

NORTHERN IRELAND CHILD CARE LAW

“THE ROUGH GUIDE”

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Section 1: Introduction

- 1.1 The purpose of this document is to provide a practical guide to Northern Ireland child care law. It lists the main primary and subordinate legislation governing this area of the law. Central to this is the Children (Northern Ireland) Order 1995 which changed the philosophy and practice of the law in relation to children. The Order is widely regarded as the single most important source of child law and it affects all who work for and care for children, whether as parents, paid carers or volunteers. The guide also lists court rules, departmental guidance and other material pertinent to the Children Order.
- 1.2 Those working in the field of child care policy should have a clear understanding not only of the Children Order but also of the plethora of subordinate legislation and guidance which underpins it. It is hoped that this document, which has been given the title “A Rough Guide”, will be useful to those new to this area of work. It does not try to describe the law and practice in any great detail. Instead, it is intended to act as a quick and easy-to-consult guide to the law. For those who do not need to know more, it provides the basic legal framework. However, for those embarking on a more detailed examination of the Children Order, it aims to give a broad picture of the Order so that they can identify which bits are most relevant to them. It also lists all amendments to the Children Order since it became law. These amendments are summarised in Annex A. It also includes a list of Key Resources at Annex B.
- 1.3 Before going any further – a number of health warnings! This guide can only prove an introduction to the law relating to child care. It is not intended as a substitute for further reading. It is a starting point. Furthermore the guide does not deal with the law relating to adoption. This is dealt with in a separate document. Neither does the guide cover the law relating to criminal offending by children and young people as policy responsibility for this lies with the Northern Ireland Office.

Section 2: Primary Legislation

- 2.1 The law reflects changing social attitudes and assumptions and undergoes constant reform in the courts as established principles are interpreted, clarified or reapplied to meet new circumstances. However, substantial changes to the law are the responsibility of government through the enactment of primary legislation.
- 2.2 What is “primary legislation”? In essence, primary legislation is the term used to describe law which is enacted by Parliament. There is a wide range of primary legislation which applies in Northern Ireland. This includes:
- Pre-1921 Acts of the Westminster Parliament
 - Post-1921 Acts of the Westminster Parliament which extend to Northern Ireland
 - Acts of the Northern Ireland Parliament 1921 to 1972
 - Orders in Council made at Westminster in 1972 and 1973 under the Northern Ireland (Temporary Provisions) Act 1972
 - Measures of the Northern Ireland Assembly in 1974 under the Northern Ireland Constitution Act 1973
 - Orders in Council made at Westminster between 1974 and 1999 under the Northern Ireland Act 1974
 - Acts of the Northern Ireland Assembly made between 2000 and 2002 under the Northern Ireland Act 1998
 - Orders in Council made at Westminster from November 2002 under the Northern Ireland Act 2000
- 2.3 In 1972, and from 1974 until 1999, Northern Ireland did not have a body of its own to enact legislation, but separate primary legislation in the form of Orders in Council were made in respect of Northern Ireland. In 1999, the Northern Ireland Act 1998 created a new Northern Ireland Assembly which had the power to enact primary legislation known as “Acts”.
- 2.4 In February 2000, the assembly was suspended and the power to make separate primary legislation in the form of Orders in Council was reinstated under the Northern Ireland act 2000. The assembly was restored in June 2000 but was suspended again in October 2002.
- 2.5 During periods of suspension and other periods when there was no independent legislative body, Northern Ireland has been “governed” under what is known as “direct rule” from Westminster. During such periods, Northern Ireland Departments operate under the control and direction of the Secretary of State for Northern Ireland and the Order in Council procedure has applied for the purpose of enacting primary legislation

- 2.6 Although loosely termed “primary legislation” in Northern Ireland, Orders in council made under either the Northern Ireland Acts 1974 and 2000 are regarded as “delegated or subordinate legislation” at Westminster and are termed statutory instruments.
- 2.7 Legislation Progress Unit, Machinery of Government Division, OFMDFM, has prepared step-by-step guidance for staff involved in the preparation of primary legislation. The latest version of this guidance can be obtained from the DHSSPS Legislation Liaison Officer. A copy of the guidance can also be accessed via the DHSSPS intranet (go to “Business Area” and then click on “Office of the Permanent Secretary”).

Section 3: Summary of main primary legislation

- 3.1 The main pieces of primary legislation for which Child Care Policy Directorate has policy responsibility are set out below (adoption legislation is dealt with in a separate paper). Against each statute is a brief summary giving a flavour of what the legislation is about.

The Children (Northern Ireland) Order 1995 (S.I. 1995/755 (NI 2))

- 3.2 The Children Order is the principal statute governing the care, upbringing and protection of children in Northern Ireland. It affects all those who work with and care for children, whether parents, paid carers or volunteers. The Order reformed, and brought together, most of the “public” and “private”¹ law relating to children relating to children in a single coherent statutory framework along the lines of the Children Act 1989 in England and Wales. This rather dry statement does not explain the impact that the Children Order had upon the public, professionals and most of all children. When it became law in November 1996, the Order was regarded as a radical piece of legislation and marked a major shift in the way children were dealt with by courts and by social services.
- 3.3 The Children Order is best thought of as being at three levels. At the top is the “primary legislation” – the Order itself as passed by Parliament. In addition to Order, there are Regulations. These are called “subordinate legislation”. Regulations set out in detail how the law works in practice and have the full force of law. As well as the primary and secondary legislation, there are several volumes of Guidance issued BY THE Department. These do not have the force of law but say how professionals such as social workers should carry out their duties under the Order. These three levels taken together form the Children Order as it affects the lives of children and families.
- 3.4 The Children Order introduced “parental responsibility” as the central organising concept in child law, and reasserted the significance of children’s welfare as the paramount consideration in disputes concerning their upbringing. It gave courts wide-ranging and flexible powers to regulate the exercise of parental responsibility and introduced sweeping procedural and jurisdictional changes. In the public law, the legislation made fundamental adjustments to the powers and duties of HSS Trusts regarding the family and in the relationship between HSS Trusts and the courts in fulfilling their complementary child care

¹ **Public law** deals with those areas where society intervenes in family life (such as when the State, in the form of HSS Trusts, takes children into care). **Private law** addresses the behaviour of individuals towards each other (such as determining with whom children are to live following divorce).

functions. It established a wholly new basis for compulsory care or supervision and introduced new procedures for protecting children in emergencies and made major changes to the legal regulation of children looked after away from home. While much of the detail of the law is to be found in the Order itself, a vast amount of practical detail is consigned to the many Regulations, Rules of Court and volumes of Guidance which underpins the Order.

- 3.5 The Children Order is a large piece of legislation consisting of nearly 200 Articles (arranged into 12 Parts) and 10 Schedules. The following summary will tell you very briefly what is in the Order and where to find it.

Part 1 – Introductory

- 3.6 This part contains definitions of the principal terms used in the Order.

Part 11 – General Principles

- 3.7 This sets out the basic principles upon which courts must decide issues relating to the upbringing of children. The first principle is that “the child’s welfare shall be the court’s paramount consideration”. The second principle governing the courts is the principle of non-intervention, in other words, courts may only make an order if to do so is better than making no order at all. The third principle is that “delay in determining the question [of the child’s upbringing] is likely to prejudice the welfare of the child”. This Part also introduces the concept of parental responsibility and makes provision for welfare reports under the Order. The principles in Article 3 are important as they apply to all legal proceedings under the Children Order.

Part 111 – Orders in Family proceedings

- 3.8 This introduces four orders known collectively as Article 8 orders which provide for different aspects of a child’s care and upbringing. Article 8 orders can control where a child shall live, with whom he or she shall have contact and other important decisions which affect his or her welfare. These orders are likely to be used in the main to resolve disputes between private individuals.

Part 1V – HSS Trust support for children and families

- 3.9 This part of the Order imposes a general duty on HSS Trusts to provide a range of services for children in need within their locality. Articles 17A – 20 and Schedule 2 list the services which Trusts must or may provide. Article 21 imposes a duty on Trusts to provide accommodation for children in certain circumstances. Article 22 – 48 set out in detail the duties and powers an HSS Trust has in relation to children it is looking after.

Part V – Care and supervision

- 3.10 This contains the provisions which govern the making of care and supervision orders. Article 50 sets out the criteria which must be satisfied before the court can make an order. Article 53 requires HSS Trusts to allow contact with a child in care and gives the court the power to make certain orders in certain circumstances. Article 52 explains the effect of care orders and Article 54 and Schedule 3 set out the duties of a supervisor and the requirements which must be attached to supervision orders. Article 57 deals with interim orders which may be made in care proceedings and Article 57A gives the court the power to exclude certain persons from the family home. Article 58 covers the discharge and variations of care orders and Article 59 gives the courts the power to make orders pending appeal. Article 55 enables an education and library board to apply for an education supervision order when a child is not being properly educated and Schedule 4 explains how such orders operate. Article 60 imposes a duty on the court to appoint a guardian *ad litem* in most public law proceedings under the order. Article 61 gives the guardian *ad litem* a right of access to social work records.

Part V1 – Protection of Children

- 3.11 This part contains the provisions which govern the making of child assessment and emergency protection orders. Article 62 deals with child assessment orders. Articles 63, 63A, 64 and 67 cover emergency protection orders. Article 65 gives the police the power to remove and accommodate children in an emergency. Section 66 imposes a duty to investigate on HSS Trusts in certain specified circumstances. Articles 68 and 69 relate to the abduction of children who are in care or subject to emergency orders and the recovery of missing children.

Parts V11, V111 and 1X – Children’s homes

- 3.12 These parts of the Order govern the provision, conduct and management of the various categories of children’s homes (statutory, voluntary and private).

Part X – Private arrangements for fostering

- 3.13 This part and Schedule 5 contain provision to protect the welfare of privately fostered children.

Part X1 – Child minding and day care for young children

- 3.14 This part contains provisions to protect the welfare of young children who are in day care or looked after by child minders. Each HSS Trust is required to keep a register of persons who act as child minders or who

provide day care. Provision is also made for a person authorised by the Trust to carry out inspections in relation to premises used for child minding and day care.

Part X11 – Employment of Children

- 3.15 This part provides general restrictions on the employment of children (those below school leaving age which is around the young persons 16th birthday). It prohibits the employment of children who are aged under 13 and restricts the hours any child may work on school days or any other days. The Department is given the power to make regulations to modify these general restrictions in certain limited respects. The Part also places restrictions on children taking part in public performances (theatre, music, ballet and TV etc) and provides that subject to specified exceptions a licence must be obtained from the local education and library board before a child can take part in a public performance.

Part X111 – Department’s supervisory functions and responsibilities

- 3.16 This part lists the various functions and duties of the Department as regards the inspection of children’s homes, hospitals, schools and certain other establishments in which children may be accommodated. It imposes a duty on the Department to keep under review the adequacy of child care training in both the statutory and voluntary sectors and provides for the financing of research and training.

Part X1V – Parents not married to each other

- 3.17 This part removes the legal disadvantages of illegitimacy.

Part XV – Guardians

- 3.18 This part makes provision for the appointment of guardians by the High Court or County Court and for a procedure under which a parent may appoint a guardian. It makes clear that a guardian will have parental responsibility for the child.

Part XV1 – Jurisdiction

- 3.19 This part sets out the jurisdictional framework under which the Children Order will operate. It confers concurrent jurisdiction on the High Court, County Court and magistrate’s courts and provides that a juvenile court exercising any jurisdiction conferred by the Children Order will be known as a family proceedings court. This was designed to ensure that the family business of juvenile courts was separated from the criminal business. It also enables the Lord Chancellor to make orders as regards such matters as the level of court in which proceedings may commence and the transfer of proceedings.

Part XVII – Miscellaneous and general

- 3.20 This part contains provisions designed to protect the welfare of children living away from home in long-stay hospitals, boarding schools, nursing homes or private hospitals. It provides that a court may issue a warrant authorising the police to assist a person to enter premises for the purposes of carrying out inspections under the Children Order. It also requires the Department to produce an annual report on the operation of the Children Order.

Amendments to the Children Order

- 3.21 Since the Children Order became law, there have been numerous amendments to the Order by other legislation. While some of these have constituted a significant change in the law, others have been of a minor or purely technical nature. Whatever the nature of the amendment, there is a need for clarity as to the current state of the law. Consequently, all amendments to the Children Order up until February 2003 are set out at Annex A of this guide. Alternatively, an updated version of the Order can be found on the Northern Ireland legislation section of the HMSO website (site under “Updated Statutes of Northern Ireland 1921 – 2002”)

The Children (Northern Ireland Consequential Amendments) Order 1995 (SI 1995/756)

- 3.22 This Order in Council was made under section 38(2) of the Northern Ireland Constitution Act 1973. It makes amendments to certain Acts applying solely to Great Britain or the United Kingdom as a whole as a consequence of the introduction of the Children Order. The amendments are of a purely consequential nature. The Children Order could not be used to make these amendments as they related to reserved or expected matters.

The Children (Leaving Care) Act (Northern Ireland) 2002 (c.11 (NI))

- 3.23 The main purpose of this Act is to improve the life chances of young people who are looked after by HSS Trusts as they make the transition to independent living. To do this it amends the Children Order to place new and enhanced duties on HSS Trusts to assess and meet the care and support needs of young people until they are at least 21 years old. The Act inserts new Articles 34A to 34F, 35, and 35A to 35D into the Children Order.
- 3.24 The key features of the Act are as follows:

- it places a duty on HSS Trusts to assess and meet the needs of eligible 16 and 17 years olds who remain in care, or those who have left care. The Act and supporting Regulations will determine who will and will not be eligible under the new arrangements
- it places a new duty on HSS Trusts to keep in touch with young people who have left care in order to make sure that they receive the support to which they are entitled. The duty will run until the young person reaches 21, or later if he or she is still receiving help from a Trust with education or training
- it requires HSS Trust to provide a personal adviser and a pathway plan for all eligible young people. The pathway plan will map out a route to independence for these young people and will be reviewed regularly to take account of a young person's changing circumstances and ambitions. The personal adviser will provide a single point of contact for a young person. The adviser will be responsible for overseeing the pathway plan and ensuring that the young person receives the support to which he or she is entitled in a co-ordinated and easily accessible way
- it places HSS Trusts under a statutory duty to support and maintain 16 and 17 year old care leavers and at the same time removes their entitlement to means-tested benefits (Income Support, Housing Benefit or income-based Jobseeker's Allowance). Under the new arrangements, HSS Trusts would become their primary source of income.
- it provides continuing support to care leavers when they enter the adult world at 18. It enables those young people who have qualified for the new arrangements when they were 16 or 17 to continue to have a personal adviser and a pathway plan. It also requires HSS Trusts to keep in touch with them until they are 21, or later if they are still being helped with education or training. On top of this, the Act requires HSS Trusts to provide general assistance for these young people, in kind, or exceptionally in cash, until they are 21 and to assist them with the expenses associated with employment, education and training. HSS Trusts are required to provide vacation accommodation (or the funds to secure it) to care leavers they are assisting in full-time higher education or further education.

3.25 The Act has still to be commenced. It will be brought into operation by way of commencement order on such day or days as the Department may appoint. A copy of the Act and its accompanying Explanatory note can be found on the Northern Ireland legislation section of the HMSO website.

The Protection of Children and Vulnerable Adults (Northern Ireland) Order 2003 (S.I. 2003/417 (NI.4))

- 3.26 The main purpose of this Order is to strengthen existing arrangements, known as the Pre-Employment Consultancy Service (PECS), under which checks are carried out as to the suitability of those seeking work with children or adults with a learning disability.
- 3.27 Part I of the Order is introductory. Parts II and III deal with the protection of children and vulnerable adults respectively.
- 3.28 The Order, when commenced, will place the PECS Register on a statutory basis. It will impose duties on child care organisations to carry out checks on prospective employees. These checks will be carried out against new statutory lists of those deemed unsuitable to work with children, which are held by the Department and the Department of Education. Child care organisations will be required to make referrals to the list held by the Department in specified circumstances. An individual who is included in the new statutory lists of those who are unsuitable to work with children will be disqualified from working with children. An individual who is subject to a disqualification order (a new court order introduced by the Order which may be imposed in certain cases), or who is included on either of the lists held by the Department or the Department of Education will commit an offence if he works or seeks work in specified positions. It will also be an offence to knowingly offer or procure work in such a position for a disqualified person.
- 3.29 The Order has still to be commenced. It will be brought into operation by way of commencement order on such day or days as the Department may appoint. A copy of the Order can be found on the Northern Ireland legislation section of the HMSO website.

Section 4: Children Order Commencement Orders

The Children (1995) (Commencement No.1) Order (Northern Ireland) 1995 (S.R. 1995 No. 248 (C.3))

This order brought the following provisions of the Children Order into operation on 1 July 1995:

Articles 1 and 2;
Articles 155, 156 and 157 and Schedule 6;
Articles 183 and 184(2)
Articles 184(1) and 185 (partially);
Schedule 8 paragraph 33;
Schedule 9 paragraphs 8, 14, 82, 93(a), 101(a) and 186; and
Schedule 10 (partially)

The Children (1995) (Commencement No.2) Order (Northern Ireland) 1996 (S.R. 1996 No, 15 (C.2))

This order brought the following provisions of the Children Order into operation on 19 February 1996:

Article 60(7) and (9);
Article 185 (partially); and
Schedule 9 paragraphs 59, 138(7), 158, 159 and 166.

The Children (1995) (Commencement No.3) Order (Northern Ireland) 1996 (S.R. 1996 No.297 (C.17))

This order brought the remaining provisions of the Children Order into operation on 4 November 1996 except for:

Article 149(1)(i);
Article 176;
Article 178 (only in so far as it relates to Article 176);
Schedule 9 paragraphs 17 and 109; and
Schedule 10 (in so far as it relates to the repeal of Article 25(1) and 26 of the Domestic Proceedings (NI) Order 1980)

The Children (1995) (Commencement No.4) Order (Northern Ireland) 2000 (S.R.2000 No.139 (C.6))

This order brought the following provisions of the Children Order into operation on 15 May 2000 and 4 September 2000:

Article 176 (for the purpose of making regulations – 15 May 2000);
Article 176 (for all other purposes – 4 September 2000; and
Article 149(1)(i) and 178 (in so far as it relates to Article 176 – 4 September 2000)

Section 5: Subordinate Legislation

- 5.1 While primary legislation is carried through the Assembly or the Parliament at Westminster in the form of Acts or Orders in Council, these do not always provide for the regulation of every detail of the subject matter with which they deal. In order to relieve pressure on parliamentary time, Acts and Orders in Council give departments powers to make subordinate legislation to work out the application of the law in greater detail, adapting it to fit changing circumstances. Subordinate legislation (also known as delegated or secondary legislation) is therefore made under powers contained in primary legislation. As such all pieces of subordinate legislation are ultimately the offspring of a parent Act or Order in Council.
- 5.2 Subordinate legislation usually takes the form rules, orders or regulations which are classed as Statutory Rules within the meaning of the Statutory Rules (Northern Ireland) Order 1979. Subordinate legislation is used to lay down the law on a particular matter in more detail than is possible in the primary legislation. Under the Ministries of Northern Ireland Act 1921, Northern Ireland (now Departments) are corporate bodies charged with the exercise of administrative functions. These functions include the power to make regulations on a particular matter. These Statutory Rules are as much the law of the land as a parent Act or Order in Council.
- 5.3 Guidance for staff involved in the preparation of subordinate legislation is contained in a publication commonly referred to as the “RED BOOK”. This guidance is currently undergoing a complete revision. The proposed new handbook assumes the existence of a devolved administration and offers guidance on the impact of devolution on the rule making process. The Departmental Solicitors Office is responsible for the preparation of the new subordinate legislation handbook.
- 5.4 The Business Development Service (BDS) Centre for Learning and Development runs a couple of courses for staff seeking and introduction to subordinate legislation. Details of these courses can be found in the latest version of BDS Directory of Services.

Section 6: Statutory Rules made under the Children Order

The Guardians Ad Litem (Panel) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 128)

- 6.1 These Regulations, which came into operation on 1 May 1996, provide for the establishment of a panel of guardians ad litem.
- 6.2 A guardian ad litem is an independent person appointed by the court to represent a child's interests in court proceedings. GALs are appointed by the courts in nearly all public law cases under the Children Order. They are drawn from a panel of suitably qualified and trained persons and are managed by the Northern Ireland Guardian Ad Litem Agency which was specifically created for this purpose.

Definition of Independent Visitors (Children) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 434)

- 6.3 These Regulations, which came into operation on 4 November 1996, set out the circumstances in which a person appointed as an independent visitor is to be regarded as independent of the HSS Trust appointing him or her.
- 6.4 An independent visitor may be appointed to visit, advise and befriend a child who has had little contact with his or her parents. As the name implies, an independent visitor must be entirely independent of the Trust which appoints them.

The Emergency Protection Order (Transfer of Responsibilities) Regulations (Northern Ireland) 1996 (S.R. 1996 No.435)

- 6.5 These Regulations, which came into operation on 4 November 1996, enable an HSS Trust to take over an emergency protection order which was obtained by another Trust. Before doing so, the Trust seeking to take over the order must consider the matters listed in regulation 3 of the Regulations.

Contact with Children Regulations (Northern Ireland) 1996 (S.R. 1996 No. 443)

- 6.6 These Regulations, which came into operation on 4 November 1996, set out the steps to be taken by an HSS Trusts where it refuses to allow contact with a child in care. The Regulations require HSS Trusts to notify parents, and any others entitled to have contact with a child in care of a decision to refuse contact. Where appropriate, the notification

should include the reasons for the decision, its duration, and the remedies available in the case of dissatisfaction.

- 7 Under the Children Order, an HSS Trust must apply to a court if it seeks to deny contact to a parent. In an emergency, however, a Trust may refuse to allow contact for up to 7 days if it is necessary to do so to safeguard or promote the child's welfare. In such circumstances, the Trust must comply with these Regulations.

Day Care (Exempt Supervised Activities) Regulations (Northern Ireland) 1996 (S.R. 1996 No.444)

- 6.8 These Regulations, which came into operation on 4 November 1996, provide that registration under Part XI of the Children Order (as an early years provider) will not be required of persons providing certain supervised activities for children (including uniformed organisations and religious activities for children and leisure and recreational activities).
- 6.9 The intention of this Regulation is to limit registration to situations where the primary intention is to provide care for children.

The Representations Procedure (Children) Regulations (Northern Ireland) 1996 (S.R. 1996 No.451)

- 6.10 These Regulations, which came into operation on 4 November 1996, set out the procedures to be used by HSS Trusts in dealing with complaints and representations about the way they are carrying out their functions under Part IV of the Children Order (services to support children and their families).
- 6.11 The complaints procedures established under the Children Order are separate from the general complaints procedures established for HPSS.

The Children (private Arrangements for Fostering) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 453)

- 6.12 These Regulations, which came into operation on 4 November 1996, set out the requirements for notifying HSS Trusts of private fostering arrangements and the duties of HSS Trusts to visit and ensure the welfare of privately fostered children.
- 6.13 Privately fostered children are children placed with non-related carers by their parents or relatives in an informal arrangement – these are not children placed with approved foster carers by HSS Trusts or independent fostering agencies.
- 6.14 Regulation 2(2)(f) was amended by Regulation 12 of the Health Services (Pilot Schemes: Miscellaneous Provisions and Consequential

Amendments) Regulations (Northern Ireland) 1999 (with effect from 1 April 1999).

The Arrangements for Placement of Children (General Regulations (Northern Ireland) 1996 (S.R. 1996 No.453)

6.15 These Regulations, which came into operation on 4 November 1996, govern the arrangements for children to be placed by HSS Trusts and voluntary organisations in foster care and in residential children's homes.

The Children (Parental Responsibility Agreement) Regulations (Northern Ireland) 1996 (S.R. No.455)

6.16 These Regulations, which came into operation on 4 November 1996, contain the form to be used for recording parental responsibility agreements. They were made by the Department of Finance and Personnel.

6.17 A parental responsibility agreement is one way in which a father can acquire parental responsibility for a child where the father and mother of the child were not married to each other at the time of the child's birth. Where the child's mother and father were so married, each parent has parental responsibility for the child automatically.

The Review of Children's Case Regulations (Northern Ireland) 1996 (S.R. 1996 No.461)

6.18 These Regulations, which came into operation on 4 November 1996, govern the way in which the HSS Trusts and voluntary organisations are to review cases of children they are looking after. The Regulations deal with the conduct and frequency of reviews.

The Placement of Children with Parents etc Regulations (Northern Ireland) 1996 (S.R.1996 No. 463)

6.19 These Regulation, which came into operation on 4 November 1996, places duties on HSS Trusts making arrangements for children in their care to live with their parents or other persons who had parental responsibility for them or a residence order, before a care order or interim care order was made by the courts.

The Foster Placement (Children) Regulations (Northern Ireland) 1996 (S.R. 1996 No.467)

6.20 These Regulations, which came into operation on 4 November 1996, relate to the placement of children looked after by HSS Trusts with foster carers. Trusts may only place children they are looking after with

approved foster carers. The Regulations also govern the approval and review of foster carers by HSS Trusts and Trusts must keep a register of approved foster carers.

The Child Minding and Day Care (Applications for Registration) Regulations (Northern Ireland) 1966 (S.R.1996 No.468)

6.21 These Regulations, which came into operation on 4 November 1996, specify the information that child minders and providers of day care must provide to HSS Trusts for the purposes of registration under Part XI of the Children Order. Applicants must provide details of qualifications and experience and they must also disclose full particulars of all criminal convictions which they or any person living or working on the premises or assisting in the care of children may have.

The Employment of Children Regulations (Northern Ireland) 1996 (S.R. 1996 No.477)

6.22 These Regulations, which came into operation on 4 November 1996, deal with the employment of children between the ages of 13 and 16 (i.e. not over school leaving age). They prohibit the employment of children in an occupation other than one specified in the Regulations. They also make provision for the conditions of employment of children, including the issue of employment cards by education and library boards.

The Disqualification for Caring for Children Regulations (Northern Ireland) 1996 (S.R. 1996 No.478)

6.23 These Regulations, which came into operation on 4 November 1996, make provision for the circumstances in which a person is disqualified from fostering a child privately or being from registered as a childminder or as a person who provides day care for children under the age of 12.

The Children's Homes Regulations (Northern Ireland) 1996 (S.R. 1996 No.479)

6.24 These Regulations, which came into operation on 4 November 1996, govern the conduct and management of statutory, voluntary and private children's homes.

6.25 Paragraph 18 of Schedule 2 was amended by Regulation 11 of the Health Services (Pilot Schemes: Miscellaneous Provisions and Consequential Amendments) Regulations (Northern Ireland) 1999 (with effect from 1 April 1999).

The Refuges (Children's Homes and Foster Placements) Regulations (Northern Ireland) 1996 (S.R. 1996 No.480)

- 6.26 These Regulations, which came into force on 4 November 1996, make provision with respect to those premises (voluntary or private children's homes and foster carers) which are used as refuges. They lay down strict procedures which must be followed by those running refuges.

Children (Public Performances) Regulations (Northern Ireland) 1996 (S.R. 1996 No.481)

- 6.27 These Regulations, which came into operation on 4 November 1996, deal with children who take part in performances to which Article 137 of the Children Order applies. This Article applies to a performance in connection with which a charge for admission is made, a performance in licensed premises, a broadcast performance and any performance recorded (by whatever means) with a view to its use in a broadcast or in a film intended for public exhibition. These Regulations were made by the Department of Education with the approval of the Department of Health, Social Services and Public Safety.

The (Secure Accommodation) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 487)

- 6.28 These Regulations, which came into operation on 4 November 1966, set out the procedure to be followed by HSS Trusts when considering placing a child in secure accommodation and subsequently applying to court for an order authorising the continued placement of the child in secure accommodation.
- 6.29 There are strict controls upon the use of secure accommodation for restricting the liberty of children who are looked after by HSS Trusts. These are set out in Article 44 of the Children Order and these Regulations. Generally speaking, the purpose of legal framework is to ensure that children are only locked up in exceptional circumstances.

The Children (Prescribed Orders – Isle Of Man and Guernsey) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 528)

- 6.30 These Regulations, which came into operation on 16 December 1996, provide for the care orders made in one jurisdiction to be transferred (in certain circumstances) to another jurisdiction. They also provide for a recovery order made in the Isle of Man to have effect in Northern Ireland as if it was a recovery order made under Article 69 of the Children Order.

The Children (1995 Order) (Amendment) (Children's Services Planning) Order (Northern Ireland) 1998 (S.R. 1998 No. 261)

- 6.31 These Regulations, which came into operation on 14 September 1998, insert a new paragraph in Schedule 2 to the Children Order. The effect of the amendment is to require every HSS Board to prepare and publish a Children's Services Plan for its area. In preparing and updating its plans, an HSS Board must consult with a range of other organisations and bodies.

Inspection of Premises, Children and Records (Children Accommodated in Schools) Regulations (Northern Ireland) 2000 (S.R. 2000 No. 179)

- 6.32 These Regulations, came into operation on 4 September 2000, make provision for the inspection of children living in boarding schools. They provide for the inspection of the school premises, the children accommodated there and the records maintained in respect of such children. Article 176 of the Children Order authorises persons to enter boarding schools for the purpose of conducting inspections.

The Personal Social Services and Children's Services (Direct Payments) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 120)

- 6.33 These Regulations, which came into operation on 19 April 2004, make provision for making direct payments in respect of persons securing the provision of certain personal social services. These services are services which would be provided under the HPSS (NI) Order 1972; Article 18 of the Children (NI) Order 1995 and to carers under section 2 of the Carers and Direct Payments Act (NI) 2002.

Regulations made under the HPSS Special Agencies Order

The Northern Ireland Guardian Ad Litem Agency (Establishment and Constitution) Order (N.I.) 1995 (S.R. 1995 No. 397)

- 6.34 This order, which came into operation on 1 December 1995, provides for the establishment and constitution of a special Health and Social Services Agency, to be known as the Northern Ireland Guardian Ad Litem Agency.

Determinations made by the Department

Payment of Fees for Registration and Annual Reviews of Registration of Registered Children's Homes Determination (Northern Ireland) 1999 (see Circular Letter HSS(CC) 4/99)

- 6.35 This Determination was made under Articles 95(2)(b) and 102(3) of the Children Order. It sets a fee which should accompany each application for registration as a private children's home. It also sets a fee for the annual review of a homes registration. The determination came into operation on 13 September 1999. The Determination **does not** apply to homes run by voluntary organisations.

Section 7: Principles of the Children Order

Children do best in families

- 7.1 The Children Order believes that there are unique advantages to a child being brought up within his or her own family. In practice, this means that the Order sees families as a major way of supporting and helping children. The Children Order gives HSS Trusts the power, and in some circumstances the duty, to help children by providing services to their families.
- 7.2 At the other end of the scale, where a child may have been harmed perhaps through abuse or neglect, there should be strong efforts made to keep the child with his or her own family, moving adults out if necessary. Only in the last resort and to protect the child, should a child be removed from the family setting.
- 7.3. Children do best in families. This means that wherever possible children should be brought up and cared for in their own families. This is a key principle and professionals have a duty to work to keep children in their homes, wherever possible.

The welfare of the child must come first

- 7.4 This principle is called the “welfare principle” or the “paramountcy principle”. Where there are family tensions, it may be that a child’s welfare comes second to that of adults who are much better placed to make their views known and to take action. The Children Order reverses this – in court, a child’s welfare comes first.
- 7.5 It is not always clear what is best for the welfare of a child in any particular circumstance. The Children Order gives some guidance on this – Article 3 contains a list of elements which a court must consider when trying to reach a clear picture of what the child’s welfare is in any particular case. This is known as the welfare checklist. When you look at the “welfare checklist” you will see that one way of finding out what is best for a child is to ask the child! However, this is only one of the factors to be considered and the child’s view has to be seen in light of his or her age and understanding.

Parental responsibility means looking after the welfare of a child

- 7.6 The general philosophy of the Children Order is that primary responsibility for raising children rests with parents. Parental responsibility for the welfare of their children remains with them, even after a family break up unless a court says otherwise. The Children Order defines parental responsibility as “all the rights, duties, powers, responsibilities and authority which by law a parent of a

child has in relation to the child and his property”.² This includes the entitlement to make all major decisions about a child – name, education, place of residence, medical treatment etc.

7.7 Who has parental responsibility? When a child is born to married parents, both have parental responsibility from birth³. If the parents are unmarried, the mother alone has parental responsibility from birth⁴. The (biological) father may acquire parental responsibility by formal agreement with the mother or by court order⁵. From 15 April 2002, an unmarried father who jointly registers the birth of his child with the child’s mother, will acquire parental responsibility for that child. When a father does not have parental responsibility he is not entitled to make decisions about his children such as a change of name, education, place of residence, etc unless the child’s mother or other persons with parental responsibility agree. A mother’s parental responsibility or that of a married father can only be ended by the making of an adoption order.

7.8 Individuals other than parents can acquire parental responsibility. Such individuals may acquire this by:

- ❑ **adoption order**, in which case the adoptive parent(s) acquire all the responsibility formerly held by the parent(s) and that of the parent(s) is extinguished;
- ❑ **being appointed guardians** (after a parent’s death) giving the guardians all the parental responsibility that parents would have;
- ❑ **residence order**⁶, in which case their parental responsibility is subject to certain limitations;
- ❑ **parental order** (under the Human Fertilisation & Embryology Act 1990), full and permanent parental responsibility is conveyed by this order to a married couple of a child born in surrogacy, where at least one of the couple is a genetic parent of the child.

7.9 Parental responsibility is acquired by HSS Trusts by:

- ❑ **the making of an emergency protection order**⁷ which gives an HSS Trust temporary and limited parental responsibility;
- ❑ **the making of a care order or interim care order**⁸. An HSS Trust acquires parental responsibility which is shared with the parent(s) or guardian. The Trust is entitled to decide the extent to which the parent(s) or guardian exercise their parental responsibility, and has the right to decide where and with whom a child lives;
- ❑ **the making of a freeing for adoption order**. An HSS Trust acquires sole parental responsibility for the child – the parental responsibility of the birth parent(s) or other is extinguished.

² Article 6 of the 1995 Order

³ Article 1(1) of the 1995 Order

⁴ Article 5(2) of the 1995 Order

⁵ Article 7 of the 1995 Order

⁶ Article 12 of the 1995 Order

⁷ Article 63(4) of the 1995 Order

⁸ Article 52(3) of the 1995 Order

Working in partnership succeeds best for children

- 7.10 The idea of partnership is central to the way the Children Order operates. The Order recognises that professionals such as social workers should work in partnership with parents to keep children safe and promote their welfare. Because the Order also recognises that children should be given a voice in what happens to them, it gives opportunities for working in partnership with children as far as their age and development allows. The Order also emphasises the importance of different professionals working in partnership, and this includes those from both statutory and voluntary bodies.
- 7.11 The Children Order recognises that sometimes it will be necessary to act against parents' wishes where the child is at risk. However, the aim is to work with parents through voluntary arrangements wherever possible. Even where children are considered at risk, parents should be kept informed and consulted at each stage. They should be invited to conferences between professionals where abuse is suspected and they should be helped to take an active part in the discussion and decision making process. Children too may be invited to this kind of meeting.

Courts will not intervene in family life unless the welfare of the child requires it

- 7.12 The Children Order states that a court shall not take action by making a court order "unless it considers that doing so would be better for the child than making no order at all"⁹. This is known as the "no order" rule. The idea that no action by a court may be preferable to action, is an important one. It reflects the value the Order places on family life and the idea that no-one should intervene in family life without good cause.
- 7.13 In practice this means that families who are experiencing difficulties are encouraged to work out their own solutions with the welfare of the children in mind. Only where this proves impossible will a court take action. In all cases where children's welfare or safety are concerned, the courts will consider whether it is better for the court to make an order, or whether voluntary arrangements are possible which will safeguard the child without an action from the court.

Tension within these principles

- 7.14 The Children Order principles contain in-built tensions. For example HSS Trusts must act to protect children from harm which arises from family breakdown or abuse within the family, but avoid unwarranted intervention in families lives or unnecessary weakening of family ties.

¹ Article 3(5) of the 1995 Order

Holding the balance between a child's safety, the importance of family life to a child, and the need to avoid unnecessary interference, underpins every part of the Children Order as it applies in practice.

Section 8: Children Order – HSS Trusts responsibilities to children and families

General duty of support for children in need

- 8.1 HSS Trusts are under a statutory duty to safeguard and promote the welfare of children in their area who are in need and, so far as is consistent with their welfare, to promote their upbringing by their families (*Article 18 of the Children Order*). “Child in need” in Part IV of the Children Order means a child who:
- ❑ “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 of him of services by an HSS Trust or whose
 - ❑ health or development is likely to be significantly impaired, or further impaired, without the provision for him of such services or who
 - ❑ is disabled” (*Article 17 of the Children Order*).

Provision of services

- 8.2 HSS Trusts have a duty to ensure that the provision of certain personal social services for children in need in their area generally. The range and level of services for an individual child are left to the Trust’s discretion, but the services for children in need generally must include:
- ❑ day care for pre-school children (*Article 19(2)*);
 - ❑ holiday and out of school care for school – age children (*Article 19(5)*);
 - ❑ services for disabled children (*Schedule 2, para 7*); and
 - ❑ advice, guidance and counselling (*Schedule 2, para 9*).

In addition, each HSS Trust is required to:

- ❑ publish information about services available to children in need within its area (*Schedule 2, para 2*);
- ❑ review the provision of services within its area and publish a Children’s Services Plan (*Schedule 2, para 2A*), and
- ❑ maintain a register of disabled children within its area (*Schedule 2 para 3*).

Accommodation

- 8.3 HSS Trusts are required to provide accommodation for children in need who require it as a result of:
- ❑ there being no person with parental responsibility for them;
 - ❑ their being lost or abandoned;
 - ❑ their carers are prevented (for whatever reason) from providing them with suitable accommodation or care.

They are also required to provide accommodation for 16 and 17 year olds whose welfare is likely to be seriously prejudiced without it. (*Article 21 of the Children Order*).

- 8.4 The acceptance of accommodation is entirely voluntary, and an HSS Trust may not provide or continue to provide accommodation for a child under 16 against the wishes of the person or persons with parental responsibility who are willing and able to provide or arrange accommodation. If, however, a person has an (Article 8) residence order in his or her favour and agrees to the provision of accommodation, the HSS Trust may continue to provide it even if the parents with parental responsibility object. Where a child is 16 or 17, the agreement to accommodation must be the child's.

Section 9: Children Order – Legal intervention to protect children

Duty to Investigate

- 9.1 HSS Trusts have a statutory duty to investigate when allegations or suspicions of abuse are raised by other agencies or members of the public (*Article 66*). In any family proceedings (for example, an application for an Article 8 order), the court may direct an HSS Trust to make enquires to establish whether it should intervene to protect a child by, for example, applying for a care or supervision order. The court may not make a care or supervision order (except an interim order) except on the application of an HSS Trust (*Articles 56 and 57(1)*).

Care and supervision orders

- 9.2 These orders authorise intervention by an HSS Trust in family life where a child is suffering or at risk or suffering significant harm. Care proceedings may be brought by an HSS Trusts in respect of anyone under 17 (or under 16 if they are married) (*Article 50*).
- 9.3 A court may only make a care or supervision order if it is satisfied that the child is suffering, or is likely to suffer, significant harm. The court must also be satisfied that the harm, or likelihood of harm is attributable to either an unreasonable level of care of the child being beyond parental control (*Article 50(2)*). Even if the court is satisfied that this is so, it cannot make an order unless it considers that the order would be in the best interests of the child (*Article 3(5)*).
- 9.4 A care order places a child in the care of an HSS Trust. It gives parental responsibility for the child to the Trust, which then shares it with the birth parents. The Trust may determine the extent to which parents may continue to exercise their parental responsibility. The HSS Trust may not, however, give or change the child's name or religion, appoint a guardian, or permit the child to live outside the United Kingdom (*Article 52*).
- 9.5 A care order lasts until the child becomes 18, unless it comes to an end earlier by:
- the child being adopted or freed for adoption (*Adoption (NI) Order 1987*);
 - the order being discharged by the court (*Article 58*); and
 - the making of a residence order (*Article 179(1)*).

The child, the HSS Trust, the parent, or other person with parental responsibility may apply to the court to discharge a care order (*Article 58*).

- 9.6 A supervision order places a child under the supervision of an HSS Trust but does not give it parental responsibility. The supervision's duty is to "advise, assist and befriend" the child and the court may attach certain requirements to the order for the child to comply with.
- 9.7 A supervision order lasts for one year or such shorter period as the court orders. It may be extended up to a maximum of three years, but cannot extend

beyond the child's 18th birthday. It may be discharged on application to the court and will be discharged by:

- ❑ an adoption order (*Adoption (NI) Order 1987*);
- ❑ a freeing for adoption order (*Adoption (NI) Order 1987*); and
- ❑ the making of a care order (*Article 179(3)*).

The child, the supervision or a person with parental responsibility may apply to discharge the supervision order (*Article 58*).

Interim care and supervision orders

- 9.8 Since it is very unlikely that an application for a care order or supervision order can be dealt with to final conclusion at the initial application hearing, the court can make an interim care or supervision order if it is satisfied that there are reasonable grounds for believing the criteria for making a full order are satisfied. An interim care or supervision order can last for up to eight weeks, and can be extended by the court for further periods of up to four weeks on application by and HSS Trust (*Article 57*).
- 9.9 An interim care order has the same legal effect as a care order, with the addition that a court may make order (directions) with regard to medical examination or other assessment of the child (*Article 57(6) and (7)*). On making an interim care order a court may, if the legal criteria are met, attach an exclusion requirement so that an alleged abuser of the child can be removed or kept away from the child's home or the area around it. A power of arrest can be attached to the exclusion requirement (*Article 57A*).

Emergency protection order

- 9.10 In some circumstances, where a child is suffering or is at risk of suffering significant harm, it is necessary as a matter of urgency to remove a child from home (or prevent their removal from, for example, a foster home or hospital). It may be sufficient to commence care proceedings on notice to parents by applying for an interim care order, but an emergency protection order is available to allow rapid intervention to ensure the welfare of a child.
- 9.11 The emergency protection order gives parental responsibility to the applicant, directs any person in a position to do so to produce the child, and authorises the applicant to remove the child to accommodation provided by the applicant and kept the child there, or prevent the child's removal from a hospital or other place.
- 9.12 Anyone may apply for an emergency protection order but the court must be satisfied that there is reasonable cause to believe that the child is likely to suffer significant harm if not removed to accommodation provided by the applicant, or does not remain in the place the child is currently being accommodated. In the case of an application by an HSS Trust, the court may make an emergency protection order if it is satisfied that the applicant:

- ❑ has reasonable cause to suspect that a child is suffering or is likely to suffer significant harm
 - ❑ is making enquiries with respect to the child's welfare; and
 - ❑ those enquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency (*Article 63(1)*).
- 9.13 An emergency protection order can last for a maximum of 8 days, but may be discharged earlier if an application is made to do so any time after 72 hours. It may be extended once for a further period of up to 7 days. Once it has expired, there is no power to continue detaining the child. An application must be made for a care order if it is felt that the child should remain in public care (*Article 64*).
- 9.14 If it is necessary to enter property without the permission of the owner, an application may be made for a warrant authorising a police officer to assist the applicant in exercising the powers under the emergency protection order, by force if necessary (*Article 67(9)*).
- 9.15 On making an emergency protection order a court may, if the legal criteria are met, attach an exclusion requirement so that an alleged abuser of the child can be removed or kept away from the child's home or the area around it. A power of arrest can be attached to the exclusion requirement (*Article 63A*).

Child assessment orders

- 9.16 Where an HSS Trust has reasonable cause to believe that a child is suffering or is likely to suffer significant harm and it needs an assessment of the child's health or development to enable it to ascertain this, it may apply to the court for a child assessment order if it is unlikely that the assessment will be made satisfactorily, or not at all, without one. Any person who is in a position to do so must produce the child and comply with the directions in the order. The order will specify when the assessment is to begin and how long the order is to last (for a maximum of 7 days), and is authority for the person(s) named in the order to carry out the assessment, subject to the right of a child of sufficient understanding to refuse to submit to an examination of assessment (*Article 62*).
- 9.17 If it is necessary for the assessment, the order may permit the child to be kept away from home for a period or periods specified in the order and, if it does so, the court may include directions as to the contact between the child and other people. At least 7 days' notice of an application for a child assessment order must be given to the child, his or her parents or carers, and certain other people closely involved with the child.
- 9.18 The court may treat an application for a child assessment order as if it were an application for an emergency protection order and must make that order instead if it is satisfied that it ought to do so and that there are grounds for an emergency protection order (*Article 62(3)*).

Police protection

9.19 Police have powers to protect children in emergencies. A police officer who has reasonable cause to believe a child would otherwise suffer significant harm may remove a child to suitable accommodation or prevent a child's removal from a place such as a hospital. The local HSS Trust, the child and his or her parents must be informed as soon as possible, and a designated police officer must enquire into the circumstances. Police protection may only last for a maximum of 72 hours but the designated police officer may apply to the court for an emergency protection order (*Article 65*).

Section 10: Children Order – Children looked after by HSS Trusts

Powers and duties of HSS Trusts

10.1 Children may be accommodated by an HSS Trust under several different provisions or they may be subject to care orders or freeing for adoption orders. All such children are described as being “looked after by an HSS Trust. Those who are looked after but not in care (subject to a care order or interim order under Articles 50 and 57) include:

- ❑ children accommodated under Article 21;
- ❑ children subject to emergency protection orders or in police protection (*Article 23*);
- ❑ children freed for adoption.

Once children are looked after, a Trust must provide accommodation and maintenance for them and safeguard their welfare in accordance with the Children Order and regulations made under it (*Article 27*).

Principles to be followed

Welfare

10.2 An HSS Trust has a duty to safeguard and promote the welfare of children whom it is looking after and to make such use of services available for children cared for by their own parents as appear reasonable (*Article 26(1)*).

Consultation

10.3 Before making any decision, an HSS Trust must, as far as practicable, ascertain the wishes and feelings of the child, his parents or other people with parental responsibility, and any other person with a reasonable interest. The Trust must give due regard to those wishes and feelings, having regard to the child’s age and understanding, and the child’s religious persuasion, racial origin, and cultural and linguistic background (*Article 26(2) and (3)*).

Placement of looked after children

10.4 An HSS Trust should, if practicable and consistent with a child’s welfare, ensure that they are placed near home, and that siblings are accommodated together, and that where a child is disabled, the accommodation is suitable to the child’s particular needs (*Article 27(8) and (9)*).

10.5 The Trust should if practicable and consistent with the child’s welfare, make arrangements to enable the child to live with a parent, relative or friend. If a child who is in care (ie subject to a care order or interim care order) is placed with a parent or other person with parental responsibility or who had a residence order before a care order or interim care order was made, the Trust must comply with the Placement of Children with Parents etc Regulations (NI) 1996 (*Article 27(2) to (7)*).

Foster care for looked after children

- 10.6 Children may be placed with foster carers, who may include the child's relatives. Before a child can be placed with any foster carers, they must have been approved by a Trust and the approval must be reviewed regularly. An agreement must be signed by the foster carers and HSS Trust in respect of each child placed. The child must be visited at specific intervals which vary according to the length of time a child has been in the placement. The Trust must keep records of foster children and of visits to foster homes.

Residential care for looked after children

- 10.7 Children may be placed in residential children's homes provided by HSS Trusts, voluntary organisations or by private individuals or organisations. All children's homes must be inspected by the Registration and Inspection unit appropriate to the area in which the home is situated and they must comply with the provisions of the Children's Homes Regulations (NI) 1996. The appropriate Registration and Inspection Unit must also register voluntary and privately run children's homes.

Contact for looked after children

- 10.8 An HSS Trust has a duty to promote contact between children it is looking after and their parents, relatives, friends and other people connected with them, so far as is practicable and consistent with the children's welfare (*Article 29*). The Trust has power to help with the cost of visits to or by the child in cases of hardship (*Article 30*).
- 10.9 When a child is in care (ie subject to a care order or interim care order), an HSS Trust must allow the child reasonable contact with his or her parents or guardian and anyone previously providing care for him or her under a court order, until and unless an order to the contrary is made (*Article 53(1)*). Any of the above persons, or the HSS Trust or the child, or anyone with the court's leave, may apply to the court for an order defining the contact that is to take place (*Article 53(2) and (3)*).
- 10.10 An HSS Trust may apply to the court for an order for permission to refuse contact between the child and a parent, guardian or previous carer. In an emergency, to safeguard the child's welfare, the Trust may refuse contact for a maximum of 7 days without an *Article 53(4)* order (*Article 53(4) and (6)*).
- 10.11 Where a child is the subject of an emergency protection order, the court may make directions as to the contact that is or is not allowed between the child and any named person. In the absence of a direction, the person who holds the emergency protection order must allow the child reasonable contact with parents, with anyone with parental responsibility, the person with whom he or she was living when the order was made, and any person entitled to contact under any *Article 8* order (*Article 63(6) and (13)*).

Reviews of looked after children

- 10.12 There is a statutory duty on each HSS Trust to review the case of each child they are looking after at regular intervals. The detailed requirements are set out in the Reviews of Children's Cases Regulations (NI) 1996 (*Article 45(1) and (2)*). The first review must take place within four weeks of the child's first becoming looked after, and the next review three months later. Thereafter they must take place at intervals of not more than six months.

Secure accommodation

- 10.13 A child may not be placed in secure accommodation unless this is necessary because the child has a history of absconding and is likely to abscond and suffer significant harm, or because he or she is likely to injure him or herself or other people if kept in other accommodation. Children cannot be placed in secure accommodation for more than 72 hours in any four weeks without a court order. The court will specify a maximum period for the use of secure accommodation which cannot be more than three months initially, or six months on a further application). The HSS Trust must review the placement in secure accommodation within one month, and thereafter at least every three months (*Article 44 and the Secure accommodation Regulations (NI) 1996*).

Adoption of looked after children

- 10.14 Children looked after by HSS Trust may also be placed for adoption if the Trust decides that this is in the best interests of a child.

Leaving care

- 10.15 HSS Trusts have statutory responsibilities towards young people aged 16 and over who they have been looked after, including preparing them for this change. A Trust is required to advise, assist and befriend children it looks after, in preparation for the time when they leave care.

Financial assistance may be given to enable a person under the age of 21 (who was looked after by a Trust after age 16) to be accommodated near his or her place of employment, education or training. A Trust may also contribute towards the costs of his or her education or training. Grants for education or training may continue beyond age 21 (*Article 35 and 36* – when the Children (Leaving Care) Act (NI) 2002 is commenced, these provisions will be superseded by new leaving and after care provisions which will place new and enhance duties on HSS Trusts).

Representations and complaints

- 10.16 HSS Trusts are required to establish a procedure for considering any representations made by
- children looked after by them;
 - children not looked after by them but in need;
 - parents of such children;
 - HSS Trust foster carers;
 - other people with sufficient interest in children.

Complaints can be made about services or accommodation provided, or refusal to provide accommodation, under Part IV of the Children Order.

- 10.17 The representations and complaints procedure is not available to allow challenges to a Trust's decision to commence care or freeing proceedings. These challenges should be made to the court. The complaints procedure must be publicised and must comply with the Representations Procedure (Children) Regulations (NI) 1996. A person independent of the HSS Trust must be involved in the consideration of representations and complaints (*Article 45(3) to (8)*).

Section 11: Private arrangements for the care of children

Caring for children at home

- 11.1 There are no explicit statutory controls over arrangements parents make to have their children looked after in their own homes, whether this care is provided by a relative, friend, au pair or anyone else. However, if parents leave a child with a carer whom they have not assured themselves is suitable and who abuses the child, the harm to the child may be deemed attributable to the care given by the parents – one of the grounds for a care order or supervision order.

Children at home alone

- 11.2 It is not in itself an offence to leave children unattended, although if children are being neglected an HSS Trust may intervene to protect them or even remove them and certain conduct may render a parent, a babysitter or any caregiver liable to criminal prosecution. For example, there is an offence of cruelty to children (which can include neglect or abandonment) and another of exposing children under the age of 12 to risk of burning (Part II of the Children and Young Persons Act (NI) 1968).

Day care provision outside the home

- 11.3 The Children Order says that children should be safe and well cared for wherever they are. To this end, the Order establishes a system of registration for those providing day care for children under 12 and childminders (Part XI of the Children Order). Registration means that social services has agreed that the service meets certain standards. Registration, however, is of the “person”, not the premises, although the fitness of the premises and the suitability of the equipment will be taken into account.
- 11.4 A **childminder** is someone who looks after one or more children under the age of 12 in domestic premises (other than the home of the person employing the childminder), for reward, for a period of more than two hours in any day. The child’s parents, relatives, foster parents or a nanny are excluded from the definition of childminder (*Article 119*).
- 11.5 **Day care** – facilities that provide day care for children under the age of 12 on non-domestic premises for a total period which exceeds two hours in any day (*Article 120*).
- 11.6 **Supervised activities** – the Children Order contains a power to exempt specified supervised activities from registration under Part XI of the Order (*Article 121(6)*). It is not intended that the registration requirements should apply to all circumstances where children are away from home for short periods as this would place an unreasonable burden in some cases, and could make it impractical for some groups to operate within the law. Regulations

provide that registration will not be required of persons providing certain supervised activities for children (including uniformed organisations and religious activities for children and leisure and recreational activities).

Private fostering

11.7 A privately fostered child is someone:

- who is under 16 (or under 18 if he or she has a disability);
- who is cared for and whose accommodation is provided by someone who is not a parent, relative, person with parental responsibility for him or her or an approved foster carer, for 28 days or more, whether or not there is any payment.

If a child is looked after by a non-relative for up to 27 days, he or she does not become a foster child unless it is intended that the fostering arrangement will continue beyond that period. Thus casual arrangements, such as friends looking after a child while the parents take a holiday, do not create a fostering relationship (*Article 107*).

- 11.8 A private foster carer must notify an HSS Trust at least 6, but not more than 13 weeks, before a child is placed, unless the child is received in an emergency. In the case of an emergency placement, notification must be within 48 hours of receiving the child. Regulations specify the information to be included in the notification (*Child (Private Arrangements for Fostering) Regulations (NI) 1996*).
- 11.9 An HSS Trust may prohibit a private fostering arrangement or impose conditions to ensure the health, safety and general welfare of the children who are privately fostered. Requirements may also be imposed as to the number, age and sex of the children who may be privately fostered by a particular person (*Article 110 and 111*).
- 11.10 An HSS Trust has a duty to be satisfied that the welfare of all privately children in its area is being safeguarded. It has a duty to visit the children regularly and give advice on the care of the children if this is needed. It has a power to inspect premises and a duty to dry and make suitable alternative arrangements if the child's welfare is not being satisfied (*Article 108*).

Section 12: Private Law Orders

Introduction

- 12.1 The Children Order affects both private law and public law. Private law is where individuals take action through the courts. The Order particularly affects action involving parents and children, notably divorce and separation.

Private law

- 12.2 Where there are family difficulties, it will often be the case that parents can work out themselves where the child or children are to live and who will care for them. If they cannot agree, the courts can make decisions about the child and make a court order on disputes brought to their attention. The courts will follow the “no order” rule however, and will only make a court order if they feel that making the order is better for the child than making no order at all. In cases of private law, a child does not have to attend court. A court welfare officer may be asked to find out from the child what their views are though the court will consider this information alongside the other facts available to it.

Article 8 orders under the Children Order

- 12.3 There are four orders that a court may make under Article 8 – residence, contact, specific issues and prohibited steps. These orders are available principally to parents who cannot agree about their exercise of parental responsibility, as well as to fathers without parental responsibility, and in some circumstances they are also available to other family members or people with an interest in the child, eg foster carers (Articles 8 – 14).

Residence orders

- 12.4 A residence order is an order settling where and with whom the child is to live. Where a residence order is made in favour of a person who does not have parental responsibility, that person will have parental responsibility for as long as the residence order is in force. As well as parents, certain other people are entitled to apply for residence orders. These include anyone applying with the agreement of all the people who have parental responsibility and anyone with whom the child has lived for three years in the recent past. In addition, anyone, including the child, may ask the court for permission to apply for any Article 8 order, except that there are certain restrictions on HSS Trust foster carers, and Trusts themselves may not apply for a residence order or Article 8 contact order.
- 12.5 An application for a residence order may be made in respect of a child subject to a care order and, if granted, the residence order discharges the care order. While a residence order is in force, an HSS Trust may, but is not legally obliged to, pay an allowance towards the cost of the child’s

maintenance, as long as the child is not living with a parent or step-parent (*paragraph 17 of Schedule 1 to the Children Order*).

Contact orders

- 12.6 Contact orders require the person with whom the child lives to allow the child to have contact with named persons. Contact can include letters, cards, or other forms of correspondence (indirect contact), as well as, or instead of face-to-face (direct contact). Courts can specify the exact arrangements for contact, eg whether it is supervised or not.

Specific issue orders

- 12.7 A specific issue order enables a court to determine any question in connection with the exercise of parental responsibility for a child (except residence and contact) eg decisions about medical treatment or education.

Prohibited steps orders

- 12.8 A prohibited steps order bans a person from taking a particular step in the exercise of parental responsibility (eg preventing a parent from allowing the child to associate with a particular person or emigration).

Wardship and the inherent jurisdiction of the High Court

- 12.9 Wardship is a means by which the inherent jurisdiction of the High Court may be exercised with regard to children. It is a power that does not come from statute, although the Children Order places limits on the way it may be used, and other statutes or rules govern the procedure to be followed.
- 12.10 Any person may apply to make a child a ward of court except that a child who is subject to a care order may not be made a ward. An HSS Trust may not use wardship and may only use the inherent jurisdiction with the leave of the court in exceptional circumstances (*Article 173*).
- 12.11 Once a child is made a ward of court, future decisions about the child must be made or approved by the court. The wardship court may make a variety of orders, on the principle that the ward's welfare is its paramount consideration. It cannot, however, make an order under the "inherent jurisdiction², which would have the same legal effect as a care or supervision order in favour of an HSS Trust.

Section 13: Children Order and the Courts

- 13.1 One of the principal changes introduced by the Children Order was that it established a concurrent jurisdiction across the three tiers of courts, that is – the High Court, the county courts and the magistrates’ courts. The effect of this alignment is that, subject to certain exceptions, any court, at whatever level, can make any of the orders available under the Children Order.
- 13.2 The concurrent jurisdiction referred to above is controlled by the Children (Allocation of Proceedings) Order (Northern Ireland) 1996 (“the Allocation Order”). The Allocation Order contains three important provisions:
- it specifies where Children Order proceedings must commence;
 - it provides the basis for a system of case transfer, unique to Children Order proceedings, that includes provision for the upwards transfer and, in certain circumstances, downwards re-transfer of proceedings; and
 - it is the basis for the establishment of two types of specialised court dedicated to the hearing of Children Order proceedings and no other – these are the **Family Proceedings Courts** and the **Family Care Centres**.
- 13.3 Family Proceedings Courts are courts of summary jurisdiction constituted as juvenile courts sitting to hear proceedings under the Children Order. They are presided over by a Resident Magistrate who sits with two lay panel members of the Juvenile Court. There are now eight Family Proceedings Courts – Ballymena, Belfast, Craigavon, Dungannon, Londonderry, Newry & Mourne, Newtownards and Omagh.
- 13.4 Family Care Centres are at the County level and are presided over by County Court Judges who have all received training in Children Order work. Their function is to hear cases transferred to them and appeals from Family Proceedings Courts. There are three Family Care Centres, situated in Belfast, Londonderry and Craigavon.
- 13.5 Although subject to some exceptions in relation public law cases, the main provisions in relation to the commencement of proceedings are:
- all public law applications must be commenced in a Family Proceedings Court;

- all free standing private law applications must be commenced in a family proceedings court; and
 - all connected private law applications must be commenced in the court where there are other family proceedings ongoing which may affect or are connected with the child.
- 13.6 Subject to certain exceptions in public law applications, Children Order applications may be transferred to the Family Centre or the High Court subject to certain criteria. When considering the criteria for transfer, the court should have regard to the general principle in Article 3 of the Children Order that any delay in determining matters is likely to prejudice the welfare of the child.
- 13.7 The intention underlying the introduction of this system of allocation and transfer was that children's cases should be heard at the level of court appropriate to the circumstances of the case and that proceedings relating to the same child should be heard in the same court.

Section 14: Court Rules

14.1 The Northern Ireland Court Service made the following court rules to facilitate the commencement of the Children Order. They provide the rules, procedures and prescribed forms for applications to the courts under the Order.

The Children (Allocation of Proceedings) Order (Northern Ireland) 1996 (S.R. No.300)

14.2 This order, which came into operation on 4 November 1996, sets out which courts are to hear which applications concerning children, and how and why cases should be transferred between courts.

The Children (Admissibility of Hearsay Evidence) Order (Northern Ireland) 1996 (S.R. No.301)

14.3 This order, which came into operation on 4 November 1996, makes hearsay evidence given in connection with the upbringing, maintenance and welfare of a child admissible in civil proceedings in the High Court and county court and in family proceedings in the magistrate's court.

Juvenile Courts and Assessors for County Courts (Amendment) Regulations (Northern Ireland) 1996 (S.R. No.302)

14.4 These Regulations, which came into operation on 4 November 1996, amend the Juvenile Courts and Assessors for County Courts Regulations (Northern Ireland) 1979 to substitute a new regulation 3. The new regulation makes provision in relation to the jurisdiction of juvenile courts and makes different provision where a juvenile court is sitting for the purpose of exercising any jurisdiction conferred by or under the Children Order.

The Rules of the Supreme Court (Northern Ireland) (Amendment No.4) 1996 (S.R. No.321)

14.5 These Rules, which came into operation on 4 November 1996, amend the Rules of the Supreme Court (Northern Ireland) 1980 as a consequence of the Children Order.

The Family Proceedings Rules (Northern Ireland) 1996 (S.R. 1996 No.322)

14.6 These rules, which came into operation on 4 November 1996, apply to proceedings in the High Court and county courts and make provision for court applications under the Children Order, the Matrimonial Causes (NI) Order 1978 and certain provisions of the Matrimonial and Family Proceedings (NI) Order 1989.

Magistrates Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996 (S.R. No.323)

14.7 These Rules, which came into operation on 4 November 1996, make provision for applications to a magistrates' court (including a family proceedings court) under the Children Order.

Magistrates' Courts (Domestic Proceedings) Rules (Northern Ireland) 1996 (S.R. No.324)

14.8 These Rules, which came into operation on 4 November 1996, prescribe the procedure to be followed on applications under the Domestic Proceedings (Northern Ireland) Order 1989 and taking into account the Children Order.

Magistrates' Courts (Children and Young Persons) (Amendment) Rules (Northern Ireland) 1996 (S.R. No.325)

14.9 These Rules, which came into operation on 4 November 1996, amend the Magistrates' Courts (Children and Young Persons) Rules (Northern Ireland) 1969 in consequence of the amendments made to the Children and Young Persons Act (Northern Ireland) 1968 by the Children Order.

Legal Aid, Advice and Assistance (Amendment) Order (Northern Ireland) 1996 (S.R.No.482)

14.10 This Order amends the Legal Aid, Advice and Assistance (Northern Ireland) Order 1981 as a consequence of the introduction of the Children Order.

Legal Advice and Assistance (Amendment No.3) Regulations (Northern Ireland) 1996 (S.R.No.483)

14.11 These Regulations amend the Legal Advice and Assistance Regulations (Northern Ireland) 1981 as a consequence of the introduction of the Children Order.

The Magistrates' Courts Fees (Amendment) Order (Northern Ireland) 1996 (S.R. No.494)

14.12 This Order, which came into operation on 4 November 1996, amends the Magistrates' Courts Fees Order (Northern Ireland) 1996 to prescribe the fees to be taken in respect of certain applications and appeals under the Children Order.

The Family Proceedings Fees Order (Northern Ireland) 1996 (S.R. No. 495)

14.13 This Order, which came into operation on 4 November 1996, prescribes the fees to be taken in the High Court and county courts in respect of proceedings under the Children Order and in matrimonial proceedings.

The Family Proceedings Fees (Amendment) Order (Northern Ireland) 2002 (S.R.No.344)

14.14 This Order amends the Family Proceedings Fees Order (Northern Ireland) 1996 so as to increase a number of the fees to be taken in family proceedings, in the High Court and county courts.

The Magistrates' Courts Fees (Amendment) Order (Northern Ireland) 2002 (S.R.No.343)

14.15 This Order amends the Magistrates' Courts Fees Order (Northern Ireland) 1996 so as to increase a number of the fees payable in respect of proceedings in Magistrates' Courts.

Magistrates' Courts (Children (Northern Ireland) Order 1995) (Amendment) Rules (Northern Ireland) 1999 (S.R. No.63)

14.16 These Rules amend the Magistrates' Courts (Children (Northern Ireland) Order 1995) Rules (Northern Ireland) 1996. The Rules: (a) allow for the postal service of summonses (b) relax, for specified purposes, the requirements for confidentiality in respect of the report of a guardian ad litem; and (c) make provision where the court includes an exclusion requirement in an interim care order or an emergency protection order.

The Family Proceedings (Amendment) Rules (Northern Ireland) 1999 (S.R. No.88)

14.17 These Rules, which came into operation on 29 March 1999, amend the Family Proceedings Rules (Northern Ireland) 1966 so as to, inter alia, make provision in respect of the inclusion of an exclusion requirement in an interim care order or an emergency protection order under the Children Order.

Section 15: Departmental Guidance and Circulars

Departmental Guidance

- 15.1 Implementation of the Children Order required the production of a very considerable body of supporting Regulations and Guidance. This body of work provides further information and advice on the Order.
- 15.2 The Children Order series of Regulations consists of the following:
- Volume 1: **Court Orders and Other Legal Issues**
 - Volume 2: **Family Support, Child Minding and Day Care**
 - Volume 3: **Family Placements and Private Fostering**
 - Volume 4: **Residential Care**
 - Volume 5: **Children with a Disability**
 - Volume 6: **This guidance has been superseded**
 - Volume 7: **Schools Accommodating Children**
 - “Co-operating to Safeguard Children”** – This guidance is intended to assist Area Child Protection Committees develop strategies, policies and procedures to safeguard children who are assessed to be at risk of significant harm. It fully replaces the guidance previously provided in “Co-operating to Protect Children”, Volume 6 of the Children Order Regulations and Guidance.

Child Care Policy Directorate Circulars

HSS(CC) 1/98 Inspection and Monitoring of Residential Child Care Services (25 August 1998)

- 15.3 This circular supplements guidance given in Chapter 6 of Volume 4 of the Children Order Regulations and Guidance. It provides further clarification on a range of monitoring reports in relation to children’s homes (annual reports by registration and inspection units, monthly monitoring reports by those responsible and inspection units, monthly monitoring reports by those responsible for the home and annual monitoring statements produced by HSS Trusts).

HSS(CC) 2/99 Standards in Day Care Services: Modern Apprenticeships (27 August 1999)

15.4 This circular was issued to clarify the position regarding the employment of young people in day care settings. It sets out the circumstances under which a person who has not yet reached his or her 18th birthday, and who is undergoing specified training, may be regarded as a member of staff.

HSS(CC) 3/99 Registration and Inspection of Childminders – Advice and Good Practice (8 October 1999)

15.5 This circular provides good practice guidance in relation to the registration and inspection of childminding. It was drawn up following a number of incidents in England, one of which led to the death of a child in a day care setting. It is to be read in conjunction with Volume 2 of the Children Order Regulations and Guidance (Family Support, Childminding and Day Care).

HSS(CC) 4/99 Payment of Fees for Registration and Annual Reviews of Registration of Registered Children's Homes Determination (Northern Ireland) 1999 (9 September 1999)

15.6 This circular was used to disseminate the above-named Determination. The Determination deals with privately run children's homes. It sets a fee which should accompany an application for registration as a private children's home. It also sets a fee for the annual review of a homes registration.

HSS(CC) 1/00 Checking background of staff employed in residential child care settings, including staff supplied by employment agencies (14 August 2000)

15.7 This circular draws attention to the guidance in Volume 4 of the Children Order Regulations and Guidance, and reminds those responsible for operating children's homes of the need to ensure that checks are carried out into the background of individuals who will be working with children.

CC1/02 Private Fostering – including children from overseas (8 January 2002)

15.8 This circular was issued to HSS Boards and Trusts to ensure that that Trusts were fully aware of their responsibilities towards privately fostered children, including children from overseas placed with families for periods exceeding 28 days.

CC2/02 Independent Fostering Agencies (28 February 2002)

15.9 This guidance was issued to HSS Boards and Trusts to provide them with guidelines on how to deal with independent fostering agencies. Attached to the circular was a good practice guide “Working with Independent Fostering Agencies” produced by the British Agencies for Adoption and Fostering (BAAF). The good practice guide provides advice on policies, practices and procedures to ensure that children’s needs are met as fully as possible when placed in foster care provided by independent fostering agencies.

CC3/02 Role and Responsibilities of Directors for the Care and Protection of Children (14 June 2002)

15.10 This circular offers advice to Directors of HSS Trusts about the role they perform and reminds them of their responsibilities in relation to the care and protection of children in their area. The circular goes on to outline the Department’s expectations of both Board and Trust Directors in respect of children looked after by social services.

Section 16: Delegation of Statutory Functions

Introduction

- 16.1 In seeking to understand who is responsible for what in relation to the delivery services for children and their families, it is important to be aware of the division of functions between the Department and its agents – the four Health and Social Services Boards and 11 Community Health and Social Services Trusts. It is also important to have an understanding of the process by which certain statutory functions are delegated.

The Department

- 16.2 The government department with responsibility for child care is the Department of Health, Social Services and Public Safety. Its brief includes the formulation of policy, the preparation of legislation and the issuing of guidance. There is a Social Services Inspectorate located within the Department which has responsibility for providing it with professional advice and for conducting thematic inspections of both adult and children' social services.
- 16.3 The Department's overarching duty, placed upon it by Article 4 of the Health and Personal Social Services (NI) Order 1972 ("the 1972 Order" is to:
- provide or secure the provision of integrated health services to promote the physical and mental health of the people of Northern Ireland; and
 - provide or secure the provision of personal social services designed to promote their social welfare.

Health and personal social services are delivered to the general public by Health and Social Services Boards and Health and Social Services Trusts.

Health and Social Services Boards

- 16.4 Health and Social Services Boards were established by Article 16 of the 1972 Order to administer, on behalf of the Department, the delivery of health and personal social services. Article 17 of the 1972 Order gave the Department the authority to delegate its statutory functions to Health and Social Services Boards. Article 17(1)(a) requires Boards to exercise, on behalf of the Department, such health and personal social services functions as the Department may direct. It is understood that the wording of the legislation is such that the Department's direction would not require any formal order or other statutory instrument but would be given administratively.

Health and Social Services Trusts

- 16.5 Health and Social Services Trusts were established by Article 10 of the Health and Personal Social Services (NI) Order 1991 in response to the Government decision to delegate responsibility and decision making to operational level. Article 10 makes provision for the establishment, by order, of HSS Trusts to provide health and personal social services. The legal authority for HSS Trusts to undertake delegated personal social services functions was put beyond doubt by the Health and Personal Social Services (NI) Order 1994 (“the 1994 Order”). This Order provided for certain statutory functions of HSS Boards to be exercisable, on behalf of Boards, by HSS Trusts.

Children Order functions

- 16.6 The Children (Northern Ireland) Order 1995 includes statements as to the powers and duties of Health and Social Services Boards and Trusts. The Children Order uses the term “authority” to refer to an HSS Board or HSS Trust. The powers and duties will be exercised by an HSS Board, except where a function is exercisable by an HSS Trust by virtue of an authorisation made under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994.

Delegation of functions from Boards to Trusts

- 16.7 Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994 enables HSS Boards, with the Department’s approval, to delegate the exercise of “**relevant functions**” to HSS Trusts.
- 16.8 Article 4 of the Health and Personal Social Services (Northern Ireland) Order 1994 requires each HSS Trust to submit a scheme to its parent HSS Board, as to how it is going to discharge the statutory functions which have been delegated to it. The HSS Board must approve the scheme and it must also send the scheme to the Department. The Department has the power to approve any scheme submitted to it by a Board.
- 16.9 The mechanism by which “**relevant functions**” are delegated to HSS Trusts is in three steps. These are as follows:

Departmental Regulations

- 16.10 First, the statutory functions that an HSS Board may delegate to an HSS Trust must be specified in Regulations made by the Department (see Article 3(1) of the 1994 Order). The Regulations which specify certain

statutory provisions as **relevant functions** are the HSS Trusts (Exercise of Functions) Regulations (NI) 1994 (SR No.64), as amended by the HSS Trusts (Exercise of Functions) (Amendment) Regulations (NI) 1996 (SR No.439). The Schedule to the 1994 Regulations specifies that all of the functions of the Children (NI) Order 1995 are **relevant functions** and accordingly may be delegated by HSS Boards to HSS Trusts.

HSS Boards Instruments of Authorisation

- 16.11 Second, by virtue of Article 10(1)(c) of the 1991 Order (as inserted by Article 3(8) of the 1994 Order), each HSS Board must specify, in an instrument of authorisation, which of its **relevant functions** it wishes to delegate to individual HSS Trusts. There is an instrument of authorisation for each HSS Trust within each Board area. Each instrument of authorisation specifies that all functions under the Children (NI) Order 1995 (except Articles 80 to 87 and 96 to 103, which relate to the inspection of children's homes) can be delegated.

HSS Trusts Schemes

- 16.12 The third and final stage in the delegation process is the production of Schemes by HSS Trusts. Article 4 of the 1994 Order requires that an HSS Trust submit a Scheme to its relevant HSS Board setting out how it intends to undertake those **relevant functions** which the Board has delegated to it. HSS Trusts must submit schemes to Boards for approval and these schemes, in turn, must be submitted to the Department. The Department has a power to approve any schemes submitted to it.

Delegation of functions Regulations

Health and Social Services Trusts (Exercise of Functions) Regulations (Northern Ireland) 1994 (S.R. 1994 No.64)

- 16.13 These Regulations which came into operation on 1 April 1994, provide that all of the functions of HSS Boards under the Children and Young Persons Act (NI) 1968 are delegable to HSS Trusts. The Regulations classify all of these functions as "relevant functions" for the purposes of Article 3 of the Health and Personal Social Services (NI) Order 1994. Article 3 of the 1994 Order enables a Health and Social Services Board, with the Department's approval, to delegate the exercise of "relevant functions" to an HSS Trust.

Health and Social Services Trusts (Exercise of Functions) (Amendment) Regulations (Northern Ireland) 1996 (S.R.1996 No.439)

- 16.14 These Regulations, which came into operation on 4 November 1996, amend S.R. 1994 No 64 to take account of the introduction of the

provisions of the Children Order. The Regulations extend the list of relevant functions of an HSS Board (in S.R. No 1994 No 64) to include all functions conferred on a Board under the Children Order.

Section 17: Children Order Advisory Committee

- 17.1 The Children Order Advisory Committee (COAC) was established to monitor the operation of the Children Order in the courts and to advise the Secretary of State and the Lord Chancellor on issues arising from its implementation.
- 17.2 The membership of COAC is designed to reflect the various professions and agencies with responsibilities under the Children Order and to draw upon the special expertise of the individuals appointed. Secretarial services are provided by a small non-permanent Secretariat from the NI Court Service and DHSSPS.
- 17.3 COAC has produced the following publications:
- First Annual Report** (November 1998);
 - Second Annual Report** (October 2001);
 - Third Annual Report** (October 2002);
 - Fourth Annual Report** (January 2004)
 - “Best Practice Guidance”**. (December 2003 – this guidance is aimed at promoting best practice in all Children Order court proceedings. It endeavours to provide guidance and direction to practitioners to ensure consistency of practice in all Children Order cases and thereby reduce avoidably delay within the court system);
 - “Report on delay in the court process in Northern Ireland”** (COAC conducted a study into the causes of delay in progressing Children Order cases through the court system. The report is based on information obtained from a questionnaire sent to all users of the court system to canvass their views as to whether there was delay or not).

Section 18: Northern Ireland Guardian Ad Litem Agency

- 18.1 The Northern Ireland Guardian Ad Litem Agency (NIGALA) is a Special Agency established under the Health and Personal Social Services (Special Agencies) (Northern Ireland) Order 1990. The purpose of the Agency is to manage an independent guardian ad litem service for the whole of Northern Ireland. It was officially established on 1 December 1995 by the Guardian Ad Litem Agency (Establishment and Constitution) Order (NI) 1995. This order made provision for the constitution of the Agency and appointment of the Agency Board. NIGALA has been operational since the commencement of the Children Order on 4 November 1996.
- 18.2 NIGALA was established with the sole task of creating, managing and administering a single panel of suitably qualified persons from whom guardians ad litem may be appointed by the courts. It operates under the overall direction of a Board, the Chair of which is appointed by the Minister for Health, Social Services and Public Safety. There are two other non-executive members appointed by the Department, together with an Executive Director who is responsible for the day-to-day operation of the Agency.
- 18.3 The relationship between NIGALA and the Department of Health, Social Services and Public Safety is set out in an agreed Framework Document. NIGALA therefore is accountable to the Department for the performance of its functions but remains independent of HSS Boards and Trusts and all other parties to the proceedings in which the guardian ad litem is appointed.
- 18.4 The guardian ad litem is an independent person appointed by the courts to represent the interests of children in most public law proceedings. Before the Children Order, guardians ad litem were only appointed in adoption proceedings. The introduction of the Children Order therefore vastly expanded the need for a guardian ad litem service.
- 18.5 The Children Order requires a court in “specified” public law proceedings and in adoption proceedings to appoint a guardian ad litem unless satisfied that it is not necessary to do so. The expression “specified proceedings” is defined by Article 60(6) of the Children Order and by rules of court. The guardian ad litem is appointed to safeguard and promote the interests of the child. Among the duties undertaken by the guardian is the appointment of a solicitor to legally represent the child and the provision of a report to the court reflecting a detailed social work investigation of the circumstances leading to the application before the court.
- 18.6 NIGALA publishes Annual Reports. The most recent Report covers the period 1 April 2002 to 31 March 2003. It shows that during this period, the total number of GAS appointments requested was 565 in respect of 882 children (compared to 599 appointments involving 968 children in the preceding year). The Agency employs 41 guardians ad litem. Further information can be obtained from the NIGALA website (www.nigala.ni.nhs.uk).

Section 19: Child Abduction

- 19.1 Child abduction, along with inter-country adoption, is arguably the most significant practical problem involving children across international boundaries. Better transport communications across the world have contributed to the growing problem of international child abduction.

International Conventions

- 19.2 Two international conventions of 1980, the Hague Convention on the Civil Aspects of International Child Abduction (“**the Hague Convention**”) and the European Convention Custody of Children and Restoration of Custody of Children (“**the European Convention**”), regulate the return of children from those states which are parties to the respective Conventions¹⁰. The two Conventions have similar aims which are to return abducted children promptly to their home countries so that any dispute as to their care can be determined there. The Hague Convention has a global dimension obviously lacking in the European Convention, which is confined to certain countries within Europe. Both the Hague and European Conventions were implemented in the United Kingdom by the Child Abduction and Custody Act 1985.
- 19.3 However, as from 1 March 2001 the so-called **Brussels II Regulation**¹¹ which provides, as between Member States of the European Union (except Denmark), a separate scheme for the recognition and enforcement of judgements relating to parental responsibility for children, takes precedence over the European Custody Convention.

Hague Convention

- 19.4 Part I of the Child Abduction and Custody Act 1985 gives effect to this Convention. The Convention may be invoked in relation to any child under the age of 16, habitually resident in one contracting State, who has been wrongfully removed to or retained in another contracting State. Both the Hague and European Conventions require each contracting State to set up a Central Authority to undertake responsibility for the administration and handling of child abduction cases. The Central Authority for Northern Ireland is the Northern Ireland Court Service.

European Convention

- 19.5 Part II of the Child Abduction and Custody Act 1985 gives effect to this Convention. The Convention is utilised less than the Hague Convention since it applies only between certain European countries, and then only if the applicant has a court order in his or her favour. The Convention is really, therefore about the reciprocal enforcement of court orders in contracting States.

Brussels II Regulation

¹⁰ For signatories see Tables 1 and 2 of Annex C

¹¹ Council Regulation (EC) No. 1347/2000 – 28 May 2000

- 19.6 Under this Regulation, where a State has jurisdiction to hear matrimonial proceedings then it will have jurisdiction in a matter relating to parental responsibility in respect of a child provided the child is habitually resident in one of the Member States. Article 4 of the Brussels II Regulation gives precedence to applications for return to children made under the 1980 Hague Convention. However, under Article 37, the Brussels Regulation takes precedence over the European Convention.

Abductions between different parts of the United Kingdom

Family Law Act 1986 (c.55)

- 19.7 Abductions within the different parts of the United Kingdom are regulated by the Family Law Act 1986. Part I of the 1986 Act provides an internal UK solution to the problem of child abduction. Part I orders made in one of these jurisdictions are recognised and enforceable in the others, as if made there. Chapter V of Part I of the 1986 Act provides the mechanism whereby residence orders may be recognised, registered and enforced throughout the UK. The Family Law Act 1986 only applies to moves between different parts of the UK, and not to moves within one of its constituent parts. Thus it could not be invoked where, for example, a child is moved from Belfast to Enniskillen. In this instance, there will be no potential conflict of jurisdiction and the case would fall under the provisions of the Children Order.
- 19.8 The Family Law Act 1986, which came into force on 4 April 1988, complements the Child Abduction (NI) Order 1985 – which deals with the criminal aspects of child abduction – and the Child Abduction and Custody Act – which deals with the international aspects of child abduction.

The Magistrates' Courts (Family Law Act 1986) Rules 1988 (S.I. 1988/329)

- 19.9 These rules, which came into operation on 4 April 1988, makes the necessary provision in relation to magistrates' courts procedure for the purposes of the implementation of the Family Law Act 1986.

The Criminal Law

Child Abduction (NI) Order 1985 (S.I. 1985/1638 (NI 17))

- 19.10 Under Articles 3 and 4 of the Child Abduction (Northern Ireland) Order 1985, it is an offence for anyone connected with a child to take or send a child under the age of 16 years out of the United Kingdom without appropriate consent. This is the consent of each person who is the

child's mother, father (if he has parental responsibility for the child), guardian or anyone with a residence order or the leave of the court. The 1985 Order also enables a parent to try to stop an abduction, because it is an offence to attempt to take a child out of the United Kingdom. The police can arrest without warrant anyone they reasonably suspect of attempting to take a child out of the United Kingdom. The 1985 Order came into operation on 31 December 1985.

AMENDMENTS TO THE CHILDREN ORDER

The law is always subject to change, by amending legislation. There have been numerous amendments to the Children Order since it became law in 1995. All amendments up to February 2003 are listed below. A number of these are minor consequential amendments. Others, however, are of a more substantial nature and the amending legislation that introduced them is described very briefly.

Attention is drawn to a publication called “Statutes Revised” (this is available in DHSSPS Library or it can be accessed via HMSO website). This publication contains all Northern Ireland primary legislation and each year a Cumulative Supplement is produced which lists all amendments to the existing law.

□ **The Children (Scotland) Act 1995 (c. *)**

Paragraph 58 of Schedule 4 updated the legislative reference in Article 70(7)(c) of the Children Order.

□ **Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (NI 15))**

Paragraph 52 of Schedule 2 made minor technical amendments to Articles 2(2), 18(9), 24(3) and 39(4) of the Children Order.

□ **Education (Northern Ireland) Order 1996 (S.I. 1996/274 (NI 1))**

Schedule 5, Part I, updated the legislative references in Articles 2(2), 47(4)(b) and paragraph 4(b) of Schedule 2 of the Children Order; and

Schedule 6, Part I, repealed Article 46(5) of the Children Order.

□ **Criminal Justice (Northern Ireland) Order 1996 (S.I. 1996/3160 (NI 24))**

Paragraph 17 of Schedule 5 updated a legislative reference in the definition of “probation order” in Article 2(2) of the Children Order.

□ **Civil Evidence (Northern Ireland) Order 1997 (S.I. 1997/2983 (NI 21))**

Paragraph 8 of Schedule 1 made a minor technical amendment to Article 169(8) of the Children Order.

□ **Children (1995 Order) (Amendment) (Children’s Services Planning) Order (Northern Ireland) 1998 (S.R. 1998 No 261)**

These Regulations amended Schedule 2 to the Children Order to insert, after paragraph 2, a new paragraph 2A (“Children’s Services Plans). This paragraph placed a duty on each HSS Board to prepare and publish a plan for the

provision of children's services in its area and to keep the plan under review. In preparing and updating the plans, Boards are required to consult a range of specified bodies. This amendment came into operation on 14 September 1998.

□ **The Family Homes & Domestic Violence (Northern Ireland) Order 1998** (S.I. 1998/1071 (NI 6))

This Order tackles two separate but inter-related problems: providing protection for one family member against violence or molestation by another and regulating occupation of the family home where a relationship has broken down.

The Order made two significant amendments to the Children Order which gave courts the power to remove a suspected abuser from the family home instead of removing the child.

Article 28 inserted **Article 12A** into the Children Order to ensure that where there has been domestic violence in a home, the court must consider the risk of harm to the child from witnessing domestic violence before making a residence or contact order under the Children Order.

Article 29 inserted **Articles 57A and 63A** into the Children Order to give courts the power to remove a suspected abuser from the family home instead of removing the child under an interim care order or emergency protection order. It also inserted a definition of "dwelling house" in Article 2(2) and added **Articles 58(3A) and 64(7A)**.

Schedule 3 inserted a new sub-paragraph (h) in Article 8(4), and Schedule 5 repealed Article 8(4)(d).

All of these amendments came into operation on 29 March 1999.

□ **Criminal Justice (Children) (Northern Ireland) Order 1998** (S.I. 1998/1504 (NI 9))

This Order replaced the criminal justice provisions in the Children and Young Persons Act (NI) 1968.

Paragraphs 42, 43, 44 and 45 of Schedule 5 made minor technical amendments to Articles 2(9)(b), 70(7)(b), 74(2)(e), 91(2)(e), 107(5) and paragraph 4 of Schedule 4 of the Children Order.

Schedule 6 repealed the definition of "training school" in Article 2(2) and words in Article 50(8)(b)(ii) of the Children Order.

□ **Tax Credits Act 1999** (c.10)

Paragraph 6(k) or Schedule 1 made minor technical amendments to Articles 2(2), 18(9), 24(3) and 39(4) of the Children Order.

❑ **Child Support, Pensions and Social Security Act (Northern Ireland) 2000** (c.4 (NI))

Paragraph 30 of Schedule 3 made a number of minor technical amendments to Schedule 1 to the Children Order (wef 3 March 2003 (partially)). Schedule 9, Part I also repealed provisions in Schedule 1 to the Children Order (wef 3 March 2003 (partially)).

Paragraph 7(2) of Schedule 8 made a number of minor technical amendments to Schedule 7 (wef from 23 March 2002 and 15 April 2002). Schedule 9, Part VII also repealed provision in Schedule 7 (wef from 23 March 2002 and 15 April 2002).

❑ **Family Law Act (Northern Ireland) 2001** (c.12 (NI))

The primary purpose of this Act was to facilitate the acquisition or parental responsibility by unmarried fathers.

Section 1 amended the Children Order to provide that an unmarried father who jointly registers the birth of his child with the child's mother, shall have parental responsibility for that child. It also provides that a step-parent may apply to a court for an order conferring parental responsibility on the step-parent in relation to a child or his or her spouse. In both cases, parental responsibility may be terminated only by court order.

- ❑ Section 1 (6) (a) inserted sub-paragraph (aa) in Article 3(4);
- ❑ Section 1 (6) (b) amended Article 5(2)(b):
- ❑ Section 1(2) and (4) amended Article 7 (1) and (3) respectively;
- ❑ Section 1 (3) inserted paragraphs (1A), (1B) and (1C) in Article 7;
- ❑ Section 1 (5) replaced Article 7(4) with Article 7(3A) and a new (4); and
- ❑ Section 1 (6) (c) amended Article 179 (7).

All of the above amendments came into operation with effect from 15 April 2002.

❑ **Health & Personal Social Services Act (Northern Ireland) 2001** (c.3 NI))

Section 15(7) made minor technical amendments to update references in Articles 78(3)(b), 87(1), 94(3)(b) and 103(1) of the Children Order.

❑ **State Pension Credit Act 2002** (c.14)

This Act made a minor technical amendment to the Children Order

Paragraph 23 of Schedule 2 inserted paragraph (3A) in Article 24 of the Children Order.

□ **Tax Credits Act 2002 (c.21)**

This Act made a number of minor technical amendments to the Children Order.

Paragraphs 52(2), 53, 54, 55, 56(2) of Schedule 3 amended Articles 18(9), 18C(7)(b), 24(3), 39(4) and 183(1) of the Children Order respectively.

Paragraph 52(3) of Schedule 3 added new paragraph (10) to Article 18 of the Children Order.

Paragraph 56(3) of Schedule 3 inserted paragraph (4) in Article 183 of the Children Order.

Schedule 6 repealed the definitions of “disabled person’s tax credit” and “working families tax credit” in Article 2(2) and repealed words in Article 18C(7)(b) of the Children Order.

□ **Justice (Northern Ireland) Act 2002 (c.26)**

This Act made a number of minor technical amendments to the Children Order.

Paragraph 51 of Schedule 12 inserted sub-paragraph (bb) in Article 70(7) of the Children Order.

Paragraph 52 of Schedule 12 amended paragraph 4(1)(b) of Schedule 4 to the Children Order.

Section 11(3) amended Article 165(2)(i) of the Children Order.

□ **Carers & Direct Payments Act (Northern Ireland) 2002 (c.6 (NI))**

This Act amends the Children Order by inserting new Articles 17A, 18A, 18B, 18C and 18D.

Articles 17A and 18A require HSS Trusts to carry out needs assessments on children who care for adults and on those persons who care for disabled children.

Article 18C gives HSS Trusts the power to offer direct payments to persons with parental responsibility for a disabled child, or to 16 and 17 year old disabled young people, to enable them to arrange for the provision of services that meet the assessed needs of the child or young person under the Children Order.

Article 18B provides that the Department may make regulations which set up a voucher scheme under which a person with parental responsibility for a disabled child may be issued with a voucher by the Trust. The voucher will entitle that person to secure temporary provision of services for the child under Article 18 of the Children Order, thus enabling the person to have a break from caring for that child.

Sections 4, 5, 6, 9 and 7 (4) inserted Articles 17A, 18A, 18B, 18C and 18D into the Children Order respectively.

The Carers and Direct Payments (2002 Act) (Commencement No. 1) Order (Northern Ireland) 2003 (S.R. 2003 No. 201 (C.14)) brought sections 1, 2, 4, 5, 7, and 10 of the 2002 Act into operation on 31 March 2003. This commences new Articles 17A, 18A, and 18D of the Children Order. The Carers and Direct Payments (2002 act) (Commencement No. 2) Order (Northern Ireland) 2004 (S.R. 2004 No. 119 (C.3)) brought sections 8 and 9 of the 2002 Act into operation on 19 April 2004. This commences Article 18C of the Children Order. Article 18B (section 6 of the 2002 Act) has still to be commenced.

□ **The Children (Leaving Care) Act (Northern Ireland) 2002 (c.11 (NI))**

This Act makes substantial amendments to Part IV of the Children Order in respect of children and young people formerly looked after by HSS Trusts. It inserts new Article 34A in the Children Order to restate HSS Trusts' duties towards certain young people aged 16 and over whom they have looked after for a prescribed period ("eligible children").

It inserts new Articles 34B to 34F which impose new duties on HSS Trusts to assess and meet the needs of certain categories of young people aged 16 to 18 formerly in their care ("relevant children"). The Trust must also keep in touch with these young people, appoint a personal advisor for them and prepare a pathway plan for them. Under Article 34D, the Trust has continuing duties towards those care leavers who are aged 18 and over ("former relevant children") including a duty to provide assistance with employment, education and training.

The Act also replaces Articles 35 and 36 with new Articles 35 and 35A to 35D, which restate the powers and duties of Trusts in respect of all young people leaving the care of Trusts or other establishments.

No commencement date has been set for bringing in these amendments to the Children Order.

□ **The Health & Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (S.I. 2003/431 (NI 9))**

This Order makes substantial amendments to the Children Order. In particular, it amends Parts VII, VIII and IX as to the regulation of statutory, voluntary and

privately run children's homes. Part II of the Order establishes the Northern Ireland Health and Personal Social Services Regulation and Improvement Authority with responsibility for encouraging improvement in the quality of health and social care services. Part III of the Order applies to the regulation of all children's homes and brings independent fostering agencies (for the first time) into the new registration and inspection regime. Part IV of the Order provides for Trusts adoption, fostering and early years services to be subject to inspection by the HPSS R&I Authority. Schedules 4 and 5 to the Order make a number of minor and consequential amendments and repeals to the Children Order.

No commencement date has been set for bringing in these amendments to the Children Order.

KEY RESOURCES

The Children Order

□ **Notes on Articles on the Children Order**

The Notes on Articles are contained in three A4 size ring binders and are located in the branch library. They give background information on the origins of each Article. They also provide a thorough and comprehensive explanation of each of the Articles (and Schedules) within the Order.

□ **An Introduction to the Children (NI) Order 1995**

This booklet provides an overview of the Children Order and the principles upon which it is based. It also includes an Article-by-Article overview of the Order. The booklet was produced by DHSSPS and the Office of Law Reform and was published in July 1995 (original supplies of the booklet are now exhausted). An updated version of the document has been placed on the Directorate's "f" drive.

□ **The Law of Children in Northern Ireland: The Annotated Legislation**

This book is intended as an aid to the practitioner combining in one volume all the statute law likely to be required in proceedings involving the care and upbringing of children in NI. It contains the amended text of the Children Order, the Child Abduction and Custody Act 1985 and the Family Law Act 1986, both as they apply to NI and the texts of various rules and regulations relating to proceedings involving children in NI. The book is produced by SLS Legal Publications (NI) (the authors are Michael Long QC and Gemma Loughran BL). A copy of the book is in the DHSSPS Library.

□ **Children Order Trainers Pack**

The Children Order trainers pack consisted of a folder containing 23 laminate cards with information on the court orders introduced by the Children Order and the powers and duties of HSS Boards/Trusts under the Order. The cards presented the information in a readily accessible form and offered a simple way to find out where in the Children Order to look for information.

The Pack also consisted of a wall chart with information on the main court orders made under the Children Order. The cards and wall chart were produced in association with the Open University. The Packs were supplied, on a limited basis, to specialist trainers in HSS Boards and Trusts, the voluntary sector and the Court Service. Two additional booklets, "Duties and powers of

HSS Boards and Trusts “and” A Guide to the Transitional Provisions later supplemented the Packs.

□ **The Children Order – A Guide to the Transitional Provisions**

This booklet was produced to enable those involved in a professional capacity to see at a glance the effect of the Children Order transitional provisions (in Schedule 8 to the Order) on the old law. It set out, in simplified form, the effect of commencement of the Children Order on court orders already in force; court proceedings already in progress, premises registered under former legislation and other court related matters. The booklet was produced by DHSSPS and published in May 1996.

□ **The Children Order – Duties and Powers of Health and Social Services Boards and Trusts**

This booklet lists the duties and powers of HSS Boards and Trusts under the Children Order. It provides a brief checklist rather than a detailed description of these duties and powers. The booklet was produced by DHSSPS and published in June 1996.

□ **Children Order Leaflets**

The leaflets listed below were produced by DHSSPS to raise public awareness of the various provisions of the Children Order. The leaflets were distributed to HSS Boards and Trusts and they ensured that information was available to the general public when the Children Order came into operation.

- COG 1: The Children Order: A Guide;
- COG 2: The Children Order and You – A Guide for Young People;
- COG 3: The Children Order and the Courts – A Guide for Children and Young People;
- COG 4: Getting Help from Social Services – A Guide for Children and Young People;
- COG 5: Living Away from Home – Your Rights – A Guide for Children and Young People;
- COG 6: The Children Order and Social Services – A Guide for Parents;
- COG 7: The Children Order and the Courts – A Guide for Parents;
- COG 8: The Children Order – Child Minding and Day Care – A Guide to help you with registration.

□ **The Children Order – Guidance on Professional Practice for Nurses, Midwives and Health Visitors**

This guidance was produced specifically to assist nurses, midwives and health visitors to understand the implications of the Children Order for their practice in promoting the health and social well-being of children and their families. It

was produced by a working group of health professionals and sponsored by the Department's Nursing Group. The guidance was published in April 1998.

❑ **The Children Order – An Introductory Guide for Schools**

This booklet was produced for teachers to introduce them to the basic principles and the new terminology of the Children Order. It was a joint production by the Department of Education, the Education and Library Boards and the Council for Maintained Schools and covered those changes in the Children Order that were of specific interest to schools. It was published in November 1996.

❑ **Parental responsibility – Guidance for Schools (Circ No 1999/17)**

This circular provided further information to schools about the law on parental responsibility and provided advice on the action that schools should take in relation to a person or persons who acquire parental responsibility for a pupil. The circular was produced by the Department of Education and was issued in June 1999.

❑ **Implementing the Children Order - A Basic Awareness Training Pack**

This training pack was produced by Child Care (NI) (now known as Children Northern Ireland) for use by trainers within the voluntary child care sector. A third revision of the pack was published in March 1999.

❑ **Children Order – A Guide for Youth Workers**

This document aims to introduce youth workers to the key concepts and principles of the Children Order. It explores the implications of the Children Order for the Youth Service, identifying changes in policy and service provision that may be required in light of the Order. The Youth Council for Northern Ireland produced the document.

❑ **Children Order Report 1999**

This Report on the operation of the Children Order was produced by DHSSPS in pursuance of duties under Article 181 of the Order. It outlines the progress that was made in implementing the Order over the period November 1996 to April 1999. The Report is a priced publication and is available from the Stationery Office £12.50.

❑ **Children Order Statistical Bulletin**

This bulleting contains a range of statistics related to the Children Order. It contains sections on Children on the Child Protection Register; Children in Need; Children Looked After; Children's Homes; Children's Day Care Provision and Children in Hospital. Regional Information Branch, DHSSPS,

produces the bulletin. The latest bulletin covers the period 1 April 2001 to 31 March 2002.

□ **The Changing Face of Care under the Children Order: A prospective study of decision making and care outcome for looked after children**

This study was undertaken following the award of a Research Fellowship from the Research and Development Office for NI. The study was undertaken between January 2000 and January 2002 and involved the interrogation of 107 children's social services files (all children were accommodated or subject to a care order). The report was published by DHSSPS in January 2004 (the views expressed of the report are those of the author – Dr Theresa Donaldson – and not those of the Department).

Residential Child Care

□ **Children Matter – A review of residential child care services in Northern Ireland**

“Children Matter” is the name given to report of a review of residential child care services in Northern Ireland. The review was initiated by the DHSSPS because of a steady decline in the number of places available in both statutory and voluntary children's homes. The Report made a number of recommendations aimed at arresting the decline and expanding and updating the level of residential child care provision. The report was published by SSI in October 1998.

□ **Report of the Children Matter Task Force: The Regional Plan, Phase 1 2001-2003**

This report set out the Task Force's Regional Plan for the development of residential child care services up to the end of 2002/03. It was published by the DHSSPS in June 2001.

□ **Quantitative analysis into the use of secure accommodation in Northern Ireland between November 1996 and January 2001**

This study involved a one-day visit by the Social Services Inspectorate to Shamrock House to collect information on the occupancy of secure accommodation facility. The report of the study was published in July 2001.

□ **Secure Care: An inspection of secure accommodation at Shamrock House and Linden House**

This inspection was prompted by a recommendation in the report “Quantitative analysis into the use of secure accommodation in Northern Ireland between November 1996 and January 2001”. The inspection looked at the planning

process which underpins the decision to use secure accommodation for specific children. SSI published the inspection report in June 2002.

Fostering

□ Fostering in Northern Ireland – Children and their Carers

This report contains the findings of the first large-scale examination of fostering services in Northern Ireland. The report was launched by SSI in June 1998.

□ UK National Standards for Foster Care

The National Standards are intended to improve the quality and consistency of services for children and young people in foster care throughout the UK. There are 25 standards and they have been endorsed by the Chief Inspectors of Social Services in each of the four jurisdictions. The Standards were published in June 1999.

□ Report and Recommendations of the UK Joint Working Party on Foster Care

This report contains recommendations for taking forward policy and practice issues relating to foster care. Many of the issues raised in the report are addressed in the UK National Standards for Foster Care.

□ Code of Practice on the Recruitment, Assessment, Approval, Training, Management and Support of Foster Carers

This Code of Practice provides for a more rigorous assessment of prospective foster carers and emphasises the responsibilities of the providers of fostering services to offer appropriate training and support to carers. It is based on the Code of Practice produced in England by a sub-group of the UK Joint Working Party on Foster Care. The Code was adapted for use in Northern Ireland by a working group of specialists whose members were drawn from both the statutory and voluntary sectors. The Code was published by SSI in 1999.

Child Protection

□ Proposals of a Protection of Children & Vulnerable Adults Bill

This consultation document was published by DHSSPS in 2001. It set out the Department's proposals for new legislation in relation to the protection of children and vulnerable adults. The legislation will deal with the checks which should be carried out on the suitability of those persons seeking to work with children and vulnerable adults.

□ **The Protection of Children & Vulnerable Adults Order 2003:
Information Note 1 – Disqualification from Working with Children**

This information Note was published by DHSSPS in February 2004. It is designed to help organisations working with children, to understand the 2003 Order and to consider the implications it will have for them. It is also intended to enable organisations to make the necessary preparations in advance of the Order being commenced.

□ **“Our Duty to Care”**

This document provides guidelines to help establish better child protection practice in voluntary organisations. It provides sound principles and good practice guidelines which each voluntary organisation can adapt for their own use. The first edition of this document was published by Child care (NI) and subsequent editions have been published by the Volunteer Development Agency (with the support of DHSSPS). The third edition was published in 2000.

□ **“Making the Right Choice”**

This is the Department’s guide to using the Pre-employment Consultancy Service. The purpose of PECS is to help organisations working with children or with adults with a learning disability to make the right choices when appointing staff or volunteers. The latest version of the guidance was published in May 2003.

□ **“Safer Organisations Safer Children”**

This booklet is aimed at promoting good practice within organisations to help them offer better protection for children in their care. It is targeted at community and voluntary organisations, day care providers, uniformed organisations, sport and leisure providers. It provides common sense advice on how to enhance the protection of children through the development of good employment practices and child protection policies and procedures. The booklet was published by DHSSPS in 2002.

□ **“Protecting our Children” - A guide for parents**

This booklet is published by the Northern Ireland Sex Offender Strategic Management Committee (NISOSMC). It is intended to address concerns in the community about sex abuse and at times misunderstanding and misconceptions of the risk that sex offenders may pose. It gives parents and carers good practical advice about protecting their children in a range of settings. The booklet was reprinted in January 2003.

□ **Pastoral Care in Schools**

This booklet provides advice to schools and other on their responsibilities in relation to child protection, including the action to be taken to enable cases of suspected abuse

to be properly considered and pursued. The booklet was produced by the Department of Education and was published in 1999.

Leaving Care

□ Promoting Independence: A Review of Leaving and After Care Services

This review, which was carried out in 1999, collected information on the life experiences of young people who became care leavers during the period 1996 to 1999. The Report of the review was published by SSI in October 2000.

□ Proposals for a Children Leaving Care Bill

This consultation document was published by DHSSPS in March 2001. It set out the Department's proposals for new legislation to help improve support to young people who leave care.

□ Northern Ireland Care Leavers (2001/02)

This bulleting presents findings from a collection of information on the educational attainment of young people aged 16 and over who left the care of HSS Trusts in Northern Ireland in 2001/02. The bulleting was published by Social Services Analysis Branch, DHSSPS in October 2003.

Early Years

□ Childminding & Day Care of under twelves

This pocket-sized guide was written to provide easy access to all the relevant requirements of the law and guidance regarding the registration and inspection of early years services. It was produced by Fergus Smith of Children Act enterprises and is a priced publication (£3.00). The second edition was published in 1997.

“Children First”: The Northern Ireland Childcare Strategy

“Children First” outlined proposals for a Northern Ireland childcare strategy. The strategy was issued for public consultation at the end of February 1999. The document set out the Government's aim to ensure that good quality, affordable childcare was available for children in every neighbourhood.

Children First: The Northern Ireland Childcare Strategy: A Policy Statement

This Policy Statement, published in September 1999, sets out the government's plans for developing childcare services in Northern Ireland. It outlines a series of practical steps being taken to increase places, raise standards, improve access and provide better information for parents on childcare. The Policy Statement took account of comments made in response to the consultation document “Children First: The Northern Ireland Childcare Strategy”.

Miscellaneous

❑ **Guidance on Children's Services Planning**

This guidance provides the general framework within which children's services planning should be developed. It encourages HSS Boards, who have legal responsibility for producing Children's Services Plans, to develop them in co-operation with a wide range of other organisations and agencies. The guidance was produced by DHSSPS and endorsed by the Department of Education and the Northern Ireland Office. The guidance was published in July 1998.

❑ **"Planning to care". An overview report of care planning for children subject to statutory intervention in Northern Ireland**

This report was prepared on the basis of an inspection of the care planning arrangements in two HSS Trusts. The aim of the inspection was to determine whether decisions were evidenced based, whether they were made in a timely fashion and if they limited the potential for children to drift in care. The report was published by SSI in November 1999.

❑ **Community Statistics**

This collection of community statistics covers all Programmes of Care. It includes a section on the Family and Child Care Programme. The latest report covers the period 1 April 2002 to 31 March 2003 and is produced by Regional Information Branch, DHSSPS.

❑ **Key Indicators of Personal Social Services 2002**

This is the fifth annual report on Key Indicators of Personal Social Services in Northern Ireland. This report covers the period 1 April 2000 to 31 March 2001 and is produced by the Social Services Analysis Branch, DHSSPS.

❑ **A Better Future – 50 Years of Child Care in Northern Ireland 1950-2000**

This report examines key developments in the child and family support service over a 50-year period. The components of this service range across fostering, adoption, children's homes, juvenile offenders, children with disabilities and child protection. This report was produced by SSI and published in 2003.

❑ **Branded a Problem?**

This report is the product of the LACE (Looked After Children in Education) Research Project. The project was set up to find out why some young people in care achieve good results and enjoy school and why others underachieve. The LACE Project was a partnership between First Key (NI), Save the Children and VOYPIC. The Report was published in December 2002.

❑ **A Strategy for Children in Need – Developing the Strategy**

This consultation paper, issued in August 2003, sets out the Department's plans for the development of a strategy for children in need. The purpose of the strategy will be

to provide a coherent approach to the provision of services for children and young people in need. It is intended that the strategy will complement the broader strategy which is being brought forward by the Office of the First Minister and Deputy First Minister.

ANNEX C

SIGNATORIES TO THE HAGUE AND EUROPEAN CONVENTIONS

The parties to the Hague Convention are set out in Schedule 1 to the Child Abduction and Custody (Parties to Conventions) Order 1986 – S>I. 1986/1159 (as amended).

Table 1

Contracting States to the Convention	Date of coming into force of convention as between UK and State or territory
Argentina	1 st June 1991
Australia	1 st January 1987
Austria	1 st October 1988
The Bahamas	1 st January 1994
Belgium	1 st May 1999
Belize	1 st October 1989
Bosnia & Herzegovina	7 th April 1992
Burkina	1 st August 1992
Canada (territories)	1/8/86, 1/11/86, 1/2/87. 1/4/88
Chile	1 st May 1994
China	1 st September 1997/1 st March 1999
Colombia	1 st March 1996
Croatia	1 st December 1991
Cyprus	1 st February 1995
Czech Republic	1 st March 1998
Denmark	1 st July 1991
Equador	1 st April 1992
Federal Republic of Yugoslavia	27 th April 1992
Finland	1 st August 1994
France	1 st August 1986
Georgia	1 st October 1997
Germany	1 st December 1990
Greece	1 st June 1993
Honduras	1 st March 1994
Hungary	1 st September 1986
Iceland	1 st November 1996
Republic of Ireland	1 st October 1991
Israel	1 st December 1991
Italy	1 st May 1995
Luxembourg	1 st January 1987
Macedonia	1 st December 1991
Malta	1 st March 2002
Mauritius	1 st June 1993
Mexico	1 st September 1991
Monaco	1 st February 1993
Netherlands	1 st September 1990
New Zealand	1 st August 1991
Norway	1 st April 1989
Panama	1 st May 1994

Poland	1 st November 1992
Portugal	1 st August 1986
Romania	1 st February 1993
St Kitts & Nevis	1 st August 1994
Slovakia	1 st February 2001
Slovenia	1 st June 1994
South Africa	1 st October 1997
Spain	1 st September 1987
Sweden	1 st June 1989
Switzerland	1 st August 1986
Turkey	1 st August 2001
Turkmenistan	1 st March 1998
United States	1 st July 1988
Venezuela	1 st January 1997
Zimbabwe	1 st July 1995

The parties to the European Convention are set out in Schedule 2 to the Child Abduction and Custody (Parties to Conventions) Order 1986 – S.I. 1986/1159 (as amended).

Table 2

Contracting States to the Convention	Date of coming into force of convention as between UK and State or territory
Austria	1 st August 1986
Belgium	1 st August 1986
Cyprus	1 st August 1986
Czech Republic	1 st July 2000
Denmark	1 st August 1991
Finland	1 st august 1994
France	1 st August 1986
Germany	1 st February 1991
Greece	1 st July 1993
Iceland	1 st November 1996
Republic of Ireland	1 st October 1991
Italy	1 st June 1995
Liechtenstein	1 st August 1997
Luxembourg	1 st February 2000
Malta	1 st February 2000
Netherlands	1 st September 1990
Norway	1 st May 1989
Poland	1 st March 1996
Portugal	1 st August 1986
Spain	1 st august 1986
Sweden	1 st July 1989
Switzerland	1 st August 1986
Turkey	1 st June 2000

In addition to the above list, the following countries have ratified the Convention:

Bulgaria	(1 st October 2003)
Estonia	(1 st September 2001)
Latvia	(1 st August 2002)
Slovakia	(1 st September 2001)
Former Yugoslavian Republic of Macedonia	(1 st March 2003)
Lithuania	(1 st May 2003)

KEY STATISTICS

- ❖ Northern Ireland has **463,226** children and young people, who comprise 27% of the total population, compared with 22% in England. (*Key Indicators 2002*)
- ❖ In 2000/01 children's services accounted for 17.8% (**£83 million**) of Trusts total expenditure on personal social services. (*Key Indicators 2002*)
- ❖ In 2000/01 per capita expenditure on children's services was **£179.7 per child**, £75 less than the corresponding figure for England. (*Key Indicators 2002*)
- ❖ In 2000/01 children's services accounted for 12% (**£165 million**) of Boards total expenditure on personal social services. (*Key Indicators 2002*)
- ❖ In 2000/01 **16,037** children were referred to Social Services, a significant increase from 1997/98 (13,048). (*Key Indicators 2002*)
- ❖ At 31 March 2003, **2,446** children were being looked after (1270 boys and 1176 girls). (*Community Statistics 2003*)
- ❖ **51%** of the 2446 children looked after had been in care for 3 years or more (*Community Statistics 2003*)
- ❖ At 31 March 2003, **412** children who were being looked after, left care aged 16+ (*Community Statistics 2003*)
- ❖ At 31 March 2003, **64%** of all children in care were in foster care (foster parents or relatives) (*Community Statistics 2003*)
- ❖ At 31 March 2003, **296** children were in residential care. (*Community Statistics 2003*)
- ❖ At 31 March 2003, **1,608** children were on the child protection register. (*Community Statistics 2003*)
- ❖ **40%** of the 1608 fell into the neglect only category. (*Community Statistics 2003*)
- ❖ In 2000/01, almost **2 children** on average are raped or buggered each week in Northern Ireland. (*PSNI*)
- ❖ At 31 March 2003, there was **43,601** available places in day care facilities (*Community Statistics 2003*)

KEY STATISTICS (continued)

- ❖ 49% of the average available day care places were provided by registered childminders in private dwellings (*Community Statistics 2003*)

Court Business - 1 April 2002 – 31 March 2003

Court applications		Court disposals	
Public law	895	Public law	873
Private law	5,734	Private law	5,245
Total	6,629	Total	6,118

Court Order	No. Made
Contact permission (Art 8 order)	1,656
Residence (Art 8 order)	1,176
Prohibited Steps (Art 8 order)	88
Specific Issue (Art 8 order)	84
Care order	318
Supervision order	36
Emergency Protection order	12
Child assessment order	0
Secure accommodation order	17
Education supervision order	18

(Fourth Report of the Children Order Advisory Committee - January 2004)