



Parliamentary Commissioner Act 1967

CHAPTER 13

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The Parliamentary Commissioner for Administration

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ELIZABETH II



1967 CHAPTER 13

An Act to make provision for the appointment and functions of a Parliamentary Commissioner for the investigation of administrative action taken on behalf of the Crown, and for purposes connected therewith.

[22nd March 1967]

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:—

The Parliamentary Commissioner for Administration

1.—(1) For the purpose of conducting investigations in accordance with the following provisions of this Act there shall be appointed a Commissioner, to be known as the Parliamentary Commissioner for Administration. Appointment and tenure of office.

(2) Her Majesty may by Letters Patent from time to time appoint a person to be the Commissioner, and any person so appointed shall (subject to subsection (3) of this section) hold office during good behaviour.

(3) A person appointed to be the Commissioner may be relieved of office by Her Majesty at his own request, or 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 years.

(4) The Commissioner shall not be a member of the House of Commons, or of the Senate or House of Commons of Northern Ireland, and accordingly—

(a) in Part III of Schedule 1 to the House of Commons Disqualification Act 1957 there shall be inserted, at

the appropriate point in alphabetical order, the entry "The Parliamentary Commissioner for Administration"; and

- (b) the like amendment shall be made in the Part substituted for the said Part III by Schedule 3 to that Act in its application to the Senate and House of Commons of Northern Ireland.

1958 c. 66.

(5) The Commissioner shall, by virtue of his office, be a member of the Council on Tribunals, and of the Scottish Committee of that Council, in addition to the persons appointed or designated as such under the Tribunals and Inquiries Act 1958.

Salary and pension.

2.—(1) There shall be paid to the holder of the office of Commissioner a salary at the rate (subject to subsection (2) of this section) of £8,600 a year.

(2) The House of Commons may from time to time by resolution increase the rate of the salary payable under this section, and any such resolution may take effect from the date on which it is passed or such other date as may be specified therein.

(3) The provisions of Schedule 1 to this Act shall have effect with respect to the pensions and other benefits to be paid to or in respect of persons who have held office as Commissioner.

(4) The salary payable to a holder of the office of 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 had previously been appointed or elected; but any such abatement shall be disregarded in computing that salary for the purposes of the said Schedule 1.

(5) Any salary, pension or other benefit payable by virtue of this section shall be charged on and issued out of the Consolidated Fund.

Administrative provisions.

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

(2) Any function of the Commissioner under this Act may be performed by any officer of the Commissioner authorised for that purpose by the Commissioner.

(3) The expenses of the Commissioner under this Act, to such amount as may be sanctioned by the Treasury, shall be defrayed out of moneys provided by Parliament.

Investigation by the Commissioner

4.—(1) Subject to the provisions of this section and to the notes contained in Schedule 2 to this Act, this Act applies to the government departments and other authorities listed in that Schedule. Departments and authorities subject to investigation.

(2) Her Majesty may by Order in Council amend the said Schedule 2 by the alteration of any entry or note, the removal of any entry or note or the insertion of any additional entry or note; but nothing in this subsection authorises the inclusion in that Schedule of any body or authority not being a department or other body or authority whose functions are exercised on behalf of the Crown.

(3) Any statutory instrument made by virtue of subsection (2) of this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any reference in this Act to a government department or other authority to which this Act applies includes a reference to the Ministers, members or officers of that department or authority.

5.—(1) Subject to the provisions of this section, the Commissioner may investigate any action taken by or on behalf of a government department or other authority to which this Act applies, being action taken in the exercise of administrative functions of that department or authority, in any case where— Matters subject to investigation.

(a) a written complaint is duly made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration in connection with the action so taken; and

(b) the complaint is referred to the Commissioner, with the consent of the person who made it, by a member of that House with a request to conduct an investigation thereon.

(2) Except as hereinafter provided, the Commissioner shall not conduct an investigation under this Act in respect of any of the following matters, that is to say—

(a) any action in respect of which the person aggrieved has or had 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;

(b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law:

Provided that the Commissioner may conduct an investigation notwithstanding that the person aggrieved has or had such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect him to resort or have resorted to it.

(3) Without prejudice to subsection (2) of this section, the Commissioner shall not conduct an investigation under this Act in respect of any such action or matter as is described in Schedule 3 to this Act.

(4) Her Majesty may by Order in Council amend the said Schedule 3 so as to exclude from the provisions of that Schedule such actions or matters as may be described in the Order; and any statutory instrument made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) In determining whether to initiate, continue or discontinue an investigation under this Act, the Commissioner shall, subject to the foregoing provisions of this section, act in accordance with his own discretion; and any question whether a complaint is duly made under this Act shall be determined by the Commissioner.

Provisions
relating to
complaints.

6.—(1) A complaint under this Act may be made by any individual, or by any body of persons whether incorporated or not, not being—

- (a) a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking;
- (b) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of moneys provided by Parliament.

(2) Where the person by whom a complaint might have been made under the foregoing provisions of this Act has died or is for any reason unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him; but except as aforesaid a complaint shall not be entertained under this Act unless made by the person aggrieved himself.

(3) A complaint shall not be entertained under this Act unless it is made to a member of the House of Commons not later than

twelve months from the day on which the person aggrieved first had notice of the matters alleged in the complaint; but the Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so.

(4) A complaint shall not be entertained under this Act unless the person aggrieved is resident in the United Kingdom (or, if he is dead, was so resident at the time of his death) or the complaint relates to action taken in relation to him while he was present in the United Kingdom or on an installation in a designated area within the meaning of the Continental Shelf Act 1964 or on a ship registered in the United Kingdom or an aircraft so registered, or in relation to rights or obligations which accrued or arose in the United Kingdom or on such an installation, ship or aircraft. 1964 c. 29.

7.—(1) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under this Act, he shall afford to the principal officer of the department or authority concerned, and 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. Procedure in respect of investigations.

(2) Every such investigation shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case; and without prejudice to the generality of the foregoing provision the Commissioner may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation.

(3) 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 furnishes information for the purposes of an investigation under this Act—

- (a) sums in respect of expenses properly incurred by them;
- (b) allowances by way of compensation for the loss of their time,

in accordance with such scales and subject to such conditions as may be determined by the Treasury.

(4) The conduct of an investigation under this Act shall not affect any action taken by the department or authority concerned, or any power or duty of that department or authority to take further action with respect to any matters subject to

1962 c. 21.

the investigation; but where the person aggrieved has been removed from the United Kingdom under any Order in force under the Aliens Restriction Acts 1914 and 1919 or under the Commonwealth Immigrants Act 1962, 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.

8.—(1) For the purposes of an investigation under this Act the Commissioner may require any Minister, officer or member of the department or authority concerned or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document.

(2) For the purposes of any such investigation the Commissioner shall have the same powers as the Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents.

(3) No obligation to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished 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 under this Act; and the Crown shall not be entitled in relation to any such 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.

(4) No person shall be required or authorised by virtue of this Act to furnish any information or answer any question relating to proceedings of the Cabinet or of any committee of the Cabinet or 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 so relates shall be conclusive.

(5) Subject to subsection (3) of this section, no person shall be compelled for the purposes of an investigation under this Act to give any evidence or produce any document which he could not be compelled to give or produce in proceedings before the Court.

Obstruction
and contempt.

9.—(1) If any person without lawful excuse obstructs the Commissioner or any officer of the Commissioner in the performance of his functions under this Act, or is guilty of any act or omission in relation to an investigation under this Act

which, if that investigation were a proceeding in the Court, would constitute contempt of court, the Commissioner may certify the offence to the Court.

(2) Where an offence is certified under this section, 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 after hearing any statement that may be offered in defence, deal with him in any manner in which the Court 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 subsection (4) of section 7 of this Act.

10.—(1) In any case where the Commissioner conducts an investigation under this Act or decides not to conduct such an investigation, he shall send to the member of the House of Commons by whom the request for investigation was made (or if he is no longer a member of that House, to such member of that House as the Commissioner thinks appropriate) a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation. Reports by
Commissioner.

(2) In any case where the Commissioner conducts an investigation under this Act, he shall also send a report of the results of the investigation to the principal officer of the department or authority concerned and to any other person who is alleged in the relevant complaint to have taken or authorised the action complained of.

(3) If, after conducting an investigation under this Act, it appears to the Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay before each House of Parliament a special report upon the case.

(4) The Commissioner shall annually lay before each House of Parliament a general report on the performance of his functions under this Act and may 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, any such publication as is hereinafter mentioned shall be absolutely privileged, that is to say—

- (a) the publication of any matter by the Commissioner in making a report to either House of Parliament for the purposes of this Act ;

- (b) the publication of any matter by a member of the House of Commons in communicating with the Commissioner or his officers for those purposes or by the Commissioner or his officers in communicating with such a member for those purposes ;
- (c) the publication by such a member to the person by whom a complaint was made under this Act of a report or statement sent to the member in respect of the complaint in pursuance of subsection (1) of this section ;
- (d) the publication by the Commissioner to such a person as is mentioned in subsection (2) of this section of a report sent to that person in pursuance of that subsection.

Provision for
 secrecy of
 information.
 1911 c. 28.

11.—(1) It is hereby declared that the Commissioner and his officers hold office under Her Majesty within the meaning of the Official Secrets Act 1911.

(2) Information obtained by the Commissioner or his officers in the course of or for the purposes of an investigation under this Act shall not be disclosed except—

- (a) for the purposes of the investigation and of any report to be made thereon under this Act ;
- (b) for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of this Act or for an offence of perjury alleged to have been committed in the course of an investigation under this Act or for the purposes of an inquiry with a view to the taking of such proceedings ;
 or
- (c) for the purposes of any proceedings under section 9 of this Act ;

and the Commissioner and his officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Act.

(3) A Minister of the Crown may give notice in writing to the Commissioner, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Minister the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest ; and where such a notice is given nothing in this Act shall be construed as authorising or requiring the Commissioner or any officer of the Commissioner to communicate to any person or for any

purpose any document or information specified in the notice, or any document or information of a class so specified.

(4) The references in this section to a Minister of the Crown include references to the Commissioners of Customs and Excise and the Commissioners of Inland Revenue.

Supplemental

12.—(1) In this Act the following expressions have the meanings hereby respectively assigned to them, that is to say— Interpretation.

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

“the Commissioner” means the Parliamentary Commissioner for Administration;

“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 of Northern Ireland;

“enactment” includes an enactment of the Parliament of Northern Ireland, and any instrument made by virtue of an enactment;

“officer” includes employee;

“person aggrieved” means the person who claims or is alleged to have sustained such injustice as is mentioned in section 5(1)(a) of this Act;

“tribunal” includes the person constituting a tribunal consisting of one person.

(2) References in this Act to any enactment are references to that enactment as amended or extended by or under any other enactment.

(3) It is hereby declared that nothing in this Act authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a government department or other authority in the exercise of a discretion vested in that department or authority.

13.—(1) Subject to the provisions of this section, this Act extends to Northern Ireland. Application to Northern Ireland.

(2) Nothing in this section shall be construed as authorising the inclusion among the departments and authorities to which this Act applies of any department of the Government of Northern Ireland, or any authority established by or with the authority of the Parliament of Northern Ireland; but this Act shall apply to any such department or authority, in relation to any action taken by them as agent for a department or authority to which this Act applies, as it applies to the last-mentioned department or authority.

(3) In section 6 of this Act the references to a Minister of the Crown or government department and to Parliament shall include references to a Minister or department of the Government of Northern Ireland and to the Parliament of Northern Ireland.

(4) In section 8 of this Act the references to the Cabinet shall include references to the Cabinet of Northern Ireland, and in relation to that Cabinet for the reference to the Prime Minister there shall be substituted a reference to the Prime Minister of Northern Ireland.

Short title and commencement.

14.—(1) This Act may be cited as the Parliamentary Commissioner Act 1967.

(2) This Act shall come into force on such date as Her Majesty may by Order in Council appoint.

(3) A complaint under this Act may be made in respect of matters which arose before the commencement of this Act; and for the purposes of subsection (3) of section 6 of this Act any time elapsing between the date of the passing and the date of the commencement of this Act (but not any time before the first of those dates) shall be disregarded.

SCHEDULES

SCHEDULE 1

Section 2.

PENSIONS AND OTHER BENEFITS

1. A person appointed to be the Commissioner may, within such period and in such manner as may be prescribed by regulations under this Schedule, elect between the statutory schemes of pensions and other benefits applicable respectively to the judicial offices listed in Schedule 1 to the Judicial Pensions Act 1959 and to the civil service of the State (in this Schedule referred to respectively as the judicial scheme and the civil service scheme), and if he does not so elect shall be treated as having elected for the civil service scheme. 1959 c. 9 (8 & 9 Eliz. 2).

2. Where a person so appointed elects for the judicial scheme, a pension may be granted to him on ceasing to hold office as Commissioner if he has held that office for not less than five years and either—

- (a) has attained the age of sixty-five years ; or
- (b) is disabled by permanent infirmity for the performance of the duties of that office ;

and (subject to regulations under this Schedule) the provisions of the Judicial Pensions Act 1959, other than section 2 (retiring age), and of sections 2 to 8 of the Administration of Justice (Pensions) Act 1950 (lump sums and widows and dependants pensions), shall apply in relation to him and his service as Commissioner as they apply in relation to the holders of judicial offices listed in Schedule 1 to the said Act of 1959 and service in any such office, this paragraph being the relevant pension enactment for the purposes of that Act. 1950 c. 11 (14 & 15 Geo. 6).

3. Where a person so appointed elects for the civil service scheme, the Superannuation Act 1965 shall (subject to regulations under this Schedule) apply as if his service as Commissioner were service in an established capacity in the civil service of the State. 1965 c. 74.

4. The Treasury may by statutory instrument make regulations for purposes supplementary to the foregoing provisions of this Schedule ; and such regulations may, without prejudice to section 38 of the Superannuation Act 1965 (employment in more than one public office), make special provision with respect to the pensions and other benefits payable to or in respect of persons to whom the judicial scheme or the civil service scheme has applied or applies in respect of any service other than service as Commissioner, including provision—

- (a) for aggregating other service falling within the judicial scheme with service as Commissioner, or service as Commissioner with such other service, for the purpose of determining qualification for or the amount of benefit under that scheme ;
- (b) for increasing the amount of the benefit payable under the judicial scheme, in the case of a person to whom that scheme applied in respect of an office held by him before appointment as Commissioner, up to the amount which

SCH. 1

would have been payable thereunder if he had retired from that office on the ground of permanent infirmity immediately before his appointment ;

- (c) for limiting the amount of benefit payable under the judicial scheme, in the case of a person to whom the civil service scheme applied in respect of service before his appointment as Commissioner, by reference to the difference between the amount of the benefit granted in his case under the civil service scheme and the amount which would be payable under the judicial scheme if that service had been service as Commissioner.

5. Any statutory instrument made by virtue of this Schedule shall be subject to annulment in pursuance of a resolution of the House of Commons.

Section 4.

SCHEDULE 2

DEPARTMENTS AND AUTHORITIES SUBJECT TO INVESTIGATION

Ministry of Agriculture, Fisheries and Food.

Charity Commission.

Civil Service Commission.

Commonwealth Office.

Crown Estate Office.

Customs and Excise.

Ministry of Defence.

Department of Economic Affairs.

Department of Education and Science.

Export Credits Guarantee Department.

Foreign Office.

Ministry of Health.

Home Office.

Ministry of Housing and Local Government.

Central Office of Information.

Inland Revenue.

Ministry of Labour.

Land Commission.

Land Registry.

Lord Chancellor's Department.

Lord President of the Council's Office.

National Debt Office.

Ministry of Overseas Development.

Post Office.

Ministry of Power.

Ministry of Public Building and Works.

Public Record Office.

Public Trustee.

Department of the Registers of Scotland.

General Register Office.

General Register Office, Scotland.

Registry of Friendly Societies.

Royal Mint.

Scottish Office.

Scottish Record Office.

Ministry of Social Security.

Social Survey.

Stationery Office.
 Ministry of Technology.
 Board of Trade.
 Ministry of Transport.
 Treasury.
 Treasury Solicitor.
 Welsh Office.

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NOTES

1. The reference to the Ministry of Defence includes the Defence Council, the Admiralty Board, the Army Board and the Air Force Board.

2. The reference to the Lord President of the Council's Office does not include the Privy Council Office.

3. The reference to the Post Office is a reference to that Office in relation only to the following functions, that is to say:—

- (a) functions under the enactments relating to national savings ;
- (b) functions exercised as agent of another government department or authority listed in this Schedule ;
- (c) functions in respect of the control of public broadcasting authorities and services ; or
- (d) functions under the Wireless Telegraphy Act 1949.

1949 c. 54.

4. The reference to the Registry of Friendly Societies includes the Central Office, the Office of the Assistant Registrar of Friendly Societies for Scotland and the Office of the Chief Registrar and the Industrial Assurance Commissioner.

5. The reference to the Board of Trade includes, in relation to administrative functions delegated to any body in pursuance of section 7 of the Civil Aviation Act 1949, a reference to that body.

1949 c. 67.

6. The reference to the Treasury does not include the Cabinet Office, but subject to that includes the subordinate departments of the Treasury and the office of any Minister whose expenses are defrayed out of moneys provided by Parliament for the service of the Treasury.

7. The reference to the Treasury Solicitor does not include a reference to Her Majesty's Procurator General.

8. In relation to any function exercisable by a department or authority for the time being listed in this Schedule which was previously exercisable on behalf of the Crown by a department or authority not so listed, the reference to the department or authority so listed includes a reference to the other department or authority.

SCHEDULE 3

Section 5.

MATTERS NOT SUBJECT TO INVESTIGATION

1. Action taken in matters certified by a Secretary of State or other Minister of the Crown to affect relations or dealings between the Government of the United Kingdom and any other Government or any international organisation of States or Governments.

2. Action taken, in any country or territory outside the United Kingdom, by or on behalf of any officer representing or acting under the authority of Her Majesty in respect of the United Kingdom, or any other officer of the Government of the United Kingdom.

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3. Action taken in connection with the administration of the government of any country or territory outside the United Kingdom which forms part of Her Majesty's dominions or in which Her Majesty has jurisdiction.

1870 c. 52.
1881 c. 69.

4. Action taken by the Secretary of State under the Extradition Act 1870 or the Fugitive Offenders Act 1881.

5. Action taken by or with the authority of the Secretary of State for the purposes of investigating crime or of protecting the security of the State, including action so taken with respect to passports.

1957 c. 53.
1955 c. 18.
1955 c. 19.

6. The commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom, of proceedings at any place under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955, or of proceedings before any international court or tribunal.

7. Any exercise of the prerogative of mercy or of the power of a Secretary of State to make a reference in respect of any person to the Court of Appeal, the High Court of Judiciary or the Courts-Martial Appeal Court.

8. Action taken on behalf of the Minister of Health or the Secretary of State by a Regional Hospital Board, Board of Governors of a Teaching Hospital, Hospital Management Committee or Board of Management, or by the Public Health Laboratory Service Board.

9. Action taken in matters relating to contractual or other commercial transactions, whether within the United Kingdom or elsewhere, being transactions of a government department or authority to which this Act applies or of any such authority or body as is mentioned in paragraph (a) or (b) of subsection (1) of section 6 of this Act and not being transactions for or relating to—

- (a) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily ;
- (b) the disposal as surplus of land acquired compulsorily or in such circumstances as aforesaid.

10. Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters, in relation to—

- (a) service in any of the armed forces of the Crown, including reserve and auxiliary and cadet forces ;
- (b) service in any office or employment under the Crown or under any authority listed in Schedule 2 to this Act ; or
- (c) service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in Her Majesty, any Minister of the Crown or any such authority as aforesaid.

11. The grant of honours, awards or privileges within the gift of the Crown, including the grant of Royal Charters.

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