

*Draft Bill to establish a Children's Rights Commissioner in England*

*Children's Rights Commissioner Bill*

*A Bill*

*To provide for the establishment of a Children's Rights Commissioner to promote the rights and interests of children in England; to make provision for the powers and duties of the Commissioner and for related purposes.*

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*A Bill*

*To provide for the establishment of a Children's Rights Commissioner to promote the rights and interests of children in England; to make provision for the powers and duties of the Commissioner and for related purposes.*

*Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-*

*Appointment and staff of Commissioner*

- 1.-(1) There shall be a Children's Rights Commissioner, who shall be appointed by Her Majesty on the recommendation of the Secretary of State.*

(2) *Before making such a recommendation, the Secretary of State shall consult with such persons as appear to him to be appropriate.*

(3) *The Commissioner shall be appointed for a period of five years, and shall hold office during this period unless relieved at his own request or removed by Her Majesty in consequence of addresses from both Houses of Parliament, and at the end of a term of appointment the Commissioner shall be eligible for re-appointment.*

(4) *The Commissioner may appoint such staff as he thinks fit to assist with the discharge of the Commissioner's functions, and any function of the Commissioner may be performed by any member of his staff authorised for that purpose by the Commissioner.*

(5) *The Commissioner and the Commissioners' staff shall not be regarded as agents or servants of the Crown.*

#### ***Duties and guiding principles***

2.- (1) *The Commissioner shall have the following duties -*

(a) *to promote the rights and interests of children;*

(b) *to seek to ensure that the rights and interests of children are properly taken into account by Ministers of the Crown, government departments, local authorities, other public bodies and voluntary and private organisations when decisions on policies affecting children are taken;*

(c) *to promote compliance with the United Nations Convention on the Rights of the Child as ratified by Her Majesty's Government and subject to such reservations as Her Majesty's Government made on ratification, unless subsequently withdrawn; and*

(d) *to seek to ensure that children have effective means of redress if their rights are disregarded by any body referred to in paragraph (b).*

(2) *In exercising these functions the Commissioner shall have regard to:*

(a) *the principles laid down in the United Nations Convention on the Rights of the Child, and in such other international treaties, conventions or agreements which have been ratified or otherwise acceded to by Her Majesty's Government and which affect children;*

(b) *the need to maintain direct contact with children, to pay particular attention to the views of children and to promote respect for the views of children throughout society.*

(c) *the need to ensure co-ordination between different bodies (including government departments) which provide services for children; and*

(d) *the need to consult from time to time with persons and organisations seeking to promote the rights and interests of children.*

#### ***Annual reports***

3.-(1) *As soon as practicable after the end of each calendar year the Commissioner shall submit an annual report on his activities during the year to the Secretary of State.*

(2) *Each annual report shall include a general description of the circumstances of children in England and a survey of developments which have affected them during the period.*

(3) *The Secretary of State shall lay a copy of every annual report before both Houses of Parliament and shall cause the report to be published.*

***Recommendations and compliance notices***

4.-(1) *The Commissioner may make other reports at his discretion, and may publish them as he thinks fit, and the reports may contain such recommendations for action by others (including Ministers of the Crown) as the Commissioner feels are necessary or expedient.*

(2) *The Commissioner shall give his reasons for any recommendations in a report and shall send a copy of the report to any person or body to whom a recommendation is directed.*

(3) *If it appears to the Commissioner that a particular person or body is not complying with the provisions of the United Nations Convention on the Rights of the Child as ratified by Her Majesty's Government, then the Commissioner may make recommendations in the form of a compliance notice, which shall state the Commissioner's opinion as to the way in which provisions in the Convention are not being complied with and what action should be taken to comply.*

***Following up recommendations***

5.- (1) *Any person or body to which a recommendation is directed by a Commissioner shall -*

(a) *consider the recommendation; and*  
 (b) *notify the Commissioner within three months of receiving it (or a longer period if the Commissioner agrees) of the action which has been taken or it is intended to take in response to the recommendation.*

(2) *Where any person or body to whom a recommendation is directed intends not to comply with it they shall furnish the Commissioner with reasons for not doing so, and the Commissioner may publicise these reasons.*

(3) *The Commissioner may require a person or body to whom a recommendation has been directed to furnish him with such information as may be reasonably required to verify whether the recommendation has been complied with.*

(4) *Any person or body who fails to comply (whether wholly or partly) with a compliance notice may be required to publicise that failure in such manner as the Commissioner may specify.*

(5) *If the Commissioner has reasonable cause for believing that a person or body will not comply with subsection (4) then he may publicise the failure to comply with the notice and recover any reasonable expenses incurred from the person or body whose failure has been publicised.*

(6) *The Commissioner shall establish and maintain a Register of Compliance Notices, and the register may be inspected at all reasonable hours by any person.*

#### **Investigations**

6.- (1) *The Commissioner may conduct a formal investigation for any purpose connected with the carrying out of his duties.*

(2) *For the purposes of a formal investigation the Commissioner may require any person who possesses documents or information relevant to the investigation to -*

*(a) produce such documents; and/or*

*(b) furnish the information in writing; and/or*

*(c) attend at a specified time and place and give oral information.*

(3) *No person shall be compelled under subsection (2) to give information or produce documents which he could not be compelled to give or produce in civil proceedings before the High Court.*

(4) *The Commissioner shall prepare and publish a report of his findings in any formal investigation and shall include in it such recommendations as appear to him to be necessary or expedient.*

#### **Legislation affecting children**

7.- (1) *If a Minister of the Crown proposes -*

*(a) to lay before Parliament a Bill which consists of or contains an amendment to or repeal of the whole or part of any enactment which significantly affects children; or*

*(b) proposes to consider a Bill laid before Parliament other than by him which consists of or contains an amendment to or repeal of the whole or part of any enactment which significantly affects children; or*

*(c) proposes to make an order under any section of an enactment where that section significantly affects children, he shall first consult the Office of Commissioner.*

(2) *The Secretary of State may make regulations which set out which enactments, and which sections of which enactments are to be taken as significantly affecting children for the purposes of subsection (1).*

(3) *When the Office of Commissioner is consulted under subsection (1), the Commissioner shall consider and respond to the Minister's proposals, and publish his response, and the Minister shall have regard to the Commissioner's response.*

#### **Code of consultation**

8.- (1) *There shall be a code of consultation setting out the circumstances in which government departments should consult the Office of Commissioner, together with guidance on the timing and method of such consultations, arrangements for publication, and any other relevant matters, which shall be determined by agreement between the Office of Commissioner and the Secretary of State.*

(2) *Government departments shall have regard to the code of consultation.*

### **Child Impact Statements**

9.- (1) *Whenever it appears necessary or expedient to the Commissioner, he may require a Minister of the Crown to provide a Child Impact Statement relating to any decision or proposal on policy which affects children which the Minister has made.*

(2) *Any Child Impact Statement so required shall set out the probable impact in the Minister's opinion on children of the decision or proposal to which the statement relates, and the Minister shall cause the statement to be published.*

(3) *Where the Commissioner publishes his opinions with regard to a Child Impact Statement and requests the Minister who provided the statement to respond to these opinions, the Minister shall do so.*

### **Complaints procedures**

10.-(1) *The Office of Commissioner may require any person who has a statutory duty to establish, operate or supervise any procedure for the consideration of representations or complaints to provide such information as can reasonably be obtained about the number, nature and outcomes of representations or complaints made by or on behalf of children.*

(2) *The Office of Commissioner may request such information from any person who has established, operates or supervises any other procedure for the consideration of representations or complaints.*

(3) *Information provided to the Office of Commissioner under subsections (1) and (2) shall not identify any person who has made a representation or complaint.*

### **Other powers and functions**

11. *Where the Commissioner considers it necessary or expedient for the carrying out of his duties, he may -*

- (a) *publish and disseminate information about children;*
- (b) *undertake or assist (financially or otherwise) the undertaking by other persons of any research;*
- (c) *give assistance to a child or to a person acting on behalf of a child, which may include giving advice (including legal advice) or arranging for legal advice or for legal representation. In deciding whether to give such assistance the Commissioner shall have regard to -*
  - (i) *the availability of such assistance elsewhere;*
  - (ii) *whether in the Commissioner's opinion an important question of principle is involved; and*
  - (iii) *what is in the Commissioner's opinion the most efficient and effective means for the discharge of his duties.*
- (d) *give financial or other assistance to any organisation for the purpose of encouraging the promotion by children of the interests of children.*

### **Legal proceedings and inquiries**

12. *Where the Commissioner considers it necessary or expedient for the promotion or protection of the interests or rights of children, he may -*

*(a) prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, institute them in his own name; and*

*(b) in his own name make representations in the interests of children at any public inquiry held by or on behalf of any Minister or public body under any enactment.*

***Minister's requests***

*13. Where a Minister of the Crown requests the Office of Commissioner to consider or report on a particular matter, the Office of Commissioner shall have regard to that request.*

***Review of Act***

*14. The Office of Commissioner shall from time to time, when it thinks fit or is so required by the Secretary of State, review the working of this Act and submit to the Secretary of State any proposals for amending it.*

***Reports to Committee on the Rights of the Child***

*15. A draft of any report which Her Majesty's Government intends to submit to the Committee on the Rights of the Child under Article 44 of the United Nations Convention on the Rights of the Child shall be sent to the Office of Commissioner, who shall consider it and respond, and Her Majesty's Government shall have regard to the Office of Commissioner's response in finalising the report.*

***Definitions***

*16. For the purposes of this Act "child" is defined as every person from birth to their eighteenth birthday.*