



Recruitment and the Welsh Language

Advice under Section 3 Welsh Language Act 1993

Welsh Language Board

Public Consultation until 3 December 2009

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Language and Employment Advice

1. Introduction

1.1 Purpose of the advice

This advice is aimed at helping public organisations develop a bilingual workforce so that they can develop good services to the public through the medium of Welsh and communicate with members of the public successfully and conduct their day-to-day business in English or Welsh.

This advice deals with the principles and key aspects relevant to employment issues and the Welsh language. In doing so it enables organisations to adopt effective policies; helps to maximise employees' wide range of language skills and develop them further; and makes everyone aware of what constitutes good practice with regard to language and employment.

It is lawful advice and does not contravene other acts. This advice targets the heads of HR departments, corporate development and training officers, Welsh language officers, managers who are responsible for recruitment and selection or planning services, and senior officers.

This document should be read in conjunction with two other documents involving Welsh in the workplace. The document '[Guidelines for Organising Welsh Language Training in the Workplace](#)' published jointly by the Welsh Language Board and Welsh Assembly Government in 2009 contains advice and information on producing and implementing an effective Welsh language training programme which includes offering advice to training officers on planning, managing, promoting and monitoring a Welsh language training programme for learners at every level. '[Promoting and Facilitating Bilingual Workplaces](#)' was published by the Welsh Language Board in 2009 in order to present the Board's standpoint on the use of Welsh in the workplace and it offers guidance on the main ways of achieving this. The Board believes that increasing the use of Welsh in the workplace would increase the use of Welsh in general and would improve the skill level of the workforce.

1.2 Status of the advice

This advice was prepared in accordance with Section 3 of the Welsh Language Act 1993. Section 3 of the Act states that the Board's function is to promote and facilitate the use of the Welsh language. As part of this function the Board provides advice on ways of implementing the principle that 'in the conduct of public business and the administration of justice in Wales, the English and Welsh languages should be treated on a basis of equality'. The Board also advises those providing services to the public on the use of the Welsh language in their dealings with the public in Wales.

1.3 Using this advice in the public sector

This advice mainly targets the public sector. It applies to every public body which implements a statutory Welsh language.

Every public body which has a Welsh language scheme is responsible for implementing staffing measures aimed at providing more and better Welsh language services to the public. Following this advice will ensure that this happens on a consistently high basis.

1.4 Using this advice within voluntary and private bodies

Much of what is included in this advice is good practice which applies to employers in general. The likelihood is that small workplaces will not wish to adopt detailed arrangements as referred to in this advice. The arrangements may be amended but the core principles should be followed.

1.5 How to use this advice

The remainder of this advice has been divided into five sections. Section 2 examines the way in which other countries employ a bilingual workforce.

Section 3 outlines the statutory guidance which places a duty on public bodies to develop staffing measures within their language schemes.

Section 3 considers the way in which a bilingual workforce can be planned and practical advice is provided in Section 5 on mainstreaming language skills into the recruitment process.

Section 6 provides an interpretation of the legal position regarding the Welsh language and employment and is the basis of this advice.

2. Background

2.1 The national and international context regarding language and employment

In Wales and in accordance with the Welsh Language Act 1993, public bodies, which are identified by the Welsh Assembly Government or in the Act itself, are expected to prepare Welsh language schemes. Welsh language schemes state how an organisation will conduct its business and provide services through the medium of Welsh on an equal footing to the English language. In addition a growing number of organisations are recognising the importance of moving away from a single-language model where only English is used for administrative and governing purposes within the organisation.

The Government's policy of supporting and reinforcing the status of the Welsh language is also a background to this; along with the need to comply with the European Charter for Regional and Minority Languages. The Government of Wales Act 2006 identifies the need for Welsh Assembly Government Ministers to adopt a Welsh Language Strategy in order to state how they will promote and facilitate the use of the Welsh language. The act also places a duty on them to adopt a Welsh language scheme and report annually on the way in which the Welsh Language Strategy was implemented during the year and how effectively the use of the Welsh language was promoted and facilitated.

Matters relating to the Welsh language are relevant across policy fields and we will reflect linguistic considerations when we develop, implement and oversee the delivery of policies, by ourselves and others...We expect to see other public organisations adopting the same approach

Welsh Assembly Government Welsh Language Scheme, 2006

The Assembly Government's National Action Plan for a Bilingual Wales 'Iaith Pawb', published in 2003, outlines the action needed to make Wales a country where people can choose to live their lives through the medium of English or Welsh or both. The document states that the Government will seek to bring about an increase in the use and visibility of the Welsh language in all aspects of everyday life, including work, leisure and social activities.

One Wales - A Progressive Agenda for the Government of Wales 2007-2011 also shows a commitment to support the Welsh language. It states that the government will work towards ensuring that more people can learn Welsh and help it thrive as a living language in communities throughout Wales.

The situation in Wales in terms of bilingualism is not unique and many other countries are trying to work in two, three or more languages. There are international examples of skills planning and HR management in order to serve multilingual communities. There are various examples of the approaches adopted to improve multilingual services.

2.1.1 The setting of linguistic conditions has been proven to be valid in the European Court of Law and is also undertaken in other European countries. For example, linguistic conditions are set for public sector appointments in the Basque Country and Catalonia.

2.1.2 In the Basque Country information is published on an annual basis regarding the vacancies advertised and the language(s) spoken by the successful candidate. This information is sent to the government division responsible for the Basque language.

2.1.3 Public service staff in Canada are encouraged to maintain their linguistic skills, which includes an oral assessment every two to three years. A 'bilingualism bonus' is given to public service staff who pass a linguistic skills test.

2.1.4 Staff who only speak one language in Canada are supported to become bilingual, indeed, linguistic training is considered essential to increase the number of bilingual staff in the country.

Language training is a key factor in ensuring that public servants achieve the language skills required by their posts. If bilingualism is acknowledged to be a basic skill, language training must be regarded as an essential component of learning and career development plans.

French to Follow. Revitalizing the Official Languages in the Workplace, Canadian Centre for Management Development 2003

2.1.5 In the Basque Country, Act 10 / 1982 of the Basque Country Government on the normalisation of the use of the Basque language is the basis of developments in the public sector. Article 14 of the act states that the public authorities will adopt measures which lead to the gradual development of Basque language skills amongst public service workers. The public authorities will also identify the posts where skills in both languages is deemed to be essential and for those posts where the Basque language is not essential public authorities will consider linguistic skills (Gardner, N, 2006 Public Sector Basque Language schemes; a brief summary). Organisations are expected to prioritise those posts which involve the most contact with the public as 'Basque essential'. A percentage of posts are designated 'Basque essential' in every body which corresponds to the percentage of Basque speakers in the body's administrative area. In the case of every other post, linguistic ability wins additional points, which are combined with points for qualifications and other kinds of experience to influence a candidate's success.

Qualifications and proficiency levels in the Basque language are recorded in detail for each individual during the process of appointing staff. Standard procedures and conditions apply when recruiting and contracting staff which give priority to ensuring that staff have appropriate language

skills for the posts to which they are appointed. Any individual who lacks the required language skills is asked to sign a personal plan to undertake the necessary training in order to gain those language skills. If an individual fails to meet the linguistic requirements, the law allows for the transfer of that individual to another post which does not require linguistic skills.

The Basque Language Normalisation Officer is responsible for conducting an annual review of progress of the language skills of the body's staff. Significant investment is made in linguistic training tailored to the workplace's needs based on specific competencies.

Formalising and standardising the method of recognising the additional value of Basque language skills in the process of recruiting and selecting staff for **every** post in the civil service in the Basque Country sets an expectation and provides applicants with an incentive to improve their language skills when applying for a new post or promotion in each section of the civil service.

The Planning and Management of Bilingual Skills,
a study conducted on behalf of the Welsh Language Board by
Cwmni Iaith, 2006

2.1.6 In the same way as the Basque Country, Ireland has recognised the need to invest in language training which is tailored to the workplace's needs in order to act in accordance with language legislation.

3 Implementing Language and Employment Principles – Responsibilities of public bodies

3.1 Statutory guidance

The implications of the Welsh Language Act 1993 in terms of employment need to be understood in order to promote the principles on an operational level. Statutory guidance published under Section 9 of the Welsh Language Act 1993 '*Welsh Language Schemes - Their preparation and approval in accordance with the Welsh Language Act 1993*', outlines the form Welsh language schemes should take and what should be included. Measures 8 (i) and 8 (ii) within that guidance places a duty on public bodies to develop staffing measures.

Measure 8(i)

'measures to ensure that workplaces which have contact with the public in Wales seek access to sufficient and appropriately skilled Welsh speakers to enable those workplaces to deliver a full service through the medium of Welsh'.

Measure 8(ii)

'measures to identify those posts where the ability to speak Welsh is considered to be essential and those where it is considered to be desirable in order to deliver a full service through the medium of Welsh'.

Therefore, organisations have a duty to plan, develop, implement and invest in a bilingual workforce in accordance with the requirements of the two measures noted above. If an organisation does not have sufficient numbers of officers who possess Welsh language skills to implement the measures contained in the language scheme action needs to be taken.

There are numerous examples of local organisations implementing their own internal administrative policies in addition to statutory requirements. In this regard the relationship between the organisation's linguistic practices and the local social profile is just as relevant as the expectations of the Welsh Language Act 1993.

3.2 Implementing a Language and Employment Policy

In order to fulfil this responsibility a body's fixed policies and practices need to recognise and mainstream the language skills dimension. The organisation's selection and appointment codes of practice should refer to compliance with the Welsh Language Act and the organisation's language scheme at least.

The way in which that is implemented will need to be identified under the relevant headings (person profiles, job description, vacancy advertisements, information packs for candidates, conducting interviews and tests, setting probationary

period conditions etc). Further details on practical methods of achieving these aims are provided in Sections 5 and 6.

4 Planning for a bilingual workforce

4.1 Vision and staffing priorities

The organisation's staffing expectations will have been identified clearly in the Welsh language scheme. Any subsequent workforce planning will need to reflect the scheme's priorities and respond to the language scheme's timetable.

The Board believes that a bilingual workforce planning strategy can contribute to eradicating any uncertainty pertaining to the Welsh language in employment and allow an organisation to deal with language skills in a positive, objective and lawful manner.

Below is an example of organisations which approach this issue in a strategic and purposeful way by making specific arrangements or formulating a specific scheme for meeting bilingual skills' needs. They view the process as part of their corporate responsibility.

Example 1

"In our Language Scheme, we have adopted the central principle found in the Welsh Language Act 1993 that we will treat the Welsh language on an equal basis to English. We have committed to implementing this principle in the conduct of our business and in providing services to the public in Wales.

In order to do so successfully, therefore, we need to ensure that officers who possess appropriate language skills are employed in the correct posts and workplaces. Otherwise, it is unlikely that our Welsh-medium service will reach the same standard and be as prompt and easy to access as the English-medium service, which will lead to our failure to act in accordance with the principle of equality found in the Act.

Arrangements will therefore need to be made to assess which workplaces and posts need bilingual staff, and ensure that the need is met through training programmes along with job opportunities and relocation opportunities over time. We will need to ensure that our fixed policies and practices in dealing with the workforce (e.g. our recruitment process and performance appraisal and personal development arrangements) incorporate and serve those aspects involving language skills in an appropriate manner. This should be a part of our wider HR plan.

The situation will also need to be monitored, in order to ensure that opportunities are taken, but also to provide a regular overview of the language skills capacity and establish whether the gap between supply and demand tends to increase or close."

Example 2

The organisation recently revised its Welsh language scheme, following the Board's guidance. The scheme contains innovative commitments, with the aim of developing into a fully bilingual body. The organisation has adopted a language proficiency framework which offers five levels of language ability. In order to develop into a fully bilingual body, since August 2005 it has been compulsory for any new recruit to possess basic Welsh skills (level 1) before being appointed and to then progress to level 2 within their probationary period. Since January 2008 every new recruit has had to possess level 2 skills before being appointed and level 3 skills within the probationary period. Similarly, any officer or member of staff must possess level 2 skills before being promoted within the organisation. Any training which is needed by recruits or potential recruits in order to reach the required levels of proficiency in the Welsh language is offered.

Appendix 1, namely part of 'Welsh Language Schemes - Their preparation and approval in accordance with the Welsh Language Act 1993' outlines the staffing measures that organisations should set. This advice is as relevant as ever.

Outlined below is what the Board expects to see in language schemes relating to staffing.

- A brief explanation which describes why action needs to be taken to develop a bilingual workforce.
- Aims in order to achieve the above, for example:
 - Ensure that the offices, centres, other workplaces, community teams which come into contact with the public have the staff, or can access the staff who can provide a service to the Welsh-speaking public.
 - Commit to examining the organisation's services and identify the posts within the staffing structure where officers are required to assist the Welsh-speaking public (Welsh essential) or where it would be advantageous for them to do so (Welsh desirable), and include the requirements in job descriptions and team descriptions.
 - Commit to setting criteria for assessing post requirements to include the nature of the post and the frequency of contact with the Welsh-speaking public or the need to provide administrative support to others. Requirements may be defined as part of a workplace or team.
 - Commit to conducting a staff audit to identify gaps in the service and produce measures to improve the situation.
 - Explain the actions the organisation will take in order to employ the correct number of Welsh-speaking staff needed to offer the service

required eg seek to recruit Welsh speakers to a specific post when a post becomes vacant or when a new post is created, reorganize duties or provide Welsh-language training to staff.

- Explain who is responsible for implementing the scheme's staffing measures.
- Commit to holding briefing sessions and providing guidance for officers who are responsible for staff recruitment, training and reviews.
- Commit to ensuring that responsible officers to review the implementation of the staffing measures on an annual basis.
- Commit to ensuring that the HR Department will keep information on staff's Welsh-language skills within the organization.
- Targets which identify either the number or percentage of posts which require Welsh speakers.
- Commit to including a statement welcoming Welsh speakers in job advertisements where there is a lack of Welsh-speaking staff within the service.
- Outline the way in which the organisation will proactively attract Welsh speakers to join the organisation.
- Commit to publishing information on the number of Welsh speakers within the organisation and by department / team / location as appropriate.

4.2 Standard strategy for planning a bilingual workforce

In order to plan an effective bilingual workforce language skill needs must be identified based on the commitments made in the organisation's language scheme or policy. This is done in order to deal with the Welsh-speaking public and in order to allow the organisation to conduct its business through the medium of English and Welsh. Several computer management systems can record the workforce's language skills. The action taken is as follows:

4.2.1 Map capacity and identify the gap in provision

- Map language skill needs per individual workplace and post against the aim (implement the organisation's language scheme), using a guide or flow chart to assess the organisation's language skills.
- Map the current capacity of workplaces and posts in a similar manner, setting it as a benchmark.

- Compare capacity and need thematically at a body level (e.g. percentages / linguistic ability levels, location, title / grade, number of first language speakers / learners, age profile, etc.) and then per individual department, team service, workplace and post, as appropriate.

4.2.2 Set a target(s) and produce an action plan

- Set a horizon of progress for the Framework's first implementation stage, which will include specific targets stemming from the mapping and comparison process above, including departmental targets or similar.
- Adopt an action plan which describes the steps the body intends to take in order to reach its horizon of progress which will identify priorities (thematic and / or locational) and arrangements (e.g. recruitment, training, relocation) to combat any deficiency. (Departmental action plans will often be needed in addition to the composite corporate action plan.)
- Develop the workplace's Welsh language skills e.g. by adopting a language training programme for [some] members of staff as part of their on-the-job development.
- Train managers on the body's objectives in its Framework, their responsibility, how procedures should be approached objectively, and what information needs to be collected and reported.

4.2.3 Adopt an objective approach to determining language skills by producing a post-related language skills assessment for the organisation. See point 6.1 for further information on determining a post's language skills and point 6.2 for advertising vacancies.

4.2.4 Adopt procedures for recording and updating information on individuals' language skills within the organisation in order to have a picture of the capacity to provide Welsh language services within departments, sites and the organisation as a whole. The Board suggests that targets and performance indicators should be adopted e.g.

The number and percentage of posts and teams which have had their linguistic category assessed.

The number and percentage of main reception posts where Welsh is identified as an essential skill and the percentage of vacancies filled by Welsh speakers.

The number and percentage of staff able to speak Welsh per service department; according to grade; and per workplace.

The number of posts advertised where Welsh was identified as an essential skill and the percentage filled by Welsh speakers.

The number of posts advertised where Welsh was identified as a desirable skill and the percentage filled by Welsh speakers.

These indicators can allow bodies to measure the extent to which Welsh language services are available to the public and whether this service is planned in a deliberate manner. This data could allow us to measure progress over time and consider any recruitment issues highlighted. Appendix 2 provides an example of an organisation which uses performance indicators to this effect.

5 Human Resources fixed policies and practices

The bodies' fixed policies and practices need to recognise and mainstream the language skills dimension. The organisation's selection and appointment codes of practice should refer to compliance with the Welsh Language Act and the organisation's language scheme and then identify how that is implemented under the relevant headings (person profiles, job description, job advertisements, information packs for candidates, conducting interviews and tests, setting probationary period conditions etc). Further details are provided below on practical ways of achieving these aims.

5.1. An objective approach to determining the language skills necessary to a post

Language needs to be discussed routinely when a post is created or when a vacancy arises which also includes examining capacity e.g. the capacity of a team or office to operate bilingually as well as an individual post.

Firstly, a *screening* process needs to be undertaken in order to determine whether the Welsh language is essential, desirable or not relevant in terms of meeting the employer's requirements. Secondly, and if language is a factor, care must be taken to avoid any racial discrimination by conducting a *check*.

5.1.1. Screening: We suggest that determining how a post is categorised should be based on criteria such as:

Essential

- *the need to assist Welsh speakers whether they are internal staff or service users*
- *a post whose respective function or part of it is being in contact with the public, which could expect the individual to be able to communicate in English or Welsh*
- *a post located in a Welsh-speaking community which has regular contact with the public*
- *posts which involve a great deal of contact with Welsh speakers*
- *situations where there are no members of staff available to provide a Welsh language service*
- *situations where it is not possible for another officer to provide a Welsh language service*
- *local considerations in an organisation's language policy e.g. the need to undertake in-house administration in English and Welsh.*
- *the need to deal with other organisations who operate through the medium of Welsh internally*

Desirable

- *the need to assist Welsh speakers whether they are internal staff or service users*

- *a post whose respective function is being in contact with the public*
- *any post located in a Welsh-speaking community or serving a Welsh-speaking area*
- *posts which involve a great deal of contact with Welsh speakers*
- *situations where there are no members of staff available to provide a Welsh language service*
- *situations where it is not possible for another officer to provide a Welsh language service*
- *situations where employing more Welsh-speaking members of staff would improve the Welsh language service provided*
- *a situation where employing a Welsh-speaking officer would reduce the need for restructuring a service and where restructuring would have a detrimental effect on the service*
- *a situation where having to provide a Welsh language service by asking another officer for assistance would have a detrimental effect on the service*
- *local considerations in an organisation's language policy e.g. the need to undertake in-house administration in English and Welsh.*

As well as the above criteria any factors in a statutory Welsh language scheme should be considered and implemented according to those considerations *at all times*.

5.1.2. Verification: The verification process should be undertaken in accordance with section 6.6.7 of this advice which is to follow the criteria established in the case of *Crizzle*¹. Verification may be carried out by asking two main questions:

- *What is the linguistic context?*
- *Is the objective valid and reasonable and is the approach taken to achieve the aim, namely the employer's linguistic needs, reasonable and more than the discriminatory effect?*

5.2 Language levels

In terms of training qualifications, the Board does not approve *one* model for acknowledging skill levels. Levels are mainly used for Welsh for Adults, or in vocational qualifications eg NVQ, Welsh for Adults' levels, GCSEs or other qualifications. They are all suitable.

This is the indicator used by the Board for reporting skills training:

The number and percentage of staff (Welsh speakers and learners) who have received training in Welsh to a specific competency.

Many organisations identify the linguistic capability of their workforce by using a language levels self-assessment - oral, written etc. These levels have been

¹ *St Mathias Church of England School V Crizzle*, [1993] IRLR 472

created by the organisations themselves for internal use. This approach can be effective in terms of collating information. There is an example of a levels self-assessment based on the ALTE framework (The Association of Language Testers of Europe) in Appendix 3.

When recruiting, the Board favours two indicators only namely stating that Welsh is either an 'essential' or 'desirable' requirement for the respective post. The Board does not encourage the use of levels here.

However, after determining the necessity of a language for the post (either essential or desirable) an organisation can then consider the prerequisites for the post by detailing further the nature of the necessary linguistic prerequisites for fulfilling the post. The speaking, writing, understanding etc model can then be used. However, care needs to be taken so that an organisation does not use levels to explain to a candidate what exactly the post's linguistic prerequisites are as there are far more effective and understandable ways of conveying the prerequisites to a candidate. See 5.5.1 for examples.

5.3 The wording of language requirements in advertising a vacancy

A survey² carried out on behalf of the Welsh language Board has discovered that a variety of public bodies do not state that the Welsh language is essential for any posts - even posts which deal with situations which are extremely sensitive in terms of language.

The reasons given for not stating that Welsh is essential were legal uncertainty and the presumption that Welsh speakers will not apply for a post which states that 'Welsh is essential' only or past experience of that.

Future Skills Wales (a research project to establish general skills needs of Wales) define Welsh skills as *"The ability to read, write, and speak Welsh at a level necessary to function and progress at work and in society in general."*

Advertisements and job descriptions should be clear when describing the necessary skill or qualification to work through the medium of Welsh. One way of doing this is to use relevant and user-friendly wording in advertisements.

Employers who have added practical and relevant recruitment wording for the post say that they have been more successful in appointing Welsh speakers (and as a result of that more efficient and cost-effective).

² The Planning and Management of Bilingual Skills, a Study conducted on behalf of the Welsh Language Board by Cwmni Iaith, 2006

5.4 Person specification

There is a legal and practical difference between language as a *qualification* and language as a *skill* in terms of achieving the purpose of a post.

The Board believes that standard boxing should be included under the heading 'Skills required to fulfil the post' or similar wording in the person specification. A sub-heading could be included e.g. 'Working Language' in the specification.

A language qualification such as a GCSE, A level or degree in Welsh or a translation certificate etc should be shown separately in its respective place in a specification.

An example of denoting Welsh as a *skill* in person specifications.

Project manager

Listening and Speaking

Able to fulfil all aspects of the post orally with confidence through the medium of English and Welsh to the same standard. This will include giving public presentations in both languages.

Reading and Understanding

Able to use and interpret any information from various sources through the medium of English and Welsh in order to fulfil all aspects of the post.

Writing

Able to present information in writing through the medium of English and Welsh in a completely confident manner using the most appropriate method and language for the subject and audience.

Play Assistant

Listening and Speaking

Able to fulfil all aspects of the post orally with confidence through the medium of English and Welsh to the same standard.

Reading and Understanding

Able to use and interpret any information from various sources in order to fulfil all aspects of the post.

Writing

Able to complete a standard form and write a short letter through the medium of English and Welsh by using a series of key sentences to convey simple information

5.5 Language Skills in a Job Description

A language skills assessment will have provided a definition of the language skill requirements of the post and that should be worded simply and fairly in the job details.

The details should be worded carefully. It would be better to describe what kind of Welsh competencies are essential rather than only using general wording. For example if the ability to speak Welsh is essential a description of the exact linguistic requirements would assist candidates e.g. 'The successful candidate will be able to converse with confidence and at ease in both English and Welsh with customers'. If looking for candidates who are able to write in Welsh a description such as 'The successful candidate will be able to answer queries in English and Welsh as well as answer correspondence in both languages' could be used. 'Training will be offered to improve written Welsh skills if needed' could be added.

5.5.1 Wording prerequisites for a post

After categorising the language requirements based on service needs the post's prerequisites should be considered detailing the language skills which will be needed to undertake the work – writing reports, public speaking or answering the telephone. It is important not to set linguistic expectations which are higher than the requirements of the post for practical and legal reasons. Below is a range of competencies which could be included in prerequisites for a post.

The initial screening and then determination of the competencies needed will offer objective wording in relation to a specific post.

Examples of wording asking for language requirements in a job description

Appointments Clerk

Theability to converse at ease with customers in Welsh (a prerequisite for the post)....is essential (prerequisite status)... for the post.

Social Worker

The ability to prepare client reports in Welsh is essential for the post.

Finance Officer

It would be desirable if the successful candidate could answer simple correspondence in Welsh

Project Manager

The ability to give public presentations and prepare reports in Welsh is essential for this post.

Receptionist

The ability to speak Welsh with our customers is desirable for this post.

Social Care Officer

The ability to conduct a simple conversation in Welsh is essential for this post.

Education Psychologist

The ability to conduct psychological assessments through the medium of English and Welsh and the ability to present written information in both languages is essential for this post.

Director

We are looking for a director who can use the Welsh language to a high standard both orally and in writing in order to conduct interviews with the press and respond to technical correspondence.

Environment Officer

The ability to produce technical documents in English and Welsh is essential for this post.

Youth Officer

The ability to lead activities for children and young people through the medium of Welsh is essential for this post.

Administrative Officer

The ability to write letters and minutes in correct Welsh is essential for this post.

Physiotherapist

The ability to give directions and advice in Welsh is essential for this post and the ability to write in Welsh is desirable.

5.6 Recruitment Pack

Best practice is to provide all the material in a recruitment pack including the standard material and specific information on a post, bilingually whatever the post's linguistic requirements. Providing both the information and application form in a bilingual format is a matter of equal opportunities. A number of public sector organisations provide their recruitment packs on their websites where the user may choose their preferred language.

Whilst working towards the aim of providing everything bilingually, standard material may be produced for every post in a bilingual format with more specific information being provided bilingually when bilingualism / language skills are relevant to the post. Individual organisations' language schemes should detail their commitment to using the Welsh language in recruitment packs. Producing English-only packs where a post has Welsh language requirements is not considered good practice.

5.7 Application Form and job applications

The officers responsible for evaluating applications should either be bilingual or be provided with a translation of a Welsh application form. Steps must be taken to ensure that an organisation can receive job applications in Welsh only and deal with them in an appropriate manner.

Depending on the prerequisites it is possible that details on the Welsh language will be required in two places on the application form –

- (i) qualification for example a degree in Welsh or translation certificate.
- (ii) skill for fulfilling the role.

A question may also be included asking about the applicant's language preference for an interview.

If you are selected for an interview in which language would you like to be interviewed?

English / Welsh

5.8 Equal Opportunities Form

Standard boxes on linguistic ability need to be included on the organisation's standard equal opportunities monitoring forms. This is a matter of equal opportunities as well as the recording of skills.

Possible boxes:

	Speak Welsh	Read Welsh	Write Welsh
None			
A little			
Quite good			
Fluent			

5.8 Recruitment interview

More than one correct approach may be adopted when dealing with recruitment interviews but there are some important steps which can be taken in order to ensure that candidates are treated as fairly as possible and to ensure satisfactory results.

5.8.1. Although an interview is a competitive exercise, the Board suggests that it is good practice to offer candidates the opportunity to use the Welsh language when arranging interviews and planning the process in order to treat everyone as fairly as possible as well as proving linguistic ability.

5.8.2 The candidate should be advised of how the interview will be conducted linguistically so that a candidate is aware of what to expect beforehand and is able to prepare, (e.g. the need to show ability in both languages, the language spoken by the panellists, simultaneous translation or questions in both languages, a separate language test, etc).

5.8.3. Where possible, members of the interview panel should be bilingual. If that is not possible, as many as possible should be bilingual. An additional bilingual officer should be co-opted to take part in the interview if the usual officers do not speak Welsh.

5.8.4. Many organisations choose to provide a simultaneous translation service for non-Welsh speaking panellists. The organisation's Code of Practice will need to examine the appropriateness of conducting interviews using a translator providing good guidance if that is done.

5.8.5. Following a standard procedure, the panellists should be briefed on the requirements of conducting a bilingual interview, and the relevance (if applicable) of the language skill to the responsibilities of the post.

5.8.6 According to evidence collected on behalf of the Board³ a number of public bodies already offer interviews through the medium of Welsh to candidates

³ The Planning and Management of Bilingual Skills, a Study conducted on behalf of the Welsh Language Board by Cwmni Iaith, 2006

as standard practice whatever the requirements of the post. When the Welsh language is essential to a post it appears that even more conduct the majority or part of the interview in Welsh.

5.9 Proving Language Skills

The way in which language skills are proven needs to vary according to the duties of the post. Oral questions in Welsh can be sufficient for a post where the ability to speak Welsh is essential or desirable in order to fulfil the role but when the Welsh language needs to be used in writing a short written test may be required. The written test should reflect the kind of language which needs to be used in undertaking the role.

5.10 Evaluating Candidates

The organisation's Code of Practice should note that those responsible for evaluating candidates need to understand the linguistic needs of the post and the panel should be provided with an objective method of evaluating candidates according to what is contained in the person specification.

There are examples of posts within public bodies which have been advertised where the Welsh language has been essential and non-Welsh speaking individuals have been appointed. The fairness of appointing a non-Welsh speaking member of staff to a post where Welsh is essential should be considered. Employers may be accused of discrimination as the recruitment material has given the false impression that non-Welsh speakers could not undertake the role.

5.11 Work agreement

If learning Welsh to a specific standard is a condition of the post, that has to be formally noted in work agreements in order to ensure that individuals are required to reach the expected standard within a specific timeframe. The condition needs to be linked to a clear learning plan for the officer in question and a method of assessing success. Consideration could also be given to including the responsibility for offering bilingual services in a work agreement.

5.12 Induction

The induction of new members of staff is vitally important with regard to beginning to establish their understanding of the body's internal culture and the way in which they are expected to behave. Therefore, it is appropriate for an organisation to consider how it wishes to make new recruits aware of the concept of using staff's language skills to provide a bilingual service. Some of the approaches adopted by public bodies in order to achieve this are as follows:

- (i) Including information on the body's language scheme in an induction pack for new members of staff.
- (ii) Every new member of staff to receive a summary of the Language Scheme and / or the language scheme in full.
- (iii) A presentation or workshop for new members of staff, as part of an induction course or 'customer care' training for new members of staff.
- (iv) New members of staff to receive guidance and / or briefing sessions on implementing those parts of the language scheme which are relevant to their post.

6 Interpretation of the legal position – language and employment

A survey⁴ conducted on behalf of the Welsh Language Board showed that a number of public bodies do not state that Welsh is an essential skill due to legal uncertainty. In this section we examine the acts and agreements which form the basis of this guide. Possessing an employment policy in accordance with this section will ensure that an organisation operates on the correct basis.

6.1. The European Charter for Regional and Minority Languages

The UK Government signed this charter in March 2001 thus committing itself to implementing the charter with regard to the Welsh language. One of the objectives and principles found in the charter, key to this guide, is that taking steps to promote linguistic equality is not classed as discrimination.

considering that the right to use a regional or minority language in private and public life, is an inalienable right conforming to the principles embodied in the United Nations International Covenant on civil and political rights, and according to the spirit of the Council of Europe Convention for the protection of human rights and fundamental freedoms.

Preamble, The European Charter for Regional and Minority Languages
1992

The UK Government therefore understands the need to adopt special measures in favour of minority languages in order to promote linguistic equality. That does not disadvantage the speakers of more widely used languages.

The adoption of special measures in favour of regional or minority languages aimed at promoting equality between the uses of these languages and the rest of the population or which take due account of their specific conditions is not considered to be an act of discrimination against the users of more widely used languages.

Article 7, The European Charter for Regional and Minority Languages
1992

The Welsh Language Act 1993 is therefore only one piece of legislation involving the promotion of linguistic equality and placing duties on governments to support minority languages. Statutes at UK and European level are aligned; placing measures in favour of minority languages eg setting linguistic conditions when recruiting is not considered to be discrimination.

⁴ The Planning and Management of Bilingual Skills, a Study conducted on behalf of the Welsh Language Board by Cwmni Iaith, 2006

6.2. European Law

European Law prohibits member-states from preventing workers from other European countries from finding work in their country. Regulation no. 16/2/68, regarding the freedom of movement of workers within the Community in accordance with the Treaty of Rome, however makes a specific linguistic exception. Article 3 states that requiring special linguistic knowledge may be justified if that is reasonable.

Under this regulation, provisions laid down by law, regulation or administrative action or administrative practices of a member state shall not apply... where, though applicable irrespective of nationality, their exclusive or principal aim or effect is to keep nationals of other member states away from the employment offered.

This provision shall not apply to conditions relating to linguistic knowledge required by reason of the nature of the post to be filled.

Article 3, Regulation no. 16/2/68

As Article 3 is part of a Regulation is it also part of UK law. European law therefore does not prevent member-states nor public bodies within those member-states from setting conditions regarding linguistic ability when that is required due to the nature of the vacancy.

6.3 United Nations Agreements on Human Rights

A Statement on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities is found in decision 47/135 of the United Nations on 18 December 1992.

Persons belonging to national or ethnic, religious and linguistic minorities have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language, in private, freely and without interference or any form of discrimination.

Article 2 Agreement on Human Rights 47/135

Further support for the need for public bodies to provide Welsh-medium services.

6.4. Human Rights Act 1998

The Human Rights Act 1998 incorporates the majority of rights found in the European Convention on Human Rights. It includes Article 14 of the Convention which lists "language" alongside other aspects of equality:

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 14 Human Rights Act 1998

However, it should be noted that Article 14 deals with equality in the context of the other rights within the Convention, for example the right to an education and freedom of expression and not a general right to linguistic equality.

6.5 Race Relations Act and the Welsh Language

It is probably the Race Relations Act 1976 as amended in 2000 and 2003 which places the greatest restriction on the way in which language skills are addressed in employment. Inappropriate action with regard to employing Welsh speakers could contravene the Act by giving people from a Welsh background an unfair advantage over people from other nationalities or ethnic backgrounds. However, the act contains a key exception; if there are valid occupational reasons for advertising a vacancy with linguistic requirements then that does not constitute racial discrimination. Therefore advertising for Welsh speakers (be that essential or not) is not classed as discrimination if doing so is justifiable.

In 1996 when the statutory guidance on preparing Welsh language schemes was published, a concord between the Welsh Language Board and the Commission for Racial Equality was also published (Appendix 5). The burden of this concord, signed by Herman Ouseley and Lord Ellis-Thomas, was that Welsh language issues and racial equality were part of the same anti-discrimination agenda. Since 1996 there have not been any unfavourable tribunal cases involving language and employment under the Racial Equality Legislation 1976.

In the Tribunal case of *Boylan V Anglesey County Council*⁵ under the Race Relations Act 1976 in May 1998, it was decided that Anglesey were correct to advertise a vacancy for a community youth worker as a 'Welsh essential' post and were correct not to place a non-Welsh speaker on the shortlist nor appoint that individual.

"We can see nothing objectionable - nothing which cannot be justified - in the Council's practice. If Welsh is an essential requirement, then it is sensible to use that as a criterion when formulating a short-list" "The unanimous decision of the tribunal is that the complaint under the Race Relations Act 1976 fails".

The Board accepts that advertising a vacancy which states that Welsh is essential or desirable can discriminate against ethnic minorities which have a lower than average percentage of Welsh speakers. However this can be justified due to public bodies' need to recruit Welsh speakers in order to meet their statutory commitments under their Welsh Language Schemes.

⁵ *Boylan v Anglesey County Council*: Industrial Tribunal: case no. 2900883/97

6.6 Introducing a language requirement without committing racial discrimination

Section 4 (1) of the Race Relations Act 1976 as amended in 2003 prohibits discrimination against candidates on the basis of race and Section 4(2) prohibits racial discrimination against people who are already employed.

Racial discrimination is defined in two ways:

- (i) direct discrimination – where a person is guilty of discrimination by treating someone from a specific race less favourably than they would treat others
- (ii) indirect discrimination – where the same requirements are placed on everybody but those from a specific racial background will be under a considerable disadvantage compared to others.

Placing a language skill condition on posts is not considered direct discrimination, as linguistic incentives and reasons are causing the disadvantage rather than racial ones. However, indirect discrimination can occur if inappropriate language skill measures are adopted, or if appropriate measures are implemented in an inappropriate manner.

Indirect discrimination is explained in the original act of 1976 as follows:

The application of a requirement or condition to a person which is or would be applied equally to persons not of the same racial group; where there is a considerably smaller proportion of that person's racial group able to comply with that condition; which is to the detriment of the person discriminated against; which cannot be demonstrated to be justifiable.

In 2003 a new test was added:

The application of a provision, criterion or practice to a person that is or would be applied to persons not of the same race or ethnic or national origin; where persons of the same race or ethnic or national origins as that person are put at a particular disadvantage when compared with other persons; which puts that person at that disadvantage; which cannot be shown to be a proportionate means of achieving a legitimate aim.

In the case of setting Welsh language skill requirements for posts there are many points to consider in light of these tests.

6.6.1 Identifying Welsh skills as essential – be that the employer's general policy for all members of staff, or for a percentage of them or individual posts – applies a 'requirement or condition' under the original test and a 'provision, criterion or practice' under the new test.

6.6.2 Under the original test, identifying Welsh skills as desirable does not apply a 'requirement or condition', as this skill is only one of a number

of qualities to consider in appointing an individual to this post, and the post is open to candidates without that skill. This was clearly established by the Appeal Court cases of Perera⁶ and Meer⁷. Now, however, it is likely that 'Welsh is desirable' will count as a 'provision, criterion or practice' under the new test. A candidate does not need to prove that they cannot comply with a requirement, it is now sufficient for the existence of a 'provision, criterion or practice' to place the candidate under a disadvantage. Therefore, since 2003, the two categories – essential and desirable (and 'advantageous') – have been considered as discrimination if there is no justification.

6.6.3 The processes and methods used to determine language skills and appoint staff to those posts need to be transparent and official, following the best recognised practice in employment.

6.6.4 The situation regarding giving Welsh speakers an advantage over people from different racial backgrounds is the same to all intents and purposes under the new test. All those not belonging to the Welsh racial group belong to a different racial group either through ethnicity or nationality. As well as there being far less of a likelihood that they will be able to speak Welsh they are under a specific disadvantage (the new test) as a result.

6.6.5 The situation regarding the relationship between Welsh people who speak Welsh and those who do not speak Welsh remains the same. In accordance with the ruling in the case of Gwynedd v Jones and Doyle⁸, they belong to the same racial group and a linguistic difference in itself is not enough to create a different ethnic group.

Demanding Welsh language skills, therefore, cannot constitute racial discrimination against non-Welsh speaking Welsh people as they do not belong to a different racial group to their fellow countrymen and women who do speak Welsh. Therefore they cannot bring a case under the 1976 Act. However, they will continue to face the same disadvantage when applying for posts as people from different racial backgrounds who do not possess Welsh language skills.

6.6.6 Therefore any steps taken to fill vacancies with people who possess Welsh skills (be they essential or not) can now be considered to be indirect discrimination on the basis of race, unless this is justifiable and can be shown to be 'a proportionate means of achieving a legitimate aim'.

⁶ Perera v Civil Service Commission and the Department of Customs [1983] IRLR 166, CA

⁷ Meer v London Borough of Tower Hamlets [1988] IRLR 399, CA

⁸ Gwynedd v Jones and Doyle EAT (1986)

6.6.7 If a policy or action does not constitute a proportionate means of achieving a legitimate aim then it is unlikely to be 'justifiable'. When considering justifying language requirements in recruitment processes then guiding criteria established in the case of *Crizzle*⁹ to measure 'justifiable', the original wording, sets a precedent and offers guidance:

- "What is the context within which the employer's objective is based?
- Is the objective legitimate and reasonable in that context?
- Are the means used to achieve the objective reasonable (that is to say, is the imposition of the condition reasonable)?
- Is any discriminatory effect outweighed by the reasonable needs of the employer?"

Although the criteria in the case of *Crizzle* are intended to interpret the original test, it appears that they are just as legitimate as a basis for the new test.

6.6.8 When the above criteria are used to evaluate language skills the following reasoning may be applied, remembering that the interpretation is always subject to the exact circumstances of individual cases:

- (i) The context is the bilingual nature of Wales and the numbers and classification of Welsh speakers in the catchment area of the body in question along with the statutory requirement through its Language Scheme to treat both languages equally and to respect that principle when providing services through the medium of English and Welsh.
- (ii) The objective or aim is to ensure that there are enough staff who possess the appropriate language skills in the correct posts to enable the body to achieve the commitments identified in its Language Scheme in a satisfactory and efficient manner. This is legitimate and reasonable.
- (iii) The next step is to consider if the means of achieving the aim is reasonable and proportionate. Evaluating this will vary according to the circumstances. For example, where a target is set to ensure that there are a specific percentage of Welsh speakers in the workforce, the appropriateness of that target and the timescale for achieving that target are likely to be considerations. If an individual post is in question, it is likely that the relevance of Welsh language skills to the routine tasks associated with that post, or the level of proficiency of those skills, or the language profile of other members of the team or all of these, will be relevant

⁹ *St Mathias Church of England School V Crizzle*, [1993] IRLR 472

considerations in deciding if the means of achieving the aim is achieved is appropriate under the circumstances.

- (iv) Lastly, do the employer's reasonable needs outweigh any discriminatory effect? The employer will need to show the following:
- that the linguistic requirements are necessary and suitable in terms of achieving the body's commitments in its Language Scheme;
 - that not taking these steps would contravene the Scheme, and provide a basis for complaint or public criticism, or create the risk of censure or an investigation by the Board or National Government of Wales;
 - that there is no other reasonable and acceptable means of meeting this requirement (e.g. considering restructuring the team so that bilingual staff deal with Welsh-speaking users would be an appropriate step to take if that could be done without creating unreasonable requirements or problems for the organisation, but using a translator would not be an appropriate way of providing a face-to-face service as that would contravene the Scheme, provide an inferior service and result in the employer incurring unnecessary costs);
 - that the employer has considered ways of reducing the discriminatory effect which the language requirement is causing (e.g. offering language training to staff in general or giving non-Welsh speakers a reasonable period of time and the utmost support to learn the language in order to meet the condition of employment); then we can be confident that that will be accepted as reasonable action which may be justified.

When considering the legitimate aim within the linguistic context in Wales many other local and national factors can be considered in addition to the organisation's language scheme and the Welsh-speaking population served for example:

- Welsh Assembly Government's Language Strategy (Iaith Pawb)
- Clause 78 of the Government of Wales Act
- Language Skills Strategy

- Community Strategy
- Health, Social Care and Well-being Strategy
- Education Strategy

The key point in this regard is that the aim itself and the means of achieving it contribute to passing the test. Objectivity – reinforced by suitable assessment methodology – and following employment best practice is very important so that action which would otherwise be proportionate is not undermined.

6.6.9 The same considerations apply in the case of non-Welsh speaking members of staff who are already employed and do not belong to the Welsh racial group, as Welsh language skill requirements can limit their opportunities (see Section 4(2) Act 1976). The same reasoning and conclusions apply when using the test.

Example European Court of Law Ruling supporting the placing of a language condition on a post.

The case of Groener V Minister for Education and the City of Dublin

Anita Groener, from the Netherlands, applied for a lecturing post at the Dublin College of Marketing and Design. She was told that she would not be appointed unless she passed an oral test in the Gaelic language. In the Constitution of Ireland and especially Article 8 Gaelic is identified as Ireland's national language and first official language. When Groener failed to pass the test, she asked the authorities to waive this condition; her request was denied. She took her case to the High Court of Ireland claiming that the policy stopped workers from moving within Europe which contravenes European law especially Article 3 (1) Regulation 1612/68. This Article states that linguistic conditions should not restrict workers' freedom to apply for a post if the nature of the post in question does not justify the conditions. Groener argued that speaking Gaelic was not necessary to undertake the lecturing post for which she was applying. The European Court of Law judged that the Government's standpoint was legitimate.

20 The importance of education for the implementation of such a policy [promote the Gaelic language] must be recognized. Teachers have an essential role to play, not only through the teaching which they provide but also by their participation in the daily life of the school and the privileged relationship which they have with their pupils. In those circumstances, it is not unreasonable to require them to have some knowledge of the first national language

Anita Groener V Minister for Education and the City of Dublin
Vocational Educational Committee

6.7 Including the condition of learning a language when employing an individual

Disciplining or dismissing a non-Welsh speaker who does not belong to the Welsh racial group for failing to meet the condition to learn Welsh after a designated period of time would also be subject to Section 4(2). (Section 98, Employment Rights Act 1996 could also be relevant to such a dismissal, but not for race-related reasons.)

Learning a language is an intensive and long-term commitment, which is easier for some than others, and a significant percentage of learners (for those reasons and others) are unlikely to succeed to a sufficient degree. Therefore, employers need to consider this very carefully before appointing individuals, taking responsible and fair measures. It would certainly be unwise to consider this a routine approach to ensuring sufficient bilingual skills. If a condition to learn Welsh is set then the organisation must make interim arrangements to provide those aspects of the individual's post where the ability to speak Welsh is essential.

For the purpose of racial discrimination, if it could be objectively shown that a certain level of skill in the Welsh language were essential for the post and that the individual had had reasonable opportunity to develop that skill and that there is no other suitable post (that does not call for that skill) for that individual to undertake, then – as a last resort an employer could be confident that dismissing the individual would not be a contravention. However, every case would need to be considered on an individual basis.

The Board received legal advice based on the Race Relations Act 1976, as amended, and the Employment Rights Act 1996 regarding the recruitment and training procedures of one organisation in particular. Legal advice was sought on the recruitment of staff with Welsh language skills, encouraging staff to obtain and / or improve their Welsh language skills and the legality of taking disciplinary measures or other administrative measures against staff who fail to reach Level 1 or 2 proficiency as required.

In light of the advice obtained, it is unlikely that any individual could succeed in proving illegal discrimination on the part of the organisation considering the training and time given to the employee to obtain the necessary levels of Welsh language proficiency, be that as a condition of employment, in order to remain in employment or to claim a bonus payment. The advice also stated that if it can be objectively shown that a particular level of Welsh language skills is necessary for a particular post and that an individual has had reasonable opportunity to obtain the skill and that another post is not available for the individual then dismissal for not obtaining the skill would be likely to be judged as fair.

6.8 Statutory Code of Practice on Racial Equality in Employment

The statutory Code of Practice on racial equality in the workplace published by the CRE in 2005 helps employers to act within racial legislation when advertising, recruiting and dealing with staff. The Code states that employers need to compile job descriptions for each vacancy they wish to fill. In terms of person specifications it explains the need to set linguistic requirements where that is necessary for a role.

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

4.51 Statutory Code of Practice on Racial Equality in Employment, Commission for Racial Equality, 2005

The Code of Practice accepts that a number of public, private and voluntary organisations in Wales operate through the medium of Welsh or bilingually in English and Welsh. The Code states that employers in Wales should seek advice from the Welsh Language Board in relation to the Welsh language in the workplace as well as following advice found in the CRE's Code of Practice.

The Code of Practice understands that public bodies in Wales and public bodies who provide services to the public in Wales are required to comply with the Welsh Language Act and provide services in Welsh as well as English.

This means a wide range of posts in public bodies in Wales, and some in public bodies outside Wales, will need workers who can speak, write and read Welsh sufficiently well for the post in question. In some cases, this may make Welsh language skills an essential requirement for appointment; in others it may require the applicant to agree to learn the language to the required level within a reasonable period of time after appointment.

4.52 Statutory Code of Practice on Racial Equality in Employment, Commission for Racial Equality, 2005

6.9 Advisory, Conciliation and Arbitration Service (ACAS)

The advice given by ACAS is that job descriptions and person specifications should be as clear as possible in order to help organisations to develop and implement an equal opportunities policy.

Drawing up the person specification allows the organisation to profile the ideal person to fill the job. It is very important that the skills, aptitudes and knowledge included in the specification are related precisely to the needs of the job..... The very process of writing a job and person specification should help the employer to develop and implement a policy of equal opportunity in the recruitment and selection of employees.

Recruitment and Induction booklet, ACAS, 2007

6.10 The Welsh Language Act and the Welsh Language Board's role

The Welsh Language Act 1993 contains three parts:

- (i) Establishing the Welsh Language Board to promote and facilitate the use of the Welsh language.
- (ii) The Act placed a duty on public bodies to treat the English and Welsh languages on a basis of equality when conducting their business and providing services to the public. This is done based on the content of language schemes agreed by the Board.
- (iii) It gives Welsh speakers a total right to use the language in court.

In terms of this advice the second point is the most important regarding the duty placed on public bodies to prepare language schemes. The Board has a central role to play in this regard. Under Section 5 of the Act the Board advises public bodies to prepare a language scheme. In this scheme public bodies will outline the measures they intend to take in order to improve their Welsh language provision.

The Act placed a responsibility on the Welsh Language Board to publish guidance regarding the format and content of schemes (Section 9 of the Act). Under Section 3 of the Act a duty is placed on the Welsh Language Board to advise public bodies and Crown institutions on the ways in which they can implement the principle of equality when providing services to the public in Wales, and advise them on the use of the Welsh language when dealing with the public in Wales. In fulfilling its statutory role the Board operates in the context of that which is appropriate under the circumstances and is reasonably practical.

In addition to the Board's role in preparing and approving language schemes the Board has an essential role to play in monitoring the implementation of schemes. If, following a complaint made under Section 18 or otherwise, it appears to the Board that a public body may have failed to implement a scheme approved by the Board the Board may conduct an Investigation under Section 17 of the Welsh Language Act in order to see if such a failure took place. Following completion of the investigation the Board must send a copy of the report to the public body in question and to the Assembly Government Ministers. The Board can make the report more public if it deems that appropriate. If the Board believes that the body has failed to implement its scheme, it can make recommendations to the organisation in question within its report. If the Board believes that the public body has failed to act on any of the recommendations in accordance with Section 20 it may refer the matter to the Assembly Government. The Minister responsible for the Welsh language may take further action at their own discretion and order the organisation to act on the recommendations giving the body such directions as deemed appropriate. If such directions are given they can be subject to a court order.

6.11 The influence and precedent of other developments

Wider developments which form the backdrop of the Welsh language are also relevant to the test, such as the fact that Welsh Language Schemes as a process and legal entity have won their place as an acceptable method of ensuring that some individuals are given appropriate equal opportunities, even though that may have a discriminatory effect on others, and that the precedent increases as more and more become operational.

The expectation that bodies mainstream the Welsh language in their activity was reinforced, and a 'Bilingual Skills Strategy' was introduced as a planning and implementation entity. We believe that this Strategy also has legal significance. It not only offers a standard procedure for planning and managing language skills, but also reinforces the justification and offers a responsible and reasonable approach if an accusation of discrimination were to come to light.

The same procedure could also apply to planning the membership of a board or committee or executive panel (e.g. magistrates, tribunal members). Further information on the possible content of a Language Skills Strategy is provided in Appendix 4.

All of these elements are a means of reinforcing any argument which states that reasonable action taken by an employer with regards to the Welsh language, in order to promote the provision of satisfactory bilingual services or to develop an understanding between people in the workplace, is a 'valid aim'.

Appendix 1

‘Welsh Language Schemes – Their preparation and approval in accordance with the Welsh Language Act 1993’, 1996: staffing guidance

“As part of their scheme, organisations should specify the measures they propose to take as part of their staffing strategy to reach a position, as soon as possible, where they are able to deliver their full range of services through the medium of Welsh. Where possible, this should be linked to the timetable in the scheme. In assessing their staffing requirements, organisations should make provision for a potential increase in demand for services through the medium of Welsh as schemes are implemented, and Welsh speakers take up the offer to deal with organisations in Welsh. With that in mind, organisations should follow the approach set out below:

- (1) by considering in detail the nature of its activities and relationship with the public in Wales, the organisation should identify, in an objective manner, those workplaces and posts where an ability to speak or write in Welsh is an essential skill and those where it is desirable, and the level of proficiency required. Where necessary, team and job specifications should be drawn up accordingly;*
- (2) the organisation should also establish how many of its staff speak or are learning Welsh and their level of proficiency, and how many of them are currently in those workplaces or posts identified in accordance with (1) above. The results of this exercise should then be compared with the conclusions of (1) above to identify areas for action;*
- (3) the organisation should then consider how best it may achieve the remainder of its staffing objectives identified in (2) above. The options available may include transferring Welsh-speaking staff into designated workplaces or posts, Welsh language training for staff, and recruitment of Welsh speakers to specific workplaces or posts;*
- (4) an implementation programme should be adopted by the organisation in which priorities are specified. Managers and others responsible for staff recruitment, training and supervision should be familiar with the programme and tasked with implementing it;*
- (5) progress in implementing the programme should be monitored as part of monitoring the scheme, which will also highlight the action to be taken should the number of Welsh speakers in scheme-related posts begin to decline.”*

Appendix 2

Example of an organisation using indicators to identify the staff profile

Performance Indicator

Number and % of staff working for the Council who are able to speak Welsh (excluding teachers and school staff)

- per service division
- according to grade
- per workplace (office, centre and main offices)

Department	Number	Percentage
Chief Executive	194	66%
Resources	228	55%
Regeneration and Recreation	199	48%
Social Care and Housing	833	52%
Education and Children's Services	882	26%
Technical Services	308	30%
Whole Authority	2644	46%

Pay Scale	Number	Percentage
Grade 1 – SO1	796	14%
SO2 – POG	551	40%
Senior Officer Grade	26	14%

Workplace	Number	Percentage
Workplace 1	140	61%
Workplace 2	182	60%
Workplace 3	17	44%
Workplace 4	120	41%
Workplace 5	38	61%
Workplace 6	36	52%

Appendix 3 – Levels

Welsh language skills – workplace assessment

(i) Listening

0	No skills
1	Able to understand basic enquiries in Welsh [“Ble mae..?”; “Ga i siarad â..?”]
2	Able to understand a basic social conversation in Welsh.
3	Able to follow routine conversations involving work between fluent Welsh speakers.
4	Able to follow the majority of conversations involving work including group discussions.
5	Able to understand all conversations involving work.

(ii) Reading

0	No skills
1	Able to read basic words and phrases e.g. signs or short and simple notes.
2	Able to read basic material involving work (slowly).
3	Able to read routine material with a dictionary.
4	Able to read the majority of material in own area.
5	Able to understand all material involving work.

(iii) Speaking

0	No skills
1	Able to conduct a general conversation [greetings, names, sayings, placenames].
2	Able to answer simple enquiries involving work.
3	Able to converse with someone else, with some hesitancy, regarding routine work issues.
4	Able to speak the language in the majority of situations using some English words.
5	Fluent – able to conduct a conversation and answer questions, for an extended period of time where necessary.

(iv) Writing

0	No skills.
1	Able to write basic messages - “Diolch am y llythyr. Dyma gopi o’r map”.
2	Able to answer simple correspondence with assistance.
3	Able to draft routine text, with editing assistance.
4	Able to prepare the majority of written material related to the area, with some assistance in terms of revision.
5	Skilled – able to complete complex written work without the need for revision.

Appendix 4 Language Skills Strategy

In order to meet the aim of developing the workforce for the purpose of improving bilingual services to the public the Board believes that large public bodies should adopt a Language Skills Strategy as a working document which is separate from their language scheme. Every public organisation should include details on arranging a bilingual workforce as part of a language scheme. If a body does not wish to adopt a Language Skills Strategy then section 8 of the language scheme itself should be a framework for planning a bilingual workplace. The main considerations are as follows.

The main objectives of a Language Skills Strategy are:

- To provide more high quality services, both orally and written, through the medium of Welsh;
- To provide a wider range of Welsh language services;
- Inform staff and the public of the objectives;
- Set targets, measure and report on performance;
- Invest in developing Welsh language skills.

A Language Skills Strategy should be a working tool which enables an organisation to plan a bilingual workforce. We do not wish to provide a template for a Language Skills Strategy as so many different organisations implement language schemes but we believe that a Language Skills Strategy should contain the following elements:

Mission Statement

We suggest a possible wording but every organisation may word their statement in a manner which is relevant to their work:

“.. ensure a sufficient supply of officers who possess the appropriate language skills in the correct places to enable the organisation to provide a satisfactory and complete Welsh language service, in accordance with the Welsh Language Scheme.”

Underlying perspectives

Principles and objectives which form the basis of what is intended are needed. We suggest that statements on the following points would be suitable, bringing together aspects of service and employment:

Underlying Perspectives

Service

- That a satisfactory and complete Welsh language service means a service of the same quality and accessibility as the English language service provided.
- If that is not possible immediately, make it one of the corporate priorities, with the intention of adopting a proactive approach to achieving it.
- That such an approach is part of the body's anti-discrimination practices.
- That the aim and these perspectives are familiar to staff and the public.
- The body will measure how it meets this aim in a routine and open manner.

Employment

- That linguistic ability for the purpose of work is a skill like any other
- Staff will be supported and encouraged to acquire and use their bilingual skills.

Procedural action

This is normally central action taken by human resources officers. The aim is to ensure that the standard processes and documents facilitate and support the implementation of the staffing measures found in the language scheme. The action to be taken is identified below.

Procedural Action

- Adopt an objective approach to determining language skills, namely methodology to be used for the following purposes:
 - analysing and measuring the need for language skills per workplace and post;
 - analysing the language skills of existing staff;
 - providing guidance on the wording of adverts and job descriptions;
 - compiling a shortlist / interviewing / appointing;
 - measuring language training needs.
- Make arrangements to record and update the language skills record, in order to avoid significant and unnecessary audits again, and in order to be able to report on and analyse the situation at any time.
- Align staff appointment and development policies and practices with the language skill objectives and arrangements (e.g. selection and appointment codes of practice; standard form for person specifications; language skills in job descriptions; candidate evaluation methods for shortlists and interviews; equal opportunities monitoring forms; performance appraisal framework, on-the-job development or training assessment and record).
- Within the procedure for approving vacancies before they are filled, and authorising managers to make appointments, include the stated assumption that vacancies are to be filled according to the bilingual skills map, unless managers can justify the opposite in an objective manner, which is recorded as a deviation. (If there is no general procedure in place for authorising vacancies, one should be created specifically for language skills, transferring responsibility for its implementation to a designated officer, e.g. HR officer or language officer).

Executive Action

Below is action to be taken by heads / line managers, normally, in consultation with the HR unit and language officer.

Executive Action

- Map language skill needs per workplace and post against the Aim, using the Language Skills Assessment Guide.
- Map the existing capacity within workplaces and posts in a similar manner, setting it as a benchmark.
- Compare capacity with need, thematically on body level (e.g. percentages / linguistic ability level, location, title / grade, number of first-language speakers / learners, age profile, etc) and then per department, service, team, workplace and post, as appropriate.
- Set a horizon of progress for the Strategy's first implementation stage, which will include specific targets stemming from the mapping and comparison process above, including departmental targets or similar.
- Adopt an action plan which describes the steps the body intends to take in order to reach its horizon of progress, which will identify priorities (thematic and/or locational) and arrangements (e.g. recruitment, training, relocation) to combat any deficiency. (Departmental action plans will often be needed in addition to the composite corporate action plans.)
- Develop the Welsh language skills of the workforce e.g. by adopting a language training programme for [some] members of staff as part of their on-the-job development. (In larger bodies, it is likely that a specific 'Welsh Language Skills Development Plan' will be needed to guide and co-ordinate efforts. Regular feedback on attendance, commitment and attainment will be needed, feeding information on progress into the Welsh language skills database as well as the individual's development plan.)
- Train managers on the body's objectives in its Strategy, their responsibility, how the procedure should be used objectively, and what information should be collected and reported.

Review action

These are the steps which will enable the body to monitor progress during the Strategy's life cycle.

Review action

- 'Departmental' reporting programme, which provides routine information to the 'HR department' and others regarding progress.

- Recurring corporate reporting programme, which provides a detailed analytical overview of the situation to senior managers and the governing body, along with further executive action, most likely to be aligned with reporting to the Board on implementation of the action plan.

- Periodic review and evaluation of the implementation of the Strategy (aligned with the horizon of progress), which analyses the body's achievements against the underlying perspectives and initial benchmark, measuring what has been achieved as well as the completeness and effectiveness of that action.

- Update the Bilingual Skills Strategy (aligned with the previous action).

Appendix 5 – Concord between the Welsh Language Board and the Commission for Racial Equality 1996

An update of the Concord is being prepared

“The Commission for Racial Equality works towards a just society which gives everyone an equal chance to learn, work and live without facing discrimination or prejudice and without the fear of harassment or racial violence.

The Welsh Language Board strives for the day when those living in Wales whose preferred language is Welsh have the same opportunity to use it in all aspects of their lives as those whose preferred language is English.

The task facing both these bodies is to promote equality, and we share common values. We respect each other’s aims and responsibilities, acknowledging the fact that they complement each other.”