



Reform of the Office of Children's Commissioner: draft legislation

Presented to Parliament
by the Secretary of State for Education
by Command of Her Majesty

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Foreword

The Government aims to make the UK the most child-friendly country in Europe. Children are generally more vulnerable than adults and do not have the same opportunities to make their views known or to raise concerns about the impact of new policies or legislation. It is therefore important that the Children's Commissioner has the powers and independence they need to represent children effectively.

Following John Dunford's independent review, this paper sets out how a new role for the Children's Commissioner can be created. It focuses on promoting and protecting the rights of children, in line with the Articles of the UN Convention on the Rights of the Child, to which the Government is a committed signatory. That role would also include the functions of the Children's Rights Director, which is currently part of Ofsted.

The role would entail new powers so that the Children's Commissioner can take an active role in assessing the impact of new policies and legislation on children. Together with strengthened powers of investigation and greater independence from Government, these proposals provide children with a strong advocate to represent their rights and interests. It is intended that the measures in this paper would form part of the package of children and families legislation announced in the Queen's speech.



Sarah Teather MP
Minister of State for Children and Families

Provisions reforming the office of Children's Commissioner

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1 Primary function of the Children's Commissioner

For section 2 of the Children Act 2004 (general function of the Children's Commissioner) substitute –

“2 Primary function: children's rights, views and interests

- (1) The Children's Commissioner's primary function is promoting and protecting the rights of children in England.
- (2) The primary function includes promoting awareness of the views and interests of children in England.
- (3) In the discharge of the primary function the Children's Commissioner may, in particular –
 - (a) encourage persons exercising functions or engaged in activities affecting children to take account of their rights, views and interests;
 - (b) advise the Secretary of State on the rights, views and interests of children;
 - (c) consider the potential effect on the rights of children of government policy proposals and government proposals for legislation;
 - (d) consider the effect on the rights of children of Acts and subordinate legislation (within the meaning of the Interpretation Act 1978) made under Acts;
 - (e) consider or research the availability and effectiveness of complaints procedures so far as relating to children;
 - (f) consider or research the availability and effectiveness of advocacy services for children;
 - (g) consider or research any other matter relating to the rights or interests of children;
 - (h) publish a report on any matter considered or researched under this section.
- (4) In the discharge of the primary function, the Children's Commissioner must have particular regard to the rights of children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers to be at particular risk of having their rights infringed.
- (5) The Children's Commissioner may not conduct an investigation of the case of an individual child in the discharge of the primary function.

2A United Nations Convention on the Rights of the Child

- (1) The Children's Commissioner must 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).

- (2) The reference in subsection (1) to the United Nations Convention on the Rights of the Child is to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989, subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

2B Involving children in the discharge of the primary function

- (1) The Children's Commissioner must take reasonable steps to involve children in the discharge of the primary function.
- (2) The Commissioner must in particular take reasonable steps to—
 - (a) ensure that children are aware of the Commissioner's primary function and how they may communicate with him or her, and
 - (b) consult children, and organisations working with children, on the matters the Commissioner proposes to consider or research in the discharge of the primary function.
- (3) The Children's Commissioner must for the purposes of this section have particular regard to children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers do not have adequate means by which they can make their views known.

2C Primary function: reports

- (1) This section applies where the Children's Commissioner publishes a report in the discharge of the primary function.
- (2) The Commissioner must, if and to the extent he or she considers it appropriate, also publish the report in a version which is suitable for children (or, if the report relates to a particular group of children, for those children).
- (3) Where the report contains recommendations in respect of a person exercising functions under an Act or an instrument made under an Act, 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.
- (4) In subsection (3), "Act" includes—
 - (a) an Act of the Scottish Parliament;
 - (b) an Act, Order in Council or Measure comprised in Northern Ireland legislation;
 - (c) an Act or Measure of the National Assembly for Wales."

2 Provision by Commissioner of advice and assistance to certain children

After section 2C of the Children Act 2004 (as inserted by section 1) insert—

“2D Provision of advice and assistance to certain children in England

- (1) The Children's Commissioner may provide advice and assistance to any child who is within section 8A (children living away from home or receiving social care).
- (2) The Children's Commissioner may in particular under this section make representations on behalf of a child who is within section 8A to a person in England who is—
 - (a) providing the child with accommodation or services, or
 - (b) otherwise exercising functions in relation to the child.”

3 Commissioner's powers to enter premises and conduct interviews

After section 2D of the Children Act 2004 (as inserted by section 2) insert—

“2E Powers to enter premises and conduct interviews

- (1) This section applies for the purposes of the Children's Commissioner's primary function and the function under section 2D.
- (2) The Children's Commissioner, or a person authorised by the Commissioner, may at any reasonable time enter any premises, other than a private dwelling—
 - (a) for the purpose of interviewing a child, or
 - (b) for the purpose of observing the standard of care provided to children accommodated or otherwise cared for there.
- (3) An interview of a child under subsection (2)(a) may be conducted in private, if the child consents.
- (4) A person who enters premises under subsection (2) may interview any person present on the premises who works there.
- (5) It is immaterial for the purposes of subsection (4) whether a person's work is paid, or under a contract of employment.

4 Provision of information to Commissioner

After section 2E of the Children Act 2004 (as inserted by section 3) insert—

“2F Provision of information to Commissioner

- (1) Any person exercising functions under an Act or an instrument made under an Act 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.
- (2) The information must be information which that person would, apart from subsection (1), lawfully be able to disclose to the Commissioner.
- (3) In subsection (1), “Act” includes—
 - (a) an Act of the Scottish Parliament;

- (b) an Act, Order in Council or Measure comprised in Northern Ireland legislation;
- (c) an Act or Measure of the National Assembly for Wales.”

5 **Advisory board**

After section 7 of the Children Act 2004 insert –

“7A **Advisory board**

- (1) The Children's Commissioner must appoint an advisory board to provide the Commissioner with advice and assistance relating to the discharge of his or her functions.
- (2) The advisory board must consist of persons who (taken together) represent a broad range of interests which are relevant to the Children's Commissioner's functions.
- (3) The Children's Commissioner must from time to time publish a report on the procedure followed and the criteria used when making appointments to the advisory board.”

6 **Business plans**

After section 7A of the Children Act 2004 (as inserted by section 5) insert –

“7B **Business plans**

- (1) The Children's Commissioner must publish a business plan which sets out, in relation to the discharge of the Commissioner's functions –
 - (a) the Commissioner's proposed main activities for the period covered by the plan (including the matters he or she intends to consider or research), and
 - (b) the Commissioner's proposed strategic priorities for that period.
- (2) A business plan must cover a period of at least 12 months beginning with the date of publication.
- (3) The Commissioner must publish a new business plan before the end of the period covered by the preceding business plan.
- (4) Before publishing a business plan under this section, the Children's Commissioner must –
 - (a) take reasonable steps to consult children,
 - (b) consult persons who (taken together) represent a broad range of interests which are relevant to the Children's Commissioner's functions, and
 - (c) consult such other persons as the Commissioner thinks appropriate.
- (5) The Children's Commissioner must for the purposes of subsection (4)(a) have particular regard to children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers do not have adequate means by which they can make their views known.”

7 Annual reports

- (1) Section 8 of the Children Act 2004 (annual reports) is amended as follows.
- (2) In subsection (1) –
 - (a) in paragraph (a) omit “under this Part, other than functions of holding inquiries”,
 - (b) after paragraph (a) insert “and”, and
 - (c) omit paragraph (c) and the “and” which precedes it.
- (3) In subsection (2) for the words from “an account” to the end substitute “ –
 - (a) a summary of the Commissioner’s activities and an analysis of the effectiveness of those activities in promoting and protecting the rights of children,
 - (b) an account of what the Commissioner has done in the discharge of his or her functions in relation to children who are within section 8A (children living away from home or receiving social care), and
 - (c) an account of the steps taken by the Commissioner to involve children in the discharge of his or her functions.”
- (4) In subsection (3)(b) for “the Secretary of State” substitute “the Commissioner”.
- (5) In subsection (4) for “the Secretary of State has laid” substitute “laying”.
- (6) For subsection (5) substitute –
 - “(5) If the Children’s Commissioner does not consider a report made under this section to be suitable for children, the Commissioner must publish a version of the report which is suitable for children.”

8 Children living away from home or receiving social care

After section 8 of the Children Act 2004 insert –

“8A Children in England living away from home or receiving social care

- (1) For the purposes of this Part, a child is within this section if he or she is within any of subsections (2) to (5).
- (2) A child is within this subsection if he or she is provided with accommodation by a school or college in England to which section 87(1) of the Children Act 1989 applies.
- (3) A child is within this subsection if he or she is accommodated in an establishment (within the meaning of the Care Standards Act 2000) in respect of which Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is the registration authority under section 5 of that Act.
- (4) A child is within this subsection if functions are being exercised in relation to him or her by an agency (within the meaning of the Care Standards Act 2000) in respect of which Her Majesty’s Chief Inspector of Education, Children’s Services and Skills is the registration authority under section 5 of that Act.

- (5) A child is within this subsection if a local authority in England exercises social services functions (within the meaning of the Local Authority Social Services Act 1970) in relation to him or her.
- (6) For the purposes of this Part, a person who is not a child is to be treated as a child who is within this section if –
 - (a) he or she is aged 18 or over and under 25, and
 - (b) a local authority in England has provided services to him or her under any of sections 23C to 24D of the Children Act 1989 at any time after he or she reached the age of 16.”

9 Children's Commissioner: minor and consequential amendments

Schedule 1, which makes minor and consequential amendments to Part 1 of the Children Act 2004 and other Acts, has effect.

10 Repeal of requirement to appoint Children's Rights Director

- (1) Section 120 of the Education and Inspections Act 2006 (requirement to appoint Children's Rights Director) is repealed.
- (2) In that Act –
 - (a) in section 117 (performance of functions of the Office for Standards in Education, Children's Services and Skills), in subsection (2) after paragraph (a) insert –
 - “(aa) any matters raised by the Children's Commissioner with the Office or the Chief Inspector;”, and
 - (b) in section 119 (performance of the functions of the Chief Inspector of Education, Children's Services and Skills), in subsection (3) after paragraph (a) (and before the “and” which follows it) insert –
 - “(aa) any matters raised by the Children's Commissioner with the Chief Inspector;”.
- (3) In consequence of subsection (1), in the Safeguarding Vulnerable Groups Act 2006, in Part 1 of Schedule 4 (regulated activity related to children), omit subparagraph (1)(r) of paragraph 4.
- (4) Schedule 2, which makes provision for transfers of staff and property in consequence of the repeal of the requirement to appoint a Children's Rights Director, has effect.

11 Commencement

- (1) Sections 1 to 10 come into force on such day as the Secretary of State appoints by order made by statutory instrument.
- (2) An order under subsection (1) may –
 - (a) appoint different days for different purposes, and
 - (b) contain transitional, transitory or saving provision in connection with the coming into force of sections 1 to 10.

12 Extent

- (1) Sections 1 to 10 extend to the whole of the United Kingdom, subject to subsection (2).

- (2) An amendment or repeal made by sections 1 to 10 has the same extent as the provision to which it relates.

SCHEDULES

SCHEDULE 1

Section 9

CHILDREN'S COMMISSIONER: MINOR AND CONSEQUENTIAL AMENDMENTS

Inquiries

- 1 (1) Section 3 of the Children Act 2004 (inquiries initiated by Commissioner) is amended as follows.
 - (2) Omit subsection (3) (requirement to consult the Secretary of State before holding an inquiry).
 - (3) In subsection (7) for "any enactment" substitute "an Act or an instrument made under an Act".
 - (4) After that subsection insert

“(7A) In subsection (7), “Act” includes –

 - (a) an Act of the Scottish Parliament;
 - (b) an Act, Order in Council or Measure comprised in Northern Ireland legislation;
 - (c) an Act or Measure of the National Assembly for Wales.”

- 2 (1) Section 4 of the Children Act 2004 (inquiries held on the direction of the Secretary of State) is repealed.
 - (2) In consequence of sub-paragraph (1), omit the following provisions of the Children Act 2004 –
 - (a) section 5(6) and (7) (inquiries in Wales),
 - (b) section 6(7) to (9) (inquiries in Scotland), and
 - (c) section 7(7) to (9) (inquiries in Northern Ireland).

Functions of Commissioner: children in Wales, Scotland and Northern Ireland

- 3 (1) Section 5 of the Children Act 2004 (functions of Commissioner in Wales) is amended as follows.
 - (2) In subsection (1), for “promoting awareness of the views and interests of children in Wales” substitute “promoting and protecting the rights of children in Wales”.
 - (3) After subsection (1) insert –

“(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Wales.”

- (4) For subsection (2) substitute –
- “(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children's Commissioner's function under subsection (1) as in relation to the Commissioner's primary function.
- (2A) For the purposes of subsection (2), sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “groups of children”.
- (5) After subsection (5) insert –
- “(5A) The Children's Commissioner may authorise the Children's Commissioner for Wales to discharge the function under subsection (1) in respect of a particular matter.
- (5B) But the Children's Commissioner may not authorise the Children's Commissioner for Wales to publish a report, advise the Secretary of State, or otherwise make recommendations on the matter.”
- 4 (1) Section 6 of the Children Act 2004 (functions of Commissioner in Scotland) is amended as follows.
- (2) In subsection (1), for “promoting awareness of the views and interests of children in Scotland in relation to reserved matters” substitute “promoting and protecting the rights of children in Scotland where those rights are or may be affected by reserved matters”.
- (3) After subsection (1) insert –
- “(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Scotland.”
- (4) For subsection (2) substitute –
- “(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children's Commissioner's function under subsection (1) as in relation to the Commissioner's primary function.
- (2A) For the purposes of subsection (2), sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “groups of children”.
- (5) In subsection (5) for “Subsections (2) to (7)” substitute “Subsections (2) to (7A)”.
- (6) After subsection (6) insert –
- “(6A) The Children's Commissioner may authorise the Commissioner for Children and Young People in Scotland to discharge the function under subsection (1) in respect of a particular matter.
- (6B) But the Children's Commissioner may not authorise the Commissioner for Children and Young People in Scotland to publish a report, advise the Secretary of State, or otherwise make recommendations on the matter.”
- 5 (1) Section 7 of the Children Act 2004 (functions of Commissioner in Northern Ireland) is amended as follows.

- (2) In subsection (1), for “promoting awareness of the views and interests of children in Northern Ireland in relation to excepted matters” substitute “promoting and protecting the rights of children in Northern Ireland where those rights are or may be affected by excepted matters”.
- (3) After subsection (1) insert –
- “(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Northern Ireland.”
- (4) For subsection (2) substitute –
- “(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children's Commissioner's function under subsection (1) as in relation to the Commissioner's primary function.
- (2A) For the purposes of subsection (2), sections 2(4) and 2B(3) have effect as if for “children who are within section 8A (children living away from home or receiving social care) and other groups of children” there were substituted “groups of children”.
- (5) In subsection (5) for “Subsections (2) to (7)” substitute “Subsections (2) to (7A)”.
- (6) After subsection (6) insert –
- “(6A) The Children's Commissioner may authorise the Commissioner for Children and Young People for Northern Ireland to discharge the function under subsection (1) in respect of a particular matter.
- (6B) But the Children's Commissioner may not authorise the Commissioner for Children and Young People for Northern Ireland to publish a report, advise the Secretary of State, or otherwise make recommendations on the matter.”

Young persons

- 6 For section 9 of the Children Act 2004 (care leavers and young persons with learning disabilities) substitute –
- “9 Commissioner's functions in relation to certain young people**
- (1) This section applies for the purposes of this Part, other than section 2A and section 8A (and references in this Part to a child who is within section 8A).
- (2) For the purposes of the Children's Commissioner's functions in respect of children in England, a reference to a child includes, in addition to a person under the age of 18, a person aged 18 or over and under 25 –
- (a) in respect of whom an assessment under section 139A of the Learning and Skills Act 2000 (a learning difficulty assessment) has been conducted,
 - (b) to whom a local authority in England has provided services under any of sections 23C to 24D of the Children Act 1989 at any time after reaching the age of 16, or
 - (c) who has been looked after by a local authority (in Wales, Scotland or Northern Ireland) at any time after reaching the age of 16.

- (3) For the purposes of the Children's Commissioner's functions in respect of children in Wales, Scotland and Northern Ireland, a reference to a child includes, in addition to a person under the age of 18, a person aged 18 or over and under 25 –
- (a) who has a learning disability,
 - (b) who has been looked after by a local authority (in Wales, Scotland or Northern Ireland) at any time after reaching the age of 16, or
 - (c) to whom a local authority in England has provided services under any of sections 23C to 24D of the Children Act 1989 at any time after reaching the age of 16.
- (4) For the purposes of this section –
- “learning disability” means a state of arrested or incomplete development of mind which induces significant impairment of intelligence and social functioning;
- a person is “looked after by a local authority” if –
- (a) for the purposes of the Children Act 1989, he or she is looked after by a local authority in Wales;
 - (b) for the purposes of the Children (Scotland) Act 1995, he or she is looked after by a local authority in Scotland;
 - (c) for the purposes of the Children (Northern Ireland) Order 1995, he or she is looked after by an authority in Northern Ireland.”

Appointment and tenure of Children's Commissioner

- 7 In Schedule 1 to the Children Act 2004, in paragraph 3 (appointment and tenure of office) –
- (a) in sub-paragraph (4) for “five years” substitute “six years”, and
 - (b) in sub-paragraph (5) for “is eligible for reappointment once only” substitute “is not eligible for reappointment”.
- 8 In Schedule 1 to the Children Act 2004, after paragraph 3 insert –

“Interim appointments

- 3A (1) Where there is a vacancy in the office of Children's Commissioner, the Secretary of State may appoint a person as interim Children's Commissioner.
- (2) Subject to the provisions of this paragraph, a person holds and vacates office as interim Children's Commissioner in accordance with the terms and conditions of the appointment as determined by the Secretary of State.
- (3) An appointment as interim Children's Commissioner is for a term ending –
- (a) with the appointment of a person as the Children's Commissioner under paragraph 3, or
 - (b) if sooner, at the end of the period of six months beginning with the date on which the appointment as interim Children's Commissioner was made.

- (4) A person who has held office as interim Children's Commissioner –
 - (a) is eligible for reappointment, and
 - (b) is eligible for appointment as the Children's Commissioner.
- (5) An interim Children's Commissioner may at any time resign by notice in writing to the Secretary of State.
- (6) The Secretary of State may remove an interim Children's Commissioner from office if satisfied that the interim Commissioner has –
 - (a) become unfit or unable properly to discharge his or her functions; or
 - (b) behaved in a way that is not compatible with continuing in office.”

Deputy Children's Commissioner

- 9 (1) In Schedule 1 to the Children Act 2004, in paragraph 5 (staff) –
 - (a) in sub-paragraph (1) omit “, one of whom shall be appointed as deputy Children's Commissioner”,
 - (b) omit sub-paragraph (2), and
 - (c) in sub-paragraph (3) omit “Without prejudice to sub-paragraph (2),”.
- (2) In consequence of paragraph 9 –
 - (a) in section 36(6) of the Criminal Justice and Court Services Act 2000 (meaning of “regulated position”), in paragraph (fa) omit “and deputy Children's Commissioner”, and
 - (b) in the Safeguarding Vulnerable Groups Act 2006, in Part 1 of Schedule 4 (regulated activity related to children), in sub-paragraph (1)(i) of paragraph 4 omit “or deputy Children's Commissioner”.

SCHEDULE 2

Section 10

REPEAL OF REQUIREMENT TO APPOINT CHILDREN'S RIGHTS DIRECTOR: TRANSFER SCHEMES

Staff transfer schemes

- 1 (1) The Secretary of State may make a scheme (a “staff transfer scheme”) providing for designated members of staff of the Office for Standards in Education, Children's Services and Skills (“the Office”) to become members of the Children's Commissioner's staff.
- (2) A staff transfer scheme may provide –
 - (a) for the terms and conditions of service of a member of staff of the Office to have effect (subject to any necessary modifications) as the terms and conditions of service as a member of the Children's Commissioner's staff;
 - (b) for the transfer to the Children's Commissioner of the rights, powers, duties and liabilities of the Office under or in connection with the contract of employment of the member of staff;

- (c) for anything done (or having effect as if done) before that transfer by or in relation to the Office in respect of such a contract or the member of staff to be treated as having been done by or in relation to the Children's Commissioner.
- (3) A staff transfer scheme may provide for a period before a person became a member of the Children's Commissioner's staff to count as a period during which he or she was a member of the Commissioner's staff (and for the operation of the scheme not to be treated as having interrupted the continuity of that period).
 - (4) A staff transfer scheme may provide for a person who would be treated (by an Act or otherwise) as being dismissed by the operation of the scheme not to be so treated.
 - (5) A staff transfer scheme may provide for a person who is a member of staff of the Office not to become a member of the Children's Commissioner's staff if the person gives notice objecting to the operation of the scheme in relation to him or her.

Property transfer schemes

- 2 (1) The Secretary of State may make a scheme (a "property transfer scheme") providing for the transfer to the Children's Commissioner of designated property, rights or liabilities of the Office.
- (2) A property transfer scheme may –
 - (a) create rights, or impose liabilities, in relation to property or rights transferred by virtue of the scheme;
 - (b) provide for anything done by or in relation to the Office in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the Children's Commissioner;
 - (c) apportion property, rights and liabilities;
 - (d) make provision about the continuation of legal proceedings.
- (3) The things that may be transferred by a property transfer scheme include –
 - (a) property, rights and liabilities that could not otherwise be transferred;
 - (b) property acquired, and rights and liabilities arising, after the making of the scheme.

The Chief Inspector

- 3 In the following provisions of this Schedule, a reference to the Office includes a reference to the Chief Inspector –
 - (a) paragraph 1(2)(b) (to the extent that the Chief Inspector has rights, powers, duties or liabilities under or in connection with the contract of employment of a member of staff of the Office);
 - (b) paragraph 1(2)(c) (to the extent that anything has been done (or has effect as if done) by or in relation to the Chief Inspector in respect of such a contract or member of staff before a transfer);
 - (c) paragraph 2(1) (to the extent that the Chief Inspector has property, rights or liabilities);

- (d) paragraph 2(2)(b) (to the extent that anything has been done by or in relation to the Chief Inspector in respect of any property, rights or liabilities transferred by a property transfer scheme).

Continuity

- 4 A transfer by virtue of a staff transfer scheme or a property transfer scheme does not affect the validity of anything done by or in relation to the Office or the Chief Inspector before the transfer takes effect.

Supplementary provisions

- 5 A staff transfer scheme or a property transfer scheme may include supplementary, incidental, transitional and consequential provision.

Interpretation

- 6 In this Schedule –
“the Chief Inspector” means Her Majesty’s Chief Inspector of Education, Children’s Services and Skills;
“designated”, in relation to a staff transfer scheme or a property transfer scheme, means specified in, or determined in accordance with, the scheme;
“the Office” has the meaning given in paragraph 1(1).

PROVISIONS REFORMING THE OFFICE OF CHILDREN'S COMMISSIONER

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to changes to be made to the Children Act 2004 ('the 2004 Act'). They have been prepared by the Department for Education in order to assist the reader in understanding the provisions but do not form part of the clauses and are not meant to provide a comprehensive description of the clauses. So, where a clause or part of a clause does not seem to require explanation or comment, none is given.
2. The Department for Education (DfE) is planning for these changes to form part of a larger package of children and families legislation in the near future. These explanatory notes are therefore only concerned with the provisions relating to the reform of the office of Children's Commissioner (OCC).

BACKGROUND

3. These provisions primarily amend Part 1 of the Children Act 2004 - the founding legislation that established the office of Children's Commissioner and provided for the functions of the Children's Commissioner. The proposed changes follow recommendations made in John Dunford's report (*Review of the Office of the Children's Commissioner (England): December 2010*), following his independent review of the office of Children's Commissioner in 2010. The recommendations seek to address what John Dunford considered to be weaknesses in the current legislative framework, which in his view had limited the impact that the Children's Commissioner had been able to have on the majority of children's lives.
4. The key concerns that John Dunford's report identified, which these provisions seek to address, are that:
 - the Children's Commissioner's current remit of promoting awareness of children's views and interests is too limited and that a change to a statutory rights-based role would make the post more compliant with the United Nations Convention on the Rights of the Child (UNCRC) and better serve children's interests;
 - there is a perception that the Children's Commissioner is not sufficiently independent from Government and that this has affected the Commissioner's credibility with children's organisations;

These notes refer to the provisions reforming the Office of Children's Commissioner

- while the Children's Commissioner is required to submit an annual report to Parliament, there has been only limited subsequent Parliamentary scrutiny of the Children's Commissioner's work, or assessment of the impact the OCC has had on improving children's lives;
 - there is the potential for confusion or duplication resulting from the fact that there is both a Children's Commissioner (acting as a champion for all children) and a separate Children's Rights Director (CRD) in Ofsted (with responsibility for a defined group of children, principally those living away from home or receiving social care);
 - that the Children's Commissioner's business planning arrangements are not sufficiently transparent or consultative; and
 - the UK-wide role of the Children's Commissioner in respect of non-devolved¹ matters, means that there are concerns about how effectively the Commissioners in the devolved administrations are able to respond to non-devolved issues that are raised by children in Scotland, Wales and Northern Ireland.
5. A copy of John Dunford's report and the Government's response can be found at: <https://www.education.gov.uk>

6 Following John Dunford's report, the Government consulted on its legislative proposals between July and September 2011. The draft Bill to which these explanatory notes relate, takes account of the responses to that consultation exercise. A copy of the summary of consultation responses and an accompanying Ministerial statement on next steps can be found at: <https://www.education.gov.uk>

OVERVIEW

7. The clauses will amend the functions of the Children's Commissioner as follows:
- The Commissioner's primary function will be to promote and protect the rights of children in England;
 - In exercising that function, the Commissioner will (amongst other things):
 - have particular regard to the rights of children and young people (as defined in section 9 of the 2004 Act, as amended by Schedule 1) who the

¹ References to 'non-devolved' matters refer to policy areas which are: 'non-devolved' in Wales; 'reserved' in Scotland; and 'excepted' in N. Ireland.

These notes refer to the provisions reforming the Office of Children's Commissioner

Commissioner determines are at particular risk of their rights being infringed;

- continue to promote awareness of the views and interests of children and young people;
- continue to take reasonable steps to ensure that children and young people are aware of the Commissioner's function and know how to communicate with him/her; and
- continue to encourage organisations working with children and young people to take account of their rights, views and interests.

8. The provisions relating to the appointment and functions of the CRD in the Office for Standards in Education, Children's Services and Skills ("the Office"), are repealed and new functions will be imposed on the Children's Commissioner to ensure that the current CRD activities are continued under the new arrangements. The provisions provide that the Children's Commissioner, in exercising his or her primary functions, must have particular regard to the rights of children living away from home or receiving social care, and other groups of children who the Commissioner considers to be a particular risk of having their rights infringed.

9. The Commissioner will also have powers to:

- continue to access places where children are cared for or are accommodated away from home, so that their concerns can be heard and so that standards of care can be observed;
- carry out assessments of the impact of new policies and legislation on children's rights.

10. Other provisions are intended to make the Commissioner's business planning processes more transparent and remove provisions under the existing legislation which allow the Secretary of State to direct the Commissioner to carry out certain activities.

TERRITORIAL APPLICATION

11. These provisions extend to the whole of the United Kingdom (save that an amendment or repeal has the same extent as the provision to which it relates).

COMMENTARY ON CLAUSES

Clause 1]: Primary function of the Children's Commissioner

12. Clause 1 replaces section 2 of the 2004 Act with new sections 2 to 2C, and changes the primary function of the Commissioner from one of 'promoting awareness of the views and interests of children in England' to one of 'promoting and protecting the rights of children in England'.

13. The role of promoting children's rights will entail raising awareness of children's rights and how they should be applied. In practice, this should include raising awareness of the UNCRC among children and proactively encouraging other organisations to develop policies and practices that comply with the UNCRC.

14. The role of protecting children's rights will mean that the Commissioner will be able to challenge any policy or practice which may lead, or has led, to an infringement or abuse of children's rights. It does not mean that the Commissioner will have the power to change that policy or practice or require others to do so. Where there is a lack of compliance, the Children's Commissioner may seek other ways of effecting change, for example through presenting evidence of any negative impact of policies and practices on children's rights to those who are responsible and have the authority to bring about change.

15. Although promoting awareness of children's views and interests will no longer be the Commissioner's primary function, it will nevertheless remain important that children's views inform any comments or recommendations that the Children's Commissioner makes. New section 2(2) (as inserted by clause 1) therefore retains the function of promoting awareness of the views and interests of children, and makes it an aspect of the primary function of promoting and protecting children's rights. There are numerous ways in which the Commissioner could fulfil this function. He or she could, for example, seek the views of children as part of any investigation and reflect those views in any subsequent report. The Commissioner might also seek children's views on a range of issues affecting their lives – for example through an annual census of children in care - in order to be able to report how those children's views on the care they receive are changing over time.

16. New section 2(3) sets out a number of additional activities that the Commissioner may undertake in the exercise of the primary function:

- paragraph (a) carries forward a similar provision from section 2 of the 2004 Act, but extends it to cover 'rights' (as well as views and interests) to reflect the change to the Commissioner's primary function. This aspect of the Commissioner's role could include providing both general advice on how best to involve children in the decision-making processes of organisations; and specific advice arising from points children have made in the course of a particular investigation that the Commissioner has undertaken. Not only could the Commissioner represent the rights, views and interests of children under this paragraph, he or she could also encourage others to be proactive in gathering children's views themselves;
- paragraph (b) carries forward a similar provision from Part 1 of the Children Act 2004, but extends it to cover 'rights' (as well as views and interests) to reflect the change to the Commissioner's primary function. It is intended that the Commissioner will give advice on his or her own initiative, but may also choose to respond to requests for advice from any Secretary of State. How the

Commissioner chooses to respond will be entirely a matter for his or her judgment;

- paragraphs (c) and (d) make clear that in the discharge of the primary function, the Children's Commissioner can: carry out assessments of the potential impact that proposed new policies or legislation made by the UK Government would have on children's rights; or assess the effect that policies and legislation made by the UK Government have had on children's rights, following their implementation. It will be for the Commissioner to determine how many impact assessments he or she carries out and on which issues. It would also be for the Commissioner to choose the most appropriate timing to conduct an impact assessment. For example, it could be carried out at any point in the policy development or pre-legislative process, during the passage of legislation or following implementation. However, the expectation is that the Commissioner would plan to conduct an impact assessment at a time when it was likely to have the greatest influence on subsequent policy or practice. As well as carrying out formal impact assessments, the Commissioner might also wish to respond to calls for evidence to inform pre-legislative scrutiny of draft Bills, or to respond to public consultations on new policy proposals;
- paragraphs (e) and (f) extend provisions in Part 1 of the 2004 Act. In particular, paragraph (e) provides that the Commissioner may consider or research the availability and effectiveness (rather than 'operation') of complaints services for children. Paragraph (f) contains a new, but linked provision that allows the Commissioner to also consider or research the availability and effectiveness of advocacy services for children. In carrying out these activities, the Commissioner will want to be satisfied that there is adequate provision in place, that services are easily accessible and effectively respond to the issues raised by children and young people. The Commissioner will be able to look at any services, procedures or arrangements relevant to children, both public and private. It is envisaged that in doing this, the Commissioner will work with the relevant Ombudsmen and statutory bodies as appropriate;
- paragraph (g) broadly replicates a provision from Part 1 of the 2004 Act, which clarifies that the Commissioner has wide discretion over other matters that he or she chooses to consider or research, but provides for this to cover the rights (as well as the interests of) children – to reflect the change to the Commissioner's primary function;
- paragraph (h) confirms that the Commissioner is able to publish a report on any matter that he or she considers or researches under the Commissioner's primary function. It will be for the Commissioner to determine whether to publish a report. It is expected that the Commissioner will want to publish a report where he or she has significant findings to report, or wishes to set out recommendations for change - and to seek a response to those

recommendations from the person to whom they are made (as provided for in new section 2C). But there may be occasions where the Commissioner has, for example, carried out a small piece of research that, in the Commissioner's view does not warrant the publication of a formal report.

17. Subsection (4) requires the Commissioner – when exercising the primary function - to focus in particular on promoting and protecting the rights of: the children defined in new section 8A; and children who the Commissioner determines are at particular risk of their rights being infringed. The definition of children at section 8A (as inserted by clause 8) covers children and young people aged 18-24 who currently fall within the remit of the CRD. This includes children receiving social care services or who live away from home for significant periods of time, such as children in residential special schools, residential FE colleges and boarding schools.

18. Requiring the Commissioner to have particular regard to children defined in section 8A should ensure that children and young people in respect of whom the CRD currently carries out activities will be given particular attention by the Commissioner in the context of his or her primary function.

19. Aside from children defined in section 8A, there are other groups of children who are at particular risk of having their rights infringed – for example children in custody. Subsection (4) therefore also requires the Commissioner to give particular attention to groups of children who are at greater risk of their rights being infringed. The provision does not seek to define which groups of children are at particular risk, instead leaving it to the Commissioner to determine which groups to focus on at any given point in time. This approach seeks to protect the Commissioner's independence, by not seeking to define those who are at risk in a way that could restrict the activities that he or she undertakes.

20. Subsection (5) provides that the Commissioner will continue to be prohibited from conducting investigations into the case of an individual child. The intention is that this will allow the Commissioner to concentrate on strategic issues that affect a larger number of children, rather than provide an ombudsman service for individual children on issues that are only relevant to that child - where any support that is needed should be provided through their local advocates or services. The Commissioner will, however, be able to provide advice and assistance (as set out in section 2D) to children defined in section 8A.

United Nations Convention on the Rights of the Child (UNCRC)

21. New section 2A (1) (as inserted by clause 1) provides that the Commissioner should have regard to the United Nations Convention on the Rights of the Child (UNCRC) when considering what constitutes children's rights. As a consequence, it is therefore no longer relevant to retain section 2(3) of the Children Act 2004, which will be repealed. Where domestic law or statutory guidance afford children greater protection than the UNCRC, the Commissioner should take account of them, as required. New section 2A (2) defines the UNCRC and provides that any reservations,

objections or interpretations that have been adopted by the UK Government in relation to the UNCRC, will apply.

Involving children in the discharge of the primary function

22. New section 2B (as inserted by clause 1) broadly replicates sections 2(4) to (6) of the 2004 Act and seeks to ensure that the Commissioner: takes reasonable steps to involve children in his or her work; and provides children with information about the Commissioner's role and how they can raise issues with him or her. Subsection (2)(b) makes provision for children to be consulted on the activities that the Commissioner intends to undertake in the discharge of the primary function. Subsection (3) is a new provision that requires the Commissioner (when involving children in the discharge of their primary function) to have particular regard to: children defined in new section 8A; and children who do not have other adequate means to make their views known. It will be for the Commissioner to determine which children fall into the latter category.

23. It will be for the Commissioner to decide how best to make children aware of his or her role and activities, and to put in place arrangements that allow children to contact the Commissioner and comment on his or her proposed work programme. At present, this is achieved through the Children's Commissioner's website (which can, for example, be used to facilitate on-line consultations) and the Commissioner's children and young people board, which meets regularly with the Commissioner. The Commissioner (and staff) also have extensive direct contact with children and young people in the course of the Commissioner's investigations and inquiries – which typically involve discussions with children who, given the nature of those investigations/inquiries, do not have other adequate means of making their views known. The Commissioner may also use other children's rights organisations as a conduit for seeking the views of children, to avoid duplication and to make the best use of available resources.

Reports

24. New section 2C (as inserted by clause 1) relates to reports that the Commissioner publishes following any investigations or research that he or she has undertaken in carrying out the primary function. It broadly replicates section 2(10) of the 2004 Act. Subsection (2) requires the Commissioner to publish a report in a child-friendly format where the Commissioner considers it appropriate to do so. Subsection (3) gives the Commissioner the power to follow up recommendations made in any of the reports he or she produces. Persons with statutory functions who are subject to recommendations must inform the Commissioner, in writing, within a time period specified by the Commissioner, what action they are taking or proposing to take in response to the recommendations. A person is not obliged to accept any recommendations that the Commissioner makes, but if they do not intend to implement a recommendation, they should set out in writing the reasons for not doing so. Subsection (4) makes clear that the requirement to respond to recommendations made by the Commissioner applies to any person exercising statutory functions.

Clause 2: Provision by Commissioner of advice and assistance to certain children in England

25. Notwithstanding the provision at section 2(5) (as inserted by clause 1), which prevents the Commissioner from investigating the case of an individual child, new section 2D (as inserted by clause 2) provides for a new power that will enable the Commissioner to provide advice and assistance to children and young people defined in section 8A. This will enable the role which the CRD currently carries out in relation to such children to be carried forward under the new arrangements.

26. In practice, it is not envisaged that this will involve providing a full casework function that might, for example, involve carrying out a detailed investigation or supporting an individual child to take a case to court. Rather, it is envisaged that children who request advice and assistance will either be signposted to an existing complaints process, or helped to resolve an issue through the Commissioner or a member of his or her staff making representations on their behalf, for example through contacting an official working in another organisation that provides services to children, to explore ways in which a situation might be resolved.

Clause 3: Commissioner's power to enter premises and conduct interviews

27. Clause 3 inserts a new section 2E into the 2004 Act. This broadly replicates the Commissioner's existing powers to enter premises where children are accommodated or cared for, in order to interview children, and applies it to the section 2D function. However, the power has been extended to reflect existing practice. At present, under section 2(8) of the 2004 Act the Commissioner may enter certain premises (but not private dwellings) for the purposes of interviewing children (including in private, if the child consents). In practice, when the Commissioner visits such establishments (such as youth offending institutions, asylum detention centres and children's homes) as well as interviewing children, the Commissioner may also interview staff or observe the facilities in the establishment. The new provisions remove any doubt about what the Commissioner is able to do when he or she visits an establishment, by stipulating that they may observe the facilities and standards of care therein and interview persons working at the establishment.

Clause 4: Provision of Information to the Commissioner

28. Clause 4 inserts a new section 2F into the 2004 Act, which broadly replicates the existing section 2(9). It places a duty upon bodies with statutory functions to provide the Commissioner with information that he or she requests as long as: the request is reasonable; and it is information that the body is able to disclose lawfully to the Commissioner. The effect of section 2F is, for example, that where a person exercising statutory functions has discretion to disclose confidential information under other legislation, it must do so, so long as the request is reasonable.

Clause 5: Advisory Board

29. New section 7A (as inserted by clause 5) imposes a new requirement on the Children's Commissioner to appoint an advisory board, the purpose of which is to provide support and challenge to the Commissioner. It will be for the Children's

Commissioner to decide who to appoint to the board, but subsection (2) requires the board's membership, when taken together, to represent a broad range of interests that are relevant to the functions of the Children's Commissioner. The role of the board will be advisory only and ultimately it will be the responsibility of the Children's Commissioner (rather than the advisory board) to determine his or her priorities. The aim of the advisory board is to make the Commissioner's business planning processes more transparent and to ensure that his or her activities add value, rather than duplicate, the work of other children's rights organisations. It will be for the Children's Commissioner to determine whether to appoint a separate chairperson from among the members of the advisory board, or to chair the advisory board him or herself.

30. Subsection (3) requires the Commissioner to publish details of the process through which appointments to the advisory board will be made and the criteria used to select members. The intention is not that the Commissioner should be required to provide a justification for why specific individuals have been selected. Rather the aim is to provide transparency on the overall process, so that children's organisations can be satisfied that appointments to the board are made on the basis of objective criteria and that people who are interested in becoming members of the advisory board have adequate opportunities to make their interest known. This might, for example, mean that opportunities are provided for people to express an interest in being appointed to the advisory board, before decisions are made on its membership.

Clause 6: Business Plans

31. New section 7B (as inserted by clause 6) imposes requirements on the Children's Commissioner to consult on, and then publish, a business plan. Subsection (1) sets out what should be included in the business plan. Subsections (2) and (3) set out the time period that the business plan should cover and when it should be published. Subsection (4) requires the Commissioner to consult children and children's organisations on the content of the business plan before it is published. Subsection (5) stipulates that when consulting children, the Commissioner should, in particular, take steps to consult children falling within section 8A and other children who do not have adequate means to make their views known.

32. It will be for the Commissioner to determine how best to meet the requirements in subsections (4) and (5). The Government would expect the Commissioner to send a draft business plan to the key children's rights organisations and other representative bodies that have an interest in the functions carried out by the Commissioner. The Government would also expect the Commissioner to send a copy of the draft business plan to the chairs of the appropriate select committees of both Houses of Parliament in order to encourage greater engagement by Parliament in the Commissioner's work. There is no statutory requirement on the Commissioner to consult the Government on its business plan, although there would be nothing to prevent the Commissioner from doing so. It will be for the Commissioner to determine how he or she responds to any views that are received on the draft business plan.

33. With regard to consulting children, there are a number of ways in which this requirement could be met. The Children's Commissioner's website provides opportunities for children to be made aware of the Commissioner's future priorities and to comment on them. The Commissioner's children and young people board could also provide a sounding board to help to ensure that the Commissioner's priorities properly reflect the key concerns that children have about the impact of policies and practices on their rights. Non-Governmental organisations, in particular those that focus on supporting children who have limited opportunities to make their views known, could also facilitate opportunities for children to comment on the business plan.

Clause 7: Annual Reports

34. Clause 7 amends section 8 of the 2004 Act, which is concerned with the Commissioner's annual report. The Government wants the key audience for the Commissioner's annual report to be Parliament and for the report to be the mechanism through which Parliament has the opportunity to scrutinise the Commissioner's activities and impact. The annual report is not intended to provide a vehicle through which the Commissioner makes recommendations for change, which should be contained in the separate reports that the Commissioner publishes following his or her investigations or inquiries – which are directed towards those who have the authority to make changes to relevant policies and practices.

35. Accordingly, section 8 will continue to require the Commissioner to report annually on the main activities that he or she has undertaken and what impact these activities have had on the promotion and protection of children's rights. *Subsections (2) (b) and (c)* require the Commissioner to include in the annual report information on: the actions that he or she has taken to support children falling within section 8A; and an account of how the Commissioner has involved children in the discharge of their functions.

36. The requirement for the annual report to include the action the Commissioner has taken to support children falling within section 8A will help to ensure that the Commissioner continues to give sufficient priority to children and young people who currently fall within the CRD's remit. This is in response to the concern in John Dunford's report that the current level of support provided to this group of children should not be diluted under any new arrangements..

37. Subsection (2)(a) amends section 8(1) of the 2004 Act to provide that the annual report must address how the Commissioner has discharged all his functions, including the function of holding inquiries (under section 3 of the 2004 Act), which does not currently have to be included in the report.. Subsections (4) and (5) provide for the Commissioner to lay the annual report before both Houses of Parliament, rather than through the Secretary of State, as is presently the case. The Commissioner will be responsible for publishing, publicising and disseminating the report, as appropriate. Subsection (6) requires the Commissioner to ensure that a child-friendly version of the annual report is available.

Clause 8: Children living away from home or receiving social care

38. New section 8A (as inserted by clause 8) defines for the purposes of the Commissioner's functions, the children and young people whom the Commissioner:

- should have particular regard to, when discharging the Commissioner's primary function (as set out in section 2(4));
- should have particular regard to, when taking steps to involve children in the discharge of the Commissioner's primary function (as set out in section 2B);
- can provide advice and assistance to (as set out in section 2D); and
- should have particular regard to, when consulting on the Commissioner's business plan (as set out in section 7B (5));

39. The annual report must set out how the Commissioner has had particular regard to this group, in exercising his functions.

40. The definition includes all those children and young people who currently fall under the remit of the CRD. In broad terms, this includes:

- children who are looked after by a local authority;
- those who are receiving care leaving support under the Children act 1989; and
- children accommodated in boarding schools, residential special schools and residential FE colleges;

Clause 9 and Schedule 1: Minor and consequential amendments

41. Schedule 1 makes minor and consequential amendments to Part 1 and Schedule 1 to the 2004 Act and consequential amendments to the Criminal Justice and Courts Services Act 2000 and the Safeguarding Vulnerable Groups Act 2006.

Clause 10: Repeal of requirement to appoint a Children's Rights Director

42. Subsection (1) repeals the provision in the Education and Inspections Act 2006, which required the Chief Inspector to appoint a Children's Rights Director.

43. Subsection (2) amends provisions in that Act to take account of this change and, in particular, to place requirements on the Office and the Chief Inspector to have regard to any matters raised by the Children's Commissioner. In general, the purpose of these provisions is to ensure that the views and interests of children within the CRD's remit continue to inform the work of the Chief Inspector and the Office, but they will also extend more generally to cover any matters raised by the Children's Commissioner.

44. For example, the Commissioner may raise issues concerning the rights of children in care or who live away from home, that have come to light in the exercise of the Commissioner's function of providing advice and assistance to children defined in section 8A. It is also possible that the Commissioner may want to raise matters with the Office or the Chief Inspector that come to light as a result of the Commissioner's wider functions. For example, the Commissioner may wish to raise findings from an investigation on school exclusions with Ofsted or the Chief Inspector.

45. Subsection (3) makes a consequential amendment to the Safeguarding Vulnerable Groups Act 2006. Subsection (4) provides for Schedule 2, which will allow the Secretary of State to make provision for relevant staff and property to be transferred from the Office to the Children's Commissioner.

Clause 11: Commencement

46. Clause 11 provides for clauses 1 to 10 to be brought into force by order and for the Secretary of State to make transitional provisions.

Clause 11: Territorial Extent and Application

47. Clause 11 provides that the provisions extend to the whole of the United Kingdom, subject to subsection (2) which provides that an amendment or repeal has the same extent as the provision to which it relates.

SCHEDULES

Schedule 1: Children's Commissioner Minor and consequential amendments

48. The Schedule makes minor and consequential amendments to Part 1 of the 2004 Act.

Inquiries

49. Paragraph 1 (2) removes the requirement on the Commissioner to consult the Secretary of State before holding an inquiry under section 3 of the 2004 Act; and paragraph 2 (1) removes the Secretary of State's power to direct the Commissioner to conduct an inquiry. Paragraph 2 (2) makes consequential amendments to provisions in the 2004 Act that prohibit the Secretary of State from directing the Commissioner to undertake an inquiry into the case of an individual child in Wales, Scotland or Northern Ireland. The purpose of these changes is to address concerns raised by John Dunford and others which called into question the Commissioner's independence from Government which had potentially damaged the Commissioner's credibility.

Functions of Commissioner in respect of Wales, Scotland and Northern Ireland

50. Paragraphs 3, 4 and 5 amend Section 5, 6 and 7 of the 2004 Act to apply the changes to the Commissioner's functions, to his or her functions in respect of non-devolved matters in Northern Ireland, Scotland and Wales and make new provision as explained in the paragraph below.

51. Paragraphs 3(5), 4(6) and 5(6) include provisions that will allow the Children's Commissioner for England to delegate the exercise of functions to the Commissioner for Children and Young People for Northern Ireland, the Commissioner for Children and Young People in Scotland and the Children's Commissioner for Wales. The purpose of these provisions is to make it easier for the Children's Commissioners in the devolved administrations to consider any issue raised by a child who is resident in their jurisdiction, regardless of whether it is in relation to a non-devolved or a devolved matter. This will help to avoid a situation where children who live in Northern Ireland, Scotland or Wales may have to be referred to the Children's Commissioner where the issue they have raised relates to a non-devolved matter.

52. The effect of Sections 5 to 7, as amended, will be to make it easier for the Commissioners in the devolved administrations to seek to use the powers of the Children's Commissioner to investigate non-devolved matters. The Children's Commissioner will continue to be responsible for non-devolved matters and for publishing reports and making recommendations, for example, to the Secretary of State on a non-devolved matter.

Young persons

53 Paragraph 6 substitutes a new section 9 in the 2004 Act. This provision applies for the purposes of Part 1 other than sections 2A and 8A (and references to a child who falls within section 8A). Its purpose is to enable the Commissioner to exercise his

functions in relation to young persons over 18 and under 25 who are (or have been at any time after reaching 16) in receipt of care leaving support services under the Children Act 1989 (or who have been looked after by a local authority in Wales, Scotland or Northern Ireland after reaching the age of 16) or in respect of whom a section 139A learning difficulty assessment under the Learning and Skills Act 2000 has been conducted. Subsection (2) makes provision in relation to the Commissioner's functions in respect of children and young persons in Wales, Scotland and Northern Ireland. In this case a child includes a young person over 18 and under 25 who has a learning disability (as defined) or has been looked after by a local authority in Wales, Scotland or Northern Ireland or has received care leaving support in England. As paragraph 2 indicates, it is intended that the measures in this paper would form part of the package of children and families legislation announced in the Queen's Speech, and it will be necessary to amend these provisions to reflect the reform of provisions relating to special educational needs and learning difficulty and disability.

Appointment and tenure of the Children's Commissioner

54. Paragraph 7(a) and (b) make changes to address a concern raised in John Dunford's report, namely that the ability for a Commissioner to be appointed for a second term might compromise his or her independence. In future, therefore, the Children's Commissioner will be appointed for a single, six-year term. There will no longer be an option to renew the Commissioner's appointment at the end of his or her first term of office.

Interim Appointments

55. Paragraph 8 inserts a new paragraph 3A into Schedule 1 to the 2004 Act, which makes provision for appointing an interim Children's Commissioner and sets out the process that should be followed. This provision is introduced as a consequence of removing the requirement on the Commissioner to appoint a Deputy Children's Commissioner (see paragraph 60 below) and will apply where the current Children's Commissioner resigns, is dismissed (in line with the provisions set out in paragraph 3 (7) of Schedule 1 of the 2004 Act), or is otherwise unable to continue in post.

56. Where such a situation arises, a recruitment exercise to appoint a new substantive Children's Commissioner should begin at the earliest opportunity. However, it is possible that recruiting a new substantive Children's Commissioner could take some time and paragraph 8 therefore provides for the Secretary of State to appoint an interim Children's Commissioner to provide continuity and stability in the intervening period. Subparagraph (2) provides that the terms and conditions of any interim appointment will be determined by the Secretary of State.

57. Subparagraph (3) provides that the interim appointment should cease either:

- at the point that a new substantive Commissioner is appointed; or, if sooner
- 6 months after the date that the interim appointment is made.

These notes refer to the provisions reforming the Office of Children's Commissioner

58. If, for any reason, the recruitment of a new substantive Commissioner cannot be completed within 6 months, subparagraph (4) enables the Secretary of State to renew the interim appointment for up to a further 6 months. Subparagraph (4) also provides that a person who has been appointed as the interim Children's Commissioner can subsequently be appointed as the new substantive Commissioner (following the process required under paragraph 3 of Schedule 1).

59. Sub-paragraphs (5) and (6) make provision in relation to resignation and removal from office of the interim Children's Commissioner which is equivalent to the provision for the Children's Commissioner

Deputy Children's Commissioner

60. Paragraph 9 amends paragraph 5 of Schedule 1 to the 2004 Act, so as to remove the requirement on the Commissioner to appoint a deputy. It will be for the Commissioner to determine his or her office's staffing structure. Paragraph 9 (2) makes consequential amendments.

Schedule 2: repeal of requirement to appoint a Children's Rights Director: Transfer schemes

61. Paragraph 1 contains a power for the Secretary of State to make a scheme in relation to designated members of staff who are members of staff of the Office for Standards, Educations, Children's Services and Skills ('the Office') to become members of staff of the Children's Commissioner. The Schedule provides that the scheme may contain provisions as to continuity of employment.

62. Paragraph 2 contains a power for the Secretary of State to make a property transfer scheme, transferring to the Children's Commissioner any property, rights and liabilities of the Office.

63. Paragraph 3 provides that for the purposes of the transfer schemes, references to 'the Office' include, so far as relevant the Chief Inspector. Paragraph 5 allows a scheme to contain supplementary, incidental, transitional or consequential provision. Paragraph 6 defines certain terms used in the schedule.

ADDITIONAL INFORMATION

Compatibility with the European Convention on Human Rights

64. Human rights considerations may arise in relation to Clause 3: Commissioner's powers to enter premises and conduct interviews, which inserts a new section 2E into the 2004 Act. This re-enacts the current power of entry contained in section 2(8) of the Children Act 2004 Act with some modifications, and potentially engages Article 8 of the ECHR (right to respect for private and family life, home and correspondence) and Article 1 of the First Protocol to the ECHR (right to peaceful enjoyment of possessions).

65. We have also considered the United Kingdom's obligations under the UN Convention on the Rights of the Child ("UNCRC"), which was ratified by the UK Government in 1991 and came into force in 1992. The UNCRC is not directly enforceable in UK law but the Government takes into account the rights and obligations contained within the UNCRC when considering new legislation and policies.

66. The power of entry will support the Commissioner's new primary function of protecting and promoting the rights of children both in England and, in relation to non-devolved matters within the devolved administrations. It will also apply for the purposes of the Commissioner's functions under clause 2 (Provision of advice and assistance to certain children in England) which inserts a new section 2D into the 2004 Act. The following safeguards are explicitly provided for in section 2E(2) namely that that the power of entry can only be exercised by the Commissioner or a person authorised by the Commissioner; can only be exercised at a reasonable time; and may not be exercised in relation to private dwellings. The Commissioner will also be required to exercise the power compatibly with Convention rights by virtue of the application of section 6 of the Human Rights Act.

67. We consider that the purposes for which the power of entry is to be exercised (namely, to protect children's rights) and the safeguards which are in place are sufficient to meet the requirement that the power be necessary and proportionate to the need to protect the rights of children.

Financial Affects

68. The proposed changes to the 2004 Act do not result in financial burdens on the private sector or civil society. Nor do they result in additional costs to the public sector or place new information gathering burdens on public bodies. There are no funding or tax implications. HM Treasury has been consulted through the HA clearance procedures.

Impact Assessment

69. An initial assessment was made of the likely impact of the measure against the thresholds set out by the Better Regulation Executive in BIS. In light of this, the Department's Better Regulation Unit has confirmed that a full economic impact assessment is not needed. An equality impact assessment has been completed.

Children Act 2004 c. 31

Part 1 CHILDREN'S COMMISSIONER

[Showing changes made to the Children Act 2004 by the proposed provisions to reform the office of Children's Commissioner. Deletions are struck through, additions are shown in italics.]

1 Establishment

- (1) There is to be an office of Children's Commissioner.
- (2) Schedule 1 has effect with respect to the Children's Commissioner.

~~2~~ General function

- ~~(1) The Children's Commissioner has the function of promoting awareness of the views and interests of children in England.~~
- ~~(2) The Children's Commissioner may in particular under this section—~~
 - ~~(a) encourage persons exercising functions or engaged in activities affecting children to take account of their views and interests;~~
 - ~~(b) advise the Secretary of State on the views and interests of children;~~
 - ~~(c) consider or research the operation of complaints procedures so far as relating to children;~~
 - ~~(d) consider or research any other matter relating to the interests of children;~~
 - ~~(e) publish a report on any matter considered or researched by him under this section.~~
- ~~(3) The Children's Commissioner is to be concerned in particular under this section with the views and interests of children so far as relating to the following aspects of their well-being—~~
 - ~~(a) physical and mental health and emotional well-being;~~
 - ~~(b) protection from harm and neglect;~~
 - ~~(c) education, training and recreation;~~
 - ~~(d) the contribution made by them to society;~~

~~(e) social and economic well-being.~~

~~(4) The Children's Commissioner must take reasonable steps to involve children in the discharge of his function under this section, and in particular to—~~

~~(a) ensure that children are made aware of his function and how they may communicate with him; and~~

~~(b) consult children, and organisations working with children, on the matters he proposes to consider or research under subsection (2)(c) or (d).~~

~~(5) Where the Children's Commissioner publishes a report under this section he must, if and to the extent that he considers it appropriate, also publish the report in a version which is suitable for children (or, if the report relates to a particular group of children, for those children).~~

~~(6) The Children's Commissioner must for the purposes of subsection (4) have particular regard to groups of children who do not have other adequate means by which they can make their views known.~~

~~(7) The Children's Commissioner is not under this section to conduct an investigation of the case of an individual child.~~

~~(8) The Children's Commissioner or a person authorised by him may for the purposes of his function under this section at any reasonable time—~~

~~(a) enter any premises, other than a private dwelling, for the purposes of interviewing any child accommodated or cared for there; and~~

~~(b) if the child consents, interview the child in private.~~

~~(9) Any person exercising functions under any enactment must supply the Children's Commissioner with such information in that person's possession relating to those functions as the Children's Commissioner may reasonably request for the purposes of his function under this section (provided that the information is information which that person may, apart from this subsection, lawfully disclose to him).~~

~~(10) Where the Children's Commissioner has published a report under this section containing recommendations in respect of any person exercising functions under any enactment, he may require that person to state in writing, within such period as the Children's Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.~~

~~(11) In considering for the purpose of his function under this section what constitutes the interests of children (generally or so far as relating to a particular matter) the Children's Commissioner must have regard to the United Nations Convention on the Rights of the Child.~~

~~(12) In subsection (11) the reference to the United Nations Convention on the Rights of the Child is to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989, subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.~~

2 Primary function: children's rights, views and interests

(1) The Children's Commissioner's primary function is promoting and protecting the rights of children in England.

(2) The primary function includes promoting awareness of the views and interests of children in England.

(3) In the discharge of the primary function the Children's Commissioner may, in particular—

(a) encourage persons exercising functions or engaged in activities affecting children to take account of their rights, views and interests;

(b) advise the Secretary of State on the rights, views and interests of children;

(c) consider the potential effect on the rights of children of government policy proposals and government proposals for legislation;

(d) consider the effect on the rights of children of Acts and subordinate legislation (within the meaning of the Interpretation Act 1978) made under Acts;

(e) consider or research the availability and effectiveness of complaints procedures so far as relating to children;

(f) consider or research the availability and effectiveness of advocacy services for children;

(g) consider or research any other matter relating to the rights or interests of children;

(h) publish a report on any matter considered or researched under this section.

(4) In the discharge of the primary function, the Children's Commissioner must have particular regard to the rights of children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers to be at particular risk of having their rights infringed.

(5) The Children's Commissioner may not conduct an investigation of the case of an individual child in the discharge of the primary function.

2A United Nations Convention on the Rights of the Child

(1) The Children's Commissioner must 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).

(2) The reference in subsection (1) to the United Nations Convention on the Rights of the Child is to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989, subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

2B Involving children in the discharge of the primary function

(1) The Children's Commissioner must take reasonable steps to involve children in the discharge of the primary function.

(2) The Commissioner must in particular take reasonable steps to—

(a) ensure that children are aware of the Commissioner's primary function and how they may communicate with him or her, and

(b) consult children, and organisations working with children, on the matters the Commissioner proposes to consider or research in the discharge of the primary function.

(3) The Children's Commissioner must for the purposes of this section have particular regard to children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers do not have adequate means by which they can make their views known.

2C Primary function: reports

(1) This section applies where the Children’s Commissioner publishes a report in the discharge of the primary function.

(2) The Commissioner must, if and to the extent he or she considers it appropriate, also publish the report in a version which is suitable for children (or, if the report relates to a particular group of children, for those children).

(3) Where the report contains recommendations in respect of a person exercising functions under an Act or an instrument made under an Act, 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.

(4) In subsection (3), “Act” includes—

(a) an Act of the Scottish Parliament;

(b) an Act, Order in Council or Measure comprised in Northern Ireland legislation;

(c) an Act or Measure of the National Assembly for Wales.

2D Provision of advice and assistance to certain children in England

(1) The Children’s Commissioner may provide advice and assistance to any child who is within section 8A (children living away from home or receiving social care).

(2) The Children’s Commissioner may in particular under this section make representations on behalf of a child who is within section 8A to a person in England who is—

(a) providing the child with accommodation or services, or

(b) otherwise exercising functions in relation to the child.

2E Powers to enter premises and conduct interviews

(1) This section applies for the purposes of the Children’s Commissioner’s primary function and the function under section 2D.

(2) The Children’s Commissioner, or a person authorised by the Commissioner, may at any reasonable time enter any premises, other than a private dwelling—

(a) for the purpose of interviewing a child, or

(b) for the purpose of observing the standard of care provided to children accommodated or otherwise cared for there.

(3) An interview of a child under subsection (2)(a) may be conducted in private, if the child consents.

(4) A person who enters premises under subsection (2) may interview any person present on the premises who works there.

(5) It is immaterial for the purposes of subsection (4) whether a person’s work is paid, or under a contract of employment.

2F Provision of information to Commissioner

(1) Any person exercising functions under an Act or an instrument made under an Act 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.

(2) The information must be information which that person would, apart from subsection (1), lawfully be able to disclose to the Commissioner.

(3) In subsection (1), “Act” includes—

(a) an Act of the Scottish Parliament;

(b) an Act, Order in Council or Measure comprised in Northern Ireland legislation;

(c) an Act or Measure of the National Assembly for Wales.

3 Inquiries initiated by Commissioner

(1) Where the Children's Commissioner considers that the case of an individual child in England raises issues of public policy of relevance to other children, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.

(2) The Children's Commissioner may only conduct an inquiry under this section if he is satisfied that the inquiry would not duplicate work that is the function of another person (having consulted such persons as he considers appropriate).

~~(3) Before holding an inquiry under this section the Children's Commissioner must consult the Secretary of State.~~

(4) The Children's Commissioner may, if he thinks fit, hold an inquiry under this section, or any part of it, in private.

(5) As soon as possible after completing an inquiry under this section the Children's Commissioner must—

(a) publish a report containing his recommendations; and

(b) send a copy to the Secretary of State.

(6) The report need not identify any individual child if the Children's Commissioner considers that it would be undesirable for the identity of the child to be made public.

(7) Where the Children's Commissioner has published a report under this section containing recommendations in respect of any person exercising functions under *an Act or instrument made under an Act*, he may require that person to state in writing, within such period as the Children's Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.

(7A) In subsection (7), "Act" includes—

(a) an Act of the Scottish Parliament;

(b) an Act, Order in Council or Measure comprised in Northern Ireland legislation;

(c) an Act or Measure of the National Assembly for Wales.

(8) Subsections (2) and (3) of section 250 of the Local Government Act 1972 (c. 70) apply for the purposes of an inquiry held under this section with the

substitution for references to the person appointed to hold the inquiry of references to the Children's Commissioner.

~~4 Other inquiries held by Commissioner~~

~~(1) Where the Secretary of State considers that the case of an individual child in England raises issues of relevance to other children, he may direct the Children's Commissioner to hold an inquiry into that case.~~

~~(2) The Children's Commissioner may, if he thinks fit, hold an inquiry under this section, or any part of it, in private.~~

~~(3) The Children's Commissioner must, as soon as possible after the completion of an inquiry under this section, make a report in relation to the inquiry and send a copy to the Secretary of State.~~

~~(4) The Secretary of State must, subject to subsection (5), publish each report received by him under this section as soon as possible.~~

~~(5) Where a report made under this section identifies an individual child and the Secretary of State considers that it would be undesirable for the identity of the child to be made public—~~

~~(a) the Secretary of State may make such amendments to the report as are necessary to protect the identity of the child and publish the amended report only; or~~

~~(b) if he considers that it is not possible to publish the report without identifying the child, he need not publish the report.~~

~~(6) The Secretary of State must lay a copy of each report published by him under this section before each House of Parliament.~~

~~(7) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) apply for the purposes of an inquiry held under this section.~~

5 Functions of Commissioner in Wales

(1) The Children's Commissioner has the function of ~~promoting awareness of the views and interests of children in Wales~~ *promoting and protecting the rights of children in Wales* except in so far as relating to any matter falling within the remit of the Children's Commissioner for Wales under section 72B, 73 or 74 of the Care Standards Act 2000 (c. 14).

(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Wales.

~~(2) Subsections (2) to (12) of section 2 apply in relation to the function of the Children's Commissioner under subsection (1) above as in relation to his function under that section.~~

(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children's Commissioner's function under subsection (1) as in relation to the Commissioner's primary function.

(2A) For the purposes of subsection (2), sections 2(4) and 2B(3) have effect as if for "children who are within section 8A (children living away from home or receiving social care) and other groups of children" there were substituted "groups of children".

(3) In discharging his function under subsection (1) above the Children's Commissioner must take account of the views of, and any work undertaken by, the Children's Commissioner for Wales.

(4) Where the Children's Commissioner considers that the case of an individual child in Wales raises issues of public policy of relevance to other children, other than issues relating to a matter referred to in subsection (1) above, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.

(5) Subsections (2) to (8) of section 3 apply in relation to an inquiry under subsection (4) above.

(5A) The Children's Commissioner may authorise the Children's Commissioner for Wales to discharge the function under subsection (1) in respect of a particular matter.

(5B) But the Children's Commissioner may not authorise the Children's Commissioner for Wales to publish a report, advise the Secretary of State, or otherwise make recommendations on the matter.

~~(6) Where the Secretary of State considers that the case of an individual child in Wales raises issues of relevance to other children, other than issues relating to a matter referred to in subsection (1) above, he may direct the Children's Commissioner to hold an inquiry into that case.~~

~~(7) Subsections (2) to (7) of section 4 apply in relation to an inquiry under subsection (6) above.~~

6 Functions of Commissioner in Scotland

(1) The Children's Commissioner has the function of ~~promoting awareness of the views and interests of children in Scotland in relation to reserved matters.~~ *promoting and protecting the rights of children in Scotland where those rights are or may be affected by reserved matters.*

(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Scotland.

~~(2) Subsections (2) to (12) of section 2 apply in relation to the function of the Children's Commissioner under subsection (1) above as in relation to his function under that section.~~

(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply in relation to the Children's Commissioner's function under subsection (1) as in relation to the Commissioner's primary function.

(2A) For the purposes of subsection (2), sections 2(4) and 2B(3) have effect as if for "children who are within section 8A (children living away from home or receiving social care) and other groups of children" there were substituted "groups of children".

(3) In discharging his function under subsection (1) above the Children's Commissioner must take account of the views of, and any work undertaken by, the Commissioner for Children and Young People in Scotland.

(4) Where the Children's Commissioner considers that the case of an individual child in Scotland raises issues of public policy of relevance to other children in relation to a reserved matter, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.

~~(5) Subsections (2) to (7)~~ *Subsections (2) to (7A)* of section 3 apply in relation to an inquiry under subsection (4) above.

(6) Subsections (3) to (5) of section 210 of the Local Government (Scotland)

Act 1973 (c. 65) apply for the purposes of an inquiry under subsection (4) above with the substitution of references to the Children's Commissioner for references to the person appointed to hold the inquiry.

(6A) The Children's Commissioner may authorise the Commissioner for Children and Young People in Scotland to discharge the function under subsection (1) in respect of a particular matter.

(6B) But the Children's Commissioner may not authorise the Commissioner for Children and Young People in Scotland to publish a report, advise the Secretary of State, or otherwise make recommendations on the matter.

~~(7) Where the Secretary of State considers that the case of an individual child in Scotland raises issues of relevance to other children in relation to a reserved matter, he may direct the Children's Commissioner to hold an inquiry into that case.~~

~~(8) Subsections (2) to (6) of section 4 apply in relation to an inquiry under subsection (7) above.~~

~~(9) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973 apply for the purposes of an inquiry under subsection (7) above with the substitution (notwithstanding the provisions of section 53 of the Scotland Act 1998 (c. 46) (general transfer of functions to the Scottish Ministers)) of references to the Secretary of State for references to the Minister.~~

(10) In this section, "reserved matter" has the same meaning as in the Scotland Act 1998 (see section 30 of and Schedule 5 to that Act).

7 Functions of Commissioner in Northern Ireland

~~(1) The Children's Commissioner has the function of promoting awareness of the views and interests of children in Northern Ireland in relation to excepted matters promoting and protecting the rights of children in Northern Ireland where those rights are or may be affected by excepted matters.~~

(1A) The function under subsection (1) includes promoting awareness of the views and interests of children in Northern Ireland.

~~(2) Subsections (2) to (12) of section 2 apply in relation to the function of the Children's Commissioner under subsection (1) above as in relation to his function under that section.~~

(2) Subsections (3) to (5) of section 2 and sections 2A to 2C, 2E and 2F apply

in relation to the Children's Commissioner's function under subsection (1) as in relation to the Commissioner's primary function.

(2A) For the purposes of subsection (2), sections 2(4) and 2B(3) have effect as if for "children who are within section 8A (children living away from home or receiving social care) and other groups of children" there were substituted "groups of children".

(3) In discharging his function under subsection (1) above the Children's Commissioner must take account of the views of, and any work undertaken by, the Commissioner for Children and Young People for Northern Ireland.

(4) Where the Children's Commissioner considers that the case of an individual child in Northern Ireland raises issues of public policy which are of relevance to other children in relation to an excepted matter, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.

(5) ~~Subsections (2) to (7)~~ *Subsections (2) to (7A)* of section 3 apply in relation to an inquiry under subsection (4) above.

(6) Paragraphs 2 to 5 of Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) apply for the purposes of an inquiry under subsection (4) above with the substitution of references to the Children's Commissioner for references to the person appointed to hold the inquiry.

(6A) The Children's Commissioner may authorise the Commissioner for Children and Young People for Northern Ireland to discharge the function under subsection (1) in respect of a particular matter.

(6B) But the Children's Commissioner may not authorise the Commissioner for Children and Young People for Northern Ireland to publish a report, advise the Secretary of State, or otherwise make recommendations on the matter.

~~(7) Where the Secretary of State considers that the case of an individual child in Northern Ireland raises issues of relevance to other children in relation to an excepted matter, he may direct the Children's Commissioner to hold an inquiry into that case.~~

~~(8) Subsections (2) to (6) of section 4 apply in relation to an inquiry under subsection (7) above.~~

~~(9) Paragraphs 2 to 8 of Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) apply for the purposes of an inquiry under subsection (7) above with the substitution of references to the Secretary of State for references to the Ministry.~~

(10) In this section, “excepted matter” has the same meaning as in the Northern Ireland Act 1998 (c. 47).

7A Advisory board

(1) The Children’s Commissioner must appoint an advisory board to provide the Commissioner with advice and assistance relating to the discharge of his or her functions.

(2) The advisory board must consist of persons who (taken together) represent a broad range of interests which are relevant to the Children’s Commissioner’s functions.

(3) The Children’s Commissioner must from time to time publish a report on the procedure followed and the criteria used when making appointments to the advisory board.

7B Business plans

(1) The Children’s Commissioner must publish a business plan which sets out, in relation to the discharge of the Commissioner’s functions—

(a) the Commissioner’s proposed main activities for the period covered by the plan (including the matters he or she intends to consider or research), and

(b) the Commissioner’s proposed strategic priorities for that period.

(2) A business plan must cover a period of at least 12 months beginning with the date of publication.

(3) The Commissioner must publish a new business plan before the end of the period covered by the preceding business plan.

(4) Before publishing a business plan under this section, the Children’s Commissioner must—

(a) take reasonable steps to consult children,

(b) consult persons who (taken together) represent a broad range of interests which are relevant to the Children’s Commissioner’s functions, and

(c) consult such other persons as the Commissioner thinks appropriate.

(5) The Children's Commissioner must for the purposes of subsection (4)(a) have particular regard to children who are within section 8A (children living away from home or receiving social care) and other groups of children who the Commissioner considers do not have adequate means by which they can make their views known.

8 Annual reports

(1) As soon as possible after the end of each financial year the Children's Commissioner must make a report on—

~~(a) the way in which he has discharged his functions under this Part, other than functions of holding inquiries and~~

~~(b) what he has found in the course of exercising those functions during the year; and~~

~~(c) the matters he intends to consider or research in the next financial year.~~

(2) The Children's Commissioner must in particular under subsection (1)(a) include an account of the steps taken by him to involve in the discharge of the functions referred to in that provision the children in relation to whom those functions are exercised.

(a) a summary of the Commissioner's activities and an analysis of the effectiveness of those activities in promoting and protecting the rights of children,

(b) an account of what the Commissioner has done in the discharge of his or her functions in relation to children who are within section 8A (children living away from home or receiving social care), and

(c) an account of the steps taken by the Commissioner to involve children in the discharge of his or her functions.

(3) Where the Children's Commissioner makes a report under this section—

(a) he must send a copy to the Secretary of State; and

~~(b) the Secretary of State~~ *the Commissioner* must as soon as possible lay a copy before each House of Parliament.

(4) The Children's Commissioner must publish a report under this section as soon as possible after ~~the Secretary of State has laid~~ *laying* before each House of Parliament.

~~(5) The Children's Commissioner must also, to the extent that he considers appropriate, publish any report made under this section in a version which is suitable for children.~~

(5) If the Children's Commissioner does not consider a report made under this section to be suitable for children, the Commissioner must publish a version of the report which is suitable for children.

(6) In this section, "financial year" has the same meaning as in paragraph 8 of Schedule 1.

8A Children in England living away from home or receiving social care

(1) For the purposes of this Part, a child is within this section if he or she is within any of subsections (2) to (5).

(2) A child is within this subsection if he or she is provided with accommodation by a school or college in England to which section 87(1) of the Children Act 1989 applies.

(3) A child is within this subsection if he or she is accommodated in an establishment (within the meaning of the Care Standards Act 2000) in respect of which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of that Act.

(4) A child is within this subsection if functions are being exercised in relation to him or her by an agency (within the meaning of the Care Standards Act 2000) in respect of which Her Majesty's Chief Inspector of Education, Children's Services and Skills is the registration authority under section 5 of that Act.

(5) A child is within this subsection if a local authority in England exercises social services functions (within the meaning of the Local Authority Social Services Act 1970) in relation to him or her.

(6) For the purposes of this Part, a person who is not a child is to be treated as a child who is within this section if—

(a) he or she is aged 18 or over and under 25, and

(b) a local authority in England has provided services to him or her under any of sections 23C to 24D of the Children Act 1989 at any time after he or she reached the age of 16.

~~9 Care leavers and young persons with learning disabilities~~

~~(1) This section applies for the purposes of this Part, other than section 2(11) and (12).~~

~~(2) Any reference to a child includes, in addition to a person under the age of 18, a person aged 18, 19 or 20 who—~~

~~(a) has been looked after by a local authority at any time after attaining the age of 16; or~~

~~(b) has a learning disability.~~

~~(3) For the purposes of subsection (2)—~~

~~a person is “looked after by a local authority” if (a) for the purposes of the Children Act 1989 (c. 41), he is looked after by a local authority in England and Wales;~~

~~(b) for the purposes of the Children (Scotland) Act 1995 (c. 36), he is looked after by a local authority in Scotland;~~

~~(c) for the purposes of the Children (Northern Ireland) Order 1995 (S.I.1995/755 (N.I.2)), he is looked after by an authority in Northern Ireland;~~

~~“learning disability” means a state of arrested or incomplete development of mind which induces significant impairment of intelligence and social functioning.~~

9 Commissioner's functions in relation to certain young people

(1) This section applies for the purposes of this Part, other than section 2A and section 8A (and references in this Part to a child who is within section 8A).

(2) For the purposes of the Children's Commissioner's functions in respect of children in England, a reference to a child includes, in addition to a person under the age of 18, a person aged 18 or over and under 25—

(a) in respect of whom an assessment under section 139A of the Learning and Skills Act 2000 (a learning difficulty assessment) has been conducted,

(b) to whom a local authority in England has provided services under any of sections 23C to 24D of the Children Act 1989 at any time after reaching the age of 16, or

(c) who has been looked after by a local authority (in Wales, Scotland or Northern Ireland) at any time after reaching the age of 16.

(3) For the purposes of the Children's Commissioner's functions in respect of children in Wales, Scotland and Northern Ireland, a reference to a child includes, in addition to a person under the age of 18, a person aged 18 or over and under 25—

(a) who has a learning disability,

(b) who has been looked after by a local authority (in Wales, Scotland or Northern Ireland) at any time after reaching the age of 16, or

(c) to whom a local authority in England has provided services under any of sections 23C to 24D of the Children Act 1989 at any time after reaching the age of 16.

(4) For the purposes of this section—

"learning disability" means a state of arrested or incomplete development of mind which induces significant impairment of intelligence and social functioning;

a person is "looked after by a local authority" if —

(a) for the purposes of the Children Act 1989, he or she is looked after by a local authority in Wales;

(b) for the purposes of the Children (Scotland) Act 1995, he or she is looked after by a local authority in Scotland;

(c) for the purposes of the Children (Northern Ireland) Order 1995, he or she is looked after by an authority in Northern Ireland.

Schedule 1 CHILDREN'S COMMISSIONER

Status

1

- (1) The Children's Commissioner is to be a corporation sole.
- (2) The Children's Commissioner is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and his property is not to be regarded as property of, or property held on behalf of, the Crown.

General powers

2

- (1) The Children's Commissioner may do anything which appears to him to be necessary or expedient for the purpose of, or in connection with, the exercise of his functions.
- (2) In particular he may—
 - (a) co-operate with other public authorities in the United Kingdom;
 - (b) enter into contracts; and
 - (c) acquire, hold and dispose of any property.

Appointment and tenure of office

3

- (1) The Children's Commissioner is to be appointed by the Secretary of State.
- (2) The Secretary of State must, to such extent and in such manner as he thinks fit, involve children in the appointment of the Children's Commissioner.
- (3) Subject to the provisions of this paragraph, a person shall hold and vacate office as the Children's Commissioner in accordance with the terms and conditions of his appointment as determined by the Secretary of State.
- (4) An appointment as the Children's Commissioner shall be for a term not exceeding ~~five years~~ *six years*.
- (5) A person who has held office as the Children's Commissioner ~~is eligible for reappointment once only~~ *is not eligible for reappointment*.
- (6) The Children's Commissioner may at any time resign by notice in writing

to the Secretary of State.

(7) The Secretary of State may remove the Children's Commissioner from office if he is satisfied that he has—

(a) become unfit or unable properly to discharge his functions; or

(b) behaved in a way that is not compatible with his continuing in office.

Interim appointments

3A

(1) Where there is a vacancy in the office of Children's Commissioner, the Secretary of State may appoint a person as interim Children's Commissioner.

(2) Subject to the provisions of this paragraph, a person holds and vacates office as interim Children's Commissioner in accordance with the terms and conditions of the appointment as determined by the Secretary of State.

(3) An appointment as interim Children's Commissioner is for a term ending—

(a) with the appointment of a person as the Children's Commissioner under paragraph 3, or

(b) if sooner, at the end of the period of six months beginning with the date on which the appointment as interim Children's Commissioner was made.

(4) A person who has held office as interim Children's Commissioner—

(a) is eligible for reappointment, and

(b) is eligible for appointment as the Children's Commissioner.

(5) An interim Children's Commissioner may at any time resign by notice in writing to the Secretary of State.

(6) The Secretary of State may remove an interim Children's Commissioner from office if satisfied that the interim Commissioner has—

(a) become unfit or unable properly to discharge his or her functions; or

(b) behaved in a way that is not compatible with continuing in office.

Remuneration

4

The Secretary of State must—

(a) pay the Children's Commissioner such remuneration and allowances, and

(b) pay or make provision for the payment of such pension or gratuities to or in respect of him,

as may be provided under the terms of his appointment.

Staff

5

(1) The Children's Commissioner may appoint any staff he considers necessary for assisting him in the exercise of his functions, ~~one of whom shall be appointed as deputy Children's Commissioner.~~

~~(2) During any vacancy in the office of Children's Commissioner or at any time when the Children's Commissioner is for any reason unable to act, the deputy Children's Commissioner shall exercise his functions (and any property or rights vested in the Children's Commissioner may accordingly be dealt with by the deputy Children's Commissioner as if vested in him).~~

~~(3) Without prejudice to sub-paragraph (2),~~ Any member of the Children's Commissioner's staff may, so far as authorised by him, exercise any of his functions.

Pensions

6

(1) In the Superannuation Act 1972 (c. 11), in Schedule 1 (kinds of employment etc to which section 1 of that Act applies)—

(a) in the list of ““Other Bodies””, at the end insert ““Employment by the Children's Commissioner””;

(b) in the list of ““Offices””, at the appropriate place insert ““Children's Commissioner””.

(2) The Secretary of State must pay to the Minister for the Civil Service, at such times as the Minister may direct, such sums as he may determine in respect of any increase attributable to sub-paragraph (1) in the sums payable out of money provided by Parliament under the Superannuation Act 1972.

Funding

7

The Secretary of State may make payments to the Children's Commissioner of such amounts, at such times and on such conditions (if any) as the Secretary of State considers appropriate.

Accounts

8

(1) The Children's Commissioner must—

(a) keep proper accounting records;

(b) prepare a statement of accounts for each financial year; and

(c) send a copy of each such statement of accounts to the Secretary of State and the Comptroller and Auditor General as soon as possible after the end of the financial year to which the statement relates.

(2) The Comptroller and Auditor General must examine, certify and report on each statement of accounts sent to him under sub-paragraph (1)(c) and must lay copies of the statement and of his report before Parliament.

(3) In this paragraph, “financial year” means—(a) the period beginning with the date on which the first Children's Commissioner is appointed and ending with 31st March next following that date; and

(b) each successive period of twelve months ending with 31st March.

Evidence

9

(1) A document purporting to be duly executed under the seal of the Children's Commissioner or to be signed by him or on his behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

(2) This paragraph does not extend to Scotland.

Protection from defamation actions

10

For the purposes of the law of defamation—

(a) any statement made by the Children's Commissioner in a report published under this Part has absolute privilege; and

(b) any other statement made by the Children's Commissioner or a member of his staff for the purposes of this Part has qualified privilege.

Regulated position

11

In the Criminal Justice and Court Services Act 2000 (c. 43), in section 36(6) (meaning of “regulated position”), after paragraph (f) insert—

“(fa) Children's Commissioner and deputy Children's Commissioner appointed under Part 1 of the Children Act 2004.”.

Disqualifications

12

In the House of Commons Disqualification Act 1975 (c. 24), in Part 3 of Schedule 1 (certain disqualifying offices), at the appropriate places insert the following entries—

“Children's Commissioner”;

“Member of staff of the Children's Commissioner”.

Disqualifications

13

In the Northern Ireland Assembly Disqualification Act 1975 (c. 25), in Part 3 of Schedule 1 (certain disqualifying offices), at the appropriate places insert the following entries—

“Children's Commissioner”;

“Member of staff of the Children's Commissioner”.



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