

Explanatory Memorandum to The Commissioner for Older People in Wales (Appointment) (Amendment, Transitional and Revocation) Regulations 2023

This Explanatory Memorandum has been prepared by the Health and Social Care Department of the Welsh Government and is laid before Senedd Cymru 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, Transitional and Revocation) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Mark Drakeford MS
First Minister
3 November 2023

PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1 The First Minister of Wales appoints the Older People’s Commissioner for Wales (OPCW). The Older People in Wales (Appointment) (Amendment, Transitional and Revocation) Regulations 2023 which amend the Commissioner for Older People in Wales (Appointment) Regulations 2007 and revoke the Commissioner for Older People in Wales (Appointment) (Amendment) Regulations 2016) provide that a newly appointed OPCW should be appointed on a fixed, non-extendable 7-year term of office.
- 1.1 The purpose of the changes made by these Regulations is to ensure that the term of office for which all Welsh Commissioners are appointed is consistent at a fixed, non-extendable 7 years.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 None.

3. Legislative background

- 3.1 These Regulations are made under the power set out in section 28(2) of, and paragraph 2 of Schedule 1 to, the Commissioner for Older People (Wales) Act 2006.
- 3.2 These Regulations are subject to the negative procedure.

4. Purpose and intended effect of the legislation

- 4.1 There are four Welsh Commissioners who are appointed by the First Minister for Wales and supported through similar funding and governance arrangements. They are The Older People’s Commissioner for Wales, The Children’s Commissioner for Wales, The Future Generations Commissioner for Wales, and the Welsh Language Commissioner. The Welsh Language Commissioner, the Children’s Commissioner for Wales and the Future Generations Commissioner for Wales are each appointed for a fixed, non-extendable 7-year term of office under the particular legal provisions relevant to their respective appointments. However, the position has been that the Older People’s Commissioner for Wales (OPCW) is appointed for a 4-year term of office. The First Minister has the power to extend the OPCW’s initial term of office by 2 years, but this power can only be exercised after taking into account the views of older people in Wales or those who represent those views. Alternatively, the Commissioner may reapply for

a further 4-year term of office under a competitive process but not for any additional term.

- 4.2 The purpose of these Regulations is to ensure that the term of office for which all Welsh Commissioners is consistent at 7 years. These Regulations will allow the First Minister to appoint the OPCW for a term of office of 7 years rather than the current term of 4 years. The opportunity to ask the First Minister for an extension of 2 years, or to reapply through a competitive process after the completion of a successful term is removed.
- 4.3 The next OPCW is to be appointed in August 2024. The amendments made by these Regulations ensure that the next OPCW can be appointed on a fixed, non-extendable 7-year term of office.

4.4 **Additional background to these changes**

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 primary focus was on the Children's Commissioner, consequential recommendations were made in relation to the four Commissioners in Wales. In relation to the OPCW, it was recommended that efforts should be made to align the term of office with the other three Commissioners in Wales.

A two phased approach to the alignment of the OPCW's term of office was recommended by Dr Shooter. In the first instance an amendment to the Commissioner for Older People in Wales (Appointment) Regulations 2007 should allow for a 2-year extension to the 4-year term of office or the opportunity to reapply. These amendments, made by the Commissioner for Older People in Wales (Appointment) (Amendment) Regulations 2016, came into force in April 2016.

The second phase was to bring the term of office in line with the other Commissioners in Wales at a fixed, non-extendable 7-year term of office. This is the intended effect of these Regulations which will come into force in December 2023.

5. Consultation

- 5.1 A public consultation on this proposal was conducted between 19 June and 12 September 2023. We asked six questions:
- **Question 1** Are you completing the survey as a member of the public or on behalf of an organisation?
 - **Question 2** We would like your views on whether we should make these proposed changes. Do you agree that we should change the Regulations for the appointment of an Older People's Commissioner for Wales from a 4-year term of office to a 7-year term of office in line

with the other Welsh Commissioners? In doing so, we will remove the existing option to request a 2-year extension or to apply for a second 4-year term of office.

- **Question 3** Do you have any additional comments to support your response?
- **Question 4** We would like to know your views on the effects that these changes would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?
- **Question 5** Please also explain how you believe the proposed changes could be formulated or changed to have a positive effect or increased positive effects on opportunities for 6 people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language, and on treating the Welsh language no less favourably than the English language.
- **Question 6** What do you think would be the likely effects on individuals and groups with protected characteristics from these changes? Your views on how positive effects could be increased, or negative effects mitigated, would also be welcome.

5.2 The 12-week consultation was held via the Welsh Government website between 19 June and 12 September 2023. The consultation document provided an overview of the reasons behind the consultation and details on how to respond.

In June 2023, we wrote by e-mail to our stakeholders inviting them to respond and to share the invite within their communities and networks across Wales. Organisations invited to respond who represent the views of older people included:

- Members of the Ministerial Advice Forum on Ageing
- Age Cymru
- National Pensioners Convention (NPC) Wales
- Active Wales
- Older People's Alliance Wales Seniors Forum
- Age Friendly Wales Officers located in each local authority in Wales
- Elected Councillor Age Friendly Wales Champions at each local authority
- The Older People's Commissioner for Wales
- Other partner organisations in the private, public and third sector

The consultation was also publicised via the Welsh Government channels on social media and discussed at relevant meetings and events. Responses could be submitted by completing the Welsh Government's online form, downloading, and emailing the form or by writing to the Older People's Rights Team in Welsh Government.

5.3 Responses and conclusions

There were 71 respondents who engaged with the consultation, around two thirds were members of the public and a third were organisations. Of those who engaged, 61 answered 'YES' or 'NO' to the primary question around extending the term of office from 4 to 7 years. 67% were in favour and 33% were against this proposal.

Four additional questions were asked. These asked respondents to provide further comments behind their decision to vote 'YES' or 'NO'. Questions were also included relating to the possible effects of this change on opportunities to use the Welsh language and individuals and groups with protected characteristics.

The comments gathered in response to these questions were wide ranging. The majority were supportive of the proposal to extend the term of office to 7 years as they felt it would facilitate greater and more meaningful engagement with individuals and groups of older people. Responses also recognised the opportunity to deliver on a longer-term strategy. Others felt that a longer term of office could lead to complacency.

Several noted their desire to see an OPCW in post who can speak Welsh and that a longer term of office would support opportunities to learn and improve Welsh language skills where needed. Others noted the importance of developing strong relationships with groups who have protected characteristics. They asked that efforts be made to attract a diverse range of candidates to the role of OPCW.

- 5.4 The report on 'Older People's Commissioner for Wales term of office consultation (WG47762)' – can be found [here](#)

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

- 6.1 Arrangements governing the OPCW's term of office are set out in subordinate legislation - namely the Commissioner for Older People in Wales (Appointment) Regulations 2007, as amended by the Commissioner for Older People in Wales (Appointment) (Amendment) Regulations 2016. This means that the changes proposed to the term of appointment and removal of extension of term or to re-apply for a further term of office can only be achieved through amendment to the 2007 regulations.

There are two options relating to the proposed amendment to subordinate legislation which are as follows:

1. Keep the status quo.
2. Amend existing legislation relating to the OPCW term of office from 4 to 7 years.

6.2 Option 1 - keep the status quo

The OPCW is appointed in accordance with the following regulations:

- [The Commissioner for Older People in Wales \(Appointment\) Regulations 2007](#)

[as amended by:](#)

- [The Commissioner for Older People in Wales \(Appointment\) \(Amendment\) Regulations 2016](#)

The 2007 Appointment Regulations noted above established the OPCW's term of office as 4 years. The 2014 Shooter Review into the Children's Commissioner noted that closer alignment should be explored between the Commissioners as the Welsh Language Commissioner, the Children's Commissioner for Wales and the Future Generations Commissioner for Wales are each appointed for a 7-year term of office. The Welsh Government responded to the review by agreeing to explore how its recommendations might be implemented. As a result, the 2007 regulations were amended By the Commissioner for Older People in Wales (Appointment) (Amendment) Regulations 2016 to allow the following:

These Regulations provide that the First Minister may extend the term of the Commissioner, who is in the first term of appointment, for a period of up to 2 years. In reaching a decision on whether to extend the Commissioner's term, the First Minister must take into account the views of older people. If the First Minister extends the

Commissioner's term, the Commissioner may not be reappointed for a second term¹.

Keeping the status quo would mean that subsequent OPCW Commissioners will be recruited for an initial 4 years with the option to extend their term by a further 2 years to maximum of 6 years, subject to the agreement of the First Minister. The OPCW's term of office would remain 3 years shorter than that of the other three Commissioners.

6.3 Option 2 - Amend the legislation relating to the Older People's Commissioner's term of office from 4 to 7 years.

The Explanatory Memorandum to the Commissioner for Older People in Wales (Appointment) (Amendment) Regulations 2016 notes that the term of office for the OPCW is out of line with the other Commissioners. It also notes that the proposed amendment for a 2-year extension should be the first step in aligning the terms of office with that of the other three Commissioners.

The proposed amendment to the Commissioner's term of office for Older People in Wales (Appointment) Regulations 2007 (as amended) will allow the First Minister to appoint the OPCW for a term of office of 7 years rather than the current term of 4 years. The opportunity to ask the First Minister for an extension of 2 years, or to reapply for a second 4-year term of office through a competitive process, will also be withdrawn by these Regulations. This would ensure consistency and parity with the other commissioners who are appointed for a single term of office and are not able to ask for an extension or re-apply for a second term.

There are no other legislative options or approaches available to Ministers to achieve the extension of the OPCW's current term of office from 4 to 7 years.

7. Costs and benefits

7.1 Option 1: keep the status quo

A possible benefit to this option is that it would allow the First Minister to end an OPCW's term of office after 4 years if the post holder's performance was not meeting WG expectations or if older people in Wales advised against a 2-year extension. However, every OPCW to date, has either requested a 2-year extension or has reapplied for a second term of office. The 2nd and 3rd Commissioners have both received

¹ [The Commissioner for Older People in Wales \(Appointment\) \(Amendment\) Regulations 2016 \(Explanatory note\)](#)

a 2-year extension to their term of office. Each Commissioner has stated that 4 years does not provide sufficient time to successfully design and deliver a strategic plan.

Maintaining the status quo will not lead to any savings. The OPCW's sole income is a grant of £1.6m from Welsh Government - none of this funding is allocated by the OPCW to a third party (the OPCW does allocate any grants or funding directly to older people).

Costs to Welsh Government relating to staff resource required to process a request to the First Minister for a 2-year extension or to recruit a new Commissioner would also remain unchanged.

7.2 Option 2 - Amend the regulations relating to the Older People's Commissioners term of office from 4 to 7 years.

The term of office for the current OPCW ends in August 2024 and work has commenced to appoint the next Commissioner. As stated previously, the Welsh Language Commissioner, the Children's Commissioner for Wales and the Future Generations Commissioner for Wales are all appointed for a single, 7-year term of office.

The OPCW and those who represent the views of older people have called for alignment on the OPCW's term of office with the other Commissioners in readiness for the appointment. If the Commissioner for Older People in Wales (Appointment) Regulations 2007 (as amended) are not changed, the next OPCW will be appointed in August 2024 for a 4-year term of office. This may be seen as a missed opportunity to create consistency and may imply that Welsh Government does not give equal status to the OPCW compared to the other Welsh Commissioners.

The Commissioner for Older People in Wales (Appointment) Regulations 2007 (as amended) will remove the requirement for future Older People's Commissioners to ask the First Minister for a 2-year extension following successful completion of a 4-year term. It will also enable older people to sustain a longer-term relationship with the incumbent OPCW.

The OPCW statutory functions include the following:

- Promote awareness of the rights and interests of older people in Wales
- Challenge discrimination against older people in Wales
- Encourage best practice in the treatment of older people in Wales
- Review the law affecting the interests of older people in Wales

Therefore, the option 2 proposal will allow future Commissioners to develop and promote policies over a longer period that help to protect older people's rights and encourage good practice. This, in turn, could

prevent older people from experiencing services and discrimination that are detrimental to their health and well-being.

The office of the OPCW is funded by the Welsh Government – this proposal will not lead to any increases in this budget. However, it will eliminate the need to publicly consult for an extension of 2 years following successful completion of a 4-year term and thereby reduce costs relating WG staff resources.

The office of the OPCW is funded by Welsh Government – this proposal will not lead to any increases in this budget. Therefore, no additional costs or savings have been identified on business, the third sector or statutory sector.

However, the amendments proposed will eliminate the need to publicly consult for the purposes of any request by an incumbent Commissioner to extend the term of their office for 2 years and thereby reduce costs relating Welsh Government staff resources. Furthermore, recruiting every seven years as opposed to every 4 years, could lead to savings in recruitment costs and WG staff time. The approximate cost of recruitment is £3,000 which comes from Welsh Government budget. This is a direct cost and is based on the current cost of recruiting the next OPCW.

Indirect positive impact for individuals could occur if future Commissioners opt to continue the current OPCW's campaign to increase pension credit take up in Wales. An increased take up of pension credit will also provide older people with more money to spend in their local communities, thereby benefitting the local economy. A longer term of office of 7 years would create continuity and potentially strengthen any campaigns relating to the economic well-being of older people.

Impact and consultation

A full assessment of the social impact on older people with supporting evidence has been completed in the Integrated Impact Assessment which includes an Equality Impact Assessment which will be published on the Welsh Government website.

As stated earlier in this document, the OPCW and those who represent the views of older people have called for alignment on the OPCW's term of office with the other Commissioners in readiness for the appointment of the next OPCW.

In addition to responding to requests to extend the term of office from the current OPCW and older people, we have undertaken a public consultation which was circulated to older people's groups and forums.

We publicised the consultation with members of the Ministerial Advisory Forum on Ageing and the network of local authority age friendly leads and requested their feedback. It has also been discussed with staff working in the office of the current OPCW as they are the group most likely to be directly affected by the proposal.

8. Competition Assessment

The proposed legislation will not affect business, charities and/or the voluntary sector.

9. Post implementation review

There are no plans to monitor or evaluate the impact of the amendment to the subordinate legislation however, the performance of future Commissioners will be monitored by Welsh Government Ministers and senior officials and any benefits or issues resulting from the extended term of office will be noted via these reviews.