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## **IMMIGRATION ACT 2016: LANGUAGE REQUIREMENTS FOR PUBLIC SECTOR WORKERS**

The Immigration Act 2016 will place a new duty on public authorities to ensure that people working for them in roles dealing with members of the public are able to speak sufficient English (or Welsh) to perform their role effectively.

These duties will be applicable across the UK, but public authorities in England, Scotland and Wales will only have these duties where their activities relate to matters that are dealt with by the Westminster parliament, such as immigration, benefits and social security, rather than matters that may be 'devolved' to the such as healthcare and housing.

The duty comes into force on 21 November 2016. The government issued its draft *Code of Practice on the English Language Requirement for Public Sector Workers* at an earlier date to help public authorities be ready to comply with the duty on the date it enters into force.

### **What is a public authority?**

The relevant section of the Immigration Act 2016 describes a public authority that must comply with the duty as a body which carries out functions of a public nature. This is not always clear cut but includes, for example, central government bodies, councils and local government bodies, the National Health Service, state-funded schools and the police.

The definition does not include voluntary sector or private sector bodies that are contracted by a public authority to provide public services, however there is a power in the Act to extend the duty to these bodies at a later date using regulations.

### **What specific duties will public authorities have?**

Public authorities will be required to ensure that each person who works for them in a 'customer-facing' role speaks 'fluent' English (or Welsh). These concepts are explained in more detail below. The public authority is also required to have a complaints procedure to enable members of the public to complain if the authority has not complied with the duty and is employing someone unable to speak English or Welsh to the appropriate standard.

### **Which public sector workers will be affected?**

The public authority is required to ensure that those employed by the authority in roles that require them to speak with members of the public as a regular and necessary part of their role are able to speak English or Welsh to the appropriate standard. This includes staff, agency temps and apprentices employed by the public authority. The public authority must ensure that both new and existing staff meet the language requirements.

## **What standard of English (or Welsh) will be required?**

The Immigration Act 2016 states that 'fluent' English is required, however this is defined in the Act as *"a command of spoken English which is sufficient to enable the effective performance of the person's role"*. The use of the term 'fluent' is therefore misleading because the necessary standard of spoken English or Welsh will vary according to the nature of the role.

Public sector employers will need to identify the appropriate standard of spoken English or Welsh relevant for the different roles in which their staff deal with members of the public. They will also need to review their human resources policies and practices to ensure that the language requirements are reflected in these.

The language requirement may also be met through the use of a sign language interpreter or other reasonable adjustments that employers must make for people with disabilities. In Wales, the language requirement may be met in English or Welsh as appropriate.

## **What will happen if a worker does not meet the standard?**

A public authority may identify that an employee does not meet the necessary standard of spoken English following a complaint from a member of the public or through its normal performance management.

Public authorities will be required to comply with the Code of Practice issued by the Government. This states that public authorities must give members of staff a reasonable opportunity to reach the necessary standard of English or Welsh fluency. They should consider providing training or re-training to support staff to meet the language requirements. The public authority should only consider dismissing an employee as a last resort, after all reasonable alternatives have been considered. It must act fairly and in compliance with employment and equality legislation.

## **How can workers be protected against discrimination?**

Concerns have been expressed about the risk that the provisions will lead to discrimination towards people from Black and Minority Ethnic communities and people with disabilities, for example where members of the public make complaints based on prejudicial attitudes towards these groups or where public authorities discriminate directly or indirectly against these groups in the steps they take to comply with its language duty.

The Code of Practice reminds public authorities that they must comply with their obligations under the Equality Act 2010 in both their recruitment and employment processes. It is unlawful under the Equality Act 2010 to discriminate against a person directly or indirectly against a person on grounds of race, disability or other protected characteristics. Public authorities are also required to reject complaints from the public based on a workers' race, nationality, ethnic origin or disability.

The Equality and Human Rights Commission has advice on challenging discrimination at work at: <https://www.equalityhumanrights.com/en/multipage-guide/how-challenge-discrimination-work>. Workers can also seek legal advice in relation to their employment. Legal aid remains available for advice and representation in employment cases that involve discrimination where people are financially eligible for legal aid.

## **Further information**

HM Government, *Code of Practice on the English Language Requirement for Public Sector Workers*, October 2016, Version 1.0 preliminary (draft) at: <https://www.gov.uk/government/publications/english-language-requirement-for-public-sector-workers-code-of-practice>