



Public sector workers language requirements: draft Code of Practice and consultation published

A response from IR-MultiLing UK team

On 13 October 2015, the Cabinet Office published a consultation on a draft Code of Practice relating to the requirement set out in the Immigration Bill 2015-16 that UK public sector workers who regularly speak to the public as part of their roles must be able to speak fluent English (or Welsh in Wales) (see [Legal update, Fluent English a legal requirement for customer-facing public sector employees](#)).

The draft Code of Practice:

- Is intended to assist public authorities in meeting their obligations under Part 7 of the Immigration Bill 2015-16 and also to provide a higher quality service offering to the public.
- Must be followed by public authorities if the Bill comes into force as currently drafted, as it is intended for the language requirements to be a statutory duty.
- Provides assistance to public authorities in determining the appropriate standard of spoken English (or English or Welsh in Wales) to be met by their customer-facing staff, the appropriate complaints procedure to follow should a member of the public consider that the required standard has not been met, and the appropriate forms of remedial action which may be taken if a member of staff falls below the standard required.

The draft Code will apply to public authorities in England, Wales and Scotland (although in Scotland only to those who have functions not devolved to the legislative competence of the Scottish Parliament). Public authorities exercising functions in Wales must ensure that someone working for them in a customer-facing role speaks fluent English or Welsh.

The consultation closes on 8 December 2015 and responses should be emailed to: englishlanguage requirement@cabinetoffice.gov.uk.

[As part of this consultation, the IR-MultiLing UK team prepared the following response at UNISON request.](#)

- In principle, it is important that public sector workers in customer-facing roles should have the right level of English/Welsh but why just public and not voluntary and private sector organisations, many of whom are providing services for public sector? The definition of the 'public sector' therefore is misleading and will lead to anomalies and unfairness across the full range of employers. Insofar as public sector organisations will bear the brunt of training costs then this will also put them at a competitive disadvantage over those in the private sector. It won't, for example apply to general practitioners working under General Medical Services Contracts or most Out-of-Hours and locum providers. If it is intended to protect the public, it won't.
- It will create anomalies across the UK. In Scotland it will apply only to those functions not devolved to the legislative competence of the Scottish Parliament so people not considered fluent in English will still be able to work in Scotland. It won't apply at all in Northern Ireland
- The interpretation of 'regular and intrinsic' contact with the public is bound to be contested by employers, employees and service users. For a government supposed committed to reducing red tape, it seems like an added burden.
- It is likely to be challenged as an unjustified barrier to free movement of labour within the EEA.
- Employers such as an NHS who are required to maintain 'adequate' staffing levels, post Francis, are likely to see this as another barrier to permanent recruitment and incentive to employ agency staff which the government says it wants to reduce. Training is vital but there appears little in the proposal to require employers to provide it. If anything the onus is on the employee to fund it. The main providers of ESOL Training are FE colleges and they have endured a massive cut: *Impact of cuts announced in July 2015*:
<https://www.tes.com/news/further-education/breaking-news/esol-funding-cuts-will-have-devastating-impact-thousands>; *Situation in 2014*
<https://www.aoc.co.uk/sites/default/files/ESOL.Qualifications%20Report%20%28Jan%202014%29.pdf>; *Institute of Fiscal Studies Report on funding cuts to FHE*
<http://www.ifs.org.uk/uploads/publications/bns/BN168.pdf#page=5>; *Alison Wolf on FE funding*
<http://www.kcl.ac.uk/sspp/policy->

[institute/publications/Issuesandideas-alison-wolf-digital.pdf](#);

- The document is right to take account of users of other languages but how will a competency to communicate with these groups this be achieved, via recruitment and/or training of professional staff and not just through interpreters etc. ?Professionals in the public sector invariably have an ethical code that requires them to respect the autonomy and wishes of their clients, etc. Effective communication is a pre-condition for implementing this principle.
- The document rightly recognizes the importance of accepting people with various accents (2.9). However, it is also worth noting that some accents may not be intelligible for other speakers.
- The sanctions on an employee (e.g. training, possible dismissal) are clearer and seemingly more punitive than for an employer. What will happen to an employer who fails to comply? How will the public know if employers are not required to keep records of complaints and their outcomes? (3.3) Public sector service providers have a duty to provide services that are safe and effective and this would seem to be an opportunity to make it clear that staff who can communicate with service users are part of that responsibility. In the cases involving doctors with poor English working in hospitals the NHS trusts are liable for the failure to provide adequate care but this does not clarify that linguistic fluency is part of adequate care.
- The definition of 'fluent' has not been developed fully and is open for interpretation. The reference to CEFR and British General Qualifications is very broad from B1 to C2. Some employers may find it difficult to specify correctly the level of English/Welsh required for a particular job. In this respect, the reference to tests and qualifications may bring even more confusion.
- What counts as a 'reasonable time' to attain the required level: employers need to be aware that it may take some time before an employee may reach the level as language skills are difficult to attain, and it is a very long process.

- It is unfortunate that the consultative document is part of a wider policy agenda of immigration control and assimilation. The reference to a single British identity and the link to the community cohesion agenda undermines the pluralistic culture that many wish to celebrate. This does not detract from the commitment to promote effective communication (including English) across all employment sectors but should not be conceived as part of a wider exclusionary agenda.
- The costs of implementation form an important part of the proposal but there is considerable uncertainty and wide margins in terms of projected numbers and corresponding needs. More robust data may be forthcoming as a result of the consultation process, but given the absence of datasets required to make more reliable forecasts, this seems unlikely.

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