

CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2 – Commissioner for Children and Young People In Scotland

Section 5 – Investigations by the Commissioner

12. Section 7 of the Commissioner for Children and Young People (Scotland) Act 2003 (“the 2003 Act”) provides for the Commissioner to undertake an investigation into whether, by what means and to what extent, a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people. Any such investigation must focus on a matter of particular significance to children and young people generally or to particular groups of children and young people, but not to individual children.
13. Subsections (1) and (2) amend sections 7(1) and 7(2) of the 2003 Act in order to allow for the Commissioner to undertake two distinct types of investigation: a “general investigation” which is consistent with the Commissioner’s original investigatory power under section 7 of the 2003 Act; and an “individual investigation” focusing on the extent to which a service provider has had regard to the rights, views and interests of an individual child or young person. This individual investigation is new. The term “service provider” is defined in the 2003 Act and means any person or organisation providing a service to children and young people. This includes the private, public and voluntary sector. Thus any individual who, or organisation or company which, provides services to children or young people can be investigated by the Commissioner. For example, organisations which give advice, provide guidance or provide goods could be investigated. The service in question does not need to be provided exclusively to children or young people. Parents carrying out their parental responsibilities are not service providers. However, the local authorities to whom parental responsibilities have been transferred are treated as service providers.
14. Section 7(2) of the 2003 Act as amended provides that the Commissioner can only carry out a general investigation if the evidence and information collected demonstrates that there is an issue that is significant for children and young people generally or specific groups of children and young people.
15. New section 7(3) of the 2003 Act makes clear that the Commissioner may only undertake either a general or individual investigation if they are satisfied that it would not duplicate the work that is the function of another person. There are a number of bodies already tasked with considering complaints and responding to concerns raised by members of the public in Scotland including the Scottish Public Services Ombudsman, Social Care and Social Work Improvement Scotland (the Care Inspectorate) and the Equality and Human Rights Commission. Each has a particular function and where it is recognised that a complaint falls within the remit of one of these bodies or any other complaint handling body, the Commissioner should not pursue the matter.

16. **Section 5(2)(b)** removes section 7(3)(b) of the 2003 Act. This is the provision that currently prevents the Commissioner from undertaking investigations in relation to individual children.
17. Subsection (2)(c) amends section 7 of the 2003 Act to enable the Commissioner to resolve a matter which could properly form the basis of an individual investigation without the need for a formal investigation. Such a step might be taken by the Commissioner where it is felt that an issue can be addressed satisfactorily without having to exhaust the investigatory process.
18. Subsection (3)(a) replaces section 8(1)(b) of the 2003 Act, removing the requirement for the Commissioner to publish notice of any investigation and terms of reference. Instead, it requires the Commissioner to give notice of an investigation to those individuals who are likely to be affected by it. The change reflects the fact that it will not always be appropriate for details of a planned investigation to be made widely available, particularly where the investigation focuses on sensitive matters relating to an individual child. Subsections (3)(b) and (c) provide for individual investigations to be held in private whilst the presumption is that general investigations will be held in public unless the Commissioner is satisfied that there are grounds for taking evidence in private, as is currently provided for under section 8(2) of the 2003 Act.
19. Subsection (4)(a) amends section 11(1) of the 2003 Act, removing the need for all investigation reports to be laid before the Scottish Parliament. Instead, section 11(1) will require that the Commissioner prepares a report in relation to each investigation. In order to finalise the report, the Commissioner will share its content for consideration and comment with all those persons named within the report or identifiable from it. Should the report be amended as a consequence of this process, a revised version will be made available to all of the above persons.
20. Subsection (4)(c) adds new subsections to section 11 to require the Commissioner to lay before the Scottish Parliament any finalised report relating to a general investigation. The Commissioner will have the power, but not an obligation, to lay before the Scottish Parliament a report relating to an individual investigation.

Section 6 – Requirement to respond to Commissioner’s recommendations

21. Subsection (2) amends section 11 of the 2003 Act, providing the Commissioner with a power to require a response from a service provider to any recommendations made as part of a report linked to either a general investigation or an individual investigation and to identify a time by which that response must be received. Where a report includes a requirement to respond, a copy of the report must also be shared with the service provider on whom the requirement is imposed.
22. Subsection (3) adds a new section 14AA to the 2003 Act. This section sets out the arrangements for publishing a service provider’s response to any recommendations made by the Commissioner. It requires the Commissioner to publish any response made by a service provider in respect of recommendations following a general investigation unless the Commissioner considers publication to be inappropriate. The Commissioner may publish a response to recommendations following an individual investigation. Any published material should not, so far as reasonable and practicable, name or identify any child referred to in it.
23. Where a service provider fails to respond to a requirement, the Commissioner may take steps to publicise this failure.