
Status: Point in time view as at 01/04/2009.

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STATUTORY INSTRUMENTS

1995 No. 755

The Children (Northern Ireland) Order 1995

PART IV **N.I.**

SUPPORT FOR CHILDREN AND THEIR FAMILIES

Children in need and their families

Interpretation **N.I.**

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.

[^{F1}Assessments and services for children who are carers **N.I.**

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 [^{F2}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 [^{F3}or section 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009]; or

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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 [^{F4}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.]

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|-----------|--|
| F1 | 2002 c. 6 (NI) |
| F2 | 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), Sch. 6 para. 1(1)(a) (with Sch. 6 para. 1(2)(3)); S.R. 2009/114, art. 2 |
| F3 | 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), Sch. 6 para. 14(1) ; S.R. 2009/114, art. 2 |
| F4 | 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), Sch. 6 para. 1(1)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2 |

General duty of authority to provide [^{F5}social care] for children in need, their families and others **N.I.**

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 [^{F6}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, [^{F7} 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 of income support, [^{F8} of any element of child tax credit other than the family element, of working tax credit] [^{F9}, of an income-based jobseeker's allowance or of an income-related employment and support allowance].

[^{F10}(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** 2002 c. 21
- F9** 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
- F10** 2002 c. 21

[^{F11}**Assessments: carers of disabled children** **N.I.**

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—

- (a) Article 17 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) [^{F12}or section 6 of the Health and Social Care (Reform) Act (Northern Ireland) 2009]; or

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- (b) paragraph 6 of Schedule 3 to the Health and Personal Social Services (Northern Ireland) Order 1991 (in the case of an ^{F13}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.]

F11 2002 c. 6 (NI)

F12 Words in art. 18A(4)(a) substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 14(2)**; S.R. 2009/114, **art. 2**

F13 Words in art. 18A(4)(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)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

..... ^{F14} **N.I.**

F14 prosp. inserted by 2002 c. 6 (NI)

^{F15}Direct payments **N.I.**

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 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)^{F16}, of any element of child tax credit other than the family element, of working tax credit^{F17}, of an income-based jobseeker's allowance or of an income-related employment and support allowance].
- (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.]

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F15 2002 c. 6 (NI)

F16 2002 c. 21

F17 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

[^{F18}Information for carers **N.I.**

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 [^{F19}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).]

F18 2002 c. 6 (NI)

F19 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 **N.I.**

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 an education and library board or by other persons.

Review of provision for day care, child minding, etc. N.I.

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 the appropriate education and library board and district councils; and
- (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.

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

Provision of accommodation for children: general **N.I.**

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.

Powers of person with parental responsibility **N.I.**

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 **N.I.**

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. **N.I.**

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.

(3) No person shall be liable to pay any charge under paragraph (1) at any time when he is in receipt of income support,^[F20] of any element of child tax credit other than the family element, of working tax credit^[F21], of an income-based jobseeker's allowance or of an income-related employment and support allowance].

^[F22](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^[F23] 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.

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F20 2002 c. 21

F21 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

F22 2002 c. 14 (NI)

F23 SR 2005/479

Status:

Point in time view as at 01/04/2009.

Changes to legislation:

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