
Bidding for Contracts and Grants: Welsh language considerations



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Contracts and Grants



This guide has been prepared for those working under contract or receiving grants. This is an opportunity to understand more about the requirements that may be passed on to them regarding using the Welsh language.

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Background

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The Welsh Language (Wales) Measure 2011 gave the Welsh language official status in Wales and established a new framework for introducing duties for organisations to use the Welsh language, in the form of Welsh language standards.

The Welsh Language Commissioner is an independent body established to promote and facilitate the use of the Welsh language. The Commissioner can impose standards on specific organisations but also offers advice and guidance to all organisations whether or not they have a statutory requirement to use the Welsh language.

Contracts and Grants



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Introduction

This guide has been prepared for those working under contract or receiving grants. This is an opportunity to understand more about the requirements that may be passed on to them regarding using the Welsh language. It includes an explanation of how to find out more about standards, what to check for in contracts and a few practical pointers on how to be ready for these requirements.

This booklet mainly deals with contracts for services on behalf of organisations that are required to comply with Welsh language standards. These may be awarded following a quote or tender. However, as there is a key difference between delivering services under a contract and receiving a grant from a body to deliver your own service, the booklet also considers the possible requirements where a grant is awarded.

It also sets out what support and advice the Welsh Language Commissioner can offer businesses and third sector organisations wishing to use the Welsh language on a voluntary basis and to help to prepare themselves for Welsh language requirements in tenders and contracts.

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What are Welsh language standards?

Standards explain how organisations are expected to use the Welsh language in different situations, and establish rights for people to use the language.

Standards aim to:

- make it clear to organisations what their duties are in relation to the Welsh language
- make it clearer to Welsh speakers about the services they can expect to receive in Welsh
- make Welsh language services more consistent and improve their quality.

The Measure lists some of the organisations and sectors which may be required to comply with standards. They include most public organisations delivering services to people in Wales. Some private sector and third sector organisations may also be required to comply with standards (see section 9 for more details). The types of standards they will have to comply with vary according to the organisation or group of organisations.

Each organisation has its own 'compliance notice' which sets out which standards it has to comply with. The standards are based on the principle that the Welsh language should be treated no less favourably than the English language. This means that the Welsh service should be at least as good as the English service.

Standards are split into 5 categories

1 Service delivery

Welsh language provision through service delivery such as publications, face to face, social media or websites.

2 Policy making

To consider the effect of policy decisions on people's ability to use the language.

3 Operational

These deal with the use of the Welsh language within organisations.

4 Promotion

Some bodies are required to adopt a strategy outlining how they propose to promote and facilitate the use of the Welsh language more widely.

5 Record keeping

Keep records of other standards, and of any complaints a body receives.

- Organisations are required to publish their compliance notices on their website so that they can be easily found. All compliance notices are also published on the Welsh Language Commissioner's website.
- welshlanguagecommissioner.wales/compliancencotices

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What does this mean for an organisation that is bidding for a contract?

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A list of Welsh language schemes in force can be found here:

www.welshlanguagecommissioner.wales/welshlanguagescheme

Where an organisation requires services to be delivered to the public on its behalf, certain service delivery standards may be relevant to the delivery of those services. In some cases, other groups of standards may be relevant to a contract, for example, when a contract is for the delivery of internal training on behalf of the organisation.

It is important to note that public bodies differ from third sector and private sector organisations in terms of the European tendering rules that they have to comply with. The implications of these rules with regards to the Welsh language is explained in section 6.

If you deliver services for an organisation which is not yet listed as having a compliance notice, then it may not yet be subject to Welsh language standards. Some organisations may be implementing Welsh language schemes, under the Welsh Language Act 1993, explaining which services they will provide in Welsh, how they will do so and when.



It is important to note that public bodies differ from third sector and private sector organisations in terms of the European tendering rules that they have to comply with. **The implications of these rules with regards to the Welsh language is explained in section 6.**

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Do contractors have to comply with all the same Welsh language obligations as the organisation contracting out the service?

Only some Welsh language standards and parts of Welsh language schemes deal with delivering services to the public. Other aspects deal with, for example, requirements on organisations when making policy decisions or when employing staff. An organisation should only require a contractor to comply with standards which are relevant to the delivery of the services for that particular contract. Contractors should expect to see contract conditions such as the example below, which is an extract from the Welsh Language Commissioner's advice note on Contracting out Public Service Contracts:

Contract Conditions

- 1.1** The Contractor shall at all times comply with the [Welsh Language Act 1993] [Welsh Language (Wales) Measure 2011] and the Welsh language [standards] [OR] [scheme] with which the Authority is liable to comply, as if it were the Authority to the extent that the same relate to the provision of the Services.
- 1.2** The Contractor shall deliver the Services (in accordance with the Specification) through the medium of English or Welsh (on an equal basis).
- 1.3** The Contractor shall be responsible for promoting the delivery of the Services in Welsh or English to the Service user and shall use all reasonable steps to achieve this.
- 1.4** The Contractor shall be responsible for monitoring the level of take-up for the Service through the medium of Welsh and English and shall report to the Authority on a [monthly] [quarterly] [bi-annual] basis by providing the following information in writing:
 - 1.4.1** The number of users requiring the Service in Welsh and English.
 - 1.4.2** The percentage increase/decrease from the previous report.
 - 1.4.3** The allocation of staff to deliver the Services in Welsh and English.
 - 1.4.4** Any changes in Service delivery made or anticipated by the Contractor as a consequence of the above and, if relevant, the timescale for their implementation.

1.4.5 Any complaints of difficulties indicated by Service users or staff of the contractor in delivering the Services in compliance with Welsh language obligations during the report period [and any advice or guidance that is required by the Contractor in delivering such Services].

1.5 [Contractor specific proposals – Schedule to include any specific proposals included by the contractor within their successful tender to deal with Welsh language requirements].

When setting contract requirements and preparing to receive tenders, organisations will set out what Welsh language requirements contractors are required to demonstrate.

This could range from a commitment to deliver certain services in Welsh to requiring a statement or presentation in Welsh so as to assess the Welsh language capability. Exactly what is required will depend on the type of services being procured and what the organisation wishes to see as evidence that those requirements can be met.

This would vary greatly depending on the type of service – for example:

a painting and decorating service contract may not require any interaction with the public other than appropriate bilingual signage so an organisation may only require a contractor to commit to that obligation;

whereas

a careers awareness training service contract may require promotional information, handouts and delivery of training in Welsh or English and so an organisation may want clear evidence of ability to deliver in both mediums as part of the tender process.

Here is an example of what contractors may see in invitations to tender, taken from the Welsh Language Commissioner's advice note on Contracting out Public Service Contracts:

Evaluation – Invitation to Tender

Tenderers are reminded that the services must be delivered in a manner which is compliant with the Welsh Language (Wales) Measure 2011 [the Welsh Language Act 1993] and with the Welsh language standards [scheme] that the authority is liable to comply with for the Services, as if the tenderer was itself the authority. Tenderers must ensure that they are familiar with the authority's [current Welsh language scheme which is available at [insert here a link to the authority's Welsh language scheme]] OR [the standards with which the authority is liable to comply which are available at [insert here a link to the authority's Welsh language standards]].

Tenderers are required to provide a method statement describing how they would deliver the service under this contract to ensure that service users are treated equally whether they require the service in Welsh or English. [The method statement should briefly address each key aspect of the service and should address the anticipated level of Welsh language requirement for this contract].

Tenderers are required to explain the marketing plan or campaign they would employ for this contract to monitor and promote the ability of service users to receive an equal Welsh or English service. The response should include [a staged plan over the life of the contract] [examples of bilingual information to be provided] [and an indication of how the tenderer would respond to any resulting change in demand for the service to be provided through the medium of Welsh/English].

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Does imposing Welsh language requirements breach European tendering rules?

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The advice document Contracting out Public Service Contracts is available on the Welsh Language Commissioner's website here:

www.welshlanguagecommissioner.wales/publications

Where contracts for services are tendered, some organisations had concerns about including requirements to deliver services through the medium of Welsh as well as English within tender documents and contracts. This was particularly for contracts with values over certain financial thresholds, to which European procurement legislation applies. One of their main concerns was whether including Welsh language requirements favoured Welsh speaking organisations over organisations from other European member states, and whether this could be contrary to the requirements of European procurement rules.

The advice document refers to a European case¹ which confirms that national legislation which protects and promotes official languages is compatible with European procurement rules providing it does 'not go beyond what is necessary to achieve that objective'.

It explains that protecting official languages is also an objective of European law and that procurement processes may include such obligations to ensure these objectives are met. The judge went on to say that the fact that this may advantage organisations which are already working in that language (e.g. Welsh speaking organisations), it does not mean that the requirement is disproportionate or unreasonable. Public bodies must ensure they comply with Welsh language legislation when contracting out their services, but must also conduct tender processes appropriately and fairly when doing so.

Contracting out Public Service Contracts:

To address these concerns and to clarify legal obligations when tendering a public service contract in Wales, the Welsh Language Commissioner published an advice document titled 'Contracting Out Public Service Contracts: Welsh Language Considerations'. The document offers advice and assistance on how to consider the needs of Welsh speakers when contracting public services and goods. It includes practical examples of how to include these requirements in tender documents and contracts. Contractors may also find this document useful if they would like a more detailed understanding of Welsh language requirements in public tender processes.

¹ Case C-222/07 UTECA v Administration General del Estado (ECJ 5 March 2009)

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Does it make a difference if it is a contract for services or a grant agreement?

Yes. A contract for services is an agreement to deliver services on behalf of an organisation. The organisation must ensure that those services are delivered in accordance with all the legal obligations that it would be subject to if it delivered the services itself. This includes all Welsh language service delivery standards that are relevant to that service or, if they do not yet have to comply with standards, the service delivery elements of their Welsh language scheme. In some cases, other groups of standards may be relevant to a contract. Organisations are legally obliged to ensure that their contractors meet the service delivery standards and/or other standards in delivering services on their behalf under a contract for services.

Grants, on the other hand, are financial support for the grant recipient's own activities, not to deliver services on behalf of the organisation that is awarding the grant. The Welsh Government describes grants as follows:



Grants are funding that can be provided by Welsh Government and other public bodies as a means of offering financial support to third sector organisations to enable them to undertake activities the Welsh Government and other public bodies wish to support.

Grants may be aimed at assisting with the core costs of running and developing an organisation or more specifically to help it carry out a particular project or services. The grant giver is not contracting for a service that forms part of its own business.²



Service delivery standards therefore do not apply to grant conditions.

However, most organisations are subject to a policy making standard or a similar commitment in their Welsh language scheme to have a policy on awarding grants. Such standards require them to consider, when making decisions to award a grant, how the grant will affect opportunities for persons to use the Welsh language and how to treat the Welsh language no less favourably than the English language. The organisation must also consider imposing conditions of grant so that use of the grant would have positive effects on opportunities for persons to use the Welsh language, and on treating the Welsh language no less favourably than the English language.

² Welsh Government Code of Practice for Funding the Third Sector, January 2014

In order to ensure you address the Welsh language appropriately in a grant application or as part of your grant agreement, here are some practical steps you could take to prepare:

- Check if the organisation you receive or wish to receive grant from has a policy on Welsh language when awarding grants. The policy should include details of the specific grant conditions that the public body would impose.
- If your activity involves activities where Welsh language skills are essential, you may want to prepare a staff policy which explains Welsh language grant commitments to staff that deliver such activities and demonstrates organisational awareness.
- Think how you or the activity that will be grant funded uses the Welsh language and what opportunities are/will be provided for people to use the Welsh language. Prepare a statement which captures this and how you will demonstrate that you are treating the Welsh language no less favourably than the English language. See section (11) on developing a Welsh language promotion plan. You should highlight any positive impact the activity will have on the Welsh language or how you will minimise any negative impact.
- Ensure that you have considered any additional costs of delivering the activity bilingually as part of costing your grant application – for example if you would need to take on extra staff to offer opportunities for persons to use the Welsh language then these costs should be included and the benefits highlighted.
- Think about how you could monitor how the grant will affect opportunities for persons to use the Welsh language and will treat the Welsh language no less favourably than the English language. For example, recording the number of activities offered in Welsh (compared to previously if it is a repeat grant), or customer satisfaction surveys if a Welsh language member of staff is appointed.

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Can a public body require contractors to meet new Welsh language requirements if they are not included in an existing contract?

Organisations are required to comply with Welsh language standards from the date set out in their compliance notice, or if they are not subject to standards yet, from the date their Welsh language scheme came into effect.

This means that regardless of what contract terms say, the public have rights to receive all services offered by the organisation in accordance with their Welsh language standards from that date, whether the organisation delivers the service themselves or through a contractor.

Where contracts were put in place before Welsh language standards came into force, they may say little or nothing about meeting Welsh language requirements. Whilst a public body cannot impose new contract terms on you without your agreement, the contract should allow for changes to be made by the organisation where those changes have come about because of new legal requirements. The organisation should contact you to discuss any changes that are needed to such contracts to meet Welsh language standards.

If you have existing contracts for services with organisations you may want to do the following:

- Have a look at your contract terms and see what it says (if anything) about meeting Welsh language requirements.
 - Check if that organisation is subject to a compliance notice or has a Welsh language scheme and see which of the service delivery standards (or parts of the scheme) would apply to the type of services you deliver. Make a note of the ones that you think would apply to your contract.
 - If the Welsh language requirements are not adequately addressed, think about what changes you will need to make to your current arrangements to meet these new Welsh language obligations.
 - Contact the organisation to discuss amending the contract to address Welsh language requirements. These amendments should be limited to the minimum necessary to meet the legal Welsh language requirement only and, if the organisation is a public body, can't involve changes to the scope of services otherwise. You should keep a written record of any changes.
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Could contractors or grant recipients be made subject to their own Welsh language obligations?

Where you deliver services on behalf of an organisation under a contract, that organisation's service delivery standards will be relevant to the contract for services. Similarly, if you receive a grant from an organisation, your grant agreement will set out exactly what grant conditions you have to meet in relation to the Welsh language. However, in some circumstances, a contractor or grant recipient could be subject to its own Welsh language obligations.

The Welsh Language (Wales) Measure 2011 allows organisations to be added to the list of those that can receive a compliance notice, including

- Organisations that provide services to the public who also receive public money amounting to £400,000 or more in a year (if they have also received public monies in another financial year); or
- Organisations that provide services of a certain type to the public under an agreement with a public authority.

Adding organisations to the list of those that can receive a compliance notice and then issuing a compliance notice is not a quick process. You would be notified well in advance if this could happen to you and would be consulted with in detail if you could be made subject to standards.

However, if in the future you did become subject to your own Welsh language standards or if you are already subject to your own Welsh language standards or scheme or are named in the Welsh Language (Wales) Measure 2011 but have not yet received a compliance notice, here are a few extra points you should bear in mind:

- If you are applying for or receive grant funding from an organisation, then the fact that you are subject to Welsh language standards may assist you in your application or compliance with any grant conditions. Make sure that you explain that you are subject to these in your grant application as you will need to comply with your own Welsh language standards or scheme when undertaking your own activities, even if these are grant funded.
 - If you have a contract for services with an organisation then you are delivering services on that organisation's behalf and must comply with their Welsh language standards or scheme rather than your own. However if your Welsh language standards or scheme have a 'higher' requirement than the funding organisation's, then you should include those additional commitments as part of your tender to ensure that you are complying with your own standards as well.
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Can I submit my tender or grant application in Welsh?

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Yes, in most cases you are entitled to submit your tender or grant application in Welsh or English.

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How can contractors prepare for Welsh language requirements in tenders and contracts?

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Visit the Commissioner's website for businesses and charities for more information:

comisiynyddygybraeg.cymru/hybu

For information on sourcing free Welsh lessons for staff visit:

www.learnwelsh.cymru

In order to ensure that you are ready to evidence how you would meet Welsh language requirements for your type of service, here are some practical steps you could take to prepare:

- Think about the ways in which the public interact with the service you presently deliver or plan to deliver – face to face services, written literature or correspondence, websites, telephone services?
- Prepare a plan, policy or scheme which describes how the service will be delivered to service users equally whether they require the service in English or Welsh – address each of the ways that the public interact with your service and how that will be delivered bilingually or in the language chosen.

Welsh Language Promotion Plan

- The Welsh Language Commissioner's Promotion Team supports businesses and charities in putting together a policy which helps them to plan their provision. You can begin by filling out the self assessment questionnaire which will then take you through the process of putting a promotion plan in place.

Here are some practical considerations:

- Asking Welsh speaking staff to wear lanyards or badges that show if they are Welsh speakers.
- Developing your website or social media content.
- Advertising your Welsh language services and asking existing users if they are aware of what is available.
- An increasing number of commissioning organisations recognise the Commissioner's Welsh Language Promotion Plan as a sign of good practice. It is embedded in some accredited quality marks such as PQASSO for third sector organisations.

Welsh Language Skills and Awareness

- If your contract involves the delivery of a service in person to the public where Welsh language skills are essential, you may want to prepare a staff policy which explains to staff that deliver such services what Welsh language obligations are applicable. You could also include plans to increase organisational awareness and improve Welsh language skills. The Welsh Language Commissioner offers free training courses on language awareness and planning which are accredited by Agored Cymru. The National Centre for Learning Welsh offers a variety of Welsh language courses for organisations and individuals.
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- Think about how you could monitor uptake of the service in Welsh and the impact of any marketing plan you introduce. For example, conduct an initial survey of how many users ask for a Welsh language service and receive a Welsh language service from you at present. Think about what system you could use to monitor uptake of the Welsh language service in future and prepare a template monitoring report to show the percentage increase/decrease over a set period. For example, monitoring the number of clicks on a Welsh language version of your website, number of calls received, noting any barriers to delivering increased services in Welsh etc.

Familiarise yourself with the requirements

- If you repeatedly contract with certain organisations, have a look at their compliance notices and see which of the service delivery standards would apply to the type of services you deliver. Make a note of the ones that you think apply so that you can confirm this with the organisation awarding the contract. Make sure to ask them to let you know if they think other standards or parts of their scheme are relevant so that you can ensure you are meeting the right obligations.
 - If you have contracts with multiple organisations in Wales that are subject to different standards, you should consider any differences in the requirements. If the same team delivers services which would be subject to different standards for different organisations, you may want to decide on the 'highest' obligations and ensure you meet or exceed those Welsh language requirements.
 - Ensure that you have considered any additional costs of delivering bilingually as part of your tender price – for example if the contract requires bespoke literature to be prepared, this will need to be translated and the cost to your organisation should be factored in when pricing. You are entitled and encouraged to outline these costs at the outset.
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Other guidelines by the Welsh Language Commissioner:

Bilingual Design Guide

Using Welsh on social media

Technology, websites and software:
Welsh language considerations

Contracting out Public Service

Contracts: Welsh Language
Considerations

Recruitment: Welsh Language
Considerations

If you have any queries on Welsh language requirements in an existing contract or for a contract that you wish to tender for you can contact:

Welsh Language Commissioner

Market Chambers

5-7 St Mary Street

Cardiff CF10 1AT

0345 6033 221

post@welshlanguagecommissioner.wales

welshlanguagecommissioner.wales



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