

EXPLANATORY MEMORANDUM TO
THE CODE OF PRACTICE (ENGLISH LANGUAGE REQUIREMENTS FOR
PUBLIC SECTOR WORKERS) REGULATIONS 2016

2016 No. 1157

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Cabinet Office and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument brings into force a code of practice which sets out guidance for public authorities in relation to their compliance with Part 7 of the Immigration Act 2016.
- 2.2 Part 7 of the Immigration Act 2016 places a duty on public authorities to ensure that anyone who works for them in a customer-facing role speaks fluent English, or in Wales, Welsh or English (throughout this Explanatory Memorandum references to English are to be read as references to English or Welsh).
- 2.3 Following further consideration the words ‘public-facing’ were determined to better reflect the full range of public services in the scope of this duty than ‘customer-facing’ which may not have been recognisable to the people who administer these services, e.g. a doctor in a hospital or a teacher in a school.
- 2.4 In the code and this explanatory memorandum, a public sector worker is determined to be ‘public-facing’ if as a regular and intrinsic part of their role, they are required to speak to members of the public in English. This is described in Part 7 of the Act as a ‘customer-facing role’ and defined in section 77(7) of the Act.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Immigration Act 2016 received Royal Assent on 12th May 2016.
- 4.2 Section 77 of the Immigration Act 2016, provides that public authorities must ensure that anyone who works for them in a public-facing role speaks fluent English. The definition of ‘work’ includes those working under a contract of employment, apprenticeship or to do work personally, an agency worker, a constable and those in Crown employment. The Act defines fluent as having “a command of spoken English which is sufficient to enable the effective performance of the person’s role”. It also

provides that in determining how to comply with this duty public authorities must have regard to the code of practice issued in accordance with Part 7.

4.3 Section 80 of the Immigration Act 2016 provides that a code of practice, applicable to each public authority in relation to compliance with the duty in Section 77, must be issued and include provision about four specific matters:

- the standard of spoken English required to be met by a person working for a public authority to which the code applies in a public-facing role;
- the action available to such a public authority where such a person does not meet that standard;
- the procedure to be operated by a public authority to enable complaints to be made about breaches of the duty and for consideration of such complaints; and
- how the public authority is to comply with its other legal obligations as well as the duty.

4.4 This instrument brings into force a code of practice which has been issued for this purpose.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales, Scotland and Northern Ireland.

5.2 The territorial application of this instrument is England, Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 In 2015 the Government made a manifesto commitment to legislate to ensure the safe and high quality delivery of public services by ensuring that they are provided to an appropriate standard of fluency in English, or in Wales, English or Welsh.

7.2 The policy objective is to ensure that citizens are able to interact with all public services. It intends to improve the quality, efficiency and safety of public service provision and ensure taxpayers' confidence that they are receiving value for money. It also intends to deliver consistency with existing language standards.

Consolidation

7.3 As this instrument simply brings into force a standalone code of practice no question of consolidation arises.

8. Consultation outcome

8.1 The Government consulted on a draft code of practice which was made available on gov.uk, alongside the consultation document and impact assessment. The Government engaged directly with 92 stakeholders including public authorities, subject matter experts, trade unions and organisations that champion equality or represent people with protected characteristics.

8.2 The consultation ran for eight weeks from 13th October until 8th December 2015 and focused on eight key areas:

- the sufficiency of the guidance in the draft code of practice;
- clarity of alignment with existing obligations;
- existing language standards;
- best practice;
- extension to private and voluntary sector providers of public services;
- cost;
- staff affected; and
- complaints.

8.3 Almost all respondents agreed that the ability to speak fluent English to a sufficient standard was key to ensuring the quality of public service delivery. Many responses offered proposals to bring greater clarity to the code of practice.

8.4 The Government has taken into account the evidence and observations made by organisations through the consultation. In response, a balanced view was taken to supplement and revise the code of practice as necessary to ensure that public authorities have sufficient guidance to comply with the duty set out in Part 7 of the Immigration Act 2016.

9. Guidance

9.1 The code of practice provides guidance to public bodies on how to comply with the duty set out in Part 7 of the Immigration Act 2016.

9.2 A copy of the code of practice is available from the Stationary Office and is on gov.uk.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that public authorities will have to ensure that anyone working for them in a public-facing role speaks fluent English and in complying with this duty they must have regard to the guidance set out in the code of practice. Public authorities must also operate an adequate procedure for enabling complaints to be made about breaches of this duty. It is anticipated that there will be a small upfront cost linked to the familiarisation and implementation of the duty.

10.3 For those public authorities with any non-fluent workers there will be an additional impact as they will have to provide the relevant training or possibly in some cases the redeployment of employees into non public-facing roles. There may also be the need to resolve any complaints that there has been a breach of the duty.

10.4 An Impact Assessment on this basis is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Government will monitor further evidence of the impact of the duty set out in Part 7 of the Immigration Act 2016. There will be a one-year on report, which assesses the impact of the duty. Metrics for this have been developed with key parties.

13. Contact

- 13.1 Simon Claydon at the Cabinet Office, telephone: 07825 552721 (Hanna Griffiths) email: Simon.Claydon@cabinetoffice.gov.uk, can answer any queries regarding the instrument.