

## Consultation Response Form

Your name:	Welsh Language Commissioner
Organisation (if applicable):	Welsh Language Commissioner
Email / Telephone number:	
Your address:	post@cyg-wlc.cymru

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

<b>QUESTION 1: Do you agree that market stability reports should be prepared on a regional basis, by local authorities and local health boards through the regional partnership boards? If not, please give your reasons.</b>			
Agree X but please see below	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
<p>We have no objection to the intention that market stability reports should be prepared. 2.8 in the Code of Practice and Guidance outlines that Section 144B of the Social Services and Well-being (Wales) Act 2014 requires local authorities to produce a market stability report which includes;</p> <ul style="list-style-type: none"> <li><span style="color: #0070c0;">○</span> an assessment of the sufficiency of provision of care and support;</li> <li><span style="color: #0070c0;">○</span> any other matter relating to the provision of regulated services as prescribed by regulations;</li> <li><span style="color: #0070c0;">○</span> and the effect on the exercise of the local authority’s social services functions of the commissioning by the authority of any services in connection with those functions</li> <li><span style="color: #0070c0;">○</span> the report must also include any action taken by the local authority during the specified period in pursuance of their duty under section 189(2) of the 2014 Act, to meet the care and support need of individuals in the case of provider failure</li> </ul> <p>Our interpretation is that market stability reports should consider Welsh language services in relation to each of the above matters. If the market stability reports achieve this in a meaningful way that will lead to making Welsh language social services available to people who need to receive those services then we believe there would be value in preparing market stability reports. With this in mind please see our responses to the other questions in this document and specifically question 8.</p>			

**QUESTION 2: Do you agree that market stability reports should be produced on a five yearly cycle alongside the population needs assessments? If not, what alternative arrangements would you propose, and why?**

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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We believe it is sensible to produce five yearly market stability reports alongside the population needs assessments as long as those assessments, and therefore the market stability report leads to ensuring that social services are available in Welsh for those people who need to receive those services in Welsh.

**QUESTION 3: Have we specified all the key matters that need to be included in market stability reports? If there are other matters you think should be included, please specify.**

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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Schedule 1 of the regulations sets out the matters that need to be covered in the market stability reports. These include:

- Sufficiency of provision of care and support
- Overall quality of care and support
- Current or developing trends of care and support
- Significant challenges
- impact of commissioning and funding on local authority social services functions

There is no reference in these regulations to Welsh language services. We believe that the Welsh language needs to be considered as part of each of these issues and that specific reference should be made to this in the regulations. Including the need to give full consideration to Welsh language social services in Appendix 1 is the only way to ensure that the Welsh language is given appropriate consideration in the market stability reports. Detailed guidance on this should be included in the code and guidelines as we set out below.

Further information is provided in the Code of Practice and Guidance on the five above matters and 3.37 of the document states that ‘local authorities must assess the sufficiency of care and support provided through the medium of Welsh against the Welsh language community profile established during the population needs assessment. This includes any gaps in provision. Local authorities must also consider how current or future trends in the market for regulated services might affect the provision of care and support to the Welsh-speaking community, as well as any identified challenges and risks, and the impact of local authority and Local Health Board commissioning and funding decisions.’ While we applaud the need to do this, we believe the code of practice and guidelines need to include much more guidance on how to assess the sufficiency of care and support in terms of Welsh language services including attention to the quality of care and the extent to which it meets the needs of Welsh speakers and how it meets the

well-being outcomes in terms of the Welsh language. Indeed the code and guidelines should include Welsh language guidance for each of the above matters to which the report is required to refer.

**QUESTION 4: Do you agree that market stability reports should be kept under regular review and revised as necessary, but at least at the mid-way point of the five year cycle? If not, what other monitoring and review arrangements would you propose, and why?**

Agree X please see our comments below	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
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It would be reasonable to review the market stability reports regularly and amend them as necessary to respond to changes in need. However, we would like to note some issues in relation to the production, monitoring and review of these reports. The Code of Practice and Guidance in 5.1-5.54 sets out the procedure for agreeing and presenting the market stability reports and notes that they will be approved by the partnership boards prior to submission to individual local authorities for approval. The reports will be submitted to the Welsh Ministers on publication.

We would encourage you to state in the code of practice and guidance that local authorities and health boards are required to act in accordance with the Welsh language standards and that the Regional Partnership Boards would therefore be expected to operate in accordance with those standards that their members comply with. We would therefore expect the market stability report and population needs assessment to be compiled within the context of the requirements of these standards including, but not limited to, the policy making standards, the service delivery standards and the relevant operational standards.<sup>1</sup>

There is no clarity in the Code of Practice and Guidance on the role of the Welsh Ministers in monitoring and reviewing the suitability and delivery of market stability reports. If the Welsh Ministers do not think that they are sufficient, we would like to know what mechanisms will be put in place by the Welsh Ministers to ensure that they are sufficient. In particular, we ask Welsh Ministers to ensure that they are appropriate in terms of the consideration given to the adequacy and quality of Welsh language services.

**QUESTION 5: In your opinion, does the draft code of practice strike the right balance between what is required of local authorities and what is left to their discretion? Are there further requirements or guidelines you would like to see added, or other ways in which the document might be improved?**

<sup>1</sup> Please see standards relevant to health boards and local authorities in compliance notices on the Commissioner's website  
<http://www.comisiynyddygygymraeg.cymru/English/Organisations/Pages/SearchStandards.aspx>

Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
<p>We have no view on this, but I should draw your attention to our response to question 5 above where we note that the guidance needs to state that local authorities and health boards must act in accordance with Welsh language standards, when acting as members of a Regional Partnership Board.</p>			
<p><b>QUESTION 6: In your opinion, does the draft statutory guidance set out clearly the partnership approach that local authorities and local health boards should take in preparing their market stability reports? Are there further requirements or guidelines you would like to see added, or other ways in which the document might be improved?</b></p>			
Agree <input type="checkbox"/>	Tend to agree <input type="checkbox"/>	Tend to disagree <input type="checkbox"/>	Disagree <input type="checkbox"/>
<p>The statutory guidance should emphasize the need for local authorities and health boards to operate in accordance with Welsh language standards, including when acting as members of a Regional Partnership Board.</p>			
<p><b>QUESTION 7: What impacts do you think our proposals will have on the duties of public bodies under the Equality Act 2010, or upon a local authority's duty under the 2014 Act to have due regard to the United Nations Convention on the Rights of the Child, the United Nations Convention on the Rights of People with Disabilities, or the United Nations Principles for Older People?</b></p>			
<p><b>QUESTION 8: We would like to know your views on the effects that our proposals with regard to market stability reports would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.</b></p> <p><b>What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?</b></p>			
<p>In principle we see that producing market stability reports every five years alongside the population needs assessments could lead to improvements in Welsh language services and thus have a positive impact on people's opportunities to use Welsh, and in particular to receive care in Welsh.</p> <p>However, in practice, and based on what we know about the consideration given to the Welsh language within the population needs assessments published in 2017, we are doubtful whether this will actually happen unless the code of practice, the guidelines and expectations placed on health boards and local authorities are strengthened in relation to the Welsh language when producing population assessments and market stability reports. The Centre for Population Health's <i>Evaluation of Local Authority</i></p>			

*Population Needs Assessment Reports*<sup>2</sup> states: 'some issues with Welsh language service provision were highlighted – most notably in the North Wales report. It is interesting to note that reference to Welsh language services was not always highlighted through each regional report as this was explicitly part of the guidance issued by the Act.' These findings reflect our own findings from looking at many of these population assessments. In essence, therefore, across all the assessments submitted, little consideration was given to Welsh language services by the regional partnership boards in 2017 and this was reflected in the subsequent area reports. This indicates shortcomings on the part of regional partnership boards, health boards and the local authorities. It also demonstrates shortcomings in the expectations placed on them by Welsh Ministers and in the approach to monitoring and reviewing the content of those assessments. Unless the population assessments are sufficient and appropriate with respect to Welsh language services we are sceptical that the market stability report can be of any value in terms of planning and providing services for Welsh speakers.

At the end of 2020 we were asked as Welsh Language Commissioner to provide evidence concerning Welsh language capacity assessments in a case against a local authority in the Court of Protection and the impact of this on patients' experiences of receiving services. With certain conditions the Court of Protection has allowed us to share the court's decision to ask all local authorities and health boards in Wales to provide information about the ability of their staff to conduct assessments in Welsh. This emphasizes the need for a thorough knowledge of the linguistic needs of the population in order to plan to provide suitable care for Welsh speakers. In September 2020 also Care Inspectorate Wales published a *National review of care homes for people living with dementia*.<sup>3</sup> The review found examples of good practice, however it states:

'We saw Welsh-speaking people in homes where there were no Welsh-speaking staff and no Welsh language activities or resources. Less than half of care homes provide a bilingual service and it would appear many care homes do not identify people who are Welsh speaking. This could be harmful for people whose preference is to communicate in Welsh and an infringement of their individual rights.' (page 6)

In our view, if the population needs assessments published in 2017 had adequately addressed the Welsh language we would not expect Care Inspectorate Wales to have identified the above circumstances. We do not have similar recent information on the experiences of Welsh speakers to whom population needs assessments require specific attention (children and young people; older people; health / physical disabilities; learning disabilities/ autism; mental health; sensory impairment; carers who need support; violence against women, domestic abuse and sexual violence). As the Welsh language is given little consideration overall in the population assessments published in 2017, it makes us question to what extent is the situation much better in terms of current Welsh language services in these areas too?

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<sup>2</sup> <https://ncphwr.org.uk/wp-content/uploads/2019/03/Local-Authority-Population-Assessment-Reports-FINAL.pdf>

<sup>3</sup> [https://careinspectorate.wales/national-review-care-homes-people-living-dementia?\\_ga=2.144214259.736270072.1606314278-428815351.1586445275](https://careinspectorate.wales/national-review-care-homes-people-living-dementia?_ga=2.144214259.736270072.1606314278-428815351.1586445275)

This has serious implications in many respects. In the first place it is of real concern to us that vulnerable people are not receiving suitable and quality care through the medium of Welsh in accordance with their needs, leading to situations as the Care Inspectorate Wales has reported that may be harmful for people whose preference is to communicate in Welsh and an infringement of their individual rights. Secondly, if the assessments are not adequate in terms of the need for Welsh language services how can we prove that language skills need to be improved and workforce planning needed to ensure that there is a sufficient workforce to be able to provide the services for Welsh speakers? Thirdly, local authorities and health boards are required to comply with operational standards which include assessing the Welsh language skills of their workforce and considering the linguistic needs of posts before they are advertised. If local authorities do not have sufficient information about the care needs of their population how can they adequately assess the linguistic needs of social services posts as well as commission services from others? We as the Welsh Language Commissioner often hear that local authorities and health boards alike say that they cannot recruit Welsh speakers, but if there is a lack of evidence of need in strategic documents of this kind, it is not possible to plan and train the workforce to ensure that Welsh speakers are available to apply for those posts.

Welsh-medium and bilingual schools across Wales produce Welsh speakers, and pupils in English-medium schools have some Welsh language skills. These are people who often lose their skills and confidence to use the language because they are unaware of the opportunities to speak the language in the workplace. A golden opportunity is being missed here to discover the real needs of the care workforce in terms of the Welsh language and to ensure career progression for these individuals. This would go a considerable way to fulfilling the aims of the Health and Social Care Workforce Strategy <sup>4</sup> that states: 'We will develop a workforce that is able to meet the health and care needs of people through the medium of Welsh' because 'evidence of better clinical outcomes, and outcomes for people accessing care and support, highlights the vital importance we place on the delivery of health and social care in the language of Wales.'

Assessing the number of Welsh speakers in a particular area alone is not sufficient in assessing the needs of the Welsh-speaking population. This requires a much more sophisticated approach to predicting where, how, when, what and who has the needs. We therefore recommend that you:

- Undertake a review of the consideration given to the Welsh language in the population needs assessments published in 2017 and the subsequent area plans with particular regard to how the statutory guidance relating to assessments of the population and area plans could be strengthened in terms of evidence of the need for Welsh language services
- Strengthen the statutory guidance relating to needs assessment and area plans or issue additional statutory guidance on how regional service partnerships should take account of the Welsh language in their needs assessments and area plans.
- Strength accordingly the guidance given in the draft code of practice and the

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<sup>4</sup> <https://aagic.gig.cymru/files/strategaeth-gweithlu-are-gyfer-iechyd-a-gofal-cymdeithasol/>

guidance for the market stability reports.

- Strengthen Welsh Ministers' approach to monitoring the delivery of these Welsh language requirements in relation to population needs assessments and market stability reports.
- Ensure that there is appropriate Welsh language guidance for drawing up the area plans published in April 2023.
- Undertake a review of the new population needs assessments, market stability reports and area plans in terms of Welsh language need and provision by the end of 2023 with a view to further strengthening the Welsh language guidelines if deemed necessary.

**QUESTION 9: Please also explain how you believe the proposed policy around market stability reports could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.**

Please see our response to question 8

**QUESTION 10: Under the Well-being of Future Generations (Wales) Act 2015, public bodies have a duty to consider the long-term impact of their decisions. We would like to know to what extent you think our proposals will support the principle of sustainable development set out in that Act.**

Further information on the Well-being of Future Generations (Wales) Act 2015 may be found here: <https://www.futuregenerations.wales/about-us/future-generations-act/>

Please see our response to question 8

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

