



# Commissioner for Children and Young People (Scotland) Act 2003

2003 asp 17

## *Functions*

### **4 Promoting and safeguarding rights**

- (1) The general function of the Commissioner is to promote and safeguard the rights of children and young people.
- (2) In exercising that general function the Commissioner is, in particular, to—
  - (a) promote awareness and understanding of the rights of children and young people;
  - (b) keep under review the law, policy and practice relating to the rights of children and young people with a view to assessing the adequacy and effectiveness of such law, policy and practice;
  - (c) promote best practice by service providers; and
  - (d) promote, commission, undertake and publish research on matters relating to the rights of children and young people.

### **5 United Nations Convention and equal opportunities**

- (1) In exercising functions under this Act, the Commissioner must comply with subsections (2) to (4).
- (2) The Commissioner must have regard to any relevant provisions of the United Nations Convention on the Rights of the Child.
- (3) The Commissioner must, in particular—
  - (a) regard, and encourage others to regard, the best interests of children and young people as a primary consideration; and
  - (b) have regard to, and encourage others to have regard to, the views of children and young people on all matters affecting them, due allowance being made for age and maturity.
- (4) The Commissioner must act in a manner which encourages equal opportunities and, in particular, the observance of the equal opportunity requirements.

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## 6 Involving children and young people

- (1) The Commissioner must encourage the involvement of children and young people in the work of the Commissioner.
- (2) The Commissioner must, in particular, take reasonable steps to—
  - (a) ensure that children and young people are made aware of—
    - (i) the functions of the Commissioner;
    - (ii) the ways in which they may communicate with the Commissioner; and
    - (iii) the ways in which the Commissioner may respond to any issues which they raise;
  - (b) consult children and young people on the work to be undertaken by the Commissioner; and
  - (c) consult organisations working with and for children and young people on the work to be undertaken by the Commissioner.
- (3) In carrying out the duties under subsections (1) and (2) the Commissioner must pay particular attention to groups of children and young people who do not have other adequate means by which they can make their views known.
- (4) The Commissioner must prepare and keep under review a strategy for involving children and young people in the work of the Commissioner in accordance with this section.

## 7 Carrying out investigations

- [<sup>F1</sup>(1) The Commissioner may carry out an investigation into—
- (a) whether, by what means and to what extent a service provider has regard to the rights, interests and views of children and young people in making decisions or taking actions that affect those children and young people (such an investigation being called a “general investigation”);
  - (b) whether, by what means and to what extent a service provider had regard to the rights, interests and views of a child or young person in making a decision or taking an action that affected that child or young person (such an investigation being called an “individual investigation”).
- (2) The Commissioner may carry out a general investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the matter to be investigated raises an issue of particular significance to—
- (a) children and young people generally; or
  - (b) particular groups of children and young people.
- (2A) The Commissioner may carry out an investigation only if the Commissioner, having considered the available evidence on, and any information received about, the matter, is satisfied on reasonable grounds that the investigation would not duplicate work that is properly the function of another person.]
- (3) The Commissioner may not carry out an investigation—
- (a) if it would relate to a reserved matter;
  - <sup>F2</sup>(b) . . . . .
  - (c) so far as it would relate to—

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- (i) the making of decisions or taking of action in particular legal proceedings before a court or tribunal; or
- (ii) a matter which is the subject of legal proceedings before a court or tribunal.

[<sup>F3</sup>(4) Subsection (5) applies in relation to a matter about which the Commissioner may carry out an individual investigation.

(5) Where the Commissioner considers that the matter may be capable of being resolved without an investigation, the Commissioner may with a view to securing that outcome take such steps as the Commissioner considers appropriate.]

#### Textual Amendments

- F1** S. 7(1)-(2A) substituted for s. 7(1)(2) (7.8.2017) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 5(2)(a), 102(3); S.S.I. 2016/254, art. 3(4) (with art. 4)
- F2** S. 7(3)(b) omitted (7.8.2017) by virtue of Children and Young People (Scotland) Act 2014 (asp 8), ss. 5(2)(b), 102(3); S.S.I. 2016/254, art. 3(4) (with art. 4)
- F3** S. 7(4)(5) added (7.8.2017) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 5(2)(c), 102(3); S.S.I. 2016/254, art. 3(4) (with art. 4)

## 8 Initiation and conduct of investigation

(1) Before taking any steps in the conduct of an investigation, the Commissioner must—

- (a) draw up terms of reference for the investigation; and
- [<sup>F4</sup>(b) take such steps as appear to the Commissioner to be appropriate with a view to bringing notice of the investigation and terms of reference to the attention of persons likely to be affected by it.]

(2) [<sup>F5</sup>A general] investigation is to be conducted in public except to the extent that the Commissioner considers that the taking of evidence in private is necessary or appropriate.

[<sup>F6</sup>(3) An individual investigation is to be conducted in private.]

#### Textual Amendments

- F4** S. 8(1)(b) substituted (7.8.2017) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 5(3)(a), 102(3); S.S.I. 2016/254, art. 3(4) (with art. 4)
- F5** Words in s. 8(2) substituted (7.8.2017) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 5(3)(b), 102(3); S.S.I. 2016/254, art. 3(4) (with art. 4)
- F6** S. 8(3) added (7.8.2017) by Children and Young People (Scotland) Act 2014 (asp 8), ss. 5(3)(c), 102(3); S.S.I. 2016/254, art. 3(4) (with art. 4)

## 9 Investigations: witnesses and documents

(1) The Commissioner may require any person—

- (a) to give evidence on any matter within the terms of reference of an investigation; or
- (b) to produce documents in the custody or control of that person which have a bearing on any such matter.

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- (2) The Commissioner may not impose such a requirement on any person whom the Parliament could not require, under section 23 of the Scotland Act, to attend its proceedings for the purpose of giving evidence or to produce documents.
- (3) Schedule 2 makes further provision with respect to witnesses and documents and the sanctions for non-compliance with a requirement under this section.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 4(2A) inserted by [2024 asp 1 s. 11\(2\)](#)