

EXPLANATORY MEMORANDUM TO

The Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6) (No.2) Order 2016

This Explanatory Memorandum has been prepared by the Education and Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6) (No.2) Order 2016.

The Right Honourable Carwyn Jones AM
First Minister

23 February 2016

1. Description

1.1 The Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6) (No.2) Order 2016 ('the Order') amends Schedule 6 to the Welsh Language (Wales) Measure 2011 ('the Measure') which sets out (i) the organisations (referred to as "persons" in the Measure) who are liable to be required to comply with Welsh language standards and (ii) which classes of standards are potentially applicable to each organisation.

1.2 The Order deals with changes such as including new organisations, and omitting the entries of other organisations to reflect changes that have occurred since the Measure was made.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 An order to amend Schedule 6 to the Measure ('Schedule 6') is likely to be made from time to time to capture changes in the names or status of organisations, delete organisations that no longer exist and insert new organisations, to ensure that the Welsh Ministers may make standards specifically applicable to them.

2.2 As stated in paragraph 3.1 below, the Welsh Ministers can only amend Schedule 6 to include an organisation (or category of organisations) if that organisation (or category of organisation) falls within one or more of the categories in Schedule 5 to the Measure. To aid transparency the table below indicates, for organisations in paragraph 1 and 2 of the Schedule to the Order, which Schedule 5 category the Welsh Ministers consider that they fall within. Where there is potential for the organisation to fall within more than one category only one category has been noted.

Body	Category in Schedule 5
The governing body of Saint David's Catholic College	Category (4): Persons upon whom functions of providing services to the public are conferred or imposed by an enactment.
Merthyr Tydfil College Limited	Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where— (a) that person also received public money in a previous financial year, or (b) a decision has been made that that person will receive public money

	in a subsequent financial year.
Trustees of the National Heritage Memorial Fund	Category (2): Persons providing services to the public established by an enactment.
Valuation Tribunal for Wales	Category (2): Persons providing services to the public established by an enactment
WJEC CBAC Limited	Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where— (a) that person also received public money in a previous financial year, or (b) a decision has been made that that person will receive public money in a subsequent financial year.

3. Legislative background

3.1 Section 35 of the Measure enables the Welsh Ministers, by order, to amend the Schedule 6 table so that column 1 of the table includes (i) an organisation who falls within one or more of the Schedule 5 categories or (ii) a category of organisation, all of whom fall within one or more of the Schedule 5 categories.

3.2 Section 38 of the Measure enables the Welsh Ministers, by order, to amend the Schedule 6 table so that column 2 of an organisation's entry (or a category of organisations' entry) includes a reference to one or more of the following (i) service delivery standards, (ii) policy making standards, (iii) operational standards and (iv) record keeping standards.

3.3 This Order amends Schedule 6 to the Measure by;

- (a) Inserting new organisations and specifying classes of standard in column 2 of each organisation's entry;
- (b) Omitting entries where the names of those organisations have changed since the Measure was made.

3.4 This Order is subject to the approval of the National Assembly for Wales (the affirmative procedure).

4. Purpose and intended effect of the legislation

Background

4.1 The Measure confirmed the official status of the Welsh language in Wales and created a new legislative framework for the language. A key step in giving effect to the Measure is specifying standards and authorising the Welsh Language Commissioner (“the Commissioner”) to require organisations to comply with those standards.

The issue

4.2 Schedule 6 to the Measure sets out the organisations and categories of organisations who are liable to comply with standards. Since the Measure was made the Schedule has become out of date. Some of the organisations have changed their name and the Commissioner has, following a standards investigation, concluded that some organisations that were not previously included in Schedule 6 to the Measure but were included in the standards investigation should be required to comply with Welsh language standards. The Commissioner has also requested that some organisations be included in Schedule 6 with a view to including these organisations in future standards investigations.

4.3 As part of the process of preparing this Order the Welsh Ministers have considered the Commissioner’s request to include these organisations, the conclusions of the standards investigation, along with whether these organisations fall into one or more of the categories in Schedule 5 and the appropriateness of including the organisation in Schedule 6. The Order reflects these changes.

Purpose

4.4 This Order will update the list of organisations in Schedule 6 to reflect the changes.

- Paragraphs 1 and 2 of the Schedule to the Order inserts the names of organisations into Schedule 6 to the Measure

The Welsh Ministers have considered each organisation included in the Order to ensure that they fall into one or more of the categories in Schedule 5 and are satisfied that they do.

- Paragraphs 3 and 4 of the Schedule to the Order omit entries where the name of those organisations have changed since the Measure was made.

Effect

4.5 This Order will enable the Welsh Ministers (by separate Regulations) to make Welsh language standards specifically applicable to the organisations or categories of organisations contained in paragraphs 1 and 2 of the Schedule to the Order. That will mean that the Commissioner is authorised to require those organisations to comply with standards.

Risk if legislation changes are not made

4.6 Unless an organisation that falls into one or more of the categories in Schedule 5 to the Measure is also included in Schedule 6 the Welsh Ministers will not be able to make standards specifically applicable to them. This will mean that the Commissioner will not be able to require the organisation to comply with standards.

4.7 This could lead to the following risks being realised;

- A key component of the Measure not being implemented. That is introducing the standards regime and authorising the Commissioner to require an organisation to comply with standards.
- An organisation that deals with the public may not be included in the new standards regime.
- There will be inconsistency in terms of the duties placed on organisations in the same sectors.
- The public will be unsure about which services they can expect to receive in Welsh. This uncertainty will continue if this Order is not made allowing standards to be made specifically applicable to organisations that fall into one or more of the categories in Schedule 5 to the Measure.
- Organisations that have a Welsh Language Schemes introduced under the Welsh Language Act 1993 will not transition to the standards regime.

5. Consultation

5.1 The Welsh Ministers have not consulted on this Order, as the Order does not place any duties directly on the organisation. Schedule 6 to the Measure, sets out the organisations and categories of organisations who are liable to comply with standards. The process of requiring an organisation to comply with standards provides a number of opportunities for an organisation to engage in the process and raise any concerns it may have.

5.2 Before an organisation is required to comply with standards a number of conditions must be met. These are set out in section 25 of the Measure. One such condition is that the Welsh Ministers have to make standards

specifically applicable to the organisation by Regulations. Furthermore, the Commissioner will have to give the organisation a compliance notice setting out with which standards (and in which circumstances or areas) the organisation has to comply. The compliance notice will also set out the date from which the organisation has to comply.

- 5.3 Before giving the organisation a compliance notice the Commissioner must consult with them in accordance with section 47 of the Measure (unless the Commissioner is satisfied that they have already been consulted or given the opportunity to be consulted on that matter in connection with a standards investigation).
- 5.4 There is also a clear procedure for an organisation to challenge the requirements to comply with a particular standard on the grounds of whether it is reasonable and proportionate to require them to do so. In the first place, an organisation will be able to present a challenge to the Commissioner. If the organisation wishes to appeal the Commissioner's decision, they may appeal to the Welsh Language Tribunal, and thereafter to the High Court.
- 5.5 The organisations in paragraphs 1 and 2 of the Order who were included in the Commissioner's second and third Standards Investigations are engaged in and aware of the process of making standards¹. The Commissioner has presented an analysis of the responses received from each of these organisations along with her conclusion in a series of reports to the Welsh Ministers.
- 5.6 Section 66(2) of the Welsh Language (Wales) Measure 2011 places a duty on the Welsh Ministers to have due regard to the standards investigation reports prepared by the Commissioner when deciding whether and how to exercise the powers to specify standards and make them specifically applicable. Any concerns raised by an organisation are considered by the Welsh Ministers during this process.
- 5.7 The organisation that was not included in the Commissioner's second or third investigations is WJEC CBAC Limited. This body cannot be required to comply with Welsh language standards until the conditions set out in section 25 of the Measure are met, and consultation on the compliance notice (in accordance with section 47) has been undertaken.

6. Regulatory Impact Assessment (RIA)

- 6.1 A Regulatory Impact Assessment is not considered necessary in respect of the Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6) (No.2) Order 2016 as it does not impose direct costs and is part of updating the 2011 Measure.

¹ The governing body of Saint David's Catholic College, Merthyr Tydfil College Ltd, Trustees of the National Heritage Memorial Fund, Valuation Tribunal for Wales.

