



# Care Standards Act 2000

## 2000 CHAPTER 14

### PART V

#### THE CHILDREN'S COMMISSIONER FOR WALES

#### **72 Children's Commissioner for Wales.**

- (1) There shall be an office of the Children's Commissioner for Wales or Comisiynydd Plant Cymru.
- (2) Schedule 2 shall have effect with respect to the Children's Commissioner for Wales (referred to in this Act as "the Commissioner").

#### **Commencement Information**

- I1** [S. 72](#) in force for W. at 13.11.2000 by [S.I. 2000/2992](#), [art. 2\(1\)](#), [Sch. 1](#)

#### **[<sup>F1</sup>72A Principal aim of the Commissioner**

The principal aim of the Commissioner in exercising his functions is to safeguard and promote the rights and welfare of children to whom this Part applies.]

#### **Textual Amendments**

- F1** [S. 72A](#) inserted (26.8.2001 for W.) by [2001 c. 18, s. 2](#); [S.I. 2001/2783](#), [art. 2\(2\)\(b\)](#)

#### **Commencement Information**

- I2** [S. 72A](#) in force for W. at 26.8.2001 by [S.I. 2001/2782](#), [art. 2\(1\)\(2\)\(a\)](#)

#### **[<sup>F3</sup>72B Review of exercise of functions of [<sup>F2</sup>Welsh Ministers] and other persons**

- (1) The Commissioner may review the effect on children to whom this Part applies of—

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- (a) the exercise or proposed exercise of any function of the [<sup>F4</sup>Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government], including the making or proposed making of any subordinate legislation; or
  - (b) the exercise or proposed exercise in relation to Wales of any function of any person mentioned in Schedule 2A.
- (2) The [<sup>F5</sup>Welsh Ministers] may by order amend this section or Schedule 2A by—
- (a) adding any person to that Schedule;
  - (b) omitting any person from that Schedule;
  - (c) altering the description of any person mentioned in that Schedule; or
  - (d) making provision specifying, in respect of a person mentioned in that Schedule and specified in the order, a function of the person which although exercisable in relation to Wales is not to be treated as such for the purposes of subsection (1)(b).
- (3) An order under subsection (2) may add a person to Schedule 2A only if—
- (a) some or all of the person’s functions are in a field in which [<sup>F6</sup>functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government];
  - (b) the person is established under an enactment or by virtue of Her Majesty’s prerogative or is established in any other way by a Minister of the Crown or government department or by the [<sup>F7</sup>Welsh Ministers, the First Minister for Wales, or the Counsel General to the Welsh Assembly Government]; and
  - (c) (unless consent is given by the Secretary of State under subsection (4)), at least half of the person’s expenditure on the exercise of functions in relation to Wales (or, where the person’s functions relate only to a part of Wales, in relation to the part of Wales to which they relate) is met directly from payments made by the [<sup>F8</sup>Welsh Ministers].
- (4) An order under subsection (2) may add to Schedule 2A a person who does not satisfy the condition in subsection (3)(c) if the Secretary of State gives consent.
- (5) An order under subsection (2) must not add to Schedule 2A a person whose sole or main activity is—
- (a) the investigation of complaints by members of the public about the actions of any person; or
  - (b) the supervision or review of, or of steps taken following, such an investigation.
- (6) The [<sup>F9</sup>Welsh Ministers] may not make an order under subsection (2) if the result would be that the Commissioner could review the effect of the exercise or proposed exercise of a person’s function in a field in which [<sup>F10</sup>no functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government].
- (7) In subsection (1)(a) “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).]

#### Textual Amendments

- F2** S. 72B: words in heading substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, [Sch. 1 para. 70\(2\)](#), the amendment coming into force immediately after the end of "the initial period" (which ended with

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- the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F3** S. 72B inserted (26.8.2001 for W.) by 2001 c. 18, s. 3(1); S.I. 2001/2783, art. 2(2)(c)
- F4** Words in s. 72B(1)(a) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 70(3), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F5** Words in s. 72B(2) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 70(4), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F6** Words in s. 72B(3)(a) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 70(5), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F7** Words in s. 72B(3)(b) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 70(6), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F8** Words in s. 72B(3)(c) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 70(7), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F9** Words in s. 72B(6) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 70(8)(a), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F10** Words in s. 72B(6) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 70(8)(b), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)

#### Commencement Information

- I3** S. 72B in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(b)

### 73 Review and monitoring of arrangements.

- (1) The Commissioner may review, and monitor the operation of, arrangements falling within subsection (2), [F11(2A), (2B), (2C),] (3) or (4) for the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the rights and welfare of children [F12—
- (a) to or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B; or
  - (b) to or in respect of whom regulated children’s services in Wales are provided.]

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- [<sup>F13</sup>(1A) The Commissioner may also assess the effect on such children of the failure of any person to make such arrangements.]
- (2) The arrangements falling within this subsection are the arrangements made by the providers of regulated children’s services in Wales, or by the [<sup>F14</sup>Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government], for dealing with complaints or representations [<sup>F15</sup>about such services made by or on behalf of children to whom such services are provided].
- [<sup>F16</sup>(2A) The arrangements falling within this subsection are the arrangements made by a person mentioned in Schedule 2B for dealing with complaints or representations made to the person by or on behalf of a child about services provided in Wales by the person to or in respect of the child.
- (2B) The arrangements falling within this subsection are the arrangements made by a person providing services in Wales on behalf of, or under arrangements with, a person mentioned in Schedule 2B for dealing with complaints or representations made to the person by or on behalf of a child about a service which is so provided to or in respect of the child.
- (2C) The arrangements falling within this subsection are the arrangements made by the [<sup>F14</sup>Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government] for dealing with complaints or representations made by or on behalf of a child about a service which is provided in Wales to or in respect of the child by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B (other than the [<sup>F14</sup>Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government]).]
- (3) The arrangements falling within this subsection are arrangements made by the providers of regulated children’s services in Wales, [<sup>F17</sup>by the [<sup>F14</sup>Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government], or by another person mentioned in Schedule 2B or subsection (2B)], for ensuring that proper action is taken in response to any disclosure of information which may tend to show—
- (a) that a criminal offence has been committed;
  - (b) that a person has failed to comply with any legal obligation to which he is subject;
  - (c) that the health and safety of any person has been endangered; or
  - (d) that information tending to show that any matter falling within one of the preceding paragraphs has been deliberately concealed,
- in the course of or in connection with the provision of [<sup>F18</sup>the services mentioned in subsection (3A)].
- [<sup>F19</sup>(3A) The services are—
- (a) in the case of a person mentioned in Schedule 2B, services provided in Wales by the person to or in respect of a child;
  - (b) in the case of a person mentioned in subsection (2B), services provided in Wales by the person to or in respect of a child on behalf of, or under arrangements with, a person mentioned in Schedule 2B;
  - (c) in the case of a provider of regulated children’s services in Wales, those services.]

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- (4) The arrangements falling within this subsection are arrangements made (whether by providers of regulated children’s services in Wales, by the [<sup>F14</sup>Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government] or by any other person) for making persons available—
- (a) to represent the views and wishes of children [<sup>F20</sup>—
    - (i) to or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B; or
    - (ii) to or in respect of whom regulated children’s services in Wales are provided]; or
  - (b) to provide such children with advice and support of any prescribed kind.
- (5) Regulations may confer power on the Commissioner to require prescribed persons to provide any information which the Commissioner considers it necessary or expedient to have for the purposes of his functions under this section.

[<sup>F21</sup>(5A) The [<sup>F22</sup>Welsh Ministers] may by order amend this section or Schedule 2B by—

- (a) adding any person to that Schedule;
- (b) omitting any person from that Schedule;
- (c) altering the description of any person mentioned in that Schedule; or
- (d) making provision specifying, in respect of a person mentioned in that Schedule and specified in the order, services which although provided by the person in Wales are not to be treated as such for the purposes of the exercise of the Commissioner’s functions.

(5B) An order under subsection (5A) may add a person to Schedule 2B only if—

- (a) the person provides services in Wales to or in respect of children;
- (b) some or all of the person’s functions are in a field in which [<sup>F23</sup>functions are exercisable by the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government];
- (c) the person is established under an enactment or by virtue of Her Majesty’s prerogative or is established in any other way by a Minister of the Crown or government department or by the [<sup>F24</sup>Welsh Ministers, the First Minister for Wales, or the Counsel General to the Welsh Assembly Government]; and
- (d) (unless consent is given by the Secretary of State under subsection (5C)), at least half of the person’s expenditure on the exercise of functions in relation to Wales (or, where the person’s functions relate only to a part of Wales, in relation to the part of Wales to which they relate) is met directly from payments made by the [<sup>F25</sup>Welsh Ministers].

(5C) An order may add to Schedule 2B a person who does not satisfy the condition in subsection (5B)(d) if the Secretary of State gives consent.

(5D) An order under subsection (5A) must not add to Schedule 2B a person whose sole or main activity is—

- (a) the investigation of complaints by members of the public about the actions of any person; or
- (b) the supervision or review of, or of steps taken following, such an investigation.

(5E) The [<sup>F26</sup>Welsh Ministers] may not make an order under subsection (5A) if the result would be that the Commissioner could exercise functions in relation to a person’s functions in a field in which [<sup>F27</sup>no functions are exercisable by the Welsh

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Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government].]

### Textual Amendments

- F11** Words in s. 73(1) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(2)(a); S.I. 2001/2783, art. 2(2)(d)
- F12** Words in s. 73(1) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(2)(b); S.I. 2001/2783, art. 2(2)(d)
- F13** S. 73(1A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(3); S.I. 2001/2783, art. 2(2)(d)
- F14** Words in s. 73(2)(2C)(3)(4) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 71(2), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F15** Words in s. 73(2) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(4); S.I. 2001/2783, art. 2(2)(d)
- F16** S. 73(2A)-(2C) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(5); S.I. 2001/2783, art. 2(2)(d)
- F17** Words in s. 73(3) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(6)(a); S.I. 2001/2783, art. 2(2)(d)
- F18** Words in s. 73(3) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(6)(b); S.I. 2001/2783, art. 2(2)(d)
- F19** S. 73(3A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(7); S.I. 2001/2783, art. 2(2)(d)
- F20** Words in s. 73(4) substituted (26.8.2001 for W.) by 2001 c. 18, s. 4(8); S.I. 2001/2783, art. 2(2)(d)
- F21** S. 73(5A)-(5E) inserted (26.8.2001 for W.) by 2001 c. 18, s. 4(9); S.I. 2001/2783, art. 2(2)(d)
- F22** Words in s. 73(5A) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 71(3), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F23** Words in s. 73(5B)(b) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 71(4)(a), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F24** Words in s. 73(5B)(c) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 71(4)(b), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F25** Words in s. 73(5B)(d) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 71(4)(c), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F26** Words in s. 73(5E) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 71(5)(a), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)
- F27** Words in s. 73(5E) substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 71(5)(b), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)

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#### Commencement Information

**I4** S. 73 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(c)

#### 74 Examination of cases.

(1) Regulations may [<sup>F28</sup>, in connection with the Commissioner’s functions under this Part,]make provision for the examination by the Commissioner of the cases of particular children to whom this Part applies.

[<sup>F29</sup>(1A) The reference in subsection (1) to functions of the Commissioner does not include a reference to his power to consider and make representations by virtue of section 75A(1).]

(2) The regulations may include provision about—

- (a) the types of case which may be examined;
- (b) the circumstances in which an examination may be made;
- (c) the procedure for conducting an examination, including provision about the representation of parties;
- (d) the publication of reports following an examination.

(3) The regulations may make provision for—

- (a) requiring persons to provide the Commissioner with information; or
- (b) requiring persons who hold or are accountable for information to provide the Commissioner with explanations or other assistance,

for the purposes of an examination or for the purposes of determining whether any recommendation made in a report following an examination has been complied with.

(4) For the purposes mentioned in subsection (3), the Commissioner shall have the same powers as the High Court in respect of—

- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad); and
- (b) the provision of information.

(5) No person shall be compelled for the purposes mentioned in subsection (3) to give any evidence or provide any information which he could not be compelled to give or provide in civil proceedings before the High Court.

(6) The regulations may make provision for the payment by the Commissioner of sums in respect of expenses or allowances to persons who attend or provide information for the purposes mentioned in subsection (3).

#### Textual Amendments

**F28** Words in s. 74(1) inserted (26.8.2001 for W.) by 2001 c. 18, s. 5(2)(a); S.I. 2001/2783, art. 2(2)(e)

**F29** S. 74(1A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 5(2)(b); S.I. 2001/2783, art. 2(2)(e)

#### Commencement Information

**I5** S. 74 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(d)

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## 75 Obstruction etc.

- (1) The Commissioner may certify an offence to the High Court where—
  - (a) a person, without lawful excuse, obstructs him or any member of his staff in the exercise of any of his functions under regulations made by virtue of section 73(5) or 74; or
  - (b) a person is guilty of any act or omission in relation to an examination under regulations made by virtue of section 74 which, if that examination were proceedings in the High Court, would constitute contempt of court.
- (2) Where an offence is so certified the High Court may inquire into the matter; and after hearing—
  - (a) any witnesses who may be produced against or on behalf of the person charged with the offence; and
  - (b) any statement that may be offered in defence,
 the High Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the same offence in relation to the High Court.

### Commencement Information

**16** S. 75 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(e)

## [<sup>F30</sup>75ZA] Working with the Commissioner for Older People in Wales

- (1) This section applies where it appears to the Commissioner that a case which he is—
  - (a) examining in accordance with regulations made under section 74, or
  - (b) considering whether to examine in accordance with such regulations,
 relates to or raises a matter which could be the subject of an examination by the Commissioner for Older People in Wales (the ‘connected matter’).
- (2) Where the Commissioner considers it appropriate, he must inform the Commissioner for Older People in Wales about the connected matter.
- (3) Where the Commissioner considers that the case also relates to or raises a matter which he is entitled to examine himself (‘the children matter’), he must also if he considers it appropriate—
  - (a) inform the Commissioner for Older People in Wales about the Commissioner’s proposals for the examination of the case; and
  - (b) consult the Commissioner for Older People in Wales about those proposals.
- (4) Where the Commissioner and the Commissioner for Older People in Wales consider that they are entitled to examine, respectively, the children matter and the connected matter they may—
  - (a) co-operate with each other in the separate examination of each of those matters;
  - (b) act together in the examination of those matters; and
  - (c) prepare and publish a joint report containing their respective conclusions in relation to the matters they have each examined.
- (5) Where the Commissioner considers—



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- (a) that the case is not one which relates to or raises a matter that he is entitled to examine himself, and
- (b) that it is appropriate to do so,

he must inform the person whose case it is, or another person interested in it that he thinks fit, about how to secure the referral to the Commissioner for Older People in Wales of the connected matter.]

#### Textual Amendments

**F30** S. 75ZA inserted (14.10.2006 for W.) by [Commissioner for Older People \(Wales\) Act 2006 \(c. 30\)](#), ss. 22, 23, [Sch. 4 para. 1\(2\)](#); S.I. 2006/2699, [art. 2](#)

### [<sup>F31</sup>75A Additional power of consideration and representation

- (1) The Commissioner may consider, and make representations to the [<sup>F32</sup>Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government] about, any matter affecting the rights or welfare of children in Wales.
- (2) The function of the Commissioner under subsection (1) is exercisable only where he does not have power to consider and make representations about the matter in question by virtue of any other provision of this Act or any other enactment.]

#### Textual Amendments

**F31** S. 75A inserted (26.8.2001 for W.) by [2001 c. 18, s. 5\(1\)](#); S.I. 2001/2783, [art. 2\(2\)\(e\)](#)

**F32** Words in s. 75A substituted by [The Government of Wales Act 2006 \(Consequential Modifications and Transitional Provisions\) Order 2007 \(S.I. 2007/1388\)](#), art. 3, [Sch. 1 para. 72](#), the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of [Government of Wales Act 2006 \(c. 32\)](#)

#### Commencement Information

**I7** S. 75A in force for W. at 26.8.2001 by S.I. 2001/2782, [art. 2\(1\)\(2\)\(f\)](#)

### 76 Further functions.

- (1) Regulations may confer power on the Commissioner to assist a child to whom this Part applies—
  - (a) in making a complaint or representation to or in respect of a provider of regulated children’s services in Wales; or
  - [<sup>F33</sup>(aa) in making a complaint or representation to or in respect of a person mentioned in Schedule 2B or section 73(2B);]
  - (b) in any prescribed proceedings,and in this subsection “proceedings” includes a procedure of any kind and any prospective proceedings.
- [<sup>F34</sup>(1A) The proceedings which may be prescribed by virtue of subsection (1)(b) are proceedings relating to—
  - (a) the exercise or proposed exercise of a function as mentioned in section 72B(1);
  - (b) the provision of services as mentioned in section 78(1)(b) or (c).]

*Status: Point in time view as at 25/05/2007.*

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- (2) For the purposes of subsection (1), assistance includes—
- (a) financial assistance; and
  - (b) arranging for representation, or the giving of advice or assistance, by any person,
- and the regulations may provide for assistance to be given on conditions, including (in the case of financial assistance) conditions requiring repayment in circumstances specified in the regulations.
- (3) The Commissioner may, in connection with his functions under this Part, give advice and information to any person.
- (4) Regulations may, in connection with the Commissioner’s functions under this Part, confer further functions on him.
- (5) The regulations may, in particular,
- [<sup>F35</sup>(a)] include provision about the making of reports on any matter connected with any of his functions;
  - [<sup>F36</sup>(b)] provide that the Commissioner may make a joint report with the Commissioner for Older People in Wales where they have discharged their respective functions under this Act and the Commissioner for Older People (Wales) Act 2006 in relation to the same matters.]
- [<sup>F37</sup>(5A) The references in subsections (4) and (5) to functions of the Commissioner do not include a reference to his power to consider and make representations by virtue of section 75A(1).]
- (6) Apart from identifying any person investigated, a report by the Commissioner shall not—
- (a) mention the name of any person; or
  - (b) include any particulars which, in the opinion of the Commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report,
- unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Commissioner considers it necessary for the report to mention his name or include such particulars.
- (7) For the purposes of the law of defamation, the publication of any matter by the Commissioner in a report is absolutely privileged.
- [<sup>F38</sup>(8) The Commissioner or a person authorised by him may for the purposes of any function of the Commissioner under section 72B or 73 or subsection (4) of this section at any reasonable time—
- (a) enter any premises, other than a private dwelling, for the purposes of interviewing any child accommodated or cared for there; and
  - (b) if the child consents, interview the child in private.]

#### Textual Amendments

**F33** S. 76(1)(aa) inserted (26.8.2001 for W.) by 2001 c. 18, s. 6(a); S.I. 2001/2783, art. 2(2)(g)

**F34** S. 76(1A) inserted (26.8.2001 for W.) by 2001 c. 18, s. 6(b); S.I. 2001/2783, art. 2(2)(g)

**F35** Words in s. 76(5) renumbered as s. 76(5)(a) (14.10.2006 for W.) by virtue of Commissioner for Older People (Wales) Act 2006 (c. 30), ss. 22, 23, Sch. 4 para. 1(3); S.I. 2006/2699, art. 2

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- F36** S. 75(5)(b) inserted (14.10.2006 for W.) by Commissioner for Older People (Wales) Act 2006 (c. 30), ss. 22, 23, **Sch. 4 para. 1(3)**; S.I. 2006/2699, **art. 2**
- F37** S. 76(5A) inserted (26.8.2001 for W.) by 2001 c. 18, **s. 6(c)**; S.I. 2001/2783, **art. 2(2)(g)**
- F38** S. 76(8) inserted (1.4.2006 for W.) by Children Act 2004 (c. 31), **ss. 61, 67**; S.I. 2006/885, **art. 2(2)**

#### Commencement Information

- I8** S. 76 in force for W. at 26.8.2001 by S.I. 2001/2782, **art. 2(1)(2)(g)**

## 77 Restrictions.

- (1) This Part does not authorise the Commissioner to enquire into or report on any matter so far as it is the subject of legal proceedings before, or has been determined by, a court or tribunal.
- (2) This Part does not authorise the Commissioner to exercise any function which by virtue of an enactment is also exercisable by a prescribed person.

#### Commencement Information

- I9** S. 77 in force for W. at 26.8.2001 by S.I. 2001/2782, **art. 2(1)(2)(h)**

## 78 Interpretation.

- [<sup>F39</sup>(1) This Part applies to a child—
- (a) who is ordinarily resident in Wales;
  - (b) to or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a person mentioned in Schedule 2B; or
  - (c) to or in respect of whom regulated children’s services in Wales are provided.
- (1A) Regulations may provide that, for the purposes of this Part of this Act, “child” includes a person aged 18 or over who falls within subsection (1B).
- (1B) A person falls within this subsection if he is a person to or in respect of whom services are provided in Wales by, or on behalf of or under arrangements with, a county council or county borough council in Wales by virtue of—
- (a) section 23C, 24, 24A or 24B of the Children Act 1989 (c. 41) (which provide for the continuing duties of such councils towards young persons); or
  - (b) regulations made under section 23D of that Act (which may provide for the appointment of personal advisers for certain young persons).]

(2) In this Part, “regulated children’s services in Wales” means any of the following services for the time being provided in respect of children—

    - (a) services of a description provided by or in Part II undertakings, so far as provided in Wales;
    - (b) services provided by local authorities in Wales in the exercise of relevant adoption functions or relevant fostering functions;
    - (c) services of a description provided by persons registered under Part XA of the 1989 Act, so far as provided in Wales;
    - (d) accommodation provided by schools or by an institution within the further education sector (as defined in section 91 of the <sup>M1</sup>Further and Higher Education Act 1992), so far as provided in Wales.

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- (3) For the purposes of this Part—
- (a) in the case of the services mentioned in subsection (2)(a), the person who carries on the Part II undertaking is to be treated as the provider of the services;
  - (b) in the case of the services mentioned in subsection (2)(d), the relevant person (as defined in section 87 of the 1989 Act) is to be treated as the provider of the services.
- (4) For the purposes of this section, an establishment or agency, and an undertaking of any other description, is a Part II undertaking if the provider of the services in question is for the time being required to be registered under that Part.
- (5) Where the activities of an undertaking are carried on from two or more branches, each of those branches shall be treated as a separate undertaking for the purposes of this Part.
- [<sup>F40</sup>(6) Regulations may provide for the references to a child in subsection (1) to include references to a person (including a child) who was at any time (including a time before the commencement of this Part)—
- (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; or
  - (c) a child to or in respect of whom regulated children’s services in Wales were provided.]
- (7) In this Part—
- “information” includes information recorded in any form;
- “regulations” means regulations made by the [<sup>F41</sup>Welsh Ministers].
- (8) In this section, “relevant adoption functions” and “relevant fostering functions” have the same meanings as in Part III.

#### Textual Amendments

- F39** S. 78(1)(1A)(1B) substituted for s. 78(1) (26.8.2001 for W.) by 2001 c. 18, s. 1(2); S.I. 2001/2783, art. 2(2)(a)
- F40** S. 78(6) substituted (26.8.2001 for W.) by 2001 c. 18, s. 1(3); S.I. 2001/2783, art. 2(2)(a)
- F41** S. 78(7): words in definition of "regulations" substituted by The Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (S.I. 2007/1388), art. 3, Sch. 1 para. 73, the amendment coming into force immediately after the end of "the initial period" (which ended with the day of the first appointment of a First Minister on 25.5.2007) in accordance with art. 1(2) of the amending S.I. and see ss. 46, 161(5) of Government of Wales Act 2006 (c. 32)

#### Commencement Information

- I10** S. 78 in force for W. at 26.8.2001 by S.I. 2001/2782, art. 2(1)(2)(i)

#### Marginal Citations

- M1** 1992 c. 13.

**Status:**

Point in time view as at 25/05/2007.

**Changes to legislation:**

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