

Explanatory Memorandum to The Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6) Order 2025

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru 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 (Wales) Measure 2011 (Amendment of Schedule 6) Order 2025.

Mark Drakeford MS
Cabinet Secretary for Finance and Welsh Language
28 January 2025

1. Description

- 1.1 The Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6) Order 2025 ('the Order') amends Schedule 6 to the Welsh Language (Wales) Measure 2011 ('the Measure') which sets out:
- (i) the bodies (referred to as "persons" in the Measure) who are liable to be required to comply with Welsh language standards ('standards'), and
 - (ii) which classes of standards are potentially applicable to each body.
- 1.2 The Order deals with inserting additional bodies to Schedule 6 to the Measure.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 An order to amend Schedule 6 to the Measure ('Schedule 6') is likely to be made from time to time to capture changes in status of bodies, delete bodies that no longer exist or insert new bodies, to ensure that the Welsh Ministers may make standards specifically applicable to them.
- 2.2 As stated in paragraph 3.1 below, the Welsh Ministers can only amend Schedule 6 to include a body (or category of person) if that body (or category of persons) falls within one or more of the categories in Schedule 5 to the Measure. To aid transparency the table below indicates, for bodies being added to Schedule 6 via this Order, which Schedule 5 category the Welsh Ministers consider that they fall within. Where there is potential for the body to fall within more than one category only one category has been noted.

Body	Category in Schedule 5
Adjudication Panel for Wales	Category (1): Public authorities.
Boundary Commission for Wales	Category (1): Public authorities.
Future Generations Commissioner for Wales	Category (1): Public authorities.

3. Legislative background

- 3.1 Section 35 of the Measure enables the Welsh Ministers, by order, to amend the Schedule 6 table so that column 1 of the table includes:
- (i) a person who falls within one or more of the Schedule 5 categories, or
 - (ii) a category of persons, all of whom fall within one or more of the Schedule 5 categories.
- 3.2 Section 38 of the Measure enables the Welsh Ministers, by order, to amend the Schedule 6 table so that column 2 of a body's entry (or "a category of persons" entry) includes a reference to one or more of the following:
- (i) service delivery standards,
 - (ii) policy making standards,

- (iii) operational standards, and
- (iv) record keeping standards.

3.3 This Order amends Schedule 6 by inserting additional bodies and specifying classes of standards in column 2 of each body's entry.

3.4 This Order is subject to the approval of Senedd Cymru (the affirmative procedure).

4. Purpose and intended effect of the legislation

4.1 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 Welsh Language Commissioner ("the Commissioner") to require bodies to comply with those standards.

4.2 Schedule 6 sets out the bodies and categories of persons who are liable to comply with standards. Since the Measure was made some additional public bodies have been identified that were not previously included in Schedule 6.

4.3 As part of the process of preparing this Order the Welsh Ministers have considered whether these bodies fall into one or more of the categories in Schedule 5 and the appropriateness of including the bodies in Schedule 6. The Welsh Ministers are satisfied that they do.

4.4 The Order inserts the names of persons into Schedule 6 and will update the list of persons in Schedule 6 to reflect the changes.

4.5 This Order does not place any duties directly on the body. Before a body is required to comply with standards a number of conditions must be met. These are set out in section 25 of the Measure. One such condition is that the Welsh Ministers have to make standards specifically applicable to the body or category of persons by Regulations. Furthermore, the Commissioner will have to give the body a compliance notice setting out with which standards (and in which circumstances or areas) the body has to comply. The compliance notice will also set out the date from which the body has to comply. These bodies cannot be required to comply with standards until the conditions set out in section 25 of the Measure are met, and consultation on the compliance notice (in accordance with section 47) has been undertaken.

4.6 The Order will enable the Welsh Ministers to amend some existing Welsh language regulations (by The Welsh Language Standards (No. 1, No. 2, No. 4, No. 6 and No. 7) Regulations (Amendment) Regulations 2025) so that standards can be made specifically applicable to the bodies contained in Article 2 of the Order, along with some other bodies and category of persons already listed in Schedule 6 to the Measure. Once standards have been made specifically applicable to a body in Regulations the

Commissioner is then authorised to give that body a compliance notice setting out which standards it is required to comply with.

Means of appeal

4.7 Bodies 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, a body 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

4.8 The Commissioner will be responsible for monitoring compliance with the standards. In cases where the Commissioner determines that a body 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 a body, to the imposition of a civil penalty not exceeding £5,000.

5. Risks if Order is not made

5.1 Unless a body who falls into one or more of the categories in Schedule 5 to the Measure is also included in Schedule 6 the Welsh Ministers will not be able to make standards specifically applicable to them. This will mean that the Commissioner will not be able to require the body to comply with standards.

5.2 This could lead to the following risks being realised;

- A key component of the Measure not being implemented. That is introducing the standards system and authorising the Commissioner to require a body to comply with standards.
- A body that deals with the public may not be included in the new standards system.
- There will be inconsistency in terms of the duties placed on bodies in the same sectors.
- The public will be unsure about which services they can expect to receive in Welsh. This uncertainty will continue if this Order is not made allowing standards to be made specifically applicable to bodies that fall into one or more of the categories in Schedule 5 to the Measure.
- Bodies that have a Welsh Language Scheme introduced under the Welsh Language Act 1993 will not transition to the standards system.

6. Consultation

- 6.1 The Welsh Ministers consulted on the proposal to add bodies contained in Article 2 of the Order to Schedule 6 at the same time as consulting on proposals to add bodies or category of persons to existing Regulations. The consultation was held between 24 June 2024 and 7 October 2024.
- 6.2 Schedule 6 sets out the bodies and categories of persons who are liable to comply with standards. The process of requiring a body to comply with standards provides a number of opportunities for a body to engage in the process and raise any concerns it may have.
- 6.3 Before giving the body a compliance notice the Commissioner must consult with them in accordance with section 47 of the Measure (unless the Commissioner is satisfied that they have already been consulted or given the opportunity to be consulted on that matter in connection with a standards investigation).
- 6.4 The bodies contained in Article 2 of the Order are engaged in and aware of the process of making standards.

7. Regulatory Impact Assessment (RIA)

- 7.1 This Order is connected with The Welsh Language Standards (No. 1, No. 2, No. 4, No. 6 and No. 7) Regulations (Amendment) Regulations 2025. The Regulations add additional bodies to the following Regulations:
- the Welsh Language Standards (No. 1) Regulations 2015,
 - the Welsh Language Standards (No. 2) Regulations 2016,
 - the Welsh Language Standards (No. 4) Regulations 2016,
 - the Welsh Language Standards (No. 6) Regulations 2017, and
 - the Welsh Language Standards (No. 7) Regulations 2018.
- 7.2 This Order updates the Measure to include the additional public bodies listed above. Updating the Measure does not, in and of itself, result in any additional costs and benefits. It is only through the amending Regulations and the issuing of compliance notices the bodies will be expected to comply with standards, incurring costs and generating benefits. As such, a single regulatory impact assessment has been prepared to accompany this Order and the Welsh Language Standards (No. 1, No. 2, No. 4, No. 6 and No. 7) Regulations (Amendment) Regulations 2025. This is in line with the policy set out in the Welsh Ministers' RIA Code for Subordinate Legislation. The RIA can be accessed via the following link:
<https://senedd.wales/media/1nvjaoam/sub-ld16944-em-e.pdf>