

## **EXPLANATORY MEMORANDUM TO**

### **Welsh Language Standards (No. 1) Regulations 2015**

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

#### **First 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. 1) Regulations 2015. I am satisfied that the benefits justify the likely costs.

Carwyn Jones AM  
First Minister of Wales

24 February 2015

## **1. Description**

1.1. The Welsh Language Standards (No. 1) Regulations 2015 ('the Standards') specify service delivery standards; policy making standards; operational standards; promotion standards; and record keeping standards.

1.2. The Regulations also make the standards specifically applicable to Welsh Ministers, County and County Borough Councils, and National Park Authorities, enabling the Welsh Language Commissioner ('the Commissioner') to issue Compliance Notices to those organisations in relation to the standards specified.

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

### ***2.1. 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 27A-D. It also affects;

- (1) a small number of sub paragraphs within individual standards (see standards 94, 115, 128, 136, 137A, 154, 170).
- (2) paragraph 29 and 42 of Schedule 1, paragraph 2 of Schedule 2, paragraph 12 of Schedule 3 and
- (3) regulation 2(6).

This style is different to the usual numbering style adopted in subordinate legislation made by the Welsh Ministers. Usually, the Welsh and English versions adopt the English alphabet. In this case, because of the nature and the subject matter of the Regulations, the Welsh alphabet has 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.

### ***2.2. Name of the Regulations***

The title of the draft Regulations consulted upon was the Welsh Language Standards (Welsh Ministers, County and County Borough Councils, and National Park Authorities) Regulations 2015. The title of the Regulations laid is the Welsh Language Standards (No. 1) Regulations 2015.

It is unusual for '(No. 1)' to appear in the title of the first in a series, because it is not usually known that there will be further Regulations in the series. In this instance, further Regulations will be made in order to specify Standards for other persons listed in Schedule 6 of the Welsh Language (Wales) Measure 2011 ('the Measure').

We therefore propose that all regulations made under section 26 of the Measure will be one continuous 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.

### 2.3. Local Government Reorganisation

Schedule 6 of the Measure sets out which bodies are liable to comply with Standards. It does not name individual County Borough Councils and County Councils. Therefore the proposed reorganisation of Local Government has no impact on the Commissioner's ability to issue Compliance Notices on existing Councils.

The position will be revisited should Councils be reorganised in the future.

## **3. 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 Measure. 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 150(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).

## **4. Purpose & 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 (ie. the Welsh Ministers have authorised the Commissioner to give that person a Compliance notice in respect of that Standard),
- ii. that the Welsh Language 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.

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 Welsh Language Commissioner since 1 April 2012.

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.
- **Promotion standards** will require organisations to adopt a strategy setting out how it proposes to promote and facilitate the use of Welsh.
- **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 bodies in the same sectors.

Some standards are dependent on each other. The Regulations therefore contain tables (in Part 2 of Schedules 1, 3 and 4) to accompany the Service delivery standards, Operational standards and the Promotion 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 Welsh Ministers, county and county borough councils and National Park authorities in Wales requiring them to comply with the standards specified. The Regulations do not authorise the Commissioner to give the Welsh Ministers a Compliance notice requiring them to comply with Promotion Standards. This is because section 78 of the Government of Wales Act 2006 already places a duty on Welsh Ministers to prepare a strategy in relation to the Welsh language.

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 or in some areas 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 requirement 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 Welsh Language Commissioner. If they are unable to resolve the dispute, there is a route of appeal available to the newly set up Welsh Language Tribunal, and thereafter to the High Court.

#### *Sanctions*

The Welsh Language Commissioner will be responsible for enforcing compliance with 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.

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

If the proposed Regulations are not made, the following issues will arise:

- Welsh Language Schemes introduced under the Welsh Language Act 1993 will continue in place for Welsh Ministers, Local Authorities and National Park Authorities in Wales
- 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 unspecific. 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. 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 organisation's 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 RIA below, with the risks of not introducing standards highlighted in the "Option 1: do nothing" section of the benefits.

## **6. Consultation**

The Commissioner conducted a standards investigation with the 26 organisations who can be required to comply with the standards specified in the Regulations between January and April 2014. Welsh Ministers fully considered the recommendations the Commissioner presented in the Standards reports and in a separate advice note. Those reports can be found on the Commissioner's website.

Welsh Ministers conducted a consultation on the draft Regulations during November 2014. Comments were invited from organisations subject to the first set of Standards and members of the public with an interest in the standards. The consultation was published on the Welsh Government website and publicised through the Welsh Government's social media feeds. Policy officials met with organisations subject to the first set of standards and lobby groups during the consultation period. A discussion was also held with young people to collect their views. Matters raised during that consultation were given full consideration as the final Regulations were drafted. A "Summary of Responses Report" has been published in relation to this consultation and is available at <http://wales.gov.uk/consultations/welshlanguage/welsh-language-standards-regulations/?status=closed&lang=en>

More details regarding consultation are included in the RIA below.

## **7. Competition Assessment**

Businesses, charities and /or the voluntary sector will not be required to comply with the Standards specified in the Regulations. However, business, charities and/or the voluntary sector may (depending on an organisation's Compliance notice) have the benefit of some of the standards, depending on their involvement with the organisation –see for example the standards relating to grants (standards 71-75).

## **8. Post Implementation Review**

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 thinks it is appropriate to include.
- The Commissioner also has the power to undertake Standards Investigations (section 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.

Subject to their Compliance notices, organisations will publish Annual Reports each year which deals with how they have complied with the standards imposed on them (see standards 158, 164 and 170). These Annual Reports could also raise issues regarding the suitability of the standards specified.

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

### **Background**

1. The Welsh Government published proposed standards on 6 January 2014, based upon which a Welsh Government Regulatory Impact Assessment (RIA) was undertaken with the 26 organisations subject to the first round of standards. The RIA questionnaire was distributed with the Welsh Language Commissioner's ("the Commissioner") Standards Investigation documentation. The Commissioner's investigation was conducted between 27 January 2014 and 18 April 2014, and organisations were requested to submit their RIA responses directly to the Welsh Government.
2. 19 of the 26 organisations responded to the RIA questionnaire. While this is a non-response rate of over 26 percent, the responding organisations include the Welsh Government, all the National Parks and 15 Local Authorities, covering a range of urban, rural, and Welsh Language characteristics. The responding organisations provided detailed information about the costs and benefits of implementing the standards within their organisation. Several Welsh language lobby and interest groups and 409 members of the public also presented their responses to the Commissioner's Standards Investigation to the Welsh Government.
3. In June 2014 the Commissioner presented her official Standards Investigation response to the Welsh Government in the form of three standards reports and an advice note for Welsh Ministers issued under section 4 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. The Commissioner's advice note advised Welsh Ministers that during her Standards Investigation many people and organisations wanted to have their say on matters which went beyond the scope of her investigation. That being so, she suggested that Welsh Ministers hold a consultation to ask people what they thought about the draft regulations to make the standards.

#### **Amendments: from draft standards to draft regulations.**

5. Converting the proposed standards published by the Welsh Government on 6 January 2014 into standards to be specified in regulations resulted in amendments. The number of standards also increased, due to some additional standards being drafted, and due to some standards being

converted into multiple standards. The duty to give due regard to the Commissioner's reports and advice also resulted in some amendments. The changes included introducing the principle of the proactive offer, the need to keep a record of language preference and meetings in relation to well being.

6. **Proactive offer** - the proposed standards published in January 2014 required organisations to provide Welsh language services when it was indicated that a Welsh service was required. In the standards specified in the regulations, however, the onus has been placed on the organisations to ask whether an activity (be it a phone call, correspondence or meeting, for instance) is required through the medium of Welsh. This approach is based on theories which suggest that users may need to be nudged to use services in Welsh where they have previously used them in English. It is widely accepted in the language planning discipline that the use of services in a minority language is greater if the service is offered as opposed to the user having to request it. The principle of the proactive offer also applies to an organisation's members of staff through the operational standards.
7. On a practical level, the requirement to make a proactive offer means that an organisation will be required to keep a record of language preferences in relation to phone conversations and correspondence so that, after the initial contact, members of the public continue to receive those services in Welsh without having to ask, or be asked, each time.
8. **Personal meetings involving an individual's wellbeing** – some standards (for example 25, 26, 26A, 26B) require an organisation to conduct meetings through the medium of Welsh (or to provide a translation service) when that meeting relates to an individual's wellbeing. Where it is not practical to conduct a meeting through the medium of Welsh, the organisation will be required to facilitate the use of Welsh through simultaneous translation, giving the individual more flexibility to use Welsh in a variety of circumstances.

### **Amendments as a result of Welsh Government consultation on draft regulations**

9. The four week consultation on the draft regulations, conducted between 5 November and 7 December 2014, ensured that interested parties had had an opportunity to have a say on these new elements.
10. A total of 188 written responses to the consultation were received. These included 17 organisations subject to the first set of standards, 12 other organisations, 9 lobby/interest groups, and 150 individuals (136 of which were based on a template prepared by Cymdeithas yr Iaith Gymraeg). Urdd

Gobaith Cymru also arranged for board members of the Syr IfanC group to discuss the draft regulations - the meeting was attended by young people aged from 14 to 20 from all over Wales.

11. Respondents to the consultation were asked to consider 8 specific questions. They were also given an opportunity to comment on related issues which may not have been specifically addressed in the consultation document.

12. As a result of the feedback received during the consultation exercise, several amendments were made to the regulations. These include introducing new standards relating to self-service machines (standard 60) and social media (standards 58 and 59).

13. Further amendments include:

- amending the phrase “personal interests and well-being” in standards 25, 26, 26A, 26B, 27, 27 A-D, 28, 29, 29A and 29B in relation to personal meetings – deleting the term “*personal interests*” so that they now only refer to meetings relating to an individual’s well-being.
- amending standards 35 and 36 in relation to public events – the draft regulations only placed duties where an event was organised or funded in its entirety by an organisation; this has been amended to place duties where the organisation funds at least 50% of an event.
- in relation to the provision of services by a third party, a new regulation has been drafted (regulation 1(5)), which makes it clear that the standards apply if an organisation has made arrangements with another party to provide services on its behalf. This additional text has been drafted with the intention that it covers both contracts and partnership arrangements.
- in relation to recruitment, we have added a second part to standard 136, which now places a duty on organisations to assess the need for Welsh language skills when assessing the requirements for a new or vacant post and categorise it as a post where one or more of the following applies:
  - Welsh language skills are essential
  - Welsh language skills needs to be learnt
  - Welsh language skills are desirable
  - No Welsh language skills requiredThe amendment clarifies that any post can be denoted as one where Welsh language skills are essential or desirable, if that is the outcome of the assessment.
- We have deleted 4 of the draft record keeping standards (draft standards 150, 152, 153 and 154). These were standards that placed duties on organisations to keep a record of:

- Number of calls to a main telephone number, helpline or call centre number where the caller requested a service in Welsh
- Number of persons who responded to an offer to say that they wished to receive a call in Welsh
- Number of persons who responded to an offer to say that they wished to receive correspondence in Welsh
- Number of persons who responded to an offer to say that they wished to speak Welsh in a meeting.

## **Conclusion**

14. Despite the amendments noted above, the general policy intent of the standards has remained unchanged. The RIA exercise conducted between January and April 2014 has therefore been maintained as a basis, with updates made in light of new information received in response to the recent consultation on the draft regulations, conducted between 7 November 2014 and 5 December 2014.
15. We believe that responses to the RIA questionnaire completed by organisations during the first Standards Investigation in 2014 remains fit for purpose and continues to reflect the individual organisations' position with regard to standards. This is borne out by the fact that only one of the 26 organisations (Wrexham) provided further estimated costs during the consultation on the regulations.
16. The 26 organisations subject to these Regulations were also given early sight of a draft version of this RIA in January 2015. This presented them with an opportunity to review the figures and report any factual errors. One organisation (Neath Port Talbot) provided additional figures during this exercise.

## **Summary of responses**

17. Responses to the RIA questionnaire were received from the Welsh Government (on behalf of the Welsh Ministers), all three National Park Authorities (Brecon Beacons, Pembrokeshire Coast, and Snowdonia), and 15 of the 22 Local Authorities (Monmouthshire, Wrexham, Blaenau Gwent, Caerphilly, Neath Port Talbot, Swansea, Torfaen, Gwynedd, Ceredigion, Merthyr, Pembrokeshire, Cardiff, Carmarthen, Conwy and Flintshire). The Local Authorities who responded include city councils, urban and rural areas; Local Authorities where the Welsh language is prominent as well as those where it is less prominent; and are spread geographically around the country.
18. The responses reflect a general support for the introduction of standards. Over half of respondents (12 out of 19 respondents) noted that they would be beneficial to the development of the Welsh language, with social and

linguistic benefits in particular being highlighted. 8 out of 19 respondents organisations also felt the standards would bring additional economic and environmental benefits to the areas in question.

## **Options**

19. This Regulatory Impact Assessment considers two options:

- **Option 1:** Do Nothing – Continue with the existing Welsh Language Schemes as operated under the Welsh Language Act 1993.
- **Option 2:** Introduce Welsh Language Standards for Welsh Ministers, Local Authorities and National Park Authorities (26 organisations in total).

20. The following analysis considers the costs and benefits associated with each of these options in turn.

## **Costs**

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

21. There are no additional costs associated with this option, however the following provides an estimate of the costs that are currently incurred.

22. In the past, the costs in relation to complying with the requirements under the 1993 Act was not routinely measured, and Welsh language service provision has increasingly been seen as an integral part of mainstream service-provision in Wales. As such, providing any accurate estimate of the costs associated with complying with duties has been a difficult task.

23. The questionnaire circulated to the 26 organisations in January 2014 asked them to provide an estimate of the current annual costs relating to their Welsh Language Schemes, as well as any additional cost that may be incurred to implement and deliver the new system of standards.

24. The current cost of implementing Welsh Language Schemes included employing those with a specific role in their implementation, translation costs (in-house as well as outsourced translation work), and training costs (Welsh language courses as well as courses to raise awareness of the Welsh Language Scheme).

25. The current annual costs ranged from £33,000 (Monmouthshire Local Authority) to £3,211,122 (the Welsh Government). On the basis of the 19

responses received, the total cost to the 26 organisations of delivering their current Welsh Language Schemes is approximately £7,462,347 per annum:

- Welsh Government - £3,211,122
- National Park Authorities - £248,860
- Local Authorities – £4,002,365 (based on the average of the 15 responding Local Authorities).

## **Option 2: Specify Welsh Language Standards for the Welsh Ministers, Local Authorities and National Park Authorities**

26. The Measure prescribes that the Welsh Language Commissioner determines which standards each organisation will be under a duty to comply with. Those duties must be reasonable and proportionate, and will be imposed by a Compliance Notice issued by the Commissioner to the organisation. As a result, the Welsh Government is not in a position to provide a definitive answer to the final cost implications at this stage, since it is unknown at this point which standards the Commissioner will impose on each organisation. However, the RIA questionnaire exercise provided an indication of any additional costs that may be incurred by the organisations in question.
27. The Welsh Government, all three National Park Authorities, and 15 Local Authorities responded to the RIA questionnaire issued on 27 January 2014. One Local Authority (Wrexham) submitted further estimated costs as part of the consultation on the draft regulations between 7 November and 5 December 2014, and another (Neath Port Talbot) provided additional figures when the organisations in question were given early sight of this RIA in January 2015.
28. The estimated additional cost of implementing the standards can be categorised into two groups - recurring costs and one-off costs.
29. The additional **one-off costs** quoted by some organisations included resources to improve ICT systems, for instance the Corporate Record Management systems associated with the record-keeping standards and, to a lesser degree, the operational standards. These costs would include the initial set-up outlay, and user management and training costs.
30. Due to the changes made to the draft regulations when compared with the standards published in January 2014 (referred to above in paras 6-11), some possible additional cost is foreseen in connection with standards 2, 3 and 21, which require organisations to keep a record of individuals' language preferences in response to the proactive offer and in connection with service-

delivery standards. However, this depends on how far their current arrangements go to fulfil the requirements of those standards.

31. The main **recurring costs** included staffing, in particular staff with expertise in the fields of translation, marketing and policy. Most responses also foresaw the need to expand translation facilities, either by recruiting more internal translators or more commonly by outsourcing translation work to external providers. This was foreseen in relation to the requirements in the service-delivery standards (e.g. simultaneous translation and web improvements) and the operational standards (e.g. developing intranet provision and HR requirements).
32. Training costs appeared as one-off as well as recurring costs. The one-off training costs involved internal administration and ICT, with the recurring training costs focusing to a greater degree on the possible need to provide more statutory staff training through the medium of Welsh, training for staff to improve their Welsh language skills, and training regarding the implementation of standards. In the main, these costs arise from the need to comply with operational standards and service-delivery standards.
33. It is fair to say that the responses in relation to the estimated cost of the proposed standards varied, although it is crucial to note that many responses were based upon the organisation being required to comply with all of the standards, thus giving the highest possible cost that could be estimated.
34. It will be for the Commissioner to determine what standards each organisation must comply with on the basis of what is reasonable and proportionate, but it is unlikely that any one organisation will be under a duty to comply with every single standard. If an organisation believes that the standards imposed on it are unreasonable and disproportionate, there will be means to appeal to the Commissioner in the first instance, and thereafter to the newly established Welsh Language Tribunal.
35. All 26 organisations included in the first tranche of standards already have Welsh Language Schemes in place, which operate under the 1993 Welsh Language Act. Those schemes are monitored by the Commissioner. The organisations should, therefore, already be providing a range of Welsh language services to the public. It could be argued that the introduction of standards (especially the service-delivery standards) should not lead to significant new financial burdens on those organisations affected.
36. Two of the 19 responding organisations (Gwynedd and Carmarthenshire Local Authorities) felt that the duties specified in the standards as a whole could be absorbed within their current budgets, while 17 of the 19 responding organisations recognised a potential for additional costs.

37. The 17 organisations which recognised a potential for additional costs specified which category of standards (whether service-delivery, policy-making, operational, promotion, or record-keeping) could be achievable or unachievable within their current budgets. The service delivery, operational and promotion standards featured prominently as the most likely to involve more thought, planning and, inevitably, cost.
38. Responses to the consultation on the draft regulations (7 November – 5 December 2014) provided more information on the organisations' capability to achieve the standards, with the comments reflecting a similar pattern to those in response to the earlier RIA questionnaire (although given the additional detail of the draft regulations, some chose to respond to individual standards rather than the wider categories).
39. With regards to implementing standards, it would be feasible for organisations to consider ways of working collaboratively with other organisations which provide a similar service in order to achieve economies of scale. There are existing examples where this has successfully been achieved, such as Local Authorities sharing translation resources.

## **Responses to categories of standards**

### **Service-delivery standards**

40. Organisations supplied costs ranging from £0 to £636,000 to implement the service-delivery standards, with the Welsh Government and 8 of the 15 Local Authorities who responded anticipating no or minimal cost implications. Further details regarding how organisations have allocated these costs can be found under the summary of data provided in the appendix.
41. Some of the additional costs noted for the service delivery standards suggest that the Commissioner's discretion to vary the standards imposed on different organisations had been misunderstood, and that organisations, due to not knowing which standards would be made applicable to them, estimated on the premise that the whole range of standards would be imposed on them. It is highly unlikely that any one organisation will be required to comply with all 87 service-delivery standards and, therefore, a fair assumption can be made that some estimated costs are considerably higher than will be the case in actual fact.
42. We would expect organisations to absorb the majority of the requirements specified in the service-delivery standards as they relate closely to the requirements already found in current Welsh Language Schemes. It is also

worth noting that the Welsh Language Commissioner, when issuing her compliance notices to individual organisations, will need to consider the reasonability and proportionality of imposing each standard, and also the date by which the organisation has to comply with the standard (imposition date).

	<b>Range</b>	<b>Average</b>	<b>Total</b>
<b>Welsh Government</b>	n/a	n/a	£0
<b>National Park Authorities</b>	£1,800 <sup>1</sup> – 163,000	£82,400	£247,200
<b>Local Authorities</b>	£0 - 636,000	£161,462*	£3,552,154**
		<b>TOTAL</b>	<b>£3,799,354</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

### **Policy-making standards**

43. Based upon the RIA responses, over half (11/19) of organisations felt that the policy-making standards would have little or no effect on the current budgets allocated to the Welsh language. Four Local Authorities noted that implementing these standards could have monetary implications, however no estimated costs were provided. Ceredigion, Pembrokeshire and Conwy Local Authorities noted costs of £22,500, £44,000 and £10,000 respectively.

	<b>Range</b>	<b>Average</b>	<b>Total</b>
<b>Welsh Government</b>	n/a	n/a	£0
<b>National Park Authorities</b>	£0 – 0	£0	£0
<b>Local Authorities</b>	£0 – 44,000	£6,955*	£153,000**
		<b>TOTAL</b>	<b>£153,000</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

### **Operational and Promotion standards**

44. The costs foreseen in relation to the operational and promotion standards were greater, although quantifying these costs has been difficult for the organisations in question. Organisations' predicted expenditure in these categories of standards is not unexpected, as their Welsh Language

<sup>1</sup> Of the three National Parks Authorities, two provided figures and one stated there would be costs but they did not know how much.

Schemes have not in the past focused on the internal use of Welsh or their role in promoting the language externally.

### Promotion Standards Additional Costs

	Range	Average	Total
<b>Welsh Government</b>	n/a	n/a	£20,000
<b>National Park Authorities</b>	£0 – 19,000	£8,107	£24,320
<b>Local Authorities</b>	£0 – 45,000	£22,500*	£495,000**
		<b>TOTAL</b>	<b>£539,320</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

### Operational Standards Additional Costs

	Range	Average	Total
<b>Welsh Government</b>	n/a	n/a	n/a
<b>National Park Authorities</b>	£0 – 15,000	£7,500	£22,500
<b>Local Authorities</b>	£0 – 258,000	£40,188*	£884,125**
		<b>TOTAL</b>	<b>£906,625</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

### Record-keeping standards

45. As with the operational and promotional standards, organisations have found it difficult to quantify the financial impact the record keeping standards may have. Eleven of the 19 organisations responding foresee some costs with some referring to the need to update their ICT or allocate additional staff to improve their current database in order to comply with these standards.

	Range	Average	Total
<b>Welsh Government</b>	n/a	n/a	£0
<b>National Park Authorities</b>	£5,620 – 12,000	£8,810	£26,430
<b>Local Authorities</b>	£0 -40,000***	£5,000*	£110,000**
		<b>TOTAL</b>	<b>£136,430</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

\*\*\*7 of the 15 responding Local Authorities responded that there would be no additional costs associated with record keeping, 7 of the remaining 8 Local Authorities thought there would be additional costs but could not quantify them. Only Conwy provided a quantifiable cost.

### Total estimated additional cost for implementing standards

	Range	Average	Total
<b>Welsh Government</b>	n/a	n/a	£20,000
<b>National Park Authorities</b>	£12,740 - £178,000	£106,817	£320,450
<b>Local Authorities</b>	£0 - £758,000	£236,104*	£5,194,279 **
		<b>TOTAL</b>	<b>£5,534,729</b>

\*based on the 15 Local Authorities who responded to the RIA questionnaire

\*\* projected aggregate for all 22 Local Authorities

46. It is important to emphasise that the above figures are estimates only, and that a more accurate evaluation of each organisation's costs will only be possible when the Commissioner has issued her compliance notices. In the Standards Reports presented to Welsh Ministers by the Commissioner, she noted that she would consult with organisations before issuing a compliance notice. Factors such as the reasonability and proportionality of individual standards may be discussed at this stage, as well as whether the organisation should be required to comply with the standards in all, or some circumstances, or in all, or in some areas.
47. The Commissioner may also issue codes of practice for the purpose of providing practical guidance with respect to the requirements of any standards.
48. The way an organisation plans to provide bilingual services can have an impact on costs. For example, it can be more costly if the Welsh element of service provision is bolted on to the English provision rather than being factored into each project or activity from the outset. It is important to note here that the cost of using the English language to provide a service is not something that is routinely measured – it could be argued that the same principle should apply to the Welsh language.
49. Proposed changes under the Reforming Local Government Programme have the potential to change the way that Welsh language services are delivered. The latest White Paper - 'Power to Local People' - sets out the Welsh Government's vision for the future of Local Government. It responds to the Williams Commission findings that there are unacceptable variations in local performance among Local Authorities in Wales, and that radical change is needed in the way in which Local Authorities conduct their business, make decisions, and are held to account.
50. In the context of the Welsh language, it is envisaged that reformed Local Authorities should have greater capacity and capability to ensure a coherent approach to promoting and sustaining the language, both in the workplace

and the provision of public services. The proposals aim to significantly strengthen corporate governance and accountability in Local Authorities, for example, by strengthening the role of the Audit Committee and Scrutiny Committees, and placing a requirement on the chief executive to prepare a corporate plan. As corporate plans will deal with both service delivery and operational matters, they will be an appropriate place to demonstrate compliance with the new Welsh Language Standards. This will give Local Authorities the means to take forward building Welsh language into their everyday business and to implement their strategies to promote the Welsh language.

51. This has the potential to aid the revised Local Authorities to comply with the standards imposed on them. For instance, it is intended to require all Local Authorities to establish a streamlined online complaints process. This could facilitate the processing and tracking of complaints, provide an auditable trail and enable a Local Authority to build up a comprehensive picture of its performance in relation to service-delivery and internal operations, as well as the views of the public. This could aid compliance with record-keeping standards.
52. The White Paper includes a number of proposals for deepening engagement between Local Authorities and the communities they serve, for example, by establishing a new system of community governance which is intended to give individuals and communities greater influence over how services are delivered in their area, giving individuals and community groups a greater role in scrutiny, and enabling individuals and communities to have their views on any open agenda items of the Executive, Council or its committees, taken into account.
53. In addition, the White Paper proposes to establish a number of 'community rights' which will give community bodies a role in improving service delivery, the ability to initiate asset transfer from the Local Authority, and a right of first refusal to buy (private) assets of community value.
54. As a whole, these proposals have significant potential to improve Local Authority performance in relation to the Welsh Language Standards and to improve the prosperity and resilience of Welsh language communities.

## **Benefits**

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

55. This is the baseline option and as such there are no additional benefits associated with this option.
56. Doing nothing would leave untouched the current 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, while the resource-intensive procedures involved in agreeing and amending schemes would also continue, as would the current, limited, enforcement regime.

57. In many areas, arrangements for delivering services to the public in Wales have changed since the Welsh Language Act 1993 ('the 1993 Act'), under which the Welsh Language Schemes operated. However, the framework set out by the 1993 Act does not enable these changes to be taken into account in a consistent way. For example, changes to the structure of certain, key public services and new ways of delivering services mean that the public face of some key services fall outside the scope of Welsh Language Schemes. This creates the potential for uncertainty about the services that Welsh speaking customers can expect to receive.
58. In terms of enforcement, the 1993 Act only provided for a single formal mechanism for investigating alleged breaches of schemes and did not provide for any graduated alternatives. A single mechanism may not be appropriate in all cases, and may not achieve the right results for all in each case. In addition, the Commissioner at present lacks the power to require persons to provide it with evidence and information that will assist it with its investigations.
59. *The National Survey for Wales, 2013-14: Welsh language use survey*<sup>2</sup>, published on 29 January 2015, contains some useful indicators as to the present use of Welsh by the public and employees, especially in relation to fields covered by the service-delivery and operational standards.
60. In the context of receiving services, when dealing with public organisations in Wales the survey showed that 51 per cent of Welsh speakers tried to use the Welsh language when dealing with public organisations, and 37 per cent tried to use Welsh to complete official forms.
61. Of those who had a job description at work, 15 per cent had Welsh language skills specified as essential and 27 per cent specified as desirable. For 57 per cent of those with job descriptions, Welsh language skills were not noted.
62. Of those who worked in the public sector, 60 per cent who had a job description had one that specified Welsh language skills as either essential or desirable (compared with 18 per cent in the private sector).
63. We are of the view that the situation, as detailed by the *National Survey*, is unlikely to improve if Option 1 were adopted.

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<sup>2</sup> <http://wales.gov.uk/docs/statistics/2015/150129-welsh-language-use-survey-en.pdf>

## **Option 2: Specify Welsh Language Standards for the Welsh Ministers, Local Authorities and National Park Authorities**

64. The standards' purpose is to improve the level of service which members of the public can expect to receive. This will establish enforceable rights for Welsh speakers.
65. The standards will make it clear what organisations need to do in terms of the Welsh language, so that people can also be clear about what to expect with regard to Welsh language services. This clarity, for public and organisations alike, will help ensure the standards can be effectively enforced and lead to an increase in the use people make of Welsh language services.
66. For the organisations themselves this is not a leap in the dark. All of the organisations subject to the first set of standards – Local Authorities, the National Parks, and Welsh Ministers – already operate Welsh Language Schemes and have committed to doing many of the things set out in the standards.
67. The standards build on the Schemes and place more rigorous requirements on organisations. Nevertheless it will be a requirement that the standards imposed on organisations will be reasonable and proportionate, so that no one can be asked to do something that is unreasonable or disproportionate to their circumstances.
68. On a practical level, the standards will simplify the resource-intensive procedures involved in agreeing and amending Welsh language schemes. Commitments outlined in Welsh Language Schemes are at times unspecific and can be open to interpretation both by the organisations themselves and by members of the public. Where organisations saw commitments as being unspecific, the level of implementation varied from organisation to organisation. Duties imposed by standards will be specific and enforceable.
69. Organisations who will have to comply with standards will now be required to take a more proactive, strategic approach to mainstreaming the Welsh language. Key to this will be the “proactive offer”, which places the onus on the organisation to offer services in Welsh, rather than expect people to have to request them. This will provide a solid foundation to improve services for Welsh speakers.
70. The introduction of standards will also impose duties on local authorities and National Park authorities in Wales with regard to promoting the use of Welsh more widely.

71. An improved enforcement regime will provide a more effective means of dealing with alleged non-compliance and allow for early and informal resolution of complaints as appropriate.

72. We are of the view that if the regulations are made to specify Standards for the Welsh Ministers, Local Authorities and National Park Authorities, the situation described by the *National Survey* in paragraphs 59 to 62 may improve. Users should be clearer about their rights to access services and the strengthening of the monitoring should encourage organisations to think holistically about the range of Welsh language services they offer, both internally and externally.

### **Summary of the preferred option**

73. Based on the analysis undertaken on both options, it is considered that option 2 should be adopted, i.e. making regulations to specify Welsh Language Standards for Welsh Ministers, National Parks Authorities and Local Authorities.

## Summary of data provided in RIA

### Regulatory Impact Assessment - Welsh Language Standards: Results

#### Benefits to Welsh Language

- > Total of 19 Responses - WG, all 3 National parks and 15 Local Authorities
- > All\* but 1 (Pembrokeshire) feel that the WL Standards will benefit the Welsh language (\*13 responses to benefits question) - see table 1
- > Most feel the Standards will bring social and linguistic benefits to the area
- > Some organisations feel the Standards will bring economic and environmental benefits to the area as well as social/ linguistic benefits (Welsh Government, Wrexham, Blaenau Gwent, Gwynedd, Carmarthen, Flint, Conwy)

#### Cost Implications

- > Over half (11/19) of organisations felt that policy making standards would have **little or no effect on current budgets** allocated to the Welsh language
- > Areas of most concern (with regard to the additional cost required to successfully implement the standards) were the **promotion standards** and the **operational standards**. These are new elements not previously included in Welsh Language Schemes.
- > It has been difficult for organisations to gauge what the costs associated with these Standards, including **record keeping** standards could be.
- > Organisations have found it difficult to establish costs without knowing exactly which Standards would be imposed on them.
- > Additional costs include: Staffing (with expertise in translation / marketing / policy) / ICT improvements (due to record keeping and operational standards) / external translation costs / internal staff training costs (resulting from operational standards)
- > Additional costs range from £0 to £758,000 (see table 2)

**Table 1**

Corff / Body	Will Standards have local benefits?				Will Standards have cost implications ?				
	Economic	Social	Environ'tal	Linguistic	Service D	Policy	Record k'ing	Prom'tion	Operat'nal
Welsh Gov	Y	Y	Y	Y	N	N	N	Y	N
Breacon Beacons NP	no answer	/	/	/	Y	N	Y	N	Y
Snowdonia NP	no answer	Y	Y	Y	Y	N	Y	Y	N
Penbr.Coast NP	no answer	Y	/	Y	Y	Y	Y	Y	Y
Monmouthshire	no answer	/	/	/	N	N	N	Y	Y
Wrexham	Y	Y	Y	Y	Y	N	Y	Y	Y
Blaenau Gwent	Y	Y	Y	Y	N	N	N	Y	Y
Caerphilly	no answer	/	/	/	N	N	N	Y	Y
Neath Port Talbot	no answer	Y	Y	/	Y	Y	Y	Y	Y
Swansea	Y	Y	/	Y	Y	N	Y	Y	Y
Torfaen	Y	Y	/	Y	Y	Y	Y	Y	Y
Gwynedd	Y	Y	Y	Y	N	N	N	N	N
Ceredigion	Y	/	Y	Y	N	Y	Y	Y	Y
Merthyr	no answer	/	/	/	Y	Y	Y	Y	Y
Pembrokeshire	N	N	N	N	Y	Y	Y	Y	Y
Cardiff	no answer	/	/	/	N	N	N	Y	Y
Carmarthen	Y	Y	Y	Y	N	N	N	N	N
Flint	Y	Y	Y	Y	Y	Y	N	Y	Y
Conwy	Y	Y	Y	Y	N	Y	Y	Y	N

**Table 2**

Costs	Current costs to implement WLS				Additional costs following Standards				
	Compliance	Training*	Tr'slation**	Mk'ting / o	Service D	Policy	Record K'pi	Prom'tion	Operat'nal
Welsh Gov	£320,314	£190,300	£2,637,908	£62,600	£0	£0	£0	£20,000	£0
Breacon Beacons N	£4,000	£18,000	£19,000	£4,000	£163,000	£0	Y-£?	£0	£15,000
Snowdonia NP	£4,420	£800	£93,640	£0	£1,800	£0	£5,620	£5,320	£0
Penbr.Coast NP	£50,000	£0	£30,000	£25,000	Y-£?	Y-£?	£12,000	£19,000 +	Y-£?
Monmouthshire	£18,000	£0	£15,000	£0	£0	£0	£0	Y-£?	Y-£?
Wrexham	£14,000	£7,950	£126,500	£0	£500,000	£0	Y-£?	Y-£?	£258,000
Blaenau Gwent	£6,000	£0	£11,000	£?	£0	£0	£0	Y-£?	Y-£?
Caerphilly	£0	£3,250	£79,000	£4,500	£0	£0	£0	Y-£?	Y-£?
Neath Port Talbot	£187,000	£700+	£10,000	£0	£143,000	Y-£?	Y-£?	Y-£?	£4,000
Swansea	£?	£?	£?	£0	Y-£?	£0	Y-£?	Y-£?	Y-£?
Torfaen	£75,000	£3,000	£15,000	£0	£450,000	Y-£?	Y-£?	Y-£?	Y-£?
Gwynedd	£?	£?	£?	£?	£0	£0	£0	£0	£0
Ceredigion	£43,500	£8,500	£202,000	£140,600	0	£22,500	Y-£?	Y-£?	£13,500
Merthyr	£18,000	£15,000	£18,000	£?	Y-£?	Y-£?	Y-£?	Y-£?	Y-£?
Pembrokshire	£10,000	£0	£129,000	£0	£636,000	£44,000	Y-£?	£45,000	£30,000
Cardiff	£77,000	£11,000	£212,000	£0	£0	£0	£0	Y-£?	Y-£?
Carmarthen	£60,000	£16,600	£345,000	£15,000	£0	£0	£0	£0	£0
Flint	£?	£39,200	£123,500	£?	£370,000	£?	£0	£?	£16,000+
Conwy	£33,000	£8,000	£190,000	£0	£0	£10,000	£40,000	£45,000	£0

Y-£?= Standards will have cost implications but no costs have been provided

£0 - Standards will have no/or minimal cost implications

\*including Welsh awareness courses/ Couses through the medium of Welsh/ Welsh language courses (to learn the language)

\*\* translation costs include internal translators as well as buying in external translators