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## STATUTORY INSTRUMENTS

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# 1995 No. 755

## The Children (Northern Ireland) Order 1995

### PART IV

#### SUPPORT FOR CHILDREN AND THEIR FAMILIES

##### *Children in need and their families*

#### **Interpretation**

17. For the purposes of this Part a child shall be taken to be in need if—

- (a) he is unlikely to achieve or maintain, or to have the opportunity of achieving or maintaining, a reasonable standard of health or development without the provision for him of services by an authority under this Part;
- (b) his health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services; or
- (c) he is disabled,

and “family”, in relation to such a child, includes any person who has parental responsibility for the child and any other person with whom he has been living.

#### **[<sup>F1</sup>Assessments and services for children who are carers**

17A.—(1) If —

- (a) a child ( “the carer”) provides or intends to provide a substantial amount of care on a regular basis for a person aged 18 or over;
- (b) the child requests an authority to carry out an assessment for the purposes of determining whether he is to be taken to be in need for the purposes of this Part; and
- (c) the authority is satisfied that the person cared for is someone for whom it may provide [<sup>F2</sup>social care],

the authority—

- (i) shall carry out such an assessment; and
  - (ii) taking the results of that assessment into account, shall determine whether the child is to be taken to be in need for the purposes of this Part.
- (2) Paragraph (1) does not apply if the child provides or will provide the care in question—
- (a) by virtue of a contract of employment or other contract with any person; or
  - (b) as a volunteer for a voluntary organisation.
- (3) Subject to any directions given by the Department to the authority under—
- (a) Article 17 of the Health and Personal Social Services (Northern Ireland) Order 1972 [<sup>F3</sup>or section 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009]; or

**Status:** Point in time view as at 21/03/2022.

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- (b) paragraph 6 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (NI 1)(in the case of an [<sup>F4</sup>HSC trust]),

an assessment under this Article is to be carried out in such manner, and is to take such form, as the authority considers appropriate.]

- |           |                                                                                                                                                                                                                            |
|-----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>F1</b> | 2002 c. 6 (NI)                                                                                                                                                                                                             |
| <b>F2</b> | Words in art. 17A(1)(c) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), <b>Sch. 6 para. 1(1)(a)</b> (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, <b>art. 2</b> |
| <b>F3</b> | Words in art. 17A(3)(a) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), <b>Sch. 6 para. 14(1)</b> ; S.R. 2009/114, <b>art. 2</b>                              |
| <b>F4</b> | Words in art. 17A(3)(b) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), <b>Sch. 6 para. 1(1)(d)</b> (with Sch. 6 para. 1(3)); S.R. 2009/114, <b>art. 2</b>    |

### **General duty of authority to provide [<sup>F5</sup>social care] for children in need, their families and others**

**18.—**(1) It shall be the general duty of every authority (in addition to the other duties imposed by this Part)—

- (a) to safeguard and promote the welfare of children within its area who are in need; and
- (b) so far as is consistent with that duty, to promote the upbringing of such children by their families,

by providing a range and level of [<sup>F6</sup>social care] appropriate to those children's needs.

(2) For the purpose principally of facilitating its general duty under this Article, every authority shall have the specific powers and duties set out in Schedule 2.

(3) Any service provided by an authority in the exercise of functions conferred on it by this Article may be provided for the family of a particular child in need or for any member of his family, if the service is provided with a view to safeguarding or promoting the child's welfare.

(4) The Department may by order amend any provision of Schedule 2 or add any further duty or power to those mentioned there.

(5) Every authority—

- (a) shall facilitate the provision by others (including in particular voluntary organisations) of services which the authority has power to provide by virtue of this Article or Article 19, 21, 27, [<sup>F7</sup> 34C to 34E, 35A or 35B]; and
- (b) may make such arrangements as it sees fit for any person to act on its behalf in the provision of any such service.

(6) The services provided by an authority in the exercise of functions conferred on it by this Article may include giving assistance in kind or, in exceptional circumstances, in cash.

(7) Assistance may be unconditional or subject to conditions as to the repayment of the assistance or of its value (in whole or in part).

(8) Before giving any assistance or imposing any conditions, an authority shall have regard to the means of the child concerned and of each of his parents.

(9) No person shall be liable to make any repayment of assistance or of its value at any time when he is in receipt [<sup>F8</sup>of universal credit (except in such circumstances as may be prescribed),] of income support, [<sup>F9</sup>of any element of child tax credit other than the family element, of working tax credit][<sup>F10</sup>, of an income-based jobseeker's allowance or of an income-related employment and support allowance].

[<sup>F11</sup>(10) The Treasury may by regulations prescribe circumstances in which a person is to be treated for the purposes of this Part (or for such of those purposes as are prescribed) as in receipt of any element of child tax credit other than the family element or of working tax credit.]

- F5** Words in art. 18 heading substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**
- F6** Words in art. 18(1) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(a\)](#) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**
- F7** 2002 c. 11 (NI)
- F8** Words in art. 18(9) inserted (27.9.2017) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\), art. 2\(2\), Sch. 2 para. 28\(a\)](#); S.R. 2017/190, art. 4(1)(2)(g)(i)
- F9** 2002 c. 21
- F10** Words in art. 18(9) substituted (27.10.2008) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\), ss. 28\(1\), 60\(1\), Sch. 3 para. 5\(3\)](#) (with transitional provisions in s. 29, Sch. 4); S.R. 2008/276, **art. 2(2)(d)**, Sch. Pt. 2
- F11** 2002 c. 21

#### [<sup>F12</sup>Assessments: carers of disabled children

**18A.—(1)** Where—

- (a) the carer of a disabled child who has parental responsibility for the child requests an authority to carry out an assessment of the carer's ability to provide and to continue to provide care for the child; and
- (b) the authority is satisfied that the child and his family are persons for whom it may provide services under Article 18,

the authority—

- (i) shall carry out such an assessment; and
- (ii) shall take the results of that assessment into account when deciding what, if any, services to provide under Article 18.

(2) Where—

- (a) an authority carries out an assessment of the needs of a disabled child for the purposes of this Part or section 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53); and
- (b) the carer of that child requests the authority, before it makes a decision as to whether the needs of that child call for the provision of any services, to carry out an assessment of the carer's ability to provide and to continue to provide care for that child,

the authority—

- (i) shall carry out such an assessment; and
- (ii) shall take the results of that assessment into account in deciding what, if any, services to provide.

(3) Paragraph (2) does not apply if the carer provides or will provide the care in question—

- (a) by virtue of a contract of employment or other contract with any person; or
- (b) as a volunteer for a voluntary organisation.

(4) Subject to any directions given by the Department to the authority under—

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- (a) Article 17 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) [<sup>F13</sup>or section 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009]; or
- (b) paragraph 6 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (in the case of an [<sup>F14</sup>HSC trust]),

an assessment under this Article is to be carried out in such manner, and is to take such form, as the authority considers appropriate.

(5) For the purposes of an assessment under this Article, the authority may take into account, so far as it considers it to be material, any other assessment made under this Article.

(6) Section 8 of the Disabled Persons (Northern Ireland) Act 1989 (c. 10) (duty of authority to take into account ability of carer of disabled person) does not apply in any case where an assessment is made under subsection (2).

(7) In this Article “carer”, in relation to a disabled child, means an individual who provides or intends to provide a substantial amount of care on a regular basis for that child.]

<p><b>F12</b> 2002 c. 6 (NI)</p> <p><b>F13</b> Words in art. 18A(4)(a) substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 14(2)</a>; S.R. 2009/114, <a href="#">art. 2</a></p> <p><b>F14</b> Words in art. 18A(4)(b) substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a></p>
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<p><b>F15</b> prosp. inserted by <a href="#">2002 c. 6 (NI)</a></p>
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**[<sup>F16</sup>Direct payments**

**18C.—**(1) The Department may by regulations make provision for and in connection with requiring or authorising an authority in the case of a person of a prescribed description who falls within paragraph (2) to make, with that person's consent, such payments to him as the authority may determine in accordance with the regulations in respect of his securing the provision of the service mentioned in that paragraph.

- (2) A person falls within this paragraph if he is—
  - (a) a person with parental responsibility for a disabled child;
  - (b) a disabled person with parental responsibility for a child; or
  - (c) a disabled child aged 16 or 17,

and the authority has decided for the purposes of Article 18 that the child's needs (or, if he is such a disabled child, his needs) call for the provision by it of a service under that Article.

- (3) Regulations under this Article may, in particular, make provision—
  - (a) specifying circumstances in which the authority is not required or authorised to make any payments under the regulations to a person, whether those circumstances relate to the person in question or to the particular service mentioned in paragraph (2);
  - (b) for any payments required or authorised by the regulations to be made to a person by the authority (“direct payments”) to be made to that person (“the payee”) as gross payments or alternatively as net payments;

- (c) for the authority to make for the purposes of paragraph (4) or (5) such determinations as to—
    - (i) the payee's means; and
    - (ii) the amount (if any) which it would be reasonably practicable for him to pay to the authority by way of reimbursement or contribution, as may be prescribed;
  - (d) as to the conditions falling to be complied with by the payee which must or may be imposed by the authority in relation to the direct payments (and any conditions which may not be so imposed);
  - (e) specifying circumstances in which the authority—
    - (i) may or must terminate the making of direct payments;
    - (ii) may require repayment (whether by the payee or otherwise) of the whole or part of the direct payments);
  - (f) for any sum falling to be paid or repaid to the authority by virtue of any condition or other requirement imposed in pursuance of the regulations to be recoverable as a debt due to the authority;
  - (g) displacing functions or obligations of the authority with respect to the provision of the service mentioned in paragraph (2) only to such extent, and subject to such conditions, as may be prescribed;
  - (h) authorising direct payments to be made to any prescribed person on behalf of the payee.
- (4) For the purposes of paragraph (3)(b) “gross payments” means payments—
- (a) which are made at such rate as the authority estimates to be equivalent to the reasonable cost of securing the provision of the service concerned; but
  - (b) which may be made subject to the condition that the payee pays to the authority, by way of reimbursement, an amount or amounts determined under the regulations.
- (5) For the purposes of paragraph (3)(b) “net payments” means payments—
- (a) which are made on the basis that the payee will himself pay an amount or amounts determined under the regulations by way of contribution towards the cost of securing the provision of the service concerned; and
  - (b) which are accordingly made at such a rate below that mentioned in paragraph (4)(a) as reflects any such contribution by the payee.
- (6) Regulations under this section shall provide that, where payments are made under the regulations to a person falling within paragraph (7)—
- (a) the payments shall be made at the rate mentioned in paragraph (4)(a); and
  - (b) paragraph (4)(b) shall not apply.
- (7) A person falls within this subsection if he is—
- (a) a person falling within paragraph (2)(a) or (b) and the child in question is aged 16 or 17; or
  - (b) a person who is in receipt [<sup>F17</sup>of universal credit (except in such circumstances as may be prescribed),] of income support, working families' tax credit or disabled person's tax credit under Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7)[<sup>F18</sup>, of any element of child tax credit other than the family element, of working tax credit][<sup>F19</sup>, of an income-based jobseeker's allowance or of an income-related employment and support allowance].

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(8) Regulations made for the purposes of paragraph (3)(a) may provide that direct payments shall not be made in respect of the provision of residential accommodation for any person for a period in excess of a prescribed period.

(9) In this Article “prescribed” means specified in or determined in accordance with regulations under this Article.]

**F16** 2002 c. 6 (NI)

**F17** Words in art. 18C(7)(b) inserted (27.9.2017) by The Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006), art. 2(2), **Sch. 2 para. 28(b)**; S.R. 2017/190, art. 4(1)(2)(g)(i)

**F18** 2002 c. 21

**F19** Words in art. 18C(7)(b) substituted (27.10.2008) by Welfare Reform Act (Northern Ireland) 2007 (c. 2), ss. 28(1), 60(1), **Sch. 3 para. 5(4)** (with transitional provisions in s. 29, Sch. 4); S.R. 2008/276, **art. 2(2)(d)**, Sch. Pt. 2

### [<sup>F20</sup>Information for carers

**18D.**—(1) An authority shall take such steps as are reasonably practicable to ensure—

- (a) that information is generally available in its area concerning the right of a person to request an assessment under Article 17A or 18A; and
- (b) that those in its area who might benefit from such an assessment receive the information relevant to them;

and nothing in paragraph (2) or (3) prejudices the generality of this paragraph.

(2) Where it appears to an authority that—

- (a) a child ( “the carer”) provides or intends to provide a substantial amount of care on a regular basis for a person aged 18 or over; and
- (b) the person cared for is someone for whom it may provide [<sup>F21</sup>social care],

the authority shall notify the carer that he may be entitled to request an assessment under Article 17A(1).

(3) Where it appears to an authority that—

- (a) a disabled child is cared for by a carer who has parental responsibility for the child; and
- (b) the disabled child and his family are persons for whom the authority may provide services under Article 18,

the authority shall notify the carer that he may be entitled to request an assessment under Article 18A(1).

(4) Where—

- (a) an authority proposes to carry out an assessment of the needs of a disabled child for the purposes of this Part or section 2 of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53); and
- (b) it appears to the authority that that child is cared for by a carer,

the authority shall notify the carer that he may be entitled to request an assessment under Article 18A(2).]

**F20** 2002 c. 6 (NI)

**F21** Words in art. 18D(2)(b) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(a)** (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, **art. 2**

## Day care for pre-school and other children

19.—(1) In this Article—

“day care” means any form of care or supervised activity provided for children during the day (whether or not it is provided on a regular basis);

“supervised activity” means an activity supervised by a responsible person.

(2) Every authority shall provide such day care for children in need within the authority's area who are—

- (a) aged five or under; and
- (b) not yet attending schools,

as is appropriate.

(3) An authority may provide day care for children within the authority's area who satisfy the conditions mentioned in paragraph (2)(a) and (b) even though they are not in need.

(4) An authority may provide facilities (including training, advice, guidance and counselling) for those—

- (a) caring for children in day care; or
- (b) who at any time accompany such children while they are in day care.

(5) Every authority shall provide for children in need within the authority's area who are attending any school such care or supervised activities as is appropriate—

- (a) outside school hours; and
- (b) during school holidays.

(6) An authority may provide such care or supervised activities for children within the authority's area who are attending any school even though those children are not in need.

(7) Every authority shall, in carrying out its functions under this Article, have regard to any day care provided for children within the authority's area by a district council or [<sup>F22</sup>the Education Authority] or by other persons.

**F22** Words in art. 19(7) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\), Sch. 3 para. 14\(1\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

### Modifications etc. (not altering text)

**C1** [Art. 19\(2\)](#) restricted (temp.) (25.3.2020) by [Coronavirus Act 2020 \(c. 7\), s. 87\(1\), Sch. 16 para. 16\(11\)](#) (with ss. 88-90)

**C2** [Art. 19\(5\)](#) restricted (temp.) (25.3.2020) by [Coronavirus Act 2020 \(c. 7\), s. 87\(1\), Sch. 16 para. 16\(11\)](#) (with ss. 88-90)

## Review of provision for day care, child minding, etc.

20.—(1) Every authority shall review—

- (a) the provision which it makes under Article 19;
- (b) the extent to which the services of child minders are available within the authority's area with respect to children under the age of twelve;
- (c) the provision for day care within the authority's area made for such children by persons required to register under Article 118(1)(b).

(2) A review under paragraph (1) shall be conducted—

- (a) together with [<sup>F23</sup>the Education Authority] and district councils; and

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(b) at least once in every review period.

(3) In paragraph (2)(b) “review period” means the period of one year beginning with the commencement of this Article and each subsequent period of three years beginning with an anniversary of that commencement.

(4) In conducting any such review, the authority shall have regard to any exempt provision made within the authority's area with respect to children under the age of twelve.

(5) In paragraph (4) “exempt provision” means provision to which the exemption provided by paragraph (1) or (2) of Article 121 applies (schools, hospitals and other establishments exempt from the registration requirements which apply in relation to the provision of day care).

(6) Where an authority has conducted a review under this Article it shall publish the result of the review—

- (a) as soon as is reasonably practicable;
- (b) in such form as it considers appropriate; and
- (c) together with any proposals it may have with respect to the matters reviewed.

(7) Any review under this Article shall have regard to any representations which the authority considers to be relevant.

**F23** Words in [art. 20\(2\)\(a\)](#) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), [Sch. 3 para. 14\(2\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, [art. 2\(b\)](#)

### **Provision of accommodation for children: general**

**21.**—(1) Every authority shall provide accommodation for any child in need within its area who appears to the authority to require accommodation as a result of—

- (a) there being no person who has parental responsibility for him;
- (b) his being lost or having been abandoned; or
- (c) the person who has been caring for him being prevented (whether or not permanently, and for whatever reason) from providing him with suitable accommodation or care.

(2) Where an authority provides accommodation under paragraph (1) for a child who is ordinarily resident in the area of another authority, that other authority may take over the provision of accommodation for the child within—

- (a) three months of being notified in writing that the child is being provided with accommodation; or
- (b) such other longer period as may be prescribed.

(3) Every authority shall provide accommodation for any child in need within its area who has reached the age of 16 and whose welfare the authority considers is likely to be seriously prejudiced if it does not provide him with accommodation.

(4) An authority may provide accommodation for any child within the authority's area (even though a person who has parental responsibility for him is able to provide him with accommodation) if the authority considers that to do so would safeguard or promote the child's welfare.

(5) An authority may provide accommodation for any person who has reached the age of 16 but is under 21 in any home provided under Part VII which takes children who have reached the age of 16 if the authority considers that to do so would safeguard or promote his welfare.

(6) Before providing accommodation under this Article, an authority shall, so far as is reasonably practicable and consistent with the child's welfare—

- (a) ascertain the child's wishes regarding the provision of accommodation; and



- (b) give due consideration (having regard to his age and understanding) to such wishes of the child as the authority has been able to ascertain.

**Modifications etc. (not altering text)**

C3 Art. 21(5) applied (10.12.2015) by Children's Services Co-operation Act (Northern Ireland) 2015 (c. 10), ss. 9(2)(a), 10(1)

**Powers of person with parental responsibility**

22.—(1) An authority may not provide accommodation under Article 21 for any child if any person who—

- (a) has parental responsibility for him; and
- (b) is willing and able to—
  - (i) provide accommodation for him; or
  - (ii) arrange for accommodation to be provided for him, objects.

(2) Any person who has parental responsibility for a child may at any time remove the child from accommodation provided by or on behalf of the authority under Article 21.

(3) Paragraphs (1) and (2) do not apply while any person—

- (a) in whose favour a residence order is in force with respect to the child; or
- (b) who has care of the child by virtue of an order made in the exercise of the High Court's inherent jurisdiction with respect to children,

agrees to the child being looked after in accommodation provided by or on behalf of the authority.

(4) Where there is more than one such person as is mentioned in paragraph (3), all of them must agree.

(5) Paragraphs (1) and (2) do not apply where a child who has reached the age of 16 agrees to being provided with accommodation under Article 21.

**Provision of accommodation for children in police protection**

23.—(1) Every authority shall make provision for the reception and accommodation of children who are removed or kept away from home under Part VI.

(2) Every authority shall receive, and provide accommodation for, children in police protection whom the authority is requested to receive under Article 65(5)(e).

(3) Where a child has been removed under Part VI and he is not being provided with accommodation by an authority, any reasonable expenses of accommodating him shall be recoverable from the authority in whose area he is ordinarily resident.

**Recoupment of cost of providing services, etc.**

24.—(1) Where an authority provides any service under Article 18 or 19, other than advice, guidance or counselling, the authority may recover from a person specified in paragraph (4) such charge for the service as the authority considers reasonable.

(2) Where the authority is satisfied that that person's means are insufficient for it to be reasonably practicable for him to pay the charge, the authority shall not require him to pay more than he can reasonably be expected to pay.

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(3) No person shall be liable to pay any charge under paragraph (1) at any time when he is in receipt [<sup>F24</sup>of universal credit (except in such circumstances as may be prescribed),] of income support, [<sup>F25</sup>of any element of child tax credit other than the family element, of working tax credit][<sup>F26</sup>, of an income-based jobseeker's allowance [<sup>F27</sup>, of an income-related employment and support allowance or of universal credit]].

[<sup>F28</sup>(3A) No person shall be liable to pay any charge under paragraph (1) for a service provided under Article 19(3) or (6) at any time when—

- (a) he is in receipt of guarantee state pension credit under section 1(3)(a) of the State Pension Credit Act (Northern Ireland) 2002; or
- (b) he is a member of a [<sup>F29</sup>couple] (within the meaning of that Act) the other member of which is in receipt of guarantee state pension credit.]

(4) The persons are—

- (a) where the service is provided for a child under 16, each of his parents;
- (b) where it is provided for a child who has reached the age of 16, the child himself; and
- (c) where it is provided for a member of the child's family, that member.

(5) Any charge under paragraph (1) may, without prejudice to any other method of recovery, be recovered summarily as a civil debt.

(6) Where an authority provides any accommodation under Article 21(1) or Article 23(1) or (2) for a child who was (before the authority began to look after him) ordinarily resident within the area of another authority, the first authority may recover any reasonable expenses incurred by it in providing the accommodation and maintaining the child from the other authority.

- F24** Words in art. 24(3) inserted (27.9.2017) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), **Sch. 2 para. 28(c)**; S.R. 2017/190, art. 4(1)(2)(g)(i)
- F25** 2002 c. 21
- F26** Words in art. 24(3) substituted (27.10.2008) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\)](#), ss. 28(1), 60(1), **Sch. 3 para. 5(5)** (with transitional provisions in s. 29, Sch. 4); S.R. 2008/276, **art. 2(2)(d)**, Sch. Pt. 2
- F27** Words in art. 24(3) substituted (coming into force in accordance with reg. 1(1) of the amending S.R.) by [The Universal Credit \(Consequential, Supplementary, Incidental and Miscellaneous Provisions\) Regulations \(Northern Ireland\) 2016 \(S.R. 2016/236\)](#), **reg. 6**
- F28** 2002 c. 14 (NI)
- F29** SR 2005/479

### *Children looked after by an authority*

#### **Interpretation**

**25.—(1)** In this Order any reference to a child who is looked after by an authority is a reference to a child who is—

- (a) in the care of the authority; or
- (b) provided with accommodation by the authority.

(2) In paragraph (1)(b) “accommodation” means accommodation which is provided for a continuous period of more than 24 hours [<sup>F30</sup> but does not include accommodation provided under Article 34C or 35B].

(3) Paragraph (1) is subject to Article 2(8).

**F30** 2002 c. 11 (NI)

**Modifications etc. (not altering text)**

- C4** Art. 25 applied (S.) (26.7.2021) by [The Disability Assistance for Children and Young People \(Scotland\) Regulations 2021 \(S.S.I. 2021/174\)](#), regs. 1, **17(6)(c)** (with sch. para. 13(a))
- C5** Art. 25 applied (21.3.2022) by [The Disability Assistance for Working Age People \(Scotland\) Regulations 2022 \(S.S.I. 2022/54\)](#), regs. 1, **27(6)(c)**

**General duty of authority**

**26.**—(1) Every authority looking after a child shall—

- (a) safeguard and promote his welfare; and
- (b) make such use of services available for children cared for by their own parents as appears to the authority reasonable in his case.

(2) Before making any decision with respect to a child whom it is looking after, or proposing to look after, an authority shall, so far as is reasonably practicable, ascertain the wishes and feelings of—

- (a) the child;
- (b) his parents;
- (c) any person who is not a parent of his but who has parental responsibility for him; and
- (d) any other persons whose wishes and feelings the authority considers to be relevant,

regarding the matter to be decided.

(3) In making any such decision an authority shall give due consideration—

- (a) having regard to his age and understanding, to such wishes and feelings of the child as the authority has been able to ascertain;
- (b) to such wishes and feelings of any person mentioned in paragraph (2)(b) to (d) as the authority has been able to ascertain; and
- (c) to the child's religious persuasion, racial origin and cultural and linguistic background.

(4) If it appears to an authority that it is necessary, for the purpose of protecting members of the public from serious injury, to exercise its powers with respect to a child whom it is looking after in a manner which may not be consistent with its duties under this Article, the authority may do so.

(5) If the Department considers it necessary, for the purpose of protecting members of the public from serious injury, to give directions to an authority with respect to the exercise of the authority's powers with respect to a child whom it is looking after, the Department may give such directions to the authority.

(6) Where any such directions are given to an authority, it shall comply with them even though doing so is inconsistent with its duties under this Article.

**Accommodation and maintenance for children**

**27.**—(1) Every authority looking after a child shall—

- (a) when he is in the care of the authority, provide accommodation for him; and
- (b) maintain him in other respects apart from providing accommodation for him.

(2) An authority shall provide accommodation and maintenance for any child whom it is looking after by—

- (a) placing him (subject to paragraph (5) and any regulations made by the Department) with—

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- (i) a family;
  - (ii) a relative of his; or
  - (iii) any other suitable person,
- on such terms as to payment by the authority and otherwise as the authority may determine;
- [<sup>F31</sup>(aa) maintaining him in an appropriate children's home;]
- (f) making such other arrangements as—
    - (i) seem appropriate to the authority; and
    - (ii) comply with any regulations made by the Department.
- (3) Any person with whom a child has been placed under paragraph (2)(a) is referred to in this Order as an authority foster parent unless he falls within paragraph (4).
- (4) A person falls within this paragraph if he is—
- (a) a parent of the child;
  - (b) a person who is not a parent of the child but who has parental responsibility for him; or
  - (c) where the child is in care and there was a residence order in force with respect to him immediately before the care order was made, a person in whose favour the residence order was made.
- (5) Where a child is in the care of an authority, it may only allow him to live with a person who falls within paragraph (4) in accordance with regulations made by the Department.
- (6) For the purposes of paragraph (5) a child shall be regarded as living with a person if he stays with that person for a continuous period of more than 24 hours.
- (7) Subject to any regulations made by the Department for the purposes of this paragraph, any authority looking after a child shall make arrangements to enable him to live with—
- (a) a person falling within paragraph (4); or
  - (b) a relative, friend or other person connected with him,
- unless that would not be reasonably practicable or consistent with his welfare.
- (8) Where an authority provides accommodation for a child whom it is looking after, the authority shall, subject to the provisions of this Part and so far as is reasonably practicable and consistent with his welfare, secure that—
- (a) the accommodation is near his home; and
  - (b) where the authority is also providing accommodation for a sibling of his, they are accommodated together.
- (9) Where an authority provides accommodation for a child whom it is looking after and who is disabled, the authority shall, so far as is reasonably practicable, secure that the accommodation is not unsuitable to his particular needs.
- [<sup>F31</sup>(10) In this Order "appropriate children's home" means a children's home in respect of which a person is registered under Part III of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003.]

**F31** 2003 NI 9

## Regulations under Article 27

- 28.**—(1) Regulations under Article 27(2)(a) may, in particular, make provision—
- (a) with regard to the welfare of children placed with authority foster parents;

- (b) as to the arrangements to be made by authorities in connection with the health and education of such children;
  - (c) as to the records to be kept by authorities;
  - (d) for securing that a child is not placed with an authority foster parent unless that person is approved as an authority foster parent;
  - (e) for securing that where possible the authority foster parent with whom a child is to be placed is—
    - (i) of the same religious persuasion as the child; or
    - (ii) gives an undertaking that the child will be brought up in that religious persuasion;
  - (f) for securing that children placed with authority foster parents, and the premises in which they are accommodated, will be supervised and inspected by an authority and that the children will be removed from those premises if their welfare appears to require it;
  - (g) as to the circumstances in which an authority may make arrangements for duties imposed on it by the regulations to be discharged on its behalf.
- (2) Regulations under Article 27(2)(f) may, in particular, make provision as to—
- (a) the persons to be notified of any proposed arrangements;
  - (b) the opportunities such persons are to have to make representations in relation to the arrangements proposed;
  - (c) the persons to be notified of any proposed changes in arrangements;
  - (d) the records to be kept by authorities;
  - (e) the supervision by authorities of any arrangements made.
- (3) Regulations under Article 27(5) may, in particular, impose requirements on an authority as to—
- (a) the making of any decision by an authority to allow a child to live with any person falling within Article 27(4) (including requirements as to those who must be consulted before the decision is made, and those who must be notified when it has been made);
  - (b) the supervision or medical examination of the child concerned;
  - (c) the removal of the child, in such circumstances as may be prescribed, from the care of the person with whom he has been allowed to live;
  - (d) the records to be kept by authorities.

### **Promotion and maintenance of contact between child and family**

**29.—**(1) Where a child is being looked after by an authority, the authority shall, unless it is not reasonably practicable or consistent with his welfare, endeavour to promote contact between the child and—

- (a) his parents;
  - (b) any person who is not a parent of his but who has parental responsibility for him; and
  - (c) any relative, friend or other person connected with him.
- (2) Where a child is being looked after by an authority—
- (a) the authority shall take such steps as are reasonably practicable to secure that—
    - (i) his parents; and
    - (ii) any person who is not a parent of his but who has parental responsibility for him, are kept informed of where he is being accommodated; and

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- (b) every such person shall secure that the authority is kept informed of the address of that person.
- (3) Where an authority (“the receiving authority”) takes over the provision of accommodation for a child from another authority (“the transferring authority”) under Article 21(2)—
  - (a) the receiving authority shall (where reasonably practicable) inform—
    - (i) the child's parents; and
    - (ii) any person who is not a parent of his but who has parental responsibility for him;
  - (b) paragraph (2)(a) shall apply to the transferring authority, as well as the receiving authority, until at least one such person has been informed of the change; and
  - (c) paragraph (2)(b) shall not require any person to inform the receiving authority of his address until he has been so informed.
- (4) Nothing in this Article requires an authority to inform any person of the whereabouts of a child if—
  - (a) the child is in the care of the authority; and
  - (b) the authority has reasonable cause to believe that informing the person would prejudice the child's welfare.
- (5) Any person who fails without reasonable excuse to comply with paragraph (2)(b) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (6) It shall be a defence in any proceedings under paragraph (5) to prove that the defendant was residing at the same address as another person who was the child's parent or had parental responsibility for the child and had reasonable cause to believe that the other person had informed the appropriate authority that both of them were residing at that address.

#### **Visits to or by children: expenses**

- 30.**—(1) Paragraph (2) applies where—
- (a) a child is being looked after by an authority; and
  - (b) the conditions mentioned in paragraph (3) are satisfied.
- (2) The authority may—
- (a) make payments to—
    - (i) a parent of the child;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) any relative, friend or other person connected with him,
 in respect of travelling, subsistence or other expenses incurred by that person in visiting the child; or
  - (b) make payments to the child, or to any person on his behalf, in respect of travelling, subsistence or other expenses incurred by or on behalf of the child in his visiting—
    - (i) a parent of his;
    - (ii) any person who is not a parent of his but who has parental responsibility for him; or
    - (iii) any relative, friend or other person connected with him.
- (3) The conditions are that—
- (a) it appears to the authority that the visit in question could not otherwise be made without undue financial hardship; and

- (b) the circumstances warrant the making of the payments.

### **Appointment of visitor for child who is not being visited**

**31.**—(1) Where it appears to an authority in relation to any child whom the authority is looking after that—

- (a) communication between the child and—
  - (i) a parent of his, or
  - (ii) any person who is not a parent of his but who has parental responsibility for him, has been infrequent; or
- (b) he has not visited or been visited by (or lived with) any such person during the preceding twelve months,

and that it would be in the child's best interests for an independent person to be appointed to be his visitor for the purposes of this Article, the authority shall appoint such a visitor.

(2) A person so appointed shall—

- (a) have the duty of visiting, advising and befriending the child; and
- (b) be entitled to recover from the authority which appointed him any reasonable expenses incurred by him for the purposes of his functions under this Article.

(3) A person's appointment as a visitor in pursuance of this Article shall be terminated if—

- (a) he gives notice in writing to the authority which appointed him that he resigns the appointment; or
- (b) the authority gives him notice in writing that the authority has terminated it.

(4) The termination of such an appointment shall not prejudice any duty under this Article to make a further appointment.

(5) Where an authority proposes to appoint a visitor for a child under this Article, the appointment shall not be made if—

- (a) the child objects to it; and
- (b) the authority is satisfied that the child has sufficient understanding to make an informed decision.

(6) Where a visitor has been appointed for a child under this Article, the authority shall terminate the appointment if—

- (a) the child objects to its continuing; and
- (b) the authority is satisfied that the child has sufficient understanding to make an informed decision.

(7) The Department may make regulations as to the circumstances in which a person appointed as a visitor under this Article is to be regarded as independent of the authority appointing him.

### **Power to guarantee apprenticeship deeds, etc.**

**32.**—(1) While a child is being looked after by an authority, or is a person qualifying for advice and assistance (within the meaning given by Article 35), the authority may undertake any obligation by way of guarantee under any deed of apprenticeship or articles of clerkship which he enters into.

(2) Where an authority has undertaken any such obligation under any deed or articles it may at any time (whether or not it is still looking after the person concerned) undertake the like obligation under any supplemental deed or articles.

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### **Arrangements to assist children to live abroad**

**33.**—(1) An authority may only arrange for, or assist in arranging for, any child in its care to live outside Northern Ireland with the approval of the court.

(2) An authority may, with the approval of every person who has parental responsibility for the child, arrange for, or assist in arranging for, any other child looked after by the authority to live outside Northern Ireland.

(3) The court shall not give its approval under paragraph (1) unless it is satisfied that—

- (a) living outside Northern Ireland would be in the child's best interests;
- (b) suitable arrangements have been, or will be, made for his reception and welfare in the country in which he will live;
- (c) the child has consented to living in that country; and
- (d) every person who has parental responsibility for the child has consented to his living in that country.

(4) Where the court is satisfied that the child does not have sufficient understanding to give or withhold his consent, it may disregard paragraph (3)(c) and give its approval if the child is to live in the country concerned with a parent, guardian, or other suitable person.

(5) Where a person whose consent is required by paragraph (3)(d) fails to give his consent, the court may disregard that provision and give its approval if it is satisfied that that person—

- (a) cannot be found;
- (b) is incapable of consenting; or
- (c) is withholding his consent unreasonably.

(6) Article 58 of the Adoption Order (which requires authority for taking or sending abroad a child for adoption) shall not apply in the case of any child who is to live outside Northern Ireland with the approval of the court given under this Article.

(7) Where a court decides to give its approval under this Article it may order that its decision is not to have effect during the appeal period.

(8) In paragraph (7) “the appeal period” means—

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

### **Death of children being looked after by an authority**

**34.**—(1) If a child who is being looked after by an authority dies, the authority—

- (a) shall notify the Department;
- (b) shall, so far as is reasonably practicable, notify the child's parents and every person who is not a parent of his but who has parental responsibility for him;
- (c) may, with the consent (so far as it is reasonably practicable to obtain it) of every person who has parental responsibility for the child, arrange for the child's body to be buried or cremated; and
- (d) may, if the conditions mentioned in paragraph (2) are satisfied, make payments to any person who has parental responsibility for the child, or any relative, friend or other person connected with the child, in respect of travelling, subsistence or other expenses incurred by that person in attending the child's funeral.

(2) The conditions are that—



- (a) it appears to the authority that the person concerned could not otherwise attend the child's funeral without undue financial hardship; and
  - (b) that the circumstances warrant the making of the payments.
- (3) Paragraph (1) does not authorise cremation where it does not accord with the practice of the child's religious persuasion.
- (4) Where an authority has exercised its power under paragraph (1)(c) with respect to a child who was under 16 when he died, the authority may recover from any parent of the child any expenses incurred by the authority.
- (5) Any sums so recoverable shall, without prejudice to any other method of recovery, be recoverable summarily as a civil debt.
- (6) Nothing in this Article affects any statutory provision regulating or authorising the burial, cremation or anatomical examination of the body of a deceased person.

### **[<sup>F32</sup>Preparation for ceasing to be looked after**

**34A.**—(1) Where a child is being looked after by an authority, the authority shall advise, assist and befriend him with a view to promoting his welfare when the authority has ceased to look after him.

(2) Where a child who is being looked after by an authority is an eligible child, the authority shall have the following additional duties in relation to him.

(3) In paragraph (2) "eligible child" means, subject to paragraph (4), a child who—

- (a) is aged 16 or 17; and
- (b) has been looked after by an authority for a prescribed period, or periods amounting in all to a prescribed period, which began after he reached a prescribed age and ended after he reached the age of 16.

(4) The Department may prescribe—

- (a) additional categories of eligible children; and
- (b) categories of children who are not to be eligible children despite falling within paragraph (3).

(5) For each eligible child, the authority shall carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate for the authority to provide him under this Order—

- (a) while it is still looking after him; and
- (b) after it ceases to look after him,

and shall then prepare an pathway plan for him.

(6) The authority shall keep the pathway plan under regular review.

(7) Any such review may be carried out at the same time as a review of the child's case carried out by virtue of Article 45.

(8) The Department may by regulations make provision as to assessments for the purposes of paragraph (5).

(9) The regulations may in particular make provision about—

- (a) who is to be consulted in relation to an assessment;
- (b) the way in which an assessment is to be carried out, by whom and when;
- (c) the recording of the results of an assessment;
- (d) the considerations to which the authority is to have regard in carrying out an assessment.

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(10) The authority shall arrange for each eligible child whom it is looking after to have a personal adviser.]

**F32** 2002 c. 11 (NI)

### [<sup>F33</sup>The responsible authority and relevant children

**34B.**—(1) The responsible authority shall have the functions set out in Article 34C in respect of a relevant child.

(2) In paragraph (1) "relevant child" means (subject to paragraph (3)) a child who—

- (a) is not being looked after by an authority;
- (b) was, before last ceasing to be looked after, an eligible child for the purposes of Article 34A; and
- (c) is aged 16 or 17.

(3) The Department may prescribe—

- (a) additional categories of relevant children; and
- (b) categories of children who are not to be relevant children despite falling within paragraph (2).

(4) In paragraph (1) the "responsible authority" is the one which last looked after the child.

(5) If under paragraph (3)(a) the Department prescribes a category of relevant children which includes children who do not fall within paragraph 2(b) (for example, because they were being looked after by a local authority in Great Britain), the Department may in the regulations also provide for which authority is to be the responsible authority for those children.]

**F33** 2002 c. 11 (NI)

### **Additional functions of the responsible authority in respect of relevant children**

**34C.**—(1) An authority shall take reasonable steps to keep in touch with a relevant child for whom it is the responsible authority, whether he is within the authority's area or not.

(2) An authority shall appoint a personal adviser for each relevant child (if it had not already done so under Article 34A).

(3) An authority, in relation to any relevant child who does not already have a pathway plan prepared for the purposes of Article 34A, shall—

- (a) carry out an assessment of his needs with a view to determining what advice, assistance and support it would be appropriate for the authority to provide him under this Part; and
- (b) prepare a pathway plan for him.

(4) The authority may carry out such an assessment at the same time as any assessment of his needs is made under any statutory provision referred to in sub-paragraphs (a) to (c) of paragraph 4 of Schedule 2, or under any other statutory provision.

(5) The Department may by regulations make provision as to assessments for the purposes of paragraph (3).

(6) The regulations may in particular provide for the matters set out in Article 34A(9).

(7) The authority shall keep the pathway plan under regular review.

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(8) The responsible authority shall safeguard and promote the child's welfare and, unless the authority is satisfied that his welfare does not require it, support him by—

- (a) maintaining him;
- (b) providing him with or maintaining him in suitable accommodation; and
- (c) providing support of such other descriptions as may be prescribed.

(9) Support under paragraph (8) may be in cash.

(10) The Department may by regulations make provision about the meaning of "suitable accommodation" and in particular about the suitability of landlords or other providers of accommodation.

(11) If it has lost touch with a relevant child, despite taking reasonable steps to keep in touch, the authority must without delay—

- (a) consider how to re-establish contact; and
- (b) take reasonable steps to do so,

and while the child is still a relevant child the authority must continue to take such steps until it succeeds.

(12) Paragraphs (7) to (9) of Article 18 apply in relation to support given under this Article as they apply in relation to assistance given under Article 18.

(13) Paragraphs (2) and (3) of Article 26 apply in relation to any decision by an authority for the purposes of this Article as they apply in relation to the decisions referred to in that Article.

### **Continuing functions in respect of former relevant children**

**34D.**—(1) Each authority shall have the duties provided for in this Article towards—

- (a) a person who has been a relevant child for the purposes of Article 34B (and would be one if he were under 18), and in relation to whom that authority was the last responsible authority; and
- (b) a person who was being looked after by that authority when he attained the age of 18, and immediately before ceasing to be looked after was an eligible child,

and in this Article such a person is referred to as a "former relevant child".

(2) The authority shall take reasonable steps—

- (a) to keep in touch with a former relevant child whether he is within the authority's area or not; and
- (b) if the authority loses touch with him, to re-establish contact.

(3) The authority shall—

- (a) continue the appointment of a personal advisor for a former relevant child; and
- (b) continue to keep his pathway plan under regular review.

(4) The authority shall give a former relevant child—

- (a) assistance of the kind referred to in Article 35B(1), to the extent that his welfare requires it;
- (b) assistance of the kind referred to in Article 35B(2), to the extent that his welfare and his educational or training needs require it;
- (c) other assistance, to the extent that his welfare requires it.

(5) The assistance given under paragraph (4)(c) may be in kind or, in exceptional circumstances, in cash.

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(6) Subject to paragraph (7), the duties set out in paragraphs (2), (3) and (4) subsist until the former relevant child reaches the age of 21.

(7) If the former relevant child's pathway plan sets out a programme of education or training which extends beyond his twenty-first birthday—

(a) the duty set out in paragraph (4)(b) continues to subsist for so long as the former relevant child continues to pursue that programme; and

(b) the duties set out in paragraphs (2) and (3) continue to subsist concurrently with that duty.

(8) For the purposes of paragraph (7)(a) there shall be disregarded any interruption in a former relevant child's pursuance of a programme of education or training if the authority is satisfied that he will resume it as soon as is reasonably practicable.

(9) Article 35B(5) applies in relation to a person being given assistance under paragraph (4)(b) as it applies in relation to a person to whom Article 35B(3) applies.

(10) Paragraphs (7) to (9) of Article 18 apply in relation to assistance given under this Article as they apply in relation to assistance given under Article 18.

**Modifications etc. (not altering text)**

C6 Art. 34D applied (10.12.2015) by [Children's Services Co-operation Act \(Northern Ireland\) 2015](#) (c. 10), ss. 9(2)(a), 10(1)

**[<sup>F34</sup>Personal advisers**

**34E.**—(1) The Department may by regulations require every authority to appoint a personal adviser for children or young persons of a prescribed description who have reached the age of 16 but not the age of 21 who are not—

(a) the children referred to in Article 34A(10);

(b) children who are relevant children for the purposes of Article 34B; or

(c) the young persons referred to in Article 34D.

(2) Personal advisers appointed under this Part shall (in addition to any other functions) have such functions as the Department prescribes.]

F34 2002 c. 11 (NI)

**Modifications etc. (not altering text)**

C7 Art. 34E: power to apply conferred (10.12.2015) by [Children's Services Co-operation Act \(Northern Ireland\) 2015](#) (c. 10), ss. 9(2)(b), 10(1)

**Pathway Plans**

**34F.**—(1) In this Part, a reference to a “pathway plan” is to a plan setting out—

(a) in the case of a plan prepared under Article 34A—

(i) the advice, assistance and support which the authority intends to provide a child under this Part, both while the authority is looking after him and later; and

(ii) when the authority might cease to look after him; and

(b) in the case of a plan prepared under Article 34C, the advice, assistance and support which the authority intends to provide under this Part,

and dealing with such other matters (if any) as may be prescribed.

(2) The Department may by regulations make provision about pathway plans and their review.

*Advice and assistance for certain children<sup>F35</sup> and young persons]*

**F35** 2002 c. 11 (NI)

**[<sup>F36</sup>Persons qualifying for advice and assistance**

**35.—**(1) In this Part “a person qualifying for advice and assistance” means a person who—

- (a) is under 21; and
- (b) at any time after reaching the age of 16 but while still a child was, but is no longer, looked after, accommodated or fostered.

(2) In paragraph (1)(b) “looked after, accommodated or fostered” means—

- (a) looked after by an authority;
- (b) accommodated by or on behalf of a voluntary organisation;
- (c) accommodated in a<sup>F37</sup> private] children's home;
- (d) accommodated for a consecutive period of at least three months in—
  - (i) any accommodation provided by <sup>F38</sup>the Education Authority] ; or
  - (ii) any residential care home; or
  - (iii) any hospital; or
  - (iv) any nursing home; or
  - (v) any prescribed accommodation; or
- (e) privately fostered.

(3) Paragraph (2)(d) applies even if the period of three months mentioned there began before the child reached the age of 16.

(4) In the case of a person qualifying for advice and assistance by virtue of paragraph (2)(a), the authority which last looked after him shall take such steps as it thinks appropriate to contact him at such times as it thinks appropriate with a view to discharging its functions under Articles 35A and 35B.

(5) In each of Articles 35A and 35B, the authority under the duty or having the power mentioned there (“the relevant authority”) is—

- (a) in the case of a person qualifying for advice and assistance by virtue of paragraph (2)(a), the authority which last looked after him; or
- (b) in the case of any other person qualifying for advice and assistance, the authority within whose area the person is (if he has asked for help of a kind which can be given under Article 35A or 35B).]

**F36** 2002 c. 11 (NI)

**F37** 2003 NI 9

**F38** Words in art. 35(2)(d)(i) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\)](#), [Sch. 3 para. 14\(3\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

*Status: Point in time view as at 21/03/2022.*

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#### **Modifications etc. (not altering text)**

**C8** Art. 35 applied (10.12.2015) by [Children's Services Co-operation Act \(Northern Ireland\) 2015 \(c. 10\), ss. 9\(2\)\(a\), 10\(1\)](#)

#### **Advice and assistance**

**35A.**—(1) The relevant authority shall consider whether the conditions in paragraph (2) are satisfied in relation to a person qualifying for advice and assistance.

(2) The conditions are that—

- (a) he needs help of a kind which the authority can give under this Article or Article 35B; and
- (b) in the case of a person who was not being looked after by an authority, the relevant authority is satisfied that the person by whom he was being looked after does not have the necessary facilities for advising or befriending him.

(3) If the conditions are satisfied—

- (a) the relevant authority shall advise and befriend him if he was being looked after by an authority or was accommodated by or on behalf of a voluntary organisation; and
- (b) in any other case the relevant authority may do so.

(4) Where as a result of this Article an authority is under a duty, or is empowered, to advise and befriend a person, it may also give him assistance.

(5) The assistance may be in kind or, in exceptional circumstances, in cash.

(6) Paragraphs (7) to (9) of Article 18 apply in relation to assistance given under this Article or Article 35B as they apply in relation to assistance given under Article 18.

#### **Modifications etc. (not altering text)**

**C9** Art. 35A applied (10.12.2015) by [Children's Services Co-operation Act \(Northern Ireland\) 2015 \(c. 10\), ss. 9\(2\)\(a\), 10\(1\)](#)

#### **Employment, education and training**

**35B.**—(1) The relevant authority may give assistance to any person who qualifies for advice and assistance by virtue of Article 35(2)(a) by contributing to expenses incurred by him in living near the place where he is, or will be, employed or seeking employment.

(2) The relevant authority may give assistance to a person to whom paragraph (3) applies by—

- (a) contributing to expenses incurred by the person in question in living near the place where he is, or will be, receiving education or training; or
- (b) making a grant to enable him to meet expenses connected with his education or training.

(3) This paragraph applies to any person who—

- (a) is under 24; and
- (b) qualifies for advice and assistance by virtue of Article 35(2)(a), or would have done so if he were under 21.

(4) Where an authority is assisting a person under paragraph (2) it may disregard any interruption in his attendance on the course if he resumes it as soon as is reasonably practicable.

(5) Where the authority is satisfied that a person to whom paragraph (3) applies who is in full-time further or higher education needs accommodation during a vacation because his term-time accommodation is not available to him then, the authority shall give him assistance by—

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- (a) providing him with suitable accommodation during the vacation; or
  - (b) paying him enough to enable him to secure such accommodation himself.
- (6) The Department may prescribe the meaning of “full-time”, “further education”, “higher education” and “vacation” for the purposes of paragraph (5).

**Modifications etc. (not altering text)**

**C10** Art. 35B applied (10.12.2015) by Children’s Services Co-operation Act (Northern Ireland) 2015 (c. 10), ss. 9(2)(a), 10(1)

**Information**

- 35C.**—(1) Where it appears to an authority that a person—
- (a) with whom it is under a duty to keep in touch under Article 34C, 34D or 35; or
  - (b) whom it has been advising and befriending under Article 35A; or
  - (c) to whom it has been giving assistance under Article 35B,
- proposes to live, or is living, in the area of another authority, the authority must inform that other authority.
- (2) Where a child who is accommodated—
- (a) by a voluntary organisation or in a<sup>F39</sup> private] children's home; or
  - (b) as mentioned in Article 35(2)(d),
- ceases to be so accommodated, after reaching the age of 16, the person providing the accommodation shall inform the authority within whose area the child proposes to live.

**F39** 2003 NI 9

**[<sup>F40</sup>Representations: Articles 34B to 35B**

- 35D.**—(1) Every authority shall establish a procedure for considering representations (including complaints) made to it by—
- (a) a relevant child for the purposes of Article 34B or a young person falling within Article 34D;
  - (b) a person qualifying for advice and assistance; or
  - (c) a person falling within Article 35B(2),
- about the discharge of its functions under this Part in relation to him.
- (2) In considering representations under paragraph (1), an authority shall comply with regulations made by the Department for the purposes of this paragraph.]

**F40** 2002 c. 11 (NI)

*Arts. 36, 37 rep. by 2002 c. 11 (NI)*

*Contributions towards maintenance of children looked after by an authority*

**Interpretation**

- 38.** In Articles 39 to 43—

*Status: Point in time view as at 21/03/2022.*

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“contribution notice” has the meaning given in Article 40(1);

“contribution order” has the meaning given in Article 41(2);

“contributor” has the meaning given in Article 39(1).

### Liability to contribute

**39.**—(1) Where an authority is looking after a child (other than in the cases mentioned in paragraph (7)), the authority shall consider whether it should recover contributions towards the child's maintenance from any person liable to contribute (a “contributor”).

(2) An authority may only recover contributions from a contributor if the authority considers it reasonable to do so.

(3) The persons liable to contribute are—

- (a) where the child is under 16, each of his parents;
- (b) where he has reached the age of 16, the child himself.

(4) A person shall not be liable to contribute during any period when he is in receipt [<sup>F41</sup>of universal credit (except in such circumstances as may be prescribed),] of income support, [<sup>F42</sup>of any element of child tax credit other than the family element, of working tax credit] [<sup>F43</sup>, of an income-based jobseeker's allowance or of an income-related employment and support allowance].

(5) A person shall not be liable to contribute towards the maintenance of a child in the care of an authority in respect of any period during which the child is allowed by the authority (under Article 27(5)) to live with a parent of his.

(6) A contributor shall not be obliged to make any contribution towards a child's maintenance except as agreed or determined in accordance with Articles 40 to 43.

(7) The cases referred to in paragraph (1) are where the child is looked after by an authority under—

- (a) Article 23;
- (b) an interim care order.

**F41** Words in art. 39(4) inserted (27.9.2017) by [The Welfare Reform \(Northern Ireland\) Order 2015 \(S.I. 2015/2006\)](#), art. 2(2), [Sch. 2 para. 28\(d\)](#); S.R. 2017/190, art. 4(1)(2)(g)(i)

**F42** 2002 c. 21

**F43** Words in art. 39(4) substituted (27.10.2008) by [Welfare Reform Act \(Northern Ireland\) 2007 \(c. 2\)](#), ss. 28(1), 60(1), [Sch. 3 para. 5\(6\)](#) (with transitional provisions in s. 29, Sch. 4); S.R. 2008/276, [art. 2\(2\)\(d\)](#), Sch. Pt. 2

### Agreed contributions

**40.**—(1) Contributions towards a child's maintenance may only be recovered if the authority has served a notice (a “contribution notice”) on the contributor specifying—

- (a) the weekly sum which the authority considers that he should contribute; and
- (b) arrangements for payment.

(2) The contribution notice must be in writing and dated.

(3) Arrangements for payment shall, in particular, include—

- (a) the date on which liability to contribute begins (which must not be earlier than the date of the notice);



- (b) the date on which liability under the notice will end (if the child has not before that date ceased to be looked after by the authority); and
  - (c) the date on which the first payment is to be made.
- (4) The authority may specify in a contribution notice a weekly sum which is a standard contribution determined by the authority for all children looked after by it.
- (5) The authority shall not specify in a contribution notice a weekly sum greater than that which the authority considers—
- (a) it would normally be prepared to pay if it had placed a similar child with authority foster parents; and
  - (b) it is reasonably practicable for the contributor to pay (having regard to his means).
- (6) An authority may at any time withdraw a contribution notice (without prejudice to the authority's power to serve another).
- (7) Where the authority and the contributor agree—
- (a) the sum which the contributor is to contribute; and
  - (b) arrangements for payment,
- (whether as specified in the contribution notice or otherwise) and the contributor notifies the authority in writing that he so agrees, the authority may recover summarily as a civil debt any contribution which is overdue and unpaid.
- (8) A contributor may, by serving a notice in writing on the authority, withdraw his agreement in relation to any period of liability falling after the date of service of the notice.
- (9) Paragraph (7) is without prejudice to any other method of recovery.

### **Contribution orders**

- 41.**—(1) Where a contributor has been served with a contribution notice and has—
- (a) failed to reach any agreement with the authority as mentioned in Article 40(7) within the period of one month beginning with the day on which the contribution notice was served; or
  - (b) served a notice under Article 40(8) withdrawing his agreement,
- the authority may apply to the court for an order under this Article.
- (2) On such an application the court may make an order (a “contribution order”) requiring the contributor to contribute a weekly sum towards the child's maintenance in accordance with arrangements for payment specified by the court.
- (3) A contribution order—
- (a) shall not specify a weekly sum greater than that specified in the contribution notice; and
  - (b) shall be made with due regard to the contributor's means.
- (4) A contribution order shall not—
- (a) take effect before the date specified in the contribution notice; or
  - (b) have effect while the contributor is not liable to contribute (by virtue of Article 39); or
  - (c) remain in force after the child has ceased to be looked after by the authority which obtained the order.
- (5) An authority shall not apply to the court under paragraph (1) in relation to a contribution notice which the authority has withdrawn.
- (6) Where—

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- (a) a contribution order is in force;
- (b) the authority serves another contribution notice; and
- (c) the contributor and the authority reach an agreement under Article 40(7) in respect of that other contribution notice,

the effect of the agreement shall be to discharge the order from the date on which it is agreed that the agreement shall take effect.

(7) Where an agreement is reached under paragraph (6) the authority shall notify the court—

- (a) of the agreement; and
- (b) of the date on which it took effect.

(8) A contribution order may be varied or revoked on the application of the contributor or the authority.

(9) In proceedings for the variation of a contribution order, the authority shall specify—

- (a) the weekly sum which, having regard to Article 40, the authority proposes that the contributor should contribute under the order as varied; and
- (b) the proposed arrangements for payment.

(10) Where a contribution order is varied, the order—

- (a) shall not specify a weekly sum greater than that specified by the authority in the proceedings for variation; and
- (b) shall be made with due regard to the contributor's means.

(11) An appeal shall lie in accordance with rules of court from any order made under this Article.

#### **Enforcement of contribution orders, etc.**

**42.**—(1) A contribution order shall be an order to which Article 98(11) of the Magistrates' Courts (Northern Ireland) Order 1981<sup>F44</sup> applies.

(2) Where a contributor has agreed, or has been ordered, to make contributions to an authority, any other authority within whose area the contributor is for the time being living may—

- (a) at the request of the authority which served the contribution notice; and
- (b) subject to agreement as to any sum to be deducted in respect of services rendered,

collect from the contributor any contributions due on behalf of the authority which served the notice.

(3) The power to collect sums under paragraph (2) includes power to—

- (a) receive and give a discharge from any contributions due; and
- (b) (if necessary) enforce payment of any contributions,

even though those contributions may have fallen due at a time when the contributor was living elsewhere.

(4) Any contribution collected under paragraph (2) shall be paid (subject to any agreed deduction) to the authority which served the contribution notice.

(5) In any proceedings under this Article, a document which purports to be—

- (a) a copy of an order made by a court under Article 41; and
- (b) certified as a true copy by the clerk of the court,

shall be evidence of the order.

(6) In any proceedings under this Article, a certificate which—

- (a) purports to be signed by an authorised officer of the authority which obtained the contribution order; and
  - (b) states that any sum due to the authority under the order is overdue and unpaid,
- shall be evidence that the sum is overdue and unpaid.

**F44** 1981 NI 26

## **Regulations**

- 43.** The Department may make regulations—
- (a) as to the considerations which an authority must take into account in deciding—
    - (i) whether it is reasonable to recover contributions; and
    - (ii) what the arrangements for payment should be;
  - (b) as to the procedures which an authority must follow in reaching agreements with—
    - (i) contributors (under Articles 40 and 41); and
    - (ii) any other authority (under Article 42).

## *Miscellaneous*

## **Secure accommodation**

**44.—**(1) In this Article “secure accommodation” means accommodation provided for the purpose of restricting liberty.

(2) Subject to paragraphs (3) to (10), a child who is being looked after by an authority may not be placed, and, if placed, may not be kept, in secure accommodation unless it appears—

- (a) that—
    - (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and
    - (ii) if he absconds, he is likely to suffer significant harm; or
  - (b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.
- (3) The Department may by regulations—
- (a) specify a maximum period—
    - (i) beyond which a child may not be kept in secure accommodation without the authority of the court; and
    - (ii) for which the court may authorise a child to be kept in secure accommodation;
  - (b) empower the court to authorise a child to be kept in secure accommodation for such further period as the regulations may specify; and
  - (c) provide that an application to the court under this Article shall be made only by an authority.

(4) A court hearing an application under this Article shall determine whether any relevant criteria for keeping a child in secure accommodation are satisfied in his case.

(5) If a court determines that any such criteria are satisfied, it shall make an order authorising the child to be kept in secure accommodation and specifying the maximum period for which he may be so kept.

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(6) On any adjournment of the hearing of an application under this Article, a court may make an interim order permitting the child to be kept during the period of the adjournment in secure accommodation.

(7) No court shall exercise the powers conferred by this Article in respect of a child who is not legally represented in that court unless, having been informed of his right to apply for [<sup>F45</sup>civil legal services funded by the Department of Justice] and having had the opportunity to do so, he refused or failed to apply.

(8) The Department may by regulations provide that—

- (a) this Article shall or shall not apply to any description of children specified in the regulations;
- (b) this Article shall have effect in relation to children of a description specified in the regulations subject to such modifications as may be so specified;
- (c) such other provisions as may be so specified shall have effect for the purpose of determining whether a child of a description specified in the regulations may be placed or kept in secure accommodation.

(9) The giving of an authorisation under this Article shall not prejudice any power of any court to give directions relating to the child to whom the authorisation relates.

(10) This Article is subject to Article 22(2) (power of person with parental responsibility to remove child from accommodation provided by or on behalf of an authority).

**F45** Words in art. 44(7) substituted (1.4.2015) by Access to Justice (Northern Ireland) Order 2003 (S.I. 2003/435 (N.I. 10)), art. 1(2), **Sch. 4 para. 11**; S.R. 2015/194, art. 2, **Sch.** (with art. 3) (as amended (18.11.2014) by Legal Aid and Coroners' Courts Act (Northern Ireland) 2014 c. 11 (N.I.), **Sch. 2 para. 6(43)(a)(viii)**)

## Reviews and representations

**45.—**(1) The Department may make regulations requiring the case of each child who is being looked after by an authority to be reviewed in accordance with the provisions of the regulations.

(2) The regulations may, in particular, make provision—

- (a) as to the manner in which each case is to be reviewed;
- (b) as to the considerations to which the authority is to have regard in reviewing each case;
- (c) as to the time when each case is first to be reviewed and the frequency of subsequent reviews;
- (d) requiring the authority, before conducting any review, to seek the views of—
  - (i) the child;
  - (ii) his parents;
  - (iii) any person who is not a parent of his but who has parental responsibility for him; and
  - (iv) any other person whose views the authority considers to be relevant,
 including, in particular, the views of those persons in relation to any particular matter which is to be considered in the course of the review;
- (e) requiring the authority to consider, in the case of a child who is in the care of the authority, whether an application should be made to discharge the care order;
- (f) requiring the authority to consider, in the case of a child in accommodation provided by the authority, whether the accommodation accords with the requirements of this Part;

- (g) requiring the authority to inform the child, so far as is reasonably practicable, of any steps he may take under this Order;
  - (h) requiring the authority to make arrangements, including arrangements with such other bodies providing services as it considers appropriate, to implement any decision which it proposes to make in the course, or as a result, of the review;
  - (i) requiring the authority to notify details of the result of the review and of any decision taken by the authority in consequence of the review to—
    - (i) the child;
    - (ii) his parents;
    - (iii) any person who is not a parent of his but who has parental responsibility for him; and
    - (iv) any other person who the authority considers ought to be notified;
  - (j) requiring the authority to monitor the arrangements which it has made with a view to ensuring that they comply with the regulations.
- (3) Every authority shall establish a procedure for considering any representations (including any complaint) made to it by—
- (a) any child who is being looked after by the authority or who is not being looked after by the authority but is in need;
  - (b) a parent of his;
  - (c) any person who is not a parent of his but who has parental responsibility for him;
  - (d) any authority foster parent;
  - (e) such other person as the authority considers has a sufficient interest in the child's welfare to warrant his representations being considered by the authority,
- about the discharge of any of the authority's functions under this Part in relation to the child.
- (4) The procedure shall ensure that at least one person who is not a member or officer of the authority takes part in—
- (a) the consideration of representations under this Article; and
  - (b) any discussions which are held by the authority about the action (if any) to be taken in relation to the child in the light of those representations;
- and the authority may pay him such fee and reasonable expenses as the Department considers appropriate.
- (5) In carrying out any consideration of representations under this Article an authority shall comply with any regulations made by the Department for the purpose of regulating the procedure to be followed.
- (6) The Department may make regulations requiring an authority to monitor the arrangements that it has made with a view to ensuring that they comply with any regulations made for the purposes of paragraph (5).
- (7) Where any representation has been considered under the procedure established by an authority under this Article, the authority shall—
- (a) have due regard to the findings of those considering the representation; and
  - (b) take such steps as are reasonably practicable to notify (in writing)—
    - (i) the person making the representation;
    - (ii) the child (if the authority considers that he has sufficient understanding); and
    - (iii) such other persons (if any) as appear to the authority to be likely to be affected,

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of the authority's decision in the matter and the authority's reasons for taking that decision and of any action which the authority has taken, or proposes to take.

(8) Every authority shall give such publicity to its procedure for considering representations under this Article as the authority considers appropriate.

### Co-operation between authorities and other bodies

**46.**—(1) Where it appears to an authority that any body mentioned in paragraph (3) could, by taking any specified action, help in the exercise of any of the authority's functions under this Part, the authority may request the help of that body, specifying the action.

(2) A body whose help is so requested shall comply with the request if it is compatible with that body's own statutory or other duties and obligations and does not unduly prejudice the discharge of any of its functions.

(3) The bodies are—

- (a) any Board;
- (b) [<sup>F46</sup>the Education Authority] ;
- (c) any [<sup>F47</sup>Health and Social Care trust] or special agency;
- (d) any district council;
- (e) the Northern Ireland Housing Executive; and
- (f) such other persons as the Department may direct for the purposes of this Article.

(4) [<sup>F48</sup>Except where paragraph (4A) applies,] where an authority complies with a request under paragraph (2) in relation to a child or other person who is ordinarily resident within the area of another authority, the first authority may recover any reasonable expenses incurred by it in respect of that child or person from the other authority.

[<sup>F48</sup>(4A) Where an authority ("authority A") complies with any request under Article 46(2) from another authority ("authority B") in relation to a child or other person—

- (a) whose responsible authority is authority B for the purposes of Article 34C or 34D; or
- (b) whom authority B is advising or befriending or to whom it is giving assistance by virtue of Article 35(5)(a),

authority A may recover from authority B any reasonable expenses incurred by it in respect of that person.]

*Para.(5) rep. by 1996 NI 1*

**F46** Words in art. 46(3)(b) substituted (1.4.2015) by [Education Act \(Northern Ireland\) 2014 \(c. 12\), Sch. 3 para. 14\(4\)](#) (with [Sch. 2 para. 4\(3\)](#)); S.R. 2015/35, art. 2(b)

**F47** Words in art. 46(3)(c) substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 1\(1\)\(c\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, art. 2

**F48** 2002 c. 11 (NI)

### Consultation with [<sup>F49</sup>the Education Authority]

**47.**—(1) Where—

- (a) a child is being looked after by an authority; and
- (b) the authority proposes to provide accommodation for him in an establishment at which education is provided for children who are accommodated there,

the authority shall, so far as is reasonably practicable, consult [<sup>F50</sup>the Education Authority] before doing so.

(2) Where any such proposal is carried out, the authority shall, as soon as is reasonably practicable, inform [<sup>F51</sup>the Education Authority] of the arrangements that have been made for the child's accommodation.

(3) Where the child ceases to be accommodated as mentioned in paragraph (1)(b), the authority shall inform [<sup>F52</sup>the Education Authority] .

<sup>F53</sup>(4) .....

<b>F49</b>	Words in art. 47 heading substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), <b>Sch. 3 para. 14(5)</b> (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)
<b>F50</b>	Words in art. 47(1) substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), <b>Sch. 3 para. 14(5)</b> (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)
<b>F51</b>	Words in art. 47(2) substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), <b>Sch. 3 para. 14(5)</b> (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)
<b>F52</b>	Words in art. 47(3) substituted (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), <b>Sch. 3 para. 14(5)</b> (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)
<b>F53</b>	Art. 47(4) repealed (1.4.2015) by Education Act (Northern Ireland) 2014 (c. 12), <b>Sch. 4</b> (with Sch. 2 para. 4(3)); S.R. 2015/35, art. 2(b)

**Miscellaneous**

**48.**—(1) Nothing in this Part shall affect any duty imposed on an authority by or under any other statutory provision.

(2) Any question arising under Article 21(2), 23(3), 24(6) or 46(4) as to the ordinary residence of a child shall be determined by agreement between the authorities concerned or, in default of agreement, by the Department.

**Status:**

Point in time view as at 21/03/2022.

**Changes to legislation:**

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