

These notes relate to the Commissioner for Children and Young People (Scotland) Act 2003 (asp 17) which received Royal Assent on 1 May 2003

COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

SUMMARY AND BACKGROUND TO THE ACT

3. This Act is a result of a Committee Bill (i.e. a Bill initiated by a Scottish Parliament committee under Rule 9.15 of the Parliament's standing orders). The Act resulted from an investigation and report published by the Education, Culture and Sport Committee on 14 February 2002, *Report on Inquiry into the Need for a Children's Commissioner in Scotland*, (2nd Report 2002, SP Paper 508). This was followed by a further report published on 3 July 2002, *Report on Proposed Commissioner for Children And Young People Bill*, (11th Report 2002, SP Paper 617). The proposal for a Committee Bill was debated and approved by the Parliament on 25 September 2002.
4. The Act was developed from the Committee's conclusion that a new and independent office of "Commissioner for Children and Young People" (the Commissioner) should be established by statute.
5. The 2nd Report recommended that the functions of the Commissioner should include advocacy for all children and young people at a national level; conduct of publicity and information campaigns; and presentation of an annual report to the Scottish Parliament. That Report also emphasised the need for a Commissioner to involve children and young people throughout Scotland in his or her work and to ensure that the work of the Commissioner is informed by the views of children and young people. This and other aspects of the Report were underpinned by articles of the United Nations Convention on the Rights of the Child (UNCROC). In particular, Article 12 of UNCROC emphasises the importance of the views of children. Similarly, Article 3 of UNCROC emphasises the importance of "the best interests" of children.
6. The Act creates the post of Commissioner for Children and Young People with the general function of promoting and safeguarding the rights of children and young people. This includes everyone in Scotland up to the age of 18, and those up to 21 years who have been "looked after" by a local authority. "Looked after" is defined in section 16. In doing so, the Commissioner will have regard to the United Nations Convention on the Rights of the Child (UNCROC).
7. There are a number of principles which underpin the Act. These are that:
 - the Commissioner is independent;
 - the best interests of children and young people should be a primary consideration in all matters affecting them; and
 - the views of children and young people should be taken into account in accordance with age and maturity.
8. In exercising the general function of promoting and safeguarding the rights of children and young people under the Act, the Commissioner is to:

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- promote an awareness of those rights amongst children, young people and adults;
 - keep under review current law, policy and practice relating to those rights;
 - promote best practice by service providers in relation to children and young people;
 - promote, commission, and publish research;
 - undertake investigations; and
 - report to the Parliament.
9. The Commissioner can conduct investigations into how service providers take rights, interests and views into account in decisions or actions affecting children and young people. The Commissioner cannot, however, undertake an investigation which only concerns an individual child or young person. In an investigation, the Commissioner has the power to call witnesses to attend and require the production of documents. It is anticipated that investigations will be rare.