted (1.4.1996) by 1996 c. 5, s. 8(3); S.I. 1996/970, art. 2(1)

Marginal Citations

- M11** 1977 c. 49.
- M12** 1978 c. 29.
- M13** 1990 c. 19.
- M14** 1990 c. 19.

[^{F17}7A Certain functions of Mental Welfare Commission for Scotland.

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) [^{F18}or], 35I (revocation of community care orders) [^{F19}or] 50 (orders

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discharging patients from guardianship)] of the ^{M15}Mental Health (Scotland) Act 1984
[^{F18}or section 73 of the Adults with Incapacity (Scotland) Act 2000].]

Textual Amendments

- F17** S. 7A and sidenote inserted (1.4.1996) by 1996 c. 5, s. 4(3); S.I. 1996/970, art. 2(1)
- F18** 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
- F19** 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
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Marginal Citations

- M15** 1984 c. 36.

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