



Local Government and Public Involvement in Health Act 2007

2007 CHAPTER 28

VALID FROM 01/04/2008

PART 9

THE COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND

168 Appointment and removal of Commissioners

- (1) Section 23 of the Local Government Act 1974 (c. 7) (appointment and removal of Commissioners) is amended as follows.
- (2) In subsection (4) (appointment of Commissioners) omit from “after consultation” to the end.
- (3) After subsection (4) insert—

“(4A) Subject to subsections (5) to (6), a Commissioner shall hold and vacate office in accordance with the terms of his appointment.”
- (4) For subsection (5) substitute—

“(5) A Commissioner's appointment may be a full-time or part-time appointment and, with the Commissioner's consent, the terms of the appointment may be varied as to whether it is full-time or part-time.

(5A) A Commissioner must be appointed for a period of not more than 7 years.

(5B) A Commissioner shall, subject to subsection (6), hold office until the end of the period for which he is appointed.”

Status: Point in time view as at 31/01/2008. This version of this part contains provisions that are not valid for this point in time.

Changes to legislation: There are currently no known outstanding effects for the Local Government and Public Involvement in Health Act 2007, Part 9. (See end of Document for details)

(5) In subsection (6) (removal of Commissioners and obligation to vacate office at end of year in which Commissioner attains age of 65) omit from “, and shall in any case vacate office” to the end.

(6) After subsection (6) insert—

“(6A) A person appointed to be a Commissioner is not eligible for re-appointment.”

169 Responsibilities of Commissioners

(1) Section 23 of the Local Government Act 1974 (appointment and removal of Commissioners) is amended as follows.

(2) For subsections (8) and (9) (allocation of cases by geographic area) substitute—

“(8A) The Commission must—

- (a) divide the matters which may be investigated under this Part of this Act into such categories as they consider appropriate, and
- (b) allocate, or make arrangements for allocating, responsibility for each category of matter to one or more of the Local Commissioners.”

(3) In subsection (10)(a), for “to accept cases for which they are not responsible” substitute “to deal with matters for which they do not have responsibility pursuant to subsection (8A) ”.

170 Annual reports

(1) Section 23A of the Local Government Act 1974 (c. 7) (annual reports) is amended as follows.

(2) In subsection (1), after “functions” insert “ (an “annual report”) ”.

(3) In subsection (2)—

- (a) for “The report” substitute “ The annual report ”;
- (b) for “their own report” substitute “ their annual report ”.

(4) In subsection (3), for “the report submitted by them under subsection (1) above” substitute “ the annual report ”.

(5) After subsection (3) insert—

“(3A) The Commission must lay a copy of the annual report before Parliament.”

(6) Omit subsections (4) and (5) (comments on Commission's annual report).

171 Power to investigate

Before section 25 of the Local Government Act 1974 insert—

“24A Power to investigate

(1) Under this Part of this Act, a Local Commissioner may investigate a matter—

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- (a) which relates to action taken by or on behalf of an authority to which this Part of this Act applies,
 - (b) which is subject to investigation under this Part of this Act by virtue of section 26, and
 - (c) in relation to which subsection (2), (3) or (5) is satisfied.
- (2) This subsection is satisfied if, in relation to the matter, a complaint which satisfies sections 26A and 26B has been made to a Local Commissioner.
- (3) This subsection is satisfied if, in relation to the matter—
 - (a) a complaint which satisfies sections 26A and 26B has been made to a member of an authority to which this Part of this Act applies, and
 - (b) the complaint has been referred, or is treated as having been referred, to a Local Commissioner under section 26C.
- (4) Any question whether subsection (2) or (3) is satisfied in relation to a matter shall be determined by a Local Commissioner.
- (5) This subsection is satisfied if—
 - (a) the matter has come to the attention of a Local Commissioner, and
 - (b) section 26D applies to the matter.
- (6) In determining whether to initiate, continue or discontinue an investigation, a Local Commissioner shall, subject to the provisions of this section and sections 26 to 26D, act in accordance with his own discretion.
- (7) Without prejudice to the discretion conferred by subsection (6), a Local Commissioner may in particular decide—
 - (a) not to investigate a matter, or
 - (b) to discontinue an investigation of a matter,if he is satisfied with action which the authority concerned have taken or propose to take.”

172 Authorities subject to investigation

- (1) Section 25 of the Local Government Act 1974 (c. 7) (authorities subject to investigation) is amended as follows.
- (2) In subsection (4), for paragraphs (b) and (c) substitute—

“(b) to a committee or sub-committee of that authority (including a joint committee or joint sub-committee on which the authority are represented),

and (for the avoidance of doubt) subsections (4ZA) to (5) apply for the purposes of this subsection.”
- (3) After subsection (4) insert—

“(4ZA) Any reference to an authority to which this Part of this Act applies also includes, in the case of a local authority operating executive arrangements, the executive.”
- (4) In subsection (4A) (Greater London Authority), omit paragraphs (b) and (c).

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(5) Omit subsection (4B) (sub-committees of the London Transport Users Committee).

(6) In subsection (5)—

- (a) in paragraph (c), after “constituted” insert “ by the authority ”;
- (b) in paragraph (d), after first “school” insert “ maintained by the authority ”;
- (c) in paragraph (e), after “constituted” insert “ by the authority ”.

(7) After subsection (5) insert—

“(6) Subsection (7) has effect where an authority to which this Part of this Act applies exercise a function entirely or partly by means of an arrangement with another person.

(7) For the purposes of this Part of this Act, action taken by or on behalf of the other person in carrying out the arrangement shall be treated as action taken—

- (a) on behalf of the authority, and
- (b) in the exercise of the authority's function.

(8) Subsection (7) does not have effect where, by virtue of another enactment, the action would be treated as action taken by the authority.”

173 Matters subject to investigation

(1) Section 26 of the Local Government Act 1974 (matters subject to investigation) is amended in accordance with subsections (2) and (3).

(2) For subsection (1) substitute—

“(1) For the purposes of section 24A(1)(b), in relation to an authority to which this Part of this Act applies, the following matters are subject to investigation by a Local Commissioner under this Part of this Act—

- (a) alleged or apparent maladministration in connection with the exercise of the authority's administrative functions;
- (b) an alleged or apparent failure in a service which it was the authority's function to provide;
- (c) an alleged or apparent failure to provide such a service.

(1A) Subsection (1) is subject to the following provisions of this section.”

(3) Omit subsections (2) to (4) (procedure for making complaints).

(4) In Schedule 5 to that Act (matters not subject to investigation), for paragraph 3 substitute—

“3 (1) Action taken in matters relating to contractual or other commercial transactions of any authority to which Part 3 of this Act applies relating to—

- (a) the operation of public passenger transport;
- (b) the carrying on of a dock or harbour undertaking;
- (c) the provision of entertainment;
- (d) the provision and operation of industrial establishments;

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(e) the provision and operation of markets.

(2) Sub-paragraph (1) does not include transactions for or relating to—

- (a) the acquisition or disposal of land;
- (b) the acquisition or disposal of moorings which are not moorings provided in connection with a dock or harbour undertaking.

(3) Sub-paragraph (1)(a) does not include action taken by or on behalf of the London Transport Users Committee in operating a procedure for examining complaints or reviewing decisions.

(4) Sub-paragraph (1)(e) does not include transactions relating to—

- (a) the grant, renewal or revocation of a licence to occupy a pitch or stall in a fair or market, or
- (b) the attachment of any condition to such a licence.”

174 Complaints and matters coming to Commissioners' attention

(1) After section 26 of the Local Government Act 1974 (c. 7) insert—

“26A Who can complain

(1) Under this Part of this Act, a complaint about a matter may only be made—

- (a) by a member of the public who claims to have sustained injustice in consequence of the matter,
- (b) by a person authorised in writing by such a member of the public to act on his behalf, or
- (c) in accordance with subsection (2).

(2) Where a member of the public by whom a complaint about a matter might have been made under this Part of this Act has died or is otherwise unable to authorise a person to act on his behalf, the complaint may be made—

- (a) by his personal representative (if any), or
- (b) by a person who appears to a Local Commissioner to be suitable to represent him.

26B Procedure for making complaints

(1) Subject to subsection (3), a complaint about a matter under this Part of this Act must be made—

- (a) in writing, and
- (b) before the end of the permitted period.

(2) In subsection (1)(b), “the permitted period” means the period of 12 months beginning with—

- (a) the day on which the person affected first had notice of the matter, or
- (b) if the person affected has died without having notice of the matter—
 - (i) the day on which the personal representatives of the person affected first had notice of the matter, or
 - (ii) if earlier, the day on which the complainant first had notice of the matter.

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- (3) A Local Commissioner may disapply either or both of the requirements in subsection (1)(a) and (b) in relation to a particular complaint.

26C Referral of complaints by authorities

- (1) This section applies where a complaint about a matter is made to a member of an authority to which this Part of this Act applies.
- (2) If the complainant consents, the complaint may be referred to a Local Commissioner by—
- (a) the member of the authority to whom the complaint was made,
 - (b) any other member of that authority, or
 - (c) a member of any other authority to which this Part of this Act applies which is alleged in the complaint to have taken or authorised the action complained of.
- (3) Subject to subsection (4), a referral under this section must be made in writing.
- (4) A Local Commissioner may disapply the requirement in subsection (3) in relation to a particular referral.
- (5) If a Local Commissioner is satisfied that the complainant asked a member of an authority mentioned in subsection (2) to refer the complaint to a Local Commissioner, he may treat the complaint as if it had been referred to him under this section.
- (6) In this section, references to a member of an authority include—
- (a) in relation to a National Park authority, a member of any of the councils by whom a local authority member of the authority is appointed;
 - (b) in relation to a joint board, a member of any of the constituent authorities of the joint board;
 - (c) in relation to a joint authority established by Part 4 of the Local Government Act 1985, a member of a constituent council of that authority.

26D Matters coming to attention of Local Commissioner

- (1) This section applies to a matter which has come to the attention of a Local Commissioner if—
- (a) the matter came to his attention during the course of an investigation under this Part of this Act,
 - (b) (subject to subsection (3)) the matter came to his attention—
 - (i) before the person affected or his personal representatives had notice of the matter, or
 - (ii) in any other case, before the end of the permitted period, and
 - (c) it appears to the Local Commissioner that a member of the public has, or may have, suffered injustice in consequence of the matter.
- (2) In subsection (1)(b)(ii), “the permitted period” means the period of 12 months beginning with—

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- (a) the day on which the person affected first had notice of the matter, or
 - (b) if the person affected has died without having notice of the matter, the day on which the personal representatives of the person affected first had notice of the matter.
- (3) A Local Commissioner may disapply the requirement in subsection (1)(b) in relation to a particular matter.”
- (2) In section 27 of that Act (provisions relating to complaints)—
- (a) for the title substitute “ Members of the public ”;
 - (b) in subsection (1), for the words before paragraph (a) substitute “ In this Part of this Act, “member of the public” means an individual or a body of persons, whether incorporated or not, other than— ”;
 - (c) omit subsection (2).

175 Reports and statements of reasons

- (1) Section 30 of the Local Government Act 1974 (c. 7) (reports on investigations) is amended as follows.
- (2) For subsection (1) substitute—
- “(1) If a Local Commissioner completes an investigation of a matter, he shall prepare a report of the results of the investigation and send a copy to each of the persons concerned (subject to subsection (1B)).
- (1A) A Local Commissioner may include in a report on a matter under subsection (1) any recommendations that he could include in a further report on the matter by virtue of section 31(2A) to (2BA).
- (1B) If, after the investigation of a matter is completed, the Local Commissioner decides—
- (a) that he is satisfied with action which the authority concerned have taken or propose to take, and
 - (b) that it is not appropriate to prepare and send a copy of a report under subsection (1),
- he may instead prepare a statement of his reasons for the decision and send a copy to each of the persons concerned.
- (1C) If a Local Commissioner decides—
- (a) not to investigate a matter, or
 - (b) to discontinue an investigation of a matter,
- he shall prepare a statement of his reasons for the decision and send a copy to each of the persons concerned.
- (1D) For the purposes of subsections (1) to (1C), the persons concerned are—
- (a) the complainant (if any),
 - (b) any person who referred the matter under section 26C(2),
 - (c) the authority concerned, and
 - (d) any other authority or person who is alleged in the complaint, or who otherwise appears to the Local Commissioner, to have taken or authorised the action which is or would be the subject of the investigation.”

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- (3) In subsection (2), for “the complaint” substitute “ a complaint about the matter ”.
- (4) In subsection (2AA)(a), for “the duty imposed by subsection (1)(c) above” substitute “ the duty to send a report or statement to the Authority under subsection (1), (1B) or (1C) ”.
- (5) Before subsection (3) insert—

“(2B) Subsections (3) to (8) apply in the case of a report under subsection (1).”
- (6) In subsection (3), for “the interests of the complainant and of persons other than the complainant” substitute “ the interests of the complainant (if any) and of other persons ”.
- (7) In subsection (7), for “the interests of the complainant and of persons other than the complainant” substitute “ the interests of the complainant (if any) and of other persons ”.

176 Power of Commissioners to make recommendations etc

- (1) Section 31 of the Local Government Act 1974 (c. 7) (further provisions about reports on investigations) is amended as follows.
- (2) For subsection (1) substitute—

“(1) This section applies where a Local Commissioner reports that there has been—

 - (a) maladministration in connection with the exercise of the authority's administrative functions,
 - (b) a failure in a service which it was the function of an authority to provide, or
 - (c) a failure to provide such a service.”
- (3) For subsection (2B) substitute—

“(2B) Where the report relates to maladministration, those recommendations are recommendations with respect to action which, in the Local Commissioner's opinion, the authority concerned should take—

 - (a) to remedy any injustice sustained by the person affected in consequence of the maladministration, and
 - (b) to prevent injustice being caused in the future in consequence of similar maladministration in connection with the exercise of the authority's administrative functions.

(2BA) Where the report relates to a failure in, or to provide, a service which it was the function of the authority to provide, those recommendations are recommendations with respect to action which, in the Local Commissioner's opinion, the authority concerned should take—

 - (a) to remedy any injustice sustained by the person affected in consequence of the failure, and
 - (b) to prevent injustice being caused in the future in consequence of a similar failure in, or to provide, a service which it is the function of the authority to provide.”

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- (4) In subsection (3)(b), for “maladministration” substitute “ the maladministration or failure ”.

177 Publication of reports etc by Commissioners

After section 31A of the Local Government Act 1974 (c. 7) insert—

“31B Publication of reports etc by Commissioners

- (1) A Local Commissioner may—
- (a) publish all or part of a report or statement under section 30,
 - (b) publish all or part of a report under section 31,
 - (c) arrange for further publication of all or part of a statement published under section 31(2D) or (2G), or
 - (d) publish a summary of a matter which is the subject of a report or statement under section 30 or 31,
- if, after taking into account the public interest as well as the interests of the complainant (if any) and of other persons, he considers it appropriate to do so.
- (2) A Local Commissioner may—
- (a) supply a copy of all or part of a report, statement or summary mentioned in subsection (1) to any person who requests it, and
 - (b) charge a reasonable fee for doing so.
- (3) Subsection (3) of section 30 applies to—
- (a) any part of a statement under section 30, and
 - (b) any part of a summary of a matter,
- that is published, or a copy of which is supplied, under this section as it applies to a report prepared under section 30.”

178 Making complaints etc electronically

- (1) In section 32 of the Local Government Act 1974 (law of defamation and disclosure of information), after subsection (3) insert—

“(3A) A notice under subsection (3) above may not be given electronically.”

- (2) In section 34 of that Act (interpretation of Part), after subsection (1) insert—

“(1A) In this Part of this Act, except as otherwise provided, references to something being done in writing are to it being done in writing whether electronically or otherwise (and references to anything written shall be interpreted accordingly).”

179 Disqualifications

- (1) Schedule 4 to the Local Government Act 1974 (c. 7) (the Commission) is amended as follows.
- (2) In paragraph 1(1) (disqualification for being Local Commissioner)—

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- (a) in paragraph (a), for “any of the authorities mentioned in section 25(1) of this Act” substitute “ any authority to which Part 3 of this Act applies ”;
 - (b) in paragraph (b), omit “or is a member (by co-option) of a committee of any of those authorities”.
- (3) In paragraph 1(2) (restriction on Local Commissioners conducting cases), for the words from “has been a member of that authority” to the end substitute “—
- (a) has been a member of that authority,
 - (b) has taken action on behalf of that authority in the exercise of any of their functions, or
 - (c) has taken action which, by virtue of an enactment, is treated as having been taken by that authority in the exercise of any of their functions.”
- (4) For paragraph 2 (disqualification of Local Commissioners for appointment to paid office by authority) substitute—

“2A

A Local Commissioner shall be disqualified for being appointed to a paid office by an authority to which Part 3 of this Act applies—

- (a) while the categories of matter for which the Local Commissioner has responsibility pursuant to section 23(8A) include—
 - (i) matters relating to the authority, or
 - (ii) matters of a description which may include matters relating to the authority, and
- (b) for three years after the Local Commissioner ceases to have responsibility for such matters pursuant to section 23(8A).”

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180 Expenses of the Commission

In Schedule 4 to the Local Government Act 1974 (the Commission) for paragraphs 6 to 8 substitute—

“5A (1) The Secretary of State must pay to the Commission in respect of each financial year such amount as he determines to be the amount required for the discharge during that year of the functions of the Commission.

(2) A determination under sub-paragraph (1) must be approved by the Treasury.”

181 Delegation

In Schedule 4 to the Local Government Act 1974 (c. 7) (the Commission) at the end insert—

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“Delegation

- 13 (1) Any function of a Commissioner may be discharged on the Commissioner's behalf—
- (a) by any person authorised by the Commissioner to do so, and
 - (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the responsibility of the Commissioner for the discharge of the function.”

182 Minor and consequential amendments

Schedule 12 (minor and consequential amendments) has effect.

Status:

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Changes to legislation:

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