

Health and Social Services Committee

HSS(2)-09-06(p3)

Meeting date: Wednesday 24 May 2006

Location: Committee Room 2, Senedd, National Assembly for Wales

Title: The Commissioner for Older People (Wales) Bill

1. Purpose

This paper identifies changes to, and tracks the progress of the Commissioner for Older People (Wales) Bill since its publication in draft form in March 2005.

Specifically the paper provides:

- A brief summary of the background to the bill
- A list of the stages the bill has completed so far in the House of Lords and the House of Commons with links to the key debates.
- Information on the draft Bill
- Information on the Bill
- A summary of the amendments made to the bill during its passage through the House of Lords.
- An annex providing a more detailed description of the amendments

2. Background

The Commissioner for Older People (Wales) Bill was published on 25 May 2005. The Bill establishes an office of Commissioner for Older People in Wales with powers and duties comparable to the Children's Commissioner in Wales. The role of the Commissioner is to safeguard and promote the interests of older people in Wales.

An equivalent draft Bill had been included in the Queen's Speech in November 2004 and published for pre-legislative scrutiny in March 2005. The Bill had formed part of the Assembly Government's primary legislative proposals to the UK Government for the 2004-05 parliamentary session.

The Bill had its First Reading in the House of Lords on 25 May 2005 and completed its passage through the House of Lords on 15 February 2006. It had its First Reading in the House of Commons on 16 February 2006 and is currently awaiting its Second Reading. A summary of the stages of the Bill is provided in section 2.

3. Progress of the Commissioner for Older People (Wales) Bill through Parliament.

25/05/05	Lords: 1 st reading	
14/06/05	Lords: 2 nd reading	http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/50614-10.htm#50614-10_head0
18/10/05	Lords: Grand Committee 1 st day	http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds05/text/51018-22.htm#51018-22_head1
26/10/05	Lords: Grand Committee 2 nd day	http://www.publications.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds05/text/51026-40.htm#51026-40_head1
09/11/05	Lords: report Stage	http://www.publications.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds05/text/51109-20.htm#51109-20_head0
15/02/06	Lords: 3 rd Reading	http://www.publications.parliament.uk/pa/ld200405/ldhansrd/pdvn/lds06/text/60215-27.htm#60215-27_head0
16/02/06	Commons: 1 st Reading	
No date	Commons: 2 nd Reading	

4. Draft Bill

The draft Bill was subject to a consultation which ended on 14 June 2005. The National Assembly for Wales Health and Social Services Committee considered, and took evidence on the draft bill at its meeting on 25 May 2005. The Committee then produced a report which was laid before the Assembly on 11 June 2005.

5. The Bill, published 25 May 2005

The Bill proper was introduced into the Lords on 25 May 2005, prior to the end of the consultation on the draft Bill, although the Government had indicated that comments would be considered to the end of the consultation period.

The Bill published on 25 May was unchanged from the draft version except for the omission of Clause

22 which had stated:

22 Money

There shall be paid out of money provided by Parliament any increase attributable to this Act in the sums payable out of money provided by Parliament under another enactment.

6. The amended Bill, published 16 February 2006

Following the passage of the Bill through the House of Lords an amended version was published on 16 February 2006. A detailed account of the changes to the Bill is provided in the annex to this paper.

The main changes to the bill were:

- Clarification of the terms ‘review and monitoring’ in the context of arrangements for advocacy, complaints and whistle-blowing (Clause 5). Expanded definition of whistle blowing to include cases where it is suggested that a person’s dignity has been violated.
- Strengthening of the regulation making power in Clause 6(5) to allow the Commissioner to ensure that his recommendations have been taken account of, and acted upon. An amended Clause 11(2) allows the Commissioner to issue a certificate to the High Court to ensure compliance with a request to provide information for these purposes.
- Strengthening and clarifying the arrangements for cross border matters (Clauses 6,8,10, 24 and 27) to give the Commissioner clearer powers over services provided to Welsh residents outside Wales.
- Addition of a new Clause (9) to allow the Commissioner to engage in research or educational activities.
- Strengthening the status of guidance produced by the Commissioner (Clause 12)
- Amendment allowing an older person being interviewed by the Commissioner the option of having another person present if they wish (Clause 13).
- Provision for joint working between the Commissioner and other commissioners and ombudsmen to avoid duplication of work where their functions overlap, and for and collaborative working where appropriate (Clauses 16 and 17). Changes to Clause 21 also address the issue of duplication of work with other bodies.
- Provision for the sharing of information between the Commissioner and other commissioners, ombudsmen and public bodies to facilitate joint and collaborative working (Clause 18).
- Protection for the Commissioner against defamation proceedings (Clause 19).
- A duty on the Commissioner to establish a complaints procedure (Clause 20).
- The addition of the National Leadership and Innovations Agency to Schedule 2: persons subject to review under Section 3.

Annex: Detail of amendments made to the Commissioner for Older People (Wales) Bill in the House of Lords

Clause 2 (General Functions)

An amendment was made to the Commissioner's general functions in Clause 2(1)(a) in order to draw out his role in safeguarding the interests of older people. A further amendment changed the reference to good practice in 2(1)(c) to read 'best' practice. This ensured consistency in terminology used in the Bill.

Clause 5 (Review of Arrangements)

Clause 5 was amended to provide clarification of the terms 'review and monitoring', which were the subject of quite lengthy discussion during Lords Grand Committee. The amendment aligned the terminology used in Clauses 3 and 5 and made clear that the term 'review' includes the process of monitoring over a period of time.

Further amendments were made to Clause 5 to take account of views expressed in the public consultation exercise on the draft Bill. The amendments expanded the definition of whistle-blowing arrangements to include arrangements for ensuring that proper action is taken in response to the disclosure of information that a person's dignity has been violated. This will enable the Commissioner to review such arrangements and, where no such arrangements exist, the effect of this on older people.

Clause 6 and Clause 11 (Review of Arrangements: supplementary and Obstruction and Contempt)

To address the matter of how the Commissioner might be able to follow up his recommendations to ensure that they have been taken account of and acted upon as appropriate, the Government amended the regulation making power in Clause 6(5). It was extended to enable the Commissioner to require prescribed persons to provide him with information for the purposes of determining whether a recommendation which he had made in a report following a review of arrangements had been complied with.

Clause 11(2) was also amended in order to ensure that where a person fails to comply with such a request for information, this will be covered by the obstruction and contempt provision. Thus, where the Commissioner believes that a person has, without lawful excuse, failed to provide the information requested, he will be able to issue a certificate to the High Court, where this may be treated as a contempt of court.

Clause 6, Clause 8, Clause 10, Clause 24 and Clause 27 (Re. cross-border matters)

It was the Government's intention that the Commissioner's remit should extend to older people who have been placed by a Welsh body for care, treatment or other services outside Wales. However, the Welsh Affairs Committee brought to the Government's attention a difficulty with the drafting of the Bill. A number of amendments were made to correct this.

One amendment was made to the definition of ‘older people in Wales’ in Clause 24. The reference to services provided in Wales in subsection 3(c) was replaced with a reference to "relevant services". This brought Welsh authorities that place a person for care, treatment or other services outside Wales within the Commissioner’s remit.

Amendments were made to Clause 6 to ensure that the Commissioner’s power to review arrangements included those relating to persons placed for care, treatment or other services outside Wales. The amendments also clarified that private services provided in Wales on behalf of a schedule 3 body, and comprising a service that would otherwise be provided by the contracting body itself, fall within the Commissioner’s remit.

Amendments were made to Clause 8 to ensure that the Commissioner is able to assist an older person who has been placed for care, treatment or other services outside Wales, in making a complaint to, or in respect of, the Welsh commissioning authority. The amendments achieved this by making the following changes.

(1) Clarifying that a complaint made to, or in respect of, a Schedule 3 body may concern any function or service that the body provides (to the extent that the Commissioner could review the exercise of that function or service under his Clause 3 review powers). This will capture complaints in respect of commissioning and contracting activities undertaken by Schedule 3 bodies outside Wales.

(2) Incorporating in Clause 8 the amended definition of relevant services provided in Clause 6.

(3) Removing the qualifier that a complaint in respect of a service provided by a Schedule 3 body must be in respect of a service provided in Wales.

Two amendments were made to Clause 27 to clarify that family health services and independently provided services are those which are provided in Wales by family health service providers in Wales and independent providers in Wales respectively.

One amendment was made to Clause 10 to remove drafting considered unnecessary in the light of the amendments made to Clause 8.

Clause 9 (Research and educational activities)

A new clause was inserted to make express provision for the Commissioner to be able to undertake, commission or provide assistance for research or educational activities in connection with any of his functions.

Clause 12 (Guidance)

To address the matter of how the Commissioner might be able to follow up his guidance to ensure that it has been taken account of and acted upon, Clause 12 was supplemented with two new subclauses. The first provided that, where best practice guidance issued under Clause 12 is applicable to a body (mentioned in subsection 2), that body must have regard to the guidance in discharging its functions. The second amendment provided that, in discharging his functions, the Commissioner may have regard to the extent to which a body has complied with any guidance that he has issued which is applicable to them.

Clause 13 (Power of entry and of interviewing)

An amendment was made to Clause 13 to explicitly provide that an older person could be interviewed by the Commissioner in the presence of another person, if that is what the older person wished.

Clause 15 (Reports following discharge of particular functions)

Clause 15 was amended to make it clear that regulations may make provision about the publication of reports prepared by the Commissioner following the discharge of his functions. This clarified the powers provided in Clause 15 and ensured that they were in line with those in respect of ‘Reports to the Assembly’ (Paragraph 8 (2), Schedule 1).

A further amendment was made to provide for the Commissioner and the Children’s Commissioner for Wales to be able to report jointly on their findings where they exercised their respective powers under their own legislation in relation to the same matter. This related to another Government amendment i.e. Clause 17.

Clause 16 (Working jointly with the Public Services Ombudsman for Wales)

A new clause was inserted to provide for joint working between the Commissioner and other commissioners and ombudsmen. It was the Government’s intention that the Commissioner should be able to work with other commissioners and ombudsmen in circumstances where their functions overlap or meet, so as to prevent unnecessary duplication and to optimise the efficiency and effectiveness of each office.

Joint working refers to the circumstance where there is an overlap in the jurisdiction of two office-holders and both are investigating, or considering whether to investigate a particular case. The Public Services Ombudsman for Wales (PSOW) is the only body that, at present, has an overlap in jurisdiction with the Commissioner for Older People in Wales and, therefore, the new clause was drafted to make specific reference just to this office-holder.

Clause 16 provides that, in a particular case that could be the subject of an ‘investigation’ by both the Commissioner and the PSOW, they may co-operate with each other in relation to the case. This may involve conducting a joint investigation and producing a single report on the findings of that

investigation.

Clause 17 (Working collaboratively with other ombudsmen)

A new clause was inserted to provide for collaborative working between the Commissioner and other commissioners and ombudsmen. Collaborative working refers to the circumstance where there is no overlap in the jurisdiction of office-holders but where a particular case raises matters that could be the subject of investigation by more than one ombudsman or commissioner.

Clause 17 provides for the Commissioner to work collaboratively with the PSOW and the Children's Commissioner for Wales based on the view that, because of the remit and functions of the PSOW and the Children's Commissioner, there may be circumstances where the Commissioner for Older People would wish to work collaboratively with these office holders.

The clause provides that, where a case which the Commissioner for Older People is examining, or considering whether to examine, relates to or raises a matter which could be the subject of an investigation by the PSOW or Children's Commissioner for Wales, they may work in collaboration with each other. This will enable duplication to be avoided, for example, in the interviewing of witnesses and the collection of information. It will facilitate the sharing of information between the two office-holders and the production of joint reports on the findings of their investigations.

Clause 18 (Power to disclose information)

A new clause was inserted to deal with disclosure of information by the Commissioner. As with Clauses 16 and 17, it was the Government's intention that collaborative working should be facilitated and duplication minimised. Therefore, the amendment provided for the sharing of information between office-holders and public bodies, where appropriate.

Clause 18 places the Commissioner under an obligation not to disclose information except for certain specified purposes. These include the sharing of information by the Commissioner with certain other commissioners, ombudsmen and public bodies for the purposes of assisting that other person in the discharge of their functions. The clause also enables the Commissioner to disclose information that he has held for more than 70 years if he considers its disclosure to be in the public interest.

Clause 19 (Protection against defamation)

A new clause was inserted to address defamation issues. It was the Government's intention that the Commissioner should be an independent body who is free to exercise his powers without being constrained by fear of defamation proceedings. It was considered that, for example, with regard to the examination of cases the Commissioner will need to deal with allegations as reported to him and take statements from third parties about the allegations. Furthermore new Clauses 16 and 17, in respect of joint working and collaborative working, place the Commissioner under an obligation to consult with

other ombudsmen where he is of the view that the matter could be considered by them. This may necessitate the disclosure of such statements or allegations to the other ombudsmen. It was considered important that the Commissioner should be able to undertake these functions, without fear of defamation proceedings. Therefore, Clause 19 provides the Commissioner with additional protection from defamation proceedings and two further amendments, made to Clause 14 and to Schedule 1, removed drafting that, in the light of the new Clause 19, was considered unnecessary.

Clause 20 (Complaints procedure in respect of the Commissioner)

It was the Government's intention that, as a matter of good public administration, the Commissioner should have a procedure in place to deal with complaints made by individuals against him or his staff. Therefore, a new clause was inserted to provide the Commissioner with a duty to establish a complaints procedure and that this must include provision on how a complaint may be made, to whom it should be made, the timescales in which it will be considered, and the action that the Commissioner must consider taking in response. In order to ensure that the Commissioner is not the sole and final arbiter of his own complaints procedure, a further amendment provided that he will be required to obtain the approval of the Assembly for his complaints procedure and for any amendments to it,

Clause 21 (Restrictions)

One amendment was made to Clause 21 to provide that certain functions of a body may be prescribed for the purposes of the clause, rather than just the body itself. The Government's intention was to prevent the Commissioner from exercising a function or functions that would duplicate the work, or part of the work, of another body.

Schedule 1

One amendment was made to the Commissioner's delegation powers (Para 5) to enable any person, including a member of the Commissioner's staff, to discharge a function on the Commissioner's behalf. This aligned the drafting of the legislation with that of the Children's Commissioner for Wales.

Schedule 2

One amendment was made to add to Schedule 2 the 'National Leadership and Innovations Agency for Healthcare' (NLIAH). This addressed views expressed in the public consultation exercise on the draft Bill. The NLIAH was established in November 2004 and is a national, strategic resource for NHS Wales, aimed at building leadership capacity and capability to deliver continuous service improvement, optimising technology, innovation and the implementation of good practice.