
WELSH STATUTORY INSTRUMENTS

2007 No. 398 (W.44)

**COMMISSIONER FOR OLDER
PEOPLE IN WALES, WALES**

The Commissioner for Older People in Wales Regulations 2007

Made - - - - 14 February 2007

Coming into force - - 16 February 2007

The National Assembly for Wales makes the following Regulations in exercise of the power conferred upon it by sections 5(4)(b) and 6(5), 8(1), (3) and (5), 10(1), (4), (5) and (9), 14(1), 15(1) and (3) of, and paragraph 8 and 22 of Schedule 1 to, the Commissioner for Older People (Wales) Act 2006.

PART I

General

Title, commencement and interpretation

1.—(1) The title of these Regulations is the Commissioner for Older People in Wales Regulations 2007 and they come into force on 16 February 2007.

(2) These Regulations apply in relation to Wales.

2.—(1) In these Regulations —

“the Act” (“*y Ddeddf*”) means the Commissioner for Older People (Wales) Act 2006⁽¹⁾;

“arrangements in relation to advocacy, complaints or whistle-blowing” (“*trefniadau mewn perthynas ag eiriolaeth, cwynion neu chwythu'r chwiban*”) means arrangements falling within subsections (4), (5) and (6) of section 5 of the Act as the case may be;

“the Assembly” (“*y Cynulliad*”) means the National Assembly for Wales;

“the Commissioner” (“*y Comisiynydd*”) means the Commissioner for Older People in Wales;

“the First Minister” (“*y Prif Weinidog*”) means the person appointed from time to time as the First Minister for Wales under section 46(1) of the Government of Wales Act 2006;

(2) In these Regulations, a reference —

- (a) to a numbered regulation is to the regulation in these Regulations bearing that number;
- (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number;
- (c) in a paragraph to a lettered or numbered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter or number.

PART II

Review of Arrangements

Prescribed advice and support

3. The kind of advice and support prescribed for the purposes of section 5(4)(b) of the Act is —
- (a) the provision of advice and support to relevant older people in Wales which is intended to enable and assist them to express their views and wishes orally or using any other means of communication, and
 - (b) the provision of advice (including information) to relevant older people about their rights and welfare.

Provision of information by prescribed persons

4.—(1) The Commissioner may require a person to whom paragraph (2) applies to provide to the Commissioner information, recorded in any form, which the Commissioner considers it necessary or expedient to have for the purposes of —

- (a) reviewing arrangements in relation to advocacy, complaints or whistle-blowing,
- (b) assessing the effect of the failure of any person to make such arrangements pursuant to section 5(3) of the Act, and
- (c) determining whether a recommendation made in a report following a review of such arrangements has been complied with.

(2) The persons referred to in paragraph (1) are —

- (a) in relation to the provision of regulated services in Wales, the providers or former providers of such services, employees or former employees of such providers or former providers, persons who work or worked for such providers or former providers in a voluntary capacity, and members and employees and former members and employees of the Assembly;
- (b) members (including elected members), directors, executives, officers and employees of a relevant person, former members, directors, executives, officers and employees of a relevant person and persons who work or worked for a relevant person in a voluntary capacity;
- (c) the receiver or manager of the property, the liquidator or provisional liquidator or the trustee in bankruptcy, as the case may be, of a person who is or has been a relevant person or who provides or provided services described in sub-paragraph (a).

(3) For the purposes of sub-paragraphs (2)(b) and (c) “relevant person” means the Assembly, any person mentioned in Schedule 3 to the Act providing services to or in respect of an older person in Wales or a person providing such services on behalf of or under arrangements with that person.

PART III

Provision of Assistance

Provision of assistance in proceedings

5.—(1) The Commissioner may, subject to paragraphs (3) and (4), provide assistance to an older person in Wales —

- (a) in making a complaint or representation to or in respect of any person referred to in sections 8(1)(a) to (d) of the Act, and
- (b) in relation to proceedings prescribed in paragraph (2) where, in the reasonable opinion of the Commissioner, the proceedings relate to matters which have a more general application or relevance to the interests of older people in Wales than in the particular proceedings concerned.

(2) The proceedings prescribed for the purposes of section 8(1)(e) of the Act are proceedings which concern —

- (a) the provision to or in respect of an older person in Wales of regulated services in Wales;
- (b) the provision of services to or in respect of an older person in Wales by any person mentioned in Schedule 3 to the Act or any person providing services on behalf of or under arrangements with that person; or
- (c) the effect on an older person in Wales of the exercise or proposed exercise of any function of the Assembly or a person mentioned in Schedule 2 to the Act.

(3) In deciding whether to provide assistance the Commissioner may take account of the financial and other assistance available to the older person in Wales in relation to the proceedings, complaint or representation concerned including assistance under the Access to Justice Act 1999.

(4) This regulation does not affect the law and practice as to who may represent a person in relation to any proceedings.

Conditions

6.—(1) Where the Commissioner decides to provide financial assistance to an older person in Wales pursuant to regulation 5 the assistance may be provided subject to either or both of the conditions specified in paragraph (2).

(2) The conditions are that —

- (a) the Commissioner may recover the reasonable cost of providing the assistance from any sums paid by other parties for this purpose in the proceedings concerned;
- (b) the assistance provided does not duplicate assistance which has been or may be provided under any enactment.

(3) For the purposes of paragraph (2)(a) it is immaterial whether the sums paid by other parties are payable by virtue of a decision of a court or tribunal, an agreement reached to avoid proceedings or to bring them to an end, or otherwise.

PART IV

Examination of Cases

Examinations

7. Subject to the following paragraphs in this Part the Commissioner may examine the cases of particular persons who are or who have been older people in Wales.

Cases subject to examination

8. Subject to regulation 9, the Commissioner may examine cases of particular persons who are or have been older people in Wales —

- (a) to or in respect of whom regulated services in Wales are being or have been provided;
- (b) to or in respect of whom services are being or have been provided by any of the persons mentioned in Schedule 3 to the Act or persons providing such services on behalf of or under arrangements with any of those persons; or
- (c) who are ordinarily resident in Wales and who are being or have been affected by the exercise or proposed exercise of any function of the Assembly or a person mentioned in Schedule 2 to the Act,

where the cases relate to issues concerning the provision of such services or the effect on the said person of the exercise of such functions.

Circumstances in which an examination may be made

9. The Commissioner may only examine the case of a particular person who is or has been an older person in Wales where —

- (a) a representation is made to the Commissioner by the person concerned, or if the person concerned is unable for any reason to make such a representation, where a representation is made to the Commissioner on behalf of the person concerned by a person who appears to the Commissioner to be an appropriate person to act on behalf of the person concerned;
- (b) the Commissioner considers that the representation raises a question of principle which has a more general application or relevance to the interests of older people in Wales than in the particular case concerned; and
- (c) the Commissioner has taken into account whether the issues involved in the case have been or are being formally considered in any way by other persons and if they have not or are not whether, in the Commissioner's opinion, they are more suitable for consideration by other persons.

Procedure for conducting an examination

10.—(1) Where the Commissioner decides to conduct an examination he or she must—

- (a) produce terms of reference of the examination;
- (b) send the terms of reference to the person who made a representation in relation to the case in accordance with paragraph (a) of regulation 9;
- (c) send written notice of the proposed examination and copies of the terms of reference to the person in respect of whose provision of services or the exercise of whose functions is to be examined ("the person being examined");

- (d) afford to the person being examined, and if he or she so desires, his or her representative, an opportunity to make representations in writing or in person in relation to the matters being examined.
- (2) Where the Commissioner decides not to conduct an examination he or she must prepare a statement of reasons for that decision and must send copies of it to —
 - (a) the person who made the representation in relation to the case in accordance with paragraph (a) of regulation 9, and
 - (b) such other persons as the Commissioner considers appropriate.

Provision of information in connection with an examination

11.—(1) In conducting an examination the Commissioner may require a person to whom paragraph (3) applies to provide any information which appears to the Commissioner to be necessary for the purposes of —

- (a) the examination, and
- (b) determining whether a recommendation made in a report following an examination of a case has been complied with.

(2) In conducting an examination the Commissioner may require any person from whom information is required under paragraph (1) or such other person as may be accountable for the said information, to provide the Commissioner with an explanation of, or assistance in relation to, —

- (a) any matters which are the subject of the examination, or
- (b) any information provided under paragraph (1).

(3) The persons to whom this paragraph applies are —

- (a) in relation to the provision of regulated services in Wales, the providers or former providers of such services, employees or former employees of such providers or former providers and persons who work or worked for such providers or former providers in a voluntary capacity and members and employees and former members and employees of the Assembly;
- (b) members (including elected members), directors, executives, officers and employees of a relevant person, former members, directors, executives, officers and employees of a relevant person and persons who work or worked for a relevant person in a voluntary capacity;
- (c) the receiver or manager of the property, the liquidator or provisional liquidator or the trustee in bankruptcy, as the case may be, of a person who is or has been a relevant person or who provides or provided services described in paragraph (a).

(4) for the purposes of sub-paragraphs 3(b) and (c) “relevant person” means the Assembly, any person mentioned in Schedule 2 to the Act, any other person exercising a function of the Assembly or of any person mentioned in the said Schedule 2, or any person providing services to or in respect of older people in Wales on behalf of or under arrangements with any person mentioned in Schedule 3 to the Act.

Attendance of witnesses

12.—(1) The Commissioner may, if it is considered necessary for the purposes of an examination, require a person to whom paragraph (2) applies to attend before the Commissioner in person to provide information, explanation or assistance.

(2) The persons to whom this paragraph applies are persons who are required —

- (a) to provide information under paragraph (1) of regulation 11, or

(b) to provide an explanation or assistance under paragraph (2) of regulation 11.

(3) The Commissioner may only require a person to attend in person at any place in accordance with paragraph (1) if reasonable written notice of the proposed date of attendance and the information, explanation or assistance required by the Commissioner has been given to that person.

(4) In connection with such attendance in person, the Commissioner may, subject to section 10(7) and (8) of the Act, issue witness summonses and administer oaths or affirmations and may permit a person to be represented before the Commissioner.

PART V

Further Functions

Relationship with older people in Wales

13.—(1) The Commissioner must take reasonable steps to ensure that —

- (a) older people in Wales are made aware of the existence and functions of the Commissioner's office;
- (b) older people in Wales are made aware of the location of the Commissioner's office or offices and the ways in which they may communicate with the Commissioner and his or her staff;
- (c) such older people are encouraged to communicate with the Commissioner and his or her staff;
- (d) the views of such older people are sought as to how the Commissioner should exercise his or her functions and as to the content of the Commissioner's annual work programme; and
- (e) the Commissioner and his or her staff make themselves available to such older people in the older persons' locality.

(2) In exercising the functions set out in paragraph (1) the Commissioner must have regard to what he or she reasonably considers to be the needs and circumstances of such older people.

PART VI

Reports

Reports

14.—(1) Following the conclusion of an examination undertaken pursuant to Part IV of these Regulations, the Commissioner must prepare a report on his or her findings.

(2) Following the conclusion of a review of discharge of functions pursuant to section 3 of the Act or a review of arrangements pursuant to section 5 of the Act the Commissioner may prepare a report on his or her findings.

(3) Where the Commissioner and the Children's Commissioner for Wales discharge their respective functions under the Act and the Care Standards Act 2000 in relation to the same matter, the Commissioner may make a joint report with the Children's Commissioner for Wales.

(4) A report made under paragraph (1), (2) or (3) must set out —

- (a) the findings and conclusions of the Commissioner; and
- (b) any recommendations made by the Commissioner.

- (5) The Commissioner must send a copy of his or her report to —
- (a) the First Minister;
 - (b) the libraries of the Assembly and of the Houses of Parliament;
 - (c) in the case of a report made under paragraph (1), to the person who made a representation to the Commissioner in accordance with regulation 9; and
 - (d) in the case of a report made under paragraph (1), (2) or (3), to the person or persons —
 - (i) whose provision of services, or the exercise of whose functions, have been examined;
 - (ii) whose arrangements in relation to advocacy, complaints or whistle-blowing have been reviewed;
 - (iii) who are mentioned in the report.

Further action following a report

15.—(1) Where the Commissioner has made a report following the examination of a case pursuant to section 10 of the Act or the review of arrangements pursuant to section 5 of the Act which contains a recommendation in respect of a provider of regulated services in Wales, the Assembly, or a person mentioned in Schedule 2 to the Act, the Commissioner may require the person in writing in respect of whom the recommendation is made to provide the Commissioner with the relevant information in such reasonable period as the Commissioner may specify but in any event no later than 3 months of the date on which the person is sent a copy of the report.

(2) Where the Commissioner has made a report following a review of discharge of functions pursuant to section 3 of the Act which contains a recommendation in respect of a person mentioned in paragraph (1) of this regulation, the Commissioner may request the person in writing in respect of whom the recommendation is made to provide the Commissioner with the relevant information in such reasonable period as the Commissioner may specify but in any event no later than 3 months of the date on which the person is sent a copy of the report.

(3) For the purposes of paragraphs (1) and (2) “the relevant information” means such information, explanation or assistance as to enable the Commissioner to determine whether the person concerned has complied with the recommendation or will be so complying, or an explanation of the reason for no such action having been taken or not being intended to be taken.

(4) Where a requirement is made under paragraph (1) or a request is made under paragraph (2) it must include a statement that failure to respond within the time specified under the relevant paragraph may be published in such manner as the Commissioner considers appropriate.

(5) If the Commissioner reasonably considers, upon receipt of the relevant information, that the action taken or proposed to be taken to comply with the recommendation or that the reason for no such action being taken or not being proposed to be taken is inadequate, the Commissioner may send to the person concerned a written notice setting out the inadequacies which requires a response within 1 month of the date of sending.

(6) Where the Commissioner receives no response within 1 month of the date of sending the written notice under paragraph (5), or is dissatisfied with the response, the Commissioner may send a supplementary notice which requires a supplementary response within 1 month of the date of sending.

(7) The supplementary notice must include a statement that failure to provide what the Commissioner reasonably considers to be a satisfactory supplementary response, or a response at all, may be published in such manner as the Commissioner considers appropriate.

- (8) The Commissioner must maintain a register containing details of —
- (a) recommendations contained in reports made under regulation 14, and

(b) the results of further action taken in accordance with paragraphs (1), (2), (5) and (6) of this regulation.

(9) Any register maintained under paragraph (8) must be open to inspection by any person at all reasonable times at the offices of the Commissioner and the Commissioner may make arrangements for copies of the register to be available for inspection in such other place or places or by such other means as he or she considers appropriate.

(10) The Commissioner must publish the said inspection arrangements in such a way as to bring them to the attention of persons who are, in the reasonable opinion of the Commissioner, likely to be interested.

Reports to the Assembly

16.—(1) The Commissioner may make a report to the Assembly in connection with the exercise of any of his or her general functions pursuant to section 2 of the Act.

(2) Subject to paragraph (3), the Commissioner must make an annual report to the Assembly which must contain —

- (a) a summary of the action taken in the exercise of the Commissioner's functions under the Act during the previous financial year including a summary of the reports issued during that period and of such representations as the Commissioner may have made during that period pursuant to section 2(3) of the Act, including any representations made as to the range or effectiveness of the Commissioner's powers;
- (b) a summary of the complaints made in accordance with the Commissioner's complaints procedure established pursuant to section 20 of the Act and of the action taken by the Commissioner in response to these complaints;
- (c) a review of issues relevant to the interests of older people in Wales; and
- (d) a summary of the Commissioner's work programme for the financial year in which the report is made and of the Commissioner's proposals for a work programme for the following financial year.

(3) The first report referred to in paragraph (2) must be made in 2008.

(4) Subject to paragraph (3), the Commissioner must, no later than 1st October in each year, send a copy of the report referred to in paragraph (1), (2) and (3) to —

- (a) the First Minister; and
- (b) the libraries of the Assembly and of the Houses of Parliament.

Publication of reports

17.—(1) The Commissioner must ensure, so far as is reasonably practicable, that reports made under regulations 14 and 16 are available in formats which are accessible to older people.

(2) The Commissioner must arrange for copies of reports made under regulations 14 and 16 to be available for inspection at the Commissioner's office at all reasonable times and at such other places or by such other means, including by electronic means, as the Commissioner considers appropriate.

(3) The Commissioner must publish the said inspection arrangements in such a way as to bring them to the attention of persons who are, in the reasonable opinion of the Commissioner, likely to be interested.

PART VII

Miscellaneous

Financial years

18.—(1) For the purposes of paragraph 22 of Schedule 1 to the Act the following periods are specified —

- (a) in relation to the first financial year, the period from 1 April 2007 to 31 March 2008
- (b) in relation to each subsequent financial year, the period from 1 April to 31 March.

Information

19. Where information required to be provided under paragraph (1) of regulation 4, paragraph (1) of regulation 11 or paragraph (1) of regulation 15 consists of information held by means of a computer or in any other form, the Commissioner may require any person having charge of, or otherwise concerned with the operation of, the computer or other device holding that information to make the information available, or produce the information, in a visible and legible form.

20. Where a person provides information to the Commissioner pursuant to paragraph (1) of regulation 11 or attends before the Commissioner pursuant to regulation 12, the Commissioner may, if he or she thinks fit, pay to that person —

- (a) sums in respect of expenses properly incurred by the person, and
- (b) allowances by way of compensation for the loss of their time,

in accordance with such scales, and subject to such conditions, as may be determined by the Commissioner.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(2).

14 February 2007

D. Elis-Thomas
The Presiding Officer of the National Assembly

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision in relation to the functions of the Commissioner for Older People in Wales (“the Commissioner”) established under the Commissioner for Older People (Wales) Act 2006 (“the Act”).

Part I of the Regulations contains interpretation provisions.

Part II concerns the role of the Commissioner in reviewing advocacy, complaints and whistle-blowing arrangements. It prescribes the kind of advice and support arrangements that the Commissioner may review as part of his or her power to review advocacy arrangements (regulation 3). It also confers power on the Commissioner to require information from prescribed persons for certain purposes (regulation 4).

Part III confers power on the Commissioner to provide financial and other assistance to older people in Wales, prescribes the proceedings and procedures in relation to which such assistance may be given (regulation 5) and provides for conditions which may be imposed in connection with the provision of assistance (regulation 6).

Part IV confers functions on the Commissioner concerning the examination of cases of particular persons who are or have been older people in Wales (regulation 7). It specifies the types of case which may be examined (regulation 8) and the circumstances in which an examination may be made (regulation 9). It also makes provision for the conduct of an examination (regulation 10), the provision of information to the Commissioner in connection with an examination (regulation 11), and the attendance of witnesses before the Commissioner (regulation 12).

Part V makes further provision for the arrangements relating to the Commissioner’s relationship with older people in Wales (regulation 13).

Part VI makes provision for specific reports and action to follow them up (regulations 14 and 15), as to reports to the Assembly (regulation 16) and as to publication of reports (regulation 17).

Part VII contains miscellaneous provisions as to the period of the initial and succeeding financial years (regulation 18), the way in which information is produced (regulation 19), and the payment of expenses and allowances in relation to the production of information (regulation 20).