



Wales Office

**Memorandum to
Welsh Affairs Committee
Post-Legislative Assessment of the
Commissioner for Older People
(Wales) Act 2006**

*Presented to Parliament by the Secretary of State for Wales
by Command of Her Majesty*

October 2011

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MEMORANDUM TO THE WELSH AFFAIRS SELECT COMMITTEE

Post-legislative assessment of the Commissioner for Older People (Wales) Act 2006

1. Introduction

This Memorandum provides an assessment of the Commissioner for Older People (Wales) Act 2006 and has been prepared by the Wales Office and the Welsh Government for submission to the Welsh Affairs Select Committee. It will be published as part of the post-legislative scrutiny process set out in Cm 7320.

2. Summary of the objectives of the Act

The Commissioner for Older People (Wales) Act 2006 (“the Act”) received Royal Assent on 25 July 2006. It gives effect to the Welsh Government’s¹ commitment to establish an independent Commissioner for Older People in Wales, to ensure that the interests of older people in Wales are safeguarded and promoted. The establishment of a Commissioner would be an important element of the Welsh Government’s commitment to drive up the standards of public-sector service delivery for older people in Wales.

The Act established the Commissioner for Older People in Wales (“COPW”) and conferred on the COPW powers of review and investigation. It also made provision about matters including the authorities and types of complaint which may be reviewed or investigated, and COPW reports and guidance.

Consultation on the draft Bill to create the COPW commenced on 22 March 2005. The objectives were to create a Commissioner to champion the interests of, and to promote the elimination of discrimination against, older people in Wales and influence future policies for older people in Wales. The Commissioner would be able to assist older people in making complaints and representations, and help to empower them to reach their full potential as active citizens. The Commissioner would have a range of functions including:

- To promote awareness of the interests of older people in Wales, and of the need to safeguard those interests;
- To promote the provision of opportunities for, and the elimination of discrimination against, older people in Wales;
- To encourage best practice in the treatment of older people in Wales; and
- To keep under review the adequacy and effectiveness of law affecting the interests of older people in Wales.

The Commissioner would also be able to examine individual cases and could support individuals in taking court action in certain circumstances. The

¹ The ‘Welsh Assembly Government’ is now known as the ‘Welsh Government’.

postholder's other powers would include discretion to undertake research, to issue guidance on best practice and to make reports to the National Assembly for Wales on the exercise of the Commissioner's functions.

3. Implementation

Sections 1 to 22 of the Act (which provide for the establishment and functions of the COPW) were brought into force on 14 October 2006 by Order². Sections 23 to 30 (which are technical and interpretation provisions) came into force on Royal Assent, on 25 July 2006.

Under the Commissioner for Older People in Wales (Appointment) Regulations 2007, the power to appoint the COPW rests with the First Minister, after appropriate consultation with older persons resident in Wales and a panel established to interview candidates. The First Minister announced the appointment of Ruth Marks as the first COPW in January 2008, and she assumed her functions under the Act in April 2008.

There have been some amendments to the Act since Royal Assent. In particular, various provisions were amended as a result of the Government of Wales Act 2006 ("GoWA 06") to reflect the new constitutional arrangements which it put in place, in particular the formal separation of the (then) Welsh Assembly Government and the National Assembly for Wales³.

The Act made provision to enable the COPW to work collaboratively with the Public Services Ombudsman for Wales and the Children's Commissioner for Wales (and to enable those ombudsmen to work with the COPW). The Welsh Language (Wales) Measure 2011 amends section 17 of the Act to enable the COPW to work with the Welsh Language Commissioner (and gives the Welsh Language Commissioner the power to work with the COPW), but the provisions are not yet in force.

Regulations under the Act enable the COPW to report jointly with the Children's Commissioner for Wales where they have both exercised their functions in relation to the same matter. The Children's Commissioner for Wales (Amendment) Regulations 2007⁴ amended earlier (2001) regulations to give the Children's Commissioner for Wales a corresponding power to make joint reports with the COPW in those circumstances. The Welsh Language (Wales) Measure 2011 amends section 15 of the Act so that regulations may also enable the COPW to report jointly with the Welsh Language Commissioner, but the amendment is not yet in force.

² The Commissioner for Older People (Wales) Act 2006 (Commencement) Order 2006, SI 2006/2699 (W 231) (C 92).

³ These changes were made by the Government of Wales Act 2006 (Consequential Modifications and Transitional Provisions) Order 2007 (SI 2007/1388), article 1 and paragraphs 124-141 of Schedule 1.

⁴ SI 2007/316 (W 30), amending SI 2001/2787 (W 237), both made under section 74 of the Care Standards Act 2000.

4. Secondary Legislation and Guidance

All powers to make secondary legislation under the Act were originally conferred on the National Assembly for Wales established under the Government of Wales Act 1998 (“GoWA 98”). As a result of the amendments made as a consequence of GoWA 06, all of those powers now rest with the Welsh Ministers, subject to Assembly rather than Parliamentary procedure.

The Commissioner for Older People in Wales Regulations 2007 (S.I. 2007/398 (W. 44)) were made on 14 February 2007 and came into force on 16 February 2007. The regulations made provision in relation to the functions of the COPW. These include powers to require the provision of information by prescribed persons, to provide assistance to older persons in prescribed proceedings, and to examine specific descriptions of cases; and duties to prepare and distribute specific reports.

These regulations were amended by the Commissioner for Older People in Wales (Amendment) Regulations 2008 (S.I. 2008/1512 (W. 155)), which were made on 10 June 2008 and came into force on 12 June 2008. The changes were made to clarify references to the Assembly in the light of GoWA 06.

The Commissioner for Older People in Wales (Appointment) Regulations 2007 (S.I. 2007/396 (W. 42)) were made on the 14 February 2007 and came into force on 16 February 2007. The regulations set out the arrangements for the appointment, term of office and removal of the COPW.

Further details of the secondary legislation are available at Annex A.

5. Legal Issues

To date there has been no legal challenge to the COPW in the execution of her powers.

6. Other Reviews

The COPW has undertaken a two stage evaluation of the establishment of the Office of the COPW, though as yet this report has not been published.

The Commission published three annual reports in the period 2008-10. These are the *First Report of the Older People's Commissioner for Wales 2008*; the *Annual Review 2008/2009*; and the *Commissioner's Report 2009/2010*⁵.

We are not aware of any other reviews of the operation of the Act or of the office of the COPW.

7. Preliminary Assessment of the Act

Most of the provisions of the Act have been used effectively and we have identified no specific failings in the legislation.

The COPW was the first such Commissioner post to be created in the UK. Since the successful implementation of the post in Wales, legislation to

⁵ Available at <http://www.olderpeoplewales.com/en/Publications/annual-reports.aspx>.

establish a Commissioner for Older People in Northern Ireland was introduced to the Northern Ireland Assembly in May 2010. The Commissioner for Older People Act (Northern Ireland) 2011 received Royal Assent on 25 January 2011. The recruitment of a Commissioner is now underway.

The COPW has begun to exercise her powers of review under the Act. The COPW has over the last year undertaken her first statutory review into the experiences of older people in an acute setting. This reported on the 14 March and the Welsh Government and NHS in Wales have published their formal response. The COPW is obliged to keep a public register of responses and any progress made toward the achievement of recommendations.

Annex A

Commissioner for Older People (Wales) Act 2006 (Commencement) Order 2006 S.I. 2006 No 2699 (W. 231) (C. 92)

Appointed 14 October 2006 as the day on which sections 1 to 22 of the Act came into force.

The Commissioner for Older People in Wales (Appointment) Regulations 2007 S.I 2007 No.396 (W. 42)

The Regulations provide that the COPW may be appointed by the First Minister for Wales. Before appointing the COPW, the First Minister must take into account the views of selected older people resident in Wales and the advice of any selection panel established for the purpose of the appointment.

The Regulations provide that the COPW must be appointed for a four-year term of office, and that a person may be appointed for a second term but no more. They also set out the circumstances in which the First Minister may relieve the COPW of office before the term expires.

The Commissioner for Older People in Wales Regulations 2007 S.I 2007 No.398 (W. 44)

The Regulations make provision in relation to the functions of the COPW.

Part I of the Regulations contains interpretation provisions.

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

Part III confers power on the COPW 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 and provides for conditions which may be imposed in connection with the provision of assistance.

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

Part V makes further provision for the arrangements relating to the COPW's relationship with older people in Wales.

Part VI requires the COPW to prepare reports following specific examinations and reviews, with a power to require responses to recommendations, requires the COPW to make reports to the Assembly, and makes provision as to publication of reports.

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

The Commissioner for Older People in Wales (Amendment) Regulations 2008 S.I 2008 No.1512 (W. 155)

These Regulations amend the Commissioner for Older People in Wales Regulations 2007 as considered appropriate in consequence of GoWA 06. References to the Assembly are modified to specify whether they apply to the Assembly constituted by GoWA 98; the Welsh Assembly Government; the Assembly Commission; the Assembly (as constituted by GoWA 06); the Welsh Ministers; the First Minister or the Counsel General.



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