

COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 7: Carrying out investigations

38. Subsection (1) gives the Commissioner a power to carry out investigations into how the rights, interests and views of children and young people are taken into account in decisions or actions affecting them.
39. Such investigations can be carried out in relation to the actions of service providers. Section 16 makes it clear that “service provider” 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. Section 16 also makes it clear that parents carrying out their parental responsibilities are not service providers. However, the Act ensures that local authorities to whom parental responsibilities have been transferred are treated as service providers by referring to sections 1 and 2 of the [Children \(Scotland\) Act 1995 \(c.36\)](#) which apply only to natural persons.
40. Investigations can concern a single service provider or a group of service providers. For example, an investigation could consider the way rights, interests and views are considered by a single local authority, or by local authorities in general.
41. Before the Commissioner can carry out an investigation he or she must be satisfied on reasonable grounds that the conditions set out in subsections (2)(a) and (2)(b) have been met.
42. In coming to a view in that regard the Commissioner must consider information available about the issue. This might include research findings, consultation exercises and the experiences of individuals. The Commissioner must also consider any other information which is received by him or her.
43. Subsection (2)(a) requires that an issue for investigation must be of significance to children and young people. This is an area in which the views of children and young people will inform the work of the Commissioner. For example, the Commissioner may consult children and young people before launching an investigation. It could be an issue that affects a particular group of children – such as children with disabilities or “looked after” children, or children in a particular institution.
44. Ultimately, it is for the Commissioner to decide whether something is significant enough to be investigated provided that he or she has reasonable grounds upon which to do so.

45. Subsection (2)(b) prevents the Commissioner from duplicating the investigatory functions of other bodies. The Commissioner has a very broad remit which covers general areas, some of which are also covered by the remit of other bodies. This provision means that the Commissioner will not be able to investigate a service provider's standards towards children if these are already regulated and inspected by other bodies. However, the Commissioner could investigate the way in which children's rights, interests and views are taken into account by the service provider generally – but only if this was not an issue already addressed in existing regulatory arrangements. The Commissioner could investigate the way in which the regulatory body itself takes children's rights, interests and views into account.
46. Subsection (3) places three further restrictions on the matters which may be subject to investigations. Firstly, the Commissioner can only investigate issues which relate to devolved matters. Secondly, an investigation must be concerned with children generally or a group of children. This prevents the Commissioner from investigating the case of an individual child or young person. This does not prevent, however, the Commissioner using examples of individual cases to inform an investigation. Thirdly, the Commissioner is prevented from undertaking an investigation into matters currently before courts or tribunals or into the decisions made by these bodies.
47. This third restriction prevents the Commissioner from impinging on current legal proceedings and investigating judicial decisions that have been made. It also prevents consideration of actions made under judicial directions by e.g. court staff. It does not prevent the Commissioner from investigating generic issues such as matters of structure or procedure, for example how child witnesses are treated generally by courts and tribunals.