

REGULATORY APPRAISAL

THE ADVOCACY SERVICES AND REPRESENTATIONS PROCEDURE (CHILDREN) (WALES) REGULATIONS 2004

1. Purpose and Intended Effect

To make the provision of advocacy support for children in need, including those looked after and care leavers, a statutory right when making or intending to make a complaint under the Children Act 1989. The Adoption and Children Act 2002 imposes a duty on local authorities to provide advocacy services for certain categories of complainant under the Children Act 1989 complaints procedure (sections 26 (3) and 24D refer).

Currently all local authorities in Wales provide an advocacy support service as a matter of good practice for children and young people making a complaint under the Children Act 1989 and respective regulations [The Representations Procedure (Children) Regulations 1991]. However, in some authorities the service is available to looked after children only (around 4,200 children and young people currently eligible in Wales).

The new provisions to come into effect from *1 June 2004*, will make access to advocacy a statutory right and extends the right to advocacy services beyond looked after children to all those in need and care leavers. This will allow an extra 15,000 children and young people in Wales (19,000 in total) access to advocacy. Currently all 22 local authorities contract out their advocacy services to professional advocacy providers in voluntary sector organisations. All services have to meet with national standards issued in February 2003.

The intended effect of the new regulations is;

to ensure the local authorities have arrangements in place for the provision of assistance, to provide children in need and care leavers with advocacy services when making representations or a complaint under the Children Act 1989

- to specify who may or may not provide assistance to ensure independence of the advocacy service
- to require local authorities to provide information about advocacy services and to help a child or young person in finding an advocate
- to require local authorities to monitor compliance of regulations through monitoring of the provision of advocacy services
- to amend the Representation Procedure (Children) Regulations 1991 so as to ensure that an appointed advocate is involved throughout the process

2. Objective

To ensure that our most disadvantaged children and young people – those in need, including looked after children and care leavers have the necessary support and access to professional advocacy services when they want to raise a concern or when making a complaint. The main thrust of the change is to ensure safeguards and to promote a listening culture so that children can have the confidence and support to discuss matters and be involved in decisions that affect their lives for example, in planning their care and education.

3. Options

Two options have been identified;

Option 1 – leave advocacy services unregulated and continue to require local authorities to provide services under their corporate parenting duties to looked after children only (currently 4,200 can access advocacy services) and rely on improvements to allow wider access through the national standards.

Option 2- introduce the new regulations to strengthen children's rights to advocacy support and statutorily require local authorities to provide and extend advocacy services to children in need. This would extend access to advocacy an extra 15,000 children and young people, and further reinforce measures to protect vulnerable children and young people from risk or harm.

4. Risks / Benefits

Option 1 This would deny some 15,000 additional children and young people advocacy support and carries the risk of exposing children to risk of harm. It is also contrary to the Assembly Government's objectives for children and young people's advocacy, and its commitment to the United Nations Convention on the Rights of the Child, where listening to children is central.

Option 2 – This option will deliver in accordance with Parliament's intention and it will also ensure systems are in place to protect vulnerable groups of children and young people from risk of harm. The new arrangements will be seen as a further signal of the Assembly Government's intent to extend advocacy provision more widely to children in social care, education and health settings. The regulations also support the Assembly Government's commitment in respect of responses to recommendations for advocacy made in the Waterhouse report "Lost in Care", in the Children's Commissioner for Wales' report "Telling Concerns" and Lord Laming's report into the death of Victoria Climbié. Monitoring of information from advocacy provides a useful quality assurance tool for local authorities in the evaluation, planning and commissioning of services more generally.

5. Consultation

There has been a three month consultation (from October 2003 until 30 January 2004) with local authorities, children voluntary organisations including advocacy and children rights providers, Local Health Boards, NHS, and other stakeholders. The regulations and guidance have been welcomed and several clear themes have emerged and have been taken into account in finalising the regulations and supporting guidance. A summary of the consultation responses will be published on the Assembly's Children First

website www.childrenfirst.wales.gov.uk from 30 April 2004. During the consultation period, stakeholders were asked to comment on the likely resource implications (both financial and human) of introducing regulations.

6 Costs

Option 1 – There are no costs associated with this approach.

Option 2 - There will be some additional costs to local authorities in extending services to all children in need, care leavers and in particular services for children placed out of county and disabled children. Additional resources to secure the implementation of the Adoption and Children Act 2002, including the development of advocacy services to improve the complaints has been made available to local authorities through the Children First programme for 2003/4 and 2004/5. . It is acknowledged that costs may increase year on year as more children and young people take up advocacy services and there may be a need to increase provision in future budget rounds.

There may be benefits to voluntary organisations providing advocacy services under revised contractual arrangements to extend advocacy to wider groups of children and young people.

7. Summary

Option 2 is recommended. The strengthening of children's and young people's rights to advocacy through statutory powers and the extension to wider children in need groups has been seen by the Children's Commissioner, children's rights groups and others as a progressive step. It is a signal of the Assembly's commitment to meeting the longer term aim of ensuring that all children and young people have access to advocacy in health, social care and education settings.

These regulations build on foundations of good practice set in national standards for advocacy issued to local authorities in February 2003 and adopted by the NHS from July 2003.