

Local Government Act 1974

- [S23 The Commissions for Local Administration](#)
- [S24A Power to investigate](#)
- [S25 Authorities subject to investigation](#)
- [S26 Matters subject to investigation](#)
- [S27 Members of the public](#)
- [S28 Procedure in respect of investigations](#)
- [S29 Investigations: further provisions](#)
- [S30 Reports on investigations](#)
- [S31 Reports on investigations: further provisions](#)
- [S32 Law of defamation and disclosure of information](#)
- [S33 Consultation between LGO and PHSO](#)
- [S34 Interpretation of Part III](#)
- [Schedule 4](#)
- [Schedule 5](#)

Note: This is not the official version of this legislation. To view the official version, go to www.opsi.gov.uk/. That version has been updated up to 2002.

The version below has been updated up to February 2010.

Part III LOCAL GOVERNMENT ADMINISTRATION

23 The Commissions for Local Administration

(1) For the purpose of conducting investigations in accordance with this Part of this Act, there shall be--

(a) a body of commissioners to be known as the Commission for Local Administration in England, . . .

(b) . . .

[but the Commission may include persons appointed to act as advisers, not exceeding the number appointed to conduct investigations.]

(2) The Parliamentary Commissioner shall be a member of the Commission.

(3) In the following provisions of this Part of this Act the expression "Local Commissioner" means a person, other than the Parliamentary Commissioner or an advisory member, who is a member of the Commission.

(4) Appointments to the office of . . . Commissioner shall be made by Her Majesty on the recommendation of the Secretary of State.

(4A) Subject to subsections (5) to (6), a Commissioner shall hold and vacate office in accordance with the terms of his appointment.

(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.

(6) A . . . Commissioner may be relieved of office by Her Majesty at his own request or may be removed from office by Her Majesty on grounds of incapacity or misbehaviour.

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

(7) The Secretary of State shall designate two of the Local Commissioners for England as chairman and vice-chairman respectively of the Commission for Local Administration in England.

(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.

(10) the Commission–

(a) shall make arrangements for Local Commissioners to deal with matters for which they do not have responsibility pursuant to subsection (8A), and

(b) shall publish information about the procedures for making complaints under this Part of this Act.

(11) For the year ending on 31st March 1975, and for each subsequent financial year, every Local Commissioner shall prepare a general report on the discharge of his functions and shall submit it to the Commission.

Any such report shall be submitted . . . not later than two months after the end of the year to which it relates.

(12) In the financial year beginning on 1st April 1990, and in every third financial year afterwards, the Commission shall review the operation (since the last review was made under this subsection) of the provisions of this Part of this Act about the investigation of matters, and shall have power to convey to authorities to which this Part of this Act applies] . . . , or to government departments, any recommendations or conclusions reached in the course of their reviews and shall send copies of those recommendations or conclusions to the representative persons and authorities concerned.

(12A) the Commission may, after consultation with the representative persons and authorities concerned, provide to the authorities or any of the authorities to which this Part of this Act applies such advice and guidance about good administrative practice as appears to the Commission to be appropriate and may arrange for it to be published for the information of the public.

(12B) The representative persons and authorities concerned are--

(a) for the purposes of subsection (12) above, such persons appearing to the Commission to represent authorities . . . to which this Part of this Act applies, and in the case of such authorities as are not so represented, those authorities; and

(b) for the purposes of subsection (12A) above, such of those persons and authorities as the Commission think appropriate.

(13) Schedule 4 to this Act shall have effect as respects the Commission.

23A Annual reports for representatives etc

(1) For the financial year ending in 1990 and for each subsequent financial year, the Commission shall prepare a general report on the discharge of their functions (an “annual report”) and shall submit it--

(a) to such persons as appear to the Commission to represent authorities . . . to which this Part of this Act applies, and

(b) in the case of such authorities as are not so represented, to those authorities.

(2) The annual report shall be submitted as soon as may be after the Commission have received the reports for the year from Local Commissioners under section 23(11) above, and the Commission shall submit copies of those reports, together with their annual report.

(3) the Commission shall arrange for the publication of the annual report and of the reports of which copies are submitted by them under subsection (2) above.

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

[Back to top](#)

24A Power to investigate

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

(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.

[Back to top](#)

25 Authorities subject to investigation

(1) This Part of this Act applies to [the following authorities]--

(a) any local authority,

(aaa) the Greater London Authority,

(ab) a National Park authority [for a National Park in England];

(b) any joint board for the constituent authorities of which are all local authorities,

(ba) [deleted]

(bb) any development corporation established for the purposes of a new town,

(bbb) the London Development Agency;

(bc) . . .

(bd) any urban development corporation established by an order under section 135 of the Local Government, Planning and Land Act 1980 for an urban development area in England],

(be) any housing action trust established under Part III of the Housing Act 1988 for a designated area in England,

(bf) the Homes and Communities Agency,

(bg) a fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004 or a scheme to which section 4 of that Act applies;

(c) any joint authority established by Part IV of the Local Government Act 1985;

(cza) the London Fire and Emergency Planning Authority;

(ca) any police authority established under [section 3 of the Police Act 1996] [for a police area in England];

[(caa) the Metropolitan Police Authority;

(cc) Transport for London; . . .

(cd) an authority established for an area in England by an order under section 207 of the Local Government and Public Involvement in Health Act 2007 (joint waste authorities);

(d) in relation to the flood defence functions of the Environment Agency, within the meaning of the Water Resources Act 1991, the Environment Agency and any regional flood defence committee for an area wholly or partly in England; and

(e) the London Transport Users' Committee.

(2) Her Majesty may by Order in Council provide that this Part of this Act shall also apply, subject to any modifications or exceptions specified in the Order, to any authority specified in the Order, being an authority which is established by or under an Act of Parliament, and which has power to levy a rate, or to issue a precept.

(3) An Order made by virtue of subsection (2) above may be varied or revoked by a subsequent Order so made and shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) Any reference to an authority to which this Part of this Act applies includes a reference--

(a) to the members and officers of that authority, and

(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.

(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.

[(4A) Any reference to an authority to which this Part of this Act applies also includes, in the case of the Greater London Authority, a reference to each of the following--

(a) the London Assembly;

(5) Any reference to an authority to which this Part of this Act applies also includes a reference to--

(a) ...

(b) ...

(c) an admission appeal panel constituted by the authority in accordance with regulations under section 94(5) or 95(3) of the School Standards and Framework Act 1998, and

(d) the governing body of any community, foundation or voluntary school maintained by the authority so far as acting in connection with the admission of pupils to the school or otherwise performing any of their functions under Chapter I of Part III of that Act, and

(e) an exclusion appeal panel constituted by the authority in accordance with regulations under section 52 of the Education Act 2002.

(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.

[Back to top](#)

26 Matters subject to investigation

(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.

(5) Before proceeding to investigate [a matter], a Local Commissioner shall satisfy himself that—

[(a) [the matter has] been brought, by or on behalf of [the person affected], to the notice of the authority to which [it relates] and that that authority has been afforded a reasonable opportunity [to investigate the matter and to respond]; or

(b) in the particular circumstances, it is not reasonable to expect [the matter to be] brought to the notice of that authority or for that authority to be afforded a reasonable opportunity [to investigate the matter and to respond]].

(6) A Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any of the following matters, that is to say,--

- (a) any action in respect of which the person affected has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment;
- (b) any action in respect of which the person affected has or had a right of appeal to a Minister of the Crown; or
- (c) any action in respect of which the person affected has or had a remedy by way of proceedings in any court of law:

Provided that a Local Commissioner may conduct an investigation notwithstanding the existence of such a right or remedy if satisfied that in the particular circumstances it is not reasonable to expect the person affected to resort or have resorted to it.

(6A) A Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any action taken by or on behalf of an authority in the exercise of any of the authority's functions otherwise than in relation to England.

(7) A Local Commissioner shall not conduct an investigation in respect of any action which in his opinion affects all or most of the inhabitants of the following areas--

(aa) where the matter relates to a National Park authority, the area of the Park for which it is such an authority;

(a) [deleted]

(ba) where the matter relates to the Homes and Communities Agency, any designated area within the meaning of Part 1 of the Housing and Regeneration Act 2008;

(c) in any other case, the area of the authority concerned.

(8) Without prejudice to the preceding provisions of this section, a Local Commissioner shall not conduct an investigation under this Part of this Act in respect of any such action or matter as is described in Schedule 5 to this Act.

(9) Her Majesty may by Order in Council amend the said Schedule 5 so as to [add to or exclude from the provisions of that Schedule (as it has effect for the time being)] such actions or matters as may be described in the Order; and any Order made by virtue of this subsection shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(11) In this section--

(a) references to a person affected include references to his personal representatives.

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.

(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;
- (d) in relation to an authority established by an order under section 207 of the Local Government and Public Involvement in Health Act 2007, a person who may be a member of the authority in accordance with section 208 of that Act.

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 –

- (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.

[Back to top](#)

27 Members of the public

(1) In this part of this Act, “member of the public” means an individual or a body of persons, whether incorporated or not, other than –

- (a) a local authority or other authority or body constituted for purposes of the public service or of local government (including [the Welsh Ministers, the National Assembly for Wales Commission or the National Assembly for Wales]), 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 by the [Welsh Ministers]], or whose revenues consist wholly or mainly of moneys provided by Parliament [or the [Welsh Ministers]].

[Back to top](#)

28 Procedure in respect of investigations

(1) Where a Local Commissioner proposes to investigate a matter under this Part of this Act, he shall afford to the authority concerned, and to any person who is alleged in the complaint (if any), or who otherwise appears to the Local Commissioner, to have taken or authorised the action which would be the subject of the investigation, an opportunity to comment on the matter.

(2) Every investigation under this Part of this Act shall be conducted in private, but except as aforesaid the procedure for conducting an investigation shall be such as the Local Commissioner considers appropriate in the circumstances of the case; and without prejudice to the generality of the preceding provision the Local 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 Local Commissioner may, if he thinks fit, pay to the person by whom the complaint (if any) was made, and to any other person who attends or furnishes information for the purposes of an investigation under this Part of this Act--

(a) sums in respect of the expenses properly incurred by them;

(b) allowances by way of compensation for the loss of their time.

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

[Back to top](#)

29 Investigations: further provisions

(1) For the purposes of an investigation under this Part of this Act a Local Commissioner may require any member or officer of the 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 documents.

(2) For the purposes of any such investigation a Local Commissioner shall have the same powers as the High Court in respect of the attendance and examination of witnesses, and in respect of the production of documents.

(3) A Local Commissioner may, under subsection (1) above, require any person to furnish information concerning communications between the authority concerned and any Government department, or to produce any correspondence or other documents forming part of any such written communications.

(4) 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 in accordance with subsection (3) above; and where that subsection applies the Crown shall not be entitled 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) Nothing in subsection (1) or subsection (3) above affects--

(a) the restriction, imposed by section 11(2) of the Parliamentary Commissioner Act 1967, on the disclosure of information by the Parliamentary Commissioner or his officers; or

(b) the restriction, imposed by section 15 of the Health Service Commissioners Act 1993 on the disclosure of information by the Health Service Commissioner for England or by any of his officers, or

(c) the restriction imposed by section 26 of the Public Services Ombudsman (Wales) Act 2005.

(6) To assist him in any investigation, a Local Commissioner may obtain advice from any person who in his opinion is qualified to give it and may pay to any such person such fees or allowances as he may determine.

(6A) A Local Commissioner may appoint and pay a mediator or other appropriate person to assist him in the conduct of an investigation under this Act.

(6B) Any person or persons appointed under subsection (6A) above shall be deemed to be an officer or officers of the Commission for Local Administration in carrying out his or their functions under that appointment.

(7) Subject to subsection (4) above, no person shall be compelled for the purposes of an investigation under this Part of this Act to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court.

(8) If any person without lawful excuse obstructs a Local Commissioner in the performance of his functions under this Part of this Act, or any person discharging or assisting in the discharge of those functions, or is guilty of any act or omission in relation to an investigation under this Part of this Act which, if that investigation were a proceeding in the High Court, would constitute contempt of court, the Local Commissioner may certify the offence to the High Court.

(9) Where an offence is so certified, the High 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 High Court could deal with him if he had committed the like offence in relation to the High Court.

(10) Nothing in subsection (8) above shall be construed as applying to the taking of any such action as is mentioned in section 28(4) above.

[Back to top](#)

30 Reports on investigations

(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.

(2) Where a complaint about the matter was referred by a person who was a member of an authority but who has since ceased to be a member of that authority, the report or statement shall be sent to the chairman, or as the case may be, mayor of that authority.

(2AA) If the authority concerned is the Greater London Authority--

(a) the duty to send a report or statement to the Authority under subsection (1), (1B) or (1C) shall be discharged by sending the report or statement to both the Mayor of London and the London Assembly; and

(b) in a case falling within subsection (2) above, the duty imposed by that subsection shall be discharged by sending the report or statement to both the Mayor of London and the London Assembly.

(2AB) Where an authority are operating executive arrangements which involve a mayor and cabinet executive, subsection (2) shall have effect as if the words ", or, as the case may be, mayor of that authority" were omitted.

(2B) Subsections (3) to (8) apply in the case of a report under subsection (1).

(3) Apart from identifying the authority or authorities concerned the report shall not [, except where subsection (3A) below applies,]--

(a) mention the name of any person, or

(b) contain any particulars which, in the opinion of the Local Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless, after taking into account the public interest as well as the interests of the complainant (if any) and of other persons, the Local Commissioner considers it necessary to mention the name of that person or to include in the report any such particulars.

(3AA) Nothing in subsection (3) above prevents a report --

(a) mentioning the name of, or

(b) containing particulars likely to identify,

the Mayor of London or any member of the London Assembly.

[(3A) Where the Local Commissioner is of the opinion--

(a) that action constituting maladministration was taken which involved a member of the authority concerned, and

(b) that the member's conduct constituted a breach of the National Code of Local Government Conduct,

then, unless the Local Commissioner is satisfied that it would be unjust to do so, the report shall name the member and give particulars of the breach.] [Note: Awaiting repeal/partially repealed]

(4) Subject to the provisions of subsection (7) below, the authority concerned shall for a period of three weeks make copies of the report available for inspection by the public without charge at all reasonable hours at one or more of their offices; and any person shall be entitled to take copies of, or extracts from, the report when so made available.

[(4A) Subject to subsection (7) below, the authority concerned shall supply a copy of the report to any person on request if he pays such charge as the authority may reasonably require.]

(5) Not later than [two weeks] after the report is received by the authority concerned, the proper officer of the authority shall give public notice, by advertisement in newspapers and such other ways as appear to him appropriate, that [copies of the report will be available as provided by subsections (4) and (4A)] above, and shall specify the date, being a date [not more than one week after public notice is first given], from which the period of three weeks will begin.

(6) If a person having the custody of a report made available for inspection as provided by subsection (4) above obstructs any person seeking to inspect the report, or to make a copy of, or extract from, the report, he shall be liable on summary conviction to a fine not exceeding [level 3 on the standard scale].

(7) The Local Commissioner may, if he thinks fit after taking into account the public interest as well as the interests of the complainant (if any) and of other persons, direct that a report

specified in the direction shall not be subject to the provisions of subsections (4) [, (4A) and (5) above].

[(8) Where the authority concerned is the Greater London Authority, any functions exercisable under this section by or in relation to the Authority (other than functions exercisable by or in relation to the proper officer of the Authority) shall be exercisable by or in relation to the Mayor and the Assembly acting jointly on behalf of the Authority, and references to the authority concerned (other than references to the proper officer or a member of the authority concerned) shall be construed accordingly.]

[Back to top](#)

31 Reports on investigations: further provisions

[(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.

(2) The report shall be laid before the authority concerned and it shall be the duty of that authority to consider the report and, within the period of three months beginning with the date on which they received the report, or such longer period as the Local Commissioner may agree in writing, to notify the Local Commissioner of the action which the authority have taken or propose to take.

(2A) If the Local Commissioner--

(a) does not receive the notification required by subsection (2) above within the period allowed by or under that subsection, or

(b) is not satisfied with the action which the authority concerned have taken or propose to take, or

(c) does not within a period of three months beginning with the end of the period so allowed, or such longer period as the Local Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Local Commissioner,

he shall make a further report setting out those facts and making recommendations.

(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.

(2C) Section 30 above, with any necessary modifications, and subsection (2) above shall apply to a report under subsection (2A) above as they apply to a report under that section.

(2D) If the Local Commissioner–

(a) does not receive the notification required by subsection (2) above as applied by subsection (2C) above within the period allowed by or under that subsection or is satisfied before the period allowed by that subsection has expired that the authority concerned have decided to take no action, or

(b) is not satisfied with the action which the authority concerned have taken or propose to take, or

(c) does not within a period of three months beginning with the end of the period allowed by or under subsection (2) above as applied by subsection (2C) above, or such longer period as the Local Commissioner may agree in writing, receive confirmation from the authority concerned that they have taken action, as proposed, to the satisfaction of the Local Commissioner,

he may, by notice to the authority, require them to arrange for a statement to be published in accordance with subsections (2E) and (2F) below.

(2E) The statement referred to in subsection (2D) above is a statement, in such form as the authority concerned and the Local Commissioner may agree, consisting of--

(a) details of any action recommended by the Local Commissioner in his further report which the authority have not taken;

(b) such supporting material as the Local Commissioner may require; and

(c) if the authority so require, a statement of the reasons for their having taken no action on, or not the action recommended in, the report.

(2F) The requirements for the publication of the statement are that–

(a) publication shall be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the Local Commissioner or, in default of agreement, nominated by him; and

(b) publication in the first such edition shall be arranged for the earliest practicable date.

(2G) If the authority concerned–

(a) fail to arrange for the publication of the statement in accordance with subsections (2E) and (2F) above, or

(b) are unable, within the period of one month beginning with the date on which they received the notice under subsection (2D) above, or such longer period as the Local Commissioner may

agree in writing, to agree with the Local Commissioner the form of the statement to be published,

the Local Commissioner shall arrange for such a statement as is mentioned in subsection (2E) above to be published in any two editions within a fortnight of a newspaper circulating within the authority's area.

(2H) The authority concerned shall reimburse the Commission on demand any reasonable expenses incurred by the Local Commissioner in performing his duty under subsection (2G) above.]

[(3) In any case where—

(a) a report is laid before an authority under subsection [(2) or (2C)] above, and

(b) on consideration of the report, it appears to the authority that a payment should be made to, or some other benefit should be provided for, a person who has suffered injustice in consequence of the maladministration or failure [to which the report relates],

the authority may incur such expenditure as appears to them to be appropriate in making such a payment or providing such a benefit.]

[(4) Where the authority concerned is the Greater London Authority, any functions exercisable under this section by or in relation to the Authority shall be exercisable by or in relation to the Mayor and the Assembly acting jointly on behalf of the Authority, and references to the authority concerned (other than references to a member of the authority concerned) shall be construed accordingly.]

[31A Consideration of adverse reports]

(1A) Where a further report of a Local Commissioner under section 31(2A) is considered by a person other than the appropriate listed authority and it is proposed that —

(a) no action should be taken on the report, or

(b) the action recommended in the report should not be taken,

consideration of the report shall be referred to that authority,

(1B) For the purposes of subsection (1A) —

(a) “listed authority” means an authority mentioned in section 25(1) or specified in an order under subsection 25(2) (but does not include a person mentioned in section 25(4) to (5)), and

(b) a listed authority is the appropriate listed authority in relation to a further report if the report relates to the authority (or to any person with which the authority is connected for the purposes of this Part of this Act by virtue of section 25(4) to (5)).

(1C) Subsection (1A) has effect subject to subsection (3).

(3) The restriction imposed by subsection (1A) above does not apply where the report recommends action to be taken by—

(a) a joint committee established under section 101 of the Local Government Act 1972,

(b) a local fisheries committee constituted under the Sea Fisheries Regulation Act 1966, or

(c) an admission appeal panel or exclusion appeal panel mentioned in section 25(5)(c) or (e), and the report is considered by that committee or panel.

(4) If an authority considering a further report of the Local Commissioner under section 31(2A) above take into consideration a report by a person or body with an interest in the Local Commissioner's report, they shall not conclude their consideration of the Local Commissioner's report without also having taken into consideration a report by a person or body with no interest in the Local Commissioner's report.

(5) No individual shall decide or vote on any question with respect to a report or further report under this Part of this Act in which he is named and criticised by a Local Commissioner.

[(7) Any functions exercisable under this section by or in relation to the Greater London Authority shall be exercisable by or in relation to the Mayor and the Assembly acting jointly on behalf of the Greater London Authority, and references to an authority shall be construed accordingly.]

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 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 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 applied to a report prepared under section 30.

[Back to top](#)

32 Law of defamation, and disclosure of information

(1) 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 in communications between a member [or officer] of an authority and a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, for the purposes of this Part of this Act;

(b) the publication of any matter by a Local Commissioner or by any person discharging or assisting in the discharge of a function of a Local Commissioner, in communicating with a complainant, or with the person affected in relation to a matter, for the purposes of this Part of this Act;

(ba) the publication of any matter by a Local Commissioner or by any person discharging or assisting in the discharge of a function of a Local Commissioner, in communicating with the Parliamentary Commissioner or the Health Service Commissioner for England or any officer of either such Commissioner for the purposes of this Part of this Act;

(c) the publication of any matter in preparing, making and sending a report or statement in accordance with section 30 or section 31 above, or, subject to section 30(7) above, in making a report available to the public [or in supplying a copy under section 30(4A) above];

(d) the publication of any matter contained in a report by a Local Commissioner which has been made available to the public, being publication by inclusion in a report made or published under section 23A above;

[(e) the publication of any matter by inclusion in a statement published in accordance with section 31(2D), (2E) and (2F) or (2G) above.]

(f) the publication of any matter by inclusion in a report, statement or summary published or supplied under section 31B.

(2) Information obtained by a Local Commissioner, or any person discharging or assisting in the discharge of a function of a Local Commissioner, in the course of or for the purposes of an investigation under this Part of this Act shall not be disclosed except—

(a) for the purposes of the investigation and of any report, statement or summary under section 30, 31 or 31B above; or

(aa) for the purposes of a complaint which is being investigated by the Parliamentary Commissioner or the Health Service Commissioner for England (or both); or

(b) for the purposes of any proceedings for an offence under [the Official Secrets Acts 1911 to 1989] alleged to have been committed in respect of information obtained, by virtue of this Part of this Act, by a Local Commissioner or by a person discharging or assisting in the discharge of a function of a Local Commissioner] or for an offence of perjury alleged to have been committed in the course of an investigation under this Part of this Act or for the purposes of an inquiry with a view to the taking of such proceedings, or

(c) for the purpose of any proceedings under section 29(9) above,

and a Local Commissioner and persons discharging or assisting in the discharge of a function of a Local Commissioner shall not be called upon to give evidence in any proceedings (other than proceedings within paragraph (b) or (c) above) of matters coming to his or their knowledge in the course of an investigation under this Part of this Act.

(3) A Minister of the Crown or any of the authorities to which this Part of this Act applies may give notice in writing to a Local 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, or as the case may be of the authority, the disclosure of that document or information, or of documents or information of that class, would be contrary to the public interest; and where such a notice is given nothing in this Part of this Act shall be construed as authorising or requiring [the Local Commissioner or any person discharging or assisting in the discharge of a function of a Local Commissioner to communicate to any other person, or for any purpose, any document or information specified in the notice, or any document or information of a class so specified:

Provided that a notice given under this subsection by any authority may be discharged by the Secretary of State.

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

(3B) Section 25(4), (4A) and (5) do not apply for the purpose of subsection (3).

(4) Nothing in subsection (3) above shall affect the obligations imposed by subsections (3) and (4) of section 29 above.

(5) Where information is disclosed in accordance with section 29(3) above, being information which is derived from a communication from a government department [. . .], and which has not been made public, a Local Commissioner shall not without the written consent of an officer of the government department [. . .] make a report which includes all or any of that information unless he has given the department [. . .] not less than one month's notice in writing of his intention.

(6) The provisions of this section shall apply to the Commissioners of Customs and Excise and Commissioners of Inland Revenue as they apply to a Minister of the Crown.

[(7) Information obtained from the Information Commissioner by virtue of section 76 of the Freedom of Information Act 2000 shall be treated for the purposes of subsection (2) above as obtained for the purposes of an investigation under this Part of this Act and, in relation to such information, the reference in paragraph (a) of that subsection to the investigation shall have effect as a reference to any investigation.]

[Back to top](#)

33 Consultation between Local Commissioner, the Parliamentary Commissioner and the Health Service Commissioners[and other Commissioners and Ombudsmen]

(1) If, at any stage in the course of conducting an investigation under this Part of this Act, a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter which could be the subject of an investigation -

(a) by the Parliamentary Commissioner, in accordance with section 5 of the Act of 1967, [(aza) . . .]

[(aa) . . .] . . .

(b) by the Health Service Commissioner for England . . . , in accordance with [the Act of 1993],

[(ba) by the Public Services Ombudsman for Wales, in accordance with the Public Services Ombudsman (Wales) Act 2005], [or

(c) by the Scottish Public Services Ombudsman in accordance with the Act of 2002,]

he shall consult with the appropriate Commissioner [or . . . Ombudsman] about the matter and, where a complaint was made about the matter he shall, if he considers it necessary, inform the person initiating the complaint under this Part of this Act of the steps necessary to initiate a complaint under the Act of 1967[, . . .][. . . the Act of 1993[, the Public Services Ombudsman (Wales) Act 2005] or under the Act of 2002], as the case may be.

(2) Where, by virtue of subsection (1) above, a Local Commissioner consults the Parliamentary Commissioner, [the Public Services Ombudsman for Wales][, the Scottish Public Services Ombudsman] or [the Health Service Commissioner for England] in relation to a matter under investigation under this Part of this Act, he may consult that Commissioner [or] [that Ombudsman] about anything relating to the matter, including--

(a) the conduct of any investigation into the matter, and

(b) the form, content and publication of any report of the results of such an investigation.

[(3) If at any stage in the course of conducting an investigation under the Act of 1967, the Parliamentary Commissioner] forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation under this Part of this Act, he shall consult with the appropriate Local Commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint . . . of the steps necessary to initiate a complaint under this Part of this Act.

(4) Where, by virtue of subsection (3) above, a Local Commissioner is consulted about a complaint under the Act of 1967 . . . , subsection (2) above shall apply (with the necessary modifications) as it applies in relation to consultations held by virtue of subsection (1) above.

(5) Nothing in section 11(2) of the Act of 1967[, . . .], in [section 15 of the Act of 1993], [in [section 26 of the Public Services Ombudsman (Wales) Act 2005]][, in section 19 of the Act of 2002] or in section 32(2) of this Act (restrictions of disclosure of information) shall apply in relation to the disclosure of information . . . in the course of consultations held in accordance with this section.

(6) In this section the "Act of 1967" means the Parliamentary Commissioner Act 1967 and ["the Act of 1993" means the Health Service Commissioners Act 1993] [and the Act of 2002" means the Scottish Public Services Ombudsman Act 2002].

[33ZA Collaborative working between Local Commissioners and other Commissioners]

[(1) If at any stage in the course of conducting an investigation under this Act a Local Commissioner forms the opinion that the matters which are the subject of the investigation include a matter within the jurisdiction of –

(a) the Parliamentary Commissioner,

(b) the Health Service Commissioner for England, or

(c) both,

he may, subject to subsection (2) below, conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(2) A Local Commissioner must obtain the consent of the person affected or the complainant (if any) before agreeing to a joint investigation referred to in subsection (1) above.

(3) If a Local Commissioner forms the opinion that a complaint which is being investigated by

–

(a) the Parliamentary Commissioner,

(b) the Health Service Commissioner, or

(c) both,

relates partly to a matter within his jurisdiction, he may conduct an investigation under this Act jointly with that Commissioner or those Commissioners.

(4) If a Local Commissioner conducts an investigation of a complaint jointly with another person, the requirements of section 30(1) (so far as relating to a case where the Local Commissioner conducts an investigation under this Act) may be satisfied by a report made jointly with that person.

(5) In relation to an investigation which has been conducted jointly with another person a direction given by the Local Commissioner under section 30(7) of this Act may relate only to those parts of a joint report prepared by virtue of subsection (4) above which are specified in the direction.]

[33A Disclosure of information by Local Commissioner to Information Commissioner]

[(1) A Local Commissioner may disclose to the Information Commissioner any information obtained by, or furnished to, the Local Commissioner under or for the purposes of this Part of this Act if the information appears to the Local Commissioner to relate to–

(a) a matter in respect of which the Information Commissioner could exercise any power conferred by–

(i) Part V of the Data Protection Act 1998 (enforcement),

(ii) section 48 of the Freedom of Information Act 2000 (practice recommendations), or

(iii) Part IV of that Act (enforcement), or

(b) the commission of an offence under–

(i) any provision of the Data Protection Act 1998 other than paragraph 12 of Schedule 9 (obstruction of execution of warrant), or

(ii) section 77 of the Freedom of Information Act 2000 (offence of altering etc records with intent to prevent disclosure).

(2) Nothing in section 32(2) of this Act shall apply in relation to the disclosure of information in accordance with this section.]

[Back to top](#)

34 Interpretation of Part III

(1) In this Part of this Act, unless the context otherwise requires--

"action" includes failure to act, and other expressions connoting action shall be construed accordingly,

["the Commission" means the Commission for Local Administration in England,]

["executive" and "executive arrangements" have the same meaning as in Part II of the Local Government Act 2000,]

"local authority" means a county council [in England], . . . a district council, [the Broads Authority] [. . .] a London borough council, the Common Council of the City of London, or the Council of the Isles of Scilly,

["mayor and cabinet executive" has the same meaning as in Part II of the Local Government Act 2000,]

"member", [–

(a) in relation to the Greater London Authority, means–

(i) the Mayor of London,

(ii) the Deputy Mayor, or

(iii) a member of the London Assembly;

"person affected"

(a) in relation to a matter which is the subject of a complaint made or to be made under this Part of this Act, means the member of the public who claims or is alleged to have sustained injustice in consequence of the matter and,

(b) in relation to a matter coming to the attention of a Local Commissioner to which section 26D applies, means the member of the public who the Local Commissioner considers has, or may have, sustained injustice in consequence of the matter,

"Parliamentary Commissioner" means the Parliamentary Commissioner for Administration,

. . .

"tribunal" includes the person constituting a tribunal consisting of one person.

(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).

(2) Section 269 of the Local Government Act 1972 (which relates to the meaning of "England" and "Wales" in Acts passed after 1st April 1974) shall apply to this Part of this Act as if it had been passed after that date.

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

[Back to top](#)

SCHEDULE 4

The Commission

Disqualifications

1

(1) A person shall be disqualified for being appointed as, or for being, a Local Commissioner if–

(a) he is disqualified for being elected, or being, a member of any authority to which Part 3 of this Act applies; or

(b) he is a member of any of those authorities.

2) A Local Commissioner shall not at any time conduct a case arising in an area if it is wholly or partly within an area for which one of those authorities is responsible and, within the five years ending at that time (“the disqualification period”), the Local Commissioner

(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.

(3) The acts and proceedings of a person appointed as a Local Commissioner and acting in that office [. . .] shall, notwithstanding his disqualification under this paragraph, be as valid and effectual as if he had been qualified.

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).

Remuneration, etc

3

(1) the Commission shall pay to or in respect of their Local Commissioners and their officers such amounts, by way of remuneration, pensions, allowances or gratuities or by way of provision for any such benefits, as the Secretary of State may determine.

(2) If a person ceases to be a Local Commissioner and it appears to the Secretary of State that there are special circumstances which make it right that that person should receive compensation, the Commission may pay to that person a sum of such amount as the Secretary of State may determine.

[(3) Sub-paragraphs (1) and (2) above apply in relation to Commissioners who are advisory members of the Commission as they apply in relation to Local Commissioners.]

Staff and accommodation

4

(1) The Commission may appoint a secretary, and such other officers as they may consider to be required for the discharge of their functions.

(2) The Commission shall make arrangements to enable Local Commissioners to investigate matters, and in particular arrangements for--

(a) allocating members of their staff to assist Local Commissioners, and

(b) providing offices and other accommodation.

(3) An officer of the Commission shall not be allocated to assist a Local Commissioner without the approval of that Local Commissioner.

(4) . . .

(6) For the purposes of conducting a joint investigation referred to in section 33ZA of this Act any function of a Local Commissioner may be performed by –

(a) any officer of the Parliamentary Commissioner, or

(b) any officer of the Health Service Commissioner for England,

who is authorised for the purpose by a Local Commissioner.

Proceedings of the Commission

5

(1) The Commission may determine their own procedure, including the quorum necessary for their meetings.

(2) The validity of any proceedings of the Commission shall not be affected by any vacancy among the members of the Commission or by any defect in the appointment of any member of the Commission.

(3) The Commission shall be a body corporate, and their common seal shall be authenticated by the signature of a member of the Commission, or of some other person authorised in that behalf by the Commission.

Expenses of the Commission

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.

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.

[Back to top](#)

SCHEDULE 5

MATTERS NOT SUBJECT TO INVESTIGATION

1 The commencement or conduct of civil or criminal proceedings before any court of law.

2 Action taken by or on behalf of any [police] authority in connection with the investigation or prevention of crime.

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;

(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.

4 Action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters.

5

(1) Any action taken by a local education authority in the exercise of functions under section 370 of the Education Act 1996 or section 17 of the Education (No 2) Act 1986 (secular instruction in county schools and in voluntary schools).

(2) Any action concerning--

(a) the giving of instruction, whether secular or religious, or

(b) conduct, curriculum, internal organisation, management or discipline, in any school or other educational establishment maintained by the authority except so far as relating to Special Educational Needs (within the meaning given by section 312 of the Education Act 1996).

6 Action taken by or on behalf of an authority mentioned in section 25(1)(ba) [or (bb)] of this Act which is not action in connection with functions in relation to housing.

7 Action taken by or on behalf of an authority mentioned in section 25(1)(bd) of this Act which is not action in connection with functions in relation to town and country planning.

8 Action taken by or on behalf of the Homes and Communities Agency which is not action in connection with functions in relation to town and country planning.