

2003 No. 439 (N.I. 11)

NORTHERN IRELAND

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

Made - - - - - 27th February 2003

*Coming into operation in accordance with Article
1(2) and (3)*

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At the Court at Buckingham Palace, the 27th day of February 2003

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order in Council has been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c.1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Commissioner for Children and Young People (Northern Ireland) Order 2003.

(2) The following provisions of this Order come into operation two weeks after the day on which this Order is made—

- (a) this Article; and
- (b) Articles 2 to 5 (together with Schedules 1 and 2).

(3) The other provisions of this Order come into operation on such day or days as the Office may by order appoint.

(4) An order under paragraph (3) may contain such transitional provisions as appear to the Office to be appropriate.

Interpretation: general

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c.33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

“action” includes failure to act;

“advocacy arrangements”, “complaint arrangements”, “inspection arrangements” and “whistle-blowing arrangements” have the meanings given by Article 9(1);

“the Commissioner” means the Commissioner for Children and Young People for Northern Ireland;

“the complainant”, in relation to a formal investigation into a complaint under Article 12(1), means the child or young person by whom the complaint was made;

“formal investigation” means an investigation under Article 16;

“general health services provider” has the meaning given in paragraph 1 of Schedule 1 and references to general health services are to any of the services mentioned in that paragraph;

“health and social services body” means any of the following bodies—

- (a) a Health and Social Services Board;
- (b) a Health and Social Services trust;
- (c) the Mental Health Commission for Northern Ireland;
- (d) the Northern Ireland Central Services Agency for the Health and Social Services;
- (e) a special health and social services agency;

“independent provider” has the meaning given in paragraph 2 of Schedule 1.

“information” includes information recorded in any form;

“notice” means notice in writing;

“the Office” means the Office of the First Minister and deputy First Minister;

“parent” includes a person who has parental responsibility for a child (within the meaning of the Children (Northern Ireland) Order 1995 (NI 2));

“practice” includes policy;

“statutory provision” has the same meaning as in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c.33).

(3) For the purposes of this Order—

- (a) the reference in Article 6(3) to the United Nations Convention on the Rights of the Child is a reference to the Convention of that name adopted by General Assembly resolution 44/25 of 20th November 1989 and ratified by the United Kingdom on 16th December 1991;
- (b) that Convention has effect subject to any reservation of the United Kingdom for the time being in force.

Interpretation: “child or young person”

3.—(1) In this Order “child or young person” means —

- (a) a person under the age of 18; and
- (b) a person aged 18 or over who falls within paragraph (2) or (3).

(2) A person falls within this paragraph if he is a person to or in respect of whom services are provided by, or on behalf of, or under arrangements made with, a Health and Social Services Board or a Health and Social Services trust by virtue of—

- (a) Article 34D, 35, 35A or 35B of the Children (Northern Ireland) Order 1995 (NI 2) (which provide for the continuing duties of those bodies towards young persons); or
- (b) regulations made under Article 34E of that Order (which may provide for the appointment of personal advisers for certain young persons).

(3) A person falls within this paragraph if—

- (a) he is under the age of 21 years; and
- (b) he is a disabled person within the meaning of the Disability Discrimination Act 1995 (c.50).

(4) Anything which is required or authorised by this Order to be done by a child or young person may be done by his parent or any other person acting on his behalf; and references in this Order to things done by a child or young person include references to things done on behalf of the child or young person.

(5) References in this Order to a child or young person in relation to any legal proceedings include references to a parent or any other person acting on behalf of the child or young person for the purposes of those proceedings.

(6) If, in the case of any adult, there are in the opinion of the Commissioner exceptional circumstances which make it appropriate to do so, the Commissioner may direct that paragraph (7) shall apply in relation to the adult.

(7) Where this paragraph applies in relation to an adult, then—

- (a) anything which is required or authorised by this Order to be done by a child or young person may be done by the adult if it relates to any action taken in relation to him at a time when he was a child or young person; and
- (b) anything which is required or authorised by this Order to be done by the Commissioner in relation to a child or young person may be done in relation to the adult if it relates to any action taken as mentioned in sub-paragraph (a).

(8) In paragraphs (6) and (7) “adult” means a person who is not a child or young person.

Interpretation: “relevant authority”

4.—(1) In this Order “relevant authority” means—

- (a) any body (other than the Office of the Commissioner) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7) (bodies subject to investigation);
- (b) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (NI 8) (departments and other authorities subject to investigation); and
- (c) any body or person listed in Schedule 1.

(2) The Office may by order amend Schedule 1 so as to—

- (a) add a body or person to that Schedule;
- (b) remove a body or person from that Schedule;
- (c) modify any entry in that Schedule; or
- (d) move a body or person from one Part of that Schedule to the other Part.

(3) No order may be made under paragraph (2) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) An order under paragraph (2) may contain such transitional provisions as the Office thinks appropriate.

(5) An order under paragraph (2) which adds a body or person to Schedule 1 may provide for this Order to apply to that person or body subject to such modifications or exceptions as are specified in the order.

(6) In this Order “relevant authority concerned” means—

- (a) in relation to an investigation for the purposes of the Commissioner's functions under Article 7(2) or (3), a relevant authority mentioned in the terms of reference produced for that investigation under paragraph 2(2)(a) of Schedule 3;
 - (b) in relation to an investigation for the purposes of the Commissioner's functions under Article 9 or 10, the relevant authority in relation to which the investigation is to be, is being, or (as the case may be) has been conducted; and
 - (c) in relation to a formal investigation into a complaint under Article 12(1), the relevant authority against which the complaint was made.
- (7) In this Order any reference to action taken by a relevant authority includes a reference to action taken by—
- (a) a member or committee of the authority (if it is a body);
 - (b) an officer or member of staff of the authority;
 - (c) any person acting on behalf of the authority;
 - (d) any person to whom the authority has delegated functions.

The Commissioner

The Commissioner for Children and Young People for Northern Ireland

5.—(1) There shall be an officer known as the Commissioner for Children and Young People for Northern Ireland.

(2) The Commissioner shall be appointed by the First Minister and deputy First Minister acting jointly.

(3) Schedule 2 has effect in relation to the Commissioner.

Principal aim of the Commissioner

6.—(1) The principal aim of the Commissioner in exercising his functions under this Order is to safeguard and promote the rights and best interests of children and young persons.

(2) In determining whether and, if so, how to exercise his functions under this Order in relation to any particular child or young person—

- (a) the Commissioner's paramount consideration shall be the rights of the child or young person; and
- (b) the Commissioner shall have regard in particular to the ascertainable wishes and feelings of the child or young person (considered in the light of his age and understanding);

but, in his dealings with any body or person under this Order, the Commissioner shall at all times have regard to any statutory provision or rule of law which authorises or requires that body or person to act in a particular manner or authorises or requires that body or person to have regard to any consideration other than that mentioned in subparagraph (a).

(3) In determining whether and, if so, how to exercise his functions under this Order, the Commissioner shall have regard to—

- (a) the importance of the role of parents in the upbringing and development of their children; and
- (b) any relevant provisions of the United Nations Convention on the Rights of the Child.

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.

Formal investigations

Formal investigations

16.—(1) Subject to Article 17, the Commissioner may determine to conduct an investigation under this Article (“a formal investigation”)—

- (a) for the purposes of his functions under Article 9 in relation to a relevant authority other than one listed in Part II of Schedule 1;
- (b) for the purposes of his functions under Article 10; or
- (c) into a complaint under Article 12(1).

(2) In determining whether to conduct or discontinue a formal investigation, the Commissioner shall act in accordance with his own discretion.

(3) Where the Commissioner determines to conduct a formal investigation for the purposes of his functions under Article 9 or 10 he shall—

- (a) produce terms of reference for the investigation;
- (b) send notice of the proposed investigation and a copy of the terms of reference to—
 - (i) the relevant authority concerned; and
 - (ii) in the case of an investigation for the purposes of his functions under Article 10, the particular child or young person mentioned in that Article;
- (c) afford to the relevant authority concerned an opportunity to comment on the matters being investigated and to give oral or other evidence respecting those matters.

(4) Where the Commissioner determines to conduct a formal investigation into a complaint under Article 12(1) he shall—

- (a) give to—
 - (i) the relevant authority concerned; and
 - (ii) any other 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 substance of the allegations made in the complaint so far as they relate to that authority or (as the case may be) to that person; and

(b) afford to every such authority or person an opportunity to comment on any allegations made in the complaint and to give oral or other evidence respecting those matters.

(5) Every formal investigation shall be conducted in private.

(6) Except as otherwise provided by this Order, the procedure for conducting a formal investigation shall be such as the Commissioner considers appropriate in the circumstances of the case; and, in particular, it is for the Commissioner to determine whether any person may be represented by counsel or solicitor or otherwise in the investigation.

(7) The Commissioner may for the purposes of a formal investigation obtain information from such persons and in such manner, and make such enquiries, as he thinks fit.

(8) Subject to paragraphs (9) and (10), in conducting a formal investigation 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.

(9) If at any time during the course of a formal investigation it appears to the Commissioner that there may be grounds for making any report or recommendation that may adversely affect any relevant authority or other person, the Commissioner shall afford to that authority or person—

- (a) an opportunity to give oral or other evidence; and
- (b) an opportunity of testing by cross-examination any evidence which may affect that authority or person.

(10) Where the opportunities mentioned in paragraph (9) are given to a relevant authority or other person, then—

- (a) in any formal investigation for the purposes of the Commissioner's functions under Article 10, the same opportunities shall be given to the child or young person mentioned in that Article; and
- (b) in any formal investigation into a complaint under Article 12(1), the same opportunities shall be given to the complainant.

(11) The Commissioner may, if he thinks fit, pay to any person (including a complainant) who attends or supplies information for the purposes of a formal investigation—

- (a) sums in respect of expenses properly incurred by him;
- (b) allowances by way of compensation for the loss of his time,

in accordance with such scales and subject to such conditions as the Office may determine.

(12) A formal investigation shall not affect—

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

Formal investigations: exclusions

17.—(1) The Commissioner shall not conduct a formal investigation for the purposes of his functions under Article 10 in relation to the operation of the advocacy, complaint, inspection or whistle-blowing arrangements of a relevant authority in the case of any child or young person if the Commissioner has under Article 14 or 15 brought or intervened in, or provided assistance in relation to, any proceedings—

- (a) against the relevant authority which relate to the operation of the arrangements in question in the case of that child or young person; or
- (b) in which the correctness in law of any action of the relevant authority in relation to the operation of any such arrangements in the case of that child or young person is called into question.

(2) The Commissioner shall not conduct a formal investigation into a complaint under Article 12(1) in respect of any action of a relevant authority if the Commissioner has under Article 14 or 15 brought, intervened in or provided assistance in relation to any proceedings—

- (a) against the relevant authority in respect of that action; or
- (b) in which the correctness in law of that action is called into question.

Report on formal investigation

18.—(1) Where the Commissioner conducts a formal investigation for the purposes of his functions under Article 9 or 10, he shall prepare a report on the outcome of that investigation and send it to—

- (a) the relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority; and
- (b) such other bodies or persons as the Commissioner thinks appropriate.

(2) Where the Commissioner conducts a formal investigation into a complaint under Article 12(1), he shall prepare a report on the outcome of that investigation and send it to—

- (a) the complainant;
- (b) the relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority;
- (c) any person who is alleged in the complaint to have taken or authorised the action complained of or otherwise to be involved in the allegation made in the complaint; and
- (d) such other bodies or persons as the Commissioner thinks appropriate.

(3) Apart from identifying any relevant authority concerned, a report under this Article shall not—

- (a) mention the name of any person; or
- (b) contain any particulars which, in the Commissioner's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless the Commissioner determines that it is necessary to do so (whether for the purposes of paragraph (4) or otherwise).

(4) A report under this Article may include recommendations as to action to be taken by a relevant authority mentioned in the report; and any such recommendations shall be accompanied by the Commissioner's reasons for making them.

(5) In particular, the report on a formal investigation conducted for the purposes of the Commissioner's functions under Article 10 in relation to any complaint arrangements may recommend that the relevant authority concerned reconsider afresh the complaint in question.

(6) Where a report contains a recommendation as to action to be taken by a relevant authority, it shall be the duty of the authority to—

(a) consider the recommendation; and

(b) determine what action (if any) to take in response to the recommendation.

Further action following report on formal investigation

19.—(1) Where the Commissioner has made a report under Article 18 which contains a recommendation as to action to be taken by a relevant authority, the Commissioner may by notice require that authority to provide the Commissioner within 3 months of the date of the notice with—

(a) such information as will enable the Commissioner to determine whether the authority has complied with the recommendation or will be complying with it; or

(b) a statement of the authority's reason for not complying with the recommendation.

(2) A notice under paragraph (1) shall include a statement that a failure by the authority to respond within the period mentioned in that paragraph may be published in such manner as the Commissioner considers appropriate.

(3) If, on receipt of a response from the authority, the Commissioner considers that—

(a) the action taken or proposed to be taken by the authority to comply with the recommendation is inadequate; or

(b) the authority's reason for not complying with the recommendation is inadequate,

the Commissioner may send to the authority concerned a further notice setting out the inadequacy and requiring the authority to reconsider the matter and respond within one month of the date of the notice.

(4) A notice under paragraph (3) shall include a statement that a failure by the authority—

(a) to provide what the Commissioner considers to be a satisfactory response; or

(b) to provide any response within the period mentioned in that paragraph,

may be published in such manner as the Commissioner considers appropriate.

(5) The Commissioner shall maintain a register containing details of—

- (a) recommendations (together with the reasons for them) contained in reports made under Article 18;
- (b) action taken by the Commissioner under paragraphs (1) and (3); and
- (c) the results of any such action.

(6) Any register maintained under paragraph (5) shall be open to inspection by any person at all reasonable times at the offices of the Commissioner and the Commissioner may make arrangements for copies of the register to be available for inspection in such other place or places or by such other means as he considers appropriate.

(7) The Commissioner shall publish those arrangements in such a way as to bring them to the attention of persons likely to be interested.

Evidence in formal investigations

20.—(1) For the purposes of a formal investigation the Commissioner may require any person who in his opinion is able to supply information or produce documents relevant to the investigation to supply any such information or produce any such documents.

(2) For the purposes of such an investigation 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 a formal investigation 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.

(4) Where any information required to be supplied under this Article consists of, or includes, information held by means of a computer or in any other form, the Commissioner may require any person having charge of, or otherwise connected with the operation of, the computer or other device holding that information to make the information available, or produce the information, in legible form.

Powers of entry and inspection for purposes of formal investigation

21.—(1) Where the Commissioner considers it necessary to do so for the proper conduct of a formal investigation, he may, at any reasonable time, enter any premises managed by a relevant authority in which—

- (a) a child or young person is living or being looked after;
- (b) a child or young person is being detained under any statutory provision; or
- (c) education, health, welfare or other services are provided for children or young persons.

(2) On entering any premises under this Article, the Commissioner may—

- (a) make any examination into the state and management of the premises and the treatment of children and young persons there which he thinks appropriate;
- (b) subject to paragraph (3), inspect and take copies of any documents or records which are required by any statutory provision to be kept there;

- (c) subject to paragraphs (4) to (6), interview in private any child or young person present on the premises;
- (d) interview in private any other person present on the premises who is employed there (whether the employment is paid or unpaid or under a contract or otherwise).

(3) The Commissioner shall not exercise his power under paragraph (2)(b) unless he considers it necessary to do so for the proper conduct of the investigation.

(4) Before exercising the power conferred by paragraph (2)(c) in relation to any child or young person, the Commissioner shall inform the parent of the child or young person—

- (a) of his intention to interview the child or young person; and
- (b) of the parent's right under paragraph (6);

and shall supply the parent with sufficient information to enable him to exercise that right.

(5) Paragraph (4) does not apply if in the Commissioner's opinion—

- (a) it would not be in the interests of the child or young person to inform the parent in accordance with that paragraph; or
- (b) it would not in the circumstances be practicable to do so.

(6) The parent of the child or young person has the right to be present at any interview conducted under paragraph (2)(c) unless—

- (a) in the Commissioner's opinion—
 - (i) it would not be in the interests of the child or young person for his parent to be present; or
 - (ii) it is in the circumstances not practicable for the parent to be present; or
- (b) the child or young person objects to the parent being present and, in the Commissioner's opinion, that objection is reasonable (regard being had in particular to the age and understanding of the child or young person).

(7) Where the Commissioner proposes to exercise the power of entry conferred by this Article he shall, if so required, produce some duly authenticated document showing his authority to exercise the power.

(8) Nothing in this Article authorises the Commissioner to enter any premises (or any part of any premises) used wholly or mainly as a private dwelling.

Obstruction and contempt in relation to formal investigation

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

- (a) obstructs the Commissioner or any officer of the Commissioner in the conduct of a formal investigation; or
- (b) is guilty of any act in relation to such an investigation 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 same offence in relation to the court.

(3) This Article does not apply to the taking in good faith of any action mentioned in Article 16(12).

Disclosure of information by Commissioner

23.—(1) Information obtained by the Commissioner or his officers in the course of, or for the purposes of, a formal investigation shall not be disclosed except as permitted by paragraph (2) or for the purposes of—

- (a) the investigation and any report to be made thereon under this Order;
- (b) any proceedings for a criminal offence;
- (c) an inquiry with a view to the taking of proceedings for a criminal offence; or
- (d) any proceedings under Article 22.

(2) 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.

(3) If the Commissioner discloses information as permitted by paragraph (2), 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.

(4) The Commissioner and his officers shall not be called upon to give evidence in any proceedings (other than proceedings mentioned in paragraph (1)(b) or (d)) of matters coming to his or their knowledge in the course of a formal investigation.

Review of this Order

Review of this Order

24.—(1) The Commissioner shall—

- (a) keep under review the working of this Order;
- (b) make reports on it to the First Minister and deputy First Minister in accordance with the following provisions of this Article.

(2) The first report under this Article shall be made as soon as practicable after the third anniversary of the making of this Order.

(3) A subsequent report under this Article shall be made at such time as the Commissioner thinks fit, not being earlier than three years after the making of the last previous report.

(4) A report under this Article—

- (a) shall include the views of the Commissioner on the adequacy and effectiveness of this Order; and
- (b) may contain recommendations as to amendments to this Order which in the opinion of the Commissioner are necessary or desirable.

(5) The First Minister and deputy First Minister acting jointly shall lay a copy of every report sent to them under this Article before the Assembly.

Supplementary provisions

Privilege for certain publications

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

Application of this Order: relevant authorities with mixed functions

26.—(1) In relation to a general health services provider, the relevant authority provisions of this Order apply only in relation to matters arising in connection with any general health services provided by that provider.

(2) In relation to an independent provider, the relevant authority provisions of this Order apply only in relation to matters arising in connection with a service which the independent provider was providing, or which it was the independent provider's function to provide, under arrangements with a health and social services body or a general health services provider.

(3) In relation to any other relevant authority, the relevant authority provisions of this Order apply only in relation to matters arising in connection with the exercise by the authority of its public functions.

(4) For the purposes of this Article—

“public functions” means functions other than those of a private nature;

“the relevant authority provisions of this Order” are—

- (a) Article 7(3) and (4),
- (b) Article 8(4);
- (c) Articles 9 to 13;
- (d) Articles 16 to 23; and
- (e) Schedule 3.

Application of this Order: matters arising before commencement

27. This Order applies in relation to matters arising before as well as after it comes into operation.

A. K. Galloway
Clerk of the Privy Council

SCHEDULE 1
RELEVANT AUTHORITIES

The following bodies and persons are relevant authorities by virtue of Article 4(1)(c)—

PART I

Health and personal social services

1. A general health services provider, that is to say—
 - (a) an individual undertaking to provide general medical services or general dental services under Part VI of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14);
 - (b) a person (whether an individual or a body) undertaking to provide general ophthalmic services or pharmaceutical services under Part VI of that Order; or
 - (c) an individual 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 social services body or an independent provider).
2. An independent provider, that is to say a person (whether an individual or a body)—
 - (a) providing services of any kind under arrangements with a health and social services body or a general health services provider; and
 - (b) not being a health and social services body or a general health services provider.
3. Any person carrying on any of the following within the meaning of the Children (Northern Ireland) Order 1995 (NI 2)—
 - (a) a children's home or voluntary home;
 - (b) a residential care home, nursing home or private hospital in which children are accommodated.
4. A person providing day care to which Article 118(1)(b) of the Children (Northern Ireland) Order 1995 (NI 2) applies.

Education

5. The Board of Governors of a grant-aided school, within the meaning of the Education and Libraries (Northern Ireland) Order 1986 (NI 3).
6. The managers of an independent school, within the meaning of that Order.
7. The governing body of an institution of further education, within the meaning of the Further Education (Northern Ireland) Order 1997 (NI 15).

8. The Northern Ireland Commissioner for Complaints.
9. The Assembly Ombudsman for Northern Ireland.
10. The Northern Ireland Film Commission.

PART II

Justice and policing

11. The Northern Ireland Court Service.
12. The Northern Ireland Policing Board and the Chief Constable of the Police Service of Northern Ireland.
13. The Juvenile Justice Board and any other body or person with whom the Secretary of State has made arrangements for the provision of juvenile justice centres or attendance centres under the Criminal Justice (Children) (Northern Ireland) Order 1998 (NI 9).
14. The Probation Board for Northern Ireland.
15. The Chief Inspector of Criminal Justice in Northern Ireland.
16. The Northern Ireland Legal Services Commission.
17. The Northern Ireland Law Commission.

Others

18. The Police Ombudsman for Northern Ireland.
19. The Parliamentary Commissioner for Administration.
20. The Information Commissioner
21. The Qualifications and Curriculum Authority.
22. The Northern Ireland Office.

SCHEDULE 2

THE COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE FOR
NORTHERN IRELAND

Status

- 1.—(1) The person for the time being holding the office of Commissioner for Children and Young People for Northern Ireland shall by that name be a corporation sole.
- (2) The Commissioner shall not be regarded—
 - (a) as the servant or agent of the Crown; or
 - (b) as enjoying any status, immunity or privilege of the Crown.

SCH. 2 (3) The property held by the Commissioner shall not be regarded as property of, or held on behalf of, the Crown.

General powers

2.—(1) The Commissioner may do anything, apart from borrowing money, which he considers is—

- (a) appropriate for facilitating, or
- (b) incidental or conducive to,

the exercise of his functions.

(2) That includes in particular—

- (a) co-operating with other bodies exercising functions relating to children and young persons or their rights (whether in the United Kingdom or elsewhere);
- (b) acquiring, holding and disposing of real or personal property;
- (c) entering into contracts.

Tenure of office

3.—(1) Subject to the provisions of this paragraph, a person shall hold and vacate office as the Commissioner in accordance with the terms of his appointment.

(2) An appointment as the Commissioner shall be for a term of 4 years.

(3) A person who ceases to be the Commissioner on the expiration of his first term of office shall be eligible for re-appointment, but a person who has been re-appointed by virtue of this sub-paragraph shall not be eligible for appointment or re-appointment as the Commissioner at any time after the end of his second term of office.

(4) A person may at any time resign his office as the Commissioner by notice to the First Minister and deputy First Minister.

(5) The First Minister and deputy First Minister acting jointly may remove a person from office as the Commissioner if satisfied that he has—

- (a) been convicted of a criminal offence;
- (b) become bankrupt or made an arrangement or composition with his creditors;
- (c) without reasonable excuse, failed to discharge his functions for a continuous period of 3 months; or
- (d) become unfit or unable to exercise his functions.

Salary, etc.

4.—(1) The Office may pay to or in respect of the Commissioner—

- (a) such remuneration,
- (b) such allowances, and
- (c) such sums for the provision of a pension,

as the Office may determine.

(2) Where a person ceases to hold office as Commissioner otherwise than on the expiration of his term of office and the Office determines that there are special circumstances that make it right for that person to receive compensation, the Office may make to that person a payment of such amount as the Office may determine.

(3) A determination of the Office under this paragraph requires the approval of the Department of Finance and Personnel.

Staff

5.—(1) The Commissioner may appoint such number of officers as he may determine.

(2) The remuneration and other conditions of service of the officers appointed under this paragraph shall be determined by the Commissioner.

(3) The Commissioner may make such payments towards the provision of such pensions or allowances to or in respect of the officers appointed under this paragraph as he may determine.

(4) The reference in sub-paragraph (3) to pensions or allowances to or in respect of the officers appointed under this paragraph includes reference to pensions or allowances by way of compensation to or in respect of any of those officers who suffer loss of employment.

(5) A determination of the Commissioner under this paragraph requires the approval of the Office and the Department of Finance and Personnel.

(6) Employment as an officer of the Commissioner is among the kinds of employment to which a superannuation scheme under Article 3 of the Superannuation (Northern Ireland) Order 1972 (NI 10) can apply and, accordingly, in Schedule 1 to that Order (employments to which Article 3 can apply) the following entry shall be inserted at the appropriate place—

“Employment by the Commissioner for Children and Young People for Northern Ireland.”.

Exercise of functions of Commissioner

6. Any function of the Commissioner may be exercised by any officer of the Commissioner who has been authorised (whether generally or specially) by him for the purpose.

Seal

7. The application of the seal of the Commissioner shall be authenticated by his signature or by the signature of any officer of the Commissioner who has been authorised (whether generally or specially) by him for the purpose.

Evidence

8. A document purporting to be an instrument issued by the Commissioner and to be duly executed under the Commissioner’s seal or to be signed by, or on behalf of, the Commissioner shall be received in evidence and shall, unless the contrary is proved, be taken to be such an instrument.

Property

9.—(1) Any real or personal property vested in the Commissioner shall (unless and until disclaimed or disposed of) vest in his successor in office.

(2) Where there is a vacancy in the office of Commissioner at the time when real or personal property would otherwise have vested, the property shall vest in the successor on his appointment.

Funding

10.—(1) The Office may make grants to the Commissioner of such amounts as it may determine.

(2) Subject to sub-paragraph (3), the Commissioner shall pay to the Office all sums received by him in the course of, or in connection with, the carrying out of his functions.

(3) Sub-paragraph (2) shall not apply to such sums, or sums of such description, as the Office may, with the approval of the Department of Finance and Personnel, direct.

(4) Any sums received by the Office under sub-paragraph (2) shall be paid into the Consolidated Fund.

Accounts

11.—(1) The Commissioner shall—

- (a) keep proper accounts and proper records in relation to the accounts, and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

- (a) be in such form, and
- (b) contain such information,

as the Office may, with the approval of the Department of Finance and Personnel, direct.

(3) The Commissioner shall, within such period after the end of each financial year as the Office may direct, send copies of the statement of accounts relating to that year to—

- (a) the Office, and
- (b) the Comptroller and Auditor General.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts sent to him by the Commissioner under this paragraph, and
- (b) send a copy of his report to the Office.

(5) The Office shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.

(6) In this paragraph and paragraph 12 "financial year" means—

- (a) the period beginning with the day on which the first person appointed under Article 5(2) takes office and ending with the next 31st March following that date, and

(b) each successive period of twelve months ending with 31st March.

SCH. 2

Annual report

12.—(1) As soon as practicable after the end of each financial year, the Commissioner shall send to the Office a report on the carrying out of his functions during that year.

(2) A report under this paragraph in respect of any year shall give details of the steps taken by the Commissioner in that year for the purpose of complying with his duty under Article 7(5).

(3) The Office—

(a) shall lay a copy of every report sent to it under this paragraph before the Assembly; and

(b) shall send a copy of every such report to the Secretary of State.

The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

13. In Part III of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (disqualifying offices) there shall be inserted, at the appropriate place—

“Commissioner for Children and Young People for Northern Ireland”.

The Commissioner for Complaints (Northern Ireland) Order 1996 (NI. 7)

14. In Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (bodies subject to investigation) there shall be inserted, at the appropriate place—

“The Office of the Commissioner for Children and Young People for Northern Ireland”.

The Freedom of Information Act 2000 (c. 36)

15. In Part VII of Schedule 1 to the Freedom of Information Act 2000 (offices and bodies which are public authorities for the purposes of the Act) there shall be inserted, at the appropriate place—

“The Commissioner for Children and Young People for Northern Ireland”.

The Criminal Justice and Court Services Act 2000 (c. 43)

16. In section 36(8) of the Criminal Justice and Court Services Act 2000 (regulated positions in Northern Ireland) at the end add—

“(d) Commissioner for Children and Young People for Northern Ireland appointed under the Commissioner for Children and Young People (Northern Ireland) Order 2003.”.

SCHEDULE 3
INVESTIGATIONS UNDER ARTICLE 8(4) OR 9(7)

Interpretation

1. In this Schedule any reference to an investigation is a reference to an investigation in relation to which the Commissioner has made a determination under—

- (a) Article 8(4); or
- (b) Article 9(7).

Conduct of investigation

2.—(1) In determining whether to conduct or discontinue an investigation, the Commissioner shall act in accordance with his own discretion.

(2) Where the Commissioner determines under Article 8(4) to conduct an investigation he shall—

- (a) produce terms of reference for the investigation;
- (b) send notice of the proposed investigation and a copy of the terms of reference to any relevant authority concerned and such other bodies or persons as the Commissioner thinks fit; and
- (c) afford to every such authority an opportunity to comment on the matters being investigated and to give oral or other evidence respecting those matters.

(3) Where the Commissioner determines under Article 9(7) to conduct an investigation he shall—

- (a) produce terms of reference for the investigation;
- (b) send notice of the proposed investigation and a copy of the terms of reference to the relevant authority concerned; and
- (c) afford to the relevant authority concerned an opportunity to comment on the matters being investigated and to give oral or other evidence respecting those matters.

(4) An investigation shall be conducted in private.

(5) 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; and, in particular, it is for the Commissioner to determine whether any person may be represented by counsel or solicitor or otherwise in the investigation.

(6) The Commissioner may for the purposes of an investigation obtain information from such persons and in such manner, and make such enquiries, as he thinks fit.

(7) Subject to sub-paragraph (8), in conducting an investigation 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.

(8) 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 relevant authority or person, the Commissioner shall afford to that authority or person—

- (a) an opportunity to give oral or other evidence; and
- (b) an opportunity of testing by cross-examination any evidence which may affect that authority or person.

(9) The Commissioner may, if he thinks fit, pay to any person who attends or supplies information for the purposes of a formal investigation—

- (a) sums in respect of expenses properly incurred by him;
- (b) allowances by way of compensation for the loss of his time,

in accordance with such scales and subject to such conditions as the Office may determine.

(10) An investigation shall not affect—

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

Report on investigation

3.—(1) Where the Commissioner has conducted an investigation pursuant to a determination under Article 8(4), he shall prepare a report on the outcome of the investigation and send it to—

- (a) any relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority; and
- (b) such other bodies or persons as the Commissioner thinks appropriate.

(2) Where the Commissioner has conducted an investigation pursuant to a determination under Article 9(7), he shall prepare a report on the outcome of the investigation and send it to—

- (a) the relevant authority concerned and, where the report contains recommendations as to action to be taken by any other relevant authority, that relevant authority; and
- (b) such other bodies or persons as the Commissioner thinks appropriate.

(3) Apart from identifying any relevant authority concerned, a report under this paragraph shall not—

- (a) mention the name of any person; or
- (b) contain any particulars which, in the Commissioner's opinion, are likely to identify any person and can be omitted without impairing the effectiveness of the report,

unless the Commissioner determines that it is necessary to do so (whether for the purposes of sub-paragraph (4) or otherwise).

(4) A report under this paragraph may include recommendations as to action to be taken by a relevant authority mentioned in the report; and any such recommendations shall be accompanied by the Commissioner's reasons for making them.

- SCH. 3 (5) Where a report contains a recommendation as to action to be taken by a relevant authority, it shall be the duty of the authority to—
- (a) consider the recommendation; and
 - (b) determine what action (if any) to take in response to the recommendation.

Further action following report on investigation

4.—(1) Where the Commissioner has made a report under paragraph 3 which contains a recommendation in respect of a relevant authority, the Commissioner may by notice require that authority to provide the Commissioner within 3 months of the date of the notice with—

- (a) such information as will enable the Commissioner to determine whether the authority has complied with the recommendation or will be complying with it; or
- (b) a statement of the authority's reason for not complying with the recommendation.

(2) A notice under sub-paragraph (1) shall include a statement that a failure by the authority to respond within the period mentioned in that sub-paragraph may be published in such manner as the Commissioner considers appropriate.

(3) If, on receipt of a response from the authority, the Commissioner considers that—

- (a) the action taken or proposed to be taken by the authority to comply with the recommendation is inadequate; or
- (b) the authority's reason for not complying with the recommendation is inadequate,

the Commissioner may send to the authority concerned a further notice setting out the inadequacy and requiring the authority to reconsider the matter and respond within one month of the date of the notice.

(4) A notice under sub-paragraph (3) shall include a statement that a failure by the authority—

- (a) to provide what the Commissioner considers to be a satisfactory response; or
- (b) to provide any response within the period mentioned in that sub-paragraph,

may be published in such manner as the Commissioner considers appropriate.

(5) The Commissioner shall include in the register maintained under Article 19(5) details of—

- (a) recommendations (together with the reasons for them) contained in reports made under paragraph 3;
- (b) action taken by the Commissioner under sub-paragraphs (1) and (3); and
- (c) the results of any such action.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order provides for the appointment and functions of the Commissioner for Children and Young People for Northern Ireland.

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