
STATUTORY INSTRUMENTS

1997 No. 1758 (N.I. 14)

NORTHERN IRELAND

**The Commissioner for Complaints
(Amendment) (Northern Ireland) Order 1997**

*Made - - - - 22nd July 1997
Coming into operation on a day to be appointed under
Article 1(2)*

At the Court at Buckingham Palace, the 22nd day of July 1997

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 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:—

Title and commencement

1.—(1) This Order may be cited as the Commissioner for Complaints (Amendment) (Northern Ireland) Order 1997.

(2) This Order shall come into operation on such day as the Department of Health and Social Services may by order appoint.

(3) An order under paragraph (2) may contain such transitional and supplementary provisions as appear to the Department of Health and Social Services to be necessary or expedient.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order “the principal Order” means the Commissioner for Complaints (Northern Ireland) Order 1996.

Bodies and persons subject to investigation by the Northern Ireland Commissioner for Complaints

3. For Articles 7 (bodies subject to investigation), 8 (matters subject to investigation) and 9 (matters not subject to investigation) of the principal Order there shall be substituted—

“Bodies subject to investigation

7.—(1) Subject to the provisions of paragraphs (2) to (4), this Article 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 Article applies includes a reference to the members and officers of that body.

(5) 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 Article applies; and
- (b) in the exercise of administrative functions of that body.

(6) Without prejudice to the generality of paragraph (5)(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.

(7) The Commissioner may investigate any action taken as mentioned in paragraph (5) 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.

(8) Without prejudice to the generality of paragraph (5)(a), any maladministration mentioned in paragraph (7) may, in relation to a health and social services body, arise from action of—

- (a) the health and social services body,
- (b) a person employed by that body,
- (c) a person acting on behalf of that body, or
- (d) a person to whom that body has delegated any functions.

(9) 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 Article applies in the exercise of a discretion vested in that body.

(10) Paragraph (9) does not apply, in the case of a health and social services body, to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.

General health services providers subject to investigation

- 8.—(1) This Article applies to persons if they are—
- (a) individuals undertaking to provide general medical services or general dental services under Part VI of the Health and Personal Social Services (Northern Ireland) Order 1972;
 - (b) persons (whether individuals or bodies) undertaking to provide general ophthalmic services or pharmaceutical services under Part VI of that Order; or
 - (c) individuals 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) In this Order—
- (a) references to a general health services provider are to any person to whom this Article applies;
 - (b) references to general health services are to any of the services mentioned in paragraph (1).
- (3) Where a general health services provider has undertaken to provide any general health services, the Commissioner may, subject to the provisions of this Order, investigate—
- (a) any action taken by the general health services provider in connection with the services;
 - (b) any action taken in connection with the services by a person employed by the general health services provider in respect of the services;
 - (c) any action taken in connection with the services by a person acting on behalf of the general health services provider in respect of the services; or
 - (d) any action taken in connection with the services by a person to whom the general health services provider has delegated any functions in respect of the services.
- (4) Where the general health services provider mentioned in paragraph (3) is a member of a recognised fund-holding practice, references in that paragraph to action taken by any person in connection with general health services include references to action taken by the person concerned in connection with any allotted sum paid to the members of the practice.
- (5) The Commissioner may investigate any action taken as mentioned in paragraph (3) 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 the action so taken with a request to conduct an investigation into it.
- (6) Nothing in this Order authorises or requires the Commissioner to question the merits of a decision taken without maladministration by—
- (a) a general health services provider;
 - (b) a person employed by a general health services provider;
 - (c) a person acting on behalf of a general health services provider; or
 - (d) a person to whom a general health services provider has delegated any functions.
- (7) Paragraph (6) does not apply to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.
- (8) In this Article—
- “allotted sum” shall be construed in accordance with Article 18 of the Health and Personal Social Services (Northern Ireland) Order 1991; and

“recognised fund-holding practice” shall be construed in accordance with Article 17 of that Order.

Independent providers of health and social services subject to investigation

8A.—(1) This Article applies to persons if—

- (a) they are persons (whether individuals or bodies) providing services (of any kind) under arrangements with health and social services bodies or general health services providers; and
- (b) they are not themselves health and social services bodies or general health services providers.

(2) In this Order references to an independent provider are to any person to whom this Article applies.

(3) Where an independent provider has made an arrangement with a health and social services body or a general health services provider to provide a service, the Commissioner may, subject to the provisions of this Order, investigate any action taken in relation to the service by—

- (a) the independent provider;
- (b) a person employed by the independent provider;
- (c) a person acting on behalf of the independent provider; or
- (d) a person to whom the independent provider has delegated any functions.

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

(5) Nothing in this Order authorises or requires the Commissioner to question the merits of a decision taken without maladministration by—

- (a) an independent provider;
- (b) a person employed by an independent provider; -6
- (c) a person acting on behalf of an independent provider; or
- (d) a person to whom an independent provider has delegated any functions.

(6) Paragraph (5) does not apply to the merits of a decision to the extent that it was taken in consequence of the exercise of clinical judgment.

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) The Commissioner shall not conduct an investigation in respect of any action which has been, or is, the subject of an inquiry under Article 54 of the Health and Personal Social Services (Northern Ireland) Order 1972 (general powers to hold inquiries).
- (6) Paragraph (7) applies where—
 - (a) action by reference to which a complaint is made under Article 7, 8 or 8A is action by reference to which a complaint can be made under a procedure operated by a health and social services body, a general health services provider or an independent provider; and
 - (b) paragraph (3) or (5) does not apply as regards the action.
- (7) In such a case the Commissioner shall not conduct an investigation in respect of the action unless he is satisfied that—
 - (a) the other procedure has been invoked and exhausted; or
 - (b) in the particular circumstances it is not reasonable to expect that procedure to be invoked or (as the case may be) exhausted.
- (8) The Commissioner shall not conduct an investigation in respect of any action taken by a health and social services board in the exercise of its functions under regulations made under Articles 56, 61, 62 or 63 of the Health and Personal Social Services (Northern Ireland) Order 1972 by virtue of Article 10 of the Health and Medicines (Northern Ireland) Order 1988 (investigations of matters relating to services).
- (9) The Commissioner shall not conduct an investigation in pursuance of a complaint if—
 - (a) the complaint is in respect of any action taken in any matter relating to arrangements made by a health and social services body and a general health services provider for the provision of general health services;
 - (b) the action is taken by or on behalf of the body or by the provider; and
 - (c) the complaint is made by the provider or the body.
- (10) Nothing in paragraph (9) prevents the Commissioner conducting an investigation in respect of any action taken by a health and social services body in operating a procedure established to examine complaints.”.

Providers: other provisions

4. Schedule 1 (which contains other provisions relating to general health services providers and independent providers, including provisions consequential on Article 3) shall have effect.

Referral of complaint by health and social services body

5. After Article 10 of the principal Order (provisions relating to complaints), there shall be inserted—

“Referral of complaint by health and social services body

10A.—(1) A health and social services body may itself refer to the Commissioner a complaint made to that body that a person has, in consequence of maladministration for which the body is responsible, sustained such injustice as is mentioned in Article 7(7).

(2) A complaint may not be so referred unless it was made—

- (a) in writing;
- (b) by the person aggrieved or by a person authorised by Article 10(3) to complain to the Commissioner on his behalf; and
- (c) not later than 12 months from the day on which the person aggrieved first had knowledge of the matters alleged in the complaint, or such later date as the Commissioner considers appropriate in any particular case.

(3) A health and social services body may not refer a complaint under this Article after the period of 12 months from the day on which the body received the complaint.

(4) Any question whether a complaint has been duly referred to the Commissioner under this Article shall be determined by him.

(5) A complaint referred to the Commissioner under this Article shall be deemed to be duly made to him.”.

Information

6.—(1) Article 21 of the principal Order (information) shall be amended in accordance with paragraphs (2) to (5).

(2) In paragraph (1) (information not to be disclosed except for certain purposes) after the word “except” there shall be inserted “as permitted by paragraph (1 B) or”.

(3) After paragraph (1) there shall be inserted—

“(1A) paragraph (1B) applies where, in the course of an investigation, the Commissioner or any of his officers obtains information which—

- (a) does not fall to be disclosed for the purposes of the investigation or any report to be made in respect of it; and
- (b) is to the effect that a person is likely to constitute a threat to the health or safety of any other person.

(1B) In such a case the Commissioner may disclose the information to any person to whom he thinks it should be disclosed in the interests of the health or safety of any person; and a person to whom disclosure may be made may, for instance, be a body which regulates the profession to which the person first mentioned in paragraph (1A)(b) belongs or his employer or any person with whom he has made arrangements to provide services.

(1C) If the Commissioner discloses information as permitted by paragraph (1B) he shall—

- (a) inform the person first mentioned in paragraph (1A)(b) that he has disclosed it; and
- (b) inform him of the identity of any person to whom he has disclosed it.”.

(4) In paragraph (2) (neither the Commissioner nor his officers to be called on to give evidence) after “and his officers” there shall be inserted “and advisers”.

(5) After paragraph (2) there shall be inserted—

“(2A) The reference in paragraph (2) to the Commissioner’s advisers is a reference to persons from whom the Commissioner obtains advice under Article 6(1A).”.

Repeal of prohibition on investigation of action taken in discharge of professional duty

7. Paragraph 3 of Schedule 3 to the principal Order (no investigation to be conducted of action taken in the discharge of a professional duty in the course of diagnosis, treatment or care of a patient) is hereby repealed.

N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

Article 4.

PROVIDERS OF SERVICES

Introduction

1. The principal Order shall be amended in accordance with the following provisions of this Schedule.

Interpretation

2.—(1) Article 2(2) (interpretation) shall be amended in accordance with sub-paragraphs (2) to (4).

(2) In the definition of “body concerned” for “this Order” substitute “Article 7”.

(3) After the definition of “the Department” insert—

““general health services” has the meaning assigned by Article 8(2)(b);

“general health services provider” has the meaning assigned by Article 8(2)(a);

“general health services provider concerned”, in relation to an investigation pursuant to a complaint under Article 8, means the general health services provider providing the services in relation to which the complaint was made;

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

(a) health and social services boards;

(b) health and social services councils;

(c) health and social services trusts;

(d) the Mental Health Commission for Northern Ireland;

(e) the Northern Ireland Central Services Agency for the Health and Social Services; and

(f) special health and social services agencies;

“independent provider” has the meaning assigned by Article 8A(2);

“independent provider concerned”. in relation to an investigation pursuant to a complaint under Article 8A, means the independent provider providing the service in relation to which the complaint was made;”.

(4) For the definition of “person aggrieved” substitute—

““person aggrieved” means the person who claims or is alleged to have sustained such injustice as is mentioned in Article 7(7), 8(5) or 8A(4);”.

The Commissioner

3. After Article 5 (appointment of acting Commissioner) insert—

“Ineligibility of certain persons for appointment as Commissioner

5A.—(1) A person who is a member of a health and social services body shall not be appointed as the Commissioner or acting Commissioner, and a person so appointed shall not, during his appointment, become a member of such a body.

(2) A person who is a general health services provider shall not be appointed as the Commissioner or acting Commissioner, and a person so appointed shall not, during his appointment, become a general health services provider.”.

4. In Article 6 (staff and expenses) after paragraph (1) insert—
 - “(1A) To assist him in—
 - (a) any investigation pursuant to a complaint under Article 7 where the complaint relates to action taken by or on behalf of a health and social services body; or
 - (b) any investigation pursuant to a complaint under Article 8 or 8A.the Commissioner may obtain advice from any person who, in his opinion, is qualified to give it.
 - (1B) The Commissioner may pay to any person from whom he obtains advice under paragraph (1A) such fees or allowances as he may determine with the approval of the Department.”.

Complaints and investigations

5. In Article 10(3) (complaints made by person other than person aggrieved), after “or other” insert “body or”.
6. In Article 11 (purposes of investigation)—
 - (a) for paragraph (a) substitute—
 - “(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”;
 - (b) in paragraph (b)(ii)—
 - (i) after “body concerned” insert “, the general health services provider concerned or the independent provider concerned (as the case may be)”;
 - (ii) after “that body” insert “or provider”.
- 7.—(1) Article 12 (procedure in respect of investigations) shall be amended in accordance with sub-paragraphs (2) to (4).
 - (2) In paragraph (2)—
 - (a) in sub-paragraph (a)(i) after “body concerned” insert “, the general health services provider concerned or the independent provider concerned (as the case may be)”;
 - (b) in sub-paragraph (a) after “that body” insert “or provider”;
 - (c) in sub-paragraph (b) after “such body” insert “, provider”.
 - (3) In paragraph (10) for “under this Order” substitute “pursuant to a complaint under Article 7”.
 - (4) After paragraph (10) add—
 - “(11) An investigation pursuant to a complaint under Article 8 or 8A shall not affect any action taken by the general health services provider or z independent provider concerned, or any power or duty of that provider to take further action with respect to any matters subject to the investigation.”.
8. In Article 14(3) (obstruction and contempt) after “12(10)” insert “or (11)”.
9. For Article 15 (reports on investigations) substitute—

“Reports on investigations

15.—(1) In any case where the Commissioner conducts an investigation pursuant to a complaint under Article 7 relating to action taken by or on behalf of any body other than a health and social services body, he shall send a report of the results of the investigation—

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

(2) In any case where the Commissioner conducts an investigation pursuant to a complaint made under Article 7 relating to action taken by or on behalf of a health and social services body, he shall send a report of the results of the investigation—

- (a) to the person who made the complaint;
- (b) to the health and social services body which at the time the report is made has the function in relation to which the complaint was made;
- (c) to any person who is alleged in the complaint to have taken or authorised the action complained of or otherwise to be involved in the allegations made in the complaint.

(3) In any case where the Commissioner conducts an investigation pursuant to a complaint under Article 8 he shall send a report of the results of the investigation—

- (a) to the person who made the complaint;
- (b) to any person by reference to whose action the complaint is made;
- (c) to the general health services provider concerned (if that provider does not fall within sub-paragraph (b)); and
- (d) to any health and social services body with whom the general health services provider concerned is subject to an undertaking to provide general health services.

(4) In any case where the Commissioner conducts an investigation pursuant to a complaint under Article 8A he shall send a report of the results of the investigation—

- (a) to the person who made the complaint;
- (b) to any person who is alleged in the complaint to have taken or authorised the action complained of;
- (c) to the independent provider concerned; and
- (d) to the health and social services body or general health services provider with whom the independent provider concerned made the arrangement to provide the service concerned.

(5) In any case where the Commissioner decides not to conduct an investigation pursuant to a complaint under Article 7, 8 or 8A he shall send a statement of his reasons for not conducting an investigation to the person who made the complaint.”.

10. In Articles 16(1) (compensation) and 17(1) (application to High Court for relief) for “under this Order” substitute “pursuant to a complaint under Article 7”.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Commissioner for Complaints (Northern Ireland) Order 1996 by, principally—

- (1) adding general health services providers and independent providers to the list of those whom the Commissioner may investigate and setting out his remit in respect of the investigation of complaints about these providers;
- (2) removing the statutory bar on the Commissioner investigating complaints about action taken in the discharge of a professional duty in the course of diagnosis, treatment or care of a patient;
- (3) providing that the Commissioner can investigate action taken by a health and social services body in operating a complaints procedure;
- (4) enabling the Commissioner to appoint such advisers as he thinks fit and extending the exemption from giving evidence in proceedings to the Commissioner's advisers;
- (5) requiring the Commissioner, in relation to complaints concerning action taken by a health and social services body, to send a report of an investigation to the body which is the relevant one at the time the report is made;
- (6) allowing the Commissioner to disclose information to the effect that a person is likely to constitute a threat to the health or safety of any person.