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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation Document

Welsh Language Standards (Healthcare Regulators) Regulations

A consultation on draft Welsh language standards regulations for
healthcare regulators and the Professional Standards Authority.

Date of issue: 16 March 2020
Action required: Responses by 15 June 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This consultation seeks views on the draft Regulations to specify Welsh Language Standards for the following bodies:

- General Chiropractic Council
- General Dental Council
- General Medical Council
- General Optical Council
- General Osteopathic Council
- General Pharmaceutical Council
- Health and Care Professions Council
- Nursing and Midwifery Council
- Professional Standards Authority for Health and Social care

These Regulations will enable the Welsh Language Commissioner to place duties on them in relation to the Welsh language.

How to respond

Responses to this consultation should be completed in the response form and e-mailed/posted to the address below to arrive by **15 June 2020**.

We are very aware that all stakeholders are under considerable strain and are facing a period of uncertainty due to the current Coronavirus situation. We will therefore review the closing date in due course to ensure that all stakeholders have a fair opportunity to give the consultation their full consideration.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information:

Address:
Welsh Language Division
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

email:
UnedIaithGymraegWelshLanguageUnit@gov.wales

Telephone: 03000 256333

General Data Protection Regulation (GDPR)

The Welsh Government will be data controller for any personal data you provide as part of your response to the consultation. Welsh Ministers have statutory powers they will rely on to process this personal data which will enable them to make informed decisions about how they exercise their public functions. Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about or planning future consultations. Where the Welsh Government undertakes further analysis of consultation responses then this work may be commissioned to be carried out by an accredited third party (e.g. a research organisation or a consultancy company). Any such work will only be undertaken under contract. Welsh Government's standard terms and conditions for such contracts set out strict requirements for the processing and safekeeping of personal data.

In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing.

You should also be aware of our responsibilities under Freedom of Information legislation

If your details are published as part of the consultation response then these published reports will be retained indefinitely. Any of your data held otherwise by Welsh Government will be kept for no more than three years.

Your rights

Under the data protection legislation, you have the right:

- to be informed of the personal data held about you and to access it
- to require us to rectify inaccuracies in that data
- to (in certain circumstances) object to or restrict processing
- for (in certain circumstances) your data to be 'erased'
- to (in certain circumstances) data portability
- to lodge a complaint with the Information Commissioner's Office (ICO) who is our independent regulator for data protection.

For further details about the information the Welsh Government holds and its use, or if you want to exercise your rights under the GDPR, please see contact details below:

Data Protection Officer:
Welsh Government
Cathays Park
CARDIFF
CF10 3NQ

e-mail:
Data.ProtectionOfficer@gov.wales

The contact details for the Information Commissioner's Office are:

Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Tel: 01625 545 745 or
0303 123 1113
Website: <https://ico.org.uk/>

Foreword

The Welsh Government is committed to increasing the use of the Welsh language and giving rights to people to use the language when going about their everyday lives. Strengthening the provision of Welsh language services through Welsh language standards is an important contributor to achieving that aim. 122 bodies are currently complying with standards, and the next step on this journey is bringing bodies which regulate health sector professionals and the Professional Standards Authority under the standards system. Other major health sector bodies, including Local Health Boards and NHS Trusts, have been complying with standards since May 2019. Placing professional healthcare regulators within the standards system will further strengthen and mainstream the Welsh language within the health sector.

These bodies may not be ones that people deal with on an everyday basis, but if a member of the public ever finds themselves in a position where they need to complain about a healthcare professional then I believe that they should be able to do so in the language of their choice. The standards are specifically designed for these bodies, with a focus on the services they provide to members of the public. However, the standards also deal with the situation of healthcare professionals if they ever find themselves subject to a fitness to practise hearing.

Since becoming the Minister responsible for the Welsh language I have emphasised that my priority is to see more people using the Welsh language, and I am keen to use the standards system as a means to contribute to reaching that aim. I have committed to review the standards system with a view to reducing the bureaucracy and complexity around the system, but whilst preserving clarity and the rights of users. I hope that these Regulations are a step forward in this regard.

I look forward to receiving the views of stakeholders to this consultation, and will consider them before moving forward to present the final Regulations to the National Assembly for Wales for their approval.

Eluned Morgan AM
Minister for the Welsh Language and International Relations

1. Introduction

1.1 The Welsh Government is preparing Welsh Language Standards ('standards') under the Welsh Language (Wales) Measure 2011 ("the Measure") which give Welsh speakers enforceable rights to use the Welsh language when dealing with bodies. Regulations that specify standards are being introduced gradually. The draft Regulations subject to this consultation have been prepared for the following nine bodies:

- General Chiropractic Council
- General Dental Council
- General Medical Council
- General Optical Council
- General Osteopathic Council
- General Pharmaceutical Council
- Health and Care Professions Council
- Nursing and Midwifery Council
- Professional Standards Authority for Health and Social care (PSA)

1.2 The bodies listed above (apart from the PSA) regulate the practice of a large number of health professionals in the UK. Anyone wishing to work in these regulated professions must register with their relevant regulator who maintain a public register of practitioners. They would not be allowed to practise without being on the register, and must pay a membership fee to the regulators in order to be placed on their register. These regulatory bodies deal with complaints with regard to the practice of health professionals, and they conduct fitness to practise hearings.

1.3 The PSA has a different function to the other bodies. Its function is to oversee the other regulatory bodies, and issue guidance on regulating. They can review decisions made by regulatory bodies about practitioners' fitness to practise. They have a power to appeal decisions to the High Court if they consider decisions made by the regulatory bodies to be insufficient for the protection of the public.

1.4 The draft Regulations set out Standards for these nine bodies, and makes the Standards specifically applicable to them. This means that (subject to one exception in relation to the PSA) the Commissioner is authorised to give the bodies a compliance notice requiring them to comply with those Standards. Making these Regulations will in itself not impose any duties on the bodies. Once the Regulations are made following approval by the National Assembly for Wales, it will be for the Welsh Language Commissioner ("the Commissioner") to choose which standards to impose on individual bodies, and he will do this by issuing a compliance notice to a body. The Commissioner has flexibility in choosing which standards, and the extent to which, a body has to comply as well as setting the date by which the body is required to comply with a standard. The Commissioner sets out that information in a compliance notice which is issued to the body.

1.5 A body will be able to challenge a requirement to comply with a particular standard on the grounds of whether it is reasonable and proportionate. In the first place, a body will be able to present a challenge to the Commissioner, asking him to

determine whether the requirement upon it to comply with a particular standard in the compliance notice is reasonable and proportionate. If they are unable to resolve the dispute, there is a route of appeal available to the Welsh Language Tribunal, and thereafter to the High Court (on a question of law).

- 1.6 We have previously made six sets of Regulations. As a result of which, 122 bodies have received compliance notices from the Commissioner and are currently complying with standards. The last set of regulations specified standards for local health boards, NHS trusts, the Board of Community Health Councils, and Community Health Councils. Making these Regulations for the healthcare regulators will enable more bodies linked to the health sector to be moved from their current Welsh Language Schemes and to be placed under the standards system.
- 1.7 These 9 bodies currently provide Welsh language services to the public in accordance with their Welsh Language Schemes prepared under the Welsh Language Act 1993. The Schemes have been successful in getting these bodies to think about, plan, and provide Welsh language services. Reporting systems around the Schemes also mean that they are used to having their Welsh language provision monitored. However, moving to the standards system, and having to provide Welsh language services as a result of legal duties as opposed to commitments in a Scheme means that Welsh language services have a stronger foundation within the bodies – and the public have rights to those services. There is also a stronger enforcement system attached to the standards system.
- 1.8 These standards have been drafted with the aim of creating duties from which the Commissioner can choose what is reasonable and proportionate for each body to comply with. The Standards make it clear to the public which Welsh language services they can receive from the bodies and to the bodies what they need to do in terms of the Welsh language.

2. Background

- 2.1 Between July and October 2016 a public consultation was held on draft Welsh Language Standards Regulations for health sector bodies. As well as specifying standards for bodies such as local health boards, NHS trusts, and community health councils, those draft Regulations proposed to amend the Welsh Language Standards (No.4) Regulations 2016 so as to include the bodies listed in 1.1. The No 4 Regulations were made in March 2016 and were applicable to Welsh Tribunals and the Education Workforce Council. The proposed amendment would have meant that the standards in the No 4 Regulations would be specifically applicable to the Regulators.
- 2.2 The Welsh Ministers decided after analysing and considering responses to the consultation that they would not pursue the policy of adding the bodies to the No. 4 Regulations, and would prepare separate, specific Standards for them instead.
- 2.3 The purpose of this consultation is to consult on Regulations which have been prepared in a bespoke manner taking into account the functions and structures of these Regulatory bodies, and which services they provide to the public. We are eager to hear from anyone with an interest in the draft standards, and in the use of

Welsh by these bodies. This consultation will be open until 15 June 2020 to ensure that all interested stakeholders have ample opportunity to have their say on the Regulations.

3. The draft Welsh language standards regulations

3.1 Service delivery standards

Service delivery standards relate to the delivery of services to another person. They are intended to promote or facilitate the use of the Welsh language, or to ensure that it is treated no less favourably than English. This consultation seeks your views on the appropriateness of the service delivery standards included in the draft Regulations.

This consultation document does not discuss each individual standard, but sections 3.2-3.4 below highlight some matters which may be of particular interest to stakeholders. The draft Regulations includes standards which relate to the following activities:

- Correspondence
- Telephone calls
- Meetings
- Public events
- Publicity and advertising
- Official notices
- Displaying material in public
- Producing and publishing documents and forms
- Legal proceedings
- Websites and on-line services
- Using social media
- Raising awareness about Welsh language services
- Corporate identity

3.2 Stakeholders should note that the main policy objective of the service delivery standards in Schedule 1 are to ensure that individual members of the public are able to use Welsh when dealing with these bodies, in particular when making a complaint, accessing information regarding complaining, or accessing information on what to expect from a healthcare professional. Many service delivery standards therefore only apply when the bodies are providing services to an “individual”. Regulation 1 defines an “*individual*” as “*a natural person ordinarily resident in Wales acting in their personal capacity, but does not include a registrant acting in their capacity as a registrant*”. This means that many of the Standards will not apply when registrants are dealing with the body in their capacity as a registrant. A registrant means a person ordinarily resident in Wales who is registered or applying to be registered with the body.

3.3 In their responses to the consultation in 2016, some of the Regulatory bodies expressed a concern about the financial implications of having to provide Welsh language services to their registrants. This, coupled with the content of their current Welsh Language Schemes, have led us to prepare Standards which only apply in limited circumstances when the body deals with their registrants or a corporate body. The focus in most standards is on ensuring that members of the public can use Welsh when dealing with the bodies. The standard itself clarifies who is able to access a Welsh language service. For example, standard 1 applies to correspondence received from ‘persons’ which includes individuals, registrants and

corporate bodies. In other cases, registrants are referred to expressly – see for example the standards relating to legal proceedings (standards 22 to 25).

3.4 Due to the nature of these bodies we have prepared specific service delivery standards which relate to **legal proceedings** (standards 22-25). It is important to note that section 22 of the 1993 Welsh Language Act gives people the right to use Welsh in legal proceedings in Wales. As was the case with tribunal hearings held by those subject to the Welsh language standards (No. 4) Regulations 2016, fitness to practice hearings held by these bodies are regarded as legal proceedings and would come under the provision made in section 22 of the 1993 Act. Standards 22-25 in the draft regulations have been prepared to complement that right and ensure that registrants would be able to use Welsh throughout this sensitive and personal process. The standards would allow registrants to submit documentation and written submissions in Welsh, and places a duty on the regulators not to treat Welsh language documents less favourably than English ones. The provision in the 1993 Act only makes provision about speaking Welsh, therefore these standards would allow a registrant submit documents written in Welsh. Standard 23A also makes provision to allow a registrant to use Welsh if the fitness to practice hearing were held in England. This was included due to the fact that some Regulators do not hold hearings in Wales. If a registrant from Wales found themselves subject to a hearing in England it would not come under the provisions of the 1993 Act. The Commissioner will not be able to impose Standards relating to legal proceedings on the PSA because it does not undertake legal proceedings.

3.5 We have taken into account that these are bodies that operate across the UK. We have therefore specified that some of the standards can only apply when services are provided in Wales. For example, standards relating to meetings (standards 8-12), standards relating to displaying material in public (standards 16-17), and standards relating to official notices (standards 29-30). The Standards which relate to correspondence sent, forms and documents are not limited to material produced exclusively for individuals in Wales. They apply to material which is produced for individuals within and outside Wales. However, the Welsh language version would not have to be distributed outside of Wales (see paragraph 21 of Schedule 1).

3.6 Policy making standards

Policy making standards require bodies to consider what effect their policy decisions will have on the ability of persons to use the language and on the principle of treating Welsh no less favourably than English. We are keen to see policy making standards being made specifically applicable to all bodies that the Welsh Ministers are able to as it is a means of trying to ensure that factors concerning the Welsh language are mainstreamed through the bodies' policies. We therefore propose that nine policy making standards are included in the Regulations (standards 34-42).

The standards included in the regulations will require bodies to consider the effects of their new or amended policies on the Welsh language, and will place specific duties on bodies which will come into effect when they publish consultation documents or conduct research.

3.7 Operational standards

A body is able to challenge a standard imposed on it on the basis that the standard is not reasonable or proportionate for it to comply with. Careful consideration has therefore been given when creating the draft standards to the structures and functions of the bodies in question to ensure that the range of standards provide the Commissioner with standards which are likely to be both reasonable and proportionate for the bodies to comply with. In the case of operational standards, which generally deal with the internal use of Welsh by bodies, we also had to consider where these UK-wide bodies are located and their current staffing levels.

The General Medical Council is the only one of these bodies which has an office in Wales. Currently, that is a small office in Cardiff housed in a shared office block with no reception area which is not usually open to the public. The vast majority of its staff work in other offices outside of Wales. The other eight bodies do not have an office in Wales. It also became evident that all of these bodies currently have a low number of staff with any Welsh language skills. The priority policy outcome therefore when developing operational standards was to try to encourage these bodies to increase their capacity with regards to Welsh language skills.

Four operational standards have therefore been included in the Regulations (standards 43-45). These standards place duties on the bodies to raise awareness of the Welsh language amongst their staff, and require the bodies to assess whether Welsh language skills are required when advertising new or vacant posts. The basis for including these standards is to place duties on the bodies to consider the Welsh language when planning their workforce which will hopefully lead to the bodies being better equipped to provide Welsh language services to service users in future.

3.8 Record keeping standards and standards dealing with supplementary matters

Six standards have been prepared in these categories (standards 46-51). The number of record-keeping and supplementary standards have been reduced compared to the No 4 regulations in order to reduce the bureaucracy attached to the standards system for these bodies. Under these standards the bodies will be required to keep a record of the number of complaints made to them regarding compliance with standards, and to keep a record of how new and vacant posts were categorised in relation to Welsh language skills. Bodies will also, under their supplementary standards, be required to produce various documents including an Annual Report. They are currently committed to producing an Annual Report under their Welsh Language Schemes.

4. Regulatory Impact Assessment (RIA)

4.1 As part of the previous consultation on draft standards for the health sector in 2016, the bodies subject to these draft Regulations were asked to submit information to allow the Welsh Government to prepare a RIA to accompany the Regulations when they were being laid at the Assembly.

4.2 There are significant differences between the draft Regulations subject to this consultation and what was proposed in the consultation in 2016. We are therefore

asking the bodies to consider the draft Regulations now being consulted upon, and submit new information. The purpose of the RIA is to help the Welsh Ministers consider the impact of proposed regulations and to consider the costs and benefits of all options available to them before implementing a policy. It is also a means of presenting for scrutiny the relevant evidence on the positive and negative effects of policies.

- 4.3 The nine bodies subject to the draft regulations are asked to complete the questions attached at Annex B, below. **Annex B does not apply** to other stakeholders.

ANNEX A:

**Consultation
Response Form**

Your name:

Organisation (if applicable):

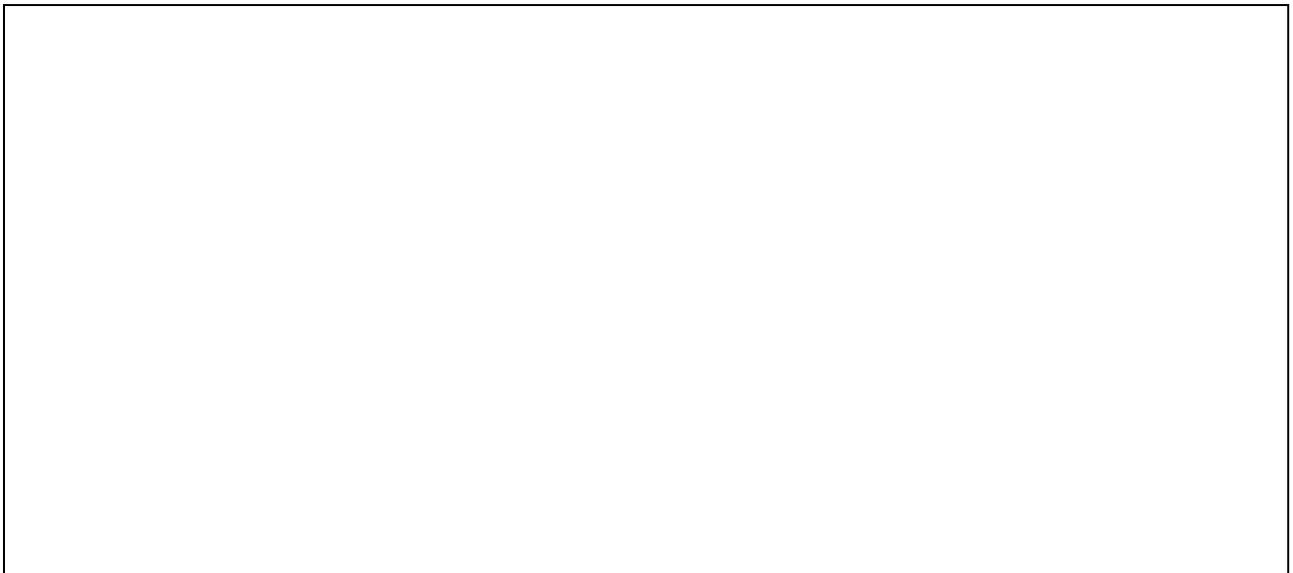
email / telephone number:

Question 1: Do you have any comments on the service delivery standards proposed in the regulations?

Question 2: Part 3 of Schedule 1 to the Regulations includes interpretations for some of the Service Delivery Standards. Paragraphs 16-37 explains how some of the standards work and if what circumstances they apply. Do you have any comments on the interpretation of standards as set out in Part 3?



Question 3: Do you have any comments on the policy making standards proposed in the regulations?



Question 4: Do you have any comments on the operational standards proposed in the regulations?

Question 5: Do you have any comments on the record keeping standards and standards dealing with supplementary matters proposed in the regulations?

Question 6: We would like to know your views on the effects that these regulations would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favourably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 7: Please also explain how you believe the regulations could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

Question 8: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:



Llywodraeth Cymru
Welsh Government

Regulatory Impact Assessment of the proposed Welsh language standards regulations.

Introduction

A Regulatory Impact Assessment (RIA) can be regarded as:-

- a process to help the Welsh Ministers consider the impact of proposed regulation on the interests of individuals, groups, organisations etc.
- a tool to enable the Welsh Ministers to weigh the costs and benefits of all options available to them before implementing a policy; and,
- a means of presenting for scrutiny the relevant evidence on the positive and negative effects of such interventions.

It is important that the Welsh Government receives detailed and accurate information in the responses to the questionnaire below, so that we are in the best possible situation to provide full information to the National Assembly for Wales as part of the process of making standards through subordinate legislation.

The Welsh Government has published a Regulatory Impact Assessment Code, which can be read in full here:

<https://gov.wales/welsh-ministers-regulatory-impact-assessment-code-for-subordinate-legislation>

Queries regarding this document should be directed to the Welsh Language Division:

UnedlaithGymraegWelshLanguageUnit@Wales.GSI.Gov.UK

Name of the body: _____

When answering questions 1 to 7 below, please note the following:

- You should identify the cost of a member(s) of staff in figures rather than in the salary bands for your body
- If a member of staff works across different categories of standards please identify the cost **once only**
- All costs should be to the nearest £'000
- In questions 3 to 7 we require information regarding any **additional** costs associated with complying with standards, compared to the costs of complying with your current Welsh language Scheme.
- Complying with the standards may mean you need to use existing resources (including staff resources) in a different way to before. While there might not be an additional financial outlay associated with this, there could still be an opportunity cost (because the resources are no longer available for their alternative/previous use). This opportunity cost should be reflected in your response (for example, by estimating the value of staff time involved).
- Please note in the comments boxes below questions 3 to 7 whether you expect any additional costs identified to be transitional or ongoing costs
- You may also note in the comments boxes any opportunities identified for saving costs as a result of complying with standards.

1. Are there benefits to the body in complying with the draft Welsh language standards proposed in this document?

Yes	
No	

Is yes, what are these benefits?

Type of benefit	Description of the benefit of complying with the proposed standards
Economic Benefit	
Social Benefit	

Environmental Benefit	
Linguistic Benefit	
Other – please be as specific as possible	

2. What is the annual cost of complying with the current Welsh Language Scheme?

	Cost
Costs of complying with the Welsh language scheme (staff costs should not be included)	

Further details on how the cost has been calculated:

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3. Staffing Costs

Please note the staffing costs associated with delivering the commitments in your current Welsh Language Scheme, and any additional staffing costs that will be incurred by having to comply with the standards specified in the Regulations being consulted upon:

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4. Service delivery standards

The service delivery standards can be seen at Schedule 1 in the draft regulations.

Are the duties in the draft service delivery standards likely to have an effect on your resources or how you use those resources?

Yes	
No	

	Cost (to the nearest £'000)
Complying with draft service delivery standards	

Further details (for examples, are there specific delivery standards which are likely to generate an additional cost to your organisation, how have you estimated the additional cost and in which year(s) do you expect the cost will be incurred?)

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5. Policy making standards

The policy making standards can be seen at Schedule 2 in the draft regulations.

Are the duties in the draft policy making standards likely to have an effect on your resources or how you use those resources?

Yes	
No	

	Cost (to the nearest £'000)
Complying with draft policy making standards	

Further details

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6. Operational standards

The operational standards can be seen at Schedule 3 in the draft regulations.

Are the duties in the draft operational standards likely to have an effect on your resources or how you use those resources?

Yes	
No	

	Cost (to the nearest £'000)
Complying with draft operational standards	

Further details

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7. Record keeping standards and standards dealing with supplementary matters

The record keeping standards can be seen at Schedule 4 in the draft regulations and standards dealing with supplementary matters can be seen at Schedule 5.

Are the duties in the draft record keeping standards and standards dealing with supplementary matters likely to have an effect on your resources or how you use those resources?

Yes	
No	

	Cost (to the nearest £'000)
Complying with draft record keeping standards and standards dealing with supplementary matters	

Further details

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