

CHILDREN'S COMMISSIONER FOR WALES ACT 2001

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Children's Commissioner for Wales Act ('the Act'), which received Royal Assent on 11th May 2001. They have been prepared by the Wales Office in order to assist the reader of the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not intended to be a comprehensive description of the Act, so where a section or a part of a section does not seem to require any comment, none is given.

BACKGROUND AND SUMMARY

3. The Act implements the policy of the Government and the National Assembly for Wales ('the Assembly') on establishing a Children's Commissioner for Wales ('the Commissioner') with a wide-ranging scope, which encompasses all children in Wales and different sectors and services. This policy is based on the recommendations of the Assembly's Health and Social Services Committee in its report 'A Children's Commissioner for Wales', published in May 2000. This was itself based on the consensus that emerged in Wales, evidenced by the results of the widespread consultation undertaken by the Committee.
4. The office of the Commissioner was established initially by virtue of Part 5 of the Care Standards Act 2000 ('the 2000 Act') to reflect Sir Ronald Waterhouse's recommendations on the establishment of an independent Children's Commissioner in his report *Lost in Care - The Report of the Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974*, (HC201) published in February 2000.
5. The Commissioner's functions under the 2000 Act extend to all services for children to be regulated by the Act: children's homes, residential family centres, local authority fostering and adoption services, fostering agencies, voluntary adoption agencies, domiciliary care, private and voluntary hospitals/clinics, 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.
6. The Commissioner's functions under the 2000 Act include:
 - (a) the reviewing and monitoring of arrangements by service providers for dealing with complaints, for ensuring that proper action is taken in response to information regarding possible unlawful or dangerous activities, or their concealment ("whistleblowing"), and for making persons available to represent children's views and provide them with advice and support ("advocacy");
 - (b) the provision of advice and information;

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- (c) the examination, where the Commissioner considers appropriate, of the cases of particular children who are receiving or have been in receipt of such services;
 - (d) the provision of assistance, including financial assistance, and representation, in respect of proceedings or disputes or in relation to the operation of procedures and arrangements monitored by the Commissioner; and
 - (e) making reports, including an annual report on the exercise of his or her functions to the Assembly.
7. The power to require the provision of information and the disclosure of documents may be conferred by the Assembly on the Commissioner in connection with the review and monitoring of the activities specified above and for the purposes of examining particular cases or determining whether a report's recommendations have been complied with.
 8. The Act extends the scope of the Commissioner's role to bodies and persons operating in Wales that have statutory functions or provide statutory services in functional fields devolved to the Assembly.
 9. However the Commissioner's functions under Part 5 of the 2000 Act of reviewing and monitoring arrangements for complaints, for whistleblowing and for advocacy, relate specifically to regulated children's services (as defined in section 78(2) of the 2000 Act). The Act extends these functions to bodies and persons in Wales who provide direct statutory services to or in respect of children, and persons that provide such services on their behalf. This will concern primarily the education and training, health and social services sectors; and the main persons affected will be local authorities, in respect of their provision of education and social services, schools, further and higher education institutions, training organisations, health authorities and National Health Service trusts. The Assembly will also be one of the bodies subject to this function of the Commissioner.
 10. The Act confers on the Commissioner the power to review the effect on children in Wales of any existing or proposed legislation of the Assembly. The Act also confers on the Commissioner the power to review the effect on children in Wales of any policy, or practice of, or service provided by the Assembly or any body or person listed in the Act.
 11. The Act in addition provides that the principal aim of the Commissioner in exercising his or her functions is to safeguard and promote the rights and welfare of children.
 12. The Act also provides that the Commissioner may consider, and make representations to the Assembly about, any matter affecting the rights or welfare of children in Wales.

COMMENTARY

Section 1: Application of Part 5 of the 2000 Act

13. **Section 1(1)** and **(2)** substitute a new section 78(1) of the 2000 Act. The effect of the substitution is to extend the application of Part 5 of the 2000 Act to any child receiving services provided by any of the persons listed in the new Schedule 2B, and to other children if they are ordinarily resident in Wales. In a similar way, section 1(3) also extends the Assembly's regulation-making power in section 78(6). Section 78(6) vests the Assembly with the power to provide in regulations that references to a child in the new section 78(1) shall include persons who were such children at any time including a time prior to the commencement of Part 5. In addition, section 1(2) inserts subsections (1A) and (1B) into section 78, giving a power for the Assembly to extend, by regulations, the application of Part 5 to care leavers aged 18 or over who receive post care services from local authorities by virtue of the amendments to the Children Act 1989 introduced by the Children (Leaving Care) Act 2000.

Section 2 : Principal aim of the Commissioner

14. **Section 2** inserts section 72A into the 2000 Act, which provides that the principal aim of the Commissioner in exercising his or her functions is to safeguard and promote the rights and welfare of children to whom Part 5 of the 2000 Act applies.

Section 3: Review of exercise of functions of Assembly and other persons

15. **Section 3** inserts section 72B into the 2000 Act. Section 72B(1) introduces a power for the Commissioner to review the effect of the exercise or proposed exercise of the Assembly's functions (including the making or proposed making of any subordinate legislation) and those of the other persons in Wales listed in new Schedule 2A, on children to whom Part 5 applies.
16. New Schedule 2A, inserted into the 2000 Act, lists the persons whose functions are subject to review in accordance with section 72B(1). Section 72B(2) to (5) vests the Assembly with an order-making power to add to, delete from or make alterations to the list of persons in the future. A person or body may be added to the list in respect of some or all of its functions if it has functions in a field in which the Assembly has functions, provided the person is also established under an enactment or by virtue of Her Majesty's prerogative or in any other way by a Minister of the Crown, government department or the Assembly, and at least half of the person's expenditure in relation to its functions in Wales is funded directly by the Assembly. Section 72B(4) confers the same order-making power if the person is not so funded by the Assembly, provided the Secretary of State's consent is given. Section 72B(5) prevents persons being added if their sole or main activity is the investigation of complaints by the public, or the supervision or review of follow-up action resulting from such investigation. Section 72B(6) prevents an order being made under subsection (2) if the effect would be to allow the Commissioner to review functions in a field in which the Assembly has no functions.

Section 4: Review and monitoring of arrangements

17. **Section 4** extends the Commissioner's functions in section 73 of the 2000 Act of reviewing and monitoring arrangements made by providers of services regulated under the 2000 Act for dealing with complaints and representations in respect of those services, and for whistleblowing and for advocacy. The Commissioner's functions are extended to providers of other services in Wales, listed in the new Schedule 2B to the 2000 Act, to or in respect of children.
18. **Section 4(3)** inserts into section 73 a new subsection (1A) which provides that the Commissioner may also review the effect on children of the absence of such arrangements. Section 4(5) inserts into section 73 new subsections (2A) and (2B) which extend to providers of other services the Commissioner's functions of reviewing and monitoring of arrangements. Those functions are extended to the providers listed in new Schedule 2B: the Assembly, county and county borough councils, health authorities, National Health Service trusts, schools in the public sector, further and higher education institutions; and also any person providing services on behalf of, or under arrangements with, any of the persons listed. Section 4(5) also inserts into section 73 a new subsection (2C), which provides that the Assembly's arrangements for dealing with complaints or representations in respect of services provided by any of the other persons listed in Schedule 2B, also come within the Commissioner's review and monitoring of arrangements function.
19. **Section 4(6)** makes consequential amendments to section 73(3), and section 4(7) inserts a new subsection (3A) into section 73, to establish that the arrangements made by the persons listed in Schedule 2B (and those providing services on their behalf) for dealing with whistleblowing come within the Commissioner's review and monitoring function under section 73. Section 4(8) amends section 73(4) of the 2000 Act to provide that the arrangements made by the persons listed in Schedule 2B (and those providing services

on their behalf) for dealing with children's advocacy come within the Commissioner's review and monitoring function under section 73.

20. **Section 4(9)** inserts sections 73(5A) to (5C), which vests the Assembly with an order-making power to alter the list of persons subject to the Commissioner's power to review its arrangements for dealing with complaints and other matters. The power is given in the same terms as the order-making power in the new section 72B(3) to (5) (outlined in paragraph 16) in respect of the list of persons subject to the Commissioner's review and monitoring function, but with the additional criterion that the person must provide services in Wales to or in respect of children. Section 4(9) also inserts a new section 73(5D) which prevents persons being added if their sole or main activity is the investigation of complaints by the public, or the supervision or review of follow-up action resulting from such investigation. In addition, section 4(9) inserts a new subsection 73(5E) which prevents an order being made under subsection (5A) if the effect would be to allow the Commissioner to review functions in a field in which the Assembly has no functions.

Section 5: Additional power of consideration and representation

21. **Section 5(1)** inserts section 75A into the 2000 Act. Section 75A provides that the Commissioner may consider, and make representations to the Assembly about, any matter affecting the rights or welfare of children in Wales if the Commissioner does not have the power to do so by virtue of any other power. Section 5(2)(b) inserts a new subsection (1A) into section 74(1) of the 2000 Act. Its effect is to disapply the provisions concerning the Commissioner's function to examine cases, in respect of the additional power of consideration and representation in the new section 75A.

Section 6: Further functions of the Commissioner

22. **Section 6** inserts paragraph (aa) after section 76(1)(a) of the 2000 Act, to extend the Assembly's power to make regulations enabling the Commissioner to assist a child in making a complaint or representation. The power is extended to complaints and representations involving any of the persons mentioned in Schedule 2B or section 73(2B). Section 6 also inserts section 76(1A) which identifies the kind of proceedings which the Assembly can prescribe as being proceedings in which the Commissioner may assist. Section 6 also inserts section 76(5A) to disapply, in respect of the Commissioner's additional power of consideration and representation under section 75(A), the Assembly's power to make regulations for the conferring of further functions on the Commissioner (under section 76(4) and (5)).

Section 7: Consequential, etc provision

23. Section 118 of the 2000 Act enables the Assembly to make supplementary, consequential and other provisions when making regulations and orders under the 2000 Act. Section 118(8) enables such provision to include provision amending and repealing enactments and instruments where regulations are being made under Part 5 of the 2000 Act. Section 7 extends section 118(8) to include orders made by the Assembly, as well as regulations.
24. The provisions of the Act, extending the scope of Part 5 of the 2000 Act (except where the Act makes express exceptions) similarly extend the existing powers of the Commissioner and of the Assembly insofar as the new provisions apply to those powers.

COMMENCEMENT

25. By virtue of section 9, the provisions of the Act will come into force on a date or dates appointed by the Assembly by order.
26. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

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<i>Stage.</i>	<i>Date.</i>	<i>12. Hansard Reference.</i>
13. House of Commons.		
Introduction.	11 th December 2000.	Vol. 359, Col 372.
Second Reading.	16 th January 2001.	Vol. 361, Col 212 – 314.
Committee.	23 rd January 2001 – 1 st Sitting AM.	Standing Committee F.
	2 nd Sitting, PM	
	25 th January 2001 – 3 rd Sitting.	
	30 th January 2001 - 4 th Sitting AM.	
	5 th Sitting, PM.	
Report and 3 rd Reading.	8 th February 2001.	Vol. 362, Col 1129 – 1168.
House of Lords.		
Introduction.	8 th February 2001.	Vol. 621, Col 1329.
2 nd Reading.	19 th February 2001.	Vol. 622, Col 540 – 574.
Committee.	3 rd April 2001.	Vol. 624, Col 741 – 789.
Report and 3 rd Reading.	9 th May 2001.	Vol. 624, Col 2188 – 2201.
House of Commons.		
Commons Consideration of Lords of Lords Amendments.	11 th May 2001.	Vol. 368, Col 365 – 375.
Royal Assent.		
House of Commons.	11 th May 2001.	Vol. 368, Col 406.
House Of Lords.	11 th May 2001.	Vol. 624, Col 2282.