



# Children's Commissioner for Wales Act 2001

## CHAPTER 18

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# Children's Commissioner for Wales Act 2001

## 2001 CHAPTER 18

An Act to make further provision about the Children's Commissioner for Wales. [11th May 2001]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### 1 Application of Part 5 of the Care Standards Act 2000

- (1) Section 78 of the Care Standards Act 2000 (c. 14) (interpretation) is amended as follows.
- (2) For subsection (1) substitute—
  - “(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).”.
- (3) For subsection (6) substitute-
- “(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.”.

## **2 Principal aim of the Commissioner**

After section 72 of the Care Standards Act 2000 (c. 14) (establishment of the office of the Children’s Commissioner for Wales) insert –

### **“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.”.

## **3 Review of exercise of functions of Assembly and other persons**

- (1) After section 72A of the Care Standards Act 2000 (which is inserted by section 2 above) insert –

### **“72B Review of exercise of functions of Assembly and other persons**

- (1) The Commissioner may review the effect on children to whom this Part applies of –
- (a) the exercise or proposed exercise of any function of the Assembly, 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 Assembly 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 the Assembly has functions;
  - (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 Assembly; 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 Assembly.
- (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 Assembly 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 the Assembly does not have functions.
- (7) In subsection (1)(a) "subordinate legislation" has the same meaning as in the Interpretation Act 1978 (c. 30)."
- (2) After Schedule 2 to the Care Standards Act 2000 (c. 14), insert the Schedule 2A contained in Part 1 of the Schedule to this Act.

#### **4 Review and monitoring of arrangements**

- (1) Section 73 of the Care Standards Act 2000 (review and monitoring of arrangements) is amended as follows.
- (2) In subsection (1)—
- (a) after "subsection (2)," insert "(2A), (2B), (2C),"; and
  - (b) for "to whom this Part applies." substitute —
    - (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."
- (3) After that subsection insert—
- "(1A) The Commissioner may also assess the effect on such children of the failure of any person to make such arrangements."

- (4) In subsection (2), for “in respect of such services made by or on behalf of children to whom this Part applies” substitute “about such services made by or on behalf of children to whom such services are provided”.
- (5) After that subsection insert –
- “(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 Assembly 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 Assembly).”
- (6) In subsection (3) –
- (a) for “or by the Assembly” substitute “by the Assembly, or by another person mentioned in Schedule 2B or subsection (2B)”;
- (b) for “such services” substitute “the services mentioned in subsection (3A).”.
- (7) After that subsection insert –
- “(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.”.
- (8) In subsection (4), for “to whom this Part applies” substitute “ –
- (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”.
- (9) After subsection (5) insert –
- “(5A) The Assembly 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 the Assembly has functions;
  - (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 Assembly; 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 Assembly.
- (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 Assembly 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 the Assembly does not have functions.”
- (10) After Schedule 2A to the Care Standards Act 2000 (c. 14) (which is inserted by section 3(2) above), insert the Schedule 2B contained in Part II of the Schedule to this Act.

## **5 Additional power of consideration and representation**

- (1) After section 75 of the Care Standards Act 2000 (c. 14) insert –

### **“75A Additional power of consideration and representation**

- (1) The Commissioner may consider, and make representations to the Assembly 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.”.

- (2) In section 74 of that Act—
- (a) in subsection (1), after “may” insert “, in connection with the Commissioner’s functions under this Part,”; and
  - (b) after that subsection insert—
 

“(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).”.

## **6 Further functions of the Commissioner**

In section 76 of the Care Standards Act 2000 (c. 14) (further functions of the Commissioner)—

- (a) in subsection (1), after paragraph (a) insert—
 

“(aa) in making a complaint or representation to or in respect of a person mentioned in Schedule 2B or section 73(2B);”;
- (b) after that subsection insert—
 

“(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).”;
  - (c) after subsection (5) insert—
 

“(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).”.

## **7 Consequential, etc. provision**

In section 118(8) of the Care Standards Act 2000 (orders and regulations) after “regulations” insert “or an order”.

## **8 Financial provisions**

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money so provided under any other Act.

## **9 Commencement, short title and extent**

- (1) This Act (apart from this section) shall come into force on such day as the Assembly may by order made by statutory instrument appoint, and different days may be appointed for different purposes.
- (2) An order under subsection (1) may make such transitional or consequential provision as the Assembly considers appropriate.
- (3) This Act may be cited as the Children’s Commissioner for Wales Act 2001.

- (4) This Act does not extend to Scotland or Northern Ireland.



## SCHEDULE

### PERSONS AND ARRANGEMENTS SUBJECT TO REVIEW

#### PART 1

#### SCHEDULE 2A TO BE INSERTED IN THE CARE STANDARDS ACT 2000

#### “SCHEDULE 2A

#### PERSONS SUBJECT TO REVIEW BY THE COMMISSIONER UNDER SECTION 72B.

- 1 Any county council, county borough council or community council in Wales.
- 2 Any Health Authority for an area in, or consisting of, Wales.
- 3 Any National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales.
- 4 The National Council for Education and Training for Wales.
- 5 Any further education corporation within the meaning of section 17(1) of the Further and Higher Education Act 1992 (c. 13) which conducts an institution in Wales.
- 6 Any higher education corporation within the meaning of section 90(1) of the Further and Higher Education Act 1992 which conducts an institution in Wales.
- 7 Any institution in Wales falling within section 91(5)(a) of the Further and Higher Education Act 1992.
- 8 Any institution in Wales in relation to which a designation under section 28 of the Further and Higher Education Act 1992 has effect, which on the date the designation took effect was an institution falling within subsection (2)(a) of that section.
- 9 Any governing body of a school in Wales which is a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (c. 31).
- 10 Her Majesty's Chief Inspector of Education and Training in Wales.
- 11 Any agricultural wages committee for an area wholly in, or consisting of, Wales.
- 12 A National Park authority for a National Park in Wales.
- 13 The Arts Council of Wales.
- 14 The Care Council for Wales.
- 15 The Countryside Council for Wales.

- 16 The National Library of Wales.
- 17 The National Museums and Galleries of Wales.
- 18 The Qualifications, Curriculum and Assessment Authority for Wales.
- 19 The Royal Commission on the Ancient and Historical Monuments of Wales.
- 20 The Sports Council for Wales.
- 21 The Wales Tourist Board.
- 22 The Welsh Development Agency.
- 23 The Welsh Language Board.
- 24 The Welsh National Board for Nursing, Midwifery and Health Visiting.”.

## PART 2

### SCHEDULE 2B TO BE INSERTED IN THE CARE STANDARDS ACT 2000

#### “SCHEDULE 2B

#### PERSONS WHOSE ARRANGEMENTS ARE SUBJECT TO REVIEW BY THE COMMISSIONER UNDER SECTION 73.

- 1 The Assembly.
- 2 Any county council or county borough council in Wales.
- 3 Any Health Authority for an area in, or consisting of, Wales.
- 4 Any National Health Service trust all or most of whose hospitals, establishments and facilities are situated in Wales.
- 5 The National Council for Education and Training for Wales.
- 6 Any further education corporation within the meaning of section 17(1) of the Further and Higher Education Act 1992 (c. 13) which conducts an institution in Wales.
- 7 Any higher education corporation within the meaning of section 90(1) of the Further and Higher Education Act 1992 which conducts an institution in Wales.
- 8 Any institution in Wales falling within section 91(5)(a) of the Further and Higher Education Act 1992.
- 9 Any institution in Wales in relation to which a designation under section 28 of the Further and Higher Education Act 1992 has effect, which on the date the designation took effect was an institution falling within subsection (2)(a) of that section.
- 10 Any governing body of a school in Wales which is a maintained school within the meaning of section 20(7) of the School Standards and Framework Act 1998 (c. 31).”.