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 —

(**1**) 2006 c. 30

(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