

Establishing A New Office Of The Children's Commissioner For England (OCCE): Consultation On Legislative Proposals

Consultation Response Form

The closing date is: 29 September 2011
Your comments must reach us by that date.

THIS FORM IS NOT INTERACTIVE. If you wish to respond electronically please use the online response facility available on the DfE e-consultation website (www.education.gov.uk/consultations).

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.

Reason for confidentiality:

Name	Nagalro
Organisation (if applicable)	The professional association for Children's Guardians, Family Court advisers and Independent Social Workers
Address:	PO Box 264 Esher Surrey KT10 0WA

If your enquiry is related to the policy content of the consultation you can contact the Department on;

Telephone: 0370 000 22 88

e-mail: childrenscommissioner.consultation@education.gsi.gov.uk

If you have a query relating to the consultation process you can contact the Consultation Unit on:

Telephone: 0370 000 22 88

e-mail: consultation.unit@dcsf.gsi.gov.uk

Please mark an X in one box below that best describes you as a respondent

<input type="checkbox"/> Children and/or Young People's Organisation	<input type="checkbox"/> Parent	<input type="checkbox"/> Local Authority
<input type="checkbox"/> Children's Workforce	<input type="checkbox"/> Young Person	x Other

Please Specify: Professional Association
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Under the new legislation, the function of the Children's Commissioner will be to promote and protect the rights of all children and so will encompass those children who fall under the CRD's current remit. The legislation will specify that, in discharging his or her functions, the Children's Commissioner should have particular regard to the children and young people who are currently covered by the CRD's remit (see annex 1). While we recognise that there are other children and young people who are vulnerable for a variety of reasons, what defines and distinguishes the groups we are intending to identify separately in legislation, is the fact that they do not have a parent or guardian to whom they have regular access, who can advocate on their behalf.

Q1) Do you agree with the proposals to ensure that the functions of the Children's Rights Director continue to be provided for in legislation'?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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There are additional groups of vulnerable children who should also be named in the legislation, for example: children who are the subject of trafficking. They are also a group of children who do not have a parent or guardian to advocate on their behalf.

John Dunford did not comment on the title of the Children's Commissioner, but stakeholders have queried whether the title 'Children's Commissioner' resonates with young people. We are interested in your views on this point.

Q2) Should the Children's Commissioner's title be amended to 'The Children's and Young People's Commissioner', so that it more clearly covers the full age range?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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<p>Comments: More importantly the legislation should extend to young people up to the age of 25 in recognition that the decade from 16-26 is arguable the most formative in terms of enabling children to realise their potential through access to education, training and life skills and in setting the pattern for the rest of life.</p>
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John Dunford's report said that 'corporation sole' status had led to a weakness in the strategic planning of the Commissioner and a detachment between the Commissioner and the Office. The report highlighted the fact that the existing and former Children's Commissioners both felt that corporation sole status had left them feeling isolated. The report argued that the Children's Commissioner should be indivisible from the OCCE and be responsible for all of the OCCE's functions and for how the office operates. For the reasons above, he concluded that the Children's commissioner should not have corporation sole status.

We have examined the possibility of models other than 'corporation sole' - such as a 'body corporate' - but are not convinced that they represent a preferable model for the new OCCE. We believe that we can address the weaknesses that John Dunford identified through other changes that will be introduced, in particular the proposal to appoint an advisory board to provide support and challenge to the Children's Commissioner. The advantages of giving the Commissioner 'corporation sole' status, supported by an advisory board, are that: he or she will have full responsibility for the objectives and operation of the OCCE; and it allows arrangements to be made legally for the office and role to continue in the event of the Commissioner being unable to continue to carry out his or her functions.

Q3) Do you agree with the proposal to create the new OCCE as a corporation sole, supported by an advisory board?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

John Dunford reviewed the existing powers of the Children's Commissioner (including whether there was a case for him or her to be given additional powers); as well as the requirements that were placed on the Children's Commissioner. In general, he felt that the Children's Commissioner already had sufficient powers, but argued that a new power should be included in the legislation - to allow the Children's Commissioner to carry out assessments of the impact on children of new policies and proposed legislation.

We do not intend to deviate in substance from the recommendations in this area that were included in John Dunford's report. The statutory powers that we are therefore proposing the Children's Commissioner should have are the powers to:

- investigate cases of individual children where the case has wider significance for the rights of children;
- carry out inquiries on issues that have wider significance for the rights of children; and
- carry out assessments on the impact of new policies and legislation on the rights of children in relation to the UNCRC.

We are considering whether it is necessary to specify separately in the new legislation that the Children's Commissioner has the power to: undertake research on issues relating to children's rights; and monitor the effectiveness of complaints and advocacy services as they relate to children and young people, or whether these activities are already encompassed by the powers set out above. It is not intended to dilute the Children's Commissioner's existing powers. Our aim is to avoid adopting details from the existing legislation that do not need to be specified in the new legislation.

Q4 a) Do you agree that the powers proposed for the new Children's Commissioner are the right ones?

Yes

No

Not Sure

Comments:

We agree that the Children's Commissioner should have the powers proposed but believes that the remit of the Children's Commissioner should extend to all children; clearly the main focus should be vulnerable children but that should include children who are suffering the negative effects of family breakdown, either through abuse or exposure to domestic violence and homelessness resulting from serial family breakdown.

Limiting investigations and inquiries to matters that have wider significance for children's rights was recognised by John Dunford as an important safeguard, designed to ensure that the OCCE does not become bogged down in dealing with individual casework. We support this view that the OCCE's role should be strategic. We also support his view that the OCCE should not duplicate the work undertaken by existing complaints and advocacy services for children and young people. At the same time, John Dunford recognised that the CRD did carry out a form of casework in support of individual children and young people within his remit, where there may not be issues of wider significance. This role has involved different responses according to the circumstances of the case - for example, ascertaining children's wishes and feelings; advising children and professionals; challenging, or recommending the 'freezing' of decisions; and referring cases for review and response to the relevant Director of Children's Services or other bodies. John Dunford felt this function should continue to be allowable.

We are proposing, therefore, to design the legislation in a way that allows the OCCE to carry out a similar role to the CRD in respect of individual cases, but only in relation to children who fall under the CRD's current remit. As at present, the power would not enable the OCCE to appeal decisions or to determine the outcome of individual cases. The current role of the Children's Commissioner in carrying out investigations of individual cases would continue, but only where there are wider implications for children's rights

Q4 b) Do you agree that the Children's Commissioner should be able to undertake a limited form of casework for children who fall under the CRD's remit?

No

Not Sure

Comments:

There should be clarity regarding the statutory powers of the Children's Commissioner in implementing sanctions that would follow non-compliance of a request to any Government department or body which might be made by the Commissioner

When considering what duties/requirements should be placed on the Children's Commissioner, John Dunford was clear that the purpose of imposing duties was not to try to dictate the way in which the Commissioner carried out his or her role. Rather, it was to ensure that the Children's Commissioner is more accountable to Parliament for the impact the OCCE has in promoting and protecting children's rights; and to ensure financial propriety. On that basis, the duties we want the legislation to place on the Children's Commissioner would be:

- a duty to submit an annual report to Parliament each year, which includes: a report on action the OCCE has taken to implement the activities set out in its business plan; recommendations made in light of these activities to better promote and protect children's rights; work done specifically in relation to those groups to which the Commissioner is to have particular regard; and a budget statement/annual accounts to demonstrate how funding has been used; and
- a requirement to have an advisory board that provides support and challenge to the Children's Commissioner. The advisory board will be 'Paris Principles' compliant. In relation to the advisory board, compliance means that its constitution and membership is consistent with Paris Principles. This will ensure that all key interests are represented on the board and that it is sufficiently independent.

We are intending to replicate the existing provisions in the Children Act 2004, which require the Children's Commissioner in the exercise of his or her functions to:

- take steps to make children aware of his/her role and how they can communicate with him/her;
- seek out and report on the views of children, especially children who do not have other adequate means of making their views known.

Q5) Do you agree that the duties and requirements set out above are the right ones for the new Children's Commissioner?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

The appointment of the Children's Commissioner will be in line with the general principles for all public appointments. Within these arrangements, we want to ensure that Parliament (most likely through the relevant Select Committees) has an opportunity to contribute at important stages of the process. We will work with parliamentary clerks to develop a process that involves:

- an opportunity for parliamentarians to consider and comment on the job description for the post of Children's Commissioner, prior to it being advertised;
- an opportunity for parliamentarians to make recommendations on one or more candidates at the pre-appointment stage; and
- an opportunity for parliamentarians to raise any concerns directly with the relevant Secretary of State if he or she chose not to accept their recommendations.

Q6) Do you agree with our proposals for the appointment of the Children's Commissioner?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

With regard to the Children's Commissioner's term of office, in recommending a single 7 year term John Dunford was intending to avoid the potential conflicts of interest for the Commissioner that might arise during the period before his or her possible re-appointment.

We are aware, however, that a 7 year term is a long period for a Commissioner to remain in office if he or she is having little impact. We do not intend to change the circumstances in which the Secretary of State can remove the current Children's Commissioner, as set out in Schedule 1 of the Children Act 2004.

These give the Secretary of State the power to remove the Children's Commissioner if he is satisfied that: the Children's Commissioner has become unfit or unable to properly discharge his or her functions; or has behaved in a way that is not compatible with him or her continuing in office. The arguments for a single 7 year term or retaining a 5 year term with the option of re-appointment are, therefore, finely balanced and we would welcome your views on this issue.

Q7) Do you agree that the Children's commissioner should be appointed for a single, fixed term, without the possibility of reappointment?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:
A single fixed term would provide for an automatic refreshment of the reservoir of skills being brought to the post by individual incumbents

Q8) Should the duration of the Children's Commissioner's appointment be i) seven years, ii) six years or iii) five years. Please explain the reasons for your preference?

<input type="checkbox"/> Seven Years	<input type="checkbox"/> Six Years	<input checked="" type="checkbox"/> Five Years
<input type="checkbox"/> Other		

Comments:
Five years is long enough to provide a properly focused and consistent approach to the strategic development of policy whilst 6 or 7 years may allow some stagnation of purpose.

In considering the governance arrangements for the Children's Commissioner, the challenge for John Dunford was to balance the competing demands for the OCCE to be both: more visibly independent from government (see above); but also more accountable for the impact it has. John Dunford recommended that there should in future be more parliamentary scrutiny of the extent to which the OCCE had achieved its objectives. He also suggested that an appropriate Select Committee should call the Children's Commissioner to give evidence on its achievements and to set out which areas they intended to focus on in future.

As indicated in the section on 'Powers and Duties', we are proposing to place a duty on the Children's Commissioner to submit an annual report to Parliament. It will then be open to Parliament to scrutinise the OCCE's annual report. John Dunford argued that submitting reports direct to Parliament would raise its profile and envisaged that one or more Select Committees might want to debate the issues raised in the Children's Commissioner's report. He also envisaged that the Children's Commissioner might be asked to appear before Select Committee(s) to discuss the OCCE's performance, or to give evidence in other inquiries where children's rights issues were relevant.

DfE Officials will work with the parliamentary clerks to achieve a clearer understanding of how these arrangements might work in practice. Parliament's response will necessarily depend on the nature and volume of other parliamentary business and so may vary from session to session. For this reason it is not appropriate to prescribe the arrangements in legislation.

An important part of the new governance arrangements is the establishment of an advisory board. The board would serve a number of purposes. First, it would protect the Children's Commissioner from the sense of isolation that John Dunford identified. Second, it would help the Children's Commissioner to identify what the OCCE's key objectives (and supporting performance indicators) should be in the coming year, bringing greater transparency to the OCCE's business planning processes. And third, it would provide a greater degree of challenge to the decisions made by the Children's Commissioner - although John Dunford was clear that the board should not be able to direct the Children's Commissioner, as this would compromise his or her independence.

John Dunford recommended that the membership of the board should comply with Paris Principles and that Parliament should have a role in the process. Our proposal is that while the Secretary of State should formally appoint the chair and members, others should have a say in the make-up of the board. We are not intending to set out how appointments to the board will be made in legislation, but propose that the Secretary of State would invite:

- Parliament to nominate the chair (thus bringing a greater degree of independence/accountability) and two other members;

- NGO organisations to nominate two members ;
- Children and young people to nominate two members;
- The Children's Commissioner to nominate two members.

The Secretary of State would appoint two further representatives and the Children's Commissioner would also be a member of the advisory board in his or her own right. We also propose that one or more members of the advisory board should have expertise in the needs and interests of children in care. The questions at the end of this section seek views on how best to manage the nominations process set out in the paragraph above.

We are proposing that the members of the advisory board would not have executive functions and the Children's Commissioner - rather than the board - would be responsible for the OCCE's performance. Nevertheless, the members of the board could bring expert knowledge and experience that would help to improve the decisions made by the Children's Commissioner.

Q9 a) Do you agree that the proposals set out are the right ones for making the new Children's Commissioner more accountable?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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It would be important that any Advisory Board included members with an in depth knowledge of child care law and practice as well convention compliant practice as required by the UNCRC and the ECHR as incorporated into domestic legislation in the Human Rights Act 1998.

Q9 b) Do the proposals represent a fair and balanced approach to determining the membership and role of the advisory board?

Yes

No

Not Sure

Comments:

We have some concerns about a process which appears to be exclusively based on nomination rather than a more transparent and widely drawn system of application

Q9 c) What should the process be for nominating the two NGO representatives?

Comments:

See above. This process should be transparent.

Q9 d) What should the process be for nominating the two children and young people representatives?

Comments:

Again, the process should be widely drawn and transparent. We would suggest that schools could be involved as well as young people's organisations and NGOs. It is quite a responsibility and young people would need access to accurate information on a wide range of relevant subjects in order to be fully effective.

John Dunford argued that, in principle, the four Children's Commissioners in the UK should each be responsible for all matters relating to the rights of children and young people who normally reside in their countries - in other words, that the role of the Commissioners in Northern Ireland, Scotland and Wales should extend to non-devolved matters. This could potentially cover a wide range of matters but is most likely to include, for example, rights issues in relation to asylum and border controls, policing, youth justice and custody arrangements and the armed forces.

We accept the principle behind this recommendation, although we are still working out the most practical way to proceed. There is not an obvious legislative solution, as each of the four Children's Commissioners has a slightly different set of functions and powers. It is for Parliament in Westminster to legislate on non-devolved matters rather than the devolved administrations, and any transfer of powers could impact on the terms of the devolution settlements. Discussions are continuing with the devolved administrations to identify a workable solution. Meanwhile, the four Commissioners are already working together and integrating their activities more closely so that some of the practical difficulties John Dunford reported are already being addressed.

Q10) Can you give us any practical examples of children's rights issues that have arisen in the context of non-devolved matters, where the involvement of the Children's Commissioner for Northern Ireland, Scotland or Wales might have been helpful?

Comments:

No. However, as front line practitioners we experience first-hand the tragedies and injustices which can occur when children's human rights are ignored, overridden or abused. What is remarkable is the inconsistencies of the present arrangements in which some children have rights in some situations and others do not. The marked contrast in the state's approach to children in private and public law proceedings is one example. The fact that the four Commissioners have had very different powers is regrettable and has provided structural barriers to a clear and accessible route to redress for those children who need it. Children and young people have free standing rights to access to justice and these should be made explicit in the powers of all four commissioners

John Dunford argued that having an independent Children's Commissioner for England, with a statutory role of promoting and protecting children's rights, was essential in order for the Government to be compliant with the UNCRC. The new OCCE legislation will ensure that the Children's Commissioner's role meets those conditions.

It is important, however, that we do not view the changes we are proposing to make through the OCCE legislation as the only action that could be taken to strengthen the Government's implementation of the UNCRC

Q11) What other practical steps could the Government take to demonstrate its commitment to the UNCRC?

Comments:

1. One very obvious and long overdue step is for the Government to incorporate the UNCRC into domestic legislation in the same way as the Rights of Children and Young Persons (Wales) Measure 2011 has been incorporated by the Welsh Assembly Government. The measure contains a number of provisions that will strengthen and build on the existing rights based approach of the Welsh Assembly Government towards policy for children and young people aged 0-25. Without the necessary statutory framework and sanctions the delivery of children's rights based services will remain at the discretion of the adults and organisations. It is sad to reflect that the UK ratified the UNCRC in December 1991 and 20 years later it has still not been incorporated into domestic legislation. The main advantage of the UNCRC is that it does provide internationally accepted minimum standards which can be used to provide a more forensic and objective measure of services and standards than the more subjective and differential

definitions of 'best interests'.

Incorporation of the Convention into domestic legislation would act as a powerful catalyst for effective change. At the moment, major change often occurs only as a reactive rather than proactive response to a major scandal. Incorporation would provide some clear signposting for the proactive policy development which is currently impeded by the lack of co-ordination and budgets at central government level. The current non-cost effective disconnects between DfE and MOJ in relation to the development of children's services particularly in relation to children suffering the negative effects of family breakdown is one very clear example.

2. Another step which Government could take which would be of great benefit to vulnerable children, would be to amend the Legal Aid, Sentencing and Prosecution of Offenders Bill currently before parliament in order to ensure that any changes in scope did not apply to any child or young person under the age of 18 years. An amendment to this effect was introduced at Committee stage but sadly did not receive the support of Government.

There are also additional groups of vulnerable children who should also be named in the legislation, for example children who are the subject of trafficking. They are also a group of children who do not have a parent or guardian to advocate on their behalf.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply x

Here at the Department for Children, Schools and Families we carry out our research on many different topics and consultations. As your views are valuable to us, would it be alright if we were to contact you again from time to time either for research or to send through consultation documents?

xYes

 No

All DfE public consultations are required to conform to the following criteria within the Government Code of Practice on Consultation:

Criterion 1: Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

If you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Co-ordinator, tel: 01928 438060 / email: carole.edge@education.gsi.gov.uk

Thank you for taking time to respond to this consultation.

Completed questionnaires and other responses should be sent to the address shown below by 29 September 2011

Send by post to:

Mr T Gibb
Implementation of Children's Commissioner Review Team
Ground Floor
Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Send by e-mail to: childrenscommissioner.consultation@education.gsi.gov.uk