

A Briefing from the Alliance for Reform of the Children's Commissioner Children and Families Bill 2nd Reading, 25 February 2013

Introduction

This briefing summarises the priority issues for the Alliance for Reform of the Children's Commissioner¹. We warmly welcome the reforms to the role of the Office of the Children's Commissioner for England (OCCE) introduced in the Children and Families Bill, and the proposed legislation's close adherence to the recommendations in the Dunford Review. However, the legislation could be further strengthened to ensure that the OCCE has the sufficient functions, powers and independence to effectively promote children's rights.

Key recommendations:

Enhancing the independence of the OCCE

It is vital that the Children's Commissioner is sufficiently independent to effectively champion children's rights. We believe the Bill should:

- Require the Secretary of State to have regard to the desirability of ensuring that the Commissioner is under as few constraints as reasonably possible in determining activities, timetables and priorities².
- Provide for greater parliamentary involvement in the appointment and removal of a Commissioner. For example, the legislation should require the Secretary of State to have due regard to the views of parliament in relation to candidates for appointment, and involve parliament in any decision to dismiss a Children's Commissioner.
- Ensure the Children's Commissioner has sufficient funds to carry out his or her functions by requiring the Secretary of State to provide the OCCE with such sums as appear reasonably sufficient for the purpose of enabling it to perform its functions³.

Extending the definition of vulnerable children

The legislation requires the Children's Commissioner to have particular regard to specific groups of vulnerable children⁴, and allows the Commissioner to provide advice and assistance to those groups of children⁵. The groups specified include children in care, care leavers, children in boarding schools and children receiving social care services. We believe the definition should be extended to include children living in custody and separated children who are seeking asylum or have been trafficked.

¹ Action for Children, British Youth Council, Children England, Children's Rights Alliance for England (CRAE), The Children's Society, National Children's Bureau (NCB), NSPCC, Save the Children and UNICEF UK

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

³ A similar provision can be found in the Equality Act 2006, Schedule 1, paragraph 38.

⁴ See cl.77 (which will insert into Children Act 2004 new section 2(4) (primary function) and new section 2B(3) (involving children in the discharge of the primary function)), and cl.82 (which will insert into Children Act 2004 new section 7B(5) (business plans)).

⁵ cl.78.

Strengthening the powers and functions of the Children's Commissioner

We believe that the legislation should grant the Children's Commissioner all those powers which a national human rights institution⁶ (NHRI) should have. The Bill should add the following additional functions to the Children's Commissioner:

- Raising public awareness of children's rights by promoting knowledge of and respect for the human rights of children and young people.
- Monitoring the extent to which children's rights are realised by publishing an annual report that examines the state of children's rights in England, providing recommendations for action by government and others.
- Initiating and participating in legal proceedings to promote children's rights.
- The children's commissioner should have a clear mandate to protect and promote the full range of rights.

Strengthening the involvement of children in the work of the OCCE

Given the Commissioner's role to promote and protect children's rights, it is vital that children are involved in all aspects of the Office's work. We welcome provisions requiring the Children's Commissioner to 'take reasonable steps' to involve children in the Commissioner's work and to consult children in respect of individual aspects of its work⁷. However, this should be strengthened. We believe the legislation must:

- Wherever there is a duty to consult children, include a corresponding obligation to have due regard to their views.
- Require the OCCE to report on the extent to which it has had regard to children's views.

A children's rights duty for public bodies

The state has the primary responsibility for ensuring children's rights are upheld. This duty cannot be discharged by tasking other bodies (such as the OCCE) with the job of promoting and protecting children's rights. We therefore believe the Bill should introduce:

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

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⁶ As set out in the Paris Principles adopted by the UN General Assembly and in General Comment No. 2 of the UN Committee on the Rights of the Child.

⁷ See cl.77 (to insert new section 2B (involving children in the discharge of the primary function) and cl. 82 of the Bill.