

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

POLICY AND RESOURCES CABINET BOARD

7 MARCH 2018

**REPORT OF THE HEAD OF CORPORATE STRATEGY AND
DEMOCRATIC SERVICES – K.JONES**

SECTION A - MATTER FOR DECISION

WARDS AFFECTED - ALL

**CONSULTATION – CODE OF PRACTICE FOR THE WELSH
LANGUAGE STANDARDS (No.1) REGULATIONS 2015**

Purpose of Report

1. To agree the Council's response to consultation being undertaken by the Welsh Language Commissioner's on her draft Code of Practice for the Welsh Language Standards.
2. To update Members on the outcome of further dialogue that has taken place between officers and representatives of the Welsh Language Commissioner concerning the 9 standards still subject of Challenge.

Background

3. The Welsh Language Commissioner, in exercising her right under Section 68 of the Welsh Language Measure, has produced a code of practice to assist in the implementation of the Standards issued - the Welsh Language Standards (No1) Regulations.
4. The Code is 'an opportunity to bring together any guidance on the standards in one accessible document, whilst ensuring clarity and consistency in relation to the requirements of the standards across every body'.
5. The consultation was issued on 12 January 2018 with a deadline of 6 April 2018 for receipt of responses.

6. Officers attended a consultation event on 7 February to provide some initial feedback on the draft Code. This report seeks approval from Members to the substance of the Council's formal response to the consultation exercise.

Code of Practice

7. The purpose of the Code is to provide assistance to bodies to comply with the standards that are imposed by the Welsh Language Commissioner. The consultation document states that the main purpose of the codes is to provide clarity on the exact requirements of the standards by interpreting terms and phrases not already interpreted in the regulations or the Measure; providing examples of how a body can put requirements into operation; and highlighting matters to consider when working towards compliance.
8. The consultation seeks views on the way the Code is structured and also the extent to which the layout, style and language used is coherent. It seeks views on whether issues have been addressed appropriately in the Code, for example whether the Code aids compliance or conflicts with other legislation etc. The response form can be found at Appendix 1.

Main issues

9. In the view of officers, the document is written in a very technical style which is contrary to the aim of providing an accessible document to ease implementation the standards. The use of plain Welsh/English would be far more appropriate if it is to achieve the objectives set by the Commissioner.
10. Repetition – There is considerable repetition throughout the document, sometimes more than once in the same section, which makes the document very difficult to read and use.
11. Structure – the Code is generally well structured with clear 'chapters' dealing with each set of standards. However the structure within these chapters is not so well defined. While the general principle is clear, the execution falls short: a heading of what is required (the standard) followed by explanations in the form of questions and answers which involve repetition and provides limited

clarity. A suggested amendment could be to keep the 'What are the requirements?' with issues identified in the 'Q&As' to be addressed generally under a few examples. This would help remove/reduce repetition and therefore assist clarity.

12. Examples could be identified more clearly – they are lost amongst the text. Boxes could be used for examples rather than for standards.

13. Confusion/contradictions in the Code – once accepted by Ministers this Code will have statutory force.

1.1.20 A body's failure to comply with a provision of an approved Code of Practice does not render that body liable to enforcement action of any kind. This document should not be considered a complete nor authoritative declaration of the law. Only the Welsh Language Tribunal and courts are able to provide an authoritative declaration of legislation and subsequent judicial decisions may affect the content of this Code.

1.1.21 Even so, should the Commissioner decide to take any action under the Measure in relation to a body's failure to comply with a standard, a failure to comply with a relevant provision of an approved Code of Practice may be relied upon as tending to establish that the body is liable for the alleged standards failure.

1.1.22 Similarly, compliance with a relevant provision of an approved Code of Practice may be relied upon as tending to establish that the body in question is not liable for the alleged standards failure.

and

2.1.15 In this Code, statutory duties that come directly from the law are denoted by the term 'must' (or similar terms).

2.1.16 The terms 'may' and 'expected' (or similar terms) denote the Commissioner's practical guidance relating to the requirements of the standards or examples of how they could be implemented. Although they are not necessarily statutory requirements, paragraphs 1.1.20 – 1.1.22 of this code should be considered.

This section is particularly unclear. It would be much clearer if the elements of the Code which have statutory force as more clearly distinguished from those which are advisory. Furthermore, the Commissioner should reflect on whether the way in which she intends to use the Code (particularly those elements which are advisory) to determine compliance or non-compliance is appropriate. We would expect to be accountable for compliance with statutory provisions but we may have good reason to not comply with elements which are advisory. It is unhelpful to confuse these two aspects.

14. Elected Members – the Code differentiates between executive and non-executive elected members and treats these groups differently. This is an unhelpful approach. Where any elected Member is acting for the Council in a formal capacity then we would expect the Code to apply. However, if any Member is acting in the local representative or other capacity we would not expect the Code to apply. As drafted, it appears that there is a confused understanding within the Commissioner's office of these issues.
15. Although the Code has been produced to include frequently asked questions it may be useful if it also reflects the issues which have been raised by bodies under the Challenge process. In our experience, the standards themselves are often unclear and if the Commissioner is to ensure a consistent application of the standards it would be beneficial if the advice that has been offered to individual bodies is formalised within the Code.

Welsh Language Standards Challenge

16. Officers met with representatives of the Welsh Language Commissioner in February to discuss the last 9 remaining standards. The meeting was very positive and productive. The Commissioner's representatives were able to put some further modifications to the Commissioner to assist the Council in achieving compliance – for example focusing bi-lingual services at the two main reception desks across the Council in the civic centres; helpfully agreeing that the original source of minutes and agendas can be made clear on any translated version; agreeing to explore difficulties in meeting standards for driver training where the means of compliance is outside of the Council's own control. Providing guidance on outstanding issues related to the Council's human resources activities.

17. Further information and advice has been provided to the Commissioner's representatives following the meeting. We hope to receive the outcome of actions agreed for the Commissioner's representatives shortly following which the Council would be in a position to make a final set of proposals related to the remaining nine standards subject of Challenge with a view to concluding the process.

Financial Impact

18. There are no financial impacts with this report

Equality Impact Assessment

There is no requirement for an Equality Impact Assessment with this report

Workforce Impacts

There are no direct workforce impacts with this report

Legal Impacts

This work directly supports the requirement for the Council to secure compliance with those standards that the Welsh Language Commissioner determines should apply to this Council.

Risk Management

Further modification to the Determination for this Council will reduce the risk of the Council being unable to comply with the Welsh Language standards which reflects on the Council's reputation and has the risk of attracting sanctions, including financial penalties

Consultation

19. There is no requirement under the Constitution for external consultation on this item.

Recommendations

20. That Members consider the draft Code of Practice and the advice provided by officers within this report and agree the substance of a response that can be submitted to the Commissioner and to authorise the Chief Executive to submit the response.
21. That Members note the current position in relation to the Challenge

Reason for Proposed Decision

22. To ensure the Council's views on the proposed Code of Practice are conveyed to the Welsh Language Commissioner.

Implementation of Decision

23. The decision is proposed for implementation after the three day call in period

Appendices

24. Appendix 1 – Response Form

Background papers

25. Welsh Language Commissioner's Draft Code of Practice for the Welsh Language Standards (No. 1) Regulations 2015

Officer Contact:

- 26 Mrs Karen Jones, Head of Corporate Strategy and Democratic Services Tel: 01639 763284 e-mail: k.jones3@npt.gov.uk

Appendix 1

Response Form

Consultation on practical guidance on the requirements of the Welsh language standards for the Welsh Ministers, county councils and county borough councils in Wales and National Park authorities¹

How and when to respond

This consultation is conducted between **12 January** and **6 April 2018**.

You can respond by completing this form and sending it:

- via e-mail to hysbysiadcydymffurfio@comisiynyddygydraeg.cymru; or
- through the post to Welsh Language Commissioner, Siambrau'r Farchnad, 5-7 Heol Eglwys Fair, Caerdydd, CF10 1AT.

Related documents

You should read the code's content alongside the following related documents:

- The Welsh Language Standards (No. 1) Regulations 2015

¹ In accordance with section 68(4) of The Welsh Language (Wales) Measure 2011.

<http://www.legislation.gov.uk/wsi/2015/996/contents/made>

- Welsh Language (Wales) Measure 2011
<http://www.legislation.gov.uk/mwa/2011/1/contents/enacted>

Confidentiality

The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allows the public to ask to see information held by public bodies, including the Commissioner. This includes information which has not been published.

However, the law also allows us to withhold information in some circumstances. If you wish the information you supply to be treated in confidence, you should be aware that we must comply with the Freedom of Information Act's statutory code of practice.

Amongst other things, this code deals with matters of confidentiality. Therefore, it would be useful if you could provide a concise explanation of why you wish the information you provide to remain confidential. If we receive an application to disclose the information, we will give full consideration to your explanation, but we cannot guarantee confidentiality in every eventuality.

It is possible that the body's name will be published unless you tick the box below. To keep your response anonymous (including e-mail addresses), please tick the box below:

Please keep my response anonymous

If you wish to keep your response anonymous, please provide an explanation why below:

[Provide your explanation in this box]

Response Form

Please write your response in the boxes below.

1. Is the code structured and set out in a coherent way? If it is not, have you got any recommendations on how to improve it?

[Note your response in this box]

2. Do you feel that the style and language used is totally clear? If you do not, have you got any recommendations on how to improve it?

[Note your response in this box]

For the following questions, we ask that you refer to the category of standards (e.g. operational standards), to the number of the particular standards (e.g. standards 21-24) or the particular clauses within the code when providing any comments. This will allow us to consider and analyse the information collected thoroughly and correctly.

3. Do you agree that the code deals with the appropriate issues? If you do not, what is missing?

[Note your response in this box]

4. After reading the code, are there any issues that remain unclear? If there are, what are they?

[Note your response in this box]

5. Does the code help you to interpret the standards clearly? If it does not, what would make it clearer?

[Note your response in this box]

6. Are you of the opinion that the code expands on or restricts the requirements of the standards?

[Note your response in this box]

7. Do you feel that any aspects of the code restrict your ability to comply with one or more of the standards?

[Note your response in this box]

8. Do you feel that any aspects of the code contradict:
- any other part of the code;
 - any information you have received previously; or
 - any other legislation?

[Note your response in this box]

9. Do the examples included in the code help you to better understand the requirements or put them in their context better? Are there any other examples that could be included?

[Note your response in this box]

10. Does the content of any lists in the code help you to understand the requirements? Do any of the lists need to be expanded upon?

[Note your response in this box]

11. Have you got any further comments on the content of this code?

[Note your response in this box]

Further information

For any further information, please phone 0345 6033 221 or send an e-mail to hysbysiadcydymffurfio@comisiynyddygydraeg.cymru.