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THE CHILDREN AND YOUNG PERSONS COMMISSIONER FOR NORTHERN IRELAND

Research and Library Service

This paper is prepared to facilitate the Committee for the Office of the First Minister and Deputy First Minister (OFMDFM) in its examination of the review of the Children and Young Persons Commissioner in Northern Ireland.

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Introduction

This briefing is prepared to facilitate the Committee for the Office of the First Minister and deputy First Minister (OFMDFM) in its examination of the review of the Children and Young Persons Commissioner in Northern Ireland. The first section of the paper provides background information on the role of children's commissioners and the United Nations Convention on the Rights of the Child. Section 2 looks at the legislative framework and review of Northern Ireland's Commissioner for Children. Section 3 compares the roles and duties of children's commissioners in England, Scotland, Wales and Northern Ireland. Section 4 summarises the outcome of an independent review of the legislation for Northern Ireland in 2006. Section 5 outlines some key issues in relation to the review of the office.

1.0 Background

1.1 What are Children's Commissioners?

Since Norway's creation of an "Ombudsman for Children" in the early 1980s, a number of governments throughout the world have established children's commissioners or similar bodies to promote and protect the rights of children and young people, (see Appendix A for some international comparisons). These children's commissioners vary considerably in role and responsibilities; some have been established by statute, others by executive action. In general, statutory children's rights commissioners are responsible for representing and promoting the rights and interests of children in all areas of law, policy and practice affecting them.

1.2 The United Nations Convention on the Rights of the Child.

The United Nations Convention on the Rights of the Child¹ (UNCRC) is an international treaty that recognises the rights of the child (defined as persons up to the age of 18) and encompasses rights relating to every aspect of children's lives. The Convention was ratified by the UK in 1991 and came into force in 1992. It has now been ratified by almost all of the United Nations (UN) countries. The Convention operates on 4 core principles, these are:

- Non-discrimination
- Devotion to the best interests of the child
- The right to life, survival and development; and
- Respect for the views of the child

The Convention commits National Governments to protecting and ensuring the rights of children. In addition, National Governments are made accountable before the international community for this commitment. Implementation of the Convention is monitored by the Committee on the Rights of the Child. Governments that have ratified the Convention must provide regular reports to the Committee on the status of children's rights in their countries. The reports are reviewed and commented on by the Committee.

¹ <http://www.everychildmatters.gov.uk/files/589DD6D3A29C929ACB148DB3F13B01E7.pdf>

2.0 Northern Ireland's Commissioner for Children and Young People

The Office of the Children and Young People's Commissioner for Northern Ireland (NICCY) was established by the *Commissioner for Children and Young People (Northern Ireland) Order (2003)*. The OFMDFM is responsible for sponsoring and monitoring the Office of the Commissioner. Relations between the Commissioner and OFMDFM are governed by a Management Statement and Financial Memorandum².

OFMDFM is required under the Memorandum to carry out a review of the office of Commissioner at least once every three years. The first review of the office has now been undertaken. The purpose of the review is to determine the effectiveness and efficiency of the Office within the legislative terms set out in the *Commissioner for Children and Young People (NI) Order (2003)*.

2.1 Review of the Office

The OFMDFM's Terms of Reference specifies that the review should consider the organisational status of the office by addressing the following themes:

- (i) Delivery of objectives.
The review should include an evaluation of the organisational status of the Office, examining how the Commissioner contributes to the delivery of the objectives with regard to the legislation.
- (ii) Relationships.
The review should examine Commissioner's relationship with children and young people, government, NGO's and the statutory, voluntary and community sectors.
- (iii) Past performance.
The review should examine the past performance of the Commissioner – how effectively s/he has performed against aims, objectives, impact measures and key targets. It should examine how well the Commissioner has utilised financial resources, co-operated with others to deliver objectives, and how the Commission has performed compared with other bodies performing similar functions.
- (iv) Responsiveness
The review should examine the responsiveness of the Commissioner to the needs and requirements of her/his customers, stakeholders and staff and the extent to which the commissioner has maintained the focus of the remit of the office.
- (v) Good Practice.
The review should seek to identify example of good practice in the delivery of the Commissioner's functions and look for evidence of the systemic use of quality schemes.
- (v) Delivery mechanisms
The review should seek to identify how the Commissioner's services should be delivered in the future and how the existing structures have contributed to the delivery of its role and objectives. The review should also seek to identify the organisational option best suited to delivering the Commissioner's services in the future.

² http://www.niccy.org/uploaded_docs/01-06-05%20MSFM%20-%20%20Final%20Version.pdf

2.2 Legislative framework

The Office of the Children and Young People's Commissioner for Northern Ireland is the principal measure of implementation in Northern Ireland of the United Nations Convention on the Rights of the Child (UNCRC). Northern Ireland's first Commissioner for Children and Young People was appointed in October 2003 following the *Commissioner for Children and Young People (Northern Ireland) Order (2003)*³. This created the office of Commissioner and stated that the principal aim of the Commissioner is to:

safeguard and promote the rights and best interests of children and young persons⁴.

The Order details the powers and duties of the Commissioner. These include:

- The duty to review the adequacy and effectiveness of law and practice relating to the rights and welfare of children;
- Power to review complaints, advocacy, inspection and whistle-blowing arrangements of relevant authorities;
- Power to investigate complaints in certain circumstances; and
- Power to bring, assist or intervene in legal proceedings.

The Commissioner is empowered to deal with individual complaints from children and young people or from their parents/guardians about any services that impact on those under the age of 18 (or 21 for those with a disability or leaving care). Every aspect of the work of the Commissioner is carried out with explicit reference to the UNCRC, in particular Article 12. The Commissioner has an annual budget of approximately £1.9 million and is required to report on budget spending to the Assembly and Parliament on a regular basis.

3.0 Children's Commissioners in the UK

The UNCRC was ratified by the UK government in 1991 and it came into force in 1992. The UK government agreed to report back to the UN Committee on its implementation of the Convention after the first two years and subsequently every five years. To date, the UK has reported on three occasions over the period, the most recent in July 2007.

Following its first report on implementation of the Convention in 1994, the government of the UK came in for some censure from the United Nations Committee for not adequately fulfilling its obligations with regard to the Convention⁵. In particular, it was criticised for its failure in setting up an autonomous means to support and protect children's rights.

³ <http://www.opsi.gov.uk/si/si2003/20030439.htm>

⁴ Statutory Instrument 2003 No. 439 (N.I. 11). The Commissioner for Children and Young People (Northern Ireland) Order 2003

⁵ <http://www.bmj.com/cgi/content/full/313/7072/1565?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=implementing+un+convention+child&searchid=1&FIRSTINDEX=0&resourcetype=HWCIT>

Since 2000, progress has been made by the UK in addressing the UNCRC in legislation and practice by the creation of Children's Commissioners in each of the countries. Table 2 identifies the legislation and Offices established in Wales, Scotland, England and Northern Ireland between 2000 and 2005.

Table 2 Legislation and Offices created: Wales, Scotland, NI and England		
	Legislation	Office created
Wales	<i>The Care Standards Act (2000)</i> Powers of the post of Children's Commissioner extended by the <i>Children's Commissioner for Wales Act (2001)</i>	Children's Commissioner for Wales, appointed December 2000
Scotland	<i>Commissioner for Children and Young People (Scotland) Act (2003)</i>	Commissioner for Children and Young People, appointed April 2004
Northern Ireland	<i>The Commissioner for Children and Young People (Northern Ireland) Order (2003)</i>	Northern Ireland Commissioner for Children and Young People, appointed October 2003
England	<i>Children Act 2004</i>	Children's Commissioner for England, appointed July 2005

Table 3 below compares the roles and functions of each of the Children's Commissioners which have been established in Wales, Scotland, England and Northern Ireland since 2000.

3.1 Wales

The first region to establish a Children's Commissioner was Wales in 2000, with the *Care Standards Act*. This legislation established the office of Commissioner; the *Children's Commissioner for Wales Act (2001)* extended the Commissioners powers. In Wales as well as in Northern Ireland, individual complaints can be considered, but this is not the case in Scotland and England.

3.2 Scotland

Scotland's first Commissioner for Children and Young People was appointed April 2004 following the *Commissioner for Children and Young People (Scotland) Act (2003)*. Unlike the other Commissioners, the Scottish Commissioner cannot focus on a case involving an individual child.

3.3 England

The first Children's Commissioner for England was appointed in July 2005 following the *Children Act (2004)*. Unlike the other Commissioners, the English Commissioner's role is to promote the views and interests of children and young

people, rather than to safeguard their rights – although s/he too must adhere to the UNCRC. The Commissioner for England is also less independent of government, as s/he can carry out formal investigations only with the approval of the relevant Secretary of State⁶ who decides if it has wider implications for children generally.

Table 3. Comparison of the role and functions of Children’s Commissioners in NI, Wales, Scotland and England⁷.

Functions	N Ireland	Wales	Scotland	England
Principal Aim	To safeguard and promote the rights and best interests of children and young people in NI. In exercising functions, considerations to the rights of the child are paramount.	To safeguard and promote the rights and welfare of children in Wales.	To promote and safeguard the rights of children and young people in Scotland.	To promote awareness of the views of children in England.
UNCRC	Shall have regard to relevant UNCRC provisions.	Shall have regard to the UNCRC in exercising his functions	Must have regard to relevant UNCRC provisions.	In considering what constitutes the interests of children must have regard to UNCRC.
Review law, policy, practice	Yes. To assess adequacy and effectiveness relating to the rights of children.	Yes. Including Assembly.	Yes. To assess adequacy and effectiveness relating to the rights of children.	Not specifically – The Commissioner may advise the Secretary of State on the views and interests of children.
Review adequacy and effectiveness of services to children by relevant authorities	Yes.	Can review the effect on children of the exercise of functions and arrangements for complaints, advocacy and whistle blowing of devolved bodies and the assembly.	Promote best practice by “service providers”. Explanatory notes say this includes public, private and voluntary providers, but excludes parents and guardians.	Not specifically.

⁶http://www.nspcc.org.uk/WhatWeDo/MediaCentre/MediaBriefings/Policy/Children_Commissioner_wda33211.html

⁷ Information for Table from “Memorandum from the Commissioner for Wales and the Commissioner for Children and Young People for NI to the House of Commons Education and Skills Committee”. Originally prepared by Alex Callaghan, 2003. Last updated 2005.

Review advocacy, complaint, inspection and whistle blowing procedures of children's service providers.	Yes	Yes and of the Assembly.	Not specified.	May consider or research the operation of complaints procedures so far as relating to children.
Functions	N Ireland	Wales	Scotland	England
Investigations concerning individual children	Yes investigations can relate to particular children but there must be reasonable ground to believe the arrangements in place by relevant authorities were, for example, ineffective on safeguarding and promoting the rights of the child concerned.	Yes	No investigations relating to particular children	Not as part of general function. Only where the Commissioner decides having consulted the Secretary of State that the case of an individual child raises issues of relevance to other children.
Investigations into complaints by children against relevant authorities	Yes, where a child's rights may have been infringed, and the Commissioner is satisfied there is a question of principal at stake.	Yes		As above
Formal investigations	The Commissioner may carry out a formal investigation as a result of carrying out his functions i.e. this is not limited to cases about individual children, but not where the Commissioner has been involved in previous legal proceedings in the matter.	May examine the cases of particular children where a representation raises a question of principle which has a more general application to the rights or welfare of the relevant child and the Commissioner has taken account whether the issues have been or should be considered by other persons.	Commissioner may carry out an investigation into whether, by what means and to what extent, a service provider "has regard to the rights, interests and views or children and young people" if it raises an issue of particular significance to children and young people or to groups of them.	Only in circumstances where the Commissioner decides or the Secretary of State directs that the case of an individual child raises issues of relevance to other children.
Bring legal proceedings	Yes if it raises the question of principle.	Neither specified no prohibited	Neither specified no prohibited	No

Undertake and commission research	Yes	Neither specified no prohibited		Yes

3.4 The Children’s Commissioner in the Republic of Ireland

The Ombudsman for Children (OCO) was established in the Republic of Ireland under the *Ombudsman for Children Act* ⁸ (2002).

The main work areas of the OCO are:

- Independent complaints handling.
Under the legislation the OCO can look into complaints made by children (or adults on their behalf) against public organisations, schools or hospitals.
- Increasing awareness of children’s and young people’s rights
- Advising government on policies and legislation in relation to the rights of children and young people

4.0 Northern Ireland: Review of the Legislation

In 2006 an independent review of the NI legislation was undertaken by Queens University Belfast⁹. The report assesses the NICCY legislation against the Paris Principles¹⁰ and other human rights standards. The research was intended to test that NICCY met statutory requirements and had the best legislation to carry out the aims of safeguarding and promoting the rights and best interests of children and young people in Northern Ireland. Within the report, 4 key values were identified as permeating the Paris Principles:

- Independence
- A broad mandate
- Adequate powers
- Adequate resources

The review team considered each of these key values and made the following recommendations:

Independence

The report recommended that at least two Assistant Commissioners be appointed; this was intended to provide a stronger institutional basis for the protection of the Commissioner’s independence. Alternatively, it was proposed that the establishment of an Advisory Council should be considered to provide expertise for the benefit of the performance of the Commissioners functions and to provide a forum of advice to the Commissioner.

⁸ <http://www.irishstatutebook.ie/front.html>

⁹ Fitzpatrick, B (2006) Article 24 of the Commissioner for Children and Young People (Northern Ireland) Order 2003 – The review of the Office of the Commissioner.

¹⁰ Full title is ‘Principles relating to the status and functioning of national institutions for protection and promotion of human rights.’

Breadth of mandate

It was recommended that the mandate of NICCY should be extended to include private authorities as the definition 'relevant authority' in the 2003 Order¹¹ excludes such authorities. This may include a wide range of faith-based, community and voluntary and commercial organisation, subject to the limitation that NICCY should not have the power to promote and protect children's rights within families and against parents.

Breadth of Powers

It was suggested that the NICCY Order should include a provision whereby courts and tribunals should be required to take the UN Convention on the Rights of the Child into account in determining any issue concerning the rights and interests of children and young people.

It was recommended that the Commissioner's powers of formal investigation should apply across the full range of the Commissioner's investigatory and complaint assistance powers. It was also suggested the Commissioner's powers should be directed towards the role of reporting upon issues within his remit rather than taking on a judiciary role on matters of illegality with corresponding enforcement powers.

Autonomy and resources

The report stated that while the Commissioner must be subject to public accountability in relation to finances and use of budget, the Commissioner's autonomy cannot be guaranteed if a Government Department is his sponsoring Department. In this instance, the review recommended that the Commissioner, as a 'constitutional watchdog', was made answerable to a committee of the Assembly rather than a Government Department. If NICCY is to remain a Non-Departmental Public body (NDPB), a declaration of independence should be included in the NICCY Order.

5.0 Conclusions and Key Issues

This paper provides some background and comparative information on the roles, remit and functions of Children's Commissioners. OFMDFM's proposed content of the review of Northern Ireland's Commissioner was outlined in section 2.1. The legislative framework for the Office was summarised in section 2.2. Table 3.3 outlined and compared the role and functions of the Children's Commissioners in the UK. In Section 4, four main outcomes from an independent review of the legislation were summarised.

As stated earlier, the purpose of OFMDFM's review of the office of Children's Commissioner for Northern Ireland is to determine its effectiveness and efficiency within the legislative terms set out in the *Commissioner for Children and Young People (NI) Order (2003)*. OFMDFM have stated that the Review Team will provide a report setting out the outcomes of the review. Key issues in relation to the review report are:

- Has the review addressed the aim of determining the effectiveness and efficiency of the Office of Commissioner within the legislative terms?

¹¹ Article 4 of the Commissioner and Young People (Northern Ireland) Order 2003.

- In particular what is its assessment of the organisational status of the office of the Commissioner against the legislative terms set out in the 2003 Order, looking at :
 - The delivery of objectives,
 - Relationships,
 - Past performance,
 - Responsiveness,
 - Good practice,
 - Delivery mechanisms (see section 2.1).

- Which options for the future organisational status of the office are recommended by the review? Some possible future options offered in the review's Terms of Reference included:
 - abolition of the Office,
 - continuation of NDPB status,
 - alternative delivery arrangements including: a public private partnership, market testing, merger or rationalisation, privatisation, or strategic contracting out.

APPENDIX A

International comparisons¹²

Australia - Queensland: Children's Commission

- Established by statute in 1996. The *Commission for Children and Young People and Child Guardian Act 2000* established role of Commissioner and Child Guardian. Funded directly by government.
- Functions – Commissioner's role is to promote, protect the rights, interests and wellbeing of children; monitoring / review of services; advising Minister on standards for child care; receiving and investigating complaints; monitoring procedures for handling complaints; co-operating with police in investigating offences involving children and on sexual abuse, pornography/sex tourism.

Australia - South Australia: Children's Interest Bureau

- Established by statute in 1983. Funded as part of the Office for Families and children within South Australia Government's Department of Human Services
- Functions – policy review and development; advice to Government; researching and monitoring interests of children; community and professional education; advocacy services for children; promoting UN convention.

Austria: Ombudsman for Children and Young People

- Established 1991. No legal basis. Budget is subsumed within the Federal ministry.
- Functions – promoting a children-friendly society; raising awareness of children's issues; collaborating with regional ombudsmen, public and private welfare organisations; undertaking individual casework. No legal powers.

Belgium: General Representative for Children's Rights and Youth Assistance

- Established by decree in 1991 to preserve the rights and interests of all children and young people
- Function – provide information about children's rights; control whether relevant laws and rules are correctly applied; make proposals to the Executive to adapt rules currently in force; receive information and complaints.

Belgium (Flanders): Children's Rights Commissioner

- Established 1998.
- Functions – ensure implementation of UN Convention; research living conditions of children; dealing with complaints and acting as Ombudsman; informing Government and Parliament of need for new laws.

Canada - British Columbia: Commissioner for Children and Office of the Child, Youth and Family Advocate.

- Established 1996: Commissioner by Order in Council; Advocate's Office by statute.

¹² House of Commons Research Paper 01/05 *The Children's Commissioner for Wales Bill*.
January 2001
<http://www.parliament.uk/commons/lib/research/rp2001/rp01-005.pdf>

- Functions of Commissioner – monitor services for children; monitor complaint and review processes; follow up unresolved complaints and review all children’s deaths.
- Functions of Advocates Office – ensure that rights and interests of children, youth and families are heard.

Denmark: Danish National Council for Children

- Established by Order in 1994. Members appointed by Minister of Social Affairs. Funded by Government.
- Functions – advise on matters relating to children’s issues in light of the UN Convention. No formal legal powers.

Germany: Children’s Commissioner

- Established in 1988 as a subcommittee of the Committee for the family, Elderly, Women and Youth of the Bundestag. Funded as part of the Bundestag.
- Essentially a lobby group for interests of children across Government. Principal function is to examine the effect of Federal initiatives and regulations on children on children and propose amendments / improvements.

Israel: Director of the Open Line for Pupils

- Established 1991 as part of the Office of the deputy Director General of the Ministry of Education, Culture and Sport.
- Functions – propose changes to policies, guidelines and means of enforcement and monitoring in relation to pupils rights; respond to complaints and crises by pupils and parents; advise and assist pupils and education workers; increase awareness of pupils rights; improve policies of ministry of Education; help pupils defend their rights.

New Zealand: Office of the Commissioner for Children

- Established by statute in 1990 by the *Children, Young Person and Families Act*. The *Children’s Commissioner Act 2003* extended the powers of the Commissioner.
- Functions – receiving and inviting representations on any matter relating to the welfare of children, however the Commissioner cannot investigate any decision or recommendation of a court or a tribunal; advocacy role, increasing public awareness of children’s rights; promotion of child centre policies and practices to government; monitoring of children’s and youth services; monitoring implementation of the UN Convention.

Norway: Ombudsman for Children

- Established by statute in 1981. Funded by Parliament through the Department of Family and Children Affairs.
- Principal function – protect interests of children in all fields; ensure that legislation on protection of children’s interests is observed; propose measures to strengthen children’s safety; propose measures to solve or prevent conflicts between children and society; provide information on children’s rights. No executive powers.

Sweden: Children's Ombudsman

- Established by statute in 1993. Funded by the Department of Social Affairs.
- Functions – consider legislation and ensure all legislation follows UN Convention; take initiative to make changes which safeguard interests of children; represent children in general debates; propose changes to legislation; co-ordinate precautionary measures to safeguard children; provide information on UN Convention.