

# CARE STANDARDS ACT 2000

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part V – the Children’s Commissioner for Wales

176. Part V establishes an office of the Children’s Commissioner for Wales, and sets out its functions and powers. These will extend to all the services for children regulated in Wales under the Act: children’s homes, residential family centres, local authority fostering and adoption services, fostering agencies, voluntary adoption agencies, domiciliary care services for children, the welfare aspects of daycare and childminding services for all children under the age of eight; and the welfare of children living away from home in boarding schools. They will also apply to children in other settings regulated under this Act, such as care homes and independent hospitals. The Commissioner’s functions and powers include the review and monitoring of arrangements for dealing with complaints, ‘whistleblowing’ and advocacy arrangements; the examination of particular cases; and providing assistance, including financial, to a child in making a complaint or in other proceedings.

#### *Section 72 Children’s Commissioner for Wales*

177. *Section 72* establishes the office of the Children’s Commissioner for Wales (or Comisiynydd Plant Cymru), and gives effect to *Schedule 2*. Schedule 2 sets out arrangements for the constitution, appointment, financial and audit procedures and other general provisions.

#### *Section 73 Review and monitoring of arrangements*

178. *Section 73* sets out what the Commissioner may do in respect of ensuring that arrangements for complaints, whistleblowing and advocacy procedures in respect of children’s services regulated in Wales under this Act safeguard and promote the rights and welfare of children receiving such services.
179. *Subsections (2), (3) and (4)* give details of the arrangements that the Commissioner is empowered to monitor and review. *Subsection (2)* concerns complaints or representations made by, or on behalf of, children to whom this Part applies. *Subsection (3)* concerns the arrangements for ensuring proper action is taking following disclosure of information (*ie* whistleblowing). Such information may appear to show that a criminal offence has been committed, that a legal obligation has not been fulfilled, that the health and safety of a person has been endangered, or that any of these have been deliberately concealed. *Subsection (4)* concerns arrangements for advocacy or other support (as may be described in regulations) for children.

#### *Section 74 Examination of cases*

180. *Subsection (1)* enables the Assembly to make regulations giving the Commissioner power to examine the cases of particular relevant children to whom regulated services are provided. Under *subsection (2)* provision is made for regulations to detail the circumstances in which an examination may be made; the procedure for conducting

an examination; and the publication of reports following examination. *Subsection (3)* enables the regulations to be made granting the Commissioner rights to obtain information, explanations and assistance in respect of such an examination. For the purposes of examination, *subsection (4)* provides that the Commissioner shall have the same powers as the High Court in respect of the attendance and examination of witnesses and the production of documents.

### ***Section 75 Obstruction etc***

181. This section give the Commissioner power to complain to the High Court if he is obstructed in the exercise of his powers, as set out above. The High Court can then deal with the person concerned as if they were obstructing the High Court in the exercise of its functions. This is a common form of enforcement mechanism for offices of this type.

### ***Section 76 Further functions***

182. *Subsections (1)* and *(2)* enable the Assembly to make regulations giving the Commissioner power to assist a child (including financially) who is making a complaint or representation to, or in respect of, a provider; or who is taking part in any prescribed proceedings. *Subsection (3)* enables the Commissioner to give advice and information to any person in connection with his functions. *Subsection (4)* enables further functions to be conferred on the Commissioner in regulations, in connection with his existing functions under this Part. *Subsection (6)* sets out restrictions on naming persons who are not the subject of an investigation in reports of the Commissioner. *Subsection (7)* establishes that the publication of any matter by the Commissioner in a report arising from his functions is absolutely privileged for the purposes of the law of defamation.

### ***Section 77 Restrictions***

183. *Subsection (1)* restricts the Commissioner's ability to enquire into or report on any matter that is or has been the subject of legal proceedings before a court or tribunal. *Subsection (2)* precludes the Commissioner from exercising any functions which under statute is exercisable by another individual or body, eg CAFCASS (the Children and Family Court Advisory Support Service), if regulations so provide.

### ***Section 78 Interpretation***

184. This section provides definitions for this Part of the Act. *Subsection (1)* provides that this Part of the Act applies to a child in respect of whom regulated children's services are provided in Wales. For example, a child accommodated in a children's home, or in foster care. *Subsections (2)* to *(5)* define the term "regulated children's services in Wales", and provide further clarification as to who is to be treated as the provider of particular regulated services.
185. *Subsection (6)* enables the Assembly to provide, in regulations, for the Commissioner to exercise his functions in respect of a matter that occurred prior to the commencement of this Part, and in respect of an adult who was a child receiving relevant services during a prescribed time. This will enable the Commissioner to investigate cases that come to light after his Office is established, even though the events took place prior to that time.