

Explanatory Memorandum to The Making and Laying of The National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019

This Explanatory Memorandum has been prepared by the Health and Social Services Group 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/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of Subordinate Legislation: The Making and Laying of The National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019.

Vaughan Gething AM
Minister for Health and Social Services
9 May 2019

PART 1

1. Description

The Regulations amend the Regulations referred to at paragraph 3 below by placing six common duties in relation to the Welsh language upon independent primary care providers (IPCPs) in Wales i.e. General Medical Services Contractors, General Dental Practitioners, Community Pharmacists and Optometrists, through their respective terms of agreement, contract and/or service with Local Health Boards.

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

None.

3. Legislative background

The Welsh Ministers have the powers under the following sections of the NHS (Wales) Act 2006 (“the 2006 Act”) to prescribe terms of the relevant primary care contracts/terms of service/agreements with Local Health Boards:

- Section 47(1) and (2) in relation to general medical services contracts;
- Section 61(1) and (3) in relation to general dental services contracts;
- Section 66(1) and (3) in relation to personal dental services agreements;
- Section 71(10) and section 72(1) in relation to general ophthalmic services;
- Section 80(1) and (2) in relation to pharmaceutical services.

The 6 common duties in relation to the Welsh Language will be included in the following 5 Regulations for the IPCPs –

- The National Health Service (General Ophthalmic Services) Regulations 1986;
- The National Health Service (General Medical Services Contracts) (Wales) Regulations 2004;
- The National Health Service (General Dental Services Contracts) (Wales) Regulations 2006;
- The National Health Service (Personal Dental Services Agreements)(Wales) Regulations 2006; and
- The National Health Service (Pharmaceutical Services) (Wales) Regulations 2013.

The Regulations are being made under the negative resolution procedure.

4. Purpose and intended effect of the legislation

Background

The Welsh Ministers, in exercise of the powers conferred upon them by sections 26, 27, 39 and 150(5) of the Welsh Language (Wales) Measure 2011 (“the Measure”) made the Welsh Language Standards (No. 7) Regulations 2018 (“the 2018 Regulations”) which came into force on 29 June 2018. The 2018 Regulations outlined standards for health sector bodies. Under Section 44 of the Measure, the Welsh Language Commissioner issued compliance notices on 30 November 2018 to health sector bodies, including Local Health Boards (LHBs) outlining what standards they had to comply with under the 2018 Regulations. The health sector bodies have to comply with the standards from 30 May 2019.

Schedule 1 of the 2018 Regulations contain Service Delivery Standards for LHBs in relation to Primary Care which include –

Standard 65: When you know that a primary care provider is willing to provide a primary care service or part of a primary care service through the medium of Welsh, you must designate and maintain a page on your website (in Welsh) containing that information.

Standard 66: You must—
(a) provide an English to Welsh translation service for use by a primary care provider to enable it to obtain Welsh language translations of signs or notices displayed in connection with its primary care service, and
(b) encourage the use of the translation service provided by you in accordance with this standard.

Standard 67: You must—
(a) make available to a primary care provider a badge for it or its staff to wear to convey that they are able to speak Welsh, and
(b) promote to a primary care provider the wearing of the badge.

Standard 68: You must provide training courses, information or hold events so that a primary care provider can develop—
(a) an awareness of the Welsh language (including awareness of its history and its role in Welsh culture); and
(b) an understanding of how the Welsh language can be used in the workplace.

In order for IPCPs to engage in the service delivery standards being provided by the LHBs, it has been determined to place duties in relation to the Welsh language on IPCPs through their contractual terms and terms of service.

Purpose and Effect

The purpose of the National Health Service (Welsh Language in Primary Care Services) (Miscellaneous Amendments) (Wales) Regulations 2019 is to amend the 5 sets of Regulations listed above to include the 6 common duties in relation to the Welsh language which will require IPCPs to –

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

Unlike the majority of bodies that are required to comply with Welsh Language standards, independent primary care providers have not previously been subject to Welsh language schemes. The six common duties being placed upon the independent primary care providers in relation to the Welsh language are therefore at a level that is considered appropriate and reasonable. The placing of achievable duties on independent primary care providers provides a reasonable starting point to introduce Welsh language provision in the primary care sector.

If the relevant Regulations are not made then IPCPs will not be subject to any duties in relation to the Welsh language. This will result in no or limited progress being made with enhancing and promoting the use of the Welsh language within primary care services delivered by IPCPs consistently across Wales.

Consultation

A consultation took place from 14 July to 14 October 2016 on the draft Welsh Language Standards Regulations for the Health Sector. The consultation document included 13 questions which were set out in a proforma style document and an online form for ease of return. The questions gave respondents the choice of yes or no answers and then allowed for comments.

A total of 88 responses were received either using the proforma questionnaire some of which were supported by detailed narrative or by letter.

The Welsh Government response to the consultation was issued in February 2018. The response outlined the way forward regarding placing the 6 duties on the IPCPs.

The consultation response can be found at <https://gov.wales/sites/default/files/consultations/2018-02/180227-welsh-language-standards-health-sector-regulations-summary%20of%20response.pdf>
Page 11 contains the response regarding primary care.

The representative bodies of the IPCPs, referred to below, were consulted in relation to the duties being placed upon the independent primary care providers in relation to the Welsh language in February 2018.

- Chair, General Practitioners Committee Wales
- Chair, Welsh General Dental Practitioners Committee Wales
- British Dental Association Wales National Director
- Chair, Community Pharmacy Wales
- Chair, Optometry Wales

6. Regulatory Impact Assessment (RIA)

The Regulations do not impose costs on the public, private or voluntary sector. For this reason, an RIA is not deemed necessary.

The legislation has no impact on the Welsh Government's statutory duties or partners under the Government of Wales Act 2006.

For information purposes the Explanatory Memorandum and Regulatory Impact Assessment for the Welsh Language Standards (No. 7) Regulations 2018 can be accessed at –

<http://www.assembly.wales/laid%20documents/sub-ld11429-em/sub-ld11429-em-e.pdf>