

[Back](#)

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# Education Culture and Sport Committee

11th Report 2002

## Report on Proposed Commissioner for Children and Young People Bill

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SP Paper 617

Session 1 (2002)

### Remit and membership

#### Remit:

To consider and report on matters relating to school and pre-school education and such other matters as fall within the responsibility of the Minister for Education and Young People; and on matters relating to culture and sport and such other matters, excluding tourism, as fall within the responsibility of the Minister for Tourism, Culture and Sport. (As agreed by resolution of the Parliament on 13 June 2002)

#### Membership

Karen Gillon (Convener)

Jackie Baillie

Ian Jenkins

Frank McAveety<sup>4</sup>

Irene McGugan

Brian Monteith

Cathy Peattie (Deputy Convener)<sup>5</sup>

Michael Russell

#### Committee Substitutes

Murdo Fraser<sup>1</sup>

Fiona McLeod<sup>2</sup>

Karen Whitefield<sup>3</sup>

#### Committee Clerking Team:

Clerk to the Committee

Martin Verity

Senior Assistant Clerk

Susan Duffy

Assistant Clerk

Ian Cowan

## **Education, Culture and Sport Committee**

### **11th Report 2002**

#### **Proposed Commissioner for Children and Young People Bill**

The Committee reports to the Parliament as follows-

#### **Introduction**

1. In its 2nd Report of 2002, Inquiry into the Need for a Children's Commissioner in Scotland, the Education, Culture and Sport Committee recommended that an office entitled "Commissioner for Children and Young People" should be established by statute.
2. It was recommended that the Commissioner should be independent, and should cover all children and young people up to age 18, and those over age 18 to whom after care duties apply.
3. Furthermore the Committee recommended that the Commissioner's remit should be to co-ordinate, monitor and promote issues affecting children's rights and interests.
4. In light of its initial report, the Committee appointed 2 reporters, Jackie Baillie and Irene McGugan, to refine its policy and keep the Committee informed of progress.
5. The purpose of this further report is to make a proposal for a Committee Bill under Rule 9.15 of Standing Orders, providing detail and direction to give effect to the recommendations above.

#### **The proposal**

##### *A summary*

6. The proposal for a "Commissioner for Children and Young People Bill" would create a new and

independent office for a Commissioner for Children and Young People in Scotland.

7. It is intended that the Bill will establish the office of Commissioner and provide for the detail of the fundamentals of the post, including the Commissioner's powers, remit etc.

8. The work of the Commissioner will be informed by the views of children and young people, with an input from those organisations working with and for children and young people. The principles of consultation, participation and accessibility will be key to the Commissioner's *modus operandi*.

### *Establishing the office*

9. The Commissioner will be independent, appointed by the Queen on recommendation of the Parliament. Terms and conditions of appointment will be determined by the Scottish Parliamentary Corporate Body.

10. The Committee proposes that the Commissioner will be appointed for a period of up to five years with the possibility of re-appointment for a further period of not more than five years.

11. It is proposed that the Commissioner can be removed from office on a motion affirmed by at least two thirds of the Parliament.

12. The Committee proposes that the office should be publicly funded, with payment of salary and any allowances coming through the Scottish Parliamentary Corporate Body.

13. There will be a requirement for accounts to be prepared and submitted to the Auditor General.

14. The Commissioner and his/her staff will be given protection from actions of defamation in relation to reports, statements and communications made in the course of their work.

### *Accountability: duty to report*

15. The Committee proposes that the Commissioner be subject to a duty to publish and lay before the Parliament an annual report, setting out:

- a review of current issues relevant to children and young people;
- a review of the Commissioner's activity over the previous year;
- an overview of work to be undertaken over the following year;

- a strategy for actively engaging children and young people in the work of the Commissioner; and
- any other information that the Commissioner considers to be relevant.

16. It is proposed that the Commissioner also publish and lay before the Parliament all reports pertaining to investigations undertaken by the office and any other reports as the Commissioner sees fit.

*Involving children and young people: consultation, participation and accessibility*

17. Involving children and young people is central to the aims, ethos and working practices of the Commissioner. It is proposed that the Commissioner will be placed under a duty to take all reasonable steps to encourage this involvement as an on-going process.

18. Ultimately it will be for the Commissioner to decide how best to carry out that duty, putting the principles of consultation, participation and accessibility into practice and establishing mechanisms to encourage the most constructive involvement of children and young people.

19. On a practical level, the Commissioner will be expected to consider, develop and promote good practice and a diversity of approaches to engaging with children and young people.

20. Such diversity might include interviews, surveys, discussion groups, participatory events, or long-term structures such as youth parliaments, schools' councils, children and young people's forums etc. It might entail working through existing structures/networks, the media or modern communications technology.

*Remit*

21. The primary role of the Commissioner will be to promote and safeguard the rights of children and young people. In doing so, the Commissioner will have regard to the relevant provisions of the United Nations Convention on the Rights of the Child.

22. In order to fulfil this role the Commissioner will:

- promote an awareness and understanding, among children, young people and adults, of children and young people's rights;
- engage actively with children and young people and also with those organisations working with, or on behalf of, children and young people;

- keep under review current practice relating to children and young people in order to assess adequacy and effectiveness;
- make recommendations and issue guidance on best practice in relation to children and young people's rights; and
- publish, promote and commission research on children and young people's rights.

23. It is proposed that the remit will cover all those children and young people in Scotland up to age 18. In addition there will be cover for all those of 18 and over who have been looked after under the Children (Scotland) Act 1995.

### *Investigations*

24. The Commissioner is to have power to carry out investigations into how the rights, interests and views of children and young people are taken into account. The Commissioner will not have power to investigate the case of an individual child or young person. Any organisation (including the Parliament and the Executive) or any individual, (including children and young people) may suggest a matter for investigation by the Commissioner. The Commissioner may decide of his/her own accord to undertake an investigation. Ultimately the decision to undertake an investigation will lie with the Commissioner.

25. To warrant investigation an issue must constitute, in the reasonable opinion of the Commissioner, exceptional circumstances. It must also:

- relate to devolved matters;
- be a matter concerning the provision of services to children and young people;
- so far as is reasonably possible involve no duplication of work carried out by existing organisations; and
- be of particular significance to children and young people, in the reasonable opinion of the Commissioner, supported by evidence (from consultation, research, information gathering etc.) that this is so.

26. It is proposed that any organisation providing a service to children may be subject to an investigation in accordance with the criteria set out above.

27. It is proposed that the Commissioner will have the power, if necessary, to require the production of documents and the attendance of witnesses during the course of an investigation.

28. Having carried out an investigation, the Commissioner is to report to the Parliament and that report shall set out any recommendations that the Commissioner may have.

## **Conclusions**

### *Added value*

29. The office of the Commissioner will be new and unique. No existing office or organisation has the combination of breadth of remit, independence and statutory status.

30. The office will be unique in respect of:

- its coverage of all children and young people;
- providing a focus for the co-ordination and promotion of children and young people's rights;
- its ability to develop an overview of issues pertaining to children and young people's rights; and
- the work undertaken, and prioritisation of such, being informed by children and young people.

31. In seeking to influence and encourage decision-makers to implement child-centred policy and practice, the Commissioner will represent the views of children and young people to the Parliament, the Executive and others. The statutory basis of the office, its independence, the duty to report to the Parliament, and active engagement with children and young people will enable these views to be heard.

32. The Commissioner will seek to minimise overlap and duplication with others by co-ordinating the work of the office, and establishing good working relationships, with other relevant parties. These might include inter alia other commissioners and ombudsman, statutory organisations including the Parliament and the Executive, and children's organisations. In this way it is envisaged that the office of the Commissioner might provide a "clearing-house" role.

33. In the course of his/her work, the Commissioner may identify vulnerable groups of children and young people not covered by the work of existing agencies or provision of services. The Commissioner would be able to consider how best their needs can be met.

34. The powers of the Commissioner when conducting an investigation will extend to a requirement for production of documents and the attendance of witnesses. No existing body with an exclusive focus on children and young people's rights has these powers.

35. In summary, the Commissioner will add value by advancing children and young people's rights and raising awareness of children and young people's issues. This can be achieved through promotion of an integrated, mainstreaming approach by the Commissioner, providing a single focus for (and overview of) rights and issues for all children and young people, associated organisations, service providers, policy makers and the media.

### **Recommendation**

36. The provisions contained within this Bill would establish a significant new office for children and young people's rights in Scotland. The Commissioner would work to ensure that the rights and interests of all children and young people are treated as a priority by policy makers and service providers. The Commissioner would particularly add value by providing an integrated and focused approach to the promotion of children and young people's rights. **The Committee recommends that the Parliament agree to this proposal.**

### **Footnotes**

1 from 16 May 2002

2 from 16 May 2002

3 from 9 May 2002

4 Frank McAveety was Deputy Convener until his resignation from the Committee on 9 May 2002

5 Cathy Peattie became a member of the Committee on 9 May 2002 and became Deputy Convener on 14 May 2002

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[Back](#)

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19 November 2002

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> [Edinburgh and Lothians](#)  
> [South](#)

#### EXECUTIVE EXTRA

> [Main page](#)

#### EDUCATION AND YOUNG PEOPLE



### Role and Remit of Children's Champion

29/08/2002

The role and remit of an independent Commissioner to champion the rights of children and young people was set out today.

The Executive sees the Commissioner's work focusing on four main areas:

1. Promoting and safeguarding children's rights
2. Communicating with children
3. Investigations
4. Promoting good practice

In response to the Education, Culture and Sport Committee's second report on the establishment of a Commissioner for Children and Young People, Cathy Jamieson, the Minister for Education and Young People, said:

"I see the Commissioner as a champion for all children and young people. But those most at risk of exclusion and deprivation must be the priority.

"Pathways to poverty and exclusion are often set early in life, and it become very difficult to break this cycle. Children from disadvantaged backgrounds can suffer lasting problems - poor educational performance, a wide range of health problems, greater contact with the police.

"The post could act in a number of different areas - making children and young people aware of their rights and raising public awareness, engaging directly with young people, carrying out general investigations, and providing recommendations for change.

"I believe a Commissioner for Children and Young People can make a real and lasting difference to young lives. I look forward to working with colleagues in the Parliament to realise this vision in the months ahead."

Formal Response by Executive

#### SCOTTISH EXECUTIVE RESPONSE TO THE REPORT FROM THE EDUCATION, CULTURE AND SPORT

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> [Main Page](#)



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## COMMITTEE ON A PROPOSED COMMISSIONER FOR CHILDREN AND YOUNG PEOPLE BILL

### Introduction

1. This report is submitted by the Scottish Executive in response to the Report from the Education, Culture and Sport Committee on a Proposed Commissioner for Children and Young People Bill.
2. The Executive welcomes this second report from the Education, Culture and Sport Committee in response to the request from Sam Galbraith, the then Minister for Children and Education, who asked the Committee in January 2000 to consider the possible establishment of a Children's Commissioner.

### Commissioner for Children and Young People

3. The Scottish Executive is committed to building a Scotland where every child matters, where every child, regardless of its family background, has the best possible start in life. Children form one-fifth of Scotland's population and over 25% of all households include children. The Scottish Executive Response to the initial Report from the Education, Culture and Sport Committee on their Inquiry into the Need for a Children's Commissioner in Scotland emphasised the First Minister's commitment to put children at the heart of the Executive's agenda and set out the work which is being taken forward across the Executive to support children and young people.
4. As we outlined in that Response there is an unacceptable gap between those who succeed and those who fall behind. Those who fall behind are predominantly those whose background is already marked by exclusion and deprivation. Pathways to poverty and social exclusion are often set early in life and differences in health and social development are all too evident by the age of only one or two. By the age of 3 some children are already better placed than others to benefit from available opportunities. Children from disadvantaged backgrounds suffer a range of lasting problems: poor educational performance, more contact with police and a wider range of health problems – all of which will impact on their adult lives. Ministers are committed to closing that gap. A Commissioner for Children and Young People could help to provide a voice for the most vulnerable and deprived children in Scotland and help to raise the profile of child poverty issues. A Commissioner for Children and Young People could make a real difference to the lives of children and young people.
5. A number of countries have appointed Children's Commissioners or Ombudsmen to represent the rights of children. The roles, functions and statutory basis of such appointments vary. Ministers have accepted that there is a good case in principle for the establishment of a Commissioner for Children and Young People. We need to ensure that the role, remit and powers of a Commissioner will make a real difference to children and young people and will add value to existing structures. The Executive welcomes the Report from the Education, Culture and Sport Committee which provides further information on the remit and powers

of a Commissioner.

6. The Executive considers that a Commissioner for Children and Young People could add value in 4 main areas:
  - Promotion and safeguarding of Children's Rights;
  - Communicating with Children;
  - Investigations; and
  - Promoting Good Practice.

We agree that the Commissioner should have responsibility for all children and young people resident in Scotland up to the age of 18. However, we consider that the Commissioner should particularly focus on the needs of those children and young people most at risk of exclusion and deprivation. In this way he or she will be able to make a significant contribution to closing the gap between those who succeed in life and those who fall behind. We welcome the Committee's suggestion that the Commissioner's responsibilities should include those young people under 21 to whom the local authority still owes a duty of care under the Children (Scotland) Act 1995. The Committee has also proposed that the Commissioner's remit should include those children and young people not covered by existing agencies and services. The Commissioner would also presumably want to focus on children and young people in receipt of services but whose needs are not being adequately met.

### **Promotion and safeguarding of Children's Rights**

1. The Executive agrees that the Commissioner should promote and safeguard children's rights. Children access a wide range of services and the organisations providing those services need to be well placed to deal with children's concerns and comments. In order to fulfil this role a Commissioner for Children and Young People could:
  - Promote a culture of children's rights and respect for the views of children;
  - Make children and young people aware of their rights and the rights of others;
  - Raise public awareness of the rights of children.
  - Seek to represent the views of children and offer a child focused perspective on issues;
  - Review and monitor the complaints procedures and arrangements used by public authorities to ensure that they are accessible to children and make recommendations for appropriate action. This would not entail reviewing any individual decisions reached by those agencies; and
  - Provide general advice/information to children about their rights and direct them to the appropriate organisation if they wish to make an individual complaint.

### **Communicating with Children**

1. The Executive welcomes the emphasis on involving and consulting children and young people contained in the Education, Culture and Sport Committee's Report. We agree that it would be for the Commissioner to determine how best to support and involve children and young people. However, we imagine that he/she would want to work in partnership with voluntary organisations who work with children and young people to make use of their expertise and to build upon Scottish Executive initiatives in communicating with children and young people. It is important that the Commissioner also seeks to include children who may be harder to reach such as those with communications difficulties, whose first language is not English, from an ethnic minority background and children with disabilities. A Commissioner for Children and Young People could:
  - Engage actively, and consult directly, with children and organisations working with or on behalf of children.

### **Investigations**

1. The Executive considers that the power to conduct investigations will be an important part of the Commissioner's role. Ministers agree that the Commissioner should have powers to enable him/her to conduct generic policy investigations and reviews and to report his/her findings to the Scottish Parliament. It would be for the Commissioner to determine which issues should be subject to detailed consideration. The Executive welcomes the Committee's proposals that a Commissioner should focus on general investigations and should not have the power to investigate the case of an individual child or young person. This is important to avoid duplicating due process. There would, however, be an important role for a Commissioner in offering advice to organisations to ensure that their complaints procedures are accessible to children and young people. A Commissioner for Children and Young People could:
  - Carry out investigations into general matters affecting the rights of children.
1. The Executive welcomes the Committee's proposal that investigations should only relate to devolved matters which is consistent with Ministers' view that the overall responsibilities of a Commissioner for Children and Young People should reflect the responsibilities of the Scottish Parliament.

### **Promotion of Good Practice**

2. The First Minister has established a Cabinet Sub-Committee on Children's Services. The Cabinet Committee is building upon the findings in the *For Scotland's Children* report to drive forward progress on the better integration of policy, funding and delivery of children's services throughout Scotland to ensure that every child has the best opportunities to

prosper. A Commissioner for Children and Young People could provide an important way of maintaining this impetus for change and pressing the case for a significant improvement in the delivery of better integrated children's services in particular for the most vulnerable and deprived children. A Commissioner would be well placed to gather and disseminate information on good practice in the provision of services to children and young people.

3. The *For Scotland's Children* report recommended that the Executive should consider the impact of all legislation, policy and initiatives on children (and their families) through the publication of a child impact statement. A Commissioner for Children and Young People could undertake this role as part of his/her annual reporting process. In addition to this annual statement the Commissioner may wish to comment upon the impact upon children and young people of a specific policy proposal as part of the standard consultation process.

A Commissioner for Children and Young People could be empowered to:

- Make recommendations and issue guidance on the development of good practice in relation to children's rights and needs
- Establish good practice and identify any gaps and consider suitable mechanisms for filling those gaps
- Provide advice to statutory agencies, including the Executive and the Parliament, on children's rights and how to achieve good practice
- Include in their annual report a child impact statement considering the impact of the Executive's policies on children in Scotland
- Prepare individual child impact statements
- Publish, promote and commission research on children's rights and needs; and

### **Working with Others**

1. It is important that a Commissioner for Children and Young People adds value and does not replicate functions already carried out by other agencies. The Executive welcomes the Committee's comments that the Commissioner should seek to minimise overlap and duplication with others. Ministers consider that in undertaking his/her role the Commissioner should seek to establish a meaningful and active partnership with voluntary organisations and avoid replicating functions already carried out by other statutory bodies including Her Majesty's Inspectorate of Education, Social Work Services Inspectorate and the Scottish Commission for the Regulation of Care. The Scottish Executive proposes to establish an independent Human Rights Commission and it will be important that the Commissioner for Children and Young People and the Human Rights Commission develop working practices which promote effective co-operation and minimise duplication and overlap. The Commissioner should not interfere in individual cases considered by the Courts or by Children's Panels including relating to the early release of offenders or in cases which are under review by another organisation. A

Commissioner for Children and Young People could:

- Work with similar bodies where appropriate to ensure effective access to their services by children and young people.

### **Access to information**

1. The Commissioner will have a range of mechanisms at his/her disposal in order to fulfil their remit most of which will not require any statutory provision. The Education, Culture and Sport Committee have recommended that the Commissioner should have the power, if necessary, to require the production of documents and the attendance of witnesses during the course of an investigation. As already stated Ministers agree that the carrying out of investigations will be an important part of the Commissioner's role and consideration should be given to what additional powers the Commissioner will require for this function. The Freedom of Information (Scotland) Act 2002 will, when implemented, make provision for the disclosure of information held by Scottish public authorities and the Commissioner would have the right to request information from public authorities under that Act. If the Commissioner considered that a public authority was withholding information in contravention of the duty placed upon it by the Freedom of Information (Scotland) Act then he/she would have the right to raise the issue with the Scottish Information Commissioner. Careful consideration will need to be given to the implications of the Committee's proposals for private and voluntary organisations. Whatever provision is made will need to be consistent with other legislation, in particular the Data Protection Act 1998.

### **Duty to render assistance**

2. The co-operation of other organisations will be a key factor in allowing the Commissioner to discharge his or her duties effectively. It is important that the Commissioner works in a co-operative way with other agencies but the Commissioner should also have the right to expect individuals and organisations to render assistance in the delivery of his/her statutory functions. Consideration could be given to allowing the Commissioner a right of access to public and private institutions providing services to children and young people. It is important that the Commissioner adopts a sensitive approach in discharging his/her duties and exercises any powers in a reasonable way giving due regard to the wishes of children and young people and the views of parents and carers.

### **Annual Reports**

3. The Executive welcomes the Committee's proposal that the Commissioner should be under a duty to prepare an Annual Report. This will provide the Commissioner with a forum to publicise any issues which have come to his/her attention over the previous year and any associated recommendations. Any recommendations should be backed by clear

evidence and be widely disseminated.

### Added Value

4. A Commissioner for Children and Young People could make a real difference to the lives of children and young people. We agree that the post should be established by statute and be independent (of the Executive, Scottish Parliament, statutory, voluntary and private organisations). A Commissioner could help to raise the profile of children's issues and children's rights amongst children and adults. A Commissioner could be a valuable resource for agencies involved in the delivery of services for children and could support the drive towards improvements in the delivery of better integrated children's services. A Commissioner should seek to provide a voice for all children and young people especially the most vulnerable and deprived in Scotland.

### Conclusion

5. The Executive welcomes the Report from the Education, Culture and Sport Committee on a Proposed Commissioner for Children and Young People Bill. Ministers welcome the proposed establishment of a Commissioner for Children and Young People. Ministers recognise that there will be a significant amount of work to be done in translating these policy intentions into legislation. The Executive welcomes the Committee's proposal that a Commissioner should have responsibility for the promotion and safeguarding of children's rights and welcomes the emphasis in the Committee's report on communicating with children and young people. It is important that a Commissioner is able to add real value to existing systems and mechanisms and not duplicate the work of existing agencies. The Executive considers that the Commissioner could play an important role in closing the opportunity gap for Scotland's children and young people.

SEED  
August 2002

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News Release: [SEED091/2002](#)  
[29/08/2002](#)

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SCOTTISH EXECUTIVE

[Back](#)

**COMMISSIONER FOR CHILDREN**

**MEMORANDUM FROM THE SCOTTISH EXECUTIVE TO THE  
EDUCATION, CULTURE AND SPORT COMMITTEE OF THE  
SCOTTISH PARLIAMENT**

***Introduction***

1. This memorandum is submitted by the Scottish Executive in response to a request from the Education, Culture and Sport Committee of the Scottish Parliament.
2. The Committee indicated from the time of its establishment an interest in the issue of consultation with children and respect for their rights. This is an area where over the past 5 years or so there have been notable developments through, for example, the Children (Scotland) Act 1995 and the appointment of a Minister for Children. But Ministers recognise that we should not be complacent about the adequacy of existing structures and safeguards. Some have suggested that children's rights and interests would be better secured with the appointment of a Commissioner for Children and the Committee has agreed to examine this idea. This memorandum sets out arguments considered by the Scottish Executive in examining this issue to date, against the background of recent developments.

***Background: Children's Commissioner***

3. A number of countries (with both unitary and devolved systems of Government) have set up Children's Commissioners or similar bodies. Outline details of some of these are set out in the Appendix. It is hard to identify a single common theme among them. They vary in status. Some are independent but some seem to be government agencies with "Commission" or something similar in their title. Some have been established by statute, others by executive action. Role and tasks vary considerably including review of individual cases in the role of ombudsman, lobby group on behalf of children and/or mechanism to report on the UN Convention on the Rights of the Child etc.

4. In his recently published report 'Lost in Care: the Report of the Tribunal of Inquiry into the abuse of children in care in the in the former county council areas of Gwynedd and Clwyd since 1974', Sir Ronald Waterhouse recommended the establishment of a Children's Commissioner for Wales whose remit would encompass monitoring, ombudsman and reporting type roles (all of which will be considered later in this document). All four political parties in the National Assembly for Wales have endorsed the idea of a Commissioner for Children in Wales. Its Health and Social Services Committee is now looking at this in more detail. The Scottish Executive's response to the issues raised in the Waterhouse Report - which go wider, of course, than just the case for a Children's Commissioner - will be published shortly.

## ***Discussion***

5. It must be right to seek to learn from other countries' experiences. But it is clear that the role of Children's Commissioners and similar appointments in those countries that have them vary considerably. Other institutional structures for children's issues also vary between countries. The unique children's hearings system in Scotland is an example of this. Reflecting the variety of international practice, those who have called for a Children's Commissioner in Scotland have envisaged such an appointment playing a variety of roles.
6. This memorandum looks in some detail at these potential various roles. While a Children's Commissioner may seem the right way forward in some of these circumstances, it might not in others. In the remainder, it may be that the present position can be improved upon through some other means.

## ***Arguments for Children's Commissioner***

7. A number of valid arguments have been advanced for having a Children's Commissioner. These include expertise, independence, and/or a voice for those actually or potentially discriminated against.

## ***Expertise***

8. On **expertise** there are certainly people with considerable experience in one or more areas of children's services. The issue may be more whether one person could genuinely claim expertise in the range of policy issues affecting children aged 0-18.
9. Expertise could be provided by a Children's Commissioner having appropriately skilled staff - in addition to support staff. If a key function of the position were to be seen as bringing outside expertise to bear, that would probably imply a larger staff requirement

(and hence cost) than under some other models. Evidence from other countries suggests that setting up a Commissioner for Children may cost anything between £150,000-£620,000 per year. It seems unlikely that a unit with a Commissioner, two specialist staff and two support staff would cost less than £300,000. In addition a budget for research might be appropriate (see paragraph 12 below). However there may be scope for reducing the additional costs required to set up and fund such a unit. A Commissioner would replicate a number of functions for which other bodies already receive public funding: the extent to which this happened would depend on his or her precise role. If a Commissioner were to be appointed, it would make sense to re-examine funding for existing bodies - including voluntary bodies - to ensure that none of it was being duplicated. Relevant voluntary bodies receiving core funding from the Scottish Executive during 2000-01 include Children in Scotland (£134,608), the Scottish Child Law Centre (£58,066), Who Cares? Scotland (£60,816) and Childline Scotland (£43,286). In addition these and other bodies may receive separate funding for specific projects.

### **Expertise: Existing Sources**

10. The need for such a source of expertise should also be seen against the background of existing sources.. Within the Scottish Executive Her Majesty's Inspectorate of Schools, the Social Work Services Inspectorate and the Chief Medical Officer and his staff provide considerable knowledge and experience in their fields. A range of statutory and voluntary organisations, universities, and think-tanks provide outside expertise. The ability of Scottish Parliamentary Committees to use expert advisers for specific enquiries would be a valuable way of mobilising existing expertise both in scrutiny and in making policy recommendations. It could be argued that bringing in sources of expert advice in this focused way may be more effective than relying upon one person or small group of people to cover the whole ground although the latter would provide a single easily recognised route for those seeking advice.

### **Expertise: Holistic Perspective**

11. While there are a number of sources of expertise already available on children's issues, it is sometimes argued that these are not deployed holistically in development and implementation of policy. Steps have been taken over recent years to seek to address this:
  - The Children (Scotland) Act 1995 set in place the system of children's services plans drawn up by local authorities, but involving health boards, the voluntary sector and others in their compilation.
  - There is now a Minister for Children and Education with an overarching view of

children's issues within the Scottish Executive. In addition, the Child Strategy Statement ensures that children's interests are considered in developing policy across the Scottish Executive. The Statement is being drawn to the attention of local authorities and others as something that might be adaptable by them to their own circumstances.

- The Social Work and Schools Inspectorates are now both housed within the Scottish Executive Education Department and responsibilities for children's social work services, children and families policy, sport, community education, childcare and pre-school education have all been brought together within a single Children and Young People's Group within that Department. There are close contacts with other parts of the Scottish Executive whose work affects children eg the Civil Law Division of the Scottish Executive Justice Department in relation to family law.
- As regards an integrated approach to children's health, the Planning and Priorities Guidelines issued to the NHS in Scotland for 1999-2002 stress that children and young people should be an important focus of the improving health and tackling inequalities effort and emphasise the importance of joint working with other agencies. Every Health Board in Scotland now has a lead Commissioner for Children's Services. In addition, the Innovation Fund for Children's Services will provide £9m over 3 years to develop innovative, combined and integrated child health services.

We will continue to look for further ways in which an integrated approach to children's services can be achieved. As the examples above indicate, this is already an issue high up on the Scottish Executive's agenda.

### **Expertise: Providing information, reports and research into children's issues**

12. If a Children's Commissioner were to be appointed, he or she could provide research and information on children's issues. The key question here is whether research or reports from this source would be markedly more valuable than from existing organisations in this field. It is arguable that, say, an annual report from a statutorily established Children's Commissioner would attract more publicity and carry more clout than one from a non-statutory body. The role of the Committee must also be looked at in this context. The Committee is itself well placed to comment and report on material issued by the Scottish Executive related to children's issues. These will include reports to be made on progress towards targets and milestones in relation to the Programme for Government and social justice, including the eradication of child poverty.

### **Expertise: Promoting the UN Convention and reporting on Government compliance to the UN Committee on the Rights of the Child**

13. Another suggestion has been that a Children's Commissioner might promote the UN Convention on the rights of the Child and report on Government compliance with it. The United Kingdom (like all other countries except the United States of America and Somalia) is a signatory to the UN Convention on the Rights of the Child. There is no court that enforces adherence to its terms in the same way as for the European Convention on Human Rights. But the UK Government has to submit a report on compliance to the UN Committee on the Rights of the Child every 5 years. The UN Committee then offers comments on this. The Scottish Executive has publicised the UN Convention through, for example, the leaflet 'The UN Convention on the Rights of the Child: A Guide for Children' commissioned from the Scottish Child Law Centre and distributed widely to schools and others. There is also a UK National Committee for the United Nations Children Fund (UNICEF), much of whose time is spent in promoting the UN Convention. It receives grant funding from the UK Government. In its response to the 1<sup>st</sup> UK Report on the UN Convention, the Committee suggested that the UK Government should establish a permanent monitoring mechanism on compliance with the Convention. It seems unlikely that this task alone, if thought necessary, would justify establishing a Children's Commissioner. But it might be combined with other duties. Equally, one could imagine a Parliamentary Committee or other mechanism looking at this subject at regular intervals.

## ***Independence***

14. Other things being equal, the Executive's policy is to minimise the number of "Quangos" with their more indirect accountability, in favour of the more direct accountability of Ministers to Parliament and, ultimately, the electorate. In other words Ministers owe their powers to a democratic process which provides legitimacy for decisions. A Commissioner would probably owe powers to Ministerial appointment but not be part of the Executive. It is therefore suggested that the simple fact of independence is not in itself a strong enough argument for a Commissioner; there must be other arguments to balance the loss of direct accountability.

## **Independence: Role of Parliament**

15. That leads on to the role of the Parliament, validated by democratic election, and its committees, as the foremost source of independent scrutiny of the Executive.
16. It is not really for the Executive to comment on the role of the Parliament. But to give a full picture it seems necessary to say at least something about its relation to children. First, the simple fact of having a Scottish Parliament considerably increases the degree of scrutiny to which the Executive is subjected, on children as on other issues. The ability to contact MSPs should help children, among others, in making their views heard. The 'Put it to your MSP' initiative set up by the Educational Institute of Scotland and

UNICEF for MSPs to hold surgeries for young people is relevant here.

17. The Education, Culture and Sport Committee specifically scrutinises the portfolio of the Minister for Children and Education. As the Minister himself has an overview of all children's issues, the Committee will be well placed to take a wide view. There are, however, other committees with an interest in children's issues, such as Health and Community Care, and Social Inclusion, Housing and Voluntary Sector. In addition there is a Cross-Party Group in the Scottish Parliament on Children.

### **Independence: Scrutiny of Specific Cases**

18. Independent scrutiny of *specific* cases is at present largely covered by the range of ombudsmen. Their role is mainly limited to dealing with complaints from individuals that they have suffered injustice because of maladministration, although the Health Service Ombudsman can also deal with complaints about clinical care. Complaints to the Parliamentary and Scottish Parliamentary Ombudsmen must be referred by an MP or MSP respectively on behalf of the aggrieved person, who could potentially be a child. The Local Government and Health Service Ombudsmen can accept complaints directly from the aggrieved person. (In all cases considered by ombudsmen there is an expectation of having exhausted other means of complaint first.)
19. While we have no evidence that children's interests are inadequately dealt with by the existing range of ombudsmen, it is possible that a child might find these processes hard to fathom - particularly if without any or adequate parental support. If this were found to be the case, a Children's Commissioner acting as a focus for all cases involving children might be one way forward. Consideration would need to be given to the scope of his or her jurisdiction. Would he or she have sole responsibility for dealing with such cases? Investigating complaints of maladministration is a specialised job in which the existing ombudsmen have accumulated considerable experience and expertise. It might therefore be more appropriate for the Children's Commissioner's role to be simply as a link between the child and the ombudsmen who would continue to carry out the investigations. Other questions that may need to be considered include - how easy would it be to distinguish cases involving children? would cases only be accepted from children or also from parents or other representatives?
20. Although a Children's Commissioner might address any shortcomings that might be identified with current ombudsman arrangements, the creation of a separate office may not be the only or the best way forward. One could imagine, for example, a 'virtual' children's ombudsman whereby a single telephone number/address/e-mail point, well publicised in media and attractive to children, provided advice on taking up complaints and a gateway to the various ombudsmen. The Scottish Parliamentary and Health Service Ombudsmen already share an address and telephone helpline.

21. The Executive will shortly be issuing a consultation paper on the Review of Public Sector Ombudsmen in Scotland. Amongst the issues it will discuss are various proposals for improving the accessibility of the Ombudsmen, eg removal of the MSP filter for complaints to the Scottish Parliamentary Ombudsman; and the establishment of a one-stop shop combining the offices of the Scottish Parliamentary, Local Government and Health Service Ombudsmen. The paper could be extended to include specific proposals relating to complaints by children.

### **Independence: Looked After Children etc**

22. Particular concerns about children's rights arise in the context of looked after children. The current pre-legislative consultation paper on *Regulating Care and the Social Services Workforce* sets out the Executive's intention to establish the Scottish Commission for the Regulation of Care (SCRC) and the Scottish Social Services Council in 2001. These will have a considerable impact in safeguarding children's interests and, in particular, in ensuring independent scrutiny of care for children. There may be scope for appointing a Children's Rights Director within the new Commission. This is the approach being taken forward in England, where a Children's Rights Director will be appointed as part of the National Care Standards Committee. (The Committee, which will have a similar role to the SCRC, is due to be set up in 2002 by the Department of Health.) In addition, local authorities have been funded to establish a network of advocacy services through Who Cares? Scotland and others for children in residential and foster care. These reforms need to be taken into account in considering whether a Children's Commissioner could add further value.

### **Advocacy**

23. There is also an argument that children need an **advocate**. This could be to counter their absence from democratic participation because of age and/or to counter or challenge cultural assumptions about children's views or capacities. The latter has some similarity to the case for the Equal Opportunities Commission or the Commission for Racial Equality. But there are differences. These two Commissions were set up in legislation which also made illegal specific forms of discrimination on grounds of gender or race, made it possible to seek redress for this from the courts or an employment tribunal, and gave the Commissions a function of monitoring how this legislation was applied in practice and of providing assistance where people wished to bring a case on these grounds.
24. Although the Children (Scotland) Act 1995 does include some broad rights for children to be consulted on matters of concern to them, these rights may not lend themselves to redress through the courts in the same way as, for example, being turned down for a job on grounds of race where there will be a clear monetary consequence. That said, the

two Commissions do range more widely, for example in encouraging good practice and looking more broadly at policy. Here one can see a clear analogy with work that could be carried out with a children's focus - and which, indeed, organisations such as Children in Scotland already carry out, albeit on a non-statutory basis.

### **Advocacy: Taking test cases and initiating legal action on behalf of children**

25. The role envisaged here is similar to that of the Commission for Racial Equality and the Equal Opportunities Commission (which can initiate legal proceedings in their own right). There may be something in this. Although there have already been notable developments in the law relating to children, for example over corporal punishment in schools following an ECHR case, it seems intuitively possible that children's legal rights may sometimes be neglected given the lesser probability of them having recourse to legal action (although children under 16 can apply for legal aid and instruct solicitors in connection with any civil matter, where they have a general understanding of what it means to do so; parents can also act on their children's behalf). It is worth adding that the EOC and CRE work in the children's field where relevant to their core duties.

### **Advocacy: Children's Hearings**

26. This also needs to be seen in the context of the children's hearing system. This combines the principles of child welfare and juvenile justice and has implications for any scrutiny and advocacy role of a Commissioner. Around 14,000 children are referred to hearings each year. The creation of a Commissioner could therefore risk overlap with the statutory functions already exercised by children's panels. If a Commissioner were to have a specific advocacy role, particularly for the vulnerable and damaged children and young people appearing before hearings, this could introduce renewed pressures for legal representation within the system. The relative informality of hearings is generally seen as one of the strengths of the system.

### **Conclusion**

27. This memorandum has sought to outline the possible role of the Children's Commissioner, the arguments for and against such an appointment and the arrangements already in place to ensure the interests of children are safeguarded, promoted and taken properly into account. It does not aim to come to an overall conclusion. But key issues for consideration might be:
- is there more that ought to be done that is not being done now to protect and promote children's interests, collectively or individually?
  - if yes, is a Children's Commissioner the best way forward? Are there alternative

approaches which might be better or equally effective?

- what added value might a Children's Commissioner bring? What specific roles would a Children's Commissioner perform?
- what would or might have to change if we had a Children's Commissioner?
- what roles currently undertaken by voluntary organisations would be taken over by a Commissioner?
- to whom would a Commissioner be answerable?

Scottish Executive  
May 2000

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## **APPENDIX**

### **COMMISSIONER FOR CHILDREN: FOREIGN COMPARATORS**

#### **Australia - Queensland: Children's Commission**

- Established by statute in 1996. Funded direct by Government (annual budget £620K).
- Functions - monitoring / review of services; advising Minister on standards for child care; receiving & investigating complaints; monitoring procedures for handling complaints; co-operating with police in investigating offences involving children & on sexual abuse, pornography/sex tourism; establishing tribunals to hear appeals; inquiring into matters relating to children's services. No formal legal powers.

#### **Australia - South Australia: Children's Interest Bureau**

- Established by statute in 1983. Funded as part of the Office for Families and Children within the South Australia Government's Department of Human Services (annual budget £120K).
- Functions - policy review & development; advice to Government; research & monitor interests of children; community & 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 & 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 & 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 & complaints.

## **Belgium (Flanders): Children's Rights Commissioner**

- Established 1998. Annual budget £300K.
- Functions - ensure implementation of UN Convention; research living conditions of children; dealing with complaints & acting as Ombudsman; informing Government & 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.
- Functions of Commissioner - monitor services for children; monitor complaint and review processes; follow up unresolved complaints & review all children's deaths.
- Functions of Advocate's Office - ensure that rights & interests of children, youth & families are heard.

## **Denmark: Danish National Council for Children**

- Established by Order in 1994. Members appointed by Minister of Social Affairs. Funded by Government (annual budget approximately £250K).

- 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 & regulations on children & propose amendments/improvements.

### **Israel: Director of the Open Line for Pupils**

- Established 1991 as part of Office of the Deputy Director General of the Ministry of Education, Culture and Sport. Annual budget £100K.
- Functions - propose changes to policies, guidelines & means of enforcement & monitoring in relation to pupils rights; respond to complaints & crises by pupils & parents; advise & assist pupils & 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. Annual budget £270K.
- Functions - details unavailable - has been criticised for lack of independence.

### **Norway: Ombudsman for Children**

- Established by statute in 1981. Funded by Parliament through Department of Family and Children Affairs (annual budget approximately £550K).
- Principal functions - 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 Department of Social Affairs (annual budget

£570K).

- 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.
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