

Comisiynydd y
Gymraeg
Welsh Language
Commissioner



Policy Making Standards: Creating opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language

Good practice advice document

Published in accordance with section 4(2)(j) of the Welsh Language Measure (Wales) 2011
Date: September 2020

The Commissioner's good practice advice documents offer practical ideas and advice about how to comply with statutory duties, and promote the use of the Welsh language.

The advice documents refer to the requirements of specific statutory duties, however please note:

- Bodies that aren't subject to the specific duties referred to within can apply the principles and examples to their own situation and decisions;
- The advice documents do not legally bind organisations. Bodies must depend on their own legal advice in interpreting and implementing language duties.

The advice documents are not standards codes of practice issued under section 68 of the Welsh Language Measure, so it is not required to refer to the advice documents when considering the interpretation of the Welsh language standards. [The Commissioner's codes of practice](#) for Welsh language standards regulations are on the website (see section 1 of the codes of practice for the legal status of the codes).

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Checklist

The ideas and practices within the advice are summarised in this checklist. Remember that some of the points below are requirements in the standards, and others are good practice.

| Step? | In action? |
|---|------------|
| Produce a comprehensive tool to consider the effects of policy decisions on the Welsh language | |
| Ensure that the implementation and compliance of a process for considering the effects of policy decisions on the Welsh language can be monitored | |
| Officers and senior officers have a good awareness of the Welsh language from a legal, community and local standpoint | |
| Officers responsible for the Welsh language can offer guidance and advice when required | |
| Robust data and evidence to inform the assessment with officers aware of relevant sources (that are easily accessible) and able to interpret and understand their significance and to place them in a local context | |
| Ensure the views, experience or expertise of relevant stakeholders are included as part of any evidence | |
| Ensure internal scrutiny takes place during the process with constant points of challenge on a management level (e.g. senior Welsh language champions; portfolio members; scrutiny committees; legal departments) | |
| A central record is kept of all impact assessments and is accessible to ensure a corporate overview | |
| A formal programme of scrutiny (including inviting external scrutiny) to look specifically at the results of Welsh language impact assessments | |

1 Background

The process of considering the effects of policy decisions in this advice document is about creating opportunities to use the Welsh language and treating the Welsh language no less favourably than the English language.

- 1.1 Consideration of the effects of policy decisions enables the body to prevent or mitigate any negative aspects by modifying or removing those particular aspects at an early stage of policy development.
- 1.2 It may also highlight a positive effect that would enable the body to increase that positive effect following the assessment. Effects can be direct or indirect and can only be predicted through a rigorous process of impact assessment. When considering the effects of policy decisions, it is the current practice, on the ground, that is important.
- 1.3 Ensuring that a body has an effective mechanism for considering the effects of policy decisions on the Welsh language enables it to create a robust audit trail to cover legal considerations, the needs of Welsh speakers, national and local strategies, and specific policy areas that relate to the Welsh language.

Findings of the Welsh Language Commissioner's monitoring work

- 1.4 The Commissioner has monitored the performance and practices of public bodies subject to the policy making standards, and has found that:
 - inconsistencies exist in the way bodies consider the effects of policy decisions on the Welsh language and the processes in place are inadequate
 - the need for bodies to consider all relevant Welsh language factors when developing policy. Although there are strengths and examples of effective practice, often, those strengths are weakened because there are inconsistencies in other aspects
 - there is a risk to the certainty of policy decisions in terms of:
 - considering the impact of policy decisions at the start of the process
 - the language officer's formal involvement with the process
 - detailed and specific training
 - detailed guidance or advice to guide officers through the process and a lack of detailed guidance or advice to directors or heads who are ultimately responsible for the decisions of the organisation
 - the rigour of the questions being asked and answered during the process
 - the completeness of the process from the start of the preparation stage to the end of a policy decision
 - the need to strengthen formal (or informal) arrangements to monitor and evaluate the impact of policy decisions on the Welsh language.

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- o finally, some bodies have adopted erroneous practices by including the Welsh language as a protected characteristic in equality impact assessments and in doing so, failing to ensure that the statutory requirements arising from the Welsh Language (Wales) Measure 2011¹ (Welsh Language Measure) are taken into account when making policy decisions.
- 1.5 Therefore, it is important that processes that enable a body to consider the effects of policy decisions should be ongoing elements of policy making. It should continue through public consultations and producing drafts to implement the policy in question and the review of its performance in due course. In addition, the process is set to resume when new policy challenges and new pieces of evidence emerge.

¹ http://www.legislation.gov.uk/mwa/2011/1/pdfs/mwa_20110001_mi.pdf

2 Legal context

Welsh Language (Wales) Measure 2011

2.1 The Welsh Language Measure makes provision about promoting and facilitating the use of the Welsh language, and about treating the Welsh language no less favourably than the English language. The Welsh Language Measure also makes provision about standards relating to the Welsh language.

Policy making standards

2.2 In the context of the Welsh Language Measure, a 'policy making standard' means a standard that relates to a policy decision and is intended to secure, or contribute to securing, one or more of the following outcomes:

- the person making a policy decision considers what effects, if any (whether positive or adverse), the policy decision would have on—
 - opportunities for persons to use the Welsh language, or
 - treating the Welsh language no less favourably than the English language
- the person making a policy decision considers how the decision might be made so that the decision has positive, or increased positive effects—
 - opportunities for persons to use the Welsh language, or
 - treating the Welsh language no less favourably than the English language
- the person making a policy decision considers how the decision might be made so that the decision does not have adverse effects, or so that the decision has decreased adverse effects—
 - opportunities for persons to use the Welsh language, or
 - treating the Welsh language no less favourably than the English language

Record keeping standards

2.3 In the context of the Welsh Language Measure, a "record keeping standard" means a standard relating to the keeping of –

- a) records about other specified standards, and
- b) records about –
 - i. complaints concerning a person's compliance with other specified standards, or;
 - ii. other complaints concerning the Welsh language.

2.4 The Welsh language standards mean that a body must keep a record of the steps it has taken to ensure compliance with the policy making standards with which it is under a duty to comply.

3 What does a 'policy decision' mean?

- 3.1 Section 29(6) of the Welsh Language Measure² states that a 'policy decision' means a decision by a person about the exercise of its functions or the conduct of its business or other undertaking.
- 3.2 The Measure's general definition of 'policy decision' was appropriately applied to the differing situation of organisations. This was done through regulations and details are given in Annex 2.
- 3.3 It is the organisation's responsibility to satisfy itself that it is using this advice alongside the duty as applied in regulations, and in accordance with further requirements of a code of practice. This is because some references in this advice may go beyond the duty of certain bodies in certain circumstances.
- 3.4 Many public bodies define what they consider to be “policy” and “practice” differently.
- 3.5 However, the Commissioner considers that a ‘policy’ broadly relates to a formal written statement/document which sets out the aims, direction, ideas, guidance or plan of how a body will operate in a particular situation.
- 3.6 Then, the Commissioner considers that a “practice” relates broadly to a body’s operations decisions that govern day-to-day actions. They are made within the limits or permissions of policy decisions. Operations decisions put policy decisions into action.

Case study: policy or practice?

If a County Council is consulting on increasing the cost of school transport or moving from providing free transport to charging for that service, this is a **policy decision**. The Council is making a decision about exercising its function to provide transport and possibly modifying the policy by increasing charges for it (or introducing new charges). In the Commissioner's view, the fact that the decision is subject to consultation, and that the views of interested stakeholders are being sought, make this more likely to constitute a policy decision as public bodies have extensive obligations to consult if they consider a change in policy.

If the local authority chooses to allow one parent to pay in instalments after making a decision to increase charges for school transport, and requires another to pay the costs up front, this would, in the view of the Commissioner, constitute an **operations decision**; i.e. a practice that implements the policy. This practice would not be captured by the definition of a policy decision.

² [Section 29 of the Welsh Language Measure \(Policy making standards\)](#)

3.7 Policy decisions may include, but are not limited to, decisions within the following categories (this is not an exhaustive list):

The content of legislation

- e.g. Welsh Ministers introducing a Bill for further debate and scrutiny in the Senedd

Exercise of statutory powers:

- e.g. enforcement arrangements (e.g. if the body has regulatory powers)

Content of policy statements:

- e.g. naming streets or properties

Strategies or strategic plans:

- e.g. Welsh in Education Strategic Plan
- a local development plan
- housing strategy
- corporate plan
- digital strategy
- a Welsh language promotion strategy
- strategies of a national nature that do not necessarily apply to one area only

Internal structures:

- e.g. governance procedures
- recruiting or using volunteers
- partnerships
- office and building locations
- restructuring (i.e. staffing)

Activities undertaken as the exercise of a function/conduct of business or other undertaking:

- e.g. holding events to publicise a policy decision
- an awarding body announcing grants to businesses by a set date

3.8 Here are some further examples of policy decisions that would be subject to the policy making standards:

- a local authority deciding to exercise its statutory right to change the prices for a particular service;

- o a statement from a police force about recruiting a more diverse workforce to reflect the local community it serves;
- o a health board's decision on the final wording of its strategic plan;
- o a further education provider's production of internal staff structures;
- o a tribunal's announcement of limited opening hours for the submission of claims;
- o a museum's decision to charge fixed rates for entry to new exhibitions.

Case study: The Commissioner's investigation into a school closure proposal

The Commissioner received two complaints from a member of the public regarding matters relating to a County Council's proposal to close a Welsh-medium primary school in the area. The first complaint related to the Council's consultation on the proposal to close the school. The second complaint related to alleged deficiencies in assessing the impact of the decision on opportunities to use the Welsh language and treating the Welsh language no less favourably than the English language.

The complainant alleged that:

- i. the Council did not carry out appropriate consultation because the consultation documents did not consider or seek views on how the decision would affect opportunities to use the Welsh language and treating the Welsh language no less favourably than the English language;
- ii. the Council failed to respond appropriately to comments made about the way the consultation was conducted;
- iii. the consultation documents treated the Welsh language less favourably than the English language due to the fact that the space allocated to include responses to some questions is smaller in the Welsh versions compared to the English versions;
- iv. the assessment of Welsh-medium education was not published on the Welsh language pages of the Council's website during the consultation process;
- v. the Council did not properly assess the impact of the decision to close the school on opportunities to use the Welsh language in the school community, and that the impact assessment on Welsh-medium education did not meet the requirements of the Welsh language standards placed on the Council.

The Council has a duty to assure and satisfy itself that any policy decisions it makes (together with its formulation and consultation) comply with any applicable regulations or laws. The purpose of the investigation in this case was to determine whether the Council had failed to comply with the Welsh language standards in reaching its decision. Where a policy decision has already been made, it is not open to the Commissioner to require the Council to repeat that decision.

Therefore, the actions the Commissioner has asked the Council to take are relevant only to future decisions, in relation to considering the effects of policy decisions on the Welsh language, and considering and seeking views on the effects on the Welsh language when consulting on those decisions.

4 When should a body consider the effects of policy decisions it makes on the Welsh language?

- 4.1 The policy making standards include requirements for a body to ensure, or contribute to ensuring, that the person making the policy decision considers what effects the policy decision would have on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language when carrying out the following activities:
- when formulating a new policy, or reviewing or revising an existing policy
 - in publishing a consultation document relating to a policy decision
 - when producing and publishing a policy on awarding grants; and
 - when commissioning or undertaking research intended to assist a body in making policy decisions.
- 4.2 The Commissioner's [Code of Practice for the Welsh Language Standards \(No. 1\) Regulations 2015](#) notes that 'consideration of the effect of policy decisions on the Welsh language is expected to be a fundamental part of producing, reviewing or revising policies from the outset. This should be undertaken before the final policy decision is made'.
- 4.3 Previously, the Commissioner has decided to investigate a matter where the effects on the Welsh language were considered after the final decision was made.

Case study: The Commissioner's investigation into a Welsh University's process of conducting a proposed restructuring to a staffing structure

The Commissioner received a complaint regarding a proposed restructuring of the staffing structure within a Welsh University. The complainant claimed that the University had not conducted an adequate linguistic impact assessment on the restructuring plan.

The complainant claimed that the proposed changes were significant, and that there was concern that the changes went against the aim of achieving equal status for the language within the University. The complainant also considered that some of the proposals could undermine the good work and leadership status of the University in relation to the Welsh language, and would therefore affect the University's ability to attract and recruit students from Wales in the future. The complainant stated that the proposal meant that the Welsh language was treated less favourably than the English language in the process of formulating the policy underpinning the strategy.

Although the document in question concerned a wide-ranging restructuring across the University, the complainant was concerned about the potential impact of the changes on the Welsh language. The complainant expressed concern at the proposal to abolish the role of Pro Vice-Chancellor for Welsh Language and Culture and noted that the proposal risked impacting on:

- the unambiguous institutional status for the Welsh language at the highest strategic level
- the University's identity and reputation in terms of its Welsh medium provision and the importance of the role to the public perception of the University's commitment to the

Welsh language

- the University's ability to implement the statutory requirements of the Welsh language standards
- the way in which the University has played a leading role in its dealings with external bodies in relation to the planning of academic and administrative provision through the medium of Welsh.

Following consideration of the evidence, the Commissioner was satisfied that the University had made a meaningful assessment of the potential effects of the proposals on the Welsh language and had considered steps to mitigate any adverse effects. He also felt that the changes proposed in the final proposal suggested that due consideration had been given to the comments and concerns expressed as part of the consultation.

The Commissioner was also keen to consider whether the standards were applied at the right time during the decision making process. In this respect the policy making standards expect the University to consider the effects on the Welsh language when formulating a new policy or reviewing or modifying a policy.


In response to the evidence notice, the University stated that the proposal predated the standards' imposition date and therefore the institution was not required to undertake any assessment or to adopt any specific methodology to assess the impact of a policy decision on the Welsh language. Based on the dates given to the Commissioner, he concluded that the process of formulating the policy in question had begun before the date the University was subject to the Welsh language standards, but that the standards had come into force during the policy making process.

The Commissioner had already stated that he was satisfied that the University had undertaken a meaningful assessment of the potential effects of the proposals on the Welsh language. However, he also considered that the University should have carried out the initial assessment before publishing the consultation document. Indeed, he was of the opinion that the assessment should have been carried out before the proposals were submitted to the University Council. In approving decisions that are likely to have a noticeable impact on staff (including directly affected staff, and the impact of such changes on staff morale), the structure of the University and also attitudes towards the University's commitments to the Welsh language, the Commissioner considers that it is vital that the University Council receives full assessments of the potential effects of those decisions on the Welsh language before proceeding to its approval.

In its response to the evidence notice, the University states that a Language Impact Assessment was undertaken one day after the consultation period ended. The University had undertaken an equality impact assessment when producing the consultation document which included a section on the Welsh language.

It is the Commissioner's view that carrying out an impact assessment of proposed policy decisions a day after the consultation period ends does not constitute compliance with the requirements of these standards. Although the University had made clear that it had been in the process of developing a language impact assessment tool, it had not identified the reason why it had decided to continue the consultation process before undertaking a full impact assessment of the proposals. Nor did the University offer a reason why it was not possible to delay the consultation process until a full assessment had been carried out (whether or not with the impact assessment tool).

The Commissioner therefore concludes that the University had not adequately assessed the



impact of the proposals set out in the consultation document. However, the date of approval for consultation on the document predates the setting of the relevant standards. As a result, the University had no duty to comply with the standards.

With regard to the requirements of the standards, the University is required, when publishing a consultation document, to consider and seek views on the potential effects of any policy decisions on the Welsh language.

In submitting further information, the University had also made clear that an agenda for the meetings had not been prepared to inform any discussions. The Commissioner therefore concluded that there was no specific effort to gather views and feedback on the impact of the proposals set out in the consultation document on the Welsh language.

The Commissioner acknowledged that the University had received comments, and was satisfied that those comments had been given meaningful consideration and that those considerations had led to the final proposals being improved. However, the Commissioner's view was that the University should have been more proactive in seeking views on the impact of the proposals on the Welsh language. It is not appropriate to expect the target audience to remember to consider the possible effects of policy decisions on the Welsh language. The University has a duty to encourage and ensure that consultees consider the Welsh language, and the usual method of doing so, which the Commissioner considers most effective, is by asking specific questions or including the Welsh language within the agenda of any meetings or discussions arranged as part of the consultation.

In its response to the evidence notice, the University confirmed that the consultation document did not include any specific questions relating to the potential effects of the proposals on the Welsh language. As a result, the Commissioner concluded that the University did not ensure that the consultation document sought views on potential effects on the Welsh language in accordance with the requirements of the standard. However, the date of publication of the consultation document and the commencement of the consultation process predates the date of setting the relevant standards. As a result, the University had no duty to comply with the standards.

5 Considering the requirements of the policy making standards alongside other requirements

- 5.1 The requirements of the policy making standards do not exist in a vacuum, separate to other requirements that arise from other laws or duties.
- 5.2 The fact that other laws require, for example, specific assessments of the impact of the policy in question on various areas does not mean that the duty imposed on bodies in relation to the policy making standards does not remain in place. Some bodies have applied the duty in relation to Welsh language policy-making standards in an integrated way and as part of a broad impact assessment process. Certainly, the requirements of other laws, even if they refer specifically to the Welsh language within those laws, do not exclude the need to comply with policy making standards under the Welsh Language Measure.
- 5.3 Below are examples of some of these requirements that arise from other laws which also include a reference to the Welsh language.

Learner Travel (Wales) Measure 2008³

The Learner Travel (Wales) Measure 2008 sets functions, including duties on local authorities, in relation to transport and travel arrangements to schools and other places of education. The relevant clauses are:

6(2) The local authority may make travel arrangements to facilitate the attendance of the learner at a place where that person receives education or training.

6(3) A local authority may charge for travel arrangements made under this section for registered pupils of compulsory school age in accordance with the provisions of sections 455 and 456 of the Education Act 1996.

6(4) A local authority may charge for travel arrangements made under this section for other learners.

10 Each local authority and the Welsh Ministers must promote access to education and training through the medium of the Welsh language when exercising functions under this Measure

5.4 Therefore, if a local authority decides to formulate or modify a policy relating to transport and travel arrangements to schools and other places of learning (and other provisions of the 2008 Measure), section 10 places a duty on that organisation, in implementing its functions, to promote access to education and training through the medium of Welsh. It is not a matter of choice, nor is it a matter of discretion. It is not about "paying due regard" to promoting Welsh-medium education, but to actually promoting it. Alongside the duty under the 2008 Measure, a policy decision such as this is subject to the policy making standards. With that in mind, the act of considering the effects of the policy decision on the Welsh language (more widely) is expected to be an integral part of policy formulation, review or modification from the outset. This should be done before the final policy decision is made.

³ https://www.legislation.gov.uk/mwa/2008/2/pdfs/mwa_20080002_mi.pdf

Welsh in Education Strategic Plans

Section 84(2) of School Standards and Organisation (Wales) Act 2013⁴ states that 'a local authority must prepare a Welsh in education strategic plan for its area'. It is noted that such a plan should include:

- (a) A local authority's proposals on how it will carry out its education functions to-
 - i. Improve the planning of the provision of education through the medium of Welsh ("Welsh medium education") in its area;
 - ii. Improve the standards of Welsh medium education and of the teaching of Welsh in its area;
- (b) The local authority's targets for improving the planning of the provision of Welsh medium education in its area and for improving the standards of that education and of the teaching of Welsh in its area;
- (c) A report on the progress made to meet the targets contained in the previous plan or previous revised plan.

5.5 The Commissioner considers that the duty placed upon a local authority to produce a Welsh in education strategic plan for the area in question is also subject to Welsh language standards. Therefore, the body should ensure that it considers its duties under the policy making standards in a manner that is parallel to any specific duties in relation to the Welsh in education strategic plan.

Technical Advice Note 20 - Planning and the Welsh Language⁵

In October 2017, the Welsh Government published Technical Advice Note 20 on Planning and the Welsh Language (TAN 20). The purpose of TAN 20 is to provide guidance on how the Welsh language may be given appropriate consideration in the planning system and on compliance with the requirements of planning and other relevant legislation.

While each Local Planning Authority (LPA) is expected to prepare a Local Development Plan (LDP) for its area, the Planning (Wales) Act 2015 enables Strategic Development Plans (SDPs) to be prepared on a cross-boundary, regional basis. It also makes provisions for Welsh Ministers to produce a National Development Framework (NDF).

LDPs should be focused on local issues and objectives, informed by local strategies and an evidence base. One of the issues requiring consideration when preparing an LDP is how the strategy and policies are likely to impact on use of the Welsh language and the sustainability of communities.

Section 62 of the Planning and Compulsory Purchase Act 2004 (PCPA) requires a sustainability appraisal to include an assessment of the likely effects of the plan on the use of the Welsh language in the area of the LPA. Section 61 PCPA requires LPAs to keep under review the matters which may be expected to affect the development of their area or the planning of its development, including the extent to which the Welsh language is used in the area.

Part A, paragraphs 2.3 – 2.6 of TAN 20 provide detailed advice as to how the SA should be used to assess the potential impact of the strategy, policies and allocations contained in the

⁴ http://www.legislation.gov.uk/anaw/2013/1/pdfs/anaw_20130001_mi.pdf

⁵ <https://gov.wales/technical-advice-note-tan-20-planning-and-welsh-language>

LDP on the Welsh language.

5.6 Alongside an assessment of the likely effects of the plan on the use of the Welsh language in the area, LPAs should ensure that they comply with the Welsh language standards by considering all the effects of their proposed LDPs on the Welsh language. The Commissioner does not consider that the requirement under section 62 of PCPA means that the requirement to comply with Welsh language standards is removed.

5.7 As they arise from two separate statutory requirements, it is entirely appropriate to expect bodies to ensure that they go beyond the requirements of section 62 in order to consider the wider effects on the Welsh language and to comply with the policy making standards under the Welsh Language Measure.

School Organisation Code

The School Standards and Organisation (Wales) Act 2013 requires that the Welsh Ministers issue a School Organisation Code⁶.

The Code imposes requirements in accordance with which relevant bodies (the Welsh Ministers, local authorities, governing bodies and other promoters) must act. It also includes practical guidance to which relevant bodies must have due regard and sets out the policy context, general principles and factors that should be taken into account by those bringing forward proposals to reconfigure school provision and by those responsible for determining proposals.

Annex C of the School Organisation Code, 'Community impact and Welsh-medium impact assessments' states that 'the Welsh Government takes the view that the requirement for assessments should not be overly burdensome and does not consider that it is necessary to commission such work from external consultants. Local authorities are already under a duty to carry out equality impact assessments which could provide the basis for the impact assessments specified in this guidance. It notes that 'the impact assessment in respect of the Welsh language might include the following:

- information on the language category of the school;
- information on the language category of any alternative school;
- information about standards in the Welsh language in the school and any alternative school;
- information about after school activities which provide additional opportunities to use Welsh in the school and any alternative school (e.g. the Urdd, Mentrau Iaith clubs);
- information about whether the school provides facilities for members of the community to learn Welsh, or undertake activities through the medium of Welsh, and where any alternative facilities could be provided;
- whether it might be appropriate to provide additional after school facilities at any alternative school to further secure standards in the Welsh language;
- how parents' and pupils' engagement with any alternative school and any specific language enhancement it offers could be supported (e.g. how pupils will be helped to participate in activities provided by the Urdd, Mentrau Iaith);
- observations provided by the local authority's Welsh medium education forum (if it has one);
- information on how the proposal fits with the authority's Welsh in Education Strategic Plan and any future actions that will be needed in consequence of the change to

⁶ <https://gov.wales/school-organisation-code>

continue to comply with the scheme or meet targets in the scheme.

5.8 The Welsh language standards require bodies' consultation documents to consider and seek views on the potential effects that the policy decision under consideration would have on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language. As Welsh-medium education is the focus of a Welsh-medium Impact Assessment under the School Organisation Code, the Commissioner does not consider that such an assessment removes or relieves bodies of the duties imposed on them by means of the Welsh language standards. The requirements to comply with the Code and the Standards are under two different statutory regimes, so it is appropriate to require bodies to go beyond the requirements set out in the Code when considering the possible wider impacts on the Welsh language.

Case study: Judicial review of the decision made by Rhondda Cynon Taf County Borough Council to reorganise schools in the Pontypridd area

On 30 July 2020, a judge in the High Court concluded that Rhondda Cynon Taf County Borough Council had failed in its duty to consider the impact of its school closure proposals on the Welsh language.

The Court concluded that the Council had failed to consider the impact on Welsh medium provision generally and on the communities served by the school; the impact on the sustainability of Welsh-medium secondary education in the area; and how their decision would contribute to the Government's and their own strategic aim to increase the use of the Welsh language and not treat the Welsh language less favourably than English.

The Commissioner considered it was essential to intervene and contribute evidence in this case as it is an important issue for the future of Welsh-medium education and would help ensure the demands of the Welsh Language Measure were understood. This case makes it clear to councils that in all cases, pupils must be able to access or continue receiving education with at least equivalent standards and opportunities in their chosen language. This is not an option, but mandatory in Wales. It also clearly states that, with any proposals that are going to have an effect on Welsh-medium education, a thorough impact assessment must be carried out. This is not optional either.

The judge in this case also notes that the language assessment undertaken was not meaningful, i.e. superficial, and that full compliance with the Welsh Language Standards would have meant that the Council would be much more likely to have complied with the School Organisation Code as well.⁷

Within this particular context, there is an overlap between the Welsh language standards and the School Organisation Code in that they seek to address the need to consider the effect on the sustainability (or enhancement) of Welsh medium provision within the 14-19 age network and the wider area, as well as promote access to availability of Welsh medium courses in post-16 education.

School reorganisation is an evolving decision making process. By virtue of the consultation process the finalised proposals, and necessarily the impact that such proposals will have, may not be known until late in the day. The Commissioner's opinion is that the impact on the Welsh language ought to be considered holistically. It is not said that a formal assessment is necessarily required; it is not said that this is a balance book financial exercise; but rather that an awareness of the impact and consideration of the same must underpin any rational

⁷ [Judge finds council has failed in its duty to consider the impact of school closures on the Welsh language - the Commissioner's full press release](#)



and evidence based decision-making.

Also, there are specific duties under the Welsh Language Standards which the Commissioner enforces. Enforcement of those matters relate to compliance with standards: they do not relate to the policy decision itself. Against that backdrop, it is particularly important that Welsh language considerations and consultation duties relating to the same are viewed in context. The impact of the proposals, in their totality, on Welsh-medium education needs to be considered.

For further reading, please refer to Appendix 4, which contains a summary of key points arising from the judgement of the Honourable Mr Justice Fraser, together with a link to the judgement in full.

6 Who should consider the effects of policy decisions made by a body on the Welsh language?

- 6.1 It's important that the person (or persons) responsible for considering the effects of policy decisions made by a body on the Welsh language possesses the following skills and elements or be able to take appropriate steps to acquire them:
- a detailed understanding of the policy area in question
 - a good awareness of the position of the Welsh language – legally, in the community and in the (specific) geographical area of the body in question
 - be in a position to ensure that changes can be made when required
 - have the support and leadership of senior managers / heads
- 6.2 Beyond the responsible individual (or individuals), ensuring input from a wider team responsible for considering the effects of policy decisions would help bring a range of experience and expertise to the process, especially when the person carrying out the assessment does not have extensive expertise in Welsh language issues.
- 6.3 The Commissioner is also aware of some bodies (or departments within organisations) that actively commission external individuals to carry out impact assessments on their behalf. These outsiders are usually individuals or companies with specific expertise in relation to the Welsh language.
- 6.4 The key to the success of this process is that, despite the fact that officers across bodies are responsible for considering the impact of policy decisions on different areas, the Welsh language is part of the process when they do so, rather than having Welsh language considerations separate from the rest of the decision.
- 6.5 To ensure that public organisations' structures are developed in line with the aims set out above, they should:
- take steps to improve the understanding of all responsible officers of how to consider the impact on the Welsh language, and all the different factors that may affect the Welsh language
 - ensure that experts have an input into the process of considering the effects on the Welsh language, for example in terms of contributing information; challenging or scrutinising the process; or approving an impact assessment
 - ensure that those who approve the final decision (e.g. the organisation's head or its board) challenge the decision in terms of the impact on the Welsh language.

Welsh language officers

- 6.6 The Commissioner's monitoring work shows that the extent to which language officers (or officers with responsibility for the Welsh language) are involved in considering the effects of policy decisions varies greatly. This is because their roles and the departments where they are located are different, depending on the organisation. The nature of their posts varies with some officers combining Welsh language and equality functions, for example. Even in these cases, their influence varies with some being responsible for the impact assessment process as a whole and others only playing an advisory role.
- 6.7 In the vast majority of organisations, the role of the language officers is often to provide advice and guidance on policy matters, often informally and as required. The level of requests for advice from different departments also varies across the organisations.
- 6.8 Although ensuring expertise and experience in the Welsh language when considering the effects of their policy decisions on the language is important, organisations should also take care not to create an unacceptable workload for a Welsh language officer. As a result, it would be wise for bodies to consider up-skilling other staff involved in the process to enable them to conduct it effectively.
- 6.9 In general, ensuring that an organisation's processes to comply with the policy-making standards internalize the Welsh language, in order to take advantage of existing structured systems, is vital.

7 Methodology for considering the effects of policy decisions on the Welsh language

- 7.1 When formulating a new policy, or reviewing or revising an existing policy, it is important that a body considers and identifies all relevant effects that a policy decision may have on opportunities for people to use the Welsh language or treating the Welsh language no less favourably than English.
- 7.2 Similarly, a body could consider relevant evidence in order to understand the likely or actual effects of policy decisions on the Welsh language.

Step 1: Gathering information

- 7.3 To facilitate effective assessment, the first step will be to gather information about the policy decision in question. The following is the type of information that should be collected in order to carry out an effective assessment of the Welsh language (this is not an exhaustive list):
 - o the policy objectives
 - o any statutory power or duty under primary or secondary legislation or referenced in other guidance documents linked to the policy objectives
 - o the nature of the activity
 - o who will benefit from the policy / target groups
 - o results / outcomes
 - o partners/interested stakeholders
 - o the current (or projected) linguistic profile of the geographical area(s) concerned
 - o the lifespan of the activity
 - o relevant data or research
 - o consultation arrangements/documents
 - o monitoring and assessment arrangements

Step 2: Possible factors to gather evidence about when considering the effects of policy decisions on the Welsh language⁸

National policies

1. Would the policy decision contribute to, or damage, the aims and objectives of Welsh language strategies nationally and in specific policy areas (e.g. Welsh Government strategies for the Welsh language and laws or subordinate legislation relating to the Welsh language)?

⁸ The factors listed in this section are for consideration only insofar as they are relevant to the policy decision in question. It is up to the body to think about the detail required.

Cymraeg 2050: A million Welsh speakers⁹

2. Would the policy decision contribute to, or damage, the following aims:
 - o successful transmission of the Welsh language within the family
 - o increasing the number of Welsh speakers in the context of early years, statutory education age and post-compulsory education
 - o increase the number of the education workforce who can speak and use Welsh in their work
3. Would the policy decision contribute to, or damage, the following aims:
 - o increasing the use of Welsh within the context of the workplace
 - o increasing the use of Welsh language services
 - o increasing the social use of the Welsh language
4. Would the policy decision contribute to, or damage, the following aims:
 - o supporting the socio-economic infrastructure of Welsh-speaking communities
 - o ensuring that the Welsh language is protected as an integral part of contemporary Welsh culture
 - o ensuring that the Welsh language is at the heart of innovation in digital technology to enable the use of Welsh in all digital contexts
 - o ensuring that linguistic infrastructure (dictionaries, terminology, the translation profession) continues to develop and is an integral part of the implementation of Cymraeg 2050
 - o establishing language planning and promotion of the language nationally, regionally and locally as essential elements, with better understanding and supporting bilingualism and the needs of Welsh speakers

Linguistic profile and opportunities to use the Welsh language

5. Would the policy decision:
 - o positively (or adversely) affect the aims and targets of the organisation's 5-year promotion strategy?
 - o increase (or decrease) the number of Welsh speakers moving from / to a particular area?
 - o impact on opportunities and number or percentage of people who use Welsh?
 - o lead to an increase (or decrease) in the number of individuals learning the language?

Viability of the Welsh language

6. To what extent would the policy decision positively or adversely affect

⁹ <https://gov.wales/cymraeg-2050-welsh-language-strategy>

- o safeguarding the Welsh language in a specific area
- o the sustainability of areas where the Welsh language is part of the fabric of that community
- o taking steps to promote the Welsh language
- o the prosperity of Welsh as the language of family, community, or the workplace

Staffing

7. Would the policy decision:
- o lead to an increase (or decrease) in the number of jobs requiring Welsh language skills?
 - o encourage / make it easier (or harder) to recruit Welsh speakers?
 - o reduce understanding and / or awareness at a strategic level?
 - o mean that a body loses an advocate or an advocate for Welsh speakers?

Activities

8. Beyond the statutory duties of service delivery standards, would the policy decision have a positive or adverse effect on
- o making the Welsh language more visible?
 - o result in the activity/activities being compromised?
 - o mean that accessibility and access to the Welsh language activity is restricted?

Other considerations

9. To what extent would the decision lead to positive or adverse economic outcomes in the local area (or beyond)?

Step 3: Positive and adverse effects – introducing mitigation measures¹⁰

- 7.4 Following the completion of Steps 1 and 2, the standards state that a body must give due consideration to the consequences of such an effect and subsequently introduce mitigation measures. The standards require a body to consider how a policy can be formulated (or how an existing policy can be changed) so that the policy decision would have positive, or increased positive effects on
- i. the opportunities for persons to use the Welsh language, and
 - ii. treating the Welsh language no less favourably than the English language.

¹⁰ The text for Step 3 comes from the Commissioner's [Code of Practice for the Welsh Language Standards \(No. 1\) Regulations 2015](#)

- 7.5 The standards also require a body to consider how a policy can be formulated (or how an existing policy can be changed) so that the policy decision would not have adverse effects, or decreased adverse effects, on
- i. the opportunities for persons to use the Welsh language, and
 - ii. treating the Welsh language no less favourably than the English language.
- 7.6 The standard notes that a body must consider any options to mitigate or prevent adverse effects that the policy decision may have on the Welsh language. Consideration must also be given to the options of how to achieve positive, or increased positive effects on the opportunities for persons to use Welsh and treating the Welsh language no less favourably than the English language. This will vary according to the nature of the policy decision. Below are examples of some factors that a body may consider in order to do so:

Need and demand

- 1) Is the measure necessary?
- 2) Would it be possible to meet demand without any new developments?
- 3) Could other existing provision be used?

Method and process

- 4) How should it happen?
- 5) Are the benefits of the Welsh language planned as part of the process?
- 6) Can different / less harmful methods be used?

Factors such as technology and planning should be considered to ensure that processes support bilingualism rather than impede it.

Location

- 7) Where should the development be?
- 8) What is the geographic influence of the policy?

Such considerations are key to the future of Welsh language communities. Developments should be sensitive to the needs of such communities and there should be an understanding of the current (and/or projected) linguistic profile of communities and areas. The location of other relevant services should also be considered – e.g. location of local Welsh-medium schools.

Timing

- 9) When and in what order should developments take place?

The scale of development is also important in some areas and adverse impact could be reduced for example by extending development over time.

Exemplary impact assessment templates

7.7 Below are two examples of impact assessment templates for policy decisions on the Welsh language used by two public organisations. These examples apply to the bodies that produced them, therefore it would be sensible for other bodies to produce templates that are suitable for their own purposes.

Case study: Welsh Government Impact Assessment Template

Welsh Language Impact Assessment Questions

Below are a series of general questions to help you get started with the thinking process.

What are the likely effects on the Welsh language?

- What are the aims of the policy, and how do these relate to the Welsh language?
- Is the policy, or could the policy, promote the Welsh language more and / or the use of Welsh?
- What aspects of the policy are particularly relevant to the Welsh language?
- Which of the Welsh Language Standards apply?
- Could the policy affect Welsh language groups? Which Welsh language groups are relevant to this policy?
- Is it a policy that could affect service users or how services or functions are performed?
- Will it have an impact on how other bodies operate with regard to the Welsh language (for example, national strategy or inspection criteria)?
- Does it relate to functions that previous engagement exercises have identified as important to Welsh speakers?

Will the proposed action affect any or all of the following?

- Use of Welsh
- Sustainability of Welsh speaking communities
- Numbers and / or percentages of Welsh speakers
- Fluency and confidence of Welsh speakers and learners to use Welsh
- Transmission of Welsh at home / from one generation to the next
- Using Welsh in the workplace
- Increase Welsh language digital media infrastructure and / or media
- Flow of Welsh speakers to and from traditional Welsh strongholds
- The net impact of the number and percentage of Welsh speakers in an area / or nationally
- Promoting the Welsh language in everyday life and its status.

To what extent will the proposed actions affect the following?

- Traditional Welsh speaking strongholds where the population is declining and may be

under further threat (where around 70% previously spoke Welsh)

- Characteristics of a geographical area, such as the proximity of historical or cultural resources, sites to which the Welsh language is relevant, which raises awareness of Wales and has tourist links, access to Welsh language services
- Adversely affect areas, sites, highways, structures, or objects of interest to Welsh speakers.

Could the policy / action result in non-compliance with the Welsh Language Standards?

- Does it affect service standards, e.g. how the body arranges contracts, grants, correspondence, IT systems etc?
- In what ways might the policy negatively affect Operational Standards, including the use of Welsh within the organisation, the Welsh language skills of the workforce and the translation service?
- Does the policy contravene the Policy Making Standards?
- How does this promote the Welsh language, especially the use of Welsh?
- Does the policy offer opportunities for Welsh speakers and / or learners to use the language?
- Does it encourage people to use Welsh at work?
- Is there an opportunity to encourage people to pass the Welsh language on from one generation to the next?
- Could this policy promote Welsh-medium education or opportunities to study through the medium of Welsh?
- Can this policy promote the status of Welsh or positive attitudes towards the language?
- Could this create opportunities to raise people's confidence to use Welsh or improve their skills to use Welsh more often or in more situations?

Deciding who, when and where:

Now that you have listed all the possible effects, consider who is likely to be affected and when and where. Effects that are positive for some groups could be detrimental to others - even among Welsh language groups.

Consider the effects on different groups. For example, a proposal may be beneficial to Welsh learners, but not to Welsh speakers.

- Welsh speakers
- Welsh Learners
- Children in Welsh medium schools or playgroups
- Welsh language service users

Second, consider the effects geographically by area. Different language issues arise in different parts of Wales. Demographic data is available by ward in the 2011 Census data.

Thirdly, you should consider the effects on those situations where there is already inequality: you should consider Welsh language groups, areas where numbers and percentages of

Welsh speakers are declining (using Census results). Policies should seek to redress inequalities and promote the use of Welsh wherever possible.

Case study: Older People's Commissioner for Wales' Impact Assessment Template

1: PLANNING

Describe in brief the type of work (i.e. project/ policy/research) and outline how this piece of work fits with the Older People's Commissioner's strategy and work programme

What are the objectives of the policy/project? What will constitute 'success'?

What links are there with the Welsh Government's strategy for the Welsh language?

2: IMPACTS/ EFFECTS IDENTIFIED AND ASSESSED

What impacts and effects have you identified (using the WLIA tool checklist) together with the probability and likely severity/ significance of impact (using the risk analysis template).

Positive effects/ impacts:

Adverse effects/ impacts:

Opportunities to promote the Welsh language e.g. status, use of Welsh language services, use of Welsh in everyday life, Welsh at work increased?

Evidence / data used to support your assessment:

Project outcomes are focused on delivering change to all Welsh older people, regardless of geography or language preference – deliverables must comply with Welsh language standards.

Decision:

1. No major change
2. Adjust the policy to improve impacts
3. Continue the policy with mitigation measures
4. Stop and remove the policy

How do you plan to address these impacts in order to improve the outcomes for the Welsh language? Detail mitigation measures/ alternative options to reduce adverse impacts and increase positive outcomes:

3: CONSULTING

During consultation, what questions do you wish to ask about the Welsh Language Impacts? With whom are you consulting? How are Welsh language interest groups likely to respond?

Following consultation, what changes have you made to address language issues raised?

4: POST CONSULTATION, FINALISING DECISION, ONGOING MONITORING

Summarise your final decisions, list the likely effects on the Welsh language and how you will promote/ mitigate these. Record your compliance with the Welsh language standards.

How will you monitor the ongoing effects during the implementation of the policy?

8 Consultation documents

- 8.1 The Commissioner's Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015 notes that the standards relating to consultation 'are a means to ensure that a body's consultation documents which relate to a policy decision consider and seek views on the potential effects that the decision will have on the Welsh language and opportunities to use it'..
- 8.2 As well as ensuring that a consultation document considers the effects of the policy decision in question on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language, a body must include specific questions in the document which ask for a response. A body is expected to give due consideration to any information gathered during this process when making the policy decision, so that the body acts on any outcomes from the consultation.
- 8.3 Here is an example of the type of questions a body might ask during consultation to gather views:

In your opinion, what positive effects would the policy decision under consideration have on:

- o opportunities for persons to use the Welsh language, and
- o treating the Welsh language no less favourably than the English language?

In your opinion, what adverse effects would the policy decision under consideration have on:

- o opportunities for persons to use the Welsh language, and
- o treating the Welsh language no less favourably than the English language?

How do you think the policy under consideration could be formulated or revised so that it would have positive effects, or more positive effects on –

- o opportunities for persons to use the Welsh language, and
- o treating the Welsh language no less favourably than the English language.

How do you think the policy under consideration could be formulated or revised so that it would not have adverse effects, or less adverse effects on –

- o opportunities for persons to use the Welsh language, and
- o treating the Welsh language no less favourably than the English language.

- 8.4 It is important to ensure that the consultation sample is representative of Welsh speaking service users. If consultation is restricted to selected organisations, the body could consider how to ensure that the appropriate language planning bodies are involved in the process. For example, in the case of a policy relating to leisure and young people, consideration could be given to including the Urdd or the local Menter Iaith, amongst other organisations.

- 8.5 It is also important to note that views can be sought in a number of ways during a consultation process such as public meetings, written correspondence, online questionnaires, face-to-face surgeries or interviews, and social media amongst other options.
- 8.6 However, the standards in question relate only to the published "consultation document" and not other forms of consultation exercise.
- 8.7 Failure to include specific questions would indicate a lack of proactivity in seeking views on whether a proposed policy decision would have a positive or adverse impact on the Welsh language, or how that policy should be revised to increase the positive effect and minimise the adverse effect.
- 8.8 When seeking views as part of a policy decision consultation, it is important that bodies ensure that they have effective methods of engaging the views, experience or expertise of relevant stakeholders. Here is a list of the type of stakeholders that bodies could consider engaging and consulting with:
- Shareholders
 - Welsh and UK Governments
 - Senior executive officers
 - Organisations within the same field/sector
 - Suppliers
 - The press
 - Pressure groups
 - Customers
 - The public
 - The wider community

Case study: Proposal to reorganise schools in a specific area

A county council in Wales is proposing to close a primary and secondary school in the area and establish a new bilingual all-age school on the existing school sites. The current primary school is a dual stream bilingual school, and the secondary school a category 2C bilingual school (i.e. offering a Welsh language stream where 50-79% of the curriculum is available through the medium of Welsh). The council recently consulted on the establishment of the new school.

Following a query from a member of the public regarding the consultation, the Commissioner looked at the documents that had already been published. This review called into question whether or not the consultation had been carried out in accordance with the requirements of the standards. This was due to the fact that the consultation document and accompanying questionnaire did not adequately consider or seek views on opportunities to use the Welsh language or treating the Welsh language no less favourably than the English language.

A revised impact assessment is available on the Council's website. It includes an impact

assessment on the Welsh language as well as impact assessments on other issues. The assessment did not appear to have considered the issues required of the standards. The assessment includes:

- o knowledge of standards of literacy and communication
- o a list of opportunities to use Welsh outside school hours
- o a list of other Welsh activities in the school and community
- o a summary of the consultation comments on the impact of the decision on the Welsh language
- o the Council's response to the consultation comments.

There did not appear to have been an assessment and analysis of opportunities for persons to use the Welsh language, and how the Welsh language could be treated no less favourably than the English language.

Following the consultation, the Council issued a statutory notice declaring its decision to create a bilingual all-age school in the area. In considering the information, the Commissioner considered that it was doubtful that the Council had adequately considered, in accordance with the requirements of the policy making standards, the potential effects of the decision on the opportunities for persons to use the Welsh language or treating the Welsh language no less favourably than the English language.

The Commissioner's finding is that the Council, in making this policy decision, had not given sufficient consideration to what effects the policy decision would have in accordance with the requirements of the standards. The Commissioner therefore found that the Council had failed to comply with the relevant requirements in this case. The basis of the judgement is that there is no evidence that the Council has considered what effects, if any (whether positive or adverse) the policy decision would have on— (a) opportunities for persons using the Welsh language, and (b) treating the Welsh language no less favourably than the English language.

The standards are a means of ensuring that consultation documents relating to a policy decision consider and seek views from persons on the possible effects that the decision will have on the Welsh language and on the opportunities to use it.

The Commissioner's finding is that the consultation document did not consider potential effects on the Welsh language nor did it include specific questions seeking the public's views on how the proposed policy decision was going to affect persons' opportunities to use the Welsh language, or treating the Welsh language no less favourably than the English language.

The standards impose a clear requirement that views must be sought on the potential effects as well as asking how the decision can be changed or revised so that it has more positive or less adverse effects on opportunities to use the Welsh language. The consultation document in question did not include such specific questions.

The Commissioner's finding is that the Council failed to comply with the relevant standard in this case. The first basis of the judgement is that the consultation document on the policy decision did not include specific questions seeking views on the effects (whether positive or adverse) that the policy decision would have on (a) opportunities for persons to use Welsh, and (b) treating the Welsh language no less favourably than the English language. The second basis for the judgement is that the consultation document did not adequately discuss or offer options or full information on the potential impact of the

proposal to enable the public to make an informed response to the consultation.

Case study: Consultation on a county council's housing strategy

The Commissioner received a complaint alleging that a county council in Wales was undertaking a housing strategy consultation process and that the consultation did not consider the effects of the strategy on the Welsh language. The complainant claimed that the word 'Welsh' did not appear in the consultation document. On the basis of the complaint, it was considered that there was sufficient doubt that there was a failure to comply with one or more Welsh language standards which impose duties on the Council to seek the public's opinion on possible effects on the Welsh language when making policy decisions and developing policies.

Following full consideration of the evidence of the complainant and the Council, the Commissioner concluded that the consultation document on the housing strategy did not seek views on possible effects on the Welsh language. The Commissioner's finding therefore is that the Council failed to comply with the relevant standard on the basis that they had not sought views on the effects that the policy decision would have on opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language within the consultation document.

9 Keeping a record of policy decisions

- 9.1 The Commissioner's Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015 notes, due to the standard relating to a body keeping a record of the steps taken in order to ensure compliance with the policy making standards with which it has a duty to comply, the body is expected to be able to provide sufficient evidence that it has considered the effects of policy decisions in accordance with the policy making standards in order to meet the requirements of standard 150. That may happen in different ways such as discussions in meetings, a written assessment or by commissioning research bodies
- 9.2 A body must keep a record of the steps that it has taken in order to ensure compliance with the policy making standards with which it is under a duty to comply. In the context of this standard, those records may include:
- copies of assessments undertaken by the body when considering the effects of a policy decision on the Welsh language
 - copies of minutes from meetings held to discuss the effects of the policy decision on the Welsh language
 - copies of research terms of reference which show that the research needs to consider the effects of the policy decision on the Welsh language.
- 9.3 In general, the record above could reflect the current and reliable nature of the evidence it uses.

10 Appendix 1: relevant standards¹¹

| Standard number (regulations) | Standard wording |
|--|---|
| 88(1), 84(2), 83(4), 85(5), 94(6), 69(7) | <p>When you formulate a new policy, or review or revise an existing policy, you must consider what effects, if any (whether positive or adverse), the policy decision would have on—</p> <ul style="list-style-type: none"> (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language. |
| 89(1), 85(2), 84(4), 86(5), 95(6), 70(7) | <p>When you formulate a new policy, or review or revise an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision would have positive effects, or increased positive effects, on—</p> <ul style="list-style-type: none"> (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language. |
| 90(1), 86(2), 85(4), 87(5), 96(6), 71(7) | <p>When you formulate a new policy, or review or revise an existing policy, you must consider how the policy could be formulated (or how an existing policy could be changed) so that the policy decision would not have adverse effects, or so that it would have decreased adverse effects, on—</p> <ul style="list-style-type: none"> (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language. |
| 91(1), 87(2), 86(4), 88(5), 97(6), 72(7) | <p>When you publish a consultation document which relates to a policy decision, the document must consider, and seek views on, the effects (whether positive or adverse) that the policy decision under consideration would have on—</p> <ul style="list-style-type: none"> (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language. |
| 92(1), 88(2), 87(4), 89(5), 98(6), 73(7) | <p>When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would have</p> |

¹¹ [The Welsh Language Standards \(No. 1\) Regulations 2015](#); [The Welsh Language Standards \(No. 2\) Regulations 2016](#); [The Welsh Language Standards \(No. 4\) Regulations 2016](#); [The Welsh Language Standards \(No. 5\) Regulations 2016](#); [The Welsh Language Standards \(No. 6\) Regulations 2017](#); [The Welsh Language Standards \(No. 7\) Regulations 2018](#)

| | |
|---|--|
| | <p>positive effects, or increased positive effects, on—</p> <ul style="list-style-type: none"> (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language. |
| <p>93(1), 89(2), 88(4), 90(5), 99(6), 74(7)</p> | <p>When you publish a consultation document which relates to a policy decision the document must consider, and seek views on, how the policy under consideration could be formulated or revised so that it would not have adverse effects, or so that it would have decreased adverse effects, on—</p> <ul style="list-style-type: none"> (a) opportunities for persons to use the Welsh language, and (b) treating the Welsh language no less favourably than the English language. |

11 Appendix 2: the interpretations of the different sets of Welsh Language Standards Regulations of a 'policy decision'

| | |
|---|--|
| <p>The Welsh Language Standards (No. 1) Regulations 2015</p> | <p>Any decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, and it includes, amongst other things (and as appropriate to the organisation), decisions about—</p> <ul style="list-style-type: none"> (a) the content of legislation; (b) the exercise of statutory powers; (c) the content of policy statements; (ch) strategies or strategic plans; (d) internal structures. |
| <p>The Welsh Language Standards (No. 2) Regulations 2016 & The Welsh Language Standards (No. 5) Regulations 2016</p> | <p>Any decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, and it includes, amongst other things (and as appropriate to the organisation), decisions about —</p> <ul style="list-style-type: none"> (a) the content of legislation; (b) the exercise of statutory powers; (c) the content of policy statements; (ch) strategies or strategic plans; (d) internal structures and office locations; (dd) the recruitment or use of volunteers. |
| <p>The Welsh Language Standards (No. 4) Regulations 2016</p> | <p>Any decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, and it includes, amongst other things (and as appropriate to the organisation), decisions about —</p> <ul style="list-style-type: none"> (a) the content of legislation; (b) the exercise of statutory powers; (c) the content of policy statements; (ch) strategies or strategic plans; (d) internal structures and office locations. |
| <p>The Welsh Language Standards (No. 6) Regulations 2017</p> | <p>Any decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, in so far as the decision relates to—</p> <ul style="list-style-type: none"> (a) the admission and selection of students; (b) information provided to students and prospective students about the organisation; (c) the welfare of students; (ch) complaints; (d) disciplinary proceedings in respect of a student; (dd) careers service; (e) student intranet, virtual learning sites and learning portal sites; |

| | |
|---|--|
| | <p>(f) graduation and award ceremonies; (ff) the assessment or examination of a student; (g) the awarding of grants and the provision of financial assistance; (ng) public lectures; (h) learning opportunities; (i) courses; (j) signs on the organisation's buildings; (l) student accommodation, libraries and arts centres; (ll) allocation of a personal tutor; (m) calls to a main telephone number (or numbers), helpline numbers, call centre numbers and automated telephone systems; and includes, amongst other things (and as appropriate to the organisation), decisions about—</p> <p>(i) the content of legislation; (ii) the exercise of statutory powers; (iii) the content of policy statements; (iv) strategies or strategic plans; (v) internal structures; (vi) office and building locations; (vii) the recruitment or use of volunteers.</p> |
| <p>The Welsh Language Standards (No. 7) Regulations 2018</p> | <p>Any decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, and it includes, amongst other things (and as appropriate to the organisation), decisions about—</p> <p>(a) the exercise of statutory powers; (b) the content of policy statements; (c) strategies or strategic plans; (ch) internal structures and location of premises; or (d) the recruitment or use of volunteers.</p> |

12 Appendix 3: Welsh language data sources

1. [2011 Census](#)

The main source of information on the number of Welsh speakers. Contains information on understanding, reading and writing Welsh. As it is a census, the data is available for different subgroups and for small areas.

2. [Welsh language use survey: 2013 to 2015](#)

More detailed information on the fluency of Welsh speakers, and their use of Welsh in a range of settings. The most recent Welsh Language Use Survey was conducted in 2013-15.

3. [The Position of the Welsh Language 2012-2015: The Welsh Language Commissioner's 5-year report](#)

This report summarises those aspects which appear most significant today. That includes a summary of the Welsh language context in 2015; an analysis of the Welsh language skills of the people of Wales based on the Office for National Statistics' 2011 Census; an analysis of the success of efforts to create new Welsh speakers; and an analysis of the use of Welsh in some specific contexts.

4. [Annual Population Survey](#)

This survey collects information on people's ability in terms of the Welsh language and how often they speak it. The results are published quarterly (since 2004) and are historically higher than those produced by the Census.

5. [Welsh Language Commissioner's assurance reports](#)

The Commissioner publishes an assurance report every year, to show how bodies are performing and what are the experiences of users. The report is based on a range of evidence, including the results of survey work, public engagement sessions and general engagement with organisations.

6. [National Survey for Wales](#)

An annual survey that collects information on the ability of adults aged 16 and over to speak Welsh. This survey is capable of cross-analysis by a number of other topics and includes additional questions about the language in some survey years. Speaker estimates are higher than those produced by the Census.

7. [Cymraeg 2050: A million Welsh Speakers – Annual report 2017-18](#)

In order to fulfil the requirements of the Government of Wales Act 2006, 'Cymraeg 2050: A million Welsh speakers' was launched in July 2017, when the previous strategy came to an end. The Government of Wales Act 2006 requires an annual report to be published to monitor progress against the Welsh Language Strategy. With regard to education in particular, the report includes data on the proportion of learners in Welsh-medium education, the percentage of education activities conducted in Welsh or bilingually by type of provider, and the number of teachers who can teach through the medium of Welsh, among other statistics.



8. Health and Welsh language data

[My Language, My Health: Inquiry into the Welsh Language in Primary Care](#)

[General practitioners Welsh language ability by local health board and year](#)

9. Data relating to the economy and the Welsh language

[Report of the Welsh language and economic development task and finish group](#)

13 **Appendix 4: Judicial review of the decision made by Rhondda Cynon Taf County Borough Council to reorganise schools in the Pontypridd area: summary of key points arising from the Honourable Mr Justice Fraser's judgement of 24 June 2020**¹²

Background summary

In these proceedings, the Claimant sought judicial review of the decision made by Rhondda Cynon Taf County Borough Council ("the Council") on 18 July 2019 to implement proposals that concern wide-ranging re-organisation of the primary, secondary and sixth form education in the greater Pontypridd area within the Council's boundary. The proposals were published in three Statutory Notices. The implementation of a fourth proposal, contained in a fourth Statutory Notice, was referred by the Council to the Welsh Ministers. The proposals all concerned reorganisation of education in the Pontypridd area.

On 8 June 2020, the Commissioner made an application to intervene in the proceedings, to serve evidence and make both written and oral submissions at the hearing. In view of the concerns around the impact of the proposals upon education in the Welsh language, and the role of the Commissioner in the Welsh language, the Court deemed it appropriate that the Commissioner should be permitted to intervene and make submissions.


The purpose of the Commissioner's application to intervene was to provide the court with further information about the events leading up to the preparation of his final investigation report into the way that the Council had approached the proposals, and consideration of the impact of the proposals on the Welsh language. The Commissioner had arrived at a proposed determination that the Council was in breach in certain respects of the requirements of standards 91 to 93 of the Welsh Language Standards (No.1) Regulations 2015 ("2015 Standards"). The Claimant argued that this proposed determination should lead to the Court concluding that the Council had failed to comply with the Welsh language requirements imposed by the Welsh Government's School Organisation Code 2013 ("2013 Code"). The Council disagreed with the Claimant's argument. This challenge was referred to by the Judge as the Welsh Language Ground.

The Welsh Language Ground

The Claimant argued that the Council failed to take into account a specific factor for proposals to reorganise secondary schools or remove sixth forms, namely how those proposals might affect the sustainability or enhancement of Welsh medium provision in the regional 14 – 19 network and wider area, and promote access to availability of Welsh medium courses in post-16 education.

Choice

¹² [Copy of the Honourable Mr Justice Fraser's judgement in full](#)



The Judge considered that it was implicit that both children (and the parents of children) in Wales should be able to be educated through the medium of Welsh if they so choose.

Sustainability

Paragraph 1.9 of the 2013 Code states that the following should be taken into account by those reorganising schools:

"How proposals might affect the sustainability or enhancement of Welsh medium provision in the local 14 – 19 network and wider area and promote access to availability of Welsh medium courses in post-16 education..."

Equivalent standards

Furthermore, paragraph 1.4 of the 2013 Code states:

*"In all cases, existing pupils at a school where provision is being reduced or removed **must** be able to continue receiving an education that provides at least equivalent standards and opportunities for progression in their current language medium. Specific transition arrangements may be necessary in order to achieve this.*

*Where proposals affect schools where Welsh is a medium of instruction (for subjects other than Welsh) for some or all of the time, local authorities **should** carry out a Welsh Language Impact Assessment."*

(emphasis added)

The Judge commented that the second paragraph is directory guidance only, which may be departed from where a relevant body has a proper basis for doing so. However, the first paragraph uses "must", which is mandatory. The beginning of that paragraph also uses the phrase "in all cases". This applies where "provision is being reduced or removed" and the Judge considered this was a strictly worded mandatory requirement.

Therefore, in all cases, pupils must be able to continue receiving education with at least equivalent standards and opportunities in their chosen language. This is mandatory. Further, if proposals affect schools which are Welsh medium schools, the directory guidance is that a Welsh Language Assessment should be carried out. This means it should be done unless there is good reason for it not to be done. The Council had completed a Welsh Language Assessment which was included in its consultation documentation.

Policy decision

The Judge considered how public bodies could be caught by the Policy Making Standards which includes standards 91 to 93. Section 29(6) of the Welsh Language Measure, a policy decision, means any decision made by an organisation about the exercise of its functions or about the conduct of its business or other undertaking. The Policy Making Standards provide requirements for considering and adapting the impact of policy decisions on the Welsh language.

Poor practice in the past

Not all public bodies recognise when they are caught by the Policy Making Standards or the Standards regime in general. The Commissioner confirmed in his evidence before the Court, "*The standards have been designed to ensure that the decisions made by an organisation contribute to the strategic aims of increasing the use of Welsh and treating Welsh no less favourably than English*".

To support his argument, the Commissioner made reference to the report published by his Office in 2018 called "*A Measure of Success: The Welsh Language Commissioner's assurance report 2017-2018*"¹³. This stated that there was very little information provided by organisations demonstrating how they gathered opinion in relation to the impact decisions may have on the Welsh language when conducting consultations. In a number of investigations, the Commissioner had previously found that a local authority (for example) had failed to consider the impact of a new policy (that was being consulted upon) on opportunities to use the Welsh language.

Local authorities also failed to seek views on the impact of their decisions upon the Welsh language, and they had failed to consider whether Welsh was being treated less favourably than English. On occasion, local authorities had also failed to ask consultees how they could make a decision so that it had a more positive, or less adverse, effect upon opportunities for people to use Welsh. This resulted in enforcement action being taken by the Commissioner's office.

Welsh language standards v 2013 Code


The Judge accepted the Commissioner's comment in evidence that the 2015 Standards and the 2013 Code were different statutory regimes and only compliance with the 2013 Code was to be scrutinised by the Court (given the Commissioner's proposed determination had not been finalised and could ultimately be scrutinised by the Welsh Language Tribunal rather than the Court).

The Council did not accept that it had failed to comply with the 2015 Standards, or with paragraph 1.4 or 1.9 of the 2013 Code. However, the Council recognised in its evidence before the Court that changes to Welsh medium primary education can have an impact on the take-up of Welsh medium secondary education. The Judge considered it plain and obvious that changes to Welsh medium primary education must inevitably have an impact upon Welsh medium secondary education. The fewer pupils who enjoy a Welsh medium primary education, the fewer are then likely to attend Welsh medium secondary education.

The Judge considered that the Council decided that there was to be no reorganisation of Welsh medium secondary education, and so that was the end of any consideration about the impact of *any* of its proposals upon Welsh medium secondary education. The Judge further commented that those from the Council involved failed to consider how the decisions that they were making either contributed to the strategic aims of increasing the use of Welsh, and/or whether they were treating Welsh no less favourably than English.

The Judge considered that the Council's consultation document which set out the advantages and disadvantages of the alternative options considered was limited in

¹³ [A Measure of Success: Welsh Language Commissioner's 2017-18 Assurance Report](#)



detail. Also, it did not include a form of analysis or reasoned rationale and the Welsh Language Impact Assessment had limited content in terms of the impact of the proposals upon the Welsh language.

Conclusion

The Judge found that the Council breached paragraph 1.9 of the Code because it failed to consider how the closure of two schools, and the establishment of a new Welsh medium primary school on an existing site would impact upon Welsh medium provision generally, and how the impact upon Welsh medium primary education would also impact upon Welsh medium secondary education for those in the local 14 – 19 network. The Judge concluded that despite the Council completing a Welsh Language Impact Assessment it had failed to assess the impact of the proposals on the Welsh language in any meaningful way.

Accordingly, the Claimant succeeded in the challenge on the Welsh Language Ground and the Judge quashed the four linked school reorganisation proposals approved by the Council's Cabinet on 18 July 2019.



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