



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Enforcement Policy



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Foreword

As Welsh Language Commissioner, I am pleased to present this revised Enforcement Policy, that reflects our new approach to co-regulation and our increasing focus on regulatory outcomes.

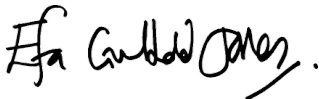
This new approach is based on the principles of collaboration and partnership, working closely with organisations; not only to increase the opportunities available for people to use the Welsh language, but also to increase the use made of those services.

This revised policy represents an important step forward in our efforts to ensure that the Welsh language standards continue to be upheld and implemented effectively across Wales. Our aim is to create an environment where the Welsh language can thrive, and this policy outlines the steps we will take to ensure compliance, as well as the enforcement action that may be taken where required.

We are focussing increasingly on regulatory outcomes, ensuring that our efforts lead to tangible and positive outcomes for Welsh speakers. This policy sets out our commitment to transparency, fairness and consistency in fulfilling our enforcement duties.

I urge all organisations to work with us in this process, as we believe strongly that, together, we can create a Wales where the Welsh language can be used in all aspects of everyday life.

Thank you for your continued co-operation.



Efa Gruffudd Jones

Welsh Language Commissioner

1. Introduction

- 1.1** The Welsh Language (Wales) Measure 2011 (“the Measure”) sets out a legal framework for placing duties on some organisations to comply with the Welsh Language Standards (“standards”). The standards apply to the following areas:
- service delivery
 - policy making
 - operational
 - promotion
 - record keeping.
- 1.2** The duties resulting from the standards mean that organisations must promote and facilitate the use of the Welsh language and that they must not treat the Welsh language less favourably than the English language.
- 1.3** The Welsh Language Commissioner (“the Commissioner”) gives organisations a compliance notice that sets out the specific standards with which they must comply, and by when. Copies of those compliance notices are available on our [website](#).
- 1.4** This Enforcement Policy is a statutory document produced in accordance with section 108 of the Measure. The document provides advice and information on our intended approach to ensuring that organisations comply with their duties and reflects our duties under Part 5 of the Measure (Enforcement of Standards).
- 1.5** It explains how we will deal with non-compliance and what actions we will most likely take under various circumstances. It also provides information about our principles and approach to enforcement.
- 1.6** The policy’s main target audience is those organisations who are required to comply with standards. The policy is also relevant to the public, and persons¹ who wish to complain about an organisation’s compliance.
- 1.7** This is the third version of our Enforcement Policy. We will keep the policy under review and a copy will be available on our [website](#) and in all our offices.

1 A person in this context includes any individual or body of corporate or non-corporate persons.

2. Our regulatory approach

- 2.1** We regulate to ensure an increase in the opportunities available to use the Welsh language. In doing so, we will also contribute to realising our vision of a Wales where people can use the Welsh language in their everyday lives.
- 2.2** We are committed to co-regulation with a strong focus on promoting self-regulation. The success of co-regulation is dependent on operating within an environment of openness and honesty.
- 2.3** We encourage organisations to contact us at an early stage to inform us of any risk of non-compliance. We also welcome requests from organisations for advice and clarification on matters relating to compliance.
- 2.4** Our aim is to ensure that regulation involves more than undertaking statutory investigations and imposing legal enforcement action. It involves providing advice, increasing awareness and understanding, transferring expertise and supporting organisations in their efforts to comply with the standards.
- 2.5** In effect, there are a range of methods that we may use, and we will always choose the method which will work best in every circumstance.
- 2.6** If our regulatory support is not successful, we will use the powers available to us under Part 5 of the Measure.

Regulatory outcomes

- 2.7** We will regulate purposefully and strategically and be very clear about what we are trying to achieve when making regulatory decisions. In line with our commitment to co-regulation, we have produced and published regulatory outcomes.
- 2.8** Our intention in introducing these regulatory outcomes is that they, amongst other things:
- set the Welsh Language Standards and our regulatory work in the context of the national vision to increase the number of Welsh speakers and increase the use of the language
 - provide transparent public statements of what we intend to achieve, and how we will demonstrate that it has been achieved
 - ensure that our regulatory activities focus on outcomes for Welsh language users and have the greatest impact on opportunities to use the Welsh language
 - mitigate the risk that organisations focus on strict compliance as opposed to good outcomes for Welsh language users.

2.9 We want these outcomes to represent the common aims and objectives of organisations, Welsh language users as well as all of us within the Welsh Language Commissioner, and we want us all to take ownership over them.

2.10 The need to deliver these outcomes will inform our method and approach to regulation, and we will use our resources in those areas where the risk to delivering these outcomes is greatest.



Outcome 1: Organisations with the capacity to deliver high-quality Welsh language services at all times



Outcome 2: Welsh language users have an understanding and awareness of the Welsh language services available to them



Outcome 3: Organisations give due regard to the potential impacts of their policy decisions on the Welsh language



Outcome 4: Organisations increase the use of Welsh in their workplace, enabling staff to work in Welsh on a day-to-day basis



Outcome 5: Organisations promote the Welsh language so that people can use the language naturally in their daily lives



Outcome 6: Organisations protect and promote the interests of Welsh language users by having effective governance and complaints arrangements

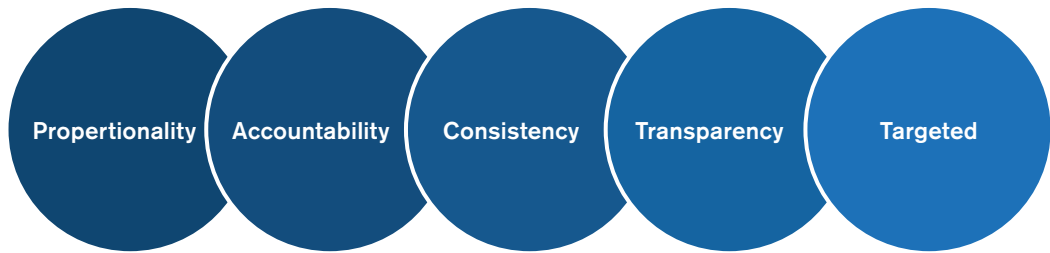


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Our principles

2.11 We will follow the five principles of good regulation set out below:



Proportionality

2.12 We will make proportionate decisions about whether or not to investigate under section 71 of the Measure (“investigation”). We will consider whether carrying out an investigation is a reasonable and proportionate use of our resources given the seriousness of the matter.

2.13 Following the conclusion of an investigation, and in deciding what further action to take, we will consider what is proportionate to prevent future non-compliance.

Accountability

2.14 The Measure gives organisations and complainants the right to appeal to the [Welsh Language Tribunal](#) (“Tribunal”) against some of our decisions. Complainants may also apply to the Tribunal to review a decision in some cases. Further information about the Tribunal’s work is available in [section 6 of this policy](#).

2.15 We will be accountable for the decisions we make by receiving representations and feedback on our work and the way in which we use our powers. We have a complaints process that a person may use to express any concerns regarding our work and decisions ([see section 7 of this policy](#)).

Consistency

- 2.16** We will consider the facts of each case individually and consistently when determining the appropriate response. In doing so, we will ensure fairness and objectivity when dealing with different parties. Acknowledging that the circumstances of each case are different, operating consistently, however, does not mean making the same decision.

Transparency

- 2.17** We will be transparent in ensuring that the public and organisations understand the decisions that we have made and why.
- 2.18** We will keep a record of all our investigations, including any enforcement action that we will take. This information is published as a [Register of Enforcement Action](#).

Targeted

- 2.19** We will target our regulatory work by taking action on a number of specific measures, including risk assessment. We will use risk to manage the use of time and resources, focussing on work that will have the greatest impact on compliance, and on opportunities for people to use the Welsh language.
- 2.20** We will also consider sharing resources with others where possible to avoid duplication. For example, we may work with other ombudsmen and commissioners when undertaking an investigation in some cases ([see section 4 of this policy](#)). We will consider the circumstances of each case to reach a decision on the most appropriate course of action.

3. Complaints

- 3.1** In line with the regulatory outcomes that we have set, we expect the people of Wales to receive high-quality Welsh language services from organisations and for corrective action to be taken when things go wrong.
- 3.2** The quality of the service delivered by organisations is very dependent on organisations' awareness and understanding of their own performance. Complaints are a way of learning about the experience of service users. Although complaints are made when something goes wrong, they can be seen as a positive opportunity to better understand performance and make changes.
- 3.3** Organisations are expected to have a complaints procedure in place setting out how they propose to deal with complaints, and publish a document detailing that procedure on their website.
- 3.4** We want to give organisations the opportunity to put these complaints procedures into practice, and to respond and offer a solution to a complaint when something goes wrong.
- 3.5** If this is not possible, or if the complainant is not satisfied with the outcome of the complaint or the way in which an organisation has dealt with the complaint, we will consider what action we may take.
- 3.6** In doing so, our main focus will be seeking the best possible solution for the complainant and Welsh language users, whether by bringing the matter – and the need to comply with the requirements of the standards – to the attention of the organisation or, where appropriate, carrying out an investigation.

Making a valid complaint

- 3.7** A complainant must be a person who has been directly affected, or a person acting on behalf of that person. Both are considered complainants for the purposes of this policy.
- 3.8** We will accept complaints:
- in written format or electronically
 - through our website
 - through our social networks.
- 3.9** If a complaint cannot be made through any of these methods due to personal circumstances, we will make reasonable adjustments.

3.10 A complainant must provide sufficient details about their complaint, including:

- name of organisation
- circumstances of the complaint
- how the matter has affected the complainant
- the complainant's name and contact details.

3.11 We may not be able to consider the complaint further if these details are not provided, or if the exceptions in paragraphs 3.21-3.23 of the policy apply.

3.12 Further details about our complaints procedure are available on our [website](#).

Deciding whether or not to investigate

3.13 Where a valid complaint is made we have a general duty to consider carrying out an investigation (unless the exceptions outlined in paragraphs 3.21-3.23 apply).

3.14 We will not investigate unless we consider that doing so is in the public interest and represents the best use of our resources.

3.15 Our decision about whether or not to investigate will be based on a number of factors. These factors may vary and/or may be weighted differently depending on the circumstances. We will consider all relevant factors before deciding whether to investigate, and review the ongoing relevance of those factors during an investigation.

3.16 These factors include, but are not limited to the following:

- (a)** the extent to which the complainant has made an initial complaint to the organisation, and completed the organisation's complaints procedure
- (b)** the organisation's response when the matter was brought to its attention
- (c)** the nature of the failure to comply, where relevant, and the extent to which it was intentional or non-intentional
- (ch)** the action taken by the organisation to address any non-compliance
- (d)** the extent to which the matter was the subject of previous complaints or investigations
- (dd)** the likelihood, in our opinion, that this matter will recur

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- (e) the likelihood, in our opinion, that this matter will have a detrimental effect on Welsh language users and, if so, its possible significance
 - (f) the likelihood, in our opinion, that investigating (and any follow-up action where relevant) will have a positive effect on achieving our regulatory outcomes
 - (ff) the extent to which the organisation was aware of the risks taken
 - (g) whether we had provided advice in this area previously, and whether this advice was followed
 - (ng) whether it is possible to respond to the complaint without investigating on the grounds that a legal or statutory solution exists which addresses the basis of the complaint
 - (h) has the complaint been made in the circumstances outlined in paragraphs 3.21-3.23.

3.17 Where we decide to investigate, we will do so with the following aim:

- to collect information and establish the facts
- to identify any failure to comply and understand the causes
- to determine appropriate interventions, including any enforcement action.

3.18 It should be noted that a decision not to investigate does not mean that no action or proactive steps will be taken. Even if an organisation has provided a high level of assurance that the matter has been resolved and that the likelihood of the failure happening again is low, we may decide to maintain contact with the organisation and ask for evidence where relevant.

3.19 After reaching our decision, we will inform the complainant and the organisation, where relevant.

3.20 If the complainant is unsatisfied with our decision, they may, with the permission of the Tribunal, apply for a review of the decision. We will inform the complainant of that right ([see section 5 of this policy](#)).

A complaint made more than a year after the complainant became aware of the matter

3.21 If a complaint is made more than a year after the complainant became aware of the matter, we will not consider it unless we deem it appropriate. Such situations may include, but are not limited to the following:

- non-compliance continues
- serious non-compliance is revealed
- significant public interest in the case
- the complainant has a valid reason for not submitting the complaint earlier.

Frivolous and vexatious complaints

3.22 If we believe that a complaint is frivolous or vexatious, has already been made several times, or if a complaint is withdrawn, we will not investigate and we will close the complaint.

3.23 A number of circumstances may lead us to conclude that a complaint is frivolous or vexatious. These may include circumstances where the complainant:

- submits an insubstantial complaint or makes significant changes to the complaint
- submits an insincere complaint
- submits a complaint which has been made more than once already or relates to the same matter submitted in a previous complaint and does not include any new information
- submits a complaint where there is no hope or basis to consider that the complaint would be successful
- insists on pursuing a valid complaint in an unreasonable manner
- submits a complaint where the cost and/or time taken to investigate are incompatible with the value to the public and best use of our resources
- insists that the complaint is treated in a way which is contrary to this enforcement policy or good practice
- raises irrelevant matters
- sets out unreasonable demands
- makes contact in a way which is considered unreasonable.

4. Investigations

Carrying out an investigation

4.1 Where we decide to carry out an investigation, we will try to avoid any unnecessary delays and make a decision as soon as possible. We acknowledge that investigations may cause concern and uncertainty to the complainant as well as the organisation involved.

4.2 To mitigate this, we will follow the principles below when investigating:

- We will inform everyone at the earliest possible opportunity that we have opened an investigation, and the reasons for this
- We will provide regular updates on our investigation and we will inform them of when they can expect the next update
- We will provide the contact details of the officer working as the main contact during our investigation
- We will give reasonable opportunities for everyone to submit representations during the different stages of the investigation process, this may be done verbally or in writing
- We will keep any evidence we receive in line with our publication policy
- We will give reasonable notice to any organisation if we decide to exercise our power to enter premises² which are under its control
- We will inform everybody when a decision has been made about any steps that we intend to take in response to any non-compliance
- When we take follow-up action, we will explain the appropriate rights to make representations and the rights to appeal against a decision.

We will also act in accordance with our duties under Schedule 10, Part 1–3 of the Measure, and will do so in a prompt and timely manner.

² This power does not extend to dwellings.

Working with other ombudsmen and commissioners

4.3 If it appears that the subject of an investigation could also be subject to an investigation by an ombudsman or other commissioner, we will do the following if we consider it to be appropriate:

- inform the relevant ombudsman or commissioner about the investigation
- consult the relevant ombudsman or commissioner in relation to the investigation.

4.4 Where both parties are investigating the same matter, or where the other ombudsmen and commissioners are investigating a related matter, one or more of the following steps may be taken:

- co-operate in relation to the investigation/the separate investigations
- carry out a joint investigation
- prepare and publish a joint report in relation to the separate investigations or the joint investigation.

4.5 If we do not investigate, we will provide information about how to refer the related matter to the other relevant ombudsman or commissioner. We will also give this information to any other interested person in the case.

Discontinuing an investigation

4.6 We may decide to discontinue an investigation at any time. The reasons for deciding to discontinue an investigation may include, but are not limited to the following:

- the investigation reveals disproportionate use of our resources
- the investigation quickly reveals that the organisation has not failed to comply and therefore there is no justification for using resources to continue with the investigation
- the investigation quickly reveals that the organisation is taking appropriate steps to ensure compliance
- we believe that discontinuing the investigation is in the public interest
- the organisation has been abolished
- if we consider that one or more of the factors noted in section 3.16 above become relevant during the investigation.

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- 4.7** When we decide to discontinue an investigation, we will inform the relevant parties as soon as practicable, as well as our reasons for doing so. If the investigation is a result of a complaint, the complainant will be informed of their right, with the permission of the Tribunal, to apply for a review of our decision ([see section 5 of this policy](#)).

Decision of investigation

- 4.8** After carrying out an investigation, we must decide whether or not the organisation has failed to comply. Before making a final decision, we will produce a draft report on the investigation and give each interested person the opportunity to respond and provide comments on the draft.
- 4.9** Depending on the decision, there are a range of actions available to us. These include:
- taking no further action
 - giving advice and/or recommendations to the organisation or any other qualifying person
 - seeking to enter into a settlement agreement with the organisation
 - requiring the organisation to take specific steps
 - requiring the organisation to prepare an action plan
 - publicising the organisation's non-compliance
 - requiring the organisation to publicise its non-compliance
 - issuing a civil penalty.
- 4.10** Where we determine that an organisation has failed to comply with a standard, we will try to ensure that the organisation restores compliance voluntarily. Where this is not possible, we will take steps to enforce compliance.
- 4.11** Based on the principles set out in 2.11-2.20 of this policy, we will exercise discretion and professional judgement when deciding on the appropriate response to each individual case. The exact steps we decide to take will depend on the nature of the failure to comply and the related circumstances. These circumstances include, but are not limited to the following:
- the organisation's co-operation when carrying out the investigation
 - the organisation's ability and willingness to address the non-compliance effectively
 - the steps taken by the organisation to prevent the non-compliance and any clear reasons for the non-compliance
 - the organisation's willingness to be open about the non-compliance.

Take no further action

4.12 When we decide to take no further action, the organisation will not be expected to take any further action. However, the duty to comply with the standard remains.

Give advice or recommendations

4.13 When we decide to give advice or recommendations, we will do so with the aim of providing guidance on how to address the non-compliance as quickly and effectively as possible.

4.14 If we consider it appropriate, a warning letter may accompany our advice and guidance.

4.15 We are more likely to conclude that giving advice or recommendations is an appropriate response (with a written warning or not) where one or more of the factors below are deemed significant:

- the risk associated with the failure to comply is relatively low
- the organisation has a good record of compliance
- the organisation has acted sincerely, demonstrating a commitment to compliance
- the organisation has demonstrated a willingness to rectify matters
- where the failure to comply is beyond the organisation's control, but we would want the organisation's co-operation to prevent any recurrence.

4.16 Any advice and/or recommendations given will always be confirmed in writing and will usually state:

- the nature of the non-compliance
- what should be done to address the non-compliance
- a timetable for completing any steps required
- in the case of a warning letter, the possible consequences of failing to rectify the non-compliance.

4.17 Where advice or recommendations have been given, we will take reasonable and practical steps to contact the organisation to receive evidence or confirmation that those steps have been taken. This will allow us to monitor compliance and ensure that our advice is implemented effectively.

4.18 If the matter in question arises again in the future, such advice, recommendations and/or written warnings will be taken into account when considering the most appropriate enforcement action to take.

Settlement agreements

4.19 When entering into a settlement agreement we will agree not to take enforcement action while the organisation will agree to take steps or act in a specific way to restore and maintain compliance for the future.

4.20 It is possible that we may seek to enter into a settlement agreement when an organisation commits to taking reasonable and effective action within a specific timeframe. We are likely to agree to enter into a settlement agreement where we are satisfied:

- that the organisation has provided sufficient details about any proposed actions – to allow us to make informed decisions
- that the proposed timeframe for completing the actions is achievable and appropriate, given the nature, severity and circumstances of the case
- that there is evidence of a positive commitment to the actions and that the organisation is likely to fulfil that commitment
- that any proposed actions appear adequate to prevent future non-compliance.

4.21 The Commissioner retains the right, for a period of 5 years from the day the settlement agreement is entered into, to apply to a county court for an order requiring the organisation to comply with the settlement agreement.

Require an organisation to take steps or prepare an action plan

4.22 Where an organisation fails to address the non-compliance voluntarily, we will ensure that this happens by requiring the organisation to take specific steps or prepare an action plan.

4.23 Where we require the organisation to take specific steps, or prepare an action plan, we will set out what it is required to do in our decision notice.

Publicise the non-compliance

4.24 We may publicise, or require the organisation to publicise its non-compliance where we consider:

- that it would be an effective response, or part of an effective response to prevent future non-compliance
- that there is clear public interest in the investigation.

This may be done through different methods including publishing:

- a statement that the organisation has failed to comply with one of its duties
- a report on the investigation
- any other information relating to the case.

4.25 The decision notice will set out what needs to be done to publicise the case, and the consequences if the organisation does not comply with this requirement.

4.26 The requirement to publicise may be additional to other enforcement action required of the organisation.

Issue a civil penalty

4.27 In cases where we are considering issuing a civil penalty on an organisation, we will consider the following matters:

- the severity of the matter
- the circumstances of the organisation
- the need to prevent future non compliance.

4.28 We may consider any other matter that may be relevant, in our view, when deciding whether or not to issue a civil penalty.

4.29 The civil penalty can be any amount up to a maximum of £5,000³. We will consider the amount appropriate based on an assessment of the nature, severity and circumstances of the case.

4.30 The decision notice will include the following details:

- the value of the civil penalty
- how the civil penalty may be paid
- the period within which the civil penalty must be paid (no less than 28 days)
- the consequences if the penalty is not paid
- the organisation's right of appeal.

³ It should be noted, however, that Welsh Ministers, by order, may impose a different amount to this maximum.

Failure to comply with an enforcement action⁴

- 4.31** In cases where we have imposed one or more enforcement actions, we will verify compliance with those requirements.
- 4.32** We will take any failure to comply with these requirements seriously and further enforcement action is likely to follow. Subject to the circumstances of the case, this may include:
- during the relevant period⁵, applying to a county court for an order requiring the organisation to comply, or
 - issuing a civil penalty.
- 4.33** A number of the factors set out in 3.16 of this policy will be relevant when reaching our decision.

⁴ One or more of the steps set out in section 77(3) of the Measure.

⁵ Within a period of 5 years beginning with the day when the decision notice is given, or when the action plan comes into force.

5. Register of enforcement action

- 5.1** The Commissioner must maintain a register of enforcement action that includes details of the investigations that we have carried out.
- 5.2** The register includes the following details:
- a description of every investigation
 - the findings of the investigations
 - details of decision notices
 - a statement detailing whether or not any further action was taken
 - if further action was taken, a statement of that action
 - details of appeals made to the Tribunal under Chapter 4, Part 5 of the Measure, including, but not limited to, the decisions made by the Tribunal.
- 5.3** A copy of the current register is available on our [website](#) and in all our offices. We will update the register continuously.
- 5.4** The details in the register will be retained in accordance with the [Commissioner's Document Retention and Disposal Policy](#).

6. Appeals to the Welsh Language Tribunal

- 6.1** The Welsh Language Tribunal is an independent tribunal that deals with appeals from organisations and complainants against some of the Commissioner's decisions.
- 6.2** An organisation may appeal to the Tribunal if the Commissioner, following an investigation, has decided that there has been a failure to comply with a standard. They may also apply to the Tribunal for a review of the Commissioner's decision not to investigate a complaint.
- 6.3** A complainant may appeal to the Tribunal if the Commissioner, following an investigation, has decided that there has not been a failure to comply with a standard. They may also apply to the Tribunal for a review of the Commissioner's decision not to investigate a complaint.
- 6.4** Details regarding how to make an appeal or apply for a review, along with the Tribunal's Rules, are available on the website of the [Welsh Language Tribunal](#).

7. Complaints about the Commissioner

7.1 We have a specific complaints procedure should anyone wish to make a complaint about the Commissioner.

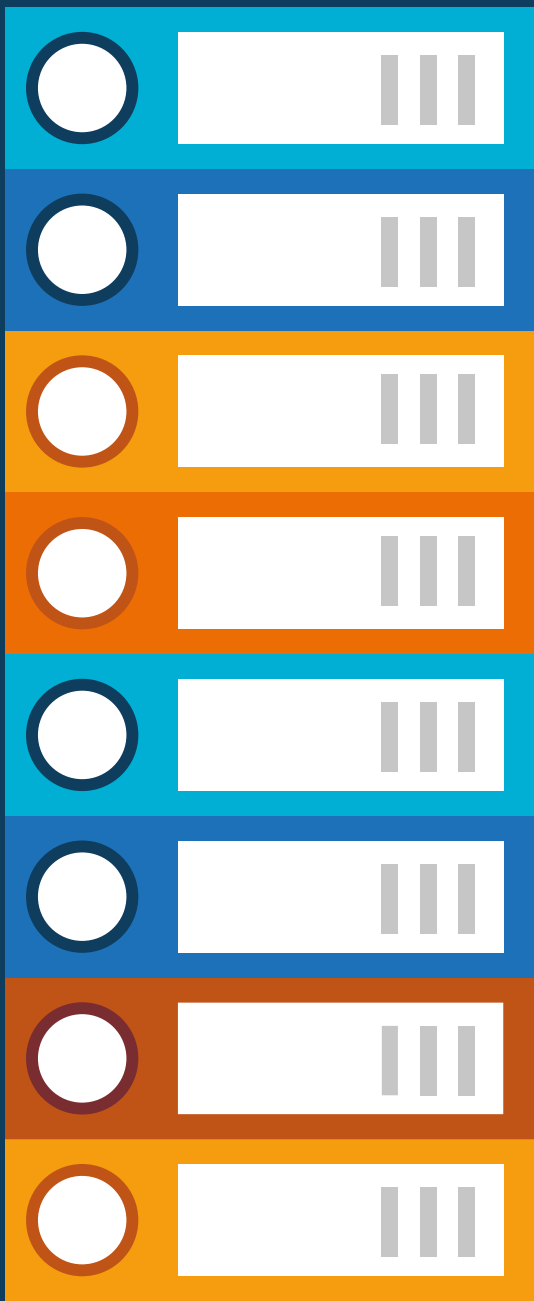
7.2 Further details on this procedure are available on our [website](#).

7.3 Our contact details are:

- Phone: 0345 6033 221
- Email: post@cyg-wlc.wales
- Website: welshlanguagecommissioner.wales



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T: 0345 6033 221

E: post@cyg-wlc.wales

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