



HM Government

# Draft Code of practice on the English language requirement for public sector workers

**Part 7 of the Immigration Act [2016]**

October 2016, Version 1.0

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# Foreword

British public services should be amongst the best in the world. Citizens accessing core public services should feel there is no language barrier standing in the way of the delivery of public services.

In our manifesto we said we would “legislate to ensure that every public sector worker operating in a customer-facing role must speak fluent English”. We are delivering this commitment through the Immigration Bill now before Parliament. The Immigration Bill creates a duty to ensure that all public authority staff working in customer-facing roles speak fluent English or Welsh to an appropriate standard.

Our intention is to support public authorities to meet their obligations under Part 7 of the Immigration Bill and so provide higher quality services to the public. We hope that this Code of Practice will contribute to efficient and effective public services. The Code sets out considerations public authorities need to take into account when deciding how to comply with this new legal duty, without creating more red tape in the recruitment of public sector staff.

It should be simple to comply with. Nothing is required of anyone already fluent in English. The aim is to bring standards up to the best.

This draft Code applies to the provisions in the Immigration Act [2016] that were introduced on 17 September 2015.

**The Rt Hon Matt Hancock MP**

Minister for the Cabinet Office and Paymaster General

# Using the Code of Practice

## Status of the Code

The [relevant Minister] is required to issue a Code under Part 7 of the Immigration Act [2016] for the purposes of section 42 of that Act. It is a statutory Code. This means it has been prepared by [the relevant Minister] and s/he has laid a draft of it before Parliament. The Code contains practical guidance on the standards and practices expected of public authorities when complying with their legal duty under the Act.

This Code is not intended to prescribe the process for every type of customer-facing role and it is not a definitive statement of the law. However, it provides principles and examples which public authorities can consider when fulfilling their legal duties and obligations.

## To whom this Code applies

This Code is aimed at public authorities defined in Part 7 of the Immigration Act [2016]. It aims to assist public authorities in meeting their statutory duty under the Immigration Act [2016].

## How to use the Code

Public authorities must have regard to this Code when fulfilling their statutory duty under the Immigration Act [2016]. It provides assistance to public authorities who must determine the appropriate standard of spoken English (or English or Welsh in Wales) to be met by their customer-facing staff, the appropriate complaints procedure to follow should a member of the public consider that the required standard has not been met, and the appropriate forms of remedial action which may be taken if a member of staff falls below the standard required. Further references to that duty in this Code will be to the "fluency duty".

Although all staff in customer-facing roles will be required to speak English or Welsh to the necessary standard, the fluency duty does not require public authorities to ensure that their customer-facing staff speak only in English or Welsh to communicate with members of the public. Public authorities are free to provide guidance to their customer-facing staff that they may where appropriate, make use of any language skills they have to communicate with citizens who speak other languages.

This Code is made up of five sections:

- **Section 1** defines the scope of the Code.
- **Section 2** explains the appropriate ways in which public authorities can set a standard of spoken English or Welsh for customer-facing roles.
- **Section 3** provides options for remedial action where staff do not meet the necessary standard of spoken English or Welsh.
- **Section 4** outlines the complaints procedure that must be followed in respect of complaints raised by a member of the public under the fluency duty.
- **Section 5** provides guidance on compliance with other legal obligations.

### Examples in the Code

Examples included in this draft Code are intended simply to illustrate the principles and concepts used in the legislation and should be read in that light.

### Territorial Extent

The draft Code applies to public authorities in England, Wales and Scotland, although in Scotland only to those who have functions not devolved to the legislative competence of the Scottish Parliament.

Public authorities exercising 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.



# Section 1: Introduction

## Scope of the Code

### Public Authorities

- 1.1. This Code applies to all public authorities defined in section 39, Part 7 of the Immigration Act [2016], as bodies which carry out functions of a public nature. This includes central government departments, non-departmental public bodies, councils and other local government bodies, NHS bodies, state-funded schools, the police and the armed forces, and public corporations.
- 1.2. This Code does not apply to the security and intelligence agencies or the Government Communications Headquarters.

### Workers

- 1.3. Public authorities are subject to the fluency duty and should have regard to the guidance in this Code in relation to all of their staff who work in customer-facing roles including permanent and fixed-term employees, apprentices, self-employed contractors, agency temps, police officers and service personnel.
- 1.4. The fluency duty does not extend to workers employed directly by a private or voluntary sector provider of a public service, or whose work is carried out mainly or wholly outside the UK.

### Customer-facing Roles

- 1.5. 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 as working in a customer-facing role. Customer-facing roles would include, but are not limited to the following illustrative examples:

- *A work coach directly employed by the Department of Work and Pensions would be viewed as operating in a customer-facing role, as s/he will have face-to-face interactions with the public, in the form of claimants, on a daily basis.*
- *A local government employee working in customer service, receiving calls and fielding queries from the public would be viewed as operating in a customer-facing role, as they will have regular telephone and face-to-face interactions with the public.*
- *A teaching assistant required to communicate with pupils to support their learning, would be viewed as operating in a customer-facing role.*

1.6. As shown in these examples, face-to-face and telephone conversations bring a role within the scope of the fluency duty. Regular and anticipated interaction with the public is an intrinsic part of the job role and this would be defined in a job description or in clear occupational goals.

1.7. The examples set out below are of roles that require occasional interaction with the public and this interaction is therefore not a regular or an intrinsic part of the role. These roles are not, therefore, considered customer-facing and would be outside the scope of the fluency duty:

- *A local authority employed street cleaner would not be viewed as a customer-facing role as their main duties do not require regular interaction with members of the public.*
- *A clerical officer or IT user technician providing internal support within an organisation would not be viewed as a customer-facing role as they are not required to communicate with members of the public over the telephone or face-to-face on a regular basis.*

1.8. When determining whether a role is customer-facing or not, employers should consider:

- The business need for interaction with the public.
- The frequency and form of this interaction.
- The level of service quality and responsiveness expected by the public.
- The proportion of the role which would require English or Welsh fluency.

## Section 2: Setting a Standard

- 2.1. This section of the Code is about setting the necessary standard of fluent English or Welsh required for a customer-facing role in a public authority to which this Code applies.
- 2.2. Public authorities must ensure that workers in such roles, whatever their nationality or origins, are able to speak fluent English or Welsh. This means that they must have a command of spoken English or Welsh which is sufficient to enable the effective performance of their role. The fluency duty applies in respect of existing staff as well as to new recruits.

### Deciding on the Standard

- 2.3. Setting the required standard of English or Welsh spoken language proficiency will depend on the type of customer-facing role. Each public authority must carefully consider the nature and extent of the spoken communication which is necessary for effective performance. The following factors may be relevant when considering the standard required:
  - The frequency of spoken interaction.
  - The topic of spoken interaction.
  - Whether the communication is likely to include technical or specialist vocabulary.
  - The typical duration of spoken interaction.
  - Whether the communication repeated in or supplemented by, written material provided to customers
- 2.4. Some customer-facing roles of public authorities are already subject to a required language standard. It is not anticipated that public authorities will need to impose a higher standard in fulfilling the fluency duty than the standards already required for such roles. For example:

- Teachers in local authority maintained schools must be appraised annually against the Teachers Standards. One of the Standards states that teachers must:

*“Demonstrate an understanding of and take responsibility for promoting high standards of literacy, articulacy and the correct use of standard English, whatever the teacher’s specialist subject.”*

- The General Medical Council core guidance, Good Medical Practice (2013) states:

*“All doctors who practise medicine in the UK must have the necessary knowledge of English language to provide a good standard of practice and care in the UK.”*

2.5. A standard specification of English speaking ability could include:

*“An ability to fulfil all spoken aspects of the role with confidence through the medium of English or (in public functions in Wales) Welsh.”*

2.6. The standard of fluency must however be adapted to the role in question to ensure a proportionate approach to the fluency duty.

### **Level of Language Proficiency**

2.7. Employers must satisfy themselves that an individual has the required level of fluency for the role they will be undertaking, whether an existing or a potential new member of staff.

2.8. Fluency relates to a person’s language proficiency and their ability to speak with confidence and accuracy, using accurate sentence structures and vocabulary. In the context of a customer-facing role, a person should be able to choose the right kind of vocabulary for the situation at hand without a great deal of hesitation. They can listen to their customer and understand their needs. They can tailor their approach to each conversation appropriate to their customer, responding clearly with fine shades of meaning, even in complex situations.

2.9. Fluency does not relate to accents regional or international, dialects, speech impediments or the tone of conversations.

### **Language Qualifications and Tests**

2.10. Where language skills have been legitimately set as an essential requirement for the role, applicants may need to be assessed on their English or Welsh-speaking ability, either through a formal test or as part of the interview process. However, it is not envisaged that existing members of staff will all need to be tested. Where staff or job applicants are clearly fluent, no further action is necessary.

2.11. Public authorities should be prepared to accept a range of evidence of language ability. There are a number of ways a member of staff or job applicant could demonstrate their fluency. For example, by:

- Competently answering interview questions in English or Welsh;
- Possessing a relevant qualification at level 2 or above, taught in English or Welsh by a recognised institution abroad or attained as part of education in the UK; or
- Passing an English or Welsh spoken language competency test.

2.12. Public authorities can, but are not required to, specify a minimum academic qualification if they determine this is appropriate for a customer-facing role and which may in itself denote a sufficient standard of fluency.

2.13. The UK National Academic Recognition Information Centre (UK NARIC) provides information and advice about how qualifications and skills from overseas compare to UK national qualification frameworks. Applicants may provide a letter of comparability from UK NARIC for public authorities to use in the selection process. Levels of language proficiency are also outlined in the Common European Framework of Reference for Languages (CEFR). CEFR describes the levels of spoken interaction and fluency.

2.14. The table below provides a useful summary extracted from the CEFR levels of fluency and descriptions that includes a comparable British General Qualification to reference:

CEFR Certificate	British General Qualifications/NQF	Description	Linguistic Fluency
B1	GCE AS Level / lower grade A-Level / NQF Level 2	Threshold or intermediate	<ul style="list-style-type: none"> <li>• Can exploit a wide range of simple language flexibly to express much of what he/she wants.</li> <li>• Can keep going comprehensibly, even though pausing for grammatical and lexical planning and repair is very evident, especially in longer stretches of free production.</li> </ul>
B2	GCE A-Level (known as A2) / NQF Level 3	Vantage or upper intermediate	<ul style="list-style-type: none"> <li>• Can adjust to the changes of direction, style and emphasis normally found in conversation.</li> <li>• Can produce stretches of language with a fairly even tempo; although he/she can be hesitant as he or she searches for patterns and expressions, there are few noticeably long pauses.</li> </ul>
C1	NQF Level 4-6	Effective operational proficiency or advanced	<ul style="list-style-type: none"> <li>• Can express him/herself fluently and spontaneously, almost effortlessly. Only a conceptually difficult subject can hinder a natural, smooth flow of language.</li> </ul>
C2	NQF Level 7-8	Mastery or proficiency	<ul style="list-style-type: none"> <li>• Can express him/herself spontaneously at length with a natural conversational flow, avoiding or backtracking around any difficulty so smoothly that the customer is hardly aware of it.</li> </ul>

2.15. There are a range of external assessment tools available to determine English language competency. English language courses and tests examples include, but are not limited to:

- International Speaking and Listening (IESOL) Diploma: City and Guilds
- International English Language Testing System (IETLS): Cambridge English Language Assessment

- EIKEN test in Practical English Proficiency: The Society for Testing English Proficiency (STEP)
- Europass – self assessment language passport: Council of Europe.

2.16. Some workforce groups are already subject to specific language standards that meet the fluency duty sufficiently:

### **Health**

*Many of the statutory health regulatory bodies have adopted the use of IELTS to assess workers for the health care setting. The overall IELTS English language test score of 7.0 has been set, this is the equivalent of C1 of the Common European Framework for Reference of Languages.*

## **Policies and Practices**

2.17. Each public sector organisation will need to review HR policies and practices to ensure that they reflect the fluency duty and provide clear compliance with existing legislation. In order to fulfil the fluency duty public authorities should consider if it is appropriate to:

- Make all customer-facing employees aware of this new duty and explain the possible actions which may be taken if their proficiency in spoken English or Welsh is found to be insufficient.
- Ensure existing selection and appointment practices refer to compliance with the language provision and inform those responsible for evaluating candidates of the spoken language requirements.
- Stipulate in contracts of employment the standard of fluent English or Welsh required as an occupational requirement for the role.
- Ensure that their recruitment processes do not contravene the Equality Act 2010; all job applicants must be treated in the same way at each stage of their recruitment process.

- Make clear in adverts and job descriptions the necessary standard of spoken English or Welsh required for the sufficient performance of the customer-facing role.
- Ensure consistency when advertising for similar types of customer-facing roles.
- Brief interview panel members so they understand the language requirements for the role and provide an objective method of evaluating candidates against clear criteria set out in the role specification.

2.18. Public authorities in Wales must consider obligations under the Welsh Language Measure [2011] and ensure their selection and appointment policies and practices comply.

### **Agency workers**

2.19. Agency staff are engaged to work by public authorities under the terms of a contract between the public authority and an employment agency. For customer-facing roles the instructions of public authorities to employment agencies should include reference to the standard of spoken English or Welsh required, which will help ensure that the employment agency only supplies candidates who meet the necessary standard. This can be integrated into the service level agreement.

2.20. The selection of agency workers can be undertaken under pressure of time and without the degree of formal assessment applied to the recruitment of employees. However, public authorities must ensure that included in the selection process of agency workers is a specific assessment of their ability to speak English or Welsh to the necessary standard required for the customer-facing role. No higher or lower standard of spoken English or Welsh should be applied to agency workers than to employees of the public authority working in an equivalent role.



## Section 3: Remedial Action

- 3.1. This section of the Code explains the actions which may be taken by a public authority where a person who works in a customer-facing role does not meet the required standard of spoken English or Welsh. This may become apparent because of a complaint received from a member of the public or as a result of routine performance management.
- 3.2. It is the responsibility of the public authority to implement measures to support workers in customer-facing roles who are found to not demonstrate the necessary standard of spoken English or Welsh fluency.

### Training

- 3.3. Public authorities should consider providing training or re-training to support workers to meet the fluency duty. Suitable training courses or qualifications determined by the organisation must reflect the necessary standard of fluent English or Welsh required. The interventions must give the member of staff the opportunity to meet the necessary language standard within a reasonable period. Staff already clearly fluent should not need training.
- 3.4. Public authorities in Wales must provide training for its workforce and assess the Welsh language skills of all employees, as required under the Welsh Language Standards Regulations 2015, relating to workers developing Welsh language skills.

### Re-deployment

- 3.5. If the worker does not meet the necessary standard of spoken English or Welsh fluency, adjustments to their role could also be considered. This could include moving the individual to a non-customer-facing role.

## Dismissal

- 3.6. Public authorities must ensure that fair and consistent policies are in place in respect of the fluency duty and that these are effectively communicated to employees and managers.
- 3.7. Members of staff must be given a reasonable opportunity to develop their command of the necessary standard of spoken English or Welsh fluency. As a last resort, the public authority could consider dismissing the individual on the basis that they are not capable of fulfilling their duties, for example if a member of staff has:
- Refused to undertake training to the required standard; or
  - Has not been able to attain the standard of fluent English or Welsh required for the role within a reasonable amount of time, after reasonable training opportunities have been provided; or
  - No other suitable post without customer-facing duties can be made available for that individual.
- 3.8. Prior to the dismissal of an employee, a public authority must ensure that the situation has been investigated fully in accordance with its capability and disciplinary procedures. All other usual policies and procedures should be followed to give the employee the opportunity to explain their position and provide mitigation. Public authorities should take legal advice and only consider dismissal after considering all reasonable alternatives.
- 3.9. During this process public authorities must adhere to the Advisory, Conciliation and Arbitration Service Code of Practice on Disciplinary and Grievance Procedures.

### **Agency workers and self-employed contractors**

- 3.10. Agency workers are not employed by a public authority and the terms on which they are engaged depend on the contract between the employment agency and the public authority and their own arrangements with the employment agency. If

an individual agency worker is unable to meet the required standard of spoken English or Welsh fluency, a public authority can consider terminating the agreement with the employment agency for their engagement in accordance with the terms of the contract between the employment agency and public authority.

- 3.11. Self-employed contractors work for public authorities in accordance with the terms of a services contract. The terms of the contract will determine the steps which a public authority can reasonably take should the individual fail to meet the necessary standard of spoken English or Welsh fluency required for a customer-facing role.

## Section 4: Complaints Procedure

4.1. This section of the Code is about the procedure a public authority should take should there be a complaint regarding a breach of the fluency duty.

### Complaint Handling

4.2. If a member of the public feels that a customer-facing public authority worker has insufficient proficiency in spoken English or Welsh for the performance of their role they have the right to complain to the public authority. They have the right to have their complaint investigated and to receive a response to their complaint.

#### **What is a complaint?**

4.3. For the purposes of the language requirement, a legitimate complaint is one about the standard of spoken English or Welsh of a public sector worker in a customer-facing role. It will be made by a member of the public or someone acting on his or her behalf.

4.4. A complaint about the strength of a public sector worker's accent, dialect, manner or tone of communication, origin or nationality would not be considered legitimate as a complaint about the fluency duty. Public authorities should make this clear in the terms of their complaints policy.

4.5. Public authorities are not obliged by this Code of Practice to respond to complaints that are vexatious, oppressive, threatening or abusive. These should be given their usual dictionary meaning and could be defined as those complaints that are without foundation and/or which are intended to result in harsh or wrongful treatment of the person referred to in the complaint. In these types of circumstances a complaint should not be allowed to continue.

## **Providing effective means for the public to make complaints**

- 4.6. Knowing how to complain and what will happen when a complaint is made is essential to public confidence. The public needs information about the complaints system: who can make a complaint, how they go about it and what complaints come within the scope of the fluency duty.
- 4.7. Public authorities are responsible for dealing with complaints and must therefore:
- Establish appropriate complaints procedures, using existing channels where appropriate, to facilitate complaints in relation to the fluency duty.
  - Update their complaints policy as necessary.
  - Provide first and second line managers and supervisors with an appropriate level of training and support to enable them to deal with complaints confidently and professionally.
  - Ensure that their customers are aware of this by adequately signposting the complaints process.
  - Ensure appropriate reasonable adjustments are in place so that all members of the public are able to register their complaint.
  - Ensure that complaints are dealt with in line with the Data Protection Act 1998.
  - Ensure that all legitimate complaints are treated seriously.
  - Ensure complaints are progressed and citizens receive a response efficiently and in a timely manner. Some complaints may take longer to resolve than others because of the individual circumstances. The likely timescale should be part of the explanatory information.
- 4.8. Following the receipt of a legitimate complaint, public authorities must assess its merits against the necessary standard of spoken English or Welsh fluency required for the role in question. If the complaint is upheld, a public authority must consider what steps can be taken to meet the fluency duty. Steps may include specific training, retraining or assessment, re-deployment or dismissal. Public authorities should refer to Section 3 of this Code of Practice and ensure they take account of:
- The nature of the complaint.

- The information received from the complainant or their representative.
- The complainant's expectations of an outcome.

4.9. Members of staff who are the subject of a complaint should be notified of the complaint and the action being taken in relation to it. They should be given the opportunity, as soon as practicable, to give their own account of the facts leading to the complaint.

4.10. Public authorities in Wales must also ensure their complaints practices and procedures meet the requirements of the Welsh Language Standards Regulations [2015].

### **Complaints data**

4.11. At the time of publishing this guidance, the fluency duty does not require public authorities to publish complaints data. However, if authorities already publish their complaints data, they may decide to include any complaints that fall under the fluency duty. As standard practice, a record should be kept of all complaints.

## Section 5: Compliance

5.1. This section of the Code is about how a public authority should comply with its other legal obligations as well as complying with the fluency duty.

### Obligations under the Equality Act

- 5.2. Public authorities must take into account their obligations under the Equality Act 2010 when considering their duty to ensure that each person in a customer-facing role speaks fluent English or Welsh. The processes and methods used to determine whether a person has a command of spoken English or Welsh for effective performance in the role must be fair and transparent.
- 5.3. It is unlawful to discriminate directly against a person or persons on grounds of race. Authorities should ensure that people from particular nationalities or ethnic backgrounds, in a recruitment process or during employment, are treated in the same way as people from an English or Welsh ethnic background.
- 5.4. Public authorities have a duty towards disabled members of staff under the Equality Act 2010 to provide such adjustments as are reasonable to remove a disadvantage caused by the application of a particular provision, criterion or practice.

### Other Legal Obligations

5.5. In Wales, the Welsh language should be treated no less favourably than the English language. Public authorities in Wales must consider obligations required under the Welsh Language (Wales) Measure [2011] when deciding how to comply with the fluency duty. The Welsh Language Measure sets a new legal context for the Welsh language. This creates a new legislative framework for enforcing duties on persons operating in Wales with regard to the Welsh language. Many of the

public authorities subject to the standards of the Welsh Language Measure currently operate Welsh Language Schemes under the Welsh Language Act 1993. Each public authority will still be obliged to comply with its Welsh Language Scheme, as approved under the Welsh Language Act 1993, until such a time as that public authority becomes subject to standards under the Welsh Language Measure.

- 5.6. Public Authorities may have specific legal duties towards members of the public, for example the Medical Act 1983, which will inform the decision as to the standard of spoken English or Welsh required for particular customer-facing roles.
- 5.7. Additionally, as referred to in paragraph 2.4 above, a certain standard of fluency in English or Welsh can be required as an entry requirement for some roles, or stipulated by the regulatory body of certain professionals. This will also inform the decision as to the standard of spoken English or Welsh required for particular customer-facing roles: it is not anticipated that public authorities will impose any higher standard in fulfilling the fluency duty than are already required for such roles.



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