

Agenda – Constitutional and Legislative Affairs Committee

Meeting Venue:

Committee Room 1 – Senedd

Meeting date: Monday, 9 January
2017

Meeting time: 14.30

For further information contact:

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1 Introduction, apologies, substitutions and declarations of interest
(14.30)

**2 Landfill Disposals Tax (Wales) Bill: Evidence session with the
Cabinet Secretary for Finance and Local Government**

(14.30 – 15.30)

(Pages 1 – 7)

Mark Drakeford AM, Cabinet Secretary for Finance and Local Government, Member
in charge of the Bill

Emma Cordingley, Welsh Government

Sarah Tully, Welsh Government

CLA(5)–01–17 – Research Service and Legal Service Briefing

[Landfill Disposals Tax \(Wales\) Bill, as introduced](#) [PDF, 298KB]

[Explanatory Memorandum](#) [PDF, 935KB]

[Statement of policy intent](#) [PDF, 146KB]

**3 Instruments that raise no reporting issues under Standing Order
21.2 or 21.3**

(15.30 – 15.35)

(Page 8)

CLA(5)–01–17 – Paper 1 – Statutory Instruments with clear reports



Affirmative Resolution Instruments

SL(5)042 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) Regulations 2017

SL(5)044 – The Education Workforce Council (Registration Fees) Regulations 2017

**4 Instruments that raise issues to be reported to the Assembly
under Standing Order 21.2 or 21.3**

(15.35 – 15.40)

Affirmative Resolution Instruments

SL(5)045 – The Welsh Language Standards (No. 6) Regulations 2017

(Pages 9 – 112)

CLA(5)–01–17 – Paper 2 – Report

CLA(5)–01–17 – Paper 3 – Regulations

CLA(5)–01–17 – Paper 4 – Explanatory Memorandum

Negative Resolution Instruments

SL(5)046 – The Local Election Survey (Wales) (Amendment) Regulations 2016

(Pages 113 – 137)

CLA(5)–01–17 – Paper 5 – Report

CLA(5)–01–17 – Paper 6 – Regulations

CLA(5)–01–17 – Paper 7 – Explanatory Memorandum

5 Paper(s) to note

(15.40 – 15.45)

Wales Bill: UK Government's response to the House of Lords Constitution Committee's report on the Wales Bill

(Pages 138 – 153)

CLA(5)–01–17 – Paper 8 – Correspondence from the UK Government to the House of Lords Constitution Committee, 12 December 2016

CLA(5)–01–17 – Paper 9 – UK Government's response to the House of Lords Constitution Committee's report on the Wales Bill

Wales Bill: Correspondence from the UK Government regarding clause 60 of the Wales Bill

(Pages 154 – 157)

CLA(5)–01–17 – Paper 10 – Correspondence from the UK Government to the Llywydd (Presiding Officer) regarding clause 60 of the Wales Bill, 13 December 2016

CLA(5)–01–17 – Paper 11 – Correspondence from the UK Government to the First Minister regarding clause 60 of the Wales Bill, 13 December 2016

Wales Bill: Fiscal framework for Wales

(Pages 158 – 178)

CLA(5)–01–17 – Paper 12 – Written Statement by the Cabinet Secretary for Finance and Local Government on the Fiscal Framework for Wales, 19 December 2016

CLA(5)–01–17 – Paper 13 – The agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework, 20 December 2016

Call for evidence from the House of Lords Constitution Committee: Delegation of powers

(Pages 179 – 183)

CLA(5)–01–17 – Paper 14 – Call for evidence from the House of Lords Constitution Committee on their inquiry into 'The Legislative Process: Delegation of powers'

6 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

(15.45)

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person.

7 Landfill Disposals Tax (Wales) Bill: Consideration of Evidence

(15.45 – 16.00)

Date of the next meeting

Monday 16 January 2017

Document is Restricted

Agenda Item 3

9 January 2017

SL(5)042 – The Council Tax Reduction Schemes (Prescribed Requirements and Default Scheme) (Wales) (Amendment) 2017

Procedure: Affirmative

Council Tax Reduction Schemes (CTRS) are the mechanisms through which Local Authorities provide support to low income households in meeting their Council Tax liability. This Statutory Instrument makes amendments to both the Council Tax Reduction Schemes and Prescribed Requirements (Wales) Regulations 2013 and the Council Tax Reduction Schemes (Default Scheme) (Wales) Regulations 2013. It updates certain figures used to calculate an applicant's entitlement to a reduction under a Council Tax Reduction Scheme, and the subsequent level of reduction. This instrument also makes consequential amendments as a result of changes to the wider welfare and tax system.

Parent Act: Local Government Finance Act 1992

Date Made: Not stated

Date Laid: 5 December 2016

Coming into force date: In accordance with regulation 1(2)

SL(5)044 – The Education Workforce Council (Registration Fees) Regulations 2017

Procedure: Affirmative

These draft Regulations prescribe the fee payable in connection with registration in the register established and maintained by the Education Workforce Council from 1 April 2017 and revokes the Education Workforce Council (Registration Fees) (Wales) Regulations 2016.

Parent Act: Education (Wales) Act 2014

Date Made: Not stated



Date Laid: 14 December 2016

Coming into force date: 1 February 2017 except as provided for in regulation 1(1)



SL(5)045 – The Welsh Language Standards (No. 5) Regulations 2017

Agenda Item 4.1

Background and Purpose

The Welsh Language (Wales) Measure 2011 (the Measure) makes provision for the specification of standards of conduct in relation to the Welsh language (“standards”). These replace the system of Welsh language schemes provided for by the Welsh Language Act 1993.

These Regulations specify standards in relation to the conduct of 27 bodies listed in regulation 3 of the Regulations (which are referred to in the Regulations as “bodies”). These bodies form part of the education sector.

The Regulations also authorise (subject to certain exceptions set out in regulation 3) the Commissioner to give a compliance notice to those bodies, in relation to standards specified by the Regulations.

Usually a number in the name of one of a series of Statutory Instruments refers to the number made in the particular year. In this case the number refers to the whole series of Standards Regulations, in the same manner as commencement orders are numbered.

These Regulations take the place (with amendments) of the Welsh Language Standards (No. 3) Regulations 2016 (the No.3 Regulations) that were rejected by the Assembly before the election last year.

Procedure

Affirmative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.



Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument. (Standing Order 21.3(ii): the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).

The Committee received representations on the No.3 Regulations from student representatives. The Committee noted the representations and drew them to the Assembly's attention. The No.3 Regulations were rejected by the Assembly on 15 March 2016.

The Government amended the draft Regulations before re-laying them in the present form. The Culture, Welsh Language and Communications Committee will be scrutinising the revised draft.

Legal Advisers

Constitutional and Legislative Affairs Committee

January 2017



Draft Regulations laid before the National Assembly for Wales under section 150(2) of the Welsh Language (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2017 No. (W.)

WELSH LANGUAGE

**The Welsh Language Standards
(No. 6) Regulations 2017**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Welsh Language (Wales) Measure 2011 (nawm 1) (“the 2011 Measure”) makes provision for the specification of standards of conduct in relation to the Welsh language (“standards”). These replace the system of Welsh language schemes provided for by the Welsh Language Act 1993 (c. 38).

Section 26 of the 2011 Measure enables the Welsh Ministers to specify standards, and section 39 enables them to provide that a standard is specifically applicable to a person by authorising the Welsh Language Commissioner (“the Commissioner”) to give a notice to that person requiring compliance with the standard (a “compliance notice”).

These Regulations specify standards in relation to the conduct of 27 bodies listed in regulation 3 of the Regulations (which are referred to in the Regulations as “bodies”). These bodies form part of the education sector and are:

- (i) Career Choices Dewis Gyrfa Limited;
- (ii) Further Education institutions (Coleg Ceredigion, Coleg Sir Gâr, Merthyr Tydfil College Limited, the governing body of Saint David’s Catholic College, and WEA YMCA CC Cymru);
- (iii) Further Education corporations (Cardiff and Vale College, Coleg Cambria, Coleg y Cymoedd, Gower College Swansea, Coleg Gwent, Bridgend College, Pembrokeshire College, Grŵp Llandrillo Menai, NPTC Group);

- (iv) Higher Education institutions (Aberystwyth University, Bangor University, Cardiff University, the Open University, the Royal Welsh College of Music and Drama Limited, Swansea University, the University of Wales, and University of Wales: Trinity St David);
- (v) Higher Education Corporations (Cardiff Metropolitan University, Glyndŵr University, and the University of South Wales);
- (vi) The Higher Education Funding Council for Wales.

The Regulations also authorise (subject to certain exceptions set out in regulation 3) the Commissioner to give a compliance notice to those bodies, in relation to standards specified by the Regulations.

In accordance with section 44 of the 2011 Measure, the Commissioner may (by way of a compliance notice) require a body to comply with one or more standards that are specifically applicable to it. To reflect that, the standards specified by the Regulations are expressed in the second person narrative, meaning that they are in “you must” form (where “you” means the relevant body in each case).

Using the flexibility provided by section 44 of the 2011 Measure the Commissioner may (if it is reasonable and proportionate, and the Commissioner wishes to do so) require a body to comply with one standard in some circumstances and another standard in other circumstances. For example, if a standard is specifically applicable to a body the Commissioner may require the body to comply with the standard in some circumstances but not others, or require it to comply with the standard only in some areas. Similarly if two or more standards relate to a specific conduct (for example, standards 8 to 11 in relation to answering telephone calls), the Commissioner may (by way of a compliance notice) require a body to comply with one of those standards only, or with different standards at different times, in different circumstances, or in different areas; as is appropriate for the body. The Commissioner is not, therefore, obliged to require every body to comply with every standard.

In accordance with section 46 of the 2011 Measure, the compliance notice given to a body must state the imposition day, or imposition days; meaning the day or days upon which the body becomes required to comply with a standard (or comply with a standard in a specific way). Using the flexibility provided for by section 46, the Commissioner may set an early imposition day for a body to comply with a standard (provided this is at least 6 months after the date on which the body was given the related compliance

notice), or set an imposition day further in the future (for example in relation to more challenging standards).

Where a standard specified in these Regulations requires written material to be displayed or provided in Welsh, or for a service to be provided in Welsh, this does not mean that the material must be displayed or provided in Welsh only, or that the service must only be provided in Welsh (unless that is specifically stated).

Schedule 1 to the Regulations specifies **service delivery standards**. Section 28 of the 2011 Measure provides that a “service delivery standard” means a standard that relates to a service delivery activity, and is intended to promote or facilitate the use of the Welsh language, or to work towards ensuring that the Welsh language is treated no less favourably than the English language when that activity is carried out. A “service delivery activity” means a person delivering services to another person, or dealing with any other person in connection with delivering services to that other person, or to a third person.

The service delivery standards only apply to the extent that the activity undertaken or the service provided relates to the matters listed in paragraph 31 of Schedule 1. This does not include courses (including on-line courses) or course materials.

Schedule 2 to the Regulations specifies **policy making standards**. Section 29 of the 2011 Measure provides that a “policy making standard” means a standard that relates to a policy decision, and is intended to secure, or to contribute to securing, that the person making the policy decision considers one or more of the following—

- (a) what effects, if any, (whether positive or adverse) the policy decision would have on opportunities for people to use the Welsh language, or on treating the Welsh language no less favourably than the English language;
- (b) how the decision could be made so that the decision has positive effects, or increased positive effects, on opportunities for people to use the Welsh language, or on treating the Welsh language no less favourably than the English language;
- (c) how the decision could be made so that the decision does not have adverse effects, or has decreased adverse effects, on opportunities for other persons to use the Welsh language, or on treating the Welsh language no less favourably than the English language.

Schedule 3 to the Regulations specifies **operational standards**. Section 30 of the 2011 Measure provides

that an “operational standard” means a standard that relates to the functions, or a business or other undertaking (“relevant activities”) of a person (“A”), that is intended to promote or facilitate the use of the Welsh language—

- (a) by A in carrying out A’s relevant activities,
- (b) by A and another person in dealings between them in connection with A’s relevant activities, or
- (c) by a person other than A in carrying out activities for the purposes of, or in connection with, A’s relevant activities.

Schedule 4 to the Regulations specifies **record keeping standards**. Section 32 of the 2011 Measure provides that a “record keeping standard” is a standard relating to the keeping of records about other specified standards, records about complaints concerning compliance with other specified standards, or records about other complaints concerning the Welsh language.

Schedule 5 to the Regulations specifies **standards that deal with supplementary matters**. These are specific forms of service delivery standards, policy making standards, operational standards and record keeping standards that deal with the matters referred to in section 27(4) of the 2011 Measure (which are supplementary to the matters dealt with in Schedules 1 to 4).

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Welsh Language Unit, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 150(2) of the Welsh Language (Wales) Measure 2011, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2017 No. (W.)

WELSH LANGUAGE

**The Welsh Language Standards
(No. 6) Regulations 2017**

Made

Coming into force

7 February 2017

The Welsh Ministers, in exercise of the powers conferred upon them by sections 26, 27, 39 and 150(5) of the Welsh Language (Wales) Measure 2011⁽¹⁾, having received the approval of the National Assembly for Wales in accordance with section 150(2) of that Measure, make the following Regulations:

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Welsh Language Standards (No. 6) Regulations 2017.

(2) These Regulations come into force on 7 February 2017.

(3) These Regulations apply in relation to Wales.

(4) In these Regulations—

a “body” (“*corff*”) means a person referred to in regulation 3;

an “individual” (“*unigolyn*”) means a member of the public or a student;

a “member of staff” (“*aelod o staff*”) means an employee of a body or an individual working for a body (and “staff” (“*staff*”) must be construed accordingly).

(5) In these Regulations—

(1) 2011 nawm 1.

- (a) references to any activity being carried out by a body, or to any service being provided by a body, are to be read as including a reference to that activity being carried out on the body's behalf or to that service being provided on the body's behalf by a third party under arrangements made between the third party and the body;
- (b) accordingly, unless a compliance notice provides to the contrary, a body will have failed to comply with a standard in respect of an activity or service it has arranged to be carried out or provided by a third party if that activity or service has not been carried out or provided in accordance with the standard.

(6) Nothing in these Regulations requires a body to comply with a standard in respect of an activity carried out by it or a service provided by it where it is carrying out that activity or providing that service on behalf of a third party under arrangements made between it and the third party.

Standards specified

2.—(1) In Schedule 1—

- (a) Part 1 specifies service delivery standards;
- (b) Part 2 provides that—
 - (i) a compliance notice must require a body to comply with certain standards specified in Part 1 if it has required the body to comply with certain other standards, and
 - (ii) a compliance notice must not require a body to comply with certain standards specified in Part 1 in certain circumstances if it has required the body to comply with certain other standards;
- (c) Part 3 defines a number of words and expressions.

(2) In Schedule 2—

- (a) Part 1 specifies policy making standards;
- (b) Part 2 defines a number of words and expressions.

(3) In Schedule 3—

- (a) Part 1 specifies operational standards;
- (b) Part 2 provides that a compliance notice must require a body to comply with certain standards specified in Part 1 if it has required the body to comply with certain other standards;
- (c) Part 3 defines a number of words and expressions.

(4) In Schedule 4—

- (a) Part 1 specifies record keeping standards;
- (b) Part 2 defines a number of words and expressions.

(5) Schedule 5 specifies standards that deal with matters which are supplementary to the matters dealt with in the standards specified in Schedules 1 to 4 and, in particular—

- (a) Part 1 specifies service delivery standards that deal with supplementary matters;
- (b) Part 2 specifies policy making standards that deal with supplementary matters;
- (c) Part 3 specifies operational standards that deal with supplementary matters;
- (ch) Part 4 specifies record keeping standards that deal with supplementary matters;
- (d) Part 5 makes provision about interpreting the supplementary standards;
- (dd) Part 6 makes supplementary provision.

Standards that are specifically applicable

3. The Welsh Ministers authorise the Welsh Language Commissioner to give a compliance notice to—

(1) Career Choices Dewis Gyrfa Limited requiring it to comply with the following standards specified under regulation 2 and the Schedules—

- (a) 94 to 162;
- (b) 169 to 182;

(2) Coleg Ceredigion, Coleg Sir Gâr, Further Education Corporations in Wales, Merthyr Tydfil College Limited, the governing body of Saint David's Catholic College and WEA YMCA CC Cymru requiring them to comply with the following standards specified under regulation 2 and the Schedules—

- (a) 1 to 136;
- (b) 138 to 182;

(3) Aberystwyth University, Bangor University, Cardiff University, Higher Education Corporations in Wales, the Open University, the Royal Welsh College of Music and Drama Limited, Swansea University, the University of Wales and the University of Wales: Trinity St David requiring them to comply with the standards specified under regulation 2 and the Schedules;

(4) The Higher Education Funding Council for Wales requiring it to comply with the following standards specified under regulation 2 and the Schedules—

- (a) 1 to 24B;

- (b) 27 to 27D;
- (c) 30 to 59;
- (ch) 61 to 91;
- (d) 94 to 103;
- (dd) 105 to 136;
- (e) 138 to 182.

Name

Minister for Lifelong Learning and Welsh Language,
under authority of the Cabinet Secretary for Education,
one of the Welsh Ministers

Date

SCHEDULE 1 Regulation 2(1)
Service Delivery Standards

PART 1

THE STANDARDS

1 Standards relating to correspondence sent by a body

(1) When a body replies to correspondence

Standard 1: If you receive correspondence from a person in Welsh you must reply in Welsh (if an answer is required), unless the person has indicated that there is no need to reply in Welsh.

(2) When a body initiates correspondence

(a) When a body corresponds with an individual

Standard 2: When you correspond with an individual (“A”) for the first time, you must ask A whether A wishes to receive correspondence from you in Welsh, and if A responds to say that A wishes to receive correspondence in Welsh you must—

- (a) keep a record of A’s wish,
- (b) correspond with A in Welsh when corresponding with A from then onwards, and
- (c) send any forms you send to A from then onwards in Welsh.

(b) When a body corresponds with more than one member of the same household

Standard 3: When you send correspondence addressed to two individuals who are members of the same household (for example, the

parents of a child) for the first time, you must ask them whether they wish to receive correspondence from you in Welsh; and if —

- (a) both individuals respond to say that they wish to receive correspondence in Welsh, you must keep a record of that wish and correspond in Welsh from then onwards when sending correspondence addressed to both of those individuals;
- (b) one (but not both) of the individuals responds to say that he or she wishes to receive correspondence in Welsh, you must keep a record of that wish and provide a Welsh language version of correspondence from then onwards when sending correspondence addressed to both of those individuals.

(c) When a body corresponds with several persons (for example, when it sends a circular, or sends the same letter to a number of homes)

Standard 4: When you send the same correspondence to several persons, you must send a Welsh language version of the correspondence at the same time as you send any English language version.

(3) General standards relating to correspondence

Standard 5: If you don't know whether a person wishes to receive correspondence from you in Welsh, when you correspond with that person you must provide a Welsh language version of the correspondence.

Standard 6: If you produce a Welsh language version and a corresponding English language version of correspondence, you must not treat the Welsh language version less

favourably than the English language version (for example, if the English version is signed, or if contact details are provided on the English version, then the Welsh version must be treated in the same way).

Standard 7: You must state —

- (a) in correspondence, and
- (b) in publications and notices that invite persons to respond to you or to correspond with you,

that you welcome receiving correspondence in Welsh, that you will respond to correspondence in Welsh, and that corresponding in Welsh will not lead to delay.

2 Standards relating to telephone calls made and received by a body

(1) Telephone calls made to a body's main contact number and to any helplines or call centres

Standard 8: When a person contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must greet the person in Welsh.

Standard 9: When a person contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must inform the person that a Welsh language service is available.

Standard 10: When a person contacts you on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must deal with the call in Welsh in its entirety if that is the person's wish (where necessary by transferring the call to a member of staff who is able to deal with the call in Welsh).

Standard 11: When a person contacts you on

your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must deal with the call in Welsh if that is the person's wish until such point as —

- (a) it is necessary to transfer the call to a member of staff who does not speak Welsh who can provide a service on a specific subject matter; and
- (b) no Welsh speaking member of staff is available to provide a service on that specific subject matter.

Standard 12: When you advertise telephone numbers, helpline numbers or call centre services, you must not treat the Welsh language less favourably than the English language.

Standard 13: If you offer a Welsh language service on your main telephone number (or numbers), on any helpline numbers or call centre numbers, the telephone number for the Welsh language service must be the same as for the corresponding English language service.

Standard 14: When you publish your main telephone number, or any helpline numbers or call centre service numbers, you must state (in Welsh) that you welcome calls in Welsh.

Standard 15: If you have performance indicators for dealing with telephone calls, you must ensure that those performance indicators do not treat telephone calls made in Welsh any less favourably than calls made in English.

Standard 16: Your main telephone call answering service (or services) must inform persons calling, in Welsh, that they can leave a message in Welsh.

Standard 17: When there is no Welsh language service available on your main telephone number (or numbers), or on any helpline numbers or call centre numbers, you must inform persons calling in Welsh (by way of an automated message or otherwise), when a Welsh language service will be available.

(2) Telephone calls made to departments and to members of a body's staff

Standard 18: If a person contacts one of your departments on a direct line telephone number (including on staff members' direct line numbers), and that person wishes to receive a service in Welsh, you must deal with the call in Welsh in its entirety (if necessary by transferring the call to a member of staff who is able to deal with the call in Welsh).

Standard 19: If a person contacts one of your departments on a direct line telephone number (including on staff members' direct line numbers), and that person wishes to receive a service in Welsh, you must deal with the call in Welsh until such point as —

- (a) it is necessary to transfer the call to a member of staff who does not speak Welsh who can provide a service on a specific subject matter; and
- (b) no Welsh speaking member of staff is available to provide a service on that specific subject matter.

Standard 20: When a person contacts you on a direct line number (whether on a department's direct line number or on the direct line number of a member of staff), you must ensure that, when greeting the person, the Welsh language is not treated less favourably than the English language.

(3) Telephone calls made by a body

Standard 21: When you telephone an individual (“A”) for the first time you must ask A whether A wishes to receive telephone calls from you in Welsh, and if A responds to say that A wishes to receive telephone calls in Welsh you must keep a record of that wish, and conduct telephone calls made to A from then onwards in Welsh.

(4) A body dealing with telephone calls using an automated system

Standard 22: Any automated telephone systems that you have must provide the complete automated service in Welsh.

3 Standards relating to a body holding meetings that are not open to the general public or to students within a particular cohort

(1) Meetings between a body and one other invited person

Standard 23: If you invite one person only (“P”) to a meeting, you must offer to conduct the meeting in Welsh; and if P informs you that P wishes for the meeting to be conducted in Welsh, you must conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 24: If you invite one person only (“P”) to a meeting you must ask P whether P wishes to use the Welsh language at the meeting, and inform P that you will, if necessary, provide a translation service from Welsh to English for that purpose.

Standard 24A: If you have invited one person only (“P”) to a meeting and P has informed you that P wishes to use the Welsh language at the meeting, you must arrange for a simultaneous translation service

from Welsh to English to be available at the meeting (unless you conduct the meeting in Welsh without the assistance of a translation service).

Standard 24B: If you have invited one person only (“P”) to a meeting and P has informed you that P wishes to use the Welsh language at the meeting, you must arrange for a consecutive translation service from Welsh to English to be available at the meeting (unless you conduct the meeting in Welsh without the assistance of a translation service).

(2) Meetings with one person relating to complaints, disciplinary proceedings or student support

Standard 25: If you invite an individual (“A”) to a meeting, and

- (a) the meeting relates to a complaint about A or made by A;
- (b) the meeting relates to disciplinary proceedings regarding A; or
- (c) the purpose of the meeting is to provide student support to A,

you must—

- (i) ask A whether A wishes for the meeting to be conducted in Welsh, and
- (ii) if A informs you that A wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 26: If you invite an individual (“A”) to a meeting, and

- (a) the meeting relates to a complaint about A or

- made by A;
- (b) the meeting relates to disciplinary proceedings regarding A; or
- (c) the purpose of the meeting is to provide student support to A,

you must—

- (i) ask A whether A wishes to use the Welsh language at the meeting, and
- (ii) inform A that you will, if necessary, provide a translation service from Welsh to English and from English to Welsh for that purpose.

Standard 26A: You must arrange for a simultaneous translation service from Welsh to English and from English to Welsh to be available at a meeting—

- (a) if—
 - (i) the meeting relates to a complaint about the invited individual (“A”) or made by A;
 - (ii) the meeting relates to disciplinary proceedings regarding A; or
 - (iii) the purpose of the meeting is to provide student support to A; and
- (b) if A has informed you that A wishes to use the Welsh language at the meeting;

unless you conduct the meeting in Welsh without the assistance of a translation service.

Standard 26B: You must arrange for a consecutive translation service from Welsh to English and from English to Welsh to be available at a meeting—

- (a) if—
 - (i) the meeting relates to a complaint about the

- invited individual (“A”) or made by A;
 - (ii) the meeting relates to disciplinary proceedings regarding A; or
 - (iii) the purpose of the meeting is to provide student support to A; and
- (b) if A has informed you that A wishes to use the Welsh language at the meeting; unless you conduct the meeting in Welsh without the assistance of a translation service.

(3) Meetings between a body and more than one invited person

Standard 27: If you invite more than one person to a meeting, you must ask each person whether they wish to use the Welsh language at the meeting.

Standard 27A: If you have invited more than one person to a meeting, and at least 10% (but less than 100%) of the persons invited have informed you that they wish to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to English to be available at the meeting.

Standard 27B: If you have invited more than one person to a meeting, and at least 20% (but less than 100%) of the persons invited have informed you that they wish to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to English to be available at the meeting.

Standard 27C: If you have invited more than one person to a meeting, and at least 30% (but less than 100%) of the persons invited have informed you that they wish to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to

English to be available at the meeting.

Standard 27CH:

If you have invited more than one person to a meeting, and all of the persons invited have informed you that they wish to use the Welsh language at the meeting, you must conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 27D:

If you have invited more than one person to a meeting, and all of the persons invited have informed you that they wish to use the Welsh language at the meeting, you must arrange for a simultaneous translation service from Welsh to English to be available at the meeting (unless you conduct the meeting in Welsh without the assistance of a translation service).

(4) Meetings with more than one person relating to complaints, disciplinary proceedings or student support

Standard 28:

If you invite more than one person to a meeting, and

- (a) the meeting relates to a complaint made by or about one or more of the individuals invited;
- (b) the meeting relates to disciplinary proceedings regarding one or more of the individuals invited; or
- (c) the purpose of that meeting is to provide student support to one or more of the individuals invited;

you must—

- (i) ask that individual or each of those individuals whether he or she wishes for the meeting to be conducted in Welsh; and
- (ii) if that individual, or if each of those

individuals, informs you that he or she wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 29: If you invite more than one person to a meeting, and

- (a) the meeting relates to a complaint made by or about one of the individuals invited;
- (b) the meeting relates to disciplinary proceedings regarding one or more of the individuals invited; or
- (c) the purpose of that meeting is to provide student support to one or more of the individuals invited;

you must—

- (i) ask that individual or each of those individuals whether he or she wishes to use the Welsh language at the meeting; and
- (ii) inform that individual (or those individuals) that, if necessary, you will provide a translation service from Welsh to English and from English to Welsh for that purpose.

Standard 29A: You must provide a simultaneous translation service from Welsh to English and from English to Welsh at a meeting—

- (a) if you have invited more than one person to the meeting;
- (b) if—
 - (i) the meeting relates to

a complaint made by or about one or more of the individuals invited;

(ii) the meeting relates to disciplinary proceedings regarding one or more of the individuals invited; or

(iii) the purpose of the meeting is to provide student support to one or more of the individuals invited; and

(c) if at least one of those individuals has informed you that he or she wishes to use the Welsh language at the meeting;

unless you conduct the meeting in Welsh without the assistance of a translation service.

Standard 29B: You must provide a consecutive translation service from Welsh to English and from English to Welsh at a meeting—

(a) if you have invited more than one person to the meeting;

(b) if—

(i) the meeting relates to a complaint made by or about one or more of the individuals invited;

(ii) the meeting relates to disciplinary proceedings regarding one or more of the individuals invited; or

(iii) the purpose of the meeting is to provide student support to one or more of the individuals invited; and

(c) if at least one of those individuals has informed

you that he or she wishes to use the Welsh language at the meeting;

unless you conduct the meeting in Welsh without the assistance of a translation service.

4 Standards relating to meetings arranged by a body that are open to the public or to students within a particular cohort

Standard 30: If you arrange a meeting that is open to—

- (a) the public, or
- (b) students who are within a particular cohort,

you must state on any material advertising it, and on any invitation to it, that anyone attending is welcome to use the Welsh language at the meeting.

Standard 31: When you send invitations to a meeting that you arrange which is open to—

- (a) the public, or
- (b) students who are within a particular cohort,

you must send the invitations in Welsh.

Standard 32: If you invite persons to speak at a meeting that you arrange which is open to—

- (a) the public, or
- (b) students who are within a particular cohort,

you must —

- (i) ask each person invited to speak whether he or she wishes to use the Welsh language, and
- (ii) if that person (or at least one of those persons) has informed you that he or she wishes to use the Welsh language at the meeting, provide a

simultaneous translation service from Welsh to English for that purpose (unless you conduct the meeting in Welsh without a translation service).

Standard 33: If you arrange a meeting that is open to—

- (a) the public, or
- (b) students who are within a particular cohort,

you must ensure that a simultaneous translation service from Welsh to English is available at the meeting, and you must orally inform those present in Welsh —

- (i) that they are welcome to use the Welsh language, and
- (ii) that a simultaneous translation service is available.

Standard 34: If you display any written material at a meeting that you arrange which is open to—

- (a) the public, or
- (b) students who are within a particular cohort,

you must ensure that the material is displayed in Welsh, and you must not treat any Welsh language text less favourably than the English language text.

5 Standards relating to public events organised or funded by a body

Standard 35: If you organise a public event, or fund at least 50% of a public event, you must ensure that, in promoting the event, the Welsh language is treated no less favourably than the English language (for example, in the way the event is advertised or publicised).

Standard 36: If you organise a public event, or fund at least 50% of a public event,

you must ensure that the Welsh language is treated no less favourably than the English language at the event (for example, in relation to services offered to persons attending the event, in relation to signs displayed at the event and in relation to audio announcements made at the event).

6 Standard relating to a body's publicity and advertising

Standard 37: Any publicity or advertising material that you produce must be produced in Welsh, and if you produce the material in Welsh and in English, you must not treat the Welsh language version less favourably than you treat the English language version.

7 Standards relating to a body displaying material in public

Standard 38: Any material that you display in public must be displayed in Welsh, and you must not treat any Welsh language version of the material less favourably than the English language version.

Standard 39: Any material that you display at a public exhibition organised by you must be displayed in Welsh, and you must not treat any Welsh language version of the material less favourably than you treat an English language version.

8 Standards relating to public lectures

Standard 40: If you arrange a public lecture you must ensure that a simultaneous translation service from Welsh to English is available for the purpose of any questions asked by the audience during or after the lecture where—

- (a) the subject matter of the public lecture suggests that such a service should be provided, or
- (b) the anticipated audience

and their expectation suggests that such a service should be provided.

Standard 40A: If you arrange a public lecture and you provide a simultaneous translation service you must orally inform those present in Welsh that they are welcome to use the Welsh language.

9 Graduation and award ceremonies

Standard 41: If you arrange a graduation or award ceremony you must ensure that the Welsh language is treated no less favourably than the English language in relation to material or signs displayed by you at the venue and in relation to any information provided regarding the order of events at the ceremony (whether in an electronic, written or oral form).

Standard 42: If you invite persons to speak at a graduation or award ceremony you must —

- (a) ask each person invited to speak whether he or she wishes to use the Welsh language, and
- (b) if a person (or at least one of those persons) has informed you that he or she wishes to use the Welsh language at the ceremony, either
 - (i) provide a simultaneous translation service from Welsh to English for that purpose, or
 - (ii) provide a written English translation at the ceremony.

10 Standards relating to a body producing and publishing documents

Standard 43: Any documents that you produce

for public use or for students' use must be produced in Welsh.

Standard 44: If you produce the following documents you must produce them in Welsh—

- (a) agendas, minutes and other papers that are available to the public or to students, which relate to Board or Council meetings;
- (b) agendas, minutes and other papers for meetings, conferences or seminars that are open to the public or to students.

Standard 45: Any licence, permit or certificate you produce must be produced in Welsh.

Standard 46: Any brochure, prospectus, leaflet, pamphlet or card that you produce in order to provide information to the public or to students must be produced in Welsh.

Standard 47: If you produce the following documents, and they are available to the public or to students, you must produce them in Welsh —

- (a) policies, strategies, annual reports and corporate plans;
- (b) guidelines and codes of practice;
- (c) consultation papers.

Standard 48: Any rules that you publish that apply to the public must be published in Welsh.

Standard 49: When you issue any statement to the press you must issue it in Welsh and, if there is a Welsh language version and an English language version of a statement, you must issue both versions at the same time.

Standard 50: If you produce a document which is available to the public or to students, and no other standard has

required you to produce the document in Welsh, you must produce it in Welsh —

- (a) if the subject matter of the document suggests that it should be produced in Welsh, or
- (b) if the anticipated audience, and their expectations, suggests that the document should be produced in Welsh.

Standard 51: If you produce a document in Welsh and in English (whether separate versions or not), you must not treat any Welsh language version less favourably than you treat the English language version.

Standard 52: If you produce a Welsh language version and a separate English language version of a document, you must ensure that the English language version clearly states that the document is also available in Welsh.

11 Standards relating to a body producing and publishing forms

Standard 53: Any form that you make available to the public or students must be produced in Welsh.

Standard 53A: If you produce a Welsh language version and a separate English language version of a form, you must ensure that the English language version clearly states that the form is also available in Welsh.

Standard 53B: If you produce a form in Welsh and in English (whether separate versions or not), you must ensure that the Welsh language version is treated no less favourably than the English language version, and you must not differentiate between the Welsh and English versions in relation to any requirements that are relevant to the form (for example in relation to any deadline for submitting the form, or in relation to the time allowed to respond to the content of the form).

Standard 54: If you pre-enter information on a Welsh language version of a form (for example, before sending it to a member of the public in order for him or her to check the content or to fill in the remainder of the form), you must ensure that the information that you pre-enter is in Welsh.

12 Standards relating to a body's websites and on-line services

(1) Websites published by a body

Standard 55: You must ensure that —

- (a) the text of each page of your website is available in Welsh,
- (b) every Welsh language page on your website is fully functional, and
- (c) the Welsh language is not treated less favourably than the English language on your website.

Standard 56: You must ensure that —

- (a) the text of the homepage of your website is available in Welsh,
- (b) any Welsh language text on your homepage (or, where relevant, your Welsh language homepage) is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language in relation to the homepage of your website.

Standard 57: You must ensure that when you publish a new page on your website or amend a page —

- (a) the text of that page is available in Welsh,
- (b) any Welsh language version of that page is fully functional, and

- (c) the Welsh language is treated no less favourably than the English language in relation to that page.

Standard 58: If you have a Welsh language web page that corresponds to an English language web page, you must state clearly on the English language web page that the page is also available in Welsh, and you must provide a direct link to the Welsh page on the corresponding English page.

Standard 59: You must provide the interface and menus on every page of your website in Welsh.

Standard 60: You must provide computer software for checking spelling and grammar in Welsh on your student intranet, your virtual learning sites and your learning portal sites.

(2) Apps published by a body

Standard 61: All apps that you publish must function fully in Welsh, and the Welsh language must be treated no less favourably than the English language in relation to that app.

13 Standards relating to a body's use of social media

Standard 62: When you use social media you must not treat the Welsh language less favourably than the English language.

Standard 63: If a person contacts you by social media in Welsh, you must reply in Welsh (if an answer is required).

14 Standard relating to self service machines

Standard 64: You must ensure that any self service machines that you have function fully in Welsh, and the Welsh language must be treated no less favourably than the English language in relation to that machine.

15 Standards relating to signs displayed by a body

Standard 65: When you erect a new sign or renew a sign (including temporary signs), any text displayed on the sign must be displayed in Welsh (whether on the same sign as you display corresponding English language text or on a separate sign); and if the same text is displayed in Welsh and in English, you must not treat the Welsh language text less favourably than the English language text.

Standard 66: When you erect a new sign or renew a sign (including temporary signs) which conveys the same information in Welsh and in English, the Welsh-language text must be positioned so that it is likely to be read first.

Standard 67: You must ensure that the Welsh language text on signs is accurate in terms of meaning and expression.

16 Standards relating to a body receiving visitors at its buildings

Standard 68: Any reception service you make available in English must also be available in Welsh, and any person who requires a Welsh language reception service must not be treated less favourably than a person who requires an English language reception service.

Standard 69: If you arrange a visit or appointment in advance for a person (“P”) which will mean that P will come to your reception, you must ask P whether P wishes to receive a Welsh language reception service (unless you already know whether P wishes to receive that service in Welsh).

Standard 69A: You must provide a face to face Welsh language reception service for a person (“P”) at your reception if you have arranged a visit or

appointment for P in advance and—

- (a) P has informed you in advance that P wishes to receive the service in Welsh, or
- (b) you are already aware that P wishes to receive the service in Welsh.

Standard 70: If you have no face to face Welsh language reception service available, you must ensure that a Welsh language reception service is available over a phone in your reception.

Standard 71: You must display a sign in your reception which states (in Welsh) that persons are welcome to use the Welsh language at the reception.

Standard 72: You must ensure that staff at the reception who are able to provide a Welsh language reception service wear a badge to convey that.

17 Standards relating to notices made by a body

Standard 73: Any notice that you publish or display must be published or displayed in Welsh, and you must not treat any Welsh language version of a notice less favourably than an English language version.

Standard 74: When you publish or display a notice that contains Welsh language text as well as English language text, the Welsh language text must be positioned so that it is likely to be read first.

18 Standards relating to a body awarding grants or providing financial assistance

Standard 75: Any documents that you publish which relate to applications for a grant or financial assistance must be published in Welsh, and you must not treat a Welsh language version of such documents less

favourably than an English language version.

Standard 76: When you invite applications for a grant or financial assistance, you must state in the invitation that applications may be submitted in Welsh and that any application submitted in Welsh will be treated no less favourably than an application submitted in English.

Standard 76A: You must not treat applications for a grant or financial assistance submitted in Welsh less favourably than applications submitted in English (including, amongst other matters, in relation to the closing date for receiving applications and in relation to the timescale for informing applicants of decisions).

Standard 77: If you receive an application for a grant or financial assistance in Welsh and it is necessary to interview an applicant as part of your assessment of the application, you must offer to conduct that interview in Welsh and, if the applicant so wishes, you must conduct the interview in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 78: If you receive an application for a grant or financial assistance in Welsh and it is necessary to interview the applicant as part of your assessment of the application you must —

- (a) offer to provide a translation service from Welsh to English to enable the applicant to use the Welsh language at the interview, and
- (b) if the applicant wishes to use the Welsh language at the interview, provide a simultaneous translation service for that purpose (unless you conduct the interview in Welsh without a translation service).

Standard 79: When you inform an applicant of your decision in relation to an application for a grant or financial assistance, you must do so in Welsh if the application was submitted in Welsh.

19 Standards relating to a body awarding contracts

Standard 80: Any invitations to tender for a contract that you publish must be published in Welsh, and you must not treat a Welsh language version of any invitation less favourably than an English language version.

Standard 81: When you publish invitations to tender for a contract, you must state in the invitation that tenders may be submitted in Welsh, and that a tender submitted in Welsh will be treated no less favourably than a tender submitted in English.

Standard 81A: You must not treat a tender for a contract submitted in Welsh less favourably than a tender submitted in English (including, amongst other matters, in relation to the closing date for receiving tenders, and in relation to the timescale for informing tenderers of decisions).

Standard 82: If you receive a tender in Welsh and it is necessary to interview a tenderer as part of your assessment of the tender, you must offer to conduct that interview in Welsh and, if the tenderer so wishes, you must conduct the interview in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 83: If you receive a tender in Welsh and it is necessary to interview the tenderer as part of your assessment of the tender you must—

- (a) offer to provide a translation service from Welsh to English to enable the tenderer to use the Welsh language at the interview, and

- (b) if the tenderer wishes to use the Welsh language at the interview, provide a simultaneous translation service for that purpose (unless you conduct the interview in Welsh without a translation service).

Standard 84: When you inform a tenderer of your decision in relation to a tender, you must do so in Welsh if the tender was submitted in Welsh.

20 Standards for raising awareness about Welsh language services provided by a body

Standard 85: You must promote any Welsh language service that you provide, and advertise that service in Welsh.

Standard 86: If you provide a service in Welsh that corresponds to a service you provide in English, any publicity or document that you produce, or website that you publish, which refers to the English service must also state that a corresponding service is available in Welsh.

21 Standard relating to a body's corporate identity

Standard 87: When you form, revise or present your corporate identity, you must not treat the Welsh language less favourably than the English language.

22 Standards relating to learning opportunities offered by a body

Standard 88: If you offer a learning opportunity that is open to the public, you must offer it in Welsh.

Standard 89: If you develop a learning opportunity that is to be offered to the public, you must assess the need for that opportunity to be offered in Welsh; and you must ensure that the assessment is

published on your website.

23 Standards relating to submitting written work in Welsh

Standard 90: You must inform your students that any written work submitted to you as part of an assessment or examination may be submitted in Welsh, and that work submitted to you in Welsh will be treated no less favourably than written work submitted to you in English as part of that assessment or examination.

Standard 90A: You must not treat any written work submitted to you in Welsh as part of an assessment or examination less favourably than written work submitted to you in English as part of that assessment or examination.

24 Standard relating to public address systems used by a body

Standard 91: When you announce a message over a public address system, you must make that announcement in Welsh and, if the announcement is made in Welsh and in English, the announcement must be made in Welsh first.

25 Standards relating to student accommodation

Standard 92: When students or prospective students apply to you for residential accommodation you must allow those students to express a preference for accommodation (or part of an accommodation) that will be reserved for Welsh speakers.

Standard 92A: You must promote to your students and prospective students the ability for them to express a preference for accommodation (or part of an accommodation) that will be reserved for Welsh speakers.

26 Standard relating to allocating a personal tutor

- Standard 93:** If you allocate a personal tutor to a student (“A”) you must—
- (a) ask A whether A wishes to have a Welsh speaking personal tutor, and
 - (b) if A informs you that A wishes to have a Welsh speaking personal tutor, allocate a Welsh speaking personal tutor to A.

PART 2

STANDARDS THAT RELATE TO OTHER STANDARDS – SPECIAL CONDITIONS

27 When a compliance notice requires a body to comply with one of the standards listed on a specific row in column 1 of Table 1, that compliance notice must also require that body to comply (in whatever way the Welsh Language Commissioner considers appropriate) with the standard or standards listed in column 2 of that row (or with one or more of those standards where that is stated).

TABLE 1

<i>Row</i>	Column 1 <i>Main standard</i>	Column 2 <i>Reliant standard</i>
(1)	Replying to correspondence Standard 1	Standard 7
(2)	Corresponding with members of the same household Standard 3	Standard 6
(3)	Corresponding with several persons Standard 4	Standard 6 Standard 7
	General standards relating to correspondence	

(4)	Standard 5	Standard 6 Standard 7
(5)	Raising awareness about corresponding in Welsh Standard 7	Standard 1
(6)	Receiving telephone calls Standard 9	One or more of the following: Standard 10 Standard 11
(7)	Receiving telephone calls Standard 10 or 11	Standard 9 Standard 14
(8)	Raising awareness about telephone services in Welsh Standard 14	One or more of the following: Standard 10 Standard 11 and also Standard 16, and Standard 17
(9)	Meetings with one person Standard 24	One or more of the following: Standard 24A Standard 24B
(10)	Meetings with one person Standard 24A or 24B	Standard 24
(11)	Meetings with one person Standard 26	One or more of the following:

		Standard 26A Standard 26B
(12)	Meetings with one person Standard 26A or 26B	Standard 26
(13)	Meetings with more than one person Standard 27	One or more of the following: Standard 27A Standard 27B Standard 27C and also one of more of the following: Standard 27CH Standard 27D
(14)	Meetings with more than one person Standard 27A, 27B, 27C, 27CH or 27D	Standard 27
(15)	Meetings with more than one person Standard 29	One or more of the following: Standard 29A Standard 29B
(16)	Meetings with more than one person Standard 29A or 29B	Standard 29
(17)	Public meetings Standard 30	Standard 33
(18)	Public meetings Standard 33	Standard 30
(19)	Public lectures Standard 40	Standard 40A
(20)	Public lectures Standard 40A	Standard 40

	Documents	
(21)	Standard 43, 44, 45, 46, 47, 48 or 50	Standard 51 Standard 52
	Forms	
(22)	Standard 53	Standard 53A Standard 53B
	Websites	
(23)	Standard 55, 56 or 57	Standard 58
	Signs	
(24)	Standard 65 or 66	Standard 67
	Reception	
(25)	Standard 68	Standard 71 Standard 72
	Reception	
(26)	Standard 69	Standard 69A
	Reception	
(27)	Standard 70	Standard 71
	Raising awareness of Welsh-language services in a reception	
(28)	Standard 71	One or more of the following: Standard 68 Standard 70
	Grants and financial assistance	
(29)	Standard 76	Standard 76A Standard 79
	Grants and financial assistance	
(30)	Standard 77 or 78	Standard 76 Standard 76A
	Contracts	
(31)	Standard 81	Standard 81A Standard 84
	Contracts	

(32)	Standard 82 or 83	Standard 81 Standard 81A
	Written work in Welsh	
(33)	Standard 90	Standard 90A
	Written work in Welsh	
(34)	Standard 90A	Standard 90
	Student accommodation	
(35)	Standard 92	Standard 92A
	Student accommodation	
(36)	Standard 92A	Standard 92

28

(1) Paragraph 28(2) applies if a compliance notice requires a body to comply with one or more of the standards listed on a specific row in column 1 of Table 2 and with one or more of the standards listed on the same row in column 2.

(2) If the compliance notice requires the body to comply with a standard listed in column 2 in respect of a meeting (or in respect of a meeting of a particular kind) the compliance notice must not require the body to comply with a standard listed on the same row in column 1 in respect of that meeting (or in respect of a meeting of that kind).

TABLE 2

<i>Row</i>	Column 1	Column 2
	Meetings with one person	Meetings with one person relating to complaints, disciplinary proceedings or student support
(1)	Standard 23, 24, 24A or 24B	Standard 25, 26, 26A or 26B

	Meetings with more than one person	Meetings with more than one person relating to complaints, disciplinary proceedings or student support
(2)	Standard 27, 27A, 27B, 27C, 27CH or 27D	Standard 28, 29, 29A or 29B

PART 3

INTERPRETING THE STANDARDS

- 29** The standards specified in Part 1 of this Schedule must be interpreted as follows.
- 30** The standards only apply to the extent that a body —
- (a) delivers services to a person, or
 - (b) deals with any other person in connection with delivering services—
 - (i) to that other person, or
 - (ii) to a third person.
- 31** The standards only apply to the extent that the activity undertaken or the service provided relates to —
- (a) the admission and selection of students;
 - (b) information provided to students and prospective students about the body;
 - (c) the welfare of students;
 - (ch) complaints;
 - (d) disciplinary proceedings in respect of a student;
 - (dd) careers service;
 - (e) student intranet, virtual learning sites and learning portal sites;
 - (f) graduation and award ceremonies;
 - (ff) the assessment or

- examination of a student;
- (g) the awarding of grants and the provision of financial assistance;
- (ng) public lectures;
- (h) learning opportunities⁽¹⁾;
- (i) allocation of a personal tutor⁽²⁾;
- (j) student accommodation, libraries and arts centres;
- (l) calls to a main telephone number (or numbers), helpline numbers, call centre numbers and automated telephone systems;
- (ll) signs on the body's buildings.

32 A body is not required to produce, to display or to send material in Welsh to the extent that another enactment has specified the wording of a document, a sign or a form which would run contrary to that requirement.

33 For the purposes of the standards —

- (a) a requirement to produce, to send, to publish, to display, to make available or to issue any written material in Welsh does not mean that the material should be produced, sent, published, displayed, made available or issued in Welsh only, nor does it mean that the material should be produced in Welsh first (unless that is specifically stated in the standard);
- (b) a requirement to provide a service in Welsh does not mean that that service should only be provided in Welsh (unless that is specifically stated in the standard).

(1) See paragraph 63.

(2) See paragraph 66.

(1) A body is not required to translate into Welsh any text that it has not produced (“text A”).

(2) A body will not be treating the Welsh language less favourably if it does not translate text A into Welsh but see sub-paragraph (3).

(3) A body must use the Welsh version of text A if another person has produced text A in Welsh in accordance with —

- (a) its Welsh Language Scheme;
- (b) a duty to comply with standards;
- (c) Standing Orders of the Assembly;
- (ch) section 35(1C) of the 2006 Act; or
- (d) the Assembly Commission’s Official Languages Scheme.

(4) In this paragraph—

- (a) “Welsh Language Scheme” means a Welsh language scheme produced in accordance with Part 2 of the Welsh Language Act 1993(1);
- (b) “a duty to comply with standards” means a duty to comply with a standard under section 25 of the Welsh Language (Wales) Measure 2011;
- (c) “the 2006 Act” means the Government of Wales Act 2006(2);
- (ch) “Standing Orders of the Assembly” means standing orders made under section 31 of the 2006 Act;
- (d) “the Assembly Commission’s Official Languages Scheme” means the Scheme adopted and published under paragraph 8 of Schedule 2 to the 2006 Act.

(1) 1993 c.38.

(2) 2006 c.32.

- 35 A body is not required to comply with these standards in relation to material published in journals or books.
- 36 For the purposes of standards 2, 3 and 21, a body corresponds with an individual or makes a telephone call to an individual for the first time when it corresponds or makes a telephone call for the first time after the date on which a compliance notice has required the body to comply with the standard.
- 37 For the purposes of standards 18 to 20 (telephone calls) “department” means a department that deals wholly or mainly with the matters listed in paragraph 31(a) to (l).
- 38 In standard 22 an “automated” telephone system means a system that answers telephone calls and guides persons through a set procedure with a recorded message which, for example, asks a person to press different keys in order to choose different options.
- 39 For the purposes of standards 25 to 26B and 28 to 29B (meetings relating to student support) providing ‘student support’ means providing counselling or support in relation to mental health issues.
- 40 Standards 23 to 29B (meetings) do not apply to medical examinations.
- 41 For the purposes of standards 30 to 34 (public meetings) “cohort” means a group of students sharing one or more statistical or demographic features (for example, students born in a particular year, all students or all third year students studying geography).
- 42 Standard 36 (public events) does not apply to—
- (a) performances of music;
 - (b) artistic or dramatic productions;

(c) seminars or oral presentations relating to the performance or production;

(ch) any recording of the performance, production, seminar or oral presentation.

43 Standards 36 and 91 do not apply when the message that you announce over a public address system is made during an emergency or an emergency drill.

44 Standards 30 to 34 (public meetings) and 35 and 36 (public events) do not apply to public lectures or graduation ceremonies (see standards 40 to 42).

45 Standards 38 and 39 (displaying material) do not apply to graduation ceremonies (see standards 41 to 42).

46 Where a standard refers to material that is to be produced in Welsh (with the exception of standards 41 (graduation ceremonies), 55 to 61 (websites and apps), 62 and 63 (social media), 80 (invitations to tender) and 90 (submitting written work in Welsh)), references to treating the Welsh language no less favourably than the English language, or to treating a Welsh language version no less favourably than an English language version, include, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards —

(a) the visual presentation of material (for example in relation to the colour or font of any text);

(b) the size of the material;

(c) the position and prominence of the material in any public place;

(ch) when and how the material is published, provided or exhibited;

- (d) the publication format of material.

47

For the purposes of standard 41 (graduation and award ceremonies), references to treating the Welsh language no less favourably than the English language include, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards —

- (a) the visual presentation of material (for example in relation to the colour or font of any text);
- (b) the size of the material;
- (c) the position and prominence of the material in any public place;

(ch) when and how the material is published, provided or exhibited;

- (d) the publication format of material

but a body will not be treating the Welsh language less favourably than the English language by providing the information in written or electronic format in Welsh when the information is provided orally in English.

48

For the purposes of standards 43, 44, 47, 50 and 53 references to documents or other materials being available to the public or to students or to being produced for public use or for students use do not include documents or materials that are only available to the public or to students by virtue of the Freedom of Information Act 2000⁽¹⁾.

49

(1) Standards 53, 53A and 53B do not apply to the forms listed in sub-paragraph (3).

(2) For the purposes of standard 2, a body is not required to send a Welsh language version of the forms listed in sub-paragraph (3).

(1) 2000 c.36

- (3) The forms are —
- (a) forms used by a body to recruit employees (see standards 146A, 147 and 148 in relation to recruitment);
 - (b) forms used when applying for grant or financial assistance from a body (see standards 75 to 79 in relation to applications for grants and financial assistance);
 - (c) forms used when submitting a tender to enter into a contract with a body (see standards 80 to 84 in relation to tendering for a contract).

50 Standards 43, 48, 50, 51 and 52 do not apply to an enactment made by a body or to a draft enactment prepared by a body.

51 Standards 43, 46, 47 and 50 do not apply to any advertising material contained in a document, brochure, leaflet, pamphlet or card.

52 Standards 55 to 59 (websites) do not apply to —

- (a) documents to which a link is provided on a website, advertising material on a website, or to video and audio clips on a website (see standards 43 to 52 for specific provision in relation to documents, and standard 37 in relation to advertising material produced by a body);
- (b) information presented by persons (other than the body) on an interactive page published on a body’s website (for example on a section for comments or on a discussion forum).

53 For the purposes of standards 55 to 59 (websites) “website” includes student intranet, virtual learning sites and learning portal sites.

54 (1) For the purposes of standard 61 an ‘app’ is a software application designed to undertake a specific task on an electronic device.

(2) Standard 61 does not apply to any advertising material on an app (see standard 37 in relation to advertising material produced by a body).

55 For the purposes of standards 55 to 60 (websites), standard 61 (apps) and standards 62 and 63 (social media), references to treating the Welsh language no less favourably than the English language include, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards —

(a) the visual presentation of the material (for example in relation to the colour, size, font and format of any text), or

(b) when material is published on the website, app or social media;

but it does not mean that Welsh language material must appear on the same page as English language material, or on a page that a person is likely to find before the English language page when searching.

56 (1) Standards 1 to 7 (correspondence) do not apply to correspondence sent by social media (see standards 62 and 63 in relation to social media).

(2) Standards 55 to 59 (websites) and standard 61 (apps) do not apply to social media (see standards 62 and 63 in relation to social media).

57 Standards 62 and 63 (social media) do not apply to —

(a) documents to which a link is provided through social media, or to video and audio clips provided through social media (see

standards 43 to 52 for specific provision in relation to documents, and standard 37 in relation to advertising material produced by a body);

- (b) information presented by persons (other than the body) on a body's social media account (for example on a section for comments).

58 For the purposes of standard 64 (self service machines) reference to treating the Welsh language no less favourably than the English language includes, amongst other matters, treating the Welsh language no less favourably as regards the visual presentation of the material (for example in relation to the colour, size, font and format of any text), but it does not mean that Welsh language material must appear on screen at the same time as English language material.

59 For the purposes of standards 68 to 72 (receiving visitors) —

- (a) “reception” means an area in a body's offices and service locations where staff are made available for the purpose of welcoming persons;
- (b) “reception service” means a service for welcoming persons to the body's offices or service locations by staff who are made available for that purpose;
- (c) “service locations” include libraries, leisure centres, arts centres, advice centres and drop in centres.

60 For the purposes of standards 7, 73 and 74 a “notice” means any notice that a body publishes, but it does not include notices prescribed by an enactment.

61 For the purposes of standard 80 (invitation to tender) —

- (1) A body is not required to

publish an invitation to tender in Welsh in the Official Journal of the European Union.

(2) A reference to treating a Welsh language version no less favourably than an English language version includes, amongst other matters, treating the Welsh language no less favourably as regards—

- (a) the visual presentation of material (for example in relation to the colour or font of any text);
- (b) the size of the material;
- (c) the position and prominence of the material in any public place;
- (ch) when and how the material is published, provided or exhibited;
- (d) the publication format of material;

but a body will not be treating the Welsh language less favourably than the English language by not publishing an invitation to tender in Welsh in the Official Journal of the European Union.

62

(1) For the purposes of standard 87, the reference to a body forming or presenting its “corporate identity” includes, amongst other things, the way a body presents itself by means of visual statements, the name or names used by a body, and a body’s branding and slogans (for example, branding and slogans printed on its stationery).

(2) Standard 87 does not apply to the extent that an enactment requires a body to use a legal name.

63

For the purposes of standards 88 and 89 (learning opportunities) and paragraph 31, “learning opportunities” means any seminar, training, workshop, taster session, or similar provision which is provided in order to educate or to improve the skills of members of the public; but does not include—

- (a) any seminar, training, workshop, taster session or

similar provision provided as part of a course; or

- (b) seminars or oral presentations relating to a performance or production.

64 Standards 90 and 90A (submitting written work in Welsh) do not apply when the body is assessing the proficiency of a student in a language other than Welsh.

65 For the purposes of standard 90 and 90A (submitting written work in Welsh) a reference to treating the Welsh language no less favourably than the English language includes, among other matters, the timescale for informing persons of the outcome of the assessment or examination; but a body will not be treating the Welsh language less favourably than the English language—

- (a) by obtaining a translation of that work in order for it to be assessed, or
- (b) by not translating any comments on that translated work.

66 For the purposes of standard 93 (allocation of a personal tutor) and paragraph 31—

- (a) a “personal tutor” is a member of staff allocated to a student (“A”) whose main role as a personal tutor is to support A in A’s learning or with other matters;
- (b) the allocation of a personal tutor to A does not include providing A with an academic tutor;
- (c) an “academic tutor” is a member of staff provided to A whose role as an academic tutor is to—
 - (i) deliver a lecture or course, or
 - (ii) facilitate tutorials, workshops or practical support to the programme of learning.

67

For the purposes of the standards “enactment” means an enactment (whenever enacted or made) comprised in, or in an instrument made under—

- (a) an Act of Parliament; or
- (b) a Measure or an Act of the National Assembly for Wales.

SCHEDULE 2 Regulation 2(2)

Policy making Standards

PART 1

THE STANDARDS

1 Standards relating to considering the effects of a body's policy decisions on the Welsh language

Standard 94: 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.

Standard 95: 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.

Standard 96: 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.

Standard 97: 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.

Standard 98: 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.

Standard 99: 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.

Standard 100: You must produce and publish a policy on awarding grants or providing financial assistance (or, where appropriate, amend an

existing policy) which requires you to take the following matters into account when you make decisions in relation to the awarding of a grant or providing financial assistance —

- (a) what effects, if any (and whether positive or negative), the awarding of a grant or providing financial assistance would have on—
 - (i) opportunities for persons to use the Welsh language, and
 - (ii) treating the Welsh language no less favourably than the English language;
- (b) how the decision could be taken or implemented (for example, by imposing conditions) so that it would have positive effects, or increased positive effects, on—
 - (i) opportunities for persons to use the Welsh language, and
 - (ii) treating the Welsh language no less favourably than the English language;
- (c) how the decision could be taken or implemented (for example, by imposing conditions) so that it would not have adverse effects, or so that it would have decreased adverse effects on—
 - (i) opportunities for persons to use the Welsh language, and
 - (ii) treating the Welsh language no less favourably than the English language;
- (ch) whether you need to ask the applicant for any additional information in order to assist you in assessing the effects of awarding a grant or providing financial assistance on—

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

Standard 101: 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.

Standard 102: 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 a 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.

Standard 103: 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.

Standard 104: When you develop or revise a course (or any component of a course) you must consider—

- (a) what effects, if any (and whether positive or negative), that course would have on—
 - (i) opportunities for persons to use the Welsh language, and
 - (ii) treating the Welsh language no less favourably than the English language;
- (b) how that course would have positive effects, or increased positive effects, on—
 - (i) opportunities for persons to use the Welsh language, and
 - (ii) treating the Welsh language no less favourably than the English language;
- (c) how that course would not have adverse effects, or so that it would have decreased adverse effects on—
 - (i) opportunities for persons to use the Welsh language, and
 - (ii) treating the Welsh language no less favourably than the English language.

PART 2

INTERPRETING THE STANDARDS

2

In Part 1 of this Schedule a “policy decision” means any decision made by a body about the exercise of its functions or about the conduct of its business or other undertaking, in so far as the decision relates to—

- (a) the admission and selection of students;
- (b) information provided to

- students and prospective students about the body;
- (c) the welfare of students;
- (ch) complaints;
- (d) disciplinary proceedings in respect of a student;
- (dd) careers service;
- (e) student intranet, virtual learning sites and learning portal sites;
- (f) graduation and award ceremonies;
- (ff) the assessment or examination of a student;
- (g) the awarding of grants and the provision of financial assistance;
- (ng) public lectures;
- (h) learning opportunities;
- (i) courses;
- (j) signs on the body's buildings;
- (l) student accommodation, libraries and arts centres;
- (ll) allocation of a personal tutor;
- (m) calls to a main telephone number (or numbers), helpline numbers, call centre numbers and automated telephone systems;

and includes, amongst other things (and as appropriate to the body), decisions about —

- (i) the content of legislation;
- (ii) the exercise of statutory powers;
- (iii) the content of policy statements;
- (iv) strategies or strategic plans;
- (v) internal structures;
- (vi) office and building locations;
- (vii) the recruitment or use of volunteers.

- 3** In Part 1 of this Schedule a reference to positive or adverse effects is a reference to such effects whether direct or indirect.
- 4** In this Schedule ‘learning opportunities’ has the same meaning as in paragraph 63 of Schedule 1.
- 5** In this Schedule ‘allocation of a personal tutor’ has the same meaning as in paragraph 66 of Schedule 1.

SCHEDULE 3 Regulation 2(3)

Operational standards

PART 1

THE STANDARDS

1 Standards relating to the use of the Welsh language within a body's internal administration

Standard 105: You must develop a policy on using Welsh internally for the purpose of promoting and facilitating the use of the language, and you must publish that policy on your intranet.

Standard 106: When you offer a new post to an individual, you must ask that individual whether he or she wishes for the contract of employment or contract for services to be provided in Welsh; and if that is the individual's wish you must provide the contract in Welsh.

Standard 107: You must —

- (a) ask each employee whether he or she wishes to receive any paper correspondence that relates to his or her employment, and which is addressed to him or her personally, in Welsh, and
- (b) if an employee so wishes, provide any such correspondence to that employee in Welsh.

Standard 108: You must ask each employee whether he or she wishes to receive any documents that outline his or her training needs or requirements in Welsh; and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

Standard 109: You must ask each employee whether he or she wishes to receive any documents that outline his or her performance objectives in Welsh;

and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

Standard 110: You must ask each employee whether he or she wishes to receive any documents that outline or record his or her career plan in Welsh; and if that is the employee's wish you must provide any such documents to him or to her in Welsh.

Standard 111: You must ask each employee whether he or she wishes to receive any forms that record and authorise —

- (a) annual leave,
- (b) absences from work, and
- (c) flexible working hours,

in Welsh; and if that is an employee's wish, you must provide any such forms to him or to her in Welsh.

Standard 112: If you publish a policy relating to behaviour in the workplace, you must publish it in Welsh.

Standard 113: If you publish a policy relating to health and well-being at work, you must publish it in Welsh.

Standard 114: If you publish a policy relating to salaries or workplace benefits, you must publish it in Welsh.

Standard 115: If you publish a policy relating to performance management, you must publish it in Welsh.

Standard 116: If you publish a policy about absence from work, you must publish it in Welsh.

Standard 117: If you publish a policy relating to working conditions, you must publish it in Welsh.

Standard 118: If you publish a policy regarding work patterns, you must publish it in Welsh.

2 Standards relating to complaints made by a member of a body's staff

Standard 119: You must allow each member of staff —

- (a) to make complaints to you in Welsh, and
- (b) to respond in Welsh to any complaint made about him or about her.

Standard 119A: You must state in any document that you have that sets out your procedures for making complaints that each member of staff may —

- (a) make a complaint to you in Welsh, and
- (b) respond to a complaint made about him or about her in Welsh;

and you must also inform each member of staff of that right.

Standard 120: If you receive a complaint from a member of staff or a complaint about a member of staff, and a meeting is required with that member of staff, you must —

- (a) offer to conduct the meeting in Welsh, and
- (b) if the member of staff wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 121: If you receive a complaint from a member of staff or a complaint about a member of staff, and a meeting is required with that member of staff, you must —

- (a) ask the member of staff whether he or she wishes to use the Welsh language at the meeting;
- (b) explain that you will provide a translation service from Welsh to English for that purpose if it is required;

and if the member of staff wishes to use the Welsh language, you must provide a simultaneous translation service from Welsh to English at the meeting (unless you conduct the meeting in Welsh without translation services).

Standard 122: When you inform a member of staff of a decision you have reached in relation to a complaint made by him or by her, or in relation to a complaint made about him or about her, you must do so in Welsh if that member of staff—

- (a) made the complaint in Welsh,
- (b) responded in Welsh to a complaint about him or about her,
- (c) asked for a meeting about the complaint to be conducted in Welsh, or
- (ch) asked to use the Welsh language at a meeting about the complaint.

3 Standards relating to a body disciplining staff

Standard 123: You must allow all members of staff to respond in Welsh to allegations made against them in any internal disciplinary process.

Standard 123A: You must —

- (a) state in any document that you have which sets out your arrangements for disciplining staff that any member of staff may respond in Welsh to any allegations made against him or against her, and
- (b) if you commence a disciplinary procedure in relation to a member of staff, inform that member of staff of that right.

Standard 124: If you organise a meeting with a member of staff regarding a disciplinary matter that relates to his or to her conduct you must —

- (a) offer to conduct the meeting in Welsh; and
- (b) if the member of staff wishes for the meeting to be conducted in Welsh, conduct the meeting in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 125: If you organise a meeting with a member of staff regarding a disciplinary matter that relates to his or her conduct you must —

- (a) ask the member of staff whether he or she wishes to use the Welsh language at the meeting, and
- (b) explain that you will provide a translation service for that purpose if it is required;

and, if the member of staff wishes to use the Welsh language, you must provide a simultaneous translation service from Welsh to English at the meeting (unless you conduct the meeting in Welsh without a translation service).

Standard 126: When you inform a member of staff of a decision you have reached following a disciplinary process, you must do so in Welsh if that member of staff—

- (a) responded to allegations made against him or her in Welsh,
- (b) asked for a meeting regarding the disciplinary process to be conducted in Welsh, or
- (c) asked to use the Welsh language at a meeting regarding the disciplinary process.

4 Standards relating to a body's information technology and about support material provided by a body, and relating to the intranet

Standard 127: You must provide staff with computer software for checking spelling and grammar in Welsh, and provide Welsh language interfaces for software (where an interface exists).

Standard 128: You must ensure that —

- (a) the text of each page of your intranet is available in Welsh,
- (b) every Welsh language page on your intranet is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language on your intranet.

Standard 129: You must ensure that —

- (a) the text of the homepage of your intranet is available in Welsh,
- (b) any Welsh language text on your intranet's homepage (or, where relevant, your Welsh language intranet homepage) is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language in relation to the homepage of your intranet.

Standard 130: You must ensure that each time you publish a new intranet page or amend a page —

- (a) the text of that page is available in Welsh,
- (b) any Welsh language version of that page is fully functional, and
- (c) the Welsh language is treated no less favourably than the English language in relation to the text of that page.

Standard 131: If you have a Welsh language page on your intranet that corresponds to an English language page, you must state clearly on the English language page that the page is also available

in Welsh, and must provide a direct link to the Welsh language page on the corresponding English language page.

Standard 132: You must designate and maintain a page (or pages) on your intranet which provides services and support material to promote the Welsh language and to assist your staff to use the Welsh language.

Standard 133: You must provide the interface and menus on your intranet pages in Welsh.

5 Standards relating to a body developing Welsh language skills through planning and training its workforce

Standard 134: You must assess the Welsh language skills of your employees.

Standard 135: You must provide training in Welsh in the following areas, if you provide such training in English —

- (a) recruitment and interviewing;
- (b) performance management;
- (c) complaints and disciplinary procedures;
- (ch) induction;
- (d) dealing with the public; and
- (dd) health and safety.

Standard 136: You must provide training (in Welsh) on using Welsh effectively in—

- (a) meetings;
- (b) interviews; and
- (c) complaints and disciplinary procedures.

Standard 137: You must provide training to staff who provide careers advice on the value of Welsh language skills in the employment sector.

Standard 138: You must provide opportunities during working hours—

- (a) for your employees to

receive basic Welsh language lessons, and

- (b) for employees who manage others to receive training on using the Welsh language in their role as managers.

Standard 139: You must provide opportunities for employees who have completed basic Welsh language training to receive further training, free of charge, to develop their language skills.

Standard 140: You must provide training courses so that your employees can develop —

- (a) awareness of the Welsh language (including awareness of its history and its role in Welsh culture);
- (b) an understanding of the duty to operate in accordance with the Welsh language standards;
- (c) an understanding of how the Welsh language can be used in the workplace.

Standard 141: When you provide information to new employees (for example by means of an induction process), you must provide information for the purpose of raising their awareness of the Welsh language.

Standard 142: You must provide wording or a logo for your staff to include in e-mail signatures which will enable them to indicate whether they speak Welsh fluently or whether they are learning the language.

Standard 143: You must provide wording for your employees which will enable them to include a Welsh language version of their contact details in e-mail messages, and to provide a Welsh language version of any message which informs others that they are unavailable to respond to e-mail messages.

Standard 144: You must make available to members of staff who are able to

speaking Welsh a badge for them to wear to convey that.

Standard 144A: You must promote to members of staff the wearing of a badge that conveys that a member of staff is able to speak Welsh.

6 Standards relating to a body recruiting and appointing

Standard 145: When you assess the requirements for a new or vacant post, you must assess the need for Welsh language skills, and categorise it as a post where one or more of the following apply —

- (a) Welsh language skills are essential;
- (b) Welsh language skills need to be learnt when appointed to the post;
- (c) Welsh language skills are desirable; or
- (ch) Welsh language skills are not necessary.

Standard 145A: If you have categorised a post as one where Welsh language skills are essential, desirable or need to be learnt you must —

- (a) specify that when advertising the post, and
- (b) advertise the post in Welsh.

Standard 146: When you advertise a post, you must state that applications may be submitted in Welsh, and that an application submitted in Welsh will not be treated less favourably than an application submitted in English.

Standard 146A: If you publish —

- (a) application forms for posts;
- (b) material that explains your procedure for applying for posts;
- (c) information about your interview process, or about other assessment methods when applying for posts;
- (ch) job descriptions;

you must publish them in Welsh;

and you must ensure that the Welsh language versions of the documents are treated no less favourably than any English language versions of those documents.

Standard 146B: You must not treat an application for a post made in Welsh less favourably than you treat an application made in English (including, amongst other matters, in relation to the closing date you set for receiving applications and in relation to any timescale for informing individuals of decisions).

Standard 147: You must ensure that your application forms for posts provide a space for individuals to indicate that they wish an interview or other method of assessment in Welsh and if an individual so wishes, you must conduct any interview or other method of assessment in Welsh (without the assistance of a simultaneous or consecutive translation service).

Standard 148: You must ensure that your application forms for posts —

- (a) provide a space for individuals to indicate that they wish to use the Welsh language at an interview or at any other method of assessment, and
- (b) explain that you will provide a translation service from Welsh to English for that purpose if it is required;

and, if the individual wishes to use the Welsh language at the interview or assessment, you must provide a simultaneous translation service at the interview or assessment (unless you conduct the interview or assessment in Welsh without that translation service).

Standard 149: When you inform an individual of your decision in relation to an application for a post, you must do so in Welsh if the application was made in Welsh.

7 Standards relating to signs displayed in a body's workplace

Standard 150: When you erect a new sign or renew a sign in your workplace (including temporary signs), any text displayed on the sign must be displayed in Welsh (whether on the same sign as the corresponding English language text or on a separate sign), and if the same text is displayed in Welsh and in English, you must not treat the Welsh language text less favourably than the English language text.

Standard 151: When you erect a new sign or renew a sign in your workplace (including temporary signs) which conveys the same information in Welsh and in English, the Welsh language text must be positioned so that it is likely to be read first.

Standard 152: You must ensure that the Welsh language text on signs displayed in your workplace is accurate in terms of meaning and expression.

8 Standard relating to audio announcements and messages in a body's workplace

Standard 153: When you make announcements in the workplace using audio equipment, that announcement must be made in Welsh, and if the announcement is made in Welsh and in English, the announcement must be made in Welsh first.

PART 2

STANDARDS THAT ARE RELIANT ON OTHER STANDARDS – SPECIAL CONDITIONS

9 When a compliance notice requires a body to comply with one of the standards listed on a specific row in column 1 of Table 1, that compliance notice must also require that body to comply (in whatever way the Welsh Language Commissioner considers

appropriate) with the standard or standards listed in column 2 of that row.

TABLE 1

<i>Row</i>	Column 1 <i>Main standard</i>	Column 2 <i>Reliant standard</i>
	Complaints procedures	
(1)	Standard 119	Standard 119A
	Complaints procedures	
(2)	Standard 119A	Standard 119
	Disciplining staff	
(3)	Standard 123	Standard 123A
	Disciplining staff	
(4)	Standard 123A	Standard 123
	Intranet	
(5)	Standard 128, 129 or 130	Standard 131
	Raising awareness of Welsh language badge	
(6)	Standard 144	Standard 144A
	Raising awareness of Welsh language badge	
(7)	Standard 144A	Standard 144
	Recruitment and appointments	
(8)	Standard 145	Standard 145A
	Recruitment	
(9)	Standard 146	Standard 146A Standard 146B Standard 149
	Internal signs	
(10)	Standard 150	Standard 152

PART 3

INTERPRETING THE STANDARDS

- 10** The standards specified in Part 1 of this Schedule must be interpreted as follows.
- 11**
- (1) A body is not required to translate into Welsh any text that it has not produced (“text A”).
- (2) A body will not be treating the Welsh language less favourably if it does not translate text A into Welsh but see sub-paragraph (3).
- (3) A body must use the Welsh version of text A if another person has produced text A in Welsh in accordance with—
- (a) its Welsh Language Scheme;
 - (b) a duty to comply with standards;
 - (c) Standing Orders of the Assembly;
 - (ch) section 35(1C) of the 2006 Act; or
 - (d) the Assembly Commission’s Official Languages Scheme.
- (4) In this paragraph—
- (a) “Welsh Language Scheme” means a Welsh language scheme produced in accordance with Part 2 of the Welsh Language Act 1993;
 - (b) “a duty to comply with standards” means a duty to comply with a standard under section 25 of the Welsh Language (Wales) Measure 2011;
 - (c) “the 2006 Act” means the Government of Wales Act 2006;
 - (ch) “Standing Orders of the Assembly” means standing orders made under section 31 of the 2006 Act;
 - (d) “the Assembly

Commission's Official Languages Scheme" means the Scheme adopted and published under paragraph 8 of Schedule 2 to the 2006 Act.

12

For the purposes of standards 128, 129 and 130 (a body's intranet), references to treating the Welsh language no less favourably than the English language include, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards—

- (a) the visual presentation of the material (for example in relation to the colour, size, font and format of any text);
- (b) when material is published on the intranet;

but it does not mean that the Welsh language material must appear on the same page as the English language material, or on a page that is likely to open before the corresponding English language version of a page.

13

For the purposes of standards 146A (recruitment) and 150 (internal signs), references to treating the Welsh language no less favourably than the English language includes, amongst other matters (and in addition to specific matters referred to in any individual standard), treating the Welsh language no less favourably as regards —

- (a) the visual presentation of the material (for example in relation to the colour or font of any text);
- (b) the size of the material;
- (c) the position and prominence of the material in any public area;
- (ch) when and how material is published, provided or exhibited;
- (d) the publication format of

the material.

- 14** For the purposes of the standards a requirement to publish, provide or display any written material in Welsh does not mean that material should be published, provided or, displayed in Welsh only, nor does it mean that the material should be produced in Welsh first (unless that is specifically stated in the standard).
- 15** Standards 128 to 131 (intranet) do not apply to—
- (a) documents to which a link is provided on the intranet, advertising material on the intranet, or to video and audio clips on the intranet (see standards 112 to 118 for specific provision in relation to documents);
 - (b) information presented by persons on an interactive page published on a body's intranet (for example on a section for comments or on a discussion forum).
- 16** For the purposes of standards 145 and 145A only—
- (a) “post” includes a public appointment;
 - (b) “public appointment” means any appointment to a public body or public office.
- 17** Standard 153 does not apply when the message that you announce over a public address system is made during an emergency or an emergency drill.

SCHEDULE 4 Regulation 2(4)
Record Keeping Standards

PART 1
THE STANDARDS

1 Standards relating to a body keeping records

Standard 154: You must keep a record, in relation to each financial year, of the number of complaints you receive relating to your compliance with standards.

Standard 155: You must keep a copy of any written complaint that you receive that relates to your compliance with the standards with which you are under a duty to comply.

Standard 156: You must keep a copy of any written complaint that you receive that relates to the Welsh language (whether or not that complaint relates to the standards with which you are under a duty to comply).

Standard 157: You must keep a record of the steps that you have taken in order to ensure compliance with the policy making standards with which you are under a duty to comply.

Standard 158: You must keep a record (following assessments of your employees' Welsh language skills made in accordance with standard 134), of the number of employees who have Welsh language skills at the end of each financial year and, where you have that information, you must keep a record of the skill level of those employees.

Standard 159: You must keep a record, for each financial year of—

- (a) the number of members of staff who attended training courses provided in Welsh (in accordance with standard 135), and

- (b) if a Welsh version of a course was provided in accordance with standard 135, the percentage of the total number of staff attending the course who attended that version.

Standard 160: You must keep a record of the number of members of staff who wear a badge (made available to them in accordance with standard 144) at the end of each financial year.

Standard 161: You must keep a copy of every assessment that you carry out (in accordance with standard 145) in respect of the Welsh language skills that may be needed in relation to a new or vacant post.

Standard 162: You must keep a record, in relation to each financial year, of the number of new and vacant posts which were categorised (in accordance with standard 145) as posts where—

- (a) Welsh language skills are essential;
- (b) Welsh language skills need to be learnt when appointed to the post;
- (c) Welsh language skills are desirable; or
- (ch) Welsh language skills are not necessary.

PART 2

INTERPRETING THE STANDARDS

- 2 The standards specified in Part 1 of this Schedule must be interpreted as follows.
- 3 For the purposes of standards 154, 158, 159, 160 and 162 “financial year” means the body's own financial year.

SCHEDULE 5 Regulation 2(5)

Standards which deal with
Supplementary Matters

PART 1

SERVICE DELIVERY STANDARDS

1 A body publicising service delivery standards

Standard 163: You must ensure that a document which records the service delivery standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

2 A body publishing a complaints procedure

Standard 164: You must—

- (a) ensure that you have a complaints procedure that deals with the following matters—
 - (i) how you intend to deal with complaints relating to your compliance with the service delivery standards with which you are under a duty to comply, and
 - (ii) how you will provide training for your staff in relation to dealing with those complaints,
- (b) publish a document that records that procedure on your website, and
- (c) ensure that a copy of that document is available in each of your offices that are open to the public.

3 A body publishing arrangements for oversight, promotion etc.

Standard 165: You must—

- (a) ensure that you have arrangements for—
 - (i) overseeing the way you comply with the service delivery standards with which you are under a duty to comply,
 - (ii) promoting the services that you offer in accordance with those standards, and
 - (iii) facilitating the use of those services,
- (b) publish a document that records those arrangements on your website, and
- (c) ensure that a copy of that document is available in each of your offices that are open to the public.

4 A body producing an annual report regarding service delivery standards

Standard 166:

- (1) You must produce a report (an “annual report”), in Welsh, in relation to each financial year, which deals with the way in which you have complied with the service delivery standards with which you were under a duty to comply during that year.
- (2) The annual report must include the number of complaints that you received during that year which related to your compliance with the service delivery standards with which you were under a duty to comply.
- (3) You must publish the annual report no later than 6 months following the end of the financial year to which the report relates.
- (4) You must publicise the fact that you have published an annual report.
- (5) You must ensure that a current

copy of your annual report is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

5 A body publicising the way it intends to comply with service delivery standards

Standard 167: You must publish a document on your website which explains how you intend to comply with the service delivery standards with which you are under a duty to comply.

6 A body providing information to the Welsh Language Commissioner

Standard 168: You must provide any information requested by the Welsh Language Commissioner which relates to your compliance with the service delivery standards with which you are under a duty to comply.

PART 2
POLICY MAKING STANDARDS

7 **A body publicising policy making standards**

Standard 169: You must ensure that a document which records the policy making standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

8 **A body publishing a complaints procedure**

Standard 170: You must—

- (a) ensure that you have a complaints procedure that deals with the following matters—
 - (i) how you intend to deal with complaints relating to your compliance with the policy making standards with which you are under a duty to comply, and
 - (ii) how you will provide training for your staff in relation to dealing with those complaints,
- (b) publish a document that records that procedure on your website, and
- (c) ensure that a copy of that document is available in each of your offices that are open to the public.

9 **A body publishing arrangements for oversight**

Standard 171: You must—

- (a) ensure that you have

arrangements for overseeing the way you comply with the policy making standards with which you are under a duty to comply,

- (b) publish a document that records those arrangements on your website, and
- (c) ensure that a copy of that document is available in each of your offices that are open to the public.

10

A body producing an annual report regarding policy making standards

Standard 172:

(1) You must produce a report (an “annual report”), in Welsh, in relation to each financial year, which deals with the way in which you have complied with the policy making standards with which you were under a duty to comply during that year.

(2) The annual report must include the number of complaints you received during the year which related to your compliance with the policy making standards with which you were under a duty to comply.

(3) You must publish the annual report no later than 6 months following the end of the financial year to which the report relates.

(4) You must publicise the fact that you have published an annual report.

(5) You must ensure that a current copy of your annual report is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

11

A body publicising the way it intends to comply with policy making standards

Standard 173:

You must publish a document on your website which explains how

you intend to comply with the policy making standards with which you are under a duty to comply.

12 A body providing information to the Welsh Language Commissioner

Standard 174: You must provide any information requested by the Welsh Language Commissioner which relates to compliance with the policy making standards with which you are under a duty to comply.

PART 3

OPERATIONAL STANDARDS

13 A body publicising operational standards

Standard 175: You must ensure that a document which records the operational standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

14 A body publishing a complaints procedure

Standard 176: You must—

- (a) ensure that you have a complaints procedure that deals with the following matters—
 - (i) how you intend to deal with complaints relating to your compliance with the operational standards with which you are under a duty to comply, and
 - (ii) how you will provide training for your staff in relation to dealing with those

complaints, and

- (b) publish a document that records that procedure on your intranet.

15 A body publishing oversight arrangements, promotion etc.

Standard 177: You must—

- (a) ensure that you have arrangements for—
 - (i) overseeing the way you comply with the operational standards with which you are under a duty to comply,
 - (ii) promoting the services that you offer in accordance with those standards, and
 - (iii) facilitating the use of those services, and
- (b) publish a document that records that procedure on your intranet.

16 A body producing an annual report regarding operational standards

Standard 178: (1) You must produce a report (an “annual report”), in Welsh, in relation to each financial year, which deals with the way in which you have complied with the operational standards with which you were under a duty to comply during that year.

(2) The annual report must include the following information (where relevant, to the extent you are under a duty to comply with the standards referred to)—

- (a) the number of employees who have Welsh language skills at the end of the year in question (on the basis of the records you kept in accordance with standard 158);
- (b) the number of members of

staff who attended training courses you offered in Welsh during the year (on the basis of the records you kept in accordance with standard 159);

- (c) if a Welsh version of a course was offered by you during that year, the percentage of the total number of staff attending the course who attended the Welsh version (on the basis of the records you kept in accordance with standard 159);
- (ch) the number of members of staff who wear a badge at the end of the financial year (on the basis of records you kept in accordance with standard 160);
- (d) the number of new and vacant posts that you advertised during the year which were categorised as posts where—
 - (i) Welsh language skills were essential,
 - (ii) Welsh language skills needed to be learnt when appointed to the post,
 - (iii) Welsh language skills were desirable, or
 - (iv) Welsh language skills were not necessary,(on the basis of the records you kept in accordance with standard 162);
- (dd) the number of complaints that you received during that year which related to your compliance with the operational standards with which you were under a duty to comply.

(3) You must publish the annual report no later than 6 months following the end of the financial year to which the report relates.

(4) You must publicise the fact

that you have published an annual report.

(5) You must ensure that a current copy of your annual report is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

17 A body publicising the way it intends to comply with operational standards

Standard 179: You must publish a document on your website which explains how you intend to comply with the operational standards with which you are under a duty to comply.

18 A body providing information to the Welsh Language Commissioner

Standard 180: You must provide any information requested by the Welsh Language Commissioner which relates to compliance with the operational standards with which you are under a duty to comply.

PART 4

RECORD KEEPING STANDARDS

19 A body publicising record keeping standards

Standard 181: You must ensure that a document which records the record keeping standards with which you are under a duty to comply, and the extent to which you are under a duty to comply with those standards, is available—

- (a) on your website, and
- (b) in each of your offices that are open to the public.

20 A body providing information to the Welsh Language Commissioner

Standard 182 : You must provide any records you have kept in accordance with the record keeping standards with which you are under a duty to comply to the Welsh Language Commissioner, if the Commissioner asks for those records.

PART 5

INTERPRETING THE STANDARDS

- 21** The standards specified in Parts 1 to 4 must be interpreted as follows.
- 22** For the purposes of standards 166, 172 and 178 “financial year” means the body’s own financial year.
- 23** For the purposes of the standards a requirement to produce or publish any written material in Welsh does not mean that material should be produced or published in Welsh only, nor does it mean that the material should be produced in Welsh first (unless that is specifically stated in the standard).

PART 6

SUPPLEMENTARY PROVISION

- 24** **Complaints procedures**
- (1) When a body is under a duty to comply with one or more of the following standards, it may—
- (a) comply with them in one complaints procedure;
 - (b) revise an existing complaints procedure.
- (2) The standards are—
- (a) standard 164;
 - (b) standard 170;
 - (c) standard 176.
- 25** **Supervisory arrangements**

(1) When a body is under a duty to comply with one or more of the following standards, it may comply with them in one set of supervisory arrangements.

(2) The standards are—

- (a) standard 165;
- (b) standard 171;
- (c) standard 177.

26

Annual reports

(1) When a body is under a duty to comply with one or more of the following standards, it may comply with them by including the necessary information in one annual report, to be called “Welsh Language Standards Annual Report”.

(2) The standards are—

- (a) standard 166;
- (b) standard 172;
- (c) standard 178.

27

Publicising the way in which a body intends to comply with standards

(1) When a body is under a duty to comply with one or more of the following standards, it may comply with them in one document.

(2) The standards are—

- (a) standard 167;
- (b) standard 173;
- (c) standard 179.

EXPLANATORY MEMORANDUM TO

The Welsh Language Standards (No. 6) Regulations 2017

This Explanatory Memorandum has been prepared by the Welsh Language Division and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Welsh Language Standards (No. 6) Regulations 2017. I am satisfied that the benefits justify the likely costs.

Alun Davies AM
Minister for Lifelong Learning and the Welsh Language

15 December 2016

Description

The Welsh Language Standards (No. 6) Regulations 2017 ('the Regulations') specify service delivery standards; policy making standards; operational standards; and record keeping standards.

The Regulations also make the standards specifically applicable to the following 27 organisations, enabling the Welsh Language Commissioner ('the Commissioner') to issue Compliance Notices to those organisations in relation to the standards specified:

Coleg Ceredigion	Merthyr Tydfil College Limited
Coleg Sir Gâr	Swansea University
Cardiff and Vale College	Aberystwyth University
Coleg Cambria	Bangor University
Coleg y Cymoedd	Cardiff University
The governing body of St David's Catholic College	Royal Welsh College of Music and Drama Limited
Gower College Swansea	University of Wales
Coleg Gwent	University of Wales: Trinity St David
Bridgend College	University of South Wales
Pembrokeshire College	Glyndŵr University
Grŵp Llandrillo Menai	Cardiff Metropolitan University
NPTC Group	The Open University
WEA YMCA CC Cymru	Higher Education Funding Council for Wales (HEFCW)
Career Choices Dewis Gyrfa Limited	

Matters of special interest to the Constitutional and Legislative Affairs Committee

The Welsh Language Standards (No. 6) Regulations 2017

The Welsh Language Standards (No. 6) Regulations 2017 makes standards applicable to the 27 organisations named above. The Welsh Government laid the Welsh Language Standards (No. 3) Regulations 2016 ("the No 3 Regulations") making standards for these organisations in February 2016. Those regulations were rejected by the previous Assembly on 15 March 2016.

Policy changes between different sets of Regulations

To date, the approach taken by the Welsh Government has been that Regulations specifying standards are prepared so that they are suitable for a specific group of organisations or a sector. This focus can influence the policy approach taken in each set of regulations and result in different standards being prepared for different sectors. In regulations for other sectors, the approach taken was to specify circumstances in which standards did not apply. A different approach has been taken with The Welsh Language

Standards (No 6) Regulations. Paragraph 30 of Schedule 1, part 3 of the Regulations lists the services and activities in relation to which an organisation can be required to comply.

This list of activities and services has been included in the Regulations to ensure that commercial activities such as research and publishing academic materials are not caught by standards and that the Regulations therefore do not interfere with an organisation's ability to raise its own income. This means that, for example, (subject to the body's compliance notice) standards will apply to correspondence which relates to the matters in the list in Paragraph 30 of Schedule 1.

Designated student accommodation for Welsh speakers

Replicating commitments in Welsh language schemes into the legal framework of Welsh language standards can be challenging because of the strict way in which standards have to be drafted to create enforceable duties. One such case is in reference to student accommodation that has been designated to Welsh speakers.

The Welsh language schemes of both Aberystwyth and Cardiff Universities indicate a commitment to provide students with designated student accommodation for Welsh speakers. The Welsh Ministers consider that it is not reasonable and proportionate to specify standards which provide students with an absolute right to accommodation reserved for Welsh speakers. If more students apply for designated accommodation than spaces available, then it is inevitable that a body would fail to comply with such a standard.

New standards have therefore been included in the Welsh Language Standards (No.6) Regulations 2017 which provide students with the right to express a preference for accommodation reserved for Welsh speakers as well as for that right to be promoted by the body.

Name of the Regulations

The title of the Regulations laid is the Welsh Language Standards (No. 6) Regulations 2017. It is intended that all the Regulations made under section 26 of the Welsh Language (Wales) Measure 2011 ("the Measure") will be made in one continuous series, in the same way as commencement orders. It is felt that this approach will make the Regulations easier to deal with and to refer to, particularly when Compliance Notices refer to Regulations. Since the No 3 Regulations were rejected, further regulations have been made, and therefore it is considered appropriate to continue that sequential numbering. It also makes it easier to differentiate between the rejected regulations and these revised Regulations.

Bodies in Regulation 3

Regulation 3 of these Regulations lists the bodies that the Commissioner is authorised to give a compliance notice to in respect of the Standards specified. Section 43 of the Measure provides that regulations may not make standards specifically applicable to a person unless the standard is potentially applicable to them. The majority of the bodies listed are either specified in column 1 of the table in Schedule 6 of the Measure or are within a category of persons specified in that column, and column 2 of their entry sets out which standards are potentially applicable to them (section 36 of the Measure).

Numbers in the Regulations

There has been no change to the policy regarding numbering in Regulations. The Regulations use the Welsh alphabet i.e. (a), (b), (c), (ch) etc. This affects standards 27 A-D and a small number of sub paragraphs within individual Standards (see Standards 99, 121, 134, 144, 145A, 161 and 177) It also affects:

- (1) paragraphs 30, 33, 40, 44, 45, and 59 of Schedule 1, paragraph 2 of Schedule 2, paragraphs 11 and 13 of Schedule 3 and
- (2) regulations 2(5) and 3(4).

This style is different to the usual numbering style adopted in subordinate legislation made by the Welsh Ministers. Usually, the Welsh and English version adopt the English alphabet. In this case, because of the nature and the subject matter of the Regulations, the Welsh alphabet had been used. The Welsh style numbering has been used in the English and Welsh versions to ensure consistency and to remove any possibility of confusion when cross-referring. The same style was adopted within the Welsh Language Standards (No. 1) Regulations 2015 (SI 2015/996), the Welsh Language Standards (No. 2) Regulations 2016, the Welsh Language Standards (No.4) Regulations 2016 and the Welsh Language Standards (No.5) Regulations 2016.

Legislative background

The Regulations are made in exercise of the powers conferred on the Welsh Ministers under sections 26, 27, 39 and 150(5) of the Measure. Section 26 of the Measure enables the Welsh Ministers to specify standards by regulations. Section 27 enables the Welsh Ministers to specify different standards in relation to different conduct. It also enables them, in relation to a particular conduct, to specify one standard or a number of standards.

Before the Commissioner can give a person a compliance notice requiring them to comply with a standard, that standard has to be specifically applicable to the person (section 45). Section 39 provides that a standard is specifically applicable to a person once the Welsh Ministers have authorised the Commissioner to give that person a Compliance Notice in respect of that standard. Section 105(5) provides that any power of the Welsh Ministers to

make regulations includes a power to make such transitional, transitory, consequential, saving incidental and other provision as the Welsh Ministers think necessary or appropriate.

The Regulations, pursuant to section 150(2) of the Measure must be laid before and approved by resolution of the National Assembly for Wales (i.e. the affirmative procedure).

Purpose and intended effect of the legislation

The Measure confirmed the official status of the Welsh language in Wales and created a new legislative framework for the language.

A key step in giving effect to the Measure is specifying standards and authorising the Commissioner to require persons to comply with those Standards.

Section 25 of the Measure provides that a person is required to comply with a standard specified by the Welsh Ministers where certain conditions are met. Those conditions include:

- i. That a standard is specifically applicable to the person (i.e. the Welsh Ministers have authorised the Commissioner to give that person a Compliance Notice in respect of that standard),
- ii. That the Commissioner has given a Compliance Notice to the person,
- iii. The Compliance Notice requires the person to comply with the standard, and
- iv. The Compliance Notice is in force.

The duty to comply with standards will take the place of the Welsh Language Schemes that were developed under the Welsh Language Act 1993 and monitored by the Welsh Language Board until its abolition on 31 March 2012, and the Welsh Language Commissioner since 1 April 2012.

The Regulations have two purposes. The first is to specify standards.

Standards falling into the following categories of standards are specified in the Regulations:

- Service-delivery standards will be imposed in relation to the delivery of services in order to promote or facilitate the use of the Welsh language, or to ensure that it is treated no less favourably than English.
- Policy-making standards will require organisations to consider what effect their policy decisions will have on the ability of persons to use the language and on the principle of treating Welsh no less favourably than English.
- Operational standards deal with the internal use of Welsh by organisations.

- Record-keeping standards will make it necessary to keep records about some of the other standards, and about any complaints received by an organisation. These records will assist the Commissioner in regulating the organisation's compliance with standards.

The standards have been drafted with the aim of:

- Improving the services Welsh-speakers can expect to receive from organisations in Welsh
- Increasing the use people make of Welsh-language services
- Making it clear to organisations what they need to do in terms of the Welsh language
- Ensuring that there is an appropriate degree of consistency in terms of the duties placed on organisations in the same sectors.

Some standards are dependent on each other. The Regulations therefore contain tables (in Part 2 of Schedules 1 and 3) to accompany the Service-delivery standards and Operational standards, detailing which other standards will also need to be imposed when a particular standard is included in a Compliance Notice. Part 2 of Schedule 1 to the Regulations also contains a table which provides that the Commissioner may not require a body to comply with a particular standard when another particular standard is included in a compliance notice.

The second purpose of the Regulations is to authorise the Commissioner to give Compliance Notices to the organisations listed above requiring them to comply with the standards specified.

The Regulations, when they come into force, will not have a direct effect on organisations and they will not, by themselves, create rights for Welsh language users. That will only happen when all the conditions in section 25 have been met. However, the Regulations are a crucial step in the Measure's framework, and enable the Commissioner to require organisations to comply with the standards.

It will be for the Commissioner to choose which standards to impose on each organisation by way of a Compliance Notice. The Regulations set the range of standards which could be imposed on an organisation. There is no requirement on the Commissioner to require every organisation to comply with every standard. The organisation may have to comply with the standard only in some circumstances and not in others – depending on what is stated in their Compliance Notice. The Compliance Notice will also set the date by which the organisation is required to comply with a standard.

Means of appeal

Any organisation will be able to challenge the requirements to comply with a particular standard on the grounds of whether it is reasonable and proportionate to require them to do so.

In the first place, an organisation will be able to present a challenge to the Commissioner. If they are unable to resolve the dispute, there is a route of

appeal available to the Welsh Language Tribunal, and thereafter to the High Court.

Sanctions

The Commissioner will be responsible for enforcing compliance with standards. In cases where the Commissioner determines that an organisation has failed to comply with a standard, the Commissioner may take enforcement action. Enforcement action under the Measure can vary from the making of recommendations or giving advice to an organisation, to the imposition of a civil penalty not exceeding £5,000.

Risks if Regulations are not made

If the proposed Regulations are not made, the following risks will be realised:

- Welsh Language Schemes introduced under the Welsh Language Act 1993 will remain in place for the organisations listed above.
- If Welsh Language Schemes remain there will be no enforcement mechanism if an organisation breaches their Scheme.
- Currently, Welsh Language Schemes vary from organisation to organisation, and the commitments in some Schemes are not specific. This leads to a situation where the public are unsure about which services they can expect to receive in Welsh. This uncertainty will continue if the Regulations are not made. Although there may still be some variation between organisations, the standards are specific in their nature and will therefore reduce the public's uncertainty.
- Uncertainty on the part of organisations concerning their Welsh language provisions, due to the fact that they have been under the impression that their Schemes will be replaced by standards. Many organisations have started to prepare for the onset of standards and the new monitoring and enforcement regime.
- No improvement as far as organisations' internal use of Welsh is concerned. An organisation's internal use of Welsh would continue to depend on the goodwill of that organisation, with no monitoring system in place.
- A key component of the Measure will not be implemented.

More detailed information about the risks and benefits of implementing the standards can be found in the Regulatory Impact Assessment (RIA) below, with the risks of not introducing standards highlighted in the 'Option 1: do nothing' section of the benefits.

Consultation

The Commissioner conducted a standards investigation with the organisations who can be required to comply with the standards specified in the Regulations between November 2014 and February 2015. The Welsh Ministers gave due regard to the conclusions the Commissioner presented in the standards reports. These reports can be found on the Commissioner's website.

The Welsh Ministers decided not to hold a full public consultation on a draft version of these Regulations. However, the organisations in the Commissioner's second investigation have had opportunities to engage in the process of making Standards. All the organisations responded to the Commissioner's standards investigation; of these most already have a Welsh language scheme and experience of developing a Welsh language provision. Commitments made in the bodies' Welsh language schemes were also considered.

In addition, specific matters relating to the Regulations have been discussed with sector representatives, namely Colegau Cymru, NUS Wales, Universities Wales and Coleg Cymraeg Cenedlaethol, in order to gather more information about the nature of their work.

Competition assessment

A competition Filter Test has been undertaken – the Regulations are unlikely to have a significant detrimental effect on competition. In order for the Regulations to fulfil the policy aim of not applying to commercial activities, a list specifying in relation to which matters the standards could apply is included in the Regulations. See paragraph 30 of Schedule 1 and paragraph 2 of Schedule 2 (Service Delivery Standards and Policy Making Standards).

Equalities Impact Assessment

An Equalities Impact Assessment has been undertaken. Some standards in the No. 6 Regulations under the 'meetings' heading (standards 25- 26B and 28 – 29B relating to student support meetings as well as complaints and disciplinary procedures) make specific provisions to accommodate the language use of vulnerable individuals. The student support element of these meeting standards will only come into play when the focus of the meeting relates to the individuals' counselling or mental health needs. They do not cover issues relating to support given to individuals with physical or sensory impairments.

The difference between the new complaints, disciplinary and student support meetings standards and the other meetings standards is the level of Welsh medium provision (or level of translation) provided at the meeting. In the complaints, disciplinary and student support standards, two way translation would be provided – from Welsh to English as well as from English to Welsh. For individuals in a vulnerable position or in a fragile state of mind, the procedure of switching language during a meeting could cause increased levels of stress so the offer of two way translations puts the individuals' needs first. The focus here is the avoidance of undue stress caused to an individual already under mental strain. Therefore, advancing equality of opportunity having due regard to the need to remove or minimise disadvantages suffered

by persons who share a protected characteristic that are connected to that characteristic.

Meetings involving individuals with physical or sensory impairments, have been accounted for in the other meetings standards so that those meetings can take place in Welsh. If the physical issue leads to the individual suffering from stress or other mental health issues, then the 'student support' standards would apply. At each point, a student with or without a form of physical or sensory impairment would be offered to have meetings conducted through the medium of Welsh via the meetings standards. It is, of course, a matter for the Welsh Language Commissioner to determine which standards a body has to comply with, and in which circumstances or areas.

We are content that specific provisions in the No 6 Regulations are compatible with the Welsh Ministers' equality duties.

Post-implementation review

The Measure provides many opportunities for the Commissioner to bring the suitability of the standards specified in the Regulations to the Welsh Ministers' attention. For example:

- The Commissioner may make recommendations or provide advice to the Welsh Ministers (section 4 of the Measure) which could directly recommend amending the Regulations if she sees fit to do so. Advice given by her could also lead to the Welsh Ministers determining that it would be appropriate to review the standards. The Welsh Ministers must have due regard to any written recommendations or advice that the Commissioner makes or gives when exercising the function to which the recommendation or advice relates.
- Section 18 of the Measure requires the Commissioner to produce an annual report which must include a review of issues relevant to the Welsh language (among other matters) and could also include any other matters the Commissioner think it is appropriate to include.
- The Commissioner also has the power to undertake Standards Investigations (sections 61 and 62 of the Measure) which can consider which standards should be, or should continue to be, specifically applicable to a person, whether or not the standards are already specified by the Welsh Ministers. After a Standards Investigation the Commissioner must produce a Standards Report, a copy of which must be provided to the Welsh Ministers. The Welsh Ministers must have due regard to such report in accordance with section 66 of the Measure.

Subject to their Compliance Notices, organisations will publish Annual Reports which deal with how they have complied with the standards imposed on them (see standards 166, 172 and 178). These Annual Reports could also raise issues regarding the suitability of the standards specified.

PART 2 – REGULATORY IMPACT ASSESSMENT

Background

1. The organisations subject to the Welsh Language Commissioner's ('the Commissioner') second standards investigation were asked to take part in a Welsh Government Regulatory Impact Assessment (RIA). The RIA questionnaire was distributed with the Commissioner's Standards Investigation documentation. The Commissioner's investigation was conducted between 7 November 2014 and 9 February 2015, and organisations were asked to submit their RIA responses directly to the Welsh Government.
2. 73 of the 119 organisations in the Commissioner's second investigation responded to the RIA questionnaire, giving a response rate of 61%. The responding organisations included a good cross-section of the different sectors, and covered organisations with a varying range of Welsh language provisions. The majority of the respondents provided detailed information about the costs and benefits of implementing the standards within their organisations.
3. In May and early June 2015, the Commissioner presented her official Standards Investigation response to the Welsh Government in the form of nine standards reports issued under section 64 of the Measure. The Welsh Ministers must have due regard (i) to the Commissioner's Standards Reports in deciding whether and how to exercise the powers in Part 4 of the Measure (which includes the power to specify standards), and (ii) to any advice issued by the Commissioner in writing.

Summary of Responses

4. 15 of the 27 organisations (56%) that will be subject to the No 6 Regulations have provided information on the cost of their current Welsh Language Scheme and an estimate of the cost of complying with the Welsh Language Standards. These organisations were Coleg Sir Gâr, Cardiff and the Vale College, Coleg y Cymoedd, Coleg Gwent, Grwp Llandrillo Menai, NPTC Group, Swansea University, Bangor University, Cardiff University, The University of Wales: Trinity St David, Cardiff Metropolitan University, University of South Wales, The Open University, Career Choices Dewis Gyrfa and HEFCW.

Accuracy and Usefulness of Data

5. We have concerns around the data received from organisations and whether it is suitable to produce a robust and accurate RIA. The Commissioner based her second investigation on the draft Regulations prepared for bodies in set 1 that were subject to a Welsh Government

consultation in November 2014. The RIA responses were therefore also based on these Regulations. Some organisations were reluctant to base their RIA responses on draft regulations due to their potential to change, and due to the fact that they had been prepared specifically for the Welsh Ministers, local authorities and National Park Authorities.

6. To enable an assessment to be made of the additional cost incurred in complying with the Welsh Language Standards, an organisation would have to provide a figure for the cost of delivering their current Welsh Language Scheme and an estimate of what it would cost them to comply with Standards. However, in a number of cases organisations were unable to provide either figure or could only provide one of the figures.
7. Even where estimated costs have been provided, many organisations stressed the difficulties of providing accurate data when they did not know which of the draft standards they would be expected to comply with. Some organisations have seemingly provided estimated costs for complying with every single standard. However, it is unlikely that every standard will be imposed on any single organisation – this will be a decision for the Commissioner when she issues compliance notices under section 45 of the Welsh Language Measure.
8. Organisations have also interpreted the questions in different ways. There are a number of examples of organisations indicating that their costs will increase in order to employ multiple additional members of staff to deal with implementing different categories of standards when their evidence suggests that only one person would potentially be needed to do that work. This has greatly increased the estimates provided by these organisations. There were also some examples of organisations including the cost of employing staff that are employed to deliver services as cost of complying with their current Welsh language scheme. The evidence indicated that these staff members were employed to deliver the organisation's services, and sometimes not exclusively through the medium of Welsh.
9. A number of organisations have provided estimates for compliance that are many times higher than other, similar organisations.
10. With these issues in mind, this RIA focuses on the economic, social and linguistic impacts on organisations as well as covering the financial impact as far as possible. If the Regulations are passed by the Assembly, further information will be collected from organisations when the Commissioner issues Compliance Notices and organisations are in a position to provide more accurate costs.

Options

11. This Regulatory Impact Assessment considers two options:

- Option 1: Do nothing – Organisations would continue to operate their existing Welsh Language Schemes under The Welsh Language Act 1993.
- Option 2: Introduce Welsh Language Standards for the 27 organisations listed above.

12. The following analysis considers the costs and benefits associated with each of these options in turn.

Costs and benefits

Costs

Option 1: Do Nothing

13. There are no additional costs under this option. The organisations would not be required to comply with new Welsh Language Standards but they would be expected to continue to deliver the existing Welsh Language Schemes.

14. Table 1 summarises the information received from the organisations about the cost of complying with the existing Welsh Language Schemes. The range in costs is likely to reflect differences in the size and scope of the organisations involved as well as probable differences in the interpretation of the questions in the questionnaire.

Table 1 - Range of costs for delivering existing Welsh Language Schemes

	Responses	Minimum (£)	Maximum (£)
Bodies in the (No. 6) Regulations	15	0	629,000

Option 2: Introduce Welsh Language Standards for the 27 organisations listed above.

15. While it has not yet known which of the standards will apply to each organisation, it is considered likely that there will be additional one-off and recurrent costs incurred by the organisations to comply with the standards.

16. The main recurring cost is expected to be staffing, in particular staff with expertise in the fields of translation, marketing and policy. Organisations are likely to need to expand translation facilities, either by recruiting more internal translators or more commonly by outsourcing translation work to external providers.

17. In addition, there are likely to be one-off and recurrent training costs incurred. The one-off training costs are expected to relate to internal administration and training regarding the implementation of standards, with

the recurring training costs focusing to a greater degree on the possible need to provide more statutory staff training through the medium of Welsh and training for staff to improve their Welsh language skills,

18. As noted above, the organisations involved were contacted and asked to provide cost data to inform this RIA. Our concerns about the data collected are outlined above.
19. To demonstrate the variation in responses, the minimum and maximum identified additional costs for these organisations are set out in the table below. While the maximum cost estimate is an outlier, there were other organisations that identified a significant increase in compliance costs. At the opposite end of the range, it is not clear how realistic it is to suggest (prior to knowing which standards will apply) that complying with the standards will impose no additional costs on an organisation.

Table 2 - Range of additional costs identified by organisations (£)

	Responses	Minimum (£)	Maximum (£)
Bodies in the (No. 6) Regulations	15	0	10,000,000

20. Due to the above concerns, the data is considered incomplete and potentially inconsistent. Following discussions with Government Economists and Statisticians, it has been agreed that the data collected is not sufficiently robust for use in a Regulatory Impact Assessment. Given the ranges in the submitted data and the current uncertainty around which of the Standards will apply to each organisation, even taking an average of costs is considered unlikely to be an accurate reflection of the cost of complying with the Welsh Language Standards.
21. A further round of data gathering was considered but it was decided that the outcome was likely be the similar and that it would not be possible to collect the data needed to produce a robust assessment of the cost implications until there is further information available on which standards will apply to each organisation.
22. In addition to the compliance costs incurred by the organisations, there are also likely to be costs incurred by the Welsh Language Commissioner and the Welsh Language Tribunal for monitoring and enforcing compliance with the standards. Finally, there will be an appeals process established whereby, if an organisation believes that the standards imposed on it are unreasonable and disproportionate, there will be means to appeal to the Commissioner in the first instance, and thereafter to the newly established Welsh Language Tribunal. The costs associated with these processes are not known at this stage.

Benefits

Option 1: Do Nothing

23. This is the baseline option and there are no additional benefits associated with this option.
24. Doing nothing would maintain the status quo of the Welsh Language Schemes which have been in place since 1993. The regulatory role of the Commissioner would continue along similar lines to that of the Welsh Language Board as would the resource-intensive procedures involved in agreeing and amending schemes, and the current, limited, enforcement system.

Option 2: Introduce Welsh Language Standards for the 27 organisations listed above

25. The purpose of the standards is to improve the level of Welsh language service which members of the public can expect to receive. At this stage (and until the Welsh Language Commissioner issues the compliance notices), it is only possible to outline the expected benefits in general terms.
26. The standards will make clear what organisations need to do in terms of the Welsh language, so that people will know what to expect with regard to Welsh language services. This clarity, both for the public and the organisations, will help ensure that the standards can be effectively enforced and lead to an increase in the use of Welsh language services.
27. 24 of the 27 organisations already operate Welsh Language Schemes and already do many of the things set out in the standards. The standards build on the Schemes and place more rigorous requirements on organisations. However, the Commissioner can only set standards that are reasonable and proportionate for each individual organisation to comply with.
28. On a practical level, the standards will replace sometimes vague commitments in Schemes with specific and enforceable duties.
29. Organisations will now be required to take a more proactive and strategic approach to mainstreaming the Welsh language. Key to this will be the 'proactive offer,' which places the onus on the organisation to offer services in Welsh, rather than on the individual to request them. This will provide a solid foundation to improve services for Welsh speakers.
30. An improved enforcement regime will provide a more effective means of dealing with alleged non-compliance and allow for early and informal resolution of complaints as appropriate.
31. As part of the RIA process, organisations were asked to comment on any linguistic, social or environmental advantages of introducing standards. A variety of responses were noted, from organisations that saw no

advantages to introducing standards to those who viewed the standards as an opportunity in several ways.

32. From an economic or business point of view, some organisations saw the standards as an opportunity to increase the number of Welsh speakers within their workforces – they commented that this could lead to longer term savings on translation and interpretation work that was previously outsourced as well as increasing their capacity to work through the medium of Welsh which would be helpful when working with organisations who operate largely through the medium of Welsh. Several of the higher education organisations commented that the standards could help increase recruitment of Welsh domicile students in general, as well as recruitment of students to Welsh medium courses, and subsequently increase income.
33. Some organisations commented that the standards would help them to improve the services that they offer to a bilingual public and to attract new customers. Providing a better working environment for staff was also mentioned, along with supporting staff to use their Welsh in the workplace.
34. A small number of organisations commented on their social responsibility to promote the Welsh language and felt that the standards would help with normalising the use of Welsh, especially in a business environment. This could increase people's confidence and help them to use Welsh in all aspects of their lives. One organisation felt that the standards would give the Welsh language greater value as a skill in the workplace. One of the universities commented that the standards would help them respond to the increasing demand for Welsh speakers in the medical, optometry, pharmacy, dentistry, social work, health care sciences and law professions.
35. Lastly, some organisations said that compliance with the Standards was likely to broaden their links with their local communities and encourage greater local involvement and engagement in their activities. Increased social inclusion was also mentioned by a number of organisations.

Conclusion

36. The current uncertainty surrounding which of the Standards each organisation will need to comply with means that it is not possible to produce a robust assessment of the costs and benefits associated with the Regulations at this stage.
37. The Welsh Language Commissioner has confirmed that she will consult with the relevant organisations before issuing final compliance notices and factors such as reasonability and proportionality of individual standards are likely to be discussed at this stage, as well as which standards organisations will be expected to comply with and in which circumstances. As part of this process, organisations could present an assessment of the

relative costs and benefits associated with the Standards. This could be considered by the Commissioner as part of the process of coming to a decision on whether the standards are reasonable and proportionate.

SL(5)046 – The Local Election Survey (Wales) (Amendment) Regulations 2016

Agenda Item 4.2

Background and Purpose

These Regulations (the 2016 Regulations) amend the Local Election Survey (Wales) Regulations 2012 (the 2012 Regulations).

Section 1 of the Local Government (Wales) Measure 2011 (the Measure) imposes a duty on a local authority (a county council or county borough council), to conduct a survey by asking prescribed questions of councillors and candidates who have stood for election as councillors to the council of the county or county borough or to a community council in the local authority's area. Section 1 was amended by the Local Government (Wales) Act 2015 (the 2015 Act) and provides that the survey must be conducted before or after each ordinary election, and removes the requirement for local authorities to arrange for information to be provided anonymously.

The 2012 Regulations prescribe the questions that must be asked. Regulations 3 and 4 2016 Regulations amend the 2012 Regulations and insert a new survey into the 2012 Regulations. The amended survey is similar to the survey in the 2012 Regulations, with the addition of unique identifying questions which can be used to establish whether a survey respondent was elected as a councillor. The amendments will also require different questions to be asked depending on whether the survey is being conducted before or after an ordinary election.

Procedure

Negative

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

One point is identified for reporting under Standing Order 21.3 in respect of this instrument. (Standing Order 21.3(ii): the instrument is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly).



Section 1(5) of the 2011 Measure states that nothing in section 1 places a duty on an individual to provide any information in a relevant survey.

A letter from the Minister will be given to every candidate, explaining the purposes of the survey. It is understood that the wording from section 1(5) of the 2011 Measure will be used in the Minister's letter and the Guidance to the present Regulations to inform candidates that they are under no duty to provide information.

Legal Advisers

Constitutional and Legislative Affairs Committee

January 2016



W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1220 (W. 291)

**LOCAL GOVERNMENT,
WALES**

**The Local Election Survey (Wales)
(Amendment) Regulations 2016**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Election Survey (Wales) Regulations 2012 (“the 2012 Regulations”).

Section 1 of the Local Government (Wales) Measure 2011 (“the Measure”) imposes a duty on a local authority (a county council or county borough council), to conduct a survey by asking prescribed questions of councillors and candidates who have stood for election as councillors to the council of the county or county borough or to a community council in the local authority’s area. Section 1 was amended by the Local Government (Wales) Act 2015 (“the 2015 Act”) and provides that the survey must be conducted before or after each ordinary election, and removes the requirement for local authorities to arrange for information to be provided anonymously.

The 2012 Regulations prescribe the questions that must be asked. Regulations 3 and 4 amend the 2012 Regulations and insert a new survey into the 2012 Regulations. The amended survey is similar to the survey in the 2012 Regulations, with the addition of unique identifying questions which can be used to establish whether a survey respondent was elected as a councillor. The amendments will also require different questions to be asked depending on whether the survey is being conducted before or after an ordinary election.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained at Democracy, Diversity and Remuneration Team, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2016 No. 1220 (W. 291)

**LOCAL GOVERNMENT,
WALES**

**The Local Election Survey (Wales)
(Amendment) Regulations 2016**

Made 13 December 2016

Laid before the National Assembly for Wales
15 December 2016

Coming into force 6 January 2017

The Welsh Ministers, in exercise of the powers conferred upon them by sections 1(3)(a) and 175 of the Local Government (Wales) Measure 2011⁽¹⁾, make the following Regulations:

Title and commencement

1.—(1) The title of these Regulations is the Local Election Survey (Wales) (Amendment) Regulations 2016.

(2) These Regulations come into force on 6 January 2017.

Interpretation

2. In these Regulations—

“the 2012 Regulations” (“*Rheoliadau 2012*”) means the Local Election Survey (Wales) Regulations 2012⁽²⁾; and

“the Measure” (“*y Mesur*”) means the Local Government (Wales) Measure 2011.

Amendments to the 2012 Regulations

3. For regulation 3 (survey questions and form) of the 2012 Regulations substitute—

“3. Survey questions and form

(1) 2011 (nawm 4).

(2) S.I. 2012/685 (W. 93).

For the purposes of section 1(3)(a) of the Measure, the questions and form in which they are to be asked are set out in—

- (a) Parts 1, 2 and 4 of the Schedule if the survey is conducted in accordance with section 1(3A)(b) of the Measure; and
- (b) Parts 1, 3 and 4 of the Schedule if the survey is conducted in accordance with section 1(3A)(a) of the Measure.”

4. For the Schedule to the 2012 Regulations (Survey of Local Government Candidates in Wales), substitute the Schedule to these Regulations.

Mark Drakeford

Cabinet Secretary for Finance and Local Government,
one of the Welsh Ministers
13 December 2016

SCHEDULE Regulation 4
Survey of Local Government Candidates in Wales

PART 1

Administration information

Please provide the same details below as those given on your nomination form(s).

1. Please enter the last 3 characters of your home postcode:

For example, for 'CF10 4LG' please enter **4LG**

2. Please enter the last 3 characters of your surname:

For example, for 'MURPHY' please enter **PHY**

3. Please enter the day of your date of birth:

For example, for '04/05/2017' please enter **04**

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PART 2

Candidate information (for use when conducting the survey before the election)

4. In which election are you standing?

Please select one option.

- County or County Borough Council
- Community or Town Council
- Both County or County Borough Council and Community or Town Council

5. Which party, if any, are you representing?

Please select one option.

- Independent
- Plaid Cymru
- Welsh Conservative Party
- Welsh Labour Party
- Welsh Liberal Democrats
- Other, please specify:

6. Have you stood for election to a County or County Borough Council in the past?

Please select one option

- No
- Yes and was elected
- Yes but was not elected

Question 6A only needs to be asked if Question 6 has been answered "Yes and was elected".

6A. How many years in total have you served as a County or County Borough Councillor?

Please include all periods of office that you have served as a County or County Borough Councillor.

_____ years

7. Have you stood for election to a Community or Town Council in the past?

Please select one option

- No
- Yes and was elected
- Yes but was not elected

Question 7A only needs to be asked if Question 7 has been answered "Yes and was elected".

7A. How many years in total have you served as a Community or Town Councillor?

Please include all periods of office that you have served as a Community or Town Councillor.

_____ years.

PART 3

Candidate information (for use when conducting the survey after the election)

4. In which election did you stand?

Please select one option.

- County or County Borough Council
- Community or Town Council
- Both County or County Borough Council and Community or Town Council

Question 4A only needs to be asked if Question 4 has been answered "County or County Borough Council".

4A. You said that you stood for election to a County or County Borough Council. What is your status following the election?

Please select one option.

- Elected Unelected

Question 4B only needs to be asked if Question 4 has been answered "Community or Town Council".

4B. You said that you stood for election to a Community or Town Council. What is your status following the election?

Please select one option.

- Elected Unelected

Question 4C only needs to be asked if Question 4 has been answered "Both County or County Borough Council and Community or Town Council"

4C. You said that you stood for election to both a County or County Borough Council and a Community or Town Council. What is your status following the election?

Please select one option in each row.

	Elected	Unelected
County or County Borough Council	<input type="checkbox"/>	<input type="checkbox"/>
Community or Town Council	<input type="checkbox"/>	<input type="checkbox"/>

5. Which party, if any, did you represent?

Please select one option only.

- Independent
- Plaid Cymru
- Welsh Conservative Party
- Welsh Labour Party
- Welsh Liberal Democrats
- Other, please specify:

6. Have you stood for election to a County or County Borough Council in the past?

Please select one option.

- No
- Yes and was elected
- Yes but was not elected

Question 6A only needs to be asked if Question 6 has been answered "Yes and was elected"

6A. How many years in total have you served as a County or County Borough Councillor?

Please include all periods of office that you have served as a County or County Borough Councillor.

_____ years.

7. Have you stood for election to a Community or Town Council in the past?

Please select one option.

- No
- Yes and was elected
- Yes but was not elected

Question 7A only needs to be asked if Question 7 has been answered "Yes and was elected"

7A. How many years in total have you served as a Community or Town Councillor?

Please include all periods of office that you have served as a Community or Town Councillor.

_____ years.

PART 4

Candidate characteristics

8. Are you:

Please select one option.

- Male
- Female

9. What age band were you in on your last birthday?

Please select one option.

- | | |
|--------------------------------------|---|
| <input type="checkbox"/> 18-24 years | <input type="checkbox"/> 55-59 years |
| <input type="checkbox"/> 25-29 years | <input type="checkbox"/> 60-64 years |
| <input type="checkbox"/> 30-34 years | <input type="checkbox"/> 65-69 years |
| <input type="checkbox"/> 35-39 years | <input type="checkbox"/> 70-74 years |
| <input type="checkbox"/> 40-44 years | <input type="checkbox"/> 75-79 years |
| <input type="checkbox"/> 45-49 years | <input type="checkbox"/> 80 years or over |
| <input type="checkbox"/> 50-54 years | |

10. Do you have parental responsibility for a child aged 16 or under?

Please select one option.

- Yes No

11. What is your ethnic group?

Please select one option.

A. White

- Welsh/ English/ Scottish/ Northern Irish/ British
- Irish
- Gypsy or Irish Traveller
- Any other White background

B. Mixed/multiple ethnic groups

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other mixed or multiple ethnic background

C. Asian/ British Asian

- Indian
- Pakistani
- Bangladeshi
- Chinese
- Any other Asian background

D. Black/ African/ Caribbean/ Black British

- African
- Caribbean
- Any other Black/ African/ Caribbean background

E. Other ethnic group

- Arab
- Any other ethnic group

12. What is your religion?

Please select one option.

- No religion
- Christian (all denominations)
- Buddhist
- Hindu
- Jewish
- Muslim
- Sikh
- Any other religion, please specify:

13. Do you consider yourself to be:

Please select one option.

- Heterosexual or straight
- Gay or lesbian
- Bisexual
- Other

14. Can you understand, speak, read or write Welsh?

Please select all that apply.

- Understand spoken Welsh
- Speak Welsh
- Read Welsh
- Write Welsh
- None of the above

15. What is your main language?

Please select one option .

English

Welsh

Other (including British Sign Language), please specify:

Education and employment

16. What is your highest educational qualification?

Please select one option.

None

'O' Level, GCSE, CSE, NVQ Level 1/2 or equivalent

'A' Level, NVQ Level 3 or equivalent

NVQ Level 4 or equivalent

Foundation or Ordinary Degree, NVQ Level 5, HND and HNC

Honours Degree

Masters Postgraduate qualification

Professional qualification (e.g. accountancy)

17. What is your current employment status?

Please select all that apply.

- In full-time employment
- In part-time employment
- Self employed
- Unemployed
- Full-time student
- Part-time student
- Retired
- On maternity leave
- Looking after family or home
- Long term sick or disabled
- On a government training scheme
- Unpaid worker in family business
- Unpaid carer
- Other, please specify:

18. What category best describes your current or most recent employment sector?

Please select one option.

- Local Government
- Central Government
- NHS
- Education
- Other public sector
- Private sector
- Voluntary sector
- Agriculture
- Other, please specify:

19. Which category best describes your current or most recent type of employment?

Please select one option.

- Managerial or executive
- Professional or technical
- Lecturer, teacher or researcher
- Administrative, clerical, secretarial or sales
- Manual or craft
- Other, please specify:

20. Have you given unpaid help, for example as a volunteer, trustee or board member, to any of these types of groups or organisations at any time in the last 12 months?

Please select one option in each row.

	Yes	No
Children's education/schools	<input type="checkbox"/>	<input type="checkbox"/>
Youth/children's activities (outside school)	<input type="checkbox"/>	<input type="checkbox"/>
Education for adults	<input type="checkbox"/>	<input type="checkbox"/>
Sports or exercise (e.g. coaching)	<input type="checkbox"/>	<input type="checkbox"/>
Religious or faith based group	<input type="checkbox"/>	<input type="checkbox"/>
Gender group	<input type="checkbox"/>	<input type="checkbox"/>
Sexuality group	<input type="checkbox"/>	<input type="checkbox"/>
Political party	<input type="checkbox"/>	<input type="checkbox"/>
Health, disability or social welfare group	<input type="checkbox"/>	<input type="checkbox"/>
The elderly	<input type="checkbox"/>	<input type="checkbox"/>
First aid	<input type="checkbox"/>	<input type="checkbox"/>
Environment group	<input type="checkbox"/>	<input type="checkbox"/>
Animal welfare group	<input type="checkbox"/>	<input type="checkbox"/>
Justice or Human Rights	<input type="checkbox"/>	<input type="checkbox"/>
Community or neighbourhood group	<input type="checkbox"/>	<input type="checkbox"/>
Citizen's group	<input type="checkbox"/>	<input type="checkbox"/>
Social club	<input type="checkbox"/>	<input type="checkbox"/>
Trade union	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify below)	<input type="checkbox"/>	<input type="checkbox"/>

If you have selected 'Other' please specify: _____

Health and Disability

21. How is your physical health in general?

Please select one option.

- Very good
- Good
- Fair
- Poor
- Very poor

22. How is your mental health in general?

Please select one option.

- Very Good
- Good
- Fair
- Poor
- Very poor

23. Do you consider yourself to have a disability?

Please select one option.

- Yes
- No

24. Do you have an illness or disability that limits your activities in any way?

Please select one option .

- Yes
- No

25. Do you have any of the following conditions:

Please select one option in each row.

	Yes	No
Physical impairment	<input type="checkbox"/>	<input type="checkbox"/>
Sensory impairment	<input type="checkbox"/>	<input type="checkbox"/>
Learning disability	<input type="checkbox"/>	<input type="checkbox"/>
Mental health issue	<input type="checkbox"/>	<input type="checkbox"/>
Long term health condition	<input type="checkbox"/>	<input type="checkbox"/>
Other (please specify below)	<input type="checkbox"/>	<input type="checkbox"/>

If you have selected 'Other' please specify: _____

Explanatory Memorandum to the Local Election Survey (Wales) (Amendment) Regulations 2016

This Explanatory Memorandum had been prepared by the Local Government Democracy Division of the Welsh Government and is laid before the National Assembly for Wales in accordance with Standing Order 27.1.

Cabinet Secretary's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Local Elections Survey (Wales) (Amendment) Regulations 2016. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Cabinet Secretary for Finance and Local Government, one of the Welsh
Ministers

15 December 2016

1. Description

- 1.1 The Local Election Survey (Wales) (Amendment) Regulations 2016 amend the questions which must be asked when conducting a survey of councillors and unsuccessful candidates at each ordinary general election to county and county borough councils and town and community councils.
- 1.2 These Regulations amend the Local Election Survey (Wales) Regulations 2012 to reflect changes to how the survey may be conducted which were introduced under the Local Government (Wales) Act 2015.

2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee

- 2.1 None.

3. Legislative Background

- 3.1 These Regulations are made in exercise of the powers conferred upon the Welsh Ministers by sections 1(3)(a) and 175 of the Local Government (Wales) Measure 2011 (“the Measure”).
- 3.2 This instrument is subject to the annulment procedure by the National Assembly for Wales (the negative procedure).
- 3.3 Part 1 of the Measure introduced a duty on local authorities to monitor the equality and diversity of candidates in ordinary elections to principal and town and community councils.
- 3.4 Section 1(1) and (2) provide that in accordance with regulations a local authority must conduct a survey of councillors and unsuccessful candidates at ordinary elections to a county or county borough and to a town and community council.
- 3.5 Section 1 (3)(a) and (b) provide that the questions asked, the manner in which they are asked and how the information is collated is as prescribed in regulations.
- 3.6 Section 1(4) sets out the fields of questions which may be asked in the survey. The fields are - gender, sexual orientation, language, race, age, disability, religion or belief, health, education or qualification, employment and work as a councillors.
- 3.7 Section 1(5) provides that there is no duty on any individual to provide any information.

- 3.8 Section 2(1) provides that the local authority must compile the survey data and provide the information to the Welsh Ministers within six months of the date of the ordinary election to which the survey relates.
- 3.9 Section 2(5) and (6) provide that the Welsh Ministers may publish and share the information in an anonymous format. The information must be published by the Welsh Ministers within 12 months of the ordinary election to which it relates.

4. Purpose and intended effect of amended regulations

- 4.1 The first local election survey was conducted following the 2012 ordinary local government elections. The previous Welsh Government published a report on the collated data from the survey.

<http://gov.wales/statistics-and-research/local-government-candidates-survey/?lang=en>

- 4.2 The Expert Group on Diversity in Local Government was established to consider the results of the survey, suggest improvements to the methodology and any other improvements to the survey.
- 4.3 In their report *On Balance: Diversifying Democracy in Local Government in Wales*:

<http://gov.wales/topics/localgovernment/publications/expert-group-report/?lang=en>

the Expert Group recommended that:

“The Welsh Government establish a methodology which allows for the survey questionnaires to be distributed at the time of handling nomination papers, in advance of the election.

The Welsh Government should agree with local government that a single research provider, such as the Local Government Data Unit” be employed to conduct the survey on behalf of local authorities at the next elections. “

- 4.4 The Welsh Ministers accepted these recommendations and made the following amendments to the Measure:

- The Local Government (Wales) Act 2015 amended section 1(2) of the Measure to remove the requirement that a local authority must conduct a survey themselves. A local authority can now arrange for the survey to be

conducted by a third party.

- A new section 1(3A) was inserted to allow local authorities to conduct the survey before or after the date of the ordinary election to which the survey refers.
- Section 1(6) was repealed, removing the requirement for local authorities to arrange for information to be provided anonymously.

4.5 The aim of the amendments was to improve the response rate of councillors and unsuccessful candidates participating in the survey. Allowing the survey forms to be issued in advance of the election is deemed more likely to encourage candidates to return the form and result in a higher response rate. Removing the requirement for the survey to be conducted anonymously will allow those conducting the survey to monitor response rates and identify those candidates who were elected.

4.6 Allowing local authorities to contract with a third party to conduct the survey on their behalf provides another option for local authorities on conducting the survey, but does not remove their statutory duty.

4.7 The Local Election Survey (Wales) (Amendment) Regulations 2016 make minor amendments to the survey questions and order in which they are asked. The changes are aimed to improve the survey response rate. The Regulations provide two versions of some questions to enable candidates to answer the survey before or after the election. The survey will also collect administrative data to help identify those who have responded to the survey and those who have been elected.

4.8 The Welsh Government wishes to encourage a more diverse range of candidates to stand for election to local government. These Regulations will enable the compilation of reliable data on the profile of candidates and councillors in local government. This will enable the Welsh Government to design policy to improve diversity in council chambers and assess their effectiveness.

5 PART 2: REGULATORY IMPACT ASSESSMENT

Options

- 5.1 Options for achieving the policy objective in relation to the amended Regulations are:
Option 1 – Do nothing and not amend the Regulations.
Option 2 – Introduce amended Regulations

Costs and Benefits

- 5.4 Option 1 – Do nothing. The Local Election Survey (Wales) Regulations 2012 would not be amended to reflect the changes made to the Local Government Measure (Wales) 2011 as a result of recommendations made by the Expert Group on Diversity in Local Government. The survey contained in the 2012 Regulations would remain unchanged.
- 5.5 Option 2- Introduce amended Regulations. Amending the Local Election Survey (Wales) Regulations 2012 to reflect the changes made to the Local Government Measure (Wales) 2011, as a result of recommendations made by the Expert Group on Diversity in Local Government
- 5.6 Option 1 means the survey contained in the 2012 Regulations will not reflect the changes made designed to increase participation. This is unlikely to lead to an increase in the amount of candidates or councillors completing the survey. As such it will make it difficult for the Welsh Government to assess how successful various schemes to increase the range of candidates standing for local government election have been. Doing nothing will also mean that if the survey is completed before the election, it will not make sense to a reader. This is because there are questions such as “what is your status following the election” contained in the current version of the survey. One benefit of following Option 1 is that it would be the same survey that was used following the previous ordinary election. This would enable the Welsh Government to make a direct comparison with next years survey and the previous survey that was undertaken.
- 5.7 Option 2 will ensure that the survey is conducted in conformity with the 2015 Act. To achieve this, two versions of the survey questions have been prepared to facilitate the survey being conducted before or after the election, and to include identifying questions which can be used to establish if a respondent was in fact elected as a councillor. The changes are also aimed at improving the response rate to the survey. These changes (lead from recommendation made by the Expert Group on Diversity) are

intended to improve the quality of the data received, which in turn will help to establish the success or otherwise of initiatives to increase the diversity of local councillors. This will enable the Welsh Government to develop further initiatives to encourage a more diverse set of candidates to stand for election to local government.

5.8 One negative of following Option 2 is that the questions will be slightly different from the survey asked in 2012. This could impact how the public can compare the two surveys. However, as the changes to the survey are minor it is not considered that such changes will make it difficult to compare the two surveys.

5.9 The Welsh Ministers are committed to financing this survey. £35,000 will be divided between the 22 local authorities in Wales. The allocation will be calculated based on the number of candidates in each area who stood for election to each county, county borough and town and community council at the 2012 ordinary local government election and the 2013 ordinary local government election on the Isle of Anglesey.

6 Welsh Language

6.1 The schedule to the Regulations contains a series of questions based around the following fields:

- Work as a councillor
- Age gender and race
- Belief
- Sexual orientation
- Employment status
- Parental responsibility
- Volunteering
- Education
- Health and disability
- Language

6.2 The survey monitors the proficiency of an individual's ability to understand, speak, read and write Welsh.

6.3 Compiling data on the usage of the Welsh Language will help inform future policy.

7. Consultation

7.1 The Welsh Government consulted on the proposed changes to Part I of the Measure as part of its wide consultation on the Local Government (Wales) Bill.

8.2 No consultation has been conducted on the Local Election Survey (Wales) (Amendment) Regulations 2106

9 Competition Analysis

9.1 The amended regulations will not affect business, or charities and/or the voluntary sector in ways which raise issues related to competition. The competition filter has not been applied.

10. Post-implementation Review

10.1 The collated survey data provided to the Welsh Government will be analysed and the Welsh Government will publish the results.

10.2 The results of the survey will help build a picture over time of the characteristics of those standing for election to local government and help to monitor the Welsh Government's initiatives to encourage more people from under represented group to consider standing for election.

10.3 This information will help to develop policy in this area.

Agenda Item 5.1



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The Rt Hon the Lord Lang of Monkton
Chair
Constitution Committee
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Ref: 514SUB 16

12th December 2016

Dear Sir

Thank you for the Constitution Committee's report on the Wales Bill. I am grateful to the Committee for its consideration of the Bill. I enclose a copy of the Government's response to your report.

The Wales Bill delivers the Government's commitments in the St David's Day Agreement to put in place a clear, strong and lasting devolution settlement for Wales. It makes devolution stronger by devolving significant new powers to the National Assembly for Wales in areas such as energy, transport and elections. This is delivered within the new reserved powers model that establishes a clear boundary between the responsibilities of Parliament and the UK Government, and the responsibilities of the National Assembly and the Welsh Government.

The Government has given careful consideration to the Committee's report and has listened to the debate on the Bill more widely. We have made a number of changes to the Bill in its passage through the Lords where we have been persuaded of the case for change, including the devolution of teachers' pay and conditions. The Government is tabling further amendments for debate at Lords Report stage, including the replacement of Secretary of State powers of intervention in relation to water with a statutory agreement (a "water protocol") between the UK Government and the Welsh Government.

The Bill's Lords stages have also enabled me to clarify how the Government sees the new reserved powers model working in practice, helping to allay a number of concerns in respect of the model, and in particular the "relates to" test.

I believe the Wales Bill, in light of the amendments the Government is bringing forward at Report stage, stands in good stead to deliver a clear and lasting devolution settlement for Wales.

A handwritten signature in black ink, appearing to read "Lord Bourne". The signature is written in a cursive style with a long horizontal stroke extending to the left.

Lord Bourne
Parliamentary Under Secretary of State for Wales

UK GOVERNMENT RESPONSE

The Wales Bill: An overview

1. We welcome the decision to move the Welsh devolution settlement to a reserved powers model. This will place the Welsh settlement on the same footing as Scotland's devolution settlement, while allowing for variation which reflects the differing circumstances in each nation. (Paragraph 6)

2. Setting up a reserved powers settlement and determining which powers should be devolved and which should be reserved to the centre is a complicated and challenging process. Unfortunately, as we discuss in the rest of this report, the current implementation of the reserved powers model in the Wales Bill undermines its key advantages: namely providing the devolved legislature with constitutional space to legislate and allowing for a relatively clear and simple division of powers. (Paragraph 7)

The Government's key aim in introducing the new reserved powers model is to make the Welsh devolution settlement clearer by delineating those powers which are reserved and those which are devolved. This will hopefully put an end to the squabbles over competence between Cardiff and Westminster that has characterised Welsh devolution in recent years. We expect the new model to enable the Welsh Government to focus on the job of improving the Welsh economy; securing more Welsh jobs; and improving public services in devolved areas.

The list of reservations in new Schedule 7A for the most part reflects the current devolution boundary, supplemented by the significant further devolution of powers on which there is political consensus under the St David's Day Agreement. Amendments made to the Schedule to date, and the further modifications that will be debated at Report stage, reflect the detailed discussions the Government has had with the Welsh Government, the Assembly Commission and other interested parties about how the reservation model will work in practice. The Government has been open to consider changes to the list where effective arguments have been made that certain subjects should be devolved; for example, teachers' pay and conditions and the Community Infrastructure Levy.

The rationale for each reservation included in the list is set out in the accompanying Explanatory Notes, and these have been supplemented and improved during the Bill's parliamentary passage. The Government is confident that the list, as we hope it will be amended at Report stage, reflects a broad consensus on where the Welsh devolution boundary lies.

3. Given the complexity of the law in this area, it is a pity that the opportunity was not taken to bring forward a consolidated bill to set out clearly the Welsh devolution settlement in a single Act of Parliament. We intend to return to the issue of consolidation bills in our forthcoming inquiry on the legislative process. (Paragraph 8)

This Bill is amending only a limited number of distinct parts of the Government of Wales Act 2006 (GoWA), mostly to implement the new reserved powers model. We are also giving the Assembly the power to amend many of its own processes which were prescribed by the 2006 Act.

GoWA, as amended by the Wales Bill, provides the broad framework for the new devolution settlement for Wales, and is essentially a single Act of Parliament setting out the Welsh devolution settlement. A root and branch rewriting of the GoWA is unnecessary, would be time consuming and would delay the implementation of the new settlement.

GENERAL CONSTITUTIONAL MATTERS

'Permanence'

4. This provision simply echoes an identical provision that Parliament has but recently chosen to enact in relation to Scotland. On that basis, this clause has the merit of bringing the Welsh devolution settlement into line with Scotland's and bringing a degree of consistency to the otherwise disparate and asymmetrical approaches taken to date. (Paragraph 13)

5. However, in our report, *The Union and devolution*, we concluded that the devolution settlements should be designed with a clear eye to their implications for the coherence and stability of the Union itself. Against this background, legislation which creates uncertainty about the lynchpin principle of parliamentary sovereignty could be considered unhelpful and damaging to the stability of the constitution of the Union as a whole. (Paragraph 14)

Clause 1 is a statement in law of the acknowledged position that a National Assembly for Wales and a Welsh Government are permanent parts of the UK's constitutional arrangements. The clause also provides that the Assembly and the Welsh Government are not to be abolished except on the basis of a decision of the people of Wales voting in a referendum. Clause 1 does not seek to have any (and indeed has no) effect on the sovereignty of Parliament.

The Sewel Convention

6. In our previous report on the Scotland Bill, we asked the Government about the disparity between the scope of the Sewel Convention in the Bill and how the Convention is commonly understood. We did not

receive a clear answer. We ask the Government again to address this question in relation to the Wales Bill. (Paragraph 19)

7. We recognise that identical provisions have already been passed by Parliament in relation to Scotland. Nonetheless, we draw to the attention of the House once again our concern that setting the Sewel Convention in statute risks inappropriately drawing the courts into areas which have previously been within the jurisdiction of Parliament alone, namely its competence to make law. (Paragraph 20)

This clause delivers on the St David's Day commitment to place the convention on legislative consent on a statutory footing in the same manner as the Sewel Convention for Scotland. The convention was never intended to change the sovereignty of Parliament, nor was it intended to prevent Parliament from making laws for all constituent parts of the United Kingdom. The provision at clause 2 of the Bill merely reflects the current constitutional arrangements. The position before clause 2 is enacted, and the position after it is enacted, will remain the same: section 107(5) of GoWA expressly protects the sovereignty of Parliament to make laws for Wales on any matter.

Where a Parliamentary Bill relates to a devolved matter the consent of the National Assembly will normally be obtained to the provision before it is enacted. The use of the word "normally" in the provision replicates the language of the convention in relation to Wales, and the language in section 2 of the Scotland Act 2016. The Government has always sought a legislative consent motion in the Assembly before Westminster passes a Bill applying in Wales in relation to matters we consider to be devolved. This has been part of the routine working arrangements between the UK Government and the Welsh Government, as reflected in Devolution Guidance Note 9 (DGN 9), and we expect this to continue. We also expect to draft new guidance, in consultation with the Welsh Government, to reflect the new Welsh settlement before the reserved powers model commences.

The effect of clause 2 is to place existing practice on a statutory footing. We believe it is important to spell out this commitment in the context of Wales's new constitutional framework. This commitment does not, however, create new legal rights or obligations or in any way effect the sovereignty of Parliament.

The principles underlying the devolution settlement for Wales

8. In our report, *The Union and devolution*, we concluded that any further devolution should take place on the basis of appropriate principles, to ensure that the devolution settlements evolve "in a coherent manner", rather than "in the reactive, ad hoc manner in which devolution has been managed to date". (Paragraph 32)

9. There is no evidence of a clear rationale underlying the scope of the powers devolved by the Wales Bill. We would welcome an explanation

from the Government as to the principles that underpin the devolution settlement set out in the Wales Bill. (Paragraph 33)

The Government is committed to putting in place a clearer, more stable and long-term devolution settlement for Wales. We believe that implementing a reserved powers model is crucial to achieving this. A reservation model for Welsh devolution was the underpinning recommendation in the Silk Commission's second report, and the St David's Day process found a strong political consensus to implement that recommendation.

The list of reservations in new Schedule 7A in most part reflect the current devolution boundary, supplemented by the significant further devolution of powers on which there is political consensus under the St David's Day Agreement. Amendments made to the Schedule to date, and the further modifications that will be debated at Report stage, reflect the detailed discussions the Government has had with the Welsh Government, the Assembly Commission and other interested parties about how the reservation model will work in practice. The Government has been open to consider changes to the list where effective arguments have been made that certain subjects should be devolved; for example, teachers' pay and conditions and the Community Infrastructure Levy.

The rationale for each reservation included in the list is set out in the accompanying Explanatory Notes, and these have been supplemented and improved during the Bill's parliamentary passage. The Government is confident that the list, as amended at Report stage, will reflect a broad consensus on where the Welsh devolution boundary should lie.

The complexity of the devolution settlement for Wales

10. We believe that there is a strong constitutional interest in legislation - particularly constitutional legislation such as the Wales Bill - being as clear as possible. The lack of clarity in the Wales Bill increases the likelihood of demarcation disputes regarding the extent of the Welsh Assembly's powers, and thus risks not only future litigation but the need for further legislation to clarify the Welsh devolution settlement. (Paragraph 40)

The Government considers the boundaries of the Assembly's legislative competence to be very clearly defined under the new reservation model. We simply do not agree with the Committee's conclusion that it lacks clarity and will this lead to more disputes. Indeed, we believe the very opposite to be the case. The Supreme Court has provided guidance in a number of cases on how to interpret the reserved powers model in Scotland. We expect that guidance to be applicable to the reserved powers model in Wales and therefore useful in avoiding disputes.

The Government contends that this new model provides clarity and precision in terms of subjects which are reserved, together with a test for determining

when a matter relates to a reserved matter and is thus not within the Assembly's competence. The current *conferred* powers model of Welsh devolution lacks the certainty the new model provides, in large part because it is silent on a wide range of subjects, leading to uncertainty as to the extent that they are reserved or devolved.

The scope of Assembly's legislative competence

11. The “relates to” test in Clause 3 of the Wales Bill mirrors an identical provision in section 29 of the Scotland Act 1998. However, the list of reserved matters set out in Schedule 1 of the Wales Bill is so broad, compared to the reservations contained in the Scotland Act, that the restrictions following from this test are far greater in the context of the Wales Bill. (Paragraph 49)

12. As a result, we are concerned that this test may have the effect of reducing the scope of the Welsh Assembly's legislative competence, and perhaps lead to further referrals to the Supreme Court. We would welcome an explanation from the Government as to whether this was the intent of the legislation and, if not, what steps they intend to take to ensure that the competence of the Welsh Assembly is not inadvertently reduced. (Paragraph 50)

13. The House may also wish to note that the Welsh Assembly's Constitutional and Legislative Affairs Committee has proposed two amendments that would restore the existing limits on the Welsh Assembly's jurisdiction by allowing it to legislate in an ancillary way in relation to reserved matters. We have reproduced these amendments above in paragraph 48. (Paragraph 51)

As the Committee notes, the “relates to” test (the so-called “purpose test”) in the Bill mirrors the same provision which operates in Scotland. Similar issues have arisen in the context of Scotland because both in Scotland and Wales we are relying on the purpose test to help define the scope of the relevant legislature's legislative competence. We have the benefit of guidance from the Supreme Court on the proper interpretation of these provisions. As mentioned above, that guidance, although given in a Scottish case, will be highly relevant to the new Welsh settlement.

The starting point is that whether a provision in an Assembly Bill could be said to “relate to” a reserved matter is dependent on its purpose. As has been pointed out in the Supreme Court, “the expression ‘relates to’ indicates more than a loose or consequential connection”.

The application of the purpose test in a reserved powers model should be interpreted as meaning that a provision that merely refers to a reserved matter, or has an incidental or consequential effect on a reserved matter, will not relate to that reserved matter. In other words, to fail the “relates to” test, an Assembly Act provision must have a reserved matter as its purpose. The

purpose of a provision must be established by having regard to its legal, practical and policy effects in all the circumstances. The Assembly Member bringing forward an Assembly Bill cannot simply assert such a purpose for one of its provisions. The purpose must be assessed by considering how the provision has been drafted and what it actually does, as well as the wider context, including the other provisions of the Bill of which the provision under scrutiny forms a part.

It is also important to say that the move from the current conferred powers model to one based on reserved matters reverses the operation of the purpose test. Whereas under the current settlement an Assembly Act provision needs to satisfy the purpose test by positively demonstrating that it relates to one of the subjects conferred in Schedule 7 to GoWA, the reserved powers model instead requires that such a provision must **not** relate to a reserved subject matter. In other words, the case would need to be made that an Assembly Act provision is outside competence because its purpose relates to a reserved matter. If such a case cannot be made, the provision would satisfy the requirements of the proposed new Section 108A(2)(c), inserted into GoWA by clause 3 of the Bill, and would be within competence, provided, of course, that it satisfied the other legislative competence requirements of new section 108A.

We are conscious that the list of reservations in new Schedule 7A does not make frequent use of the formulation, *subject matter of X Act*. We have sought to take account of the desire of the Welsh Government for the Wales Bill to explain in plain terms what the subject matter of the reservation is. They have expressed concerns to us that over time it could become harder to work out what the subject matter of a particular Act is, because it could be amended or repealed. There is a balance to be drawn between legal certainty and accessibility, and we consider that the reservations in the list at new Schedule 7A strike the right balance.

The Government does not believe that the new reserved powers model set out in the Bill will lead to further referrals to the Supreme Court. Indeed, we believe that the opposite will be the case given the clearer boundary between what is devolved and what is reserved which the new model puts in place. Further, we do not agree that the new model inadvertently reduces the Assembly's competence. The Assembly's competence will in fact be enhanced through the further devolution of powers we committed to in the St David's Day Agreement, including in areas such as transport, the environment, energy consenting and Assembly and local government elections in Wales.

The necessity test

14. The 'necessity test' in relation to the modification of the law on reserved matters corresponds to a similar provision in the Scotland Act. As with the "relates to" test, it is likely to have a disproportionate effect on the legislative competence of the Welsh Assembly, given the lengthy

list of reserved subjects set out in Schedule 7 of the Wales Bill. The House may wish to consider whether it is appropriate to include this provision, as it stands, in the Wales Bill, when its effect is likely to differ so widely from the equivalent provision in the Scotland Act. (Paragraph 56)

15. We note that the Welsh Assembly Constitutional and Legislative Affairs Committee has proposed an amendment removing the necessity test in relation to the law on reserved matters, which we reproduce above for the convenience of the House. (Paragraph 57)

The Government welcomes the Committee's acknowledgement that the "necessity test" in relation to the law on reserved matters (paragraphs 1 and 2 of new Schedule 7B to GoWA, inserted by Schedule 2 to the Bill) operates in the Wales context in the same way as it does in the Scotland settlement.

The law on reserved matters is, by definition, an area of the law that should not be open to wide-ranging modification by the Assembly. However, the Government recognises that the Assembly will need to make some modifications of the law on reserved matters in order to make its legislation effective. Indeed, it is because the Assembly is likely to need to modify the law on reserved matters more than the Scottish Parliament (because of paragraph 6 of new Schedule 7A to GoWA, inserted by Schedule 1 to the Bill, which reserves single legal jurisdiction matters such as courts, judges and civil and criminal proceedings), that paragraph 1 of new Schedule 7B goes further than its Scotland Act equivalent by allowing not only incidental/consequential modifications, but also enforcement-type provisions.

We believe it is appropriate that the Assembly is able to modify the law on reserved matters in an ancillary way, but is constrained in its ability to do so by any such modification being subject to having no greater effect on reserved matters than is necessary to give effect to the purpose of the provision. Amendments that the Assembly wishes to make law on reserved matters, but which go no further than necessary, can instead be made by Order under section 150 of GoWA, in agreement with the UK Government.

We believe this represents an appropriate and balanced limitation on the Assembly's competence when considered in the wider context of the purpose test. It is also important to note that there are a number of potential outcomes in applying the "no greater effect than necessary" test; fulfilling that test does not mean that a lowest common denominator option would be the only option which could meet the test.

Private and criminal law

16. We would welcome a statement from Government as to whether the Wales Bill is intended to roll back the competence of the Welsh Assembly as regards certain matters relating to criminal law, and in particular the Welsh Assembly's current competence in relation to the

protection and well-being of children and of young adults. (Paragraph 60)

The Government recognises the need for the Assembly to be able to enforce its legislation in order to make it effective. The private law restriction at paragraph 3 of new Schedule 7B to the GoWA (inserted by Schedule 2 to the Bill) enables the Assembly to continue to modify private (civil) law for a devolved purpose

For criminal liability, the Assembly can continue to create criminal offences to enforce devolved purposes. The Assembly can also make other provision in relation to those offences such as which court should hear the case and the setting of appropriate sentences in relation to devolved matters. In order to ensure consistency across the single legal jurisdiction, paragraph 4 of new Schedule 7B reserves a small number of the most serious, indictable-only offences, as well as the fundamental architecture of the criminal law including matters such as criminal responsibility and capacity. The Assembly will continue to be able to apply the existing criminal law framework to its own enforcement provisions and to choose which elements of the existing criminal law apply to the offences it creates. However, the Assembly will not be able to alter that framework.

The Government does not believe that the new model rolls-back the Assembly's powers in relation to the protection and well-being of children and of young adults. We intend to bring forward amendments to the Bill at Lords Report stage to further clarify the devolution boundary in this respect, and in particular in relation to the disciplining of children.

Executive functions

17. If the Government's intention is to align, as far as possible, the executive and legislative competence of the Welsh Assembly and Government, we question why it is doing so via secondary legislation rather than in primary legislation—as was the case in Scotland. We would welcome an explanation from Government as to why it intends to use a Transfer of Functions Order to pass executive competence to the Welsh Government, rather than simply amending the Wales Bill so as to transfer all functions currently exercisable by Ministers of the Crown within devolved competence to the Welsh Government (taking into account the exceptions it listed in its response to the Commons Welsh Affairs Committee). (Paragraph 64)

It is a basic principle that devolved legislative competence should include the ability for the legislature to confer functions on the executive in relation to all aspects of that devolved subject and to hold the executive, the Welsh Ministers, to account in exercising those functions. This principle applies to the vast majority of devolved subjects but given the unique development of the Welsh settlement there are a number of instances where the boundary is not the same.

Currently, Ministers of the Crown exercise a limited number of functions in devolved areas; these are commonly known as “pre-commencement functions”. The Government has reviewed these functions with the intention of clarifying who will exercise each function in future under the reserved powers model. Our aim in reviewing the pre-commencement functions has been to devolve as many as we can. Many such functions have already been transferred by Transfer of Function Orders made since 1999.

The Government published a list of functions to be included in a Transfer of Functions Order in September, listing those “pre-commencement” Minister of the Crown functions we intend to transfer to Welsh Ministers. We are currently working with the Welsh Government to review this list, with the aim of capturing any functions that may not have been included in the first draft.

We believe that transferring the limited number of functions we have identified to date by order is appropriate. The order, made under s.58 of GoWA, must be approved by both Houses of Parliament and the National Assembly, providing an appropriate degree of scrutiny and oversight by both legislatures.

Some pre-commencement functions will in future be exercised jointly or concurrently by Ministers of the Crown and Welsh Ministers. These are listed in new Schedule 3A to GoWA, inserted by Schedule 4 to the Wales Bill. The limited number of functions listed in new Schedule 3A provide both UK Ministers and Welsh Ministers with the ability to exercise powers for the benefit of Wales, for example to pay grants and to work together across the devolution boundary.

Our review of pre-commencement Minister of the Crown functions has resulted in only a handful of functions in devolved areas being retained. These are listed in sub-paragraphs 11(b) to (f) of new Schedule 7B to GoWA, inserted by Schedule 2 to the Bill. The Assembly cannot legislate in respect of these functions unless UK Ministers consent.

A key outcome of our work on pre-commencement functions is that it is clear what each function is and who will exercise it in future. This clarity could not have been achieved through a blanket transfer of functions to Welsh Ministers.

18. The House may wish to consider whether the extension of the consent requirement beyond Ministers of the Crown to all ‘reserved authorities’ is appropriate, and whether it is appropriate to extend the consent requirement to merely incidental or consequential modifications or removals of relevant functions. In deciding this matter, the House may wish to consider the extent to which it is appropriate for the scope of a devolved assembly’s legislative authority to be determined through the exercise of discretion by UK Ministers, albeit in respect of what is likely to be a relatively limited range of matters. (Paragraph 71)

A key principle underpinning the new reserved powers model is a clear separation between devolved and reserved powers. The Government believes that this clarity is essential in order to be clear whether the Assembly and Welsh Government, or Parliament and the UK Government, exercise competence in relation to a particular subject.

The Wales Bill makes clear (through new section 157A of, and new Schedule 9A to, GoWA, inserted by clause 4 of, and Schedule 3 to, the Bill respectively) which bodies are devolved Welsh authorities and therefore within the competence of the Assembly and the Welsh Ministers. All other public authorities are reserved authorities, and therefore accountable directly or indirectly to Parliament or UK Ministers. Special provision has been made in relation to the small number of bodies which exercise a mix of reserved and devolved functions in new Schedule 7B to GoWA (inserted by Schedule 2 to the Bill).

Given these lines of accountability it is only right that UK Ministers should consent if the Assembly seeks to modify the functions of a reserved authority, given that such modifications could influence the priorities and spending of such authorities. We note, and concur, with the Committee's conclusion that the requirement for Ministers of the Crown consent for the Assembly to legislate on reserved authorities is likely to be in respect of a relatively limited range of matters.

It is important to note however that the consent of a Minister of the Crown is not required to subject reserved authorities in Wales to general duties imposed by provisions in an Act of the Assembly, for example planning permission or prohibiting smoking in public buildings.

OTHER MATTERS

Tax-varying power

19. We have previously concluded that referendums are “most appropriately used in relation to fundamental constitutional issues” and that “the drawbacks and difficulties of their use are serious.”⁸³ The imposition and removal of a referendum requirement in such rapid succession implies an unprincipled and tactical use of referendums which is inappropriate. (Paragraph 74)

The Silk Commission published its first report, on fiscal devolution to Wales, in 2012. It recommended a referendum before an element of income tax could be devolved to Wales.

The Government accepted that recommendation in responding to the Silk Commission in 2013, and the Wales Act 2014 provided for there to be a referendum before the Welsh Rates of Income Tax (WRIT) could be implemented, if the Assembly voted by two-thirds majority, to trigger one.

But the constitutional debate in Wales, and indeed across the United Kingdom, has moved on significantly since the Silk Commission made its recommendation in 2012, not least because of the wider debate across the UK on constitutional issues since the referendum on Scottish independence in 2014.

It has been clear for some time that there is a strong consensus in Wales that the Assembly should not have to call a referendum before the WRIT is implemented. The First Minister of Wales has stated publicly that income tax devolution is “the next logical step”, provided that agreement can be reached between the Government and the Welsh Government on how to adjust the Welsh Block Grant to take account of this. The Government has been discussing these adjustments with the Welsh Government in recent months, and we are confident that agreement will be reached shortly.

We do not therefore agree with the Commission’s conclusion that “the imposition and removal of a referendum requirement in such rapid succession implies an unprincipled and tactical use of referendums which is inappropriate”.

Rather, we would argue that we are now in different times. The constitutional landscape in the UK has changed, and views on fiscal devolution have changed. There is an appetite in Wales for more accountable devolved governance that the implementation of WRIT will help fulfil.

There is already precedent for fiscal devolution without the need for a referendum. The Wales Act 2014 provided for taxes on land transactions and landfill disposal to be devolved to the National Assembly without the need for a referendum. Business Rates are also fully devolved.

The Assembly is already set to become a tax-raising legislature and taking responsibility for WRIT is the next logical step in ensuring greater accountability for the Welsh Government to the people who elect them by becoming responsible for raising more of the money it spends.

The Government committed to remove the referendum at Autumn Statement 2015, having discussed the issue with stakeholders and interested parties across Wales. Clause 17 delivers this commitment, reflecting the evolution of the debate on fiscal devolution in Wales and across the UK.

Elections

20. The House may wish to seek clarification from the Government as to whether they consider that, should the National Assembly for Wales wish to exercise its powers over the franchise, it will have to do so in a way that enfranchises some prisoners so as to ensure that the law is compatible with Convention rights. (Paragraph 78)

In line with the Government's commitment in the St David's Day Agreement, the franchise for Assembly and local government elections in Wales is being devolved to the Assembly. As such, the franchise for elections within devolved competence will be a matter for the Assembly to decide.

A distinct or separate Welsh jurisdiction

21. The cases for and against a 'separate' or a 'distinct' Welsh jurisdiction are complex and we do not intend to express a view on them at this juncture. It is an issue that will grow in importance as the process of Welsh law-making becomes increasingly significant. (Paragraph 83)

22. The reality of a growing body of distinct Welsh law should, however, be reflected in the operation of a single England and Wales jurisdiction. For that reason, we welcome the formation of a 'Justice in Wales' working group, and we trust that the Government will keep this issue under review to ensure that a single jurisdiction can continue to operate effectively in the light of the deepening of the Welsh devolution regime. (Paragraph 84)

The Government has been clear throughout the passage of the Wales Bill that the single legal jurisdiction of England and Wales is the most efficient and effective way to administer the justice system in Wales. We are fully committed to maintaining it.

The overwhelming majority of law that applies in Wales is the same as that which applies in England, and the case has not been made to warrant the cost and complexity of establishing a separate or distinct jurisdiction in Wales. It would risk instilling uncertainty into the justice system in Wales at just the point when the new reserved powers model offers stability for the longer term.

The Government does however recognise the distinctiveness of Wales within the single jurisdiction given the growing body of law that applies in Wales made by the Assembly and the Welsh Ministers. It is for this reason that the body of Welsh law is being recognised in new section A2 of GoWA, inserted by clause 1 of the Bill) as part of the law that applies in Wales.

We consider it essential that the administrative arrangements for justice in Wales also fully reflect this.

As the Committee notes, the Government has established a *Justice in Wales* working group to examine the administrative arrangements for justice in Wales and recommend how those arrangements can be improved. The group is expected to report its findings to Ministers before the Christmas recess.

The Government agrees fully with the Committee that it is essential to ensure law made by the Assembly and Welsh Ministers is reflected in the justice system fully and in a timely manner. We recognise the need to continue to review the operation of the justice system in Wales as the administrative

arrangements evolve to reflect Wales's distinctiveness within the single jurisdiction.

We intend therefore to establish a non-statutory committee to review the operation of the justice system within the settlement provided for by the Wales Bill. We will establish a small group with a focused remit, including representatives from both the UK Government and the Welsh Government. The group will report periodically to the Lord Chancellor, with both the First Minister of Wales and the Secretary of State for Wales receiving copies. Further consideration will be given to the terms of reference of the group and how practitioners and those working in the legal profession in Wales will provide input.

We believe establishing a non-statutory committee to review the justice system in Wales on a periodic basis provides an effective way of ensuring the justice system in Wales keeps pace with the dual influence of Assembly and parliamentary law-making within the single jurisdiction.

Henry VIII powers

23. Clause 53 would permit legislation passed by the National Assembly for Wales to be amended by statutory instrument at the behest of a UK Government minister without the consent, or indeed involvement, of the National Assembly or Welsh Government. The House may wish to consider whether it would be more appropriate for the consent of the National Assembly to be required as, for example, is the case for certain statutory instruments made under the Legislative and Regulatory Reform Act 2006 and the Public Bodies Act 2011. (Paragraph 88)

The power in (what is now) clause 60 of the Bill enables the Secretary of State to make regulations amending primary or secondary legislation which the Secretary of State considers appropriate in consequence of any provision in the Bill.

The Government believes that the power is proportionate and appropriate in order to implement the Wales Bill's provisions, in particular those relating to the reserved powers model. It reflects an equivalent power for the Secretary of State in the Scotland Act 2016. The power can be exercised only in the context of making consequential provision in relation to the Bill itself to ensure the wider statute book reflects the changes this Bill makes.

In regard to modifying parliamentary legislation, regulations laid under section 60(2), that includes provision amending or repealing any provision of primary legislation (made by Parliament or the Assembly) would be subject to the affirmative procedure in both Houses of Parliament. Other regulations made under section 60(2) would be subject to the negative procedure in both Houses. The Government considers this to be an appropriate level of scrutiny for consequential provision of this kind.

In regard to modifying primary or secondary legislation made by the Assembly or the Welsh Ministers, the power reflects well-established reciprocal arrangements. These Assembly regularly empowers Welsh Ministers to modify parliamentary legislation in consequence of Assembly legislation. Two-thirds of Acts passed by the Assembly in 2015 and 2016 include a power for Welsh Ministers to make consequential amendments to Acts of Parliament without any role for Parliament to scrutinise such secondary legislation.

To give an example, the Assembly has recently passed the Renting Homes (Wales) Act 2016. Section 255 of that Act includes a power for Welsh Ministers to make consequential amendments to *any enactment*. “Enactment” is defined in section 252 of the Renting Homes (Wales) Act to include Acts of Parliament and secondary legislation made under Acts of Parliament. There is no requirement for Parliamentary approval of such consequential amendments, so it seems inconsistent for there to be a role for the Assembly in an equivalent power in the Wales Bill.

These reciprocal arrangements allow consequential amendments to be made to other enactments. This ensures that the legislative programmes of both the Welsh Government and the UK Government run smoothly.

The Government understands the concerns expressed by the Committee in respect to the modification of legislation made by Assembly and Welsh Ministers. The Secretary of State for Wales has therefore written to the First Minister of Wales and the Presiding Officer of the National Assembly for Wales committing to early discussions between officials well in advance of regulations being laid which affect legislation made by either the Assembly or the Welsh Ministers. He has further committed to write formally to inform them of any intention to make regulations which affect legislation made by the Assembly or Welsh Ministers, again doing so at the earliest opportunity before regulations are laid.

An equivalent power to clause 60 was passed by Parliament in section 71 of the Scotland Act 2016, which included no role for the Scottish Ministers or the Scottish Parliament. In relation to Scotland, the Government intends to use the power to make consequential changes that are required as a result of the further devolution of elections in Scotland in the 2016 Act. We expect clause 60 to be needed for similar purposes given the devolution of Assembly elections and local government elections in Wales in this Bill.

Agenda Item 5.2



Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru

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Elin Jones AM
Presiding Officer
National Assembly for Wales
Ty Hywel
Cardiff Bay
CF99 1NA

13th December 2016

Ref: 509 SUB 16



Wales Bill: Clause 60 Consequential Provision

I am writing in regard to the powers at clause 60 of the Wales Bill which enable the Secretary of State to make regulations amending primary or secondary legislation which the Secretary of State considers appropriate in consequence of any provision in the Bill.

The power allows the Secretary of State to amend, repeal, revoke or otherwise modify primary or secondary legislation made both by Parliament and the Assembly. It is needed in practice to enable the Secretary of State to make the consequential provision needed to implement Wales Bill provisions, in particular those relating to the new reserved powers model. The power is the same as that conferred on the Secretary of State in the Scotland Act 2016.

The power to amend Assembly legislation is mirrored by similar powers in a number of Acts of the Assembly that enable Welsh Ministers to modify parliamentary legislation in consequence of Assembly Act provisions without recourse to Parliament.

Clause 60 has attracted a great deal of scrutiny during the Wales Bill's passage in the House of Lords, with some Peers critical that it allows the Secretary of State to amend legislation made by the Assembly and Welsh Ministers without need for the Assembly to approve the change.

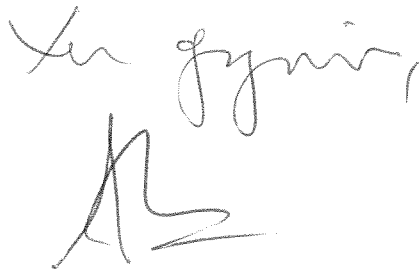
I would like to assure you that the power is necessary in order to ensure the smooth implementation of the provisions in the Wales Bill. The power can be exercised only in the context of making consequential provision in relation to the Bill itself, and in practice the vast majority of such provision will be minor.

Nevertheless I understand the concerns expressed by some Peers, and therefore I would like to offer two further reassurances in terms of how the power would be exercised. Firstly, any intention to exercise the power in respect to legislation made by either the Assembly or Welsh Ministers would be discussed between our officials well in advance of regulations being laid.

Secondly, I would write to you formally informing you of any intention to make regulations which affect legislation made by the Assembly or Welsh Ministers. I would do so at the earliest possible stage before regulations are laid.

I hope you would agree that the close working I have outlined should enable us to resolve any concerns you may have about the exercise of this power well before the relevant regulations need to be laid.

I am writing in similar terms to the First Minister of Wales and copying this letter to him and to the Chair of the Assembly's Constitutional and Legislative Affairs Committee. I am also placing a copy of this letter in the Library of both Houses of Parliament.

A handwritten signature in black ink, appearing to read 'Alun Cairns', with a stylized flourish below it.

Rt Hon Alun Cairns MP
Secretary of State for Wales

Rt Hon Carwyn Jones AM
First Minister of Wales
Welsh Government
Ty Hywel
Cardiff Bay
CF99 1NA

Ref: 509SUB16

13th December 2016

Dear Carwyn,

Wales Bill: Clause 60 Consequential Provision

I am writing in regard to the powers at clause 60 of the Wales Bill which enable the Secretary of State to make regulations amending primary or secondary legislation which the Secretary of State considers appropriate in consequence of any provision in the Bill.

The power allows the Secretary of State to amend, repeal, revoke or otherwise modify primary or secondary legislation made both by Parliament and the Assembly. It is needed in practice to enable the Secretary of State to make the consequential provision needed to implement Wales Bill provisions, in particular those relating to the new reserved powers model. The power is the same as that conferred on the Secretary of State in the Scotland Act 2016.

The power to amend Assembly legislation is mirrored by similar powers in a number of Acts of the Assembly that enable Welsh Ministers to modify parliamentary legislation in consequence of Assembly Act provisions without recourse to Parliament.

Clause 60 has attracted a great deal of scrutiny during the Wales Bill's passage in the House of Lords, with some Peers critical that it allows the Secretary of State to amend legislation made by the Assembly and Welsh Ministers without need for the Assembly to approve the change.

I would like to assure you that the power is necessary in order to ensure the smooth implementation of the provisions in the Wales Bill. The power can be exercised only

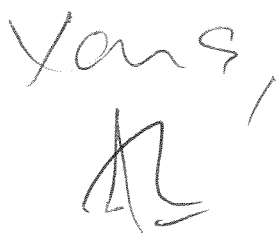
in the context of making consequential provision in relation to the Bill itself, and in practice the vast majority of such provision will be minor.

Nevertheless I understand the concerns expressed by some Peers, and therefore I would like to offer two further reassurances in terms of how the power would be exercised. Firstly, any intention to exercise the power in respect to legislation made by either the Assembly or Welsh Ministers would be discussed between our officials well in advance of regulations being laid.

Secondly, I would write to you formally informing you of any intention to make regulations which affect legislation made by the Assembly or Welsh Ministers. I would do so at the earliest possible stage before regulations are laid.

I hope you would agree that the close working I have outlined should enable us to resolve any concerns you may have about the exercise of this power well before the relevant regulations need to be laid.

I am writing in similar terms to the Presiding Officer in the National Assembly and copying this letter to her and to the Chair of the Assembly's Constitutional and Legislative Affairs Committee. I am also placing a copy of this letter in the Library of both Houses of Parliament.

A handwritten signature in black ink, appearing to read 'Alun Cairns', with a stylized flourish below the name.

Rt Hon Alun Cairns MP
Secretary of State for Wales
Ysgrifennydd Gwladol Cymru



WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE	Fiscal framework for Wales
DATE	19 December 2016
BY	Mark Drakeford AM, Cabinet Secretary for Finance and Local Government

A fiscal framework for Wales, which provides long-term, fair funding for Wales, has been agreed between the Welsh and UK governments.

The package of measures which makes up the fiscal framework has been negotiated between the Welsh Government and HM Treasury.

It will ensure fair funding for Wales for the long term by implementing the funding floor recommended by the Holtham Commission. With a fair funding floor in place the agreement about how to adjust the block grant protects our budget from undue risks which could arise following the devolution of tax powers, including stamp duty land tax, landfill tax and Welsh rates of income tax.

This package of measures paves the way for the partial income tax devolution in Wales.

As part of the agreement, Wales' capital borrowing limit will double to £1bn. It also creates a new, single Welsh reserve, which will enable the Welsh Government to better manage its budget, including the new tax revenues.

The fiscal framework also includes provision for independent oversight – giving independent bodies a role, where required, to provide input into disputes between the Welsh and UK governments on matters relating to the agreement.

I will make an oral statement in the Assembly in the New Year about the agreement.



HM Government



Llywodraeth Cymru
Welsh Government

The agreement between the Welsh Government and the United Kingdom Government on the Welsh Government's fiscal framework



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Foreword

This agreement represents a significant milestone for Wales. Following the recommendations of the Commission on Devolution in Wales (Silk Commission), the Wales Act 2014 provided the legislative framework to devolve tax and borrowing powers to the National Assembly for Wales and the Welsh Government. These powers provide the Welsh Government with further tools to grow the Welsh economy and to vary the level of tax and spending in Wales, thereby increasing its accountability to the people of Wales.

This agreement will enable the powers in the Wales Act 2014 – and any further powers devolved under the current Wales Bill – to be implemented. In particular, it will support the devolution of stamp duty land tax and landfill tax, and the creation of Welsh rates of income tax (subject to the enactment of the Wales Bill currently before Parliament).

Building on the joint funding announcement in 2012 and the funding floor implemented at the 2015 Spending Review, this agreement puts in place fair, sustainable and coherent funding arrangements across all the Welsh Government's tax and spending responsibilities. It also provides the Welsh Government with additional capital borrowing powers and a new Wales Reserve to help manage its budget.

The UK and Welsh governments have worked closely and constructively to reach an agreement that is fair for Wales and for the rest of the UK.

We will continue to work together to implement this agreement and the new powers it supports, which will bring benefits to Wales and to the United Kingdom as a whole.



**MARK DRAKEFORD AM
CABINET SECRETARY FOR FINANCE
AND LOCAL GOVERNMENT**



**RT HON DAVID GAUKE MP
CHIEF SECRETARY TO
THE TREASURY**

Context and scope

1. This agreement sets out the Welsh Government's funding arrangements to support its existing responsibilities, the implementation of Wales Act 2014, and any further powers devolved under the current Wales Bill.
2. The funding arrangements for areas that are currently within EU competence are outside the scope of this agreement.
3. Under the Wales Act 2014, the Welsh Government is taking on the following new tax powers:
 - Stamp duty land tax (SDLT) from 2018-19
 - Landfill tax from 2018-19
 - Welsh rates of income tax (WRIT) from 2019-20 (subject to the removal of the referendum requirement through the current Wales Bill and the Welsh Government setting out its intention to introduce Welsh rates of income tax to the National Assembly for Wales)
4. The Welsh Government's block grant funding is therefore being updated (subject to the enactment of the current Wales Bill and the implementation of Welsh rates of income tax in 2019-20) to reflect these new powers and to address longstanding concerns in Wales about fair funding.
5. Alongside these changes to block grant funding, this agreement also covers capital borrowing, budget management tools, treatment of policy spill-over effects and implementation arrangements.

Welsh Government block grant funding

6. As summarised in Box 1 and set out in further detail below, the Welsh Government's new block grant funding arrangements comprise two elements: a Barnett-based 'Holtham floor'¹ in relation to spending devolution and Comparable block grant adjustments for tax devolution.

Box 1: Summary of the agreed block grant funding arrangements

The key elements are:

- From 2018-19 a new **needs-based factor will be included in the Barnett Formula** to determine changes to Welsh Government block grant funding in relation to spending devolution
- This **needs-based factor will be set at 115%** based on the range suggested by the Holtham Commission and the SR15 funding floor
- While relative Welsh Government funding per head remains above 115%, a **transitional factor of 105%** will be set
- Changes to block grant funding in relation to tax devolution will be determined through the **Comparable model** (after an initial baseline deduction to reflect tax foregone by the UK government at the point of devolution)
- The Comparable model will be applied to **stamp duty land tax, landfill tax and each band of income tax**
- These arrangements will provide stability to the Welsh Government's funding in a way that is **fair to Wales and the rest of the UK**

Current arrangements and relative funding

7. Under the current arrangements, the Welsh Government is largely funded through a block grant from the UK government². Changes to the block grant are determined by the Barnett Formula. Under this formula, the block grant in any given financial year is equal to the block grant in the previous year plus a population share of changes in UK government spending on areas that are devolved to the Welsh Government.
8. The Welsh Government has, for some time, been concerned about the rate of convergence in relative funding per head towards the level in England. This was highlighted by the Independent Commission on Funding and Finance for Wales (the Holtham Commission), which was tasked by the Welsh Government to examine its funding arrangements and explore alternative funding mechanisms. The reports³, published in 2009 and 2010, suggested Wales had relative needs of 114% to 117% of English needs and expressed concern that relative funding in Wales might fall below this range. This issue of convergence was also recognised in a joint statement by both governments in 2012⁴.
9. Examining the Welsh Government's relative funding per head since 1999-00 shows that until 2009-10, there was a sustained period of convergence towards English

¹ As proposed by the Independent Commission on Funding and Finance for Wales (Holtham Commission)

² The Welsh Government also retains revenues from business rates

³ <http://gov.wales/docs/icffw/report/100705fundingsettlementsumen.pdf>

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214844/2012-10-23-Joint-statement-on-funding-reform-ENGLISH1.pdf

funding levels. However, since 2009-10, relative Welsh Government funding per head has diverged from English levels and is expected to be around 120% during the 2015 Spending Review period. This is displayed in the graph below:

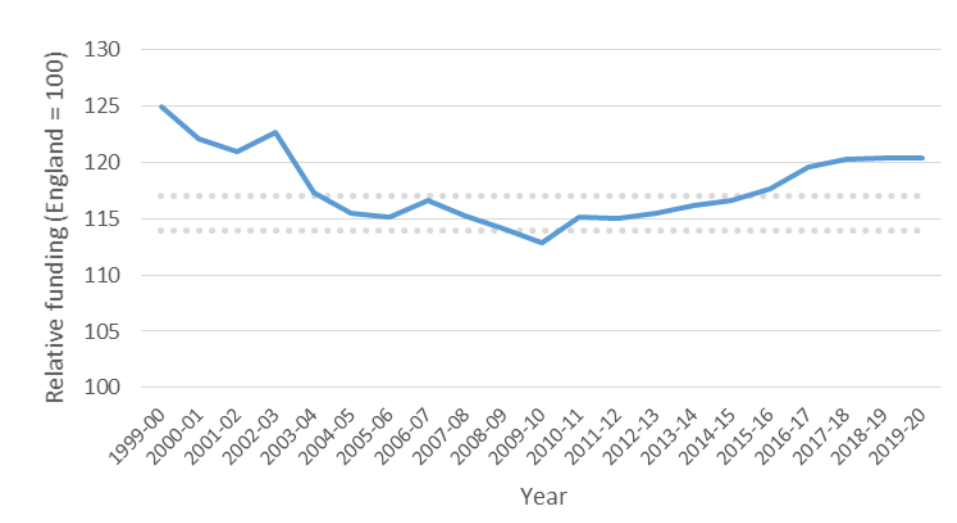


Figure 1: Welsh Government relative funding per-head, 1999 to 2020

10. There are two main causes of the convergence/divergence effect inherent in the Barnett Formula:
- **Spending growth** – Welsh Government funding per head converges towards English levels when UK government spending grows (in cash terms), all else being equal. Conversely, Welsh Government funding per head diverges when spending falls (again in cash terms), all else being equal.
 - **Relative population growth** – Welsh Government funding per head converges towards English levels when population growth is faster in Wales than England, all else being equal. Conversely, Welsh Government funding per head diverges when population growth is slower in Wales, all else being equal.
11. Both of these drivers have been in evidence during the periods of convergence and divergence displayed in the graph above. During the first decade of devolution, rapid convergence was driven by growth in public spending. Thereafter, although public spending is growing in cash terms (and capital spending is growing in real terms) relative Welsh Government funding has actually diverged due to slower population growth. However, when growth in public spending returns to the long-term trend, convergence is expected to resume and relative Welsh Government funding will ultimately fall below the range suggested by the Holtham Commission.

Impact of tax devolution

12. The UK government established the Commission on Devolution in Wales (the Silk Commission) in 2011 to examine financial and constitutional arrangements in Wales, and recommend ways in which they might be improved. The Commission concluded the National Assembly for Wales should have stronger financial accountability to the people of Wales while retaining the security and stability of sharing resources as part of the UK.
13. In particular, while the National Assembly for Wales already had substantial responsibility for public spending in Wales, the Commission recommended it should have new tax powers. There are two key benefits of tax devolution in relation to accountability:

- The Welsh Government becomes responsible for funding more of its spending;

- There are more choices for the Welsh Government over the level of tax and spending in Wales.
14. This means the Welsh Government's funding arrangements need to change alongside tax devolution. Specifically, the Welsh Government's funding will ultimately comprise two separate funding streams:
- Revenues from business rates, devolved taxes (stamp duty land tax and landfill tax) and Welsh rates of income tax;
 - Adjusted block grant funding from the UK government.
15. The UK and Welsh governments have been considering how the Welsh Government's future block grant funding should be determined to deal with both tax devolution and longer-term concerns about the likely resumption of Barnett-based convergence.

Block grant funding principles

16. The UK and Welsh governments have agreed a set of block grant funding principles designed to support the development of a robust and sustainable approach to funding:
- **Relatively simple to operate and understand** – the funding system should use straightforward and objective calculations rather than relying on complex statistical techniques or assumptions;
 - **Not subject to ongoing negotiation** – aside from periodic review, the funding system should operate mechanically (like the Barnett Formula);
 - **Fair funding for the long-term** – the Welsh Government should have a fair level of funding based on relative need, subject to appropriate risks in relation to tax devolution;
 - **Consistent treatment of risks and opportunities** – the Welsh Government should hold symmetric (and therefore off-setting) risks and opportunities across tax and spending, in particular through using the same population numbers for all elements of block grant funding.
17. The new funding agreement set out below meets all of these principles. In particular, it provides the Welsh Government with a long-term and sustainable fair funding guarantee that incorporates a consistent approach to risks and opportunities.

Barnett-based funding floor

18. At the 2015 Spending Review (SR15) the UK government implemented a funding floor in Wales. This provided a guarantee that the Welsh Government's block grant funding per head would not fall below 115% of equivalent funding per head in England. This guarantee was provided for the current Parliament, after which the floor would be reset.
19. The two governments have now agreed to implement a new funding floor mechanism from 2018-19, which was originally recommended by the Holtham Commission. Under this Holtham floor, all changes in the Welsh Government's block grant determined by the Barnett Formula will be multiplied by a new needs-based factor. While this retains almost all of the features of the Barnett Formula, there is one key difference – all else being equal, relative Welsh Government funding will converge towards this needs-based factor over time (rather than towards 100% as under the current arrangements). This therefore provides a more mechanical funding floor than the simple floor introduced at SR15.
20. The diagram below sets out the existing Barnett Formula and how this will be applied in Wales under this agreement.

Barnett Formula						
Change in UK department expenditure limit	x	Comparability factor	x	Population share	=	Change in Welsh Government block grant

Barnett Formula to be applied in Wales								
Change in UK department expenditure limit	x	Comparability factor ⁵	x	Population share	x	New needs-based factor	=	Change in Welsh Government block grant

21. The governments have agreed this needs-based factor will be set at 115%, based on the range recommended by the Holtham Commission and the funding floor implemented at the SR15. However, for a transitional period, while relative Welsh Government block grant funding per head remains above 115% of equivalent England funding per head, the factor will be set at 105%. From 2018-19 and for the remainder of the current spending review period, all uplifts to Welsh Government DEL above the level in 2017-18 will attract the 105% factor, while any reductions below the 2017-18 level will be applied without the additional factor.
22. Relative Welsh Government block grant funding is expected to converge slowly from around 120% into the range recommended as fair by the Holtham Commission (114% to 117%).
23. At the point that relative block grant funding reaches 115%, the transition period will end and the multiplier will be set at 115%.
24. The two governments have agreed a methodology for assessing relative funding and this will be used to determine when the multiplier needs to change from 105% to 115%. The two governments have further agreed that input and/or assurance can be sought from independent bodies. Further details on the process for moving to the longer-term post-transition arrangements are outlined in Annex A.

Comparable block grant adjustments for tax devolution

25. When further areas of spending are devolved, the changes to the Welsh Government's block grant funding comprise two elements:
- Initial baseline adjustment – this reflects UK government spending plans at the point of devolution
 - Subsequent block grant changes – these are based on changes in equivalent UK government spending in the rest of the UK (via the Barnett Formula)
26. For tax devolution, there are two similar elements:
- Initial baseline adjustment – this reflects tax foregone by the UK government at the point of devolution
 - Subsequent block grant changes – these are based on changes in equivalent UK government tax in the rest of the UK

⁵ The comparability factor reflects the proportion of spending by the relevant UK department on areas that are devolved.

27. The initial baseline adjustment for tax devolution is relatively straightforward – the approach that will be used to estimate Welsh taxes at the point of devolution is set out in Annex B. However, as has been widely explored in recent academic literature, there are a range of choices about how subsequent block grant changes are determined.

28. Based on the agreed principles, there are two key issues:

- **Impact of tax base growth** – the Welsh Government should have fair funding subject to “appropriate” tax risks.
- **Treatment of population change** – the same population numbers should be used to calculate changes in the block grant in relation to tax devolution and spending devolution.

29. Alongside the Barnett-based funding floor, the UK and Welsh governments have agreed these principles are satisfied by the application of the Comparable model to each of the devolved taxes (stamp duty land tax and landfill tax) and to each band of income tax.

30. The diagram below sets out how the Comparable model determines changes in the block grant (after the initial baseline adjustment).

Comparable model						
Change in equivalent UK government tax	x	Comparability factor	x	Population share	=	Change in Welsh Government block grant

31. It should be noted:

- An increase in equivalent UK government tax corresponds to a reduction in the Welsh Government block grant (and vice versa).
- The comparability factor reflects tax per head in Wales as a proportion of the corresponding UK government tax per head at the point of devolution. For example, based on HMRC’s 2015-16 estimates⁶, the comparability factor is 25% for stamp duty land tax and 87% for landfill tax.
- The Comparable model uses the same population share as the Barnett Formula.

32. There are two further key points:

- **Applying the Comparable adjustment to each band of income tax** – The UK government remains responsible for defining taxable income across the UK, which includes responsibility for all tax reliefs and the personal allowance. As the composition of the income tax base in Wales is significantly different from the UK average, the two governments have agreed that the Comparable model will be applied separately to each band of income tax (basic, higher and additional rate). This ensures the new funding arrangements will deal with any UK government decisions to change the UK-wide income tax base (for example changes to the personal allowance) entirely mechanically. It will ensure the Welsh Government’s tax revenues are broadly unaffected by UK government policy decisions⁷. For completeness, the Comparable adjustment will be applied to aggregate changes in the two fully devolved taxes.

⁶ <https://www.gov.uk/government/statistics/disaggregation-of-hmrc-tax-receipts>

⁷ There is more information on the treatment of other policy ‘spill-over’ effects later in the agreement

- **Consistent treatment of population change** – As noted, in a recent report by the Welsh Governance Centre and Institute for Fiscal Studies⁸, the agreed approach to block grant funding delivers a consistent approach to population change – the same population numbers will be used to calculate changes in the Welsh Government’s block grant funding in relation to both tax and spending (so any impacts of differential growth will offset within the Welsh Government’s funding). This will be the case even during the transitional period.

33. Annex B sets out more details on the interaction between these adjustments and the Welsh Government’s tax revenue (in particular the timing of forecasts and reconciliation to actuals).

⁸ <http://sites.cardiff.ac.uk/wgc/files/2016/12/161209-WGC-IFS-2nd-Report-Barnett-Squeezed.pdf>

Policy ‘spill-over’ effects

34. As summarised in Box 2 and set out in further detail below, this section covers the treatment of spill-over effects.

Box 2: Summary of the treatment of spill-over effects

The key elements are:

- **Direct effects** – These will all be accounted for, either mechanically through the block grant adjustment or separately once identified.
- **Behavioural effects** – These will only be accounted for in exceptional circumstances, where the effects are material and demonstrable, and both governments agree that it is appropriate to do so.
- **Second round effects** – These will not be accounted for.

35. Policy ‘spill-over’ effects occur where a decision by one government has an impact on the tax or spending of another⁹. There are three main categories:

- **Direct effects** – these are the financial effects that will directly and mechanically exist as a result of a policy decision (before any associated change in behaviour). For example, if the UK government increases the personal allowance then the Welsh Government will receive less revenue from Welsh rates of income tax.
- **Behavioural effects** – these are the financial effects that result from people changing behaviour following a policy decision. For example, if the Welsh Government sets a different additional rate of income tax¹⁰, it may encourage people to move across the border thereby affecting the UK government’s revenues.
- **Second round effects** – these are the wider economic impacts that may result more indirectly from policy decisions. For example, a change in income tax rates in Wales could affect economic activity and therefore the amount of VAT generated for the UK government in Wales.

36. Taking these in turn, the UK and Welsh governments have agreed **all direct effects will be accounted for**. As set out in the block grant funding section, applying the Comparable model to each income tax band separately will ensure UK government income tax policy decisions (such as changes to the personal allowance) will be dealt with entirely mechanically.

37. The UK and Welsh governments have also agreed **behavioural effects can be accounted for** in exceptional circumstances, where the effects are material and demonstrable, and both governments agree it is appropriate to do so.

38. Finally, it has been agreed **second round effects will not be accounted for** due to the significant uncertainty surrounding the causality and scale of any financial impact.

39. For all spill-over effects, assessment of causality and scale of financial impacts will be based on a shared understanding of the evidence. Any transfer relating to a spill-over effect must be jointly agreed by both governments. Without a joint agreement, no

⁹ Note this doesn’t include decisions by the UK government that affect block grant funding, as this is the fundamental basis of the Barnett Formula (and associated arrangements for tax devolution).

¹⁰ The design of Welsh rates of income tax means that the Welsh Government determines whether there are differential rates of income tax between Wales and England (as UK rates are paid by English taxpayers while ‘UK rates less 10p’ are paid by Welsh taxpayers)

transfer will be made. Issues relating to spill-overs will first be discussed by officials in both governments. Where officials are unable to reach an agreement this will be discussed by Ministers meeting as the Joint Exchequer Committee (Wales). These discussions may be informed by seeking the view of independent bodies. Where the governments are unable to reach agreement at official or ministerial level a dispute can be raised through the usual channels (see later section on dispute resolution).

Capital borrowing

40. As summarised in Box 3 and set out in further detail below, this section covers the changes to the Welsh Government's capital borrowing powers.

Box 3: Summary of the changes to the Welsh Government's capital borrowing powers

The key elements are:

- The Welsh Government's **overall capital borrowing cap will be increased to £1bn**
- From April 2019 the Welsh Government's **annual capital borrowing limit will be increased to £150m** (15% of the overall cap)

41. The Welsh Government's existing capital borrowing limits (set out in the Wales Act 2014) are being increased.

42. Under the Wales Act 2014, the Welsh Government can borrow up to £125m per year from 2018-19 within an overall cap of £500m. Within these parameters, the Welsh Government can borrow for any purpose within its devolved responsibilities. In addition, the UK government agreed the Welsh Government could have limited early access to borrowing (in 2016-17 and 2017-18) to take forward improvements to the M4. Amounts borrowed through this early access facility require consent from HM Treasury.

43. The Welsh Government can borrow from the National Loans Fund (via the Secretary of State for Wales) or through a commercial loan (directly from a bank or other lender). Following the implementation of the UK government's St David's Day announcement, the Welsh Government will also be able to issue bonds. Borrowing for capital expenditure will be in pounds Sterling.

44. The governments have now agreed the statutory limit on borrowing for capital expenditure will be increased to £1bn. The UK government will therefore amend the Wales Bill accordingly. The annual limit on the amount of borrowing for capital expenditure will also be increased. Alongside the introduction of Welsh rates of income tax, the annual limit will be set at 15% of the overall borrowing cap, which is equivalent to £150m a year. There remain no restrictions about how the Welsh Government can use its borrowing powers to deliver its devolved responsibilities.

45. The Welsh Government will notify the Treasury monthly about planned capital borrowing, outstanding debt and repayment profile. The repayment arrangements are to remain consistent with the Wales Act 2014. Under these arrangements, the term of any loan would normally be for 10 years but this can be altered to reflect the expected lives of the assets being purchased through the loan.

Budget management tools

46. As summarised in Box 4 and set out in further detail below, this section covers the changes to the Welsh Government's budget management tools.

Box 4: Summary of the changes to the Welsh Government's budget management tools

The key elements are:

- The Welsh Government's cash reserve and access to the Budget Exchange facility are being combined into a **new Wales Reserve** from April 2018
- There will be **no annual limit for payments in** to the Wales Reserve
- The Wales Reserve **can hold up to £350m in aggregate**
- There will be an **annual drawdown limit of £125m for resource and £50m for capital**
- The Welsh Government's **resource borrowing powers will remain as set out in Wales Act 2014**

47. The Welsh Government's budget management tools are being extended and rationalised. At the moment they comprise:

- **Resource borrowing** – the Welsh Government can borrow up to £200m each year (within an overall £500m cap) if tax revenues are lower than forecast. Repayments must be within four years.
- **Budget exchange** – this facility enables the Welsh Government to carry forward up to 0.6% of its resource DEL budget and 1.5% of its capital DEL budget into the next financial year.
- **Cash reserve** – the Welsh Government can save surplus revenues into a cash reserve (once any resource borrowing is repaid), which can be drawn down as required in future years. The reserve must be held within the UK government rather than with a commercial bank

48. The two governments have agreed the cash reserve and access to the Budget Exchange facility will be replaced with a new Wales Reserve from April 2018. This timing will allow the Welsh Government to save any 2017-18 underspends in the new Reserve to support the devolution of stamp duty land tax and landfill tax and the introduction of their successor taxes in Wales – land transaction tax and landfill disposals tax, respectively, in April 2018. The Reserve will also include £98.5m as agreed as part of the arrangements for the full financial devolution of non-domestic rates in Wales.

49. The Wales Reserve will be held within the UK government and will be separated between resource and capital. Resource funding (including resource block grant and tax receipts) can be paid into the resource reserve. Funds in the resource reserve may be drawn down to fund resource or capital spending. Capital funding (including capital block grant and capital borrowing) can be paid into the capital reserve. Funds in the capital reserve may be drawn down to fund capital spending only.

50. The Wales Reserve will be capped in aggregate at £350m. There are no annual limits for payments into the Wales Reserve. Annual drawdowns will be limited to £125m for resource and £50m for capital. The detailed operational arrangements will be agreed between the governments. In line with existing arrangements, Welsh Ministers may request additional flexibility with the consent of Treasury Ministers in exceptional circumstances.
51. The governments have also agreed the resource borrowing powers set out in Wales Act 2014 remain unchanged as they already reflect the expected volatility from full implementation of the Welsh Government's new tax powers, including Welsh rates of income tax).

Implementation arrangements

52. While the two governments will need to work through the detailed governance and operational arrangements, they have reached high-level agreement in a number of key areas:

- **Governance** – the implementation of this agreement will continue to be overseen by the Joint Exchequer Committee (Wales), with most of the new funding arrangements implemented during 2017 to begin in 2018-19. The Joint Exchequer Committee (Wales) (Officials) will oversee this work at official level. Memoranda of Understanding will be agreed between the bodies that will perform the duties outlined in this agreement or relating to the operation of the new tax powers, and will then be published.
- **Reporting to the UK Parliament and National Assembly for Wales** – the two governments recognise accountability to the UK Parliament and National Assembly for Wales is crucial and welcome detailed scrutiny of this agreement. Progress on the implementation and operation of the funding arrangements will continue to be reported to the UK Parliament and the National Assembly for Wales through annual Wales Act 2014 implementation reports.
- **Data and information sharing** – the two governments have agreed a shared objective to ensure all parties have access to the necessary technical, operational and policy information (including data) to discharge their duties. Sharing will be as full and open as possible subject to statutory, commercial and confidentiality restrictions. In particular, the UK government will initially provide information about income tax via the Public Use Tape, but will work with the Welsh Government (as with the Scottish Government) to ensure access to data that supports robust policy development and the production of forecasts of a comparable quality to those produced by the Office for Budget Responsibility (OBR). Data must be provided in sufficient time to support the production of forecasts in advance of the Welsh Government's draft Budget. The UK government will also require access to information about fully-devolved taxes in order to undertake wider compliance activities.
- **Forecasting responsibilities** – the OBR will continue to produce all UK-wide economic and fiscal forecasts for the UK government (which includes revenues from taxes devolved in Wales). The Welsh Government will be able to decide whether to use the OBR's forecasts or to put in place alternative independent forecasting arrangements. For a short period the Welsh Government may produce its own forecasts, while putting in place independent forecasting arrangements. The Welsh Government's own forecasts would be subject to independent scrutiny. The OBR will also produce all forecasts of relevant UK government taxes that are required to operate the Comparable model for stamp duty land tax, landfill tax and each band of income tax.
- **Financial reporting** – building on existing reporting arrangements, the Welsh Government will provide regular financial information to the UK government, Office for National Statistics and OBR setting out its tax, borrowing and spending plans. This will include planned capital borrowing for the whole of the Spending Review period (updated in advance of each financial year), planned drawdown of funding from the Wales Reserve in advance of each financial year, monthly in-year funding/spending data and five-year tax forecasts.

- **Implementation and running costs** – as set out in the Statement of Funding Policy, the Welsh Government will meet all the net costs of devolution including implementing and operating Welsh rates of income tax.
- **Periodic review** – the two governments have agreed that, although the agreement is expected to operate without regular renegotiation, it should be subject to periodic review. The first review will take place before the end of the block grant funding transitional period, and may include input from independent bodies. Either government can request a review but it is not intended that these arrangements will be reviewed more than once during an Assembly or Parliamentary term.
- **Dispute resolution** – the dispute resolution process set out here applies to all disputes relating to the implementation or operation of this agreement. These disputes will firstly be considered by officials, initially at working level and then by JEC (Wales) (Officials). Where officials are unable to reach an agreement this will be considered by Ministers at JEC (Wales). Discussions may be informed at any stage by seeking the view of independent bodies. If Ministers fail to reach agreement the dispute falls – there would be no specific outcome from the dispute and so no fiscal transfer between the governments. If either government wishes to pursue the dispute further, the processes outlined in the Memorandum of Understanding between the UK government and the devolved administrations provides that basis.

53. All remaining operational arrangements will be finalised prior to implementation.

Annex A – Relative funding methodology

This annex summarises the agreed relative funding methodology.

This is designed to compare Welsh Government block grant funding per head against equivalent UK government funding per head in England (UK government funding for England on areas that are devolved in Wales).

This methodology will be used at each Spending Review to determine when relative Welsh Government block grant funding per head reaches 115% of comparable UK government funding per head in England, at which point the needs-based factor of 115% will replace the transitional 105%. Specifically, the change will take place from the first year where relative Welsh Government funding is projected to be 115.0% to the nearest 0.1% (below 115.05%). Input may be sought from independent bodies to support this process.

The agreed methodology involves four steps:

- 1) **Welsh Government funding** is based on total DEL before any adjustments for tax devolution.
- 2) **Equivalent UK government funding for England** is calculated by multiplying each department's total DEL by the comparability factor used in the Barnett Formula¹¹ (where the comparability factor reflects the proportion of each department's spending on areas that are devolved in Wales).
- 3) **An adjustment is made to each of the above** to deal with the unique treatment of non-domestic rates (explained below).
- 4) **The ONS principal population projections** are used to calculate funding on a per head basis.

An adjustment is required in relation to non-domestic rates to compare relative Welsh Government funding against the range recommended by the Holtham Commission, which considered the position before tax devolution. While we can use Welsh Government total DEL before block grant adjustments to deal with stamp duty land tax, landfill tax and Welsh rates of income tax, a different approach is required for the devolution of non-domestic rates as this is uniquely dealt with within the Barnett-based block grant.

The agreed solution is to add non-domestic rates into the funding totals calculated in steps one and two above. To remove the effects of divergent policies, the assumption is made that non-domestic rate revenues in Wales would have grown at the same rate per head as in England in the absence of devolution. In addition to using English non-domestic rate revenues, the growth in these revenues is used to calculate the appropriate Welsh non-domestic rate numbers.

¹¹ The comparability factors used will be those in the most recent Statement of Funding Policy unless there are machinery of government or other changes that are not captured by those factors. Revisions to comparability factors for the purposes of measuring relative funding will need to be agreed by both governments.

Annex B – Further details on the operation of the tax block grant adjustments

This annex sets out for each tax:

- How the initial baseline block grant adjustments will be calculated
- When forecasts of corresponding UK government taxes will be made prior to the start of each financial year and whether they will be updated in-year
- When these forecasts will be reconciled to outturn

Stamp duty land tax

- **Baseline adjustment** – A provisional baseline for the adjustment will use the OBR's autumn 2017 forecast of receipts in Wales in 2017-18. This will be updated to use actual receipts in Wales in 2017-18 in HMRC's official statistics publication on stamp duties¹². The Comparable model will be applied to determine deductions for 2018-19 onwards.
- **Forecasting** – The Comparable model will use forecasts of UK government stamp duty land tax up to the autumn prior the start of each financial year in question. There will be a further in-year update using the autumn forecasts to ensure that the Welsh Government is shielded from UK-wide economic impacts¹³.
- **Reconciliation** – The forecasts will be reconciled to outturn once these are available around six months after the end of the financial year. The outcome of this reconciliation will be applied to the Welsh Government's funding for the following financial year.

Landfill tax

- **Baseline adjustment** – A provisional baseline for the adjustment will use the OBR's autumn 2017 forecast of receipts in Wales in 2017-18. This will be updated to use an estimate of outturn receipts in Wales based on official statistics. The Comparable model will be applied to determine deductions for 2018-19- onwards.
- **Forecasting** – The Comparable model will use forecasts of UK government landfill tax up to the autumn prior the start of each financial year in question. There will be a further in-year update using the autumn forecasts to ensure that the Welsh Government is shielded from UK-wide economic impacts¹³.
- **Reconciliation** – The forecasts will be reconciled to outturn once these are available around 6 months after the end of the financial year. The outcome of this reconciliation will be applied to the Welsh Government's funding for the following financial year.

Welsh rates of income tax

- **Baseline adjustment** – If the Welsh Government sets all three Welsh rates at 10% in 2019-20 (the earliest possible introduction date, subject to the enactment of the Wales Bill and the Welsh Government setting out its intention to introduce Welsh rates of income tax to the National Assembly for Wales) then the baseline adjustment will equal the receipts collected in that year. If the Welsh Government sets different rates then the baseline adjustment will equal an estimate of what would have been generated by 10%. In either scenario, this will provisionally use an

¹² <https://www.gov.uk/government/collections/stamp-duties-statistics>

¹³ In the case of in-year UK government tax policy changes, the Welsh Government will have the option to defer the impact on the block grant adjustment until the final reconciliation when outturn data is available.

OBR forecast and will be updated once actual receipts are available in the summer of 2021. The Comparable model will subsequently be applied to determine further deductions for 2020-21 onwards.

- **Forecasting** – The Comparable model will use forecasts of UK government income tax up to the autumn prior to the start of each financial year in question. The UK government will also transfer the Welsh Government's income tax revenues based on Welsh independent forecasts or the OBR autumn forecast until arrangements for Welsh independent forecasts are in place. As the Welsh Government does not therefore hold any in-year risk, there will not be an in-year update.
- **Reconciliation** – The forecasts will be reconciled to outturn once these are available around 15 months after the end of the financial year. The outcome of this reconciliation will be applied to the Welsh Government's funding for the following financial year.



Constitution Committee inquiry: The Legislative Process

Draft Call for Evidence on the delegation of powers

The Constitution Committee is conducting a large-scale inquiry into the legislative process. This follows its major 2004 report on *Parliament and the Legislative Process*.¹ The Committee is interested in how bills are prepared by Government and scrutinised in Parliament; whether and how outside organisations and the public are involved in the process; and how the legislative process is, or could be, affected by new technology and by the UK's withdrawal from the EU.

The inquiry began in October 2016 and will continue over the next year. It will be taken in four parts, each addressing a stage or significant factor in the legislative process. These are:

1. Preparing legislation for introduction in Parliament;
2. The passage of legislation through Parliament;
3. The delegation of powers; and,
4. The period after Royal Assent.

The Committee took evidence on stage 1, 'Preparing legislation for introduction to Parliament', between October and December 2016. The Committee has not yet issued a Call for Evidence in relation to stage 2: 'The passage of legislation through Parliament'—it will return to this topic in the 2017-18 Session of Parliament.

Stage 3: The delegation of powers

The Committee is now seeking evidence in relation to stage 3 of its inquiry: 'The delegation of powers', before the expected introduction of the Government's 'Great Repeal Bill' in the next session of Parliament. Delegated powers are frequently included in the Bills presented to Parliament by the Government. These powers allow Ministers (and occasionally other public bodies) to use 'secondary legislation' (usually in the form of statutory instruments) to do things which would otherwise need another Bill. The Committee is focusing on the inclusion of delegated powers in primary legislation, although it will consider secondary legislation and the manner in which it is scrutinised as necessary to inform its consideration of the delegation of powers in primary legislation.

¹ Constitution Committee – Parliament and the Legislative Process:
<http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/17302.htm>

The Committee would welcome written submissions on any aspect of this topic, and particularly on the issues and questions set out below. We welcome contributions from all interested individuals and organisations.

Written evidence should be submitted online via the committee's website, <http://www.parliament.uk/legislative-process-written-submission-form>. The deadline for submissions is 5pm on Wednesday 18 January 2017.

Questions

Consistency of approach

1. For what purposes is it appropriate to delegate powers to make law to Government? Is there a clear boundary between subject-matters which are appropriate for primary legislation on the one hand, and for secondary legislation on the other?
2. Does the Government have a consistent approach to the delegation of powers and, if so, on what basis has that approach been adopted? Has the outcome of this approach been satisfactory?
3. How effective is parliamentary scrutiny of provisions in primary legislation that delegate power to the Government?
4. Are there circumstances in which 'skeleton' Bills and clauses are appropriate? Are 'skeleton' Bills and clauses becoming more frequent, and if so, why?
5. How far are matters previously dealt with in secondary legislation moving into guidance, codes of practice and directions; and what are the implications of any such movement for Parliamentary scrutiny?

Scrutiny of secondary legislation

6. The extent to which it is appropriate for Parliament to devolve power to the Government inevitably depends on the appropriateness of Parliament's future scrutiny of the exercise of those powers. To what extent are current procedures for scrutinising secondary legislation effective?
7. Is there a case for making secondary legislation amendable in certain circumstances (and if so, in which circumstances), or for greater use of an enhanced scrutiny process that allows Parliament to scrutinise draft instruments before a final version is introduced for approval (such as the existing super-affirmative procedure)? What problems arise from the 'take it or leave it' process currently used for agreeing secondary legislation?
8. Is there a case for allowing either or both Houses of Parliament additional powers to delay or reject secondary legislation?

Henry VIII powers

9. Bills often include 'Henry VIII powers', which allow the Government to amend or repeal primary legislation by secondary legislation. For what reasons might such powers be appropriate, and with what level of scrutiny? Are there any subject-matters or purposes for which Henry VIII powers should never be used? Should Henry VIII powers ever be exercisable by a person who is not a Minister?

Information provision

10. Do the Explanatory Notes that accompany a Bill contain sufficient information about what the proposed secondary legislation will do?
11. How far is the intended content of secondary legislation made clear when the Bill is going through Parliament? Should draft secondary legislation be routinely made available when Bills are scrutinised by Parliament? Are there any examples of secondary legislation that brought forward provisions which were unexpected in the light of information provided by Government when the primary legislation was being enacted?

Brexit

12. To what extent, in Brexit-related primary legislation, might the use of secondary legislation be necessary or justified to convert the 'acquis' (the body of existing EU law) into British law?
13. Do you envisage that any changes will be required to procedures related to the delegation of powers or secondary legislation, to cope with the legislation likely to be required as a result of Brexit?

ANNEX: GUIDANCE FOR SUBMISSIONS

Written evidence must be submitted online via the committee's inquiry page <http://www.parliament.uk/legislative-process-written-submission-form>. Please do not submit PDFs (if you do not have access to Microsoft Word you may submit in another editable electronic form). If you cannot submit evidence online, please contact the committee staff.

The deadline for written evidence is 5pm on Wednesday 18 January 2017.

Concise submissions are preferred. A submission longer than six pages should include a one-page summary. Paragraphs should be numbered. Submissions should be dated, with a note of the author's name, and of whether the author is making the submission on an individual or a corporate basis. All submissions submitted online will be acknowledged automatically.

Personal contact details supplied to the committee will be removed from submissions before publication but will be retained by the committee staff for specific purposes relating to the committee's work, such as seeking additional information.

Submissions become the property of the committee which will decide whether to accept them as evidence. Evidence may be published by the committee at any stage. It will appear on the committee's website and be deposited in the Parliamentary Archives. Once you have received acknowledgement that your submission has been accepted as evidence you may publicise or publish it yourself, but in doing so you must indicate that it was prepared for the committee. If you publish your evidence separately you should be aware that you will be legally responsible for its content.

You should not comment on individual cases currently before a court of law, or matters in respect of which court proceedings are imminent. If you anticipate such issues arising, you should discuss with the clerk of the committee how this might affect your submission.

Certain individuals and organisations may be invited to appear in person before the committee to give oral evidence. Oral evidence is usually given in public at Westminster and broadcast in audio and online. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Substantive communications to the committee about the inquiry should be addressed through the clerk or the chairman of the committee, whether or not they are intended to constitute formal evidence to the committee.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy directly.

You may follow the progress of the inquiry at <http://www.parliament.uk/legislative-process-inquiry>.

To contact the staff of the committee, please email constitution@parliament.uk.