

COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 4: Promoting and safeguarding rights

18. The general function of the Commissioner, set out in subsection (1), is to promote and safeguard the rights of children and young people.
19. [Section 16](#) provides that “children and young people” are individuals under the age of 18. However, if someone in Scotland has been “looked after” by an authority in the United Kingdom they will come within the remit of the Commissioner until they reach 21 years of age.
20. The word “rights” is not defined in the Act. Therefore the Commissioner’s general function is to promote and safeguard any rights which apply to children and young people in Scotland, either statutory or otherwise. This includes, for example, the right to a school education under section 1 of the [Standards in Scotland’s Schools Act 2000 \(asp 6\)](#).
21. Subsection (2) sets out specific duties of the Commissioner in carrying out the general function of promoting and safeguarding the rights of children and young people.
22. In particular the Commissioner is to promote awareness and understanding of the rights of children and young people (subsection (2)(a)). In relation to children and young people themselves this might include providing information to individuals about what their rights are and where and how to access further assistance. In relation to the promotion of those rights amongst adults as well as children and young people this might include, for example, fostering a high media profile or holding conferences.
23. Under subsection (2)(b) the Commissioner is to consider legislation relating to the rights of children and young people as well as the way in which it is applied. An example of this might include issuing statements or reports on the possible impact of legislation and proposed legislation. It also requires the Commissioner to consider policy and practice. This could include consideration of Scottish Executive policy, Scottish Parliament practice, local authority practice, practice in voluntary organisations or practice in private companies. A review of law, policy or practice could result, for example, in recommendations in a report to the Parliament under section 12 or be referred to in the annual report under section 10.
24. Under subsection (2)(c) the Commissioner is to promote best practice amongst “service providers”. Section 16 of the Act defines “service providers” in such a way as to include any person providing services for children and young people. The exercise of parental responsibilities is not regarded as a “service” for these purposes unless such responsibilities are being exercised other than by a parent or guardian (for example, by a local authority). (See paragraph 41, below for further discussion of “service provider”).

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

25. Subsection (2)(c) is closely linked to the function of reviewing practice in subsection (2) (b). For example, the Commissioner could recommend improvements and highlight examples of good practice as a result of considering current practice under subsection (2)(b). The Commissioner might promote best practice by, for example, making recommendations to service providers.
26. Under subsection (2)(d) the Commissioner has obligations in relation to research relating to the rights of children and young people. This might result, for example, in the Commissioner undertaking research into the effect of a particular piece of legislation or policy on the rights of children and young people.