

CHILDREN ACT 2004

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 - Children's Commissioner

Section 3: Inquiries initiated by the Commissioner

35. This section permits the Commissioner to initiate inquiries into individual cases that meet certain criteria. It applies to all matters relating to children in England.
36. *Subsections (1) and (2)* set out the criteria that the Commissioner must consider before starting an inquiry. The case concerned must raise issues of public policy that would be relevant to other children. This would for example mean that the Commissioner could hold an inquiry into the case of a child in a children's home or a residential school if the issues involved were relevant in general to children in such an establishment, but not if they were only relevant to children in that particular establishment. The Commissioner must satisfy himself that an inquiry would not duplicate the work that was the function of another person and to this end he must consult others who might have such a function. The Commissioner could carry out an inquiry if after conducting the appropriate consultation he had established that a person who might carry out an inquiry was not going to do so; or that his inquiry would be looking at an aspect of a case which was different from the aspect that someone else's inquiry would look at so his inquiry would not amount to a duplication of work. The aim of the inquiry must be to investigate the public policy issues arising from the case and make recommendations relating to them.
37. *Subsection (3)* requires the Commissioner to consult the Secretary of State before holding an inquiry. The Secretary of State may offer guidance, but has no power to veto an inquiry: the final decision is for the Commissioner. *Sub-section (4)* allows the Commissioner to decide whether to hold all or part of an inquiry in private.
38. *Subsection (5)* requires the Commissioner to publish a report and send a copy of it to the Secretary of State as soon as possible after completing the report. *Subsection (6)* permits the Commissioner to protect a child's identity in the inquiry report.
39. *Subsection (7)* gives the Commissioner the power to follow up recommendations made by him in any report he produces after conducting an inquiry that he himself has initiated. Bodies with statutory functions that are subject to recommendations must inform the Commissioner, in writing, in any time period dictated by the Commissioner, what action they are taking or proposing to take in response to these recommendations.
40. *Subsection (8)* gives the Commissioner a range of powers to assist him in carrying out an inquiry under this section. By virtue of the application of subsections (2) and (3) of section 250 of the Local Government Act 1972 the Commissioner will, when conducting an inquiry in England, be able to summons people to attend to give evidence or to produce documents and to administer oaths and take evidence on oath and it will be an offence to disobey a summons by for example refusing to give evidence or by tampering with documentary evidence.