

<b>Title:</b> English Language Requirement for Public Sector Workers <b>IA No:</b> CO2001  <b>RPC Reference No:</b> <b>Lead department or agency:</b> Cabinet Office <b>Other departments or agencies:</b> Public Sector Bodies	<b>Impact Assessment (IA)</b>			
	<b>Date:</b> 20/05/2016			
	<b>Stage:</b> Final			
	<b>Source of intervention:</b> Domestic			
	<b>Type of measure:</b> Primary legislation			
	<b>Contact for enquiries:</b> Simon Claydon Cabinet Office, 0207 271 8325			
<b>Summary: Intervention and Options</b>				<b>RPC Opinion:</b> Not Applicable

Cost of Preferred (or more likely) Option				
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANDCB in 2014 prices)	One-In, Three-Out	Business Impact Target Status
-£5.79m	N/A	N/A	Not in scope	Non qualifying provision

**What is the problem under consideration? Why is government intervention necessary?**

The Government made a manifesto commitment to help ensure the safe and high quality delivery of public services by ensuring that they are provided to an appropriate standard of fluency in English, or in Wales, English or Welsh. Quality of communication is critical to efficiency, health and safety, and public confidence in public services. The public should be able to expect sufficient standards of spoken English across public services for effective delivery of services. Often the public sector is a monopolist provider of services, so there are no market forces to influence quality and regulation of service. Without intervention the Government cannot ensure that a sufficient standard of spoken English is maintained.

**What are the policy objectives and the intended effects?**

The policy objective is to ensure that citizens are able to interact with all public services by ensuring that every worker in a public-facing role meets a necessary standard of fluent English and that this is maintained and enforced. The policy intends to improve the quality, efficiency and safety of public service provision and ensure taxpayers' confidence that they are receiving value for money. The policy intends to deliver consistency with existing language standards, bringing the rest of the public sector into line with those leading the way. In Wales the policy will apply to the standard of spoken Welsh or English of workers in applicable roles.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

Option 1: Impose a statutory duty: the preferred option.  
 Introducing a statutory duty through primary legislation is the preferred option, as it is the only option that will fully deliver the policy intent, by creating consistency and safeguards to ensure quality public services, enhancing public perception and confidence. Codes of Practice proposed under the preferred option would provide guidance and support to public authorities to meet their obligations, whilst retaining flexibility to account for the differing requirements and existing arrangements of public authorities. The preferred option will ensure that the burden placed on public authorities is small.

Option 2: Do nothing

<b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> Month/2017						
Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope?			<b>Micro</b> Yes/No	<b>Small</b> Yes/No	<b>Medium</b> Yes/No	<b>Large</b> Yes/No
What is the CO <sub>2</sub> equivalent change in greenhouse gas emissions? (Million tonnes CO <sub>2</sub> equivalent)			<b>Traded:</b> N/A		<b>Non-traded:</b> N/A	

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.***

**Signed by the responsible Minister:** Ben Gummer **Date:** 29/11/16

# Summary: Analysis & Evidence

# Policy Option 1

Description: Policy Option 1 - statutory Code of Practice (preferred option)

## FULL ECONOMIC ASSESSMENT

Price Base Year 2016	PV Base Year 2016	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -£7.31m	High: -£4.27m	Best Estimate: -£5.79m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	£4.4m	£0m	£4.3m
High	£7.5m	£0m	£7.3m
Best Estimate	£5.9m	£0m	£5.8m

### Description and scale of key monetised costs by 'main affected groups'

The key monetised costs include transition costs to all public sector bodies in familiarisation with the new legislation, estimated at £1.2m. Public sector bodies with non-fluent workers will incur additional transition costs in resolving fluency complaints of £1.1m, and in taking remedial action including staff re-deployment costs of £0.8m and training costs of £2.8m. It is expected that transition will be phased, taking place over four years following the introduction of the legislation.

### Other key non-monetised costs by 'main affected groups'

Public sector workers may be affected by costs of familiarisation with the new statutory duty and Code of Practice if they do not have or it is uncertain whether they have the required level of fluency.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	N/A	N/A	N/A
High	N/A	N/A	N/A
Best Estimate			

### Description and scale of key monetised benefits by 'main affected groups'

The consultation did not provide sufficient data to monetise the benefits of this policy. While some benefits could be monetised on a per case basis (e.g. avoiding cost of errors in health care associated with poor language skills), insufficient data on the number and types of such cases render it disproportionate to monetise benefits in aggregate.

### Other key non-monetised benefits by 'main affected groups'

The main beneficiaries of this statutory duty will be users of public sector services, i.e. members of the general public. They will benefit from the impact of improved interaction with public sector workers, including more efficient, better quality and more accurate public services, providing greater confidence and trust. Public authorities may also benefit from greater efficiency and productivity in service provision, and a reduction in errors, reducing associated legal costs.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5%
The main risks are associated with possible increases in costs to public sector bodies related to increases in vexatious complaints, difficulties in recruitment, and complaints about unfair recruitment practices if organisations become risk averse in hiring staff whose first language is not English. There could also be some variation in how standards in the new legislation are applied resulting in possible variation in the quality of services and recruitment procedures.		

## BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			Score for Business Impact Target (qualifying provisions only) £m:
Costs: N/A	Benefits: N/A	Net: N/A	
			N/A

# Evidence Base (for summary sheets)

## Introduction

This impact assessment relates to the Government's manifesto commitment to ensure the safe and high quality delivery of public services by ensuring that they are provided to an appropriate standard of fluency in English, or in Wales, English or Welsh. Under the preferred option, following the initial impact assessment, a provision has been included in the Immigration Bill that imposes a duty on public authorities to ensure that all of their workers in customer-facing roles have a sufficient command of spoken English (or English or Welsh in Wales). Public authorities will be required to have regard to a statutory Code of Practice that will contain practical guidance for setting a proportionate standard and the practices expected when complying with the statutory duty.

In this Impact Assessment, a public sector worker is determined to be 'public-facing' if as a regular and intrinsic part of their role, they are required to speak to members of the public in English, or in Wales in English or Welsh. This is described in Part 7 of the Act as a 'customer-facing role' and defined in section 77(7) of the Act.

This Impact Assessment details the problem under consideration, the rationale for intervention and the policy objective. It also evaluates the monetised and non-monetised costs and benefits of the preferred option, as well as considering risks and possible wider impacts.

The assessment considers the impact of the policy and statutory Code of Practice, with particular reference to scope, standard setting, recruitment, remedial action and complaints handling, as well as wider implications such as social cohesion, potential discrimination and inconsistent standard setting.

The Cabinet Office consulted across the UK on a draft Code of Practice, a full list of organisations consulted is attached at Annex A. The open consultation ran for a period of eight weeks from 13 October until 8 December 2015. Over 130 stakeholders, including public and private sector organisations, trade unions, subject matter experts and academia, were actively engaged, of which 40 submitted formal written responses. The evidence and insight gained from consultation has been published in the Government Response<sup>1</sup> and is reflected within this Impact Assessment.

## Issue under consideration and rationale for Government intervention

1. In 2015, the Conservative Manifesto commitment to help ensure the safe and high quality delivery of public services by ensuring that they are provided to an appropriate standard of fluency in English, or in Wales, English or Welsh.
2. The Government believes that the public have the right to expect that all those with whom they interact, within the sphere of public services, will have the language abilities required to respond to their needs.

### Scale of the problem

3. Reports suggest that not all public sector workers operating in public-facing roles have a sufficient command of English to effectively perform their role. The cases below illustrate the impacts that such shortfalls in English fluency can have:
  - A 2011 Department for Business Innovation and Skills research paper reports on various cases where businesses have faced communication barriers due to insufficient language skills, which have resulted in complaints from the public and even dismissal from work. For example, in one business in the transport sector, a public sector worker had been held responsible for an error (attributed to his English language skills), which resulted in poor client relations. Consequently, the worker was removed from client-facing roles to avoid further reputational and financial risk.

---

<sup>1</sup> <https://www.gov.uk/government/consultations/language-requirements-for-public-sector-workers>

- A survey of Responsible Officers by the England Revalidation Support Team (RST) in 2011, which covered just over half of all doctors, indicated that there were sixty-six cases in 2011 where Responsible Officers had dealt with linguistic concerns about a doctor.

## **Public trust and confidence**

4. Successful delivery of public services depends on high levels of public trust and confidence. The Committee on Standards in Public life report, *Public Perceptions of Standards in Public Life in the UK and Europe*<sup>2</sup>, indicates that this is not currently high, noting a recent decline in levels of public confidence in national representative and administrative institutions. The Government is committed to improving public faith and confidence in the services they receive and fluency in English or in Wales, Welsh or English, is likely to impact on public trust in the expertise of public sector workers and their confidence in understanding the staff they interact with. Therefore, it seems this will be a positive course of action to take and will help indicate to the public that the Government recognises and acts on their concerns.

## **Quality and efficient public services**

5. A report<sup>3</sup> published by the 2020 Public Services Trust suggested that one of two core priorities for the general public for public services is a good standard of service provision. The ability to communicate with public sector workers is likely to be crucial in supporting a high standard of service provision.
6. Not only are good standards a component of delivering an effective service, but as public services are funded with public money, they are also necessary to ensure public funds are well managed and the public receives good value for money in services. Public sector workers are paid from public funds and therefore should deliver a service that meets the expectations of taxpayers. We understand that meeting these expectations will require public-facing workers to speak fluent English or in Wales, Welsh or English.
7. Introducing the duty at this stage will ensure consistency and that the appropriate standards are in place for future recruitment.

## **Health and safety**

8. Without a sufficient understanding of English, or in Wales, Welsh or English, for their role, public sector workers are likely to need more time to comprehend issues raised by members of the public and are also more likely to misunderstand the needs of the members of the public, consequently acting in error. Any misunderstandings or errors may potentially have substantial material impacts on members of the public, including matters relating to health and safety. This was reiterated during the open consultation by such experts as Professor Steve Field, who led the 2010 ministerial review on out-of-hours care. The investigation was prompted by the tragic death of a patient in February 2008 after he was administered an incorrect dosage of medication by a locum doctor from Germany, in part associated with the doctor's insufficient English language skills.
9. The General Medical Council, which registers doctors and licenses them to work, was given new powers in June 2014 to check the English Language skills of licensed doctors in the UK. They reported<sup>4</sup> that half of all EU doctors who sought work in the UK from June 2014 to July 2015, were refused a licence to practice because they failed to prove their English was good enough. This demonstrates how language standards can be effective against risk to patient safety, and while language standards have been extended to doctors already, this is not consistent across the health sector.
10. The importance of ensuring patient safety was further highlighted by key stakeholders in the health sector during consultation, with support for further extending the policy in future to all workers in day centres and domiciliary care, rather than just those directly employed by the public sector. The

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/337021/2901994\\_CSPL\\_PublicPerceptions\\_acc-WEB.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/337021/2901994_CSPL_PublicPerceptions_acc-WEB.pdf)

<sup>3</sup> [https://www.ipsos-mori.com/DownloadPublication/1345\\_sri\\_what\\_do\\_people\\_want\\_need\\_and\\_expect\\_from\\_public\\_services\\_110310.pdfpdf](https://www.ipsos-mori.com/DownloadPublication/1345_sri_what_do_people_want_need_and_expect_from_public_services_110310.pdfpdf)

<sup>4</sup> <http://www.gmc-uk.org/news/26383.asp>

recent Independent Age report also showed that one in five of the adult social care workforce is born outside of the UK and of these, 72% were born outside the EU<sup>5</sup>. It is important to note that the implementation of the policy as currently proposed would not impact on the greater proportion of social care provision, as this is predominantly outsourced to private sector providers. A further impact assessment would be required to fully consider the implications to private and voluntary sector providers of public services should an extension of the policy be considered.

## Policy objectives and intended effects

11. The policy aims to ensure that all directly-engaged public sector workers in public-facing roles, whatever their nationality or ethnic origins, are able to speak fluent English or in Wales, Welsh or English. This means that their employer must ensure that they have a command of spoken English or Welsh that is sufficient to enable the effective performance of their role.
12. Minimum language standards have already been introduced across some parts of the public sector. The policy intends to make sure that all who desire to work in public-facing roles within public services, clearly understand the expected standard of spoken English or Welsh. The policy will:
  - ensure consistency with existing language standards by reinforcing and widening the expected standard of spoken English or Welsh for public-facing roles in public services, by spreading best practice and bringing the rest of the public sector into line with those leading the way,
  - promote sufficient standards in public service delivery to ensure there is no language barrier to citizens accessing public services and that safety is not put at risk,
  - create more efficient services for taxpayers and improve public faith and confidence in public services,
  - ensure proportionate standards of English, or English or Welsh in Wales, without placing a significant additional burden on public authorities or individual employees,
  - encourage development of language skills to the benefit of the individual, as language skills promote productivity, employability and social cohesion.
13. The intended effects of this policy are described in more detail at paragraph 22-27 under the preferred option.

### Intended scope

14. Application of the policy is intended across all public authorities in:
  - England,
  - Scotland, exercising functions relating to reserved matters only,
  - Wales, exercising functions outside the legislative competence of the National Assembly for Wales,
  - Northern Ireland, exercising functions that relate to excepted matters only.
15. It is intended that all public authorities subject to the policy, set a proportionate and necessary standard of spoken English or in Wales, Welsh or English, for all existing and new staff in public-facing roles, including permanent and fixed-term employees, apprentices, self-employed contractors, agency temps, police officers and service personnel. Private and voluntary sector providers of public services are not under the initial scope.

### Key definitions

16. Public authorities are defined as bodies which carry out functions of a public nature. This includes central Government departments, non-departmental public bodies, councils and other local Government bodies, NHS bodies, state-funded schools, the police and the armed forces, and public corporations. The policy will not apply to the security and intelligence agencies, the Government Communications Headquarters or staff locally engaged overseas.

---

<sup>5</sup> Independent Age, Moved to Care: the impact of migration on the adult social care workforce, by Ben Franklin and Cesira Urzi Brancati, November 2015

17. Public-facing workers are defined as those who are directly employed by a public authority, or temporary staff substituting for directly employed staff who are required to speak to members of the public, either face-to-face or by telephone, as a regular and intrinsic part of their role.
18. The policy intention is that where public-facing roles are performed by people whose only or first language is a sign language, the fluency duty will be to ensure that the sign language interpreter has a sufficient command of spoken English or in Wales, English or Welsh.
19. Fluent is defined as having a sufficient command of spoken English to effectively perform the role being undertaken. Fluency relates to a person's language proficiency and their ability to speak with confidence and accuracy, using accurate sentence structures and vocabulary. The policy does not intend fluency to relate to accents (regional or international), dialects, speech impediments or the tone of conversations.

## Policy Options

### **Option 1 – statutory Code of Practice (preferred option)**

20. Without legislating the Government cannot ensure public authorities set a necessary and proportionate standard of spoken English, or English or Welsh in Wales, for all public-facing roles, or that members of the public could raise concerns when the standard of spoken English or Welsh acts as a barrier to accessing public services. Therefore, the full benefits of promoting safety, quality and confidence in our public services would not be realised without legislating.
21. The preferred option is to implement a statutory duty requiring public authorities to ensure that relevant workers can speak fluent English, or in Wales fluent English or Welsh, and in meeting this duty, to have regard to a statutory Code of Practice. This measure is to be implemented through primary legislation to ensure adherence to the policy by all public authorities in scope and to make the standard meaningful for members of the public, giving the public the opportunity to complain about any services falling short of the required standard of spoken English or Welsh.
22. This option ensures the greatest level of consistency. The Code would provide assistance and guidance to public authorities to determine the necessary standard of spoken English or Welsh required for the sufficient performance of a public-facing role; the appropriate complaints procedure to follow and the appropriate forms of remedial action that may be taken if a member of staff falls below the standard required. Hereafter, the Code will serve to assure the public that they can be confident in this aspect of service quality.
23. Nonetheless, this option intends to keep the burden on public authorities as minimal as possible. The suggested option takes a pragmatic and proportional approach to addressing the issue of fluency, as organisations have the flexibility and discretion to specify what level of English or Welsh is required for their public-facing roles. This should ensure that time and resources are not spent pursuing a standard of spoken English or Welsh higher than that which is needed to ensure a quality service. It is not envisaged that the majority of existing members of staff would need to be tested. Where staff or job applicants are clearly fluent to the necessary standard, no further action would be necessary.
24. Organisations responding to the consultation on the draft Code of Practice identified that not only do existing recruitment practices mostly align with the proposed duty, but there are established mechanisms for remedial action, redeployment processes and complaints regimes, which they can use to implement the duty without significant amendment. Throughout the consultation, organisations also expressed approval of the moderate approach to standard setting and considered the duty a proportionate means of achieving a legitimate aim.
25. The introduction of a statutory Code of Practice is therefore the preferred option, as it is the only option that fulfils the spirit of the manifesto commitment by ensuring every public sector worker operating in a public-facing role speaks fluent English or in Wales, fluent English or Welsh.

## Option 2 – do nothing

26. Under this option, current practice would essentially continue unaltered, but with existing and already planned regulations still in place for those public sector workers they apply to.
27. The estimates of the scale of the issue show that under a ‘do nothing’ scenario it is unlikely that problems caused by a lack of fluent English or Welsh in the public sector will be widespread or acute. However, without legislating and introducing a Code of Practice to guide public authorities, the Government cannot guarantee that language would not be a barrier to citizens accessing public services or that the necessary standard for spoken English or Welsh is upheld.
28. Furthermore, if the number of prospective public sector workers with English as a second language were to increase, or the level of English or Welsh language skills available in the labour market were to decline, issues of poor communication could increase in severity and prevalence, which could then impact on the effectiveness and quality of the service that the public receive.
29. Under the ‘do nothing’ scenario, the Government would not be able ensure that all public authorities consider the necessary language skills of workers in public-facing roles or that proportionate standards are in place across the whole public sector. The risk of miscommunication would continue, particularly across sectors with recruitment difficulties that significantly rely on migrant workers.

### *Current practice in the public sector*

30. During the consultation, a large number of respondents suggested that recruitment criteria for public-facing roles, requiring good communication skills and communicative competence, are already in place and are normally assessed at interview. However, this is not necessarily set or assessed against a formal or considered standard of spoken English or Welsh and public authorities have themselves observed that some of their workforce may not have the competence in fluent spoken English they would like. There are also some professions that already regulate in relation to language proficiency, most notably for doctors, nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians.
31. The Civil Service Recruitment Principles set out the legal requirement that selection for appointment to the Civil Service must be on merit. Merit means the appointment of the best available person judged against the essential criteria for the role. No one should be appointed to a job unless they are competent to do it and the job must be offered to the person who would do it best.
32. Feedback to the consultation suggests that the Civil Service already sets essential recruitment criteria where a good standard of spoken English is expected and tested, most commonly at interview. However, this is not always the case when conducting bulk recruitment and filling temporary roles. In addition, the ability to speak fluently is not specifically considered to determine a candidate’s command of spoken English or Welsh. Some departments and agencies have suggested that a low proportion of staff may not meet a sufficient standard of spoken English or Welsh when taking into account considerations set out in the draft Code of Practice.
33. Teachers who qualify in England are already required to pass a test in written English, and teachers who qualify overseas must pass some basic proficiency tests before teaching in England, unless they qualified in an Anglophone country such as Australia or New Zealand, (and for some schools in Wales, Welsh). However, the consultation highlighted that there was no formal or uniform standard and there are no existing standards for other roles within the sector, such as teaching assistants and auxiliary staff. Recent statistics from the education sector also suggest that the number of unqualified teachers, who have not been assessed in the same way as their colleagues with Qualified Teacher Status, is increasing<sup>6</sup>.
34. Local Government employment terms and conditions are set out in what is known as the “Green Book”, which currently only makes reference to English language speaking in terms of positive action training to develop staff in under-represented groups, though it also makes reference to a

---

<sup>6</sup> <https://www.gov.uk/government/statistics/school-workforce-in-england-november-2013>

requirement for Welsh, British Sign Language and other languages in certain cases. Consultation revealed that the majority of local authorities already stipulate communicative criteria for public-facing roles and assessment of spoken language at interview is commonplace. Authorities only identified a small proportion of existing public-facing staff that are not likely to meet the necessary standard of spoken English or Welsh.

35. Under the 'do nothing' option, the state of spoken English and Welsh language skills in the public sector would remain as described above. In the interest of consistency, the introduction of a statutory duty and Code of Practice would help guide authorities and bring the rest of the public sector into line with those leading the way. It would address the shortfalls identified in consultation and ensure quality services now and in the future for all citizens accessing a public service.

### **Other option considerations**

36. Prior to the consultation the option of using a non-statutory Code of Practice was considered. This option proposed not to legislate, but rather provide public authorities with guiding principles recommended through a Code of Practice, similar to that being proposed under the preferred legislative option. However, it would not have been a statutory requirement for public sector bodies to ensure that their public-facing staff meet the necessary level of spoken language skills or take the Code into account.
37. This option was not considered further, as the Code of Practice may not be consistently applied across the public sector and would not be enforceable. Furthermore, the consultation suggested that not all public authorities would abide by a non-statutory Code of Practice. As such, this option would not have fulfilled the spirit of the manifesto commitment to ensure, not expect, that all public sector workers in public-facing roles speak fluent English or Welsh. If the public are, in effect, to have the right to be able to communicate effectively in English, or English or Welsh in Wales, when they interact with public services, then the standard needs to be enforceable for this to be meaningful. Members of the public should have a right of complaint against authorities that have not met the necessary standard of spoken English fluency.
38. Furthermore, inconsistency in the application of standards across public services could have a damaging effect on public trust, even if it is only a small number of cases where language skills fall below par. Publicity of such cases could have a negative impact on perceptions of quality and value for money, which may have a disproportionate effect on trust in and support for public services. Variations and inconsistencies in standards were consistently raised during the consultation as potential risks. The impact of this is assessed further in the Risks and Assumptions section at paragraph 74-93.
39. As such, option 1 is the preferred option to pursue and therefore all other options are discounted at this stage. Further analysis below is carried out for option 1 only.

### **Scale of the impact**

40. Whilst current Census data<sup>7</sup> shows the number of people currently working in public administration who do not speak fluent English is likely to be relatively low, it nevertheless identifies a proportion of existing staff for whom this might be a concern. These figures are based on self-reporting and it is therefore possible that the proportion of people without fluency in English could be higher.
41. There are 4.3 million people working in the public sector in England and a further 50,000 people are employed in reserved matters in Scotland and Wales. Through analysis of 'Standard Occupational Classification' codes (using the Labour Force Survey) of individuals working in the public sector, we expect about 3.1 million (73%) of these staff to be working in public-facing roles. Data was not available for staff working on excepted matters in Northern Ireland. However, it is expected that this would be a small number of employees, not significantly affecting the total rounded figure of 3.1m and subsequent cost estimates.

---

<sup>7</sup> <http://www.nomisweb.co.uk/census/2011>



42. Analysis of data on public sector workers indicates that about 1.3 million in scope workers (in England only) are already subject to English language regulations; these include doctors, nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians. Many impacts of the preferred option would not affect those already covered by regulation, as, for example, they would already be assessed on recruitment for their level of English without a new statutory duty coming into effect. For all such impacts these workers can be excluded, leaving ~1.8 million employees in scope.
43. We consider a high estimate of the proportion of workers who are potentially insufficiently fluent as 0.4%. This is based on 2011 Census data for people over 16 and in employment within public administration, education and healthcare sectors, who report that English is not their main language and they do not speak it well, or at all. This higher rate assumption would mean that ~7,400 employees (0.4% of 1.8m employees) in scope may not be able to meet the necessary levels of fluent English.
44. During the open consultation a large number of respondents across different professions informed us that they routinely assess candidates for public-facing roles against oral and written communication skills, or similar, and although they did not set a specific language standard the majority expected few or none of their public-facing staff would not be fluent to the necessary standard for their role. The consultation also identified unregulated professions in the health sector that would be more significantly impacted, with particular regard to adult social care, where a significant proportion of the workforce do not speak English as a first language, and employers are increasingly struggling to fill recruitment gaps. We have considered, as a low estimate, that 0.2% of staff in public-facing roles may potentially not meet the standard of fluent English necessary for the sufficient performance of their role. This gives a low estimate of ~3,700 current staff (0.2% of 1.8m employees) in scope who are potentially insufficiently fluent in English. The best estimate is then calculated as the mid-point between the high and low estimates, i.e. 5,500 staff. Note that the figures quoted are rounded to the nearest one hundred staff.
45. The scale of impact on the Welsh language is discussed at paragraph 105-119.

## Monetised and non-monetised costs

### Familiarisation

46. All authorities in scope of the policy would be required to familiarise themselves and relevant workers with the new statutory duty. This brings an opportunity cost of the time spent by relevant HR employees to read and understand new legislation and to update organisational policies and practices. This would be a one-off cost of transition. Some organisations that are not in scope of the policy may also familiarise themselves, at least to the extent needed to understand that it would not apply to them.
47. Using the feedback from consultation where we tested our assumptions, familiarisation costs are estimated as follows:
  - 1 person in a HR role per public sector organisation (~21,500) would need to familiarise themselves with the new requirements, update recruitment processes, cascade to relevant staff, update complaints procedures, update other HR policies and relevant job descriptions.
  - It is assumed that it would take 3 hours to read and understand a Code of Practice and apply it, this means familiarisation would take approximately 64,500 hours. This will vary across different public sector organisations of different sizes, however based on the feedback we have received from consultation and given that in some professions there will be common standards set by external bodies, we use 3 hours as the mean length of time to implement the actions described in the previous bullet point.
  - We can estimate the value of an employee's time to the public sector organisation as being their wage and additional non-wage costs. We assume the median gross hourly pay in the public sector will apply, £14.47 (ASHE 2015 data), uprating for inflation gives £14.63 and we add a

further 30% to this to cover overheads and further costs to the employing organisation, resulting in a cost to the organisation of £19.02 per hour.

- Therefore we estimate that the cost of familiarisation with a new statutory duty and Code of Practice to be approximately **£1.2 million** (£19.02 per hour x 3 hours x 21,500 organisations).

## Complaints

48. The policy intends to give members of the public the right to complain about a public authority not meeting the statutory duty on the basis that the member of staff with whom they interacted did not meet the necessary level of fluency. Therefore, public authorities must have a complaints regime in place to receive and handle such complaints from the public. It is envisaged that in the majority of cases public authorities will already have this capability through an existing internal complaints procedure. Additionally, for some public sector bodies, an independent body deals with service complaints. Furthermore, we do not expect the volume of complaints to increase by any substantial amount – both because the number of staff we expect to not meet the necessary standard to be small, and because we would expect members of the public to already be complaining where they feel they receive inadequate service.
49. Following feedback during consultation, complaints costs are estimated as follows:
- 1 complaint per non-fluent worker (3,700-7,400, best estimate 5,500)
  - Straightforward complaint will take 2 hours of 2 HR employee's time each and 1 hour of non-fluent worker's time
  - Complex complaints will take 10 hours of 2 HR employee's time each and 10 hours of non-fluent worker's time
  - 80% of complaints are assumed to be straightforward, with the other 20% being complex
  - We can estimate the value of an employee's time to the public authority as being their wage and additional non-wage costs. We assume the median gross hourly pay in the public sector will apply, giving £14.63, and we add a further 30% to this to cover overheads and further costs to the employing organisation, resulting in a cost to the authority of £19.02 per hour.
  - Therefore the best estimate of complaints costs is **£1.1 million** ((5 hours x 80% straightforward x £19.02 per hour x 5,500 employees) + (30 hours x 20% not straightforward x £19.02 per hour x 5,500 employees)).
  - The high estimate of total complaints costs is £1.4 million ((5 hours x 80% straightforward x £19.02 per hour x 7,400 employees) + (30 hours x 20% not straightforward x £19.02 per hour x 7,400 employees))
  - The low estimate of total complaints costs is £0.7 million ((5 hours x 80% straightforward x £19.02 per hour x 3,700 employees) + (30 hours x 20% not straightforward x £19.02 per hour x 3,700 employees))

## Remedial action

50. Workers who are already subject to language regulations are excluded from the following impacts of the policy, as regulatory bodies are already required to take action if anyone in these roles does not meet the language standard required. Therefore any action taken or costs incurred to rectify the standard of English or Welsh amongst these workers is not attributable to this legislation.
51. Where any action is taken to bring services up to the required standard of English or Welsh fluency specified by the new statutory duty, only extra improvements which are required because of the new duty, over and above those which would have been needed under the current system, are considered as contributing to the costs of this policy. From the consultation we understand that under current arrangements most workers would, in effect, be tested for communicative competence during the recruitment process, for example through evaluating their communications skills at interview. It is also the case that most public sector employers are already monitoring their staff's performance and taking action to train, re-deploy, or replace anyone who is incapable of fulfilling their role effectively for any reason, including lack of language skills.

52. It is expected that there will only be a very small number of cases where additional action is required above what would have occurred anyway under the 'do nothing' scenario. However for simplicity, we assume here that concerns investigated and action taken to address them fall under the impacts of the new statutory duty. As such this considers the upper bound of possible costs associated with re-deployment and training.

### *Re-deployment*

53. Consultation feedback suggested that public authorities are likely to take a common approach to remedial action and consider re-deploying the member of staff to a role that does not require interaction with the public as an intrinsic part of the role. This approach is likely to resolve a legitimate complaint more swiftly, with less cost and less risk of complaint or challenge than dismissal. We therefore expect that re-deployment would be comparatively low cost. However, the opportunity cost of the time taken to arrange a transfer, to train a worker for a new role and potentially recruit or transfer another worker to fill the resulting vacancy is not inconsiderable.
54. It may be the case that re-deployment will more often be used for permanent employees of public authorities, and will be more unusual for workers employed temporarily or as agency workers. Re-deployment would also not be considered likely across some public sector professions, such as education, where there is a distinct lack of roles that do not require interaction with members of the public, for example, it is unlikely to be possible to re-deploy a teaching assistant to a back office role.
55. Following feedback during consultation, we expect the cost of redeployment to consist of:
- 50% of remedial action leading to redeployment
  - The best estimate of the number of affected employees is ~2800 (50% of ~5,500), the low estimate is ~1800 (50% of ~3,700) employees and the high estimate is ~3700 employees (50% of ~7,400).
  - This will take 4 hours of a HR employee's time, 4 hours of non-fluent worker's time to understand and organise leaving current role and 8 hours of non-fluent worker's time to familiarise themselves with new role
  - As above we estimate the cost of employee time to the organisation to be £19.02 per hour, giving us a best estimate of cost at **£0.8 million** (16 hours x £19.02 per hour x 2800 employees), a low estimate of £0.6m (16 hours x £19.02 per hour x 1800 employees) and a high estimate of £1.1m (16 hours x £19.02 per hour x 3700 employees).

### *Training*

56. In cases where a worker does not meet the required standard, but it would be difficult to re-deploy them, or it would be difficult to find another person to fill their current role, we expect that employers may choose to support workers to improve their English or Welsh. The consultation confirmed that for some sectors and professions this would be the preferred approach to remedial action. A training provision is likely to incur a cost and potentially take a considerable amount of time to complete. Therefore, we assume an opportunity cost is incurred for the time spent. Whether this burden falls on the worker or on the employer will again depend on the approach taken and whether training is completed within working hours.
57. Some public sector bodies will choose to use private training courses for affected workers. Based on desk research we estimate these to cost around £500 for a week long intensive English language course. The policy intends to guide authorities to consider a range of training provisions, many of which are at no or little cost such as, free online language courses, podcasts and mobile applications, internal mentoring and coaching or online interactive communities.
58. Using the feedback from consultation where we tested our assumptions, the costs for complaints consist of:
- 50% of remedial action involves training. Organisations will either choose to send their non-fluent workers on a privately provided training course or make use of free online resources. We assume that 50% will choose privately provided training courses and 50% will choose alternative training provisions at little to no cost.

- We estimate the average cost of intensive language courses will be £500 and take 40 hours of non-fluent worker's time. We also estimate that non-fluent workers will need 40 hours to use alternative resources in order to improve their level of fluency based on information provided by the resource providers.
  - The best estimate of the number of employees affected is ~2800, the low estimate is ~1800 employees and the high estimate is ~3700 employees
  - As above we estimate the cost of employee time to the organisation to be £19.02 per hour, giving a best cost estimate for training of **£2.8 million**  $((50\% \times (40 \text{ hours} \times £19.02 + £500) \times 2800) + (50\% \times 40 \text{ hours} \times £19.02 \times 2800))$ , a low estimate of £1.9m  $((50\% \times (40 \text{ hours} \times £19.02 + £500) \times 1800) + (50\% \times 40 \text{ hours} \times £19.02 \times 1800))$  and a high estimate of £3.7m  $((50\% \times (40 \text{ hours} \times £19.02 + £500) \times 3700) + (50\% \times 40 \text{ hours} \times £19.02 \times 3700))$ .
59. A detailed breakdown of costs is attached at Annex B. Note that these are transition costs – it is expected that once all public bodies complete the transition to following the Code of Practice, the volume of language-related complaints will be negligible. The transition process, however, is modelled here to last four years, to take into account the time for remedial action (see below) and updated HR processes.

## Monetised and non-monetised benefits

### Service quality

60. A new statutory duty would ensure a consistent standard of fluency necessary for the effective performance of public-facing roles, across the public sector not already covered by such regulation, expected to be in the vicinity of 1.8 million roles.
61. A material impact would only apply in cases where workers are potentially unable to meet the necessary level of fluency, expected to be in the range of 3,700 – 7,400 current workers at the initial implementation of the policy. While the number of such cases is clearly low in comparison to the scale of employment in the public sector, improved communication between the public and public sector staff is likely to improve the quality, and therefore value for money, of the service being provided. Most directly this benefits the members of the public using services, members of the public, as they receive a better or greater level of service than they otherwise would have. This may also be advantageous to public authorities that wish to improve the quality of service and value they are providing.
62. Again, these benefits are likely to be most significant in cases where a mistake is avoided due to improved communications. It is possible that in such instances, the improvement in quality will be something of actual material / financial value to a member of the public. For example, processing identification documents accurately first time by staff with sufficient English language skills may allow individuals to undertake travel, or regulated activities, such as driving, which otherwise may have been prevented by a delay.
63. In some cases service quality is very dependent on, if not essentially the same as, the standard of communication offered by public services. In these cases any improvement in communication effected by the new statutory duty would directly bring improvements to the service received by the public and so will benefit them. For example, advice services are heavily dependent on communicating information to the public, and the quality of the communication will directly affect the experience members of the public have and the impact the service has on them. While care professionals are recruited with the requisite skills for the role, the consultation identified that this is one area in particular where language skills need to be further addressed particularly for workers in day centres and domiciliary care. Improved communication with some of our most vulnerable citizens could therefore not only improve overall wellbeing but would further ensure consistency, quality and safety in this important area of public service provision.
64. Where the standard of English or Welsh improves interaction with the public, communication will likely become quicker and more accurate, both between members of the public and public sector staff, and amongst public sector workers. This would directly increase workforce productivity and

consequently greater efficiency savings would be realised. Members of the public would also benefit in terms of saving time when interacting with the service provision.

65. The amount of time saved is likely to be significant in cases where a mistake would have been made due to miscommunication, but is avoided because an appropriate standard of English or Welsh has been enforced. While the number of cases where errors will be prevented by having a higher level of language proficiency may be small, given the time needed to identify an error once made, and the time and resources used correcting it, the savings for public authorities from these cases may be noticeable. For example, an error in recording the address of an individual may bring significant delays in subsequent communication with them.

## **Health and safety**

66. In some cases the avoidance of errors or miscommunication, as mentioned above, may affect the health or safety of members of the public. While cases where miscommunication would result in a significant impact of this type are likely to be infrequent, where they are avoided benefits may be considerable. These benefits principally fall to the individual who would otherwise have experienced a risk to their health or safety, however, they may also likely bring savings to the public authority responsible for the service concerned, through reduced legal action and compensation claims.
67. While the clearest examples of impacts on health are within healthcare services, it must be noted that many healthcare professionals are already subject to language regulations and therefore the safeguarding of the public in these cases is not attributable to this policy. However, there remain aspects of healthcare, or services related to health, which are as yet not subject to any language regulations, such as care assistants. Miscommunication across unregulated healthcare roles may mean that the needs of a patient are not effectively met, therefore ensuring there is no language barrier would ensure errors are reduced and risk to health and safety due to miscommunication are minimised.
68. Improved communication could also have safety implications in other sectors involving currently unregulated workers, for example, instructions given by workers on trains, instructions to schoolchildren from classroom assistants or lunchtime supervisors, or fire control operators passing life-saving advice to callers trapped in a burning building.
69. By ensuring there is no language barrier in English, or in Wales, in English or Welsh, to accessing public services, trust in public services is likely to be increased. In turn, improved perceptions of the quality of services will likely increase support for said services.
70. Benefits are widely dispersed and are unlikely to be large in any one specific instance, but are worth noting in aggregate. For example, the public's wellbeing is improved by feeling they can trust and rely on public services, such as confidence in medical and care professionals.

## **Net impact**

71. The best estimate of present value of cost is £5.8 million; this covers familiarisation, complaints, redeployment, and training costs. The benefits from this legislation are difficult to monetise. However we expect there to be benefits to the quality of service to members of the public in scope organisations. These can be measured by using feedback and looking at satisfaction ratings from members of the public. The other potential benefits will be from the removal of isolated incidences where lack of language skills in English or Welsh can cause errors in public service provision which could have serious consequences. However these benefits cannot be quantified at this stage. As such we cannot currently estimate the net impact from this legislation, but we will be in a better position to do so after assessing the full impact following implementation. The progress report that will be completed after full implementation is discussed in paragraph 126-128.

# Risks and assumptions

## Increased and vexatious complaints

72. There could be greater numbers of complaints than expected should members of the public interpret 'fluent English or Welsh' as meaning a different standard of English or Welsh than the necessary level defined by the public authority. In particular, some members of the public may also experience communication difficulties with public sector workers due to strong regional or international accents.
73. There is also a risk that members of the public who are generally dissatisfied with a public service, may use the fluency duty as a basis for a complaint, or to have a complaint taken more seriously. It is difficult to anticipate or quantify to what extent the fluency duty may be abused and used for illegitimate reasons.
74. As identified above, there is also some risk that prejudice against some groups of public sector workers may manifest in a higher number of complaints than would be deemed legitimate. In particular, this risk would seem relevant to workers with English as a second language working in the public sector; some responses to the Government's consultation suggested that there could be an indirect effect on workers who identify as BAME or who are disabled. The mitigating actions that the Government is taking to address and prevent such risks are explored further in the policy equality statement at Annex C.
75. The policy intends that authorities should make clear within their complaint regimes who can make a complaint, how they go about it and what legitimate complaints can be made in relation to the fluency duty. Public authorities should not respond to complaints that are vexatious, discriminatory, oppressive, threatening or abusive.

## Impact of complaints

76. Any investigation of and action to remedy legitimate complaints or concerns may cause some disturbance or distraction amongst the individual, team or unit affected and may also have some effect on morale and productivity.
77. It is anticipated that the policy intent and existing safeguards under the Health and Safety at Work Act 1974 and Management of Health and Safety at Work Regulations 1999, will mitigate the risk to health and safety and welfare at work of employees. Existing obligations are further considered in the policy equality statement at Annex C.
78. Whilst we expect dismissals due to a failure to meet the necessary standard of language ability to be very few and to be a last resort, we would expect public authorities to mitigate risk by fairly managing their staff, as it is in their interest to do so and to only pursue this course of action where appropriate.

## Recruitment difficulties

79. In general, we do not expect that enforcing a statutory duty would reduce the number of people qualified to undertake public sector roles to the extent that vacancies become difficult to fill. As indicated by respondents to the consultation, competence in spoken language skills is already a criterion for employment across most sectors within public services and they expect that setting a standard of spoken English or Welsh would not have any significant impact on their ability to recruit staff.
80. The consultation highlighted some sectors, such as adult social care, already experiencing recruitment difficulties or increasingly attracting migrant workers.
81. Despite this risk, the impact may be reduced through good recruitment principles and effective recruitment processes. It is also necessary to implement the duty despite this risk, as the public

should always be able to expect to effectively interact with a public sector service provision, particularly in sectors like care where a language barrier could significantly affect health and safety.

## **Recruitment complaints**

82. Recruitment complaints may be costly and time-consuming for an organisation, as well as reputationally damaging. The risk of such complaints is increased if standard setting is poorly executed by authorities. Prospective workers may either identify inconsistencies in the required fluency levels for similar roles or feel that the level of fluency is not proportionate or necessary for the role in question.
83. It is the responsibility of the public authority to be consistent and proportionate when setting standards. If the duty is implemented well, this impact should be avoided and therefore it is not being considered a reason against the introduction of a statutory duty.

## **Risk aversion in recruitment**

86. The responsibility of standard setting and assessing language skills, in order to comply with the duty, may cause some employers to become risk averse. In fear of not complying with a legal duty or avoiding complaints, employers may directly/indirectly favour applicants who speak English or Welsh as a first language.
87. Whilst this is a risk, authorities have the obligation to ensure that they are fair and do not unlawfully discriminate during recruitment. Compliance with the Public Sector Equality Duty requires them to have regard to equality when carrying out all functions. Good practice in relation to diversity issues is being encouraged throughout the public sector, demonstrated by such initiatives as name-blind recruitment.
88. There is also a risk of employers applying blanket standards or assigning specific language qualifications to roles which may require different levels of spoken ability. The negative impact of this is threefold:
  - Employers set a language requirement that is disproportionate to the necessary level required.
  - Employers deter candidates from applying to roles for which they have the necessary skills, but not necessarily a high level of spoken English or Welsh.
  - Qualifications, such as GCSEs, may provide false credibility and misrepresent a potential candidate's skillset, as they do not necessarily accurately represent the level of an individual's oral language skills.
89. The policy intends to align with the Common European Framework for Languages and guide authorities to accept a range of evidence of spoken language qualifications, should authorities feel this is necessary for the public-facing role in question. This should ensure authorities take common considerations into account to ensure proportionality when assessing the necessary level of fluency required for the role.

## **Variation in standards**

90. The consultation identified common concerns around potential variations in standards set for similar public-facing roles across public authorities, professions and regions.
91. For example, two neighbouring authorities may set a different standard of English for a youth support worker. Subsequently, authorities may receive complaints from either potential candidates, on the basis of unfair treatment during the recruitment process, or from members of the public, frustrated by the disparity in service across local authorities.
92. Public frustration with varying standards may also be exacerbated by the fact that initially the policy is only to be implemented in relation to the directly engaged staff of public authorities and not extended to voluntary and private sector organisations providing public services on behalf of a public authority. Members of the public may find that it is unclear when they are interacting directly with a local authority or with an outsourced provider, and this could potentially cause dissatisfaction.

93. The Government Response to the consultation notes this issue and encourages authorities to minimise this risk by developing common standards collectively across sectors, such as Local Government, Health and Education. This would also lessen the burden on authorities to individually set their own standards for each public-facing role.

## Wider impacts

### Integration and social cohesion

94. There is an increasingly diverse population across the UK and in recent years, some areas have experienced high levels of migration. Equally, whilst English remains the main language in England and Wales, there are certain regions/boroughs, particularly in London, where other languages are widely spoken.
95. Little is currently known about the overall extent to which immigrants work for public authorities, in particular when distinguishing immigrants from within the EU, and from outside the EU.
96. Data from the 2011 Census shows that 78% of residents in London speak English as their first language. However, the remaining 22%, equivalent to just over 1.7 million people, have another first language. Of these nearly 320,000 say that they cannot speak English well or at all.
97. COMPAS<sup>8</sup> research into social care and migrant labour reported in 2009 that it was estimated that 28% of adult care workers recruited in 2007 across the UK were migrants, this was significantly higher at 60% in London. Limited English language proficiency was most frequently identified by providers (by 66%) regarding the challenges of engaging migrant care workers.
98. Communicating in English is important to ensure access to work and participation in community life, and it is linked to increased social integration, social cohesion and trust. The Commission on Integration and Cohesion report<sup>9</sup>, published in 2007, indicates that the majority of the public believe that speaking English is a critical part of British identity. Short term economic migrants may be better incentivised to learn English or Welsh when there is a clear language requirement to obtain employment. Professor Christian Dustmann in consultation on the draft Code of Practice, stated that English speaking ability is irrefutably beneficial to workforce productivity and to individuals themselves.
99. The policy intends to encourage public authorities to guide their public-facing staff that they may, where appropriate, make use of any additional language skills they have to communicate with citizens who speak other languages. The policy may equally work to promote productivity and integration of migrant populations in the UK. Any increase in language skills is likely to improve the individuals' prospects of obtaining work and productivity when in work, which will have subsequent benefits for economic prosperity, the community and improvements in wellbeing.

### Equalities

100. Employers also have a duty to comply with other legal obligations, such as the Equality Act 2010. There is a potential risk that public sector workers who identify as being non-British ethnicity or nationality or who are disabled may be exposed to discriminatory behaviour from members of the public as a direct effect of implementing the policy. Staff with such protected characteristics may receive a disproportionate amount of vexatious complaints made on the basis of accent, speech impediment or other communicative disability or national or racial identity, rather than legitimate issues with English or Welsh fluency.
101. This is explored in detail in the Policy Equality Statement which acts as an Annex to this document (Annex C), but it is important to note that public authorities will be expected to fulfil duties towards disabled members of staff under the Equality Act 2010 to provide such adjustments as are

---

<sup>8</sup> [http://www.compas.ox.ac.uk/media/PR-2009-Care\\_Workers\\_Ageing\\_UK\\_Executive\\_Summary.pdf](http://www.compas.ox.ac.uk/media/PR-2009-Care_Workers_Ageing_UK_Executive_Summary.pdf)

<sup>9</sup> <http://resources.cohesioninstitute.org.uk/Publications/Documents/Document/DownloadDocumentsFile.aspx?recordId=18&file=PDFversion>



reasonable to remove a disadvantage caused by the application of a particular provision, criterion or practice.

102. Under the Equality Act 2010, public authorities must also ensure that any particular disadvantage for anyone with a protected characteristic, which is the result of the policy, is a proportionate means of achieving a legitimate aim.
103. That said, it is anticipated that the policy intent and existing safeguards will ensure there is a minimal risk of discriminatory impact. Guidance to public authorities will look to protect against discrimination, and this is further explored in Annex C.

## **Welsh Language**

104. The policy intends that all public authorities exercising non-devolved functions in Wales ensure that someone working for them in a public-facing role speaks fluent English or Welsh. This does not run counter to or in any way affect the requirements of Welsh Language schemes and/or the standards stipulated by the Welsh Language (Wales) Measure 2011.
105. Under the Welsh Language Act 1993, a number of public bodies have prepared a Welsh Language Scheme that outlines how that body will treat the Welsh and English languages on a basis of equality when conducting public business in Wales. Welsh language schemes are to be phased out over a period of time and replaced with standards in compliance with the Welsh Language (Wales) Measure 2011. These standards place duties on specific organisations, including public authorities. They came into force in 2014 and encompass five broad areas: the way organisations deliver services; make policy; operate; promote the Welsh Language; and keep records.
106. We have considered the Welsh Language Standards (No1) Regulations 2015 issued under the Welsh Language (Wales) Measure 2011 and guidance from the Welsh Language Commissioner in respect of recruitment. We feel confident the policy does not undermine or effect either the guidance or the Welsh Language Measure: it is clear that the Welsh Language Measure, and this duty are different in their application and policy intent.
107. The policy acknowledges the difference in demographics between England and Wales and the need for a public workforce in Wales to be able to serve a bilingual population.
108. Public authorities are thus already required to consider the provision of Welsh language speakers as part of their service offering, either through their existing language scheme or by way of the Welsh Language (Wales) Measure 2011. The policy has no effect on this position. Rather, it supports the intention that members of the public in Wales can expect to interact with public services in the Welsh or English language. The policy intends to support public authorities in Wales to further consider the necessary level of fluency for public-facing roles in order to provide quality public services.

### *Evidence base*

109. Responses to the consultation provided reassurance that the policy intent is a proportionate means of achieving a legitimate aim. The Welsh Local Government Association consulted Welsh local authorities to seek views on the draft Code of Practice. Overall, authorities felt the new duty aligned with existing Welsh language standards and that this would be a minimal burden. They welcomed the equal treatment of the Welsh language to that of English and acknowledged that the draft Code of Practice makes clear that where there are existing standards, these are likely to meet the necessary requirements and only minor updates to existing practices and procedures would be needed.
110. We recognise that the policy impact will be different in Wales in comparison to England: the Welsh language has official status in Wales and there is a bilingual requirement. In 2011, Census data showed that 19% of the Welsh population are able to speak Welsh and 16.6% of people in employment were Welsh speakers. There has also been a large increase in the migrant population, especially in Cardiff, Swansea and Newport. Overall, Wales saw an 82% increase in its migrant population between 2001-2011.

111. The proportion of people over 16 working in public administration, education and healthcare sectors in Wales, who reported that they do not speak Welsh was 80% (census 2011). The proportion of people over 16 working in public administration, education and healthcare sectors in Wales who reported that English or Welsh aren't their main languages and they don't speak either language well or at all was 0.18% (census 2011). Therefore, the scale of the impact will differ. It is also worth taking in to account that the policy will only apply to functions of a non-devolved matter, we estimate that 18,000 civil servant employees in Wales will be in scope.

#### *Potential impacts and effects*

112. Public authorities in Wales are already required to assess the need of Welsh language skills for new or vacant posts. The policy recognises that language standards across many parts of the public sector already exist and it directs authorities not set higher or lower standards than is proportionate or necessary for the role in every case. This will further minimise a new burden upon authorities.
113. The consultation identified that the majority of authorities/professions that do not have existing language requirements or currently regulate against spoken English or Welsh, commonly test communicative competence for public-facing roles at interview. The policy anticipates that relevant public authorities will test against the necessary standard of spoken English or Welsh as practiced for communicative competence and align with their existing processes where applicable.
115. There is a marginal risk that public authorities may not implement the policy as guided by a Code of Practice and Welsh language may be treated less favourably to English. Public authorities in Wales would need to make sure that when setting a necessary standard of Welsh for a public-facing role, they treat it no less favourably to English.
116. The policy intends to encourage authorities to look at using descriptors for the required level of fluency rather than rely on qualifications as evidence of language ability, unless this is specifically required. This approach aligns with guidance provided by the Welsh Language Commissioner.
117. It is possible that when a member of the public wishes to complain to a public authority regarding the fluency of a public-facing worker delivering a relevant service in Wales that they may not clearly understand if their complaint should be addressed by the Welsh Language Commissioner or through the complaints regime of the public authority.

#### *Organisations affected*

118. The intended scope of the policy in Wales applies to public authorities exercising functions outside the legislative competence of the National Assembly for Wales. Although organisations that provide public services that cover devolved matters are not in scope, there are still some roles within local authorities, such as equalities and standards officers, that are providing public services on non-devolved matters. This poses a potential impact on authorities to decide how to comply with the policy requirements for such a small proportion of public-facing roles and members of the public in Wales may be confused to understand when they are interacting on a devolved or non-devolved matter. This potential impact would also apply to Scottish public authorities providing public services on non-devolved matters.
119. The overall impact on Welsh communities and Welsh speakers is deemed positive, as it ensures that members of the public that there will be no language barrier when interacting with a public service in either Welsh or English.

## Preferred option summary and implementation

### *Summary*

120. Overall, it is not expected that the policy will have a significant impact on the public sector, as the responsibilities of public authorities to deliver a high standard of public services will not fundamentally change. Consultation has confirmed that hiring suitable candidates for public service delivery is common practice throughout and that most public authorities already assess

communicative skills of applicants for public-facing roles during the recruitment process. Consultation also confirmed that aligning existing processes and practices with the policy would have a minimal impact.

121. However, authorities have confirmed our assumptions by identifying areas across the public sector where existing staff may not meet the necessary language requirements.
122. The consultation also identified some marginal risks, mostly centred on alignment with existing legal obligations such as the Equality Act 2010. The policy intends to provide clear guidance through a statutory Code of Practice and support public authorities to meet all of their legal obligations. Whilst there are some potentially negative consequences to the policy, these would only arise as a result of misinterpretation, poor implementation or purposeful abuse and therefore should not be considered as a reason not to proceed with legislation.
123. Our preferred option does not intend to increase the burden on public authorities, but in legislating, it is the intention of the Government to bring the rest of the public sector into line with those leading the way on language standards, improving consistency and sharing best practice.
124. By formalising language requirements, the policy creates consistency and safeguards to ensure quality public services, enhancing public perception and confidence. Providing members of the public with the right to complain against poor quality public services as a result of public-facing staff being unable to meet the necessary standards of spoken English or Welsh, in turn will prompt public authorities to ensure there is no language barrier in English or in Wales in English or Welsh when interacting with public services.
125. Furthermore, the Impact Assessment identifies other positive benefits of the policy, such as improved efficiency and productivity and potential positive impacts on social cohesion, integration and individual skill and prosperity.

#### *Implementation plan*

126. Following publication of the draft Code of Practice shortly after Royal Assent is given to the Immigration Act 2016, public authorities will be required to determine the necessary and proportionate standard of spoken English (or English or Welsh in Wales) for all public-facing roles. In this way, before legislation comes into force, the policy will allow for a period to ensure adequate preparation for existing processes and practices to be updated and aligned.
127. Subsequently, a progress report would further assess any negative or positive impact of implementation. The report would aim to assess the following broad areas:
  - Impact against discrimination and BAME and disabled public sector workers
  - Level of common standard setting across sectors/authorities
  - Complaints, both legitimate and vexatious
  - Impact on recruitment
  - Alignment with existing standards, legal obligations and existing practices/procedures
  - Costs
  - Public perception and confidence
  - Identify benefits to service quality
128. To ensure greater consistency of implementation and minimise potential risks of duplication, confusion and complexity, collective development of standards will be actively encouraged across relevant public authorities.

## Annex A – List of actively consulted organisations and respondents

2 individual responses from members of the public

Association of Chief Education Officers  
Association of Colleges  
Association of Directors for Adult Social Services  
Association of School and College Leaders  
Bank of England  
BME Advisory Group NHS England  
British Transport Police Authority  
Business Disability Forum  
Business in the Community  
British Broadcasting Corporation  
British Council  
British Medical Association  
Brook Street Recruitment  
Cabinet Office  
Care Quality Commission  
Centre for Research and Analysis of Migration  
The Centre on Migration, Policy, and Society  
Channel 4  
Charity Commission  
Chartered Institute of Personnel and Development  
Chartered Society of Physiotherapy  
Civil Aviation Authority  
Civil Nuclear Constabulary/Civil Nuclear Police Authority  
Civil Service Resourcing  
Coal Authority  
Committee on Climate Change  
Competition and Markets Authority  
Companies House  
Convention of Scottish Local Authorities  
Council of Europe Language Policy Unit  
Crown Commercial Services  
Department for Business, Innovation & Skills  
Department for Communities and Local Government  
Department of Culture Media and Sport  
Department for Education  
Defence Electronics and Components Agency  
Department of Energy and Climate Change (covers the Oil and Gas Authority and NDPBs)  
Department for Environment, Food & Rural Affairs  
Department of Health  
Department for Transport  
Department for Work and Pensions (includes Pension Advisory Service)  
Devon County Council  
Driver and Vehicle Standards Agency  
East Midlands Councils  
East Sussex County Council  
Employment Law Group

Engineering Construction Industry Training Board  
Equality and Human Rights Commission  
Foreign and Commonwealth Office  
Forestry Commission  
General Medical Council  
Gosport Borough Council  
Hampshire County Council  
Hay Group Recruitment  
Health and Care Professions Council  
Health and Safety Executive  
Health Education England  
Highways England  
HM Courts and Tribunal Service  
HM Revenue & Customs  
Home Office  
House of Commons  
House of Lords  
Institute of Equality and Diversity Professionals  
Isle of Wight Council  
Joint Council for the Welfare of Immigrants  
Kent Police  
Kirkless Council  
Leasehold Advisory Service  
Legal Aid Agency  
Leicester City Council  
Local Government Association  
Maritime and Coastguard Agency  
McIlwraite Education  
Ministry of Defence  
Ministry of Justice  
National Association of Schoolmasters Union of Women Teachers  
National Offender Management Service  
National Union of Teachers  
Network Rail  
NHS Employers  
NHS England  
NHS Professionals  
Northern Ireland Assembly  
Northern Ireland Office  
Northern Lighthouse Board  
North Yorkshire County Council  
Nottingham City Council  
Nuclear Decommissioning Authority  
Nursing and Midwifery Council  
Office for Standards in Education, Children's Services and Skills  
Office of Qualifications and Examinations Regulations  
Office of Rail and Road  
Office of the Public Guardian  
Planning Inspectorate  
Prospect Trade Union  
Public Health England  
Pupils 2 Parliament  
Queen Elizabeth II Conference Centre

Race Equality Foundation  
Recruitment and Employment Confederation  
Royal College of Nursing  
Russell Group  
Rutland County Council  
Scottish Government  
Scotland Office  
Sense  
Signature  
Skills for Care  
Skills for Health  
Slough Borough Council  
South East Employers  
South West Councils  
Student Loans Company  
Trade Union Congress  
Trinity House  
The University of Oxford Centre on Migration,  
Policy and Society  
UK Hydrographic Office  
UNISON  
Valuation Office Agency  
Valuation Tribunal Service  
Voice the Union  
Wales TUC  
Wellingborough Council  
Welsh Government  
Welsh Language Commissioner  
Welsh Local Government Association  
Wales Office  
Yorkshire and the Humber Employers  
York St. John University

## Annex B – Costs

Familiarisation costs will all fall in the 1<sup>st</sup> year as familiarisation will be required of organisations very shortly after the legislation comes into force. We expect that complaints numbers will diminish rapidly over the first 4 years, we have therefore assumed that 50% will fall in the 1<sup>st</sup> year, 25% in the 2<sup>nd</sup>, 20% in the 3<sup>rd</sup> and 5% in the 4<sup>th</sup>. Therefore the complaints, re-deployment and training costs will all be split in the same way.

### Costs by year (present value)

Cost profile over 10 years      Discount rate 3.5%

Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	10 year total
Lower rate of non-fluency	£2,789,443	£754,556	£583,232	£140,877	£0	£0	£0	£0	£0	£0	£4,268,108
Higher rate of non-fluency	£4,351,374	£1,509,112	£1,166,464	£281,754	£0	£0	£0	£0	£0	£0	£7,308,704

### Lower bound costs by year (present value)

Lower rate of non-fluency      Discount rate 3.5%

Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	10 year total
Familiarisation cost	£1,227,512	£0	£0	£0	£0	£0	£0	£0	£0	£0	£1,227,512
Complaints cost	£350,423	£169,286	£130,849	£31,606	£0	£0	£0	£0	£0	£0	£682,165
Re-deployment cost	£280,338	£135,429	£104,680	£25,285	£0	£0	£0	£0	£0	£0	£545,732
Training	£931,170	£449,841	£347,703	£83,986	£0	£0	£0	£0	£0	£0	£1,812,699
<b>Total</b>	<b>£2,789,443</b>	<b>£754,556</b>	<b>£583,232</b>	<b>£140,877</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£4,268,108</b>

### Higher bound costs by year (present value)

Higher rate of non-fluency      Discount rate 3.5%

Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	10 year total
Familiarisation cost	£1,227,512	£0	£0	£0	£0	£0	£0	£0	£0	£0	£1,227,512
Complaints cost	£700,846	£338,573	£261,699	£63,212	£0	£0	£0	£0	£0	£0	£1,364,330
Re-deployment cost	£560,677	£270,858	£209,359	£50,570	£0	£0	£0	£0	£0	£0	£1,091,464
Training	£1,862,340	£899,681	£695,406	£167,972	£0	£0	£0	£0	£0	£0	£3,625,399
<b>Total</b>	<b>£4,351,374</b>	<b>£1,509,112</b>	<b>£1,166,464</b>	<b>£281,754</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£7,308,704</b>

### Best estimate costs by year (present value)

Best estimate      Discount rate 3.5%

Year	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	10 year total
Familiarisation cost	£1,227,512	£0	£0	£0	£0	£0	£0	£0	£0	£0	£1,227,512
Complaints cost	£525,634	£253,930	£196,274	£47,409	£0	£0	£0	£0	£0	£0	£1,023,247
Re-deployment cost	£420,507	£203,144	£157,019	£37,927	£0	£0	£0	£0	£0	£0	£818,598
Training	£1,396,755	£674,761	£521,554	£125,979	£0	£0	£0	£0	£0	£0	£2,719,049
<b>Total</b>	<b>£3,570,408</b>	<b>£1,131,834</b>	<b>£874,848</b>	<b>£211,316</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£0</b>	<b>£5,788,406</b>



# Policy Equality Statement

Immigration Act 2016 – English Language Requirement

April 2016

## Contents

Introduction .....	26
Methodology .....	26
Chapter 1: Context and drivers for an English language requirement.....	27
Chapter 2: Definitions .....	28
Chapter 3: Stakeholders .....	28
Chapter 4: Impacts on protected groups by characteristic .....	28
Direct discrimination .....	28
Indirect discrimination.....	29
Race .....	29
Disability .....	30
Chapter 5: Summary .....	31
Annex A: Definitions of protected characteristics .....	32



# Introduction

## Purpose of this document

Included in the Immigration Act 2016 is a requirement that public authorities must ensure that “each person who works for the public authority in customer-facing role speaks fluent English” (or English or Welsh in Wales). Relevant provisions of Part 7 of the Immigration Act 2016 are referred to throughout this document as ‘the fluency duty’. This Policy Equality Statement is a written record of the assessment and analysis of the Cabinet Office in applying the aims of the public sector equality duty to the fluency duty.

In this Policy Equality Statement, a public sector worker is determined to be ‘public-facing’ if as a regular and intrinsic part of their role, they are required to speak to members of the public in English, or in Wales in English or Welsh. This is described in Part 7 of the Act as a ‘customer-facing role’ and defined in section 77(7) of the Act.

## Public Sector Equality Duty

On 5 April 2011, the public sector equality duty (PSED) came into force in England, Scotland and Wales. The PSED is set out at Section 149 of the Equality Act 2010. It requires that those public authorities in scope must, when exercising their functions, have “due regard” to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Equality Act 2010;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Due regard has been given to those three aims when formulating the policy behind and implementation of the fluency duty. It is anticipated that the fluency duty will increase the effectiveness of public service delivery which will in itself advance the aims of the PSED.

## Protected characteristics

The protected characteristics relevant to the PSED (referred to in this document as ‘the protected characteristics’) are:

- Age
- Disability
- Gender reassignment
- Pregnancy and Maternity
- Race (including ethnic or national origins, colour or nationality)
- Religion or belief
- Sex
- Sexual Orientation
- Marriage and civil partnership.

## Methodology

This Policy Equality Statement looks in particular at the potential impact of the fluency duty upon person(s) who hold certain protected characteristics. The questions considered are primarily whether the fluency duty will affect persons with a protected characteristic equally or differently, whether the impacts

affect in a positive or negative way and whether there is mitigation or justification for any negative impact.

Cabinet Office formed the policy behind the fluency duty in consultation with a wide range of Government departments and stakeholders, including public authorities, trade unions, subject matter and legal experts, and academics. In a formal consultation in relation to the draft Code of Practice, which supports Part 7 of the Immigration Act 2016, Cabinet Office policy leads engaged actively with 92 different organisations, and a further 40 provided formal responses. One of the key questions for this consultation was:

*Is the Code of Practice clear in its alignment with any existing legal obligations that you must adhere to, such as the Equality Act 2010 or Welsh Language (Wales) Measure 2011? If not, please suggest how it could be better aligned with those obligations or any others not already included.*

Through the consultation, we aimed to understand the full range of concerns that stakeholders may have in relation to the aims of the PSED, and the impact which the fluency duty may have on individuals with protected characteristics.

## Chapter 1: Context and drivers for an English language requirement

Included in the Immigration Act 2016 is the commitment that “each person who works for the public authority in a customer-facing role speaks fluent English”. The aim of implementing this commitment across the wider public sector is to improve the quality, efficiency and safety of public service delivery. The Government also wants to reduce any barrier to the access of core public services or risk to public safety stemming from an insufficient fluency in English (or English or Welsh in Wales) on the part of public-facing workers.

### Background

In 2014 the Department of Health and General Medical Council consulted on language controls for doctors and implemented new language testing for doctors of EU origin, adding to the existing language testing of non-EU doctors. This required legislative change and full public consultation and was extended to cover all regulated healthcare professionals in 2015. These existing duties do not apply to unregulated healthcare professionals, such as healthcare assistants and carers.

Legislation is required to implement an English language requirement for the wider public sector to ensure that public-facing public sector workers have sufficient command of spoken English (or English or Welsh in Wales) to effectively serve the public and carry out their roles. This will also create consistency across the public sector in terms of scope.

### Immigration Act 2016

The purpose of the fluency duty is to ensure that public authority workers in public-facing roles have a command of English (or Welsh in Wales) which is sufficient to enable the effective performance of their role. The Code of Practice will make clear that public authorities must carefully assess the language requirements for each public-facing role so that they are proportionate and necessary and to ensure that they do not act as a barrier to recruitment by placing disproportionate or burdensome standards on the public authority or individuals.

Welsh language legislation already allows public sector employers in Wales (and some outside Wales) to require workers to comply with language schemes or meet certain standards in Welsh. The fluency duty included in the Immigration Act 2016 will operate alongside existing provisions regarding the Welsh language.

## Chapter 2: Definitions

The key scope and definitions underpinning the fluency duty can be found in the provisions of Part 7 of the Immigration Act 2016 and the Impact Assessment that this Statement accompanies.

The final Code of Practice will make clear that the fluency duty should not be applied without modification in relation to the following public sector workers in public-facing roles:

- those that speak British Sign Language as their first and primary language; and
- those that are employed exclusively to speak another language to English and/or Welsh, to an individual or group whose primary language is not English and/or Welsh.

In addition, staff whose work is carried out wholly or mainly outside the UK are not in the scope of the fluency duty.

## Chapter 3: Stakeholders

A full list of stakeholders engaged through consultation can be found in the Annexes of the Impact Assessment that this document accompanies. Types of stakeholder with specific relevance to this Policy Equality Statement can be found below.

Internal	External
Departmental policy leads	Wider public sector – assessed by area of work to understand the full impact (E.g. Health, Education, Local Government)
Equality and Human Rights Commission	Trade Unions
Government Equality Office	Equalities pressure groups
Home Office	Subject matter experts
HM Treasury	

## Chapter 4: Impacts on protected groups by characteristic

Whilst consideration has been given to all the protected characteristics in the development of this policy, the fluency duty specifically relates to the use of spoken English (or English or Welsh in Wales). Therefore it is considered that the protected characteristics of 'race' and 'disability' are most relevant in relation to this assessment for the PSED. This was confirmed through engagement with the stakeholders listed above during the public consultation and their responses raised some of the issues noted below. In general, most stakeholders agreed that the fluency duty represented a legitimate aim for government and where possible, policy leads actively worked with equalities groups to reduce any potential detriment and test proposals.

### Direct discrimination

The fluency duty, if implemented correctly following guidance in the Code of Practice, should not give rise to any direct discrimination because of one or more of the protected characteristics.

However, there is the potential risk that those with protected characteristics, most especially race and disability, may be exposed to discriminatory behaviour from members of the public as a result of some aspects of the fluency duty: for example, staff with such protected characteristics may receive vexatious complaints made on the basis of accent, speech impediment or other communicative disability or national or racial identity, rather than on the basis of legitimate issues in relation to English or Welsh fluency.

The Code of Practice will make clear that any complaint made on the basis of a public sector worker's accent, racial or ethnic origin or nationality would not be considered a legitimate complaint for the purpose of the fluency duty: public authorities will not be required to respond to complaints that are vexatious, discriminatory, oppressive, threatening or abusive.

Employers also have legal responsibilities under the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999, to protect the health and safety at work of their employees, including minimising the risk of stress-related illness and would be expected to manage the complaints process required under the fluency duty accordingly.

There is the additional risk that, as a result of the fluency duty, some public authorities would be minded to favour applicants of British origin in recruitment, as more likely to have the requisite level of fluency in spoken English (or Welsh in Wales) for the role. The Code will make clear that this would be discriminatory and unlawful under the Equality Act 2010.

Given the considerations above, we expect there to be minimal risk of any direct discrimination of those with protected characteristics because of the implementation of the fluency duty. This will be further confirmed by a review of its implementation within the Parliament, which the Government committed to in their response to the public consultation.

### Indirect discrimination

There is a risk that the implementation of the fluency duty may have some adverse effect on those who, because of their ethnic or racial origin or disability, may be less likely than others to have the requisite command of spoken English (or English or Welsh in Wales) for some public-facing roles. The policy aim is to promote the quality, efficiency and safety of service delivery to members of the public across the public sector. It is considered that the fluency duty as framed in the Immigration Act 2016 is a careful and proportionate implementation of this aim. This is further explored in the Impact Assessment that this document accompanies.

The Code of Practice will remind public authorities of their duty towards disabled members of staff under the Equality Act 2010 to provide such adjustments as are reasonable to remove a 'substantial disadvantage' caused by the application of a particular provision, criterion or practice. The Code will also make clear that public-facing roles can be performed by people whose only or first language is a sign language and that in that case only the sign language interpreter would need to meet the standard of spoken English or Welsh necessary for that role.

Equally, public authorities will be required to apply the duty in a proportionate way, so as to reduce any potential adverse impact, and will be encouraged to offer training where existing staff fail to meet the necessary language standard. The fluency duty is not to be brought into force until six months from Royal Assent, giving employers and workers time to understand and implement the duty appropriately.

A further assessment of impact upon race and disability, by area of impact, is shown below.

### Race

Area	Positive impact areas	Negative impact areas	Mitigating actions
<b>Attraction</b>	Prospective applicants may be encouraged by the duty to increase their command of spoken English (or English or Welsh in Wales). Consultation feedback suggests that increased English	Applicants from EU/non-EU communities will be expected to demonstrate a sufficient command of spoken English (or English or Welsh in Wales) commensurate with the needs of the role, which may reduce	The Code will provide guidance to employers to explain that job descriptions are only required to specify a standard of spoken English (or English or Welsh in Wales) required for the sufficient performance of the role and

	language skills are beneficial to individuals and their communities.	applicants from these groups.	that it is proportionate.
<b>Recruitment and selection</b>	Public authorities will be expected to include clear descriptors of fluency required for the role, which may provide greater clarity to applicants, than the current criteria.	Evidence required of 'fluency' could vary across public authorities, as there will not necessarily be any regulation of fluency standards.  Employers might also, as a result of this policy, be minded not to interview or select applicants of non-British nationality or ethnic origin.	The Code of Practice will include case studies and guidance to support standard setting. It will ensure public authorities are reminded of their existing obligations under the Equality Act 2010.. Policy leads will also work with public authorities where appropriate to support consistency and proportionality in standard setting.
<b>Existing employees</b>	Public authorities may provide language skills training to staff as a result of the fluency duty, which would increase an employee's overall effectiveness in the workplace and employability.	There may be some existing employees without sufficient fluency in spoken English (or English or Welsh in Wales) for the sufficient performance of their current role. This might be identified by complaints from members of the public following the new right to complain afforded by the fluency duty, which could lead to staff anxiety, and ultimately, if complaints prove to be accurate and no other reasonable steps can be taken, could lead to termination of employment.	Public authorities will be encouraged in the Code to provide training and support to existing employees who are found to have insufficient fluency for their current role, to enable them to reach the required standard. It will be made clear that termination of employment should be a last resort following all other reasonable interventions. The Code will also clarify differences between legitimate and illegitimate complaints, to reduce vexatious or discriminatory complaints from the public.

## Disability

Area	Positive impact areas	Negative impact areas	Actions
<b>Attraction</b>		Individuals who have a disability that impairs their communicative competence may be less likely to apply for roles with a clear fluency criteria, even though any employer would be bound by the duty to provide 'reasonable adjustments' under the Equality Act 2010.	The Code will remind public authorities of their existing responsibility to provide 'reasonable adjustments' for disabled job applicants and staff.
<b>Recruitment and selection</b>		It may be that some disabled applicants will find it harder than others	The Code will remind employers of their duties to disabled job applicants and

	because of their disability to meet the requisite standard of spoken English (or English or Welsh in Wales).	staff under the Equality Act 2010.
<b>Existing employees</b>	As above, existing employees may receive a complaint by a member of the public if it is perceived that they have insufficient fluency for the effective performance of their role.	Where a complaint from members of the public is a result of an individual's disability, and where they have been employed with agreed reasonable adjustments, these will remain in place and the complaint will be deemed vexatious and illegitimate. The Code will provide guidance on this.

## Chapter 5: Summary

There is the potential risk that those with protected characteristics, particularly race and disability, may be put at some disadvantage compared to those not of that protected characteristic and/or that they may be exposed to directly discriminatory behaviour as a result of the implementation of the fluency duty. However, this is expected to be minimal. The fluency duty is a proportionate means of achieving a legitimate aim in that it will further ensure the quality, efficiency and safety of public services.

The Code of Practice will signpost employers' responsibilities under the Equality Act 2010 and Public Sector Equality Duty, whilst emphasising the considerations needed to ensure proportionality in implementing the fluency duty. It will make clear that public authorities must have an objective and fair method of evaluating staff and job applicants against the necessary standard of spoken English, or in Wales, English or Welsh, and consider where appropriate reasonable adjustments for staff in public-facing roles so that disabled staff are not put at a substantial disadvantage as a result of the implementation of the fluency duty. It will also ensure that they are not disadvantaged because of their ethnic origin, national identity or accent.

In addition, the Government has committed to review implementation within this Parliament, to ascertain the positive and negative impacts as a result of the fluency duty and take any necessary action to address these.

## Annex A: Definitions of protected characteristics

### **Age**

Where this is referred to, it refers to a person belonging to a particular age group (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds).

### **Disability**

A person has a disability if s/he has a physical or mental impairment, which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities.

### **Gender reassignment**

A person has the protected characteristic of gender reassignment if s/he is proposing to undergo, is undergoing or has undergone a process (or part of a process) for the purpose of reassigning his/her sex by changing physiological or other attributes of sex..

### **Marriage and civil partnership**

Protection on the basis of marriage and civil partnership relates to someone who is legally married or in a civil partnership. Marriage can either be between a man and a woman, or between partners of the same sex. Civil partnership is between partners of the same sex.

### **Pregnancy and maternity**

Pregnancy is the condition of being pregnant or expecting a baby. Maternity in the context of employment rights refers to the period after the birth, and is linked to a former pregnant women's rights during this period.

### **Race**

Race is someone's colour, nationality, or ethnic or national origins.

### **Religion and belief**

Religion means any religion and includes a lack of religion; belief means any religious or philosophical belief and includes a lack of belief. Generally, a belief should affect someone's life choices or the way s/he lives for it to be included in the definition.

### **Sex**

A man or a woman.

### **Sexual orientation**

A person's sexual orientation towards persons of their own sex, of the opposite sex or of either sex.