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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 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.

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

**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—
  - (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;
- (b) maintaining him in a home provided under Part VII;
- (c) maintaining him in a voluntary home;
- (d) maintaining him in a registered children's home;
- (e) maintaining him in a home or institution provided by a government department or a prescribed public body; or
- (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.

## **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
- (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.

#### **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.