

Explanatory Memorandum to the Welsh Language Measure (Registrable Interests) 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 Welsh Language Measure (Registrable Interests) Regulations 2012.

Leighton Andrews AM

Minister for Education and Skills

7 March 2012

Description

1. The Welsh Language Measure (Registrable Interests) Regulations 2012 make provision about the integrity of the Welsh Language Commissioner (“the Commissioner”) and the Deputy Welsh Language Commissioner (“the Deputy Commissioner”).

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None.

Legislative Background

3. Sections 134 to 139 of Chapter 1 of Part 8 of the Welsh Language (Wales) Measure 2011 (“the Measure”) make provision about the integrity of the Welsh Language Commissioner (“the Commissioner”) and the Deputy Welsh Language Commissioner (“the Deputy Commissioner”).
4. Section 134 requires the Commissioner and Deputy Commissioner (defined in Part 8 of the Measure as “relevant office holders”) to create and maintain a register of interests.
5. A register of interests must include all of a relevant office holder’s registrable interests. Sections 135 to 137 of the Measure make related provision about the publication of registers of interests; conflicts of interest; and the validity of acts of a relevant office holder.
6. Section 138 of the Measure provides the Welsh Ministers with the power, by regulations, to specify what interests are registrable interests for the purposes of Chapter 1 of Part 8 of the Measure.
7. The Welsh Ministers make these Regulations in reliance upon the power provided by section 138 of the Measure. Regulation 2 introduces the Schedule to the Regulations which specifies relevant office holders’ registrable interests.
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. An accessible register of interests is fundamental to the chapter entitled ‘Integrity’ within Part 8 of Chapter 1 of the Measure. These regulations are intended to help ensure objectivity on the part of the Commissioner in undertaking his/her activities. Part 8 of Chapter 1 of the Measure

addresses the issue of conflicts of interest which may arise in relation to the exercise of functions by the Commissioner or Deputy Commissioner.

10. The Commissioner will have regulatory powers to impose duties on persons or categories of persons described in Schedules 6 and 8 to the Measure in terms of compliance with Welsh language standards. The Commissioner will also be able to investigate allegations of non-compliance with standards and will have a range of powers available to take enforcement action in light of a failure to comply; these enforcement options include the possibility of imposing action plans or civil penalties. Given these powers, it is considered important that any individual tasked with the role of Commissioner or Deputy Commissioner is not perceived to be biased in any way and does not allow private interests to influence the way he or she performs in their professional capacity.
11. The making of these Regulations is therefore entirely consistent with the desire for the Commissioner and his/her Deputy to operate in a transparent, accountable and impartial manner and will operate to help ensure that the Commissioner and his/her Deputy observes the highest standards of probity in the management of their affairs. The Nolan principle of honesty, in particular, states that “holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest”.
12. In circumstances where the Commissioner has a registrable interest which relates to the exercise of a function, the Measure will operate to prevent the Commissioner from exercising that function. In such a case, the function in question must be exercised by the Deputy Commissioner, or another member of the Commissioner’s staff. Where the Deputy Commissioner is prevented from exercising a function as a result of a conflict of interest, the Commissioner must make arrangements for the function to be exercised otherwise than by the Deputy Commissioner.

Effect

13. Regulation 2 provides that the interests listed in the Schedule to the Regulations are registrable interests for the purposes of Chapter 1 of Part 8 of the Welsh Language (Wales) Measure 2011.
14. Part 1 of the Schedule includes defined terms used in Part 2, the part of the Schedule which specifies which interests are registrable interests.
15. Interests (a) to (d) are intended to ensure that the Commissioner and Deputy Commissioner are required to make public circumstances in which they, or a partner or child (as defined in Regulations) of the Commissioner or Deputy Commissioner, have interests in relation to which the relevant office holder should not exercise a function. A relevant office holder must register an interest in the circumstances described below.

16. In circumstances where a relevant office holder's partner or child (as defined by the Regulations) holds an office with, or is employed by, any person listed in Schedule 6 or 8 to the Measure, that interest will have to be registered. The persons listed in either of these two Schedules can be made subject to Welsh language standards in accordance with the Measure as well as the range of enforcement powers available to the Commissioner. Where a conflict of this kind existed, the Welsh Government feels it would be inappropriate for the relevant office holder in question to be exercising the relevant regulatory functions.
17. A relevant office holder must also register an interest if they, or their partner or child (as defined) holds any interest in land or intellectual property in respect of which the office of the Commissioner (as opposed to the Commissioner as a private person) holds an interest. In a situation where, for example, the Commissioner's partner owned land rented by the Commissioner's office, the person acting as Commissioner would be prevented from exercising any of the Commissioner's functions in relation to that land.
18. The other registrable interests relate to the commercial interests of relevant office holders or their partners and/or children. A relevant office holder will, have to register the names of companies or other bodies in which they hold a beneficial interest in shares. That interest must be registered regardless of whether it is an interest he or she holds alone, or is an interest held with or on behalf of a partner and/or child. In addition to interests in shares, a relevant office holder must register any remunerated directorships held by that relevant office holder in any company.
19. In addition to the wide range of persons listed in Schedules 6 and 8, in respect of whom, standards could be imposed, the exercise of the Commissioner's functions under the Measure could bring relevant office holders into contact with private companies and other bodies in situations where standards do not apply. For example, the Commissioner will have the power to investigate, and produce reports upon, alleged interferences with individuals' freedom to speak Welsh with one another in Wales or to institute or intervene in legal proceedings. As a result, these interests relating to shares and directorships have been included in the regulations in the interests of transparency and probity.

Consultation

20. 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

21. 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.
22. 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).