
STATUTORY INSTRUMENTS

1996 No. 1297

**The Commissioner for Complaints
(Northern Ireland) Order 1996 (revoked)**

F1 functions transferred by SR 1999/481

Introductory

Title and commencement

1.—(1) This Order may be cited as the Commissioner for Complaints (Northern Ireland) Order 1996.

(2) This Order shall come into operation on the expiration of two months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

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

“body concerned”, in relation to an investigation pursuant to a complaint under^[F1] Article 7], means the body against which the complaint was made;

“the Commissioner” means the Northern Ireland Commissioner for Complaints;

“department” means a department of the Government of Northern Ireland;

“the Department” means the Department of Finance and Personnel;

^[F1]“general ^[F2]health care]” has the meaning assigned by Article 8(2)(b);

“general ^[F2]health care] provider” has the meaning assigned by Article 8(2)(a);

“general ^[F2]health care] provider concerned”, in relation to an investigation pursuant to a complaint under Article 8, means the general ^[F2]health care] provider providing the services in relation to which the complaint was made;

“health and ^[F3]social care] body” means any of the following bodies—

- (a) health and ^[F3]social care] boards;
- (b) health and ^[F3]social care] councils;
- (c) health and ^[F3]social care] trusts;
- (d) the Mental Health Commission for Northern Ireland;
- (e) the Northern Ireland Central Services Agency for the Health and Social Services; and

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the The Commissioner for Complaints (Northern Ireland) Order 1996 (revoked). (See end of Document for details)

- (f) special health and [^{F3}social care] agencies;
 “independent provider” has the meaning assigned by Article 8A(2);
 “independent provider concerned”. in relation to an investigation pursuant to a complaint under Article 8A, means the independent provider providing the service in relation to which the complaint was made;]
 “officer” includes employee;
 [^{F1}“person aggrieved” means the person who claims or is alleged to have sustained such injustice as is mentioned in Article 7(7), 8(5) or 8A(4);]
 “statutory provision” has the meaning assigned by section 1 of the Interpretation Act (Northern Ireland) 1954;
 “tribunal” includes any authority, body or person having power to determine any matter.

F1 1997 NI 14

F2 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(b\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

F3 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, [art. 2](#)

The Northern Ireland Commissioner for Complaints

The Northern Ireland Commissioner for Complaints

3.—(1) There shall continue to be a Commissioner, known as the Northern Ireland Commissioner for Complaints.

(2) A person appointed under section 36(1) of the Northern Ireland Constitution Act 1973 to be the Commissioner shall, subject to paragraphs (3) and (4), hold office during good behaviour.

(3) A person appointed to be the Commissioner—

- (a) may, at his own request, be relieved of office by Her Majesty;
- (b) may be removed from office by Her Majesty in consequence of an Address from the Assembly; and
- (c) shall in any case vacate office on completing the year of service in which he attains the age of 65 years.

(4) Her Majesty may declare the office of Commissioner to have been vacated if she is satisfied that the person appointed to be the Commissioner is incapable for medical reasons—

- (a) of performing the duties of his office; and
- (b) of requesting to be relieved of it.

Salary and pension

4.—(1) There shall be paid to the holder of the office of Commissioner such salary as the Department may by order determine.

(2) An order under paragraph (1) may provide for the salary determined by the order to be payable from such date, whether before or after the making of the order, as may be specified in the order.

(3) 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.

(4) Schedule 1 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.

(5) Any abatement under paragraph (3) shall be disregarded in computing the salary of any person for the purposes of any pension or other benefit payable by virtue of Schedule 1.

(6) Except in so far as Schedule 1 otherwise provides, any salary, pension or other benefit payable under this Article shall be charged on and issued out of the Consolidated Fund.

Appointment of acting Commissioner

5.—(1) Where the office of Commissioner becomes vacant, Her Majesty may, pending the appointment of a new Commissioner, appoint a person under this Article to act as the Commissioner at any time during the period of 12 months beginning with the date on which the vacancy arose.

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

(a) until the appointment of a new Commissioner or the expiry of the period of 12 months beginning with the date on which the vacancy arose, whichever occurs first; and

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

(3) A person appointed under this Article shall, while he holds office, be treated for all purposes, except those of Articles 3 and 4, as the Commissioner.

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

[^{F4}Ineligibility of certain persons for appointment as Commissioner

5A.—(1) A person who is a member of a health and [^{F5}social care] body shall not be appointed as the Commissioner or acting Commissioner, and a person so appointed shall not, during his appointment, become a member of such a body.

(2) A person who is a general [^{F6}health care] provider shall not be appointed as the Commissioner or acting Commissioner, and a person so appointed shall not, during his appointment, become a general [^{F6}health care] provider.]

F4 1997 NI 14

F5 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(a\)](#) (with [Sch. 6 para. 1\(2\)\(3\)](#)); S.R. 2009/114, [art. 2](#)

F6 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(b\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

Staff and expenses

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

[^{F7}(1A) To assist him in—

(a) any investigation pursuant to a complaint under Article 7 where the complaint relates to action taken by or on behalf of a health and [^{F8}social care] body; or

(b) any investigation pursuant to a complaint under Article 8 or 8A,

the Commissioner may obtain advice from any person who, in his opinion, is qualified to give it.

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the The Commissioner for Complaints (Northern Ireland) Order 1996 (revoked). (See end of Document for details)

(1B) The Commissioner may pay to any person from whom he obtains advice under paragraph (1A) such fees or allowances as he may determine with the approval of the Department.]

(2) The Assembly Ombudsman for Northern Ireland may authorise any of his officers to assist the Commissioner in the exercise of the functions of the Commissioner under this Order.

(3) Any function of the Commissioner under this Order may be performed by any officer of the Commissioner or of the Assembly Ombudsman for Northern Ireland authorised for the purpose by the Commissioner.

(4) References in this Order to officers of the Commissioner include references to officers of the Assembly Ombudsman for Northern Ireland acting under this Article.

(5) The expenses of the Commissioner under this Order shall, to such amount as the Department may approve, be defrayed out of money appropriated by Measure.

F7 1997 NI 14

F8 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with [Sch. 6 para. 1\(2\)\(3\)](#)); S.R. 2009/114, [art. 2](#)

Investigations by the Commissioner

[^{F9}Bodies subject to investigation

7.—(1) Subject to the provisions of paragraphs (2) to (4), this Article applies to the bodies listed in Schedule 2.

(2) The Department may by order amend Schedule 2 by the alteration of any entry, the removal or qualification of any entry or the insertion of any additional entry.

(3) Nothing in paragraph (2) authorises the inclusion in Schedule 2 of—

(a) a department; or

(b) a body which does not either—

(i) exercise functions conferred on it by a statutory provision; or

(ii) have its expenses substantially defrayed out of moneys appropriated by Measure.

(4) Any reference in this Order to a body to which this Article applies includes a reference to the members and officers of that body.

(5) Subject to the provisions of this Order, the Commissioner may investigate any action taken—

(a) by or on behalf of a body to which this Article applies; and

(b) in the exercise of administrative functions of that body.

(6) Without prejudice to the generality of paragraph (5)(b), action taken in the exercise of administrative functions of a body includes action taken by or on behalf of that body in relation to any appointment or employment in respect of which power to take action, or to determine or approve action to be taken, is vested in that body.

(7) The Commissioner may investigate any action taken as mentioned in paragraph (5) only if a complaint is made to the Commissioner in accordance with this Order by a person who claims to have sustained injustice in consequence of maladministration in connection with the action so taken with a request to conduct an investigation into it.

(8) Without prejudice to the generality of paragraph (5)(a), any maladministration mentioned in paragraph (7) may, in relation to a health and [^{F10}social care] body, arise from action of—

(a) the health and [^{F10}social care] body,

- (b) a person employed by that body,
- (c) a person acting on behalf of that body, or
- (d) a person to whom that body has delegated any functions.

(9) Nothing in this Order authorises or requires the Commissioner to question the merits of a decision taken without maladministration by a body to which this Article applies in the exercise of a discretion vested in that body.

(10) Paragraph (9) does not apply, in the case of a health and ^{F10}social care] body, to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.]

F9 1997 NI 14

F10 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), **Sch. 6 para. 1(1)(a)** (with [Sch. 6 para. 1\(2\)\(3\)](#)); S.R. 2009/114, **art. 2**

General ^{F11}health care] providers subject to investigation

8.—(1) This Article applies to persons if they are—

- (a) individuals undertaking to provide general medical services or general dental services under Part VI of the Health and Personal Social Services (Northern Ireland) Order 1972;
- (b) persons (whether individuals or bodies) undertaking to provide general ophthalmic services or pharmaceutical services under Part VI of that Order; or
- (c) individuals performing personal medical services or personal dental services in accordance with arrangements made under Article 15B of that Order (except as employees of, or otherwise on behalf of, a health and ^{F12}social care] body or an independent provider).

(2) In this Order—

- (a) references to a general ^{F11}health care] provider are to any person to whom this Article applies;
- (b) references to general ^{F11}health care] are to any of the services mentioned in paragraph (1).

(3) Where a general ^{F11}health care] provider has undertaken to provide any general ^{F11}health care], the Commissioner may, subject to the provisions of this Order, investigate—

- (a) any action taken by the general ^{F11}health care] provider in connection with the services;
- (b) any action taken in connection with the services by a person employed by the general ^{F11}health care] provider in respect of the services;
- (c) any action taken in connection with the services by a person acting on behalf of the general ^{F11}health care] provider in respect of the services; or
- (d) any action taken in connection with the services by a person to whom the general ^{F11}health care] provider has delegated any functions in respect of the services.

Para. (4) rep. by 2001 c. 3 (NI)

(5) The Commissioner may investigate any action taken as mentioned in paragraph (3) only if a complaint is made to the Commissioner in accordance with this Order by a person who claims to have sustained injustice in consequence of the action so taken with a request to conduct an investigation into it.

(6) Nothing in this Order authorises or requires the Commissioner to question the merits of a decision taken without maladministration by—

- (a) a general ^{F11}health care] provider;

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the The Commissioner for Complaints (Northern Ireland) Order 1996 (revoked). (See end of Document for details)

- (b) a person employed by a general [^{F11}health care] provider;
- (c) a person acting on behalf of a general [^{F11}health care] provider; or
- (d) a person to whom a general [^{F11}health care] provider has delegated any functions.

(7) Paragraph (6) does not apply to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.

Para. (8) rep. by 2001 c. 3 (NI)

- F11** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(b\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)
- F12** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, [art. 2](#)

Independent providers of health and [^{F13}social care] subject to investigation

8A.—(1) This Article applies to persons if—

- (a) they are persons (whether individuals or bodies) providing services (of any kind) under arrangements with health and [^{F13}social care] bodies or general [^{F14}health care] providers; and
- (b) they are not themselves health and [^{F13}social care] bodies or general [^{F14}health care] providers.

(2) In this Order references to an independent provider are to any person to whom this Article applies.

(3) Where an independent provider has made an arrangement with a health and [^{F13}social care] body or a general [^{F14}health care] provider to provide a service, the Commissioner may, subject to the provisions of this Order, investigate any action taken in relation to the service by—

- (a) the independent provider;
- (b) a person employed by the independent provider;
- (c) a person acting on behalf of the independent provider; or
- (d) a person to whom the independent provider has delegated any functions.

(4) The Commissioner may investigate any action taken as mentioned in paragraph (3) only if a complaint is made to the Commissioner in accordance with this Order by a person who claims to have sustained injustice in consequence of maladministration in connection with the action so taken with a request to conduct an investigation into it.

(5) Nothing in this Order authorises or requires the Commissioner to question the merits of a decision taken without maladministration by—

- (a) an independent provider;
- (b) a person employed by an independent provider;
- (c) a person acting on behalf of an independent provider; or
- (d) a person to whom an independent provider has delegated any functions.

(6) Paragraph (5) does not apply to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.

- F13** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, [art. 2](#)

F14 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(b\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

Matters not subject to investigation

9.—(1) The Commissioner shall not conduct an investigation under this Order in respect of any such actions or matters as are described in Schedule 3, otherwise than as authorised by the proviso to paragraph 2 of that Schedule.

(2) The Department may by order amend Schedule 3 so as to exclude from the provisions of that Schedule any such action or matter as is described in that order.

(3) Subject to paragraph (4) and to^{F15} section 78 of the Northern Ireland Act 1998], the Commissioner shall not conduct an investigation under this Order in respect of—

- (a) any action in respect of which the person aggrieved has or had a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or otherwise;
- (b) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in a court of law.

(4) The Commissioner may conduct an investigation—

- (a) notwithstanding that the person aggrieved has or had such a right or remedy as is mentioned in paragraph (3). if the Commissioner is satisfied that in the particular circumstances it is not reasonable to expect him to resort to or have resorted to it; or
- (b) notwithstanding that the person aggrieved had exercised such a right as is mentioned in paragraph (3)(a), if he complains that the injustice sustained by him remains unremedied thereby and the Commissioner is satisfied that there are reasonable grounds for that complaint.

(5) The Commissioner shall not conduct an investigation in respect of any action which has been, or is,^{F16} the subject of—

- ^{F16}(a) an inquiry under the Inquiries Act 2005, or
- (b) any such inquiry as is referred to in section 23 of the Interpretation Act (Northern Ireland) 1954 (inquiries and investigations)]

(6) Paragraph (7) applies where—

- (a) action by reference to which a complaint is made under Article 7, 8 or 8A is action by reference to which a complaint can be made under a procedure operated by a health and ^{F17}social care] body, a general ^{F18}health care] provider or an independent provider; and
- (b) paragraph (3) or (5) does not apply as regards the action.

(7) In such a case the Commissioner shall not conduct an investigation in respect of the action unless he is satisfied that—

- (a) the other procedure has been invoked and exhausted; or
- (b) in the particular circumstances it is not reasonable to expect that procedure to be invoked or (as the case may be) exhausted.

(8) The Commissioner shall not conduct an investigation in respect of any action taken by a health and ^{F17}social care] board in the exercise of its functions under regulations made under Articles 56, 61, 62 or 63 of the Health and Personal Social Services (Northern Ireland) Order 1972 by virtue of Article 10 of the Health and Medicines (Northern Ireland) Order 1988 (investigations of matters relating to services).

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the The Commissioner for Complaints (Northern Ireland) Order 1996 (revoked). (See end of Document for details)

- (9) The Commissioner shall not conduct an investigation in pursuance of a complaint if—
- (a) the complaint is in respect of any action taken in any matter relating to arrangements made by a health and [^{F17}social care] body and a general [^{F18}health care] provider for the provision of general [^{F18}health care];
 - (b) the action is taken by or on behalf of the body or by the provider; and
 - (c) the complaint is made by the provider or the body.

(10) Nothing in paragraph (9) prevents the Commissioner conducting an investigation in respect of any action taken by a health and [^{F17}social care] body in operating a procedure established to examine complaints.

F15 1998 c. 47

F16 2005 c. 12

F17 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, [art. 2](#)

F18 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(b\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

Provisions relating to complaints

10.—(1) A complaint under this Order may be made by any person other than—

- (a) a department;
- (b) a district council or other body constituted for the purposes of local government;
- (c) a body constituted for the purposes of—
 - (i) the public service; or
 - (ii) carrying on under national or public ownership any industry or undertaking or part thereof;
- (d) any other body—
 - (i) whose members are appointed by Her Majesty, a Minister of the Crown, a department of the Government of the United Kingdom, the head of a department or a department; or
 - (ii) whose revenues consist wholly or mainly of moneys appropriated by Measure or provided by the Parliament of the United Kingdom;
- (e) a member, at the time of the action complained of, of the body against which the complaint is made.

(2) Except as provided by paragraph (3), a complaint shall not be entertained under this Order unless made by the person aggrieved himself.

(3) Where the person by whom a complaint might have been, made under this Order—

- (a) has died; or
- (b) 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 [^{F19}body or] individual suitable to represent him.

(4) A complaint shall not be entertained under this Order unless made in such form and containing such particulars as may be prescribed by order made by the Department.

(5) A separate complaint shall be made under this Order in respect of each separate injustice alleged to have been sustained by the person aggrieved.

(6) Except as provided by paragraph (7), a complaint shall not be entertained under this Order unless it is made to the Commissioner not later than 12 months from the day on which the person aggrieved first had knowledge of the matters alleged in the complaint.

(7) The Commissioner may conduct an investigation pursuant to a complaint not made within the period mentioned in paragraph (6) if he considers that there are special circumstances which make it proper to do so.

(8) A complaint shall not be entertained under this Order unless—

- (a) the person aggrieved is resident in Northern Ireland or (if he is dead) was so resident at his death; or
- (b) the complaint relates to action taken in relation to the person aggrieved while he was present in Northern Ireland or in relation to rights or obligations which accrued or arose in Northern Ireland.

(9) Any question whether a complaint is duly made under this Order shall be determined by the Commissioner.

F19 1997 NI 14

[^{F20}Referral of complaint by health and [^{F21}social care] body

10A.—(1) A health and [^{F21}social care] body may itself refer to the Commissioner a complaint made to that body that a person has, in consequence of maladministration for which the body is responsible, sustained such injustice as is mentioned in Article 7(7).

(2) A complaint may not be so referred unless it was made—

- (a) in writing;
- (b) by the person aggrieved or by a person authorised by Article 10(3) to complain to the Commissioner on his behalf; and
- (c) not later than 12 months from the day on which the person aggrieved first had knowledge of the matters alleged in the complaint, or such later date as the Commissioner considers appropriate in any particular case.

(3) A health and [^{F21}social care] body may not refer a complaint under this Article after the period of 12 months from the day on which the body received the complaint.

(4) Any question whether a complaint has been duly referred to the Commissioner under this Article shall be determined by him.

(5) A complaint referred to the Commissioner under this Article shall be deemed to be duly made to him.]

F20 1997 NI 14

F21 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(a\)](#) (with [Sch. 6 para. 1\(2\)\(3\)](#)); S.R. 2009/114, [art. 2](#)

Purposes of investigation

11. The purposes of the investigation by the Commissioner shall be —

[^{F22}(a) to ascertain if the matters alleged in the complaint—

- (i) may properly warrant investigation by him under this Order; and
- (ii) are, in substance, true; and]

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the The Commissioner for Complaints (Northern Ireland) Order 1996 (revoked). (See end of Document for details)

- (b) where it appears to the Commissioner to be desirable—
- (i) to effect a settlement of the matter complained of; or
 - (ii) if that is not possible, to state what action should in his opinion be taken by the body concerned^[F22], the general ^[F23]health care] provider concerned or the independent provider concerned (as the case may be)] to effect a fair settlement of that matter or by that body^[F22] or provider] or by the person aggrieved to remove, or have removed, the cause of the complaint.

F22 1997 NI 14

F23 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(b\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

Procedure in respect of investigations

12.—(1) In determining whether to initiate, continue or discontinue an investigation under this Order, the Commissioner shall, subject to the foregoing provisions, act in accordance with his own discretion.

(2) Where the Commissioner proposes to conduct an investigation pursuant to a complaint under this Order—

(a) he shall furnish to—

- (i) the body concerned^[F24], the general ^[F25]health care] provider concerned or the independent provider concerned (as the case may be)]; and
- (ii) any person who is alleged in the complaint to have taken or authorised the action complained of or who is otherwise involved in allegations made in the complaint,

information as to the allegations made in the complaint so far as they relate to that body^[F24] or provider] or (as the case may be) to that person and the substance of any evidence which the Commissioner has reason to believe may be tendered in support of those allegations; and

(b) he shall afford to every such body^[F24], provider] or person an opportunity to comment on any allegations made in the complaint and to furnish oral or other evidence respecting them.

(3) Every investigation under this Order shall be conducted in private.

(4) Except as otherwise provided by this Order, the procedure for conducting an investigation shall be such as the Commissioner considers appropriate in the circumstances of the case.

(5) The Commissioner may obtain information from such persons and in such manner, and make such enquiries, as he thinks fit.

(6) Subject to paragraphs (7) and (8), the Commissioner shall not be obliged to hold any hearing, and no person shall be entitled as of right to be heard by the Commissioner.

(7) If at any time during the course of an investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect any body or person, the Commissioner shall give to that body or person, if it or he so desires—

- (a) the opportunity of being examined by its or his own solicitor or counsel; and
- (b) the opportunity of testing by cross-examination, by its or his own solicitor or counsel or otherwise, any evidence which may affect it or him.

(8) Where the opportunities mentioned in paragraph (7) are given to a person other than the person aggrieved, the like opportunities shall be given to the person aggrieved.

(9) 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 Order—

- (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 the Department may determine.

(10) An investigation^[F24] pursuant to a complaint under Article 7] shall not affect—

- (a) any action taken by the body concerned or by any department or head of a department with respect to that body; or
- (b) any power or duty of that body, department or head of a department to take further action with respect to any matters subject to the investigation.

^[F24](11) An investigation pursuant to a complaint under Article 8 to 8A shall not affect any action taken by the general ^[F25]health care] provider or independent provider concerned, or any power or duty of that provider to take further action with respect to any matters subject to the investigation.]

F24 1997 NI 14

F25 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(b\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

Evidence

13.—(1) For the purposes of an investigation under this Order the Commissioner may require any 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 an investigation under this Order the Commissioner shall have the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses, including the administration of oaths or affirmations and the examination of witnesses abroad; and
- (b) the production of documents.

(3) A person shall not be compelled for the purposes of any investigation under this Order to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings in the High Court.

Obstruction and contempt

14.—(1) If any person without lawful excuse—

- (a) obstructs the Commissioner or any officer of the Commissioner in the performance of his functions under this Order; or
- (b) is guilty of any act in relation to an investigation under this Order which, if that investigation were a proceeding in the High Court, would constitute contempt of court,

the Commissioner may certify the offence to the High Court.

(2) Where an offence is certified under this Article, the High Court may inquire into the matter and, after hearing—

- (a) any witnesses who may be produced against or on behalf of the person charged with the offence; and
- (b) any statement that may be offered in defence,

may deal with the person charged with the offence in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

(3) This Article does not apply to the taking of any action mentioned in Article 12(10)^[F26] or (11)].

F26 1997 NI 14

^[F27]Reports on investigations

15.—(1) In any case where the Commissioner conducts an investigation pursuant to a complaint under Article 7 relating to action taken by or on behalf of any body other than a health and ^[F28]social care] body, he shall send a report of the results of the investigation—

- (a) to the person who made the complaint;
- (b) to the body concerned; and
- (c) to any person who is alleged in the complaint to have taken or authorised the action complained of or otherwise to be involved in the allegations made in the complaint.

(2) In any case where the Commissioner conducts an investigation pursuant to a complaint made under Article 7 relating to action taken by or on behalf of a health and ^[F28]social care] body, he shall send a report of the results of the investigation—

- (a) to the person who made the complaint;
- (b) to the health and ^[F28]social care] body which at the time the report is made has the function in relation to which the complaint was made;
- (c) to any person who is alleged in the complaint to have taken or authorised the action complained of or otherwise to be involved in the allegations made in the complaint.

(3) In any case where the Commissioner conducts an investigation pursuant to a complaint under Article 8 he shall send a report of the results of the investigation—

- (a) to the person who made the complaint;
- (b) to any person by reference to whose action the complaint is made;
- (c) to the general ^[F29]health care] provider concerned (if that provider does not fall within subparagraph (b)); and
- (d) to any health and ^[F28]social care] body with whom the general ^[F29]health care] provider concerned is subject to an undertaking to provide general ^[F29]health care].

(4) In any case where the Commissioner conducts an investigation pursuant to a complaint under Article 8A he shall send a report of the results of the investigation—

- (a) to the person who made the complaint;
- (b) to any person who is alleged in the complaint to have taken or authorised the action complained of;
- (c) to the independent provider concerned; and
- (d) to the health and ^[F28]social care] body or general ^[F29]health care] provider with whom the independent provider concerned made the arrangement to provide the service concerned.

(5) In any case where the Commissioner decides not to conduct an investigation pursuant to a complaint under Article 7, 8 or 8A he shall send a statement of his reasons for not conducting an investigation to the person who made the complaint.]

F27 1997 NI 14

- F28** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with [Sch. 6 para. 1\(2\)\(3\)](#)); S.R. 2009/114, [art. 2](#)
- F29** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(b\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

Application for compensation by person aggrieved

16.—(1) Where on an investigation^{F30} pursuant to a complaint under Article 7] the Commissioner reports that a person aggrieved has sustained injustice in consequence of maladministration, the county court may, on an application by that person, by order award that person damages to be paid by the body concerned.

(2) An application to the county court under this Article shall be made in accordance with county court rules and upon notice to the body concerned.

(3) Damages awarded under this Article shall be such as the county court may think just in all the circumstances to compensate the person aggrieved for any loss or injury which he may have suffered on account of—

- (a) expenses reasonably incurred by him in connection with the subject matter of the maladministration on which his complaint was founded; and
- (b) his loss of opportunity of acquiring the benefit which he might reasonably be expected to have had but for such maladministration.

(4) In calculating the amount of damages to be awarded by virtue of paragraph (3)(b) the county court shall apply the same rule concerning the duty of a person to mitigate his loss as applies in relation to damages recoverable at common law.

(5) Where on an application to the county court under this Article it appears to the court that justice could only be done to the person aggrieved by directing the body concerned to take, or refrain from taking, any particular action, the court may, if satisfied that in all the circumstances it is reasonable to do so, make an order containing such a direction.

(6) Where an order under paragraph (5) is duly served on the body concerned, disobedience to that order by that body or any member or officer of that body may be treated as a contempt of court to which Article 55 of the County Courts (Northern Ireland) Order 1980 applies.

(7) Without prejudice to Articles 61 and 65 of that Order, the body concerned or person aggrieved may, if dissatisfied with an order of the county court under this Article, appeal from that order as if it had been made in the exercise of the jurisdiction conferred by Part III of that Order and the appeal were brought under Article 60 of that Order.

(9) The powers conferred on a county court by this Article may be exercised notwithstanding anything to the contrary in any statutory provision which imposes limitations on its jurisdiction by reference to an amount claimed or to the value of property.

F30 1997 NI 14

Application to High Court for relief following report by Commissioner

17.—(1) This Article applies where on an investigation^{F31} pursuant to a complaint under Article 7] the Commissioner reports that a person aggrieved has sustained injustice in consequence of maladministration and it appears to the Commissioner (whether or not so stated in his report) that—

- (a) the body concerned had previously engaged in conduct which was of the same kind as, or of a similar kind to, that which amounted to such maladministration; and

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the The Commissioner for Complaints (Northern Ireland) Order 1996 (revoked). (See end of Document for details)

(b) that body is likely, unless relief is granted by the High Court under this Article, to engage in future in such conduct.

(2) Where this Article applies the Attorney General may, at the request of the Commissioner, apply to the High Court for the grant of relief under this Article.

(3) On an application under this Article the High Court may, if satisfied as to the matters mentioned in sub-paragraphs (a) and (b) of paragraph (1), grant such mandatory or other injunction or such declaration or other relief as appears to the court to be proper in all the circumstances, including an injunction restraining the body concerned or any member or officer of that body from engaging in, or causing or permitting others to engage in, conduct of the same kind as that which amounted to maladministration or conduct of any similar kind specified by the court.

(4) The High Court may in determining for the purposes of an application under this Article whether a body has engaged in a course of conduct, take into account not only the action investigated by the Commissioner on the complaint of the person aggrieved but also any other action whether or not the subject of an investigation by the Commissioner which appears to the court to be relevant.

F31 1997 NI 14

Supplementary provisions in relation to proceedings under Article 16 or 17

18.—(1) For the purpose of any proceedings under Article 16 or 17—

- (a) a recommendation of the Commissioner and any report of the Commissioner relating to the complaint in connection with which the recommendation is made shall, unless the contrary is proved, be accepted as evidence of the facts stated therein; and
- (b) the authenticity of any such recommendation or report may be proved by production of a certificate of its authenticity signed by the Commissioner or an officer of the Commissioner.

(2) Nothing in Article 16 or 17 affects the right to bring any proceedings, whether civil or criminal, which may be brought otherwise than under those Articles.

Reports to the Assembly

19. The Commissioner shall annually lay before the Assembly a general report on the performance of his functions under this Order and may from time to time lay such other reports before the Assembly as he thinks fit.

Privilege for certain publications

20. For the purposes of the law of defamation, the publication by the Commissioner or his officers of any matter which the Commissioner is required or authorised to publish under this Order shall be absolutely privileged.

Disclosure of information by Commissioner

21.—(1) Information obtained by the Commissioner or his officers in the course of, or for the purposes of, an investigation under this Order shall not be disclosed except^{F32} as permitted by paragraph (1B) or] for the purposes of—

- (a) the investigation and any report to be made thereon under this Order;
- (b) any proceedings for an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of this Order;

- (c) any proceedings for an offence of perjury alleged to have been committed in the course of an investigation under this Order;
- (d) an inquiry with a view to the taking of proceedings of the kind mentioned in subparagraphs (b) and (c); or
- (e) any proceedings under Article 14, 16 or 17.

Para. (1A) rep. by 2001 c. 3 (NI)

[^{F33}(1B) Where information is to the effect that any person ("the subject") is likely to constitute a threat to the health or safety of any other person ("the person at risk"), the Commissioner may disclose that information to any person to whom the Commissioner thinks it should be disclosed in the interests of the health or safety of the person at risk.

(1C) If the Commissioner discloses information as permitted by paragraph (1B) he shall—

- (a) where he knows the identity of the subject, inform the subject—
 - (i) that he has disclosed the information; and
 - (ii) of the identity of any person to whom he has disclosed it; and
- (b) inform the person from whom the information was obtained that he has disclosed it.]

(2) The Commissioner and his officers[^{F32} and advisors] shall not be called upon to give evidence in any proceedings (other than the proceedings mentioned in paragraph (1)(b) or (c) or proceedings in the High Court under Article 14 or 17) of matters coming to his or their knowledge in the course of an investigation under this Order.

[^{F32}(2A) The reference in paragraph (2) to the Commissioner's advisors is a reference to persons from whom the Commissioner obtains advice under Article 6(1A).]

(3) The Secretary of State or the head of a department 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 his opinion the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of Northern Ireland or the United Kingdom or otherwise contrary to the public interest.

(4) Where a notice is given under paragraph (3) nothing in this Order shall authorise or require 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.

[^{F34}(5) 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 paragraph (1) as obtained for the purposes of an investigation under this Order and, in relation to such information, the reference in paragraph (1)(a) to the investigation shall have effect as a reference to any investigation.]

F32 1997 NI 14

F33 2001 c. 3 (NI)

F34 2000 c. 36

[^{F35}Disclosure of information to Information Commissioner

21A.—(1) The Commissioner may disclose to the Information Commissioner any information obtained by, or furnished to, the Commissioner under or for the purposes of this Order if the information appears to the Commissioner to relate to—

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

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the The Commissioner for Complaints (Northern Ireland) Order 1996 (revoked). (See end of Document for details)

- (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 Article 21(1) applies in relation to the disclosure of information in accordance with this Article.]

F35 2000 c. 36

Supplementary provisions

Orders

22.—(1) The Department may make provision by order for any matter appearing to it to be necessary or desirable for carrying out effectively the intent or purpose of this Order.

(2) Orders made by the Department under this Order shall be subject to negative resolution.

Amendments, repeals and transitional and saving provisions

Para. (1) rep. by 1998 c. 47

Para. (2)—Repeals

(3) Any order made by the Secretary of State under the Salaries (Comptroller and Auditor-General and Others) (Northern Ireland) Order 1973 and in operation immediately before the coming into operation of this Order shall, in so far as it relates to the Northern Ireland Commissioner for Complaints, have effect as if made by the Department under Article 4(1).

(4) Any order made under section 13(1)(e) of the Commissioner for Complaints Act (Northern Ireland) 1969 and in operation immediately before the coming into operation of this Order shall have effect as if made under Article 10(4).

(5) A complaint may be made under this Order in respect of matters which arose before as well as after the coming into operation of this Order.

Status:

Point in time view as at 01/04/2009.

Changes to legislation:

There are currently no known outstanding effects for the The Commissioner for Complaints (Northern Ireland) Order 1996 (revoked).