

Health and Social Services Committee HSS-08-01(p.1)

Date: 16 May 2001

Venue: Committee Room 3, National Assembly for Wales

Title: Children's Commissioner - Proposals for Regulations

Purpose

1. To seek the Committee's views on the proposals for the Children's

Commissioner Regulations, taking into account the public consultation responses.

Recommendations

2. That the Committee gives its views on the proposals for regulations as issued for consultation and the issues raised in this paper.

Timing

3. The timetable is for the regulations to be posted to the Intranet by 6 June, go to Business Committee on 19 June and to plenary on 19 July.

Background

4. The Assembly's policy on a Children's Commissioner is based on the

Committee's report which was published in May 2000 and endorsed by the Assembly in plenary in June. The office of Commissioner was initially established by virtue of Part V of the Care Standards Act 2000 and will be extended as a result of the wider powers introduced by the Children's Commissioner for Wales Bill.

The Assembly Legislation : proposals for regulations

5. The proposals are set out in the public consultation paper issued on 9 March, which was

distributed to a wide variety of different bodies and organisations, as well as posted to the Internet. It was also copied to every AM. A list of those directly consulted is at Annex A of this paper.

6. The proposals for regulations seek to reflect, as far as possible, the Committee's recommendations on the role, remit and functions of a Commissioner. They also anticipated the effect that the Children's Commissioner for Wales Bill would have in extending Part V of the Care Standards Act.

7. The proposals are set out in detail in the consultation paper but, in brief, they cover:

- the definition of the type of advocacy services that come within the Commissioner's review and monitoring of arrangements function under section 73 of the Care Standards Act, as extended by the Bill – page 6 of the consultation paper;
- the persons from whom the Commissioner may obtain information in connection with his function under section 73 – page 7;
- the types of cases of particular children that may be examined under section 74 of the Act, as extended by the Bill; the circumstances in which an examination may be made; the procedure for conducting an examination; the Commissioner's right to information, explanations and assistance when examining a case; and the publication of reports following examination – pages 7 to 11;
- the circumstances in which the Commissioner may provide assistance, including financial, to a child – pages 11 and 12;
- reports and recommendations, including follow up action – pages 12,13 16 and 17;
- imposing a duty on the Commissioner to establish a participative and consultative relationship with children and young people – page 13;
- restricting the Commissioner from duplicating the work of CAFCASS –page 14;
- retrospective application of the powers – page 15;
- extension of the functions to adult care leavers – pages 15 and 16; and
- transitional and general provisions – page 16.

Consultation responses : main issues raised

8. As of Tuesday 8 May, responses had been received from the 27 bodies and individuals listed in Annex B to this paper. A table summarising the main issues raised is at Annex C. Copies of the verbatim responses have been placed in the Library.

9. The general response is one of support for the regulatory framework proposed, although a number of responses have raised particular issues or concerns.

10. Some of the comments received appeared to be based on a misunderstanding of the primary legislation and/or the effect of the proposals for regulations, which officials from

Children and Families Division have subsequently clarified, or will clarify, by writing to the bodies and individuals concerned.

11. Other responses reflect a general dissatisfaction with the limitations of the scope of the Commissioner's core powers, and therefore the primary legislation, rather than with the proposals for regulations per se. This dissatisfaction focuses mainly on the restriction of the Commissioner's scope to fields of devolved responsibility and to services and policies in Wales and on the extent of his compliance powers. Although reflected in the table at Annex C, these comments have not been considered in any further detail in this paper, given that the issue before the Committee is the subordinate legislation, which cannot extend the Commissioner's core powers.

12. However, the Committee will wish to take into account the Government amendment to the Children's Commissioner for Wales Bill which empowers the Commissioner to consider, and make representations to the Assembly about, **any** matter affecting the rights or interests of children in Wales. This will give the Commissioner a formal role in non-devolved areas of responsibility – for example, youth justice.

Consideration

13. Substantive issues raised by the responses that do not fall into the above categories are considered below:

A **Issue** – It is suggested that the regulations should limit the Commissioner's power to examine the actions of individuals, in particular teachers. Otherwise, it is argued that the regime could have a demoralising effect and it is unnecessary, given the existence of other complaints systems. (Issue raised by 2 of the responses).

Consideration - it has never been the Assembly's intention for the Commissioner to take over or duplicate the role of other complaints systems and the Assembly's policy is for the Commissioner to exercise his examination function only where a matter of principle is concerned. It is considered that the proposals for regulations in respect of the examination function will establish a control framework which reflects this intention. However, to prevent the Commissioner from examining a case if other complaints systems exist, or from looking at the actions of an individual as part of an examination, could fetter his role as children's champion and therefore not reflect the Assembly's policy on his powers.

B. **Issue** - It is recognised that children and young people will need to be

able to contact the Commissioner. However, It is said that imposing a duty on him to establish a consultative and participative framework with children and young people to enable him to take into account their views and wishes in exercising his functions could lead to an

unbalanced work programme and encourage frivolous or malicious complaints. (Issue raised by 2 of the responses).

Consideration – This duty reflects the Committee’s strong recommendations on the participation of children and young people and the need for their views and wishes to be taken into account by the Commissioner in the exercise of his functions. Having said that, there is an implicit need for the Commissioner to exercise his functions reasonably and therefore he will be expected to take a balanced view in so doing. With regard to a frivolous or malicious individual complaint, the proposed requirement for the Commissioner to set out his terms of reference for any examination, and to afford the subjects concerned the right to make representations, will ensure that the Commissioner is unlikely to examine such a complaint or, if he starts to, he can curtail examination in the event it becomes clear it is unfounded.

C. Issue - It is said that the proposals on the publication of reports need to be tightened to ensure that the confidentiality of the individual child or children can be maintained. (Issue raised by 3 of the responses).

Consideration – This is already covered in the primary legislation. Section 76(6) of the Act provides that, apart from identifying any person investigated, a report shall not mention the name of any person, or include any particulars which are likely to identify any person and can be omitted without impairing the effectiveness of the report, unless the Commissioner considers that including a person’s names or particulars which could identify them are necessary, having taken into account the public interest, as well as the interests of any person who made the complaint and other persons.

D. Issue – It is argued that, in establishing a consultative and participative framework for children and young people, the Commissioner should pay particular attention to the needs of sick children, as well as the other groups of children indicated in paragraph 52 of the consultation paper. (Issue raised by 1 of the responses).

Consideration - It is recognised that the list is not exhaustive and further consideration will be given to the way in which the regulations can reflect the needs of children with particular needs without detracting from the principal aim of the Commissioner, which is to exercise all his functions to safeguard and promote the rights and welfare of all children to whom Part V of the Care Standards Act, as extended by the Bill, applies. In essence, this means all children ordinarily resident in Wales.

E. Issue – Given that the Commissioner’s "investigatory" powers will be limited to requiring information, explanations and assistance, it is argued that the Assembly should use its powers to ensure that his recommendations are implemented. (Issue raised by 1 of the responses).

Consideration – This is not a duty that can, or should be, imposed by these regulations.

Given that the Assembly is a democratically elected body that will itself be subject to the Commissioner's jurisdiction and may not agree with his recommendations, it will rightly be a matter for the Assembly to decide whether to support the Commissioner's recommendations, and how.

F. Issue – It is suggested that the retrospective application of the Commissioner's powers should not be restricted to 5 years. (Issue raised by 1 of the responses).

Consideration – As explained in the consultation paper, the Assembly's policy is for the Commissioner to concentrate his efforts on current service provision and policies that affect children. In addition, it is not the Assembly's policy for the Commissioner to investigate individual cases routinely. Therefore, it is considered that a time limit needs to be placed upon retrospective application in order to ensure that a reasonable period is allowed for past events to be investigated. In the absence of any suggested alternative, 5 years is considered to be appropriate.

G. Issue – It is said that the regulations should recognise the need for the Commissioner to have regard specifically to the Welsh language needs of children in exercising his core functions and in his proposed duty under the regulations to provide a consultative and participative framework for children and young people. (Issue raised by 1 of the responses).

H. Consideration – Officials from Children and Families Division are discussing this issue with the Welsh Language Board. It is believed that the majority of the Board's concerns will be met by the Assembly's intention to add, by order later this year, the Commissioner to the list of bodies that must produce Welsh Language Schemes under the Welsh Language Act.

I. Issue – It is argued that the regulations should specify how the

Commissioner's exercise of his examination function should fit in with the judicial process. (Issue raised by 1 of the responses).

Consideration – This is effectively covered by section 77(1) of the Act and the proposals in paragraph 28 of the consultation paper on the exercise of the examination function. Section 77 (1) states that Part V of the Act does not authorise the Commissioner to enquire into or report on matters insofar as they are subject to legal proceedings before, or have determined by, a court or tribunal. The proposals in paragraph 28 would impose a duty for the Commissioner to consider whether a case was more suitable for examination by other means before deciding to exercise his examination function. There may be instances when the Commissioner commences examining a particular case which then becomes subject to judicial process. However, it is not considered that the regulations need to specify how the Commissioner should act in this event. Taking into account the restrictions in section 77(1), it will be for the Commissioner to make a reasonable decision as to when, for example, to curtail his

examination or continue examining aspects of the case that may not be subject to legal proceedings.

Late responses

14. We are expecting a late response from Children in Wales. Advice on the issues they raise will be provided either before or at the Committee meeting as an addendum to this paper.

Compliance

15. The Assembly's powers to make the subordinate legislation proposed are contained in Part V and sections 118 and 119 of, and Schedule 2 to, the Care Standards Act 2000, as extended by the Children's Commissioner for Wales Bill. There are no issues of propriety or regularity.

Financial Implications

16. There will be no additional financial implications for the Assembly. The Assembly has allocated £800k to the Commissioner for this, and the next two, financial years in order to exercise his functions, which will be commenced by the proposed subordinate legislation. All the work associated with the preparation of this legislation is being accommodated within existing administration costs.

Regulatory Appraisal

17. Please refer to section 4 of the consultation paper.

Cross-cutting themes

18. This paper is being sent to the Chairs of all subject committees, given that the Children's Commissioner for Wales Bill will extend the Commissioner's scope to all areas of devolved responsibility and therefore the wide impact the proposals for regulations could have on Assembly business.

Action for the Health and Social Services Committee

19. The Committee is invited to give its views on the proposals for regulations in the light of the consultation responses and the issues discussed in this paper.

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Minister for Health & Social Services

Contact Point:

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Children and Families Division

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Annex A

Children's Commissioner for Wales: Consultation on Regulations

Mailing list

Health Sector

All NHS Trusts in Wales

All Health Authorities in Wales

All Wales Children's Senior Nurse Forum

Association for the Welfare of Children in Hospitals

Association of Chairs of Local Health Groups

British Medical Association (Wales)

Bro Taff Child Health Forum

British Association of Community and Child Health

Chartered Society of Physiotherapy

Child and adolescent Community Health

Child and Adolescent Mental Health Services Representatives

Children Centre, University Hospital Wales

Clinical Psychology Service

Community Practitioners & Health Visitors Association

Department of Public Health

KRUF Children's Kidney Centre for Wales

NHS Confederation in Wales

Royal College of Nursing Wales

Royal College of Paediatrics & Child Health

Stillbirth & Neonatal Death Society (SANDS)

The Health Commissioner for Wales

The Mental Health Forum

The Specialised Health Services Commission for Wales

Ty Hafen Children's Hospice in Wales

Welsh National Board for Nursing, Midwifery and Health Visiting

Welsh Nursing and Midwifery Committee

Local Authority Sector

All Chief Executives and Directors of Local Authorities

Association of Directors of Education

Association of Directors of Social Services

Blaenau Gwent Early Years Development and childcare partnership

Partneriaeth Plant Ceredigion

Powys Early Years Education and Childcare

Powys Leisure and Recreation Youth Services

Welsh Local Government Association

Wrexham Childcare Partnership

Education Sector

All Primary Schools in Wales

All Secondary Schools in Wales

All Further/Higher Education institutes in Wales

ACCAC

Association of Educational Psychologists

Association of Teachers and Lecturers Cymru (ATL)

CELTEC

Council of Welsh TEC's

Department of Social Policy and Applied Studies

Education Welfare Officers

ESTYN

Further and Higher Education Funding Council

Higher Education Wales

Mid Wales TEC

NASUWT

National Association of Head Teachers

National Association of Social Workers in Education

National Association of Teachers Further Education (NATFE)

National Union of Head Teachers

National Union of Teacher (NUT)

Professional Association of Teachers (PAT)

School Governors Wales

Secondary Heads Association (SHA)

Sir Thomas Picton School

South East Wales TEC

The National Council for Education and Training for Wales

UCAC (Undeb Cenedlaethol Athrawon Cymru)

Universities Council for the Education of Teachers (UCET)

Wales Pre-School Playgroups Association

Wales Primary Schools Association

Welsh Joint Education Council (WJEC)

Welsh Secondary Schools Association

West Wales TEC

Voluntary Sector

Access for Black Children with Disabilities

After Adoption Wales

Arts Council of Wales

BAAF

Barnardo's Cymru

Barnardo's GALRO Service in West Glamorgan

BASPCAN (British Association for the Study and Prevention of Child Abuse)

Bite Back c/o Save the Children Fund

Bobath Cymru children's therapy centre Wales

British Agencies for Adoption and Fostering Cymru - Wales Centre

British Association of Social Workers

CAFCASS

Care for Wales

Catholic Children & Family Care Society (Wales)

CCETSW

Childline Cymru

Children and Young People's Assembly Steering Group

Children in Wales

Children's Advocacy c/o NSPCC Cymru

Children's Advocate

Children's Information Bureau

Churches in Wales Centre

Churches Together in Wales

Churches' National Assembly Centre

Chwarae Teg

Clover Care Consultancy

Commission for Racial Equality

Committee of Ethnic Minorities in Wales

Disability Rights Commission

Disability Wales

Equal Opportunities Commission

Foster Care Associates Cymru

Friends of the Earth

Gingerbread

Home Start UK

Leaving Care Forum

Llais Ifanc/Young Voice

Mencap

MSF

Mudiad Ysgolion Meithrin (MYM)

NACRO

Justice for Children

Kids Club Network

National Childminding Association in Wales

National Commissioner of Inquiry into the Prevention of Child Abuse

National Deaf Children's Society

National Family and Parenting Institute

National Federation of Women's Institutes (NFWI)

National Foster Care Association

National Playbus Association

National Playing Fields Association

National Private Day Nurseries Association

National Youth Advocacy Service

NCH Action for Children Cymru

NCH in Wales (action for Children)

NSPCC

Play Wales

Princes Trust Cymru

Race Equality First

Royal National Institute for the Blind

Royal National Institute for the Deaf Regional Education Centre

Royal Society for the Prevention of Accidents

Save the Children Fund

SCOPE in Wales

SCOVO

Shelter Wales

SNAP Cymru

Special Needs Advisory Project

Sports Council for Wales

Sustran Cymru

Swansea Young Single Homeless Project

TACT - The Child & Adolescent Trust

The Arts Factory

The Bridge Childcare Development Service

The Buttle Trust

The Children's Legal Centre Ltd

The Children's Society

The National Pyramid Trust

Voices from Care

Voices of Children in Care

Voluntary Sector Assembly Centre

Wales Advocacy Unit

Wales Assembly of Women

Wales Assembly of Women - Gwent Branch

Wales Association of Community and Town Councils

Wales Council for Voluntary Action

Wales Youth Agency

Welsh Development Agency

Welsh Funding Council

Welsh Refugee Council

Welsh Women's Aid

Women's Royal Voluntary Service

Wrexham Early Years Forum

Y Bont

Young Minds

Youthlink Wales

Legal Sector

Association of Lawyers for Children

Cardiff and the Vale GALRO Panel

Dyfed Powys Police Authority

Gwent Probation Service

Independent GALRO Panel for South Wales

Law Society in Wales

Manager North Wales GALRO Panel

Legal Services Commission

North Wales Police Authority

Probation Service

South East Wales GALRO Consortium

South Wales Constabulary

Youth Justice Board for England and Wales

Other Sector

Agricultural Wages Committee

Brecon Beacons National Park Authority

Cardiff Chamber of Commerce Trade & Industry

Careers Plus

CBI Wales

Centre for Family Policy and Child Welfare

Centre for Social Policy Research & Development

Chepstow Library

Child & Family Consultation Service

Childhood Matters Implementation Initiative

Council of Museums of Wales

Countryside Council for Wales

Federation of Small Businesses

National Library of Wales

National Museums and Galleries of Wales

Pembrokeshire Coast National Park Authority

Royal Commission on Ancient and Historical Monuments of Wales

Snowdonia National Park Authority

The Careers Company

The Commission for Local Administration in Wales

The Parliamentary Commissioner for Administration

Thomas Coram Institute

UNISON

Urdd Gobaith Cymru

Wales Rural Forum

Wales TUC

Welsh Administration Ombudsman

Welsh Association of Safety Officers

Welsh Centre for Internal Affairs

Welsh Drug and Alcohol Unit

Welsh Language Board

Annex B

CHILDREN'S COMMISSIONER : CONSULTATION ON ASSEMBLY REGULATIONS

LIST OF RESPONDENTS

Education Sector

ELWa

NUT Cymru

NAHT Cymru

Welsh Secondary Schools Association

Hawthorn High School, Pontypridd

Health sector

Bro Taf Health Authority

Pontypridd and Rhondda NHS Trust

Swansea NHS Trust

Director of Public Health & Policy, Bro Taf Health Authority

Chartered Society of Physiotherapy

Royal College of Nursing Wales

Prof D P Davies, University of Wales College of Medicine

Primary Care Health Division, NAW

Local authority sector

Education, Leisure & Communities Services, Bridgen County Borough Council

Flintshire County Council

Newport County Borough Council

Social Services, Torfaen County Borough Council

City and County of Swansea

Police

Dyfed-Powys Police

South Wales Police

Other

Gwenda Thomas AM

Suzanne Stevens

CloverCare Consultancies

National Playbus Association

CARE FOR WALES (Christian Action Research and Education)

CHILDREN’S COMMISSIONER FOR WALES : RESPONSES TO CONSULTATION ON ASSEMBLY REGULATIONS

SUMMARY OF MAIN COMMENTS	MADE BY
<p>The Commissioner should not be sucked into relatively trivial school disputes, such as school uniform issues.</p>	<p>Hawthorn High School, Pontypridd.</p>
<p>The widening of the Commissioner’s functions beyond the social care sector into healthcare and clinical governance could prove overburdensome and unnecessary for the office.</p>	<p>Prof D P Davies, Consultant Paediatrician, UCW College of Medicine.</p>
<p>Given that the Commissioner’s compliance powers are restricted to the right to information, explanations and assistance, the Assembly should use its powers to ensure that his recommendations are implemented.</p>	<p>CloverCare consultancies</p>
<p>Either the regulations or Assembly guidance should acknowledge the Commissioner’s campaigning role.</p>	<p>City and County of Swansea</p>
<p>It would not be appropriate for the Commissioner to investigate, or oversee the investigation of, individual complaints against teachers, given there are other, more specialised, means of dealing with such complaints and that such complaints may be malicious and unfounded.</p>	<p>NUT (National Union of Teachers) Cymru. NAHT (National Association of Head Teachers) Cymru.</p>
<p>It would not be appropriate for the Commissioner, in reviewing and monitoring arrangements for dealing with complaints, whistleblowing and advocacy under section 73 of the Care Standards Act 2000, to single out individual school governors or teachers.</p>	<p>NUT Cymru.</p>

<p>Given the efforts made by school managers to ensure correct treatment and services for pupils, there is a danger that the Commissioner's section 73 review and monitoring function will have a demoralising effect on school management. It could also lead to an increased bureaucratic burden.</p>	<p>NAHT Cymru.</p>
<p>Imposing a duty on the Commissioner to make his reports public could be damaging to the subjects of the report as there is a danger the contents will be manipulated and misquoted by the media.</p>	<p>NAHT Cymru.</p>
<p>Imposing a duty on the Commissioner to encourage children to communicate with his office will encourage malicious and mischievous allegations.</p>	<p>NAHT Cymru.</p>
<p>The Commissioner's jurisdiction should extend to the private and voluntary sector, in particular pre-school playgroups and after school clubs, and to cross-border services; and there should be a simple route for any further extension of his jurisdiction in the future.</p>	<p>The Chartered Society of Physiotherapy (CSP).</p>
<p>Generally these proposals are too restrictive and the Commissioner should be given more discretion in the exercise of his functions. His jurisdiction should also not be confined to devolved areas of responsibility.</p>	<p>Susanne Stevens (individual).</p>
<p>The Commissioner's lack of jurisdiction in respect of the police may prove problematic if he is involved in reviewing multi-agency child protection procedures. It is also disappointing that he will have no statutory enforcement powers in connection with serious case reviews.</p>	<p>South Wales Police</p>
<p>The Commissioner should identify and publicise good practice models of co-operation between the different sectors.</p>	<p>Welsh Secondary Schools Association.</p>
<p>The proposal for the Commissioner to provide a participative and consultative framework for children and young people to inform the exercise of his functions should include the duty to pay particular attention to sick children, as well as disabled children.</p>	<p>Royal College of Nursing Wales.</p>
<p>With regard to the publication of reports, the right of the child to confidentiality should be paramount and therefore it may not always be appropriate to publish the full report or make it available generally.</p> <p>Retrospective application of the Commissioner's powers should extend beyond 5 years in respect of his function of examining cases of particular children.</p>	<p>Bro Taf Health Authority.</p> <p>Social Services Department, Torfaen County Borough Council.</p>

<p>Any service provided to or in respect of children should come under the Commissioner's jurisdiction and the Commissioner should have statutory enforcement powers.</p>	<p>National Playbus Association.</p>
<p>The proposed regulations suggest that the Commissioner should rely on children and young people directly in order to inform the exercise of his functions. It is very important for children and young people to be able to communicate freely with the Commissioner but it is inappropriate for his work to be informed solely by their concerns and complaints.</p>	<p>CARE (Christian Action Research and Education) FOR WALES.</p>
<p>The Commissioner's scope should extend to young offenders.</p>	<p>Pontypridd and Rhondda NHS Trust.</p>
<p>The Commissioner should have regard to the language needs of children, both in his direct communication with children and his findings as to the effectiveness of, for example, the advocacy arrangements of service providers.</p>	<p>Welsh LanguageBoard.</p>
<p>The principle of extending the Commissioner's scope to young adults has been established as he will have jurisdiction in respect of care leavers. Consideration should also be given to extending the Commissioner's scope to young adults who have profound or severe learning difficulties.</p>	<p>ELWa (Education and Learning Wales).</p>
<p>Consideration needs to be given as to how the Commissioner's exercise of his examination function fits in with the judicial process. Also to whether the Commissioner needs stronger sanctions in respect of his recommendations.</p>	<p>National Youth Advocacy Service.</p>
<p>The Commissioner should be able to report on judicial processes as they affect children.</p>	<p>Social Services Department, Torfaen County Borough Council.</p> <p>Swansea NHS Trust.</p>