

Explanatory Memorandum to the Welsh Language Commissioner (Appointment) Regulations 2011

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 Welsh Language Commissioner (Appointment) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Leighton Andrews AM

Minister for Education and Skills

1st June 2011

Description

1. The draft regulations make provision about the appointment of the Welsh Language Commissioner (“the Commissioner”) whose office is established under section 2 of the Welsh Language (Wales) Measure 2011 (“the Measure”). The draft regulations make provision about the establishment of a selection panel whose members will interview candidates for appointment as Commissioner and make recommendations to the First Minister in relation to that appointment. The regulations also make provision about the principles to be followed in appointing the Commissioner and about the knowledge and proficiency in Welsh that is required of the Commissioner.

Matters of special interest to the Constitutional Affairs Committee

2. None.

Legislative background

3. Section 2 of the Measure provides that there is to be a Welsh Language Commissioner and that the First Minister must appoint the Commissioner. Paragraph 3(1)(a) of Schedule 1 to the Measure provides that, in appointing the Commissioner, the First Minister must comply with appointment regulations made by the Welsh Ministers under paragraph 7 of that Schedule.
4. Paragraph 7 of Schedule 1 to the Measure imposes a duty upon the Welsh Ministers to make provision, by regulations, regarding the appointment of the Commissioner (referred to in the Measure as “appointment regulations”). Paragraph 7(2) of Schedule 1 to the Measure provides that appointment regulations must make provision for the establishment of a panel of persons (a “selection panel”) who are to interview candidates for appointment as Commissioner and make recommendations to the First Minister in relation to the appointment. In appointing the Commissioner, the First Minister must, in line with paragraph 3(1)(b) of Schedule 1, take into account the selection panel’s recommendations. In accordance with paragraphs 7(3) – (6) of Schedule 1 to the Measure, appointment regulations may also make provision about other matters relating to the appointment including provision about principles to be followed in appointing the Commissioner and provision about the knowledge of, and proficiency in, the Welsh language which the Commissioner must have. Paragraph 7(7) of Schedule 1 to the Measure provides that appointment regulations may confer functions on any person, including functions involving the exercise of a discretion.

5. As specified in section 150(2)(l) of the Measure, these regulations are subject to the approval of the National Assembly through the Affirmative Resolution procedure.

Purpose and intended effect of the legislation

Policy Objectives

6. These regulations are required for Welsh Ministers to comply with the obligation placed on them by the Measure to make provision about the appointment of the Commissioner, and will in turn enable the First Minister to make an appointment. Without these regulations, the Commissioner cannot be appointed and the policy objectives set out in the Measure cannot be realised.

Effect

7. These regulations place a duty on the Welsh Ministers, once requested to do so by the First Minister, to convene a selection panel. The regulations state broadly who the categories of members will be: namely a person accredited by the Office of the Commissioner for Public Appointments who will act as an independent appointments assessor; a person with experience of the promotion of the use of Welsh and/or another language; a member of staff of the Welsh Government and a member nominated by a committee of the National Assembly for Wales. These categories of members were chosen and set out in legislation to ensure that the appointment process is fair and transparent and that the selection panel's composition is appropriate to providing a balanced view and making recommendations. The selection panel's membership will ensure it has a mixture of experience and expertise relevant to the appointment process and the field in which the Commissioner will work. Its recommendations will be provided to the First Minister who must take them into account in appointing the Commissioner. Additionally, in making the appointment, these regulations ensure that the First Minister must follow the principles of ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality which are core considerations in the public appointments process and take 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. Provision is also made in the regulations to ensure that the appointment process can continue in the event that an Assembly committee declines or fails to make a nomination.
8. Provision is made to disqualify persons who hold or who have held the post of Commissioner or Deputy Commissioner from sitting on the selection panel for the appointment of a Commissioner. This reinforces the independence and objectivity of the panel.

Consultation

9. Information under this heading is included in the Regulatory Impact Assessment at Part 2.

PART 2- REGULATORY IMPACT ASSESSMENT

Options

Option 1: Do Nothing

10. Paragraph 3(1)(a) of Schedule 1 to the Measure sets out that in appointing the Commissioner the First Minister must comply with appointment regulations. Paragraph 7(1) of Schedule 1 to the Measure imposes a duty upon the Welsh Ministers, by regulations, to make provision about the appointment of the Commissioner.
11. The Welsh Ministers, in order to comply with their duty, must make appointment regulations and the Commissioner cannot be appointed unless appointment regulations have been made. Therefore, the 'do nothing' option is not feasible.

Option 2: Make the Legislation

12. Making these regulations enables Welsh Ministers to discharge the duty placed upon them to make appointment regulations. These regulations in turn will allow the First Minister to satisfy the legal duty placed upon him to comply with the regulations in appointing a person to the post. These regulations will lead to the appointment of the Commissioner, which is an integral part in fulfilling the policy objectives of the Measure.

Costs and benefits

Option 1: Do Nothing

13. There would be no costs or benefits as a result of not making the legislation as it would not be possible for the First Minister to appoint a Commissioner.
14. Should the Commissioner not be appointed, it would not be possible to implement the Measure. This would be contrary to the expectation of the National Assembly for Wales and the general public.

Option 2: Make the Legislation

Costs

15. There are no cost implications arising from these regulations for business, the voluntary sector, local government and others.
16. Costs stemming from these regulations are those associated with the appointment process for the Commissioner. It is estimated that the cost of advertising the post and of using an executive search company to help identify suitable candidates will amount to around £30k. This cost will be met from the Department for Education and Skills' budget for 2011-12.
17. Under the current arrangements, salary costs incurred by the Welsh Language Board are met from Budget Expenditure Line (BEL) 6020 Welsh Language Board which has a revenue budget of £13.858m for 2011-12.

This BEL is due to transfer from Heritage Main Expenditure Group (MEG) to the Education and Skills MEG in the first Supplementary Budget for 2011-12. Costs associated with the remuneration of the Commissioner, once appointed, will be met from this same budget.

18. As previously estimated in the Regulatory Impact Assessment to the Measure, the staff costs associated with implementing the Measure is circa £200k in year 1 (2011-12) which is being met from the Welsh Government's existing budgets. A small proportion of this total staff cost will be incurred in delivering the work associated with these regulations, namely planning and managing the appointment process for the Commissioner.

Benefits

19. Making the legislation will ensure that the appointment of the Commissioner can occur and discharges the duty on the Welsh Ministers to make appointment regulations.

Consultation

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

Competition Assessment

21. The competition assessment is not applicable in this case as these regulations will not affect business, charities or the voluntary sector.

Post implementation review

22. The regulations will be reviewed following the appointment of each Commissioner with a view to making any amendments required prior to the next appointment.