

National Assembly for Wales

STATUTORY INSTRUMENTS

2001 No. (W.)

CHILDREN'S COMMISSIONER, WALES

The Children's Commissioner for Wales Regulations 2001

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the functions of the Children's Commissioner for Wales ("the Commissioner") established under Part V of the Care Standards Act 2000 ("the Act").

Part I of the Regulations contains interpretation provisions.

Part II, in relation to the role of the Commissioner in reviewing and monitoring complaints, whistle-blowing and advocacy arrangements, prescribes the kind of advice and support for children arrangements for the provision of which are to be subject to the Commissioner's jurisdiction (regulation 2). It also confers power on the Commissioner to require information from prescribed persons (regulation 3).

Part III confers functions on the Commissioner concerning the examination of cases of particular children to whom Part V of the Act applies (regulation 4); specifies the types of case which may be examined (regulation 5) and the circumstances in which an examination may be made (regulation 6); makes provision for the conduct of an examination (regulation 7), as to the provision of information to the Commissioner in connection with an examination (regulation 8), and as to attendance before the Commissioner in person (regulation 9).

Part IV confers power on the Commissioner to provide financial and other assistance to children to whom Part V of the Act applies, prescribes the proceedings and procedures in relation to which such assistance may be given (regulation 10) and provides for conditions which may be imposed in connection with the provision of assistance (regulation 11).

Part V makes further provision for the arrangements relating to the Commissioner's relationship with children (regulation 12).

Part VI makes provision for specific reports and action to follow them up (regulations 13 and 14), as to annual reports (regulation 15) and as to publication of reports (regulation 16).

Part VII contains miscellaneous provisions as to the restrictions on the exercise of certain functions where they overlap with functions of other bodies which are prescribed (regulation 17); to set the period of the initial and succeeding financial years (regulation 18); as to the way in which information is produced (regulation 19), as to payment of expenses and allowances in relation to the production of information (regulation 20) and as to the construction of certain references to children (regulation 21). Finally, the Regulations impose a duty on the Commissioner, in exercising his or her functions, to have regard to the United Nations Convention on the Rights of the Child (regulation 22).

STATUTORY INSTRUMENTS

2001 No. (W.)

CHILDREN'S COMMISSIONER, WALES

The Children's Commissioner for Wales Regulations 2001

Made 2001

Coming into force

For all purposes other than

Regulation 21(1) 26th August 2001

For the purposes of

The National Assembly for Wales makes the following Regulations in exercise of the power conferred upon it by sections 73(4)(b) and (5), 74(1) to (3) and (6), 76(1), (1A), (2), (4) and (5), 77(2), 78(1A) and (6), 118(4) and (7) of and paragraphs 6(4) and 8 of Schedule 2 to the Care Standards Act 2000():

PART I

GENERAL

Citation, commencement and interpretation

1. — These Regulations may be cited as the Children's Commissioner for Wales Regulations 2001 and shall come into force for the purposes of paragraph (1) of regulation 21 on 1st October 2001 and for all other purposes on 26th August 2001.

1. In these Regulations -

"the Act" ("*y Ddeddf*") means the Care Standards Act 2000;

"arrangements in relation to complaints, whistle-blowing or advocacy" ("*trefniadau mewn perthynas â ch•ynion, chwythu'r chwiban neu eiriolaeth*") means arrangements falling within subsection (2), (2A), (2B), (2C), (3), or (4) of section 73 of the Act respectively;

"an arrangements review" ("*adolygiad trefniadau*") means a review of arrangements in relation to complaints, whistle-blowing or advocacy pursuant to section 73(1) of the Act;

"the Assembly" ("*y Cynulliad*") means the National Assembly for Wales;

"the Commissioner" ("*y Comisiynydd*") means the Children's Commissioner for Wales;

"the First Minister" ("*y Prif Weinidog*") means the person elected from time to time as the Assembly First Secretary pursuant to section 53(1) of the Government of Wales Act 1998;

"a functions review" ("*adolygiad swyddogaethau*") means a review of the effect on children of the exercise or proposed exercise of functions pursuant to section 72B(1) of

the Act;

"regulated children's services in Wales" ("*gwasanaethau rheoleiddiedig i blant yng Nghymru*") and "provider" ("*darparydd*"), in relation to such services, shall be construed in accordance with section 78 of the Act except that references to such services and to the providers of such services shall also be construed in accordance with paragraph 3 of Schedule 5 to the Act to the effect that they include references to services which may at any time not be regulated under the Act or to providers of such services at such a time, pending the coming into force of relevant provisions of the Act;

"relevant children" ("*plant perthnasol*") means children to whom Part V of the Act applies.

2. In these Regulations, a reference -

- a. to a numbered regulation is to the regulation in these Regulations bearing that number;
- b. in a regulation to a numbered paragraph, is to the paragraph in that regulation bearing that number;
- c. in a paragraph to a lettered or numbered sub-paragraph, is to the sub-paragraph in that paragraph bearing that letter or number.

PART II

REVIEW AND MONITORING OF ARRANGEMENTS

Prescribed advice and support

2. The kind of advice and support prescribed for the purposes of section 73(4)(b) of the Act is -

- a. the provision of advice and support to relevant children which is intended to enable or assist them to express their views and wishes orally or using any other means of communication, and
- b. the provision of advice (including information) to such children about their rights and welfare.

Provision of information by prescribed persons

3. — The Commissioner may require a person to whom paragraph (2) applies to provide to the Commissioner information, recorded in any form, which the Commissioner considers it necessary or expedient to have for the purposes of
 - a. reviewing and monitoring arrangements in relation to complaints, whistle-blowing or advocacy, and
 - b. assessing the effect of the failure of any person to make such arrangements pursuant to section 73(1A) of the Act.
1. The persons referred to in paragraph (1) are -
 - a. In relation to the provision of regulated children's services in Wales, the providers or former providers of such services, employees or former employees of such providers or former providers, persons who work or worked for such providers or former providers in a voluntary capacity, and members and employees and former members and employees of the Assembly;
 - b.
 - i. Members (including elected members), directors, executives, officers and employees of a relevant person, former members, directors, executives, officers and employees of a relevant person and persons who work or worked for a relevant person in a voluntary capacity;
 - ii. For the purposes of sub-paragraph (i) "relevant person" means the Assembly, any person mentioned in Schedule 2B to the Act (other than the Assembly) providing services to or in respect of children in Wales or a person providing such services on behalf of or under arrangements with that person.
 - c. The receiver or manager of the property, the liquidator or provisional liquidator or the trustee in bankruptcy, as the case may be, of a person who provides or provided services described in paragraphs (a) or (b).

PART III

EXAMINATION OF CASES

Examinations

4. Subject to the following paragraphs in this Part the Commissioner may examine the cases of particular children to whom Part V of the Act applies.

Cases subject to examination

5. Subject to regulation 6, the Commissioner may examine cases of particular children -
 - a. to or in respect of whom regulated children's services in Wales are being or have been provided;
 - b. to or in respect of whom services are being or have been provided by any of the persons mentioned in Schedule 2B to the Act or persons providing such services on behalf of or under arrangements with any of those persons; or
 - c. who are ordinarily resident in Wales and who are being or have been affected by the exercise or proposed exercise of any function of the Assembly or a person mentioned in Schedule 2A to the Act,

where the cases relate to issues concerning the provision of such services or the effect on the said children of the exercise of such functions.

Circumstances in which an examination may be made

6. The Commissioner may only examine the case of a particular child where
 - a. a representation is made to the Commissioner by the child concerned or, if the child is unable for any reason to make such a representation, where a representation is made to the Commissioner on behalf of the child by a person who, in the reasonable opinion of the Commissioner is suitable to make such a

representation;

- b. the Commissioner considers that the representation raises a question of principle which has a more general application or relevance to the rights or welfare of relevant children than in the particular case concerned; and
- c. the Commissioner has taken into account whether the issues involved in the case have been or are being formally considered in any way by other persons and if they have not whether, in the Commissioner's opinion, they are more suitable for consideration by other persons.

Procedure for conducting an examination

7. — Where the Commissioner decides to conduct an examination he or she shall -
 - a. produce terms of reference of the examination;
 - b. send the terms of reference to the person who made a representation in relation to the case in accordance with paragraph (a) of regulation 6;
 - c. send written notice of the proposed examination and copies of the terms of reference to the person ("the person being examined") in respect of whose provision of services or the exercise of whose functions is to be examined;
 - d. afford to the person being examined, and if he or she so desires, his or her representative an opportunity to make representations in writing or in person in relation to the matters being examined.
1. Where the Commissioner decides not to conduct an examination he or she shall prepare a statement of reasons for that decision and shall send copies of it to -
 - a. the person who made the representation in relation to the case in accordance with paragraph (a) of regulation 6, and
 - b. such other persons as the Commissioner considers appropriate.

Provision of information in connection with an examination

8. — In conducting an examination the Commissioner may -

- a. require a person to whom paragraph (2) applies to provide any information which appears to the Commissioner to be necessary for the purposes of the examination in question;
- b. require such a person or such other person as may be accountable for the said information, to provide the Commissioner with an explanation of or assistance in relation to_
 - i. any matters which are the subject of the examination, or
 - ii. any information provided under sub-paragraph (a).

1. The persons to whom this paragraph applies are_

- a. In relation to the provision of regulated children's services in Wales, the providers or former providers of such services, employees or former employees of such providers or former providers and persons who work or worked for such providers or former providers in a voluntary capacity and members and employees and former members and employees of the Assembly;
- b.
 - i. Members (including elected members), directors, executives, officers and employees of a relevant person, former members, directors, executives, officers and employees of a relevant person and persons who work or worked for a relevant person in a voluntary capacity;
 - ii. For the purposes of sub-paragraph (i) "relevant person" ("*person perthnasol*") means the Assembly, any person mentioned in Schedule 2A to the Act, any other person exercising a function of the Assembly or of any person mentioned in the said Schedule 2A, or any person providing services to or in respect of children in Wales on behalf of or under arrangements with any person mentioned in Schedule 2B to the Act.

- c. The receiver or manager of the property, the liquidator or provisional liquidator or the trustee in bankruptcy, as the case may be, of a person who provides or provided services described in paragraphs (a) or (b).

Attendances of witnesses

9. — The Commissioner may, if it is considered necessary for the purposes of an examination, require a person to whom paragraph (2) applies to attend before the Commissioner in person to provide information, explanations or assistance.
 1. The persons to whom this paragraph applies are persons who are required_
 - a. to provide information under paragraph (1)(a) of regulation 8, or
 - b. to provide an explanation under paragraph (1)(b) of regulation 8.
 2. The Commissioner may only require a person to attend in person at any place in accordance with paragraph (1) if reasonable written notice of the proposed date of attendance and the information, explanations or assistance required by the Commissioner has been given to that person.
 3. In connection with such attendance in person, the Commissioner may, subject to section 74 (4) of the Act, issue witness summonses and administer oaths or affirmations and may permit a person to be represented before the Commissioner.

PART IV

PROVISION OF ASSISTANCE

Provision of assistance in proceedings

10. — The Commissioner may, subject to paragraphs (3) and (5), provide relevant assistance to a relevant child -
 - a. in relation to proceedings prescribed in paragraph (2) where, in the reasonable opinion of the Commissioner, the proceedings relate to matters which have a more general application or relevance to the rights and welfare of children in Wales than

- in the particular proceedings concerned, and
- b. in making a complaint or representation to or in respect of a provider of regulated children's services in Wales, and
 - c. in making a complaint or representation to or in respect of a person mentioned in section 73(2B) of or Schedule 2B to the Act.
1. The proceedings prescribed for the purposes of section 76(1)(b) of the Act are proceedings which concern -
 - a. the provision to or in respect of a relevant child of regulated children's services in Wales;
 - b. the provision of services to or in respect of such a child by any person mentioned in Schedule 2B to the Act or any person providing services on behalf of or under arrangements with that person; or
 - c. the effect on such a child of the exercise or proposed exercise of any function of the Assembly or a person mentioned in Schedule 2A to the Act
 2. In deciding whether to provide relevant assistance the Commissioner may take account of the financial and other assistance available to the relevant child in relation to the proceedings, complaint or representation concerned, including assistance under the Access to Justice Act 1999.
 3. For the purposes of this regulation "relevant assistance" means -
 - a. Providing or arranging for the provision of advice to and representation of the child; and
 - b. providing or arrange for the provision of any other assistance which he or she considers appropriate.
 4. Paragraph (4) does not affect the law and practice as to who may represent a person in relation to any proceedings.

Conditions

11. — Where the Commissioner decides to provide financial assistance to a relevant child pursuant to regulation 10 the assistance may be provided subject to either or both of the conditions

specified in paragraph (2).

1. The conditions are that -
 - a. The Commissioner may recover the reasonable cost of providing the assistance from any sums paid by other parties for this purpose in the proceedings concerned;
 - b. The assistance provided does not duplicate assistance which has been or may be provided under any enactment.
2. For the purposes of paragraph (2)(a) it is immaterial whether the sums paid by other parties are payable by virtue of a decision of a court or tribunal, an agreement reached to avoid proceedings or to bring them to an end, or otherwise.

PART V

FURTHER FUNCTIONS

Relationship with children

12. — The Commissioner shall take reasonable steps to ensure that -
 - a. children in Wales are made aware of the location of the Commissioner's office or offices and the ways in which they may communicate with the Commissioner and his or her staff;
 - b. such children are encouraged to communicate with the Commissioner and his or her staff;
 - c. the content of any material issued by the Commissioner or his or her staff, whether printed or in electronic form, which is intended to be read by any one or more of such children, takes account, so far as practicable, of the age, level of understanding and usual language of the intended recipient;
 - d. the views of such children are sought as to how the Commissioner should exercise his or her functions and as to the content of the Commissioner's annual work

programme ; and

e. the Commissioner and his or her staff make themselves available to such children in the children's locality.

1. In exercising the functions set out in paragraph (1) the Commissioner shall have regard to what he reasonably considers to be the needs and circumstances of such children.

PART VI

REPORTS

Reports

13. — Following the conclusion of an examination undertaken pursuant to Part III of these regulations, the Commissioner shall make a report .

1. Following the conclusion of a functions review, an arrangements review, monitoring pursuant to section 73(1) of the Act or an assessment pursuant to section 73(1A) of the Act, the Commissioner may make a report.

2. A report made under paragraph (1) or (2) shall set out_

a. the findings and conclusions of the Commissioner; and

b. any recommendations made by the Commissioner.

3. The Commissioner shall send a copy of such a report to_

a. The First Minister; and

b. The libraries of the Assembly and of the Houses of Parliament.

4. The Commissioner shall send a copy

a. in the case of a report made under paragraph (1), to the child or person , as the case may be, who made a representation to the Commissioner in accordance with

regulation 6; and

- b. in the case of a report made under paragraph (1) or (2), to the person or persons
 - i. whose provision of services or the exercise of whose functions have been examined,
 - ii. whose arrangements in relation to complaints, whistle-blowing or advocacy have been reviewed or monitored,
 - iii. in respect of whom an assessment pursuant to section 73(1A) of the Act has been carried out, or
 - iv. who are mentioned in the report.

Further action following a report

14. — Where the Commissioner has made a report under paragraph (1) of regulation 13 which contains a recommendation in respect of a provider of regulated children's services in Wales, the Assembly or a person mentioned in Schedule 2A to the Act, the Commissioner may require the person in writing in respect of whom the recommendation is made to provide the Commissioner with the relevant information within 3 months of the date on which the person is sent a copy of the report.
 1. Where the Commissioner has made a report under paragraph (2) of regulation 13 which contains a recommendation in respect of a person mentioned in paragraph (1) of this regulation, the Commissioner may request the person in writing in respect of whom the recommendation is made to provide the Commissioner with the relevant information within 3 months of the date on which the person is sent a copy of the report.
 2. For the purposes of paragraphs (1) and (2) "the relevant information" means such information, explanations or assistance as to enable the Commissioner to determine whether the person concerned has complied with the recommendation or will be so complying, or an explanation of the reason for no such action having been taken or not being intended to be taken.
 3. Where a requirement is made under paragraph (1) or a request is made under paragraph (2) it shall include a statement that failure to respond within the 3 months concerned may be published in such manner as the Commissioner considers appropriate.
 4. If the Commissioner reasonably considers, upon receipt of the relevant information, that

the action taken or proposed to be taken to comply with the recommendation or that the reason for no such action being taken or not being proposed to be taken is inadequate, the Commissioner may send to the person concerned a written notice setting out the inadequacies which requires a response within 1 month of the date of sending.

5. Where the Commissioner receives no response in accordance with the written notice under paragraph (5) within 1 month or is dissatisfied with the response the Commissioner may send a supplementary notice which requires a supplementary response within 1 month of the date of sending.
6. The supplementary notice shall include a statement that failure to provide what the Commissioner reasonably considers to be a satisfactory supplementary response, or a response at all, may be published in such manner as the Commissioner considers appropriate.
7. The Commissioner shall maintain a register containing details of_
 - a. recommendations contained in reports made under paragraphs (1) or (2) of regulation 13, and
 - b. the results of further action taken in accordance with paragraphs (1), (2), (5) and (6) of this regulation .
8. Any register maintained under paragraph (8) shall be open to inspection by any person at all reasonable times at the offices of the Commissioner and the Commissioner may make arrangements for copies of the register to be available for inspection in such other place or places or by such other means as he or she considers appropriate.
9. The Commissioner shall publish the said arrangements in such a way as to bring them to the attention of persons who are, in the reasonable opinion of the Commissioner, likely to be interested.

Annual Reports

15. — Subject to paragraph (3), the Commissioner shall make an annual report to the First Minister which shall contain_
 - a. a summary of the action taken in the exercise of the Commissioner's functions under the Act during the previous financial year including a summary of the reports issued during that period and of such representations as the Commissioner may have made during that period pursuant to section 75A of the Act, including

any representations made as to the range or effectiveness of the Commissioner's powers;

- b. a review of issues relevant to the rights and welfare of children in Wales; and
 - c. a summary of the Commissioner's work programme for the financial year in which the report is made and of the Commissioner's proposals for a work programme for the financial year following that year.
1. The Commissioner shall also produce a version of the annual report which is, so far as reasonably practicable, suitable for children.
 2. The first reports referred to in paragraphs (1) and (2) shall be made in 2002.
 3. Subject to paragraph (3), the Commissioner shall, no later than 1st October in each year, send a copy of the reports referred to in paragraphs (1) and (2) to_
 - a. The First Minister; and
 - b. The libraries of the Assembly and of the Houses of Parliament.

Publication of reports

16. — The Commissioner shall arrange for copies of reports made under paragraphs (1) or (2) of regulation 13 and under regulation 15 to be available for inspection at the Commissioner's office at all reasonable times and at such other places or by such other means, including by electronic means, as the Commissioner considers appropriate.
 1. The Commissioner shall publish the said arrangements in such a way as to bring them to the attention of persons who are, in the reasonable opinion of the Commissioner, likely to be interested.

PART VI

MISCELLANEOUS

Restrictions on exercise of functions exercisable by prescribed persons

17. For the purposes of section 77(2) of the Act there is prescribed the Children and Family Court Advisory and Support Service().

Financial years

18. For the purposes of paragraph 6(4) of Schedule 2 to the Act the following periods are specified_
- a. in relation to the first financial year, the period from 1 March 2001 to 31 March 2002;
 - b. in relation to each subsequent financial year, the period from 1 April to 31 March.

Information

19. Where information required to be provided under paragraph (1) of regulation 3, paragraph (1)(a) of regulation 8 or paragraph (1) of regulation 14 ("the relevant provisions") consists of information held by means of a computer or in any other form, the Commissioner may require any person having charge of, or otherwise concerned with the operation of, the computer or other device holding that information to make the information available, or produce the information, in a visible and legible form.
20. Where a person provides information to the Commissioner pursuant to paragraph (1)(a) of regulation 8 or attends before the Commissioner pursuant to regulation 9, the Commissioner may, if he or she thinks fit, pay to that person_
- a. Sums in respect of expenses properly incurred by the person, and
 - b. Allowances by way of compensation for the loss of their time,

in accordance with such scales, and subject to such conditions, as may be determined by the Commissioner.

Application of references to children

21. — For the purposes of Part V of the Act "child" includes a person aged 18 or over who falls within subsection (1B) of section 78 of the Act and references to "child" or "children" in Part V of the Act and in these Regulations shall be construed accordingly.

1. Subject to paragraph (3), references to a child in subsection (1) of section 78 of the Act shall include references to a person (including a child) who was at any time (including a time before the coming into force of this paragraph)_

a. A child ordinarily resident in Wales;

b. A child to or in respect of whom services were provided in Wales by, or on behalf of or under arrangements with a person mentioned in Schedule 2B to the Act; or

c. A child to or in respect of whom regulated children's services were provided,

and references to "child" or "children" in Part V of the Act and in these Regulations shall be construed accordingly.

2. References to "child" or "children" construed in accordance with paragraph (1) shall not, in addition, be construed in accordance with paragraph (2) in relation to any time before the coming into force of paragraph (1).

United Nations Convention on the Rights of the Child

22. In exercising his or her functions the Commissioner shall have regard to the United Nations Convention on the Rights of the Child() as ratified by and subject to such reservations made by the United Kingdom as apply as at the date of making of these regulations.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998()

Date

The Presiding Officer of the National Assembly for Wales