

**INDEPENDENT REVIEW OF THE LEGISLATION OF THE  
NORTHERN IRELAND COMMISSIONER FOR CHILDREN AND  
YOUNG PEOPLE**

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## INTRODUCTION

### **'Putting Children First' Alliance**

'Putting Children First' (PCF) was established in 2000 as a multi-agency alliance of organisations working with/for children to campaign for appropriate structures in and outside government. The PCF Alliance sought to guarantee the rights and futures of all children in Northern Ireland and ensure delivery on the Belfast/Good Friday Agreement by campaigning for: the creation of an independent human rights institution for children; establishment of the post of Minister for Children and a Standing Assembly Committee on Children; development and operation of a rights-based Children's Strategy.

The Alliance (PCF, 2001:1) argued that a Commissioner for Children and Young People was needed because children aged 18 and under "remained largely invisible in terms of government structures". The specific issues facing children in Northern Ireland included: a very high incidence of poverty; discrimination - particularly amongst vulnerable young people - in relation to accessing health, education and housing; unacceptable levels of child abuse; increasing numbers of young people affected by mental health problems; the rights and safeguards concerning children in the youth justice system; a socially selective education system which reinforced relative gaps and opportunities for children from different social backgrounds. The Alliance stressed that children in Northern Ireland should have access to the same rights in society as adults, especially as they are subject to rules and regulations over which they have no control or input, they have no voice in political structures and no vote. They should be entitled to the fullest protection that society can provide - grounded in the UN Convention on the Rights of the Child (UNCRC), to which the UK is a signatory. The appointment of a Commissioner was stated as being "a critical step towards ensuring that the rights of Northern Ireland's children are enhanced and upheld".

### **Independent review**

Article 24 of *The Commissioner for Children and Young People (Northern Ireland) Order 2003* (HMSO, 2003) requires the Commissioner to submit an initial report to the First Minister and Deputy First Minister on the working of the Order "as soon as practicable after the third anniversary of the making of [the] Order" (A24: 2), with a subsequent report "at such time as the Commissioner thinks fit, not being earlier than three years after the making of the last previous report" (A24: 3). These reports are expected to "include the views of the Commissioner on the adequacy and effectiveness of [the] Order; and may contain recommendations as to amendments to [the] Order which in the opinion of the Commissioner are necessary or desirable" (A24: 4a and b).

The PCF Alliance was re-convened in August 2005 with the intention of informing the Commissioner's first review. The Alliance commissioned an independent review of the legislation, for which the 'Terms of Reference' included:

- independently reviewing the effectiveness, remit and operation of *The Commissioner for Children and Young People (Northern Ireland) Order 2003*
- preparing and submitting a report which independently assesses the adequacy, effectiveness and operation of the Order against international standards and best practice, drawing on evidence in respect of the discharge of duties, exercise of powers and interpretation of statutory remit by the Commissioner's office.

This independent review includes detailed analysis of the 2003 Order to assess compliance in relation to two key international standards: the 'Paris Principles' (Office of the High Commissioner for Human Rights, 1993) and UN General Comment No. 2 (UN Committee on the Rights of the Child, 2002).

A Supplementary Report has been produced to inform strategic developments of the PCF Alliance. This incorporates information about how the Order has been implemented, based on analysis of questionnaire responses and two focus group discussions.

# **INTERNATIONAL DEBATE CONCERNING INDEPENDENT NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRI) FOR CHILDREN**

## **Implementation of UNCRC**

Article 4 of the *Convention on the Rights of the Child* (UN General Assembly, 1989) required that “State Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention”.

In General Comment No. 5, the UN Committee on the Rights of the Child (2003) outlined States Parties’ obligations to develop measures for implementation of the UNCRC, focusing on Article 4 (above), Article 42 (“States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike”) and Article 44 (“States Parties shall make their reports widely available to the public in their own countries”).

## **Minimum standards for NHRIs**

The UN General Assembly (1993: para 5) reaffirmed “the importance of developing, in accordance with national legislation, effective national institutions for the promotion and protection of human rights and of ensuring the pluralism of their membership and their independence”. This resolution endorsed the ‘Paris Principles’, which provide minimum standards regarding the competence and responsibilities, composition, methods of operation and quasi-judicial competence of NHRIs (ibid, Annex). The Office of the High Commissioner for Human Rights (1993) described the emergence of NHRIs in the context of the general evolution of efforts to protect and promote human rights both within and external to the United Nations system; outlining the functions and structure of such institutions and the differences between Human Rights Commissions, Ombudsmen, and Specialized Institutions.

## **NHRIs for children**

At its 10<sup>th</sup> Anniversary Commemorative Meeting, the UN Committee on the Rights of the Child (1999, Annex IV: para 291u) encouraged the establishment of “independent monitoring mechanisms, whether specifically for child rights or within the functions of national human rights institutions”, which should “build on the requirements of the Convention, the ‘Paris Principles’, and the practical experiences of existing institutions”. According to UNICEF (2001), the main functions of independent human rights institutions for children include: influencing

policy makers and practitioners to take greater account of the human rights of children; promoting respect for the views of children; raising awareness of child rights among children and adults; and ensuring that children have effective means of redress when their rights are violated. The essential characteristics of a NHRI for children are: independence; clear, comprehensive and adequate powers; accessibility; collaboration; and accountability. Minimum standards relating to these areas are described in the UN Committee on the Rights of the Child (2002) General Comment No. 2.

In 2003, the UN General Assembly (2004: para 5a) recognised the role of NHRIs in protecting and promoting children's rights. State Parties were urged to "take all appropriate measures for the implementation of the rights recognized in the Convention... by putting in place effective national legislation, policies and action plans and by strengthening relevant governmental structures for children, including, where appropriate, ministers in charge of child issues and independent commissioners for the rights of the child". Two years later, the UN Commission on Human Rights (Office of the High Commissioner for Human Rights, 2005: para 5) reiterated this call upon State parties.

# **ESTABLISHMENT OF A COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE IN NORTHERN IRELAND**

## **The Belfast/Good Friday Agreement**

The Belfast/Good Friday Agreement, signed by the British and Irish Governments in 1994, recognised the centrality of protection of human rights and equality in the peace process. The Agreement made provision for the establishment of an Equality Commission and a Human Rights Commission, but did not consider the establishment of a dedicated Commission for children and young people. While the Equality and Human Rights Commissions retain responsibility for protecting the rights of children within their remit, their capacity to focus on the rights of children is restricted given: the breadth of their briefs, their limited resources, and the particular needs of children in respect of rights enforcement.

## **Northern Ireland Assembly**

On 29<sup>th</sup> January 2001, the Office of the First Minister and Deputy First Minister (OFMDFM) announced the intention of the NI Executive to establish the office of a Commissioner for Children and Young People: “an opportunity to shape new arrangements for protecting children and upholding their rights, an opportunity to put Northern Ireland at the cutting edge of world practice” (Deputy First Minister, Hansard, Northern Ireland Assembly, 29 January 2001).

A Non-Governmental (NGO) Forum was established on 3 April 2001, whose remit included provision of advice to OFMDFM about the role and remit of a Children’s Commissioner for NI. In fulfilment of equality duties under the 1998 Northern Ireland Act, and Article 12 of the UNCRC, OFMDFM also established a Young People’s Advisory Forum.

A private members bill - *Children’s Commissioner Bill* - was introduced by MLA Monica McWilliams on 30 April 2001. Following informal pre-consultation, OFMDFM published *Protecting Our Children’s Rights - A Consultation Paper on A Commissioner for Children for Northern Ireland* on 9 August 2001, with the consultation period ending on 8 November. A range of responses was submitted by statutory and voluntary organisations (see OFMDFM, 2002).

Between March and May 2001, the NI Assembly Committee of the Centre heard evidence from a wide range of departments and organisations about the proposal for a Children’s Commissioner (including: Junior Ministers; Human Rights Commission; Equality Commission; Save the Children; Children’s Law Centre; Barnardo’s; PlayBoard; Include Youth; National Deaf Children’s Society; Southern Travellers Early Years Partnership; NSPCC; Western Young People’s Steering Group; Derry Children’s Commission; BASW NI; NI Guardian Ad Litem

Agency; The Law Society of Northern Ireland; Child Care NI; First Key NI; NI Foster Care Association; NIACRO; EXTERN; Parents Advice Centre; Gingerbread NI; VOYPIC; Chair of the Welsh Health and Social Services Committee; Assembly Ombudsman for NI; Norwegian Ombudsman for Children). It also received written submissions from most of these organisations and various Committees (including: Health, Social Service and Public Safety; Regional Development; Environment; Committee on Procedures; Higher Education, Further Education, Training and Employment; Enterprise, Trade and Investment; Education). The Committee of the Centre submitted a report, with recommendations, to OFMDFM on 4 June (Committee of the Centre, 2001) and this was debated in the Assembly on 26 June.

*The Commissioner for Children and Young People Bill* was laid before the NI Assembly on 24 June 2002, receiving its second reading on 2 July 2002 before being referred to the Assembly's Committee of the Centre for detailed consideration beginning 4 September 2002. The Committee of the Centre received written submissions from the Environment Committee and Committee on the Administration of Justice, briefings from a Senior Assembly Researcher and Christian Action Research and Education, and evidence from: Child Care NI, Parents Advice Centre, Barnardo's, the Welsh Commissioner, Children's Law Centre, Include Youth, Human Rights Commission and OFMDFM officials before conducting a clause by clause scrutiny of the Bill on 25 September and 2 October.

After suspension of devolution in NI in October 2002, the draft Order was finalised and laid before Parliament on 19 December 2002. *The Commissioner for Children and Young People (Northern Ireland) Order 2003* became law on 27 February 2003.

# COMPLIANCE OF THE 2003 ORDER WITH MINIMUM STANDARDS RELATING TO THE STATUS AND FUNCTIONING OF NATIONAL INSTITUTIONS FOR PROTECTION AND PROMOTION OF HUMAN RIGHTS

This section assesses compliance of *The Commissioner for Children and Young People (Northern Ireland) Order 2003* with the minimum standards provided by UN Committee on the Rights of the Child (2002) General Comment No. 2 and the UN General Assembly (1993) 'Paris Principles'.

## Competence

### Paris Principle

A national institution shall be vested with competence to protect and promote human rights (A1)

### Order

*The Commissioner for Children and Young People (Northern Ireland) Order 2003* establishes "an officer known as the Commissioner for Children and Young People for Northern Ireland (A5: 1)... appointed by the First Minister and deputy First Minister acting jointly" (A5: 2).

The Order defines the "principal aim of the Commissioner in exercising his functions" as being "to safeguard and promote the rights and best interests of children and young persons" (A6: 1).

In determining whether and how to exercise his [sic] functions in relation to any child or young person, "the Commissioner's paramount consideration shall be the rights of the child or young person" (A6: 2a). 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)" (A6: 2b).

The Order states that 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" (A8: 6).

*While the Commissioner's paramount consideration is the rights of the child or young person (A6: 2a), s/he is required to have regard to the lower standard of 'welfare' where this is the standard in other statutory provision. The Order states that: "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 sub-paragraph (a)" (A6: 2). Within youth justice*

*statutory provisions - the Justice (NI) Act 2002 - and some elements of the Children (NI) Order 1995, the 'welfare' of the child is the standard in relation to children and young people. The 'welfare' standard tends to be used in a paternalistic manner based on the decisions of adults about what is most appropriate for the child, whereas rights-based standards are more holistic and prioritise the voice of the child.*

## **Mandate**

### **General Comment No. 2**

NHRIs should... be legislatively mandated... their mandate should include as broad a scope as possible for promoting and protecting human rights, incorporating the UNCRC, its Optional Protocols and other relevant international human rights instruments – thus effectively covering children’s human rights, in particular their civic, political, economic, social, and cultural rights. The legislation should include provisions setting out specific functions, powers and duties relating to children, linked to the Convention on the Rights of the Child and its Optional Protocols... necessary arrangements, including the enactment or amendment of legislation, should be put in place so as to ensure conformity of the institution’s mandate with the principles and provisions of the Convention. (8)

### **Paris Principle**

A national institution shall be given as broad a mandate as possible... clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence. (A2)

### **Order**

The Commissioner’s mandate is established in the 2003 Order, which specifies the Commissioner’s sphere of competence (title and principal aim; functions – duties and powers; formal investigations; review of the Order; supplementary provisions).

The Order specifies the duties of the Commissioner. These are:

- Promoting “an understanding of the rights of children and young persons” (A7: 1a), “an awareness of the importance of those rights and a respect among children and young persons for the rights of others” (A7: 1b), “an awareness of matters relating to the best interests of children and young persons” (A7: 1c).
- Keeping under review “the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons” (A7: 2), “the adequacy and effectiveness of services provided for children and young persons by relevant authorities” (A7: 3).
- Advising 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” (A7: 4)

- Ensuring that “children and young persons and their parents are made aware of the functions of the Commissioner; the location of the Commissioner’s office; and the ways in which they may communicate with the Commissioner” (A7: 5a, i, ii, iii); “children and young persons are encouraged to communicate with the Commissioner (A7: 5b); “the content of any matter published by the Commissioner takes account... 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” (A7: 5c); “the views of children and young persons and their parents are sought concerning the exercise by the Commissioner of his functions” (A7: 5d); “the services of the Commissioner are, so far as is practicable, made available to children and young persons in the locality in which they live” (A7: 5e).

The Order states that, in determining whether and how to exercise his functions, the Commissioner “shall have regard to the importance of the role of parents in the upbringing and development of their children” (A6: 3a).

*‘Have regard to’ is not a binding requirement, and the Commissioner’s paramount consideration is the rights of the child or young person (A6: 2a). However, in some legislation the rights of the child are vested in the child’s parent (eg in education it is a child’s parent who has the right of appeal against exclusion from school). In other legislation parents are assumed to uphold the ‘welfare’ of their children, which may undermine the best interests of the child (eg parents have the right to physically punish their children).*

The Commissioner is also expected to “have regard to... any relevant provisions of the United Nations Convention on the Rights of the Child” (A6: 3b).

*The Order does not include an expectation that the Commissioner should act in accordance with the UNCRC and relevant provisions of other international human rights instruments (such as the International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of all forms of Racial Discrimination; Convention on the Elimination of all forms of Discrimination Against Women; Riyadh Guidelines – UN Guidelines for the Prevention of Juvenile Delinquency; Beijing Rules – UN Standard Minimum Rules for the Administration of Juvenile Justice; UN Rules for the Protection of Juveniles Deprived of their Liberty; Standard Rules on the Equalization of Opportunities for Persons with Disabilities; Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others).*

The Order determines the scope of the Commissioner's functions by defining what constitutes a 'relevant authority'. In the Order, a relevant authority includes: any body subject to investigation by the Commissioner for Complaints (NI) (A4: 1a); any department or other authority subject to investigation by the Ombudsman (NI) (A4: 1b); any body or person listed in Schedule 1 of the Order (A4: 1c).

Part I of this Schedule includes bodies which are the responsibility of the devolved administration: Health and Personal Social Services – general health services provider, independent provider, children's home or voluntary home, residential care home/nursing home/private hospital in which children are accommodated, person providing day care to which A118 (1b) of the Children (NI) Order 1995 applies; Education – Board of Governors of a grant-aided school, managers of an independent school, governing body of an FE institution; Others – NI Commissioner for Complaints, Assembly Ombudsman for NI, NI Film Commission.

Part II of Schedule 1 includes bodies which are the responsibility of the Northern Ireland Office or other Whitehall Departments (areas reserved or excepted under Section 4 of the Northern Ireland Act 1998): Justice and Policing – NI Court Service, NI Policing Board and Chief Constable of the PSNI, Juvenile Justice Board and any body/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) (NI) Order 1998, Probation Board for NI, Chief Inspector of Criminal Justice in NI, NI Legal Services Commission, NI Law Commission; Others – Police Ombudsman for NI, Parliamentary Commissioner for Administration, Information Commissioner, Qualifications and Curriculum Authority, NI Office.

*The focus within this remit is public authorities or "matters arising in connection with the exercise by the authority of its public functions" (A26: 3)*

*The legislation prevents the Commissioner from investigating breaches of children's rights by private bodies such as independent providers of services not providing services "under arrangements with a health and social services body or general health services provider" (A26: 2) (eg the Commissioner would not be able to review inspection arrangements in respect of premises where education services were being provided to a child by an independent provider).*

*The Order also prevents powers of entry and inspection for the purposes of formal investigation in the private sphere of the home: "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" (A21: 8) (eg the Commissioner would not be able to conduct a formal investigation into home tuition provided by a parent in the child's home).*

## **Opinion and recommendation on matters relating to promotion and protection of children's rights**

### **Reviewing the adequacy and effectiveness of law and practice**

#### **General Comment No. 2**

Prepare and publicise opinions, recommendations and reports, either at the request of national authorities or on their own initiative, on any matter relating to the promotion and protection of children's rights. (19c)

Keep under review the adequacy and effectiveness of law and practice relating to the protection of children's rights. (19d)

#### **Paris Principle**

A national institution shall have the following responsibilities:

To submit to the government, parliament and any other competent body, on an advisory basis either at the request of the authorities concerned or through the exercise of its power to hear a matter without higher referral, opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights... relat[ing] to the following areas:

Any legislative or administrative provisions, as well as provisions relating to judicial organisation, intended to preserve and extend the protection of human rights...The national institution shall examine the legislation and administrative provisions in force, as well as bills and proposals, and shall make such recommendations as it deems appropriate in order to ensure that these provisions conform to the fundamental principles of human rights. It shall, if necessary, recommend the adoption of new legislation, the amendment of legislation in force and adoption or amendment of administrative measures. (A3a i)

Within the framework of its operation, the national institution shall freely consider any questions falling within its competence, whether they are submitted by the government or taken up by it without referral to a higher authority, on the proposal of its members or of any petitioner. (C1)

#### **Order**

The Order includes the duties to "keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons" (A7: 2), and to "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" (A7: 4).

*The Commissioner has no explicit function to examine bills and proposals to ensure their compatibility with children's rights. Advising after receipt of a request for advice, or as the Commissioner thinks appropriate, does not ensure early access to all draft legislation which may affect children and young people or establish an expectation that the Commissioner's duties include 'child-rights-proofing' planned and existing legislation. Compliance of policy/legislation with the UNCRC would be more likely if all public bodies were expected to seek advice from the Commissioner about draft proposals.*

*There should be an associated requirement that the Government and relevant authorities give due regard to the Commissioner's advice and recommendations. Addition of a duty which requires the Commissioner to review progress and implementation of advice/recommendations would incorporate an element of accountability on the part of those responsible for developing law and practice.*

## **Investigation into any situation of violation of children's rights**

### **General Comment No. 2**

Undertake investigations into any situation of violation of children's rights, on complaint or on their own initiative, within the scope of their mandate. (19a)

### **Paris Principle**

Responsibilities include submitting to the government, parliament and any other competent body... opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights relating to... Any situation of violation of human rights which it decides to take up. (A3a ii)

### **Order**

The Order states that the Commissioner "may, for the purposes of any of his functions, conduct such investigations as he considers necessary or expedient" (A8: 3)

Under A16, a formal investigation can be undertaken in respect of the Commissioner's functions under Article 9 (general review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities), Article 10 (review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities in individual cases) or Article 12 (investigation of complaints against relevant authorities made by a child or young person).

In a formal investigation, "the Commissioner shall have the same powers as the High Court in respect of (a) the attendance and examination of witnesses... and (b) the production of documents" (A20: 2). S/he also has the power to "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” (A21: 1). On entering any premises, the Commissioner may “make any examination into the state and management of the premises and the treatment of children and young persons there which he thinks appropriate” (A21: 2a); if necessary for the proper conduct of the investigation “inspect and take copies of any documents or records which are required by any statutory provision to be kept there” (A21: 2b); “interview in private any child or young person present on the premises” (A21: 2c); and “interview in private any other person present on the premises who is employed there (whether the employment is paid or unpaid or under contract or otherwise)” (A21: 2d).

*The Commissioner may conduct a formal investigation regarding general review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities (A9) “in relation to a relevant authority **other than one listed in Part II of Schedule 1**” (A16: 1a) – ie non-devolved public bodies. This affords unequal protection to certain children, based on administrative issues and the politics of devolution. Less protection is afforded to children in the care of non-devolved bodies such as those detained in the Juvenile Justice Centre (who are the responsibility of the Juvenile Justice Board and any other body/person with whom the Secretary of State has made arrangements for the provision of juvenile justice centres under the ‘Criminal Justice (Children) (Northern Ireland) Order 1998’ under Part II of Schedule 1) or refugee and asylum seeking children and young people (who are the responsibility of the Home Office which is not listed as a relevant authority).*

Article 10 (review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities in individual cases), Article 11 (assistance with complaints to relevant authorities), and Article 12 (investigation of complaints against relevant authorities) are each dependent on an individual child or young person identifying themselves and making a complaint.

*A child in the ongoing care of the state, whose rights are being abused, is unlikely to identify him/herself either through a complaints procedure or through seeking a review of advocacy, inspection or whistle-blowing arrangements.*

*These powers could relate to a group of children or young persons – to avoid the Commissioner’s involvement in multiple complaints relating to the same actions/incident and to increase the likelihood of vulnerable young people lodging complaints because they can do this alongside others rather than alone.*

In review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities - both general (A9) and in individual cases (A10) - the Order states that: “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” (A9: 4; A10: 3).

*All relevant authorities have a named body or person empowered to review operation of their inspection arrangements. However, children and young people will not necessarily be aware which institutions have these statutory responsibilities and should not be expected to approach the ‘appropriate’ institution – if their rights are being breached, immediate action is required by adults to protect them and safeguard their rights. Children and young people should feel confident that they can go to one place – the Commissioner – to be heard and seek redress, rather than rely on ‘watchdog’ mechanisms within relevant authorities.*

The Commissioner can only conduct an investigation into a complaint made by a child or young person if s/he is satisfied that “the complaint does not fall within an existing statutory complaints system” (A12: 2b).

*If a statutory complaints system exists (eg as under Article 101 of the Education (NI) Order 1986), the Commissioner will not be able to investigate regardless of the seriousness of the complaint or a child’s experience of the existing system.*

The Order states that 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... 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” (A13: 1).

*This may prohibit the Commissioner from investigating a complaint since, other than in exceptional circumstances, there is always some form of legal remedy (eg Judicial Review or appeal process) available to complainants. It may also lead to a number of cases going before the Courts which could be more appropriately resolved through investigation by the Commissioner.*

The Order also excludes the Commissioner from investigating complaints relating to the commencement and conduct of criminal and civil proceedings: “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” (A13: 2).

*This undermines the safeguarding of children's rights (eg the Commissioner would not be able to investigate a complaint that there had been a failure to prosecute in respect of a child abuse case or in relation to the conduct of family/care proceedings concerning an individual.)*

While the Commissioner “may in any court or tribunal... intervene in any proceedings involving law or practice concerning the rights or welfare of children or young persons” (A14: 1b), an intervention made under this paragraph “shall not be made except with the leave of the court or tribunal” (A14: 2a) and “in accordance with any such provision as may be made by the rules regulating practice and procedure of the court or tribunal” (A14: 2b).

*In cases where it is argued that an authority has acted in a manner incompatible with the European Court of Human Rights - incorporated into domestic legislation by the Human Rights Act - the Commissioner does not have the capacity to bring proceedings in his own name. If arguing Human Rights Act points, the Commissioner has to name ‘a victim’ (eg if arguing the ‘right to a fair trial’ under Article 6 of the ECHR when taking a case regarding the suspension or exclusion of children from school). Given their age and vulnerability, it is unlikely that an individual child will identify themselves as a victim.*

Arrangements made by the Commissioner for the provision of assistance to a child or young person in relation to legal proceedings “may, if the Commissioner thinks it reasonable in the circumstances, include provision for recovery of expenses from the child or young person” (A15: 5).

*Recovery of expenses from a child or young person seems an inappropriate expectation.*

## **Reporting on the national situation to the public and parliamentary bodies**

### **General Comment No. 2**

NHRIs must have the right to report directly, independently and separately on the state of children's rights to the public and to parliamentary bodies. (18)

### **Paris Principle**

Responsibilities include submitting to the government, parliament and any other competent body... opinions, recommendations, proposals and reports on any matters concerning the protection and promotion of human rights relating to... The preparation of reports on the national situation with regard to human rights in general, and on more specific matters (A3a iii)

## **Order**

The Commissioner “may compile information” (A8: 5a); “provide advice or information on any matter” (A8: 5b) and “publish any matter” (A8: 5c) “concerning the rights or best interests of children and young persons”.

## **Government knowledge about the work of the NHRI, violation of rights, initiatives, and opinion about government compliance/positions**

### **General Comment No. 2**

State’s parties must ensure that an annual debate is held in Parliament to provide parliamentarians with an opportunity to discuss the work of the NHRI in respect of children’s rights and the State’s compliance with the Convention. (18)

### **Paris Principle**

Drawing the attention of the government to situations in any part of the country where human rights are violated and making proposals to it for initiatives to put an end to such situations and, where necessary, expressing an opinion on the positions and reactions of the government. (A3a iv)

## **Order**

The duties of the Commissioner include: “keep under review” both “the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons” (A7: 2) and “the adequacy and effectiveness of services provided for children and young people by relevant authorities” (A7: 3).

*While the Commissioner can draw attention to inadequate or ineffective law and practice, or service provision, there is no requirement of the Government or public bodies to provide assurances that such issues will be addressed.*

The general powers of the Order state that 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” (A8: 2) and that he “may make representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young people” (A8: 6) – ‘any bodies or persons’ includes the government.

The Order states “As soon as practicable after the end of each financial year, the Commissioner shall send to the Office [OFMDFM] a report on the carrying out of his functions during that year” (Schedule 2, A12: 1). OFMDFM “shall lay a copy of every report sent to it... before the Assembly” (Schedule 2, A12: 3a) and “send a copy of every such report to the Secretary of State” (Schedule 2, A12: 3b).

*While this annual report may provide a useful overview, there is no guarantee that the work of the Commissioner or the State's compliance with the UNCRC will be debated by parliamentarians.*

## **Harmonisation of legislation/policy/practice with the UNCRC and relevant human rights instruments**

### **General Comment No. 2**

Promote harmonization of national legislation, regulations and practices with the Convention on the Rights of the Child, its Optional Protocols, and other international human rights instruments relevant to children's rights and promote their effective implementation, including through the provision of advice to public and private bodies in construing and applying the Convention. (19e)

Ensure that national economic policy makers take children's rights into account in setting and evaluating national economic and development plans. (19f)

Review and report on the Government's implementation and monitoring of the state of children's rights, seeking to ensure that statistics are appropriately disaggregated and other information collected on a regular basis to determine what must be done to realise children's rights. (19g)

In accordance with Article 3 of the Convention requiring that the best interests of children should be a primary consideration in all actions concerning them, ensure that the impact of laws and policies on children is carefully considered from development to implementation and beyond. (19i)

In light of UNCRC Article 12, ensure that the views of children are expressed and heard on matters concerning their human rights and in defining issues relating to their rights. (19j)

### **Paris Principle**

To promote and ensure the harmonisation of national legislation, regulations and practices with the international human rights instruments to which the State is a party, and their effective implementation. (A3b)

### **Order**

The Order states that, in determining whether and how to exercise his functions, the Commissioner shall have regard to "any relevant provisions of the United Nation Convention on the Rights of the Child" (A6: 3b).

*The Order does not refer to any other human rights instruments to which the State is a party (see Paris Principle A2 above)*

The Commissioner's duties include keeping under review "the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons" (A7: 2) and "the adequacy and effectiveness of services provided for children and young persons by relevant authorities" (A7: 3).

*As stated above, while the Commissioner can draw attention to inadequate or ineffective law and practice, or service provision, there is no requirement of the Government or public bodies to provide assurances that such issues will be addressed.*

The Commissioner "shall keep under review the working of [the] Order" (A24: 1a) and "make reports on it to the First Minister and deputy First Minister" (A24: 1b) as soon as practicable after the third anniversary of the making of the Order (A24: 2) and subsequently no earlier than every three years after that (A24: 3). The report "shall include the views of the Commissioner on the adequacy and effectiveness of [the] Order" (A24: 4a) and "may contain recommendations as to amendments to [the] Order which in the opinion of the Commissioner are necessary or desirable" (A24: 4b). Acting jointly, the First Minister and deputy First Minister "shall lay a copy of every report sent to them... before the Assembly" (A24: 5).

*This review focuses on the adequacy and effectiveness of the legislation, rather than implementation of the Order and monitoring the state of children's rights to assess progress in applying the UNCRC or incorporation of children's rights into laws and practice.*

## **Ratification of relevant human rights instruments**

### **General Comment No. 2**

Encourage ratification of, or accession to, any relevant international human rights instruments. (19h)

### **Paris Principle**

To encourage ratification of [international human rights] instruments or accession to those instruments, and to ensure their implementation. (A3c)

### **Order**

In determining whether/how to exercise his functions, the Commissioner "shall have regard to any relevant provisions of the United Nations Convention on the Rights of the Child" (A6: 3b).

*No other human rights instruments are mentioned in the Order.*

## Reporting to UN bodies and Committees

### General Comment No. 2

NHRIs should contribute independently to the reporting process under the Convention and other relevant international instruments and monitor the integrity of government reports to international treaty bodies with respect to children's rights... (20)

States parties [are requested by the UN Committee to] include detailed information on the legislative basis and mandate and principal relevant activities of NHRIs in their reports to the Committee. It is appropriate for States parties to consult with independent human rights institutions during the preparation of reports to the Committee. However, States parties must respect the independence of these bodies and their independent role in providing information to the Committee. It is not appropriate to delegate to NHRIs the drafting of reports or to include them in the government delegation when reports are examined by the Committee. (21)

### Paris Principle

To contribute to the reports which States are required to submit to United Nations bodies and committees, and to regional institutions, pursuant to their treaty obligations, and, where necessary, to express an opinion on the subject, with due respect for their independence. (A3d)

### Order

Under the Commissioner's general powers, s/he "may make representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons" (A8: 6).

*The Order does not explicitly include contribution to reports for UN bodies and Committees within the Commissioner's functions, although 'any body' would include these.*

## Co-operation with the UN, other agencies in the UN system, regional institutions and national institutions of other countries

### General Comment No. 2

NHRIs should cooperate with the special procedures of the Commission on Human Rights, including country and thematic mechanisms, in particular the Special Rapporteur on the sale of children, child prostitution and child pornography and the Special Representative of the Secretary-General for Children and Armed Conflict. (22)

States parties should avail themselves of assistance [from the Office of the High Commissioner for Human Rights, and/or the UN Children’s Fund (UNICEF)], where necessary. (23)

**Paris Principle**

To co-operate with the United Nations and any other agency in the UN system, the regional institutions and the national institutions of other countries which are competent in the areas of protection and promotion of human rights. (A3e)

**Order**

Under the Commissioner’s general powers, s/he “may make representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons” (A8: 6).

*The Order does not explicitly include co-operation with other agencies in the UN system, or regional/national institutions, within the Commissioner’s general powers but ‘any body’ includes these bodies.*

**Assistance in the formulation of teaching programmes and research into children’s rights**

**General Comment No. 2**

Assist in the formulation of programmes for the teaching of, research into and integration of children’s rights in the curricula of schools and universities and in professional circles. (19n)

Undertake human rights education which specifically focuses on children (in addition to promoting general public understanding about the importance of children’s rights). (19o)

**Paris Principle**

To assist in the formulation of programmes for the teaching of, and research into, human rights and to take part in their execution in schools, universities and professional circles. (A3f)

**Order**

The duties of the Commissioner include promoting “(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” (A7: 1)

Within the general powers contained in the Order, “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” (A8: 1)

*While these duties and powers might include developing programmes for teaching about children’s rights, this is not an explicit expectation.*

## **Publicising the UNCRC to the Government, public agencies and the general public, and monitoring implementation**

### **General Comment No. 2**

Promote public understanding and awareness of the importance of children’s rights and, for this purpose, work closely with the media and undertake or sponsor research and educational activities in the field. (19l)

In accordance with Article 42 of the Convention [obliging State parties to make the principles and provisions of the UNCRC widely known to adults and children] sensitize the Government, public agencies and the general public to the provisions of the Convention and monitor ways in which the State is meeting its obligations in this regard. (19m)

The role of NHRIs is to monitor independently the State’s compliance and progress towards implementation [of the UNCRC] and to do all it can to ensure full respect for children’s rights. While this may require the institution to develop projects to enhance the promotion and protection of children’s rights, it should not lead to the Government delegating its monitoring obligations to the national institution. It is essential that institutions remain entirely free to set their own agenda and determine their own activities. (25)

### **Paris Principle**

To publicize human rights and efforts to combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs. (A3g)

Address public opinion directly or through any press organ, particularly in order to publicise its opinions and recommendations. (C3)

### **Order**

The duties in the Order include “The Commissioner shall promote an understanding of the rights of children and young persons” (A7: 1a)

*The Commissioner’s duties do not explicitly refer to publicising the principles and provisions of the UNCRC. They relate more to ensuring that children, young people and parents are aware of her/his functions (see Paris Principle A2 above). However, in determining whether and how to exercise his/her functions, the Commissioner “shall have due regard to... any relevant provisions of the United*

*Nations Convention on the Rights of the Child” (A6: 3b) and Article 42 of the Convention requires states to make the principles and provisions of the Convention widely known.*

The general powers include undertaking, commissioning or providing assistance for research or educational activities (A8: 1) (see Paris Principle A3f above)

The Commissioner “may (a) compile information concerning... (b) provide advice or information on... (c) publish any matter concerning the rights or best interests of children and young persons” including the outcome of any research or investigations, or any advice provided (A8: 5). S/he “may make representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons” (A8: 6).

*The general powers do not explicitly refer to raising public awareness through information, education and use of all forms of the media but A8: 6 would include these activities.*

## **Establishment process and composition**

### **General Comment No. 2**

NHRI establishment processes should be consultative, inclusive, transparent, initiated and supported at the highest levels of Government, inclusive of all relevant elements of the State, the legislature and civil society. (10)

NHRIs should ensure that their composition includes pluralistic representation of the various elements of civil society involved in the promotion and protection of human rights. They should seek to involve, among others: human rights, anti-discrimination and children’s rights NGOs (including child and youth-led organisations); trade unions; social and professional organisations (doctors, lawyers, journalists, scientists, etc); universities and experts (including children’s rights experts); Government departments should be involved in an advisory capacity only. NHRIs should have appropriate and transparent appointment procedures, including an open and competitive selection process (12)

Article 12 of the Convention [promotion of respect for the views of children in all matters affecting them]... should be applied to the establishment, organisation and activities of NHRIs. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. (16)

### **Paris Principle**

The composition of the national institution and the appointment of its members, whether by means of an election or otherwise, shall be in accordance with a procedure which affords all necessary guarantees to ensure the pluralist

representation of the social forces (of civilian society) involved in the protection and promotion of human rights, particularly by powers which enable effective cooperation to be established with, or through the presence of, representatives of: NGOs responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organisations (eg associations of lawyers, doctors, journalists and eminent scientists); trends in philosophical or religious thought; universities and qualified experts; parliament; government departments (... only in an advisory capacity). (B1)

### **Order**

The Order establishes that “The person... holding the office of Commissioner for Children and Young People for Northern Ireland shall by that name be a corporation sole” (Schedule 2, A1: 1) – there is not an institution composed of representative members.

The Commissioner “shall be appointed by the First Minister and deputy First Minister acting jointly,”(A5: 2) and “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.” (Schedule 2, A3: 5)

*It is vital that, before final appointment by the responsible government department (eg OFMDFM) or Minister, an open and transparent appointment process should be developed which involves civil servants and politicians in an ‘advisory’ capacity only. This process should include young people who have received appropriate training about recruitment and selection.*

*All the powers of the Order are vested in one person - the Commissioner - undermining pluralistic representation and the involvement of NGOs, trade unions, social and professional organisations, universities and ‘experts’ in the work of this national institution. This issue could be addressed through the appointment of an Advisory Group or Groups, which include representatives from the various elements of Northern Ireland society involved in the promotion and protection of human/children’s rights – the Commissioner “may do anything... which he considers is (a) appropriate for facilitating, or (b) incidental or conducive to, the exercise of his functions” (Schedule 2, A2: 1), including “in particular, co-operating with other bodies exercising functions relating to children and young persons or their rights” (Schedule 2, A2: 2a).*

## **Appointment**

### **Paris Principle**

Appointment [of members of the institution] shall be effected by an official act which shall establish the specific duration of the mandate. This mandate may be

renewable, provided that the pluralism of the institution's membership is ensured. (B3)

### **Order**

The Order establishes the role of "an officer known as the Commissioner for Children and Young People for Northern Ireland" (A5: 1). Schedule 2 (A3: 2) outlines tenure of office, stating that "An appointment as the Commissioner shall be for a term of 4 years". On the expiry of their first term of office, a Commissioner is eligible to be re-appointed for one more term.

## **Infrastructure, including funding**

### **General Comment No. 2**

... to ensure their independence and effective functioning, NHRIs must have adequate infrastructure, funding, staff, premises, freedom from forms of financial control that might affect their independence. (10)

... it is the duty of States to make reasonable financial provision for the operation of NHRIs... The mandate and powers of national institutions may be meaningless, or the exercise of their powers limited, if the national institution does not have the means to operate effectively to discharge its powers. (11)

### **Paris Principle**

The national institution shall have an infrastructure which is suited to the smooth conduct of its activities, in particular adequate funding. The purpose of this funding should be to enable it to have its own staff and premises, in order to be independent of the government and not subject to financial control which might affect this independence. (B2)

### **Order**

Under Schedule 2 (A4: 1) OFMDFM "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".

The Commissioner "may appoint such number of officers as he may determine" (Schedule 2, A5: 1) and determine their remuneration and other conditions of service (Schedule 2, A5: 2). However, "A determination of the Commissioner under this paragraph requires the approval of the Office [OFMDFM] and the Department of Finance and Personnel (Schedule 2, A5: 5).

*This requirement of approval, rather than making decisions 'subject to examination', undermines the independence of the Commissioner and could be construed as political interference in employment processes.*

OFMDFM “may make grants to the Commissioner of such amounts as it may determine” (Schedule 2, A10: 1).

*Allocation of the Commissioner’s budget directly by the OFMDFM also undermines the Commissioner’s independence and may influence operational issues such as allocation of funding to specific areas of the Commissioner’s work. It is difficult to assess whether the budget determined by OFMDFM provides the means for the Commissioner to operate effectively. However, there should be no budgetary restriction (particularly on decisions about whether to take a case). As an independent institution, the Commissioner’s budget should not be affected by funding cuts imposed on Government departments.*

## **Accessibility and participation**

### **General Comment No. 2**

NHRIs should be geographically and physically accessible to all children... they should proactively reach out to all groups of children, in particular the most vulnerable and disadvantaged such as (but not limited to) children in care or detention, children from minority and indigenous groups, children with disabilities, children living in poverty, refugee and migrant children, street children and children with special needs in areas such as culture, language, health and education. (15)

Article 12 of the Convention [promotion of respect for the views of children in all matters affecting them]... should be applied to the establishment, organisation and activities of NHRIs. Institutions must ensure that they have direct contact with children and that children are appropriately involved and consulted. (16)

NHRIs should devise specially tailored consultation programmes and imaginative communication strategies to ensure full compliance with Article 12 of the Convention. A range of suitable ways in which children can communicate with the institution should be established. (17)

### **Order**

The Order states that “In determining whether and, if so, how to exercise his functions... in relation to any particular child or young person... 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)” (A6: 2)

The duties of the Commissioner include taking reasonable steps to ensure that children and young people are aware of the Commissioner’s functions; the location of her/his office; and the ways in which they may communicate with the Commissioner” (A7: 5). Children and young people are encouraged to communicate with the Commissioner (A7: 5b) and their views should be sought

concerning the exercise by the Commissioner of her/his functions (A7: 5d). Wherever practicable, the services of the Commissioner should be available to children and young people in the locality in which they live (A7: 5e) (see Paris Principle A2 above)

*The Order does not explicitly refer to the most vulnerable and disadvantaged children and young people, who are likely to be 'hard to reach', but these groups would be included within the duties outlined in A7.*

## **Powers, including to hear any person and obtain any necessary information/document**

### **General Comment No. 2**

NHRIs should be accorded such powers as are necessary to enable them to discharge their mandate effectively, including the power to hear any person and obtain any information and document necessary for assessing the situations falling within their competency. These powers should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities. (9)

... they must have the powers to compel and question witnesses, access relevant documentary evidence and access places of detention. (13)

NHRI legislation should include the right of the institution to have access in conditions of privacy to children in all forms of alternative care and to all institutions that include children. (15)

In accordance with Article 3 of the Convention [obliging State parties to ensure that the institutions, services and facilities responsible for the care and protection of children conform with the standards established by competent authorities, particularly in the areas of safety, health, number and suitability of staff, competent supervision] undertake visits to juvenile homes (and all places where children are detained for reform or punishment) and care institutions to report on the situation and make recommendations for improvement. (19s)

### **Paris Principle**

Hear any person and obtain any information and any documents necessary for assessing situations falling within its competence. (C2)

### **Order**

When 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” (A21: 1). On entering any premises s/he may examine the state and management of the premises and the treatment of children and young people; inspect and take copies of any documents of records required by statutory provision to be kept there; interview in private any child or young person present on the premises; interview in private any person present on the premises who is employed there (A21: 2a-d). (see Paris Principle A2 above).

*Although under the general powers it is stated that: “The Commissioner may, for the purposes of any of his functions, conduct such investigations as he considers necessary or expedient” (A8: 3), these powers are limited. The term ‘relevant authority’ does not include non-devolved public bodies (eg justice and policing), independent providers not working under arrangements with health and social services, or private dwellings. Consequently, the Commissioner can not conduct formal investigations into these bodies, restricting his/her powers to certain groups of children and young people (eg not including those in the juvenile justice centre or refugees and asylum seekers) or to specific circumstances (eg complaint by an individual child under A10, A11 and A12).*

*The focus on “premises managed by a relevant authority in which... education, health, welfare or other services are provided for children and young persons” (A21: 1c) excludes certain forms of provision (eg leisure facilities).*

## **Member meetings and working groups**

### **Paris Principle**

Meet on a regular basis and whenever necessary in the presence of all its members after they have been duly consulted. (C4)

Establish working groups from among its members as necessary, and set up local or regional sections to assist it in discharging its functions. (C5)

### **Order**

The Commissioner is not a ‘body’ of members.

*The Commissioner has general powers to co-opt representatives (eg through Advisory or Working Groups) under Schedule 2, A2, which states that s/he “may do anything... which he considers is (a) appropriate for facilitating, or (b) incidental or conducive to, the exercise of his functions” (Schedule 2, A2: 1), including “in particular, co-operating with other bodies exercising functions relating to children and young persons or their rights” (Schedule 2, A2: 2a).*

## **Co-operation with relevant national, regional and international bodies/ institutions**

### **General Comment No. 2**

NHRIs should consult and cooperate with relevant national, regional and international bodies and institutions about children's rights issues. (28)

International and regional mechanisms and exchanges are encouraged, as they provide NHRIs with an opportunity to learn from each other's experience, collectively strengthen each other's positions and contribute to resolving human rights problems affecting both countries and regions (eg child rights issues such as trafficking of women and children, child pornography, child soldiers, child labour, child abuse, refugee and migrant children) (29)

### **Paris Principle**

Maintain consultation with other bodies, whether jurisdictional or otherwise, responsible for the protection and promotion of human rights (in particular, ombudsmen, mediators and similar institutions). (C6)

### **Order**

Within his/her general powers, 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" (A8: 2)

The general powers of the Commissioner also include making "representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons" (A8: 6)

*Although consultation with other bodies responsible for protection and promotion of children's rights are not explicitly included, reference to 'such bodies as he thinks appropriate' (A8: 2) or 'any body' (A8: 6) includes these bodies. The general powers outlined in Schedule 2, A2: 2a include: "co-operating with other bodies exercising functions relating to children and young persons or their rights (whether in the United Kingdom or elsewhere)".*

## **Relationships with NGOs**

### **General Comment No. 2**

Advocate for, and facilitate meaningful participation by, children's rights NGOs, including organisations comprised of children themselves, in the development of domestic legislation and international instruments on issues affecting children. (19k)

The role of NHRIs, with their legislative base and specific powers, is complimentary [to the role of NGOs promoting human rights and children's rights]. It is essential that institutions work closely with NGOs and that Governments respect the independence of both NHRIs and NGOs. (26)

### **Paris Principle**

...develop relations with the NGOs devoted to protecting and promoting human rights, to economic and social development, to combating racism, to protecting particularly vulnerable groups (especially children, migrant workers, refugees, physically and mentally disabled persons) or to specialized areas. (C7)

### **Order**

Under his/her general powers, 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" (A8: 2)

The general powers of the Commissioner include making "representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons" (A8: 6)

*Development of relations or close working relationships with human/children's rights NGOs is not explicitly included in the Commissioner's general powers. However, reference to 'such bodies as he thinks appropriate' (A8: 2) or 'any body' (A8: 6) includes NGOs. They would also be included within the general powers outlined in Schedule 2, A2: 2a: "co-operating with other bodies exercising functions relating to children and young persons or their rights (whether in the United Kingdom or elsewhere)".*

## **Mediation and conciliation**

### **General Comment No. 2**

Where appropriate, NHRIs should undertake mediation and conciliation of complaints. (13)

Engage in mediation or conciliation processes before taking cases to court, where appropriate. (19q)

### **Paris Principle**

Seeking an amicable settlement through conciliation or, within limits prescribed by the law, through binding decisions or, where necessary, on the basis of confidentiality. (D1)

## **Order**

The duties of the Commissioner include keeping under review “the adequacy and effectiveness” of “law and practice relating to the rights and welfare of children and young persons” (A7: 2), and “services provided for children and young persons” (A7: 3).

The Commissioner’s general powers include making “representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons” (A8: 6).

*In fulfilling his/her duties and powers, an emphasis on children’s rights implies a commitment to mediation and conciliation.*

## **Information to relevant parties**

### **Paris Principle**

Informing the party who filed the petition of his/her rights, in particular the remedies available to him/her, and promoting his/her access to them. (D2)

### **Order**

Where the Commissioner decides to conduct a formal investigation into advocacy, complaint, inspection or whistle-blowing arrangements of relevant authorities in individual cases (A10) “he shall... send notice of the proposed investigation and a copy of the terms of reference to (i) the relevant authority concerned; and (b)... the particular child or young person” (A16: 3b). Where opportunities to give oral or other evidence and test by cross-examination any evidence which may affect them are given to a relevant authority or person in any formal investigation under Article 10 or formal investigation into a complaint under A12 (1), “the same opportunities shall be given to the child or young person” (A16: 10a and b).

When the Commissioner conducts a formal investigation into a complaint under Article 12, “he shall prepare a report on the outcome of that investigation and send it to the complainant” (A18: 2a)

*To promote learning from cases, it would be helpful if all reports produced by the Commissioner were made public and a version for young people was made available.*

## **Making recommendations, proposing amendments or reforms of the law/policy/practice**

### **Paris Principle**

Making recommendations to the competent authorities, especially by proposing amendments or reforms of the laws, regulations or administrative practices, especially if they have created the difficulties encountered by the persons filing the petitions in order to assert their rights. ( 4)

### **Order**

The duties of the Commissioner include: keeping under review “the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons” (A7: 2) and “services provided for children and young persons by relevant authorities” (A7: 3). They also include advising “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” (A7: 4).

*Although the Commissioner’s duties include keeping the law and practice under review and providing advice (A7: 2, 3, 4), there is no requirement on relevant authorities, the Secretary of State, or the Executive Committee of the Assembly to act upon the Commissioner’s advice or recommendations.*

The Commissioner’s general powers include: making “representations or recommendations to any body or person about any matter concerning the rights or best interests of children and young persons” (A8: 6)

*There is no requirement for bodies to give due consideration to representations/recommendations made by the Commissioner under his/her general powers (A8: 6)*

When the Commissioner conducts a formal investigation under Articles 9, 10 or 12 “he shall prepare a report on the outcome of that investigation” (A18: 1 and 2). This report “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” (A18: 4). The Commissioner then “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” (A19: 1). Failure by the authority to respond “may be published in such a manner as the Commissioner considers appropriate” (A19: 2).

*Inclusion of recommendations and expectations of response are possibilities ('may') rather than requirements ('must') – they can not be enforced, unless the Commissioner decides to bring, intervene in or assist in legal proceedings where “the case raises a question of principle” or “there are other circumstances which make it appropriate” (A14), or to provide assistance to a young person in relation to legal proceedings (A15).*

## RECOMMENDATIONS

According to the International Council on Human Rights Policy (2005: 7-9), NHRIs tend to be more effective when they:

- enjoy public legitimacy
- are accessible
- have an open organisational culture
- ensure the integrity and quality of their members
- have diverse membership and staff
- consult with civil society
- have a broad mandate
- have an all-encompassing jurisdiction
- have power to monitor compliance with their recommendations
- treat human rights issues systematically
- have adequate budgetary resources
- develop effective international links
- handle complaints speedily and effectively.

The following recommendations are based on analysis of compliance of *The Commissioner for Children and Young People (Northern Ireland) Order 2003* with two key international standards: the 'Paris Principles' and UN General Comment No. 2.

### **Establishment process, appointment, funding**

To ensure compliance with international standards relating to the establishment of a national children's rights institution,

- the *Commissioner* should be *appointed through a transparent appointment process, which involves civil servants and politicians in an 'advisory' capacity and young people who have received appropriate training* about recruitment and selection (addition to A5: 2)
- *pluralist representation* of the various elements of civil society involved in promoting and protecting children's rights could be *established through* development of an *Advisory Group or Groups* (amendment to Schedule 2, A1)
- the Commissioner's *decisions about appointment of officers* should be *subject to examination* by OFMDFM, *rather than requiring the approval* of the Office and the Department of Finance and Personnel (amendment to Schedule 2, A5: 5)
- the *budget allocated* to the Commissioner should enable him/her to fulfil his/her duties as an independent institution, *without budgetary restriction or the imposition of funding cuts applied to Government departments* (amendment to Schedule 2, A10: 1), and *details about spending on different areas of work* should be *included in the annual statement of accounts submitted to the Assembly* (amendment to Schedule 2, A11: 5)

## **Consolidation of current strengths**

- The *principal aim* of the Commissioner is to safeguard and promote the rights and best interests of children and young people (A6: 1). While having due regard to statutory provisions in which the welfare of the child is the standard in relation to children and young people, and to the role of parents, this aim should underpin any decision or action of the Commissioner.
- The Commissioner's *paramount consideration* in determining whether and how to exercise her/his functions in relation to any child/young person is *the rights of the child or young person*, with regard in particular to the ascertainable wishes and feelings of the child or young person (A6: 2a)
- The Commissioner's *general powers* are wide-ranging and include: undertaking, commissioning or providing financial or other assistance for research or educational activities; issuing guidance on best practice; conducting such investigations as s/he considers necessary or expedient; compiling information, providing advice or information and publishing any matter; making representations or recommendations to any body or person about any matter ... concerning the rights or best interests of children and young persons (A8: 1, 2, 3, 5, 6)

## **Commissioner's aim**

The Commissioner's aim should include:

- having regard to relevant provisions of *international human rights instruments*, in addition to the UNCRC (addition to A6: 3b)

## **Commissioner's duties**

The Commissioner's duties should include:

- a duty to *act in accordance with relevant provisions of the UNCRC and other international human rights instruments* (addition to A7)
- promoting and safeguarding the rights and best interests of *all children and young people in Northern Ireland*, including those within the youth justice system, asylum seekers and other non-devolved areas such as young people in the armed forces; those receiving services from private bodies and in private dwellings (amendment to Schedule 1, leading to amendment to A7: 3 and A21: 1; removal of A21: 8)
- examining and commenting on draft legislation to ensure *compatibility of bills and proposals with children's rights*, as well as assessing existing legislation and making recommendations for change where appropriate (amendment to A7: 4). There should be related requirements for the Secretary of State, Executive Committee of the Assembly and relevant authorities to consult with the Commissioner within reasonable timescales and to have due regard to the Commissioner's advice/recommendations.
- reviewing the *progress and implementation of advice to Government and relevant bodies* (addition to A7: 4), *recommendations relating to the adequacy and effectiveness of law and practice* (addition to A7: 2) and

- recommendations made in reports following formal investigations* (addition to A19: 5)
- assisting in the formulation of *programmes for the teaching of, and research into, children's rights* in the curricula of schools, universities and professional training (addition to A7)
  - contributing to an *annual debate* in which parliamentarians discuss the work of the Commissioner and the State's compliance with the UNCRC (addition to Schedule 2, A12)

### **Commissioner's powers in relation to bringing, intervening in or assisting in legal proceedings**

The Commissioner should be able to:

- argue Human Rights Act points without having to name a 'victim' or persuade an individual to take the onus of court action upon themselves. This would require an *amendment to the Human Rights Act*
- make arrangements for provision of assistance to a young person in relation to legal proceedings, but *not be able to recover expenses from the child or young person* (removal of A15: 5)

### **Commissioner's powers in relation to formal investigations**

The general powers to conduct such investigations as s/he considers necessary or expedient (A8: 3) should apply to all circumstances. If this were the case, the Commissioner would be able to:

- *conduct a formal investigation under Article 9* (general review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities) *in private bodies* (A26: 2), *non-devolved public bodies* such as juvenile justice centres (A16: 1a) *and in private dwellings* (A21: 8); with the same powers as the High Court in respect of examination of witnesses and production of documents, and powers of entry and to interview in private any child/young person/person employed on the premises
- *review advocacy, complaint, inspection and whistle-blowing arrangements* – both general and in individual cases – *even when another body/ person has power under statutory provision to review arrangements* (A9: 4; A10: 3)
- *conduct an investigation into a complaint* made by a child or young person *even if the complaint falls within an existing statutory complaints system* (A12: 2b)
- *investigate complaints* against relevant authorities based on a complaint *made by a group of children/young people*, as well as by individuals (A11: 1; A12: 1)
- *investigate a complaint even when the complainant has had a right of appeal, complaint, review before a tribunal or remedy by way of court proceedings* (A13: 1)
- *investigate complaints relating to commencement and conduct of criminal and civil proceedings* before any court in the UK or proceedings before any international court or tribunal (A13: 2)

## **Review of the Order**

The Commissioner's review of the Order should include:

- the views of the Commissioner about *implementation of the Order*, rather than just its adequacy and effectiveness (addition to A24: 4)
- an *assessment of progress in compliance with/implementation of the UNCRC and other human rights instruments* to which the Government is a party (addition to A24: 4)
- an *assessment of progress regarding incorporation of children's rights into laws, policy and practice* (addition to A24: 4)

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