



## 2011 CHAPTER 1

### *Functions of the Commissioner*

#### **General review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities**

**5.—(1)** This section and section 6 apply to the following arrangements of a relevant authority—

- (a) advocacy arrangements, that is to say arrangements for making persons available—
  - (i) to represent the views, wishes and interests of older persons in relation to whom any functions of the authority are exercisable; and
  - (ii) to provide such older persons—
    - (A) with information, advice and support to enable or assist them to express their views and wishes to the authority; and
    - (B) with advice about their interests;
- (b) complaint arrangements, that is to say arrangements for dealing with complaints made to the authority by older persons about actions taken in relation to them by that or another relevant authority;
- (c) inspection arrangements, that is to say arrangements for examining the state and management of, and the treatment of older persons on, any premises managed by that or another relevant authority in which—
  - (i) an older person is living or being looked after;
  - (ii) an older person is being detained whether under any statutory provision or otherwise; or
  - (iii) health, welfare or any other services are provided for older persons; and

- (d) whistle-blowing arrangements, that is to say arrangements for ensuring that proper action is taken in response to any disclosure of information which may tend to show—
- (i) that a criminal offence has been committed;
  - (ii) that a person has failed to comply with any legal obligation to which that person is subject;
  - (iii) that the health and safety of any older person has been endangered;
  - (iv) that the rights of any older person have been infringed; or
  - (v) that any matter falling within one of the preceding paragraphs has been deliberately concealed,
- in the course of, or in connection with, the exercise by the relevant authority of any of its functions in relation to older persons.

(2) Subject to subsections (3) and (4), the Commissioner may review the operation of any arrangements to which this section applies for the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the interests of older persons.

(3) The Commissioner may not exercise the Commissioner's power under subsection (2) in relation to any arrangements made by a relevant authority unless the Commissioner has reasonable grounds to believe that—

- (a) the arrangements in question are ineffective in safeguarding and promoting the interests of older persons; or
- (b) those arrangements have not been operated, or have been operated incorrectly.

(4) The Commissioner may not review the operation of the inspection arrangements made by a relevant authority unless it appears to the Commissioner that there is no other body or person likely to review those arrangements.

(5) Where a relevant authority has failed to make any arrangements of a kind mentioned in subsection (1), the Commissioner may assess the effect of that failure on older persons.

(6) The power conferred by this section to review the operation of any arrangements includes power to review the failure of any such arrangements to operate.