

*These notes refer to the Children and Families Act 2014
(c.6) which received Royal Assent on 13 March 2014*

CHILDREN AND FAMILIES ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 6 - the Children's Commissioner

Section 115 and Schedule 5: Minor and consequential amendments

456. *Schedule 5* makes minor and consequential amendments to Part 1 of the Children Act 2004, and a consequential amendment to the Criminal Justice and Courts Services Act 2000.

Inquiries

457. *Paragraph 1(2)* of Schedule 5 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 remove the power of the Secretary of State to direct 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. It will be for the Commissioner to determine how to respond to a request from the Secretary of State to undertake a particular activity.

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

458. *Paragraphs 3, 4 and 5* amend sections 5, 6 and 7 of the 2004 Act to apply (with certain modifications) the changes to the Commissioner's functions to his or her functions in respect of non-devolved matters in Northern Ireland, Scotland and Wales.

Young persons

459. *Paragraph 6(1)* substitutes a new section 9 in the 2004 Act. Its purpose is to enable the Commissioner to exercise his or her functions in relation to young persons in England who are aged 18 or over for whom an EHC plan is maintained by a local authority (as to which, see Part 3 of the Act); who are aged 18 or over and under 25 and to whom services have been provided by a local authority under any of sections 23C to 24D (which relates to certain children and young people defined in section 8A) of the Children Act 1989.
460. New section 9(3) makes provision in respect of the Commissioner's functions in Wales, Scotland and Northern Ireland. In this case, a child includes a young person who is aged 18 or over and under 25 who has a learning disability (as defined); or who has been looked after by a local authority in Wales, Scotland or Northern Ireland at any time after the age of 16.

461. *Paragraph 6(2)* is intended to preserve the effect of section 9 as it applied before substitution under this Act.

Appointment and tenure of the Children’s Commissioner

462. *Paragraph 7* of Schedule 5 amends paragraph 3(2) of Schedule 1 to the 2004 Act, strengthening the requirement on the Secretary of State to involve children in the Commissioner’s appointment, by requiring him or her to “take reasonable steps” to involve them.
463. Provision is also made to address a concern raised in John Dunford’s report, “Review of the Office of the Children’s Commissioner (England)”, namely that the ability for a Commissioner to be appointed for a second term might compromise his or her independence. The Children’s Commissioner will be now appointed for a single, six-year term. There is no longer an option to renew the Commissioner’s appointment at the end of his or her term of office.

Interim Appointments

464. *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 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 to the 2004 Act), or is otherwise unable to continue in post.
465. 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. *Sub-paragraph (2)* provides that the terms and conditions of any interim appointment will be determined by the Secretary of State.
466. *Paragraph 3(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.
467. If, for any reason, the recruitment of a new substantive Commissioner cannot be completed within 6 months, *sub-paragraph (4)* enables the Secretary of State to renew the interim appointment for up to a further 6 months. *Sub-paragraph (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).
468. *Paragraph 3(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

469. *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.