

Equality Impact Assessment
DRAFT REVISED ENFORCEMENT POLICY – WELSH
LANGUAGE COMMISSIONER

INTRODUCTION

The Welsh Language Commissioner (the "Commissioner") has commissioned an independent consultant to undertake an equality impact assessment on its draft revised Enforcement Policy, during its formative stage.

The Commissioner is subject to the Equality Act 2010, together with the general Wales-specific equality duty which came into force in 2011. Conducting the assessment ensures that the Commissioner is meeting part of the specific equality duties in "assessing the impact of policy decisions and procedures on equality."

The assessment is a core part of understanding and considering the impact on people with protected characteristics as a result of revising policy, formulating new policies, revising a procedure or developing a new procedure.

In carrying out an impact assessment we carefully consider how this proposal might affect individuals who share protected characteristics, and seek to identify actions to reduce inequalities and promote equal opportunities.

Further to the requirements relating to the Equality Act 2010, this assessment takes into account the socio-economic duty which came into force in Wales in 2021. This duty is intended to lead to decisions that will ultimately deliver better outcomes for those who are socio-economically disadvantaged.

We note that the Commissioner is not one of the statutory bodies required to comply with the duty, however the Commissioner is committed to acting in the spirit of the duty. The Commissioner will do this by embedding the principles within processes when considering the impact of strategic decisions on individuals facing socio-economic disadvantage.

We also note that an equality assessment by a public body in Wales would usually take into account the provisions of the Welsh Language (Wales) Measure 2011. These require public bodies to consider the effect that a change in any policy or procedure, or the creation of a new policy or procedure, will have on people's opportunities to use Welsh and to ensure that the Welsh language is not treated less favourably than English. However, as the aim of the Commissioner's function is to promote and facilitate the use of the Welsh language as well as the nature of the policy, this assessment will not deal with the language as a separate specific consideration.

SECTION 1 - Details

Policy title

Draft Revised Enforcement Policy

Purpose of the policy

The Enforcement Policy is a statutory document that explains how the Commissioner will exercise enforcement powers to ensure compliance with the Welsh language standards under the Welsh Language (Wales) Measure 2011. It provides clarity as to when and how these powers may be used in response to allegations of failure to comply with the standards, ensuring fairness, transparency, and consistency in decision-making.

The policy is considered central to the Commissioner's regulatory work because of its impact on organisations operating under the Welsh language standards regime and on individuals who complain of failures to comply. It also plays a key role in protecting the linguistic rights of Welsh speakers and in building confidence in the enforcement process in general. There is a link between the policy and the Regulatory Framework which outlines the way in which the Commissioner exercises the Commissioner's regulatory functions.

The revised Enforcement Policy will replace the current Enforcement Policy which has been in place since 2021.

Why is change necessary?

The Commissioner is of the view that the current policy needs to be amended to reflect the more proactive approach to co-regulation that has been adopted, with an emphasis on promoting self-regulation. This new approach encourages collaboration with organisations.

The Commissioner has indicated an intention to ensure that regulation does not simply mean carrying out statutory investigations and imposing enforcement action. The intention is to increase the regulatory support available by providing advice, raising awareness and understanding; and supporting organisations to comply with the standards.

The Commissioner considers that the success of the co-regulatory approach depends on being open and honest, thereby encouraging organisations to communicate early on to report any risk of non-compliance.

What changes are being considered?

The revised policy emphasizes a new approach to co-regulation, with an emphasis on promoting self-regulation. The revised policy will also seek to:

- Propose regulatory principles with a greater emphasis on collaboration and partnership
- Encourage organisations to resolve complaints internally before they reach the Commissioner
- Clearly state that there is a variety of methods available to restore compliance – giving a choice of the best approach in each situation
- Emphasise the need to avoid unnecessary delays and provide regular updates to the parties involved.

The following compares the main elements of the current policy with the draft revised policy reflecting the main changes identified above:

Method of regulation

- Current policy – The current policy is based on traditional regulatory principles, including proportionality, accountability, consistency, transparency, and targeting. It focuses on a one-way model where the Commissioner leads the regulatory process, and compliance is monitored through formal enforcement processes.
- Draft revised policy - The revised policy reflects the more collaborative approach to regulation, which has recently been adopted by the Commissioner. While the evolution of the approach to regulation is reflected in the policy, the principles of good regulation remain at the heart of the Commissioner's work. This approach is considered to emphasise the importance of working in partnership with organisations in order to ensure compliance, promote self-regulation, and support efforts in improvement.

Complaints handling

- Current policy – The current policy offers a detailed description of the process for the submission and validation of complaints, and the considerations used to decide whether to open an investigation. It focuses on a detailed, sometimes laborious, process that deals with each complaints in accordance with the statutory process and procedure.
- Draft revised policy – The revised policy seeks to simplify and improve the accessibility of the complaints process and emphasises the need to avoid unnecessary delays and to act in a timely manner. The Commissioner remains obliged to consider all complaints and to follow statutory processes, however the policy seeks to encourage the opportunity for organisations to seek to deal with complaints through internal processes in the first instance, where appropriate. The aim of the change is to make the process more efficient in order to focus resources on issues of pressing importance ensuring the best possible outcomes for the service user.

Investigations and Enforcement Action

- Current Policy - The current policy outlines the order of the formal steps that must be taken in the conduct of investigations. The emphasis is on putting enforcement action in place after a failure to comply is found.
- Draft revised policy - The new policy reflects the many approaches available to the Commissioner for restoring compliance including conducting an investigation by including more flexible and collaborative approaches. The emphasis is on using the variety of approaches available by selecting the best approach in each situation, including settlement agreements and drawing up action plans to address issues. The policy also encourages real improvements with greater emphasis on remedial action and a way of working that seeks positive outcomes for the Welsh language and its users.

Appeals and Oversight

- Current policy - The current arrangements include provisions for organisations to appeal against the Commissioner's decisions, but with little detail about the appeals process.
- Draft revised policy - The proposed policy introduces a specific section on the rights of appeal to the Welsh Language Tribunal. It provides clear guidance on the appeals process, strengthening the principles of transparency and accountability. By clarifying the oversight approach, the Commissioner will increase the confidence of organisations in the regulatory process.

SECTION 2 – Method and Methodology

The assessment follows recognised principles of good practice including evidence-based considerations. It also includes the results of consultation and the use of relevant data.

The assessment identifies potential positive and negative impacts. To conduct this assessment:

- The current policy and the revised draft policy have been reviewed from an equalities perspective
- The Commissioner's statutory duties under the Equality Act 2010 have been considered
- Responses to the consultation have been examined
- Relevant data available on complaints was considered including profile information and demographics

We consider assessment to be an ongoing process, with monitoring and evaluation arrangements ensuring that policies are truly inclusive and effective.

SECTION 3 - Engagement and data

The Commissioner conducted a stakeholder engagement process between the 4th of December 2024 and the 29th of January 2025.

A link to the engagement documents was emailed to a range of stakeholders, including:

- all bodies that implement Welsh language standards
- all bodies that have been included in recent regulations, or are likely to come under standards in the next period.
- campaign groups (Cymdeithas yr Iaith, Dyfodol, Rhieni dros Addysg Gymraeg etc.)
- other stakeholders (Mentrau Iaith Cymru, Coleg Cymraeg Cenedlaethol, Centre for Learning Welsh, Urdd etc.)

Respondents were invited to submit comments and complete a questionnaire via an online form. Some comments were received by email, and have been viewed in the same way as those submitted online. We understand that all requests for an extension of the timetable for responding were allowed.

All the information along with the link to the feedback form were published on the Commissioner's website.

As part of awareness-raising activities, a link was shared in six messages on the Commissioner's 'X' platform and LinkedIn page and information about the exercise was published in a stakeholder newsletter which was available on the Commissioner's website as well as sent directly to stakeholders. We understand that the contact list for receiving newsletters includes organisations representing people with protected characteristics.

We understand that there has not been a specific attempt, beyond the overall engagement process, to engage with people with protected characteristics.

Outcome of the engagement process

A total of 68 responses were received, with 62 of those from public bodies. Two responses were received from campaign groups, two from members of the public and two from Welsh language policy stakeholders.

We consider that following covers the main themes:

- Broad support for a co-regulatory approach - There was clear support from most organisations for the collaborative approach and the emphasis on regulatory outcomes. There were positive comments considering that the draft policy is a way of improving efficiency, and a way of enabling organisations to respond more promptly and effectively to compliance issues.
- Investigations procedure – A number expressed the need for detailed information on the investigation process, for example, how to contact the Commissioner and what the usual timetable is.
- Organisational capacity and resources – A number of comments were made on the practical implications for organisations in terms of resources and financial cuts. There was concern that increasing pressures could disrupt the ability of organisations to comply effectively.
- Referral of complaints to organisations – A concern was raised by some that it is unfair to refer complaints to organisations as a matter of routine, although it was not clear from the responses what the basis of that concern was.
- Nature of complaints - Some have expressed concern that the policy does not do enough to emphasise that all complaints matter, not just the strategic ones.
- Questions about organisations' complaints processes - Suggestions were made regarding the internal complaints process and the need for clear and consistent guidance across organisations.
- Balance between investigations and wider work – One expressed concern that the policy could create the impression that regulatory work is limited to specific investigations only.
- Compliance with the Measure - Concerns were raised that the draft policy may be in breach of the provisions of the Measure, e.g. by encouraging organisations to self-report or by including 'valid' complaint criteria.

Specific responses relating to equality and diversity

There were a number of responses referring to issues relating to equality and diversity, these included the impact of the revised policy on the rights of Welsh speakers, particularly those with protected characteristics or who are under-represented.

- Several responses indicated that reducing the use of formal investigations could undermine trust and lead to the disregard of Welsh language complaints in relation to public bodies.
- Some welcomed certain aspects of the policy, such as reasonable adjustments to ensure accessibility for people with specific needs, but emphasised the need for inclusive means of communication, e.g. EasyRead or BSL format.
- Some expressed concern that the policy would reduce access to justice during a cost-of-living crisis, suggesting that more, not less, support is needed from the Commissioner.

Comments were received about the engagement process itself, including a lack of publicity and a lack of transparency about changes to the policy. One response noted that there was a gap in the assessment when considering the impact of equality, asking who would be included or excluded from the new system.

Other sources of evidence

As part of the assessment, other relevant sources of evidence available to the Commissioner were considered, including complainants' equality data.

The equality profile data of complainants currently held by the Commissioner is low and limits our ability to produce a full analysis. We note that the Commissioner's Strategic Equality Plan 2024–28 includes a number of actions including "Recording equality data from people who engage with us, including in relation to complaints, and where appropriate, publishing that data".

The following overview is based on the information recorded for only ten complainants who have completed the online form on the Commissioner's website. Although a small number have responded to the questionnaire, we consider that this provides an initial picture in order to assess the extent to which diversity and social representation are reflected among the complainants or service users.

Demographics

- Age : The majority of respondents were aged 55–64 (six), and there was no response from anyone under the age of 35. This indicates a lack of representation from younger people.
- Gender: Seven respondents were women, and three were men. No one had chosen the 'other' option or refused to answer.
- Nationality and Ethnicity: All respondents were Welsh and nine of the ten were white – Welsh, with one stating "White – other".
- Language: Welsh was the primary language of each household and the first language of eight of the respondents, with two choosing "I prefer not to answer".

Education and Employment

- Eight of the respondents held a degree-level qualification or above, indicating a high level of academic competence among the sample.
- The majority of the sample (seven) were employed or self-employed, with two retired and only one unemployed.

Disability

- None of the respondents considered themselves to be disabled.

Religion

- Six of the ten identified their religion as Christians, while two had no religion, and two others indicated that they preferred not to answer.

Marital status

- Seven of the respondents were married, and none were in a civil partnership or living with a partner.

Gender Identity

- All identified with the sex assigned to them at birth, except for three who chose not to answer.
- Seven of the respondents indicated that they were heterosexual, with three choosing "I prefer not to answer".

Caring

- Two of the respondents identified themselves as carers.

Gaps in evidence

As highlighted above, the existing equalities data is too small to reflect the diversity of service users or to draw firm conclusions. We note that it is therefore unlikely that systemic trends will be highlighted as a result.

It is fair to note that these gaps also make it difficult to carry out a robust and representative assessment, which highlights how the policy can affect all protected groups.

SECTION 4 – Identifying the impact

This section addresses the impact that any changes will have on people with the equality characteristics below.

Characteristics	Impact	Reasons including evidence where relevant
Age	Possible negative	<ul style="list-style-type: none"> Existing complaints data evidence suggests that complainants tend to be older which suggests that young people are not confident enough to submit comments and feedback. Limiting the methods of submitting complaints to those listed in section 3.8 can potentially create barriers for people over the age of 65, particularly if the policy does not provide adequate information about the reasonable adjustments available.
Disability — including neurodiversity, sensory disabilities, physical disabilities and hidden disabilities	Possible negative	<ul style="list-style-type: none"> The complaints process is mostly text-based and online, that can exclude people with visual impairment, learning difficulties, or some neurodivergent conditions. The lack of accessible formats (e.g., Easy Read, BSL, audio) may limit the participation of some disabled people. Risk exists if there is insufficient information about the reasonable adjustments available.
Sex	Neutral	No evidence of specific impact
Gender reassignment	Neutral	No evidence of specific impact
Sexual orientation	Neutral	No evidence of specific impact
Marriage and civil partnership	Neutral	No evidence of specific impact
Pregnancy and maternity	Possible negative	<ul style="list-style-type: none"> The process could inadvertently exclude individuals if the time limits are strict and unadjusted for people on maternity leave or those with caring responsibilities.
Race – including ethnic or national origin, colour or nationality	Neutral	No evidence of specific impact
Religion and belief – including non-belief	Neutral	No evidence of specific impact
Socio-economic characteristics	Possible negative	<ul style="list-style-type: none"> Access to the internet or digital resources is limited for some individuals. Potential costs associated with postage or transport.

SECTION 5 – Analysis and recommendations

The Equality Impact Assessment highlights a number of gaps in the evidence, particularly in relation to complainant and service user equality data. The limited sample size (ten individuals) limits the ability to conduct a comprehensive and representative analysis. In particular, the sample does not reflect the experiences of communities with protected characteristics such as young people, disabled people, LGBTQ+ people, and Black, Asian and minority ethnic communities.

Although the engagement process appears wide-ranging, no specific engagement has been undertaken with disadvantaged groups or those with protected characteristics. This carries an unintended risk of excluding vital perspectives that are key to ensuring equity and inclusion.

In addition, the draft policy raises potential concerns about equal access to complaints processes – particularly for individuals who are unable to use digital means or who face language, literacy or accessibility barriers.

Recommendations

To strengthen the policy and the Equality Impact Assessment, we recommend the following actions:

- **Adapt the policy to remove any barriers**
 - Include a clear statement of reasonable adjustments and provide specific examples including arrangements for telephone/verbal submission of complaints.
 - Ensure accessible versions of the policy and associated documents (e.g. Braille, large print, BSL, audio, Easy Read).
 - Promote the service as free and easy to use.
- **Develop and implement an engagement strategy with individuals and communities with protected characteristics**
 - Ensure that engagement methods go beyond organisational stakeholders and include people with lived experience.
 - Work with key organisations (e.g. Disability Wales, Stonewall Cymru) to target under-represented groups.
- **Strengthen equalities data collection and analysis arrangements**
 - Review equalities data collection arrangements from complainants and service users.
 - Publish annual summaries of the data to increase transparency and continuous improvement.
- **Continuously monitor the impact on protected groups**
 - Monitor annually in light of feedback from various groups, and review the Equality Impact Assessment accordingly.

