
DRAFT STATUTORY INSTRUMENTS

2003 No.

**The Commissioner for Children and Young
People (Northern Ireland) Order 2003**

Functions of the Commissioner

Duties of the Commissioner

7.—(1) The Commissioner shall promote—

- (a) an understanding of the rights of children and young persons;
- (b) an awareness of the importance of those rights and a respect among children and young persons for the rights of others; and
- (c) an awareness of matters relating to the best interests of children and young persons.

(2) The Commissioner shall keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons.

(3) The Commissioner shall keep under review the adequacy and effectiveness of services provided for children and young persons by relevant authorities.

(4) The Commissioner shall advise the Secretary of State, the Executive Committee of the Assembly and a relevant authority on matters concerning the rights or best interests of children and young persons—

- (a) as soon as reasonably practicable after receipt of a request for advice; and
- (b) on such other occasions as the Commissioner thinks appropriate.

(5) The Commissioner shall take reasonable steps to ensure that—

- (a) children and young persons and their parents are made aware of—
 - (i) the functions of the Commissioner;
 - (ii) the location of the Commissioner's office; and
 - (iii) the ways in which they may communicate with the Commissioner;
- (b) children and young persons are encouraged to communicate with the Commissioner;
- (c) the content of any matter published by the Commissioner takes account, so far as practicable, of the age, understanding and usual language of any children or young persons by whom it is intended that such matter will be read and of the effect of any disabilities they may have;
- (d) the views of children and young persons and their parents are sought concerning the exercise by the Commissioner of his functions;
- (e) the services of the Commissioner are, so far as practicable, made available to children and young persons in the locality in which they live.

General powers of the Commissioner

8.—(1) The Commissioner may undertake, commission or provide financial or other assistance for research or educational activities concerning the rights or best interests of children and young persons or the exercise of his functions.

(2) The Commissioner may, after consultation with such bodies or persons as he thinks appropriate, issue guidance on best practice in relation to any matter concerning the rights or best interests of children and young persons.

(3) The Commissioner may, for the purposes of any of his functions, conduct such investigations as he considers necessary or expedient.

(4) If the Commissioner so determines, Schedule 3 shall apply in relation to an investigation conducted by the Commissioner for the purposes of his functions under Article 7(2) or (3).

(5) The Commissioner may—

- (a) compile information concerning the rights or best interests of children and young persons;
- (b) provide advice or information on any matter concerning the rights or best interests of children and young persons;
- (c) publish any matter concerning the rights or best interests of children and young persons, including—
 - (i) the outcome of any research or activities mentioned in paragraph (1);
 - (ii) the outcome of any investigations conducted under paragraph (3);
 - (iii) any advice provided by the Commissioner.

(6) The Commissioner may make representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons.

General review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities

9.—(1) This Article and Article 10 apply to the following arrangements of a relevant authority—

- (a) advocacy arrangements, that is to say arrangements for making persons available—
 - (i) to represent the views, wishes, needs and interests of children or young persons in relation to whom any functions of the authority are exercisable; and
 - (ii) to provide such children and young persons—
 - (A) with information, advice and support to enable or assist them to express their views and wishes to the authority; and
 - (A) with advice about their rights and best interests;
- (b) complaint arrangements, that is to say arrangements for dealing with complaints made to the authority by children and young persons about actions taken in relation to them by that or another relevant authority;
- (c) inspection arrangements, that is to say arrangements for examining the state and management of, and the treatment of children or young persons on, any premises managed by that or another relevant authority in which—
 - (i) a child or young person is living or being looked after;
 - (ii) a child or young person is being detained under any statutory provision; or
 - (iii) education, health, welfare or other services are provided for children or young persons; and

- (d) whistle-blowing arrangements, that is to say arrangements for ensuring that proper action is taken in response to any disclosure of information which may tend to show—
- (i) that a criminal offence has been committed;
 - (ii) that a person has failed to comply with any legal obligation to which he is subject;
 - (iii) that the health and safety of any child or young person has been endangered;
 - (iv) that the rights of any child or young person have been infringed; or
 - (v) that any matter falling within one of the preceding sub-paragraphs has been deliberately concealed,

in the course of, or in connection with, the exercise by the relevant authority of any of its functions in relation to children or young persons.

(2) Subject to paragraphs (3) and (4), the Commissioner may review the operation of any arrangements to which this Article applies for the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the rights and best interests of children and young persons.

(3) The Commissioner shall not exercise his power under paragraph (2) in relation to any arrangements made by a relevant authority unless he has reasonable grounds to believe that—

- (a) the arrangements in question are ineffective in safeguarding and promoting the rights and best interests of children and young persons; or
- (b) those arrangements have not been operated, or have been operated incorrectly.

(4) The Commissioner shall not review the operation of the inspection arrangements made by a relevant authority unless he is satisfied that no other body or person has power under any statutory provision to review those arrangements.

(5) Where a relevant authority has failed to make any arrangements of a kind mentioned in paragraph (1), the Commissioner may assess the effect of that failure on children and young persons.

(6) The power conferred by this Article to review the operation of any arrangements includes power to review the failure of any such arrangements to operate.

(7) If the Commissioner so determines, Schedule 3 shall apply in relation to an investigation conducted by the Commissioner for the purposes of his functions under this Article in relation to a relevant authority listed in Part II of Schedule 1.

Review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities in individual cases

10.—(1) Subject to paragraphs (2) and (3), the Commissioner may review the operation of any arrangements to which this Article applies in the case of a particular child or young person (or, as regards inspection arrangements, in the case of any particular premises).

(2) The Commissioner shall not exercise his power under paragraph (1) in relation to the operation of any arrangements made by a relevant authority in the case of a particular child or young person unless he has reasonable grounds to believe that—

- (a) the arrangements in question were ineffective in safeguarding and promoting the rights and best interests of the child or young person concerned; or
- (b) those arrangements did not operate, or were operated incorrectly, in relation to the child or young person concerned.

(3) The Commissioner shall not review the operation of the inspection arrangements made by a relevant authority unless he is satisfied that no other body or person has power under any statutory provision to review those arrangements.

(4) The power conferred by paragraph (1) to review the operation of any arrangements includes power to review the failure of any such arrangements to operate.

(5) Where a relevant authority has failed to make any arrangements of a kind mentioned in paragraph (1), the Commissioner may assess the effect of that failure on any particular child or young person.

Assistance with complaints to relevant authorities

11.—(1) Subject to paragraph (3), the Commissioner may provide assistance (including financial assistance) to a child or young person in making a complaint to a relevant authority—

- (a) that the rights of the child or young person have been infringed by any action taken by that or another relevant authority; or
- (b) that the interests of the child or young person have been adversely affected by any such action.

(2) Subject to paragraph (4), the Commissioner may act on behalf of a child or young person in—

- (a) making such a complaint to a relevant authority; and
- (b) any investigation or other proceedings conducted by that authority pursuant to the complaint.

(3) The Commissioner shall not provide any assistance to a child or young person under paragraph (1) unless it appears to the Commissioner that there is no other person or body likely to provide such assistance.

(4) The Commissioner shall not take any action on behalf of a child or young person under paragraph (2) unless it appears to the Commissioner that there is no other person or body likely to take such action.

(5) Where the making of a complaint to a relevant authority is regulated by a statutory provision, nothing in this Article authorises a complaint to be made to that authority otherwise than in accordance with that provision.

Investigation of complaints against relevant authorities

12.—(1) Subject to paragraph (2) and Article 13, the Commissioner may conduct an investigation into a complaint made by a child or young person—

- (a) that his rights have been infringed by any action taken by a relevant authority; or
- (b) that his interests have been adversely affected by any such action.

(2) The Commissioner shall not exercise his power under paragraph (1) in relation to a complaint unless he is satisfied that—

- (a) the complaint raises a question of principle; and
- (b) the complaint does not fall within an existing statutory complaints system.

(3) For the purposes of paragraph (2), a complaint falls within an existing statutory complaints system if a statutory provision confers power on a person to make the complaint to a body or person and—

- (a) that body or person has power under a statutory provision to investigate the complaint; or
- (b) that body or person would have power under a statutory provision to investigate the complaint but for some exclusion or restriction in that statutory provision.

(4) Where the Commissioner decides not to conduct an investigation into a complaint made under paragraph (1), he shall prepare a statement of his reasons for that decision and shall send a copy of the statement to—

- (a) the complainant; and
- (b) such other persons (if any) as the Commissioner considers appropriate.

Actions which may be investigated: restrictions and exclusions

13.—(1) The Commissioner shall not conduct an investigation in respect of any action in respect of which the complainant has or had—

- (a) a right of appeal, complaint, reference or review to or before a tribunal constituted under any statutory provision or otherwise; or
- (b) a remedy by way of proceedings in any court,

unless the Commissioner is satisfied that, in the particular circumstances, it is not reasonable to expect the complainant to resort to or have resorted to the right or remedy.

(2) The Commissioner shall not conduct an investigation in respect of—

- (a) the commencement before any court in the United Kingdom of—
 - (i) any criminal proceedings; or
 - (ii) any civil proceedings by any person other than a relevant authority;
- (b) the conduct of any civil or criminal proceedings before any court in the United Kingdom; or
- (c) the commencement or conduct of any proceedings before any international court or tribunal.

(3) The Commissioner shall not conduct an investigation in respect of any action which is, or has been, the subject of a local or public inquiry.

(4) The Commissioner shall not conduct an investigation into a complaint if it appears to the Commissioner that there has been an unreasonable delay in making the complaint to the Commissioner.

Power to bring, intervene in or assist in legal proceedings

14.—(1) Subject to the following provisions of this Article, the Commissioner may in any court or tribunal—

- (a) bring proceedings (other than criminal proceedings) involving law or practice concerning the rights or welfare of children or young persons;
- (b) intervene in any proceedings involving law or practice concerning the rights or welfare of children or young persons;
- (c) act as *amicus curiae* in any such proceedings.

(2) An intervention under paragraph (1)(b) shall not be made except—

- (a) with the leave of the court or tribunal; and
- (b) in accordance with any such provision as may be made by the rules regulating the practice and procedure of the court or tribunal.

(3) The Commissioner shall not bring or apply to intervene in proceedings unless he is satisfied that—

- (a) the case raises a question of principle; or
- (b) there are other special circumstances which make it appropriate for the Commissioner to do so.

Assistance in relation to legal proceedings

15.—(1) This Article applies to—

- (a) proceedings involving law or practice concerning the rights or welfare of children or young persons which a child or young person has commenced, or wishes to commence; or
- (b) proceedings in the course of which a child or young person relies, or wishes to rely, on such law or practice.

(2) Where the child or young person applies to the Commissioner for assistance in relation to proceedings to which this Article applies, the Commissioner may, subject to paragraph (3), grant the application if he is satisfied that—

- (a) the case raises a question of principle;
- (b) it would be unreasonable to expect the child or young person to deal with the case without assistance because of its complexity, or because of his position in relation to another person involved, or for some other reason; or
- (c) there are other special circumstances which make it appropriate for the Commissioner to provide assistance.

(3) The Commissioner shall not grant an application for assistance under paragraph (2) unless it appears to him that there is no other person or body likely to provide such assistance.

(4) Where the Commissioner grants an application under paragraph (2) he may arrange for the provision of legal advice or representation and any other assistance which he thinks appropriate.

(5) Arrangements made by the Commissioner for the provision of assistance to a child or young person may, if the Commissioner thinks it reasonable in the circumstances, include provision for recovery of expenses from the child or young person.