



Commissioner for Older People (Wales) Act 2006

2006 CHAPTER 30

Functions

2 General functions

- (1) The Commissioner may—
 - (a) promote awareness of the interests of older people in Wales and of the need to safeguard those interests;
 - (b) promote the provision of opportunities for, and the elimination of discrimination against, older people in Wales;
 - (c) encourage best practice in the treatment of older people in Wales;
 - (d) keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales.
- (2) The powers conferred by subsection (1) are exercisable only in relation to fields in which the Assembly has functions.
- (3) The Commissioner may consider, and make representations to the Assembly about, any matter relating to the interests of older people in Wales.

3 Review of discharge of functions

- (1) For the purpose of safeguarding and promoting the interests of older people in Wales, the Commissioner may review the effect on them of—
 - (a) the discharge or proposed discharge of a function of the Assembly, including the making or proposed making of subordinate legislation;
 - (b) a failure by the Assembly to discharge a function;
 - (c) the discharge or proposed discharge in relation to Wales of a relevant function of a person mentioned in Schedule 2;
 - (d) a failure by such a person to discharge a relevant function in relation to Wales.
- (2) A relevant function is—

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- (a) in the case of a person who is a family health service provider in Wales, a function dischargeable in relation to the provision of any of the family health services which the person has entered into a contract, undertaken, or made arrangements, to provide;
 - (b) in the case of a person who is an independent provider in Wales, a function dischargeable in relation to the provision of any of the independently provided services which the person has made arrangements to provide;
 - (c) in the case of any other person mentioned in Schedule 2, any function of the person.
- (3) “Subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).
- (4) The references in subsection (1) to the discharge of a function, or a failure to do so, include the discharge of a function, or a failure to do so, at a time before this section comes into force.

4 Power to amend Schedule 2

- (1) The Assembly may by order amend Schedule 2 by—
- (a) adding a person;
 - (b) omitting a person;
 - (c) changing the description of a person.
- (2) An order under subsection (1) may add a person to Schedule 2 only if—
- (a) the person has functions dischargeable in relation to Wales,
 - (b) some or all of the person's functions are in a field in which the Assembly has functions,
 - (c) the person is established by or under an enactment or by virtue of Her Majesty's prerogative or in any other way by a Minister of the Crown, a government department, the Assembly or another person mentioned in Schedule 2, and
 - (d) at least half of the person's expenditure on the discharge of its functions in relation to Wales is met directly from payments made by the Assembly.
- (3) But an order under subsection (1) may add a person to Schedule 2 even if the person does not satisfy the condition in subsection (2)(d), if the Secretary of State consents.
- (4) An order under subsection (1) may not add to Schedule 2 a person whose sole or main activity is—
- (a) the investigation of complaints by members of the public about the actions of any person, or
 - (b) the supervision or review of, or of steps taken following, such an investigation.
- (5) An order under subsection (1) must make provision about which of the functions of a person mentioned in Schedule 2 and specified in the order are to be relevant functions for the purposes of section 3.
- (6) The provision that may be made by virtue of subsection (5) includes provision amending section 3.
- (7) But a function may be specified as a relevant function by virtue of subsection (5) only if it is in a field in which the Assembly has functions.

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5 Review of arrangements

- (1) The Commissioner may review—
 - (a) any arrangements mentioned in subsection (2), and
 - (b) the operation of any such arrangements,for the purpose of ascertaining whether, and to what extent, the arrangements are effective in safeguarding and promoting the interests of relevant older people in Wales.
- (2) The arrangements are—
 - (a) advocacy arrangements;
 - (b) complaints arrangements;
 - (c) whistle-blowing arrangements.
- (3) The Commissioner may also assess the effect on relevant older people in Wales of a person's failure to make any such arrangements.
- (4) Advocacy arrangements are arrangements made by a person for making persons available—
 - (a) to represent the views and wishes of relevant older people in Wales;
 - (b) to provide relevant older people in Wales with advice and support of a prescribed kind.
- (5) Complaints arrangements are arrangements made by a person falling within section 6(3) for dealing with complaints or representations which are made—
 - (a) by or on behalf of a relevant older person in Wales, and
 - (b) in respect of relevant services provided to relevant older people in Wales by or on behalf of the person who has made the arrangements.
- (6) Whistle-blowing arrangements are arrangements made by a person falling within section 6(3) for ensuring that proper action is taken in response to a disclosure of potentially adverse information.
- (7) Information is potentially adverse if it may tend to show that, in the course of, or in connection with, the provision of relevant services, any of the following has occurred—
 - (a) a criminal offence has been committed;
 - (b) a person has failed to comply with a legal obligation to which he is subject;
 - (c) the health or safety of a person has been endangered;
 - (d) the dignity of a person has been violated;
 - (e) information tending to show a matter falling within any of paragraphs (a) to (d) has been deliberately concealed.

6 Review of arrangements: supplementary

- (1) This section applies for the purposes of section 5.
- (2) Relevant older people in Wales are older people—
 - (a) to or in respect of whom regulated services in Wales are provided, or
 - (b) to or in respect of whom relevant services (within the meaning of subsection (4)) are provided by or on behalf of, or under arrangements with, a person mentioned in Schedule 3.
- (3) The persons falling within this subsection are—

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- (a) the Assembly;
 - (b) a person providing regulated services in Wales;
 - (c) a person mentioned in Schedule 3;
 - (d) a person providing services in Wales on behalf of, or under arrangements with, a person mentioned in Schedule 3.
- (4) A relevant service is—
- (a) in the case of the Assembly, any service which the Assembly provides;
 - (b) in the case of a person providing regulated services in Wales, any of those services;
 - (c) in the case of a person who is a family health service provider in Wales, any of the family health services which the person provides;
 - (d) in the case of a person who is an independent provider in Wales, any of the independently provided services which the person provides;
 - (e) in the case of any other person mentioned in Schedule 3, any service the person provides;
 - (f) in the case of a person falling within subsection (3)(d), any service which—
 - (i) the person provides in Wales on behalf of, or under arrangements with, a person mentioned in Schedule 3; and
 - (ii) would, if provided by the person mentioned in Schedule 3, be a relevant service falling within paragraphs (c) to (e).
- (5) Regulations may confer power on the Commissioner to require prescribed persons to provide any information which the Commissioner thinks it necessary or expedient to have for either or both of the following purposes—
- (a) the purposes of his functions under section 5;
 - (b) the purposes of determining whether a recommendation made in a report following the discharge of his functions under section 5 has been complied with.

7 Power to amend Schedule 3

- (1) The Assembly may by order amend Schedule 3 by—
- (a) adding a person;
 - (b) omitting a person;
 - (c) changing the description of a person.
- (2) An order under subsection (1) may add a person to Schedule 3 only if—
- (a) the person provides a service in Wales,
 - (b) the service is in a field in which the Assembly has functions,
 - (c) the person is established by or under an enactment or by virtue of Her Majesty's prerogative or in any other way by a Minister of the Crown, a government department, the Assembly or another person mentioned in Schedule 3, and
 - (d) at least half of the person's expenditure on the discharge of its functions in relation to Wales is met directly from payments made by the Assembly.
- (3) But an order under subsection (1) may add a person to Schedule 3 even if the person does not satisfy the condition in subsection (2)(d), if the Secretary of State consents.

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- (4) An order under subsection (1) may not add to Schedule 3 a person whose sole or main activity is—
 - (a) the investigation of complaints by members of the public about the actions of any person, or
 - (b) the supervision or review of, or of steps taken following, such an investigation.
- (5) An order under subsection (1) must make provision about which of the services provided by a person mentioned in Schedule 3 and specified in the order are to be relevant services for the purposes of section 5.
- (6) The provision that may be made by virtue of subsection (5) includes provision amending section 6.
- (7) But a service may be specified as a relevant service by virtue of subsection (5) only if—
 - (a) the person provides the service in Wales, and
 - (b) the service is in a field in which the Assembly has functions.

8 Assistance

- (1) Regulations may confer power on the Commissioner to give assistance to a person who is or has been an older person in Wales—
 - (a) in making a complaint or representation to or in respect of the Assembly;
 - (b) in making a complaint or representation to or in respect of a person providing regulated services in Wales, in respect of the provision of those services;
 - (c) in making a complaint or representation to or in respect of a person mentioned in Schedule 3, in relation to anything done or omitted to be done by that person the effect of which is subject to review under section 3;
 - (d) in making a complaint or representation to or in respect of a person providing services on behalf of or under arrangements with a person mentioned in Schedule 3, in respect of the provision of a relevant service;
 - (e) in any procedure, proceedings or prospective proceedings of a prescribed description.
- (2) The reference in subsection (1) to a person who has been an older person in Wales includes a person who has ceased to be an older person in Wales before this section comes into force.
- (3) A description of procedure or proceedings may be prescribed by virtue of subsection (1)(e) only if it relates to—
 - (a) anything the effect of which is subject to review under section 3,
 - (b) the provision of regulated services in Wales, or
 - (c) the provision of a relevant service on behalf of, or under arrangements with, a person mentioned in Schedule 3.
- (4) Assistance includes—
 - (a) financial assistance;
 - (b) arranging for a person to provide representation or give advice or assistance.
- (5) The regulations may provide for assistance to be given on conditions including (in the case of financial assistance) conditions requiring repayment in prescribed circumstances.

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- (6) In subsections (1)(d) and (3)(c) “relevant service” means a service which is a relevant service for the purposes of section 5 by virtue of section 6(4)(f).

9 Research and educational activities

- (1) The Commissioner may, in connection with any of his functions—
- (a) undertake or commission research;
 - (b) give assistance to another to undertake or commission research;
 - (c) carry out or commission the carrying out of educational activities;
 - (d) give assistance to another to carry out or commission the carrying out of educational activities.
- (2) In this section “assistance” includes financial assistance.

10 Examination of cases

- (1) Regulations may make provision for the examination by the Commissioner of the cases of particular persons who are or have been older people in Wales, in connection with the Commissioner's functions under this Act.
- (2) The reference in subsection (1) to the Commissioner's functions under this Act does not include his powers under sections 2(3) and 9, to the extent that they are exercised in relation to a field in which the Assembly does not have functions.
- (3) The reference in subsection (1) to persons who have been older people in Wales includes people who have ceased to be older people in Wales before this section comes into force.
- (4) The regulations may include provision about—
- (a) the types of cases which may be examined;
 - (b) the circumstances in which an examination may be made;
 - (c) the procedure for conducting an examination, including provision about the representation of parties.
- (5) The regulations may make provision—
- (a) requiring persons to provide the Commissioner with information, or
 - (b) requiring persons who hold or are accountable for information to provide the Commissioner with explanations or other assistance,
- for either or both the purposes mentioned in subsection (6).
- (6) The purposes are—
- (a) the purposes of an examination;
 - (b) the purposes of determining whether a recommendation made in a report following an examination has been complied with.
- (7) For the purposes mentioned in subsection (6), the Commissioner has the same powers as the High Court in respect of—
- (a) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and
 - (b) the provision of information.

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- (8) No person is to be compelled for the purposes mentioned in subsection (6) to give any evidence or provide any information which he could not be compelled to give or provide in civil proceedings before the High Court.
- (9) The regulations may make provision for the payment by the Commissioner of sums in respect of expenses or allowances to persons who attend or provide information, explanations or other assistance for either of the purposes mentioned in subsection (6).

11 Obstruction and contempt

- (1) If the Commissioner is satisfied that the condition in subsection (2) is met in relation to a person, he may issue a certificate to that effect to the High Court.
- (2) The condition is that the person—
 - (a) without lawful excuse, has obstructed the Commissioner or a member of his staff in the discharge of any of his functions under regulations made under section 10,
 - (b) without lawful excuse, has failed to comply with a requirement to provide information which was imposed in the exercise of a power conferred by regulations made under section 6(5) or 10(5), or
 - (c) has done an act or made an omission in relation to an examination under regulations made under section 10 which, if the examination were proceedings in the High Court, would constitute contempt of court.
- (3) If the Commissioner issues a certificate under subsection (1)—
 - (a) the High Court may inquire into the matter, and
 - (b) if the High Court is satisfied that the condition in subsection (2) is met in relation to the person, it may deal with him in any manner in which it could have dealt with him if he had committed contempt in relation to the High Court.

12 Guidance

- (1) The Commissioner may issue guidance on best practice in connection with any matter relating to the interests of older people in Wales.
- (2) Guidance under subsection (1) may be issued to—
 - (a) the Assembly;
 - (b) persons mentioned in Schedule 2;
 - (c) persons providing regulated services in Wales.
- (3) Before issuing guidance under subsection (1) the Commissioner must consult such persons as he thinks appropriate.
- (4) Where guidance issued under this section is applicable to a person mentioned in subsection (2), that person must have regard to the guidance in discharging his functions.
- (5) In discharging his functions in respect of a person mentioned in subsection (2), the Commissioner may have regard to the extent to which the person has complied with any guidance issued under this section which is applicable to that person.

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13 Power of entry and of interviewing

- (1) The Commissioner or a person authorised by him may, for the purposes of a function of the Commissioner under section 3 or 5—
 - (a) enter any premises, other than a private dwelling, for the purpose of interviewing an older person accommodated or cared for there;
 - (b) interview the older person, if the older person consents.
- (2) The interview must be conducted—
 - (a) if the older person requires another person to be present, in that other person's presence; and
 - (b) otherwise in the presence of others only to the extent that the older person and the Commissioner have consented to their being present.
- (3) The powers conferred by subsection (1) are exercisable at any reasonable time.

14 Further supplementary functions

- (1) Regulations may, for any purpose connected with the Commissioner's functions, confer further functions on him.
- (2) The reference in subsection (1) to the Commissioner's functions does not include—
 - (a) his powers under sections 2(3) and 9, to the extent that they are exercised in a field in which the Assembly does not have functions;
 - (b) his powers under section 13.
- (3) Regulations under subsection (1) may, for the purposes of a function conferred on the Commissioner by the regulations, confer power on the Commissioner or a person authorised by him—
 - (a) to enter any premises, other than a private dwelling, for the purpose of interviewing an older person accommodated or cared for there;
 - (b) to interview the older person, if the older person consents.
- (4) Where regulations under subsection (1) confer power to interview an older person, the interview must be conducted—
 - (a) if the older person requires another person to be present, in that other person's presence; and
 - (b) otherwise in the presence of others only to the extent that the older person and the Commissioner have consented to their being present.

15 Reports following discharge of particular functions

- (1) Regulations may make provision about the making by the Commissioner of reports following the discharge of any of his functions.
- (2) The reference in subsection (1) to the Commissioner's functions does not include his powers under sections 2(3) and 9, to the extent that they are exercised in a field in which the Assembly does not have functions.
- (3) The regulations may in particular—
 - (a) specify the contents of a report and the persons to whom copies of a report must be sent;

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- (b) provide that the Commissioner may make a joint report with the Children's Commissioner for Wales where they have discharged their respective functions under this Act and the Care Standards Act 2000 (c. 14) in relation to the same matters;
 - (c) make provision about the publication of a report;
 - (d) specify any further action which the Commissioner is required or permitted to take after making a report.
- (4) Subject to subsection (5), a report made by the Commissioner under the regulations must not—
- (a) mention the name of any person, or
 - (b) include any particulars which, in the opinion of the Commissioner, are likely to identify any person and which, in his opinion, can be omitted without impairing the effectiveness of the report.
- (5) Subsection (4) does not apply if, after taking account of the interests of any persons he thinks appropriate, the Commissioner considers it to be in the public interest to include that information in the report.

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