

# The National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019

13 June 2019

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## Recommendations

**Recommendation 1.** Some Members felt that the Welsh Government should revoke the Regulations, whilst others did not, but the course of action on which all Members are agreed is that the Regulations should be revised following a full consultation including patients' groups, the Welsh Language Commissioner and the Culture, Welsh Language and Communications Committee as well as professional bodies representing independent primary care providers..... 6

**Recommendation 2.** The Minister for Health and Social Services should write to the Chair of the Culture, Welsh Language and Communications Committee to explain why only the minimum 21 days was allowed for scrutinising these Regulations by the Assembly when the Welsh Government had given the Chair a commitment that more time would be allowed..... 6

**Recommendation 3.** The Committee calls on the Welsh Government to commit to submitting future draft legislation relating to the provision of services in Welsh by independent primary care providers, bilingually, for scrutiny by this Committee in advance of introducing it to the Assembly..... 6

**Recommendation 4.** While only some Members of the Committee felt that the Welsh Government should guarantee the right to receive public services in Wales



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in Welsh where current capacity exists, all Members of the Committee agreed that the Welsh Government should work towards developing this capacity in other areas.....13

**Recommendation 5.** The Welsh Government should undertake a communications campaign to educate independent primary care providers of their new duties. This campaign should promote the opportunities for Welsh-speakers as a result of these duties and clarify the extent to which service providers are required to converse in Welsh.....13

**Recommendation 6.** The Welsh Government should ensure that education and training providers for those working in primary care are aware of the nature of the new duties in order to dispel any misconceptions about the need for professionals to speak Welsh to work in Wales.....17

**Recommendation 7.** The Welsh Government should immediately clarify the local health boards’ responsibilities for meeting independent primary care providers’ costs incurred as a result of complying with the Regulations. .... 19

**Recommendation 8.** The Welsh Government should fund the Welsh Language Commissioner to carry out a review of the implementation of the Regulations after they have been in force for 12 months. The Minister for Health and Social Services and the Welsh Language Commissioner should submit a report on the review to the Culture, Welsh Language and Communications Committee. ....22

## 1. Introduction

### Introduction

### Summary

1. The Culture, Welsh Language and Communications Committee (‘the Committee’) was made aware of the National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019 (‘the Regulations’) when they were laid in the National Assembly for Wales (‘the Assembly’) on 9 May 2019. The Regulations and the accompanying Explanatory Memorandum are attached at Annex 1.

2. The Committee agreed to scrutinise the Regulations under the National Assembly for Wales’ Standing Order 17.56, having indicated they would do so in March 2018 when undertaking a similar exercise on a previous set of Regulations.

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**3.** The Committee invited representatives of the professional bodies responsible for providing independent primary care services – dentists, pharmacists, opticians and GPs to discuss the Regulations at a meeting held on 6 June 2019. The Committee also heard from a representative from the Welsh Language Commissioner’s Office and from Cymdeithas yr Iaith Gymraeg. Officials from the Welsh Government provided a private briefing to Members at the meeting.

**4.** The Committee heard from those bodies representing health professionals that:

- they are in favour of meeting patients’ need to communicate in the language of their choice;
- they are concerned that the Regulations may raise expectations for patients and may reinforce the perception that professionals need to speak Welsh to work in Wales. This may, in turn, deter much needed medical professionals from working in Wales; and
- That they are unsure if all the costs of the new duties will be met by the Local Health Boards, including the cost of back filling posts when staff attend training courses.

**5.** The Committee also heard that for some patients the requirement to speak in Welsh is a necessity not a choice. The Welsh Language Commissioner’s office described the Regulations as an important first step on a journey towards greater provision of health services in Welsh.

**6.** The Committee heard concerns from Cymdeithas yr Iaith that patients were not formally consulted on the draft Regulations by the Welsh Government. It felt that the duties put too much emphasis on the primary care providers rather than the needs of patients who are often at their most vulnerable when accessing these health services.

**7.** The Committee also questioned whether there will be adequate monitoring and enforcement of the delivery of the duties in these Regulations. Local Health Boards will be responsible for ensuring providers meet their contractual duties to display signs, make documents available in Welsh and so on. Individual Welsh speaking patients will be unable to complain about the service received.

## **The purpose of the Regulations**

**8.** These Regulations amend the National Health Service (General Ophthalmic Services) Regulations 1986, the National Health Service (General Medical Services

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Contracts) (Wales) Regulations 2004, the National Health Service (General Dental Services Contracts) (Wales) Regulations 2006, the National Health Service (Personal Dental Services Agreements) (Wales) Regulations 2006 and the National Health Service (Pharmaceutical Services) (Wales) Regulations 2013.

**9.** The amendments place six duties, relating to the Welsh language, on independent primary care providers in Wales through the terms of their agreements with Local Health Boards. These duties will require contractors to do the following:

- Notify the Local Health Board of the service(s) it is willing to provide through the medium of Welsh;
- Make a Welsh language version of any document or form provided by the Local Health Board available to patients and/or members of the public;
- Display text on any new sign or notice relating to the service provided, in English and Welsh;
- Encourage the wearing of a badge, provided by the Local Health Board, by Welsh speakers, to convey that they are able to speak Welsh;
- Encourage those delivering services to utilise information and/or attend training courses and events provided by the Local Health Board, so that they can develop an awareness of the Welsh language (including awareness of its history and its role in Welsh culture) and an understanding of how the Welsh language can be used when delivering services; and
- Encourage those delivering services to establish and record the Welsh or English language preference expressed by or on behalf of a patient.

## The timing of the Regulations

**10.** The Committee was disappointed at the lack of time given for scrutiny. The Chair of the Committee was given a commitment, during the Plenary debate on the previous set of Regulations in 2018, that the Committee would be given more than 21 days to consider these Regulations. The Clerk to the Committee wrote to the Welsh Government on three occasions to ask for more clarity on the timing of the introduction of these Regulations and assurances that the Committee would have more than the minimum 21 days. There was no reply to these questions

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from the Welsh Government and no notice at all of the introduction of the Regulations before they were laid on 9 May.

**11.** The Minister for Health and Social Services responded to our concerns on the timing of the Regulations to say that:

The date of the duties coming into force on 30 May is to coincide with when most of the Welsh Language Standards for the health sector will come into force, in line with the compliance notices for health bodies which were issued by the Commissioner on 30 November. The duties for IPCPs support the service delivery Welsh language standards for Local Health Boards in relation to primary care.

**12.** The correspondence is set out at Annex 2.

**13.** The timing of the introduction could not have been worse. Due to the Bank Holiday, the Privilege holiday for civil service staff and the Assembly's Recess period, the Committee had just 10 working days to scrutinise the draft Regulations. The Chair wrote to the Minister for Health and Social Services with her concerns about the timing of the introduction of the Regulations and was told:

As you will be aware, under Standing Orders 21 and 27, there is no provision for a Committee other than the responsible Committee, i.e. the Constitutional and Legislative Affairs Committee, to report on an instrument subject to the negative procedure.

**14.** The Standing Orders of the Assembly 17.56 state 'Any Committee may report to the Assembly on matters within its remit'. Legislation relating to the Welsh language is clearly within the remit of the Committee. Moreover, the Committee had already committed to scrutinising the Regulations when it reported on similar legislation in 2018 and 2017.

**15.** The Regulations came into force on 30 May 2019 before the Committee had a chance to hear from representatives of those who would be affected by the Regulations. The Committee heard evidence from representative bodies, listed below.

**16.** In the meantime, Dai Lloyd AM, the Chair of the Health, Social Care and Sport Committee tabled a motion to annul the Regulations. This motion will be debated on 19 June 2019. The Committee also received a letter from Mick Antoniw AM, the Chair of the Constitutional and Legislative Affairs Committee, endorsing the Committee's view that the timeframe for considering the

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Regulations 'has not allowed sufficient time for scrutiny on this occasion', at Annex 4.

### Our view

The Committee is extremely disappointed that there was insufficient time for proper scrutiny by the National Assembly for Wales of such an important piece of legislation which will have an impact on the majority of all interactions with the health services in Wales.

The Welsh Government has failed to properly explain the delay in bringing forward the Regulations for scrutiny by the Assembly. The Minister for Health and Social Services has explained the reasons for the date on which the Regulations will come into force, but not why they were introduced so late.

Given the Welsh Government's previous commitment to allow longer than the minimum 21 days for scrutiny of these Regulations, the Committee calls on the Welsh Government to set out the reasons why this did not happen.

This gross failure on the part of the Welsh Government not only undermines the legislative scrutiny role of the Assembly, but also undermines the relationship between the Committee and the Welsh Ministers.

Although the Committee is very supportive of any and all efforts to increase the provision of public services in Welsh, we cannot endorse these Regulations as there has been insufficient time to consult on and scrutinise them properly.

**Recommendation 1.** Some Members felt that the Welsh Government should revoke the Regulations, whilst others did not, but the course of action on which all Members are agreed is that the Regulations should be revised following a full consultation including patients' groups, the Welsh Language Commissioner and the Culture, Welsh Language and Communications Committee as well as professional bodies representing independent primary care providers

**Recommendation 2.** The Minister for Health and Social Services should write to the Chair of the Culture, Welsh Language and Communications Committee to explain why only the minimum 21 days was allowed for scrutinising these Regulations by the Assembly when the Welsh Government had given the Chair a commitment that more time would be allowed.

**Recommendation 3.** The Committee calls on the Welsh Government to commit to submitting future draft legislation relating to the provision of services

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in Welsh by independent primary care providers, bilingually, for scrutiny by this Committee in advance of introducing it to the Assembly.

## 2. Delivering services in patients' language of choice

**17.** The Committee has previously looked at legislation designed to support the use of Welsh in the delivery of health services. In the Committee's report on the Regulations setting out Welsh language requirements for Local Health Boards, National Health Service Trusts in Wales, Community Health Councils and the Board of Community Health Councils in Wales, it was made clear that the next set of Regulations designed for independent primary care providers should aim to deliver face to face clinical services in Welsh. The Committee said:

The lack of any right to receive face-to-face clinical services in Welsh or with Welsh language support is one of the greatest concerns we have about the Regulations. We accept that there are practical reasons why a right to receive these services cannot be absolute. The Committee recognise that there will be times and situations when it will not be reasonable or proportionate to provide such services. It may also be that specific services (such as dementia care or children's services) should be prioritised.

Nevertheless, we have heard evidence of the importance of language in clinical diagnosis and care. More than that, the right to receive a service in your language of choice should be an established principle in the public sector in Wales, even if there are occasions when this right has to be tempered by the practicalities of what can be provided. In many ways, the Health Service is the most important public service that most people will use. The idea that this basic principle should not also apply to the Health Service is in our view unacceptable.

**18.** Clearly the Regulations do not address the concerns of the Committee as set out in our previous report. The Regulations place a limited number of duties on providers to increase awareness of Welsh language services where available and signal Welsh speakers ability to communicate in Welsh.

**19.** The Committee heard from professional bodies that they are broadly supportive of using patients' language of choice but have concerns about the

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extent to which these Regulations raise expectations of what providers can deliver. In its written submission, Community Pharmacy Wales ('CPW') said:

CPW is fully supportive of the desire to improve the provision of primary care services to those citizens that use Welsh as their first language and to do so in a practical and deliverable manner.

**20.** However, it said that the Regulations should only apply to 'the dispensing of prescriptions and supply of medicines' and that the 'provision of these services through the medium of Welsh only applies to the conversation between the pharmacist and the patient and not to the provision of patient information leaflets provided with the medicines or the labelling of prescribed medicines, as one would be totally impractical and the other would impact significantly on patient safety.'

**21.** The British Dental Association ('the BDA') responded to questions about why encouraging practitioners to wear lanyards and attend training courses may have unintended consequences. Dr Charlotte Seddon said:

Because if people don't have the language, then they might feel that they wouldn't be able to—that it wouldn't be the sort of environment that they would necessarily feel that they could do everything that was required of them. It's about patient expectation, and I think it's about what the patients will be expecting now and in the future. And one of the points we mentioned in our original response was about how you manage the patient expectation. If patients expect to be conversing in Welsh within a practice where you don't have a native Welsh speaker, then you're going to be disappointing that expectation.

**22.** The British Medical Association Cymru Wales ('the BMA') agreed on the need for signalling Welsh services. Its written submission said:

it is worth reiterating that BMA Cymru Wales believes as a general principle that we must support the use of the Welsh language within health care settings in Wales for the benefit of Welsh-speaking patients. We very much recognise that it benefits patients to have the ability to communicate with medical practitioners in their first language.

**23.** But it cautioned that this may raise expectations which cannot be met by surgery staff:

Many practices currently provide services or elements of services through the medium of Welsh, whether informally or on a conversational

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basis courtesy of individual practitioner/patient relationships, or on a more formal basis. Whilst the duty would help to increase patient awareness of the services they can receive through the medium of Welsh, it could also have an unintended consequence. Requiring practices to formally record their 'offered services' could deter some practitioners or staff who, whilst being Welsh speakers, do not feel sufficiently confident in their abilities to describe themselves as being able to provide services through the medium of Welsh, which could affect their propensity to use it informally.

**24.** Although Dr Ian Harris said in the meeting on 6 June:

Personally, I'm not fearful. I don't think this raises expectations a significant degree, and, in my experience, Welsh speakers are very, very tolerant of not being catered for and are actually very appreciative of any direction, any move, towards Welsh-language provision.

**25.** He felt there was not an automatic expectation from patients that consultations could and should be carried out entirely in Welsh, saying:

the expectation from patients is not that you are perfectly fluent technically in every aspect of Welsh... They're very keen that you make that Welsh offer, and I think that's where we want to try to encourage people to move in that direction, even if it is with basic greetings in Welsh to start with, to make the patient feel at home, and then moving into an English consultation...

We're very supportive of the regulations as laid out, and I think the direction of travel is one where we'd like to see more and more Welsh provision.'

**26.** Cymdeithas yr Iaith Gymraeg argued that because the primary care sector is responsible for up to 90% of patient experiences in the health service that these duties should reflect the fact that this is the highest priority sector and should 'provide maximum protection for the language rights and interests of patients'. It said 'that the regulations are far too weak to drive genuine improvements in Welsh-language services.'

**27.** It suggested two additional duties should be placed on providers – that they facilitate face-to-face services in Welsh and facilitate personal meetings in Welsh. Heledd Gwyndaf explained why this is important:

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it's that face-to-face contact; it's crucial. How many Welsh speakers go into a surgery or any other service and say 'Oh, thank goodness, they speak Welsh.'? And that speaks volumes, because it demonstrates that there is additional pressure in thinking of going somewhere and having to communicate how you feel... in your second language ...

So, the standards or these regulations aren't going to change our lives as they should. They don't provide added value for Welsh speakers and the people of Wales, and, therefore, it means that the health service isn't doing its work properly ... And in not providing any rights to deal with your doctor or dentist face to face, then that really doesn't change things in Wales at all.

**28.** It also commented on the fact that patients were not formally consulted about the Regulations. Colin Nosworthy said: ‘

We are concerned in general in drawing up these standards that a lot more emphasis is put on the views of bodies rather than users. But in this case, it's extremely bad

**29.** In his letter to the Committee the Minister for Health and Social Services said:

Discussions were also held with the Welsh Language Commissioner on the 6 duties for Independent Primary Care Providers [IPCPs] during 2018/19. The Welsh Language Commissioner indicated that, as they have not previously been subject to Welsh Language schemes, and based on capacity and capability in primary care, she was content that the duties are reasonable and appropriate at this time for the IPCPs.

**30.** Dyfan Siôn from the Welsh Language Commissioner's Office was asked to comment on this assessment. He said:

Yes, we are still of the view that these duties are appropriate as a first step. Of course, as we move forward, we will need to monitor this to ensure that the duties as they stand do work, and we also believe that there is an opportunity to build further on these. But as they currently stand, as a first step, we do think that they're appropriate.

**31.** He was asked how the Regulations could be strengthened. He replied:

The regulations introduce six duties, and there is a link between those duties and the standards that have already been laid on the health boards. I think if there was a means of developing the duties further,

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two of the duties, if I remember correctly, talk about encouragement, therefore encouraging providers of primary care, for example, to record the language of choice of patients. Certainly, there is room to strengthen that further than encouragement to ensure that it is happening. That possibly would be one way of strengthening the regulations. But beyond that, we can see the link between the standards that have already been laid on health boards. I think that is constructive; just perhaps moving from the encouragement to ensuring that this happens is the important step.

**32.** He then explained that speaking Welsh is often not a matter of language preference but one of necessity:

it's important to note in terms of providing Welsh language services in health, very often for patients it's a matter of clinical need, not a matter of language choice alone. So, that's an important principle. The other thing to note in terms of primary care is that this is the first contact the majority of patients will have with the health service.

**33.** Dyfan Siôn was asked to comment on concerns that encouraging staff to wear lanyards might raise patient's expectations of the service provision available in Welsh. He responded:

Well, yes, it's important that expectations like this are introduced sensitively. It's important that discussions take place. We do have a fair bit of experience in Wales of having worked in other sectors—local authorities, colleges, universities, and so on—where there has been encouragement and an expectation that staff that are able to provide a service through the medium of Welsh identify themselves to the public. So, I don't think that the health sector is alone in seeking to tackle that problem. It's not something that we come across very often, if truth be told, as long as there is sufficient support available from the employer.

## Our View

These Regulations apply to the vast majority of health services we will all encounter in our daily lives. Going to the doctor or dentist, collecting our prescriptions and having an eye test are routine events. All of these interactions can be made easier for Welsh speakers if services are available in their language of choice. However, we are still as far away from delivering that level of service as we were at the beginning of this Assembly. These Regulations make little, if

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any, progress in giving people in Wales the right to receive a public service in the language of their choice. Indeed, previous Committee reports accepted that this may not always be practical but should be ‘an established principle in our public services’. Our view on this has not changed.

We understand the importance of clear communication in health settings and the possible problems caused if patients and healthcare professionals misunderstand each other. However, when patients are at their most vulnerable their need to communicate in their language of choice is paramount. It can be a matter of necessity rather than mere preference.

The Committee heard of professionals’ concerns that signage and leaflets in Welsh, and encouraging Welsh speakers and learners to wear appropriate lanyards may raise patients’ expectations. There is an unfounded fear that professionals will be expected to carry out consultations in Welsh and will be met with complaints if this is not possible.

For health professionals to signal that communication in Welsh is a possibility by wearing a lanyard is comforting for a person in distress. Welsh patients are invariably bilingual and will understand that switching between Welsh and English is not a cause for complaint but a fairly commonplace occurrence.

In drafting these Regulations, the Welsh Government has clearly tempered them to suit what can be delivered in light of its consultation with professional bodies. However, the most important people – the patients – played no formal part in the consultation. The Welsh Government’s published information gives no indication of the views of those who will be most affected by these duties. It has been left to Cymdeithas yr Iaith Gymraeg to represent Welsh-speaking patients to the Assembly.

The Minister for Health and Social Services told the Committee that the previous Welsh Language Commissioner endorsed these duties as ‘reasonable and appropriate at this time’. However, the situation is far more nuanced. The Committee notes that the Commissioner’s Office has agreed that these duties are appropriate ‘as a first step’. It believes ‘that these duties should be built upon in a matter of time’. Its endorsement of these duties is conditional on them being the beginning of a journey to greater bilingual health service provision. It is vitally important to learn more about the direction and speed of this ‘journey’ from the Government if we are to have any faith in its commitment to providing the most widely used public service in a language all patients feel comfortable using.

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There is an opportunity for independent primary care providers to learn from the experience of organisations currently implementing standards, such as local authorities, and share good practice across sectors. The Committee heard evidence recently that the process, while rigorous, provided clarity, certainty and ultimately, had a positive impact on the internal culture of organisations.

**Recommendation 4.** While only some Members of the Committee felt that the Welsh Government should guarantee the right to receive public services in Wales in Welsh where current capacity exists, all Members of the Committee agreed that the Welsh Government should work towards developing this capacity in other areas..

**Recommendation 5.** The Welsh Government should undertake a communications campaign to educate independent primary care providers of their new duties. This campaign should promote the opportunities for Welsh-speakers as a result of these duties and clarify the extent to which service providers are required to converse in Welsh.

### 3. The impact of the Regulations on the recruitment and retention of health professionals

**34.** The Committee heard from the representatives of the health professional bodies that the Regulations have the potential to deter people from working in the Welsh primary care sector.

**35.** Although the Regulations do not require the use of Welsh for consultations the professional bodies believed that there is a perception that healthcare professionals working in Wales need to be able to speak Welsh. They stated that this already having an impact on the ability to recruit professionals to live and work in Wales.

**36.** The BDA's written submission to the Committee shows its concerns about this issue:

At a time when there are shortages of dentists in some parts of Wales ... the Perception of the Welsh language requirements in dental practice may impact quite severely the numbers of dentists coming from outside Wales to work in Wales in future, including from England. This

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effect of Perception by dentists should not be underestimated, particularly against a backdrop of stagnant dental workforce planning.

We want Wales to be an inclusive country, we already have problems recruiting across the healthcare sectors; especially GP's and Dentists. If prospective GP's or Dentists feel that they have to be able to speak Welsh or feel they are being actively encouraged to provide a consultation via translation then it will provide another barrier to recruiting high quality practitioners.'

**37.** Roger Pratley from the BDA said:

There are problems in recruitment, not so much in the M4 corridor, although there are problems there as well, but certainly further west. Practice owners are finding it extremely difficult, at the moment, to get anybody to take up positions in their practice, and I think—is it one or two practices in north Wales that have given their contracts back, basically, and they've closed? I think it's one practice, actually. So, there does lie a problem in recruitment.

**38.** Dr Phil White from the BMA told the Committee:

But I do know that there are big issues with recruiting secondary care staff. There's a perception that, in north-west Wales, because you have to have a knowledge of Welsh or access to Welsh, and that your children will be educated in Welsh-medium schools, it is a deterrent to many people applying for jobs, because they see that as an extra burden in an already stressful profession.

**39.** Dr Ian Harris of the BMA went on to say:

I think there's anecdotal evidence from border areas where they do try and recruit that some people are put off by the perception that they can't apply to Welsh posts because they don't have Welsh. I certainly think that does apply along the Welsh border. I've not seen any hard evidence in that regard, but you certainly get feedback anecdotally from people who are interviewing and who are advertising posts

**40.** Both the BDA and the BMA emphasised the need for better workforce planning to create a bilingual workforce. They stressed the importance of retaining Welsh-speaking graduates in Wales after their training.

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**41.** The CPW also emphasised the need to make the ‘work offer’ in Wales attractive to counter the view that working in Wales means that professionals have to be able to speak Welsh. Steve Simmonds said:

a lot of research was done amongst pre-registration students the other side of the bridge. And some of them did express that concern that, 'I don't think I can work in Wales because I don't speak Welsh.' So, in reality, there is that thing, but we shouldn't over-egg that. I think we need to approach it in a very different way, and what Welsh Government are currently doing, through Andrew Evans, our chief pharmaceutical officer, is that we're defining a pharmacy service in Wales that is a much more clinical service, that our pharmacists want to be part of. So, what we're actually doing is making practising pharmacy in Wales more attractive than practising pharmacy in other parts of the UK. So, actually, it's a positive driver for people into Wales, and that's a much better way of going about it.

**42.** Dyfan Siôn from the Welsh Language Commissioner’s Office was asked about the possibility of people being deterred from providing services in Wales if the regulations are ‘more rigorous’. He replied:

We need to make ensure that the education and training that I was talking about earlier contributes towards a bilingual workforce. The other issue of course is there is investment currently in Welsh language training through the Welsh language teaching centre. It's important that there is support available to provide training and that the health boards and the other employers push that as well to ensure that we can improve and increase the Welsh-language skills of workers that are in Wales currently, and also people who move here to work.

**43.** He said that the Welsh Language Commissioner’s Office has ‘published a report that mapped out the training and education available in order to create a bilingual primary care workforce’. He went on to say ‘one of the main messages was that the training pathways are insufficient at the moment to create a bilingual workforce and that was particularly true in terms of the data that we gathered in areas such as dentistry, optometry and health visitors. So, there is an issue there in terms of education and our ability to create and train the practitioners who have the necessary skills through the medium of Welsh.’

**44.** When asked to comment on workforce planning and recruitment Colin Nosworthy from Cyndeithas yr Iaith Gymraeg said:

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we've made two points to the Government, namely that there is a need for a training college for doctors in Bangor... but also that there's a need to look at the quotas in terms of how places on those training courses are used. There are examples of people who are completely qualified to study to be doctors, but then are rejected, and then go to study in England, and are not trained through the medium of Welsh, and we lose the skills of that person.

**45.** Commenting on a question about the need for Welsh language training to be a core part of professional training, Heledd Gwyndaf from Cymdeithas yr Iaith Gymraeg agreed that 'it's part of the service that's required.'. She also commented on the need for service providers to be able to communicate in Welsh:

But one thing that perhaps isn't dealt with in the regulations is the language requirement of posts. I live in Llandysul where over 60 per cent of people are Welsh speakers. They have appointed someone at the [GP surgery reception] desk who is a non-Welsh speaker. So, the whole ethos of the surgery has changed. Very vulnerable people go into that surgery. This doesn't deal with language choice at any level.

#### Our View

The Committee heard that there is a perception amongst trainees and qualified professionals that working in Wales means having to speak Welsh. The professionals we heard from all argued that recruiting people to work in Wales is already problematic and that any perceived additional burden on new recruits, such as the need to learn Welsh, would be an added deterrent to recruitment.

It is concerning that this perception has arisen considering the Regulations 'encourage' not 'mandate' Welsh-speaking employees to wear a badge; providers to record the patient's language of choice and employers to provide time off to attend Welsh language training courses.

The Welsh Government urgently needs to address misconceptions about the Welsh-speaking abilities required of independent primary care providers.

Those studying in Wales for careers in primary care services should be supported and encouraged to stay in Wales. The Welsh Government should collaborate with the Coleg Cymraeg Cenedlaethol to increase opportunities for those studying for careers in primary services to undertake their studies, and any work placements, in Welsh.

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**Recommendation 6.** The Welsh Government should ensure that education and training providers for those working in primary care are aware of the nature of the new duties in order to dispel any misconceptions about the need for professionals to speak Welsh to work in Wales.

## 4. Costs

**46.** The Committee was told of healthcare providers' concerns about the additional costs to their businesses of meeting the duties imposed on them via the Regulations. We heard from pharmacists and opticians that they recognise they are in a competitive market and will do all they can to attract custom, including meeting expectations for Welsh language provision.

**47.** However, the Committee heard that there is still uncertainty about the extent of the translation required in each practice and who will be responsible for meeting this requirement.

**48.** CPW commented on the costs of back filling posts if their members are to meet the requirement to encourage the attendance of language awareness courses. In their written submission, they say:

The Regulations as drafted require NHS Pharmacists to encourage appropriate people to attend health board training courses on Welsh language provision. CPW would recommend that, if this is to be successful, monies are made available to health boards so that pharmacy contractors can be reimbursed for the costs of attending any courses as CPW believe it is unreasonable for the cost of meeting these new regulatory requirements to fall on pharmacy contractors.

**49.** In their written submission the BDA says:

BDA Wales considers that - under enforcement of the regulations - health boards should provide translation of signage - at their expense. We also believe that health boards should provide finance for the production and erection of such signage. If necessary as a one off Grant to dental practices.

To be clear, BDA Wales considers that dental practices should NOT have to foot the bill for signage translation, production or erection. Similarly if

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badges are to be provided by the health board at the cost to the health board then that is considered acceptable within the context of enforcement. The requirement for forms and website information and other literature and information to be provided in the Welsh language if applicable to dental services should be funded by the health boards.

**50.** The BMA said in its written evidence that it agrees with the obligation on local health boards to meet the costs of translating signs, forms and other documentation as required. It also argued that the costs of back filling to allow staff to attend language awareness training should be met:

practices may find it extremely difficult, if not impossible, to release GPs and staff given the current workload pressures and recruitment challenges in Welsh general practice. We would suggest that, in order to fully realise the aspirations of this duty, the costs of access to training (e.g. staff backfill) need to be fully met by Health Boards or Welsh Government.

**51.** Heledd Gwyndaf from Cymdeithas yr Iaith Gymraeg was asked 'how do you respond to the concerns raised by all of the professional bodies that we've had here this morning' [on the cost of translating leaflets and releasing staff for training]. She replied:

Could I just throw that question back? What is the cost of the English language to the health service? ...

I think it's the right of a worker to learn Welsh, and that is a basic and important right. And I don't think in other areas that somebody would then start going around questioning workers' rights to other things...

The Welsh language is a skill, so they would be given training. If a nurse couldn't give you an injection... she would be trained to do that because it would be a core part of the service. Now, what's not been understood in the question is that the Welsh language is a core part of the service—it's not a bolt-on, it's not, 'Well, this is the Welsh-language budget'. So, all of the rest of the budget is an English budget? And then you have that bolt-on, that's the Welsh-language budget? So, English is the norm. What if things are drafted in Welsh, because they can be, of course? So, then, to translate them to English, that would be a cost for the English language, would it?

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## Our view

In the Explanatory Memorandum which accompanies the Regulations the Welsh Government says that they 'do not impose costs on the public, private or voluntary sector. For this reason, a Regulatory Impact Assessment is not deemed necessary.'

This does not reflect the evidence we heard from professional bodies. They are concerned about the potential cost implications for their practices of translating printed information and signage. They are also concerned about the potential costs of back filling staff when they are released to attend Welsh language awareness training.

We heard that providers want assurances that it is the responsibility of local health boards to meet the costs of translation and interpretation and, crucially, the cost of back filling staff attending training courses as a result of these new duties.

This lack of clarity about meeting the costs of these new duties means that healthcare providers are may not be able to plan effectively.

**Recommendation 7.** The Welsh Government should immediately clarify the local health boards' responsibilities for meeting independent primary care providers' costs incurred as a result of complying with the Regulations.

## 5. Monitoring and enforcement

**52.** Previous Regulations placed Welsh Language standards on Community Health Councils, Local Health Boards and NHS Trusts in Wales. They were made in 2017 and 2018 under the Welsh Language (Wales) Measure 2011 and were subject to the Assembly's affirmative procedure. The present Regulations which place six Welsh language duties on independent primary care providers, are made under the National Health Service (Wales) Act 2006 and are therefore subject to the negative procedure. They have therefore come into force automatically without being debated by the National Assembly as a matter of course.

**53.** Welsh language standards imposed on bodies via regulations made under the Welsh Language (Wales) Measure 2011 are enforced by the Welsh Language Commissioner.

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**54.** However, the Welsh language duties are placed on primary care providers through the terms of their agreements with local health boards, and so the relevant local health board will be responsible for ensuring the primary care provider complies with these duties through these contractual arrangements.

**55.** If a primary care provider fails to adhere to the duties they will be in breach of their contract with the local health board. In the first instance the parties must work together to try and resolve the dispute, and the local health board would be expected to support the primary care provider. If a resolution cannot be found between the local health board and the primary care provider, any party can refer the dispute to the Welsh Ministers.

**56.** If local health boards don't take action in relation to a failure by the primary care provider to comply with the duties, the Welsh Ministers can make an intervention order in respect of the local health board<sup>1</sup>. The duties arising from these regulations apply to contracts entered into before and after 30 May 2019.

**57.** The Committee discussed how primary care providers will be monitored to ensure they are complying with the Regulations.

**58.** The BMA was asked about which body should be responsible for monitoring and Dr Ian Harris replied:

I'm not sure we're too worried about who does it, we're more worried about how it's done. I think we need to be mindful of the fact, as it's a journey, that we need be relatively light touch and supportive on this and encouraging people... So, I think that the key for us is that this needs to be a process where people are encouraged to deliver better services in Welsh.

**59.** Both Community Pharmacy Wales and Optometry Wales considered that the monitoring role is best placed with the Local Health Board. When asked if the Welsh Language Commissioner should have a role, Steve Simmonds from CPW said:

I think we'd have concerns over that simply because we have a Government-appointed regulator, the General Pharmaceutical Council, which visits our pharmacies to inspect as to whether or not we're meeting and complying with their standards. We also then have the

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<sup>1</sup> Section 26 of the National Health Service (Wales) Act 2006

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health board visiting to ensure that we comply with all of the contractual elements. To introduce a third visitor in the pharmacy would be disruptive and it's probably unnecessary, because we do have regular visits from health boards, who go through a large tick-box exercise to check whether or not we comply with all the requirements of the current community pharmacy contractual framework anyway. So, to me it would be sensible and simple to just make them the monitoring agents.

**60.** Cymdeithas yr Iaith advocated for the Welsh Language Commissioner to have a formal role in the complaints process and to monitor the delivery of services. In its written submission to the Committee, it said:

we believe that the agreement requires an official role for the Commissioner to monitor and enforce the language conditions within it, such as via a clause that outlines a formal role in the complaints process. Otherwise, we have concerns regarding how the Welsh Government will monitor the improvement of Welsh-language provision under the new contract, the nature of the procedure involved, and the nature of the variables to be assessed.

**61.** Dyfan Siôn from the Welsh Language Commissioner's Office was asked about the legislative options for placing Welsh language standards on independent primary care providers. He told the Committee the most practical solution was the Welsh Government's preferred option 'to ensure that duties could be placed on these bodies through the health service contract'.

**62.** He was asked how the Welsh Language Commissioner will ensure providers are meeting their duties. He explained:

So, we have regulatory powers over the health boards and any services they provide directly. In terms of these duties in the contract, then the health boards would be responsible for monitoring that the contract is implemented.

**63.** He explained that local health boards have a duty:

- to provide translation support and training to the primary care providers;
- to have a policy regarding primary care provision and
- to consider the Welsh language when making decisions on primary care services.

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**64.** The Commissioner oversees the compliance of the local health boards and as such ‘through those different mechanisms, it’s still possible to have an overview of the situation’. He added that ‘We will have to work with the Government and the health boards, to ensure that there is information regarding this regime and to ensure that we all know whether it’s successful or not.’

#### Our view

The Committee is concerned that the only means by which these duties will be enforced is via the contractual arrangements between local health boards and primary care providers.

We understand that this arrangement was chosen to reduce the administrative burden of imposing Welsh language standards on a large number of small independent primary care providers. However, this results in a situation where the delivery of these duties is less open to scrutiny and where Welsh-speaking individuals are less able to complain about the quality of the service received.

The Committee is concerned that there may not be sufficient national oversight of the implementation of these duties. We urge the Welsh Government to fund the Welsh Language Commissioner to carry out a review of the implementation of the Regulations after they have been in force for 12 months. The Welsh Language Commissioner and the Minister for Health and Social Services should report on that review to the Culture, Welsh Language and Communications Committee.

**Recommendation 8.** The Welsh Government should fund the Welsh Language Commissioner to carry out a review of the implementation of the Regulations after they have been in force for 12 months. The Minister for Health and Social Services and the Welsh Language Commissioner should submit a report on the review to the Culture, Welsh Language and Communications Committee.

### Scrutiny process

**65.** The Committee discussed the Regulations with these people at their meeting on 6 June 2019:

Dr Phil White	British Medical Association Cymru Wales
Dr Ian Harris	British Medical Association Cymru Wales

Dr Caroline Seddon	British Dental Association Wales
Roger Pratley	British Dental Association Wales
Steve Simmonds	Community Pharmacy Wales
Rhodri Thomas	Community Pharmacy Wales
Siân Walker	Optometry Wales
Heledd Gwyndaf	Cymdeithas yr Iaith Gymraeg
Colin Nosworthy	Cymdeithas yr Iaith Gymraeg
Dyfan Siôn	Office of the Welsh Language Commissioner

**66.** The written submissions provided for, and the transcript of, the meeting are published on our website:

<http://senedd.assembly.wales/ieListDocuments.aspx?CId=445&MId=5532&Ver=4>

Annex 1	<p>The National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019  <a href="http://www.assembly.wales/laid%20documents/sub-ld12515/sub-ld12515-e.pdf">http://www.assembly.wales/laid%20documents/sub-ld12515/sub-ld12515-e.pdf</a></p> <p>Explanatory Memorandum to The Making and Laying of The National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019  <a href="http://www.assembly.wales/laid%20documents/sub-ld12515-em/sub-ld12515-em-e.pdf">http://www.assembly.wales/laid%20documents/sub-ld12515-em/sub-ld12515-em-e.pdf</a></p>
Annex 2	<p>Correspondence with the Minister for Health and Social Services regarding The National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019  <a href="http://senedd.assembly.wales/documents/s88608/Paper%208.2.pdf">http://senedd.assembly.wales/documents/s88608/Paper%208.2.pdf</a></p>
Annex 3	<p>Correspondence from the Chair to the Minister for Health and Social Services regarding The National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019  <a href="http://senedd.assembly.wales/documents/s88245/Paper%203.1.pdf">http://senedd.assembly.wales/documents/s88245/Paper%203.1.pdf</a></p>

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Annex 4	Correspondence from the Chair of the Constitutional and Legislative Affairs Committee to the Minister for Health and Social Services <a href="http://senedd.assembly.wales/documents/s88588/Paper%208.4.pdf">http://senedd.assembly.wales/documents/s88588/Paper%208.4.pdf</a>
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