

## Ministerial Advice

**To: Minister for Welsh Language and Lifelong Learning; Cabinet Secretary for Health and Social Services; Cabinet Secretary for Education**

**From: [hepgorwyd adran 40(2)], Welsh Language Unit**

**Date: 01 February 2018**

**Subject: LEGISLATION - Approval of Welsh Language Standards (No.7) Regulations 2018**

**MATS Reference number: MA-(L)/EM/0034/18**

**When is a decision required from the Minister?** A decision is required by Friday 16 February to allow arrangements to be made to lay the Regulations on 26 February (the Assembly is in recess 19-23 February).

### **1. What is the issue you are asking the Minister to consider?**

To seek the approval of the Minister for Welsh Language and Lifelong Learning to:

- lay the Welsh Language Standards (No. 7) Regulations 2018 (“the No 7 Regulations”) (doc 1) and the accompanying Explanatory Memorandum (doc 2) in draft on Monday 26 February, and
- publish the *Response to the consultation on Welsh Language Standards* (doc 3) on the same date.

To ask the Cabinet Secretary for Health and Social Services and the Cabinet Secretary for Education to note the above actions (the policy behind the Regulations was approved in MA-L/EM/0764/17).

### **2. What action(s) are you recommending to the Minister?**

The Minister for Welsh Language and Lifelong Learning is asked to agree:

- to lay in draft the No. 7 Regulations at doc 1 at the National Assembly on 26 February. A Plenary debate has been booked for 20 March;
- approve the Explanatory Memorandum at doc 3 and agree to it being laid in draft at the National Assembly;
- approve the Government’s response to the consultation on draft Welsh Language Standards for health sector bodies at doc 4 and agree to it being published on 26 February;
- to the advice from officials in paragraphs 5.18-5.20 regarding the timing of meetings with Opposition Spokespeople.

### **3. Deputy Director, Statement of Assurance**

I, [hepgorwyd adran 40(2)], confirm that I have quality assured this advice.

I am satisfied that the recommended decision or action, if agreed, would be lawful and affordable. Welsh Government policy priorities and cross portfolio implications

have been fully considered in line with delivery of the [government objectives](#) in [Prosperity for All: the national strategy](#).

## Advice

### **4. Context - What is the situation that has led to this advice?**

#### Draft Welsh Language Standards (No.7) Regulations 2017

- 4.1 On 22 November you received MA-L/EM/0764/17 asking you to agree the policy behind the changes made to the draft Regulations making Welsh language standards for the Health Sector following the public consultation in 2016. You were asked to consider the advice together with the advice in MA-L/VG/0368/17 which dealt with the proposed approach for independent primary care providers.
- 4.2 This led to discussions between you and the Cabinet Secretary for Health and Social Services on 07/12/2017 to seek agreement on the proposed way forward for the Regulations and primary care.
- 4.3 You also met with the First Minister and the Cabinet Secretary for Health and Social Services on 16 January 2018.
- 4.4 These draft Regulations (doc 1) have been prepared in accordance with the policy position you agreed.

#### Consultation on draft Regulations in 2016

- 4.5 A consultation on draft Welsh Language Standards (Health sector) Regulations 2016 to make standards specifically applicable to health sector bodies ran from 14 July to 14 October 2016.
- 4.6 A total of 88 responses were received, 19 of which used a proforma letter prepared by Cymdeithas yr Iaith which focused on the lack of standards on primary care. Cymdeithas yr Iaith also submitted a petition signed by 759 individuals calling for standards to be placed on primary care providers as individuals interact most frequently with primary care.
- 4.7 During the consultation officials met with the Chief Executives and senior managers from each health board and trust, the Board of Community Health Councils, representatives of the health care regulators, representatives of the Royal Colleges and other representative bodies. Two public events were held in Swansea and Caernarfon.
- 4.8 The petition from Cymdeithas yr Iaith was also submitted to the Welsh Assembly's Petition Committee (ARD/05457/16). The Minister will be asked to update the committee once the Regulations have been laid. Officials will provide separate advice on this matter.
- 4.9 You also received correspondence initiated by Cymdeithas yr Iaith signed by 32

healthcare professionals calling for Welsh language standards to be placed on primary care providers (EM/05102/17).

#### Plenary Debate

- 4.10 These Regulations will be debated and voted on in Plenary on 20 March. Should the Assembly vote to approve the Regulations, they will come into force on 29 June 2018. The delay between the debate and the coming into force date is deliberate. As well as the normal scrutiny by the Constitutional and Legislative Affairs Committee, Standing Orders allow any other Assembly Committee to give notice to the Welsh Government, within seven days of the Regulations being laid, of its intention to scrutinise them. They have 20 calendar days to report, after which the Welsh Government is able to move the motion to approve the Regulations to a vote, whether or not the Committees have reported. However, should a Committee not be able to report within the 20 days, Ministers may consider that delaying the Plenary debate on the motion would be advantageous to facilitating their passage through the Assembly. In the event the debate was postponed, if the coming into force date had passed before the rescheduled Plenary session then the Regulations would have to be re-laid. A coming into force date of 29 June allows time for rescheduling and takes the Easter recess into account.
- 4.11 If the Plenary debate takes place on 20 March as expected the later coming into force date is unlikely to delay the implementation of the standards. The Commissioner will be able to prepare draft compliance notices, a process which normally takes a couple of months, which she can issue once the Regulations come into force.

### **5. What is your advice to the Minister?**

#### Draft Welsh Language Standards (No.7) Regulations 2017

- 5.1 The draft Regulations (doc 1) reflects the advice in MA-L/EM/0764/17. They have been subject to some changes arising from final legal checks, translation and equivalence checking.
- 5.2 These changes are presentational to aid understanding or to ensure consistency between the wording of standards and do not change the policy intention.

#### The main changes are:

- 5.3 The definition of 'individual' has been amended to ensure that it is broad enough to capture the policy of excluding all types of workers. The policy intention is that an 'individual' captures only people acting in their personal capacity and not as workers of an organisation. A specific reference has been made to volunteers to make it clear that they are not captured even though they are acting in a personal capacity when volunteering for an organisation.
- 5.4 Standards 22A – 22CH and Standard 28(b) have been amended so that they

include consecutive translation. This will allow the body can choose whether it provides consecutive or simultaneous translation in a meeting.

5.5 Standards 97 & 98: The wording of these standards has been amended from 'must provide training' to 'must provide opportunities for training'. The new wording means that an organisation will only need to provide training in Welsh if there is a demand for the course in Welsh.

5.6 Standard 114. The wording has been amended so that only recorded messages are captured. This means that any ad-hoc announcements made using audio equipment in the workplace will not be caught. It is considered unreasonable to expect a body to ensure that all ad-hoc announcements in all circumstances and locations are made in Welsh.

Explanatory Memorandum (EM) and Regulatory Impact Assessment (RIA)

5.7 A draft EM that will accompany the No.7 Regulations has been attached for your approval at (Doc 2).

5.8 The Welsh Government conducted a data collection exercise in order to prepare the RIA. This was conducted through a questionnaire which was issued to all the bodies in the Commissioner's second standards investigation which include the organisation's subject to these Regulations. The questionnaire asked for data concerning the costs of complying with a current Welsh Language Scheme, as well as the projected costs of complying with standards. Bodies were also asked qualitative questions regarding the projected social, environmental, linguistic, and economic benefits of complying with standards.

5.9 The bodies that are subject to these draft Regulations were given another opportunity to complete the RIA questionnaire during the consultation on the draft Regulations in 2016. While it is not yet known which of the standards will apply to each body it is considered likely that there will be additional one-off and recurrent costs incurred by the bodies to comply with the standards.

5.10 MA-(L)/EM/0764/17 referred to concerns held by officials regarding the quality of the responses to the RIA data collection exercise. Similar concerns have been noted during the preparation of previous Regulations making Welsh language standards. Bodies are unable or unwilling to provide estimated additional costs as they do not know with which standards they will be required to comply (and will not know until after the Regulations are approved by the Assembly).

5.11 12 of the 18 organisations that will be subject to the No. 7 Regulations submitted an RIA, 11 organisations provided estimated costs of complying with standards. Policy officials undertook a quality assurance exercise and bodies who had misunderstood the requirements of the RIA or included duplicated costs were given an opportunity to review their RIA estimates. This resulted in an overall reduction of approximately £500,000 from the total estimates cost impact.

5.12 Where cost estimations were provided solely against standards that have now been removed from the draft Regulations they have been deducted from the overall costs provided by that body. All these changes have been fed into the preparation of the final RIA.

5.13 The Welsh Language Commissioner has confirmed that she will consult with the bodies before issuing final compliance notices and factors such as

reasonableness and proportionality of individual standards will be discussed at this stage. As part of this process, bodies could present an assessment of the relative costs and benefits associated with standards that they are required to comply with. This should be considered by the Commissioner as part of the process of coming to a decision on whether the standards are reasonable and proportionate. If they still believe that complying with a standard is unreasonable after a final compliance notice has been issued (and cost can be a basis for a standard being unreasonable), the Measure outlines an appeal process with the Welsh Language Tribunal having the ultimate power to decide whether a requirement is reasonable and proportionate.

- 5.14 The approach behind developing the RIA, and the draft RIA at doc 3 has been reviewed by colleagues in Knowledge and Analytical Services, and the Chief Economist Office who are content.

#### Government's response to the consultation on Welsh Language Standards

- 5.15 The Government's Response to the Consultation on Welsh Language standards at doc 4 sets out a summary of the comments received to the questions posed in the consultation document and the Government's response.
- 5.16 The consultation document included 13 questions which were set out in a proforma style document and an online form for ease of return. The questions gave respondents the choice of *yes* or *no* answers and then allowed for comments. The document also reflects the comments received during meetings held with the public and individual bodies during the consultation period.
- 5.17 The main policy changes in the Regulations as a result of the comments received are excluding clinical consultations from standards and the introduction of new standards for 'in-patients' and the requirement to publish a 5 year plan setting out how they will work toward being able to offer clinical consultation in Welsh. The approach taken for primary care also differs from what was included in the draft Regulations which were consulted upon. Detailed advice on these and the other changes were given in MA-L/EM/0764/17 and MA-L/VG/0368/17.

#### Meeting Opposition Spokespeople

- 5.18 Officials wish to emphasise to the Minister for Welsh Language and Lifelong Learning that once the Regulations are laid (26 February) they will be in the public domain and pressure groups are likely to bring matters of concern to the attention of Assembly Members. In this instance, we expect Cymdeithas yr Iaith to actively lobby Assembly Members with their main concerns being that primary care providers are not directly caught by standards, and that some commitments have been rolled back from the consultation version (for example providing support at clinical consultations). We are confident that we have credible and robust policy responses to these concerns.
- 5.19 However, pressure from lobby groups and concerns of Assembly Members could lead to these Regulations being called in by an Assembly Committee for scrutiny. This would mean that the Minister for Welsh Language and Lifelong Learning may have to publically defend the Regulations before the Plenary session which is scheduled for 20 March.

5.20 Officials therefore recommend that the Minister for Welsh Language and Lifelong Learning meets with Opposition Spokespeople before or immediately after the Regulations are laid. This will allow the Opposition Spokespeople to understand the Government's policy position before any possible committee session and before an active lobby campaign gathers pace.

## 6. What legal or policy obligations are relevant to this advice?

**[hepgorwyd adran 42]**

### Well-being of Future Generations (Wales) Act 2015

A Wales of vibrant culture and thriving Welsh language – the implementation of Welsh language standards contributes to this goal. It will increase the opportunity for people to access services in Welsh and to live their lives through the medium of Welsh thus protecting and promoting the language, the culture and heritage of Wales.

### Equality and Human Rights

An Equalities Impact Assessment has been prepared for the proposed Regulations. No one, in any part of Wales, should be denied opportunities to use the Welsh language, nor denied the opportunity to learn Welsh because of their race, ethnicity, disability, gender, sexual orientation, age or religion. Welsh language services should be available to, and accessed by, all communities.

### Children's Rights Impact Assessment

A Children's Rights Impact Assessment has been prepared for these Regulations which will be published when the Regulations are laid.

### Welsh Language Standards

The proposed Regulations have been subjected to the Welsh Government's Welsh Language Impact Assessment. The assessment identified clear benefits to the Welsh language, including increasing use of the Welsh language.

The Welsh Language Impact Assessment has been approved by internal Welsh Language Standards compliance officials. Clearance code: 16/06/01.

### Promoting Economic Opportunity for All - Tackling Poverty Agenda

The proposed Regulations aim to improve to the experience of Welsh speakers when interacting with the health sector and to reduce inequality in health.

### Prosperity for All - United and Connected

The Welsh Language is integral to the United and Connected theme. These Regulations aim to increase the opportunities for people to use Welsh in their day to day life. Being able to use their language of choice will give individuals a more

positive experience when using the services offered by the bodies subject to these Regulations and potentially lead to better health and well-being outcomes.

### Programme for Government

Bringing forward legislation is part of the wider context of delivering our vision for a million Welsh speakers which is outlined in Cymraeg 2050. These Regulations help to meet the commitment in the Programme for Government 'Taking Wales Forward 2016-2021'

### **7. What are the financial implications of Ministers agreeing to this advice and which budget will this be paid through?**

**Cost:** None

**Budget:** None

The EPS Operations Team is content that this MA(L) complies with Interim finance Notice 01/2015 (EPS/EM/6/18).

HSS Finance Directorate has seen and noted the contents of this advice, clearance number (GH 2018/6515)

### **8. What communication or media activity is planned following this decision?**

8.1 The Minister for Welsh Language and Lifelong Learning visited Cardiff University on 22 January to see the work going on to build the capacity of the Welsh speaking workforce within the NHS. Policy officials will liaise with the press office to issue a press release around this visit when the Regulations are laid.

8.2 It should be noted that laying the Regulations and accompanying documents is likely to attract media attention. Cymdeithas yr Iaith has recently sent a letter to the Minister for Welsh Language and Lifelong Learning signed by 30 individuals who work in the health sector encouraging the Minister to bring primary care within the scope of the standards. The Welsh language media have also made enquiries about the timing of making these Regulations.

### **Annex A: Copy Recipients**

- [hepgorwyd adran 40(2)],