



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

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# Policy Decisions and the Welsh Language: A Conscientious Effort?



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# Foreword

I am very pleased to be able to publish a report summarising the findings of our first key line of enquiry – in relation to the policy making standards.

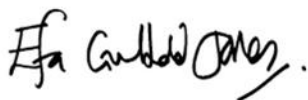
The policy making standards are a cornerstone of our regulatory framework, and my expectations of organisations in complying with these standards are clear – a conscientious effort should be made to consider the effect of policy decisions on the Welsh language.

Done well, impact assessments are more than just a means of demonstrating compliance. It is a way of ensuring that the Welsh language is included as a mainstream subject as organisations decide how they operate their public functions. I believe strongly that regulation is most effective when done in partnership with those who are regulated. The publication of this report builds on our commitment to a proactive approach to co-regulation, and the publication of clear regulatory outcomes.

This report is not intended to identify failures, but rather to help organisations learn from each other and to encourage organisations to adopt new approaches.

Our work shows that there are good examples of aspects of the Welsh language impact assessment process within public bodies. However, there is further work to be done to raise awareness and understanding of the requirements if we are to see a situation where organisations give due regard to the potential effects of their policy decisions on the Welsh language.

I'm proud of the hard work and commitment shown by everyone involved in this line of enquiry, and I look forward to seeing progress as we work together to strengthen policy making for the benefit of the Welsh language and its speakers.



**Efa Gruffudd Jones**

Comisiynydd y Gymraeg

# 1 Background and context

- 1.1 This report presents the main findings of our first key line of enquiry – a line of enquiry focused on the policy making standards. The standards can be seen in full [here](#).
- 1.2 Conducting key lines of enquiry as part of our regulatory work complements our regular monitoring, by providing a focus and more detailed analysis that informs and enriches the wider overview presented in our [annual compliance report](#).
- 1.3 The purpose of conducting this particular line of enquiry is to enable us to assess and gain a better understanding of the arrangements that exist within organisations as they consider the effect of their policy decisions on the Welsh language.
- 1.4 The policy making standards are important to ensure that organisations make a conscientious effort to consider the Welsh language when making policy decisions, and that any potential effects on the language are identified. This includes considering how the policy could be formulated so that it would have more positive effects, and also how to ensure less adverse effects on the Welsh language. It is essential that organisations have an effective mechanism to consider the effect of policy decisions on the Welsh language that encompasses legal considerations, the needs of Welsh speakers, national and local strategies, and specific policy areas relating to the Welsh language.
- 1.5 These standards also include the requirement for any consultation document relating to a policy decision to consider and seek views on the potential effects of the decision on the Welsh language. The purpose of these standards is to ensure that those responding to the consultation document can make informed comments on the effect of the decision on the Welsh language.
- 1.6 The final category of standards are those that require an organisation to ensure that any research commissioned, or undertaken to assist a policy decision, takes into account the effects of that decision on the Welsh language.
- 1.7 The standards, as outlined above, are dealt with in turn in sections 3, 4 and 5 of this report.

## Methodology

- 1.8 In undertaking this key line of enquiry, our methodology was as follows:
  1. **Create a Questionnaire:** A questionnaire was created to collect information from organisations subject to the policy making Standards. The questions were structured to examine the organisations' compliance with these standards.
  2. **Distributing the Questionnaire:** The questionnaire was sent to all relevant organisations, and responses were received from 89, providing a significant response rate (71%).
  3. **Questionnaire Content:** The questionnaire consisted of 15 questions divided across three sections, each focusing on a specific group of policy making standards:

- **Policy Decision Making Standards:** Questions regarding the arrangements for considering the Welsh language when making policy decisions.
  - **Consultation Document Standards:** Questions regarding the arrangements for considering and seeking views on the potential effects of policy decisions on the Welsh Language within a consultation document.
  - **Research Standards:** Questions regarding research considerations associated with policy decisions.
4. **Self-Assessment:** A question at the end of each section asked the organisations to carry out a self-assessment of their compliance assurance level, using the following definitions:

<b>High</b> assurance of compliance	The organisation complies with all requirements at all times, under all circumstances, except for rare exceptions
<b>Medium</b> assurance of compliance	The organisation usually fully complies with all requirements, however there is non-compliance occasionally or with some requirements
<b>Low</b> assurance of compliance	The organisation complies occasionally or with some requirements, but does not comply fully and consistently
<b>No</b> assurance of compliance	The organisation does not comply with the requirements at all, or it complies on rare occasions or with only a few aspects
Requirements not relevant	The requirements have not been placed on the organisation, or the organisation does not carry out the activity

5. **Analysis of the Response:** In analysing the responses, we gave an assessment on the assurance level of compliance for each question, ranging from 'high' to 'no assurance'. Some of the responses contained more information than others, making it difficult in some instances to draw firm conclusions on the level of assurance.

## 2 Main Findings and Recommendations

- 2.1 It is the practice of some organisations to provide statements regarding the Welsh language in the impact assessment, without identifying any specific effects. The standards clearly state that **potential effects** on the Welsh language need to be considered, and therefore including a series of factual statements about the Welsh language in an impact assessment is not sufficient to comply. This is a core area that requires focused attention.

**Recommendation 1:** **More than superficial discussion and factual statements about the Welsh language is needed within impact assessments. Organisations should contain sufficient information to show that a conscientious effort has been made to consider the effects on the Welsh language.**

- 2.2 Context is important when considering the term 'conscientious effort'.<sup>1</sup> Some types of policy decisions will require more consideration in order to achieve 'conscientious effort', e.g. if the policy relates to an area of linguistic sensitivity. Another example of a context in which one expects to see greater consideration for the Welsh language to ensure a conscientious effort is made, is in education reorganisation.

**Recommendation 2:** **Organisations should consider the context of the policy when deciding on the level of consideration given to the Welsh Language.**

- 2.3 A small minority of organisations stated that these standards do not apply to their work as they do not formulate public policies that have any effect on the Welsh language. The definition of a policy decision under these standards is broad, and as a result, we encourage organisations to look carefully at the status of their decisions before assuming that consideration of the Welsh language is not necessary.

- 2.4 Overall, many organisations have adequate administrative arrangements in place to ensure compliance with the standards. Many organisations have created templates and guidelines to facilitate compliance. However, as noted in our recent compliance report, [Delivering Change Together](#), it has become apparent that organisations do not always use or follow the procedures and arrangements they have in place when making policy decisions.

**Recommendation 3:** **Organisations should close the gap between the arrangements in place and their operation in practice.**

**It is necessary to ensure that any consultation documents published *consider, and seek views on* the Welsh language.**

**Organisations should consider adapting their arrangements so that the assessment of the impact of a policy decision on the Welsh Language is carried out separately from an equality impact**

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<sup>1</sup> This term was accepted by the Welsh Language Tribunal in the case of Neath Port Talbot Council and means that it is required to contain more than superficial discussion and factual statements about the Welsh language in order to comply with the standards. See [paragraph 3.5](#) of this report.

**assessment. This is to reflect the difference between the two regimes, and to ensure that a conscientious effort is made to consider impacts on the Welsh language. Ideally, this would take the form of a separate impact assessment template.**

- 2.5 Similarly, many organisations have useful guidance that includes relevant questions to ‘seek views’ in order to comply with the consultation document standards. In other words, questions that specifically ask about the potential effects of the policy decision on opportunities to use Welsh and on not treating the Welsh language less favourably than the English language. However, looking at some of the examples of consultation documents provided, the questions to ‘seek views’ do not always appear.
- 2.6 A pattern that emerged when analysing the responses to the questionnaire was that organisations found their compliance assurance level to be higher than it is. This supports the position that organisations have arrangements in place, but that those arrangements are not fully followed in practice.
- 2.7 The arrangements in place are there for a purpose, namely, to support staff to comply with the Welsh Language Standards (along with other statutory requirements). These arrangements should therefore be promoted, and staff should be supported and encouraged to follow them.
- 2.8 We would like to highlight the following page on [our website](#), which contains a series of responses to frequently asked questions regarding the policy making standards. This page also includes a link to a list of factors to consider when assessing the effect of policy decisions on the Welsh language, and a case study relating to the consultation document standards. Finally, the page contains links to recent Tribunal rulings on the policy making standards; links to seminars held on the policy making standards; and a link to our good practice advice document.
- 2.9 This information has been gathered to help organisations understand the requirements of the policy making standards, and we encourage organisations to make use of available resources.

**Recommendation 4: Any guidance and training provided by organisations should include examples of considerations that may apply in policy decision making. They should make clear that there are two requirements within the consultation document standards - considering and seeking views. They should also clarify the duties when conducting or commissioning research that assists a policy decision.**

**Organisations should use the Commissioner's resources, and the good practices identified in this report to support compliance.**

- 2.10 Welsh language officers working for organisations have experience in dealing with the Welsh language and the standards, and therefore are in a strong position to advise on the relevant issues to consider when assessing the impact of any policy decisions on the Welsh language.

**Recommendation 5:** Officers who have responsibilities regarding making policy decisions should work closer with Welsh language officers when considering possible effects on the Welsh language.

Welsh language officers should have a scrutiny and advisory role as policy decisions are made to ensure that the requirements of the standards are met.



## 3 Policy Decision Making Standards

### The requirements of the standards

- 3.1 When an organisation formulates, reviews or revises a policy, it must consider the effects that policy decision can have on opportunities to use the Welsh language and not treating the Welsh language less favourably than the English language. It must also consider how to increase any positive effect, and mitigate any adverse effect on the Welsh language. Please see the requirements in full [here](#).
- 3.2 By conducting this line of enquiry, we were keen to establish what arrangements organisations have in place to ensure that the Welsh language is considered when making policy decisions. The best way to do this is by undertaking a Welsh language impact assessment.

**Of the 89 organisations that responded, 85 complete a Welsh language impact assessment in some form or other when making policy decisions.**

- 3.3 The level of detail and attention given to the Welsh language within those assessments varies. Some organisations clearly give careful consideration to the Welsh language when undertaking an impact assessment, while others give the impression that the Welsh language is an afterthought when completing an equality impact assessment. This reduces the capacity to formulate policy in a way that is likely to have a positive effect on the Welsh language or mitigate any negative effects.

### How to comply

- 3.4 In order to receive a high assurance level of compliance, we expect to see the following:
  - that the organisation considers the effects on the Welsh language, and that this happens as early as possible in the process (specifically before any public consultation).
  - that robust arrangements are in place to undertake the process, which includes a template and guidance on carrying out a successful impact assessment.
  - that any guidance or template fully explains the requirements of these standards and provides clear guidance to officers on how to make a conscientious effort to consider direct and indirect effects on the Welsh language.
  - that there is collaboration between officers in preparing the impact assessment. In particular, we would like to see that the Welsh language officer, or equivalent officer, has a role in scrutinising the assessment to ensure that the potential effects on the Welsh language have been properly considered, and that the requirements of the standards have been met. A Welsh language officer is experienced in dealing with the Welsh language and the standards and will therefore be in a strong position to advise on the relevant matters for consideration.

- 3.5 The definition of 'conscientious effort' was accepted by the Welsh Language Tribunal in the Neath Port Talbot County Council case.<sup>2</sup> We have already held an [event](#) explaining what the term means and how to apply it in practice. The impression gained in analysing the responses to the questionnaire was that organisations continued to struggle to understand the principle.
- 3.6 In short, there needs to be more than superficial discussion and factual statements regarding the Welsh language within the impact assessment in order to comply with the standards. It is necessary to identify the relevant issues, and to include sufficient information to show that a conscientious effort has been made to consider the effects on the Welsh language.
- 3.7 The Tribunal concluded in the Neath Port Talbot County Council case that undertaking a full Welsh language impact assessment after the publication of a consultation document shows that consideration of any effects on the Welsh language is being delayed, and therefore no conscientious effort has been made to consider the Welsh language within the consultation document. It is the responsibility of the organisations to identify effects on the Welsh language so that the public can comment on them.
- 3.8 Context is important when considering the term 'conscientious effort'. Some types of policy decisions will require more consideration in order to achieve 'conscientious effort', if the context so suggests, e.g. if the policy relates to an area of linguistic sensitivity.
- 3.9 Another example of a context in which one expects to see greater consideration for the Welsh language to ensure a conscientious effort is made, is in education reorganisation. Following recent cases where there was a suspected failure to comply with these standards, we commissioned a piece of work to produce example guidance, templates and checklists for carrying out a Welsh language impact assessment when making a policy decision in relation to education and training. We will be publishing these resources shortly.
- 3.10 We hope that this guidance will assist organisations in checking whether the processes they have adopted in formulating a new or revised policy in education are supporting them to comply with the requirements of the Welsh Language Standards.

## **Organisations self-assessment**

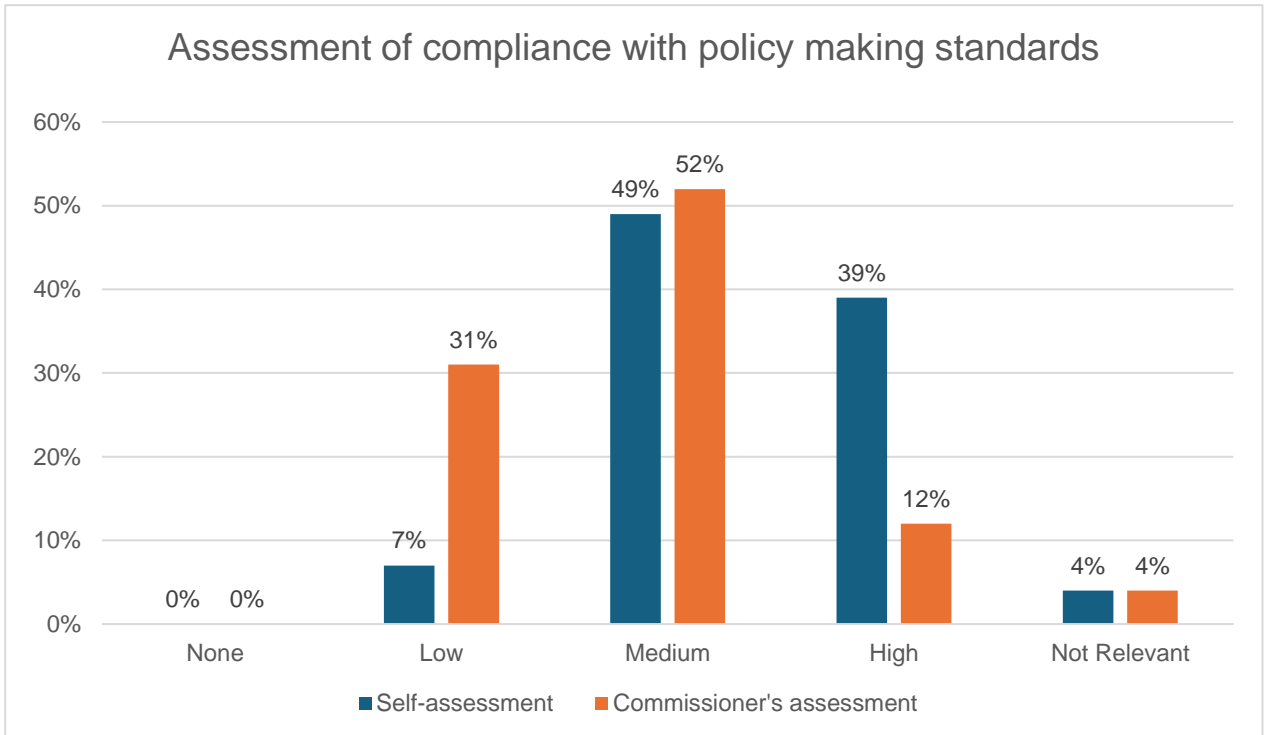
- 3.11 In the first part of the questionnaire, organisations were asked to conduct a self-assessment of their level of assurance in terms of compliance with the policy making standards. We also recorded our own assessment based on their responses to the first part of the questionnaire. This has enabled us to identify the extent to which there are significant differences between an organisation's assessment of its compliance and ours.
- 3.12 Overall, it is fair to say that organisations' assessment of their compliance assurance level is higher than it actually is. Although 39% of organisations believed

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<sup>2</sup> *Neath Port Talbot County Borough Council v Welsh Language Commissioner* (2023) TyG/22/01 para 118, [penderfyniad-nptcbc-0923.pdf \(gov.wales\)](#)

their compliance assurance level was high, only 12% reached this level according to our assessment.

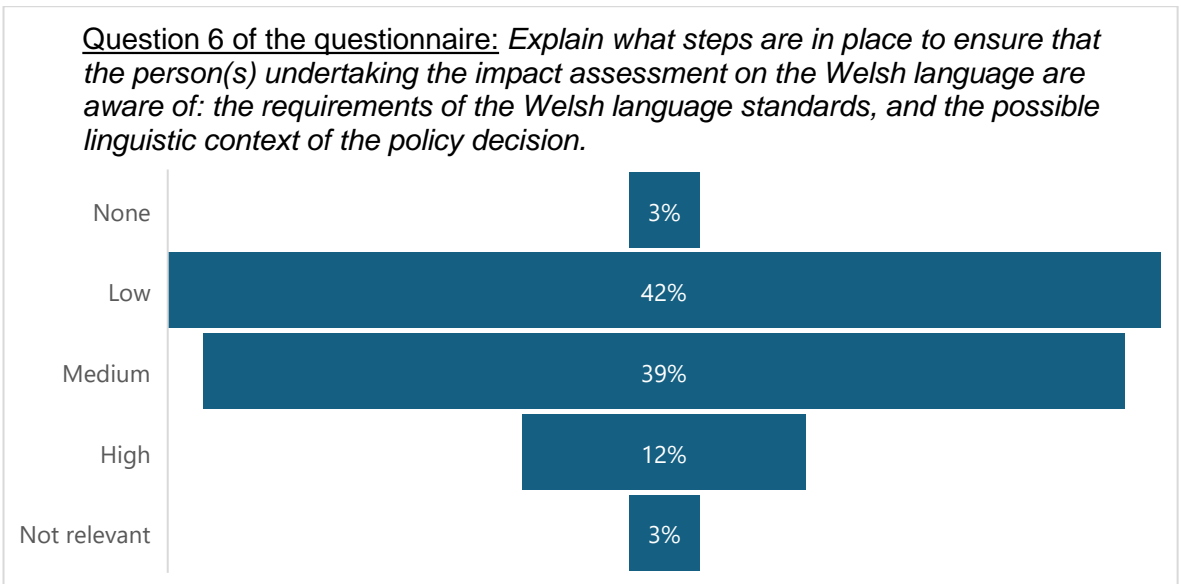
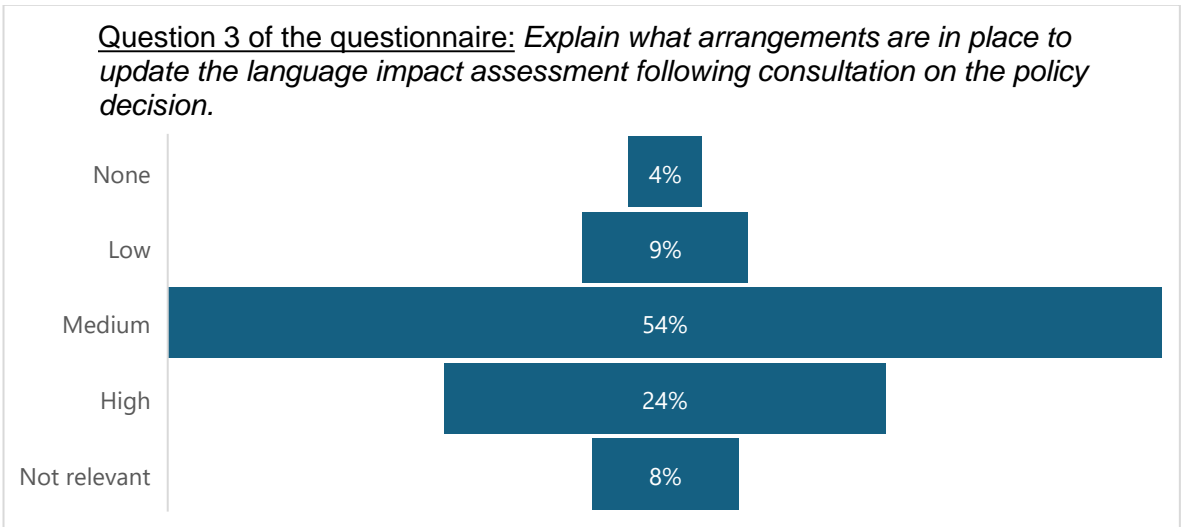
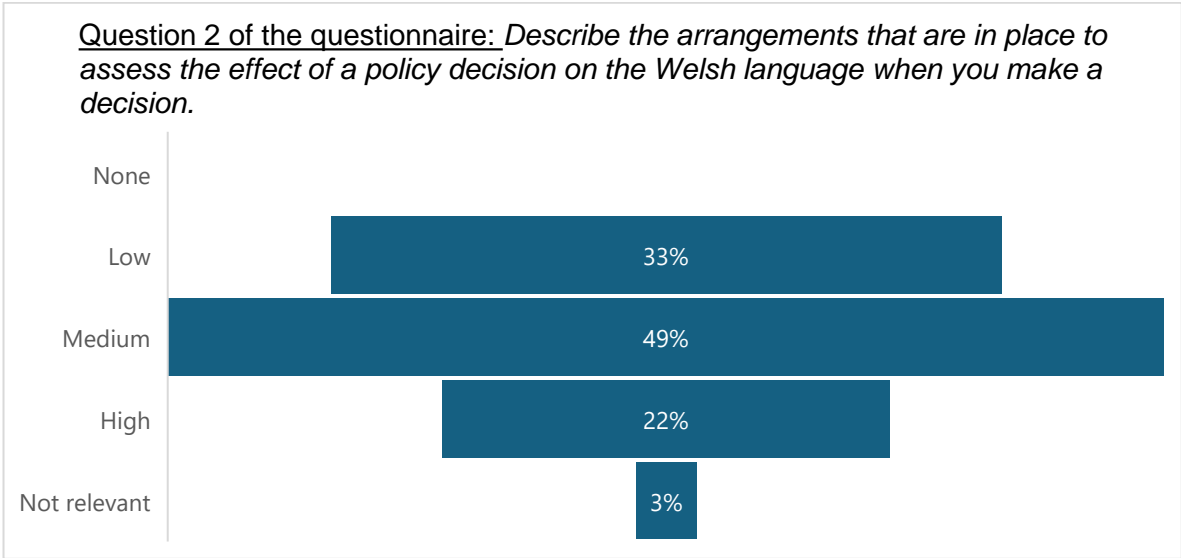
3.13 There is therefore work to be done to educate and raise organisations' awareness of what needs to be achieved in order to fully comply with the standards. The results are shown in full below:



### Commissioner's Assessment

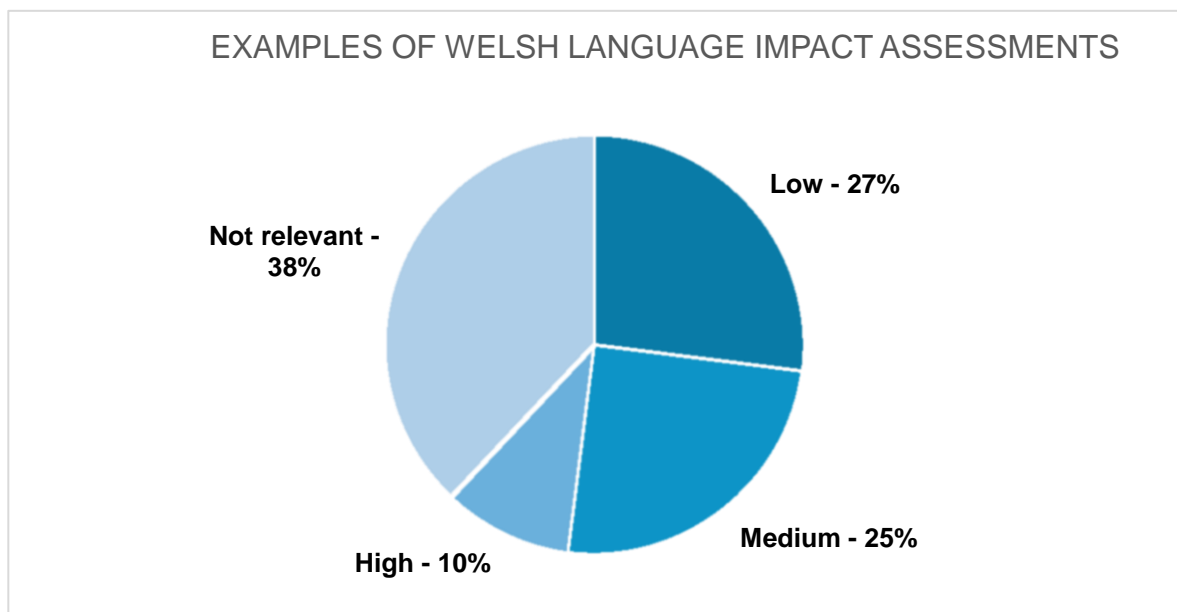
3.14 Below are some of the statistics that demonstrate our assessment of organisations' compliance in response to the individual questions. We noted our own assessment of the organisations' compliance assurance level based on the information presented to each question.

3.15 Not all questions apply directly to a requirement under the standards but are however contributing factors to reaching a high level of assurance in terms of compliance, e.g. updating an impact assessment after a consultation, or providing guidance and templates to staff on the policy making standards.



3.16 Organisations were asked to provide examples of Welsh language impact assessments undertaken in line with policy decisions made during 2023-24. We

considered those assessments and recorded their level of assurance in terms of compliance. The results are shown in the chart below:



- 3.17 The chart above demonstrates that many organisations failed to show impact assessments with a 'high' assurance level of compliance (10%). This is significantly lower than the 22% of organisations who showed in response to question 2 that their arrangements for Welsh language impact assessments were of a 'high' level of assurance. This supports our finding that organisations have good arrangements in place to comply, but that those arrangements are not necessarily followed in practice.
- 3.18 'Not relevant' had to be recorded for 38% of organisations, because they had not provided impact assessments for us to consider. 17 of the organisations responded referring to policy decisions made during the year, but did not include Welsh language impact assessments to accompany those policies. We were therefore unable to record the level of assurance for them.
- 3.19 A further 17 organisations noted that they did not have a suitable example of policy decisions made during the period. Considering the broad definition of a policy decision under the Measure, it is unlikely that 17 organisations subject to Welsh language Standards made no policy decision in the last year. This reflects a lack of understanding of the exact requirements of the standards, and that the understanding of the scope of the standards is still relatively low.

## **Good Practice**

- 3.20 In this section, we want to examine some of the good practice that emerged when analysing the responses to the questionnaires. We hope that organisations will consider applying these good practices to their policy decision-making arrangements, to aim for a high level of assurance of compliance with the standards.
- 3.21 It should be noted that some of the examples in this report have been translated as they were presented only in English as evidence to us.

## Separate assessment for the Welsh language

- 3.22 We believe that an organisation would be more likely to comply with the Welsh language standards if the Welsh language is addressed separately from the protected characteristics under the Equality Act 2010. This is because more emphasis and consideration can be given to the specific requirements of the standards.
- 3.23 One organisation adapted its arrangements so that the Welsh language was considered separately:

### **Example from a National Park Authority:**

*"We concluded that having the Welsh language impact assessment as part of the wider integrated assessment was inadequate... we decided to carry out the Welsh language impact assessment and document it in a separate document from the integrated assessment, which would enable a much more in-depth and detailed assessment to be documented at the initial stage..."*

- 3.24 The organisation noted that it relied too heavily on the consultation process and public opinion to draw its attention to effects on the Welsh language. The organisation changed its arrangements to ensure that the effects on the Welsh language were identified early in the policy decision-making process.
- 3.25 Only five organisations have a separate template for conducting a Welsh language impact assessment. This means where the Welsh language is considered separately from other considerations. The example that emerged most within the responses to the questionnaire is that the Welsh language is considered as part of an equality impact assessment.
- 3.26 Acknowledging that some organisations are of the view that considering the Welsh language alongside equality considerations gives the Welsh language a more equal status, it must be remembered that the requirements of the standards differ from those of the Equality Act 2010 (as explained in [page 98 of our Code of Practice](#)). Including Welsh as a protected characteristic within an equality impact assessment can be a misguided practice, as that does not always ensure full compliance with the requirements under the standards.
- 3.27 A factor that highlights the difference between the two legislative regimes is that a question in the majority of the equality impact assessments provided asked how the organisation would mitigate any negative effect. There is no corresponding question asking how the organisation could increase any positive effect (in accordance with the standards).

## Specific guidance and training

3.28 We identified good practice where organisations have created specific guidance and training to explain how to carry out a Welsh language impact assessment.

### **Example from a Local Authority:**

The Welsh Language Tribunal has recently made a decision that has far-reaching consequences for the conduct of policy development by Local Authorities in Wales.

- Tribunal Upholds Welsh Language Commissioner's Ruling
- Welsh Language Tribunal Ruling

The Welsh Language Commissioner has presented an advice seminar detailing the steps to be taken to ensure compliance with the Welsh Language Standards. The seminar should be viewed by all Council officers involved with policy development and the conduct of impact assessments and public consultations.

- Welsh Language Commissioner's Advice Seminar

Early review and revision of current procedures demonstrates proactive action by the Council to incorporate this guidance and acts as a safeguard against statutory investigations by the Welsh Language Commissioner and the reputational risk these will entail.

### Conscientious Effort

Making an evidenced conscientious effort to identify the effects of a policy decision on the Welsh language is a legal requirement. Further guidance from the Commissioner is anticipated but it has been clearly communicated that any kind of tick-box exercise based on minimal effort, unevidenced impact assessments, and/or assessments only identifying negative effects will be insufficient.

### What qualifies as conscientious effort?

Here are some important things to consider:

#### 1. Understanding the context

Conscientious effort depends on context. Policy decisions affecting Welsh language use, access, and promotion will be subject to a higher threshold than those with minimal impact. Examples of higher threshold policies include (but are not limited to) work with young people and children, education strategy and school organisation plans, the Council's budget, service delivery proposals, recruitment and training of Welsh language staff, and funding for Welsh language activities and events.

#### 2. Timing

Impact assessments must be completed before public consultation. The assessment results inform the contents of public consultation documents and questions. This ensures information presented to the public is comprehensive, demonstrates impact has been assessed by the Council, and that the actions to mitigate negative effects and promote positive effects have been identified

#### 3. Broadening Impact Assessments

Impact assessments must consider positive, negative and neutral effects to provide a broader foundation for the policy decision. Presenting the whole range of identified effects, and the Council's proposed responses, will act to mitigate risk and support positive actions promoting the Welsh language.

#### 4. Being Specific

Providing general statements about the Council's work - or referring to other strategies and policies - will not justify minimal impact assessments. Each policy decision has specific effects. It cannot be assumed they have been adequately considered elsewhere or the actions to mitigate negative effects and promote positive effects have already been implemented. Proposed policy decisions must be assessed on their own terms and listing general information about previous steps and achievements - or what has already been done in a particular area - will not meet the requirements.

#### Actions

- Watch the Commissioner's Guidance Seminar
- Schedule discussion of the guidance as an agenda item for team meetings
- Review policy development guidance
- Revise this guidance to include a reference to the requirement for evidenced conscientious effort.
- Take ownership of the assessment process.
- Ensure all impact assessments are completed before any public consultation.
- Use the assessments to identify positive, negative and neutral effects
- Present actions to mitigate negative effects and promote positive effects
- Feed assessment results into policy documents and questions.

3.29 More than one organisation has created guidelines referring to recent Welsh Language Tribunal cases<sup>3</sup>, which have established important principles in relation to the policy making standards. Examples of successful guidance also refer to the need to consider direct and indirect effects, as well as the need for a 'conscientious effort' to consider these effects. Including all this information in one place is key to supporting staff to understand the requirements of these standards.

3.30 Another example of good practice that we identified was organisations sharing examples of potential effects on the Welsh language with staff. This is a good way to highlight important effects to consider when making policy decisions, e.g. the effect on the number of Welsh speakers; Welsh in the workplace; social use of Welsh; use of Welsh language services etc.

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<sup>3</sup> *Swansea City and County Council v Welsh Language Commissioner* (2022) TyG/21/01, [penderfyniad-achos-tyg2101-27-07-2022.pdf \(gov.wales\)](https://gov.wales/penderfyniad-achos-tyg2101-27-07-2022.pdf)

*Neath Port Talbot County Borough Council v Welsh Language Commissioner* (2023) TyG/22/01, [penderfyniad-nptcbc-0923.pdf \(gov.wales\)](https://gov.wales/penderfyniad-nptcbc-0923.pdf)



### Example from a Police Authority:

#### 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, if any, 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.

- 3.31 It is important that organisations remind staff that this is not an exhaustive list, and that potential effects may vary depending on the context of the policy decision. A list of potential effects to consider can be found on [page 94 of our Code of Practice](#), and on our [website](#).
- 3.32 Training on the policy making standards is key to educating staff involved in the policy making process. One organisation noted that the Welsh language department had been holding briefings on the requirements with services senior management teams, with more sessions planned for the rest of the year.
- 3.33 Another organisation demonstrated the training that has been established for impact assessment authors. The training (PowerPoint presentation) contains a lot of valuable information about what constitutes a policy decision; what constitutes a

Welsh language impact assessment; the effect of the Tribunal ruling in the Neath case; and more.

### **Example from an organisation in the Health sector:**

#### Conscientious consideration

The threshold for “conscientious effort” depends on the circumstances and more must be done:

- in a sensitive or significant area in terms of the Welsh language
- as the number and/or impact of the possible effects on the Welsh language increases
- if there is a local policy or guideline requiring an assessment of possible effects on the Welsh language.

It is more likely that a “conscientious effort” will be made if a wide range of impacts are considered. It is not sufficient to include a series of factual, general statements about the Welsh language

#### 5 top tips

1. Treating Welsh language effects under a single headline in an integrated impact assessment – inadequate
2. Move away from over-simplistic approach of asking what the ‘net effect’ on the Welsh language is
3. Starting point – 2 columns: direct effects/indirect effects
4. In both columns try to identify at least 3 positive effects and 3 negative effects.
5. Take ownership of the Welsh language impact assessments.

3.34 Conducting training for relevant staff is one way of ensuring that staff are aware of the requirements of the policy making standards. It can also contribute to improving the general theme that has emerged, which is that there are sound arrangements in place, but they are not being followed correctly.

#### Impact assessment as a 'live' document

3.35 A high percentage of organisations (74%) have indicated that arrangements are in place to ensure that a Welsh language impact assessment is a live document, which needs to be updated to reflect any new effects that emerge following consultation. This is important to ensure that public opinion is reflected in an impact assessment and ensures that organisations give due regard to comments by the public.

3.36 One organisation explained in its response that the impact assessment remains open until the final decision has been made and there has been a period of review. Another organisation showed that its guidance on Welsh language impact assessments made clear that impact assessment findings can differ after the process of public engagement or consultation.

### **Example from a Local Authority:**

*"It is necessary that the impact assessment is done from the outset. If the changes are major ones that have a significant impact ... several versions may need to be drawn up. Your perceptions at the outset will be different from those you will have after the engagement process."*

## Areas for improvement

3.37 In this section, we want to examine some areas that need improvement in terms of completing a Welsh language policy impact assessment. These practices became apparent as we analysed the responses to the questionnaires.

### Lack of 'conscientious effort'

3.38 We observed that it is the practice of some organisations to provide statements regarding the Welsh language in the impact assessment, without identifying any specific effects. It must be remembered that the standards clearly state that **potential effects** on the Welsh language need to be considered, and therefore including a series of factual statements about the Welsh language in an impact assessment is not sufficient to comply.

3.39 This arose frequently in the examples of impact assessments provided. E.g. *'The documents will be available bilingually'*. A statement like this does not really convey the effect of the policy itself on the Welsh language.

3.40 One example of an impact assessment on a Welsh Language Policy in the workplace stated, *'The policy has been created to increase opportunities to use the Welsh language, and to ensure favourable treatment for the Welsh language'*. This was the extent of the Welsh language impact assessment carried out. Accepting that the policy would probably have mainly positive effects on the Welsh language, does not mean that those effects do not need to be identified and considered.

3.41 It was noted in an example of an impact assessment on an internal policy regarding the development of staff that there would be a negative effect on the Welsh language, namely fewer opportunities for staff development through the medium of Welsh compared to through the medium of English. They added that this effect should be mitigated by the Welsh Language Measure 2011, as it stated that Welsh and English should be treated equally. However, this does not meet the requirements of the policy making standards. This does not amount to a 'conscientious effort' to consider how to mitigate any negative effect on the Welsh language.

### Standards not relevant

3.42 Four organisations reported that these standards do not apply to their work as they do not make public policies that have any effect on the Welsh language. We had to contact three other organisations who had asked about the relevance of the questionnaire to them. We would like to emphasise that a policy decision does not have to be one with broad and public impact in order to fall under the requirements of the standards. Decisions regarding the below are all relevant to the standards:

- The content of legislation
- The exercise of statutory powers
- The content of policy statements
- Strategies or strategic plans
- Internal structures
- The location of offices and buildings
- The recruitment or use of volunteers
- Funding or financial support
- The language used for internal administration

- 3.43 It is important to remember that the standards apply to decisions affecting members of staff of the organisation, as well as members of the public. We therefore encourage organisations to look carefully at the status of its decisions, whether internal or external, before assuming that they do not require a Welsh language impact assessment.
- 3.44 In addition, if an organisation concludes that there is no effect on the Welsh language in making the policy decision, it must be shown that there is a process in place to identify and arrive at that conclusion.
- 3.45 Organisations included in Regulations No. 1 should bear in mind that standard 150 specifically states that it is necessary to keep a record of the steps that have been taken to ensure compliance with the policy making standards. Therefore, if an organisation concludes that there is no effect on the Welsh language, it must be able to show records of how it reached that conclusion, e.g. copies of meeting minutes to discuss the effects of the policy decision on the Welsh language.

## **Conclusion**

- 3.46 Several good practices are applied when considering the Welsh language during the policy making process. However, core areas need improvement if full compliance with the policy making standards is to be achieved. The need for a conscientious effort to consider the Welsh language is of fundamental importance if high levels of assurance are to be achieved.

## 4 Consultation Document Standards

### The requirements of the standards

- 4.1 When a body publishes a consultation document relating to a policy decision, the document must consider and seek views on the potential effects on the opportunities to use Welsh, and on not treating the Welsh language less favourably than the English language. Views must also be considered and sought on how to increase any positive effect, and mitigate any adverse effect on the Welsh language. Please see the requirements in full [here](#).
- 4.2 These standards impose two requirements on organisations when publishing a consultation document. Firstly, the Welsh language must be 'considered', and secondly, organisations must 'seek views' about the Welsh language. In the second part of the questionnaire, we were eager to understand the level of awareness among organisations of both requirements, and how many met both requirements in practice.
- 4.3 It should be noted that these standards only relate to a consultation document. One organisation provided examples of responses to a focus group form, and another organisation referred to events with the public where face-to-face discussions were organised. Such consultative approaches do not fall under the requirements of these standards.

### How to comply

- 4.4 The requirement to 'seek views' means that organisations must include specific questions regarding the effects on the Welsh language in any consultation document. In other words, questions that ask about the effect of the decision on opportunities to use the Welsh language and on not treating the Welsh language less favourably than the English language. A common practice is to use the same questions for all policy decision consultation documents. This is one way to ensure compliance with the standards.
- 4.5 However, it should be noted that the use of such questions constitutes the minimum that could be done in order to comply with the requirement to seek views. We encourage organisations to think beyond the general questions, and once again emphasise the importance of looking at the context of the policy decision. Ideally, there would be questions in the consultation document that specifically ask about the effect of the proposal on the Welsh language, tailoring the questions for the policy decision in question.
- 4.6 The requirement to 'consider' means that organisations must identify, outline and consider the potential effects on the Welsh language, and consider the options available that would enable it to make the decision in a way that would have more positive and fewer adverse effects on the Welsh language. There is an expectation that organisations consider the effects in the context of the Welsh language in the affected areas or communities, whether directly or indirectly.
- 4.7 It is possible that including the text from the impact assessment on the effects on the Welsh language within the consultation document would be sufficient to comply with the requirement to consider the Welsh language, if it shows that a conscientious effort has been made to consider the Welsh language. An appendix relating to the Welsh language impact assessment could also be included within the

consultation document, summarising the main points in the body of the consultation document.

4.8 It is important that a conscientious effort is made to consider the Welsh language in a consultation document. It is the responsibility of organisations to identify the potential effects on the Welsh language, and to consider them in the consultation document so that the public can make informed comments in response. It is not up to the public to identify the potential effects of the proposal for organisations to consider for the first time following the consultation process.

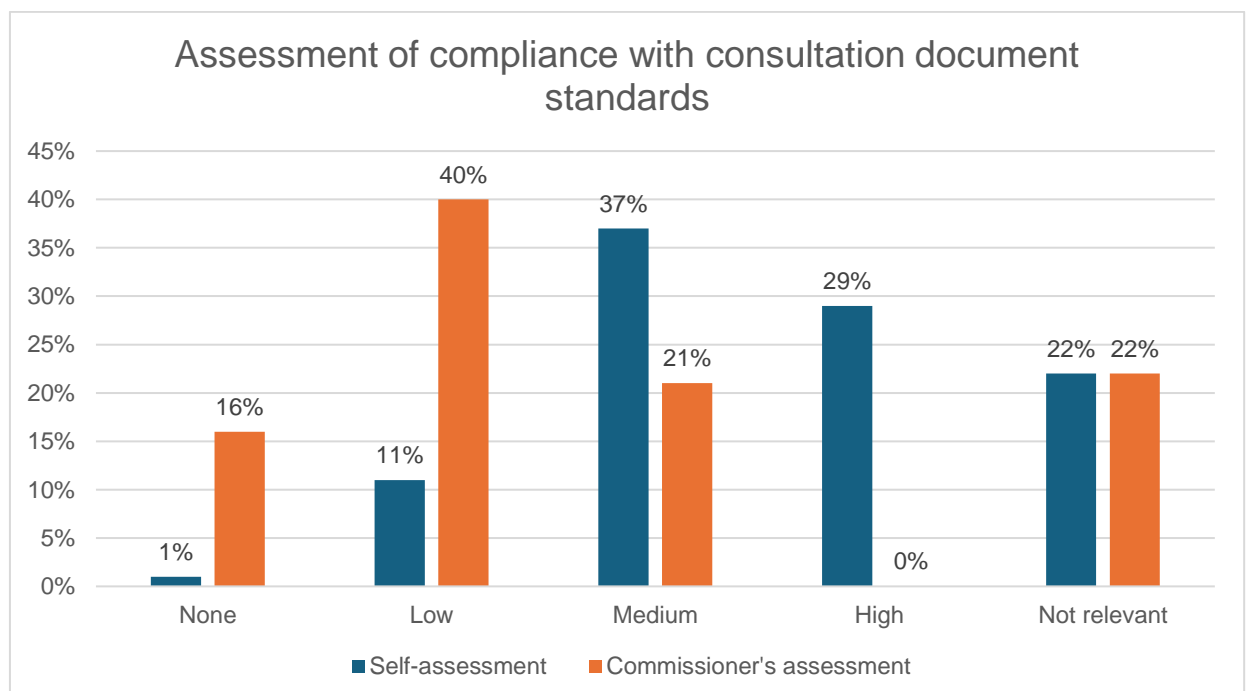
4.9 If the view after undertaking a Welsh language impact assessment is that there is no effect on the Welsh language at all, it is important that organisations state that clearly in the consultation document, with reference to the reasons for reaching that conclusion. This is to show the public that the organisation has actively considered any effect on the Welsh language but has concluded that no potential effect exists.

### Organisations self-assessment

4.10 As at the end of the first section of the questionnaire, organisations were also asked to conduct a self-assessment of their assurance level of compliance at the end of the second section. We also recorded our own assessment on the assurance levels of the organisations' compliance with the consultation document standards.

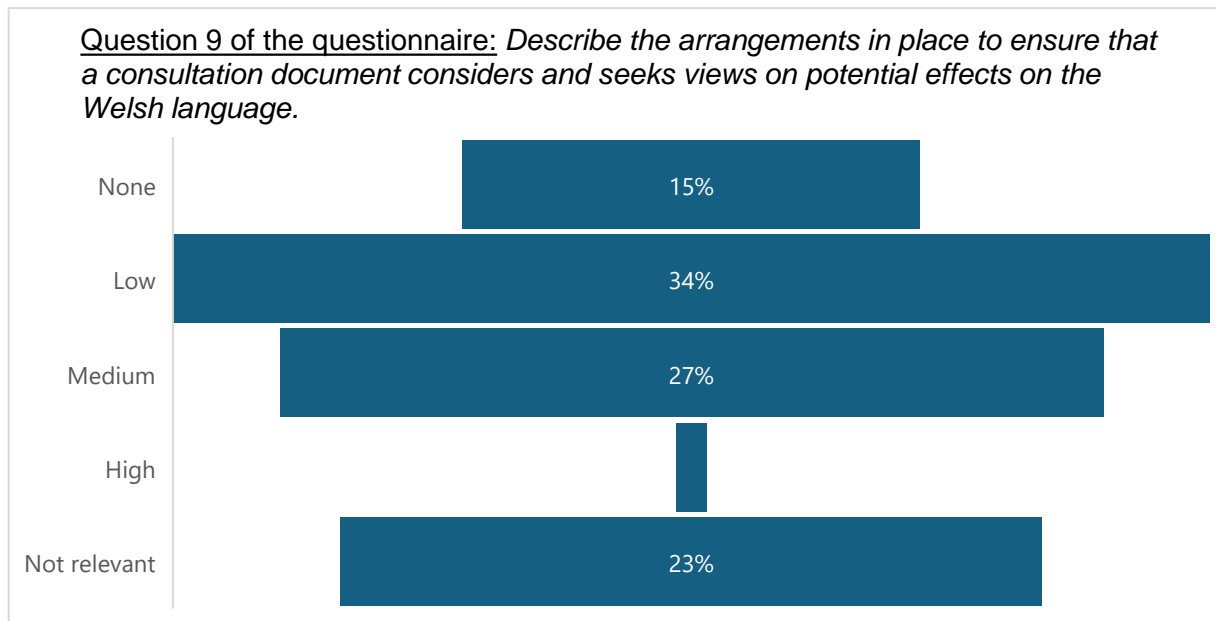
4.11 Below is the chart demonstrating the comparison between the organisations' assessment and ours on their level of assurance in terms of compliance. Once again, it appears that organisations' assessment of their compliance level exceeds ours. It is of concern that 29% of the 89 organisations that responded regarded their assurance level of compliance with these standards as 'high'. We did not find any organisation with a 'high' level of assurance of compliance with the consultation document standards.

4.12 We also recorded that 40% of organisations had a 'low' compliance assurance level. There is therefore work to be done to improve in this area.



## Commissioner's Assessment

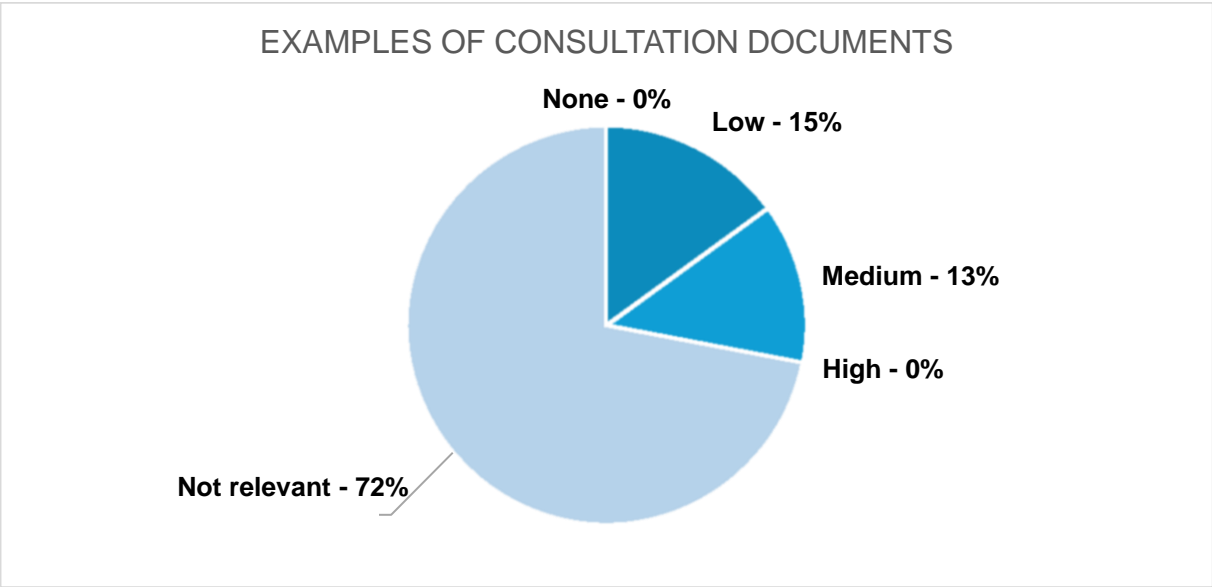
4.13 Below are some of the other statistics collected in response to the second part of the questionnaire. Please note that it is our assessment on the level of assurance that is shown below, and it is based on the responses provided by the organisations.



4.14 Overall, the information provided indicated a lower-than-expected level of compliance in terms of arrangements when producing a consultation document. One of the main reasons for this was a lack of understanding among organisations that there were two requirements within these standards. It has become apparent that more organisations meet the requirement to 'seek views' than there are in relation to the requirement to 'consider'. It must be remembered that both requirements need to be met in order to fully comply with the requirements of these standards.

4.15 In relation to question 9 in the chart above, the response of 15% of organisations led us to record 'No assurance' for them, which equates to 14 organisations. This was mainly due to a lack of understanding of the requirements of the standards when responding to the second section of the questionnaire (ten organisations). The remaining organisations made it clear that they had no arrangements for considering and seeking views when publishing a consultation document (four organisations). There is no guarantee that those organisations would comply at all with these standards.

4.16 We asked organisations to provide examples of consultation documents for us to consider and set a level of assurance for them. The results are shown in the chart below. Only 28% of the organisations presented examples of consultation documents for us to consider. 24 of the organisations referred to consultation documents; however they did not attach them for us to consider. The remaining 40 reported having no examples of consultation documents to provide.



**Good Practice**

4.17 Below is some of the good practice that emerged in the analysis of the responses to this section of the questionnaire. These are practices that organisations should consider applying in order to work towards reaching a high level of compliance when publishing a consultation document.

Questions unique to the policy decision

4.18 One organisation provided an example of a consultation document asking further questions about the effect of the proposal on the Welsh language, beyond the specific wording of the standards:

**Example from a Local Authority:**

Do you think increasing the Council Tax premium on long-term empty properties and second homes could have a negative/positive or neutral impact on:

	Positive Impact	No effect	Negative Impact	I don't know
Opportunities to use Welsh socially?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Increasing the number of people speaking or learning Welsh in the County?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Using Welsh language services?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Welsh-speaking communities?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



4.19 It is clear that organisations have tried to make an effort to ensure that they 'seek views' when publishing a consultation document. 11 organisations demonstrated that they had set questions in a template or guidelines so that staff complied with this requirement. As has already been noted, we support organisations that go beyond using the exact wording of the standards in asking these questions and ask questions that are more specific to the policy decision in question.

### Clear guidance

4.20 Clear guidance explaining the requirements of the standards is key for staff to gain an understanding of what needs to be achieved when publishing a consultation document. The example below is part of a guide that shows that the organisation has actively explained the requirements of the standards in a clear and concise way to its staff.

4.21 It also emphasises that there are two requirements under these standards, namely 'consider' and 'seek views'. It is positive that it refers to the recent Tribunal case, providing a link, to give staff the opportunity to read more about the principles established in the ruling. The list of potential effects to consider is also commendable.

#### **Example from a national organisation**

As well as seeking respondents' views through the standard questions contained in the consultation template, we must also show how we have considered the language in the narrative of the consultation document itself. A recent ruling by the Welsh Language Tribunal ([TYG/WLT/22/01](#)) on the policy making standards has informed our understanding of how the Welsh Language Commissioner and the Tribunal interpret the requirements of the policy making standards: we must show that a "conscientious effort" has been made to consider the potential effects of our policy on the Welsh language.

To help us consider what effects the policy might have on the Welsh language, the following format of bullet points can be used and included in your consultation document to help list potential effects. We need to consider direct and indirect effects. We are particularly interested in potential effects on:

- a) The number of Welsh speakers in general, or in a particular geographical area, a particular sector or group of Welsh speakers
- b) Language transfer within families
- c) Welsh in the workplace
- d) Using Welsh language services
- e) Social use of Welsh
- f) Visibility of the Welsh language
- g) The vitality of Welsh-speaking communities

### **Areas for improvement**

#### Compliance with both requirements

4.22 One area that became clear when analysing the responses to the questionnaire was the failure of organisations to meet both requirements within the consultation document standards, namely, 'consider' and 'seek views'.

- 4.23 Looking at the examples of consultation documents provided (by 25 organisations), overall, only two managed to consider and seek views within the consultation documents. Thirteen met the requirement to 'seek views' but failed to 'consider'. A further 10 managed to 'consider' but failed to 'seek views'. This was a consistent pattern in that organisations meet one requirement, but not the other. This explains why no organisation received a 'high' level of compliance assurance from us.
- 4.24 In relation to the requirement to 'consider', it became apparent that there were very few examples of arrangements by organisations to comply with this requirement. Except for the guidance noted above, we did not come across many guidelines or templates explaining how to 'consider' the Welsh language in a consultation document.

## **Conclusion**

- 4.25 Although we have identified some examples of good practice by organisations, there is work to be done to ensure that there is a better understanding of the two requirements within these standards. Both must be met to fully comply with the standards. Overall, more work needs to be done on the arrangements in relation to the requirement to 'consider' the Welsh language in a consultation document.

## 5 Research Standards

### The requirements of the standards

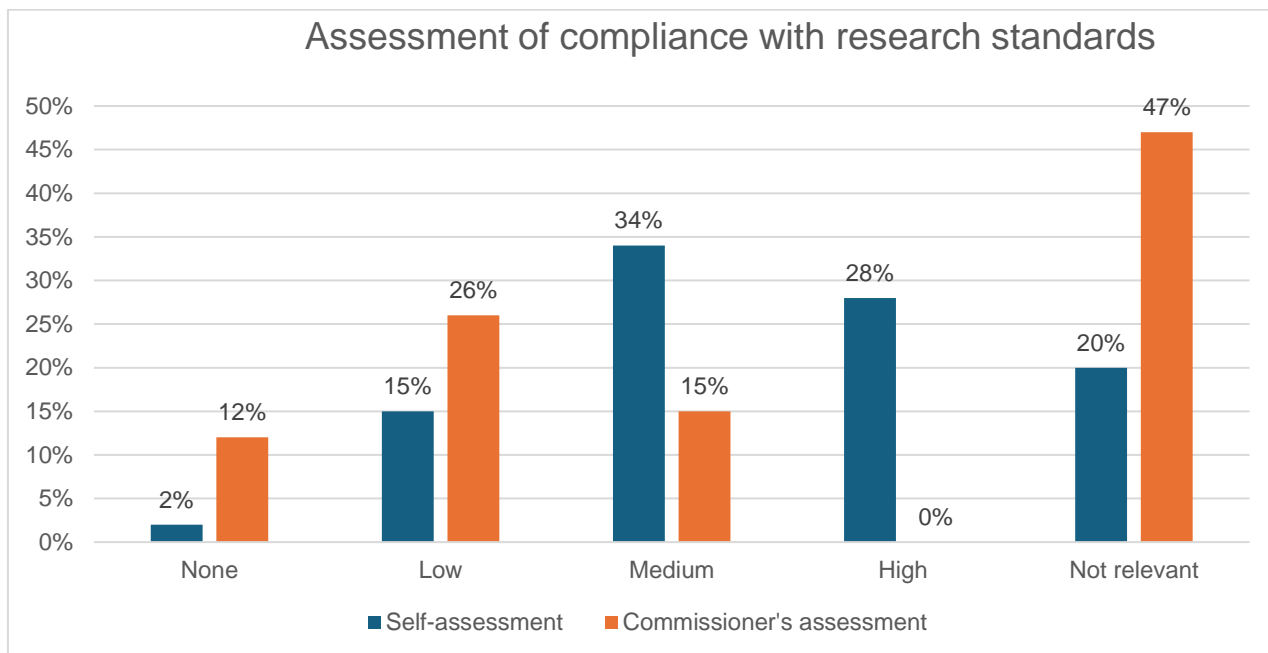
- 5.1 When an organisation commissions or undertakes research intended to assist in making a policy decision, that research must consider any effect the policy decision may have on opportunities to use the Welsh language and on not treating the Welsh language less favourably than the English language. The research must also consider how the policy decision could be made so that it would increase any positive effect, and mitigate any adverse effect on the Welsh language. Please see the requirements in full [here](#).

### How to comply

- 5.2 In most cases, this duty arises very early in the process of making a policy decision. This is when organisations begin the work of preparing towards a policy decision, undertaking research to support the decision. At this point, the research must consider the potential effects on the Welsh language, whether on the number of Welsh speakers, the Welsh language in the community, the use of Welsh language services, and more.
- 5.3 [Page 96 of our Code of Practice](#) explains that organisations can use the information gathered at this point to assist them in complying with the policy making standards. This is because it shows that consideration has been given to the Welsh language early in the process of making a policy decision.

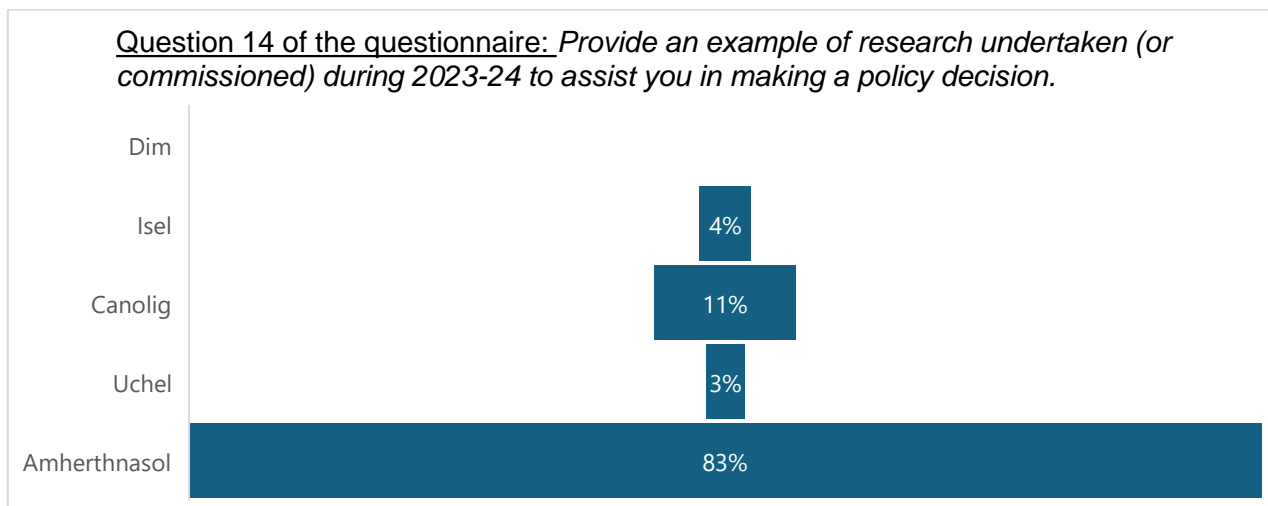
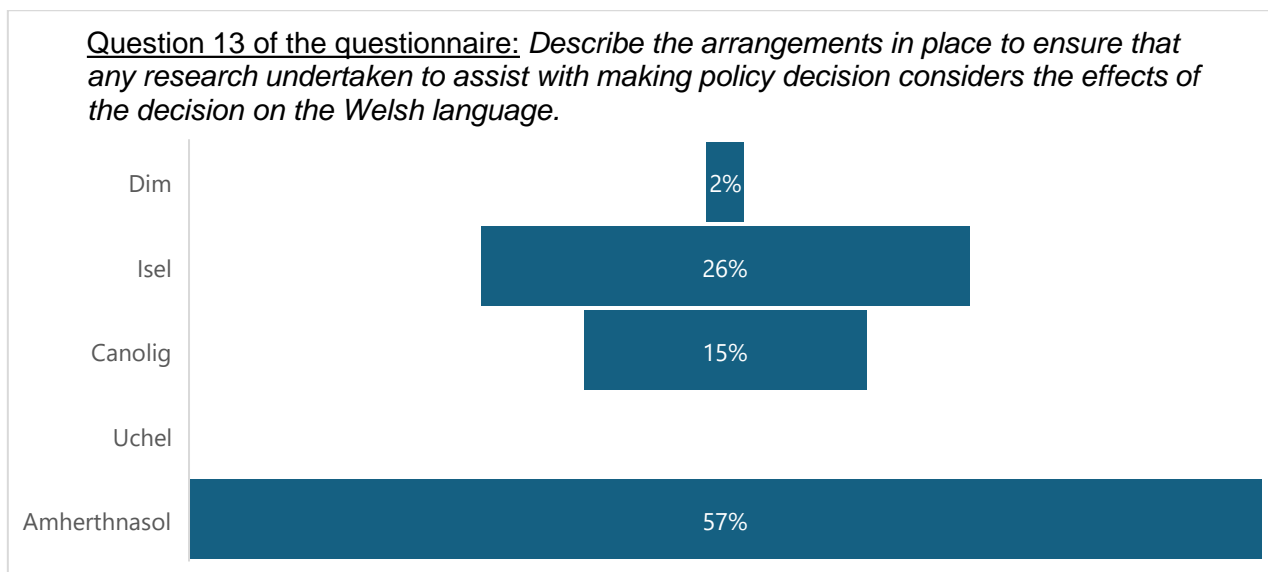
### Organisations self-assessment

- 5.4 As at the end of the previous two sections of the questionnaire, organisations were asked to conduct a self-assessment of their level of assurance of compliance with the research standards. We also recorded our own assessment.
- 5.5 The chart below shows the comparison between the organisations' assessment of their compliance with the research standards, and our own. It is fair to say once again that organisations are overestimating their level of compliance with these standards. The self-assessment of 28% of organisations showed a 'high' level of compliance assurance; however as with the consultation document standards, our analysis of the information did not identify any organisation with this level of assurance.
- 5.6 As has already been noted, it was difficult at times to draw conclusions on the levels of compliance based on the amount of information provided. As a result, we had to record 'not relevant' for 47% of organisations.



## Commissioner's Assessment

5.7 Below are some of the statistics gathered in response to the questionnaire. Please note that below is our own assessment of the assurance level of compliance based on the responses provided by the organisations.



- 5.8 We had to record 'not relevant' for 57% of the organisations based on our assessment of their arrangements for compliance with the research standards. This was largely because not enough information had been provided for us to form an opinion.
- 5.9 No 'high' assurance level of compliance was recorded for arrangements of any of the responding organisations. The threshold is high, and it was felt that no response had demonstrated that they would be compliant with the research standards in every circumstance. We recognise however that this may have been due to insufficient information submitted by organisations.
- 5.10 A 'low' level of assurance was recorded for 26% of the organisations that referred to their arrangements to comply with the research standards. These organisations had demonstrated some level of understanding of the requirements, but their arrangements were not robust enough to demonstrate that it would always be fully compliant.
- 5.11 'Not relevant' had to be recorded for 83% of responses to question 14. This was mainly because the organisations did not provide suitable examples for us to consider.
- 5.12 Some organisations referred to general research that is underway or has been carried out recently. It is important to remember that not all research conducted by an organisation fall under the requirements of these standards, and that only research that supports a policy decision is relevant.

## **Good Practice**

- 5.13 As has already been mentioned, information provided in response to the questions in the final section of the questionnaire was limited. Nevertheless, we identified the following as good practice to share with organisations.

### Clear guidance

- 5.14 An organisation in the health sector demonstrated that guidance is available to staff when undertaking research to support a policy decision. This guidance includes information on where to find relevant existing data and how to collect new data.

### **Example from an organisation in the health sector:**

#### Evidence gathering

If you determine that your policy decision could have an effect on the use of the Welsh language in Wales, and if you gather evidence that is intended to inform your work, you must collect evidence to demonstrate the extent of this impact and how you can navigate it.

Research must consider:

- What effects, if any (positive or adverse) the policy decision would have on opportunities to use the Welsh language;
- What effects, if any (positive or adverse), the policy decision would have on the Welsh language being treated the same as the English language;
- How negative effects could be mitigated and positive effects enhanced.

You should look to use existing data and insight when available and relevant (e.g., DRIH dashboards, previous and planned research; the Knowledge; Tracking Survey, National Training Survey, and Barometers). If required, new research can be undertaken to support your work. If you believe you have a need for new research, please contact the Data, Research and Insight Hub (DRIH).

Examples of evidence gathering might include:

- Desk-based research (e.g., peer reviewed articles; literature reviews; stakeholder publications; media)
- Drawing evidence from previous stakeholder engagement (via Engage and the Intelligence Module)
- Surveys
- Qualitative research (e.g., focus groups; interviews)

## **Conclusion**

- 5.15 A lack of information in response to the section on the research standards meant that detailed analysis of arrangements and examples of research supporting policy decisions could not be undertaken. Overall, organisations have not demonstrated that robust arrangements are in place to ensure compliance, and so this is certainly an area that organisations need to consider strengthening.

# Appendix 1: Organisations who responded to the questionnaire

## Welsh Language Standards Regulations No. 1

Bridgend County Borough Council  
Caerphilly County Borough Council  
Cardiff Council  
Carmarthenshire County Council  
Ceredigion County Council  
Conwy County Borough Council  
Cyngor Gwynedd  
Eryri National Park Authority  
Flintshire County Council  
Isle of Anglesey County Council  
Merthyr Tydfil County Borough Council  
Monmouthshire County Council  
Newport City Council  
Pembrokeshire Coast National Park Authority  
Pembrokeshire County Council  
Powys County Council  
Swansea Council  
Torfaen County Borough Council  
Vale of Glamorgan Council  
Wrexham County Borough Council  
Welsh Ministers

## Welsh Language Standards Regulations No. 2

Auditor General for Wales & Wales Audit Office (2HC)  
Boundaries and Local Democracy Commission for Wales  
Higher Education Quality Assurance Agency  
Equality and Human Rights Commission  
Information Commissioner's Office (ICO)  
Local Government Data Unit - Wales  
National Botanic Garden of Wales  
National Lottery Community Fund  
Natural Resources Body for Wales  
Older People's Commissioner for Wales  
Public Services Ombudsman for Wales  
Sianel 4 Cymru  
Sports Council for Wales  
The Electoral Commission  
The British Broadcasting Corporation (BBC)  
Wales Council for Voluntary Action  
Welsh Books Council

Welsh Local Government Association

Welsh Language Standards Regulations No. 4

Education Workforce Council  
Social Care Wales  
Valuation Tribunal for Wales

Welsh Language Standards Regulations No. 5

British Transport Police Authority  
Chief Constable of Dyfed-Powys Police  
Chief Constable of Gwent Police  
Chief Constable of North Wales Police  
Chief Constable of South Wales Police  
Dyfed-Powys Police and Crime Commissioner  
Independent Office for Police Conduct  
Mid and West Wales Fire and Rescue Authority  
North Wales Fire and Rescue Authority

Welsh Language Standards Regulations No. 6

Aberystwyth University  
Adult Education Wales  
Bridgend College  
Cardiff Metropolitan University  
Cardiff and Vale College  
Careers Wales  
Coleg Cambria  
Coleg Ceredigion  
Coleg y Cymoedd  
Coleg Gwent  
Gower College Swansea  
Grŵp Llandrillo Menai  
Merthyr Tydfil College Limited  
NPTC Group  
Pembrokeshire College  
Saint David's Catholic College  
Swansea University  
The Open University  
University of South Wales  
University of Wales Trinity Saint David  
University of Wrexham

Welsh Language Standards Regulations No. 7

Aneurin Bevan University Health Board  
Betsi Cadwaladr University Health Board  
Cardiff and Vale University Health Board  
Cwm Taf Glamorgan University Health Board  
NHS Wales Shared Services Partnership  
Hywel Dda University Health Board  
Powys Teaching Health Board



Public Health Wales NHS Trust  
Velindre University NHS Trust  
Welsh Ambulance Services NHS Trust

Welsh Language Standards Regulations No. 8

Professional Standards Authority  
The General Chiropractic Council  
The General Medical Council  
The General Optical Council  
The General Osteopathic Council  
The Health and Care Professions Council  
The Nursing and Midwifery Council

## Appendix 2: Useful resources

Welsh Language Commissioner's Advice Document	<a href="#"><u>Policy Making Standards: Creating opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language</u></a>
Code of Practice	<a href="#"><u>Codes of practice</u></a>
Welsh Language Commissioner's website	<a href="#"><u>Policy Making Standards</u></a>
Welsh Language Tribunal: Neath Port Talbot Council v Welsh Language Commissioner	<a href="#"><u>Tribunal decision</u></a>
Welsh Language Tribunal: City and County of Swansea Council v Welsh Language Commissioner	<a href="#"><u>Tribunal decision</u></a>

## Appendix 3: Policy making standards

### Policy Decision Making Standards

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—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

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 —

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

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—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

### Consultation document standards

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 —

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

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 positive effects, or increased positive effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

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—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

### Research standards

When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research considers what effects, if any (and whether positive or adverse), the policy decision under consideration would have on—

- (a) opportunities for persons to use the Welsh language, and

(b) treating the Welsh language no less favourably than the English language.

When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research considers how the policy decision under consideration could be made so that it would have positive effects, or so that it would have increased positive effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.

When you commission or undertake research that is intended to assist you to make a policy decision, you must ensure that the research considers how the policy decision under consideration could be made so that it would not have adverse effects, or so that it would have decreased adverse effects, on—

- (a) opportunities for persons to use the Welsh language, and
- (b) treating the Welsh language no less favourably than the English language.