



# Children and Families Act 2014

## 2014 CHAPTER 6

### PART 6

#### THE CHILDREN'S COMMISSIONER

#### 107 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) advise persons exercising functions or engaged in activities affecting children on how to act compatibly with the rights of children;
  - (b) encourage such persons to take account of the views and interests of children;
  - (c) advise the Secretary of State on the rights, views and interests of children;
  - (d) consider the potential effect on the rights of children of government policy proposals and government proposals for legislation;
  - (e) bring any matter to the attention of either House of Parliament;
  - (f) investigate the availability and effectiveness of complaints procedures so far as relating to children;
  - (g) investigate the availability and effectiveness of advocacy services for children;

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- (h) investigate any other matter relating to the rights or interests of children;
  - (i) monitor the implementation in England of the United Nations Convention on the Rights of the Child;
  - (j) publish a report on any matter considered or investigated 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, in particular, have regard to the United Nations Convention on the Rights of the Child in considering for the purposes of the primary function what constitute the rights and interests of children (generally or so far as relating to a particular matter).
- (2) The references in section 2(3)(i) and this section to the United Nations Convention on the Rights of the Child are to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989 (including any Protocols to that Convention which are in force in relation to the United Kingdom), 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 investigate 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 about the exercise by a person of functions of a public nature, the Commissioner may require that person to state in writing, within such period as the Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.”

#### **108 Provision by Commissioner of advice and assistance to certain children**

After section 2C of the Children Act 2004 (as inserted by section 107) 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.”

#### **109 Commissioner’s powers to enter premises**

After section 2D of the Children Act 2004 (as inserted by section 108) insert—

##### **“2E Powers to enter premises to conduct interviews or observe standards**

- (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 (1) 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.”

#### **110 Provision of information to Commissioner**

After section 2E of the Children Act 2004 (as inserted by section 109) insert—

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**“2F Provision of information to Commissioner**

- (1) Any person exercising functions of a public nature must supply the Children’s Commissioner with such information in that person’s possession relating to those functions as the Commissioner may reasonably request for the purposes of the primary function or the function under section 2D.
- (2) The information must be information which that person would, apart from subsection (1), lawfully be able to disclose to the Commissioner.”

**111 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.”

**112 Business plans**

After section 7A of the Children Act 2004 (as inserted by section 111) 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 investigate), 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,

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- (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.”

### **113 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),
  - (c) an account of the steps taken by the Commissioner to consult children or otherwise involve them in the discharge of his or her functions, and
  - (d) a summary of how the Commissioner has taken into account the results of any such consultation and anything else resulting from involving children in the discharge of his or her functions.”
- (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.”

### **114 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).

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- (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.”

#### **115 Children’s Commissioner: minor and consequential amendments**

Schedule 5 (minor and consequential amendments to Part 1 of the Children Act 2004 and to other Acts) has effect.

#### **116 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) Schedule 6 (transfers of staff and property in consequence of the repeal of the requirement to appoint a Children’s Rights Director) has effect.