

## Consultation Response Form

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### Consultation questions

1. Are the draft regulations clear?

The draft regulations appear clear to us.

2. Do the requirements in the draft regulations, in respect of the business case, cover the right things? Are there any other matters the business case should be required to capture?

We note that a business case means a statement containing, among other things, any other relevant outcomes for the exercise of the general power of competence and any risks associated with the exercise of that power (2(2)(d) and 2(2)(e)). An assessment is requested of the severity of the risks and any actions the authority proposes to take to mitigate the risks. In this context, it should be noted that some organisations have a duty to consider potential effects on the Welsh language and steps that could be taken to ensure positive effects on the language or to minimise any negative effects on it. The county councils, county borough councils, National Park authorities and fire and rescue authorities are subject to the policy making standards introduced as a result of the Welsh Language (Wales) Measure 2011 and discussed below.

It should be emphasised that the Welsh Language Measure has made Welsh an official language in Wales and has introduced the following principles, among others:

- duties are placed on bodies to use the Welsh language, enabling Welsh speakers to use the language in dealings with those bodies (including in the provision of services);
- the Welsh language should be treated no less favourably than the English language;
- people who wish to use the Welsh language have the freedom to do so with one another;
- standards of conduct are set that relate to the use of the Welsh language, or the treatment of the Welsh language no less favourably than the English language, in connection with delivering services, making policy

and exercising functions or conducting businesses and other undertakings.

The policy making standards ask organisations to consider the potential effects of policies on the Welsh language and how to have positive effects on the language or reduce any adverse effects on it. The consultation document states an intention to issue statutory guidance on the preparation of a business case. We recommend that the statutory guidance refers to the policy making standards. The Commissioner has published the *Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015* which includes a section on the policy making standards. The Commissioner also published the advice document *Policy Making Standards: Creating opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language*. Together, these documents explain the requirements of the standards, how to assess impact on the Welsh language and ensure positive effects on the language or reduce any adverse effects on it, present case studies and list Welsh language data sources. We would welcome a discussion about these documents and the duties discussed in them as you produce the statutory guidance.

We would like to draw attention to the Welsh Language Standards (No. 1) Regulations 2015 which apply to county councils, county borough councils and National Park authorities. We would also like to draw attention to the Welsh Language Standards (No. 5) Regulations 2016 which apply to fire and rescue authorities. The introductory text of the regulations explains that the standards apply to third parties carrying out an activity or providing a service on behalf of a body subject to the standards. This means, for example, that a company created for commercial purposes would have to comply with the standards if it provided a service on behalf of the local authority that created it. Similarly, if it provided on behalf of any other local authority, the company would have to comply with the standards imposed on that authority.

We are concerned about the risk that, as services are provided by third parties on behalf of local authorities, those authorities' compliance arrangements and hold on their services weaken. We are aware of examples of services already transferred without ensuring that the Welsh language is treated no less favourably than the English language under the alternative arrangement. We recommend that the statutory guidance refers to the requirements of the standards. We are concerned that omitting appropriate references to the standards would create a risk that organisations would fail to comply with those standards. We would welcome further discussion about this.

3. Should the regulations specify who should approve the business case? If so, who should?

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4. What are your views on the proposed application of the draft regulations to eligible community councils?

The consultation document states that community councils can provide services which can have a significant impact on an individual's well-being. It also states that, through the general power of competence, these councils will have more freedom to serve their communities. Community councils are not subject to the Welsh language standards. Some of them have a Welsh language scheme and we would expect them to adhere to their scheme when exercising the general power of competence. This should be referred to in the proposed statutory guidance for the preparation of a business case. We believe that the guidance should also ask community councils which do not have a language scheme to consider the Welsh language when preparing a business case, as described in the response to Question 2 above. This would help to ensure consistency among community councils, which currently vary in the way they deal with the Welsh language.

The Welsh language must be considered in order to be able to offer provision that has a positive effect on the well-being of Welsh-speaking individuals. This should be done within the context of the Welsh Language Measure and the Welsh Government's vision of a million Welsh speakers and a ten per cent increase in the percentage of people who speak it daily, published in the *Cymraeg 2050* strategy. As the strategy notes, "Opportunities and services in Welsh must be offered proactively, so that the individual does not have to request the Welsh language. Ultimately the vision is for people to use it at every opportunity, with opportunities available everywhere."

5. Do you agree that community councils who are eligible to exercise the general power of competence should also be authorised to trade in their ordinary functions. If not, why not?

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6. Do you agree that principal councils and eligible community councils should be subject to the same conditions when trading in their ordinary functions and exercising the general power for a commercial purpose?

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7. Are there any consequences we've not considered of subjecting FRAs and NPAs to the updated conditions set out in the draft regulations when they're exercising their power to trade in their ordinary functions?

Please see the response to Question 2 above.

8. In order to refine the Regulatory Impact Assessment, the Welsh Government would welcome views on the estimated costs to authorities of preparing a business case. An estimation of any costs which may result from the requirement to recover costs from the company would also be welcomed?

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9. We would like to know your views on the effects that the draft regulations or the proposal in respect of the revised trading order would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

As noted in the response to Question 4 above, community councils are not currently subject to the Welsh language standards (although they are open to that). This underlines the importance of referring appropriately to the Welsh language in the proposed statutory guidance for the preparation of a business case. It should be emphasised that the Welsh Language Measure has made Welsh an official language in Wales and introduced the principles listed above. Attention should also be drawn to the *Cymraeg 2050* strategy.

10. Please also explain how you believe the proposed draft regulations or the proposal in respect of the revised trading order could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Please see the response to Question 2, Question 4 and Question 9 above. In addition, we ask you to ensure that any assessment you make under the requirements of the policy making standards does not undermine the ability of organisations to comply with those standards and any other standards to which they are subject. We ask you to consider the requirements of the standards on Welsh Ministers and any internal processes established to ensure compliance with them.

11. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them. Please enter here:

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Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here: /