



# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

## PART 10

### COMPLAINTS, REPRESENTATIONS AND ADVOCACY SERVICES

#### CHAPTER 1

##### COMPLAINTS AND REPRESENTATIONS ABOUT SOCIAL SERVICES

#### **171 Complaints about social services**

- (1) Regulations may make provision about the consideration of complaints relating to—
  - (a) the discharge by a local authority of its social services functions;
  - (b) the provision of services by another person pursuant to arrangements made by a local authority in the discharge of those functions;
  - (c) the provision of services by a local authority or another person in pursuance of arrangements made by the authority under section 33 of the National Health Service (Wales) Act 2006 or section 75 of the National Health Service Act 2006 in relation to the functions of an NHS body (within the meaning of the relevant section) so far as exercisable in relation to Wales.
- (2) The regulations may provide for a complaint to be considered by one or more of the following—
  - (a) the local authority in respect of whose functions the complaint is made;
  - (b) an independent panel established under the regulations;
  - (c) any other person or body other than a Minister of the Crown.
- (3) The regulations may provide for a complaint or any matter raised by the complaint—
  - (a) to be referred to the Public Services Ombudsman for Wales (“the Ombudsman”) for the Ombudsman to consider whether to investigate the

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complaint or matter under the Public Services Ombudsman (Wales) Act 2005 (and to be treated by the Ombudsman as a complaint duly referred under section 2(3) of that Act);

- (b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

- (4) But the regulations may not make provision about complaints capable of being considered as representations under section 174 or 176.

## **172 Complaints about social services: supplementary**

- (1) The following are further examples of the provision which may be made in regulations under section 171.

- (2) The regulations may make provision about—

- (a) the persons who may make a complaint;
- (b) the complaints which may, or may not, be made;
- (c) the persons to whom complaints may be made;
- (d) complaints which need not be considered;
- (e) the period within which complaints must be made;
- (f) the procedure to be followed in making and considering a complaint;
- (g) matters which are excluded from consideration;
- (h) the making of a report or recommendations about a complaint;
- (i) the action to be taken as a result of a complaint.

- (3) The regulations may—

- (a) require a person about whom, or a body about which, a complaint is made to make a payment in relation to the consideration of the complaint under the regulations,
- (b) require a payment of that kind—
  - (i) to be made to a person or body specified in the regulations, and
  - (ii) to be of an amount specified in, or calculated or determined under, the regulations, and
- (c) require an independent panel to review the amount chargeable under paragraph (a) in a particular case and, if the panel thinks fit, to substitute a lesser amount.

- (4) The regulations may require a person who, or a body which, considers complaints under the regulations to give publicity to the procedures to be followed under the regulations.

- (5) The regulations may also—

- (a) provide for different parts or aspects of a complaint to be treated differently;
- (b) require the production of information or documents to enable a complaint to be properly considered;
- (c) authorise the disclosure of information or documents relevant to a complaint to a person who, or a body which, is considering a complaint under the regulations or to whom a complaint has been referred (despite any rule of common law that would otherwise prohibit or restrict the disclosure).

- (6) The regulations may make provision about complaints which raise both matters falling to be considered under the regulations and matters falling to be considered under other statutory complaints procedures; including (among other things) provision to—
- (a) enable a complaint of that kind to be made under the regulations, and
  - (b) secure that matters falling to be considered under other statutory complaints procedures are treated as if they had been raised in a complaint made under the appropriate procedures.
- (7) In subsection (6) “statutory complaints procedures” means procedures established by or under an enactment within the legislative competence of the National Assembly for Wales.

### **173 Assistance for complainants**

- (1) Regulations may require local authorities to—
- (a) make arrangements to provide assistance (by way of representation or otherwise) to persons who make, or intend to make, a complaint under regulations made under section 171, and
  - (b) give publicity to the arrangements for the provision of that assistance.
- (2) The regulations may, for example, make provision about—
- (a) the persons to whom assistance must be provided;
  - (b) the kind of assistance that must be provided to those persons;
  - (c) the persons by whom that assistance may be provided;
  - (d) the stage or stages in the consideration of a complaint in relation to which that assistance must be provided;
  - (e) the kind of publicity that must be given to the arrangements for the provision of that assistance.

### **174 Representations relating to certain children etc**

- (1) A local authority must establish a procedure for considering—
- (a) representations (including complaints) made to the authority by a person to whom subsection (3) applies about its discharge of a qualifying function in relation to a child who is being looked after by it, or who is not being looked after by it but may have needs for care and support;
  - (b) representations (including complaints) made to the authority by a person to whom subsection (4) applies about its discharge of functions under section 14F of the Children Act 1989 (special guardianship support services) which have been specified in regulations;
  - (c) representations (including complaints) made to the authority by a person to whom subsection (5) applies about its discharge of functions under the Adoption and Children Act 2002 which have been specified in regulations.
- (2) The following are qualifying functions for the purposes of subsection (1)(a)—
- (a) functions exercisable in relation to a child under Parts 3 to 6 (other than functions which are exercisable in relation to the child as a carer);
  - (b) functions exercisable in relation to a child under Part 7;
  - (c) functions under Part 4 or Part 5 of the Children Act 1989 which have been specified in regulations.

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- (3) This subsection (relating to representations about the discharge of qualifying functions) applies to—
- (a) the child who is being looked after by the local authority, or who is not being looked after by it but may have needs for care and support;
  - (b) a parent of the child;
  - (c) a person who is not a parent of the child but who has parental responsibility for the child;
  - (d) a local authority foster parent with whom the child is placed under section 81(5);
  - (e) a prospective adopter with whom the child is placed under section 81(11);
  - (f) any other person whom the local authority considers has a sufficient interest in the child's welfare to warrant his or her representations being considered by the authority.
- (4) This subsection (relating to representations about the discharge of specified functions under section 14F of the Children Act 1989) applies to—
- (a) a child in relation to whom a special guardianship order is in force;
  - (b) a special guardian or a parent of the child;
  - (c) a person who has applied for an assessment under section 14F(3) or (4) of the Children Act 1989;
  - (d) any other person whom the local authority considers has a sufficient interest in the welfare of the child to warrant his or her representations being considered by the authority.
- (5) This subsection (relating to representations about the discharge of specified functions under the Adoption and Children Act 2002) applies to—
- (a) a person mentioned in section 3(1) of the Adoption and Children Act 2002 (persons for whose needs provision is made by the Adoption Service) and any other person to whom arrangements for the provision of adoption services (within the meaning of that Act) extend;
  - (b) any other person whom the authority considers has sufficient interest in a child who is or may be adopted to warrant his or her representations being considered by it.
- (6) A local authority must ensure (subject to subsection (8)) that the procedure which it establishes for the purposes of this section secures that at least one person who is not a member or officer of the local authority takes part in—
- (a) the consideration of any representation to which this section applies, and
  - (b) any discussions which are held by the authority about the action to be taken, as a result of that consideration, in relation to the person to whom the representation relates.
- (7) Regulations may make further provision about the procedure which must be established for the purposes of this section.
- (8) The regulations may provide (among other things) that subsection (6) does not apply in relation to a consideration or discussion which takes place for the purpose of resolving informally the matters raised in a representation.
- (9) A local authority must give publicity to the procedure which it establishes for the purposes of this section.

### **175 Representations relating to certain children etc: further provision**

- (1) A local authority, in considering representations to which section 174 applies, must comply with requirements imposed by or under subsections (6) to (8) of that section.
- (2) Regulations may require local authorities to monitor the steps they have taken to ensure that they comply with those requirements.
- (3) Regulations may impose time limits on the making of representations to which section 174 applies.
- (4) Where a representation has been considered under a procedure established for the purposes of section 174, the local authority must—
  - (a) have regard to the findings of the persons who considered the representation, and
  - (b) take such steps as are reasonably practicable to notify (in writing) the persons mentioned in subsection (5) of the authority's decision and its reasons for taking that decision and of any action which it has taken or proposes to take.
- (5) The persons are—
  - (a) the person who made the representation,
  - (b) the person to whom the representation relates (if different), and
  - (c) any other person who appears to the authority likely to be affected.
- (6) Where the person mentioned in subsection (5)(b) or (c) is a child, the duty under subsection (4)(b) applies only where the local authority considers that the child has sufficient understanding.

### **176 Representations relating to former looked after children etc**

- (1) A local authority must establish a procedure for considering representations (including complaints) made to it by persons to whom subsection (2) applies about the discharge of its functions under Parts 3 to 7 in relation to those persons.
- (2) This subsection applies to—
  - (a) category 2 young persons;
  - (b) category 3 young persons;
  - (c) category 4 young persons;
  - (d) category 5 young persons;
  - (e) category 6 young persons;
  - (f) persons under the age of 25 who, if they were under the age of 21, would be—
    - (i) category 5 young persons, or
    - (ii) category 6 young persons falling within that category by virtue of section 104(3)(a).
- (3) Regulations may impose—
  - (a) requirements in relation to the procedure that must be established;
  - (b) time limits on the making of representations to which the procedure applies.
- (4) A local authority must—
  - (a) give publicity to the procedure which it establishes for the purposes of this section;

- (b) comply with any requirements imposed under subsection (3)(a) in considering representations to which this section applies.
- (5) In this section “category 2 young person”, “category 3 young person”, “category 4 young person”, “category 5 young person” and “category 6 young person” have the meanings given by section 104.

## **177 Further consideration of representations**

- (1) Regulations may make provision for the further consideration of representations (including complaints) which fall within section 174 or 176.
- (2) The regulations may, for example, make provision—
- (a) for the further consideration of a representation by an independent panel established under the regulations;
  - (b) about the procedure to be followed on the further consideration of a representation;
  - (c) for the making of recommendations about the action to be taken as a result of the further consideration of a representation;
  - (d) about the making of reports about the further consideration of a representation;
  - (e) about the action to be taken by the local authority concerned as a result of the further consideration of a representation;
  - (f) for a representation to be referred back to the local authority concerned for reconsideration by the authority.
- (3) The regulations may—
- (a) require the making of a payment, in relation to the further consideration of a representation, by a local authority in respect of whose functions the representation is made;
  - (b) require the payment—
    - (i) to be made to a person or body specified in the regulations, and
    - (ii) to be of an amount specified in, or calculated or determined under, the regulations;
  - (c) require an independent panel to review the amount chargeable under paragraph (a) in a particular case and, if the panel thinks fit, to substitute a lesser amount;
  - (d) provide for different parts or aspects of a representation to be treated differently;
  - (e) require the production of information or documents to enable a representation to be properly considered;
  - (f) authorise the disclosure of information or documents relevant to a representation to a person who, or a body which, is further considering a representation under the regulations (despite any rule of common law that would otherwise prohibit or restrict the disclosure).
- (4) The regulations may also provide for a representation or any matter raised by a representation—
- (a) to be referred to the Public Services Ombudsman for Wales (“the Ombudsman”) for the Ombudsman to consider whether to investigate the representation or matter under the Public Services Ombudsman (Wales) Act

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2005 (and to be treated by the Ombudsman as a complaint duly referred under section 2(3) of that Act);

- (b) to be referred to any other person or body for that person or body to consider whether to take any action otherwise than under the regulations.

### **178 Assistance for persons making representations**

- (1) A local authority must make arrangements for the provision of assistance to—
  - (a) children who make or intend to make representations which fall within section 174, and
  - (b) persons who make or intend to make representations which fall within section 176.
- (2) The duty under subsection (1) includes a duty to make arrangements for the provision of assistance where those representations are further considered under section 177.
- (3) The assistance provided under the arrangements must include assistance by way of representation.
- (4) Regulations must make further provision in relation to the arrangements.
- (5) The regulations—
  - (a) must require the arrangements to secure that specified persons or categories of persons do not provide assistance, and
  - (b) may impose other requirements in relation to the arrangements.
- (6) Regulations may require local authorities to monitor the steps they have taken to ensure that they comply with requirements imposed by or under this section.
- (7) A local authority must give publicity to its arrangements for the provision of assistance under this section.

## **CHAPTER 2**

### **COMPLAINTS ABOUT PRIVATE SOCIAL CARE AND PALLIATIVE CARE**

#### **179 Investigation of complaints about privately arranged or funded social care and palliative care**

Schedule 3 (which inserts new Parts 2A and 2B into the Public Services Ombudsman (Wales) Act 2005 to give the Public Services Ombudsman for Wales powers to investigate complaints about certain kinds of social care and palliative care and makes consequential amendments) has effect.

#### **180 Independent advocacy services for complaints about privately arranged or funded palliative care**

- (1) Section 187 of the National Health Service (Wales) Act 2006 (independent advocacy services) is amended as follows.
- (2) In subsection (2)—
  - (a) in paragraph (a) for “or independent provider” substitute “, independent provider or independent palliative care provider”;

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- (b) in paragraph (c) omit the words “or the Public Services Ombudsman for Wales”, and
  - (c) after paragraph (c) insert—
    - “(ca) a complaint to the Public Services Ombudsman for Wales which relates to a health service body or independent palliative care provider,”.
- (3) In subsection (3) insert in the appropriate place—
- ““independent palliative care provider” means a person who is an independent palliative care provider (within the meaning given by section 34T of the Public Services Ombudsman (Wales) Act 2005),”.

### CHAPTER 3

#### ADVOCACY SERVICES

#### **181 Provision of advocacy services**

- (1) Regulations may require a local authority to arrange for advocacy services to be made available to people with needs for care and support (whether or not those needs are being met by a local authority); this is subject to section 182.
- (2) “Advocacy services” are services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support.
- (3) The regulations may specify—
  - (a) the persons, or description of persons, to whom advocacy services are to be made available;
  - (b) the circumstances in which advocacy services are to be made available;
  - (c) the persons, or description of persons, by whom advocacy services may, or may not, be provided.
- (4) The regulations must require a local authority to give publicity to its arrangements for making advocacy services available.

#### **182 Provision of advocacy services: restrictions**

- (1) Regulations under section 181 may not require advocacy services to be made available to a person—
  - (a) for the purpose of making a complaint in respect of which a local authority is required to make arrangements for the provision of assistance to the person by virtue of regulations under section 173;
  - (b) for the purpose of making representations in respect of which a local authority is required to make arrangements for the provision of assistance to the person under section 178;
  - (c) for purposes in respect of which the Welsh Ministers are required to make arrangements to enable an independent mental health advocate to be available under section 130E of the Mental Health Act 1983;
  - (d) for purposes in respect of which a local authority is required to make arrangements for the provision of independent advocacy services under



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section 332BB of the Education Act 1996 or paragraph 6D of Schedule 17 to the Equality Act 2010;

- (e) for purposes in respect of which the Welsh Ministers are required to make arrangements to enable an independent mental capacity advocate to be available under section 35 of the Mental Capacity Act 2005;
- (f) for the purpose of making a complaint in respect of which the Welsh Ministers are required to arrange for the provision of independent advocacy services under section 187 of the National Health Service (Wales) Act 2006.

(2) Where—

- (a) advocacy services are being provided for a person under section 15, 17, 35, 36, 37 or 38, and
- (b) regulations under section 181 would (apart from this subsection) impose a requirement upon a local authority to make advocacy services available to that person in respect of the same matters,

that requirement does not apply.

### **183 Publicising advocacy services in care homes**

In section 22 of the Care Standards Act 2000 (regulation of establishments and agencies), in subsection (7), after paragraph (l) insert—

- “(m) make provision requiring a person who carries on or manages a care home in Wales to make arrangements to bring to the attention of persons accommodated in the home the advocacy services which are available to those persons by virtue of regulations made under section 181 of the Social Services and Well-being (Wales) Act 2014.”