

Children and Families Act 2014
Summary of Advocacy Outcomes
Alliance for Reform of the Children’s Commissioner
 Coordinated by the Children’s Rights Alliance for England (CRAE)

Part 6: The Children’s Commissioner

Issue raised	Outcome
<p>Commissioner should encourage those working with children to act compatibly with children’s rights (not just “take account” of their rights)</p>	<p>Section 107 (new section 2 of CA 2004) amended, following pre-legislative scrutiny:</p> <p><i>(3) In the discharge of the primary function the Children’s Commissioner may, in particular—</i></p> <p style="padding-left: 40px;"><i>(a) advise persons exercising functions or engaged in activities affecting children on how to act compatibly with the rights of children;</i></p>
<p>Commissioner should monitor the extent to which children in England enjoy their rights</p>	<p>Section 107 (new section 2 of CA 2004) amended, following pre-legislative scrutiny:</p> <p><i>(3) In the discharge of the primary function the Children’s Commissioner may, in particular—</i></p> <p>...</p> <p style="padding-left: 40px;"><i>(i) monitor the implementation in England of the United Nations Convention on the Rights of the Child;</i></p>
<p>Commissioner should be able to require private bodies serving a public function (not just public bodies) to respond to recommendations and provide information</p>	<p>Section 107 (new section 2C of CA 2004) amended, following pre-legislative scrutiny:</p> <p><i>(1) This section applies where the Children’s Commissioner publishes a report in the discharge of the primary function.</i></p> <p>...</p> <p><i>(3) Where the report contains recommendations about the exercise by a person of functions of a public nature, the Commissioner may require that person to state in writing, within such period as the Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.</i></p> <p>Section 110 (new section 2F of CA 2004) amended, following pre-legislative scrutiny:</p> <p><i>(1) Any person exercising functions of a public nature must supply the Children’s Commissioner with such information in that person’s possession relating to those functions as the Commissioner may reasonably request for the purposes of the primary function or the function under section 2D.</i></p>
<p>There should be a clear obligation on the Secretary of</p>	<p>Schedule 1 of Children Act 2004 amended (by schedule 5, para. 7 of the Children and Families Act),</p>

<p>State to involve children in the appointment of the Commissioner (draft legislation limited involvement “to such extent and in such manner as [Sec of State] thinks fit”)</p>	<p>following pre-legislative scrutiny:</p> <p><i>The Secretary of State must take reasonable steps to involve children in the appointment of the Children’s Commissioner.</i></p>
<p>Appointment and dismissal of the Commissioner should be an independent process</p>	<p>Government provides assurances in the document Summary of process for appointing a future Children’s Commissioner, in line with the Office of Public Appointments (OCPA) code of practice. There is an expectation that candidates are appointed on merit, following a fair and open recruitment process. Children will be involved in the recruitment process and a parliamentary committee is expected to be involved in agreeing the job description and carrying out a pre-appointment hearing.</p> <p>Further assurances provided in the debate:</p> <p><i>[The personal qualities needed for the role] will be determined by the panel that is established to lead the appointment process, which is chaired by an independent assessor appointed by OCPA, and subject to quality assurance by Parliament ...</i></p> <p><i>On dismissal, the existing provisions represent a high threshold. A dismissal could potentially be subject to judicial review and overturned if it was found to have been made inappropriately. The courts provide ample protection against the commissioner being dismissed on arbitrary grounds. I would expect the Secretary of State to want to consult the chair of a relevant parliamentary committee before taking such a drastic action. However, there may well be reasons why such matters would need to be treated in confidence.</i></p> <p>HL 18 Nov 2013 : Column GC349</p>
<p>Raising awareness of children’s rights should be part of the Commissioner’s primary function</p>	<p>Government assurance in the debate that raising awareness of children’s rights is implicit in the primary function of “promoting and protecting the rights of children in England”:</p> <p><i>I agree with [Lady Walmsley] that part of the commissioner’s role should be to raise awareness of children’s rights. However, in determining what activities to set out in the Bill, our approach has been to avoid including activities that are already implicit within the commissioner’s primary function, and we believe that raising public awareness of children’s rights is an inherent part of the commissioner’s new primary function of promoting and protecting children’s rights.</i></p>

	<p>HL 18 Nov 2013 : Column GC360</p>
<p>The Commissioner's definition of "the rights of children" should refer to the UN Convention on the Rights of the Child</p>	<p>Section 107 (new section 2A of CA 2004) amended to refer to the UNCRC "in particular":</p> <p><i>(1) The Children's Commissioner must, in particular, have regard to the United Nations Convention on the Rights of the Child in considering for the purposes of the primary function what constitute the rights and interests of children (generally or so far as relating to a particular matter).</i></p>
<p>Initiating and intervening in legal proceedings should be part of the Commissioner's primary function</p>	<p>Government assurance in the debate that initiating and intervening in legal proceedings is implicit in the primary function of "promoting and protecting the rights of children in England":</p> <p><i>During the debates in Committee, I said that initiating or intervening in legal proceedings was, in the Government's view, implicit within the commissioner's primary function. The commissioner has intervened in legal proceedings on a number of occasions under the current legislation, and there is nothing in this Bill that changes that position.</i></p> <p><i>As now, if the Office of the Children's Commissioner wanted to bring legal proceedings, it would fall to the judge in the individual case to determine whether the commissioner had "sufficient interest" in the matter. However, the fact that the Children's Commissioner will have a statutory role to promote and protect children's rights, suggests that the commissioner would have a sufficient interest in any matter before the courts where children's rights were involved.</i></p> <p>HL 29 Jan 2014 : Column 1334</p>
<p>Commissioner should be required to report on the impact of his/her consultation with children</p>	<p>Section 8 of the Children Act 2004 amended (by Section 113 (3) of the Children and Families Act), requiring the Commissioner's annual report to include:</p> <p><i>(d) a summary of how the Commissioner has taken into account the results of any such consultation and anything else resulting from involving children in the discharge of his or her functions.</i></p>
<p>Concern that the Commissioner will be prohibited from providing advice and assistance to children living away from home (other than those covered by the remit of the OCRD)</p>	<p>Government assurance in the debate that the Commissioner will be able to signpost children and, if the issue highlighted an issue of wider importance, to conduct an investigation:</p> <p><i>It is inevitable, as now, that children will contact the commissioner through, for example, the OCC's website.</i></p>

	<p><i>Where they do, we of course expect the commissioner to offer appropriate help.</i></p> <p><i>In many cases, that help would involve signposting the child to information or support. In others, it would involve helping the child to access an existing complaints or advocacy service, while in other cases it may involve the commissioner providing support that is similar to the “advice and assistance” function that the CRD currently provides. Ultimately, if the commissioner felt that the child’s case highlighted a matter of wider strategic importance, he or she could conduct an investigation into that issue.</i></p> <p>HL 29 Jan 2014 : Column 1335</p>
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