



Alliance for Reform of the Children's Commissioner Children and Families Bill

Reform of the Office of the Children's Commissioner: Our Priorities

February 2013

The Children and Families Bill will reform the role of the Office of the Children's Commissioner for England (OCCE). This briefing summarises the priority issues for the Alliance for Reform of the Children's Commissioner, which will be the focus of our lobbying activity during the passage of the Bill.

About us

The Alliance for Reform of the Children's Commissioner comprises a range of organisations working with and for children and young people. Chaired by the Children's Rights Alliance for England (CRAE), this Group led lobbying during the passage of the Children Act 2004 which established the OCCE, and coordinated the campaign for a Children's Rights Commissioner in the years preceding this legislation. See below for a full membership list.

A fully reformed OCCE would be an independent national human rights institution for children (NHRI). As recognised by the UN Committee on the Rights of the Child, children's developmental state makes them particularly vulnerable to human rights violations. Children's opinions are rarely taken into account: they cannot vote and rarely play a meaningful role in the political process. It is therefore necessary for States to establish independent monitoring bodies for children's rights¹.

Summary

We warmly welcome the reforms to the OCCE proposed in the Children and Families Bill, and its close adherence to the recommendations in the Dunford Review. However, we believe the legislation could be further strengthened to ensure we have a Children's Commissioner with the sufficient functions, powers and independence to effectively promote the full realisation of children's rights.

During the passage of the Children and Families Bill, we will be seeking amendments to:

1. enhance the independence of the OCCE – preventing interference by government, ensuring sufficient resources, and strengthening Parliament's role in the appointment and removal of a Commissioner
2. extend the definition of vulnerable children in the Bill to include children in custody and separated children who are seeking asylum or have been trafficked
3. strengthen the powers and functions of the Children's Commissioner to include raising awareness and promoting the full range of children's rights, reporting on the extent to which children enjoy their rights and initiating and participating in legal proceedings
4. strengthen the involvement of children in the work of the OCCE
5. introduce a children's rights duty on public bodies

1. Enhancing the independence of the OCCE

It is vital that the Children's Commissioner is sufficiently independent to effectively champion children's rights and to adhere to international standards for NHRIs. The Joint Committee on Human Rights agreed, making recommendations for amendments to the legislation to prevent Ministerial interference and ensure sufficient funding, and for greater Parliamentary involvement in the selection and removal of a Commissioner.

We believe the Bill should:

- a. *prevent interference by government in the work of the Children's Commissioner*: We welcome the proposal to repeal provisions in the existing legislation allowing the Secretary of State to direct the Commissioner to act. However, we recommend that the Bill should go further, by requiring the Secretary of State to have regard to the desirability of ensuring that the Commissioner is under as few constraints as reasonably possible in determining activities, timetables and priorities².
- b. *provide for greater Parliamentary involvement in the appointment and removal of a Commissioner*: The legislation should set out broad criteria to which the Secretary of State should have regard in making an appointment³ and should require the Secretary of State to have due regard to the views of Parliament in relation to candidates. The Commissioner should only be removed from office for limited reasons prescribed by law, and Parliament should be involved in any decision to dismiss a Children's Commissioner.
- c. *help ensure the Children's Commissioner has sufficient funds to carry out his or her functions*: The legislation should contain a provision requiring the Secretary of State to provide the OCCE with such sums as appear reasonably sufficient for the purpose of enabling it to perform its functions⁴. Parliament should be involved in determining the OCCE's funding for a minimum three-year period, and ideally for a parliamentary term.

2. Extending the definition of vulnerable children

The legislation requires the Children's Commissioner to have particular regard to specified groups of vulnerable children when carrying out his or her functions⁵, and allows the Commissioner to provide advice and assistance to those groups of children⁶. Cl.84 of the draft clauses states that these additional responsibilities should apply to looked after children, care leavers, children in boarding school and children receiving social care services – all those who currently sit within the remit of the Children's Rights Director. We believe the definition should be extended to include children living in custody and separated children who are seeking asylum or have been trafficked. These children are particularly vulnerable to having their rights infringed, meaning they too would benefit from the additional advice, assistance and attention of the Commissioner.

² A similar provision relating to the Equality and Human Rights Commission is included in Schedule 1 paragraph 42(3) of the Equality Act 2006.

³ See, for example, paragraph 2(1) of Schedule 1 to the Equality Act 2006.

⁴ A similar provision can be found in the Equality Act 2006, Schedule 1, paragraph 38.

⁵ See cl.77 (which will insert into Children Act 2004 new section 2 (primary function) and new section 2B (involving children in the discharge of the primary function)), and cl.82 (which will insert into Children Act 2004 new section 7B (business plans)).

⁶ cl.78.

3. Strengthening the powers and functions of the Children’s Commissioner

We believe that the legislation should grant the Commissioner all those powers which a national human rights institution (NHRI) should have, in accordance with the Paris Principles adopted by the UN General Assembly⁷ and the UN Committee on the Rights of the Child’s General Comment No. 2⁸, and as recommended by the Joint Committee on Human Rights in its consideration of the draft legislation⁹. While we recognise that, as currently drafted, the legislation allows the Commissioner to do anything ancillary to the execution of his or her functions, we believe that specifying these powers in legislation will both increase legal certainty and give rise to an expectation that such functions be fulfilled.

We believe the Bill must confer the following additional functions on the Children’s Commissioner:

- a. *Raising public awareness of children’s rights:* The Children’s Commissioner should promote knowledge of and respect for the human rights of children and young people.
- b. *Monitoring the extent to which children’s rights are realised:* The Children’s Commissioner should be required to publish an annual report that examines the state of children’s rights in England, providing recommendations for action by government and others. In preparing this report, the Children’s Commissioner should be required by law to consult children and young people, and organisations promoting and protecting children’s rights.
- c. *Initiating and participating in legal proceedings:* The Children’s Commissioner should have the power to initiate and participate in legal proceedings in a strategic way to advance children’s rights and challenge abuses.
- d. *Mandate:* While we welcome the move to having a rights-based mandate for the Children’s Commissioner, he or she should work to protect and promote the *full range* of rights, for all children, including those contained in other international human rights instruments, the Optional Protocols to the CRC and domestic legislation. Whilst it is true that many of the rights in the CRC mirror a number of those contained in other international covenants or conventions, there are a large number of rights that are not fully reflected in the CRC, for example, rights for disabled children set out in the UN Convention on the Rights of Persons with Disabilities, which was drafted after the CRC.

4. Strengthening the involvement of children in the work of the OCCE

Given the Commissioner’s role to promote and protect children’s rights, it is vital that children are involved in all aspects of the Office’s work in the spirit of Article 12 of the CRC. We welcome the provisions requiring the Children’s Commissioner to ‘take reasonable steps’ to involve children in the Commissioner’s work and to consult children in respect of individual aspects of its work¹⁰. However, this should be strengthened. We believe the legislation must:

⁷ UN General Assembly (December 1993) *Paris Principles*.

⁸ UN Committee on the Rights of the Child (2002) *The role of independent national human rights institutions in the promotion and protection of the rights of the child* <http://www2.ohchr.org/english/bodies/crc/comments.htm>.

⁹ Joint Committee on Human Rights (2012) *Reform of the Office of the Children’s Commissioner: draft legislation. Sixth Report of Session 2012–13*.

¹⁰ See cl.77 (to insert new section 2B (involving children in the discharge of the primary function) and cl. 82 of the Bill.

- wherever there is a duty to consult children, include a corresponding obligation to have due regard to their views
- require the Commissioner to report on the extent to which he or she has had regard to children's views, when reporting on the steps taken to involve children.

5. A children's rights duty for public bodies

The state has the primary responsibility for ensuring children enjoy the rights in the CRC. As made clear by the Committee on the Rights of the Child¹¹, the state cannot fulfil its obligations under the Convention by simply tasking other bodies (such as the OCCE) with the job of promoting and protecting children's rights.

We therefore believe the Bill should introduce:

- a children's rights duty, requiring public authorities in the exercise of their functions, to have due regard to the need to (a) respect, protect and fulfil children's rights; (b) actively seek and give due weight to the views of children in all matters affecting them; (c) take such steps as are appropriate to promote knowledge and understanding amongst children and adults of the Convention on the Rights of the Child and its Optional Protocols; (d) ensure mechanisms are in place to investigate and rectify any violations of children's rights without undue delay; (e) ensure children are provided with information and assistance about making representations and protecting their rights; and (f) inform children of the role and function of the Children's Commissioner
- a duty on the Office of the Commissioner to publish a statutory code of practice in relation to the duty described above.

Introducing a children's rights duty for all public bodies would build on developments in Wales and Scotland, and in so doing would see England leading the way in the realisation of children's rights in the UK.

This briefing is endorsed by members of the Alliance for Reform of the Children's Commissioner:

Action for Children
 British Youth Council
 Children England
 Children's Rights Alliance for England (CRAE)
 The Children's Society
 National Children's Bureau (NCB)
 NSPCC
 Save the Children
 UNICEF UK

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¹¹ UN Committee on the Rights of the Child (November 2002), *General Comment No. 2: The role of independent national human rights institutions in the promotion and protection of the rights of the child*, para 25.