

Explanatory Memorandum to The Welsh Language Standards (No 9) Regulations 2023

This Explanatory Memorandum has been prepared by the Welsh Government and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Welsh Language Standards (No 9) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language
27 June 2023

1. Description

1.1 The Welsh Language Standards (No. 9) Regulations ('the Regulations') specify service delivery standards, record keeping standards, and Standards which deal with Supplementary Matters. The Regulations make the standards specifically applicable to persons:

- who provide the public with water services (including supply or distribution), and
- who, by virtue of an appointment under section 6 of the Water Industry Act 1991, or by virtue of a variation of such an appointment under section 7 of that Act, are water undertakers for the whole or any part of Wales.

And also persons:

- who provide the public with sewerage services (including disposal of sewage), and
- who, by virtue of an appointment under section 6 of the Water Industry Act 1991, or by virtue of a variation of such an appointment under section 7 of that Act, are sewerage undertakers for the whole or any part of Wales.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

2.1 Numbers in the Regulations

The Regulations use the Welsh alphabet i.e. (a), (b), (c), (ch) etc. This affects paragraphs 26(3), 26(4), 33 of Schedule 1.

This style is different to the usual numbering style adopted in subordinate legislation made by the Welsh Ministers. Usually, the Welsh and English version adopt the English alphabet. In this case, because of the nature and the subject matter of the Regulations, the Welsh alphabet had been used in the English and Welsh versions to ensure consistency and to remove any possibility of confusion when cross-referring. The same style was adopted within The Welsh Language Standards (No. 1) Regulations 2015 (SI 2015/996) and subsequent Regulations specifying Welsh language standards.

2.2 Name of the Regulations

The title of the Regulations is The Welsh Language Standards (No. 9) Regulations 2023. If passed by the Senedd, these will be the eighth¹ Welsh Language Standards Regulations to be made. It is intended that all the Regulations made under section 26 of the Welsh Language (Wales) Measure 2011 ('the Measure') will be made in a series, in the same way as commencement orders. It is felt that this approach will make the

¹ Welsh Language Standards (No 3) Regulations were rejected by the then National Assembly for Wales.

Regulations easier to deal with and to refer to, particularly when Compliance Notices refer to Regulations.

3. Legislative background

- 3.1 The Regulations are made in exercise of the powers conferred on the Welsh Ministers under sections 26, 27, 39 and 150(5) of the Welsh Language (Wales) Measure 2011. Section 26 of the Measure enables the Welsh Ministers to specify standards by regulations. Section 27 enables the Welsh Ministers to specify different standards in relation to different conduct. It also enables them, in relation to a particular conduct, to specify one standard or a number of standards.
- 3.2 Before the Commissioner can give a person a compliance notice requiring them to comply with a standard, that standard has to be specifically applicable to the person (section 25). Section 39 provides that a standard is specifically applicable to a person once the Welsh Ministers have authorised the Commissioner to give that person a Compliance Notice in respect of that standard. Section 105(5) provides that any power of the Welsh Ministers to make regulations includes a power to make such transitional, transitory, consequential, saving incidental and other provision as the Welsh Ministers think necessary or appropriate.
- 3.3 The Regulations, pursuant to section 150(2) of the Measure must be laid before and approved by resolution of Senedd Cymru (i.e. the draft affirmative procedure).

4. Purpose and intended effect of the legislation

- 4.1 The Measure confirmed the official status of the Welsh language in Wales and created a new legislative framework for the language. A key step in giving effect to the Measure is specifying standards and authorising the Commissioner to require persons to comply with those standards.
- 4.2 Section 25 of the Measure provides that a person is required to comply with a standard specified by the Welsh Ministers where certain conditions are met. Those conditions include:
 - i. That a standard is specifically applicable to the person (i.e. the Welsh Ministers have authorised the Commissioner to give that person a Compliance Notice in respect of that standard);
 - ii. That the Commissioner has given a Compliance Notice to the person;
 - iii. The Compliance Notice requires the person to comply with the standard; and
 - iv. The Compliance Notice is in force.
- 4.3 Standards falling into the following categories are specified in the Regulations:

- **Service-delivery standards** will be imposed in relation to the delivery of services in order to promote or facilitate the use of the Welsh language, or to ensure that it is treated no less favourably than English.
- **Record-keeping standards** will make it necessary to keep records about some of the other standards, and about any complaints received by a body.
- **Supplementary standards.** These standards deal with various matters including the production of an annual report, monitoring arrangements and the provision of information to the Commissioner.

4.4 The standards have been prepared with the aim of:

- Increasing the use people make of Welsh-language services
- Improving the services Welsh-speakers can expect to receive from bodies in Welsh
- Making it clear to bodies what they need to do in terms of the Welsh language

4.5 Some service delivery standards are dependent on each other. The Regulations therefore contain a table (in Part 2 of Schedule 1) detailing which other standards will also need to be imposed when a particular standard is included in a Compliance Notice.

4.6 The Regulations, when they come into force, will not have a direct effect on bodies and they will not, by themselves, create rights for members of the public. That will only happen when all the conditions in section 25 of the Measure have been met. However, the Regulations are a crucial step in the Measure's framework, and enable the Commissioner to require bodies to comply with the standards.

4.7 It will be for the Commissioner to choose which standards to impose on bodies by way of a Compliance Notice. The Regulations set the range of standards which could be imposed on a body. A body may have to comply with the standard only in some circumstances and not in others – depending on what is stated in their Compliance Notice. The Compliance Notice will also set the date by which the body is required to comply with a standard.

Means of appeal

4.8 Bodies will be able to challenge the requirements to comply with a particular standard on the grounds of whether it is reasonable and proportionate to require them to do so. In the first place, a body will be able to present a challenge to the Commissioner. If they wish to challenge the Commissioner's decision, there is a route of appeal available to the Welsh Language Tribunal, and thereafter to the High Court.

Sanctions

4.9 The Commissioner will be responsible for monitoring compliance with the standards. In cases where the Commissioner determines that a body has failed to comply with a standard, the Commissioner may take enforcement action. Enforcement action under the Measure can vary from the making of recommendations or giving advice to a body, to the imposition of a civil penalty not exceeding £5,000.

5. Risks if Regulations are not made

5.1 If the proposed Regulations are not made, the following risks will be realised:

- If a body that falls within Schedule 4 of the Regulations has a Welsh Language Scheme, that Scheme will remain in place. If Welsh Language Schemes remain there will be no enforcement mechanism if a body breaches their Scheme.
- A key component of the Measure will not be implemented.

5.2 More detailed information about the risks and benefits of implementing the standards can be found in the Regulatory Impact Assessment (RIA) below, with the risks of not introducing standards highlighted in the 'Option 1: do nothing' section of the benefits.

6. Consultation

6.1 The Welsh Ministers held a public consultation on a draft version of these Welsh Language Standards Regulations between 15 February 2023 and 5 April 2023.

6.2 The consultation included a call for bodies subject to the Regulations to submit data to allow the Welsh Ministers to prepare a Regulatory Impact Assessment (RIA). The RIA is included in Part 2, below.

PART 2 – REGULATORY IMPACT ASSESSMENT

7. Options, costs and benefits

7.1 Bodies subject to Schedule 4 to these Regulations (“water companies”) were asked to take part in a Regulatory Impact Assessment (RIA) data collection exercise, which was distributed with the consultation on draft Regulations held between 15 February 2023 and 5 April 2023. The deadline to submit responses to the RIA exercise was extended beyond 5 April to allow more time for the water companies to respond. 2 water companies that fall within Schedule 4 to the Regulations submitted a response to the RIA data collection exercise: Dŵr Cymru and Hafren Dyfrdwy. The following analysis of the costs and benefits associated with the standards are based on the responses provided by them.

8. Summary of Responses

8.1 Water companies were asked to consider the economic, social, environmental, and linguistic benefits of complying with standards. The responses were as follows:

Type of benefit	Description of the benefit of complying with the proposed standards
Economic Benefit	<ul style="list-style-type: none">• Dŵr Cymru recognised that their commitment towards the Welsh language plays a significant role in earning the trust of its customers, and reflects the importance the company places on providing customers with a means of contacting the company in the language of their choice.• Hafren Dyfrdwy recognised that as a key employer in Mid Wales, and with the company operating solely in Wales that the Welsh language is important to their colleagues and customers. They also noted that the standards would increase employment opportunities for Welsh speakers looking to use Welsh at work.• Hafren Dyfrdwy noted that visible support of the Welsh Language would also enhance their standing with Welsh speakers in the community and would boost inclusion by allowing them to engage more effectively with customers are able to speak Welsh.
Social Benefit	<ul style="list-style-type: none">• Dŵr Cymru recognised the importance of setting an example for using the Welsh language, with it being one of Wales’ largest employers and one of the Welsh Government’s anchor companies.• Hafren Dyfrdwy expressed that it’s important that all customers can communicate with them in their language of choice. They have had a Welsh

	<p>Language Scheme since the business was launched in July 2018 (inherited the Dee Valley Water Welsh Language Scheme). They noted that Welsh language standards could boost inclusion by allowing them to engage more effectively with customers that can speak Welsh.</p> <ul style="list-style-type: none"> • Hafren Dyfrdwy currently have 15 customers registered as Welsh speakers on their records. However, with Welsh Language standards in place, they expect the number of customers specifying Welsh as their language of choice to grow.
Environmental Benefit	<ul style="list-style-type: none"> • Hafren Dyfrdwy do not envisage major environmental benefits. However, by ensuring that they have the correct language preference for customers, they noted a potential to boost the uptake of advice on using water wisely and avoiding sewer misuse.
Linguistic Benefit	<ul style="list-style-type: none"> • Dŵr Cymru noted that as a company based in Wales with a workforce which consists of Welsh speakers, they understand the importance of supporting a working environment where colleagues are able to converse in Welsh. • They noted that they recognise that using the Welsh language brings benefits, and that they commit to increasing the number of employees available to deal with customers through medium of Welsh either over the phone, at roadshows, and at exhibitions. • Hafren Dyfrdwy noted that they are the only water company operating solely in Wales. To recognise this, in late 2022, the company started to offer all colleagues the chance to learn Welsh for free.
Other benefits	No other benefits were recognised by either company.

9. Accuracy and Usefulness of Financial Data

9.1 Whilst Dŵr Cymru and Hafren Dyfrdwy have attempted to assess the financial implications of complying with the standards, the uncertainty around which of the standards each business will be required to comply with means we have some concerns about the information provided and whether they provide a basis to produce robust and accurate RIAs. There have been similar concerns in relation to previous Welsh Language Standards Regulations. This is not a criticism of the efforts of bodies to estimate costs, or their rationale in doing so, but rather a recognition of the

difficulties of accurately estimating costs under a system where they will not know which duties they are expected to comply with, and in which circumstances, until they receive a compliance notice from the Welsh Language Commissioner.

9.2 When duties have been imposed on bodies subject to previous standards Regulations, the Commissioner has not imposed every standard within Regulations on any single body. The likelihood of this occurring without any conditions is small. If these Regulations are passed by the Senedd, further information will be collected from the water companies when the Commissioner consults on draft Compliance Notices. Upon receiving a draft Compliance Notice, a water company will have a far greater understating of the exact nature of the duties the Commissioner proposes to impose on them. It will therefore be in a better position to provide accurate costs. A fuller financial impact assessment will then be possible, and it would be considered by the Commissioner as part of the consideration of what duties are reasonable and proportionate to impose on the individual bodies.

10. Options: Costs and benefits

10.1 This Regulatory Impact Assessment considers two options:

- Option 1: Do nothing – water companies subject to the Regulations would continue to operate their existing Welsh Language Schemes under the Welsh Language Act, if they have one.
- Option 2: Introduce Welsh Language Standards for the categories of bodies listed in the Regulations.

10.2 The following analysis considers the costs and benefits associated with each of these options in turn.

Costs

Option 1: Do Nothing

10.3 There are no additional costs under this option. The water companies would not be required to comply with Welsh Language Standards but they would be expected to continue to deliver their existing Welsh Language Schemes (if they have one). If a company does not have a Welsh Language Scheme then they will continue to operate without any commitments or duties with regards to their provision of Welsh language services.

10.4 Table 1 summarises the information received about the cost of complying with the existing Welsh Language Schemes.

Table 1 - Costs for delivering existing Welsh Language Schemes (per annum)

	Costs of compliance	Staffing Costs
Dŵr Cymru	£450,000	£350,000
Hafren Dyfrdwy	£117,500	No staffing costs*

*Whilst noting no staffing costs associated with delivering their current Scheme, Hafren Dyfrdwy noted that they use a third party translator at an annual cost of £3,000.

10.5 Dŵr Cymru have noted staffing costs of £350,000 per annum to deliver their existing Welsh Language Scheme. The majority of that expenditure is on staff who are able to deliver services to members of the public in Welsh (e.g., answer telephone calls, respond to social media queries in Welsh). Those staff members are also able to deliver the same services to the public in English. If a service such as answering a telephone call or responding to an online enquiry was not provided to a member of the public in Welsh, the company would have to spend on providing the same service in English. This is therefore not a cost that can be isolated in its entirety as expenditure on the Welsh language.

10.6 Two other water companies that did not respond to the data collection exercise also provide water and sewerage services to members of the public in Wales. They are Icosa Water Services who supply water to approximately 400 homes in North-East Wales, and Leep Utilities who supply water to a small number of homes in a specific area of Llanharan, South Wales. These companies do not have a Welsh language scheme and do not currently have systems in place to offer Welsh language services. Complying with standards to cover the full range of services they provide to the public in Wales would result in significant additional system and staffing costs. It is a matter for the Welsh Language Commissioner to decide whether to impose standards on a company or not, and then to decide which standards to include in the company's compliance notice. The Welsh Language Commissioner must consult with the bodies before issuing final compliance notices and factors such as reasonability and proportionality of complying with standards must be considered at this stage.

Option 2: Introduce Welsh Language Standards for the organisations listed in the Regulations.

Service Delivery Standards

10.7 Dŵr Cymru do not envisage any additional system costs to comply with service delivery standards, noting that they have systems already in place to deliver Welsh language services.

10.8 They do predict that their staffing costs could increase by £50,000 a year from circa £350,000 to circa £400,000 a year. This is attributed to possibly

having to recruit some additional Welsh speaking staff for some outreach activities.

10.9 Hafren Dyfrdwy estimate that having to comply with service delivery standards would result in additional system costs of circa £50,000 (a transitional cost), and additional staffing costs of circa £100,000. The staffing cost would be an annual ongoing cost. They noted that whilst the staffing cost would be an additional cost initially, in time staff turnover will allow them to bring the headcount into line with its long-term efficient level.

10.10 They also indicate, depending on which standards they must comply with, that improving telephone services could generate additional staffing costs. They note that a having to introduce a Welsh language IVR (Interactive Voice Response) would potentially result in an increase in requests for a language from a team with currently no Welsh speakers. In the short term, they envisage that they would need to take on extra staff in their contact centre to make sure they can provide a Welsh language service. This cost would be £28,000 per employee for the first two years. After the two years it is predicted that the expected turn over of staff would mean that the headcount could be brought in line with the normal level, therefore this would no longer be regarded as an additional cost.

10.11 Hafren Dyfrdwy note that another water company currently provides an emergency telephone service on its behalf. This service has a very low number of users and a Welsh language service is not currently provided. They note that providing this service in Welsh would result in an extra cost that would need to be explored further if it became a requirement under the standards. However as this telephone service deals with emergencies, the company expects that the service would be exempt of the standards under paragraph 27 of part 3 to the Regulations.

10.12 Hafren Dyfrdwy noted that the costs of complying with their Welsh Language Scheme are recovered through customer bills, so any increase in these costs need to be carefully considered given the current cost-of-living crisis.

Record keeping standards and standards dealing with supplementary matters

10.13 Dŵr Cymru and Hafren Dyfrdwy noted no additional cost implications due to having to comply with record keeping or standards dealing with supplementary matters. Both companies noted that they already have systems in place through their existing Welsh language schemes.

Benefits

Option 1: Do Nothing

10.14 This is the baseline option and there are no additional benefits associated with this option. This option would maintain the status quo where Welsh Language Schemes are complied with (where companies

have a scheme). The Commissioner would continue with the work of monitoring compliance with schemes.

Option 2: Introduce Welsh Language Standards

- 10.15 The aims of the standards are outlined in paragraph 4.4, above. At this stage (and until the Welsh Language Commissioner issues the compliance notices), it is only possible to outline the expected benefits of the standards in general terms as it is not known what standards each company would be expected to comply with.
- 10.16 The standards will make clear what the water companies need to do in terms of the Welsh language, so that members of the public will know what to expect with regard to Welsh language services. This clarity, both for the public and the bodies, will help ensure that the standards can be effectively enforced and should ensure that bodies are clear as to what level of service they need to provide in Welsh. The Commissioner can only set standards that are reasonable and proportionate for each individual body.
- 10.17 Placing water companies under the standards system will move them from the Welsh Language Scheme system, which came into force under the 1993 Welsh Language Act, to the standards system brought about by the Welsh Language (Wales) Measure 2011.
- 10.18 An improved enforcement regime will provide a more effective means of dealing with alleged non-compliance and allow for early and informal resolution of complaints as appropriate.
- 10.19 The Commissioner held focus groups with users in 2019, where Welsh speakers noted that their priorities when accessing Welsh language services were:
- To receive Welsh language services of the same standard as the equivalent English services
 - That bodies were proactive in informing them of what services were available in Welsh
 - That bodies offered a Welsh language service.
- 10.20 Complying with standards gives bodies the best opportunity to achieve those priorities and provide the benefits to Welsh speakers.
- 10.21 By 2021 over 120 public bodies were complying with Welsh language standards. A survey of Welsh speakers commissioned by the Commissioner in 2021 showed that:
- 82% of Welsh speakers felt that they could deal with public bodies in Welsh if they wished to do so
 - 86% of Welsh speakers felt that opportunities to use Welsh when dealing with public bodies was increasing or had stayed the same
 - 79% of Welsh speakers were of the opinion that the Welsh language services provided by public bodies were improving.

11. Conclusion

- 11.1 The current uncertainty surrounding which of the Standards bodies will need to comply with, and under what circumstances, means that it is not possible to produce a robust assessment of the costs and benefits associated with the Regulations at this stage.
- 11.2 The Welsh Language Commissioner must consult with the bodies before issuing final compliance notices and factors such as reasonability and proportionality of individual standards will be considered at this stage. As part of this process, bodies could present an assessment of the relative costs and benefits associated with the Standards. This could be considered by the Commissioner as part of the process of coming to a decision on whether the standards are reasonable and proportionate.

12. Duties

Well-Being of Future Generations (Wales) Act 2015

- 12.1 The Regulations supports the Welsh Governments well-being goals and principles, especially a *Wales of Vibrant Culture and Thriving Welsh language - protects culture, heritage and the Welsh language*. The Welsh Government has a duty to promote and facilitate the use of Welsh and work towards the well-being goals. The Regulations will facilitate the use of Welsh when the public deals with the bodies named in the Regulations.

UN Convention on the Rights of the Child

- 12.2 The Welsh Government's Children's Rights Scheme has been considered, and it was concluded that these Regulations do not impact upon the rights of children and young people.

Welsh language

- 12.3 A Welsh language impact assessment has been undertaken and concluded that these Regulations would have a positive impact on people's opportunities to use the Welsh language, and will not result in the Welsh language being treated less favourably than English.

Equalities

- 12.4 An Equality Impact Assessment has been undertaken for the Regulations. They do not raise any issues with regard to equality and human rights. There are no negative impact on people in protected groups. The regulations will allow Welsh speakers to receive Welsh language services from their water company, and those services will be available to all service users irrespective of whether they are in protected groups.

13. Competition Assessment

13.1 The making of the Regulations is not expected to impact on the competitiveness of businesses, charities or the voluntary sector.

14. Post-implementation review

14.1 The Measure provides opportunities for the Commissioner to bring the suitability of the standards specified in the Regulations to the Welsh Ministers' attention. The Commissioner may make recommendations or provide advice to the Welsh Ministers (Section 4 of the Measure) which could directly recommend amending the Regulations. Advice given by the Commissioner could also lead to the Welsh Ministers determining that it would be appropriate to review the standards. The Welsh Ministers must have due regard to any written recommendations or advice that the Commissioner makes or gives when exercising the function to which the recommendation or advice relates.

14.2 Section 18 of the Measure requires the Commissioner to produce an annual report which must include a review of issues relevant to the Welsh language (among other matters) and could also include any other matters the Commissioner think it is appropriate to include.

14.3 The Commissioner also has the power to undertake Standards Investigations (sections 61 and 62 of the Measure) which can consider which standards should be, or should continue to be, specifically applicable to a person, whether or not the standards are already specified by the Welsh Ministers. After a Standards investigation the Commissioner must produce a Standards Report, a copy of which must be provided to the Welsh Ministers. The Welsh Ministers must have due regard to such report in accordance with section 66 of the Measure.

14.4 Subject to their Compliance Notices, bodies will publish Annual Reports, which deal with how they have complied with the standards imposed on them. These Annual Reports could also raise issues regarding the suitability of the standards specified.