June 17th 2013

Dear Mr Hennessey,

JCHR legislative scrutiny priorities 2013-14: call for evidence

Thank you for the opportunity to feed into the JCHR’s legislative scrutiny priorities for 2013-14.

As you know, the Office of the Children’s Commissioner carries out Child Rights Impact Assessments of legislation which we consider to be particularly relevant to children’s rights. Our Business Plan for 2013-14 commits us to undertaking at least three assessments. We are yet to finalise details of these, but have already undertaken an assessment of the Anti-Social Behaviour, Policing and Crime Bill, and I highlight a number of issues below.

We believe the proposals for the Immigration Bill set out in the Queen’s Speech present significant challenges to the realisation of children’s rights. It is therefore very likely that we would undertake an assessment of the Immigration Bill, but limited detail means that it is premature to comment on specifics at this stage.

The Anti-Social Behaviour, Crime and Policing Bill

The OCC published its assessment of the Bill, focusing on parts 1 – 6 (Anti-Social Behaviour), and part 9 (Forced Marriage) on June 7th. Copies were sent to JCHR members and the assessment is available on our website. It focuses on the likely impact of these measures on children’s rights as set out in the UN Convention on the Rights of the Child (UNCRC). We recognise the importance of an effective response to Anti-Social Behaviour, particularly since children often bear the brunt of much of this behaviour.

Our assessment of the provisions on anti-social behaviour includes the following points:

There is a risk that lower thresholds for the imposition of the new civil injunction, and the use of a civil standard of proof will result in a growing number of children subject to a formal order. We consider that holding children as young as ten to account for their actions in the courts, with no requirement to consider alternative courses of action or the specific circumstances of the child, is not age appropriate, and is not in children’s best interests. However, the fact that breach would amount to civil contempt rather than a criminal offence should help remove a barrier to children’s reintegration into society.
The inclusion of positive requirements in civil injunctions and criminal behaviour orders may support some children to address their problem behaviour. However, on balance, positive requirements are likely to make compliance more difficult for children, leading to more breaches.

Custody should be reserved for only the most dangerous and serious young offenders. The use of custody as a sanction for breach of orders which do not meet the threshold for criminal prosecution is not in accordance with the UNCRC requirement that children should be imprisoned only for the most serious offences and as a matter of last resort. We recognise that, overall, 3 month limits on the length of detention orders for injunctions and their restriction to 14 – 17 year olds is likely to result in shorter average sentences compared to the current regime, with fewer of the youngest children likely to be detained for breaches.

The presumption against reporting restrictions in civil injunction and criminal behaviour order proceedings is in breach of the UNCRC requirement that children in trouble with the law must have their privacy fully respected at all stages of the proceedings.

The impact of the proposed new dispersal power is likely to be mixed, with benefits for some children affected by anti-social behaviour. However, for some children the change may result in increased vulnerability to violence and/or disproportionate restrictions on their freedom of assembly, with reduced oversight and monitoring leading to variation between different localities.

Provisions on repossession of dwelling houses mean that children may be made homeless as the result of the actions of others, or potentially as the ultimate result of behaviour deemed a nuisance and annoying. Homelessness is detrimental to children’s right to an adequate standard of living, to education and health, and their safety.

On forced marriage, our assessment concludes that criminalising breaches of Forced Marriage Protection Orders is likely to support children’s best interests since it will make enforcement easier and increase protection for children. There is limited evidence on which to assess the likely impact of the creation of an offence of Forced Marriage. Where children are involved, forced marriage must be understood and addressed as an integral part of child protection policy and practice. We recognise the symbolic value of an offence of forced marriage. However, our assessment raises a number of concerns about how this will work in practice. Careful monitoring of the impact on children will be required.

I hope this is helpful. We will of course provide you with more details of our Child Rights Impact Assessments in due course. Please do not hesitate to contact us if members of the Joint Committee would like to follow up any of the points raised in this letter.

Yours sincerely,

Frances Winter
Principal Policy Adviser, Children’s Rights, Office of the Children’s Commissioner