



Comisiynydd y
Gymraeg
Welsh Language
Commissioner



Recruitment

Good practice advice document

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The Commissioner’s good practice advice documents offer practical ideas for complying with statutory duties and promoting use of the Welsh language.

The advice documents refer to the requirements of specific statutory duties, but please note:

- Organisations (including businesses and charities) that are not subject to the duties specified can apply the principles and examples to their own situation
- The advice documents do not legally bind organisations. Organisations must depend on their own legal advice in interpreting and implementing language duties
- The advice documents are based on the laws and policies in force at the time of publication.
- The advice documents are not standards codes of practice under section 68 of the Welsh Language Measure. Therefore, it is not required to refer to the advice documents when considering the interpretation of the Welsh language standards. [The Commissioner’s codes of practice](#) for Welsh language standards regulations are on the website (see section 1 of the codes of practice for the legal status of the codes).

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This document replaces the Commissioner’s previous guidelines, **Recruitment: Welsh Language Considerations**. Among other revisions, this advice document updates the discussion of the legal position, including referring to more up to date legislation and legal cases.

Checklist

The ideas and practices within the advice are summarised in this checklist. Remember that some of the points below are requirements in the standards, and others are good practice.

Step	In action?
Undertaking skills needs assessments for posts	
Process in place to assess the Welsh language skills for every new post, including any assessment sheet and guidance for managers	
Assessments consider key matters such as: <ul style="list-style-type: none">○ Importance of Welsh language skills to the function of the role, e.g. with regards to dealing with the public and other partners○ Local considerations regarding the organisation's language policy, e.g. the need to administer through the medium of Welsh, or minimum Welsh language skills required according to a policy or strategy○ Current number of staff available to provide a service to the public.	
Welsh language skills categorised as either essential, desirable, need to be learnt or not necessary in the assessments	
Arrangements in place for scrutinising and approving decisions	
A record kept of each assessment	
Appointment process	
Advert includes a clear description of the Welsh language skills requirements	
Advert includes a statement that Welsh language applications won't be treated less favourably	
Application form includes a space for applicants to state a preference to be interviewed or assessed through the medium of Welsh	
All documentation relating to the post available in Welsh, and does not treat the Welsh language less favourably than the English language	
Arrangements in place to allow applicants to be interviewed or assessed through the medium of Welsh	


1 Introduction

Purpose of this document

- 1.1 This document is intended to help organisations to ensure that their recruitment arrangements enable them to have a workforce with the necessary Welsh language skills.
- 1.2 The document is primarily aimed at the public sector. The document explains the requirements of Welsh language standards and Welsh language schemes in relation to recruitment, and offers guidance and suggestions on how to comply with those requirements.
- 1.3 Although the requirements of the standards and Welsh language schemes are not relevant to voluntary and private organisations that are not subject to statutory duties, the principles and good practice can help such organisations to increase their capacity to offer Welsh language services.
- 1.4 Aspects of the guidance, for example the explanation of the situation regarding equality legislation, are relevant to all sectors.

The importance of considering the Welsh language when recruiting

- 1.5 The main influence on an organisation's ability to provide suitable Welsh language provision is the number of its staff with Welsh language skills. Increasing levels is therefore crucial in order to comply with the requirements of Welsh language standards and Welsh language schemes. Increasing levels will lead to:
 - Improving Welsh language services and create opportunities for users to speak Welsh
 - Providing more opportunities for workers to use Welsh at work
 - Increasing organisations' awareness of issues that affect the Welsh language in terms of policy making and promoting Welsh in the community.
- 1.6 Any reference to organisations' Welsh language 'provision' includes public services, staff provision and considerations under the policy making standards.
- 1.7 There is more than one way of increasing organisations' capacity in terms of Welsh language skills. For example, they can:
 - Improve the skills of the existing workforce – offering Welsh language lessons for beginners, and training to improve the skills and raise the confidence of people with limited skills
 - Work in partnership with other organisations in order to pool resources
 - Organise and locate staff effectively in order to ensure that Welsh speakers are in the right place at the right time to ensure suitable Welsh language provision
 - Automate and encourage channel shift to be able to divert Welsh speaking staff to where they are most needed.

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- 1.8 However, the quickest and most reliable way of increasing organisations' capacity in terms of Welsh language skills is to recruit new staff with the necessary Welsh language skills.
- 1.9 It will not always be possible to provide Welsh language services on a cost neutral basis. Sometimes, new investment in staff will be needed to improve services and comply with the requirements. We want to see organisations considering whether additional investment in staff is needed to develop their Welsh language provision and comply with the requirements.
- 1.10 Recognising that the external recruitment opportunities available to organisations may be limited, we want to see organisations take every opportunity to ensure that they have suitable capacity in terms of the Welsh language skills of their staff. The standards require organisations to undertake a meaningful assessment of the language needs for every vacancy and new post, and to advertise jobs in Welsh where skills are needed.
- 1.11 When considering the language needs for vacancies and new posts, and planning to increase the workforce's capacity in terms of Welsh language skills, it is essential that organisations operate in accordance with other legal duties, particularly in the field of employment law. This document:
- Explains the statutory requirements placed on organisations under Welsh language standards and Welsh language schemes
 - Explains how organisations can comply with these requirements without falling foul of employment law, for example by discriminating.

International perspectives

- 1.12 The situation in Wales is not unique by a long way, 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.
- 1.13 Annex 2 to this document summarises some of the most relevant examples internationally.

2 The legal situation – language and recruitment

2.1 We have heard in the past that a number of organisations are concerned about stating 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.

2.2 Annex 3 fully addresses the legislation, the documentation and the cases which create legal requirements on organisations in terms of discrimination, and the way in which the workforce's capacity can be increased in terms of Welsh language skills without falling foul of those legal requirements.

2.3 The main points are:

- The Equality Act 2010 makes it unlawful to discriminate – both directly and indirectly – against people based on race, including colour, nationality or ethnic or national origins
- Attaching a language condition to a post may result in indirect discrimination against members of racial groups with smaller percentages of Welsh speakers
- However, it may be possible to justify attaching a language condition to a post if it can be shown that it is a proportionate means of achieving a legitimate aim. The legal precedent case of *Homer v Chief Constable of West Yorkshire* (full details in Annex 3) states that the following needs to be considered:
 - What is the employer's real aim in implementing the provision, criterion or practice?
 - Is that aim a legitimate one?
 - Is implementing the provision, criterion or practice an appropriate way of achieving that legitimate aim?
 - Is implementing the provision, criterion or practice reasonably necessary to achieve that legitimate aim?
 - Does the necessity of the legitimate aim to the employer out-weigh the gravity of the effect of the provision, criterion or practice on the affected group?
- Therefore in order to attach language conditions to a post, organisations need to give real consideration to the needs of the post and the organisation's operational context. Amongst other things, consideration may be given to the extent to which Welsh language skills are needed in order to achieve the practical requirements of the post. Consideration may also be given to an organisation's need to ensure that it has sufficient staff capacity to comply with the requirements of the Welsh language standards or Welsh language scheme (or meeting the commitments of a Welsh language development plan or Welsh language policy in the case of businesses and charities where there are no statutory requirements in place), the need to develop or maintain the Welsh language as the language of the workforce, and wider strategic considerations such as

achieving the Welsh Government's language strategy. Public sector organisations are also obliged to consider their obligations to comply with the public sector equality duty (guidance is available from the [Equality and Human Rights Commission](#) about that).

- 2.4 It is important that organisations' processes address the issues raised in this annex. Adopting or adapting an employment policy may help to ensure that an organisation operates appropriately when promoting a bilingual workforce.

The Equality and Human Rights Commission's Employment Statutory Code of Practice

- 2.5 The Equality and Human Rights Commission's [Employment Statutory Code of Practice](#) for the Equality Act 2010 summarises the situation:

A language requirement for a job may be indirectly discriminatory unless it is necessary for the satisfactory performance of the job.

Employment Statutory Code of Practice, Equality and Human Rights Commission (17.44)

- 2.6 The Code of Practice also states:

Under the Welsh Language Act 1993, public bodies providing services to the public in Wales must make their services available in Welsh as well as English. This operates as a statutory exception to the Equality Act, and allows a wide range of posts in public bodies in Wales (and some outside Wales) to require workers who can speak, write and read Welsh sufficiently well for the post in question. In some cases, Welsh language skills may be an essential requirement for appointment; in others, the worker may need to agree to learn the language to the required level within a reasonable period of time after appointment.

Employment Statutory Code of Practice, Equality and Human Rights Commission (17.45)

- 2.7 Whilst in the majority of cases the Welsh Language (Wales) Measure 2011 and the standards contained in Regulations made under that Measure have superseded the provisions of the Welsh Language Act 1993, the same principle continues to apply.

3 Statutory requirements – Welsh language standards and schemes

- 3.1 Over 100 organisations now implement Welsh language standards, and others continue to implement statutory Welsh language schemes.
- 3.2 Language standards and schemes both create requirements on organisations in terms of recruitment – assessing the need for Welsh language skills for posts, advertising posts and so on. This section summarises the requirements under the two systems.
- 3.3 Businesses and charities that are not subject to statutory duties implement Welsh language policies and Welsh language development plans with the help of [the Commissioner's Hybu Team](#).

Welsh language standards

- 3.4 There are a number of standards which relate to recruitment and staff skills. A full list of the standards can be found in appendix 1, and subsequent sections of this advice document address the ways in which the requirements can be met.
- 3.5 This summary does not include requirements relating to the provision of Welsh language lessons or staff training. Neither does it address requirements relating to the assessment of employee skills, keeping records of those assessments and publishing the numbers annually. However, using a consistent framework to collect detailed data on the Welsh language skills of organisations' current members of staff will be essential in order to plan for the future and assess the needs for vacancies and new posts.

Assessing skills needs for new and vacant posts

- 3.6 For every vacancy or new post, the standards require organisations to assess whether Welsh language skills are needed. Organisations must place the post into one of the following categories:
- Welsh language skills are essential
 - Welsh language skills need to be learnt after being appointed to the post
 - Welsh language skills are desirable
 - Welsh language skills are not necessary.
- 3.7 They must:
- Keep a record of the assessment
 - Publish the number of posts placed in all categories in an annual report on Welsh language standards.

Advertising and appointing

- 3.8 If Welsh language skills are essential, desirable or need to be learnt for the post, this must be stated when the post is advertised, and the post must be advertised through the medium of Welsh.

- 3.9 When advertising a post, an organisation must state that applications may be submitted in Welsh, and that an application submitted in Welsh will not be treated less favourably than an application submitted in English.
- 3.10 Additionally, the standards require that:
- Any application forms, explanatory materials relating to the application process, information on the interview and assessment process, and job descriptions, are published in Welsh, and that Welsh versions are not treated less favourably than English versions.
 - Job applications made in Welsh are not treated less favourably those made in English, including in terms of the closing date or when applicants are informed of decisions.
 - Application forms must include space for individuals to indicate whether they would like the interview or assessment in Welsh, and the interview must either be conducted in Welsh or a translation service must be provided in order to allow the applicant to use the Welsh language (depending on the standard placed on the organisation).
 - Individuals who have applied in Welsh must be informed of decisions in Welsh.

Welsh language schemes

- 3.11 Commitments stated in language schemes tend to vary between organisations depending on their situation. However, the Commissioner provides guidance on what should be included in language schemes in the document [‘Welsh Language Schemes – Their preparation and approval in accordance with the Welsh Language Act 1993’](#). As a result, most language schemes can be expected to include commitments that are in line with the guidance.
- 3.12 An annex to that document notes what the Commissioner expects to see in Welsh language schemes with regards to staffing – quoted below.

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 organisation'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 organisation 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, reorganise 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 organisation'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 organisation will work proactively to attract Welsh speakers to join the organisation.
- A commitment to publish information on the number of Welsh speakers within the organisation and on a departmental/team/location basis as appropriate.

'Welsh Language Schemes – Their preparation and approval in accordance with the Welsh Language Act 1993' statutory guidelines

4 Assessing the need for Welsh language skills

Responsibility for scrutinising

- 4.1 It's essential that assessments are based on the understanding of the need for Welsh language skills. It's also important to have solid arrangements to ensure assessments are being completed. There are many ways to ensure this:
- You can provide information or guidance for the line managers who have the responsibility to complete the assessment
 - The organisation's Welsh language officer or manager could be responsible for completing all the assessments, or scrutinise each assessment in order to ensure the required factors have been suitably considered.
 - You could up skill the HR department to allow them to undertake the assessments or to scrutinise them
 - The management team of an organisation could scrutinise decisions before approving them.
- 4.2 Whichever method you chose, it's important that you have the mechanisms in place to stop any posts that haven't been assessed from being advertised.

General considerations

- 4.3 The following can be considered as part of the criteria when considering the linguistic requirements of a post:
- **Function** – is there an external contact with which the member of staff is expected to be able to communicate in both Welsh or English; will they be working in a certain geographical area where there is a high number or percentage of Welsh speakers
 - **The organisation's language policy** e.g. the need for internal administration, or more internal administration, through the medium of Welsh, or a minimum level of Welsh language skills set for specific posts
 - The **current number** of staff who are available to provide a Welsh language service – an organisation is expected to be able to identify any gaps in language skills to provide services
 - The need to **deal with other organisations** whose internal administration is undertaken through the medium of Welsh or bilingually.
- 4.4 In order to help officers consider the criteria effectively, organisations have developed a range of policies and procedures. For example some organisations have developed a decision tree as a tool for officers to complete when assessing the need for Welsh language skills for a post.

Considerations for categorisation

- 4.5 The standards require that posts are categorised as those where Welsh language skills as either essential, need to be learnt after the appointment, desirable or not required. Below are some relevant considerations for each one of the categories.

Relevant considerations by category

Welsh language skills essential

Welsh language skills are usually 'essential' in a situation where no one is available to provide a service through the medium of Welsh or if more Welsh-speaking staff are needed to provide a service in Welsh. Here are some considerations:

- The need to provide a service or provide assistance to Welsh speakers, whether they are internal staff or members of the public
- A post which involves being in contact with the public, where the individual is expected to be able to communicate in both Welsh and English
- A post located in a Welsh-speaking community
- A post which involves a great deal of contact with Welsh speakers
- No members of staff available to provide a Welsh language service
- Not possible for another officer to provide a Welsh language service
- The organisation's language policy e.g. internal administration is in Welsh and English
- The need to deal with other organisations that operate through the medium of Welsh.

If Welsh language skills are 'essential' for a post, the applicant will need to possess the necessary Welsh language skills in order to be appointed to the post.

Welsh language skills desirable

If Welsh language skills are not essential, an organisation may come to the conclusion that Welsh language skills are 'desirable'. This may include a situation where the organisation already has capacity to be able to provide a specific service in Welsh, but that it would be desirable to reinforce that Welsh language provision by recruiting more staff with Welsh language skills to provide the service. Here are some considerations:

- The need to provide a service or provide assistance to Welsh speakers, whether they are internal staff or members of the public
- Posts that involve a great deal of contact with the public
- Posts that are located in a Welsh-speaking community or that serve a Welsh-speaking area
- Posts that involve a great deal of contact with Welsh speakers
- 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 to restructure a service, and 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
- The organisation's language policy e.g. internal administration is in Welsh and English.

If Welsh language skills are 'desirable' for a post, an organisation may assume that an applicant with Welsh language skills has an advantage over another applicant when being considered for the post, but the successful applicant would not need to possess those skills.

Welsh language skills need to be learnt upon appointment

An organisation may determine that a post requires learning Welsh language skills when someone is appointed to the post. Usually, those appointed to a post would need to reach a particular level of fluency as a condition of their appointment. That condition is usually noted in the job advertisement. Below are examples where this would be appropriate:

- If an organisation identified a post where Welsh language skills are essential, but found it difficult to recruit an applicant with Welsh language skills to the post in question and decided to re-advertise
- If an organisation knows for certain that there is a significant shortage of persons with Welsh language skills who can undertake the role in question, and that it is likely that a non-Welsh speaker will have to be appointed (e.g. a highly specialised role)
- If an organisation aims for all staff members, or a significant proportion of staff, to have Welsh language skills and it would not be possible to recruit staff who already speak Welsh.

Welsh language skills are not necessary

This category would be used if an organisation doesn't believe that someone with Welsh language skills needs to be appointed when considering issues such as the above – when Welsh language skills are not required to undertake the role and appointing a non-Welsh speaker would not have any detrimental effect on the organisation.

- 4.6 It is important, when considering these criteria, that evidence is available to justify decisions and support any case for the language requirement. As well as the above criteria, there may be other factors resulting from the Welsh language standards, or the organisation's statutory Welsh language scheme or policy decision, and these factors should always be considered when determining language requirements of posts. Other legislation can also lead to a need to appoint more Welsh speakers, for example the requirement in section 14(1)(f) of the Social Services and Well-being (Wales) Act 2014 to assess the actions required to provide services through the medium of Welsh.
- 4.7 The verification process can be undertaken in accordance with annex 3 to this document, which considers the legal test set out in the Equality Act 2010 and the criteria established in the Homer legal precedent case. 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 proportionate and is the approach taken to achieve the objective (i.e. satisfying 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.

Evidence about the workforce's skills

- 4.8 As stated above, the current number of Welsh speakers within the workforce can be a relevant consideration. Welsh language standards require organisations to assess the workforce's Welsh language skills and report on this. The standards do not specify a method of assessing the workforce's Welsh language skills. However, the Commissioner's code of practice for Welsh language standards (no. 1) 2015 states:

What kind of Welsh language skills need to be assessed?

- 6.8.4 A body may assess the following Welsh language skills:
- speaking
 - listening;
 - reading;
 - writing;
 - understanding.
- 6.8.5 A body is expected to assess the Welsh language skills of its employees according to each kind of skill being assessed. This can ensure that a body has a complete picture of employee capabilities.
- 6.8.6 Usually, Welsh language skills are recorded in accordance with a recognised framework. The Commissioner wishes to see greater consistency in terms of recording employees' Welsh language skills, in order to facilitate the collection of data on the bilingual workforce. In order to ensure consistency on a national level in terms of the way in which bodies assess the Welsh language skills of employees, bodies may choose to conduct the assessment based on the Common European Framework of Reference for Languages (CEFR) in future.
- 6.8.7 The National Centre for Learning Welsh's (NCLW) Learn Welsh Level Checker may also be used to contribute to determining the Welsh language skills of employees and identifying further training needs. This is an online diagnostic tool which identifies Welsh language capabilities when reading, writing, listening and speaking. The outcome of the checker will correspond to the levels determined in the National Curriculum for Welsh for Adults: Entry, Foundation, Intermediate or Advanced. These levels compare with the levels found in the CEFR framework and Association of Language Testers in Europe (ALTE) framework as follows:

NCLW level	CEFR level	ALTE level
<u>Entry</u>	A1	Entry
<u>Foundation</u>	A2	1
<u>Intermediate</u>	B1	2
<u>Advanced</u>	B2	3
<u>Proficiency</u>	C1	4
-	C2	5

According to which indicators should the body assess the Welsh language skills of employees?

- 6.8.8 A body may conduct the assessment in a way which would allow it to record employees' Welsh language skills according to specific indicators.
- 6.8.9 A body must ensure that the assessment allows it to record the number of employees who have Welsh language skills in accordance with standard 151.
- 6.8.10 However, a body may also conduct an assessment in a way which would allow it to record employees' Welsh language skills:
- on an organisational level;
 - according to percentage;

- according to skill;
- according to level;
- according to job grade;
- according to workplace;
- according to service;
- according to directorate, department, or team.

Who should conduct the assessment?

6.8.11 It is a matter for the body itself to decide who should conduct the assessment. This may include:

- employees self-evaluating their Welsh language skills;
- employees undertaking exercises or tests to assess their Welsh language skills;
- managers identifying the Welsh language skills of employees as part of the appraisal process.

How often should an assessment take place?

6.8.12 In order to comply with standard 151 (record keeping), a body must keep a record of the number of employees who have Welsh language skills at the end of each financial year.

6.8.13 Therefore, in order to comply with the requirements of standard 151, as well as keeping updated records, a body must undertake such an assessment at least once a year. However, the Welsh Language Commissioner may ask a body to provide the above information at any time from the imposition day onwards, in accordance with the requirements of standard 172.

6.8.14 The information should be kept up-to-date, ensuring that any changes to Welsh language skill data are updated as required. Such changes may include a situation whereby:

- an employee's language skills level changes (e.g. following Welsh lessons in accordance with standards 130 or 131);
- an employee leaves the body;
- a new employee joins the body;
- an employee moves to another location, directorate, department, or team (and those changes affect the body's record).

Re-advertising

4.9 We are aware of some cases where organisations had advertised posts with Welsh language skills as essential, only to re-advertise them with different requirements after failing to attract applicants. This should not be done. If the organisation has assessed that Welsh is essential for a post, those requirements should not be changed unless significant changes have been made to the duties and responsibilities of the post, including ensuring another means of providing the Welsh language service or another significant change in circumstances. Failure to recruit is not, in itself, a sufficient enough reason to change the language requirement category of a post. Consideration should be given to more effective methods of attracting candidates or using different methods to ensure sufficient Welsh language provision.

5 Communicating the language requirements of posts

- 5.1 The standards require an organisation to categorise the language requirements of a post (essential, desirable and so on) – i.e. it **must** do this. In addition, organisations may also give further consideration to the nature of the necessary linguistic requirements for carrying out the post, and provide this information to applicants.
- 5.2 Many organisations use skills levels, or practical descriptions of activities, to specify needs. Sometimes, organisations will state that different levels of skills are needed to communicate in different ways (e.g. need to be a fluent Welsh speaker, but more basic written skills are acceptable).
- 5.3 The use of skills levels may be useful to provide a practical picture of the requirements to prospective applicants. It may also avoid the misapprehension that a high level of proficiency in Welsh is required for all posts where Welsh language skills are essential. However, some care needs to be taken:
 - An organisation must note under what category (e.g. essential / desirable) a post falls even if skills levels are used (e.g. even when stating that Welsh oral level B2 is required to carry out a post, they should state whether those skills are essential or desirable)
 - In some cases, the use of levels that applicants do not understand may prevent them from applying.
- 5.4 Perhaps there needs to be a more practical way to convey the exact requirements of the post to applicants than the levels. It can be more effective and coherent to give a practical description of the tasks required to be completed through the medium of Welsh in order to fulfil the role. There are examples of possible descriptions below.

Possible ways of describing posts' Welsh language requirements

- 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.”

6 Attracting Welsh speaking candidates

- 6.1 Where there is a great deal of competition for Welsh speakers, it is beneficial for the organisation to take action to ensure that Welsh speakers are more likely to apply for posts. This section offers methods of doing this.

Considering other requirements of posts

- 6.2 Some organisations have adapted the other requirements of posts in order to ensure that a wider range of Welsh speakers can apply. For example, we are aware of organisations that have:
- Rather than recruit already-qualified professional workers (e.g. social workers, planning officers), established a scheme where workers are appointed and then undergo intense training, leading to qualification, after appointment
 - Offered apprenticeship schemes rather than seeking to appoint more experienced staff.

Targeting potential applicants

- 6.3 Some organisations have proactively sought to reach potential applicants. For example, we are aware of organisations that have:
- Established a relationship with a local further education college, or a sixth form within a local school, to promote opportunities for young people who are leaving school
 - Attended jobs fairs for local young people
 - Engaged with local organisations, and put up posters in the area, rather than advertise on the corporate website only
 - Produced a video for the media and web to promote a campaign to recruit more Welsh speakers.

Facilitating the use of Welsh in appointment processes

- 6.4 Ensure that Welsh can be used easily during the appointment process, without any disadvantage, can make Welsh speakers more likely to apply. The section below summarises some ways of doing this (having considered the requirements of the standards).

Advertising posts

- 6.5 It is advantageous for 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.
- 6.6 Employers have said that adding a practical and relevant recruitment wording to the post has led to more success in appointing Welsh speakers.
- 6.7 For posts that have been categorised as having Welsh language skills as essential, desirable or needing to be learnt, the standards require this to be stated when advertising the post. This can be done by stating the category of

language requirements of a post in the job description, the person specification and the advertisement itself.

- 6.8 You may decide to advertise posts where the Welsh language is essential in Welsh only if you so wish. For example, you may decide to advertise in Welsh only in Welsh language publications or do so with a short explanation in English in advertisements published in English language publications.
- 6.9 The standards include a number of requirements regarding facilitating the use of Welsh during the recruitment process, including:
- Publishing application forms, explanatory materials relating to the application process, information on the interview and assessment process, and job descriptions, in Welsh, and ensuring that Welsh versions are not treated less favourably than English versions
 - Stating that applications may be submitted in Welsh, and that an application submitted in Welsh will not be treated less favourably than an application submitted in English
 - Not treating a Welsh language application for a post less favourably than an English language application, e.g. ensuring that the closing date is the same for both Welsh and English language applications, and that there is no delay in informing applicants about a decision on a Welsh language application compared to an English language application
 - Ensuring that application forms for posts provide a space for individuals to indicate that they wish an interview or other method of assessment in Welsh, and acting in accordance with this (either with or without using a translation service, depending on the requirements in the organisation's compliance notice)
 - Where an individual has submitted a job application in Welsh, informing them in Welsh of the decision in relation to the application.

Annex 1: Relevant standards

Number of standard (regulations)	Standard wording
136 (1); 132 (2); 131 (4); 134 (5); 145 (6); 106 (7)	<p>When you assess the requirements for a new or vacant post, you must assess the need for Welsh language skills, and categorise it as a post where one or more of the following apply –</p> <ul style="list-style-type: none"> (a) Welsh language skills are essential; (b) Welsh language skills need to be learnt when appointed to the post; (c) Welsh language skills are desirable; or (ch) Welsh language skills are not necessary.
136A (1); 132A (2); 131A (4); 134A (5); 145A (6); 106A (7)	<p>If you have categorised a post as one where Welsh language skills are essential, desirable or need to be learnt you must –</p> <ul style="list-style-type: none"> (a) specify that when advertising the post, and (b) advertise the post in Welsh.
137 (1); 133 (2); 132 (4); 135(5); 146 (6); 107 (7)	<p>When you advertise a post, you must state that applications may be submitted in Welsh, and that an application submitted in Welsh will not be treated less favourably than an application submitted in English.</p>
137A (1); 133A (2); 132A (4); 135A (5); 146A (6); 107A (7)	<p>If you publish –</p> <ul style="list-style-type: none"> (a) application forms for posts; (b) material that explains your procedure for applying for posts; (c) information about your interview process, or about other assessment methods when applying for posts; (ch) job descriptions; you must publish them in Welsh; and you must ensure that the Welsh language versions of the documents are treated no less favourably than any English language versions of those documents.
137B (1); 133B (2); 132B (4); 135B (5); 146B (6); 107B (7)	<p>You must not treat an application for a post made in Welsh less favourably than you treat an application made in English (including, amongst other matters, in relation to the closing date you set for receiving applications and in relation to any time-scale for informing individuals of decisions).</p>
138 (1); 134 (2); 133 (4); 136 (5); 147 (6)	<p>You must ensure that your application forms for posts provide a space for individuals to indicate that they wish an interview or other method of assessment in Welsh and if an individual so wishes, you must conduct any interview or other method of assessment in Welsh (without the assistance of a simultaneous or consecutive translation service).</p>
139 (1); 135 (2); 134 (4); 137 (5); 148 (6); 108 (7)	<p>You must ensure that your application forms for posts –</p> <ul style="list-style-type: none"> (a) provide a space for individuals to indicate that they wish to use the Welsh language at an interview or at any other method of assessment, and (b) explain that you will provide a translation service from Welsh to

	English for that purpose if it is required; and, if the individual wishes to use the Welsh language at the interview or assessment, you must provide a simultaneous translation service at the interview or assessment (unless you conduct the interview or assessment in Welsh without that translation service).
140 (1); 136 (2); 135 (4); 138 (5); 149 (6); 109 (7)	When you inform an individual of your decision in relation to an application for a post, you must do so in Welsh if the application was made in Welsh.

Annex 2: International perspectives

1. Other countries throughout the world operate in a bilingual or multilingual context. This annex includes some examples of processes that are in place to facilitate the recruitment of people with suitable language skills for those contexts.

Basque Country

2. Act 10/1982 of the Basque Country Parliament on the normalisation of the use of the Basque language is the basis of developments in recruitment in the public sector.
3. Article 5 states two basic rights:
 - o “Right to interact orally and/or in writing in Basque or Spanish with the Administration and with any public body or entity located in the Autonomous Community”
 - o “Right to carry out professional, labor, political and union activities in Basque”
4. Considering the right for citizens to interact with public agencies in Basque and the right to work in Basque, article 14 states that public authorities will adopt measures which lead to the gradual acquisition 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 take into account linguistic skills in the recruitment process.
5. Public agencies have flexibility to define their job positions regarding Basque language requirements depending on the area (depending on the extent to which Basque is actually spoken in the geographical area in which the employee will be located) and on the results of negotiations with trade unions, but are expected to prioritise those posts which involve the most contact with the public as ‘Basque essential’. In general, positions of responsibility are all defined as “Basque essential” and at least C1 Basque language is required (CEFR).
6. A percentage of posts are designated ‘Basque essential’ in each organisation corresponding to the percentage of Basque speakers in that particular administrative area. In respect of all other posts, linguistic ability is awarded additional points in the recruitment procedure, which are then combined with points obtained 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.
7. 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. However, this legal possibility has been used very exceptionally and only in the educational system.

8. To adapt job positions and the Basque Normalisation process to different realities, public agencies must approve a Basque Normalisation Plan every four years, which is evaluated yearly and implemented by the Basque Language Normalisation Officer (at least one for each Department), who is responsible for conducting an annual review of progress of the language skills of the organisation's staff. Significant investment is made in linguistic training tailored to the workplace's needs based on specific competencies. Information is published on an annual basis regarding the languages required from successful candidates. This information is sent to the government division responsible for the Basque language.

Canada

9. The Official Languages Act (OLA) 1988:
 - Requires federal institutions to serve members of the public in the official language of their choice
 - States that federal officers and employees in designated bilingual regions have the right to use either official language as their language of work. (That right is superseded only by the public's right to be served in the official language of their choice and, in the case of supervisors, managers and executives, by their employees' right to work in the official language of their choice.)
10. In order to fulfil these rights and requirements, the OLA provides that some positions are designated as bilingual and others are designated as unilingual. The OLA sets out the need for objectivity when determining the language requirements of positions, based on the duties to serve members of the public in the official language of their choice or to fulfil language-of-work obligations.
11. The Office of the Commissioner of Official Languages has developed a tool, the Official Languages Maturity Model (OLMM), to help federal institutions better identify their strengths and shortcomings in relation to the principles and obligations of the OLA. The OLMM offers a framework that organisations can use to assess themselves against and provides a clear roadmap for continuous and steady improvement.
12. The OLMM is structured along three areas of activity, one of which is "People Management." For example, an organization can assess the extent to which it takes into account its official languages obligations in relation to human resources practices. These practices include accurately establishing the required level of linguistic proficiency for positions and taking the necessary measures to ensure established linguistic profiles are met when staffing positions.

13. In the Canadian public service, approximately 40% of positions are designated as bilingual.
14. Bilingual positions must be staffed with candidates who meet the language requirements at the time that they are appointed, unless exceptional staffing situations exist. In these exceptional cases, institutions must:
 - Ensure that language training is provided as soon as possible so that the candidate can acquire the second-language skills required.
 - In the meantime, put in place measures to ensure that the language requirements related to the tasks and functions of the position are met.
15. To be appointed to a bilingual position, candidates must meet the language requirements based on second language evaluation results. Testing is conducted by the federal government to determine levels of proficiency in written comprehension, written expression and oral proficiency. The results are valid for five years. Individuals can be exempt from further language testing if their performance indicates that they will be able to maintain their second language proficiency at a high level indefinitely.
16. A 'bilingualism bonus' is given to eligible public service staff who occupy a bilingual position and who have valid second language evaluation results.

Republic of Ireland

17. In the Republic of Ireland, [section 13 of the Official Languages Act 2003](#) requires organisations, when they prepare draft Irish language schemes, to “ensure that an adequate number of its staff are competent in the Irish language so as to be able to provide its service through Irish as well as English” and to “ensure that the Irish language becomes the working language in its offices in the Gaeltacht not later than such date as may be determined by it with the consent of the Minister.”
18. This is reflected in many of the language schemes confirmed by the Minister, and the Irish Language Commissioner’s [Guidelines](#) encourage organisations to identify the necessary Irish language skills and competencies for each post within the organisation.
19. The emphasis of the Guidelines is mostly on providing tailored training for existing staff to improve their Irish language skills, but:
 - In the context of ensuring that services are available in Irish, the Guidelines state: “The necessary measures to be taken to ensure provision of each cluster of services / activities through the Irish language over the longer-term should be listed. These may include recruitment / transfer of bilingual staff [...]”
 - In the context of working to ensure that the Irish language becomes the working language in Gaeltacht offices, the Guidelines state that organisations will need to consider including the “ability to work through Irish as an essential requirement for any new staff being recruited/assigned/included on promotion to a Gaeltacht Office after the commencement date of the scheme”.

20. The proposed Official Languages (Amendment) Bill 2019 includes a provision in relation to recruitment of Irish speakers to provide services through Irish, by requiring an Advisory Committee on the Irish Language to have regard to the objective of “increasing the number of staff of public bodies who are competent in the Irish language so that, as soon as practicable after the establishment day, at least 20 per cent of staff recruited to public bodies are so competent”.
21. In the Constitution of Ireland, in particular Article 8, Gaelic is identified as Ireland’s national language and first official language.
22. In the 1987 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.
23. 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.
24. The European Court of Justice judged that the Government’s position was legitimate.

The importance of education for the implementation of such a policy [promoting the Irish language] must be recognised. 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

Annex 3: The legal position – language and recruitment

1. This annex addresses the legislation, the documentation and the cases which impose legal requirements on organisations in terms of discrimination, and the ways in which it is possible to increase the workforce's capacity in terms of Welsh language skills without falling foul of those legal requirements.
2. It is important that an organisation's processes address the issues raised in this annex. Adopting or adapting employment policy may be helpful in ensuring that an organisation operates appropriately when promoting a bilingual workforce.
3. The commentary below provides details of relevant legislation and cases which may be used to support of the move towards a bilingual workforce.
4. It is important to note that any single case will depend on the facts and circumstances at the time, therefore the law must be applied to the specific situation. Similarly, the case law contained in this document is provided as guidance only. It may be necessary or appropriate to obtain further legal advice on the particular circumstances of any case.

The Equality Act 2010 and the Welsh language

5. The Equality Act 2010 consolidates all previous discrimination legislation 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.
6. 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 described in two ways:
 - o **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
 - o **Indirect discrimination** – can occur where an employer applies a provision, criterion or practice which, when applied, puts a person at a particular disadvantage because of their race; and the employer cannot show that it is a proportionate means of achieving a legitimate aim.
7. 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 – would constitute applying a 'provision, criterion or practice' under the Equality Act 2010.
8. Welsh speakers are not a racial group, and Welsh speakers come from an increasingly broad variety of backgrounds. However:
 - o In terms of national origin, at present, the majority of Welsh speakers are Welsh, and the percentage of people who are not Welsh is lower within the

Welsh speaking population than in the general population.¹ As a result, including Welsh language skills requirements may indirectly discriminate against people of other racial groups based on national origin.²

- o In terms of colour, at present, the majority of Welsh speakers are white, and the percentage of people who are not white is lower within the Welsh speaking population than in the general population, As a result, including Welsh language skills requirements may indirectly discriminate against people of other racial groups based on colour.
9. However, including Welsh language skills requirements for a post will not unlawfully discriminate if the employer can prove that it is justified – that it is a proportionate means of achieving a legitimate aim. This annex provides information about how to ensure that any requirement is a proportionate means of achieving a legitimate aim; in this context, specific attention should be given to paragraph 21.
10. The Equality and Human Rights Commission’s [Employment Statutory Code of Practice](#) for the Equality Act 2010 summarises the situation:

A language requirement for a job may be indirectly discriminatory unless it is necessary for the satisfactory performance of the job.

Employment Statutory Code of Practice, Equality and Human Rights Commission (17.44)

11. It is therefore key that any organisation that sets Welsh language skills requirements for a post can show that this is a proportionate means of achieving a legitimate aim.
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.
13. The Equality and Human Rights Commission’s Employment Statutory Code of Practice states, with specific reference to the Welsh Language Act 1993:

¹ Court cases have determined that groups like Scots and the English are racial groups based on their national origin (Northern Joint Police Board v Power [1997] IRLR 610 EAT; BBC Scotland v Souster [2001] IRLR 150 CS).

² Including Welsh language skills requirements cannot indirectly discriminate based on race (national origin) against people who belong to the Welsh racial group but who do not speak Welsh – Welsh-speaking and non-Welsh speaking Welsh people belong to the same racial group, in line with Gwynedd v Jones [1986] ICR 833,

Under the Welsh Language Act 1993, public bodies providing services to the public in Wales must make their services available in Welsh as well as English. This operates as a statutory exception to the Equality Act, and allows a wide range of posts in public bodies in Wales (and some outside Wales) to require workers who can speak, write and read Welsh sufficiently well for the post in question. In some cases, Welsh language skills may be an essential requirement for appointment; in others, the worker may need to agree to learn the language to the required level within a reasonable period of time after appointment.

Employment Statutory Code of Practice, Equality and Human Rights Commission (17.45)

14. Whilst in the majority of cases the Welsh Language (Wales) Measure 2011 and the standards contained in Regulations made under that Measure have superseded the provisions of the Welsh Language Act 1993, the same principle continues to apply.
15. Although the Code is not binding, its contents are considered regularly in legal cases, and courts and tribunals are duty-bound to consider the Code in certain cases.
16. The Supreme Court judgment in *Homer -v- Chief Constable of West Yorkshire [2012] UKSC 15* confirmed the questions that an employer must consider when considering whether a provision, criterion or practice is a proportionate means of achieving a legitimate aim. Whilst this particular case related to indirect discrimination on the grounds of age, the same principles are relevant to all types of indirect discrimination. The following is a summary of the relevant questions that an employer must ask:
 - What is the employer's real aim in implementing the provision, criterion or practice?
 - Is that aim a legitimate one?
 - Is implementing the provision, criterion or practice an appropriate way of achieving that legitimate aim?
 - Is implementing the provision, criterion or practice reasonably necessary to achieve that legitimate aim?
 - Does the necessity of the legitimate aim to the employer out-weigh the gravity of the effect of the provision, criterion or practice on the affected group?
17. 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. 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).

18. The objective or aim is to ensure that there are enough staff with the appropriate language skills in the correct posts to enable the organisation to fulfil the statutory language requirements in a satisfactory and efficient manner. This is legitimate and reasonable.
19. In order to assess the legitimacy of the aim, it is appropriate to consider the context, which includes the bilingual nature of Wales, and the number and distribution of Welsh speakers in the catchment area of the organisation in question; the Welsh Government's strategy to reach a million Welsh speakers by 2050; and the statutory requirements on the organisation as a result of the Welsh language standards or a Welsh language scheme.
20. The next step is to consider whether the means of achieving the aim are proportionate. The means of achieving the legitimate aim must not only be appropriate, but also be reasonably necessary to achieve the legitimate aim. 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 as a means of achieving the applicable legitimate aim, the appropriateness of that target and the timescale for achieving that target are likely to be considerations when determining whether the provision, criterion or practice is reasonably necessary to achieve that legitimate aim. 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 and reasonably necessary under the circumstances.
21. Finally, when balancing the necessity of the legitimate aim to the employer against the gravity of the discriminatory effect of the provision, criterion or practice on the affected group (i.e. in this context, those who do not fall within the Welsh racial group or who are not white), does one out-weigh the other? The employer needs to be able to show:
 - That the linguistic requirements are appropriate and reasonably necessary and suitable in terms of achieving the organisation's statutory commitments in relation to the Welsh language
 - That not taking these steps would lead to a possible failure to comply, 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 organisation, but using a translator would not be an appropriate way of providing a face-to-face service)
 - That the employer has thoroughly considered the effect of the provision, criterion or practice on those who do not fall within the Welsh racial group or who are not white. Because it is less likely that members of such racial

- groups will possess the necessary Welsh language skills, they are less likely to be able to satisfy the requirement, and therefore unable to get the job (or be promoted or receive other benefits which result from possessing Welsh language skills)
- 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).
22. 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.
 23. Tribunals have, on more than one occasion, affirmed the legitimacy of provisions relating to Welsh language skills.
 24. 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) of the Equality Act 2010 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.
 25. 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.
 26. If a condition to learn Welsh is placed on a post, then, in order to meet the requirements of the Welsh Language Measure, the organisation will need to 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 and that the employer has acted consistently fair and reasonable at all times, then the risk of dismissing that individual as a last resort is likely to be low.. However, every case would need to be considered on an individual basis and appropriate advice should be obtained before any steps are taken.

The European Charter for Regional or Minority Languages

27. The UK Government ratified this charter in March 2001 thus committing itself to its implementation regarding 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

28. 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 7, The European Charter for Regional or Minority Languages 1992

29. The Charter, the Welsh Language Act 1993 and the Welsh Language Measure all provide a context for setting linguistic conditions when recruiting, though none excludes the need to show that these are justifiable under the Equality Act 2010.
30. Whilst the provisions of the Charter are not legally binding in England and Wales, they are nonetheless important when establishing a context for assessing the legitimacy of employers' aims that relate to the Welsh language.

European law

31. 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 number 1612/68

32. Notwithstanding the fact that article 3 is part of a Regulation and is legislation derived from the European Union, it continues to form part of the laws of the United Kingdom following the expiry of the transition period (and therefore continues to be legally binding in the United Kingdom) and is likely to continue to form part of the laws of the United Kingdom for a period of time, at least, until it is repealed. European law therefore does not prevent member states or public organisations within those member states from setting conditions regarding linguistic ability when that is required due to the nature of the vacancy. Once again, this is important when establishing a context for assessing the legitimacy of employers' aims which relate to the Welsh language.



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