

PROCUREMENT AND COMMISSIONING GUIDANCE 2016

EQUALITIES
AND
WELSH
LANGUAGE

**WORKING TOGETHER
FOR THE GOOD OF ALL**

**This publication is available in Welsh. It is available in other languages and formats on request.
Mae'r cyhoeddiad hwn ar gael yn Gymraeg. Mae ar gael mewn ieithoedd a fformatau eraill ar gais.**

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Introduction

This document has been produced to provide initial information and guidance to staff on where Equalities and Welsh Language matters must be considered when preparing Council contracts or commissioning documents for third parties, in order for them to tender and deliver goods or services on our behalf.

It explains how the Council can corporately, or at a service area level, comply with the requirements of the Public Sector Equality Duty and Welsh Language Standards at different stages of the procurement or commissioning cycle.

The guidance is split into three sections and four appendices.

Section 1	-	Background and Legislation
Section 2	-	Practical Examples
Section 3	-	Contract Management and Monitoring
Appendix A	-	Procurement Tender Statement 2016
Appendix B	-	Pre-Tender Questionnaire 2016
Appendix C	-	Model cut-down text for smaller contracts or commissions
Appendix D	-	Useful Links and Resources

This guidance is issued under the Council's **Strategic Equality Plan 2016-2020** and carries its full authority.

1) Background and Legislation

The public sector is required to protect or achieve numerous legal obligations in conducting a tender process and awarding the resulting contract; some international, some European and some domestic.

These can at times create competing priorities all of which must be balanced within the process to ensure that the differing levels of legal precedence are respected.

In Wales, these legal obligations include compliance with Equalities and Welsh Language regulations under UK and Wales-only legislation. These must be considered in the following stages of the procurement or commissioning process:

- planning and specification
- selection (pre-qualification)
- award (tender stage)
- contract terms and conditions
- contract management and monitoring

An important point to remember however is that though overall compliance must be demonstrated, any specific detail of a contract should have due regard to these considerations **when related to and proportionate to the subject matter of the goods or services being procured or commissioned.**

This means that all contracts should have a commitment to comply with the legal duties at a high level, but the detailed requirements can differ greatly, depending on what goods or services are under discussion. **Section 2** gives some examples of how this could appear in practice.

The specific legislation in relation to this guidance is as follows:

i. Equality Act 2010 Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011

Section 149 of the UK Act refers to the Public Sector Equality Duty (the PSED) and applies to public bodies named in the Act (all local authorities for example) in the exercise of any of their functions, which includes the procurement and commissioning process for third party contracts.

ii. Welsh Language (Wales) Measure 2011
The Welsh Language Standards (No. 1) Regulations 2015

In the overall interpretation of the 176 Standards covered by these Regulations, part 5 contains the following:

(a) references to any activity being carried out by a body, or to any service being provided by a body, are to be read as including a reference to that activity being carried out on the body's behalf or to that service being provided on the body's behalf by a third party under arrangements made between the third party and the body;

(b) accordingly, unless a compliance notice provides to the contrary, a body will have failed to comply with a standard in respect of an activity or service it has arranged to be carried out or provided by a third party if that activity or service has not been carried out or provided in accordance with the standard.

Standards 76 - 80 specifically deal with the tendering process of a body that awards contracts and Caerphilly's Compliance Notice notes the following:

Standard 76	<p>Any invitations to tender for a contract that you publish must be published in Welsh, and you must not treat a Welsh language version of any invitation less favourably than an English language version.</p> <p>You must comply with standard 76 in the following circumstances:</p> <ul style="list-style-type: none">(a) If the subject matter of the tender for a contract suggests that it should be produced in Welsh, or(b) If the anticipated audience, and their expectations, suggests that the document should be produced in Welsh.
Standard 77	<p>When you publish invitations to tender for a contract, you must state in the invitation that tenders may be submitted in Welsh, and that a tender submitted in Welsh will be treated no less favourably than a tender submitted in English</p>
Standard 77A	<p>You must not treat a tender for a contract submitted in Welsh less favourably than a tender submitted in English (including, amongst other matters, in relation to the closing date for receiving tenders, and in relation to the time-scale for informing tenderers of decisions).</p>

Standard 79	<p>If you receive a tender in Welsh and it is necessary to interview the tenderer as part of your assessment of the tender you must –</p> <p>(a) offer to provide a translation service from Welsh to English to enable the tenderer to use the Welsh language at the interview, and</p> <p>(b) if the tenderer wishes to use the Welsh language at the interview, provide a simultaneous translation service for that purpose (unless you conduct the interview in Welsh without a translation service)</p>
Standard 80	<p>When you inform a tenderer of your decision in relation to a tender, you must do so in Welsh if the tender was submitted in Welsh.</p>

(NB **Standard 78** has been excluded from CCBC's Compliance Notice)

iii. General Principles

These Equalities and Welsh Language duties are non-delegable, so the duty remains with the Council even if a third party actually delivers the goods or services on our behalf, acting in our place as if it were a public body itself. This could be another public body, a voluntary or health sector provider, or a private company.

The Council therefore has to ensure that it provides these third party organisations with the correct information and expectations from the outset. If this is not done, not only will the people receiving the service be in danger of being provided with a potentially poorer standard of service under these regulations, but the Council would still be liable if the third party acted unlawfully and was challenged.

It places a great deal of responsibility on the Council to ensure its procurement and commissioning functions are compliant and clear, but since 2011, Caerphilly CBC has been putting the requirements into practice. This guidance is meant to update and build on the existing good practice.

The examples shown in **Appendix A**, **Appendix B** and **Appendix C** therefore are the updated versions for 2016 of documents that have been in place for a number of years and can be used by any service area as a starting point if they are considering a tendering process and need a form of suitable wording.

2) Practical Examples

Whilst it is of course important to comply with legal duties, sometimes putting the duties into practice can be difficult in the detail of the requirements. Is there an Equalities or Welsh Language implication? If so, which aspects and in what way?

As noted previously, all contracts should have an overall commitment to comply with these legal duties, but the detailed requirements can differ greatly as service areas are responsible for such vastly different services.

As a reminder, the various strands that need to be considered, when relevant, are:

- Age
- Disability
- Gender Reassignment / Transgender
- Gypsies and Travellers
- Human Rights
- Linguistic Skills
- Marital Status
- Nationality
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex (Gender)
- Sexual Orientation
- Welsh Language

These issues are explained in more detail in the Council's [Strategic Equality Plan 2016-2020](#).

The table overleaf is meant to show some existing examples of where some or all aspects of Equalities or Welsh Language duties are currently considered.

It is not an exhaustive guide but is intended to show where the connections are, if any, between the legislation covered by this guidance and third party work currently being undertaken on the Council's behalf.

Example goods or services provided to the Council	Example strands to consider	Why?
Corporately - office stationery	General commitment only	Provision of pens, staplers and paper for printers and photocopiers do not need detailed Equalities and Welsh Language requirements, so the general commitment and contract monitoring should suffice.
Corporately - IT equipment and software	Disability, Linguistic Skills, Welsh Language	Specialised IT equipment may need to be provided for staff members with issues such as Dyslexia or language requirements e.g. Read Aloud software. The Welsh Language Standards require software for staff and the public to be available in Welsh.
Families First - childcare settings	Linguistic Skills, Race, Religion, Sexual Orientation, Welsh Language	Childcare settings need to be able to demonstrate that they do not discriminate against the child or parents based on their individual characteristics or language requirements (cultural differences, religious requirements at key dates during the year, if parents are a same-sex couple, if they require Welsh language correspondence or BSL signed contact with the setting).
Social Services – Children’s Services	Disability, Race, Religion, Linguistic Skills, Sexual Orientation, Welsh Language	Any services commissioned, for example, support for children with disabilities or family support services need to take a person-centred approach and demonstrate that they do not discriminate against the child or parents based on their individual characteristics or language requirements cultural differences, social care and health support needs, disability, religious beliefs, sexual orientation or communication in preferred language.
Social Services – Adult Services	Disability, Race, Religion, Linguistic Skills, Sexual Orientation, Welsh Language	Any services, for example, residential/nursing care or domiciliary care commissioned to support people living in the community need to take a person-centred approach and demonstrate an understanding of individual need – (cultural differences, social care and health support needs, disability, religious beliefs, sexual orientation, communication in preferred language) all of which are necessary to enable people to maintain and promote their independence.
Highways and Engineering - roadworks	Welsh Language	All road signs must be bilingual under the Welsh Language Standards - contractors undertaking work on behalf of the Council therefore must ensure that temporary signs are also bilingual.

3) Contract Management and Monitoring

Contract management is similar to project management in that each third-party contract for goods or services in effect is a mini-project, with a unique goal, associated resource requirements, has a beginning and end date, and requires coordination and planning of relevant activities, as well as full documentation and monitoring evidenced in a contract file.

The purpose of third-party contract management on behalf of the Council is to ensure that the successful third-party organisation fully meets its obligations as efficiently and effectively as possible, delivering the business and operational requirements of the Council and providing clear value for money when using public funds.

Successful contract management is based on an open flow of communication between parties and a willingness to take any action necessary for correction and improvement should issues arise. It is also very important in that it safeguards the Council should dispute situations arise that could cause conflict or even legal proceedings.

The service area responsible for the contract in question must also ensure (under the legislation covered in this guidance document) that the Equalities and Welsh Language aspects of those contracts are also monitored properly.

Where relevant Equalities and Welsh Language issues have been included in the tender process from the outset, it will be far easier to ensure that the overall management and monitoring of progress contains the necessary Equalities and Welsh Language monitoring information.

This will be different for each contract or commission and could, for example, be in the form of specific targets or performance indicators within the delivery requirements. The third-party's overall commitment will have been covered by the awarding of the tender and the signing of the contract in the first place, if the examples in **Appendices A, B or C** were used.

CAERPHILLY COUNTY BOROUGH COUNCIL

PROCUREMENT SERVICES

EQUALITIES AND WELSH LANGUAGE STATEMENT 2016

1. Introduction

Caerphilly County Borough Council aims to encourage, value and manage diversity, and is committed to equality for all and has detailed policies in relation to Equalities and Welsh Language in both service delivery and employment matters.

These statutory duties reinforce the Authority's commitments, and ensures that public money is not spent on practices that lead to unlawful discrimination, but is used instead to support and encourage equality and good community relations.

To this end the aim of the Authority is to ensure that whilst carrying out its activities will give due regard to;

- Promoting equality of opportunity
- Promoting good relations
- Eliminating unlawful discrimination
- Ensuring that the Welsh Language is treated no less favourably than English

This Council recognises that people have different needs, requirements and goals and we will work actively against all forms of discrimination by promoting good relations and mutual respect within and between our communities, residents, elected members, job applicants and workforce.

We will also work to create equal access for everyone to our services, irrespective of ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, use of Welsh Language, BSL or other spoken languages, nationality, responsibility for any dependents or any other reason which cannot be shown to be justified.

2. Statutory Duties

The Council is under a statutory duty to comply with the Equality Act 2010 and the Welsh Language (Wales) Measure 2011, which are enacted in Wales under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and the Welsh Language Standards (No. 1) Regulations 2015.

These Equalities and Welsh Language duties are non-delegable, so the duty remains with the Council even when you as a third party delivers the goods or services on our behalf, acting in our place.

To this end, the Council must ensure that all third party suppliers are able to demonstrate compliance with these requirements, where relevant to the nature and type of goods and services being provided on its behalf.

3. Contract Clauses

The Supplier shall ensure that it complies (and shall take all reasonable steps to ensure that all Supplier Personnel comply) with all relevant requirements of the above legislation, regulations and duties in force together with any guidance or Codes of Practice issued by the Equality and Human Rights Commission or Welsh Language Commissioner and shall in addition discharge its obligation under any agreement with the Council and provide the services in a manner consistent with the Council's Strategic Equality Plan.

The Supplier shall provide any information reasonably requested by the Council in respect of such legislation in so far as it relates to the performance of any agreements it has with the Council.

The Supplier shall not (and shall ensure that the Supplier Personnel shall not) do or permit or allow anything to be done which may result in the Council acting incompatibly with the rights contained within the European Convention on Human Rights and the Human Rights Act 1998.

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Appendix B - Pre-Tender Questionnaire 2016

CAERPHILLY COUNTY BOROUGH COUNCIL

PROCUREMENT SERVICES

EQUALITIES AND WELSH LANGUAGE QUESTIONNAIRE 2016

As an Employer and Service Provider Caerphilly County Borough Council has always, and continues to take, a proactive approach to its obligations arising from current Equalities and Welsh Language legislation, by implementing its Strategic Equality Plan. These duties stem from the Equality Act 2010 and the Welsh Language (Wales) Measure 2011, which are enacted in Wales under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and the Welsh Language Standards (No. 1) Regulations 2015.

Caerphilly County Borough Council therefore considers it essential that all organisations wishing to provide goods or service on its behalf are able to demonstrate that all reasonable and practical steps are taken to allow equal access and equal treatment in employment, service delivery and training for all. Please therefore complete all questions within this document.

Question 1:

In the last three years, has any finding of unlawful discrimination been made against your organisation by an Employment Tribunal, an Employment Appeal Tribunal or any other court (or in comparable proceedings in jurisdiction other than the UK)?

Yes ☐ No ☐

If you answered 'Yes', please provide a summary of the finding or judgement and explain what action you have taken to prevent similar unlawful discrimination from recurring.

Question 2:

In the last three years, has your organisation been the subject of formal investigation by the Equality and Human Rights Commission or its predecessors (or a comparable body in a jurisdiction other than the UK), on grounds of alleged unlawful discrimination?

Yes ☐ No ☐

If you answered 'Yes', please provide a summary of the nature of the investigation and an explanation of the outcome (so far) of the investigation. If the complaint against your organisation was upheld, please provide an explanation of what action (if any) you have taken to prevent unlawful discrimination from recurring.

If you have answered Yes to questions 1 and 2 and fail to provide satisfactory information, your submission will be disqualified and your submission will not be considered.

When answering Questions 3,4,5 please note they relate to the following strands:

• Age	• Nationality
• Disability	• Pregnancy and Maternity
• Gender Reassignment / Transgender	• Race
• Gypsies and Travellers	• Religion or Belief
• Human Rights	• Sex (Gender)
• Linguistic Skills	• Sexual Orientation
• Marital Status	• Welsh Language

Question 3:

Does your organisation have an Equal Opportunities or Equality and Diversity Policy, a Welsh Language Scheme or any Personnel/Recruitment/Training policies that cover the strands detailed in the above table?

Yes ☐ No ☐

Question 3 - If you do not have relevant policies in place support can be provided in order for your organisation to implement such policies. It will be a requirement of the contract that policies are implemented in a timely manner.

Question 4:

Does your organisation monitor the composition of the workforce by the Equality Strands detailed above?

Yes ☐ No ☐

Question 5:

Are all staff with managerial responsibilities required to receive training in Equalities and Welsh Language issues ?

Yes (General) ☐ Yes (Specific by Equality issues) ☐ No ☐

Question 6:

Would your organisation be able to demonstrate (via on-site audit or investigation) that the policies and procedures you have described in questions 3, 4, and 5 are reliable and comprehensively put into practice across your organisation?

Yes ☐ No ☐

If you have answered No your submission may be disqualified

Question 7:

Do you have procedures in place to protect your employees from unlawful discrimination by other employees or by members of the public?

Yes ☐ No ☐

If you have answered No your submission will be disqualified and your submission will not be considered.

Question 8:

Can you confirm that in the event that you use subcontractors to deliver the required product or service, you will take proactive steps to ensure they comply with Equalities legislation, and have taken robust and appropriate action to prevent the recurrence of any unlawful discrimination found to have occurred by an Employment Tribunal, an Employment Appeal Tribunal, Court, the Equality and Human Rights Commission or its predecessors (or any comparable body in a non-UK jurisdiction) and that you understand this may be validated.

Yes ☐ No ☐

Question 8 - If you have answered No your submission will be disqualified and your submission will not be considered.

If you require further guidance, information or support on Equalities and Welsh Language issues, please contact procurement@caerphilly.gov.uk or equalities@caerphilly.gov.uk.

Appendix C - Model cut-down text for smaller contracts and commissions

This model text can, for example, be included alongside Health and Safety, Sustainability etc. in a general section that tenderers must sign, noting their commitment to these general principles. It is therefore less of a burden on smaller companies to comply with relevant legislation, yet covers the Council when procuring or commissioning by ensuring that its own Equalities and Welsh Language duties are not overlooked in the tendering process.

EQUALITIES AND WELSH LANGUAGE - COMPLIANCE WITH LEGISLATION

Caerphilly County Borough Council considers it essential that all organisations wishing to provide goods or services on its behalf are able to demonstrate that all reasonable and practicable steps are taken to allow equal access and equal treatment in employment, service delivery and training for all.

The Council's Equalities statement makes this clear by noting that - "We will also work to create equal access for everyone to our services, irrespective of ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, use of Welsh language, BSL and other languages, nationality, responsibility for any dependents or any other reason which cannot be shown to be justified."

As a third-party Supplier, you will ensure that you have paid due regard to all relevant requirements of current Equalities and Welsh Language legislation, regulations and duties in force. You agree to provide those goods or services in a manner consistent with the Council's Strategic Equality Plan, in order to comply with the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 and the Welsh Language Standards (No. 1) Regulations 2015.

Further, as Supplier, you agree to provide any relevant Equalities monitoring information as may be required by the Council to ensure compliance.

If you require further guidance, information or support on Procurement, or Equalities and Welsh Language issues, please contact either procurement@caerphilly.gov.uk or equalities@caerphilly.gov.uk.

Appendix D - Useful Links and Resources

CCBC Intranet	Equalities and Welsh Language Portal - accessible on the Intranet Homepage - all council Equalities and Welsh Language plans, reports and guidance documents, training opportunities and translation information.
Contracting and the Welsh Language	2011 pdf document available from the CCBC Equalities and Welsh Language team - though referring to previous legislation, it does give some relevant general advice on Welsh Language issues in contracting, though the new Measure strengthens the position considerably.
Procurement Route Planner	Click on the link below: Procurement Route Planner Framework
The Equality Register	Click on the link below: The Equality Register Contract Conditions
Equality and Human Rights Guide	Click on the link below: EHRC Public Sector guidance - procurement England only guidance but does give some relevant general advice.
Value Wales Presentation	2014 pdf document available from the CCBC Equalities and Welsh Language team - <i>Building Equality into Public Sector Procurement</i>