

## **Explanatory Memorandum to Commissioner for Older People in Wales (Amendment) Regulations 2008**

This Explanatory Memorandum has been prepared by the Health and Social Services Department and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.

- (i) **Description** - this instrument amends the Commissioner for Older People in Wales Regulations 2007 as considered appropriate in consequence of the Government of Wales Act 2006.
- (ii) **Matters of special interest to the Subordinate Legislation Committee** – None.
- (iii) **Legislative Background** – This instrument is made under sections 5(4)(b), 6(5), 8(1)(e), 10(1) and (5), 15(1) and (3) of, and paragraph 8 of Schedule 1 to, the Commissioner for Older People (Wales) Act 2006. It will be made using the affirmative resolution procedure.
- (iv) **Purpose and intended effect of the legislation** – the Government of Wales Act 2006 makes new provisions for the government of Wales. This instrument modifies the Commissioner for Older People in Wales Regulations 2007 (which deal with the administrative and wider strategic functions of the Commissioner) as considered appropriate in consequence of the 2006 Act. Each reference to the Assembly in the 2007 Regulations has been amended as set out below so as to specify whether it applies to the Assembly as constituted by the Government of Wales Act 1998; to the Welsh Assembly Government; the Assembly as constituted by the Government of Wales Act 2006; the Welsh Ministers; the First Minister or the Counsel General:
  - Regulation 4(2)(a): it is proposed that the reference to members and employees and former members and employees of the Assembly be amended so as to enable the Commissioner to require information from members and employees of the Welsh Assembly Government and former members and employees of the 1998 Assembly and the Welsh Assembly Government for the purposes of:
    - reviewing arrangements in relation to advocacy, whistle-blowing or complaints;
    - assessing the effect of the failure by a person to make such arrangements, and
    - determining whether a recommendation made in a report following a review of such arrangements has been complied with.
  - Regulation 4(3): it is proposed that the reference to the Assembly be amended so that the 1998 Assembly and the Welsh Assembly

Government are relevant persons for the purposes of regulation 4(2)(b) and 4(2)(c). This would enable the Commissioner to require information from members, directors, executives, officers and employees of the Welsh Assembly Government and former members, directors, executives, officers and employees of the 1998 Assembly and the Welsh Assembly Government.

- Regulation 5(2)(c): it is proposed that the reference to the Assembly be amended so as to enable the Commissioner to provide assistance to an older person in relation to proceedings which concern the effect on older people of the exercise or proposed exercise of any function of the 1998 Assembly, the Welsh Ministers, the First Minister or the Counsel General.
- Regulation 8(c): it is proposed that the reference to the Assembly be amended so as to enable the Commissioner to examine the cases of older people 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 1998 Assembly, the Welsh Ministers, the First Minister or the Counsel General.
- Regulation 11(3)(a): it is proposed that the reference to members and employees and former members and employees of the Assembly be amended so as to enable the Commissioner to require information from members and employees of the Welsh Assembly Government, and former members and employees of the 1998 Assembly and the Welsh Assembly Government for the purposes of:
  - conducting an examination; and
  - determining whether a recommendation made in a report following an examination of a case has been complied with.
- Regulation 11(4): it is proposed that the reference to the Assembly be amended so that the 1998 Assembly and the Welsh Assembly Government are relevant persons for the purposes of regulation 11(4)(b) and 11(4)(c). This would enable the Commissioner, in conducting an examination, to require members, directors, executives, officers and employees of the Welsh Assembly Government and former members, directors, executives, officers and employees of the 1998 Assembly and the Welsh Assembly Government to provide any information which appears to the Commissioner to be necessary for the purposes of the examination or determining whether a recommendation made in a report following an examination had been complied with.
- Regulation 14(5)(b): it is proposed that the reference to 'the libraries of the Assembly and of the Houses of Parliament be amended so

as to require the Commissioner to send a copy of his or her report following an examination of a case undertaken under Part IV of the Regulations to 'the Assembly and the Houses of Parliament'. The new reference to the Assembly means the National Assembly for Wales as constituted under section 1 of the Government of Wales Act 2006.

- Regulation 15(1): it is proposed that the reference to the Assembly be amended so that, where the Commissioner has made a report following the examination of a case, which contains a recommendation in respect of the Welsh Ministers, the First Minister or the Counsel General, he or she may require them in writing to provide relevant information.
- Regulation 16(1): it is proposed that the reference to the Assembly be amended so as to enable the Commissioner to make a report to the First Minister in connection with the exercise of any of his or her general functions under section 2 of the Commissioner for Older People in Wales Act 2006.
- Regulation 16(2): it is proposed that the reference to the Assembly be amended so as to require the Commissioner to make an annual report to the First Minister
- Regulation 16(4): it is proposed that paragraph 4 be replaced with "Subject to paragraph (3), the Commissioner must, no later than 1 October in each year, send a copy of the report referred to in paragraph (1), (2) and (3) to the Assembly and the Houses of Parliament". The new reference to the Assembly means the National Assembly for Wales as constituted under section 1 of the Government of Wales Act 2006.

(v) **Implementation** – The purpose of this instrument is to clarify those persons in relation to whom the Commissioner may exercise her powers. In particular it is needed to ensure that she is able to obtain from relevant persons such information as she may require for the exercise of her functions. Failure to make this instrument will lead to a lack of clarity as to who is the relevant person and may limit the Commissioner's power to obtain all the information that she may require.

(vi) **Consultation** – no consultation has been undertaken as this legislation simply amends existing legislation to update references which would otherwise be obsolete.

(v) **Regulatory Impact Assessment** – a Regulatory Impact Assessment has not been prepared as this legislation simply amends existing legislation to update references which would otherwise be obsolete.