Draft Order in Council laid before Parliament under paragraph 2(1)(a) of the Schedule to the Northern Ireland Act 2000, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2003 No. (N.I.)

NORTHERN IRELAND

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

Made - - - - 2003
Coming into operation in accordance with Article 1(2) and (3)

At the Court at Buckingham Palace, the day of 2003

Present,

The Queen's Most Excellent Majesty in Council

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

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

Introductory

Title and commencement

1.—(1) This Order may be cited as the Commissioner for Children and Young People (Northern Ireland) Order 2003.

(2) The following provisions of this Order come into operation two weeks after the day on which this Order is made—

(a) this Article; and

(b) Articles 2 to 5 (together with Schedules 1 and 2).

(3) The other provisions of this Order come into operation on such day or days as the Office may by order appoint.

(4) An order under paragraph (3) may contain such transitional provisions as appear to the Office to be appropriate.

Interpretation: general

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order—

"action" includes failure to act;

"advocacy arrangements", "complaint arrangements", "inspection arrangements" and "whistle-blowing arrangements" have the meanings given by Article 9(1);

"the Commissioner" means the Commissioner for Children and Young People for Northern Ireland;

"the complainant", in relation to a formal investigation into a complaint under Article 12(1), means the child or young person by whom the complaint was made;

"formal investigation" means an investigation under Article 16;

"general health services provider" has the meaning given in paragraph 1 of Schedule 1 and references to general health services are to any of the services mentioned in that paragraph;

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

(a) a Health and Social Services Board;

(b) a Health and Social Services trust;

(c) the Mental Health Commission for Northern Ireland;

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

(e) a special health and social services agency;

"independent provider" has the meaning given in paragraph 2 of Schedule 1.

"information" includes information recorded in any form;

"notice" means notice in writing;

"the Office" means the Office of the First Minister and deputy First Minister;

"parent" includes a person who has parental responsibility for a child (within the meaning of the Children (Northern Ireland) Order 1995 (NI 2));

"practice" includes policy;

"statutory provision" has the same meaning as in section 1(f) of the Interpretation Act (Northern Ireland) 1954 (c. 33).

(3) For the purposes of this Order—

(a) the reference in Article 6(3) to the United Nations Convention on the Rights of the Child is a reference to the Convention of that name adopted by General Assembly resolution 44/25 of 20th November 1989 and ratified by the United Kingdom on 16th December 1991;

(b) that Convention has effect subject to any reservation of the United Kingdom for the time being in force.

Interpretation: "child or young person"

3.—(1) In this Order "child or young person" means —

(a) a person under the age of 18; and

(b) a person aged 18 or over who falls within paragraph (2) or (3).

(2) A person falls within this paragraph if he is a person to or in respect of whom services are provided by, or on behalf of, or under arrangements made with, a Health and Social Services Board or a Health and Social Services trust by virtue of—

(a) Article 34D, 35, 35A or 35B of the Children (Northern Ireland) Order 1995 (NI 2) (which provide for the continuing duties of those bodies towards young persons); or

(b) regulations made under Article 34E of that Order (which may provide for the appointment of personal advisers for certain young persons).

(3) A person falls within this paragraph if—

(a) he is under the age of 21 years; and

(b) he is a disabled person within the meaning of the Disability Discrimination Act 1995 (c. 50).

(4) Anything which is required or authorised by this Order to be done by a child or young person may be done by his parent or any other person acting on his behalf; and references in this Order to things done by a child or young person include references to things done on behalf of the child or young person.

(5) References in this Order to a child or young person in relation to any legal proceedings include references to a parent or any other person acting on behalf of the child or young person for the purposes of those proceedings.

(6) If, in the case of any adult, there are in the opinion of the Commissioner exceptional circumstances which make it appropriate to do so, the Commissioner may direct that paragraph (7) shall apply in relation to the adult.

(7) Where this paragraph applies in relation to an adult, then—

(a) anything which is required or authorised by this Order to be done by a child or young person may be done by the adult if it relates to any action taken in relation to him at a time when he was a child or young person; and

(b) anything which is required or authorised by this Order to be done by the Commissioner in relation to a child or young person may be done in relation to the adult if it relates to any action taken as mentioned in sub-paragraph (a).

(8) In paragraphs (6) and (7) "adult" means a person who is not a child or young person.

Interpretation: "relevant authority"

4.—(1) In this Order "relevant authority" means—

(a) any body (other than the Office of the Commissioner) listed in Schedule 2 to the Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7) (bodies subject to investigation);

(b) any department or other authority listed in Schedule 2 to the Ombudsman (Northern Ireland) Order 1996 (NI 8) (departments and other authorities subject to investigation); and

(c) any body or person listed in Schedule 1.

(2) The Office may by order amend Schedule 1 so as to—

(a) add a body or person to that Schedule;

(b) remove a body or person from that Schedule;

(c) modify any entry in that Schedule; or

(d) move a body or person from one Part of that Schedule to the other Part.

(3) No order may be made under paragraph (2) unless a draft of the order has been laid before, and approved by resolution of, the Assembly.

(4) An order under paragraph (2) may contain such transitional provisions as the Office thinks appropriate.

(5) An order under paragraph (2) which adds a body or person to Schedule 1 may provide for this Order to apply to that person or body subject to such modifications or exceptions as are specified in the order.

(6) In this Order "relevant authority concerned" means—

(a) in relation to an investigation for the purposes of the Commissioner's functions under Article 7(2) or (3), a relevant authority mentioned in the terms of reference produced for that investigation under paragraph 2(2)(a) of Schedule 3;

(b) in relation to an investigation for the purposes of the Commissioner's functions under Article 9 or 10, the relevant authority in relation to which the investigation is to be, is being, or (as the case may be) has been conducted; and

(c) in relation to a formal investigation into a complaint under Article 12(1), the relevant authority against which the complaint was made.

(7) In this Order any reference to action taken by a relevant authority includes a reference to action taken by—

(a) a member or committee of the authority (if it is a body);

(b) an officer or member of staff of the authority;

(c) any person acting on behalf of the authority;

(d) any person to whom the authority has delegated functions.

The Commissioner

The Commissioner for Children and Young People for Northern Ireland

5.—(1) There shall be an officer known as the Commissioner for Children and Young People for Northern Ireland.

(2) The Commissioner shall be appointed by the First Minister and deputy First Minister acting jointly.

(3) Schedule 2 has effect in relation to the Commissioner.

Principal aim of the Commissioner

6.—(1) The principal aim of the Commissioner in exercising his functions under this Order is to safeguard and promote the rights and best interests of children and young persons.

(2) In determining whether and, if so, how to exercise his functions under this Order in relation to any particular child or young person—

(a) the Commissioner's paramount consideration shall be the rights of the child or young person; and

(b) 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);

but, 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).

(3) In determining whether and, if so, how to exercise his functions under this Order, the Commissioner shall have regard to—

(a) the importance of the role of parents in the upbringing and development of their children; and

(b) any relevant provisions of the United Nations Convention on the Rights of the Child.

Functions of the Commissioner

Duties of the Commissioner

7.—(1) The Commissioner shall promote—

(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.

(2) The Commissioner shall keep under review the adequacy and effectiveness of law and practice relating to the rights and welfare of children and young persons.

(3) The Commissioner shall keep under review the adequacy and effectiveness of services provided for children and young persons by relevant authorities.

(4) The Commissioner shall 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.

(5) The Commissioner shall take reasonable steps to ensure that—

(a) children and young persons and their parents are made aware of—

(i) the functions of the Commissioner;

(ii) the location of the Commissioner's office; and

(iii) the ways in which they may communicate with the Commissioner;

(b) children and young persons are encouraged to communicate with the Commissioner;

(c) the content of any matter published by the Commissioner takes account, so far as practicable, 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;

(d) the views of children and young persons and their parents are sought concerning the exercise by the Commissioner of his functions;

(e) the services of the Commissioner are, so far as practicable, made available to children and young persons in the locality in which they live.

General powers of the Commissioner

8.—(1) 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.

(2) 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.

(3) The Commissioner may, for the purposes of any of his functions, conduct such investigations as he considers necessary or expedient.