
STATUTORY INSTRUMENTS

2003 No. 439

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

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.