

Explanatory Memorandum to the Advisory Panel to the Welsh Language Commissioner (Appointment) Regulations 2012

This Explanatory Memorandum has been prepared by the Department for Education and Skills and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Advisory Panel to the Welsh Language Commissioner (Appointment) Regulations 2012.

Leighton Andrews AM

Minister for Education and Skills

9 January 2012

Description

1. The Advisory Panel to the Welsh Language Commissioner (Appointment) Regulations 2012 make provision about the appointment of persons to be members of the Advisory Panel to the Welsh Language Commissioner.

Matters of special interest to the Constitutional Affairs Committee

2. None.

Legislative background

3. Section 23 of the Welsh Language (Wales) Measure 2011 (“the Measure”) makes provision relating to the appointment of a panel of advisers to the Welsh Language Commissioner (“the Commissioner”). That panel is referred to in the Measure as “the Advisory Panel”. The Welsh Ministers must appoint persons to be members of the Advisory Panel. The Welsh Ministers must also secure that, as far as it is practicable, there are at least 3, but not more than 5, members of the Advisory Panel at any time.
4. The Advisory Panel will provide the Commissioner with a source of advice and support intended to assist the Commissioner in the exercise of his or her functions. The Measure requires the Commissioner to consult with the Advisory Panel in preparing certain reports and in relation to the exercise of certain functions relating to Welsh language standards. In addition, the Measure provides the Commissioner with the power to consult the Advisory Panel on any matter. Any views provided by the Advisory Panel will inform the Commissioner’s decision making as he or she exercises the functions conferred upon the Commissioner by the Measure.
5. Paragraph 1(1) of Schedule 4 to the Measure provides that, in appointing members of the Advisory Panel, the Welsh Ministers must comply with appointment regulations made under paragraph 5 of that Schedule.
6. Paragraph 5 of Schedule 4 to the Measure imposes a duty upon the Welsh Ministers to make provision, by regulations, regarding the appointment of the Advisory Panel (referred to in the Measure as “appointment regulations”).
7. The provision that may be made in the appointment regulations includes, but is not limited to, provision about: principles to be followed in appointing members of the Advisory Panel; provision about the knowledge of, and proficiency in, the Welsh language which members of the Advisory Panel must have; and provision about the knowledge and experience of matters relevant to the Commissioner’s work which members of the Advisory Panel must have. The appointment regulations may also apply any code of practice concerned with appointments to public bodies. Paragraph 5(6) of Schedule 4 to the Measure provides that appointment regulations may

confer functions on the Welsh Ministers (as well as on any other person), including functions involving the exercise of a discretion.

8. As specified in section 150(3) of the Measure, these regulations are subject to the negative resolution procedure.

Purpose and intended effect of the legislation

Policy Objectives

9. In making appointments to the Advisory Panel, the Welsh Ministers are required by the Measure to comply with appointment regulations. Without these regulations, the Welsh Ministers cannot exercise their function of appointing members of the Advisory Panel and the policy objectives set out in the Measure in relation to the Advisory Panel's role cannot be realised.
10. These regulations make provision which imposes duties upon the Welsh Ministers which will apply when they make appointments to the Advisory Panel. These duties are intended to ensure that the Welsh Ministers follow established principles in the field of public appointments and to ensure that they have regard to the fact that it is desirable to have an Advisory Panel that includes persons with knowledge and experience of matters relevant to the Commissioner's work.

Effect

11. Regulation 2 places a duty on the Welsh Ministers, in appointing members of the Advisory Panel, to follow the principles of ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality taking into account the description of those principles in the Commissioner for Public Appointments' Code of Practice for Ministerial Appointments to Public Bodies of August 2009. These principles are core considerations in the public appointments process.
12. Regulation 3 places a duty on the Welsh Ministers, in appointing members of the Advisory Panel, to have regard to the fact that it is desirable that the Advisory Panel's membership includes persons with knowledge of, and proficiency in, the Welsh language.
13. Regulation 4 places a duty on the Welsh Ministers, before appointing members of the Advisory Panel, to ascertain as far as is reasonably practicable, the Commissioner's knowledge and experience of: corporate governance; exercising functions conferred by or under an enactment; promoting and facilitating the use of Welsh or another language; public relations; regulatory regimes; and working in partnership with organisations in the public, private or voluntary sectors.

14. Once the Welsh Ministers have ascertained the Commissioner's knowledge and experience, they are required by regulation 4, in making appointments, to have regard to the fact that it is desirable for the combined knowledge and experience of the Commissioner and the Advisory Panel's membership to include knowledge and experience of: corporate governance; exercising functions conferred by or under an enactment; promoting and facilitating the use of Welsh or another language; public relations; regulatory regimes; and working in partnership with organisations in the public, private or voluntary sectors.

Consultation

15. No public consultation has been undertaken on the policy principles or on the regulations as they will not have a direct impact on the public, private or voluntary sectors.

Regulatory Impact Assessment

16. A Regulatory Impact Assessment has not been prepared as the regulations will not have any material impact on business, the voluntary sector, local government and others.

17. This legislation has no impact on the statutory duties (sections 77 -79 of the Government of Wales Act 2006) or statutory partners (sections 72-75 of that Act).