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STATUTORY INSTRUMENTS

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**1996 No. 1297**

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

*Investigations by the Commissioner*

**Bodies subject to investigation**

7.—(1) Subject to the provisions of this Article, this Order 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 Order applies includes a reference to the members and officers of that body.

**Matters subject to investigation**

8.—(1) 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 Order applies; and

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

(2) Without prejudice to the generality of paragraph (1)(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.

(3) The Commissioner may investigate any action taken as mentioned in paragraph (1) 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.

(4) In this Order “person aggrieved” means the person who claims or is alleged to have sustained such injustice as is mentioned in paragraph (3).

**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 section 22 of the Northern Ireland Constitution Act 1973, 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) 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 Order applies in the exercise of a discretion vested in that body.

### **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 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.

### **Purposes of investigation**

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

- (a) to ascertain if the matters alleged in the complaint—
  - (i) may properly warrant investigation by him under this Order;
  - (ii) are, in substance, true; and
  - (iii) disclose any maladministration by or on behalf of the body concerned; and
- (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 to effect a fair settlement of that matter or by that body or by the person aggrieved to remove, or have removed, the cause of the complaint.

### **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; 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 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 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 under this Order 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.

### **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).

### **Reports on investigations**

**15.**—(1) In any case where the Commissioner—

- (a) conducts an investigation under this Order; or
- (b) decides not to conduct an investigation,

he shall send a report of the results of the investigation or, as the case may be, a statement of his reasons for not conducting an investigation to the person by whom the request for the investigation was made.

(2) In any case where the Commissioner conducts an investigation under this Order, he shall also send a report of the results of the investigation to—

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

### **Application for compensation by person aggrieved**

**16.**—(1) Where on an investigation under this Order 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 P 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.

### **Application to High Court for relief following report by Commissioner**

17.—(1) This Article applies where on an investigation under this Order 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
- (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.

### **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. he 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. or 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 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.

(2) The Commissioner and his officers 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.

(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.