



Health Service Commissioners Act 1993

CHAPTER 46

[A table showing the derivation of the provisions of this consolidation Act will be found at the end of this Act. The table has no official status.]

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Health Service Commissioners Act 1993

1993 CHAPTER 46

An Act to consolidate the enactments relating to the Health Service Commissioners for England, for Wales and for Scotland with amendments to give effect to recommendations of the Law Commission and the Scottish Law Commission.

[5th November 1993]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Health Service Commissioners

1.—(1) For the purpose of conducting investigations in accordance with this Act, there shall continue to be— The Commissioners.

- (a) a Health Service Commissioner for England,
- (b) a Health Service Commissioner for Wales, and
- (c) a Health Service Commissioner for Scotland.

(2) References in this Act to a Commissioner (or Health Service Commissioner) are, unless the context otherwise requires, to any of the Commissioners.

(3) Schedule 1 has effect with respect to the appointment and remuneration of the Commissioners and other administrative matters.

Health service bodies subject to investigation

2.—(1) The bodies subject to investigation by the Health Service Commissioner for England are— The bodies subject to investigation.

- (a) Regional Health Authorities,
- (b) District Health Authorities whose district is in England,

- (c) Special Health Authorities to which this section applies exercising functions only or mainly in England,
- (d) National Health Service trusts managing a hospital, or other establishment or facility, in England,
- (e) Family Health Services Authorities whose locality is in England,
- (f) the Dental Practice Board, and
- (g) the Public Health Laboratory Service Board.

(2) The bodies subject to investigation by the Health Service Commissioner for Wales are—

- (a) District Health Authorities whose district is in Wales,
- (b) Special Health Authorities to which this section applies exercising functions only or mainly in Wales,
- (c) National Health Service trusts managing a hospital, or other establishment or facility, in Wales, and
- (d) Family Health Services Authorities whose locality is in Wales.

(3) The bodies subject to investigation by the Health Service Commissioner for Scotland are—

- (a) Health Boards,
- (b) National Health Service trusts established under section 12A of the National Health Service (Scotland) Act 1978,
- (c) the Common Services Agency for the Scottish Health Service, and
- (d) the Scottish Dental Practice Board.

1978 c. 29.

(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.

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

Matters subject to investigation

General remit of Commissioners.

3.—(1) On a complaint duly made to a 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.

(2) In determining whether to initiate, continue or discontinue an investigation under this Act, a Commissioner shall act in accordance with his own discretion.

(3) Any question whether a complaint is duly made to a Commissioner shall be determined by him.

(4) Nothing in this Act authorises or requires a 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.

Matters excluded from investigation

4.—(1) A Commissioner shall not conduct an investigation in respect of action in relation to which the person aggrieved has or had— Availability of other remedy.

(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 National Health Service Act 1977 or section 76 of the National Health Service (Scotland) Act 1978 (general powers to hold inquiries). 1977 c. 49.
1978 c. 29.

(3) A Commissioner shall not conduct an investigation in respect of 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 Mental Health (Scotland) Act 1984. 1984 c. 36.

5.—(1) A Commissioner shall not conduct an investigation in respect of action taken in connection with— Exercise of clinical judgment.

(a) the diagnosis of illness, or

(b) the care or treatment of a patient,

which, in the opinion of the Commissioner, was taken solely in consequence of the exercise of clinical judgment, whether formed by the person taking the action or any other person.

(2) In subsection (1), "illness" includes a mental disorder within the meaning of the Mental Health Act 1983 or the Mental Health (Scotland) Act 1984 and any injury or disability requiring medical or dental treatment or nursing. 1983 c. 20.

6.—(1) A Commissioner shall not conduct an investigation in respect of action taken in connection with any general medical services, general dental services, general ophthalmic services or pharmaceutical services under the National Health Service Act 1977 by a person providing those services. General health services and service committees.

(2) A Commissioner shall not conduct an investigation in respect of action taken by medical practitioners, dental practitioners, ophthalmic or dispensing opticians or pharmacists in pursuance of their contracts with Health Boards under Part II of the National Health Service (Scotland) Act 1978.

S.I. 1992/664. (3) A Commissioner shall not conduct an investigation in respect of action taken by a Family Health Services Authority in the exercise of its functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, or any instrument amending or replacing those regulations.

S.I. 1992/434. (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 National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992, or any instrument amending or replacing those regulations.

Personnel,
contracts etc.
1977 c. 49.
1978 c. 29.

7.—(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 National Health Service Act 1977 or the National Health Service (Scotland) Act 1978.

(2) A Commissioner shall not conduct an investigation in respect of action taken in matters relating to contractual or other commercial transactions, except for—

- 1990 c. 19.
- (a) matters relating to NHS contracts (as defined by section 4 of the National Health Service and Community Care Act 1990 and, in relation to Scotland, by section 17A of the National Health Service (Scotland) Act 1978), and
 - (b) matters arising from arrangements between a health service body and a body which is not a health service body for the provision of services for patients by that body.

(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.

(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.

Complaints

Individuals and
bodies entitled to
complain.

8.—(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,
- (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, or
- (ii) whose revenues consist wholly or mainly of money provided by Parliament.

9.—(1) The following requirements apply in relation to a complaint made to a Commissioner. Requirements to be complied with.

- (2) A complaint must be made in writing.
- (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.
- (5) Before proceeding to investigate the complaint, the Commissioner shall satisfy himself that—
 - (a) the complaint has been brought to the notice of the health service body concerned by or on behalf of the person aggrieved, and
 - (b) that body has been afforded a reasonable opportunity to investigate and reply to the complaint.
- (6) The Commissioner shall disregard the provisions of subsection (5) if the complaint is made under subsection (3)(b) on behalf of the person aggrieved by an officer of the health service body in question and the Commissioner is satisfied that in the particular circumstances those provisions ought to be disregarded.

10.—(1) A health service body may itself refer to a 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). Referral of complaint by health service body.

- (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.
- (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 a Commissioner under this section shall be determined by him.

(5) A complaint referred to a Commissioner under this section shall be deemed to be duly made to him.

Investigations

Procedure in
respect of
investigations.

11.—(1) Where a Commissioner proposes to conduct an investigation pursuant to a complaint under this Act, 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.

(2) An investigation shall be conducted in private.

(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) A 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 under this subsection shall be in accordance with such scales and subject to such conditions as may be determined by the Treasury.

(5) The conduct of an investigation 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.

1971 c. 77.

(6) Where the person aggrieved has been removed from the United Kingdom under any order in force under the 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.

Evidence.

12.—(1) For the purposes of an investigation a 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.

(2) For the purposes of an investigation a 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.

- 13.—(1) A Commissioner may certify an offence to the Court where—
- (a) a person without lawful excuse obstructs him or any of his officers in the performance of his functions, or
 - (b) 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.

Obstruction and contempt.

(2) Where an offence is so certified the Court may inquire into the matter and after hearing—

- (a) any witnesses who may be produced against or on behalf of the person charged with the offence, and
- (b) 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).

Reports

14.—(1) A Commissioner shall send a report of the results of an investigation by him—

Reports by Commissioners.

- (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 health service body concerned,

- (d) to any person who is alleged in the complaint to have taken or authorised the action complained of,
- (e) if the body concerned is not a District Health Authority for a district in England, to the Secretary of State, and
- (f) if that body is a District Health Authority for a district in England, to the Regional Health Authority whose region includes that district.

(2) In any case where a Commissioner decides not to conduct an investigation he shall send a statement of his reasons—

- (a) to the person who made the complaint,
- (b) to any such member of the House of Commons as is mentioned in subsection (1)(b), and
- (c) to the health service body concerned.

(3) If after conducting an investigation it appears to a Commissioner that—

- (a) the person aggrieved has sustained such injustice or hardship as is mentioned in section 3(1), and
- (b) the injustice or hardship has not been and will not be remedied,

he may if he thinks fit make a special report to the Secretary of State who shall, as soon as is reasonably practicable, lay a copy of the report before each House of Parliament.

(4) Each of the Commissioners—

- (a) shall annually make to the Secretary of State a report on the performance of his functions under this Act, and
- (b) may from time to time make to the Secretary of State such other reports with respect to those functions as the Commissioner thinks fit;

and the Secretary of State shall lay a copy of every such report before each House of Parliament.

(5) For the purposes of the law of defamation, the publication of any matter by a Commissioner in sending or making a report or statement in pursuance of this section shall be absolutely privileged.

Information and consultation

Confidentiality of information.

15.—(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), or

(d) for the purposes of any proceedings under section 13 (offences of obstruction and contempt).

(2) Neither a Commissioner nor his officers 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.

16.—(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.

Information prejudicial to the safety of the State.

(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.—(1) This section applies where a Commissioner also holds either of the other offices of Health Service Commissioner or the office of Parliamentary Commissioner (an “additional office”).

Use of information by Commissioner in other capacity.

(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.

18.—(1) Where a Commissioner, at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation—

Consultation during investigations.

- (a) by either of the other Health Service Commissioners under this Act,
- (b) by the Parliamentary Commissioner under the Parliamentary Commissioner Act 1967,
- (c) by a Local Commissioner under Part III of the Local Government Act 1974, or
- (d) by the Commissioner for Local Administration in Scotland under Part II of the Local Government (Scotland) Act 1975,

1967 c. 13.

1974 c. 7.

1975 c. 30.

he shall consult about the complaint with the appropriate Commissioner 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.

(2) Where a Commissioner consults with another Commissioner 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 by a Commissioner or his officers in the course of consultations held in accordance with this section.

Supplementary

Interpretation.

19. In this Act—

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

“the Court” means, in relation to England and Wales, the High Court, in relation to Scotland, the Court of Session, and in relation to Northern Ireland, the High Court in Northern Ireland;

“functions” includes powers and duties;

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

“local authority” means—

(a) in relation to England and Wales, a county, district or London borough council or the Common Council of the City of London,

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

“officer” includes employee;

“Parliamentary Commissioner” means Parliamentary Commissioner for Administration;

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

“person aggrieved” means the person who claims or is alleged to have sustained such injustice or hardship as is mentioned in section 3(1).

Consequential amendments and repeals.

20.—(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.

Transitional provisions.

21.—(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.—(1) This Act may be cited as the Health Service Commissioners Act 1993.

Short title, extent and commencement.

(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.

SCHEDULES

Section 1(3).

SCHEDULE 1

THE COMMISSIONERS

Appointment of Commissioners

1.—(1) Her Majesty may by Letters Patent appoint a person to be a Commissioner and a person so appointed shall hold office during good behaviour.

(2) A person appointed to be a Commissioner—

(a) may at his own request be relieved of office by Her Majesty, or

(b) may be removed from office by Her Majesty in consequence of Addresses from both Houses of Parliament;

and shall in any case vacate office on completing the year of service in which he attains the age of sixty-five.

(3) Her Majesty may declare the office of Commissioner to have been vacated if satisfied that the person appointed to be the Commissioner is incapable for medical reasons of performing the duties of his office and of requesting to be relieved of it.

Appointment of acting Commissioners

2.—(1) Where any of the offices of Commissioner becomes vacant, Her Majesty may, pending the appointment of the new Commissioner, appoint a person under this paragraph to act as that Commissioner at any time during the period of twelve months beginning with the date on which the vacancy arose.

(2) A person appointed under this paragraph shall hold office during Her Majesty's pleasure and, subject to that, shall hold office—

(a) until the appointment of the new Commissioner or the expiry of the period of twelve months beginning with the date on which the vacancy arose, whichever occurs first, and

(b) in other respects, in accordance with the terms and conditions of his appointment which shall be such as the Secretary of State may, with the approval of the Treasury, determine.

(3) A person appointed under this paragraph shall, while he holds office, be treated for all purposes except those of paragraphs 4 to 10 as the Commissioner.

Ineligibility of certain persons for appointment

3.—(1) A person who is a member of a relevant health service body shall not be appointed a Commissioner or acting Commissioner; and a person so appointed shall not, during his appointment, become a member of such a body.

(2) For this purpose a "relevant health service body" means—

(a) in relation to the Health Service Commissioner for England or for Wales or a person appointed to act as such, a body mentioned in section 2(1) or (2), and

(b) in relation to the Health Service Commissioner for Scotland or a person appointed to act as such, a body mentioned in section 2(3) or any management committee of such a body.

Salaries

4. There shall be paid to the holder of the office of a Commissioner the same salary as if he were employed in the civil service of the State in such appointment as the House of Commons may by resolution from time to time determine; and any such resolution may take effect from the date on which it is passed or from such other date as may be specified in it.

5. The salary payable to a holder of the office of a Commissioner shall be abated by the amount of any pension payable to him in respect of any public office in the United Kingdom or elsewhere to which he has previously been appointed or elected.

6.—(1) Where a person holds—

(a) the office of Parliamentary Commissioner, and

(b) one or more of the offices of Health Service Commissioner,

he shall, so long as he does so, be entitled only to the salary pertaining to the office of Parliamentary Commissioner.

(2) Where a person holds two or more of the offices of Health Service Commissioner he shall, so long as he does so, be entitled only to the salary pertaining to such one of those offices as he selects.

Pensions and other benefits

7. Schedule 1 to the Parliamentary Commissioner Act 1967 (which relates to pensions and other benefits) has effect with respect to persons who hold or have held office as a Commissioner as it has effect with respect to persons who hold or have held office as the Parliamentary Commissioner. 1967 c. 13.

8. In computing the salary of a former holder of the office of Commissioner for the purposes of Schedule 1 to the 1967 Act, there shall be disregarded—

(a) any abatement of that salary under paragraph 5,

(b) any temporary abatement of that salary in the national interest, and

(c) any voluntary surrender of that salary in whole or in part.

9.—(1) In this paragraph, “relevant office” means the office of Parliamentary Commissioner or any of the offices of Health Service Commissioner.

(2) The Treasury may by regulations provide that Schedule 1 to the Parliamentary Commissioner Act 1967 shall have effect, in relation to persons who have held more than one relevant office, with such modifications as it considers necessary in consequence of those persons having held more than one such office; and different regulations may be made in pursuance of paragraph 4 of Schedule 1 to the 1967 Act in relation to different relevant offices.

(3) A person shall not be entitled to make simultaneously different elections in pursuance of paragraph 1 or 2 of Schedule 1 to the 1967 Act in respect of different relevant offices.

(4) Where a person has made or is treated as having made an election in pursuance of paragraph 1 or 2 of Schedule 1 to the 1967 Act in respect of any relevant office, he shall be deemed to have made the same election in respect of all such other offices to which he is, or is subsequently, appointed.

(5) No account shall be taken for the purposes of Schedule 1 to the 1967 Act of a period of service in a relevant office if salary in respect of the office was not paid for that period.

(6) Regulations under this paragraph may make such incidental or supplementary provision as the Treasury considers necessary.

SCH. 1

(7) Regulations under this paragraph shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

1967 c. 13.
1993 c. 8.

10. In any case where a person makes an election under paragraph 2(1)(a) of Schedule 1 to the Parliamentary Commissioner Act 1967 (as substituted by Part II of Schedule 4 to the Judicial Pensions and Retirement Act 1993) so that Schedule 1 to the 1967 Act continues to have effect in relation to him as it did before the coming into force of Part II of Schedule 4 to the 1993 Act, this Schedule shall have effect—

- (a) as if in paragraph 7 the words “hold or” (in both places) and in paragraph 9(3) and (4) the words “or 2” (in both places) were omitted, and
- (b) as if for the reference in paragraph 9(2) to paragraph 4 of Schedule 1 to the 1967 Act there were substituted a reference to paragraph 8 of that Schedule.

Staff and advisers

11.—(1) A Commissioner may appoint such officers as he may determine with the approval of the Treasury as to numbers and conditions of service.

(2) The Health Service Commissioner for Wales shall include among his officers such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh.

12. Any functions of a Commissioner under this Act may be performed by any officer of the Commissioner authorised by him for that purpose, or by any officer so authorised of another Commissioner or the Parliamentary Commissioner.

13.—(1) To assist him in any investigation a Commissioner may obtain advice from any person who, in his opinion, is qualified to give it.

(2) A Commissioner may pay to any such person from whom he obtains advice under this paragraph such fees or allowances as he may determine with the approval of the Treasury.

Financial provisions

14. The expenses of a Commissioner under this Act—

- (a) shall be paid out of money provided by Parliament, and
- (b) shall not exceed such amount as the Treasury may sanction.

15. Any salary, pension or other benefit payable by virtue of paragraph 2 and paragraphs 4 to 9 shall be charged on and issued out of the Consolidated Fund.

Section 20.

SCHEDULE 2

CONSEQUENTIAL AMENDMENTS

The Parliamentary Commissioner Act 1967 (c.13)

1. In section 11A of the Parliamentary Commissioner Act 1967 (consultations between Parliamentary Commissioner and Health Service Commissioners) in subsection (1)(b) for the words “Part V of the National Health Service Act 1977” to the end there shall be substituted “the Health Service Commissioners Act 1993.”

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2. In paragraph 8 of Schedule 3 to that Act (action taken by certain health service bodies not subject to investigation by the Parliamentary Commissioner) after the words "Scottish Health Service" there shall be inserted "by the Dental Practice Board or the Scottish Dental Practice Board".

The Local Government Act 1974 (c.7)

3. In section 29(5)(b) of the Local Government Act 1974 (restriction on disclosure of information by Health Service Commissioners in relation to investigations by Local Commissioners) for the words "paragraph 16 of Schedule 13 to the National Health Service Act 1977" there shall be substituted "section 15 of the Health Service Commissioners Act 1993".

4.—(1) Section 33 of that Act (consultation between Local Commissioners, Parliamentary Commissioner and Health Service Commissioners) shall be amended as follows.

(2) In subsection (1) for the words "sections 109" to the end of paragraph (b) and for the words "Part V of the Act of 1977" there shall be substituted "the Act of 1993,".

(3) In subsection (3)—

(a) for the words from the beginning to "Commissioner conducting the investigation" there shall be substituted—

"(3) If, at any stage in the course of conducting an investigation under the Act of 1967, the Parliamentary Commissioner"; and

(b) the words "under the Act of 1967 or Part V of the Act of 1977, as the case may be," shall be omitted.

(4) In subsection (4) the words "or Part V of the Act of 1977" shall be omitted.

(5) In subsection (5) for the words "paragraph 16 of Schedule 13 to the National Health Service Act 1977" there shall be substituted "section 15 of the Act of 1993".

(6) In subsection (6) for the words "the "Act of 1977"" onwards there shall be substituted "the "Act of 1993" means the Health Service Commissioners Act 1993."

The Local Government (Scotland) Act 1975 (c.30)

5. In section 27(5)(b) of the Local Government (Scotland) Act 1975 (restriction on disclosure of information by Health Service Commissioner for Scotland in relation to investigations by Commissioner for Local Administration in Scotland) for the words "that section (as applied by section 95 of the National Health Service (Scotland) Act 1978)" there shall be substituted "section 15 of the Health Service Commissioners Act 1993".

6.—(1) Section 31 of that Act (consultation between Commissioner for Local Administration in Scotland, Parliamentary Commissioner and Health Service Commissioner for Scotland) shall be amended as follows.

(2) In subsection (1) for the words "section 93 of the Act of 1978" and "Part VI of the Act of 1978" there shall be substituted "the Act of 1993".

(3) In subsection (3)—

(a) for the words from the beginning to "Commissioner conducting the investigation" there shall be substituted—

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“(3) If, at any stage in the course of conducting an investigation under the Act of 1967, the Parliamentary Commissioner”; and

(b) the words “under the Act of 1967 or Part VI of the Act of 1978, as the case may be,” shall be omitted.

(4) In subsection (4) the words “or Part VI of the Act of 1978” shall be omitted.

(5) In subsection (5) for the words “in that section as applied by section 95 of the Act of 1978” there shall be substituted “in section 15 of the Act of 1993”.

(6) In subsection (6) for the words “the “Act of 1978”” onwards there shall be substituted “the “Act of 1993” means the Health Service Commissioners Act 1993.”

The Hospital Complaints Procedure Act 1985 (c.42)

7. In section 1(2) of the Hospital Complaints Procedure Act 1985 for the words “under Part V” to “Commissioners)” there shall be substituted “under the Health Service Commissioners Act 1993”.

The Parliamentary and Health Service Commissioners Act 1987 (c.39)

8. In section 2(1) of the Parliamentary and Health Service Commissioners Act 1987 (removal of a Commissioner on medical grounds) for the words from the beginning to “for Scotland)” there shall be substituted “Section 1 of the 1967 Act (which deals with the appointment and tenure of office by the Parliamentary Commissioner)”.

Section 20.

SCHEDULE 3

REPEALS

Chapter	Short title	Extent of repeal
1974 c. 7.	The Local Government Act 1974.	In section 33(3), the words “under the Act of 1967 or Part V of the Act of 1977 as the case may be”. In section 33(4), the words “or Part V of the Act of 1977”.
1975 c. 30.	The Local Government (Scotland) Act 1975.	In section 31(3), the words “under the Act of 1967 or Part VI of the Act of 1978 as the case may be”. In section 31(4), the words “or Part VI of the Act of 1978”.
1977 c. 49.	The National Health Service Act 1977.	Sections 106 to 120. Section 130(3)(c). Schedule 13. In Schedule 14, paragraph 17. In Schedule 15, paragraphs 60 and 61.
1978 c. 29.	The National Health Service (Scotland) Act 1978.	Sections 90 to 97. Schedule 14.

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Chapter	Short title	Extent of repeal
1980 c. 53.	The Health Services Act 1980.	In Schedule 15, paragraph 12. In Schedule 1, paragraphs 72 to 74. In Schedule 2, paragraphs 7, 8 and 9 and subparagraphs (a) to (f) of paragraph 11.
1984 c. 36.	The Mental Health (Scotland) Act 1984.	In Schedule 3, paragraph 42.
1987 c. 39.	The Parliamentary and Health Service Commissioners Act 1987.	Section 2(2). Section 4(3) to (5). Section 5. Section 6(2) and (3). Section 7. Section 8.
1988 c. 49.	The Health and Medicines Act 1988.	Section 12(4) and (5).
1989 c. 6.	The Official Secrets Act 1989.	In Schedule 1, paragraph 1(h).
1990 c. 19.	The National Health Service and Community Care Act 1990.	In Schedule 9, paragraphs 18(10) and (11) and 19(18).
1993 c. 8.	The Judicial Pensions and Retirement Act 1993.	Part III of Schedule 4.

TABLE OF DERIVATIONS

Notes:

1. This Table shows the derivation of the provisions of the Bill.

2. The following abbreviations are used in this Table:

1967	= The Parliamentary Commissioner Act 1967 (c.13)
1977	= The National Health Service Act 1977 (c.49)
1978	= The National Health Service (Scotland) Act 1978 (c.29)
1980	= The Health Services Act 1980 (c.53)
1987	= The Parliamentary and Health Service Commissioners Act 1987 (c.39)
1990	= The National Health Service and Community Care Act 1990 (c.19)

3. The abbreviation "Law Comm R" followed by a number refers to the recommendation set out in the paragraph of that number in the Appendix to the Report of the Law Commission and the Scottish Law Commission (Cm. 2255).

4. Certain functions of the Minister for the Civil Service were transferred to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981 (S.I. 1981/1670 Articles 2(1),(2) and 3(5)). References to the Minister for the Civil Service in the National Health Service Act 1977 and the National Health Service (Scotland) Act 1978 are therefore reproduced in the Bill as references to the Treasury.

Provision	Derivation
1(1) (2),(3)	1977 s.106(1); 1978 s.90(1) drafting
2(1),(2)	1977 s.109, s.110; 1980 Sch.1 paras.72,73, Sch.2 para.7; Health and Medicines Act 1988 (c.49) s.12(4); 1990 s.2(1), Sch.9 para.18(10),(11); Family Practitioner Committees (Consequential Modifications) Order 1985 (S.I. 1985/39) art.7(20)
(3)	1978 s.93(1); Health and Medicines Act 1988 (c.49) s.12(5); 1990 Sch.9 para.19(18)
(4)	drafting
(5)	1977 s.109(c),(d)
(6)	1977 s.126(1)
3(1)	1977 s.115; 1978 s.93(2)
(2)	1977 s.113(1); 1978 s.93(6)
(3)	1977 s.113(2); 1978 s.93(6)
(4)	1977 s.120(2); 1978 s.97(2)
4(1)	1977 s.116(1); 1978 s.93(3)
(2)	1977 Sch.13 para.19(5); 1978 s.93(4), Sch.14 para.6
(3)	1978 s.93(4), Sch.14 para 7; Mental Health (Scotland) Act 1984 (c.36) Sch.3 para.42; Law Comm R2
5(1)	1977 Sch.13 para.19(1); 1978 s.93(4), Sch.14 para.2

Provision	Derivation
(2)	1977 s.128(1); 1978 s.108(1); Mental Health Act 1983 (c.20) Sch.4 para.47(d); Mental Health (Scotland) Act 1984 (c.36) Sch.3 para.41
6(1)	1977 s.116(2)(b)
(2)	1978 s.93(4), Sch.14 para.1
(3)	1977 Sch.13 para.19(2); 1990 s.2(1)
(4)	1978 s.93(4), Sch.14 para.3
7(1)—(3)	1977 Sch.13 para.19(3),(4); 1978 s.93(4), Sch.14 paras.4,5
(4)	1977 s.116(3); 1978 s.93(5)
(5)	1977 s.126(1); 1978 s.105(2)
8	1977 s.111(1); 1978 s.94(1)
9	1977 s.111(2), s.112, s.114(1); 1978 s.94(2)—(4)
10	1977 s.113(2), s.117; 1978 s.93(6), s.94(5); 1987 s.7, s.8
11	1967 s.7; 1977 Sch.13 paras.1-6; 1978 s.95
12	1967 s.8; Civil Evidence Act 1968 (c.64) s.17(1)(b); 1977 Sch.13 paras.7-11; 1978 s.95
13	1967 s.9; 1977 Sch.13 paras.12-14; 1978 s.95
14(1)	1977 s.119(1); 1978 s.96(1); 1987 s.5(1)
(2)	1977 s.119(2); 1978 s.96(3); 1987 s.5(2),(3)
(3)	1977 s.119(3); 1978 s.96(4); 1980 Sch.2 paras.9,11
(4)	1977 s.119(4)(b); 1978 s.96(5); 1980 Sch.2 paras.9,11
(5)	1977 s.119(5); 1978 s.96(7)
15	1967 s.11(2); 1977 Sch.13 para.16; 1978 s.95; Official Secrets Act 1989 (c.6) Sch.1 para.1
16	1967 s.11(3); 1977 Sch.13 para.17,18; 1978 s.95
17	1977 Sch.13 para.16A; 1978 s.95A(3); 1987 s.4(4),(5)
18	Local Government (Scotland) Act 1975 (c.30) s.31(3)—(4); 1977 s.118(1)—(3); 1978 s.95A(1),(2); 1987 s.4(3),(5); Law Comm R4
19	1977 s.120(1), s.128(1); 1978 s.97(1), s.108(1)
20	—
21	—
22	1977 s.130(3),(4)
Sch. 1 para.1	1977 s.106(2)—(3A); 1978 s.90(2)—(3A); 1987 s.2(1),(2)
para.2	1977 s.108A(1)—(3); 1978 s.92A(1)—(3); 1987 s.6(2),(3)
para.3	1977 s.106(4), s.108A(5); 1978 s.90(5), s.92A(5); 1987 s.6(2),(3)
para.4	1977 s.107(1); 1978 s.91(1)
para.5	1977 s.107(3); 1978 s.91(3)
para.6	1977 s.107(5); 1978 s.91(5)
para.7	1977 s.107(2); 1978 s.91(2)

Provision	Derivation
para.8	1977 s.107(4); 1978 s.91(4)
para.9(1)	drafting
(2)	1977 s.107(7); 1978 s.91(7)
(3)—(5)	1977 s.107(6); 1978 s.91(6); Judicial Pensions and Retirement Act 1993 (c.8) Sch.4 Part III
(6)	1977 s.126(4); 1978 s.105(7)
(7)	1977 s.126(1); 1978 s.105(1),(2)
para.10	Judicial Pensions and Retirement Act 1993 (c.8) Sch.4 Part III
para.11	1977 s.108(1); 1978 s.92(1)
para.12	1977 s.108(2); 1978 s.92(2)
para.13	1977 s.108(3); 1978 s.92(3)
para.14	1977 s.108(4); 1978 s.92(4)
para.15	1977 s.107(8), s.108A(4); 1978 s.91(8), s.92A(4); 1987 s.6(2),(3)
Sch. 2	Para 2, Law Comm R1
Sch. 3	—

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