

Title: English Language Requirement for Public Sector Workers IA No: Lead department or agency: Cabinet Office Other departments or agencies: Public Sector bodies	Impact Assessment (IA)	
	Date: 28/08/2015	
	Stage: Consultation	
	Source of intervention: Domestic	
	Type of measure: Primary legislation	
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Summary: Intervention and Options		RPC Opinion: Awaiting Scrutiny

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Two-Out? Measure qualifies as
TBC	TBC	TBC	No N/A

What is the problem under consideration? Why is government intervention necessary?

The Government made a manifesto commitment to "legislate to ensure that every public sector worker operating in a customer facing role must speak fluent English". Quality of communication is critical to efficiency, health and safety, and public confidence in public services. The public should be able to expect sufficient standards of English language skills across public services for effective delivery of services regardless of the main language of public sector workers. Often the public sector is a monopolist provider of services, so there are no market forces to influence quality and regulation of service. Without intervention the government cannot ensure any sufficient standard of English is maintained across public services.

What are the policy objectives and the intended effects?

The policy objective is to ensure a sufficient standard of fluent English is maintained and can be enforced across all customer facing public sector workers. This is intended to improve the quality, efficiency and safety of public service provision and support taxpayers' confidence they are receiving value for money. This proposal is expected to support current priorities for the management of immigration into the UK.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 1: Do nothing
 Option 2: Publish non-statutory guidance (non-regulatory)
 Option 3: Impose a statutory duty: The preferred option.

Introducing a statutory duty through primary legislation is the preferred option as it is the only option that will fully deliver the commitment. The Code of Practice proposed under the preferred option will be to provide guidance as to how the duty is to be implemented. It will be flexible enough to account for the differing requirements and existing arrangements of different public sector bodies while still ensuring that public sector bodies are meeting the requirements of the statutory duty. This will ensure that the burden placed on public bodies and affected businesses is small. The requirement that public bodies subject to the Code have a relevant complaints regime in place takes a similarly minimalist approach to enforcement.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date:** TBC

Does implementation go beyond minimum EU requirements? N/A					
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent) N/A			Traded:	Non-traded:	

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: _____ Date: _____

Summary: Analysis & Evidence

Policy Option 3: Preferred Option

Description: Impose a statutory duty: The preferred option

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m) TBC		
			Low: Optional	High: Optional	Best Estimate: TBC

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate	TBC		TBC	TBC

Description and scale of key monetised costs by 'main affected groups'

All costs are as yet to be confirmed. Estimating costs will require information which is to be collected during the upcoming consultation with affected groups. All public sector bodies with customer facing staff and all businesses involved in recruiting or supplying such staff will incur a familiarisation cost, e.g. extra working hours needed to read and understand the Code of Practice. The main ongoing costs of implementation will be incurred by public sector bodies, while businesses may face small increases to recruitment costs.

Other key non-monetised costs by 'main affected groups'

Public sector workers may be affected by costs of familiarisation with the new statutory duty and Code of Practice if it is uncertain whether they have the required level of fluency, and a small group will face the time cost involved in improving their English or changing their role. The costs of any disruption caused to public sector workers by implementing the standard will be incurred by public sector bodies and by their staff.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

We will endeavour to gain information about the value of benefits during consultation, however we do not expect to be able to monetise the benefits of this policy to any meaningful extent. While some benefits could be monetised on a per case basis, we are unlikely to be able to estimate what number of cases are likely to occur to estimate the total monetised benefit in aggregate. We are also aware that the value of benefits would vary widely depending on the specifics of a case, e.g. the savings due to preventing a medical error.

Other key non-monetised benefits by 'main affected groups'

The main beneficiaries of this proposed statutory duty will be users of public sector services, i.e. members of the general public. They will benefit from the impacts of improved and assured standards of communication within the public sector, including more efficient, better quality and more accurate public services, worthy of greater confidence and trust. Public sector bodies may also benefit from greater efficiency and productivity in service provision, and a reduction in errors, reducing associated legal costs.

Key assumptions/sensitivities/risks

Discount rate (%)

We assume that organisations whose recruitment practice implicitly assesses the language skills required for workers' roles will only need to take minimal action. Yet, if legislation or Code of Practice specifies a standard of fluency that requires testing or qualifications, this will increase the costs incurred by all organisations, including these. We assume that the public will only complain about the few workers who do not speak the specified standard of English, however it could encourage more ardent complaints.

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: TBC	Benefits: TBC	Net: TBC	No	IN

Summary: Analysis & Evidence

Policy Option 2

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m) TBC		
			Low: Optional	High: Optional	Best Estimate: TBC

COSTS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low				
High				
Best Estimate		TBC	TBC	TBC

Description and scale of key monetised costs by 'main affected groups'

Costs will be the same in nature to those of the preferred option: the time taken for familiarisation with a code of practice and the costs of implementation for public sector bodies. However, the scale of costs will be somewhere between those of option 3 and the 'do nothing' baseline, as without regulation a Code of Practice may not be put into practice by all public sector organisations. The likely level of implementation without a statutory duty will be explored during consultation.

Other key non-monetised costs by 'main affected groups'

Again, these costs will be qualitatively the same as under option 3, but are likely to occur to a lesser extent. Some public sector workers may be affected by costs of familiarisation with the new statutory duty and Code of Practice, and a small group will face the time cost involved in improving their English or changing their role. The costs of any disruption caused to public sector workers by implementing the standard will be incurred by public sector bodies and by their staff.

BENEFITS (£m)	Total Transition (Constant Price) Years		Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate				

Description and scale of key monetised benefits by 'main affected groups'

We will endeavour to gain information about what benefits might be realised under this option during consultation. Benefits are expected to be similar to those under the preferred option, but of lower value due to the code of practice being implemented less consistently without a statutory duty. As in the case of the preferred option, we do not expect to be able to monetise benefits in aggregate even if we may be able to monetise the benefits of particular impacts on a per case basis.

Other key non-monetised benefits by 'main affected groups'

Again, benefits are similar to, but occur to a lesser extent than, the benefits of the preferred option. The main beneficiaries of a code of practice will be members of the general public, benefiting from the effects of improved communication within the public sector, including more efficient, better quality and more accurate public services, worthy of greater confidence and trust. Public sector bodies may also benefit from greater efficiency and productivity in service provision, and a reduction in errors, reducing associated legal costs.

Key assumptions/sensitivities/risks

We assume that organisations who implicitly assess language skills at recruitment will only need to take minimal action. Yet, if a Code of Practice were to specify a standard of fluency based on testing or qualifications, this would likely increase the costs incurred by all organisations, including these. There's a risk under this option that the public may be frustrated or confused if the Code of Practice is variably implemented and they do not have the same ability to complain about language in all public services.

Discount rate (%)

BUSINESS ASSESSMENT (Option 3)

Direct impact on business (Equivalent Annual) £m:				In scope of OITO?	Measure qualifies as
Costs:	TBC	Benefits:	TBC	Net:	TBC
				No	IN

Evidence Base (for summary sheets)

Introduction

1. This impact assessment is regarding the Government's manifesto commitment to ensure that every public sector worker operating in a customer-facing role speaks fluent English. Under the preferred option, a provision will be included in the Immigration Bill that imposes a duty on public sector bodies to have regard to a statutory Code of Practice on English speaking requirements for public sector workers.
2. We understand that as this legislation will be enacting a specific manifesto commitment it does not fall under the scope of 'One in Three Out'.
3. This impact assessment focuses on the impacts of the policy to create a statutory duty as it has been defined so far, in particular regarding its scope, the standard of English specified as fluent, how complaints will be handled and the requirements of the Code of Practice to which public sector bodies in scope must have regard. However, it is expected that these aspects of the policy will be defined in more detail and potentially revised as a result of the consultation process. The proposed legislation will bring about a duty to issue a Code of Practice and will outline which matters this will cover, however the particular standards and approaches to be followed under the Code of Practice will not be specified in the legislation itself.
4. The impacts, costs, and benefits of this policy will depend on these details of its scope and definition, and as such are subject to change. Furthermore, quantifying these effects will require information and figures which are yet to be gathered, as doing so will require consultation with the organisations to be affected by the policy. Therefore, at this stage, the impact assessment only gives very approximate, or descriptive outlines of the expected costs and benefits. These will be quantified and monetised where possible following consultation.

Background to the issue and rationale for Government intervention

5. In the 2015 Conservative Manifesto the Government committed to "*legislate to ensure that every public sector worker operating in a customer-facing role must speak fluent English*".
6. Ensuring sufficient English fluency within public services will bolster efficiency, through reducing the time taken to effectively communicate with the public and reducing the likelihood of errors being made, especially those caused by misunderstandings or miscommunication. Without a sufficient understanding of English for their role public sector workers are likely to need more time to comprehend issues raised by the customer, and are also more likely to misunderstand the needs of the customer and act in error. This in turn may erode customers' confidence and faith in public services. Furthermore, any misunderstanding or errors have the potential to have substantial material impacts on members of the public if they are made in matters relating to health and safety.
7. Despite evidence of improvements in services, surveys suggest public dissatisfaction with public institutions continues, including with public services. A [report](#)¹ published by the 2020 Public Services Trust suggests that one of two core priorities of the general public for public services is a good standard of service provision. The ability to communicate with public sector workers is likely to be crucial to supporting a high standard of service provision and anecdotal reports suggest some members of the public have concerns

about their ability to communicate effectively with public sector staff, due to issues with workers' level of fluency in English.

8. Not only are good standards a component of delivering an effective service, public services are funded with public money thus such standards are also necessary to ensure public funds are well managed and the public receives a value for money service. Public sector workers are paid from public funds, and therefore should deliver a customer experience that meets the expectations of taxpayers. We understand that meeting these expectations will require that customer-facing workers speak fluent English.
9. Successful delivery of public services depends on high levels of public trust and confidence, however the Committee on Standards in Public life report: *Public Perceptions of Standards in Public Life in the UK and Europe* indicates a recent decline in levels of public confidence in national representative and administrative institutions. The Government is committed to improving public faith and confidence in the services they receive and fluency in English likely impacts on the public's trust in the expertise of public sector workers and their confidence in understanding the staff they interact with. Therefore it seems this will be a positive course of action to take. Furthermore, it will help indicate to the public that the Government recognises and acts on their concerns.
10. Anecdotal reports suggest that not all public sector workers operating in a customer-facing role have a sufficient command of English to effectively perform their role. The cases below illustrate the impacts that such shortfalls in English fluency can have:
 - A 2011 Department for Business Innovation and Skills research paper reports on various cases where businesses have faced communication barriers due to inefficient language skills, which have resulted in complaints from the public and even dismissal from work: For example, in one business in the transport sector, a public sector worker had been held responsible for an error (attributed to his English language skills), which resulted in poor client relations and consequently he was removed from client-facing roles to avoid further reputational and financial risk.
 - A survey of Responsible Officers by the England Revalidation Support Team (RST) in 2011, which covered just over half of all doctors, indicated that there were 66 cases in 2011 where Responsible Officers had dealt with linguistic concerns about a doctor.
11. Supporting the learning of English helps to facilitate integration and social cohesion in the UK. *The Commission on Integration and Cohesion report*, published in 2014, indicates that the majority of the public believe that speaking English is a critical part of British identity, and encouraging public sector workers to learn English aligns with Government policy that English speaking should be necessary to acquire citizenship. We also expect that English fluency will help increase access to employment, productivity and job retention as well as social integration outside of work. Therefore we expect this proposal to help support the management of immigration to the UK and to ensure it is of maximum possible benefit to both migrants and UK society.
12. Ensuring public sector workers are able to speak English is also consistent with current priorities to manage the number and skill level of immigrants to the UK. Potential immigrants who might wish to seek work in the public sector in the UK may be deterred if they do not have the required fluency in English, or may be encouraged to learn English prior to moving to the UK.
13. Without legislation central government does not have the power to ensure a standard of fluency is maintained throughout the public sector, or a complaints process established where concerns are raised. Therefore to fulfil the manifesto commitment and to meet the expectations of the public consistently, regulation is necessary.

14. While current figures show that the likely number of people working in public sector, customer-facing roles who do not have fluent English is likely to be small, there is nevertheless a portion of the population for whom this might be a concern. Furthermore if immigration continues or increases then the number of workers for whom English is not their main language is likely to increase, and the risk that the level of language fluency in the public sector does not meet the necessary standards will also increase.

- The lowest estimate we consider for the proportion of in-scope workers we expect to not be fluent is 0.4%, based on the proportion of people over 16 in employment in public administration, education and healthcare sectors, reporting that English is not their main language and they do not speak it well, or at all (census data 2011).
- The upper estimate we consider for the proportion of people we expect to not be fluent is 1.2%, based on the proportion of people over 16 in employment (in all sectors) reporting that English is not their main language and they do not speak it well, or at all (census data 2011).
- The above census figures are based on self-reporting and, as people may consider themselves as speaking better English than others would, it is possible that the proportion of people who would generally be assessed as not speaking fluent English could be higher. Furthermore, as the definition of fluency included in the policy is refined the likely population affected may need to be adjusted. However, given that 92% of people 16 or over and in employment report English (or Welsh in Wales) as their main language, and that those who speak English fluently as a second language will add to this figure, it is unlikely that the proportion who are determined as not fluent would be large even under a worst case scenario.

15. Evidence suggests that immigration to the UK, and specifically immigration in order to work, has been increasing over the last few years. Given that not speaking fluent English is more likely to be prevalent amongst workers who have immigrated to the UK than those who have grown up here, an increasing immigrant working population may well increase the likelihood that the people available for employment and employed by the public sector do not have fluent English. Furthermore, if immigration to the UK continues, the number of non-UK citizen workers in the UK would also grow, and could account for a larger proportion of the labour market. The proposed legislation sets a minimum standard which will have some impact at its first application, but will also be maintained and so prevent any decline in the level of English language spoken in public services in the future, regardless of whether the proportion of the labour market who are not UK citizens changes. Some of the most recent migration figures from ONS give context to this issue:

- Net long-term migration to the UK (immigration less emigration) was estimated to be 318,000 in the calendar year 2014. This was just below the previous peak in 2005 and a statistically significant increase from 2013. Immigration by EU citizens was at its highest point over the last decade, continuing a rise from mid-2012.
- 284,000 people immigrated for work in 2014, an increase of 70,000 on 2013, continuing the rise since the middle of 2012.
- Estimated employment of EU nationals (excluding British) living in the UK was 283,000 higher in Q1 2015 compared with a year earlier and non-EU nationals in employment increased by 11,000.
- In 2014, the number of work-related visas granted rose 10%, including a 15% increase for those for skilled work.

Policy objectives and intended effects:

16. The objective of the proposed regulation is to fulfil the manifesto commitment made by the Government and so to ensure every public sector worker operating in a customer-facing role speaks fluent English. To 'ensure' fluency the proposed Code of Practice seeks to set a consistent minimum requirement of fluency in English for all public sector workers in customer facing roles, improving the standard amongst current staff where necessary. Hereafter, it will serve to maintain the standard of fluency and assure the public they can be confident in this aspect of service quality, through providing facility to complain and pursuing actions to correct any shortfall in standards. Furthermore the policy reserves the power to extend the scope of the Code of Practice to include contracted out services and so the same standards may be imposed on further areas of public services if necessary.
17. Given the context of immigration into the UK and the changing UK labour market, this objective to maintain a standard of English is in effect ensuring fluent English is spoken in the public sector regardless of the nationalities and make-up of the public sector workforce.
18. The intended effects of this policy are described in more detail under the Benefits section relating to Option 3 (see points 69-77). In summary, they are:
 - An improved customer experience and quality of service for members of the public using public services
 - Greater efficiency in the delivery of public services
 - Strengthened health and safety measures and a reduction in the likelihood of errors in public service delivery
 - An improvement in the value for money delivered by public services
 - Preservation and support for public trust and confidence in the public sector
 - Support for the management of immigration and integration of immigrants into UK society

Policy Definition and scope

19. The *public sector* is likely to be given a generic description in the legislation, save for some specific exclusions, and a power will be reserved to add or exclude bodies as necessary by future regulations. The policy intention is for it to apply widely including to the following sectors (a fuller list of organisations is given in Annex A):
 - a. central government bodies (departments including NMDs, their executive agencies and NDPBs);
 - b. local government bodies (councils and others such as fire and rescue authorities and TfL);
 - c. NHS bodies (including trusts);
 - d. state-funded schools (including academies and free schools);
 - e. the police and the armed forces; and
 - f. public corporations (e.g. BBC)
20. The proposed statutory duty will apply to all directly employed workers, or workers substituting for direct employees, of the above organisations who are in customer facing roles. Therefore, it will apply to permanent employees of public sector bodies and also to self-employed contractors, agency temps or any other substitute workers filling roles, which are directly managed by the public sector body. Private sector providers of a public service, or any services which have been outsourced, will not be under the initial scope of this legislation. Those employees locally engaged overseas will not be in scope.

21. This means that the only businesses that will be directly affected by the proposed legislation are those who supply workers to the public sector bodies in scope to fill customer-facing roles. We expect these mainly to be recruitment companies who find workers to fill vacant roles directly employed by the public sector, and agencies that employ workers who they then send to public sector bodies to fill temporary vacancies or needs for extra staff.
22. As voluntary workers involved in public services are not contracted employees the statutory duty on public sector organisations to have regard to the Code of Practice will not apply in their case. Therefore we do not expect voluntary sector organisations to be affected by the proposed policy as they will not be in scope of the statutory duty it establishes. At most, some voluntary sector bodies may familiarise themselves with the legislation to an extent sufficient to understand that it will not apply to them, but we would expect any such cost to be minimal.
23. The legislation includes a power to extend the statutory duty to cover providers of contracted-out public services within the next three years. Any such extension would follow a separate consultation and full impact assessment. Therefore, the possible impacts of extending this policy have not been included in this impact assessment, which only considers the effects of the policy given its current scope. However, we note the possibility that some organisations who may be affected by an extension may familiarise themselves with the statutory duty, either in order to ascertain that it does not apply to them at this point, or to prepare for potentially being included in its scope in the future.
24. *Customer facing*, is defined as those who deal with the general public, either face-to-face, by telephone, or through correspondence, as a regular and intrinsic part of their role.
25. *Fluent*, is currently defined as having a sufficient command of spoken English to effectively perform the role being undertaken by the public sector worker in question. The possibility of specifying a standard of English equivalent to that of a certain level of qualification is being considered, and will be consulted on. However, this impact assessment is written on the basis of the assumption that the level of English to be required will be that needed to perform a role proficiently, and the statutory duty or Code of Practice will not include any requirement to test workers. If any requirement for qualifications or testing is added to the proposed Code of Practice the impact assessment will be updated accordingly.
26. The implementation of this commitment would be a reserved matter in relation to bodies carrying out functions, which are reserved to Westminster. A Legislative Consent Motion (LCM) from the Welsh Assembly and Scottish Parliament is needed to impose similar requirements on bodies carrying out devolved functions. This impact assessment is written on the expectation that an LCM will be given prior to consultation, and so the effects considered here do include those relevant to Wales and Scotland. The policy will give parity to Welsh for applicable public sector bodies in Wales. The policy would not apply to Northern Ireland. It is not proposed that it will apply to staff that are locally engaged overseas by public sector bodies.

Policy Options

Option 1: Do Nothing

27. The do nothing option involves current practice continuing unaltered, and upcoming changes to this that are already planned being implemented as currently expected. Essentially the situation remains as it would be without any new statutory duty being applied to the public sector, but with existing and already planned regulations still in place for those public sector workers they apply to. This then forms the baseline against which we consider the costs and benefits of the policy options, i.e. we only consider the impacts which are in addition to what would occur without the proposed statutory duty and Code of Practice being established.
28. The estimates of the scale of the issue (see points 39 to 42 below) show that under a do nothing scenario it is unlikely that problems caused by a lack of fluent English in the public sector will be widespread or acute. However, without introducing a Code of Practice the Government cannot guarantee a standard of service for the public and cannot ensure that an expected level of English is upheld. As such, doing nothing would not fulfil the manifesto commitment.
29. Furthermore, if the number of non-British nationals working in the public sector were to increase, or the level of English language skills available in the labour market were to decline, issues of poor communication could increase in severity and prevalence. Under a do nothing scenario, central government will not be able to require that public sector bodies prevent this from occurring and would have no power to provide for a higher standard of English language in the public sector subsequently.

Current Practice in the Public Sector

30. Some public sector roles and professions working in the public sector are already regulated regarding the level of English required of them, and while other roles are not regulated current employment practice ensures that workers filling these roles have fluent English. Under the do nothing scenario this remains the situation, and so this also forms the baseline against which we consider the impacts of the other options. In particular, options to introduce a statutory duty will only impact upon the level of English fluency in the public sector in cases where this is not already regulated or effectively assured by other quality controls and employment practice.

Civil Service

31. In the Civil Service, the majority of recruitment exercises use selection tests as part of the long- or short-listing process. This often involves a situational judgement test, which would require English language reading and comprehension. Civil Service recruitment also almost always involves an interview stage, which is conducted in English. Required language abilities would be checked and addressed at this stage. There is no specific requirement on Civil Service employers in relation to English speaking in either the Civil Service Management Code or Civil Service Nationality Rules.

Health

32. In 2014 the Department of Health and the General Medical Council consulted on language controls for doctors and implemented new language testing for doctors of EU origin, adding to the existing language testing of non-EU doctors. This required legislative change and full public consultation and in March 2015 when the power to apply language controls where appropriate was given to other regulatory bodies, this was extended to cover nurses, midwives, dentists, dental care professionals, pharmacists and pharmacy technicians. Neither piece of legislation applies to non-regulated workers.

Education

33. Teachers who qualify in England are already required to pass a test in written English, and teachers who qualify overseas must pass some basic proficiency tests before teaching in England, unless they qualified in an Anglophone country such as Australia or New Zealand. This means that there is already a de facto requirement that qualified teachers are able to speak and write in English. However, language testing does not currently apply to unqualified teachers, or to school support staff, teaching assistants or auxiliary staff.

Local Government

34. Local Government employment terms and conditions are set out in what is known as the “Green Book”ⁱⁱ, which currently only makes reference to English language speaking in terms of positive action training to develop staff in under-represented groups, though it also makes reference to a requirement for Welsh, British Sign Language and other languages in certain cases. When recruiting for customer service roles, which are the primary example of public-facing roles in local government, job descriptions include a requirement for excellent verbal and written skills, or good standards of communication and fluency. However the Local Government Association does not collect data on English-speaking.

Option 2: Publish a non-statutory guidance

35. This option would involve the publication and recommendation of a Code of Practice similar to that being proposed under the preferred, legislative option, however it would not be a statutory requirement for public sector bodies to have regard to it.
36. While this option is still being considered during consultation, we have not outlined its costs and benefits in depth here because most impacts would be qualitatively the same as those of the preferred option. However, as a Code of Practice might not be consistently applied and adherence could not be assured under this option, we would not expect impacts to occur to the same extent as if a statutory duty is in place. As the assessment of costs and benefits is very approximate at this stage, and we cannot know by what amount the impacts of a non-statutory policy would be lower than those of a statutory duty, we have not included a separate cost benefit analysis for this option. The description of costs and benefits provided for the preferred option should also be considered as applicable to this option, but with both costs and benefits both reduced to some extent. Consultation will be used to better understand the likely extent of implementation, and therefore level of impact, of a non-statutory Code of Practice.
37. This option is not being proposed as the preferred option because in this case the code of practice may not be consistently applied and would not be enforceable. As such, this option would not fulfil the spirit of the manifesto commitment to *ensure*, not merely expect, that all customer facing, public sector workers speak fluent English. If the public are, in effect, to have a right to be able communicate effectively in English when they interact with public services; the standard needs to be enforceable for this to be meaningful. As the manifesto commitment specified that the government would legislate to ensure the level of English fluency, a non-statutory option would not fulfil the specifics of this commitment.
38. Furthermore, inconsistency in the application of the standard in public services could have a considerable, damaging effect on public trust and approval even if cases where

the standard are not met are very few. Publicity of such cases, risk aversion among the public, and the greater impact on perceptions of quality of a bad experience than a good experience, mean that if a minority of services do not meet the standard expected this could have a disproportionate effect on trust of, and support for, public services.

Option 3: Implement a statutory duty: Preferred Option

39. The preferred option is to implement a statutory duty to require public sector bodies to have regard to a Code of Practice, which will be prepared once consultation feedback has been taken into consideration. This measure will be implemented through primary legislation to ensure adherence to the policy from all public sector organisations in scope and to make the standard meaningful for members of the public, giving the public the opportunity to complain about any services falling short of the standard.

40. While this option ensures the greatest level of consistency in the standard of spoken English across the public sector and takes the most stringent approach of the options listed here, it should still minimise the burden of implementation on public sector bodies and the private sector as far as possible. The Code of Practice will be prepared once a full understanding of the effect of the statutory duty on public services has been gained through consultation. The suggested option also takes a pragmatic and proportional approach to addressing the issue of fluency: Organisations are expected to have some flexibility to specify what level of English is needed for the roles of their employees, which should ensure time and resources are not spent pursuing a standard higher than that which will have an effect on service quality.

41. Furthermore, the approach to assessment and complaints ensures the policy can be implemented as efficiently as possible; existing recruitment arrangements can be relied upon where they already would take the appropriate standard of English into account, and professions which are already regulated, or soon will be, with regard to the level of English language need take no further action. Additionally, corrective action is only to be pursued when concerns from within the organisation or complaints from the public are raised, ensuring the approach to complaints is proportional to the likely low level of the problem amongst existing employees.

Scale of the impacts of the policy

42. At this stage of policy development we are not certain how many public sector roles will fall under the scope of this policy or how many organisations will be impacted. We expect consultation to provide this information and to shape our expectations of what organisations are involved with public sector employment. Given the current lack of information we have not attempted to provide monetary estimates of the costs and benefits of the policy at this stage, however we provide the following estimates of the potential numbers affected by the policy to give some indication of its scope and the likely scale of impact. All estimates of the numbers of workers affected, below, will be refined through consultation. The costs and benefits which are then outlined, below, are largely incurred on a per worker, or per organisation basis, so these initial estimates of the total population concerned may be used to indicate the scale of costs and benefits very approximately.

43. We estimate that the number of people currently employed in roles in scope of this policy is expected to be approximately 3.6m.

- 5.4m people are directly employed by the public sector in the UK.ⁱⁱⁱ

- Through a very approximate analysis of type of roles we expect about 3.7m (70%) of these employees to be working in customer facing roles.^{iv}
- 3.6m of these customer-facing roles are expected to be located in England, Scotland or Wales, based on employees' reported locations.
- The number of current employees in scope gives the scale of those impacts which occur for all employees to whom the new statutory duty applies, whether any action is taken towards them personally or not, e.g. the scale of the familiarisation cost will depend on this number. We hope to gather more reliable and accurate figures for these numbers during consultation.

44. Approximate analysis of data on public sector workers indicates that about 1.5m in scope workers (in Great Britain only) are already subject to English language regulations^v, i.e. 42% of those in customer facing roles.

- Many impacts of the preferred option would not include those already covered by regulation, as, for example, they would already be assessed at recruitment for their level of English without this new statutory duty coming into effect.
- For all such impacts these workers can be excluded, leaving ~2.1m employees in scope and affected.

45. We expect the usual turnover rate amongst public sector workers to be about 10% p.a., based on a range of data sources^{vi}, i.e. ~210,000 in scope and currently unregulated roles are vacated and filled each year.

- Again, turnover figures will be informed and refined by consultation. We are aware that turnover may vary by sector and role within the public sector, therefore the customer facing services we are concerned with could have a different rate of turnover.
- Turnover numbers will be relevant to those impacts which occur on an on-going basis for new employees only, for example, costs incurred at recruitment.

46. 0.4% of people over 16 and in employment within public administration, education and healthcare sectors, report that English is not their main language and they do not speak it well, or at all (census data). We would expect that a similar level of fluency would be found amongst public sector employees in scope of this regulation. This assumption will be tested during consultation and the following estimates will all be refined using further information gathered.

- If this rate of fluency applies, 0.4% of 3.6m people in customer facing roles gives ~15,000 current employees as not fluent in English, and ~8,400 employees not in roles which are already regulated.
- We recognise that there is a risk that workers within scope of the policy, across all service areas within the public sector, may have a lower level of fluency than those in the sectors listed above. Furthermore, those who are already covered by language regulation tend to be in professional, likely more highly educated roles, where fluency may be expected to be higher, and so once these are excluded from the relevant population fluency may drop. As such, we also consider a high estimate of the proportion of workers who are not fluent of 1.2%, based on the proportion of people over 16 and in employment within any sector that report that English is not their main language and they do not speak it well, or at all.
- This higher rate assumption that 1.2% of employees are not fluent would mean ~44,000 current employees are not fluent and ~25,000 of those not already subject to regulation would not have fluent English.
- A worst-case scenario may involve slightly higher numbers of public sector workers without fluent English. Firstly, the census figures used above rely on self-reported

levels of fluency and there is a risk that people over-estimate their own skills. Secondly, some services in particular locations may well experience higher proportions of workers lacking language skills than average, as populations of immigrants and other groups who speak English as their second language are often concentrated in geographical areas. However, as only those workers in a customer-facing role are in scope of the statutory duty we would expect these workers to have better fluency on average than all workers, including those who do not deal with the public, therefore this will probably mean the proportion with insufficient English remains low.

- The current level of fluency indicates the scale of both some costs of the policy, e.g. the likely level of complaints received and remedial action needed, and many of its benefits; the new statutory duty will only improve the quality of public services where the level of English fluency is currently falling short of the standard.
- The main benefit of this policy, an improvement in the standard of English fluency amongst public sector workers, is expected to apply to a maximum of about 8,000-25,000 cases in the first instance, when applied to current employees. It is likely to apply to no more than 2,500 workers per year after the initial transition is complete (based on turnover estimates above). It should be noted that it could apply to far fewer workers if public sector organisations are already selecting candidates for customer facing roles in part on the basis of their level of spoken English.

Costs

Familiarisation with new legislation

47. All bodies affected by the legislation will have to familiarise themselves with the new statutory duty and the statutory requirements to abide by and uphold it. This brings an opportunity cost of the time spent by relevant HR employees and legal teams to read and understand new legislation and to update organisational policies etc.
48. This will be a one-off cost of transition. It will be incurred by all public sector organisations that fall under the scope of the policy (those which employ workers in customer facing roles) and all organisations that supply workers to fill relevant roles in the public sector. Some organisations which are not in scope of the policy may also familiarise themselves with it, at least to the extent needed to understand that it will not apply to them. Those workers who are likely to be affected (who are concerned about their language skills) may also familiarise themselves with the new legislation, and it is reasonably likely that those about whom any complaint or concern is raised will do so.
49. Consultation will be used to understand the numbers of each of these types of organisations affected and the likely time needed for familiarisation will also become clear following consultation and a full specification of the legislation. We expect familiarisation to be one of the largest costs as it will apply to more people than any other effect of the policy. At this stage we can only offer very approximate figures to give an indication of what the cost might be if certain circumstances hold, as such the following figures are only to be considered an illustrative example, and are not estimates of what this cost will be:
 - If we assume that there is one person in a HR role who would need to familiarise themselves with the new requirements per 50 affected public sector workers, this would mean ~72,000 people are affected by initial familiarisation costs. This assumes that relevant personnel for all public sector workers in customer facing roles, including those who are already covered by regulation, would need to become familiar with the legislation. At this stage we assume that someone will need to check and understand

the legislation to a sufficient extent to understand that nothing further is required of them if regulations are already in place.

- If we assume that it takes one hour for one person to read and understand the new Code of Practice and the requirements to apply it, then this would mean that the initial familiarisation would take 72,000 hours, or approximately 2000 working weeks.
- We can estimate the value of employees' time to the public sector organisation as being their wage and additional non-labour costs. For these initial estimates we assume the median gross hourly pay in the public sector will apply, giving £14.15 per hour^{vii}, and we add a further 27% to this to cover overheads and further costs to the employing organisation^{viii}, resulting in a cost to the organisation of £17.97 per hour.
- Therefore under the scenario laid out above the cost of familiarisation with the new statutory duty and Code of Practice would be approximately £1.3m. This is not an estimate of what the familiarisation cost will be, but is given to help indicate what level of cost might be expected at this early stage.
- Before we know the likely length and complexity of the legislation and Code of Practice, and prior to consultation on how burdensome such familiarisation is for organisations, we cannot estimate how long familiarisation will take. If familiarisation took longer, e.g. three hours, then this cost would increase considerably, to ~£3.9m in this case.

50. Without knowing the number of private businesses involved in staffing the public sector, or the proportion of staff recruited or employed through such routes, we cannot offer any indication of how many businesses will need to become familiar with the legislation, or what proportion of the cost of familiarisation will fall on them. Organisations who will potentially be affected will be invited to contribute to the consultation. We will also ask public sector bodies to indicate the number of such organisations they work with, and what proportion of their customer facing staff are linked to these, therefore post-consultation we should be able to form an estimate of the likely impact on business.

51. We are also aware that as the proposed legislation includes the power to extend its application in the future to cover private providers of public services, some of these organisations may well familiarise themselves with the legislation and Code of Practice at this point, to prepare for potential future extensions. Engagement with the consultation from these organisations should help indicate whether a familiarisation cost will be incurred by them at this point, or only if and when the scope of the statutory duty is extended to cover them.

Implementation and complaints

Limited on action and costs due to new statutory duty

52. Workers who are already subject to language regulations are excluded from the following impacts of this statutory duty, as regulatory bodies are already required to take action if anyone in these roles does not meet the standard of English required. Therefore any action taken, or costs incurred to rectify the standard of English amongst these workers is not attributable to this legislation.

53. Where any action is taken to bring services up to the required standard of English fluency specified by the new statutory duty, only extra improvements which are required because of the new duty, over and above those which would have been needed under the current system, are considered as contributing to the costs of this policy. We would expect that under current arrangements most employees would, in effect, be screened for fluency at recruitment, even if this is not a specified requirement of the role, for example through evaluating their performance at interview. It is also expected that most public sector

employers would already be monitoring their staff's performance and taking action to train, re-deploy, or replace anyone who is incapable of fulfilling their role proficiently for any reason, including lack of language skills.

54. It is expected that there will only be a very small number of cases where additional action is required above what would have occurred anyway under the do nothing scenario. However for simplicity, we assume here that concerns investigated and action taken to address them fall under the impacts of the new statutory duty. As such this considers the upper bound of possible costs. Through detailed consultation we may be able to better understand the extent to which standards of English are already being monitored and corrected, then we may be able to reduce the extent to which the following impacts are attributed to the new Code of Practice more confidently.

Recruitment

55. In most cases we do not expect the statutory duty to increase the time or resources required for recruitment, as a worker's standard of English will be possible to assess during current recruitment procedures, e.g. through interview. However, we recognise there may be some roles for which the current recruitment process will not offer opportunity for assessment of English language skills, in these cases this statutory duty will likely increase the time and possible resources, needed for recruitment. To this extent there may be some opportunity and financial cost incurred to those involved in hiring public sector workers and opportunity cost for the individuals applying to roles. Consultation will be instrumental in developing our understanding of current recruitment practice and what additions to it will be necessary.

56. This seems unlikely to place much burden on private companies as we would expect most businesses that provide a recruitment service and agencies that provide staff directly to the public sector to already be checking the level of English of the workers they supply. We assume that in most cases that reputational concerns about the quality of their workers would mean business are already speaking to individuals prior to placement in the public sector, and so no extra assessment procedure is likely to be needed. Again consultation should help to confirm or adjust this expectation, and, in particular, we will consider certain sectors where current expectations of the language standard required may be below that required by the statutory duty as informed by the Code of Practice.

Investigating concerns raised

57. Action that is taken to look into concerns about a relevant worker's level of English, and then to correct any cases which are below the standard, will take up the time of both those involved in deciding on the action to take and of the employee concerned. As such, there is an opportunity cost of the time taken to investigate any issues raised and decide on a course of action.

58. To value this opportunity cost we use the median gross hourly pay in the public sector increased to include non-labour costs, £17.95 (as explained in section 49). Assuming that any such time spent looking into concerns or discussing necessary action will fall during normal working hours, this opportunity cost falls on the employer concerned. Therefore, in most cases the burden will be on the public sector body responsible, but in some cases this may fall on a private business, such as an agency supplying temporary workers, if it involved their time and personnel.

59. Before having consulted on this matter we are not in a position to predict what type of proceedings may take place when a concern is raised, or how difficult the process to determine any appropriate action may be. Therefore, lacking any information at this point, we cannot estimate how much time may be used, and what opportunity cost may be incurred in order to follow up on complaints and concerns.

Re-deployment

60. We expect that if a customer-facing worker is found not to have the level of English required for their role, then a common approach within public sector bodies is likely to be to transfer them to another role which they would be more suitable for, i.e. a less front-line position. Re-deployment is likely to resolve the issue with the quality of English in interactions with the public more swiftly, with less cost and with less risk of complaint or challenge than the other options available to solve the issue. Therefore we expect this course of action to only bring a comparatively low cost, however the opportunity cost of the time taken to arrange a transfer, to train an employee for a new role and to potentially recruit or transfer another worker to fill the resulting vacancy is not inconsiderable.

61. It may be the case that re-deployment will more often be used for permanent employees of public sector bodies, and will be more unusual for workers employed temporarily, or via a private agency. Consultation will be used to gain information about the courses of action different organisations are likely to take.

Training

62. In cases where a worker does not have the standard of English required, but it would be difficult to re-deploy them to a role with lower requirements, or it would be difficult to find another person to fill their current role, we expect that employers may choose to give employees the opportunity to improve their English, or to train them directly. Clearly, any provision of training will incur a cost, and depending on the approach taken this will fall on either the public sector body employing the affected worker, or the individual themselves. Training will also take a potentially considerable amount of time to complete, which means an opportunity cost is incurred for the time spent. Whether this burden falls on the individual or on the employer will again depend on the approach taken and whether training is completed within working hours.

63. We would expect that it is comparatively unlikely that private organisations supplying temporary staff, or recruitment businesses would provide any training to the workers they are placing. For these workforces it seems more likely that any training undertaken will be done on the initiative of individual workers wishing to work in regulated roles, and so the cost will fall to them. However, again, consultation will help to inform our expectations on the amount of training that might be needed and the approach that is likely to be taken to provide it.

Dismissal

64. We expect there to be very few cases of permanent staff who are found not to have the level of English required for the role being dismissed, and that this would probably be taken as a last resort measure, for example, if re-deployment isn't possible and training has been ineffective. We expect that dismissal would prove the costliest course of action to take in response to an employee falling below the standard of language required, because of time needed to complete the process to support a decision to dismiss, the financial cost of any agreement to dismiss, and the possibility of appeal or challenge of

any such decision. However, we expect this to be a very rare occurrence, so we consider the most likely scenario to involve a limited cost being incurred due to dismissals.

65. This may be a more likely course of action amongst temporary or agency workers, who it is normally possible to remove from a role with less notice and using quicker processes etc. This may have some impact on businesses who supply staff to the public sector if the arrangements for workers to fill vacancies through them are terminated, however this could be avoided by any such companies checking that the workers they place in the public sector have the requisite level of English upfront. It seems unlikely that private business would have any significant involvement in dismissals of temporary staff related to the statutory duty in terms of the time taken to decide upon and enact this course of action. Again, consultation will provide further information about possible courses of action and the likely cost burdens of each.

Complaints procedures

66. It is proposed that this legislation will give members of the public the right to complain about any staff in the public services who they feel do not have the necessary fluency in English to deliver the service in question. Therefore, public sector bodies will need to have the facility to receive and handle such complaints from the public. It is envisaged that in the majority of cases public sector bodies will already have this capability through an existing internal complaints procedure. Additionally, for some public sector bodies, an independent body deals with complaints about deficiencies in their service for which there is no other remedy. Furthermore, we do not expect the volume of complaints to increase by any substantial amount – both because the number of staff we expect to have English poor enough to be noticeable is very small, and because we would expect members of the public to already be complaining where they feel they receive inadequate service. However, if any public sector body does not currently have an internal complaints procedure, or have access to a body which can handle such complaints, it may be necessary to establish one, in which case the resources and costs involved in doing so should be considered in relation to this policy. Consultation with public sector bodies should provide information about complaints procedures.

67. As any complaints would be received and handled by the public sector body responsible for service delivery and existing ombudsman we would not expect this aspect of implementation to bring any direct cost to business.

Benefits:

68. The benefits of this regulation are unlikely to be quantifiable even after consultation, as in many cases they do not bring identifiable financial savings or measurable impacts. The only indication of their likely scale we can offer is the estimates of the scale of language issues currently within the public sector, which we expect to be tackled by the new statutory duty. The principal benefits of this policy are linked to the improvement in service quality that better communication is likely to bring and the effects this will then have on service efficiency, the public's health and safety, and public trust and confidence in services.

Improvements in service quality

69. The new statutory duty will raise the standard of English fluency required for public sector workers who deal with the public and are in roles which are not already covered by such regulation, expected to be in the vicinity of 2.1m roles. Raising the standard will have a

material impact on the level of English experienced by the public only in cases where workers would otherwise not have had fluent English, expected to be in the range of 8,000 – 25,000 current employees at the initial implementation of the policy, and up to a further 2,500 newly recruited workers p.a. thereafter. While the number of such cases is clearly low in comparison to the scale of employment in the public sector, where an improvement in the standard of English of public sector workers is achieved, this improvement in service quality and communication may well have important benefits:

70. **Efficiency:** Where the standard of English offered by public sector workers improves, communication will likely become quicker and more accurate, both between members of the public and public sector staff, and amongst public sector workers. This will save public sector workers time, bringing a saving to public sector bodies and allowing slightly more to be done by the same number of workers. It will also bring a saving to members of the public in terms of the opportunity cost of their time spent interacting with the service.

- The amount of time saved is likely to be especially large in cases where a mistake would have been made due to miscommunication, but is now avoided because the appropriate standard of English has been enforced. While the number of cases where errors will be prevented by having a higher level of English may be small, given the time needed to identify an error once made, and the time and resources used correcting it, the savings for public sector bodies from these cases may be noticeable e.g. an error in recording the address of an individual may bring significant delays in subsequent communication with them.

71. **Service quality:** In cases where the statutory duty improves communication between the public and public sector staff this is also likely to improve the quality, and therefore value for money, of the service being provided. Most directly this benefits the customers of public services, members of the public, as they receive a better or greater level of service than they otherwise would have. This may also be advantageous to public sector bodies that wish to improve the quality of service and value they are providing.

- Again, these benefits are likely to be most significant in cases where a mistake is avoided due to improved communications. It is possible that in such instances the improvement in quality will be something of actual material / financial value to a member of the public. For example, identifying a medical condition earlier could decrease time spent suffering or improve outcomes. Processing identification documents accurately first time may allow individuals to undertake travel, or regulated activities, such as driving, which would have been prevented by a delay.
- In some cases service quality is very dependent on, if not essentially the same as, the standard of communication offered by public services. In these cases any improvement in communication effected by the new statutory duty will directly bring improvements to the service received by the public and so will benefit them. For example, advice services are heavily dependent on communicating information to the public, and the quality of the communication will directly affect the experience the customer has and the impact the service has on them. While the purpose of services such as social care is not specifically to communicate, the provision of care is nevertheless much improved with improved communication; even if better communication does not result in any change to other aspects of care given, being communicated with and having greater social interaction during care brings a wellbeing benefit to users of the service.

72. **Health and safety:** In some cases the avoidance of errors or miscommunication as has been mentioned above, may affect the health or safety of members of the public. While cases where miscommunication would result in a significant impact of this type are likely to be rare, where they are avoided benefits may be considerable. These benefits

principally fall to the individual who would otherwise have experienced harm, however, they will also likely also bring savings to the public sector body responsible for the service concerned, through reduced legal action and compensation claims.

- While the clearest examples of impacts on health are within healthcare services, it must be noted that many healthcare professionals are already subject to language regulations and therefore the safeguarding of the public in these cases is not attributable to this policy. However, there remain aspects of healthcare, or services related to health, which are as yet not subject to any language regulations, e.g. social care workers, healthcare assistants. These workers could have an impact on the speed with which some conditions are diagnosed, or how effectively patients are treated, and so reducing errors or improving understanding with patients could have some effect on health.
- Improved communication could also have safety implications in other sectors involving currently unregulated workers, for example, instructions given by workers on trains, or instructions to schoolchildren from classroom assistants or lunchtime supervisors.

73. **Public trust and support:** Trust in public services is likely to be increased by members of the public being well communicated with and being well understood when they interact with public sector workers. In turn, perceptions of the quality of services will impact upon the support for public services and for funding for them amongst the general public. These benefits are widely dispersed and are unlikely to be large in any one specific instance, but in aggregate may be worth noting. For example, the public's wellbeing is improved by feeling they can trust and rely on public services. Value for money, as well as more intangible benefits such as social integration, is supported by public services being used universally by the public, e.g. the more people who trust public transport and use it, the cheaper individual fares can be.

Wider Impacts: Immigration

74. This regulation may have some impact on the numbers and costs of immigration experienced by the UK. However we do not expect any available evidence to indicate the extent of this impact, or if it would occur at all, with any certainty, so such effects remain un-quantified and uncertain. Even so, the proposed statutory duty supports the Government's agenda regarding immigration and reflects the goals of limiting immigration and encouraging immigrants who can contribute most to the UK more than others.
75. Raising the level of English required for employment in many public sector roles may discourage some potential immigrants from coming to the UK. It seems reasonable to expect that some people who would wish to move to the UK (legally or illegally) to find employment in customer facing public sector roles, and who do not have the level of English required by the new statutory duty might be deterred from doing so. This may have some effect on the total number of immigrants coming to the UK, with a higher proportion of fluent English speakers being among them.
76. This policy may also help encourage greater levels of English fluency amongst those who have migrated to the UK. This impact may occur both through deterring those who do not have fluent English, as above, and also through improving the level of some immigrants' English who are already in the UK. For example, an immigrant working in the public sector may receive training to improve their language skills due to this policy being implemented, and immigrants who are looking for work in roles affected by this statutory duty may be encouraged to invest more time in learning English.

- Speaking the language has been linked to increased social integration, social cohesion and trust (see point 10) and therefore increases in language ability are likely to be linked to improvements in wellbeing both for the individual concerned and their community. Furthermore, any increase in language skills is likely to improve people's employment prospects and productivity, so having some knock-on impacts upon economic prosperity.

Risks

Disruption

77. Any investigation of and action to remedy complaints or concerns may cause some disturbance or distractions amongst a team or unit affected and have some effect on morale and productivity. Clearly, for an individual worker about whom a complaint or concern is raised the process of being evaluated, and any subsequent change to working arrangements may cause some distress and may affect their productivity as they continue their current role or as they transition into a new one. Others who work with someone under scrutiny may well be similarly affected but to a lesser degree, and, in particular, if any dismissals are caused there could well be an effect on morale and some cost from disruption to the team. However, we would expect any such costs to be mitigated against through managing the process and any changes well.
78. We are unlikely to ever be able to estimate the magnitude of any such effects and these will be entirely dependent on individual circumstances. Overall, we recognise that, in a worst-case scenario, if a relatively high number of workforces within a particular service or in a particular locality are affected, considerable disturbance in some workforces could be caused by implementing this policy. As such, we would expect public sector bodies to manage this risk appropriately, giving consideration to what proportion of their workforce will be affected by any action taken under the proposed statutory duty.

Quantity of complaints

79. In considering the probable scale of the impacts of this policy we have assumed that only those without fluent English would be subject to complaints or concerns being raised and any subsequent actions. However, it seems worth considering the possibility that the general public may also complain about staff who would be considered to have the necessary level of English.
- There is the possibility that members of the public who are generally dissatisfied with a public service could use this requirement for fluent English as a basis for a complaint, or to have a complaint taken more seriously.
 - There is also some risk that prejudice against some groups of public sector workers will manifest in a higher number of complaints than would be justified strictly by fluency in English. In particular this risk would seem relevant to non-UK nationals working in the public sector, and potentially could also apply to certain ethnic groups or workers with noticeable accents.
 - Finally, there could be greater numbers of complaints than expected if some members of the public interpret 'fluent English' as meaning a different standard of English than the official definition. In particular, where public sector workers interact with the public via correspondence there could well be cases where members of the public may take issue with errors in grammar etc. Some members of the public may also have issues comprehending public sector workers due to strong regional, or international, accents and may view this as an issue with fluency.

80. The possibility that members of the public may use this legislation to complain more zealously than is expected purely on the basis of language skill means that the impacts of this policy could be higher in practice than is expected. If this risk occurs the costs to public sector bodies of handling complaints could be higher.
81. Consultation with public sector bodies, and, if possible, those dealing with complaints within them, should help to inform us about the likelihood that this risk will increase the burden of the policy on public sector bodies and their employees much beyond the level currently indicated. It should be possible to mitigate against this risk having a large effect, or placing too substantial a burden on organisations and their workers, through taking a pragmatic, proportionate and carefully managed approach to handling complaints.

Recruitment difficulties

82. We do not currently expect that enforcing this statutory duty would reduce the number of people qualified to undertake public sector roles to the extent that vacancies become difficult to fill. As indicated above, we expect the proportion of in-scope workers who do not have the required level of English to be very low, and so also expect it to be low amongst the pool of applicants for such roles and for there to be little effect on the ease of finding suitable candidates to fill public sector vacancies. However, there is a risk that those who do not have fluent English are concentrated in certain roles, sectors or geographical areas. Within any such groups the impact of screening out candidates who do not have fluent English, and potentially dismissing current employees who don't, may be to make it noticeably more difficult to fill vacancies. Whether this impact is at all probable in any sectors will be explored during consultation with public sector bodies, with a particular focus on sectors known to be employing relatively high numbers of non-British nationals, and which many struggle to attract British citizens, e.g. social care.
83. If they do occur, difficulties filling vacancies could well result in increased costs for public sector bodies and could potentially impact businesses involved in recruitment. If the pool of appropriate candidates for a vacancy reduces then it would be expected that recruitment costs would increase, e.g. due to increased and prolonged advertisement of the role. Furthermore, if there is a considerable reduction in the supply of appropriate candidates in the labour market we could also expect higher wages to be necessary to attract applicants to the affected roles. Any increase in wages would place a greater cost on public sector bodies, but may in fact benefit some businesses if they earn commission on the pay of workers they supply. While increased recruitment costs may be incurred by public sector bodies and private businesses involved in supplying public sector workers, we would probably expect any increase in recruitment costs incurred by the latter to be passed on to the public sector employer.

Challenges to actions taken by public sector bodies

84. While we expect dismissals due to language skills to be very few and to be a last resort, we recognise that there is a risk that this course of action could bring comparatively very large costs if employees challenge their dismissal or if there is a case for any compensation. As well as any payments to dismissed workers the possible costs of any challenges to such action taken by a public sector body could include considerable time and legal expenses and substantial disruption or effects on morale amongst the workforce. We will consider whether there could be any legal case for challenging dismissal or for being awarded a paid exit package during consultation, perhaps, for example, in the case of a worker who has been working in a role for some time with no previous complaints. We will also consult on how much discretion public sector bodies have to take such action under the current terms of employment. We would expect public

sector bodies to mitigate against this risk as it is in their interest to do so and to only pursue this course of action where it is appropriate and can be well managed.

85. There is a similar, but lower risk of workers challenging re-deployment. We would not expect such challenges to be as likely or as costly as they could be in the case of dismissal, however the risks of taking such action would include that a re-deployed worker is less motivated and productive in another role and that workers who have been transferred may be subsequently more likely to leave an organisation.

Level of benefits

86. The benefits of the proposed statutory duty are dependent upon the extent to which it has an impact on the customer-facing workforce within the public sector, and what improvement to their level of English fluency it brings. Whether such an improvement occurs, and by what amount, is entirely dependent on what standard of English customer-facing public sector workers currently have, which prior to consultation we cannot be at all certain of. The estimates we have presented above (see section 43) are based on census data, which as has been discussed is not specific to public sector workers or customer-facing workers, and so while we expect workers in scope of the proposed statutory duty to be similar to more general populations it is possible they will differ.

- If the proportion of workers who are not fluent in English is significant this would likely increase the benefits of the proposed statutory duty, as there will be a larger number of cases in which the level of English offered by public sector workers improves. Some of the costs of this policy will also increase, specifically those which depend on the number of people identified as not fluent in English, and whether there is a positive net impact will likely depend on how large the costs associated with action towards non-fluent workers turns out to be, e.g. how expensive it is to re-deploy non-fluent workers.
- However, if the proportion of workers who are not fluent is smaller than expected, it being possible that for customer-facing workers it will be below the 0.4% reported amongst workers in similar sectors, then there is a risk that the benefits of the proposed statutory duty will be very low. Essentially, if public sector workers already have fluent English, even though it is not mandatory that they do so, introducing a Code of Practice to ensure these workers are fluent in English will make no material difference to the quality of English spoken in the public sector. If the quality of communication does not change the benefits stemming from this will clearly also not be realised. As some costs will be incurred regardless of the level of fluency in the public sector, in particular familiarisation costs, if benefits are low then there is a risk that they will not outweigh the costs of introducing the statutory duty.

Net Impact

87. As explained in the preceding section, whether the benefits to introducing this statutory duty will be as large or larger than the costs will depend upon the number of in scope public sector workers who are currently not fluent and the number of new workers who would not be fluent in the future. As has been noted, we cannot be sure of the level of fluency amongst current in-scope workers, however we hope to ascertain more information about their likely level of fluency during consultation. Therefore, we may be able to make a judgement after consultation about whether the policy will have an overall positive impact regarding current public sector workers. However, we will never be able to measure what the level of fluency would have been amongst new workers if the statutory duty were not introduced, and therefore the future benefits of this policy will

likely remain un-quantified. As such, we cannot estimate whether the overall net impact of this statutory duty will be positive at this stage.

Annex A – Public sector bodies

- Local Government Association
- DCLG
- General Medical Council
- NHS Employers
- DH
- DfE
- National College for Teaching and Leadership
- National Probation Service/
- MoJ/NOMS
- DWP
- HMRC
- HRC
- HO
- MoD
- Network Rail
- CIPD
- Equality and Human Rights Commission
- CAB
- Department of Transport
- Ofsted
- (CBI)
- (TUC)

ⁱ Ipsos Mori, *What do people want need and expect from public services*, (https://www.ipsos-mori.com/DownloadPublication/1345_sri_what_do_people_want_need_and_expect_from_public_services_110310.pdf)

ⁱⁱ Available from the Local Government Association: http://www.local.gov.uk/workforce/-/journal_content/56/10180/3510601/ARTICLE

ⁱⁱⁱ Number of direct employees of the public sector: Headcount of total public sector from ONS Public sector employment data, Q1 2015.

^{iv} 3 digit Standard Occupation Classification 2010 (SOC10) codes of those who had self-reported they work in the public sector within the Annual Population Survey (APS) 2014/15 were used to broadly identify the type of role they occupy. Each code was loosely identified as relating to customer facing roles or not. 3 digit codes identify a group of occupations rather than a single type, so codes were identified on the basis of the nature of the majority of occupations in the group, and so this analysis is only very approximate at this stage. If consultation cannot provide more reliable figures for the number of roles in scope of the policy, then accessing a more detailed version of the APS data, which includes 4 digit SOC10 codes that identify occupations more specifically, could refine this analysis.

^v 3 digit SOC10 codes have been used, as above, to approximately identify roles which would already be covered by existing regulations and to count the number of people within the APS who fall into these categories.

^{vi} Public sector turnover is reported as 9.4% by the CIPD for 2013, an average turnover rate of 11.4% in the public sector is reported in XperthR's 2014 survey and the civil service has a rate of 8.2%, which we expect to be lower than the public sector generally. (<http://www.xperthr.co.uk/survey-analysis/labour-turnover-rates-2014-xperthr-survey/153337/?keywords=turnover> , http://www.cipd.co.uk/binaries/resourcing-and-talent-planning_2013.PDF)

^{vii} Annual Survey of Household Earnings

^{viii} Following Green book guidance to include non-labour costs when valuing working time and using the DfT rate of 27% quoted in the guidance.