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STATUTORY INSTRUMENTS

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**1995 No. 755**

**The Children (Northern Ireland) Order 1995**

**PART V**

**CARE AND SUPERVISION**

*Introductory*

**Interpretation**

**49.**—(1) In this Order—

“care order” means (subject to Article 2(2))—

- (a) an order under Article 50(1)(a); and
- (b) an interim care order under Article 57;

“supervision order” means—

- (a) an order under Article 50(1)(b); and
- (b) an interim supervision order under Article 57;

“education supervision order” means an order under Article 55(1).

(2) In this Part “authorised person” means—

- (a) the National Society for the Prevention of Cruelty to Children and any of its officers; and
- (b) any person authorised by order of the Department to bring proceedings under Article 50 and any officer of a body which is so authorised.

*General*

**Care orders and supervision orders**

**50.**—(1) On the application of any authority or authorised person, the court may make an order—

- (a) placing the child with respect to whom the application is made in the care of a designated authority; or
- (b) putting him under the supervision of a designated authority.

(2) A court may only make a care or a supervision order if it is satisfied—

- (a) that the child concerned is suffering, or is likely to suffer, significant harm; and
- (b) that the harm, or likelihood of harm, is attributable to—
  - (i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or
  - (ii) the child’s being beyond parental control.

(3) Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child.

(4) No care order or supervision order may be made with respect to a child who has reached the age of 17 (or 16, in the case of a child who is married).

(5) An application under this Article may be made on its own or in any other family proceedings.

(6) The court may—

- (a) on an application for a care order, make a supervision order;
- (b) on an application for a supervision order, make a care order.

(7) Where an authorised person proposes to make an application under this Article he shall—

- (a) if it is reasonably practicable to do so; and
- (b) before making the application,

consult the authority appearing to him to be the authority in whose area the child concerned is ordinarily resident.

(8) An application made by an authorised person shall not be entertained by the court if, at the time when it is made, the child concerned is—

- (a) the subject of an earlier application for a care or a supervision order, which has not been disposed of; or
- (b) subject to—
  - (i) a care or a supervision order; or
  - (ii) a probation order or an order under section 74(1)(b) or (c) of the Children and Young Persons Act (Northern Ireland) 1968<sup>(1)</sup> (power of court to make fit person order or supervision order on finding of guilt).

(9) The authority designated in a care order must be—

- (a) the authority within whose area the child is ordinarily resident; or
- (b) where the child does not reside in the area of an authority, the authority within whose area any circumstances arose in consequence of which the order is being made.

### **Timetable for proceedings**

**51.**—(1) A court hearing an application for an order under this Part shall (in the light of any rules made by virtue of paragraph (2))—

- (a) draw up a timetable with a view to disposing of the application without delay; and
- (b) give such directions as it considers appropriate for the purpose of ensuring, so far as is reasonably practicable, that that timetable is adhered to.

(2) Rules of court may—

- (a) specify periods within which specified steps must be taken in relation to such proceedings; and
- (b) make other provision with respect to such proceedings for the purpose of ensuring, so far as is reasonably practicable, that they are disposed of without delay.

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(1) 1968 c. 34 (N.I.)

## Care orders

### Effect of care order

**52.**—(1) Where a care order is made with respect to a child the authority designated by the order shall receive him into its care and keep him in its care while the order remains in force.

(2) Where—

- (a) a care order has been made with respect to a child on the application of an authorised person; but
- (b) the authority designated by the order was not informed that that person proposed to make the application,

the child may be kept in the care of that person until received into the care of the authority.

(3) While a care order is in force with respect to a child, the authority designated by the order shall—

- (a) have parental responsibility for the child; and
- (b) have the power (subject to paragraphs (4) to (9)) to determine the extent to which a parent or guardian of the child may meet his parental responsibility for the child.

(4) The authority shall not exercise the power in paragraph (3)(b) unless it is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare.

(5) Nothing in paragraph (3)(b) shall prevent a parent or guardian of the child who has care of him from doing what is reasonable in all the circumstances of the case for the purpose of safeguarding or promoting his welfare.

(6) While a care order is in force with respect to a child, the authority designated by the order shall not—

- (a) cause the child to be brought up in any religious persuasion other than that in which he would have been brought up if the order had not been made; or
- (b) have the right—
  - (i) to consent or refuse to consent to the making of an application with respect to the child under Article 17 of the Adoption Order;
  - (ii) to agree or refuse to agree to the making of an adoption order, or an order under Article 57 of that Order, with respect to the child; or
  - (iii) to appoint a guardian for the child.

(7) While a care order is in force with respect to a child, no person may—

- (a) cause the child to be known by a new surname; or
- (b) remove him from the United Kingdom,

without either the written consent of every person who has parental responsibility for the child or the leave of the court.

(8) Paragraph (7)(b) does not—

- (a) prevent the removal of such a child, for a period of less than one month, by, or with the written consent of, the authority in whose care he is; or
- (b) apply to arrangements for such a child to live outside Northern Ireland (which are governed by Article 33).

(9) The power in paragraph (3)(b) is subject (in addition to being subject to the provisions of this Article) to any right, duty, power, responsibility or authority which a parent or guardian of the child has in relation to the child and his property by virtue of any other statutory provision.

**Parental contact etc. with children in care**

53.—(1) Where a child is in the care of an authority, the authority shall (subject to the provisions of this Article) allow the child reasonable contact with—

- (a) his parents;
- (b) any guardian of his;
- (c) where there was a residence order in force with respect to the child immediately before the care order was made, the person in whose favour the residence order was made; and
- (d) where, immediately before the care order was made, a person had care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children, that person.

(2) On an application made by the authority or the child, the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and any named person.

(3) On an application made by—

- (a) any person mentioned in sub-paragraphs (a) to (d) of paragraph (1); or
- (b) any person who has obtained the leave of the court to make the application,

the court may make such order as it considers appropriate with respect to the contact which is to be allowed between the child and that person.

(4) On an application made by the authority or the child, the court may make an order authorising the authority to refuse to allow contact between the child and any person who is mentioned in sub-paragraphs (a) to (d) of paragraph (1) and named in the order.

(5) When making a care order with respect to a child, or in any family proceedings in connection with a child who is in the care of an authority, the court may make an order under this Article, even though no application for such an order has been made with respect to the child, if the court considers that the order should be made.

(6) An authority may refuse to allow the contact that would otherwise be required by virtue of paragraph (1) or an order under this Article if—

- (a) the authority is satisfied that it is necessary to do so in order to safeguard or promote the child's welfare; and
- (b) the refusal—
  - (i) is decided upon as a matter of urgency; and
  - (ii) does not last for more than seven days.

(7) An order under this Article may impose such conditions as the court considers appropriate.

(8) The Department may by regulations make provision as to—

- (a) the steps to be taken by an authority which has exercised its powers under paragraph (6);
- (b) the circumstances in which, and conditions subject to which, the terms of any order under this Article may be departed from by agreement between the authority and the person in relation to whom the order is made;
- (c) notification by an authority of any variation or suspension of arrangements made (otherwise than under an order under this Article) with a view to affording any person contact with a child to whom this Article applies.

(9) The court may vary or discharge any order made under this Article on the application of the authority, the child concerned or the person named in the order.

(10) An order under this Article may be made either at the same time as the care order itself or later.

- (11) Before making a care order with respect to any child the court shall—
- (a) consider the arrangements which the authority has made, or proposes to make, for affording any person contact with a child to whom this Article applies; and
  - (b) invite the parties to the proceedings to comment on those arrangements.

#### *Supervision orders*

#### **Supervision orders**

- 54.**—(1) While a supervision order is in force the supervisor shall—
- (a) advise, assist and befriend the supervised child;
  - (b) take such steps as are reasonably necessary to give effect to the order; and
  - (c) where—
    - (i) the order is not wholly complied with; or
    - (ii) the supervisor considers that the order may no longer be necessary, consider whether or not to apply to the court for its variation or discharge.
- (2) Schedule 3 (which makes further provision with respect to supervision orders) shall have effect.

#### *Education supervision orders*

#### **Education supervision orders**

- 55.**—(1) On the application of any education and library board, the court may make an order putting the child with respect to whom the application is made under the supervision of a designated education and library board (“an education supervision order”).
- (2) A court may only make an education supervision order if it is satisfied that the child concerned is of compulsory school age and is not being properly educated.
- (3) For the purposes of this Article, a child is being properly educated only if he is receiving efficient full-time education suitable to his age, ability and aptitude and to any special educational needs he may have.
- (4) Where a child is—
- (a) the subject of a school attendance order which is in force under Part I of Schedule 13 to the Education and Libraries (Northern Ireland) Order 1986<sup>(2)</sup> and which has not been complied with; or
  - (b) a registered pupil at a school which he is not attending regularly within the meaning of Part II of that Schedule,
- then, unless it is proved that he is being properly educated, it shall be assumed that he is not.
- (5) An education supervision order may not be made with respect to a child who is in the care of an authority.
- (6) The education and library board designated in an education supervision order must be—
- (a) the education and library board within whose area the child concerned is living or will live; or
  - (b) where—

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- (i) the child is a registered pupil at a school; and
  - (ii) the education and library board mentioned in sub-paragraph (a) and the education and library board within whose area the school is situated agree,
- the latter board.

(7) Where an education and library board proposes to make an application for an education supervision order it shall, before making the application, consult—

- (a) in the case of a child who is being provided with accommodation by, or on behalf of, an authority, that authority; and
- (b) in any other case, the authority within whose area the child concerned lives, or will live.

(8) Schedule 4 (which makes further provision with respect to education supervision orders) shall have effect.

### *Powers of court*

#### **Investigation into child's circumstances**

**56.**—(1) Where, in any family proceedings in which a question arises with respect to the welfare of any child, it appears to the court that it may be appropriate for a care or a supervision order to be made with respect to him, the court may direct the appropriate authority to undertake an investigation of the child's circumstances.

(2) Where the court gives a direction under this Article the authority concerned shall, when undertaking the investigation, consider whether it should—

- (a) apply for a care or a supervision order with respect to the child;
- (b) provide services or assistance for the child or his family; or
- (c) take any other action with respect to the child.

(3) Where an authority undertakes an investigation under this Article, and decides not to apply for a care or a supervision order with respect to the child concerned, the authority shall inform the court of—

- (a) its reasons for so deciding;
- (b) any service or assistance which the authority has provided, or intends to provide, for the child and his family; and
- (c) any other action which the authority has taken, or proposes to take, with respect to the child.

(4) The information shall be given to the court before the end of the period of eight weeks beginning with the date of the direction, unless the court otherwise directs.

(5) The authority named in a direction under paragraph (1) must be—

- (a) the authority in whose area the child is ordinarily resident; or
- (b) where the child is not ordinarily resident in the area of an authority, the authority within whose area any circumstances arose in consequence of which the direction is being given.

(6) If, on the conclusion of any investigation or review under this Article, the authority decides not to apply for a care or a supervision order with respect to the child—

- (a) the authority shall consider whether it would be appropriate to review the case at a later date; and
- (b) if the authority decides that it would be, the authority shall determine the date on which that review is to begin.

## Interim orders

57.—(1) Where—

- (a) in any proceedings on an application for a care or a supervision order, the proceedings are adjourned; or
- (b) the court gives a direction under Article 56(1),

the court may make an interim care order or an interim supervision order with respect to the child concerned.

(2) A court shall not make an interim care order or interim supervision order under this Article unless it is satisfied that there are reasonable grounds for believing that the circumstances with respect to the child are as mentioned in Article 50(2).

(3) Where, in any proceedings on an application for a care or a supervision order, a court makes a residence order with respect to the child concerned, it shall also make an interim supervision order with respect to him unless it is satisfied that his welfare will be satisfactorily safeguarded without an interim supervision order being made.

(4) An interim order made under this Article shall have effect for such period as may be specified in the order, but shall in any event cease to have effect on whichever of the following first occurs—

- (a) the expiry of the period of eight weeks beginning with the date on which the order is made;
- (b) if the order is the second or subsequent such order made with respect to the same child in the same proceedings, the expiry of the relevant period;
- (c) in a case which falls within paragraph (1)(a), the disposal of the application;
- (d) in a case which falls within paragraph (1)(b), the disposal of an application for a care or a supervision order made by the authority with respect to the child;
- (e) in a case which falls within paragraph (1)(b) and in which—
  - (i) the court has given a direction under Article 56(4), but
  - (ii) no application for a care or a supervision order has been made with respect to the child,

the expiry of the period fixed by that direction.

(5) In paragraph (4)(b) “the relevant period” means—

- (a) the period of four weeks beginning with the date on which the order in question is made; or
- (b) the period of eight weeks beginning with the date on which the first order was made if that period ends later than the period mentioned in sub-paragraph (a).

(6) Where the court makes an interim care order or interim supervision order, it may give such directions (if any) as it considers appropriate with regard to the medical or psychiatric examination or other assessment of the child; but if the child is of sufficient understanding to make an informed decision he may refuse to submit to the examination or other assessment.

(7) A direction under paragraph (6) may be to the effect that there is to be—

- (a) no such examination or assessment; or
- (b) no such examination or assessment unless the court directs otherwise.

(8) A direction under paragraph (6) may be—

- (a) given when the interim order is made or at any time while it is in force; and
- (b) varied at any time on the application of any person falling within any class of person prescribed by rules of court for the purposes of this paragraph.

(9) Paragraphs 4 and 5 of Schedule 3 shall not apply in relation to an interim supervision order.

(10) Where a court makes an order under this Article it shall, in determining the period for which the order is to be in force, consider whether any party who was, or might have been, opposed to the making of the order was in a position to argue his case against the order in full.

### **Discharge and variation, etc., of care orders and supervision orders**

**58.**—(1) A care order may be discharged by the court on the application of—

- (a) any person who has parental responsibility for the child;
- (b) the child himself; or
- (c) the authority designated by the order.

(2) A supervision order may be varied or discharged by the court on the application of—

- (a) any person who has parental responsibility for the child;
- (b) the child himself; or
- (c) the supervisor.

(3) On the application of a person who is not entitled to apply for the order to be discharged, but who is a person with whom the child is living, a supervision order may be varied by the court in so far as it imposes a requirement which affects that person.

(4) Where a care order is in force with respect to a child the court may, on the application of any person entitled to apply for the order to be discharged, substitute a supervision order for the care order.

(5) When a court is considering whether to substitute one order for another under paragraph (4) any provision of this Order which would otherwise require Article 50(2) to be satisfied at the time when the proposed order is substituted or made shall be disregarded.

### **Orders pending appeals in cases about care or supervision orders**

**59.**—(1) Where—

- (a) a court dismisses an application for a care order; and
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim care order,

the court may make a care order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(2) Where—

- (a) a court dismisses an application for a care order, or an application for a supervision order; and
- (b) at the time when the court dismisses the application, the child concerned is the subject of an interim supervision order,

the court may make a supervision order with respect to the child to have effect subject to such directions (if any) as the court may see fit to include in the order.

(3) Where a court grants an application to discharge a care or a supervision order, it may order that—

- (a) its decision is not to have effect; or
- (b) the care order, or supervision order, is to continue to have effect but subject to such directions as the court sees fit to include in the order.

(4) An order made under this Article shall only have effect for such period, not exceeding the appeal period, as may be specified in the order.



(5) Where—

- (a) an appeal is made against any decision of a court under this Article; or
- (b) any application is made to the appellate court in connection with a proposed appeal against that decision,

the appellate court may extend the period for which the order in question is to have effect, but not so as to extend it beyond the end of the appeal period.

(6) In this Article “the appeal period” means—

- (a) where an appeal is made against the decision in question, the period between the making of that decision and the determination of the appeal; and
- (b) otherwise, the period during which an appeal may be made against the decision.

### *Guardians ad litem*

#### **Representation of child and of his interests in certain proceedings**

**60.**—(1) For the purpose of any specified proceedings, the court shall appoint a guardian ad litem for the child concerned unless satisfied that it is not necessary to do so in order to safeguard his interests.

(2) The guardian ad litem shall—

- (a) be appointed in accordance with rules of court; and
- (b) be under a duty to safeguard the interests of the child in the manner prescribed by such rules.

(3) Where—

- (a) the child concerned is not represented by a solicitor; and
- (b) any of the conditions mentioned in paragraph (4) is satisfied,

the court may appoint a solicitor to represent him.

(4) The conditions are that—

- (a) no guardian ad litem has been appointed for the child;
- (b) the child has sufficient understanding to instruct a solicitor and wishes to do so;
- (c) it appears to the court that it would be in the child’s best interests for him to be represented by a solicitor.

(5) Any solicitor appointed under this Article shall be appointed, and shall represent the child, in accordance with rules of court.

(6) In this Article “specified proceedings” means any proceedings—

- (a) on an application for a care or a supervision order;
- (b) in which the court has given a direction under Article 56(1) and has made, or is considering whether to make, an interim care order;
- (c) on an application for the discharge of a care order or the variation or discharge of a supervision order;
- (d) on an application under Article 58(4);
- (e) in which the court is considering whether to make a residence order with respect to a child who is the subject of a care order;
- (f) with respect to contact between a child who is the subject of a care order and any other person;

- (g) under Part VI;
- (h) on an appeal against—
  - (i) the making of, or refusal to make, a care order, supervision order or any order under Article 53;
  - (ii) the making of, or refusal to make, a residence order with respect to a child who is the subject of a care order; or
  - (iii) the variation or discharge, or refusal of an application to vary or discharge, an order of a kind mentioned in head (i) or (ii);
  - (iv) the refusal of an application under Article 58(4); or
  - (v) the making of, or refusal to make, an order under Part VI; or
- (i) which are specified, for the purposes of this Article, by rules of court.

(7) The Department may by regulations provide for the establishment of panels of persons from whom guardians ad litem appointed under this Article must be selected.

(8) Paragraph (7) shall not be taken to prejudice the power of the Lord Chancellor to confer or impose duties on the Official Solicitor under section 75(2) of the Judicature (Northern Ireland) Act 1978(3).

- (9) The regulations may, in particular, make provision—
- (a) for the constitution, administration and procedures of panels and for the appointment of panel managers;
  - (b) for the defrayment of expenses and for the payment of fees and allowances;
  - (c) as to the qualifications for appointment as a guardian ad litem;
  - (d) as to the training to be given to guardians ad litem or to persons with a view to their appointment as guardians ad litem; and
  - (e) for monitoring the work of guardians ad litem.

- (10) Rules of court may make provision as to—
- (a) the assistance which any guardian ad litem may be required by the court to give to it;
  - (b) the consideration to be given by any guardian ad litem, where an order of a specified kind has been made in the proceedings in question, as to whether to apply for the variation or discharge of the order;
  - (c) the participation of guardians ad litem in reviews, of a kind specified in the rules, which are conducted by the court.

(11) Regardless of any statutory provision or rule of law which would otherwise prevent it from doing so, the court may take account of—

- (a) any statement contained in a report made by a guardian ad litem who is appointed under this Article for the purpose of the proceedings in question; and
- (b) any evidence given in respect of the matters referred to in the report,

in so far as the statement or evidence is, in the opinion of the court, relevant to the question which the court is considering.

(12) The Department may, with the approval of the Department of Finance and Personnel, make such grants as the Department considers appropriate with respect to expenditure incurred under regulations made under paragraph (7).

### **Right of guardian ad litem to have access to records**

**61.**—(1) Where a person has been appointed as a guardian ad litem under this Order he shall have the right at all reasonable times to examine and take copies of—

- (a) any records of, or held by, an authority or an authorised person which were compiled in connection with the making, or proposed making, by any person of any application under this Order with respect to the child concerned;
- (b) any records of, or held by, an authority which were compiled in connection with any relevant functions, so far as those records relate to that child; or
- (c) any records of, or held by, an authorised person which were compiled in connection with the activities of that person, so far as those records relate to that child.

(2) In paragraph (1) “relevant functions” means personal social services functions (including functions exercisable on behalf of the Department by virtue of directions under Article 17(1) of the Health and Personal Social Services (Northern Ireland) Order 1972)(4).

(3) Where a guardian ad litem takes a copy of any record which he is entitled to examine under this Article, that copy or any part of it shall be admissible as evidence of any matter referred to in any—

- (a) report which he makes to the court in the proceedings in question; or
- (b) evidence which he gives in those proceedings.

(4) Paragraph (3) has effect regardless of any statutory provision or rule of law which would otherwise prevent the record in question being admissible in evidence.

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(4) 1972 NI 14