



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

2003 asp 17

## *The Commissioner*

### **1 Establishment**

- (1) There is to be a Commissioner for Children and Young People in Scotland.
- (2) Schedule 1 makes further provision about the Commissioner.

### **2 Appointment**

- (1) The Commissioner is to be an individual appointed by Her Majesty on the nomination of the Parliament.
- (2) A person is disqualified from appointment as the Commissioner if that person is, at the date when the appointment is to take effect, or in the year prior to that date has been—
  - (a) a member of the Parliament;
  - (b) a member of the House of Commons; or
  - (c) a member of the European Parliament.
- (3) The Commissioner is to be appointed for such period, not exceeding five years, as the Parliamentary corporation may determine.
- (4) A person who has been appointed for one period as the Commissioner may be appointed for a second period (whether or not consecutive) but not for any additional period.

### **3 Removal**

- (1) The Commissioner may be removed from office by Her Majesty if—
  - (a) the Commissioner so requests; or
  - (b) the Parliament has passed a resolution for removal on the ground—
    - (i) that the Commissioner has breached the terms of appointment; or

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- (ii) that the Parliament has lost confidence in the Commissioner's willingness, ability or suitability to carry out the functions of the office.
- (2) A resolution for removal of the Commissioner, if passed on a division, must be voted for by not less than two thirds of those voting.

*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.

**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

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- (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**

- (1) The Commissioner may carry out an investigation into 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.
- (2) The Commissioner may carry out such 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—
  - (a) the matter to be investigated raises an issue of particular significance to children and young people generally or to particular groups of children and young people; and
  - (b) 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;
  - (b) if it would relate only to a particular child or young person; or
  - (c) so far as it would relate to—
    - (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.

## **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
  - (b) publish notice of the investigation and its terms of reference in such manner as appears to the Commissioner appropriate to bring it to the attention of persons likely to be affected by it.
- (2) An 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.

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## **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.
- (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.

### *Reports*

## **10 Annual report**

- (1) The Commissioner must lay before the Parliament annually a report on the exercise of the Commissioner's functions.
- (2) The report must include—
  - (a) a review of issues identified by the Commissioner in the period covered by the report as being relevant to children and young people;
  - (b) a review of the Commissioner's activity in that period, including the steps taken to fulfil each of the Commissioner's functions;
  - (c) any recommendations by the Commissioner arising out of such activity; and
  - (d) an overview of work to be undertaken by the Commissioner in the year following the period covered by the report, including the strategy for involving children and young people in the work of the Commissioner.

## **11 Reports on investigations**

- (1) The Commissioner must, at the conclusion of any investigation, lay before the Parliament a report of the investigation.
- (2) The report must contain any recommendations by the Commissioner arising out of the investigation.
- (3) A report of an investigation into the activities of a person named in, or identifiable from, the report may be laid before the Parliament only if that person has, where this is reasonable and practicable, been given a copy of the draft report and an opportunity to make representations on it.

## **12 Other reports to Parliament**

The Commissioner may lay before the Parliament such other reports on the exercise of the Commissioner's functions as the Commissioner considers necessary or appropriate.

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### **13 Anonymity for children and young people**

The Commissioner must ensure that, so far as reasonable and practicable having regard to the subject matter, a report under this Act does not name or identify any child or young person, or group of children or young people, referred to in it.

### **14 Publication**

- (1) The Commissioner must publish any report laid before the Parliament under this Act.
- (2) The Commissioner may publish any other report relating to the exercise of the Commissioner's functions.
- (3) Where the Commissioner publishes a report which is not specifically designed for children or young people the Commissioner must also publish a child friendly version of the report.

### *Defamation*

### **15 Protection from actions of defamation**

- (1) For the purposes of the law of defamation—
  - (a) any statement made by the Commissioner or any of the Commissioner's staff—
    - (i) in conducting an investigation under this Act;
    - (ii) in communicating with any person for the purposes of such an investigation; or
    - (iii) in a report published under this Act,has absolute privilege;
  - (b) any other statement made by the Commissioner or any of the Commissioner's staff in pursuance of the purposes of this Act has qualified privilege; and
  - (c) any statement made to the Commissioner or any of the Commissioner's staff in pursuance of those purposes has qualified privilege.
- (2) In subsection (1), "statement" has the same meaning as in the Defamation Act 1996 (c. 31).

### *Interpretation, commencement and short title*

### **16 Interpretation**

- (1) In this Act, unless the context otherwise requires—
  - "action" includes failure to act and related expressions are to be construed accordingly;
  - "best practice" means such practice in relation to the rights of children and young people as appears to the Commissioner to be desirable;
  - "child friendly version", in relation to a report, means a version or summary which is specifically designed to take account, so far as practicable, of the age, understanding and usual language of any children or young people by whom it is intended that the report should be read;

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“children and young people” means natural persons in Scotland who are under the age of 18 years or, if they have at any time been in the care of, or looked after by, a local authority or Northern Ireland authority, under the age of 21 years; and related expressions have corresponding meanings;

“Commissioner” means the Commissioner for Children and Young People in Scotland;

“equal opportunities” and “equal opportunity requirements” have the same meaning as in Section L2 of Part II of Schedule 5 to the Scotland Act;

“local authority” means any council of a county, city, town, burgh, borough, district, island or other local government area in Scotland, England or Wales;

“looked after”, in relation to a local authority in Scotland, has the same meaning as in section 17(6) of the Children (Scotland) Act 1995 (c. 36), in relation to a local authority in England and Wales, has the same meaning as in section 22(1) of the Children Act 1989 (c. 41) and in relation to a Northern Ireland authority, has the same meaning as in article 25(1) of the Children (Northern Ireland) Order 1995 (SI 1995/755);

“Northern Ireland authority” means any authority (including any Health and Social Services Board or trust) in Northern Ireland;

“Scotland Act” means the Scotland Act 1998 (c. 46);

“Scottish Law Officer” means the Lord Advocate or the Solicitor General for Scotland;

“service provider” means any person providing services for children and young people but does not include a parent or guardian exercising the responsibilities imposed or the rights conferred by sections 1 and 2 of the Children (Scotland) Act 1995 (c. 36); and

“terms” includes conditions.

- (2) Any reference in this Act to the United Nations Convention on the Rights of the Child is to that Convention read subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

## 17 Commencement and short title

- (1) The provisions of this Act, except for—

- (a) sections 1 to 3 and section 16;
- (b) schedule 1; and
- (c) this section,

come into force at the end of the period of six months beginning with the date of Royal Assent.

- (2) This Act may be cited as the Commissioner for Children and Young People (Scotland) Act 2003.

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