

**Gwenda Thomas AC/AM**  
Y Dirprwy Weinidog dros Wasanaethau Cymdeithasol  
Deputy Minister for Social Services



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

Eich cyf/Your ref  
Ein cyf/Our ref MB/GT/336/08

Ann Jones AM  
Chair  
Equality of Opportunity  
Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

27<sup>th</sup>  
November 2008

*Dear Ann,*

I attended the Equality of Opportunity Committee meeting on 2<sup>nd</sup> October as part of the Committee's inquiry into older people's issues.

As the discussion at that meeting included the treatment and rights of older people in care settings, I thought that the Committee might be interested to see a copy of a letter that was issued on 17<sup>th</sup> November to local authorities and others.

Yours sincerely

*Gwenda*

**Gwenda Thomas AM**



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

To:  
Chief Executives, All Local Authorities in Wales  
All Registered Care Homes in Wales Providing Services to  
Adults

Cc:  
Directors of Social Services, All Local Authorities in Wales  
Chief Legal Officers, All Local Authorities in Wales  
Chief Executive, Welsh Local Government Association  
Chief Executive (Honorary), Care Forum Wales  
Chairman of the Wales Region, Registered Nursing Homes  
Association

Dyddiad/Date: 17th November 2008

Dear Colleague

**Health and Social Care Act 2008: Commencement of Section 145 (Human Rights Act (HRA) 1998) from 1st December 2008**

**Purpose**

1. The purpose of this letter is to advise you that the Secretary of State for Health is to commence section 145 of the Health and Social Care Act 2008 from 1st December 2008. This provision will apply to registered care homes in England, Scotland, Northern Ireland and Wales.

**Background**

2. Section 145 provides that where a private or voluntary sector care home provides residential care under arrangements made with a local authority under sections 21 and 26 of the National Assistance Act 1948, the provider is taken to be exercising a function of a public nature under section 6(3)(b) of the Human Rights Act (HRA) 1998. This means that in providing care to such individuals, providers are required to act compatibly with rights under the European Convention on Human Rights. It also means that the person receiving residential care in accordance with such arrangements can bring proceedings against the provider under the HRA, if the provider breaches his or her rights under the Convention.

3. It should be noted that these provisions apply to people who are paying privately in full for their care only if that care was arranged under the relevant statutory provisions listed in section 145(2). Guidance on the HRA can be found at: [www.justice.gov.uk/guidance/humanrights.htm](http://www.justice.gov.uk/guidance/humanrights.htm)

### **Exception**

4. It should be noted, however, that for Wales it has been necessary to apply an exception to this commencement as it applies to care homes registered as adult placement carers covered by regulations 46 and 47 of the Care Homes (Wales) Regulations 2002. This is necessary due to the Assembly Government's plans to amend the Care Homes Regulations as they apply to adult placement carers in order to bring them in line with those in place in England. The Assembly Government is currently undertaking a public consultation on those proposed amendments and plans to introduce amended regulations in April 2009 to affect that change. Following the introduction of the amended regulations, the adult placement carers' regulations will be removed from the 2002 Regulations. As a result such carers will no-longer be required to register as a care home and as a consequence be unaffected by section 145.

### **Consequences**

5. The Assembly Government recognises that private or voluntary providers may be concerned about this change and the possible impact of the HRA. However, where providers are currently complying with the relevant Regulations and the National Minimum Standards that are in place – which themselves are written to comply with the HRA – this should ensure that they are already working within the principles of the HRA so that this change should not present them with day to day problems.

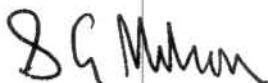
### **Further Information**

6. Any queries about the content of this letter can be directed to:

Alison James  
Older People & Long Term Care Policy 3  
Welsh Assembly Government  
Cathays Park  
Cardiff, CF10 3NQ

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Tel: 029 2082 6946

Yours sincerely



**Steven Milsom**  
**Director (Acting)/(Dirprwy) Cyfarwyddwr**  
**Older People & Long Term Care Policy/Polisi Pobl Hyn a Gofal Hirdymor**