



Children Act 2004

2004 CHAPTER 31

PART 1

CHILDREN'S COMMISSIONER

1 Establishment

- (1) There is to be an office of Children's Commissioner.
- (2) Schedule 1 has effect with respect to the Children's Commissioner.

2 General function

- (1) The Children's Commissioner has the function of promoting awareness of the views and interests of children in England.
- (2) The Children's Commissioner may in particular under this section—
 - (a) encourage persons exercising functions or engaged in activities affecting children to take account of their views and interests;
 - (b) advise the Secretary of State on the views and interests of children;
 - (c) consider or research the operation of complaints procedures so far as relating to children;
 - (d) consider or research any other matter relating to the interests of children;
 - (e) publish a report on any matter considered or researched by him under this section.
- (3) The Children's Commissioner is to be concerned in particular under this section with the views and interests of children so far as relating to the following aspects of their well-being—
 - (a) physical and mental health and emotional well-being;
 - (b) protection from harm and neglect;
 - (c) education, training and recreation;
 - (d) the contribution made by them to society;

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- (e) social and economic well-being.
- (4) The Children’s Commissioner must take reasonable steps to involve children in the discharge of his function under this section, and in particular to—
 - (a) ensure that children are made aware of his function and how they may communicate with him; and
 - (b) consult children, and organisations working with children, on the matters he proposes to consider or research under subsection (2)(c) or (d).
- (5) Where the Children’s Commissioner publishes a report under this section he must, if and to the extent that he 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).
- (6) The Children’s Commissioner must for the purposes of subsection (4) have particular regard to groups of children who do not have other adequate means by which they can make their views known.
- (7) The Children’s Commissioner is not under this section to conduct an investigation of the case of an individual child.
- (8) The Children’s Commissioner or a person authorised by him may for the purposes of his function under this section at any reasonable time—
 - (a) enter any premises, other than a private dwelling, for the purposes of interviewing any child accommodated or cared for there; and
 - (b) if the child consents, interview the child in private.
- (9) Any person exercising functions under any enactment must supply the Children’s Commissioner with such information in that person’s possession relating to those functions as the Children’s Commissioner may reasonably request for the purposes of his function under this section (provided that the information is information which that person may, apart from this subsection, lawfully disclose to him).
- (10) Where the Children’s Commissioner has published a report under this section containing recommendations in respect of any person exercising functions under any enactment, he may require that person to state in writing, within such period as the Children’s Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.
- (11) In considering for the purpose of his function under this section what constitutes the interests of children (generally or so far as relating to a particular matter) the Children’s Commissioner must have regard to the United Nations Convention on the Rights of the Child.
- (12) In subsection (11) the reference to the United Nations Convention on the Rights of the Child is to the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20th November 1989, subject to any reservations, objections or interpretative declarations by the United Kingdom for the time being in force.

3 Inquiries initiated by Commissioner

- (1) Where the Children’s Commissioner considers that the case of an individual child in England raises issues of public policy of relevance to other children, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.

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- (2) The Children’s Commissioner may only conduct an inquiry under this section if he is satisfied that the inquiry would not duplicate work that is the function of another person (having consulted such persons as he considers appropriate).
- (3) Before holding an inquiry under this section the Children’s Commissioner must consult the Secretary of State.
- (4) The Children’s Commissioner may, if he thinks fit, hold an inquiry under this section, or any part of it, in private.
- (5) As soon as possible after completing an inquiry under this section the Children’s Commissioner must—
 - (a) publish a report containing his recommendations; and
 - (b) send a copy to the Secretary of State.
- (6) The report need not identify any individual child if the Children’s Commissioner considers that it would be undesirable for the identity of the child to be made public.
- (7) Where the Children’s Commissioner has published a report under this section containing recommendations in respect of any person exercising functions under any enactment, he may require that person to state in writing, within such period as the Children’s Commissioner may reasonably require, what action the person has taken or proposes to take in response to the recommendations.
- (8) Subsections (2) and (3) of section 250 of the Local Government Act 1972 (c. 70) apply for the purposes of an inquiry held under this section with the substitution for references to the person appointed to hold the inquiry of references to the Children’s Commissioner.

4 Other inquiries held by Commissioner

- (1) Where the Secretary of State considers that the case of an individual child in England raises issues of relevance to other children, he may direct the Children’s Commissioner to hold an inquiry into that case.
- (2) The Children’s Commissioner may, if he thinks fit, hold an inquiry under this section, or any part of it, in private.
- (3) The Children’s Commissioner must, as soon as possible after the completion of an inquiry under this section, make a report in relation to the inquiry and send a copy to the Secretary of State.
- (4) The Secretary of State must, subject to subsection (5), publish each report received by him under this section as soon as possible.
- (5) Where a report made under this section identifies an individual child and the Secretary of State considers that it would be undesirable for the identity of the child to be made public—
 - (a) the Secretary of State may make such amendments to the report as are necessary to protect the identity of the child and publish the amended report only; or
 - (b) if he considers that it is not possible to publish the report without identifying the child, he need not publish the report.

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- (6) The Secretary of State must lay a copy of each report published by him under this section before each House of Parliament.
- (7) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (c. 70) apply for the purposes of an inquiry held under this section.

5 Functions of Commissioner in Wales

- (1) The Children’s Commissioner has the function of promoting awareness of the views and interests of children in Wales, except in so far as relating to any matter falling within the remit of the Children’s Commissioner for Wales under section 72B, 73 or 74 of the Care Standards Act 2000 (c. 14).
- (2) Subsections (2) to (12) of section 2 apply in relation to the function of the Children’s Commissioner under subsection (1) above as in relation to his function under that section.
- (3) In discharging his function under subsection (1) above the Children’s Commissioner must take account of the views of, and any work undertaken by, the Children’s Commissioner for Wales.
- (4) Where the Children’s Commissioner considers that the case of an individual child in Wales raises issues of public policy of relevance to other children, other than issues relating to a matter referred to in subsection (1) above, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.
- (5) Subsections (2) to (8) of section 3 apply in relation to an inquiry under subsection (4) above.
- (6) Where the Secretary of State considers that the case of an individual child in Wales raises issues of relevance to other children, other than issues relating to a matter referred to in subsection (1) above, he may direct the Children’s Commissioner to hold an inquiry into that case.
- (7) Subsections (2) to (7) of section 4 apply in relation to an inquiry under subsection (6) above.

6 Functions of Commissioner in Scotland

- (1) The Children’s Commissioner has the function of promoting awareness of the views and interests of children in Scotland in relation to reserved matters.
- (2) Subsections (2) to (12) of section 2 apply in relation to the function of the Children’s Commissioner under subsection (1) above as in relation to his function under that section.
- (3) In discharging his function under subsection (1) above the Children’s Commissioner must take account of the views of, and any work undertaken by, the Commissioner for Children and Young People in Scotland.
- (4) Where the Children’s Commissioner considers that the case of an individual child in Scotland raises issues of public policy of relevance to other children in relation to a reserved matter, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.

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- (5) Subsections (2) to (7) of section 3 apply in relation to an inquiry under subsection (4) above.
- (6) Subsections (3) to (5) of section 210 of the Local Government (Scotland) Act 1973 (c. 65) apply for the purposes of an inquiry under subsection (4) above with the substitution of references to the Children’s Commissioner for references to the person appointed to hold the inquiry.
- (7) Where the Secretary of State considers that the case of an individual child in Scotland raises issues of relevance to other children in relation to a reserved matter, he may direct the Children’s Commissioner to hold an inquiry into that case.
- (8) Subsections (2) to (6) of section 4 apply in relation to an inquiry under subsection (7) above.
- (9) Subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973 apply for the purposes of an inquiry under subsection (7) above with the substitution (notwithstanding the provisions of section 53 of the Scotland Act 1998 (c. 46) (general transfer of functions to the Scottish Ministers)) of references to the Secretary of State for references to the Minister.
- (10) In this section, “reserved matter” has the same meaning as in the Scotland Act 1998 (see section 30 of and Schedule 5 to that Act).

7 Functions of Commissioner in Northern Ireland

- (1) The Children’s Commissioner has the function of promoting awareness of the views and interests of children in Northern Ireland in relation to excepted matters.
- (2) Subsections (2) to (12) of section 2 apply in relation to the function of the Children’s Commissioner under subsection (1) above as in relation to his function under that section.
- (3) In discharging his function under subsection (1) above the Children’s Commissioner must take account of the views of, and any work undertaken by, the Commissioner for Children and Young People for Northern Ireland.
- (4) Where the Children’s Commissioner considers that the case of an individual child in Northern Ireland raises issues of public policy which are of relevance to other children in relation to an excepted matter, he may hold an inquiry into that case for the purpose of investigating and making recommendations about those issues.
- (5) Subsections (2) to (7) of section 3 apply in relation to an inquiry under subsection (4) above.
- (6) Paragraphs 2 to 5 of Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) apply for the purposes of an inquiry under subsection (4) above with the substitution of references to the Children’s Commissioner for references to the person appointed to hold the inquiry.
- (7) Where the Secretary of State considers that the case of an individual child in Northern Ireland raises issues of relevance to other children in relation to an excepted matter, he may direct the Children’s Commissioner to hold an inquiry into that case.
- (8) Subsections (2) to (6) of section 4 apply in relation to an inquiry under subsection (7) above.

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- (9) Paragraphs 2 to 8 of Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 (S.I. 1972/1265 (N.I.14)) apply for the purposes of an inquiry under subsection (7) above with the substitution of references to the Secretary of State for references to the Ministry.
- (10) In this section, “excepted matter” has the same meaning as in the Northern Ireland Act 1998 (c. 47).

8 Annual reports

- (1) As soon as possible after the end of each financial year the Children’s Commissioner must make a report on—
- (a) the way in which he has discharged his functions under this Part, other than functions of holding inquiries;
 - (b) what he has found in the course of exercising those functions during the year; and
 - (c) the matters he intends to consider or research in the next financial year.
- (2) The Children’s Commissioner must in particular under subsection (1)(a) include an account of the steps taken by him to involve in the discharge of the functions referred to in that provision the children in relation to whom those functions are exercised.
- (3) Where the Children’s Commissioner makes a report under this section—
- (a) he must send a copy to the Secretary of State; and
 - (b) the Secretary of State must as soon as possible lay a copy before each House of Parliament.
- (4) The Children’s Commissioner must publish a report under this section as soon as possible after the Secretary of State has laid it before each House of Parliament.
- (5) The Children’s Commissioner must also, to the extent that he considers appropriate, publish any report made under this section in a version which is suitable for children.
- (6) In this section, “financial year” has the same meaning as in paragraph 8 of Schedule 1.

9 Care leavers and young persons with learning disabilities

- (1) This section applies for the purposes of this Part, other than section 2(11) and (12).
- (2) Any reference to a child includes, in addition to a person under the age of 18, a person aged 18, 19 or 20 who—
- (a) has been looked after by a local authority at any time after attaining the age of 16; or
 - (b) has a learning disability.
- (3) For the purposes of subsection (2)—
- a person is “looked after by a local authority” if—
- (a) for the purposes of the Children Act 1989 (c. 41), he is looked after by a local authority in England and Wales;
 - (b) for the purposes of the Children (Scotland) Act 1995 (c. 36), he is looked after by a local authority in Scotland;

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(c) for the purposes of the Children (Northern Ireland) Order 1995 (S.I.1995/755 (N.I.2)), he is looked after by an authority in Northern Ireland;

“learning disability” means a state of arrested or incomplete development of mind which induces significant impairment of intelligence and social functioning.

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