



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Recruitment: Welsh Language Considerations



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Background

The principal aim of the Welsh Language Commissioner, an independent organization established under the Welsh Language Measure (Wales) 2011, is to promote and facilitate the use of Welsh. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles will underpin the work:

- In Wales, the Welsh language should be treated no less favourably than the English language
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so

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1 Introduction

The legislative context

The Welsh Language (Wales) Measure 2011 (“the Measure”) sets a new legal context for the Welsh language. After the Measure received Royal Assent in February 2011, official status was established for the Welsh language in Wales, as well as the general principle that the Welsh language should be no less favourably treated than the English language in Wales. The Measure creates a new legislative framework for enforcing duties on persons operating in Wales with regard to the Welsh language, and in due course, will replace many of the provisions of the Welsh Language Act 1993 (“WLA 1993”).

Section 2 of the Measure establishes the Welsh Language Commissioner (“the Commissioner”) to implement this new legislative framework. The Commissioner is independent and has responsibility for enforcing legal duties on persons via ‘standards’ detailed in Part 4 of the Measure. These standards are enforceable by the provisions of Part 5 of the Measure. To aid organizations’ future implementation of such standards, codes of practice will be produced in relation to standards. The legal procedure underpinning the standards will be developed over the next few years.

Many of the public organizations which will be subject to standards currently operate Welsh Language Schemes under the WLA 1993. When the Welsh Language Board was abolished at the end of March 2012, its duties in relation to Welsh Language Schemes were transferred to the Welsh Language Commissioner. Each organization will still be obliged to comply with its Welsh Language Scheme, as approved under the WLA 1993, until such a time as that organization becomes subject to standards under the Measure.

The Welsh Language Commissioner’s advice documents

For the period until standards come into force and statutory codes of practice are in place, the Commissioner has published a series of advice documents, to assist any organization or individual to offer bilingual provision.

For organizations implementing schemes under the legislative framework of the Welsh Language Act 1993, these advice documents will assist compliance and build upon the statutory guidance published by the former Welsh Language Board (under Section 9 of the Welsh Language Act).

For other organizations, the advice documents will assist in the provision of bilingual services and operations in a context where the Welsh language has official status in Wales.

Purpose of this advice document

- 1.1 This document is aimed at helping organizations develop a bilingual workforce and deals with the key principles surrounding recruitment and the Welsh language. It will enable organizations to adopt effective policies; help to maximise the various language skills of their employees; and raise awareness of best practice with regard to language and recruitment. In doing so it will help public organizations to better provide services through the medium of Welsh, communicate with members of the public successfully and conduct their day-to-day business in English and/or Welsh. It is aimed at the heads of HR departments, corporate development and training officers, Welsh language officers, managers responsible for recruitment and selection or service planning, and senior officers. The document should be read in conjunction with all other advice documents on the Welsh Language Commissioner's website, and, of course, with all legal requirements to which you are subject under relevant legislation.
- 1.2 The Commissioner believes that increasing the use of Welsh in the workplace would increase the use of Welsh in general and would improve the skill level of the workforce.

Using this advice document in the public sector

- 1.3 This document is aimed primarily at the public sector. It applies to every public organization which implements a statutory Welsh language scheme. These organizations are responsible for implementing staffing measures, as part of their schemes, aimed at providing more and better Welsh language services to the public. Following this guidance will ensure that this happens consistently and to a high standard.

Using this document within voluntary and private organizations

- 1.4 Much of what is included in this guidance applies as best practice to employers in general. It is likely that small workplaces will not wish to adopt such detailed arrangements as are referred to in this document. The arrangements may be adapted but the core principles should be followed.

Background

- 1.5 The document states that the Welsh Government will seek to bring about an increase in the use and visibility of the Welsh language in all aspects of life, including work, leisure and social activities. It states that the Government will work towards ensuring that more people can learn Welsh and help it thrive as a living language in communities throughout Wales. The above policies should also be viewed along with the need to comply with the European Charter for Regional or Minority Languages which is explained more fully below.

International perspectives

- 1.6 The situation in Wales is not unique and many other countries are trying to work in two, three or more languages. There are international examples of skills planning and HR management for multilingual communities.
 - The setting of linguistic conditions has been deemed legitimate by the European Court of Justice and is also common practice in other European countries. For example, linguistic conditions are set for public sector appointments in the Basque Country and Catalonia.

- In the Basque Country information is published on an annual basis regarding the vacancies advertised and the language(s) spoken by the successful candidate. This information is sent to the government division responsible for the Basque language.
- Public service staff in Canada are encouraged to maintain their linguistic skills, which includes an oral assessment every two to three years. A 'bilingualism bonus' is given to public service staff who pass a linguistic skills test.
- Staff who only speak one language in Canada are supported to become bilingual; indeed, linguistic training is considered essential to increase the number of bilingual staff in the country.

“Language training is a key factor in ensuring that public servants achieve the language skills required by their positions. If bilingualism is acknowledged to be a basic skill, language training must be regarded as an essential component of learning and career development plans.”

French to Follow. Revitalizing the Official Languages in the Workplace, Canadian Centre for Management Development 2003

- Act 10/1982 of the Basque Country Government on the normalisation of the use of the Basque language is the basis of developments in the public sector there. Article 14 states that the public authorities will adopt measures which lead to the gradual development of Basque language skills amongst public service workers. Public authorities will also identify posts where skills in both languages are deemed to be essential and for those posts where the Basque language is not essential public authorities will consider linguistic skills (Gardner, N, 2006 Public Sector Basque Language schemes; a brief summary). Organizations are expected to prioritise those posts which involve the most contact with the public as 'Basque essential'. A percentage of posts are designated 'Basque essential' in each organization corresponding to the percentage of Basque speakers in that particular administrative area. In the case of every other post, linguistic ability is awarded additional points, which are then combined with points for other qualifications and experience which have a direct bearing on the success of applicants.
- Qualifications and proficiency levels in the Basque language are recorded in detail for each individual during the process of appointing staff. Standard procedures and conditions are set when recruiting and contracting staff which give priority to ensuring that staff have appropriate language skills for the posts to which they are appointed. Any individual who lacks the required language skills is asked to sign a personal plan to undertake the necessary training in order to gain those language skills. If an individual fails to meet the linguistic requirements, the law allows for the transfer of that individual to another post which does not require linguistic skills.
- The Basque Language Normalisation Officer is responsible for conducting an annual review of progress of the language skills of the organization's staff. Significant investment is made in linguistic training tailored to the workplace's needs based on specific competencies.

“Formalising and standardising the method of recognising the additional value of Basque language skills in the process of recruiting and selecting staff for every post in the civil service in the Basque Country sets an expectation and provides applicants with an incentive to improve their language skills when applying for a new post or promotion in each section of the civil service.”

The Planning and Management of Bilingual Skills, a study conducted on behalf of the Welsh Language Board, Cwmni Iaith, 2006

- In the same way as the Basque Country, Ireland has recognised the need to invest in language training which is tailored to the needs of the workplace in order to comply with language legislation.

2 Implementing language and recruitment principles – responsibilities of public organizations

Statutory guidance

- 2.1 The implications of the Welsh Language Act 1993 in terms of employment need to be understood in order to promote the principles at an operational level. Statutory guidance published under Section 9 of the Welsh Language Act 1993, '**Welsh Language Schemes – Their preparation and approval in accordance with the Welsh Language Act 1993**', outlines the required form and content of Welsh language schemes. Guidelines 8(i) and 8(ii) place a duty on public organizations to develop staffing measures.
- Guideline 8(i) 'measures to ensure that workplaces which have contact with the public in Wales seek access to sufficient and appropriately skilled Welsh speakers to enable those workplaces to deliver a full service through the medium of Welsh'.
 - Guideline 8(ii) 'measures to identify those posts where the ability to speak Welsh is considered to be essential and those where it is considered to be desirable in order to deliver a full service through the medium of Welsh'.
- 2.2 Organizations have a duty to plan, develop, implement and invest in a bilingual workforce in accordance with these guidelines. If an organization does not have sufficient numbers of Welsh-speaking officers to implement the measures contained in the language scheme, then action needs to be taken.
- 2.3 Note: The Welsh Language Act 1993 is repealed by the Welsh Language (Wales) Measure 2011 which introduces a new system of regulation through 'standards'. The standards will be set by Welsh Government regulations and will be applicable to many employers who currently implement language schemes. In the meantime, language schemes remain in force and will be regulated by the Commissioner. The Commissioner will update this document as the new system of regulation is put in place.

Implementing a Language and Recruitment Policy

In order to fulfil this responsibility an organization's policies and standard practices need to recognise and mainstream language skills. The organization's selection and appointment codes of practice should refer to compliance with the Welsh Language Act and the organization's language scheme as a minimum. Further details on practical methods of achieving these aims and any legal implications are provided in Sections 4 (Human resources policies and standard practices) and 5 (Interpretation of the legal position – language and recruitment).

3 Planning for a bilingual workforce

Vision and staffing priorities

- 3.1 The organization's staffing expectations will have been identified clearly in the Welsh language scheme. Any subsequent workforce planning will need to reflect the scheme's priorities and correspond to its timetable. The Commissioner believes that a bilingual workforce planning strategy can help remove any uncertainty regarding the Welsh language in recruitment and allow an organization to deal with language skills positively, objectively, and legally. Below are examples of organizations which have a strategic and purposeful approach to this issue in that they have established specific arrangements or have drawn up a specific scheme for meeting bilingual skills needs. They view the process as part of their corporate responsibility.

Example 1

In our language scheme, we have adopted the central principle of the Welsh Language Act 1993 that we will treat the Welsh language on an equal basis to English. We are committed to implementing this principle in the conduct of our business and in providing services to the public in Wales.

In order to do so successfully, therefore, we need to ensure that officers who possess appropriate language skills are employed in the correct posts and workplaces. Otherwise, it is unlikely that our Welsh-medium service will reach the same standard or be as prompt and easy to access as the English-medium service, which will lead to a failure on our part to act in accordance with the principle of equality found in the Act.

Arrangements will therefore need to be made to assess which workplaces and posts need bilingual staff, and to ensure that the need is met through training programmes along with job opportunities and relocation opportunities over time. We will need to ensure that our standard policies and practices in dealing with the workforce (e.g. our recruitment process and performance appraisal and personal development arrangements) incorporate and serve those aspects involving language skills in an appropriate manner. This should be part of our wider HR plan.

The situation will also need to be monitored, in order to ensure that opportunities are taken, but also to provide a regular overview of the language skills capacity and to establish whether the gap between supply and demand tends to increase or decrease.

Example 2

The organization recently revised its Welsh language scheme. The scheme contains innovative commitments, with the aim of developing into a fully bilingual organization. The organization has adopted a language proficiency framework which offers five levels of language ability. In order to develop into a fully bilingual organization, since August 2005 it has been compulsory for any

new recruit to possess basic Welsh skills (level 1) before being appointed and to then progress to level 2 within their probationary period. Since January 2008 every new recruit must possess level 2 skills before being appointed and level 3 skills within the probationary period. Similarly, any officer or member of staff must possess level 2 skills before being promoted within the organization. Any training which is needed by recruits or potential recruits in order to reach the required levels of proficiency in the Welsh language is offered.

- 3.2 Appendix 1, which is an extract from 'Welsh Language Schemes – Their preparation and approval in accordance with the Welsh Language Act 1993' outlines the staffing measures that organizations should set. This advice is as relevant as ever. Outlined below is what the Commissioner expects to see in language schemes relating to staffing.
- A brief explanation which describes why action needs to be taken to develop a bilingual workforce.
 - Aims in order to achieve the above, for example:
 - Ensuring that the offices, centres, other work places, community teams which come into contact with the public have the staff, or can access the staff who can provide a service to the Welsh-speaking public. A commitment to examine the organization's services and identify the posts within the staffing structure where officers are justifiably required to be able to use Welsh in assisting the public (Welsh essential) or where it would be desirable for them to be able to do so (Welsh desirable), and include the requirements in job descriptions and team descriptions. A commitment to set criteria for assessing post requirements to include the nature of the post and the frequency of contact with the Welsh-speaking public or the need to provide administrative support to others. Requirements may be defined as part of a workplace or team.
 - A commitment to conduct a staff audit to identify gaps in the service and produce measures to improve the situation. An explanation of the actions the organization will take in order to employ the correct number of Welsh-speaking staff needed to offer the service required e.g. seek to recruit a Welsh speaker to a specific post when a post becomes vacant or when a new post is created, reorganize duties or provide Welsh-language training to staff.
 - An explanation of who is responsible for implementing the scheme's staffing measures.
 - A commitment to hold briefing sessions and provide guidance for officers responsible for staff recruitment, training and reviews.
 - A commitment to ensure that responsible officers review the implementation of the staffing measures on an annual basis.
 - A commitment to ensure that the HR Department will keep information on the Welsh language skills of the organization's staff.
 - Targets which identify either the number or percentage of posts which require Welsh speakers.
 - A commitment to include a statement welcoming Welsh speakers in job advertisements where there is a lack of Welsh-speaking staff to meet the needs of the service, but in a way which does not deter non-Welsh-speaking candidates.
 - An outline of the way in which the organization will work proactively to attract Welsh speakers to join the organization.

- A commitment to publish information on the number of Welsh speakers within the organization and on a departmental/team/location basis as appropriate.

Standard strategy for planning a bilingual workforce

3.3 In order to plan an effective bilingual workforce language skill needs must be identified based on the commitments made in the organization's language scheme or policy. This is done in order to deal with the Welsh-speaking public and in order to allow the organization to conduct its business through the medium of English and Welsh. Several computer management systems can record workforce language skills. The necessary action is as follows:

Map capacity and identify the gap in provision

- Map language skill needs per individual workplace and post against the aim (to implement the organization's language scheme), using a guide or flow chart to assess the organization's language skills.
- Map the current capacity of both workplaces and posts, setting this as a baseline.
- Compare capacity and need thematically at organizational level (e.g. percentages/linguistic ability levels, location, title/grade, number of fluent speakers/learners, age profile, etc.) and then per individual department, team, service, workplace and post, as appropriate.

Set target(s) and produce an action plan

- Set a goal for the first implementation stage, which will include specific targets stemming from the mapping and comparison process above, including departmental targets or similar.
- Adopt an action plan which describes the steps the organization intends to take in order to reach its goal. This will identify priorities (thematic and/or locational) and arrangements to combat any deficiency (e.g. recruitment, training, relocation). Departmental action plans will often be needed in addition to the corporate action plan.
- Develop the workplace's Welsh language skills e.g. by adopting a language training programme for [some] members of staff as part of their professional development.
- Train managers on organizational objectives, their responsibility, how procedures should be approached objectively, and what information needs to be collected and reported.

Adopt an objective approach to determining language skills

3.4 Produce a post-related language skills assessment for the organization. (See paragraph 4.1 for further information on determining a post's language skills and paragraphs 4.9-4.13 for advertising vacancies.)

Adopt procedures for recording and updating information

3.5 Record and update information on individuals' language skills within the organization in order to have an overview of the capacity to provide Welsh language services. The Commissioner proposes that targets and performance indicators should be adopted e.g.:

- the number and percentage of posts and teams which have had their linguistic category assessed;

- the number and percentage of main reception posts where Welsh is identified as an essential skill and the percentage filled by Welsh speakers;
- the number and percentage of staff able to speak Welsh per service department; according to grade; and per workplace;
- the number of posts advertised where Welsh was identified as an essential skill and the percentage filled by Welsh speakers;
- the number of posts advertised where Welsh was identified as a desirable skill and the percentage filled by Welsh speakers.

3.6 These indicators can allow organizations to measure the extent to which Welsh language services are available to the public and whether this service is planned purposefully. This data could allow us to measure progress over time and consider any recruitment issues highlighted. Appendix 2 provides an example of an organization which uses performance indicators for this purpose.

4 Human resources policies and standard practices

- 4.1 The organization's policies and standard practices need to recognise and mainstream the language skills dimension. The organization's selection and appointment codes of practice should refer to compliance with the Welsh Language Act and the organization's language scheme and then identify how this is implemented under the relevant headings (person profiles, job description, job advertisements, information packs for candidates, conducting interviews and tests, setting probationary period conditions etc). Further details are provided below on practical ways of achieving these aims. In amending and drafting such policies it is important to consider legal compliance and anti-discrimination legislation. This is covered further in Section 5 below.

An objective approach to determining the necessary language skills for a post

- 4.2 Language needs to be discussed as matter of routine when a post is created or when a vacancy arises, by examining capacity e.g. the capacity of a team or office to operate bilingually as well as an individual post. Firstly, a screening process needs to be undertaken to determine whether the Welsh language is essential, desirable or not relevant in terms of meeting the employer's requirements. Secondly, and if language is a factor, care must be taken to avoid any racial discrimination by conducting a verification exercise.

Screening

We suggest that determining how a post is categorised should be based on criteria such as:

Essential

Where no one is available to provide a service through the medium of Welsh or if more Welsh-speaking staff are needed in order to provide a bilingual service. Here are some considerations:

- the need to assist Welsh speakers whether they are internal staff or service users
- a post which involves, wholly or in part, being in contact with the public, where the individual is expected to be able to communicate in both English and Welsh
- a post located in a Welsh-speaking community which has regular contact with the public
- posts which involve a great deal of contact with Welsh speakers
- situations where there are no members of staff available to provide a Welsh language service
- situations where it is not possible for another officer to provide a Welsh language service
- local considerations in an organization's language policy e.g. the need to undertake internal administration in English and Welsh
- the need to deal with other organizations who operate through the medium of Welsh internally.

Desirable

Posts should be advertised with Welsh desirable where Welsh-speaking staff are available but it would be desirable to strengthen the pool of Welsh speakers in order to provide a better service. Here are some considerations:

- the need to assist Welsh speakers whether they are internal staff or service users
- a post involving contact with the public
- any post located in a Welsh-speaking community or serving a Welsh-speaking area
- posts which involve a great deal of contact with Welsh speakers
- situations where there are no members of staff available to provide a Welsh language service
- situations where it is not possible for another officer to provide a Welsh language service
- situations where employing more Welsh-speaking members of staff would improve the Welsh language service provided
- a situation where employing a Welsh-speaking officer would reduce the need for restructuring a service and where restructuring would have a detrimental effect on the service
- a situation where having to provide a Welsh language service by asking another officer for assistance would have a detrimental effect on the service
- local considerations in an organization's language policy e.g. the need to undertake internal administration in English and Welsh. It is important, when considering these criteria, that evidence is available to justify this decision and support any case for the language requirement. As well as the above criteria there may be other factors contained in an organization's statutory Welsh language scheme and such factors should always be considered when determining language requirements of posts.

Verification

4.3 The verification process should be undertaken in accordance with section 5.24 of this document which considers the legal test set out in the Equality Act 2010 and the criteria established in the case of *Crizzle*¹ (which was decided under the Race Relations Act 1976, this being the predecessor of the Equality Act 2010). This is an important part of the process and one that requires evidence to support any decision taken. Verification may be carried out by asking two main questions:

- What is the linguistic context?
- Is the objective legitimate and reasonable and is the approach taken to achieve the objective, i.e. the employer's linguistic needs, reasonable, outweighing the discriminatory effect? It may also be important to consider whether there is an alternative, less discriminatory, way of achieving the aim, such as training staff to acquire the necessary language skills.

Downgrading linguistic requirements

4.4 We are aware that some posts are first advertised with the Welsh language as essential but, because of a lack of suitable applicants, are re-advertised with the Welsh language as desirable. Should the organization decide that Welsh is essential from the outset, then fundamental changes must be made to the duties and responsibilities of the post, and other means of providing the Welsh language service will need to be established, before it is re-advertised with Welsh as desirable.

¹ *St Mathias Church of England School v Crizzle* (1993) IRLR 472.

Language levels

- 4.5 In terms of training qualifications, the Commissioner does not endorse one particular model for acknowledging skill levels. Levels mainly used are for Welsh for Adults, or in vocational qualifications, e.g. NVQ, Welsh for Adults levels or other qualifications. These are all suitable. This is the indicator used by the Commissioner for reporting skills training:
- The number and percentage of staff (Welsh speakers and learners) who have received training in Welsh to a specific level of competency.
- 4.6 Many organizations identify the linguistic capacity of their workforce by using language levels self-assessment – oral, written etc. These levels have been created by the organizations themselves for internal use. This approach can be effective in terms of collating information. An example of a level self-assessment based on the ALTE framework (The Association of Language Testers of Europe) is given in Appendix 3 – Levels.
- 4.7 In terms of recruitment, the Commissioner favours designating posts in two categories: stating that Welsh is either an ‘essential’ or ‘desirable’ requirement for the post. The Commissioner does not encourage the use of levels instead of the essential/desirable designations.
- 4.8 However, having determined whether Welsh is an essential or a desirable requirement organizations can then consider the necessary linguistic prerequisites for carrying out the post. The speaking, writing, understanding etc model can then be used. Organizations should avoid using levels to explain to a candidate what the post’s linguistic prerequisites are, as there are far clearer and more effective ways of communicating the prerequisites to a candidate. See paragraph 4.21 for examples.

Language requirements and prerequisites in job advertisements

- 4.9 A survey² carried out on behalf of the Welsh Language Board discovered that a variety of public organizations do not state that the Welsh language is essential for any post – even posts which deal with situations which are extremely sensitive in terms of language.
- 4.10 The reasons given for not stating that Welsh is essential were legal uncertainty and the presumption or previous experience that Welsh speakers will not apply for a post which states that ‘Welsh is essential’.
- 4.11 Future Skills Wales (a research project to establish the general skills needs of Wales) define Welsh skills as **“the ability to read, write, and speak Welsh at a level necessary to function and progress at work and in society in general.”**
- 4.12 Advertisements and job descriptions should be clear when describing the necessary skill or qualification to work through the medium of Welsh. One way of doing this is to use relevant *and* user-friendly wording in advertisements.
- 4.13 Employers who have added practical and relevant recruitment wording for the post say that they have been more successful in appointing Welsh speakers (and as a result, more efficient and cost-effective).

² The Planning and Management of Bilingual Skills, a Study conducted on behalf of the Welsh Language Board by Cwmni Iaith (2006)

Person specification

- 4.14 There is a legal and practical difference between language as a **qualification** and language as a **skill** in terms of fulfilling the requirements of a post.
- 4.15 The Commissioner believes that standard references should be included under the heading 'Skills required for the post' or similar wording in the person specification. A sub-heading could be included e.g. 'Working Language' in the specification.
- 4.16 A language qualification such as a GCSE, A level or degree in Welsh or a translation certificate etc should be shown separately in the relevant place in a specification.

An example of designating Welsh as a skill in person specifications

Project manager

- Listening and Speaking: Able to fulfil all spoken aspects of the post with confidence through the medium of English and Welsh to the same standard. This will include giving public presentations in both languages.
- Reading and Understanding: Able to use and interpret any information from various sources through the medium of English and Welsh in order to fulfil all aspects of the post.
- Writing: Able to present information in writing through the medium of English and Welsh with complete confidence using the most appropriate method and language for the subject and audience.

Play assistant

- Listening and Speaking: Able to fulfil all spoken aspects of the post with confidence through the medium of English and Welsh to the same standard.
- Reading and Understanding: Able to use and interpret any information from various sources in order to fulfil all aspects of the post.
- Writing: Able to complete a standard form and write a short letter through the medium of English and Welsh by using a series of key sentences to communicate basic information.

Language skills in a job description

- 4.17 A language skills assessment will have provided a definition of the language skills requirement of the post and this should be worded plainly and impartially in the job description.
- 4.18 The details should be worded carefully. It would be better to describe what kind of Welsh language competencies are essential or desirable rather than simply using generic wording. For example, if the ability to speak Welsh is essential, a description of the exact linguistic requirements would assist candidates e.g. 'The successful candidate will be able to converse with customers with confidence and ease in both English and Welsh.' If seeking candidates able to write in Welsh, a description such as 'The successful candidate will be able to answer verbal enquiries in English and Welsh as well as respond to correspondence in both languages' could be used. 'Training will be offered to improve written Welsh if needed' could be added. Many public organizations produce generic job descriptions. Managers should be flexible with generic job descriptions and should always bear the Welsh language in mind before advertising a post. They should consider the linguistic make-up of the area and the capacity of offices or teams to provide a Welsh language service. Managers should be able to add specific language requirements to the general content of the job description and person specification according to circumstances.

Wording prerequisites in a job description

4.19 After categorising the language requirements based on service needs the prerequisites of the post should be considered, detailing the language skills needed to undertake the work – writing reports, public speaking or answering the telephone. It is important not to set linguistic expectations which are higher than the requirements of the post for practical and legal reasons. Below is a range of competencies which could be included in prerequisites for a post.

4.20 Initial screening and subsequent setting of the required competencies will provide objective wording specific to the post.

4.21 Examples of wording asking for language prerequisites in a job description:

Appointments Clerk

The ability to converse at ease with customers in Welsh is essential for the post.

Social Worker

The ability to prepare client reports in Welsh is essential for the post.

Finance Officer

It would be desirable if the successful candidate could respond to basic correspondence in Welsh.

Project Manager

The ability to give public presentations and prepare reports in Welsh is essential for this post.

Receptionist

The ability to speak Welsh with our customers is desirable for this post.

Social Care Officer

The ability to conduct a simple conversation in Welsh is essential for this post.

Educational Psychologist

The ability to conduct psychological assessments through the medium of English and Welsh and the ability to present written information in both languages is essential for this post.

Director

We are looking for a director who can both speak and write Welsh to a high standard in order to conduct interviews with the press and respond to technical correspondence.

Environment Officer

The ability to produce technical documents in English and Welsh is essential for this post.

Youth Officer

The ability to lead activities for children and young people through the medium of Welsh is essential for this post.

Administrative Officer

The ability to write letters and minutes correctly in Welsh is essential for this post

Physiotherapist

The ability to give instructions and advice in Welsh is essential for this post and the ability to write in Welsh is desirable.

Recruitment pack

- 4.22 It is best practice to provide all the material in a recruitment pack bilingually, including the standard material and specific information on a post, whatever the post's linguistic requirements. Providing both the information and application form in a bilingual format is a matter of equal opportunities. A number of public sector organizations provide their recruitment packs on their websites where the user may choose their preferred language.
- 4.23 Whilst working towards the aim of providing everything bilingually, standard material may be produced for every post in a bilingual format with more specific information being provided bilingually when bilingualism/language skills are relevant to the post. Individual organizations' language schemes should detail their commitment to using the Welsh language in recruitment packs. Producing English-only packs where a post has Welsh language requirements is not considered good practice.

Application form and job applications

- 4.24 The officers responsible for evaluating applications should either be bilingual or be provided with a translation of a Welsh application form. Steps must be taken to ensure that an organization can receive job applications in Welsh only and deal with them in an appropriate manner. Depending on the prerequisites it is possible that details on the Welsh language will be required in two places on the application form – (i) qualifications, for example a degree in Welsh or a translation certificate; (ii) skill for carrying out the role. A question may also be included on the applicant's preferred language at interview.

If you are selected for an interview in which language would you like to be interviewed? English/Welsh

Equal opportunities form

- 4.25 Standard boxes on linguistic ability need to be included on the organization's standard equal opportunities monitoring forms. This is a matter of equal opportunities as well as the recording of skills. Possible boxes:

	Speaking Welsh	Reading Welsh	Writing Welsh
None			
A little			
Fairly well			
Fluent			

Recruitment interview

- 4.26 There is more than one correct approach to dealing with recruitment interviews but there are some important steps which can be taken to ensure that the process is conducted as fairly as possible and to ensure satisfactory results.
- i. Although an interview is a competitive exercise, the Commissioner suggests that it is good practice to offer candidates the opportunity to use the language of their choice (Welsh or English) when arranging interviews and planning the process in order to treat everyone as fairly as possible.
 - ii. Candidates should be advised of how the interview will be conducted in terms of which language(s) will be used so that they are aware of what to expect beforehand and able to prepare (e.g. the need to show ability in both languages, the language spoken by the panel, simultaneous translation or questions in both languages, a separate language test, etc).
 - iii. Where possible, members of the interview panel should be bilingual. If this is not possible, as many members as possible should be bilingual. An additional bilingual officer should be co-opted to take part in the interview if the regular officers do not speak Welsh.
 - iv. Many organizations choose to provide a simultaneous translation service for non-Welsh-speaking members of the panel. The organization's Code of Practice will need to examine the appropriateness of conducting interviews using a translator and should provide sound guidance if this is the chosen method.
 - v. Members of the panel should be briefed, according to standard procedures, on the requirements of conducting a bilingual interview, and the relevance (if applicable) of the language skill to the responsibilities of the post.
 - vi. According to evidence collected,³ a number of public organizations already offer interviews through the medium of Welsh to candidates as standard practice whatever the requirements of the post. When the Welsh language is essential to a post it appears that even more organizations conduct the majority or part of the interview in Welsh. It is good practice to offer an interview through the medium of Welsh irrespective of the language requirements of the post.

Testing language skills

- 4.27 Where language skills have been justifiably set as essential or desirable criteria, applicants will need to complete a test. The way in which language skills are tested will vary according to the duties of the post. Oral questions in Welsh can be sufficient for a post where the ability to speak Welsh is essential or desirable in order to fulfil the role but when the Welsh language needs to be used in writing a short written test may be required. The written test should reflect the kind of language needed to carry out the job.

Evaluating candidates

- 4.28 The organization's Code of Practice should note that those responsible for evaluating candidates must understand the linguistic requirements of the post and the panel should be provided with an objective method of evaluating candidates according to what is set out in the person specification.

³ See footnote 2, page 12.

Contract of employment

4.29 Learning a language takes some time and careful consideration should be given before making it a condition of employment as a means of filling a post where Welsh language skills are required. Organizations should consider whether it would be easier for Welsh speakers to learn other skills in order to carry out the work. It may be the case that it is easier to train fluent Welsh speakers in occupational skills than it is for a non-Welsh speaker to learn Welsh. However, if learning Welsh to a specific standard is a condition of the post, this must be formally stated in contracts of employment to ensure that individuals are required to reach the expected standard within a specific timeframe. The condition needs to be linked to a clear learning plan for the officer in question and to a method of assessing success. Consideration could also be given to including responsibility for offering bilingual services in a contract of employment. Reference should also be made to paragraph 5.28.

Staff induction

4.30 The induction period for new staff is vitally important with regard to establishing their understanding of the organizational culture and the way in which they are expected to behave. Therefore, it is appropriate for an organization to consider how it wishes to make new recruits aware of the concept of using their language skills to provide a bilingual service. Here are some approaches adopted by public organizations in order to achieve this:

- i. Including information on the organization's language scheme in an induction pack for new members of staff.
- ii. Every new member of staff to receive a summary of the language scheme and/or the language scheme in full.
- iii. A presentation or workshop for new members of staff, as part of an induction course or 'customer care' training for new members of staff.
- iv. New members of staff to receive guidance and/or briefing sessions on implementing those parts of the language scheme relevant to their post.

5 Interpretation of the legal position – language and recruitment

- 5.1 A survey⁴ conducted on behalf of the Welsh Language Board showed that a number of public organizations do not state that Welsh is an essential skill due to legal uncertainty. Although this guidance aims to promote the Welsh language and a bilingual workforce, it is important that no action is taken to discriminate against groups protected under the law. In this section we examine the acts and agreements which form the basis of this guide. It is important that organizations have employment policies dealing with this issue that are compliant with the relevant legislation and in accordance with this section. This should help ensure that organizations operate appropriately in promoting a bilingual workforce.
- 5.2 The commentary below provides details of relevant legislation and cases which may be used to provide evidence in support of the move towards a bilingual workforce. It is important to note that any single case will depend on its particular facts and circumstances, and this will therefore not be an absolute defence against any claim of discrimination. Similarly, the case law contained in this document is provided as guidance only. Therefore, care should be taken when reading this document and it may be necessary or appropriate to obtain further legal advice on the particular circumstances of any case.

The European Charter for Regional or Minority Languages

- 5.3 The UK Government ratified this charter in March 2001 thus committing itself to its implementation with regard to the Welsh language. One of the principles of the charter, which is fundamental to this guide, is that taking steps to promote linguistic equality is not classed as discrimination.

“The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the users of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely-used languages.”

Article 7, The European Charter for Regional or Minority Languages 1992

- 5.4 The UK Government therefore understands the need to adopt special measures in favour of minority languages in order to promote linguistic equality. This does not disadvantage the speakers of more widely used languages. *“...considering that the right to use a regional or minority language in private and public life, is an inalienable right conforming to the principles embodied in the United Nations International Covenant on civil and political rights, and according to the spirit of the Council of Europe Convention for the protection of human rights and fundamental freedoms.”* (Preamble, The European Charter for Regional or Minority Languages 1992.) The Charter and the Welsh Language Act both provide a context for setting linguistic conditions when recruiting, though neither excludes the need to show that these are justifiable under the Equality Act 2010.

⁴ See footnote 2, page 12.

European Law

- 5.5 European Law prohibits member-states from preventing workers from other European countries from finding work in their country. Regulation no. 1612/68, regarding the freedom of movement of workers within the Community in accordance with the Treaty of Rome, however, makes a specific linguistic exception. Article 3 states that requiring special linguistic knowledge may be justified if that is reasonable. *“Under this regulation, provisions laid down by law, regulation or administrative action or administrative practices of a member state shall not apply...where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other member states away from the employment offered. This provision shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.”* (Article 3, Regulation no. 1612/68.) As Article 3 is part of a Regulation it is also part of UK law. European law therefore does not prevent member-states or public organizations within those member states from setting conditions regarding linguistic ability when that is required due to the nature of the vacancy.

The Equality Act 2010 and the Welsh language

- 5.6 The greatest constraint on the way in which language skills are addressed in employment is probably that which is set out in the Equality Act 2010. Inappropriate action with regard to applying a provision, criterion or practice that a person should be able to speak Welsh as a condition of employment could contravene the Act by being an act of indirect discrimination. Generally, it is unlawful to discriminate against a person or persons on grounds of race. Race includes: colour, nationality, or ethnic or national origins. So for example, it may be a contravention of the Equality Act 2010 to provide people from a Welsh background with an advantage over people from other nationalities or ethnic backgrounds in a recruitment process or during employment. However, the act contains a key exception; if there are valid reasons associated with the post, which can be objectively justified, for advertising a vacancy with linguistic requirements then that does not constitute unlawful racial discrimination. Therefore, applying a Welsh-language requirement in a job advertisement (essential or otherwise) is not unlawful discrimination, if doing so is justifiable. There is a legal test that needs to be considered when determining if something is or is not “justifiable” in these circumstances. This is covered further below. In 1996 when the statutory guidance on preparing Welsh language schemes was published, a concordat between the former Welsh Language Board and the Commission for Racial Equality was also published (Appendix 5) and signed by the now Lord Herman Ousley and Lord Elis-Thomas. The core message of this concordat was that Welsh language issues and racial equality were part of the same anti-discrimination agenda recognising that both organizations are aiming to promote equality. In the Tribunal case of *Boylan v Anglesey County Council*⁵ (which was decided under the Race Relations Act 1976, which has since been repealed by the Equality Act 2010) in May 1998, it was decided that Anglesey were correct to advertise a vacancy for a community youth worker as a ‘Welsh essential’ post and were correct not to place a non-Welsh speaker on the shortlist and not appoint that individual. *“We can see nothing objectionable – nothing which cannot be justified – in the Council’s practice. If Welsh is an essential requirement, then it is sensible to use that as a criterion when formulating a short-list ... The unanimous decision of the tribunal is that the complaint under the Race Relations Act 1976 fails.”* The Commissioner accepts that advertising a vacancy which states that Welsh is essential or desirable may discriminate against racial groups which have a lower than average percentage of Welsh speakers. However, this may be justified due to the need for public organizations to recruit Welsh speakers in order to meet their

⁵ *Boylan v Anglesey County Council*. Industrial Tribunal: Case no. 2900883/97.

statutory commitments under their Welsh Language Schemes, provided the need to speak Welsh is 'essential' or 'desirable' for the role.

Setting a language requirement without discriminating on grounds of race

- 5.7 The Equality Act 2010 consolidates all previous discrimination legislation (including the Race Relations Act 1976), and prohibits any discrimination because of certain 'protected characteristics'. There are nine protected characteristics in total, which include race (section 9), and the Act defines race as including colour, nationality and ethnic or national origin.
- 5.8 Section 39(1) of the Equality Act 2010 prohibits discrimination in employment against candidates on racial grounds and Section 39(2) prohibits racial discrimination against people who are already employed. Racial discrimination is defined in two ways:
- i. direct discrimination – a person is guilty of direct discrimination if on racial grounds they treat a person less favourably than they treat or would treat others
 - ii. indirect discrimination – can occur where an employer:
 - a. applies a provision, criterion or practice which, when applied, puts a person at a particular disadvantage because of their race and
 - b. the employer cannot show that it is a proportionate means of achieving a legitimate aim. Generally, indirect discrimination covers situations where, seemingly, all individuals are treated alike regardless of race, but on closer examination it can be seen that members of a particular racial group or groups are more likely to suffer a disadvantage than others. Unlike direct discrimination, which cannot be justified (i.e. there is no defence), employers who show their actions were objectively justified may have a defence to a claim of indirect discrimination. Employers can avoid liability for indirect discrimination by showing that their actions were objectively justified as a proportionate means of achieving a legitimate aim.
- 5.9 Identifying Welsh skills as essential – whether this is the employer's general policy for all members of staff, for a percentage of them, or for individual posts – will involve applying a 'provision, criterion or practice' under the Equality Act 2010.
- 5.10 Prior to the Equality Act 2010, the Race Relations Act 1976 governed this area. The test for indirect discrimination under the 1976 Act required an employer to apply a 'requirement or condition' rather than a 'provision, criterion or practice'. Under the 1976 Act test, the Appeal Court cases of *Perera*⁶ and *Meer*⁷ established that identifying Welsh skills as desirable did not amount to a 'requirement or condition'. The Court held that the skill to speak Welsh was only one of a number of qualities to consider in appointing an individual to this post, and the post was open to candidates without that skill.
- 5.11 Under the Equality Act 2010, however, it is likely that a requirement saying 'Welsh is desirable' will count as a 'provision, criterion or practice'. A candidate does not need to prove that they cannot comply with a requirement, it is now sufficient for the existence of a 'provision, criterion or practice' to place the candidate under a disadvantage.
- 5.12 The processes and methods used to determine language skills and appoint staff to those posts need to be fair, transparent and official, following accepted best practice in employment.

⁶ *Perera v Civil Service Commission and the Department of Customs* (1983) IRLR 166, CA.

⁷ *Meer v London Borough of Tower Hamlets* (1988) IRLR 399, CA

- 5.13 The situation regarding giving Welsh speakers an advantage over people from different racial backgrounds is clear under the Equality Act 2010. For the purposes of the Act, 'racial group' means a group of persons defined by reference to race, and race includes 'national origins'. The Courts have established that the Scots and the English are separate racial groups by reference to their national origins (Northern Joint Police Board v Power [1997] IRLR 610 EAT; BBC Scotland v Souster [2001] IRLR 150 CS). All those not belonging to the Welsh racial group therefore belong to a different racial group through their national origins. They are less likely to be able to speak Welsh and are under a specific disadvantage (the new test) as a result.
- 5.14 Two provisions under the Equality Act 2010 may, however, benefit employers who insist on recruiting from a particular racial group.
- 5.15 First, Section 158 of the Act allows positive discrimination where employers are faced with two or more candidates of equal merit, to appoint or promote a person with a protected characteristic in preference to another person who does not have the protected characteristic.
- 5.16 Secondly, employers have a defence to a discrimination claim where being of a particular racial group is an occupational requirement. However, the employer must still show that the requirement was a proportionate way of achieving a legitimate aim. Courts will also interpret this provision narrowly.
- 5.17 Employers are advised to take legal advice before relying on these provisions.
- 5.18 The situation is different when considering the relationship between Welsh people who speak Welsh and those who do not speak Welsh. In accordance with the ruling in the case of Gwynedd v Jones and Doyle⁸, they belong to the same racial group and a linguistic difference in itself is not enough to create a different ethnic group. Demanding Welsh language skills, therefore, cannot constitute racial discrimination against non-Welsh-speaking Welsh people as they do not belong to a different racial group to their fellow country men and women who do speak Welsh. Therefore they cannot bring a case under the Equality Act 2010. However, they will continue to face the same disadvantage when applying for posts as people from different racial backgrounds who do not possess Welsh language skills.
- 5.19 Public organizations should, however, be aware of an important exception to the Equality Act 2010. Under the Welsh Language Act 1993, public organizations providing services in Wales must make their services available in Welsh as well as English. The Statutory Code of Practice on the Equality Act 2010 acknowledges that in some cases, Welsh language skills may be an essential requirement for appointment, and that workers may need to agree to learn the language to the required level within a reasonable period of time after the appointment (paragraph 17.45). Whilst the Code is not binding, the Courts can consider its content in legal proceedings.
- 5.20 The Act also includes a new public sector equality duty (the 'general duty'), replacing the separate duties on race, disability and gender equality. The aim of the general duty is to ensure that public authorities and those carrying out a public function consider how they can positively contribute to a fairer society through advancing equality and good relations in their day-to-day activities.
- 5.21 The general duty applies to most public authorities, including private or third sector (voluntary and community) organizations where they are carrying out a public function on behalf of a public authority or in their own right.

⁸ Gwynedd v Jones and Doyle EAT(1986)

5.22 Public organizations are required to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct that is prohibited by the Act;
- advance equality of opportunity between people who share a relevant protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

The specific duties in Wales are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011, and cover the following matters:

- setting and publishing equality objectives that meet the general duty;
- assessing and reporting the likely impact of policies and practices on an employer's ability to comply with the general duty;
- annually collecting and publishing employee information, broken down by job, grade and pay, including information on people who have applied or left the authority;
- collecting and publishing information about gender differences in pay;
- promoting knowledge and understanding of the general duty and specific duties amongst employees;
- drawing up and publishing a Strategic Equality Plan;
- in procurement, having due regard to whether it would be appropriate for the award criteria for that contract to include considerations to help meet the general duty; and
- annual reporting.

5.23 Any steps taken to fill vacancies with people who possess Welsh skills (essential or otherwise) can now be considered to be indirect discrimination on the basis of race, unless this is justifiable and can be shown to be "a proportionate means of achieving a legitimate aim".

5.24 If a policy or action does not constitute 'a proportionate means of achieving a legitimate aim' then it is unlikely to be 'justifiable'. The case of *Crizzle* sets a precedent and offers guidance on what may be "justifiable":

- *"What is the context within which the employer's objective is based?"*
- *Is the objective legitimate and reasonable in that context?"*
- *Are the means used to achieve the objective reasonable (that is to say, is the imposition of the condition reasonable)?"*
- *Is any discriminatory effect outweighed by the reasonable needs of the employer?"* Although the criteria in the case of *Crizzle*⁹ are intended to interpret the test under the 1976 Act, it appears that they are just as legitimate as a basis for the test under the Equality Act 2010.

5.25 When the above criteria are used to evaluate language skills the following reasoning may be applied, although it is important to remember each case will turn on its own facts: (i) The context is the bilingual nature of Wales and the numbers and distribution of Welsh speakers in the catchment area of the organization in question along with the statutory requirement through its language scheme to treat both languages on the basis of equality and to respect that principle when providing services through the medium of English and Welsh. (ii) The objective or aim is to ensure that there are enough staff with the appropriate language skills in the correct posts to enable the organization to achieve the commitments identified in its language scheme in a satisfactory and efficient manner. This is legitimate and reasonable. (iii) The next step is to consider whether the means of achieving the aim

⁹ *St Mathias Church of England School v Crizzle* (1993) IRLR 472.

are reasonable and proportionate. Evaluating this will vary according to the circumstances. For example, where a target is set to ensure that there is a specific percentage of Welsh speakers in the workforce, the appropriateness of that target and the timescale for achieving that target are likely to be considerations. In the case of an individual post, it is likely that the relevance of Welsh language skills to the routine tasks associated with that post, or the level of proficiency of those skills, or the language profile of other members of the team, or all of these, will be relevant considerations in deciding if the means of achieving the aim are appropriate under the circumstances. (iv) Finally, do the employer's reasonable needs outweigh any discriminatory effect? The employer will need to show the following:

- that the linguistic requirements are necessary and suitable in terms of achieving the organization's commitments in its language scheme;
- that not taking these steps would contravene the scheme, and provide a basis for complaint or public criticism, or create the risk of censure or an investigation by the Commissioner or the Welsh Government;
- that there is no other reasonable and acceptable means of meeting this requirement (e.g. considering restructuring the team so that bilingual staff deal with Welsh-speaking users would be an appropriate step to take if that could be done without creating unreasonable requirements or problems for the organization, but using a translator would not be an appropriate way of providing a face-to-face service as that would contravene the scheme, providing an inferior service);
- that the employer has considered ways of reducing the discriminatory effect which the language requirement is causing (e.g. offering language training to staff in general or giving non-Welsh speakers a reasonable period of time and full support to learn the language in order to meet the condition of employment); thus having confidence that this will be accepted as reasonable action which may be justified. When considering the legitimate aim within the linguistic context in Wales many other local and national factors can be considered in addition to the organization's language scheme and the Welsh-speaking population served, for example:
 - the Welsh Government's Language Strategy (A Living Language: A Language for Living)
 - Clause 78 of the Government of Wales Act
 - Language Skills Strategy
 - Community Strategy
 - Health, Social Care and Well-being Strategy
 - Education Strategy

5.26 The key point in this regard is that the aim itself and the means of achieving it contribute to satisfying the conditions of the test. Objectivity – reinforced by suitable assessment methodology – and following employment best practice is very important so that action which would otherwise be proportionate is not undermined.

5.27 The same considerations apply in the case of non-Welsh-speaking members of staff who are already employed and do not belong to the Welsh racial group, as Welsh language skill requirements can limit their opportunities (see Section 39(2) of the Equality Act 2010). The same reasoning and conclusions apply when using the test. In the case of *Groener v Minister for Education and the City of Dublin*, Anita Groener, from the Netherlands, applied for a lecturing post at the Dublin College of Marketing and Design. She was told that she would not be appointed unless she passed an oral test in the Gaelic language. In the Constitution of Ireland, in particular Article 8, Gaelic is identified as Ireland's national language and first official language. When Groener failed to pass the test, she asked the authorities to waive this condition; her request was denied. She took her case to the High Court of Ireland claiming that the policy stopped workers from moving within Europe which contravenes European law

especially Article 3(1) Regulation 1612/68. This Article states that linguistic conditions should not restrict workers' freedom to apply for a post if the nature of the post in question does not justify the conditions. Groener argued that speaking Gaelic was not necessary to undertake the lecturing post for which she was applying. The European Court of Law judged that the Government's position was legitimate.

“The importance of education for the implementation of such a policy [promoting the Gaelic language] must be recognized. Teachers have an essential role to play, not only through the teaching which they provide but also by their participation in the daily life of the school and the privileged relationship which they have with their pupils. In those circumstances, it is not unreasonable to require them to have some knowledge of the first national language.”

Anita Groener v Minister for Education and the City of Dublin Vocational Educational Committee.

Learning a language as a condition of employment

5.28 Disciplining or dismissing a non-Welsh speaker who does not belong to the Welsh racial group for failing to meet the condition to learn Welsh after a designated period of time would also be subject to Section 39(2) and potentially discriminatory (Section 98, Employment Rights Act 1996 could also be relevant to such a dismissal, but not for race-related reasons). Learning a language is an intensive and long-term commitment, which is easier for some than others, and a significant percentage of learners (for those reasons and others) are unlikely to succeed to a sufficient level. Therefore, employers need to consider this very carefully before appointing individuals, taking responsible and fair measures. It would certainly be unwise to consider this a routine approach to ensuring sufficient bilingual skills. If a condition to learn Welsh is set, then the organization must make interim arrangements to fulfil those aspects of the individual's post where the ability to speak Welsh is essential and must consider appropriate support and guidance to the employee during the learning period. In terms of racial discrimination, if it could be objectively shown that a certain level of skill in the Welsh language was essential for the post and that the individual had been given reasonable opportunity to develop that skill and that no other suitable post (that does not call for that skill) was available for that individual to undertake, then, as a last resort, an employer could be confident that dismissing the individual would not be in contravention. However, every case would need to be considered on an individual basis and appropriate advice should be obtained before any steps are taken.

Statutory Codes of Practice on Racial Equality in Employment

5.29 The Statutory Code of Practice on Racial Equality in the Workplace published by the CRE in 2005 helps employers to operate within racial legislation when advertising, recruiting and dealing with staff. The Code states that employers need to draw up job descriptions for each vacancy they wish to fill. In terms of person specifications it explains the need to set linguistic requirements where that is necessary for the job. *“A language requirement for a job may be indirectly discriminatory and unlawful unless it is necessary for the satisfactory performance of the job.”*

5.30 This Code of Practice has been supplemented by a new Code of Practice on Employment, which has been issued under the Equality Act 2010. However, it simply confirms the fundamental principles as set out in the original Code of Practice.

5.31 The Code of Practice accepts that a number of public, private and voluntary organizations in Wales operate through the medium of Welsh or bilingually in English and Welsh. The Code states that employers in Wales should seek advice from the Welsh Language Board (which was abolished by the Welsh Language (Wales) Measure 2011 – this function has been transferred to the Welsh Language Commissioner) in relation to the Welsh language in the workplace as well as following advice found in the CRE’s Code of Practice. The Code of Practice understands that public organizations in Wales and public organizations which provide services to the public in Wales are required to comply with the Welsh Language Act and provide services in Welsh as well as English.

“This means a wide range of posts in public organizations in Wales, and some in public organizations outside Wales, will need workers who can speak, write and read Welsh sufficiently well for the post in question. In some cases, this may make Welsh language skills an essential requirement for appointment; in others it may require the applicant to agree to learn the language to the required level within a reasonable period of time after appointment.”

4.52 Statutory Code of Practice on Racial Equality in Employment, Commission for Racial Equality, 2005

Advisory, Conciliation and Arbitration Service (ACAS)

5.32 The advice given by ACAS is that job descriptions and person specifications should be as clear as possible in order to help organizations to develop and implement an equal opportunities policy. *“Drawing up the person specification allows the organization to profile the ideal person to fill the job. It is very important that the skills, aptitudes and knowledge included in the specification are related precisely to the needs of the job... The very process of writing a job and person specification should help the employer to develop and implement a policy of equal opportunity in the recruitment and selection of employees.”* (Recruitment and Induction booklet, ACAS, 2010.)

The influence and precedent of other developments

5.33 Wider developments which support the Welsh language are also relevant to the test, such as the fact that Welsh language schemes as a process and legal entity have become established as an acceptable method of ensuring that Welsh speakers are given appropriate equal opportunity and access to services, and a Bilingual Skills Strategy has been introduced as a planning and implementation tool in many organizations. We believe that this Strategy also has legal significance. Not only does it offer a standard procedure for planning and managing language skills, but also reinforces the justification and provides a responsible and reasonable approach if an accusation of discrimination were to be made. The same system could also apply to planning the membership of a Commissioner, committee, or executive panel (e.g. magistrates, tribunal members). All of these elements are a means of reinforcing any argument which states that reasonable action taken by an employer with regards to the Welsh language, in order to promote the satisfactory provision of bilingual services or to develop joint understanding between people in the workplace, is a ‘valid aim’, provided it can be justified.

6 Appendices

Appendix 1

‘Welsh Language Schemes – Their preparation and approval in accordance with the Welsh Language Act 1993’ (1996): staffing guidance

“As part of their scheme, organizations should specify the measures they propose to take as part of their staffing strategy to reach a position, as soon as possible, where they are able to deliver their full range of services through the medium of Welsh. Where possible, this should be linked to the timetable in the scheme. In assessing their staffing requirements, organizations should make provision for a potential increase in demand for services through the medium of Welsh as schemes are implemented, and Welsh speakers take up the offer to deal with organizations in Welsh. With that in mind, organizations should follow the approach set out below:

- (1) by considering in detail the nature of its activities and relationship with the public in Wales, the organization should identify, in an objective manner, those workplaces and posts where an ability to speak or write in Welsh is an essential skill and those where it is desirable, and the level of proficiency required. Where necessary, team and job specifications should be drawn up accordingly;
- (2) the organization should also establish how many of its staff speak or are learning Welsh and their level of proficiency, and how many of them are currently in those workplaces or posts identified in accordance with (1) above. The results of this exercise should then be compared with the conclusions of (1) above to identify areas for action;
- (3) the organization should then consider how best it may achieve the remainder of its staffing objectives identified in (2) above. The options available may include transferring Welsh-speaking staff into designated workplaces or posts, Welsh language training for staff, and recruitment of Welsh speakers to specific workplaces or posts;
- (4) an implementation programme should be adopted by the organization in which priorities are specified. Managers and others responsible for staff recruitment, training and supervision should be familiar with the programme and tasked with implementing it;
- (5) progress in implementing the programme should be monitored as part of monitoring the scheme, which will also highlight the action to be taken should the number of Welsh speakers in scheme-related posts begin to decline.

Appendix 2

Example of an organization using indicators to identify the staff profile.

Performance Indicator

Number and % of staff working for the Council who are able to speak Welsh (excluding teachers and school staff)

- per service division
- according to grade
- per workplace (office, centre and main offices)

Department	Number	Percentage
Chief Executive	194	66%
Resources	228	55%
Regeneration and Recreation	199	48%
Social Care and Housing	833	52%
Education and Children's Services	882	26%
Technical Services	308	30%
Whole Authority	2644	46%

Pay Scale	Number	Percentage
Grade 1–SO1	796	14%
SO2–POG	551	40%
Senior Officer Grade	26	14%

Workplace	Number	Percentage
Workplace 1	140	61%
Workplace 2	182	60%
Workplace 3	17	44%
Workplace 4	120	41%

Workplace 5	38	61%
Workplace 6	36	52%

Appendix 3 – Levels

Welsh language skills – workplace assessment

(i) Listening

0 No skills.

1 Able to understand basic enquiries in Welsh [“Ble mae..?”; “Ga i siarad â..?”].

2 Able to understand a basic social conversation in Welsh.

3 Able to follow routine conversations involving work between fluent Welsh speakers.

4 Able to follow the majority of conversations involving work including group discussions.

5 Able to understand all conversations involving work.

(ii) Reading

0 No skills.

1 Able to read basic words and phrases e.g. signs or short and simple notes.

2 Able to read basic material involving work (slowly).

3 Able to read routine material with a dictionary.

4 Able to read the majority of material in own area.

5 Able to understand all material involving work.

(iii) Speaking

0 No skills.

1 Able to conduct a general conversation [greetings, names, sayings, place names].

2 Able to answer simple enquiries involving work.

3 Able to converse with someone else, with some hesitancy, regarding routine work issues.

4 Able to speak the language in the majority of situations using some English words.

5 Fluent – able to conduct a conversation and answer questions, for an extended period of time where necessary.

(iv) Writing

0 No skills.

1 Able to write basic messages – “Diolch am y llythyr. Dyma gopi o’r map.”

2 Able to answer simple correspondence with assistance.

3 Able to draft routine text, with editing assistance.

4 Able to prepare the majority of written material related to the area of work, with some assistance in terms of revision.

5 Skilled – able to complete complex written work without the need for revision.

Appendix 4

Language Skills Strategy

- 6.1 In order to meet the aims of developing the workforce and of improving bilingual services to the public the Commissioner believes that large public organizations should adopt a Language Skills Strategy as a working document which is separate from their language scheme. Every public organization should include details on arranging a bilingual workforce as part of a language scheme. If an organization does not wish to adopt a Language Skills Strategy then section 8 of the language scheme itself should be a framework for planning a bilingual workforce. The main considerations are as follows.
- 6.2 The main objectives of a Language Skills Strategy are:
- to provide more high quality services, both oral and written, through the medium of Welsh;
 - to provide a wider range of Welsh language services;
 - to inform staff and the public of the objectives;
 - to set targets, measure and report on performance;
 - to invest in developing Welsh language skills.
- 6.3 A Language Skills Strategy should be a working tool which enables an organization to plan a bilingual workforce. The Commissioner does not wish to provide a template for a Language Skills Strategy as so many different organizations implement language schemes but we believe that a Language Skills Strategy should contain the following elements:

Mission statement

- 6.4 We suggest a possible wording but each organization may word its statement in a manner which is relevant to its work:

“... to ensure a sufficient number of officers who possess the appropriate language skills in the correct places to enable the organization to provide a satisfactory and complete Welsh language service, in accordance with the Welsh Language Scheme.”

Fundamental principles

- 6.5 Principles and objectives are necessary as a basis of intent. The Commissioner suggests that statements on the following points would be suitable, bringing together aspects of service and employment:

Service

- That a satisfactory and complete Welsh language service means a service of the same quality and accessibility as the English language service provided.
- If this is not possible immediately, it should be one of the corporate priorities, with the intention of adopting a proactive approach to achieving it.
- That such an approach is part of the organization’s anti-discrimination practices.
- That staff and the public are familiar with the aim and these principles.
- The organization will measure how it meets this aim in a routine and open manner.

Employment

- That linguistic ability for the purpose of work is a skill like any other.
- Staff will be supported and encouraged to acquire and use their bilingual skills.

Procedural action

6.6 This is normally centralised action taken by human resources officers. The aim is to ensure that the standard processes and documentation facilitate and support the implementation of the staffing measures found in the language scheme. The action to be taken is identified below.

- Adopt an objective approach to determining language skills, which is a methodology to be used for the following purposes:
 - analysing and measuring the need for language skills per workplace and post;
 - analysing the language skills of existing staff;
 - providing guidance on the wording of adverts and job descriptions; compiling a shortlist/interviewing/appointing;
 - measuring language training needs.
- Make arrangements to record and update the record of language skills, in order to avoid major and unnecessary audits, and in order to be able to report on and analyse the situation at any time.
- Synchronise staff appointment and development policies and practices with the language skills objectives and arrangements (e.g. selection and appointment codes of practice; standard form for person specifications; language skills in job descriptions; candidate evaluation methods for shortlists and interviews; equal opportunities monitoring forms; performance appraisal framework, professional development or training assessment and record).
- Within the procedure for approving vacancies before they are filled, and authorising managers to make appointments, include the stated assumption that vacancies are to be filled according to the bilingual skills map, unless managers can provide an objective justification to the contrary, which is recorded as a deviation. (If there is no general procedure in place for authorising vacancies, a procedure should be created specifically for language skills, transferring responsibility for its implementation to a designated officer, e.g. HR officer or language officer.)

Executive action

6.7 This is normally action to be taken by heads/line managers, in consultation with the HR unit and language officer.

- Map language skill needs per workplace and post against the aim, using the Language Skills Assessment Guide, ensuring any skill is justifiable.
- Map the existing capacity within workplaces and posts in a similar manner, setting it as a benchmark.
- Compare capacity with need, thematically on organization level (e.g. percentages/linguistic ability level, location, title/grade, number of first-language speakers/learners, age profile, etc) and then per department, service, team, workplace and post, as appropriate.
- Set a progress goal for the strategy's first implementation stage, which will include specific targets stemming from the mapping and comparison process above, including departmental targets or similar.

- Adopt an action plan which describes the steps the organization intends to take in order to reach its progress goal, which will identify priorities (thematic and/or locational) and arrangements (e.g. recruitment, training, relocation) to combat any deficiency. (Departmental action plans will often be needed in addition to the composite corporate action plans.)
- Develop the Welsh language skills of the workforce e.g. by adopting a language training programme for [some] members of staff as part of their professional development. (In larger organizations, it is likely that a specific 'Welsh Language Skills Development Plan' will be needed to guide and co-ordinate efforts. Regular feedback on attendance, commitment and attainment will be needed, feeding information on progress into the Welsh language skills database as well as the individual's development plan.)
- Train managers on the organization's objectives in its Strategy, their responsibility, how the procedure should be used objectively, and what information should be collected and reported.

Review action

6.8 These are the steps which will enable the organization to monitor progress during the Strategy's life cycle.

- 'Departmental' reporting programme, which provides routine information to the HR department and others, regarding progress.
- Recurring corporate reporting programme, which provides a detailed analytical overview of the situation to senior managers and the governing organization, along with further executive action, most likely to be aligned with reporting to the Commissioner on implementation of the language scheme.
- Periodic review and evaluation of the implementation of the Strategy (aligned with the progress goal), which analyses the organization's achievements against the underlying principles and initial benchmark, measuring what has been achieved as well as the completeness and effectiveness of the action.
- Update the Bilingual Skills Strategy (aligned with the previous action).

Appendix 5

Concordat between the Welsh Language Board and the Commission for Racial Equality 1996

“The Commission for Racial Equality works towards a just society which gives everyone an equal chance to learn, work and live without facing discrimination or prejudice and without the fear of harassment or racial violence. The Welsh Language Board strives for the day when those living in Wales whose preferred language is Welsh have the same opportunity to use it in all aspects of their lives as those whose preferred language is English. The task facing both these organizations is to promote equality, and we share common values. We respect each other’s aims and responsibilities, acknowledging the fact that they complement each other.”