CHAPTER 462

COMMISSIONER FOR CHILDREN ACT

To provide for the appointment of a Commissioner for Children with power to investigate any breaches or infringements of the rights of children.

5th December, 2003

ACT VII of 2003, as amended by Legal Notice 427 of 2007.

Short title.

1. The short title of this Act is the Commissioner for Children Act.

Interpretation.

2. In this Act, unless the context otherwise requires -

"child" means any person who has not attained majority;

''complainant'' means any person who reports, in writing or verbally, an alleged breach of the rights of any child provided that a verbal complaint should always be subsequently put in writing;

''Commissioner'' means the Commissioner for Children appointed under article 3 and includes any officer assigned to assist the Commissioner and authorised by him in that behalf;

"Committee" means the Social Affairs Committee of the House of Representatives or any other committee substituting the same.

''Minister'' means the Minister responsible for children and family affairs;

"rights of children" include the rights of children enunciated in the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989.

Appointment of Commissioner.

3. (1) There shall be a Commissioner for Children who shall be appointed by the Prime Minister after consultation with the Committee.

(2) A person shall not be qualified to hold office as Commissioner if such person:

(*a*) is a Minister, Parliamentary Secretary, or a Member of the House of Representatives, or

(*b*) is serving as a judge or magistrate; or

(*c*) is legally incapacitated; or

(*d*) has been declared bankrupt or has made a composition or arrangement with his creditors; or

(*e*) has been convicted of a crime affecting public trust or theft or fraud, or of knowingly receiving property obtained by theft or fraud, a crime affecting the good order of families, or of an offence against this Act.

(3) Where the person appointed Commissioner is prior to such appointment already a public officer, such person shall continue to retain such office but shall not hold any position which is

incompatible with the correct performance of his or her official duties as Commissioner for Children or with the impartiality and independence expected from this office or with public confidence therein.

Independence of functions.

4. In the exercise of the functions established under this Act, the Commissioner shall act independently and shall not be subject to the direction or control of any other person or authority.

Representation of the Commissioner.

5. Any document purporting to be an instrument made or issued and signed by the Commissioner shall be received in evidence and shall, until the contrary is proved, be deemed to be an instrument made or issued by the Commissioner.

Tenure of office.

6. (1) Subject to the provisions of subarticle (2), the Commissioner shall hold office for a term of three years and shall be eligible for reappointment on the expiration of such term of office.

(2) Unless the office sooner becomes vacant, a person appointed as Commissioner shall hold office until a successor is appointed.

(3) The Commissioner may at any time resign from office by writing addressed to the Minister.

Removal or suspension from office.

7. A Commissioner may at any time be removed or suspended from office by the Prime Minister after consultation with the Committee on the grounds of proved inability to perform the functions of the office of Commissioner (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour:

Provided that if the Committee is not constituted or if Parliament is not in session, the Commissioner may be suspended from office by the Prime Minister, acting in accordance with his own discretion, for inability to perform the functions of the office or misbehaviour proved to the satisfaction of the Prime Minister, but any such suspension shall not continue in force beyond two months after the Committee is constituted and Parliament is in session.

Temporary appointment of Commissioner for Children.

8. (1) The Prime Minister may, at any time during the illness or absence of the Commissioner or for any other temporary purpose where the Commissioner considers it necessary to do so, appoint a person to act in the office of Commissioner in accordance with this article, until the resumption of office of the Commissioner.

(2) A person shall not be qualified to be appointed under this article if such person is disqualified to be appointed to the Office of Commissioner under article 3(2):

Provided that a person appointed under this article may exercise any activity for profit or reward which is not in any way incompatible with the provisions of article 3(2).

Functions of the Commissioner.

9. The Commissioner shall have the following functions:

(*a*) to promote and advocate for the rights and interests of

children;

(*b*) to ensure that children are being given the opportunity to express their opinions and that these are in fact considered;

(*c*) to promote the protection of family unity;

(*d*) to advocate for adequate support to parents for the up-bringing of their children;

(*e*) to foster the development of alternative care to children who need such care with special reference to fostering and adoption;

(*f*) to seek to ensure that the rights and interests of children are properly taken into account by government departments, local authorities, other public bodies and voluntary and public organisations when decisions on policies affecting children are taken;

(*g*) to promote the protection of children from physical or mental harm and neglect, including sexual abuse or exploitation;

(*h*) to promote the highest standards of health and social services for women during pregnancy and to promote special care and protection, including adequate legal protection, for children both before and after birth;

(*i*) to promote the highest standards of health, and education and social services for children;

(*j*) to promote the highest standards of leisure, play and recreational facilities for children;

(*k*) to ensure that all possible measures are taken by the relevant authorities to prevent and remedy poverty and social exclusion among children;

(*l*) to promote compliance with the United Nations Convention on the Rights of the Child as ratified by Malta and with such other international treaties, conventions or agreements relating to children as are or may be ratified or otherwise acceded to by Malta.

Guiding principles.

10. The Commissioner shall be guided by the following general principles:

(*a*) that the best interests of children and the family are paramount;

(*b*) that all children are to be treated with dignity, respect and fairness;

(*c*) disabled children and children with disadvantaged family or social circumstances should enjoy the same quality of life like all other children;

(*d*) that children and their families are to be provided with opportunities to participate in decisions that affect them and in defining, planning and evaluating services to children; and

(*e*) that government, families and communities share the responsibility for the promotion of the development and well-being of children.

Promoting the best interests of children.

11. In order to promote the welfare of children and to monitor the conditions under which children develop, the Commissioner shall:

(*a*) provide public education and information designed to promote an understanding of the rights of children;

(*b*) initiate measures for asserting the rights and promote the interests of children;

(*c*) collect information and investigate any alleged breaches of the rights of children including the death of any child if the Commissioner considers such an investigation to be necessary;

(*d*) set standards to be applied by ministries, departments or agencies of the Government to help ensure that their internal review processes are responsive to complaints about decisions concerning the provision of designated services to children;

(*e*) monitor whether ministries, government departments and agencies referred to in paragraph (*d*) are meeting the standards set under that paragraph;

(*f*) collect data about, conduct or encourage research into, matters relevant to services for children;

(*g*) ensure that such services in relation to children are -

(i) accessible,

(ii) community-based,

(iii) co-ordinated and integrated,

(iv) inclusive of gender, culture and language, and

(v) responsive to individual needs;

(*h*) provide public education and information designed to promote an understanding of, and to invite public comment on, the work of the Commissioner;

(*i*) monitor and assess the policies and practices of social welfare services affecting children;

(*j*) ensure that legislation relating to the protection of children's interests is observed;

(*k*) act as a spokesperson for the rights, needs and interests of children and put forward proposals for measures which can solve or prevent conflicts between children and society;

(*l*) advise the Government and propose to the Government such measures as may be required in order for the rights and interests of children to be provided for.

Council for Children.

12. (1) There shall be a Council for Children appointed by the Minister to assist the Commissioner, composed of the Commissioner who shall be the chairperson and six other members

as follows:

(*a*) one person appointed by the Minister;

(*b*) one person appointed by the Minister responsible for Health;

(*c*) one person appointed by the Minister responsible for Education;

(*d*) one person appointed by the Minister responsible for Home Affairs;

(*e*) one person appointed by the Minister responsible for Justice; and

(*f*) the Chairperson of the Committee.

(2) The Council shall have the right to co-opt up to seven other persons who, in the opinion of the Council, best represent children and the rights of children. These persons shall, as far as possible, be children and people involved in the promotion of children's rights.

(3) The Council shall not act unless the chairperson and two other members are present.

(4) The Council shall meet at least once every three months and shall be convened by the chairperson. The chairperson shall also convene a meeting of the Council when requested to do so by at least two members thereof.

(5) The Council shall, subject to the foregoing provisions regulate its own procedures.

(6) The functions of the Council shall be:

(*a*) to monitor compliance with the United Nations Convention on the Rights of the Child as ratified by Malta and with all such other international treaties, conventions or agreements relating to children as are or may be ratified or otherwise acceded to by Malta;

(*b*) generally to advise and assist the Commissioner in the performance of the functions of the Commissioner as listed in this Act;

(*c*) to advise and assist the Commissioner in the promotion of the welfare of children as specified in article 11.

Confidentiality.

13. The Commissioner, the Council members and every member of the staff of the Commissioner's office shall maintain secrecy in respect of all personal matters that come to their knowledge in the exercise of their powers and the carrying out of their duties and functions under this Act, and shall not divulge any matter coming to their knowledge as aforesaid except for the purpose of an investigation, or prosecutions for an offence against this Act or any other offence against the person of a child.

Investigations.

14. (1) Saving what is provided in subarticle (2), the Commissioner may carry out an investigation for any purpose connected with the execution of the Commissioner's duties either on a written complaint made to the Commissioner by any person or

on the Commissioner's own motion.

(2) The Commissioner shall not carry out investigations concerning specific, individual conflicts between a child and its parents or guardians, or between the parents or guardians including matters concerning the exercise of parental responsibility and any other matter that falls within the competence of any court or tribunal established by law and in any such case the Commissioner shall submit to the complainant, the reason for the refusal.

(3) A rejection by the Commissioner to carry out an investigation shall be final.

(4) Upon rendering a decision to investigate a complaint, the Commissioner shall notify the complainant of the decision to investigate and shall notify any department, agency or entity involved of the intention to investigate.

(5) The Commissioner may advise a complainant to pursue all administrative or judicial remedies or channels of complaint open to the complainant before or in lieu of pursuing a complaint with the Commissioner.

(6) If the Commissioner finds in the course of an investigation that an individual's action is or may be in violation of any law of a penal nature, the Commissioner shall immediately report that fact to the Attorney General.

(7) The Commissioner shall prepare and publish a report of the findings in any formal investigation and shall include in it such recommendations as appear to be necessary or expedient.

Access to information.

15. (1) For the purpose of an investigation the Commissioner may require any person who possesses documents or information relevant to the investigation to:

(*a*) produce such documents; and, or

(*b*) furnish the information in writing; and, or

(*c*) attend at a specified time and place and give oral information on oath.

(2) The Commissioner shall have the power to summon witnesses and to administer an oath to any person concerned in the investigation and require them to give the relevant information.

(3) Notwithstanding the provisions of the preceding two subarticles, no person shall be compelled to give information or produce documents which such person could not be compelled to give or produce in civil or criminal proceedings before a Court.

Recommendations.

16. (1) The Commissioner may make recommendations for action to be taken by other persons or body as may be necessary or expedient and may publish such recommendations, if the Commissioner deems fit, without revealing the identity of the person to whom the report refers.

(2) In those cases where the Commissioner decides to make recommendations, a report shall be drawn up by the Commissioner explaining the reasons for the recommendations and the

Commissioner shall send a copy of such report to any person or body to whom the recommendations are directed.

Compliance with the UN Convention on the Rights of the Child.

17. (1) If it appears to the Commissioner that a particular person or body is not complying with the provisions of the United Nations Convention on the Rights of the Child as ratified by Malta, then the Commissioner may make recommendations in the form of a compliance notice, which shall state the Commissioner's opinion as to the way in which the provisions of the Convention are not being complied with and what action should be taken to comply.

(2) Any person or body receiving a recommendation in accordance with the preceding sub-article, shall consider the recommendation and notify the Commissioner within such time as the Commissioner may stipulate in the compliance notice, of the action which has been taken or it is intended to take in response to the recommendation.

(3) Where any person or body to whom a recommendation is directed intends not to comply with it, they shall furnish the Commissioner with reasons for not doing so, and the Commissioner may, if deemed fit, publish these reasons.

(4) The Commissioner may require a person or body to whom a recommendation has been directed to furnish such information as may be reasonably required to verify whether the recommendation has been complied with or not.

(5) The Commissioner shall establish and maintain a Register of Compliance Notices and the register may be inspected by any person.

Child Impact Statement.

18. (1) Whenever it appears necessary or expedient, the Commissioner may carry out or cause to be carried out a Child Impact Statement relating to any decision or proposal on policy which affects children.

(2) Any Child Impact Statement shall set out the probable impact on children of the decision or proposal on policy.

(3) The Commissioner may publish the Child Impact Statement

Annual report.

19. (1) The Commissioner shall, not later than six weeks after the end of each calendar year make and transmit to the Minister, an annual report which shall include:

(*a*) a report of the Commissioner's activities during the year;

(*b*) a general description of the circumstances of children in Malta and a survey of the developments which have affected them;

(*c*) any recommendations regarding the need for legislation or change in rules or policies; and

(*d*) any responses made to the Commissioner in accordance with this Act.

(2) The Minister shall, at the earliest opportunity and not later than eight weeks after he has received a copy of every such report,

or if at any time during that period the House of Representatives is not in session, within eight weeks from the beginning of the next following session cause a copy of every such report to be laid on the Table of the House of Representatives.

(3) The report mentioned in subarticle (2) shall be discussed by the Committee.

Offences. *Amended by: L.N. 427 of 2007.*

20. Any person who knowingly impedes or obstructs the Commissioner in performing or exercising powers or functions given under this Act; or refuses to give any information required by the Commissioner or knowingly provides false or misleading information as required under this Act, shall be guilty of an offence and shall on conviction be liable to a fine (*multa*) not exceeding one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) provided that when the act committed by an offender constitutes a more serious offence under any other law, the provisions of that other law shall apply in respect of that act.

Provisions of this Act not to derogate from provisions of the Constitution.

21. The provisions of articles 3, 6, 7 and 9 shall be in addition to and shall not derogate from the provisions of the Constitution with regard to the appointment, discipline and removal of public officers.