

**Explanatory Memorandum to the Commissioner for Older People in Wales
(Appointment) (Amendment) Regulations 2016.**

This Explanatory Memorandum has been prepared by the Department of Health and Social Services 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 Commissioner for Older People in Wales (Appointment) (Amendment) Regulations 2016.

Mark Drakeford
Minister for Health and Social Services
11 February 2016

1. Description

These Regulations amend the Commissioner for Older People in Wales (Appointment) Regulations 2007 (“the 2007 Regulations”) to provide the First Minister with a discretionary power to extend the term of the Older People’s Commissioner (“OPC”), who is in a first appointment, for a maximum period of 2 years.

These Regulations also provide that if the First Minister extends the OPC’s term, the OPC may not be reappointed for a second term.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No matters of special interest to the Constitutional and Legislative Affairs Committee have been identified.

3. Legislative background

These Regulations may be made in exercise of powers conferred on the Welsh Ministers by section 28(2) of, and paragraph 2 of Schedule 1 to, the Commissioner for Older People (Wales) Act 2006.

This instrument is subject to the annulment procedure by the National Assembly for Wales (the negative procedure).

These Regulations will come into force in April 2016.

4. Purpose and intended effect of the legislation

The purpose of these Regulations is to provide the First Minister with a discretionary power to extend the term of the OPC, who is in a first appointment, for a period of up to an additional two years.

The 2007 Regulations make provision for the appointment of the Commissioner for Older People in Wales whose office is established under the Commissioner for Older People (Wales) Act 2006. The 2007 Regulations provide that the Commissioner may be appointed by the First Minister of Wales. Such an appointment may only be made following advice of a selection panel. The First Minister is also under a duty to take account of the views of older people in Wales as to the proposed appointment. The 2007 Regulations also provide that a person who has been appointed a Commissioner for one term of four years may be reappointed for a second term, (whether or not consecutive) but for no further terms of office.

In June 2014 the Minister for Communities and Tackling Poverty commissioned an independent review of the role and functions of the Children’s Commissioner for Wales. Dr Shooter’s report on the review was published in December 2014. Although

the report's main focus was on the Children's Commissioner, there were consequential recommendations across the four Commissioners in Wales. Those recommendations relevant to all Commissioners in Wales were to:-

1. explore implementing a more consistent approach to Commissioners in Wales with regard to their purpose, funding, accountability and governance;
2. explore having a single Act covering all Commissioners and the Ombudsman in Wales;
3. require the Children's Commissioner to produce two 3-year work plans during the course of her/his tenure and an annual report to be used by the National Assembly for Wales to assess progress against those work plans; and
4. amalgamate some of the back office functions of the four Commissioners and the Public Service Ombudsman in Wales, or explore cost effective options.

The Welsh Government responded to the Shooter review in February 2016. The response:

1. expressed a commitment to undertake exploratory work on the need for and practicalities of further legislation to bring about greater consistency and coherence between Commissioners;
2. acknowledged that legislation would not be possible until the next Assembly term and timing would then have to be considered in light of the Welsh Government's overall legislative priorities;
3. acknowledged the Children's Commissioner's intention to produce two 3-year work plans;
4. agreed with the need for the Commissioners to explore joint enterprise and cost effective options, work collaboratively and amalgamate functions to make efficiencies and/or provide more effectiveness, and begin implementation of new arrangements in 2016-17.

These Regulations provide the First Minister with a discretionary power to extend the OPC's term by up to two years. An extension of the current OPC's term, under these Regulations, would allow Welsh Government the time to develop a plan of action for the implementation of new arrangements following the recommendations of the Shooter Review. This would result in the new practices being put in place and enable the smooth transition of a newly appointed Commissioner.

The Welsh Government's response to the Shooter Report strengthens the case to support the provision of a power to extend the OPC's first term of office. The response in acknowledging the need for greater consistency and coherence between Commissioners, and in supporting the introduction of the proposal to introduce a requirement to produce two 3-year work plans highlights the need to enable an

extension to the OPC's term of office for up to two years. Presently, the OPC's term of office is out of line with each of the other Commissioners' seven-year term of office. These Regulations which provide the First Minister with a discretionary power to extend the OPC's first four-year term of office for two years, is the first step in aligning the OPC's term of office to that of the other Commissioners which is currently seven years.

With the support of Welsh Government officials, the First Minister will carefully consider proposals for the extension of the OPC's first term of office. As part of the decision making process, the First Minister would be under a duty to take the views of older people (or those people who represent the views of older people) into account. The First Minister would then have the discretion to extend the appointment for up to two years. The length of any extension would depend on the particular circumstances of the proposal.

Under these Regulations, if the First Minister extends the OPC's first term, then there can be no further reappointment of that OPC.

5. Regulatory Impact Assessment (RIA)

No RIA has been undertaken as the proposed revision to subordinate legislation does not impose costs or savings on the public, private or charities and third sectors.

6. Consultation

A consultation exercise was undertaken for 8 weeks from 26 October to 31 December 2015. The consultation was launched on the Welsh Government website as detailed below; this enabled any member of the public to submit their view on the proposal.

<http://gov.wales/consultations/healthsocialcare/commissioner/?lang=en>

However, given the proposal was focused on allowing the First Minister the discretionary power to extend the Older People's Commissioner's term of office, an email invitation was sent out to recipients with an interest in older people in Wales and the Older People's Commissioner's role. This included older people networks such as the Older People's Senate, the Cymru Older People's Alliance, the Ministerial Advisory Group for Older People, the 50+ groups and each local authority Older People Strategy Coordinators. Also relevant third sector organisations supporting older people and carers.

A summary of the responses has been produced and will be published on the Welsh Government website. We received 31 responses, of those 4 were against the proposal and 27 supported the proposal.

A number of responses made reference to the need to ensure the views of older people were taken into account on the proposal to extend a Commissioner's term of office, as they would be for a new appointment. This has been reflected in the Regulations.

A small number of respondents made reference to the need to present more specific criteria in relation to when the First Minister could use the power to extend the Commissioner's term of office. The Regulations do not set out the circumstances in which the First Minister would extend the OPC's term. However, such an extension would only be made when deemed necessary and after seeking the views of older people in Wales or those persons (as appear to the First Minister) to represent the views of older people in Wales. An example of such a circumstance would be a review such as the Shooter Review, where the recommendations:-

- result in significant work to take forward;
- could impact on the ability to continue to deliver results during a period of disruption;
- look for an improved structure and approach to minimise costs.

In line with the points above, the costs associated with an appointment process would be untimely.

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7. Post Implementation Review
Not appropriate.