

POLICY NOTE

THE CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2014 (PART 4 AND PART 5 COMPLAINTS) ORDER 2016

SSI 2016/152

The above instrument is made in exercise of the powers conferred by sections 30 and 43 of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”). The instrument is subject to affirmative procedure.

Policy Objectives

1. This instrument (“the Order”) relates to the provisions in sections 30 and 43 of the 2014 Act which allow the Scottish Ministers to set out a complaints process relating to the exercise of functions conferred by or under Parts 4 and 5 of the 2014 Act. The functions in Part 4 relate to the provision of a named person service, as described in section 19 of the 2014 Act. The functions in Part 5 relate to the requirement for a child’s plan (in section 33) and the form and processes for preparing, delivering and managing a child’s plan, set out throughout Part 5 and supplemented by the Child’s Plan (Scotland) Order 2016. The complaints procedures, as set out in the Order, cover all of the functions conferred on a service provider or any authority by or under Parts 4 and 5, as well as persons exercising functions on behalf of a service provider or authority.
2. The policy objective behind the Order and sections 30 and 43 of the 2014 Act is to set out clear procedures for resolution of complaints at a local level and allow for escalation to the Scottish Public Services Ombudsman in a manner that is consistent across Scotland and which seeks to complement existing complaints procedures. In the latter context, the procedures have been closely modelled on the existing model complaints handling procedures which have been specified by the Ombudsman in relation to certain authorities. The intention has been to ensure alignment of the complaints procedures here with existing mechanisms as far as possible, as well as to provide an accessible, transparent and simple route for making complaints concerning functions relating to Part 4 and/or 5 for parents, children and young people.
3. The Order sets out who can make complaints about the exercise of these functions and the process by which complaints are to be made, considered and investigated, and determinations made. Specifically, it covers: what can be the subject of a complaint; who can make a complaint (including when it is appropriate for someone else to complain on a parent/child or young person’s behalf); how the complaint should be made; timescales for different stages of the complaints procedure; who should consider the complaint; how the complaint should be considered or investigated; how information can be obtained to support investigation of the complaint where required; and how determinations of complaints are to be made.
4. The Order also makes certain amendments to the Scottish Public Services Ombudsman Act (Scotland) 2002 (“the 2002 Act”). Specifically, it amends section 7 of the 2002 Act in relation to how the Ombudsman can address the merits of decisions taken when investigating a complaint. At present, the Ombudsman’s remit in this

sense is limited to situations where there has been maladministration (as set out in section 7(1)), except where the decision was taken in consequence of the exercise of clinical judgement (section 7(2)). The Order amends section 7 so that the limitation in section 7(1) does not apply to decisions taken in exercise of Parts 4 and 5 functions. This means that the Ombudsman will be able to consider the merits of these decisions. The Order also provides that the Ombudsman's remit to investigate actions in relation to Parts 4 and 5 functions is limited to (and therefore consistent with) the matters which can be complained about under the Order.

Consultation

5. A public consultation on the options for developing the Order took place from 28 August to 30 October 2015. Those consulted included local authorities and local partnership bodies, leading third sector organisations, NHS health boards and organisations, education bodies, faith groups, private sector organisations, parent organisations such as the National Parent Forum of Scotland, and the Scottish Public Services Ombudsman.
6. Two hundred and twenty-five responses were received in total: 65 responses from organisations, 160 from individuals. A key issue in the consultation was views on different options for local procedures for complaints as well as the potential role of the Ombudsman. As a result of those responses, one of the options has formed the model for the complaints procedures adopted here, but with some alterations to take account of critical views in the responses. In addition, the role of the Ombudsman in considering complaints has been confirmed.

Impact Assessments

7. An equality impact assessment has not been completed on the policy objective as it is an adjunct to the policy set out in Parts 4 and 5 of the 2014 Act, which did receive such assessments as part of the development of the Children and Young People (Scotland) Bill in its passage through Parliament.

Financial Effects

8. The Minister for Children and Young People confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as, in line with the Financial Memorandum, there are no additional costs adjudged to result from these provisions within the 2014 Act. The Financial Memorandum was developed in conjunction with key stakeholder bodies including COSLA.

Scottish Government
Children and Families Directorate
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