



Cabinet Office

Consultation report on draft language requirements for public sector workers Code of Practice

February 2016

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Foreword

The Government is determined to ensure that UK public services are amongst the best in the world, and meet citizens' expectations.

In our Manifesto we committed to ensure that help, advice and support provided by those public services are delivered in fluent English. We are delivering on that commitment. Part 7 of the Immigration Bill 2016 will assure citizens that there will be no language barrier standing in the way of their access to core public services and that their safety will not be put at risk. It establishes a new duty on public authorities to ensure that their workers in customer-facing roles speak fluent English. Because we care deeply about, and support, the Welsh language, for appropriate public authorities in Wales, this duty requires fluency in English and/or Welsh.

Although it is reassuring that existing practices look to recruit workers with the necessary communication skills for customer-facing roles, public authorities have themselves observed that some of their workforce may not have the competence in fluent spoken English they would like.

We all benefit from a diverse workforce delivering our public services, but we must make sure that all who desire to work within our public services, in roles that require interaction with our citizens, understand clearly the expected standard of spoken English or Welsh.

The Government has already taken a number of steps across some parts of the public sector to introduce minimum language standards for staff. This duty reinforces and widens this principle by spreading best practice and bringing the rest of the public sector into line with those leading the way.

Not only will the duty create better and more efficient services for taxpayers it will also contribute to meeting our manifesto commitments to promote British values

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across the UK, in a positive and appropriate way, without creating more red tape in the process.

The additional measures set out in this consultation response continue this work and support public authorities to meet their obligations under Part 7 of the Immigration Bill.

The Rt Hon Matt Hancock MP

Minister for the Cabinet Office and Paymaster General

Executive Summary

The Government would like to thank all those who responded to this consultation, either through written responses or via consultation meetings. All participants provided constructive input for the preparation of the statutory Code of Practice on 'Language Requirement for Public Sector Workers'.

The consultation asked for representations on the draft Code of Practice, which supports Part 7 of the Immigration Bill making its way through Parliament at present. This is to establish a new duty for public authorities to ensure that their workers in customer-facing roles speak fluent English or, for appropriate public authorities operating in Wales, fluent English and/or Welsh.

The majority of responses to the consultation were neutral, with a balance of positive and negative views around the proposed implementation of the duty and a number of compelling testimonies in its support.

The Government believes the public have the right to expect that all those with whom they interact, within the sphere of public services, should have the language competence to respond to their needs as citizens. Following this consultation, the Government is confident that the duty will ensure this is the case and promote safety, quality and public confidence in the services they receive. The Government also trusts that the Code of Practice will support public authorities in their compliance with the duty, following the helpful suggestions raised through the consultation process outlined in Section 4 of this document.

Organisations largely agreed that benefits of implementing the new duty would be realised when applied across all public service providers. Although any potential impact is likely to increase over time, there was strong feeling that the duty should be extended to private and voluntary sector providers of public services within this Parliament. This Government is minded to do so.

Background

In April 2015, the Conservative Manifesto stated the intention to “legislate to ensure that all public sector workers operating in customer-facing roles speak fluent English.”

Our commitment intends to promote sufficient standards in public service delivery, improve public faith and confidence in public services. It also intends to ensure consistency with existing language standards created by the Coalition Government in the last Parliament, by providing proportionate standards for all customer-facing public sector roles. This has been a concern of successive governments across the political spectrum since before the 2010 election and we are pleased that the associated benefits to the public will shortly be realised.

The Government introduced this new duty in Part 7 of the Immigration Bill. This requires all public authorities to have regard to a Code of Practice, and required Government to shape that document through open consultation. The final published Code of Practice will guide and assist public authorities to set a proportionate and necessary standard of spoken English, and/or Welsh in Wales, for all existing and new customer-facing roles.

The Code will support public authorities to define their expectations clearly in recruitment, providing a complaints procedure for members of the public to utilise where necessary and to provide support for workers if they need to improve aspects of their spoken English or Welsh.

The draft Code of Practice and consultation document provide the policy principles and definitions. Public authorities are defined broadly to include central government departments, local authorities, NHS bodies, state-funded schools, the police, armed forces and public corporations.

Customer-facing workers are defined in the Immigration Bill as those who are directly employed by a public authority, or agency workers substituting for directly

employed staff. They are required to speak to members of the public, either face-to-face or by telephone, as a regular and intrinsic part of their role.

The Code will provide that accent and dialect should not be taken into account in relation to the duty. It reminds public authorities of their responsibilities under the Equality Act 2010 to ensure that no group or individual worker is subject to discrimination.

The focus of the duty has always been to ensure proportionate standards of English, and/or Welsh in Wales, without placing a significant additional burden on public authorities or individual public sector workers. We hope that the revisions to the Code of Practice will reassure public authorities and their staff of this intent.

Consultation Process

The Cabinet Office consulted across the UK on the draft statutory 'Code of Practice on the Language Requirement for Public Sector Workers'. The draft Code was made available on gov.uk, alongside the consultation document and impact assessment. The consultation was open to all members of the public and Government officials actively approached public authorities, subject matter experts, trade unions and organisations that champion equality or represent people with protected characteristics.

The consultation ran for eight weeks from the 13 October until the 8 December 2015 and focused questions on eight key areas:

- the sufficiency of the guidance in the draft Code of Practice;
- clarity of alignment with existing obligations;
- existing language standards;
- best practice;
- extension to private and voluntary sector providers of public services;
- cost;
- staff affected; and

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- complaints.

The consultation aimed to capture responses and test the proposed content of the Code of Practice with a wide range of stakeholders. We engaged directly with 92 stakeholders including public authorities, trade unions, representative organisations and subject matter experts during the consultation process. A further 40 formal written responses were received (a full list is available at Annex A).

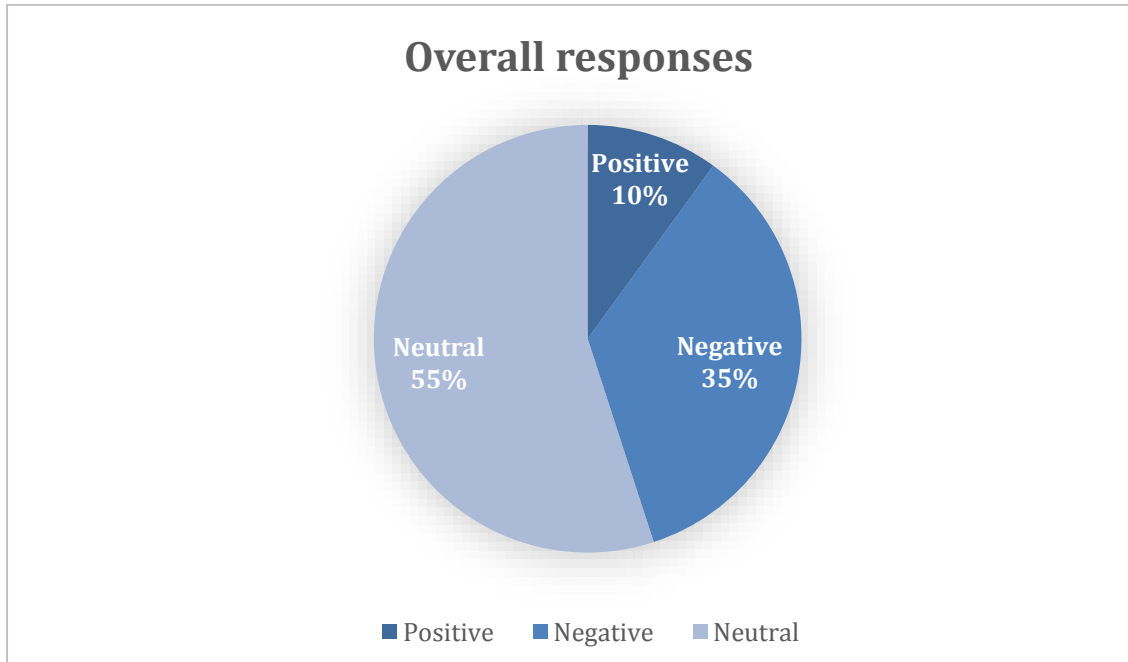
Following an analysis of the consultation responses, this document was prepared to capture and respond to issues raised. The views of respondents will also be taken into account in preparing the final statutory Code of Practice, Impact Assessment and Equality Policy Statement.

Consultation Responses

Overview

Consultation responses were received from public authorities representing the majority of public sector workforces, including trade unions with members operating across various public services.

Responses from the greater part of stakeholders were neutral. Many were supportive of the policy intent and offered proposals to bring greater clarity to the Code of Practice. Almost all respondents agreed that the ability to speak fluent English, or Welsh in Wales, to a sufficient standard was key to ensuring the quality of public service delivery. A summary of overall formal responses received can be seen in the chart below.



Responses from Major Workforces

During the course of the consultation, we engaged actively with representatives from all the major workforces, including their trade unions. A summary of responses from each workforce is provided below, followed by the key themes arising from the consultation.

Education workforce

Many of the responses from the education sector suggested that the majority of the education workforce is already assessed on English speaking ability in some way. However, they acknowledged that there was no formal, uniform standard. As a result, we do not expect the duty to create a significant burden across this sector of the workforce. As one respondent noted: *"these additional requirements would offer no significant challenge with implementation."*

It is important to acknowledge the differences between institutions across the education workforce. Compliance with the duty may have a more significant impact on smaller schools, for example. As such, where possible, we would be happy to encourage coordination across the education sector in relation to common standard-setting and training, particularly for roles without existing language requirements.

Respondents explained that, where a high level of English fluency is already seen as a critical criteria for employment, standards are set and tested through interview or otherwise. Where these are already in place, schools have met the duty with regard to these staff. However, respondents also explained that formal standards do not exist and guidance is inconsistent in different areas of the education workforce (the examples provided were teaching assistants and school receptionists).

Respondents informed us that most schools (with variance between maintained schools, free schools and academies) will employ a small number of unqualified teachers. These members of staff have not been assessed in the same way as their colleagues with Qualified Teacher Status. Recent statistics from the education

sector suggest that the number of staff with this status is increasing¹. It is very likely that this duty will support the education sector to set consistent standards in spoken English or Welsh and this will ensure that pupils and parents receive a high quality service.

Many respondents noted that English (and for some schools in Wales, Welsh) speaking competence is already a criteria for employment across much of the education sector. Therefore, they will be able to establish a standard and meet the duty without a significant impact on their ability to recruit staff.

The final theme stemming from our consultation with the education workforce was concern regarding the potential for discrimination and increases in vexatious or illegitimate complaints. This is explored in more detail in the key themes section below.

Health and Social Care workforce

Responses from the Health and Social Care sector overall noted the importance of the duty in ensuring sufficient standards of health and safety are upheld.

Furthermore, a number of respondents urged the Government to extend the duty to all private and voluntary sector providers of public services to ensure further consistency, quality and safety in this important area of public service provision. For example, one respondent noted: *"This is an excellent initiative especially for health and social care ensuring patient safety."*

Social care was highlighted as the sector most likely to be affected by this duty, particularly in relation to workers in day centres and domiciliary care. The recent Independent Age report showed that one in five of the adult social care workforce is born outside of the UK and of these 72% were born outside the EU.²

¹ November 2013 report on the schools workforce in England:

<https://www.gov.uk/government/statistics/school-workforce-in-england-november-2013>

² Independent Age, *Moved to Care: the impact of migration on the adult social care workforce*, by Ben Franklin and Cesira Urzi Brancati, November 2015.

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Respondents provided helpful detail on the new language criteria for regulated medical professionals and the Care Certificate for support staff. They explained that, whilst this is helpful for ensuring care professionals have the requisite skills, it does not address language issues relating to existing staff or go far enough in addressing their concerns in this regard.

One respondent commented in discussion: *"the duty could potentially impact on recruitment - people hire cheap labour because of cost and budgets but it is either cheap care or safe care and whatever the consequences of this duty on recruitment, it would be worth it for safe care."*

These messages emphasise the need for the duty to ensure patient safety and public and peer confidence in medical and care professionals.

Local Government

Local authorities expressed approval of the moderate approach to standard setting in the draft Code of Practice. Generally speaking, these authorities felt that aligning the duty to existing processes would be straightforward with minimal burden; they set criteria for communication skills in customer-facing roles at present. Only one borough suggested that a small proportion of their customer-facing staff would be unlikely to meet the necessary standard of English.

Respondents also felt that complaints in relation to the duty could be considered as part of the existing complaint regimes. They advised that most complaints about the duty would likely be secondary to another issue regarding the provision of a council service or function.

Local authorities raised concerns around potential variation in standards set for similar customer-facing roles across authorities and regions. In the absence of extending the duty to cover voluntary and private contractor organisations providing public services, there was also a general concern about the likelihood of members of the public holding a view that there should be no distinction between public service providers. Customers may find that it is unclear when they are

interacting directly with a local authority or local authority outsourced provision, and this could potentially cause customer dissatisfaction.

Civil Service

Overall, respondents agreed that the duty would require minimal change and cost to implement. Central government departments and their bodies broadly suggested that existing staff in customer-facing roles will hold a sufficient standard of language proficiency. The Recruitment Principles set out by the Civil Service Commission already account for the high calibre and strong skillset of workers recruited into the Civil Service.

However, some departments and agencies suggest that a low proportion of staff may not hold a sufficient standard of English or Welsh, because this was never previously a precondition for some customer-facing roles. For example, although English Language requirement is a registration condition for UK and non-EU veterinary surgeons seeking work in the UK, these requirements have only become a precondition for European Union veterinary surgeons since 18 January 2016, following the transposition of the Mutual Recognition of Professional Qualifications Directive – 2005/36/EC.

Some departments noted that interview processes might need to be strengthened for agency workers in customer-facing roles.

Subject Matter Experts and Representative Groups

The advice of subject matter experts concurred that the duty was a proportionate means of achieving a legitimate aim.

Migration experts explained that being able to speak English or Welsh helps integration and benefits migrants and their families. One migration expert stated: *“English speaking ability is irrefutably beneficial to workforce productivity and to individuals themselves – those that speak English tend to earn higher wages than those who do not.”*

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Representative groups largely agreed and provided reassurance that the legitimate aim of the duty did not interfere with obligations under existing legislation. However, there was a general view that guidance in the Code could be supported with clear and practical examples to help public authorities in relation to their obligations under the Equality Act 2010. These groups have been invited by Government to collaborate and contribute amendments to the draft Code and help develop useful case studies.

Experts in linguistics provided insight into communicative competence and agreed that the draft Code provides adequate guidance to enable public authorities to understand what the term "fluency" means. They welcomed reference to the *Common European Framework of Reference for Languages* and encouraged further guidance so public authorities might make greater use of this universal framework when considering levels of competence. They suggested steps that public authorities could take to support existing employees who have not met the required standard of spoken English or Welsh.

Trade Unions from across the public sector responded to the consultation with a number of generally held concerns around remedial action, particularly with regard to training provision and safeguarding staff who identify as Black, Asian and Minority Ethnic (BAME) or disabled. They highlighted that the duty risks accents or speech impediments being mistaken for a lack of fluency and that such complaints could likely and disproportionately be perceived as potential discrimination, particularly towards BAME and disabled staff.

Trade Unions also raised concerns that employers may focus their more stringent English testing on employees and job applicants who are of non-UK origin and/or educated outside the UK. Some sectors have a significant proportion of their workforce for whom English is not their first language (social care is an example) and they are increasingly struggling to fill recruitment gaps. The unions voiced concern that this struggle may be exacerbated by introduction of this duty.

They also expressed concerns that staff may not be aware of their entitlement to support from a union representative if disciplinary action is taken on the basis of insufficient language ability. The duty in no way changes existing legislation allowing for this and it is our expectation that public authorities and unions will continue to follow normal procedure in this regard.

Recruitment agencies supplying the greater part of agency workers to the public sector were actively consulted as part of the consultation. They accepted that agency workers were not always tested for English or Welsh fluency and urged production of a clear and consistent framework to govern this area, to ensure that public authorities are able to continue to use agency workers without significant additional cost. Respondents welcomed the development of appropriate guidance that could be included in existing commercial frameworks.

Key Themes

There were a number of points voiced consistently in the consultation responses. We provide a summary and reflections on our analysis, below.

Equality

A number of respondents, whilst being supportive of the policy intent, raised concerns that BAME and disabled public sector workers could potentially be the target of discriminatory behaviour from members of the public. In particular, respondents were concerned that any complaints procedure established to monitor compliance with the duty may lead to vexatious complaints made on the basis of accent, speech impediment or other communicative disability or national or racial identity.

The Government is committed to avoiding any discriminatory impact of the application of this duty. We were pleased when bodies responding to the consultation supported the Government's position that it is a proportionate means of achieving a legitimate aim and, therefore, in alignment with the Equality Act 2010.

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The Government does not minimise or ignore the fact that anxiety or confusion could be felt by staff in respect of whom the duty applies (despite the responsibilities of the duty sitting with public authorities, not individual workers). We have committed to publish a Policy Equality Statement and to continue working closely with the Equality and Human Rights Commission and representative groups to avoid any potential discriminatory impact.

The Code of Practice will be revised to ensure further guidance for employers is provided to help them align their compliance with this duty with their existing obligations under the Equality Act 2010 and the Public Sector Equality duty. In addition, the Government will review the implementation of the duty and ensure any negative impact is identified and addressed.

Welsh Language

A number of respondents welcomed the equal treatment of the Welsh language, and felt that the Code could be clearer in its alignment with the Welsh Language Measure 2011 and existing Welsh language schemes.

Respondents asked for greater clarity around staff who may interact with Welsh speakers, but who are employed in England to serve primarily English-speaking customers.

The Welsh Local Government Association consulted Welsh local authorities to seek views on the draft Code of Practice. Overall, authorities felt the new duty aligned with existing Welsh language standards and that this would be a minimal burden. They acknowledged that the draft Code of Practice makes clear that existing standards are likely to meet the duty and require only minor changes to existing practices and procedures.

The Government is strongly committed to the equal treatment of the English and Welsh languages. Consideration has been given to the Welsh Language Standards (No.1) Regulations 2015 issued under the Welsh Language (Wales) Measure 2011

and guidance from the Welsh Language Commissioner in respect of Welsh Language recruitment considerations.

Responses to the consultation supported the Government's view that the duty is a proportionate means of achieving a legitimate aim and it will be consistent with the Welsh Language Measure. The overall impact assessment will make evident that implementing the duty aligns to existing requirements and standards and creates a further opportunity to promote the Welsh Language.

We will expand the guidance in the Code of Practice to support public authorities to make appropriate considerations to align their response to this duty with their existing obligations to the Welsh Language Measure [2011] and existing Welsh Language Schemes.

Common Standards

Respondents consistently welcomed the moderate approach to standard setting as recommended in the Code of Practice. However, they highlighted the risk of variance in standards across comparable roles, professions and regions, with many organisations voicing a desire for more central direction.

The Government recognises the risk of duplication across public authorities applying differing standards. We actively encourage public authorities to consider developing common standards collectively, where appropriate, to achieve greater consistency and to further minimise any burden. Sectors such as education, social care and local authorities have a number of similar customer-facing roles where a common standard may be helpful. This could be developed in many ways such as localised guidance, charters, a memorandum of understanding or informal agreements.

Transition period

The majority of organisations requested a six month transition period following Royal Assent of the Immigration Bill 2016. During this period, public authorities would have sufficient time to develop collective common standards, where appropriate, and update existing processes and procedures to ensure they comply

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with the duty. In addition, existing staff and managers would have adequate time to become informed and identify any potential training, should they wish to do so, before a complaints regime comes into effect.

Impact and Cost of Implementation

The 2011 census data suggests that between 0.4 and 1.2% of the potential 2.1 million employees in the public administration, education and healthcare sectors who are not already subject to language requirements, may not have the required standard of fluency. Consultation responses in general support our original assumption that 70% of employees of public authorities are likely to be in customer-facing roles.

The questions in the consultation were also designed to test our assumptions from the initial impact assessment. Overall data provided by public authorities has been anecdotal, but suggests that between 0.2 and 0.4% of staff in customer-facing roles may not have the required standard of fluency.

Public authorities have consistently stated that costs are most likely required for familiarisation, which include updating existing processes and procedures, and that these would fall within the first year of implementation. Therefore, our initial estimations for time and cost associated with familiarisation have remained unchanged.

The Government will further detail potential costs and update estimations and assumptions based on responses provided through consultation, for the final impact assessment that will accompany the Code of Practice.

Proposed Changes to the Draft Code of Practice

The government has taken into account suggested changes to the Code of Practice in response to the evidence and observations made by organisations through the consultation. In response, a balanced view has been taken to appropriately supplement and revise the Code as necessary and ensure public authorities have sufficient guidance to meet the duty.

Section 1 – Scope of the Code

Respondents sought further clarity on the scope and definitions within the Code.

Public authority

Some organisations did not feel able to determine if they are indeed regarded as a public authority for the purposes of the Immigration Bill and several responses invited the Code to provide a list of public authorities to whom the duty will apply.

For example, there is no single test to determine what is meant by carrying out 'functions of a public nature'. However, this definition mirrors that of the Human Rights Act 1998. Other legislation has referred to a list of bodies within relevant legislation, such as the Freedom of Information Act 2000 (FOI).

The Government considers that for this duty, a list of bodies would be unnecessary. The Code will address the need for further clarity by providing additional guidance to aid organisations to consider a number of factors to help them determine if they are providing 'functions of a public nature'.

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Member of the public

The draft Code does not define 'members of the public'. Organisations highlighted the risk of confusion with other terminology such as customer, stakeholder, client and company representative that may not be considered a 'member of the public'. Clarity will be added to the Code to support consistent interpretation across public authorities.

Workers and Customer-facing Roles

Existing language standards and regulation do not always apply to employees on a temporary contract or filling a short-term appointments. A number of professions with existing language requirement regulations expressed the need for the Code to clearly state that the duty applies to such workers.

The Government is satisfied that the legislation and Code will provide the necessary clarity in respect of which staff are in scope of the duty. Public authorities subject to the duty are required to have regard for the Code in relation to all of their staff who work in customer-facing roles. This includes permanent and fixed-term employees, apprentices, self-employed contractors, agency staff, police officers and service personnel.

The consultation identified cases where workers are recruited specifically for their language skills in languages other than English or Welsh. Where this is the case, they may not have the standard of fluent spoken English or Welsh required for public authorities to fulfil the duty. These arrangements are important for some customers and communities in order to serve their needs.

The draft Code makes it clear that workers who, as a regular and intrinsic part of their role, are required to speak to members of the public in English or Welsh are considered to be working in a customer-facing role. It provides public authorities with guidance to determine whether a role is customer-facing and makes clear that where appropriate, authorities may make use of any language skills workers have to communicate with citizens who speak other languages. However, the Code will make it clear to public authorities that even if a worker has other language skills which are a necessary and useful part of their job he or she must also have a

sufficient command of spoken English or in Wales, English and/or Welsh for the effective performance of their role.

Supplementary illustrative examples of roles that would not be considered customer-facing will be added to the Code to further support public authorities.

Territorial Extent

In Scotland, the duty is to apply to public authorities exercising functions relating to reserved matters only. Application of the duty to Wales will be amended to apply to public authorities exercising functions outside the legislative competence of the National Assembly of Wales only. In Northern Ireland, the Code will apply to public authorities exercising functions that relate to excepted matters only.

The Code will recognise that certain public authorities will hold a dual function to provide services for both devolved and non-devolved matters. The duty will apply to public authorities only in respect of their exercise of relevant non-devolved functions.

Public authorities exercising relevant functions in Wales must ensure that someone working for them in a customer-facing role speaks fluent English or Welsh, in line with the requirements of language schemes and the standards stipulated by the Welsh Language (Wales) Measure 2011. Guidance will be strengthened throughout the Code to demonstrate how the Welsh Language Measure and Welsh Language Schemes interact and align with the duty.

Section 2 – Setting a Standard

Overall, organisations invited additional guidance and practical examples to further support public authorities decide on setting the standard of proficiency required for the effective performance of a customer-facing role.

British General Qualifications cause significant confusion when referenced alongside the Common European Framework for Languages. Responses provided

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by subject matter experts and regulators highlighted the need to clearly indicate that British General Qualifications are not recognised as spoken language qualifications or tests, although such qualifications may in themselves denote a sufficient standard of fluency as a relevant qualification for the role, attained as part of education in the UK or fully taught in English or Welsh by a recognised institution abroad.

This section of the Code will be expanded to provide pathways to additional information and available resources to support the development of standards. It will provide clear guidelines regarding relevant spoken English or Welsh qualifications with accessible listed bodies and recognised institutions. The Code will ensure further reflection of parallels with existing Welsh Language Schemes and the guidance of the Welsh Language Commissioner.

Although many organisations do not regulate the fluency of spoken English or Welsh for customer-facing roles at present, the consultation identified many existing recruitment criteria around communication skills. Effective communication requires candidates to demonstrate the appropriate and practical use of the English or Welsh language. The Code will make clear that where there are existing standards, these are likely to meet the fluency duty and only minor updates to existing practices and procedures will be required. This will further minimise the burden upon public authorities.

The consultation identified that the majority of public authorities/professions that do not have existing language requirements or currently regulate in relation to spoken English or Welsh, commonly test communicative competence for customer-facing roles at job interviews. The draft Code makes clear the expectation that testing the language proficiency of existing staff is not likely to be required unless a legitimate complaint is raised. The Code will further reassure public authorities that it is anticipated that the standard of spoken English or Welsh for new recruits, in many cases, will align with their existing processes as practiced for communicative competence and can be tested at interview.

Home Office immigration language requirements are not tailored to specific jobs, so employers will need to satisfy themselves that employees have the necessary fluency for the role.

Individuals from outside the EEA who make an immigration application may be required to demonstrate their English language ability as part of that application. They may therefore need to provide evidence that they have passed an appropriate test listed by the Home Office³. The Code will ensure that such tests are included in the range of evidence that may be provided by candidates, and that public authorities may wish to have regard to when determining whether an individual meets the required standard.

Section 3 – Remedial Action

Training

Linguists engaged during the consultation provided insight into the considerations that public authorities should take into account to support existing employees who have not met the required standard of spoken English or Welsh. They advise that employees who are currently operating in the workplace will have a significant level of communicative competence and, therefore, a generic English or Welsh class is unlikely to help them. The best support is likely be in one-to-one form with someone who understands the context of the role and which aspect of communicative competence needs to be addressed.

Although the draft Code makes clear the expectation that testing the language proficiency of existing staff is not likely to be required unless a legitimate complaint is raised, supporting professionalism and training of staff is the responsibility of the authority which employs or engages them. The Code will encourage managers, as part of regular learning and development practices, to support employees who have themselves identified learning needs. The Code will expand its guidance to reflect a number of training resources and means of supporting employees to

³ <https://www.gov.uk/government/publications/guidance-on-applying-for-uk-visa-approved-english-language-tests>

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better enable public authorities to consider individual learning and development needs.

The Code will guide public authorities to consider key factors when determining what is reasonable remedial action or a reasonable period for employees to meet the necessary standard should their level of spoken English or in Wales, Welsh be insufficient. It will make clear that the nature of any training should, if possible, be agreed with the employee.

Accepting that workers will have varied arrangements across the public sector, the Code is not able to prescribe that training should be met within the working hours of the employee or that any cost associated with training should be met by the authority, but it will however, encourage this practice where appropriate.

Training for Welsh language customer-facing roles must also be offered to the same standard as those for English and comply with the existing requirements of the Welsh Language Measure [2011]. The Code will guide public authorities when considering training provisions in alignment with their existing Welsh Language Schemes.

Re-deployment

Consultation responses suggest that many organisations consider re-deployment to be solely the moving of a worker into an alternative vacant post without a customer-facing element to the role, should a worker not meet the necessary fluency standard required for their existing role. To ensure public authorities take a comprehensive view of re-deployment, the Code will provide additional guidance for potential role adjustments, such as reducing the frequency of communication or supplementing communication with written material provided to customers.

Organisations also raised concern about the need to safeguard employees from demotion or loss of pay as a result of re-deployment. Although the government recognises the potential for such consequence, public authorities have varying operating models and policies and for some authorities, such outcomes may be justifiable if there are no reasonable alternatives.

Section 4 – Complaints Procedures

Organisations responding to the consultation expressed concern that the duty may stimulate vexatious complaints and that such complaints would cause undue stress and anxiety to employees. However, complaints can only be made regarding the public authority's compliance with the duty. The draft Code of Practice explains that public authorities will not be obliged to respond to complaints that are vexatious, oppressive, threatening or abusive.

The Code will be expanded to better direct public authorities through the necessary steps when a complaint is received. This will include additional guidance for ensuring fair treatment and illustrative examples of what may be considered a vexatious complaint.

Public authorities have a duty of care toward their employees. The Code will alert authorities to the potential impact such complaints may have upon a member of staff and that they should be mindful to provide appropriate support in such cases. This will include ensuring employees are protected from repeated vexatious complaints, that employees are not subjected to repeated unnecessary fluency testing and that they should where appropriate be able to contribute to the investigation of any complaint which is accepted by the public authority. If employees are aggrieved as to how they have been treated by their employer in the handling of a complaint then they would be able to raise a grievance about such treatment using established procedures.

Section 5 – Compliance

The draft Code provides guidance as to how compliance with the duty can be undertaken in conjunction with existing obligations: this will be further strengthened in particular with regard to the Public Sector Equality Duty and Welsh Language Measure.

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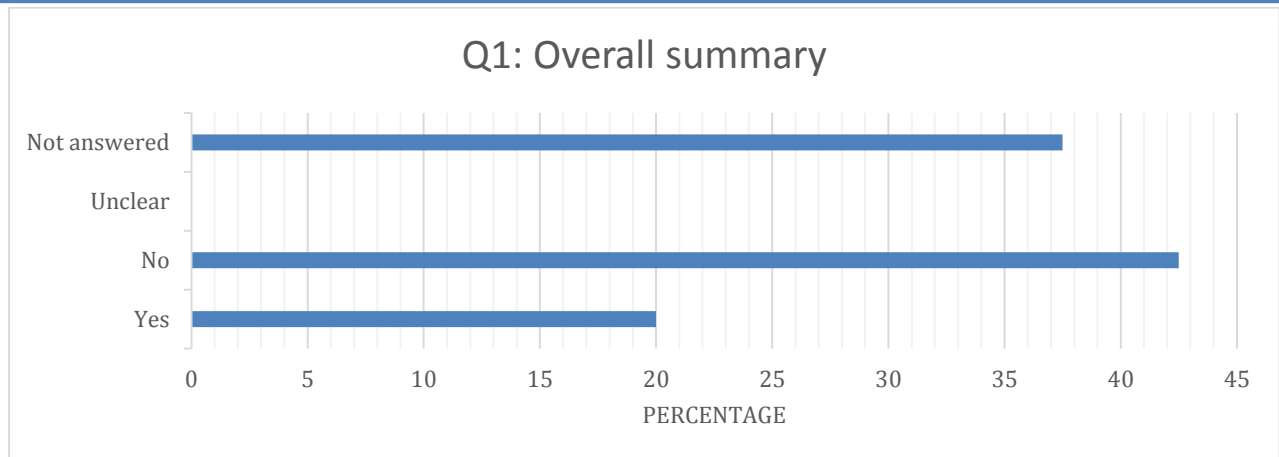
The Government recognises the duty of public authorities to provide reasonable adjustments for staff who are disabled under the terms of the Equality Act 2010. The Code will make clear that people whose first or only language is a signed language are not prevented by the public authorities' implementation of the duty from working in customer-facing roles. It will also make clear that the duty can be met by the provision of a suitable sign language interpreter for workers whose first language is a signed language. Relevant sections of the Code will be amended to ensure public authorities take account of applicable considerations when applying the duty to workers with a disability and provide illustrative examples of reasonable adjustments.

Analysis by Question

While not all formal respondents answered every question asked in the consultation document, there were a sufficient number of responses to draw conclusions and inform revision of the Code of Practice. Where bodies provided detailed responses that did not specifically answer any of the questions, these were coded as unclear, however, the insight is still valuable and will be considered. Analysis of written responses and specific comments for each question is further detailed below.

Question 1: Guidance and Standards

Is the guidance in the Code of Practice sufficient to help you meet the duties imposed on public authorities by Part 7 of the Immigration Act [2016] and set the necessary standard of spoken English? If not, please suggest what additions are necessary.



25 of the formal respondents specifically addressed this question. The majority of respondents felt that the guidance in the Code of Practice should be clearer, particularly in relation to the key definitions.

Specific comments

- A number of consultation responses requested further clarity around the scope

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of the public sector, as they felt that the definition of bodies with 'functions of a public nature' was too vague within both the Code and the Immigration Bill.

- Responses also suggested that the guidance around standard-setting, proportionality and reasonable periods for training were too ambiguous and that further support from the centre or sector specific guidance would be welcomed.

Our response

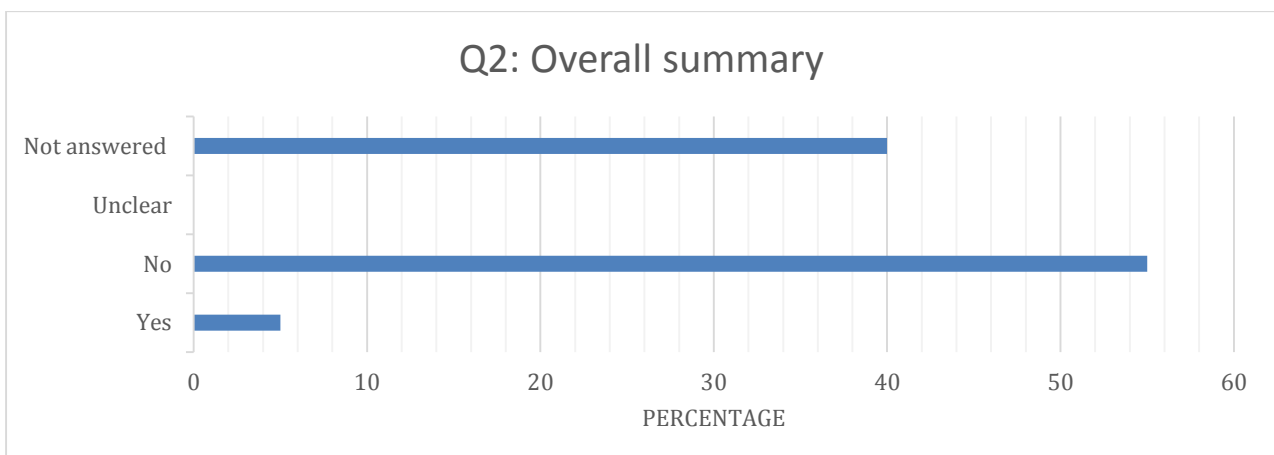
The Code will provide additional guidance to aid organisations to consider a number of factors to help them determine if they are providing 'functions of a public nature' and what is reasonable remedial action or a reasonable period for employees to meet the necessary standard.

Clarity will be added to the Code to support consistent interpretation of definitions, such as 'members of the public' and supplementary illustrative examples will further support public authorities to develop standards.

Proposed changes to the Code are detailed in Sections 1-5 of this document.

Question 2: Legal Obligations

Is the Code of Practice clear in its alignment with any existing legal obligations that you must adhere to, such as the Equality Act 2010 or Welsh Language (Wales) Measure 2011? If not, please suggest how it could be better aligned with those obligations or any others not already included.



24 of the formal respondents specifically addressed this question. The majority of respondents felt that the draft Code of Practice was unclear in its alignment with existing legal obligations, particularly in relation to the Equality Act 2010 and Welsh Language Measure 2011.

Specific comments

- Alignment with obligations and duties under the Equality Act 2010 was understandably and rightly a concern for the majority of respondents, who would welcome further clarity on ensuring that they avoid discrimination in implementing the duty.
- Although respondents overall felt the duty aligned with the Welsh Language Measure and Schemes, they also welcomed more specific guidance on any considerations they need to make.
- Some respondents also raised concerns around alignment with EU law, as they felt that the term "fluency" was too exclusionary in emphasising a mother tongue proficiency in the English or Welsh language. This was however balanced by other respondents who referenced article 53 of the professional qualifications Directive (2013/55/EU), which provides that '*A Member State shall ensure that any controls...shall be limited to the knowledge of one official language of the host Member State, or one administrative language of the host Member State provided that it is also an official language of the Union.*' In England and Scotland this has been interpreted as to cover the English language, and in Wales it has been suggested that the public sector worker should be required to understand either English and or Welsh.

Our response

The Code of Practice will provide further guidance for public authorities, supported with clear and practical examples to help them align their compliance with this duty with their obligations under the Equality Act 2010 and the Public Sector Equality duty. Additionally, a Policy Equality Statement will be published and we will continue to work closely with the Equality and Human Rights Commission and representative groups to avoid any potential discriminatory impact

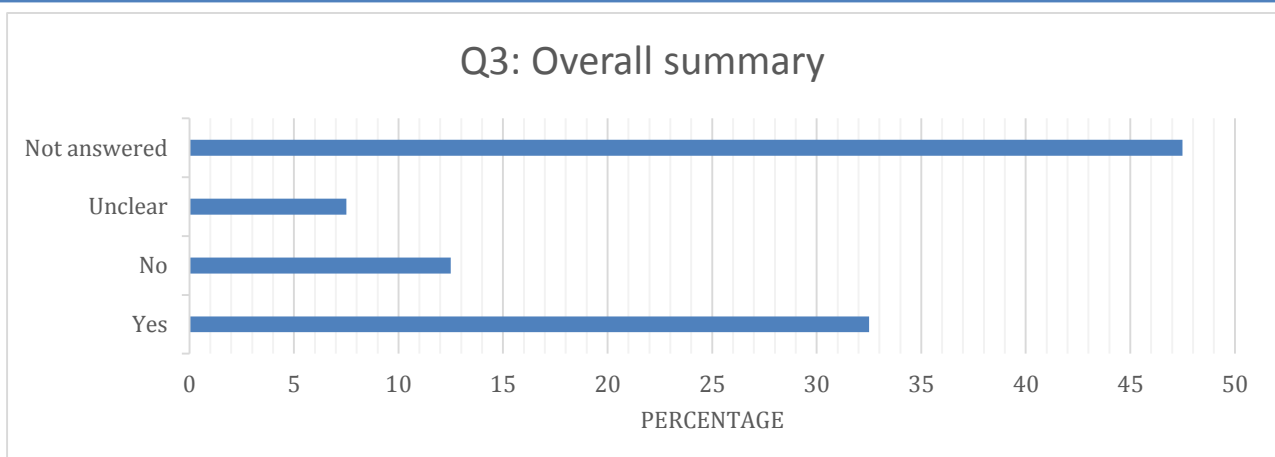
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The Government is committed to the equal treatment of the English and Welsh languages. Considerations given to the Welsh Language (Wales) Measure 2011 and existing Welsh Language Schemes, will be included within the overall impact assessment, which will make evident that implementing the duty aligns to existing requirements and standards and creates a further opportunity to promote the Welsh Language. Guidance will be strengthened throughout the Code to demonstrate and support public authorities to make appropriate considerations to align their response to this duty with their existing obligations.

The Government is committed to review the implementation of the duty. An update report will be published and ensure any negative impact is identified and addressed.

Question 3: Existing Standards

Do you have an existing minimum language standard for your customer-facing workers? If so, please provide details and confirm if you are satisfied that your existing standard meets your obligations under Part 7 of the Immigration Act [2016].



21 of the formal respondents specifically addressed this question. The majority suggest that existing recruitment practices require communicative criteria for customer-facing roles and that English or Welsh speaking ability is tested at interview. However, there was generally no formal English or Welsh speaking standard.

Specific comments

- A large number of respondents informed us that they assessed candidates for customer-facing roles against "*excellent oral and written communication skills*", or similar, or required applicants to have minimum requirement GCSE qualifications.
- Qualifications regulators and subject matter experts felt referencing British qualifications in particular was misleading, as their purpose is not to test spoken ability with the English language.
- A number of respondents, predominantly from the Health Care professions, also referenced existing English language standards, linked to the common European framework.
- A further group of respondents admitted that they had no formal English language standards in place, with a subsection of that group expressing concerns around setting inconsistent standards across the public sector.

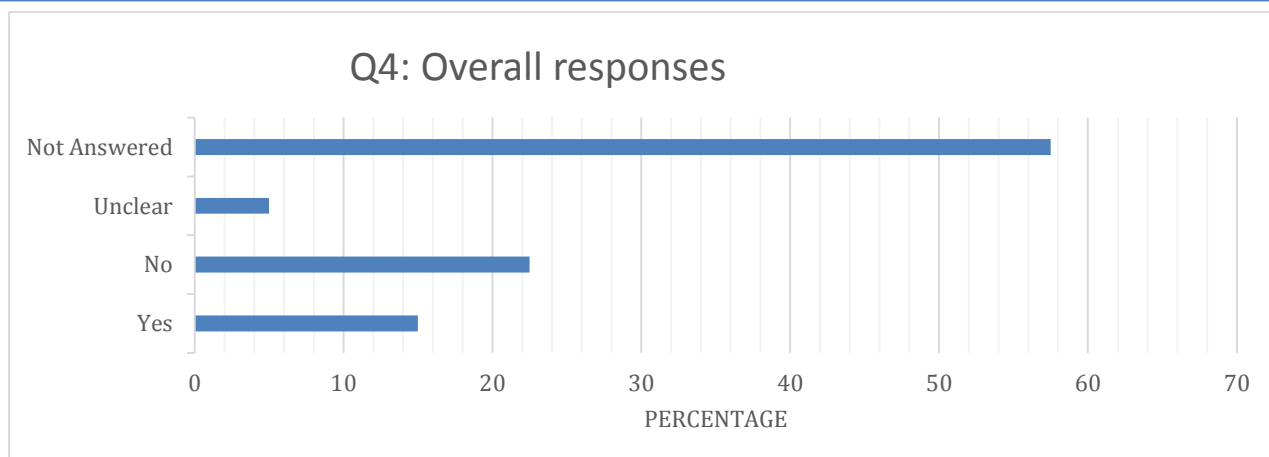
Our response

The Code will make clear that where there are existing standards, these are likely to meet the fluency duty and only minor updates to existing practices and procedures will be required. Clear guidelines will also be added regarding relevant spoken English or Welsh qualifications with accessible listed bodies and recognised institutions.

The Government actively encourages public authorities to consider developing common standards collectively, where appropriate, to achieve greater consistency and to further minimise any burden.

Question 4: Best Practice

Do you have, or are you aware of, any existing best practice for establishing a necessary level of English or Welsh fluency that would be useful to reflect in the Code of Practice? If so, please give details.



17 of the formal respondents specifically addressed this question. The majority of respondents were not aware of any best practice in implementing language requirements, but some professions were in the process of developing or introducing standards and guidance, such as language controls for EU nurses and midwives.

Specific comments

- The majority of responses citing existing processes for testing and promoting language ability were in reference to the Welsh language. In particular, the Welsh Language Commissioner noted that public authorities had already, or were developing specific processes for ensuring sufficient numbers of staff within Welsh authorities are able to provide services in Welsh.
- The other group of respondents that made reference to existing practice was within the Health Care profession, where some professional bodies noted that they were developing induction materials for new starters from overseas, to include language issues as well as general information and social norms.

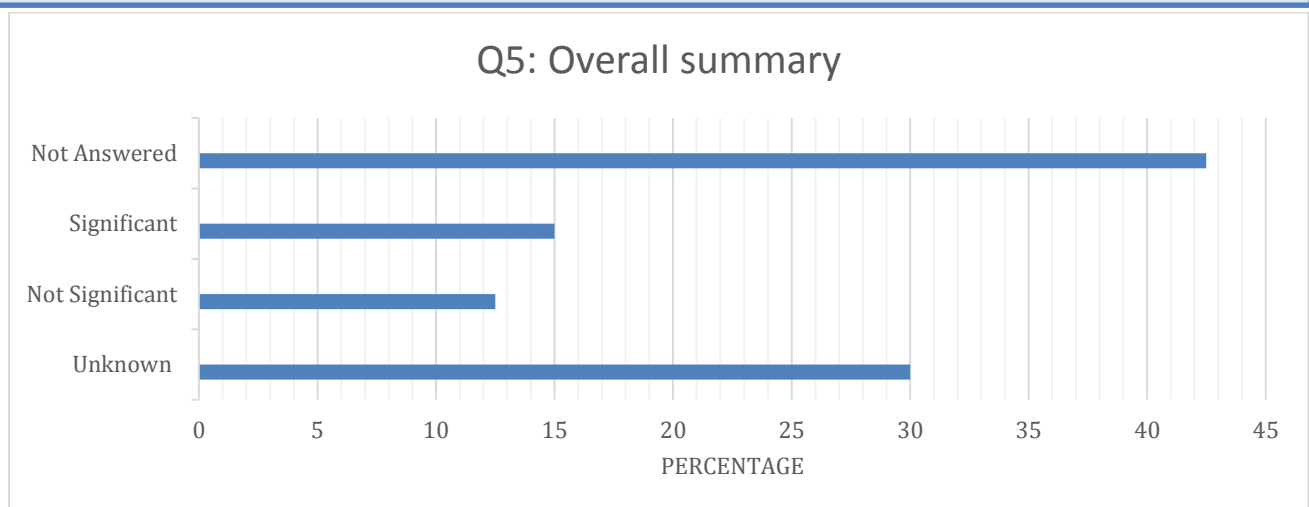
Our response

As both the language requirements for registered medical professionals and Welsh language measures are quite recent, it seems unlikely that there is any tried and

tested best practice in this specific area, which could encompass the varied standards of fluency and terminology required in the public sector. The Code will however, bring together examples and supplementary illustrations of existing standards and practices where appropriate.

Question 5: Extending the Duty

What would be the impact of extending the Code of Practice to voluntary and private sector suppliers that you contract with? Please explain your answer.



23 of the formal respondents specifically addressed this question. The majority that felt able to comment on the impact suggest that it would be significant if extended to private or voluntary sectors. This was for both positive and negative reasons, with some respondents concerned by the likely cost that would be passed on by private providers, while others urged a prompt extension to ensure that *"services provided to users... are not impeded due to the sector in which a particular service provider is based."*

Specific comments

- A number of other respondents referenced that a substantial level of public services are outsourced or provided by the private sector.
- Respondents gave the specific example of the private care sector that provides services to some of our most vulnerable citizens, and considered that the duty should be extended there in order to ensure patient safety.

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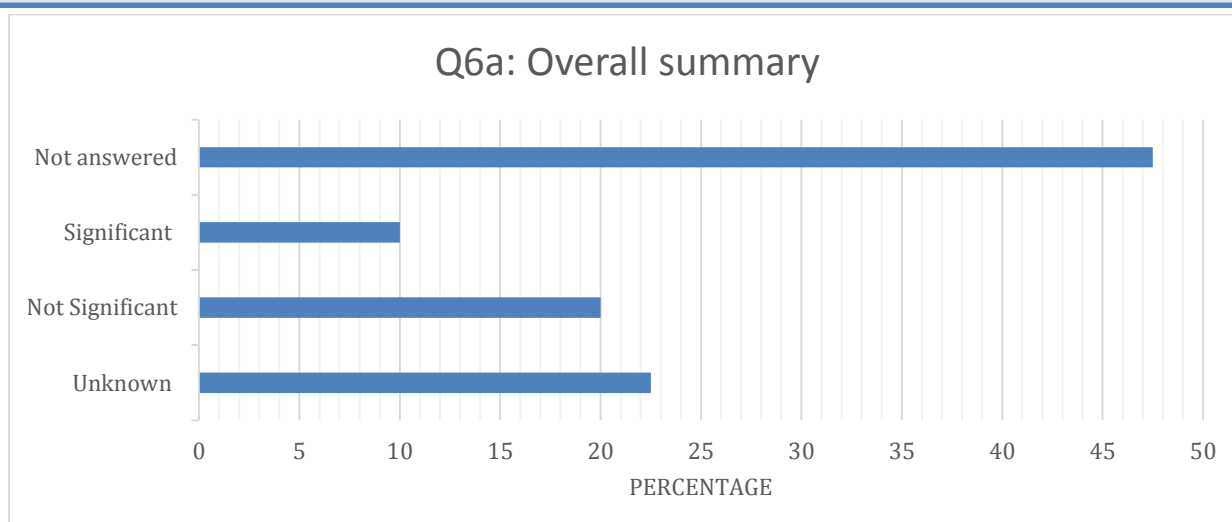
- Most respondents also raised outsourced care services as a specific area where fluency in spoken English or in Wales, Welsh might be an issue and were supportive of the extension of the duty to private and voluntary sector providers in order to ensure safety standards are upheld. Some respondents acknowledged this but expressed some concern around the impact further regulation would have on recruitment, and noted existing difficulties in recruiting into care roles.
- Some respondents also noted that the limited application of the duty in Scotland, Wales and/or Northern Ireland would likely have a limited impact as will not apply to the majority of public services delivered in those regions, and so if extended wider its impact would probably be greater.

Our response

The Government is minded to consider extending the duty to private and voluntary sector providers of public services within this Parliament in response to the strong feeling to do so by respondents to the consultation. Any potential impact to extending the duty would be fully assessed.

Question 6: Cost of Implementation

**a: What will be the additional cost to your organisation to implement this duty?
Please provide detailed estimates.**



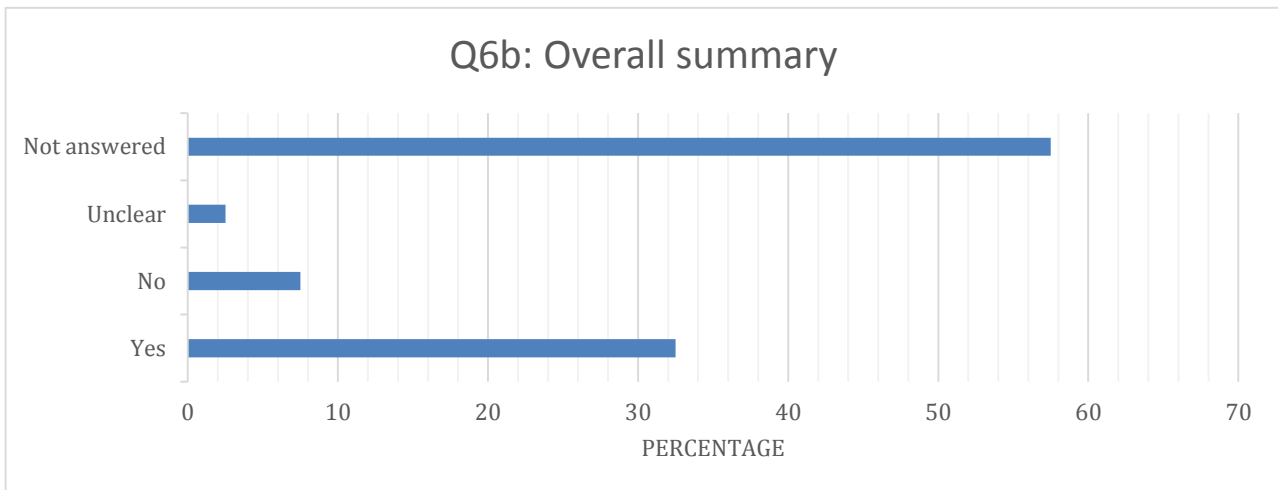
27 of the formal respondents specifically addressed this question. The majority concurred that costs associated with implementing the duty would be a minimal burden and primarily required for familiarisation. This includes updating existing practices, setting a standard and ensuring all staff are sufficiently acquainted with the duty. This is consistent with a general view that existing recruitment practices robustly test on communication skills for customer-facing roles and it is expected that very few existing staff would not meet the required standard.

Specific Comments

- Only two local authorities identified potential costs with implementing the duty. The vast majority of respondents felt that detailed estimates are unknown however, expect minimal if no cost as the duty allows for alignment with existing processes and procedures.
- This view is strongly supported by professions that already regulate language requirements, as one organisation stated: *"We do not anticipate any additional cost involved in implementing this duty."*
- Organisations, in particular Civil Service departments, conveyed that current recruitment systems support the requirements placed by the duty and that the majority of customer-facing roles currently require individuals to demonstrate sufficient language skills, which consequently places a negligible impact upon implementing the duty.
- Some organisations identified that not only do existing recruitment practices align with the duty but there are established mechanisms for remedial action, redeployment processes and complaints regimes, which they can use to implement the duty without significant amendment.
- The majority of respondents did not provide any detailed estimates of potential costs associated with complaints, but recognised that handling a rise in legitimate complaints may incur a significant cost. However, they generally expressed that it is not anticipated that there will be a rise in complaints.

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b: From your perspective, would implementing this policy have a specific impact on the country, region or business sector which you operate in? Please explain your answer.



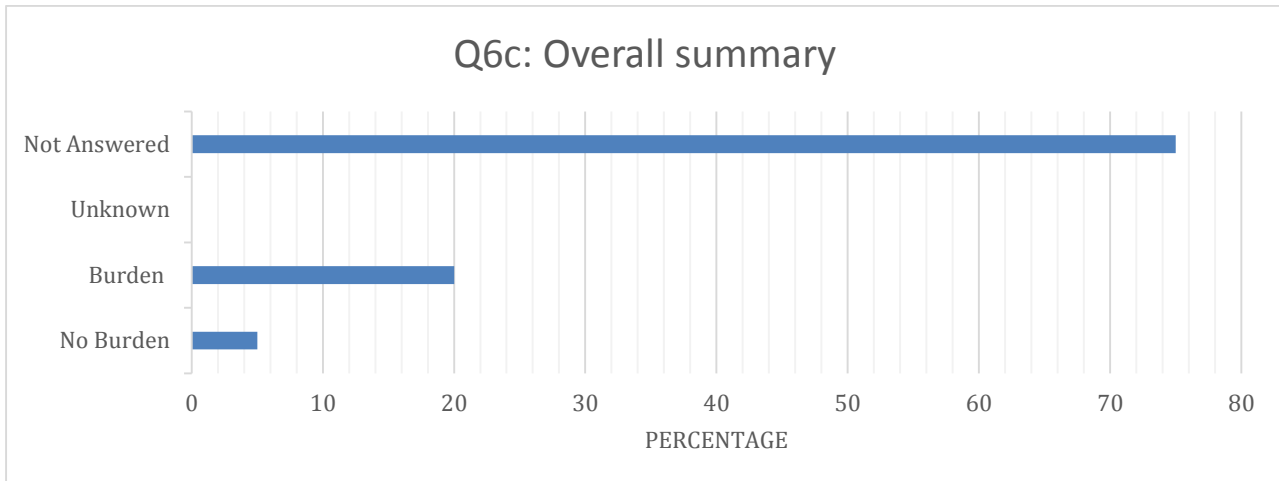
17 of the formal respondents specifically addressed this question. Whilst no specific monetary impact was identified, the potential for increased recruitment difficulties and negative impact on community relations and community cohesion in some regions with higher proportions of migrant workers was referenced.

Specific Comments

- Some organisations employing staff across England, Scotland and Wales stated that they do not anticipate any impact on country, region or business sector from implementing this duty, due to existing high levels of spoken language proficiency.
- There was some concern that imposing the duty could further exacerbate recruitment difficulties within certain professions, particularly in education and care services. This reflects existing recruitment difficulties either in type of role or in the region concerned.
- A number of respondents also raised the possible impact on the work of employment agencies and in particular that there could be an impact on geographical locations where both the prevalence of foreign workers may be higher and recruitment issues meant that public authorities rely more on agency staff to fill job vacancies.

- Organisations highlighted that the duty may discourage some migrants from applying for customer-facing roles, as required standards for spoken English or Welsh may be a disincentive.

c: If you are a local government body, to what extent would this new duty constitute a New Burden for your organisation? Please explain your answer.



Eight respondents specifically addressed this question, this includes seven local authorities and one aggregated response by the Local Government Association. The majority of respondents felt that the duty was not likely to affect their ability to recruit new staff. This was supported by shared views that almost all existing recruitment processes test communication skills at interview and that these established processes would most likely not require any revision. Additionally, public authorities expect that very few staff would not meet the required standard and consequently do not expect a significant rise in complaints.

Specific comments

- Public authorities expressed the view that potential costs would be primarily needed to cover familiarisation to update existing policies, procedures, recruitment systems, information and training for managers. However, once established the ongoing burden would be minimal with the exception of additional costs should a legitimate complaint or performance concern arise in respect of a member of staff.
- Generally public authorities felt that a potential burden may exist if authorities needed to verify that existing staff meet the required standard. This process may

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reveal a number of training needs, where the level of spoken English or Welsh is not thought to be sufficient. This would be a possible cost burden to public authorities if they pay for the training and/or provide time off to attend a course.

- Respondents also stated that they generally do not anticipate a rise in complaints as a result of implementing the duty. However, should they receive a number of legitimate complaints, remedial costs could be significant.
- Public authorities expressed the view that redeployment would in most cases not be necessary following remedial training, but if not, then for some who estimate that the majority of their roles are customer-facing, it may prove challenging for them to identify available roles for redeployment.

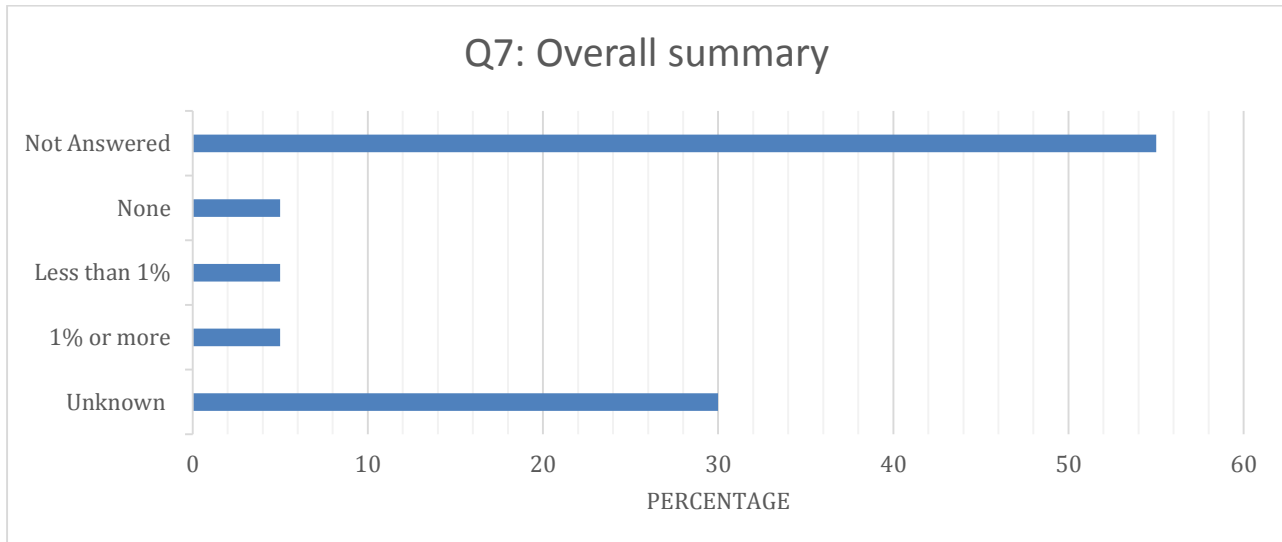
Our response

The Government will further detail potential costs and update estimations and assumptions based on responses provided through consultation, for the final impact assessment that will accompany the Code of Practice. This is discussed in more detail within the key themes section of this document.

Responses by local authorities have provided useful insight to help determine to what extent the duty will constitute a new burden. The New Burden Assessment will take account of implementation costs identified by local authorities.

Question 7: Employee Figures

How many workers will this new duty affect in your organisation? Please provide details such as employment status.



18 of the formal respondents specifically addressed this question, with the majority unable to estimate the number of staff that were likely to be affected and generally suggesting that most staff would feasibly meet the duty once standards are set, given that existing recruitment criteria and testing takes account of communication skills. Respondents from Health and Social Care and one local authority recognised that a low proportion, likely 1% of existing staff, are not as fluent in English as they would have hoped.

Specific comments

- Overall estimates by respondents that did provide figures, were evenly balanced between 0 and 1.6%.
- A number of organisations noted the proportion of their staff working in customer-facing roles. This varied significantly across respondents, which even in local government ranged from 30%-75%. As most did not provide the total number of employees, it is not possible to validate these estimates.
- Respondents also noted that application of the duty in Wales is likely to have less impact on staff, as it will only apply to public authorities exercising functions outside the legislative competence of the National Assembly of Wales. There was further reference to existing census data from 2011 that show only 0.5% of

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the population stated that they could not speak Welsh or English well. In addition, Welsh authorities felt existing Welsh language schemes and generally high standards of recruitment provided greater assurance that existing staff would meet the required standards, but they also recognised the significant rise in Wales' migrant population over recent years and that this may likely raise the number of job applicants with English or Welsh as a second language.

Our response

The Government is reassured that the duty will have a minimal impact on existing staff. Although public authorities expect the greater proportion of their customer-facing staff to meeting the necessary standard, they have themselves observed that some of their workforce may not have the competence in fluent spoken English they would like.

The Government recognised the importance of the duty in ensuring sufficient standards of health and safety are upheld, particularly for sectors such as social care that was highlighted as most likely to be affected by this duty.

Question 8: Complaints and Remedial Action

If complaints handling were to remain at the discretion of your organisation, what do you envisage as the basic process for enforcing it and for dealing with workers who do not meet the requisite language standards? Please provide details of your current process for dealing with complaints and escalation route from members of the public; any complaints data you currently publish, and the likely cost of expanding the process to include language-related complaints.

27 of the formal respondents specifically addressed this question. Overall respondents felt that existing complaints policies and grievance procedures provided a suitable framework and would operate well, with standard practices including investigation, assessment and appeal as suggested in the draft Code of Practice. The majority of respondents recognised the need to update relevant guidance but did not envisage any substantial costs for expanding or amending their existing complaints process to align with the duty. Potential costs would be

centred on remedial action and in particular any complaints that lead to a dismissal would be significant and use of external training programmes may be costly.

Specific Comments

- For the most part respondents provided insight into existing complaints processes. Consistently organisations cited that complaints handling comprises three stages, each leading to a formal response: first an informal resolution, then a formal stage and finally an appeal stage. A few stated that although it is not possible to determine the time taken to resolve any one legitimate complaint, initial responses to complaints are usually completed between 10-30 working days. A range of individuals - line managers, HR, service managers or corporate complaints team - may handle initial complaints depending on the organisation or the nature of the complaint.
- Most respondents referenced existing complaints escalation processes. These varied between organisations and routes of escalation ranged across regulators, adjudicators, ombudsman and the Parliamentary Commissioner for Administration.
- A number of respondents reflected that remedial action, following a legitimate complaint, would likely include training and thus be taken forward through performance management, aligning with current practice. Some respondents further stated that they assess if employees require support and consider positive intervention as part of standard performance management processes, without requiring a complaint to be first raised.
- Some organisations currently publish general complaints data but most did not address this in their response and it is therefore unknown if this is standard practice.
- Some respondents commented more generally that resources have been affected by cuts to training budgets, and by staff reductions. This is likely to affect considerations on any required remedial action for handling complaints that have been upheld.
- The majority of organisations reported that they have no record of a complaint regarding the fluency of English or Welsh of their staff. Only a few respondents have received a small number of language complaints.

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Our response

The Government is content that the Code will support public authorities to provide a complaints procedure for members of the public to utilise where necessary, as detailed in Section 4 of this document.

Conclusion

The Cabinet Office is grateful to all the individuals and organisations that took time to provide responses to the consultation. These will assist in producing a Code of Practice that is fit for purpose and helps to create the best possible public services for customers, organisations and public sector workers themselves.

The Government is confident that the guidance provided by the Code of Practice will enable public authorities to apply a proportionate and flexible approach to standard-setting and compliance and is the right approach.

The intention of the policy is to ensure standards are upheld without placing any duty directly on public sector workers themselves and without undue cost or administrative burden for public authorities. While a number of responses were received from groups concerned about the proportionality of the duty, we trust that the amendments suggested above will provide greater clarity to public authorities as they seek to comply with this duty with due diligence and fairness.

We are confident that the duty is a proportionate means of achieving a legitimate aim, in this case, the delivery of quality public services in fluent spoken English or Welsh. We will continue to work with the Equality and Human Rights Commission to ensure that this is the case in practice.

We are also pleased that many respondents welcome the proposed changes and even encouraged the Government to ensure that the duty is extended within this Parliament, given the potential benefits for patient care and safety.

An Equality Policy Statement and Impact Assessment will accompany the final published Code of Practice.

Following implementation, the Government will publish an update report to ascertain the positive and negative impacts as a result of the duty.

Annex A - List of actively consulted organisations and respondents

2 individual responses from members of the public

Association of Chief Education Officers

Association of Colleges

Association of Directors for Adult Social Services

Association of School and College Leaders

Bank of England

BME Advisory Group NHS England

British Transport Police Authority

Business Disability Forum

Business in the Community

British Broadcasting Corporation

British Council

British Medical Association

Brook Street Recruitment

Cabinet Office

Care Quality Commission

Centre for Research and Analysis of Migration

The Centre on Migration, Policy, and Society

Channel 4

Charity Commission

Chartered Institute of Personnel and Development

Chartered Society of Physiotherapy

Civil Aviation Authority

Civil Nuclear Constabulary/Civil Nuclear Police Authority

Civil Service Resourcing

Coal Authority

Committee on Climate Change

Competition and Markets Authority

Companies House

Convention of Scottish Local Authorities

Council of Europe Language Policy Unit
Crown Commercial Services
Department for Business, Innovation & Skills
Department for Communities and Local Government
Department of Culture Media and Sport
Department for Education
Defence Electronics and Components Agency
Department of Energy and Climate Change (covers the Oil and Gas Authority and NDPBs)
Department for Environment, Food & Rural Affairs
Department of Health
Department for Transport
Department for Work and Pensions (includes Pension Advisory Service)
Devon County Council
Driver and Vehicle Standards Agency
East Midlands Councils
East Sussex County Council
Employment Law Group
Engineering Construction Industry Training Board
Equality and Human Rights Commission
Foreign and Commonwealth Office
Forestry Commission
General Medical Council
Gosport Borough Council
Hampshire County Council
Hay Group Recruitment
Health and Care Professions Council
Health and Safety Executive
Health Education England
Highways England
HM Courts and Tribunal Service
HM Revenue & Customs
Home Office
House of Commons

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House of Lords

Institute of Equality and Diversity Professionals

Isle of Wight Council

Joint Council for the Welfare of Immigrants

Kent Police

Kirkless Council

Leasehold Advisory Service

Legal Aid Agency

Leicester City Council

Local Government Association

Maritime and Coastguard Agency

McIlwraite Education

Ministry of Defence

Ministry of Justice

National Association of Schoolmasters Union of Women Teachers

National Offender Management Service

National Union of Teachers

Network Rail

NHS Employers

NHS England

NHS Professionals

Northern Ireland Assembly

Northern Ireland Office

Northern Lighthouse Board

North Yorkshire County Council

Nottingham City Council

Nuclear Decommissioning Authority

Nursing and Midwifery Council

Office for Standards in Education, Children's Services and Skills

Office of Qualifications and Examinations Regulations

Office of Rail and Road

Office of the Public Guardian

Planning Inspectorate

Prospect Trade Union

Public Health England
Pupils 2 Parliament
Queen Elizabeth II Conference Centre
Race Equality Foundation
Recruitment and Employment Confederation
Royal College of Nursing
Russell Group
Rutland County Council
Scottish Government
Scotland Office
Sense
Signature
Skills for Care
Skills for Health
Slough Borough Council
South East Employers
South West Councils
Student Loans Company
Trade Union Congress
Trinity House
The University of Oxford Centre on Migration, Policy and Society
UK Hydrographic Office
UNISON
Valuation Office Agency
Valuation Tribunal Service
Voice the Union
Wales TUC
Wellingborough Council
Welsh Government
Welsh Language Commissioner
Welsh Local Government Association
Wales Office
Yorkshire and the Humber Employers
York St. John University

