

EXPLANATORY MEMORANDUM TO

**The Welsh Language Standards (No 7) Regulations 2018**

This Explanatory Memorandum has been prepared by the Welsh Language Division 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 Standards (No 7) Regulations 2018.

Eluned Morgan AM  
Minister for Welsh Language and Lifelong Learning  
26 February 2018

## **Description**

The Welsh Language Standards (No. 7) Regulations ('the Regulations') specify service delivery standards; policy making standards; operational standards; and record keeping standards.

The Regulations also make the standards specifically applicable to the following organisations and categories of organisations, enabling the Welsh Language Commissioner ('the Commissioner') to issue Compliance Notices to those organisations in relation to the standards specified:

The Board of Community Health Councils in Wales  
Community Health Councils  
Local Health Boards  
National Health Service Trusts in Wales

Velindre NHS Trust includes NHS Wales Informatics Service, the NHS Wales' Shared Service Partnership and the Welsh Blood Service. The Welsh Ambulance Service NHS Trust includes the NHS Direct Wales and 111 Wales 24 hour telephone service.

The Regulations also make an amendment to The Welsh Language Standards (No. 4) Regulations 2016 by adding Social Care Wales to Schedule 6 to the Regulations.

## **Matters of special interest to the Constitutional and Legislative Affairs Committee**

### *Numbers in the Regulations*

The Regulations use the Welsh alphabet i.e. (a), (b), (c), (ch) etc. This affects only one group of Standards – Standards relating to meetings a body and more than one invited person (standards 22 – 22CH). It also affects;

- (1) regulation 1(4)
- (2) a small number of sub paragraphs within individual Standards (see Standards 81, 82, 85, 97, 106, 107A, 117).
- (3) paragraphs 28, 38, 39, 41, 43, 46, 56 of Schedule 1, paragraph 3 of Schedule 2, paragraphs 12 and 14 of Schedule 3

This style is different to the usual numbering style adopted in subordinate legislation made by the Welsh Ministers. Usually, the Welsh and English version adopt the English alphabet. In this case, because of the nature and the subject matter of the Regulations, the Welsh alphabet had been used. The Welsh style numbering has been used in the English and Welsh versions to ensure consistency and to remove any possibility of confusion when cross-referring. The same style was adopted within The Welsh Language Standards (No. 1) Regulations 2015 (SI 2015/996) and subsequent Regulations making Welsh language standards.

### Name of the Regulations

The title of the Regulations laid is The Welsh Language Standards (No. 7) Regulations 2018. If passed by the Assembly, these will be the sixth<sup>1</sup> Welsh Language Standards Regulations to be made. It has been decided that the title of these Regulations will refer to (No. 7) as they follow on from the Welsh Language Standards (No. 6) Regulations 2017 made in January 2017. It is intended that all the Regulations made under section 26 of the Welsh Language (Wales) Measure 2011 ('the Measure') will be made in a series, in the same way as commencement orders. It is felt that this approach will make the Regulations easier to deal with and to refer to, particularly when Compliance Notices refer to Regulations.

### Bodies in Regulation 3 of and Schedule 6 to the Regulations

Schedule 6 to the Regulations lists the bodies that the Commissioner is authorised to give a compliance notice to in respect of the standards specified. Section 43 of the Measure provides that regulations may not make standards specifically applicable to a person unless the standard is potentially applicable to them. The bodies listed are either specified in column 1 of the table in Schedule 6 to the Measure or are within a category of persons specified in that column, and column 2 of their entry sets out which standards are potentially applicable to them (section 36 of the Measure).

### **Legislative background**

The Regulations are made in exercise of the powers conferred on the Welsh Ministers under sections 26, 27, 39 and 150(5) of the Welsh Language (Wales) Measure 2011. Section 26 of the Measure enables the Welsh Ministers to specify standards by regulations. Section 27 enables the Welsh Ministers to specify different standards in relation to different conduct. It also enables them, in relation to a particular conduct, to specify one standard or a number of standards.

Before the Commissioner can give a person a compliance notice requiring them to comply with a standard, that standard has to be specifically applicable to the person (section 25). Section 39 provides that a standard is specifically applicable to a person once the Welsh Ministers have authorised the Commissioner to give that person a Compliance Notice in respect of that standard. Section 105(5) provides that any power of the Welsh Ministers to make regulations includes a power to make such transitional, transitory, consequential, saving incidental and other provision as the Welsh Ministers think necessary or appropriate.

The Regulations, pursuant to section 150(2) of the Measure must be laid before and approved by resolution of the National Assembly for Wales (i.e. the affirmative procedure).

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<sup>1</sup>Welsh Language Standards (No 3) Regulations were rejected by the National Assembly for Wales.

The First Minister committed at the start of the fifth Assembly to amend the Measure. This commitment is included in the Welsh Government's 5 year plan, *Taking Wales Forward 2016-21*. The Minister for Lifelong Learning and Welsh Language reiterated this commitment in July 2016 adding that the process of making and enforcing standards would be looked into, with the aim of making them less bureaucratic and time-consuming.

A call for evidence exercise followed and in August 2017, the Minister published a White Paper consultation outlining proposals for a new Welsh Language Bill. The White Paper presented the Welsh Governments' preferred option to reform the current standards system, which includes a) removing or amending standards which do not contribute directly to improving services, b) are costly to implement but produce little public benefit, c) give bodies more opportunity to exercise reasonable judgement without undermining the principle of enforceable standards or, d) publishing guidance to help bodies comply with the standards.

### **Purpose and intended effect of the legislation**

The Measure confirmed the official status of the Welsh language in Wales and created a new legislative framework for the language.

A key step in giving effect to the Measure is specifying standards and authorising the Commissioner to require persons to comply with those standards.

Section 25 of the Measure provides that a person is required to comply with a standard specified by the Welsh Ministers where certain conditions are met. Those conditions include:

- i. That a standard is specifically applicable to the person (i.e. the Welsh Ministers have authorised the Commissioner to give that person a Compliance Notice in respect of that standard),
- ii. That the Commissioner has given a Compliance Notice to the person,
- iii. The Compliance Notice requires the person to comply with the standard, and
- iv. The Compliance Notice is in force.

### **Building on Welsh Language Schemes and *More than just words...***

The duty to comply with standards will take the place of the Welsh Language Schemes that were developed under the Welsh Language Act 1993 and monitored by the Welsh Language Board until its abolition on 31 March 2012, and the Commissioner since 1 April 2012. Each of the health boards, trusts, community health councils and The Board of Community Health Councils in Wales that are subject to the standards specified in the (No 7) Regulations have held Welsh Language Schemes for many years and are familiar with adhering to the Welsh language commitments made within them.

In addition to Welsh Language Schemes, the health boards and trusts are also well versed with the principles set out in *More than just words...* the Welsh Government's strategic framework for Welsh language services in Health, Social Services and Social Care 2016 - 2019. It introduced the principle of the active offer which simply means offering a service in Welsh without someone having to request it. This principle is embedded in the draft standards. However, it is recognised that there is more to do to consistently implement the active offer advocated in *More than just words...*

Whilst the standards will replace Welsh Language Schemes, *More than just words ...* will continue to provide the wider policy infrastructure within which the standards sit and will remain an important policy document for the sector as they move towards the implementation of standards.

### **Links with Integrated Medium Term Plans ('IMTP')**

Under the arrangements set out in the NHS Wales Planning Framework and the NHS Finance (Wales) Act 2014 health boards and NHS trusts are under a duty to prepare IMTPs. The plan should set out the actions organisations will take in pursuit of their long-term strategies, through measurable, clearly defined and resourced actions which address key areas of population health need, improve health outcomes and the quality of care, and ensure best value. The health boards and trusts are required to demonstrate within their IMTP 'that services are planned and delivered in line with the strategic framework for health and social care in Wales 'More than just word...;' and the Welsh Government's response to the Welsh Language Commissioner's Primary Care Inquiry Report'.

The NHS Planning Framework 2018/21 that provides guidance on what should be included in the IMTP recognises that the organisations will be required to comply with Welsh language standards in the future. This indicates an expectation that there will be shared aims between the IMTP and the standards. The draft standards in these Regulations are much more specific than the guidance on what should be included in the IMTP (which can be amended) and their implementation will be regulated by the Commissioner which will provide a stronger platform on which to build Welsh language services.

### **Welsh language Standards Regulations**

The Regulations have two purposes. The first is to specify standards.

Standards falling into the following categories of standards are specified in the Regulations:

- **Service-delivery standards** will be imposed in relation to the delivery of services in order to promote or facilitate the use of the Welsh language, or to ensure that it is treated no less favourably than English.
- **Policy-making standards** will require organisations to consider what effect their policy decisions will have on the ability of persons to use the

language and on the principle of treating Welsh no less favourably than English.

- **Operational standards** deal with the internal use of Welsh by organisations.
- **Record-keeping standards** will make it necessary to keep records about some of the other standards, and about any complaints received by an organisation. These records will assist the Commissioner in regulating the organisation's compliance with standards.

The standards have been drafted with the aim of:

- Improving the services Welsh-speakers can expect to receive from organisations in Welsh
- Increasing the use people make of Welsh-language services
- Making it clear to organisations what they need to do in terms of the Welsh language
- Ensuring that there is an appropriate degree of consistency in terms of the duties placed on organisations in the same sectors.

Some standards are dependent on each other. The Regulations therefore contain tables (in Part 2 of Schedules 1, 2 and 3) to accompany the service-delivery standards, policy making standards and operational standards, detailing which other standards will also need to be imposed when a particular standard is included in a Compliance Notice.

The second purpose of the Regulations is to authorise the Commissioner to give Compliance Notices to the organisations listed above requiring them to comply with the standards specified.

The Regulations, when they come into force, will not have a direct effect on organisations and they will not, by themselves, create rights for Welsh language users. That will only happen when all the conditions in section 25 have been met. However, the Regulations are a crucial step in the Measure's framework, and enable the Commissioner to require organisations to comply with the standards.

It will be for the Commissioner to choose which standards to impose on each organisation by way of a Compliance Notice. The Regulations set the range of standards which could be imposed on an organisation. There is no requirement on the Commissioner to require every organisation to comply with every standard. The organisation may have to comply with the standard only in some circumstances and not in others – depending on what is stated in their Compliance Notice. The Compliance Notice will also set the date by which the organisation is required to comply with a standard.

#### *Means of appeal*

Any organisation will be able to challenge the requirements to comply with a particular standard on the grounds of whether it is reasonable and proportionate to require them to do so.

In the first place, an organisation will be able to present a challenge to the Commissioner. If they wish to challenge the Commissioner's decision, there is a route of appeal available to the Welsh Language Tribunal, and thereafter to the High Court.

### *Sanctions*

The Commissioner will be responsible for enforcing compliance with these standards. In cases where the Commissioner determines that an organisation has failed to comply with a standard, the Commissioner may take enforcement action. Enforcement action under the Measure can vary from the making of recommendations or giving advice to an organisation, to the imposition of a civil penalty not exceeding £5,000.

### **Risks if Regulations are not made**

If the proposed Regulations are not made, the following risks will be realised:

- Welsh Language Schemes introduced under the Welsh Language Act 1993 will remain in place for all the organisations listed above.
- If Welsh Language Schemes remain there will be no enforcement mechanism if an organisation breaches their Scheme.
- Currently, Welsh Language Schemes vary from organisation to organisation, and the commitments in some Schemes are not specific. This leads to a situation where the public are unsure about which services they can expect to receive in Welsh. This uncertainty will continue if the Regulations are not made. Although there may still be some variation between organisations, the standards are specific in their nature and will therefore reduce the public's uncertainty.
- Uncertainty on the part of organisations concerning their Welsh language provisions, due to the fact that they have been under the impression that their Schemes will be replaced by standards. Many organisations have started to prepare for the onset of standards and the new monitoring and enforcement regime.
- No improvement as far as organisations' internal use of Welsh is concerned. An organisation's internal use of Welsh would continue to depend on the goodwill of that organisation, with no monitoring system in place.
- A key component of the Measure will not be implemented.

More detailed information about the risks and benefits of implementing the standards can be found in the Regulatory Impact Assessment (RIA) below, with the risks of not introducing standards highlighted in the 'Option 1: do nothing' section of the benefits.

### **Policy changes between different sets of Regulations**

The approach taken by the Welsh Government has been that Regulations specifying standards are prepared so that they are suitable for a specific group of organisations or a sector. The policy approach taken in each set of

Regulations influences and results in different standards being prepared for different sectors.

These Regulations also contain a number of exceptions to standards, some of which are specific and some of which are general. The standards and the exceptions reflect that some of the bodies subject to these Regulations operate 24 hours a day, 365 days a year offering a range of services from routine treatments to accident and emergency treatment to end-of-life care. We consider that without these exemptions it would be unreasonable or disproportionate for the body to comply with the standards.

## **Consultation**

The Commissioner conducted a standards investigation with the 18 organisations required to comply with the standards specified in these Regulations between November 2014 and February 2015. The Welsh Ministers fully considered the conclusions the Commissioner presented in the Standards reports. These reports can be found on the Commissioner's website.

Included in the Commissioner's Standards Investigation report recommendations for health sector organisations was a call for clarity on whether primary care services would be caught by standards. As primary care providers were not included in the Commissioner's investigation, Welsh Ministers undertook a scoping exercise in order to fully explore this issue.

The Commissioner used a draft version of the Welsh Language Standards (No 1) Regulations 2015 as the basis for her Standards Investigation into health sector organisations. Due to the fact that the draft (No.7) Regulations have been prepared specifically for health sector bodies, the Welsh Ministers held a full public consultation on the draft Regulations between July and October 2016. The consultation included a call for organisations to submit revised data to allow the Welsh Ministers to prepare a Regulatory Impact Assessment (RIA).

Further details of the costs and benefits are included in the RIA in part 2, below.

During the consultation, whilst some welcomed the level of detail offered by the standards, it was clear that there was a perception that the Regulations were complex and difficult to understand because of the number of standards included. Some organisations felt that this would make it difficult for their staff to understand what was expected of them in relation to providing Welsh language services.

Responses varied between those that felt the Regulations did not go far enough in securing and safeguarding the rights of Welsh speakers, in particular in relation to primary care. Others found it difficult to justify the likely cost investment required to comply with the standards. Costs associated with



recruitment, Welsh language training and translation were cited, amongst others.

Putting aside dividing opinions to particular aspects of the draft health Regulations, the general consensus was that delivering a Welsh language service within the health sector would have a positive impact on patients and staff. Health boards and trusts acknowledged the importance of being able to provide services in Welsh to their patients and equally so, members of the public cited the importance of being able to receive health care in the language of their choice.

The main concerns raised in the consultation responses related to the proposal to provide Welsh language support during a clinical consultation and the lack of standards on primary care providers. The draft standards have been amended in response to the comments received, as detailed below.

#### *Clinical consultations*

We propose to replace the requirement to provide Welsh language support during clinical consultations with standards that will;

- Build on the good practice examples developed by a number of health boards to identify the language choice of inpatients so that the body can look to meet the patient's language needs. The aim of the standard would be to ensure a patient's language choice is made visually apparent to staff, increasing opportunities between patients and (Welsh speaking) staff to interact in Welsh and for the active offer to be implemented.
- Require health boards and trusts to produce and publish an improvement plan with milestones setting out how they will work towards implementing the active offer during clinical consultations; that is providing services in Welsh without someone having to ask for it.

The organisations will be required to assess the extent to which they have complied with their plan.

These new standards together with standards that place a duty on the organisations to record the language choice of individuals in relation to correspondence; telephone calls and also the workforce planning duties will increase the organisations' understanding of the demand for Welsh language services and improve their capacity to offer services in Welsh.

#### *Primary Care*

In general there was support for standards 83– 97 in the consultation version of the Regulations, that place duties on health boards in relation to primary care and which also required them to provide some Welsh language services (signs, documents etc.) to primary care providers; GPs, dentists, pharmacists and opticians who provide primary care services on behalf of a local health board. However many felt they did not go far enough. In order to provide a continuous Welsh language service between primary and secondary care their view was that primary care providers should be subject to more service

delivery standards similar to those proposed for health boards and trusts. This was based on the fact that the majority of people's first point of contact with the NHS in Wales is with providers of primary care.

Following consideration of the comments received the draft Regulations have been amended so that primary care services delivered directly by health boards will be subject to the same standards as the other services provided by the health board, subject to the Compliance Notice issued by the Commissioner. This means that some of the draft standards in the consultation version of the Regulations have been deleted as it is no longer necessary to draft specific standards for documents, websites, apps and social media in relation to primary care because the other service delivery standards will apply.

Some specific standards for primary care have been retained: in these Regulations they are standards 65 – 68.

We do not consider it reasonable to place duties on local health boards that would make them responsible for any failure to comply with standards by one of its independent primary care providers. This is because they do not have any direct influence over the way individual providers deliver services. (Regulation 1(9)).

It is therefore proposed that a small number of Welsh language duties on independent primary care providers will be prescribed through the primary care contracts or terms of service agreed between the primary care provider and their local health boards. This will create contractual obligations between the local health board and the independent provider enforceable by the local health board.

This approach recognises that these providers have not previously had Welsh language schemes or operated under any Welsh language duties although there is good practice in some areas. It will embed awareness and improve Welsh language services in a consistent way within the independent sector.

### *Simplification*

Following an announcement by the previous Minister for Lifelong Learning and Welsh Language in July 2016, the standards have been reviewed to identify opportunities to simplify and reduce the bureaucratic burden on the bodies. The most substantial changes have been made to Schedule 4 (Record Keeping Standards) and Schedule 5 (Standards which deal with supplementary matters).

In Schedule 4 the only the standards that have been retained are those that require the body to keep a record of complaints they receive relating to their compliance with standards, the Welsh language skills of their staff and the Welsh language skills required for new and vacant posts. These have been retained because of the importance of workforce planning to the delivery of

the standards and the number of complaints is a valuable indicator of the public's perception of the quality of Welsh language service provided by a body.

Standards within Schedule 5 have been amalgamated to eliminate the repetition of similar standards for each of the previous schedules.

Another example of the changes made is the revisions made to the standards relating to producing and publishing documents. The standards relating to specific types of documents have been deleted. The standard which requires the body to base their decision whether to produce the document in Welsh on an assessment of the subject matter and the anticipated audience has been retained. If the result of the assessment is that the subject matter or the anticipated audience suggests that the document should be produced in Welsh the body will be expected to publish a Welsh version.

On a number of occasions service delivery standards and operational standards have been amalgamated. For instance service delivery standards relating to meetings have been amalgamated into one standard which gives the body the ability to decide whether the meeting will be in Welsh, or if not, which method of translation to use. A number of operational standards placing a duty on a body to provide different types of documents and policies to staff in Welsh have been amalgamated. These changes have not changed the requirements on the bodies.

#### *Social Care Wales*

The Regulations also make an amendment to The Welsh Language Standards (No. 4) Regulations 2016 by adding Social Care Wales to Schedule 6 to the Regulations.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Background**

1. The organisations named in Schedule 6 to these Regulations were included in the Welsh Language Commissioner's ('the Commissioner') second standards investigation, along with a further 98 organisations from sectors including education, police and rescue services. The Commissioner's investigation was conducted between 7 November 2014 and 9 February 2015 and was based on the draft Regulations prepared for Welsh Ministers, Local Authorities and National Park Authorities.
2. The organisations were asked to take part in a Welsh Government Regulatory Impact Assessment (RIA), which was distributed with the Commissioner's Standards Investigation documentation. Organisations were asked to submit their RIA responses directly to the Welsh Government. Some organisations were reluctant to base their RIA responses on draft Regulations due to their potential to change and due to the fact that they had not been prepared specifically for health sector organisations. Even so, 12 of the 18 organisations named in Schedule 6 of these Regulations submitted an RIA response.
3. In May and early June 2015, the Commissioner presented her official Standards Investigation response to the Welsh Government in the form of 9 standards reports issued under section 64 of the Welsh Language (Wales) Measure 2011 ('the Measure'). Welsh Ministers must have due regard (i) to the Commissioner's Standards Reports in deciding whether and how to exercise the powers in Part 4 of the Measure (which includes the power to specify standards), and (ii) to any advice issued by the Commissioner in writing.
4. Whilst Regulations for the majority of organisations included in the Commissioner's second Standards Investigation were made during 2016 and early 2017<sup>2</sup>, a decision was made to conduct a full public consultation on draft Regulations for the health sector organisations. This also resulted in a renewed request for those organisations that would be subject to these Regulations to provide a revised RIA. Of the 18 health organisations, 12 submitted a revised RIA.
5. The following analysis of the costs and benefits associated with the standards are based on data provided by those 12 organisations.

### **Summary of Responses**

6. 12 of the 18 organisations (61%) that will be subject to the Welsh Language Standards (No 7) Regulations 2018 provided information on the cost of their current Welsh Language Scheme and an estimate of the cost of complying with the Welsh Language Standards. These organisations were:

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<sup>2</sup> Welsh Language Standards (No.2) Regulations 2016; Welsh Language Standards (No.4) Regulations 2016; Welsh Language Standards (No.5) Regulations 2016; Welsh Language Standards (No. 6 Regulations) 2017

- Aneurin Bevan University Health Board
- Betsi Cadwaladr University Health Board
- Hywel Dda University Health Board
- Cwm Taf University Health Board
- Cardiff and Vale University Health Board
- Abertawe Bro Morgannwg University Health Board
- Velindre NHS Trust (which includes NHS Wales Shared Services Partnership and NHS Informatics Service)
- Powys Teaching Health Board
- Betsi Cadwaladr Community Health Council
- Board of Community Health Councils in Wales
- Welsh Ambulance Services NHS Trust
- Public Health Wales NHS Trust.

### **Accuracy and Usefulness of Data**

7. We have concerns around the data received from organisations and whether it is suitable to produce a robust and accurate RIA
8. To enable an assessment to be made of the additional cost incurred in complying with the Welsh Language Standards, an organisation would have to provide a figure for the cost of delivering their current Welsh Language Scheme and an estimate of what it would cost them to comply with Standards. All but one of the submitted RIA's provided useable data in relation to the costs of delivering their current Welsh Language Scheme. Providing estimations for compliance with Welsh language standards proved more challenging. Several RIAs noted that they expected increases in translation costs and/or ICT costs but failed to quantify costs.
9. Where estimated costs have been provided, many organisations stressed the difficulties of providing accurate data when they did not know which of the draft standards they would be expected to comply with. Some organisations have as a result, provided estimated costs for complying with every single standard.
10. The Commissioner is yet to impose every standard on any single organisation, and the likelihood of this ever occurring is small. None of the 107 organisations currently complying with Welsh language standards have been presented with compliance notices from the Commissioner requiring compliance with the whole set of standards.
11. Organisations have also misunderstood the requirements in the RIA or interpreted the questions in different ways. When asked to include additional cost estimations of complying with Welsh language standards (not, therefore, including the current expenditure for delivering Welsh language services), some organisations incorrectly included as an additional cost, staff currently employed to deliver services in line with their current Welsh language scheme. In addition, there were examples of the same staffing costs being included under each separate category of standards. This has inflated the

estimates provided by some organisations. Where such examples have been found, the organisations have been given the opportunity to review their RIA for quality assurance purposes. This has resulted in a reduction in staff cost estimations for complying with Welsh language standards by approximately £500,000 overall.

12. A number of organisations have provided estimates for compliance that are many times higher than other, similar organisations.
13. Where cost estimations have been provided solely against standards that have now been removed from the draft Regulations they have been deducted from the overall estimated costs provided by that organisation in their RIA. This has been done with the organisations' approval. For example, amendments have been made to the standards relating to awarding contracts. One organisation included cost estimations for translating all tender invitations into Welsh at an annual cost of £200,000. The Regulations have been amended, requiring tender invitations and packs to be published in Welsh only if the subject matter of the contract suggests that it should be produced in Welsh. This amendment could significantly reduce these translation costs.
14. With these issues in mind, this RIA focuses on the economic, social and linguistic impacts on organisations as well as covering the financial impact as far as possible. If the Regulations are passed by the Assembly, further information will be collected from organisations when the Commissioner issues Compliance Notices and organisations are in a position to provide more accurate costs. A full financial impact assessment will then be possible.

## **Options**

15. This Regulatory Impact Assessment considers two options:
  - Option 1: Do nothing – Organisations would continue to operate their existing Welsh Language Schemes under the Welsh Language Act 1993.
  - Option 2: Introduce Welsh Language Standards for the categories of organisations and organisations listed in the Regulations.
16. The following analysis considers the costs and benefits associated with each of these options in turn.

## **Costs and benefits**

### **Costs**

#### **Option 1: Do Nothing**

17. There are no additional costs under this option. The organisations would not be required to comply with new Welsh Language Standards but they would be expected to continue to deliver their existing Welsh Language Schemes.

18. Table 1 summarises the information received from the organisations about the cost of complying with the existing Welsh Language Schemes. The range in costs is likely to reflect differences in the size and scope of the organisations involved, which range from Community Health Councils to large Local Health Boards, as well as probable differences in the interpretation of the questions in the questionnaire.

Table 1 - Range of costs for delivering existing Welsh Language Schemes

	<b>Responses</b>	<b>Minimum (£)</b>	<b>Maximum (£)</b>
Staff with role in delivering Welsh language Standards	11	15,000	131,086
Training (staff)	11	0	33,841
Translation (internal and outsourced)	11	0	210,000
<b>Overall costs to deliver WLS</b>	<b>11</b>	<b>43,000</b>	<b>281,242</b>

**Option 2: Introduce Welsh Language Standards for the organisations listed in the Regulations.**

19. While it has not yet been decided which of the standards will apply to each organisation, it is considered likely that there will be additional one-off and recurrent costs incurred by the organisations to comply with the standards.
20. The main recurring cost is expected to be staffing, in particular staff with expertise in the fields of translation, HR, and ICT. This could be attributed in part to the introduction of operational standards, which focuses on the internal use of Welsh within the organisation. Similar commitments had not previously formed part of Welsh Language Schemes therefore initial costs to comply with these new standards are to be expected. Organisations are likely to need to expand translation facilities, either by recruiting more internal translators<sup>3</sup> or more commonly by outsourcing translation work to external providers.
21. In addition, updating ICT software is seen by some as a considerable investment requirement.
22. As noted above, the organisations involved were contacted and asked to provide cost data to inform this RIA. Our concerns about the data collected are outlined above.
23. To demonstrate the variation in responses, the minimum and maximum identified additional costs for these organisations are set out in the table below. While the maximum cost estimate is an outlier (it is approximately

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<sup>3</sup> Recruitment costs for additional translators were included by several respondents in the category for translation as opposed to the category for staffing.

£500,000 higher than the next highest additional cost estimate), there were other organisations that identified a significant increase in compliance costs.

24. Table 2 - Range of additional costs identified by organisations (£)

	<b>Responses</b>	<b>Minimum (£)</b>	<b>Maximum (£)</b>
Staff with role in delivering Welsh language Standards	11	31,383	470,530
Training (staff)	11	0	135,069
Translation (internal and outsourced)	11	4,872	774,000
ICT		0	1,000,000
<b>Additional costs to deliver Standards</b>	<b>11</b>	<b>32,259</b>	<b>2,070,041</b>

25. As indicated, there are differences in the way that the organisations involved have interpreted the RIA questions and approached the task. The disparity between the estimated staff costs for delivering Welsh language standards can be attributed partially to the organisations' size and remit. As expected, estimations provided by the larger health boards lean towards the maximum cost estimation for the anticipated staff needed to comply with Welsh language standards.

26. Had Welsh Language Schemes been fully implemented as intended, the need for further investment to deliver Welsh language services would be reduced. The aim of Welsh language standards is to build on commitments already made in Welsh Language Schemes. Apart from operational standards the majority of standards should not be entirely unfamiliar to the organisations named in these draft Regulations. With this in mind, some of the information provided in relation to the additional cost estimations in complying with Welsh language standards relative to Welsh Language Schemes is considered unreliable.

27. Estimated additional costs for complying with service delivery standards were on the whole, amongst the highest of the four categories of standards (service delivery; policy making; operational; record keeping). For example, three organisations cited an estimated additional cost in excess of £1million to comply with this category of standards alone. This is despite the service delivery standards being the category of standards that most closely resemble commitments made in Welsh Language Schemes. We would have expected the greatest cost estimations to have come from the operational standards as the category of standard which marks the most significant difference between the standards system and Welsh Language Schemes. What this does



highlight however, is the challenge faced by organisations named in these Regulations to provide a consistent service in Welsh.

28. All 11 organisations which provided information foresaw the need for additional investment in translation services in order to comply with standards. Of the 11 submitted RIAs, 4 organisations provided estimations to extend their translation facilities that were in excess of £200,000, with the highest estimate being £774,000 (although this is something of an outlier). It is worth noting however that these upper cost estimations are likely to have been based on having the full set of standards imposed on them as opposed to a selection of standards.
29. The requirement to comply with standards is likely to incur one-off and recurrent training costs. The one-off training costs are expected to relate to internal administration and training regarding the implementation of standards, with the recurring training costs focusing to a greater degree on the possible need for more statutory staff training through the medium of Welsh and training for staff to improve their Welsh language skills.
30. Many respondents cited costs of several hundred thousand, and more than £1 million in one case, in order to comply with the requirements outlined in standards relating to websites; on-line services and the intranet. Costs refer to the need to adapt or purchase new systems, software and equipment as well as the need to recruit specialist staff. It is worth noting however that whilst the organisations already provide and maintain a bilingual website to varying degrees, they have not been required in the past to extend this service to their intranets. There is no doubt that complying with these standards could be challenging. Health boards and trusts operate and are bound by different ICT systems and organisational structures, even within the same organisation. These duties under the operational standards may incur additional costs.
31. Due to the above concerns, the data is considered incomplete and potentially inconsistent. Organisations have interpreted the RIA questions differently making the process of judging the accuracy of the identified costs more challenging.
32. Following discussions with Government Economists and Statisticians, it has been agreed that the data collected is not sufficiently robust for use in a Regulatory Impact Assessment. Given the ranges in the submitted data and the current uncertainty around which of the Standards will apply to each group, even taking an average of costs is considered unlikely to be an accurate reflection of the cost of complying with the Welsh language standards. The figures presented in Table 2 should therefore only be considered as indicative of the upper and lower points in the potential range of additional costs faced by the organisations.
33. A further round of data gathering was considered when preparing RIA's for previous Regulations but it was decided that the outcome would likely be similar and that it would not be possible to collect the data needed to produce a robust assessment of the cost implications until there is further information

available on which standards will apply to each organisation. The same applies to the health sector organisations. It would only be possible for a body to accurately estimate the cost implications of standards after they have received a compliance notice from the Commissioner informing them of which standards they have to comply with.

34. In addition to the compliance costs incurred by the organisations, there are also likely to be costs incurred by the Welsh Language Commissioner and the Welsh Language Tribunal for monitoring and enforcing compliance with the standards. An appeals process has been established whereby, if an organisation believes that the standards imposed on it are unreasonable and disproportionate, the organisation can appeal to the Commissioner in the first instance, and thereafter to the Welsh Language Tribunal. During 2016-17 the Tribunal received 9 applications from organisations wishing to appeal against decisions made by the Welsh Language Commissioner in her compliance notice to them. The cost of a hearing at a Tribunal is between £2,500 and £3,000. In 2016-17 of the 9 applications received by the Tribunal only 1 proceeded to a decision which was made by the panel without a formal hearing.
35. In addition to the above costs, organisations and the Commissioner would need to allocate resources if they are involved in a case which has been referred to the Tribunal. If an organisation made an appeal to the Tribunal it would have to allocate resources into that process. This is likely to be staff resources working in the organisation's standards compliance field, as well as legal expertise.

## **Benefits**

### **Option 1: Do Nothing**

36. This is the baseline option and there are no additional benefits associated with this option.
37. Doing nothing would maintain the status quo of the Welsh Language Schemes which have been in place since 1993. The regulatory role of the Commissioner would continue along similar lines to that of the Welsh Language Board as would the resource-intensive procedures involved in agreeing and amending schemes, and the current, limited, enforcement system.

### **Option 2: Introduce Welsh Language Standards for the 18 organisations listed above**

38. The purpose of the standards is to improve the level of service which members of the public can expect to receive. At this stage (and until the Welsh Language Commissioner issues the compliance notices), it is only possible to outline the expected benefits in general terms.

39. The standards will make clear what organisations need to do in terms of the Welsh language, so that people will know what to expect with regard to Welsh language services. This clarity, both for the public and the organisations, will help ensure that the standards can be effectively enforced and lead to an increase in the use of Welsh language services.
40. The health boards, trusts, community health councils and Board of Community Health Councils in Wales already operate Welsh Language Schemes and already do many of the things set out in the standards. The standards build on the Schemes and place more rigorous requirements on organisations. However, the Commissioner can only set standards that are reasonable and proportionate for each individual organisation.
41. Organisations will now be required to take a more proactive and strategic approach to mainstreaming the Welsh language. Key to this will be the 'active offer,' which places the onus on the organisation to offer services in Welsh, rather than on the individual to request them. This principle was introduced in the health sector by *More than just words...* and provides a solid foundation to improve services for Welsh speakers.
42. An improved enforcement regime will provide a more effective means of dealing with alleged non-compliance with standards and allow for early and informal resolution of complaints as appropriate.
43. As part of the RIA process, organisations were asked to comment on any economic, environmental, social or linguistic advantages of introducing standards.

### **Social Care Wales**

44. The Regulations also make an amendment to The Welsh Language Standards (No. 4) Regulations 2016 by adding Social Care Wales to Schedule 6 to the Regulations.
45. Social Care Wales did not submit a Regulatory Impact Assessment.

### *Economic benefits*

46. One observation made in reference to the economic benefits was that by developing the Welsh language skills of the workforce, it could be possible to reduce the dependency of external translation costs. Another organisation commented on the increased opportunities that would be available to businesses and SMEs in Wales in relation to bid tenders. Furthermore, as large employers, some saw the development of a bilingual workforce as an opportunity to enable local people to stay in their communities and contribute economically.

### *Environmental benefits*

47. Several respondents noted the benefits – for patients and staff – of being in a visibly bilingual environment. Another organisation felt that providing patients with information in both languages would enhance the patient experience, improve physical flows and management of patient areas.

#### *Social and linguistic benefits*

48. As would be expected, the majority of organisations said that Welsh language standards could lead to linguistic and social benefits. One organisation commented that patients being able to communicate in the language of their choice could lead to positive outcomes in relation to recovery and wellbeing.

49. Many felt that the standards could help improve the confidence of bilingual staff. One organisation in particular noted that developing the Welsh language skills of the workforce would increase the quality of communication between healthcare professional and service user, potentially improving the health outcomes of the service user and reducing health inequalities. Another organisation referred to their Welsh speaking staff as an 'invaluable, untapped resource' and that increasing the confidence of Welsh speaking staff to use the language during their working hours would be of benefit to the organisation.

50. Several more noted that the introduction of standards would demonstrate best practice in the sense that patients would be able to receive health care in their language of choice and/or need.

#### **Conclusion**

51. The current uncertainty surrounding which of the standards each organisation will need to comply with means that it is not possible to produce a robust assessment of the costs and benefits associated with the Regulations at this stage.

52. The Welsh Language Commissioner will consult with the relevant organisations before issuing final compliance notices. At that stage factors such as reasonability and proportionality of individual standards are likely to be discussed as well as which standards organisations will be expected to comply with and in which circumstances. As part of this process, organisations could present an assessment of the relative costs and benefits associated with the standards. This could be considered by the Commissioner as part of the process of coming to a decision on whether the standards are reasonable and proportionate. This assessment will be completed before the final compliance notices are issued.

#### **Competition assessment**

53. A competition assessment has been undertaken – the Regulations are unlikely to have a significant detrimental effect on competition.

## **Post-implementation review**

54. The Measure provides many opportunities for the Commissioner to bring the suitability of the standards specified in the Regulations to the Welsh Ministers' attention. For example:

- The Commissioner may make recommendations or provide advice to the Welsh Ministers (section 4 of the Measure) which could directly recommend amending the Regulations if she sees fit to do so. Advice given by her could also lead to the Welsh Ministers determining that it would be appropriate to review the standards. The Welsh Ministers must have due regard to any written recommendations or advice that the Commissioner makes or gives when exercising the function to which the recommendation or advice relates.
- Section 18 of the Measure requires the Commissioner to produce an annual report which must include a review of issues relevant to the Welsh language (among other matters) and could also include any other matters the Commissioner think it is appropriate to include.
- The Commissioner also has the power to undertake Standards Investigations (sections 61 and 62 of the Measure) which can consider which standards should be, or should continue to be, specifically applicable to a person, whether or not the standards are already specified by the Welsh Ministers. After a Standards Investigation the Commissioner must produce a Standards Report, a copy of which must be provided to the Welsh Ministers. The Welsh Ministers must have due regard to such report in accordance with section 66 of the Measure.

55. Subject to their Compliance Notices, organisations will publish Annual Reports which deal with how they have complied with the standards imposed on them (see standards 120). These Annual Reports could also raise issues regarding the suitability of the standards specified.