

Nursing and Midwifery Council response to the Welsh Government's consultation on new Welsh Language Standards

Introduction

- 1 The Nursing and Midwifery Council (NMC) is the professional regulator for nurses and midwives practising in the UK. We exist to protect the public. We do this by holding and controlling access to the register of qualified nurses and midwives and setting standards of education, training, conduct and performance. If an allegation is made that a registered nurse or midwife is not fit to practise, we also have a duty to investigate and, where necessary, take action to protect the public.
- 2 We welcome the opportunity to respond to the Welsh Government's consultation on the introduction of Welsh Language Standards to the healthcare professions regulators.
- 3 We regulate nursing and midwifery in the four countries of the UK, and need to set a UK wide framework while being sensitive and responsive to single country issues and requirements.
- 4 As of 27 September, 34,412 (approximately 5 per cent) of the 690,764 nurses and midwives on our register have an address in Wales. We note that the Welsh Government Statistical Directorate states that there are 562,000 (19 per cent of 2.96 million) people in Wales who can speak some form of Welsh¹. This potentially means that 19 per cent of those on our register with an address in Wales may be Welsh speakers (approximately 6,500 nurses and midwives or 0.9 per cent of all nurses and midwives on the register).
- 5 We do not currently have any offices based in Wales.

Summary of the NMC position

- 6 We support the intention of the Welsh Government to nurture and grow the use of the Welsh language within Wales, and we are happy to work with it to achieve this goal. We also believe that services that the NMC provides should be accessible to all parts of the community, including Welsh speakers.
- 7 With this in mind, we recognise that the NMC and other UK regulators should fall within the scope of the new Welsh language legislation. However, we call on the Welsh Government to clarify the scope, extent and application of these standards in how they are applied to the NMC and the other UK-wide regulators by providing formal guidance before taking them forward any further.
- 8 We are concerned that the standards, as currently constituted, may have significant and potentially disproportionate costs and impacts. Based on our initial analysis, the cost of compliance for the NMC is likely to be several million pounds,

¹ <http://gov.wales/topics/welshlanguage/statistics/?lang=en>

with substantial ongoing costs. The NMC is funded solely through the registration fees paid by nurses and midwives across the UK, and therefore the cost of compliance with the new standards would be funded entirely through these registration fees.

- 9 Furthermore, under the funding model for the Professional Standards Authority (PSA), which is also subject to these Regulations, we pay the largest² proportion of the nine UK healthcare professional regulators towards its budget. As the cost of the PSA's compliance with the new standards would be funded by the levy paid by the regulators, this would therefore disproportionately impact the NMC. As we fund approximately half of the total that PSA receives from the regulators, nurses and midwives from across the UK would have to fund compliance with the standards twice.
- 10 Mindful of the current economic and public services funding climate, we are exercising financial restraint and seeking ongoing efficiencies across the NMC. Importantly the UK Government has also been clear that it does not support any increase in the fees burden on regulated health professionals. The cost implications of complying with the new standards will therefore have to be accommodated within our existing budget which could be problematic to achieve.
- 11 As a regulator covering England, Scotland, Wales and Northern Ireland, we employ a single model of regulation across the four countries. Therefore our registration process, the application of our Code of professional standards and other standards, and our model of quality assurance of nursing and midwifery education are the same wherever you are in the UK. Because of the size of our register and the complexity of our operations, our internal IT and process systems are configured around this single model.
- 12 There are a number of standards within the draft Regulations which we believe are unreasonable and disproportionate in the long term for the NMC. Further clarity from the Welsh Government through formal guidance will help to refine how we ascertain impact and how we will comply. We are, however, likely to seek additional exemptions from the standards which could be applied to us by adding them to the list currently in Regulation 4(b) of the proposed Welsh Language Standards (No. [Health Sector]) Regulations 2016.
- 13 In light of the above, we seek a dialogue with the Welsh Government about how we can comply with the intention of the standards and enhance services for Welsh speakers without a disproportionate impact on our regulatory functions. We will set out our views on which standards we believe we should be exempt from with our supporting rationale and assessment of estimated impacts in the RIA (Regulatory Impact Assessment). It will follow this response, as agreed by the Welsh Government. We outline the main points from our analysis so far below.

² Under the funding model agreed by the UK Treasury the funding of the PSA comes solely from the nine UK healthcare profession regulators. As the model is based on a 'per number of registrants' formula, and the NMC has by far the largest register, this means that the NMC also contributes the largest amount to the PSA budget – approximately half.

‘In relation to Wales’ – the scope of the standards

- 14 A key question we seek clarity from the Welsh Government on, concerns the definition of what constitutes “in relation to Wales”. Regulation 1(3) of the No. 4 Regulations states that “these regulations apply in relation to Wales”, reflecting the provisions within the Welsh Language Wales Measure 2011 under which the standards were made. However, there is no definition of what this means in law and no case law to aid with defining it. A clear definition of what this means in relation to the different kinds of standards will help refine our impact analysis and the approaches we will need to take to comply.
- 15 We believe that there is a genuine need for the Welsh Government to work with stakeholders to develop formal guidance on the matter before taking the proposals consulted upon forward. We also seek further clarity on how the Welsh Government has assessed what the standards may mean in terms of their practical application for organisations based outside Wales who operate the same functions across the four countries of the UK. Without this clarity it will be difficult for us to accurately assess the impact of the standards and plan for compliance.
- 16 In the absence of this information, organisations are likely to interpret the scope and extent of the standards differently, which may inadvertently lead to enforcement action by the Welsh Language Commissioner or other legal challenge with their associated costs.

Summary of estimated impacts on the NMC

- 17 The detailed nature of the standards in the No. 4 Regulations go beyond the proportionate measures in our current Welsh language scheme³. We are still finalising our assessments of likely impact through our RIA. However, at this stage it is clear that the standards would require significant IT and infrastructure development on an ongoing basis. The financial cost of this would amount to several million pounds with substantial ongoing costs.
- 18 Key impacts identified so far include:
 - 18.1 Significant change to our IT systems, in particular to the automated correspondence functionality and templates within our casework handling systems, which support our Register and Fitness to Practise functions. This would be required to comply with the majority of the correspondence standards at a cost currently estimated to be £720,000.
 - 18.2 Significant ongoing translation costs across the organisation, for example in HR, procurement, and in our operational functions. We are still calculating the likely associated costs for this, but it is expected this cost would run into several hundred thousand pounds per year.
 - 18.3 A number of the standards would require the recruitment of Welsh language speakers into specific roles to be able to comply. For example, standards 11, 12, 15, 22, 25CH and 73. We would question whether this would provide Welsh speakers with an unfair advantage over others who have

³ <https://www.nmc.org.uk/about-us/our-equality-and-diversity-commitments/welsh-language-scheme/>

more suitable skills for a role, and therefore whether these standards may come into conflict with equality legislation. Again, we seek clarity on this from the Welsh Government. The cumulative total is still being finalised through the RIA process, but it is expected to be significant

- 18.4 If we are required to translate the whole of our website (containing over 600 pages and 2000 PDF documents) as stated in the draft Regulations, early indications are that this is likely to cost approximately £350,000, and then incur ongoing maintenance costs.
- 18.5 We are likely to need to employ additional resource in our Governance function to be able to comply with the standards in the supplementary schedule. We have estimated that the cumulative total cost of compliance with a selection of the standards in the supplementary standards is in the region of £215,000.
- 19 We believe that the lead in time for compliance with many of these standards would be considerable, and the implementation of compliance approaches would be likely to impact upon our ability to meet existing key performance indicators across the business within existing budgets. Further detail will be provided in our RIA.
- 20 We have identified that there are certain standards that could not apply to the NMC. For example, the tables in part 2 of schedule 1 state that standard 11 would have to be applied in conjunction with standards 9 and 14. We are already listed as exempt from standards 9 and 14 of the No. 4 standards in the proposal for regulation 4(b) of the proposed Welsh Language Standards (No. [Health Sector]) Regulations 2016. Therefore we believe that standard 11 could not be applied. In addition, we understand that standards 79-81 relating to delivery of education programmes would not apply to the NMC following discussion with the Welsh Government.

Conclusion

- 21 We want to work with the Welsh Government to reach agreement on which standards would enhance the experience of Welsh language speakers engaging with the NMC. However in their current form there is a risk that some of the standards are impractical for a UK-wide regulator, and that their introduction would have a significant resource and process change impact. We believe, as this document sets out, that the Welsh Government should provide formal guidance on the scope of the standards and how UK-wide bodies should comply with its new legislation before taking it further forward.
- 22 We will also seek further exemptions from standards which we believe could not be applied or would be unreasonable and disproportionate for us in the long term; this will be set out in the RIA that follows this response. We look forward to working closely with the Welsh Government over the coming months to refine the proposals set out in the consultation document.