

DRAFT CODE OF PRACTICE ON LANGUAGE REQUIREMENTS FOR PUBLIC SECTOR WORKERS

RESPONSE FROM THE ROYAL COLLEGE OF NURSING

FORM FOR RESPONDING TO THE CONSULTATION

Anyone may return a completed form to the above email or address, but it is primarily targeted at public authorities to whom the Code applies. Public authorities are also expected to consult widely with their staff and employee groups before completing their responses.

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Q1: Is the guidance in the Code of Practice sufficient to help you meet the duties imposed on public authorities by Part 7 of the Immigration Act [2016] and set the necessary standard of spoken English? If not, please suggest what additions are necessary.

The RCN would suggest that in addition to the statutory code of practice there should be some sector specific guidance for employers to advise them on how to apply the code in practice, as the code covers a very broad range of services and functions.

Q2: Is the Code of Practice clear in its alignment with any existing legal obligations that you must adhere to, such as the Equality Act 2010 or Welsh Language (Wales) Measure 2011? If not, please suggest how it could be better aligned with those obligations or any others not already included.

In relation to the equalities issues:

The draft code of practice could be strengthened by ensuring that employers undertake some form of comprehensive monitoring to assess which groups experience a negative impact as a result of the fluency duty. It is vital that employers should be required to assess if existing or potential employees are dismissed, referred for training or denied access to employment on the grounds of fluency because of their race, ethnicity or national origin or indeed because they have a disability.

The code could also be further strengthened by detailing the scope of the provisions designed to protect employees who have a disability or impairment from discrimination in the sphere of work.

The draft Code sets out a clear unambiguous expectation of the Welsh language being treated on the basis of equality with English.

However, there a need for the code to be clearer about how and why its territorial applicability to Scotland and Wales and how and why it applies to these countries

differently, particularly in relation to the NHS and local authority administration to avoid confusion.

Any guidance relating to the code should set out how the duties work in conjunction with:

- the Welsh Government's standards for healthcare in the NHS,
- the inspection and regulation regime for healthcare and social care in Wales
- The Standards and regulating of Standards by the Welsh Language Commissioner
- And the Welsh Government Codes of Practice for employees of the NHS

Q3: Do you have an existing minimum language standard for your customer-facing workers? If so, please provide details and confirm if you are satisfied that your existing standard meets your obligations under Part 7 of the Immigration Act [2016].

A condition of initial registration with the Nursing and Midwifery Council as a nurse or midwife in the UK for non-EEA trained applicants is attainment of level 7 of the IELTS test and from January 2016 EEA trained nurses and midwives will also have to provide evidence of English competency or undertake the IELTS test.

Whilst employers also need to ensure that any individual candidate for a nursing position has the necessary language skills to carry out that specific role as part of the recruitment process, the RCN would not expect a completely separate testing regime to be introduced for registrants.

Care assistants – working in health and social care – are not regulated by the NMC and are therefore not subject to these requirements.

Q4: Do you have, or are you aware of, any existing best practice for establishing a necessary level of English or Welsh fluency that would be useful to reflect in the Code of Practice? If so, please give details.

The RCN will be issuing a guide to good induction for overseas nursing staff, based on good practice, which includes language issues. It is important to note however that whilst the code covers language fluency, there are other issues, including cultural norms, which impact on effective communication with customers/clients/patients.

Q5: What would be the impact of extending the Code of Practice to voluntary and private sector suppliers that you contract with? Please explain your answer.

The consultation proposes introducing the code for public authorities initially and then broadening this to voluntary and private sector organisations – which would include many social care providers, including agencies.

Prior to extending the code, it will be important to assess how it has been applied in the public sector in the first year of its implementation and build in monitoring and evaluation from the start (see also comments in Q2 re equalities), so see what impact the code has had.

NHS and local authorities would also need to consider how any English fluency requirements were dealt with when negotiating contractual arrangements.

Q6a: What will be the additional cost to your organisation to implement this duty? Please provide detailed estimates.

N/A

Q6b: From your perspective, would implementing this policy have a specific impact on the country, region or business sector which you operate in? Please explain your answer.

The RCN has both registered nurses and care assistants working in health and social care in membership. The latter would be most impacted by the code which may require some changes in recruitment practice and also more consistent identification of language training needs.

Q6c: If you are a local government body, to what extent would this new duty constitute a New Burden for your organisation? Please explain your answer.

N/A

Q7: How many workers will this new duty affect in your organisation? Please provide details such as employment status.

Q8: If complaints handling were to remain at the discretion of your organisation, what do you envisage as the basic process for enforcing it and for dealing with workers who do not meet the requisite language standards? Please provide details of your current process for dealing with complaints and escalation route from members of the public; any complaints data you currently publish, and the likely cost of expanding the process to include language-related complaints.

The RCN is pleased to see that the draft code emphasises the need for employers “to implement measures to support workers in customer facing roles who are found to not demonstrate the necessary standard of English of Welsh fluency”.

This needs to be clearly outlined in employers’ complaints processes and performance reviews with clarity on where responsibility lies to make improvements.

OTHER COMMENTS:

Communicating the introduction of the code well in advance of its implementation will be very important, including who it applies to ie all public sector workers not just those who have been recruited from outside the UK.

The introduction of the code may create further demand for English fluency training (both for UK and non-UK nationals). This needs to be factored into any discussions the Cabinet Office has with other relevant Government departments responsible for funding ESOL and other English courses.

Royal College of Nursing

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