

National Assembly for Wales
Legislation Committee No. 5

National Assembly for Wales
(Legislative Competence)
(Welsh Language) Order 2009

Committee Report
June 2009



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Committee Members

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Summary

The following is a summary of our recommendations for changes to the proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009 (the proposed Order).

We agree that, in principle, legislative competence in relation to the Welsh language should be conferred on the National Assembly for Wales (the Assembly).

We agree with the many individuals and organisations who support the transfer of legislative competence, that the Welsh language is an issue which relates uniquely to the Welsh nation and that the Assembly therefore has the moral right to legislate in this field. Of all the matters which can be devolved to the Assembly under the Government of Wales Act 2006, the matter of the Welsh language is particularly specific to Wales. We therefore believe that, on this occasion, it justifies the transfer of a broad scope of legislative power to the Assembly.

At this stage, we do not believe that it is helpful to categorise a list of intended bodies on whom duties to provide a Welsh language service of some kind or other may or may not be imposed in any future Measure.

However, we do agree that those bodies which should be subject to duties will need to be clearly specified in any subsequent Measure. They will be thoroughly scrutinised at that stage. In determining the persons upon whom duties are to be imposed, Measures should specify the categories of persons affected by reference to the nature of the services provided to the public, the size of the organisation and its legal status.

We therefore recommend that the Welsh Government replaces Matter 20.1 as follows:

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in the courts.

We strongly recommend that the Minister consults on a proposal for a Measure before introducing the proposed Measure to the Assembly.

If the Minister is not minded to accept our recommendation, then we make the following recommendations to strengthen the clarity of the provisions of the proposed Order to ensure that it is in line with the Welsh Government's objectives as supported by the Committee.

We recommend that a new category is inserted to specifically capture partnership bodies providing services to the public and their constituent bodies. Again, in determining the persons upon whom duties are to be imposed, as per our recommendation above, Measures should specify the

categories of persons affected by reference to the nature of the services provided to the public, the size of the organisation and its legal status.

We support the underlying objective of paragraph (e) (“persons providing services to the public who receive public money amounting to £200,000 or more in a financial year”) and believe that it is appropriate in principle to impose duties on organisations providing public services and in receipt of public funding. However, we are not satisfied that paragraph (e) is the best option to ensure the underlying objective is met. We strongly recommend that the Minister redrafts this provision. We believe that this provision which is intended to categorise those in regular receipt of public funds, should be more precisely and sensibly defined in subsequent Measures. They should be specified by reference to the nature of the services provided to the public, the size of the organisation and its legal status, rather than an arbitrary monetary threshold.

Any reference to “public money” in the proposed Order should include lottery funding as well as all monies received from public bodies.

We believe that all energy services should be included within the scope of the Matter. It should not be limited to gas, water and electricity services.

We believe that the Assembly should have the competence to legislate to impose duties on bodies providing railway, bus, air and sea passenger transport services to the public and their associated facilities.

We recommend that all large financial institutions providing services to the public should fall within the scope of Matter 20.1. This is due to the need to ensure a level playing field between all companies within the sector.

We recommend that the Assembly should be given the competence to legislate on the freedom of persons to use the Welsh or the English language with one another, and that Matter 20.2 should be amended as follows:

Provision about or in connection with the freedom of persons wishing to use the Welsh or English language to do so with one another (including any limitations upon it).

We recommend that the Minister inserts the power to amend section 61(k) of the 2006 Act in Article 4 of the proposed Order.

We are satisfied with the other provisions in the proposed Order.

Subject to our recommendations, the proposed Order should provide the Assembly with the legislative competence to achieve the social objective which would allow the people of Wales to live their lives through the medium of either English or Welsh. We believe that this is best done through emphasis on cooperation and consensus building.

We believe that stronger legislation in this field should be a positive, not a punitive step, which is designed to create a sea change in attitudes to providing bilingual services and the citizen's expectations of it. Legislation on the Welsh language should not be regarded as a minority issue, but needs to be considered as part and parcel of the social change policies we wish to see happening in Wales.

1. Introduction

1.1. The proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009 ('the proposed Order'¹) and Explanatory Memorandum were laid before the Assembly by the Minister for Heritage Alun Ffred Jones AM on 2 February 2009 in accordance with Standing Order 22.13 (included at Annex 1). The aim of the proposed Order is to confer legislative competence on the Assembly in the field of the Welsh language.

1.2. At its meeting on 3 February 2009 the Business Committee agreed to refer the proposed Order for detailed consideration to a committee and that the committee must report on the proposed Order by no later than 15 May 2009 (this date was subsequently extended to the 5 June).

1.3. Following a resolution in Plenary on 4 February, Legislation Committee No. 5 ('the Committee') was established, in accordance with Standing Order 21.1. The role of the Committee is to consider legislative proposals referred to it by the Business Committee. The Committee is to exist for the duration of the Third Assembly. The proposed Order was referred to the Committee by the Business Committee for scrutiny.

Terms of Reference

1.4. We met for the first time on 10 February 2009 when we agreed the terms of reference for our work:

- (i) to consider the general principle of the proposed Order, and whether the Assembly should have the power to legislate and make Measures relating to the Welsh language in the area identified in Matters 20.1 and 20.2, and
- (ii) to consider the terms of the proposed Order, and, specifically, whether they are too broadly or narrowly defined.

Evidence

1.5. We sent a consultation letter to key stakeholders within the field of the Welsh language and to those who may have an interest in the proposed Order. A copy of the consultation letter is attached at Annex 2. A general call for evidence was also issued. The deadline for consultation responses was Friday 20 March 2009. We received 70 written submissions from organisations. A list of consultation responses from organisations is attached at Annex 3.

1.6. Groups and individuals were also invited to have their say on the proposed Order through a poster campaign urging people to send in their views (see also Annex 2). The poster was distributed to libraries and community centres across Wales in a bid to reach as many people as

¹ Also referred to by some witnesses as "LCO"

possible. This encouraged a significant number of individuals to respond. The high number of responses clearly reflects the level of interest in the subject of the Welsh language amongst the public. A list of consultation responses from individuals are also attached at Annex 3.

1.7. We took oral evidence from a number of witnesses, details of which is attached at Annex 4.

1.8. At our request, further written evidence was received from the Confederation of Passenger Transport Wales and from the banking sector. Details of additional evidence submitted is included in Annex 3. This includes any further information requested from witnesses following their oral evidence sessions. Supplementary written evidence from the Minister for Heritage dated 3 March 2009 and 7 May 2009 is attached at Annex 5.

1.9. The Chair also wrote to several European and Canadian countries and regions for information on the legislative framework established for their lesser used languages. A list of the supplementary written evidence received from them is also included in the list of written evidence in Annex 3. A summary of legislative frameworks for lesser used languages in these other regions and countries is included for reference in Annex 6.

1.10. Under Standing Order 22.21, in preparing the report the Committee must, so far as is reasonably practicable, take into account any recommendations made on the proposed Order by:

- (i) any other committee of the National Assembly for Wales; and
- (ii) any committee of the House of Commons, the House of Lords or any Joint Committee of both Houses of Parliament.

1.11. No such recommendations have been made in respect of the proposed Order as yet. We had a constructive informal meeting with the Members of the Welsh Affairs Committee to compare the evidence and exchange views at the Assembly in Cardiff on 18 May 2009. We are aware that the Welsh Affairs Committee should make its recommendations in respect of the proposed Order soon.

1.12. The Chair of the Committee also received copies of all the evidence submitted by organisations and individuals in response to the Wales Office consultation (14 May 2009).

1.13. The following report and recommendations represent the conclusions we have reached based on the evidence received during the course of our work.

2. The general principle of the proposed Order

2.1. Current statutory provision in relation to the Welsh language is contained in the Welsh Language Act 1993 (the 1993 Act). The proposed Order confers competence for the National Assembly for Wales to "revisit and update" the existing legislative framework under the Welsh Language Act 1993.²

2.2. The scope of the proposed Order is wide enough to cover all matters dealt with in that Act save for sections 22 to 24 which deal with the use of Welsh in legal proceedings. In particular, the proposed Order would permit the Assembly to legislate to amend the provisions of the Act that deal with the Welsh Language Board and Welsh language schemes.

2.3. The Explanatory Memorandum states that Matter 20.1 would echo, and build upon, the principles that underpin the 1993 Act, and would allow the Assembly to legislate:

“to promote and facilitate the use of the Welsh language; and the treatment of the English and Welsh languages on the basis of equality...echoing and building on the range of functions carried out, at present, by the Welsh Language Board.”³

2.4. The proposed Order applies to a number of different categories which would traditionally be regarded as public sector services – sections (a), (b), (c), and (d) of Matter 20.1, and builds on the foundations set by the 1993 Act. However, paragraphs (e) and (h) in particular, widen the scope for legislation to encompass potentially a wide range of third sector and private sector organisations.

2.5. The Explanatory Memorandum states that Matter 20.2 would allow the Assembly to legislate to protect individuals’ freedom to speak Welsh with each other.

Evidence from consultees

2.6. Of the 70 organisations who responded to the consultation, around 50, either in written or oral evidence, explicitly state their support for the proposed Order to confer legislative competence in relation to the Welsh language.

2.7. The Welsh Local Government Association stated in its written evidence:

“It is difficult to come up with a more perfect example of an LCO request that has complete justification for legislative decisions on the subject matter to be made in Wales. This proposed LCO relates entirely to Wales, its people and its culture.”⁴

² Welsh Assembly Government, *Memorandum from the Welsh Assembly Government; Proposal for a Legislative Competence Order on the Welsh Language*, GPO-10-EM, paragraph 16

³ GPO-10-EM, paragraphs 12 - 25

⁴ Welsh Local Government Association, written evidence, IG16(o)

2.8. In addition 67 Merched y Wawr branches submitted responses to the consultation in favour of the proposed Order. In their written evidence, the Merched y Wawr Steering Committee stated:

“We feel that this legislation presents us with an opportunity to safeguard the Welsh language. Although it is only one small step, it is an important step for the future. Opportunities must be provided for people to use the Welsh language and enjoy socialising in Welsh. It must be a living language which grows and evolves.”⁵

2.9. Two respondents⁶ did not support the proposed Order, Arriva Trains would not support it unless more clarity was provided about what duties it would entail for them⁷, while the remaining respondents either did not state a clear view, objected to a specific issue or wanted to see the scope of the proposed Order narrowed (these issues are dealt with in the relevant sections below).

2.10. Of the 283 individuals who responded to the consultation, 16 respondents submitted negative responses in relation to the principle of the proposed Order, including views such as that the Assembly should not receive competence in this area because it had enough powers already, that the issue is not of relevance to most people, or that there are other more pressing issues than legislating on the Welsh language.

2.11. 240 of the individuals who responded to the consultation were in favour of the principle of the proposed Order – including the 210 respondents who submitted the same message via the Welsh Language Society, which expressed the view that “the Welsh Assembly Government has the moral right to legislate on the Welsh Language” and “all of powers [sic] in relation to the Welsh Language, without any restrictions should be transferred to the Welsh Assembly in Cardiff.”⁸ Further analysis of the responses by individuals to the consultation can be found later in this report (section 9).

Evidence from the Minister

2.12. The Minister explained what the Welsh Government hoped to achieve if they were given the powers to legislate, compared to what is possible under the 1993 Act:

“I believe that a subsequent Measure would have important consequences and would certainly improve the level of services provided through the medium of Welsh. No doubt I will be repeating this throughout the morning, but there are three promises in ‘One Wales’ regarding equality of status, improved services for Welsh speakers and establishing a commissioner for the Welsh language.

⁵ Merched y Wawr - 67 branches, written evidence, IG69(o)

⁶ Bagillt Community Council, written evidence, IG20(o); Briton Ferry Town Council, written evidence, IG19(o);

⁷ Arriva Trains Wales, written evidence, IG24(o).

⁸ Message calling for a broadening of the LCO – 210 signatories, written evidence, IG29(i)

Those would certainly have an impact on the level of services and, it is to be hoped, on attitudes towards the Welsh language.”⁹

2.13. The Minister referred to a recent poll which pointed towards support for the principle:

“In addition, a recent poll for the BBC suggested that up to 60 per cent of those who had a view thought that there should be legislation to promote the Welsh language. Several other surveys have been done that suggest that people in general believe that these services should be available bilingually. Given all the research undertaken by the Welsh Language Board as well, I think that this proposed Order goes with the grain of society in Wales.”¹⁰

2.14. The Minister¹¹ explained that most of the categories of persons set out in Matter 20.1 on whom the Assembly could legislate to impose duties contain a two stage test to determine whether or not they are within the scope of the proposed Order:

- first, whether or not a person is “providing services to the public”;
- second, that they fall within one of the categories of persons defined.

2.15. The Minister explained that this is similar to the approach laid out within the Welsh Language Act 1993. The Minister’s aim is to develop this approach, widening its scope but nonetheless remaining within the spirit of the 1993 Act:

“The proposed Order attempts to identify categories of bodies. Not all the bodies that come under those categories will fall within the scope of any subsequent Measures, but the proposed Order would allow us to categorise certain areas in which we may wish to legislate. It is a form of future proofing. If you produce a list of bodies and organisations, changes will happen, and some areas will be privatised, as has happened since 1993, and that may mean that some of those listed will fall out of the scope of the legislation. The purpose of this approach is to future-proof this area to deal with whatever happens to public services, be they privatised or not, and to cover any new bodies that are formed in certain public service areas.”¹²

2.16. The main point of contention during evidence gathering has focused on the scope of the proposed Order, with fairly polarised viewpoints presented to the Committee. Much of the evidence received from private and third sector organisations raised concerns about any potential duties which would follow in any subsequent Measures and questioned the wisdom of proposing such legislation. On the other hand, there has been an equal amount of submissions from non-private sector organisations calling for the scope of the proposed Order to be widened.

⁹ RoP, paragraph 11, 24 February 2009, Legislation Committee No. 5

¹⁰ RoP, paragraph 15, 28 April 2009, Legislation Committee No. 5

¹¹ Letter from the Minister for Heritage, 3 March (see Annex 5); RoP, paragraph 135, 28 April 2009, Legislation Committee No. 5

¹² RoP, paragraph 27, 24 February 2009, Legislation Committee No. 5

Our View

2.17. We agree that, in principle, legislative competence in relation to the Welsh language should be conferred on the National Assembly for Wales.

2.18. We agree with the many individuals and organisations who support the transfer of legislative competence, that the Welsh language is an issue which relates uniquely to the Welsh nation and that the National Assembly for Wales therefore has the moral right to legislate in this field. Of all the matters which can be devolved to the Assembly under the Government of Wales Act 2006, the matter of the Welsh language is particularly specific to Wales. We therefore believe that, on this occasion, it justifies the transfer of a broad scope of legislative power to the Assembly.

2.19. In accordance with the principles of good governance and democratic accountability, the Assembly, as the body closest to the citizens who would be affected, is best placed to legislate to safeguard the future development of the Welsh language.

2.20. Having weighed up all the evidence heard and received, we believe that there are powerful arguments for the transfer of the whole of Matter 20.1, with no excluded areas. This will ensure future-proofing of the Assembly's legislative competence. The only exception should be that which relates to the use of the Welsh language in courts which is excluded from Schedule 7 to the Government of Wales Act 2006.

2.21. We cannot see any argument in support of limiting the scope of the Assembly's legislative competence in relation to Matter 20.1 in the way proposed by the Minister.

2.22. At this stage, we do not believe that it is helpful to categorise a list of intended bodies on whom duties to provide a Welsh language service of some kind or other may or may not be imposed in any future Measure.

2.23. However, we do agree that those bodies which should be subject to duties will need to be clearly specified in any subsequent Measure. They will be thoroughly scrutinised at that stage. In determining the persons upon whom duties are to be imposed, Measures should specify the categories of persons affected by reference to the nature of the services provided to the public, the size of the organisation and its legal status.

2.24. We therefore recommend that the Welsh Government replaces Matter 20.1 as follows:

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in the courts.

2.25. This is our foremost recommendation in relation to the proposed Order.

2.26. We recognise that the Welsh Government may not be minded to pursue this recommendation, despite the cross-party consensus reached on it within the Committee.

2.27. We have therefore considered the provisions within the proposed Order, as currently drafted, with a view to strengthening their clarity, in light of the evidence received, to ensure that it is in line with the Welsh Government's objectives as supported by the Committee.

3. The Scope of Matter 20.1

Is Matter 20.1 too wide or too narrow?

3.1. The Explanatory Memorandum to the proposed Order states the following:

“The competence sought under the proposed LCO would, for example, allow the Assembly to legislate to achieve greater clarity for citizens with regard to the categories of bodies that can be required to produce a Welsh language scheme...

The need for greater clarity has arisen in part from changes to the structure of certain key public services and as a consequence of the emergence of new service delivery mechanisms which have resulted in the public face of some sectors and certain key services falling outside the scope of the 1993 Act. The Welsh Ministers have the power to specify some bodies from within these sectors under the 1993 Act, but not all. This creates the potential for an uneven playing field within these sectors and a lack of clarity about service expectations for end users.”¹³

Evidence from the business sector and Welsh Council for Voluntary Action

3.2. Generally, the majority of business sector representatives were in favour of the principle that legislative competence for the Welsh language should be conferred on the Assembly, although they were not in favour of including businesses within the scope of the proposed Order.

3.3. The Federation of Small Businesses (FSB) in their written evidence stated that they had evidence to demonstrate that any legislative duties would be “detrimental to the language itself, as well as having a potentially negative impact on SMEs [small and medium-sized enterprises].”¹⁴ This was also the view of the Chambers of Commerce.¹⁵

3.4. However, the FSB has been reassured by the Minister that very few “SMEs will not be compelled to function bilingually through legislation.”¹⁶

3.5. In their evidence to the Committee, they stated:

“We have had discussions with the Welsh Language Board, and we have been reassured that the vast majority of businesses in Wales will not be affected by this. The breakdown of businesses named in the proposed LCO — telecommunications, postal services, and so on — are not necessarily the type of businesses that would be members of the FSB. Very few SMEs will be affected. However, there is the potential for one or two to be caught further down the line, such as the postal services, utilities, smaller green energy ventures, such as anaerobic

¹³ GPO-10-EM, paragraphs 17 and 18

¹⁴ Federation of Small Businesses, written evidence, IG6(o), paragraph 3

¹⁵ RoP, paragraphs 27 -29, 10 March 2009, Legislation Committee No.5

¹⁶ Ibid, paragraph 14

digesters, and so on. However, on the whole, we are confident that they will not be affected.”¹⁷

3.6. The large companies who do fall within the scope of the proposed Order, as represented by the Confederation of British Industry (CBI), the Chambers of Commerce and others who responded, wish to exclude themselves from it. The Institute of Directors stated:

“...the assertion that there are material public services outside the scope of 1993 Act is not evidenced, and the need for action not justified.”¹⁸

3.7. The business sector use cost and demand arguments to support their position that companies should be excluded from the scope of the proposed Order. South Wales, West Wales and North Wales Chambers of Commerce¹⁹ all make the point that the main concern to their members are the potential costs involved in complying and the impact it would have on their profitability.

3.8. The Institute of Directors acknowledged that although the proposed Order will not have any direct impact on businesses, the policy intent behind it is likely to have the following adverse consequences:

- “• Increasing the regulatory burden on businesses within the (wide range of) defined areas;
 - In consequence impacting adversely on costs and competitiveness;
 - Acting as a disincentive to businesses considering Wales as a location for both new facilities and in restructuring existing multi-site activity. The simple publication of the draft Order, with the corresponding uncertainty, will itself have such a disadvantage.”²⁰

3.9. The CBI also make the point about the uncertainty created at this stage of the legislative process about what the proposed Order will eventually mean to companies at the Measure stage, in terms of cost, which would create a “a prolonged period of uncertainty” which is “not ideal”.²¹

3.10. These organisations²² prefer a voluntary approach to developing Welsh language services rather than introducing legislation, arguing that it would change from providing companies with a competitive edge to becoming a compliance issue, which then risks losing their goodwill. The Welsh Council for Voluntary Action (WCVA) also hold this position. They and several companies provided evidence of how they were providing Welsh language services on a voluntary basis to their customers.

3.11. The Welsh Language Board provided a list of companies and organisations which have voluntarily adopted or are in the process of

¹⁷ RoP, paragraph 31, 10 March 2009, Legislation Committee No. 5

¹⁸ Institute of Directors, written evidence, IG25(o), page 4

¹⁹ North Wales Chamber of Commerce, written evidence, IG22(o); West Wales Chamber of Commerce, written evidence, IG7(o); South Wales Chamber of Commerce, written evidence, IG12(o)

²⁰ Institute of Directors, written evidence, IG25(o), page 2

²¹ CBI, written evidence, IG10(o), paragraph 13

²² British Gas, BT, CBI, FSB, Mobile Broadband Group, Royal Mail, RWE Npower, UK Competitive Telecommunications Association, Virgin Media, the Chambers of Commerce

preparing Welsh Language Schemes.²³ Outside the public and third sector, only Scottish Power, Royal Mail and First Cymru and the water companies are listed. Arriva Trains are in the process of producing a scheme. Over 75 private companies have Welsh language policies in place, including British Gas and Swalec.

3.12. British Telecom (BT) gave two reasons as to why they provide a bilingual service voluntarily: first, because of requests from customers (although “not enough, perhaps”) and secondly:

“The second reason is that BT takes its social responsibility seriously. We consider the Welsh language to be important to the life, communities, businesses and the people of Wales, and we want to see the Welsh language prosper. Because of that also, we would wish to see the company supporting the Welsh language in the same way as we support people with disabilities and all kinds of activities for disabled people in the community. We believe that the Welsh language is important.”²⁴

3.13. This can be contrasted with the approach by Members of the Mobile Broadband Group who focus on providing “a seamless, consistent national network to all United Kingdom customers, so there is no Welsh language component to those two seamless services”.²⁵

3.14. The CBI stated that business attitudes to the Welsh language are far more positive today than they have been in the past.²⁶ The CBI stated:

“We believe that the evidence is clear that the extent of Welsh-language service provision is increasing. To that extent, we believe that it is working. We also believe that it is present in far more sectors than the proposed LCO would cover. So, to that extent, we believe that it is likely to work in a different and better way than it would through legislation under the proposed LCO. If by ‘working’ you mean every company providing Welsh-language services, then we are nowhere near that yet.”²⁷

3.15. The CBI and many individual businesses²⁸ submitted evidence about the low level of demand for Welsh language services. They use this evidence to argue that there is no business case for the introduction of legislation. The CBI and others argue that resources should be focused on encouraging demand rather than regulating the provision of services.

²³ Welsh Language Board, additional evidence, IG1(a) (Annex 1)

²⁴ RoP, paragraph 18, 31 March 2009, Legislation Committee No. 5

²⁵ Ibid, paragraph 23

²⁶ RoP, paragraph 16, 10 March 2009, Legislation Committee No.5

²⁷ RoP, paragraph 149, 10 March 2009, Legislation Committee No. 5

²⁸ Mobile Broadband Group, additional evidence, IG10(a); RWE npower, written evidence, IG68(o); E.ON, written evidence, IG57(o); Royal Mail, written evidence, IG28(o); National Rail Enquiries, written evidence; IG23(o), Lloyds Bank TSB, additional evidence, IG15(a), LLantrisant Fawr Community Council, written evidence, IG21(o)

3.16. The CBI believe the proposed Order will have failed if the Welsh language becomes a compliance issue.²⁹ They also stated:

“I think that as soon as you have legislation in place it becomes an issue of compliance - businesses have to comply with the law. It tends to get handed over to lawyers and compliance officers and the cost tends to be managed and minimised. Requiring companies to do something for which they see no demand among their customer base and which they do not believe will add to their customer experience or to their business is unlikely to encourage goodwill or to encourage companies to go further than the minimum. We strongly believe that what we are facing here is a demand-side problem, not a supply-side problem.”³⁰

3.17. The written submission from the CBI also noted:

“The key barrier to the voluntary extension of Welsh services in the private sector is the low level of usage. We would much prefer the Welsh Assembly Government to use its significant resources to create the business case for using Welsh... If this were to be done effectively [it would lead to] the extension of current provision by a greater number of companies than currently targeted by this LCO.”³¹

3.18. The Chartered Institute of Marketing commented that Social Marketing is extremely important and they recommended that investment in this should be a first step to changing behaviours rather than immediately choosing the legislative route. However, they also commented that “some issues cannot wait for social marketing campaigns to take effect and legislation can be required (e.g. disability discrimination, equal opportunities etc.)”.³²

3.19. National Rail Enquiries³³ stated that their Welsh language telephone service was very poorly used (6,000 compared to 15 million to the English language line). They had received requests to provide a web-based service, but given the expense and the lack of demand via the call centre, they were not pursuing it.³⁴

3.20. The Royal Mail Group expressed a desire that customers use the current Welsh language provision on offer which at present "is disappointingly low". In their response to the consultation, they commented:

“It is easier to ensure our business units comply with the scheme if it is perceived by them as something we want to do rather than are compelled to do so.”³⁵

3.21. The evidence presented to the Committee on the contrasting level of services provided by RWE npower and Scottish Power is striking. Scottish

²⁹ CBI, written evidence, IG10(o), paragraph 43

³⁰ RoP, Paragraph 151, 10 March 2009, Legislation Committee No. 5

³¹ Confederation of British Industry, written evidence, IG10(o), paragraph 9

³² The Chartered Institute of Marketing, written evidence, IG35(o)

³³ RoP, paragraph 179, 17 March 2009, Legislation Committee No. 5

³⁴ RoP, paragraph 179, 17 March 2009, Legislation Committee No. 5

³⁵ Royal Mail Group, written evidence, IG28(o)

Power receive almost 20,000 calls annually to its Welsh phone line, and stated:

“We believe that this is a key function within our operation providing an invaluable service to our customers in Wales.”³⁶

While RWE npower stated that there had been no requests for their live Welsh translation service in the past year.³⁷

3.22. For bills, RWE npower explained that the customers are informed on the back of their bills, that they may request the bill in a second language, but without mentioning Welsh specifically. To date, they had not had any requests for bills in Welsh.

3.23. On the other hand, Scottish Power, who give their customers the choice at the outset of a bilingual, English or Welsh bill set out as one of their key facts in their additional evidence:

“Bills issued bilingually in all relevant post code areas, with 140,000 customers (74%) expressing a preference to be billed in Welsh.”

All their marketing literature is sent out bilingually, and they employ Welsh speaking officers out in the field. They believe that although many customers choose their supplier on cost, providing a Welsh language service helps them retain customers in Wales.³⁸

3.24. It is probably fair to assume that not even the fact that Scottish Power’s customer base is in a more predominantly Welsh speaking part of the country would account for the significant difference in take up between the two services provided. RWE npower accepted that they may need to further explore how they promote their Welsh language service provision.³⁹

3.25. While arguing against legislation, BT stated that the voluntary approach had not failed, but that it had shown that “insufficient numbers of Welsh speakers are choosing to use the services that are available”. When questioned on how they thought the voluntary code could ever succeed without legislation, British Telecom replied:

“The problem that I have is that I do not see how legislation will achieve that either. There is no explanation or definition of the services that would be expected to be provided, and to what standard. It is not clear at all. I have no idea what we would need to provide under any Measure.”⁴⁰

³⁶ Scottish Power, additional evidence, IG12(a)

³⁷ RWE Npower, written evidence, IG68(o)

³⁸ RoP, paragraph 206, 31 March 2009, Legislation Committee No. 5; Scottish Power, written evidence, IG12(a)

³⁹ RoP, paragraphs 249, 269, 31 March 2009, Legislation Committee No. 5

⁴⁰ Ibid, paragraph 56

3.26. With the notable exceptions of British Telecom's £85,000 Welsh Language Service Awareness campaign,⁴¹ and Scottish Power's equitable approach, there was not much evidence presented to demonstrate that companies made much effort to market their Welsh language services, nor to survey their Welsh speaking customers to find out what services they would wish to receive in Welsh, their views on the quality or accessibility of the services available, or why the take up is lower than expected. The Mobile Broadband Group base their assumption on "the perception" that "there is minimal pent up demand for such a service", as well as the experience of other organisations.⁴²

3.27. The Chartered Institute of Marketing strongly recommended that further studies were undertaken to determine whether it remains a lack of supply or a lack of demand. They also quoted Nelson Mandela:

"If you talk to a man in a language he understands, that goes to his head. If you talk to him in his language, that goes to his heart".⁴³

3.28. Representatives of the business sector suggest that Welsh language legislation could deter businesses from investing in Wales or providing services to customers in Wales e.g. niche energy suppliers, or those with a smaller customer base.⁴⁴ However when questioned on this, the CBI stated:

"There is no evidence of companies saying that they will retreat. Companies ask many questions about what they will be asked to do, so that they can make their cost calculations. As I said, it is probably more about the new companies entering the markets. As they create their new business models, they could be put off by the disproportionate costs involved in serving a small customer base."⁴⁵

3.29. If companies were deterred, the business sector raise concerns that it may have a knock on effect for consumer choice as well as on competitive pricing.⁴⁶ The Committee received evidence, for example from the Mobile Broadband Group, about the potential costs involved if they were to be subject to duties, and that the likelihood that it would result in less handsets available in the Welsh market. Also any compliance costs which they thought could potentially fall on the small retailers, would force many to withdraw from the Welsh market.⁴⁷

3.30. However, when questioned on this during the oral evidence session, Mobile Broadband Group acknowledged that they did not have evidence of

⁴¹ Ibid, paragraph 27; BT Cymru, written evidence, IG55(o)

⁴² Mobile Broadband Group, additional evidence, IG11(a)

⁴³ Chartered Institute of Marketing, written evidence, IG35(o)

⁴⁴ Institute of Directors, written evidence, IG25(o); CBI, written evidence, IG10(o); South Wales Chamber of Commerce, written evidence, IG12(o); RWE npower, written evidence, IG68(o)

⁴⁵ RoP, Paragraph 201, 10 March 2009, Legislation Committee No. 5

⁴⁶ Institute of Directors, written evidence, IG25(o); CBI, written evidence, IG10(o); British Gas, written evidence, IG41(o); Virgin Media, written evidence, IG50(o); Mobile Broadband Group, written evidence, IG48(o);

⁴⁷ Mobile Broadband Group, written evidence, IG48(o)

this happening in other multilingual countries, such as Spain and that these were assertions made on their part for the Committee to consider.⁴⁸

3.31. Business representatives also questioned whether they would have enough staff with Welsh language skills to take forward any potential duties.⁴⁹ Professor Colin H. Williams agrees that this is a valid argument:

“...the existing capacity of personnel able to handle the broader expectations and statutory rights of citizens, consumers and plaintiffs will be stretched. This is a serious consideration and demanding of government attention in planning for, and resourcing, Welsh medium training and professional development in a number of spheres. There is a real danger that without such investment and purposive planning, the foundation on which the promise of constructing a bilingual society in Wales will flatter only to deceive.”⁵⁰

3.32. BT made a similar point:

“I would prefer to see services provided voluntarily for the simple reason that responding to real need in the market is a challenge...The danger of legislation is that it is a false strategy. There is no inherent benefit in a piece of legislation. The benefits come from the actions of people in the community.”⁵¹

3.33. The Explanatory Memorandum states that the current situation has resulted in “the potential for an uneven playing field”.⁵² The CBI and BT agree that it is important that any legislation should provide a level playing field between companies. However, they (and others) have drawn attention to the challenges that this will pose in ensuring compliance across the board. It may nonetheless put certain companies at a competitive disadvantage compared to others.

3.34. For example, if Welsh Language Schemes or duties were to vary according to the situation of the Welsh language in different parts of Wales, that could also potentially lead to an uneven playing field. British Gas find it “difficult to envisage” legislation able to deliver a level playing field in a sector where the range of organisations providing services is vast.

3.35. There is a certain tension between on the one hand arguing that the voluntary approach works best which results in significant variations in the standards of services provided, while on the other hand insisting that if any duties are imposed by legislation, then the same benchmark would have to be set for every company in the sector. This was a point made by BT:

“...if the legislation goes ahead, and it encompasses the sector as defined, I would argue that the same benchmark would then have to be

⁴⁸ RoP, Paragraphs 99-125, 31 March 2009, Legislation Committee No. 5

⁴⁹ South Wales Chamber of Commerce, written evidence, IG12(o); CBI, written evidence, IG10(o)

⁵⁰ Professor Colin H. Williams, School of Welsh, Cardiff University, written evidence, IG8(a)

⁵¹ RoP, Paragraph 41, 31 March 2009, Legislation Committee No. 5

⁵² GPO-10-EM, paragraph 18

set for every company in the sector...I do not consider it acceptable that we provide a higher level of service in Welsh than other companies.”⁵³

3.36. The submission from the CBI noted:

“The Welsh Assembly Government has suggested that the implementation of such services on the companies affected could be different in and between sectors and vary in different parts of Wales. This would enable companies to proportionately provide levels of Welsh language public services, according to their locality. We believe such an approach can work under a voluntary system. However, it is not feasible to propose different statutory duties on companies competing to provide the same services. Under a statutory scheme, competition law would not allow such a bespoke approach. A statutory code must provide a level playing field between companies within affected sectors.”⁵⁴

3.37. FSB believes that better dialogue is needed on the use of Welsh in business and called for research to be undertaken on the economic benefit of using the Welsh language, to back the case for legislation and why it would be a win-win situation for all.⁵⁵

3.38. The FSB drew the attention of the Committee to the grants provided by the Welsh Language Board to support small businesses to produce bilingual materials and signage which were in great demand but which ceased at the end of March 2009.⁵⁶ FSB thought that more resources should be directed towards this kind of action which would be more effective than legislation and that increasing the use of Welsh in business should be part of mainstream business advice.⁵⁷

Impact on the third sector

3.39. Similarly to the business representatives, WCVA argued that a strengthened voluntary approach would be far more constructive “because it is a hearts and minds issue”, especially as a substantial number of organisations have adopted Welsh language schemes on a completely voluntary basis.⁵⁸

3.40. The WCVA also stressed that the potential financial burdens which could result from the legislation “without any increase in resources” was also “worrying their members”.⁵⁹ They believe that their member organisations are best placed to decide how to prioritise their scarce resources according to the needs of their clients.⁶⁰

⁵³ Ibid, paragraph 39

⁵⁴ Confederation of British Industry, written evidence, IG10(o)

⁵⁵ Federation of Small Businesses, written evidence, IG6(o)

⁵⁶ Ibid

⁵⁷ RoP, paragraph 118, 10 March 2009, Legislation Committee No. 5

⁵⁸ RoP, paragraph 51, 24 March 2009, Legislation Committee No. 5

⁵⁹ Ibid, paragraph 26; also - National Childminding Association, written evidence, IG38(o); Breast Cancer Care Cymru, written evidence, IG30(o); Powys Association of Voluntary Organisations, written evidence, IG43(o)

⁶⁰ RoP, paragraph 41, 24 March 2009, Legislation Committee No. 5

3.41. In relation to paragraph (e) of Matter 20.1 (“persons providing services to the public who receive public money amounting to £200,000 or more in a financial year”), the WCVA suggested that the threshold is a relatively low figure. It could therefore impact even on some relatively small third sector organisations,. The WCVA believed that it would be more effective to identify the few remaining large organisations in receipt of substantial amounts of public funding which do not have a Welsh language scheme under a voluntary agreement, and to provide them with support to take it forward.

“In that way, you achieve your objective, you retain people’s goodwill, and you avoid the frightening factor of compliance, the law and all the rest of it, and you take those people and organisations forward.”⁶¹

3.42. The information provided by the Welsh Language Board indicates that around 90 third sector organisations have adopted or are preparing Welsh language schemes voluntarily. It is interesting to note that this is higher than the number of private companies.⁶²

3.43. In their evidence to the Committee, WCVA concluded:

“I think that our members fear that an Assembly Measure could mean that a Welsh language scheme would entail having to do every aspect of their work bilingually. Part of the reason for that fear is the lack of clarity in the proposed LCO, and part of it is the absence of debate with the third sector about how it can play its part in delivering a more bilingual Wales as part of this process.”⁶³

Regulatory Impact Assessment

3.44. Some organisations⁶⁴ have questioned why no Regulatory Impact Assessment accompanies the proposed Order. This again reflects their calls for greater clarity of what duties may be imposed on them in subsequent Measures.

3.45. Legally, no Regulatory Impact Assessment is required as the proposed Order is a request for a transfer of powers which does not impose any duties on any persons. They are only undertaken at the stage of a proposed Measure.

3.46. The Minister explained:

“I do not want to be pedantic, but the proposed LCO merely asks for the powers for us to produce Measures. A regulatory impact assessment cannot be made on those Measures, because we do not know what the Measures will ask for. All that we are doing is asking for the competence to make Measures. It is not logical to ask for an

⁶¹ Ibid, paragraph 66

⁶² Welsh Language Board, additional evidence, IG1(a)

⁶³ RoP, paragraph 83, 24 March 2009, Legislation Committee No. 5

⁶⁴ Mobile Broadband Group, written evidence, IG48(o), E.ON, written evidence, IG57(o)

assessment as to the future possible impact of a Measure, as we are not discussing Measures...”⁶⁵

Evidence from consultees who believe that Matter 20.1 is too narrow

3.47. While business representatives argue against their inclusion in the proposed Order, a similar number of consultees presented evidence as to why the proposed Order should include the private and third sectors, countering some of the arguments put forward by business representatives. These consultees mainly represent Welsh speakers or have the promotion of the Welsh language as one of their objectives.

3.48. Compared to the views of the private sector set out above, the Welsh Language Board gave a different account of their experience of working with private companies on this issue. In its further written evidence to the Committee, they state “there has been no opposition to the principle of specific Measures in relation to the provision of services in Welsh”. They highlight the fact that the main areas of concern for businesses are likely to be consistency across the sector; the need for simple, clear, proportional and positive arrangements; and their capacity - the need to give businesses and sectors a reasonable amount of time to adapt.⁶⁶

3.49. The Welsh Language Board have also collected evidence regarding the positive attitude of some large businesses towards providing bilingual services to the public.⁶⁷ They recently commissioned a survey which found that 76% of respondents believe that bilingual adverts and marketing is important in businesses.⁶⁸

3.50. On the issue of whether the cost factor should be taken into account, the Welsh Language Board agreed that there could be some additional costs. However they commented:

“The evidence that we have received from businesses is that bodies in the public sector increased the number of services that they had available in Welsh, as the 1993 Act was put into practice, and businesses and services in the third sector then wanted to move in the same direction. Therefore, there is a natural pull towards that and I do not think that it will be a problem.”⁶⁹

3.51. One of the main arguments presented against legislating for the provision of Welsh language services by the private sector is the apparent lack of demand for these services in Wales. Welsh language organisations believe that the reason for the lack of demand is the lack of consistency of services provided or the varying quality of the service which serves as a barrier or disincentive to use them.⁷⁰ The Welsh Language Board also

⁶⁵ RoP, paragraph 64, 24 February 2009, Legislation Committee No. 5

⁶⁶ Welsh Language Board, additional written evidence, IG1(a)

⁶⁷ Ibid

⁶⁸ *Omnibus survey of Beaufort Research: Attitudes towards Welsh November 2008*, May 2009

⁶⁹ RoP, paragraph 85, 3 March 2009, Legislation Committee No. 5

⁷⁰ Ibid, paragraph 13; ROP, paragraph 22, 17 March 2009, Legislation Committee No. 5

believes that organisations need to do much more to market the fact that services are available in Welsh.

3.52. Celebrating our Language stated:

“...the current legislation is so inconsistent that we need a definitive legal framework that confers status and rights. We believe that having a language commissioner is also important. As a result of the current inconsistent situation, people’s expectations are so low that they do not know which services are available to them, and they do not have the confidence to request such services. The expectation is that it will take much more time and effort for them to access Welsh-medium services - and that is if they exist at all.... The current provision is so inconsistent that people are apprehensive about asking for a service in case they are causing trouble. If what was offered was more consistent as a result of new legislation, people would make more use of such services.”⁷¹

3.53. Similarly, Mentrau Iaith Cymru stated:

“Welsh speakers are not sure what public services they want through the medium of Welsh from local authorities, for example. There is nothing that asks what the user’s expectations are. The expectations are more about the providers than the users, and so it is the providers that must interpret the law rather than the users. If we are placing the citizen at the centre of the public services, the citizen must know his or her rights with regard to those services.”⁷²

3.54. The Welsh Language Society noted that “expectations will naturally be low” if the service provided is of a poor quality.⁷³ On a related point the Royal National Institute for the Blind raised concerns about the inequality of services to people with sight problems between the English and Welsh – in that the range of information materials in large print is far more limited in the Welsh language compared to the English and that legislation should address this point as well.⁷⁴

3.55. Professor Williams stated that consistency of services is key to increasing its use. In explaining the benefits of a rights based approach to services, he commented:

“For me, the important thing about a right is that it does not become a single individual battle all the time. The biggest difficulty facing the Welsh language in my view is that each Welsh speaker seems to have some sort of albatross on their shoulder. They feel responsible for making the running each time they have some kind of political, public, or commercial interchange. So, the onus is always on the speaker to construct some sort of relationship. If you had an absolute right in

⁷¹ RoP, paragraphs 23 and 25, 17 March 2009, Legislation Committee No. 5

⁷² RoP, paragraph 157, 3 March 2009, Legislation Committee No. 5

⁷³ RoP, paragraph 43, 17 March 2009, Legislation Committee No. 5

⁷⁴ RNIB Cymru, written evidence, IG 66(o)

certain defined sectors, the onus, concern and psychological stress - which I will not exaggerate too much - that some Welsh speakers feel each time they ask for a certain service would be partially removed. That element would encourage demand and the normality of being bilingual in an officially bilingual society.”⁷⁵

3.56. The Welsh Language Society presented a dossier⁷⁶ of anecdotal evidence from its supporters about their frustrations with the lack of Welsh language service provision within the public and private sector:

“Those complaints vary from examples of a Welsh-language service that is not as comprehensive as the English-language service, to people being treated discourteously and rudely for requesting services in Welsh, and even to people discovering that services do not exist in Welsh at all... The complaints can be very serious with people’s dignity affronted, whether they are children, young people or older people, and their rights being ignored.”⁷⁷

3.57. Professor Williams argued the case against the assumption that demand should be seen as the basis for bringing forward legislation:

“Typically opponents of the extension of language rights argue that usage and demand should be the sole criteria by which the effectiveness of new legislation and additional opportunities should be measured. Were language to be conceived solely in terms of a commercial transaction, there would be some merit in this argument. However, lesser used languages are increasingly seen in terms of being a public good, akin to other characteristics of a liberal, plural society, such as gender equality, disability legislation and the promotion of equal opportunities. There is no *a priori* assumption in these cases that demand alone, rather than need and added value, should be a determining factor in deciding policy or instituting legislation.”⁷⁸

3.58. The Welsh Language Society argue that a rights based legislative approach should be adopted and that providing a service in peoples’ chosen language should be seen as a basic element of the services - something which people can expect to receive “without having to opt in to them”.⁷⁹ They feel that Welsh language rights should be seen in the same context as rights for other minority groups, as it is “an essential part of people’s identity”.⁸⁰

3.59. In its further written evidence, the Welsh Language Society stated:

“We believe that one of the core responsibilities of all governments is to take a leading role in safeguarding the future of that nation’s national

⁷⁵ RoP, paragraph 161, 6 May 2009, Legislation Committee No. 5

⁷⁶ Cymdeithas yr Iaith Gymraeg, *The Need for New Legislation, March 2009*, additional written evidence, IG10(a)

⁷⁷ RoP, paragraph 35-36, 17 March 2009, Legislation Committee No. 5

⁷⁸ Professor Colin H Williams, School of Welsh, Cardiff University, written evidence, IG8(a)

⁷⁹ RoP, paragraph 28, 17 March 2009, Legislation Committee No. 5

⁸⁰ Ibid, paragraph 103; see also Stonewall Cymru, written evidence, IG3(o)

language. In our opinion, the present situation of a lack of specific rights to use Welsh, as well as the lack of status for the language, is unacceptable and is holding back the language. Establishing rights is an incontrovertible way of creating equality, which forms an important basis of a fairer and more harmonious society.”⁸¹

3.60. To this end, the Welsh Language Society would like to see the scope of the proposed Order widened so that every person providing goods, services or facilities to the public should be included in the proposed Order, regardless of whether they fall within the public, private or third sector.⁸² They suggest that the proposed Order should be as broad as possible to future-proof it, and it could be amended to read:

“This matter does not include placing duties on persons other than those who provide goods, services and facilities to the public, whether for payment or not” and omit the list from (a) to (i) in the proposed Order”.⁸³

3.61. The Welsh Language Society also submitted as evidence their suggested legislative model in the form of a Measure (“Welsh Language Measure 2007”),⁸⁴ which is based on a gradual approach to rights:

“I would expect a minimum level of service and provision, but then the requirements would vary according to the size of the company, their location and the nature of the services that they offer to the public.”⁸⁵

3.62. Many of the organisations that responded presented evidence in support of the proposed Order but argued that the scope of Matter 20.1 was too narrow. Consumer Focus Wales stated that it does not “feel confident that the LCO included an exhaustive list of ‘key services’” and that more research is needed to identify these.⁸⁶

3.63. Several organisations and many individuals have called for the widening of the scope of the proposed Order to include banking, insurance, and sports and leisure facilities.⁸⁷ The Welsh Language Board argues that it is important for the proposed Order to be “broadly but flexibly defined for the future, to pass future Measures over time.”⁸⁸ They also explained why these particular sectors:

“This is a combination of the organisations that we have already been working with, which have Welsh language schemes voluntarily, and those that we see as fitting into the definition of organisations that

⁸¹ Welsh Language Society, additional written evidence, IG10(a)

⁸² Ibid, see also CYDAG, written evidence, IG5(o)

⁸³ Welsh Language Society, written evidence, IG9(o)

⁸⁴ Welsh Language Society, *Welsh Language Measure 2007*, additional written evidence, IG5(a)

⁸⁵ RoP, paragraph 54, 17 March 2009, Legislation Committee No. 5

⁸⁶ Consumer Focus Wales, written evidence, IG44(o)

⁸⁷ Welsh Language Board, written evidence, IG2(o), Celebrating our Language, written evidence, IG11(o), Urdd Gobaith Cymru, written evidence, IG8(o); Merched y Wawr, written evidence, IG15(o); Glyndwr University, written evidence, IG52(o); Flintshire County Council, written evidence, IG61(o); Ceredigion County Council, written evidence, IG49(o); 210 individual respondents IG29(i)

⁸⁸ RoP, paragraph 69, 3 March 2009, Legislation Committee No. 5

deliver a public service. Therefore, in looking at these, we are keen to rely on our experience of working with them, but also - to return to the point - to consider what the citizen regards to be a service, and so to combine those two elements. That is why we have come up with this list.”⁸⁹

3.64. These organisations argue that the categories defined in the proposed Order should reflect a citizen-centred approach and should focus on the services which people use in their every day lives. Urdd Gobaith Cymru and others⁹⁰ commented on the need for children and young people to be able to use Welsh and see it being used outside of their school life. Undeb Cenedlaethol Athrawon Cymru (UCAC) stated:

“...the world outside exerts a far greater influence on young people in terms of their perception of the value and status of language, and ultimately their linguistic choices. If people cannot use means of communication, socialise, bank and shop through the medium of Welsh, what value does that language then have in the eyes of young people? The National Assembly must be trusted to legislate wisely in this area. The principle remains that the Assembly should have the power to impose duties on a far wider range of persons than are currently included in the proposed Order.”⁹¹

Evidence from the Minister

3.65. In the Minister's statement in plenary on 3 February 2009, he commented:

“I cannot envisage that what is proposed within the scope of this legislative competence Order will have a negative effect on any business, large or small, whether they are caught or not caught within the legislation.”⁹²

3.66. The Minister responded to the concerns expressed above by business representatives in their evidence to the Committee, by reiterating that most businesses do not fall within the scope of the proposed Order:

“I repeat again that the vast majority of private businesses lie outside the scope of this proposed LCO. I simply do not understand why people keep repeating as fact that all private businesses will somehow fall within the scope of the proposed LCO. The categories are clearly defined, and most of them cover the old utilities that at one time were nationalised, all of which seem to be essential building blocks to a healthy society. It is simply wrong to try to lump all businesses together as if they all come under the scope of the proposed LCO.”⁹³

⁸⁹ Ibid, paragraph 91

⁹⁰ Children's Commissioner for Wales, written evidence, IG70(o) ; UCAC, written evidence, IG45(o)

⁹¹ UCAC, written evidence, IG45(o)

⁹² RoP, p.82, 3 February 2009, Plenary,

⁹³ RoP, paragraphs 22, 28, 28 April 2009, Legislation Committee No. 5

3.67. The Minister explained that the proposed Order builds on the 1993 Act and why a list of categories is included in the proposed Order. He believed that this was the strength of the proposed Order and that it was necessary to future proof the request for competence but also:

“It provides clarity as to the types of companies that will come within the scope of the proposed Order, but not every body that comes under the definition will be appropriate, for whatever reason, and that will be a matter for the Assembly in due course.”⁹⁴

3.68. As to whether the voluntary approach would be more effective than seeking to impose duties on the business or third sector through legislation, the Minister believed that legislation should be seen as only a part of a far wider process which involved promoting the voluntary approach.⁹⁵ He stated:

“It is the voluntary approach that will be adopted with most of the private sector. It has achieved some success in the past, and we hope to build on that good work. However, the purpose of the proposed LCO and Measure is to build on the Welsh Language Act 1993, and many of the bodies to which you refer already fall within the scope of that Act. They have Welsh-language schemes, as they are now, and are operating those schemes.”⁹⁶

3.69. The Minister commented on the inclusion of the third sector, specifically in relation to paragraph (e) of Matter 20.1:

“I would suggest that a voluntary organisation — and again I cannot prejudge without knowing specific examples — in receipt of £200,000 every year, consistently, over a period of time, would be quite a substantial organisation and would probably be in contact with the public. It is right and proper that the public, whoever it may be, could expect a certain level of language provision. I am rather astounded that the voluntary sector would want to be excluded from providing a proper service to Welsh speakers.”⁹⁷

3.70. The Minister agreed that it was important to promote take-up of services, however he also agreed with the point of view of Welsh language organisations that the issue of the disappointing demand for Welsh language services was a complex matter and was due to “a plethora of reasons”. He believed that it had to do with ease of access to those services and with consistency:

“I could give you chapter and verse on a number of examples where it is difficult to obtain the Welsh-language service. In general, people will not go out of their way to obtain such services if there is a convoluted process...[Consistency] is important, because you cannot have one company providing some sort of bilingual service while another in the

⁹⁴ RoP, paragraph 41, 24 February 2009, Legislation Committee No. 5

⁹⁵ RoP, paragraph 65, 28 April 2009, Legislation Committee No. 5

⁹⁶ Ibid, paragraph 11

⁹⁷ Ibid, paragraph 86

same field does not. That is one reason why many people are unsure and uncertain about accessing services in the Welsh language.”⁹⁸

3.71. Nonetheless, he did not agree that this low level of demand justified excluding these sectors entirely from the scope of the proposed Order:

“If it is their argument that there is no demand and therefore they will not provide the service, it seems to suggest that certain bodies simply do not want to provide a bilingual service. We believe that the organisations and bodies that we have referred to in the proposed Order are essential to the public life of Wales. They provide services that are essential and therefore those services should be provided bilingually.”⁹⁹

3.72. He also believed that legislation was the only way to achieving consistency of services across the board.¹⁰⁰

Comparison with language legislation in other countries and regions

3.73. The evidence received from other nations and regions demonstrates that there are wide differences between language legislation between one region and the next, depending on its linguistic history or constitutional context. In some cases, such as Finland¹⁰¹ and New Brunswick¹⁰², the legislation does not cover the private or voluntary sector, except where services are being provided on the public sector’s behalf, such as through procurement, whereas in Quebec, for example, legislation aims to make French the normal and everyday language of work, commerce and business. A summary table of duties on the private sector in a selection of countries can be found at Annex 6.

3.74. The Irish Language Commissioner¹⁰³ stated that the private sector does not in general come under the aegis of the relevant legislation in Ireland (the Official Languages Act 2003). However, certain bodies, organisations or groups may be identified as public bodies for the purposes of the Official Languages Act 2003 if prescribed by the relevant Irish Minister. The following criteria are applied:

- a body, organisation or group that receives 50% or more of its current expenditure directly from a Government Minister, a Government Department, the Central Fund or a public body under the Act.
- a body, organisation or group that was a public body when the Official Languages Act 2003 came into operation but subsequently came under private ownership or control.

⁹⁸ Ibid, paragraphs 13 -14

⁹⁹ Ibid, paragraph 13

¹⁰⁰ Ibid, paragraph 11

¹⁰¹ Swedish Assembly of Finland, written evidence, IG5(c)

¹⁰² Commissioner of Official Languages for New Brunswick, written evidence, IG1(c)

¹⁰³ An Coimisineir Teanga, written evidence, IG2(c)

- a body, organisation or group performing functions which previously were vested in a body, organisation or group under public ownership or control.
- any other body, organisation or group with functions conferred or permitted by any enactment or by any license or authority given under any enactment in relation to the public in general or a class of the public in general.

The Commissioner also noted that there have been no such organisations prescribed in this manner by the relevant Irish Minister to date.

3.75. Quebec¹⁰⁴ and Catalonia have the strongest laws as they apply to the private sector. In their evidence to the Committee, the Catalan Government state:

“Although there is a legal framework in place, the Catalan Language is mainly promoted in the private sector by consensus and collaboration. The introduction of services and information in Catalan is being considered by most companies as a business opportunity that give them a competitive advantage over their competitors.”¹⁰⁵

3.76. With over 9 million people speaking Catalan, their Government is able to stress the potential business opportunities offered to them by providing Catalan services. When asked whether in this respect, the size of the Catalan market was a major advantage, and did not compare to the Welsh speaking market, the Catalan Secretary for Language Policy, Mr. Joan stated:

“The size could be important, but it is not the definitive factor... Maltese has only 350,000 or 400,000 speakers, but its position is good compared with other languages that are more widely spoken, like Welsh, because the legal situation of Maltese is better. Therefore, the size is not definitive. As you see, minority languages such as Estonian, Lithuanian, Latvian and other eastern European languages are now in a better position than more widely spoken languages in our part of Europe. There is a combination in terms of size and the legal situation of the language.”¹⁰⁶

3.77. The Catalan Government explained that they adopt a two pronged approach: legislation on the one hand, and collaboration and consensus building on the other. They also explained the value of having a legislative framework within which to base the dialogue with the private sector. They described the consensus building process as “a step by step” process.¹⁰⁷ The Catalan Government’s policy is to avoid imposing sanctions and to offer support to businesses to comply with the legislation. They impose sanctions “only on rare occasions”. Usually in “99.99 per cent of cases” the problem is solved if enterprises make use of the tools provided by the Catalan

¹⁰⁴ Quebec, *language of work and francization of business*, written evidence IG8(c)

¹⁰⁵ Government of Catalonia, written evidence, IG3(c)

¹⁰⁶ RoP., paragraph 63, 5 May 2009, Legislation Committee No. 5

¹⁰⁷ Ibid, paragraph 30

Government. Nonetheless, they still believe that the rights and duties have to be defined in law because, if not, it could be regarded as “not essential”. They believe legislative rights are necessary to guarantee the rights of consumers.¹⁰⁸

3.78. Their evidence demonstrates that the Catalan Government has made a significant financial investment to support companies to comply with legislation, especially during the initial period after introducing the new duties.¹⁰⁹ Their budget for the Consortium for Language Teaching and Learning for adults this year is €36 million.¹¹⁰

3.79. In Catalonia, a graduated approach is applied to compliance with legislation, depending on the capacity of the business to deliver services in Catalan, with greater expectations of larger enterprises. The Catalan Secretary for Language Policy, Mr. Joan, explained that smaller enterprises needed greater government support to enable them to provide services.

3.80. Professor Williams commented on what lessons may be learnt from these regions, given that their linguistic context was very different to that in Wales. He referred to the “finely tuned” system of regulation in Quebec:

“...it is a responsible approach to language policy and language planning, which is systematically regulated and reported upon, because it was initially such a controversial issue...It reports accurately on all the weaknesses as well as the strengths of its own policy, and provides systematic evidence for public debate, whereas, in many of the countries that have gone for a similar policy, there is a lot of input in terms of rhetoric, legislation and political discussion, but little evaluation.”¹¹¹

3.81. As for the lessons to be drawn from the Catalan Government’s experience, Professor Williams noted their “political determination to establish something, which may historically have been seen to be difficult, if not impossible” and that it is about more than Catalan rights, it is part of “winning their place on the international stage.”¹¹²

Evidence from the Minister

3.82. When the Minister was questioned on whether he had undertaken research on how the proposed Order compared to the legislative approach undertaken in New Brunswick,¹¹³ for example, he replied:

“No, I have not. However, we should bear in mind that what we are doing with this Order is developing the Welsh Language Act 1993, and building on our own experiences here in Wales. Our experiences, processes and actions here in Wales are often held up in Europe as

¹⁰⁸ Ibid, paragraph 38

¹⁰⁹ Ibid, paragraphs 32 - 35

¹¹⁰ Ibid, paragraph 16

¹¹¹ RoP, paragraph 93, 5 May 2009, Legislation Committee No. 5

¹¹² Ibid, paragraph 98

¹¹³ Commissioner of Official Languages for New Brunswick, written evidence, IG1(c)

exemplars of the type of activity that should be undertaken to promote a lesser-used or minority language. Although international examples are useful to inform the debate, I think that we should be concentrating on our own experiences and our own successes and failures”.¹¹⁴

Our view

3.83. We have received a substantial amount of evidence reflecting concerns on both sides of the argument about whether the voluntary or the legislative approach is most appropriate and effective in promoting the use of the Welsh language and enabling Welsh speakers to have access through their own language to public services which are an essential part of their every day lives.

3.84. We received conflicting evidence from the business sector on the level of demand for Welsh language services. We do not believe that the level of demand or other obstacles to implementation should be the only determining factors as to whether legislative competence under Matter 20.1 should be conferred on the Assembly.

3.85. We believe that legislation would help address the lack of public awareness of and access to services in the Welsh language. It should ensure greater consistency in the provision of Welsh language services which in turn should inspire the confidence of Welsh speakers to use these services with certainty.

3.86. However, we note the fears expressed by those delivering services to the public in Wales in the private and third sector and even by some public sector organisations. We believe that this stems from the lack of clarity, at this stage in the legislative process, about the potential implications for them of subsequent Measures which would follow the Order.

3.87. The concerns highlighted include:

- the challenges of introducing legislation which would achieve a level playing field between companies within the same business sector;
- the potential costs of implementing the legislation and the need for any duties to be proportionate to the size and capacity of the organisation;
- the capacity of the public, private and third sector to deliver and respond to the potential new duties;
- the risk of a deterioration in the level of service provided and losing the growing goodwill towards the Welsh language if it becomes a matter of compliance with legislation.

3.88. We believe that all these issues raised to support the argument that the proposed Order should be more narrow are matters which should be properly considered when any subsequent Measures are proposed. We believe that they are not relevant to deciding where legislative competence in relation to

¹¹⁴ RoP, paragraph 65, 28 April 2009, Legislation Committee No.5

promoting and facilitating the Welsh language should lie. Indeed, we believe that narrowly defining legislative competence at this time will restrict the ability of the Welsh Government to respond to the future development of the linguistic needs of Welsh citizens.

3.89. As stated above, we believe that these concerns can be addressed in the Measures by specifying categories of persons affected by reference to the nature of the services provided to the public, the size of the organisation and its legal status.

3.90. The weight given to the above issues will need to be evaluated when the Assembly considers any subsequent proposals for Measures, alongside the arguments presented about the need to place the citizen at the centre of any future legislation. We believe that the Regulatory Impact Assessment which will accompany any future proposals for Measures will be of key importance in this respect.

3.91. We wish to bring these issues to the attention of the Minister and trust that he will abide by his commitment to consult widely and engage civic society and the public along the way as proposals for subsequent Measures are developed.

3.92. We strongly recommend that the Minister consults on a proposal for a Measure before introducing the proposed Measure to the Assembly.

3.93. We believe therefore that is appropriate, in principle, to include private companies and the third sector within the scope of the proposed Order.

3.94. We note the evidence received from the Catalan Government about their experiences. We were struck by their pragmatic and incremental approach to introducing duties; the need to build a consensus around the language so that it is viewed as a shared responsibility; and their emphasis on communication, information and government support. We also note the significant financial investment made by the government in its Catalan language programme and in support to businesses. We recommend that the Welsh Government considers more closely the experiences of other regions when it comes to developing proposals for subsequent Measures.

4. Consideration of the terms of Matter 20.1

“The Treatment of the Welsh and English languages on the basis of equality”

4.1. The proposed Order includes "the treatment of the Welsh and English languages on the basis of equality". The Explanatory Memorandum to the proposed Order states:

“The 1993 Act is founded on two principles - the need to promote and facilitate the use of the Welsh language and the treatment of the English and Welsh languages on the basis of equality.”¹¹⁵

Evidence from consultees

4.2. The CBI argue that the provision of treating Welsh and English “on the basis of equality” should be qualified by inserting a phrase in the proposed Order “as far as is reasonable and practicable”.¹¹⁶ Any obligations on companies should be “proportionate, reasonable and practical”.¹¹⁷

Evidence from the Minister

4.3. The Minister explained the difference between “the treatment of the Welsh and English languages on the basis of equality” as compared to “equal status for English and Welsh languages”:

“Matter 20.1 frames the competence of the Assembly to legislate in future, by Measure, to support the Welsh language. Drafting it in this way ensures that legislative provision can be identical in its treatment of the Welsh and English languages in future, by Measure, in order to provide an outcome desired by the Assembly in relation to the Welsh language and to ensure that, for example, services are available in Welsh as well as in English. Drafting the provision in this way makes it clear that the Assembly can legislate in relation to the Welsh language only if it wishes to produce an outcome for the Welsh language that is equal to that enjoyed by the English language, but without being in the position of having to make the same legal provision in respect of the English language.”¹¹⁸

4.4. The Minister rejected the CBI’s suggestion to insert a ‘reasonableness clause’ into Matter 20.1, stating that any such conditions could be introduced when any subsequent Measures are proposed. It would not be appropriate to include it within a Legislative Competence Order.¹¹⁹

¹¹⁵ GPO-10-EM, paragraph 12

¹¹⁶ CBI, written evidence, IG10(o)

¹¹⁷ RoP, paragraph 222, 10 March 2009, Legislation Committee No. 5

¹¹⁸ RoP, paragraph 201, 28 April 2009, Legislation Committee No. 5

¹¹⁹ Ibid, paragraph 220

4.5. When questioned whether the Assembly could also legislate to ensure that English speakers in mainly Welsh speaking areas were provided with equality of services, the Minister explained:

“Matter 20.1 confers competence on the Assembly to legislate in relation to the treatment of the Welsh and English languages on the basis of equality, as you mentioned. It follows therefore that the Assembly could also legislate to protect the freedom of those wishing to communicate with each other in English. So, it is possible.”¹²⁰

4.6. When asked about whether the proposed Order could lead to English speakers being put at a disadvantage, he explained that none of the provisions in the proposed Order would detract from the rights of English speakers.

“I think that these fears are unfounded. The vision, as set out in ‘Iaith Pawb’, does not imply that everyone in Wales should be able to speak both Welsh and English. It may be desirable and it may come about in future, if our education system is geared to do it, but that is not the vision. ‘Iaith Pawb’ defines a bilingual Wales as a country where people can choose to live their lives through the medium of either Welsh or English. It is important to emphasise that this legislation merely helps those who wish to live their lives through the medium of Welsh and to use the Welsh language in most aspects of their lives to do so, without impinging on the rights of English speakers. Anyway, discrimination law gives protection to all of us.”¹²¹

4.7. When questioned whether the Language Commissioner which the Welsh Government is proposing to establish in a subsequent Measure should have responsibility for equality of services for English speakers as well, the Minister replied that “technically, the answer is ‘yes’.”¹²²

Our View

4.8. We agree with the Minister that it is not appropriate to qualify the scope of the Assembly’s legislative powers in the proposed Order in relation to “the treatment of English and Welsh on the basis of equality”, by inserting a phrase such as “as far as is reasonable and practicable”.

4.9. We note the Minister’s comments that the Language Commissioner should also have responsibility for the access to public services in the English language within Wales.

“Services to the Public”

4.10. Matter 20.1 would allow the Assembly to impose duties on different categories of bodies who all provide “services to the public”. Paragraph (b) of

¹²⁰ RoP, paragraph 234, 28 April 2009, Legislation Committee No. 5

¹²¹ Ibid, paragraph 239

¹²² Ibid, paragraph 213

Matter 20.1 refers to persons providing services to the public under an agreement or in accordance with arrangements made with a public authority. Similarly, the utilities and educational bodies referred to in paragraph (h) would only be subject to duties in relation to those services provided to the public. There is no definition of “the public”, nor is “services” [to the public] defined.

4.11. Section 5 of the 1993 Act does contain the expression “services to the public in Wales”. There is no formal definition in the 1993 Act, but section 5(3) required public bodies to have regard (when preparing Welsh Language Schemes) to guidelines issued by the Welsh Language Board under section 9 of the 1993 Act.

4.12. Paragraph 1.6 of the Welsh Language Board’s Guidelines explains the meaning of “the public” –

“1.6 Welsh language schemes relate to the provision of services to the public in Wales. The term “public” extends to individuals, legal persons and corporate bodies. It includes the public as a whole, or a section of the public, as well as individual members of the public. The term includes third sector organisations and charities whether or not they have been incorporated with limited liability since they, too, will form a section of the public. Directors and others representing limited companies are also within the meaning of the term “the public”. For the purposes of sections 5 and 21 of the Act, therefore, the public means those persons with whom an organisation has dealings in the course of discharging its functions. It does not, however, include dealings with persons who are acting in a capacity which is representative of the Crown, government or the State. Consequently, persons who fulfil official functions of a public nature, even though they are legal persons, do not come within the meaning of the word “public” when they are fulfilling those official functions.”

Evidence from consultees

4.13. The CBI argue that the 1993 Act so far has only applied to the public sector where no one would seek to challenge this definition of what should qualify as a “service to the public”. The CBI argue that this phrase is not sufficiently clear in the new context proposed by the Minister and that it should be clarified. The CBI suggest that “providing services to the public” should be replaced with “functions of a public nature” which is found in sections 3 and 6 of the 1993 Act:

“This term is more accurate and focuses on delivering an original intention of the LCO- to update Welsh language service provision to match the more complex modern-day delivery of public services.”¹²³

¹²³ CBI, written evidence, IG10(o), paragraph 35

4.14. “Functions of a public nature” appears in section 6(1)(o)(i) of the 1993 Act, which permits Welsh Ministers by order to add to the list of “public bodies” that may be required to prepare Welsh language schemes.

4.15. Six orders have been made in succession by the Secretary of State (in whom the power was originally vested), the Assembly and now by the Welsh Ministers. Persons specified include quangos, universities and professional bodies. However, the duties under the 1993 Act, as in the proposed Order, relate to services to the public.

Evidence from the Minister:

4.16. Annex B of the Minister’s letter to the Committee on “interpretation of services to the public” states:

“In the sixteen years since the Welsh Language Act 1993 became law, none of the persons that have been required under that Act to prepare a Welsh Language Scheme has challenged the interpretation of the expression “services to the public” in Court.”¹²⁴

4.17. The Minister responded to the question of whether the same would be true in future, when the phrase would be applied to private sector service providers as well:

“We believe that the phrase ‘services to the public’ is clear. It concentrates on the interface between the public and the service provider. The phrase ‘functions of a public nature’ is used in the 1993 Welsh Language Act, and, in the experience of the Welsh Language Board over the years, that has created potential inconsistencies in the coverage of the Act. The expression ‘exercising functions of a public nature’ is a key feature; it is one of the tests as to whether a person can be specified by the Welsh Ministers as a public body for the purposes of the 1993 Act, so that that person is required to prepare a Welsh language scheme, but it has created certain difficulties over the years. That is why the new wording is used.”¹²⁵

4.18. The Minister’s legal adviser also explained the difficulty with inserting a definition of “services to the public” in relation to Matter 20.1:

“If we were to include a definition of ‘services to the public’ here, so in Schedule 5 to the Government of Wales Act, that would serve to undermine the use of the phrase elsewhere in the Act. The inference would be that, if there is a definition in one part of the Act but it does not apply to the same phraseology in other parts of the Act, there must be a difference in interpretation.”¹²⁶

¹²⁴ Letter from the Minister for Heritage, 3 March 2009 (see Annex 5)

¹²⁵ RoP, paragraph 131, 28 April 2009, Legislation Committee No. 5; Letter from the Minister for Heritage, 3 March 2009 (see Annex 5)

¹²⁶ RoP, paragraph 134, 28 April 2009, Legislation Committee No. 5

Our View

4.19. We are satisfied that the phrase “providing services to the public” is appropriate and that it is consistent with the terminology of the 1993 Act. Limiting it to those who exercise “functions of a public nature” would reduce the scope for building on the 1993 Act.

4.20. Any concerns regarding what types of bodies fall within the scope of “providing services to the public” can be addressed in subsequent Measures.

5. Matter 20.1 - consideration of the categories of persons falling within its scope

Paragraph (a) “public authorities”

5.1. The Explanatory Memorandum states:

“Paragraph (a) confers competence on the Assembly to legislate by Measure to impose duties on ‘public authorities’. Public authorities are defined to include all public authorities within the meaning of the Human Rights Act 1998, and would include local authorities, local health boards etc.”¹²⁷

5.2. The Law Society question the definition of "public authorities", because it includes "a court or tribunal",¹²⁸ and although the Explanatory Memorandum states that the proposed Order does not extend to the use of the Welsh language in Courts, the proposed Order itself does not contain this exception.

5.3. The Association of Chief Police Officers in Wales wanted to see the justice sector in Wales included within the scope of the proposed Order, "despite the fact that most of it remains undeveloped".¹²⁹

5.4. A few public sector respondents requested that the issue of cost to the public authority is borne in mind when subsequent Measures are proposed.¹³⁰

Evidence from the Minister

5.5. The Minister’s legal adviser explained the position of the courts in relation to the proposed Order:

“The courts are a public authority for the purposes of section 3(2)(a)... the interface between the public and the officers setting up court and so on through Her Majesty’s Court Service is included, but the actual use of the language in the court setting is outside the scope of the Assembly’s competence.”¹³¹

Our View

5.6. We believe that it is appropriate for public authorities to fall within the scope of the Matter (as defined in paragraph (a)).

Paragraph (b) services provided to the public “under an agreement, or in accordance with arrangements, made with a public authority”

¹²⁷ GPO-10-EM, paragraph 29

¹²⁸ Law Society, written evidence, IG51(o)

¹²⁹ ACPO Cymru, written evidence, IG58(o)

¹³⁰ Central Monmouthshire Rural Forum, written evidence, IG14(o); City and County of Swansea, written evidence, IG17(o); Old St Mellons Community Council, written evidence, IG65(o)

¹³¹ RoP, paragraph 197, 28 April 2009, Legislation Committee No. 5

5.7. The Explanatory Memorandum states that paragraph (b) “persons providing services provided to the public under an agreement, or in accordance with arrangements, made with a public authority” is based on paragraph 6(1)(o)(ii) of the 1993 Act and explains:

“Where public bodies outsource the delivery of services to the public, the Assembly would be able to legislate under paragraph (b) to place duties in relation to the Welsh language on contractors, but only in relation to the services provided in Wales under the outsourcing arrangements.”¹³²

5.8. The WCVA accept that where their member organisations are delivering a statutory public service under an agreement, they should be subject to duties under Matter 20.1 paragraph (b)¹³³. However, it was not clear to them to what extent third sector organisations may be caught by the proposed Order when they may be delivering what could be interpreted as “a service to the public” but is not a statutory service.

5.9. Powys Association of Voluntary Organisations argued that any obligations would have to be proportionate, as public sector service agreements can sometimes be small contracts.¹³⁴ Bridgend County Council said that they had experienced difficulties in enforcing duties on third bodies, and that the expectations had to be realistic.¹³⁵ The Institute of Directors accepts the provision in paragraph (b).

Evidence from the Minister

5.10. The Minister’s legal adviser explained that the question would be whether the activity being carried out by third sector organisations would fall within either paragraph (b) or any of the other paragraphs of Matter 20.1.¹³⁶ This is the determining factor, not whether it is a statutory service. If it is not providing a statutory service, the third sector nonetheless could fall within its scope as is apparent in the discussion on paragraph (e) of Matter 20.1 below.

Our View

5.11. We believe that it is appropriate that services provided to the public “under an agreement, or in accordance with arrangements, made with a public authority” should fall within the scope of the Matter (as defined in paragraph (b)).

Paragraph (c) “persons providing services to the public established by an enactment or prerogative instrument”

¹³² GPO-10-EM, paragraph 30

¹³³ RoP, paragraphs 24-30, 24 March 2009, Legislation Committee No. 5

¹³⁴ Powys Association of Voluntary Organisations, written evidence, IG43(o)

¹³⁵ Bridgend County Borough Council, written evidence, IG47(o); Denbighshire County Council, written evidence, IG63(o)

¹³⁶ RoP, paragraph 117, 28 April 2009, Legislation Committee No. 5

5.12. Paragraph (c) would include all bodies providing services to the public which have been created by Royal Charter or by an enactment. The Explanatory Memorandum gives some examples: the Big Lottery Fund, the Electoral Commission and S4C (by enactment); and the National Library for Wales, the Sports Council for Wales and the British Council (by prerogative instrument).

5.13. To date, approximately 900 Chartered bodies have been created albeit only about 500 remain in existence. The Charters date back to the 13th Century as this used to be the only means to incorporate a body. As this is no longer the case and bodies can now register themselves as companies, the grant of new Charters is comparatively rare (11 created in 2007). Examples of Chartered bodies include the CBI, The Bank of England, Scottish Equitable Life Assurance Society, Prince's Trust, The British Film Institute, The British Legion and several Universities (including those in England) and hospitals. The bodies created by Royal Charter are eclectic by nature and cover a wide range of different types of organisations.

5.14. Other examples of bodies created by enactments and so would fall under paragraph (c) include the Coal Authority, the Countryside Council for Wales, the Environment Agency and Ofcom.

Our View

5.15. We note the potentially wide range of bodies which fall within the scope of paragraph (c) and do not fall into any particular category in respect of the type of functions or services they provide to the public.

5.16. We recall the issue raised in evidence above about the need for a level playing field when imposing duties on service providers within defined sectors (section 3, paragraph 3.87).

5.17. We believe that this will be a matter to consider when bringing forward any proposals for Measures, alongside references to the nature of the services provided to the public, the size of the organisation and its legal status (as recommended above, paragraph 2.23).

Paragraph (d) functions of providing services to the public conferred or imposed by enactment

5.18. The Explanatory Memorandum states:

“Paragraph (d) would confer competence on the Assembly to legislate to impose duties on bodies that have functions of providing services to the public conferred or imposed upon them by an enactment. This would include, for example, the Royal Commission on the Ancient and

Historical Monuments of Wales, Consumer Focus and Investors in People UK.”¹³⁷

34. ‘Functions’ is a term widely used in the 2006 Act to encompass both powers and duties.¹³⁸

5.19. The submission by the Welsh Language Board notes:

“So far as sub-section (d) of the proposed Order is concerned, we are apprehensive as to whether partnerships providing public services are included here, such as Children and Young People’s Partnerships; Health, Care and Wellbeing Partnerships; Local Service Boards; and Spatial Plans. If they are simply not included, the clause should be amended, for obvious reasons, to ensure that they are included.”¹³⁹

5.20. The Children’s Commissioner explained that this was important as it is not always clear whose Welsh Language Scheme, if any, is in operation, or whether or not a new scheme should be constituted. He sought assurances that they were included and “that responsibilities towards language provision is not neglected.”¹⁴⁰ Several other organisations¹⁴¹ have made the same point.

Evidence from the Minister

5.21. The Minister has stated that duties “could be imposed upon all members of a partnership arrangement within the Assembly’s legislative competence, when they act in partnership, in complying with certain Welsh language duties”¹⁴². However, the Minister does not go into any detail as to how they would do this only to say that each partnership would have to be looked at on a case by case basis.

5.22. The Minister provided a written note of clarification to the Committee, explaining that if a partnership consists of bodies falling under categories 20.1 (a) to (i) then they will be included within the scope of the proposed Order. If some members of a partnership do not, then the Minister has said that it “may be able to impose duties upon the partnership if the partnership is a ‘person’ in the eyes of the law and also meets the relevant criteria in 20.1.” In addition, the Minister has stated that if the Welsh Government “could not impose duties on such a group, the Assembly could legislate by Measure to impose Welsh language duties on individual members of such a group or partnership who are within its legislative competence.”¹⁴³

5.23. The Minister also stated that “bodies unincorporate” would be included and are “within the definition of persons for the purpose of the LCO.” This

¹³⁷ GPO-10-EM paragraph 33

¹³⁸ GPO-10-EM, paragraph 34

¹³⁹ Welsh Language Board, written evidence, IG2(o), paragraph 8

¹⁴⁰ Children’s Commissioner Wales, written evidence, IG70(o)

¹⁴¹ Mentrau Iaith Cymru, written evidence, IG36(o); Merched y Wawr, written evidence, IG15(o); ACPO, written evidence, IG58(o)

¹⁴² RoP, paragraph 156, 28 April 2009, Legislation Committee No. 5

¹⁴³ Letter from the Minister for Heritage, 7 May 2009 (see Annex 5)

seems to imply that whether a body is incorporated or not, it will not make a difference as to whether it is included under the scope of the proposed Order. What is important is whether or not the bodies fall under any of the categories from 20.1(a) to (h). Many may fall within paragraph (d), and possibly (c) and (e).

Our view

5.24. We believe that partnership bodies providing public services and their constituent bodies should fall within the scope of the Matter. We are not satisfied with the Minister's explanation as to how they could potentially fall within the Matter as currently drafted, with some possibly being within and some possibly outwith.

5.25. If the proposed Order as it stands does not guarantee that all partnerships are included then a subsequent Measure cannot be made to include them as the Assembly would not have competence to legislate on their inclusion.

5.26. If the Minister follows the recommendation of the Committee to broaden the scope of the Matter (as recommended above in paragraph 2.24), then this could be addressed in a subsequent Measure.

5.27. However, if the Minister is not minded to follow our recommendation in this respect, we recommend that a new category is inserted to specifically capture partnerships providing services to the public. Again, in determining the persons upon whom duties are to be imposed, Measures should specify the categories of persons affected by reference to the nature of the services provided to the public, the size of the organisation and its legal status (as per our recommendation in paragraph 2.23 above).

Paragraph (e) "persons providing services to the public who receive public money amounting to £200,000 or more in a financial year"

5.28. Paragraph (e) of the proposed Order provides that "persons providing services to the public who receive public money amounting to £200,000 or more in a financial year" can be subject to duties. The Explanatory Memorandum states:

"The underlying principle in all these cases is that persons benefiting from substantial public funds should qualify to fulfil public responsibilities."¹⁴⁴

5.29. This is a very broad provision which has the potential to capture a wide range of service providers. The Explanatory Memorandum states that this includes those which are "national in character". Only a few examples are given: the Wales Millennium Centre, the Welsh National Opera, the National Botanic Garden of Wales and the BBC.¹⁴⁵

¹⁴⁴ GPO-10-EM, paragraph 35

¹⁴⁵ Ibid, paragraph 35

5.30. A definition of “public money” is included in the proposed Order. The Explanatory Memorandum states that it would cover public money:

“either provided directly by the Assembly, the Welsh Ministers, the UK Parliament, Ministers of the Crown or from an institution of the European Communities, or indirectly by or from these bodies (for example, through local authorities or Assembly Government Sponsored Bodies).”¹⁴⁶

5.31. The Explanatory Memorandum states that persons receiving public monies “by way of payment for services or goods supplied by them will not be included under paragraph (e)”.¹⁴⁷ However, it is not stated in the proposed Order. (See the point raised by the Confederation of Passenger Transport Wales with respect to this – paragraph 5.116 below).

Evidence from consultees

5.32. Evidence from various consultees have questioned this threshold, some saying it is too restrictive (and should be abandoned or referred to at the Measure stage),¹⁴⁸ and others too permissive, and should be increased, erased, or changed to read “each financial year”.¹⁴⁹ The Welsh Council for Voluntary Services believed that £200,000 was a “relatively arbitrary figure”, and:

“For a third sector organisation delivering a public service, it is a relatively low figure now.”¹⁵⁰

5.33. The Law Society considered that the application of a financial threshold “does not follow the policy objective to ‘provide a consistent basis for improving access to services through the medium of Welsh’”.¹⁵¹

5.34. By searching through the on-line database of the Welsh European Funding Office it is possible to identify organisations which have received grants of more than a £1 million from European Union funds.¹⁵² It is clear that paragraph (e) could capture a vast range of organisations, some of which arguably do provide services to the public (e.g. a small theatre or port authorities).

5.35. The CBI argue that this provision is confusing and covers far more than intended. They suggest that it should be amended to read in receipt of £200,000 “in each financial year”.¹⁵³ This would then avoid capturing

¹⁴⁶ Ibid

¹⁴⁷ Ibid, paragraph 37

¹⁴⁸ Powys County Council, written evidence, IG56(o)

¹⁴⁹ CBI, written evidence, IG10(o); also South Wales Chamber of Commerce, North Wales Chamber of Commerce, West Wales Chamber of Commerce - RoP, paragraphs 42, 44, 73 10 March 2009, Legislation Committee No. 5

¹⁵⁰ RoP, paragraph 75, 24 March 2009, Legislation Committee No. 5

¹⁵¹ Law Society, written evidence, IG51(o)

¹⁵² See website: www.wefo.wales.gov.uk

¹⁵³ CBI, written evidence, IG10(o)

organisations which receive one-off grants, which would more closely correspond to the Minister's stated policy intention.¹⁵⁴

5.36. The Institute of Directors is also critical of this provision, saying that its "intended scope is unclear" and is not justified, as the Welsh Government could attach Welsh language requirements as conditions to any grants they provide to organisations.¹⁵⁵

5.37. It is also not clear when this would allow the Welsh Government to impose duties i.e. during the financial year(s) only in which public money was received; for a fixed future period; for an indeterminate future period.

5.38. Other issues raised in evidence include:

- the ability to vary the threshold and that the effect of inflation would be to include an increasing number of service providers over time;¹⁵⁶
- the definition of "public money" specified in the proposed Order is very broad and includes a range of different sources including monies made available "directly or indirectly";¹⁵⁷
- clarification was requested of whether it includes funds provided by local authorities;
- the challenges of identifying organisations who receive public money from multiple sources;
- the WCVA do not wish lottery funding to be included within the definition of public money. Others¹⁵⁸ wish it to be included or have questioned why it is not included;
- the WCVA argue that it is not appropriate or realistic for third sector organisations receiving more than £200,000 to be included in the scope of the proposed Order. They believe that their members will struggle to meet the cost should they have to increase the bilingual services they provide.

Experiences of Other Nations and regions

5.39. In his letter to the Committee, the Irish Language Commissioner stated that their Official Languages Act 2003 does allow them to identify some persons as public bodies for the purposes of the 2003 Act if they receive public funding.¹⁵⁹ The following criterion is applied:

¹⁵⁴ CBI, written evidence, IG10(o); also South Wales Chamber of Commerce – RoP, paragraph 73, 10 March 2009, Legislation Committee No. 5

¹⁵⁵ Institute of Directors, written evidence, IG25(o)

¹⁵⁶ Angelsey County Council, written evidence, IG32(o); Network of Welsh language officers in Wales, written evidence, IG46(o)

¹⁵⁷ Welsh Local Government Association, written evidence, IG16(o); the Law Society, written evidence, IG51(o)

¹⁵⁸ Urdd Gobaith Cymru, written evidence, IG8(o); Merched y Wawr, written evidence, IG15(o)

¹⁵⁹ See also paragraph 3.74 above

- “A body, organisation or group that receives 50% or more of its current expenditure directly from a Government Minister, a Government Department, the Central Fund or a public body under the Act.”¹⁶⁰

5.40. In Catalonia, as mentioned above,¹⁶¹ a gradual approach is applied to compliance with legislation, with greater expectations of larger enterprises. In their evidence to the Committee, the Catalan Secretary for Language Policy, Mr. Joan stated:

“If, for example, you have 100 employees, it is more common to have a proportion of them who can use Catalan without any problems. You can then provide services in Catalan more easily.”¹⁶²

“In the case of small enterprises, we thought that it would be a little more difficult, but our aim is to help the enterprises in their ability to offer services in Catalan in all cases. However, we do not want to punish small enterprises, in particular, or put pressure on them. We wish to help them and to make it easy for them to comply with the law.”¹⁶³

Evidence from the Minister

5.41. The Minister explained why he had chosen to insert a monetary threshold as the criteria in paragraph (e), he stated:

“I said that the word ‘substantial’ could not be used, but that was the feeling, namely that only bodies in receipt of substantial public funds should come within the scope of this legislation. I am sure that this will be a talking point, but £200,000 seems to us to be a reasonable bar to use to judge whether a body should be included. It is a fairly hefty sum of money, and so you are not likely to be caught by this if you happen to be in receipt of a grant one year but not in another. The whole idea behind the legislation is to provide certainty and to build over a long time with organisations the idea of equality of service through Welsh and English. It is therefore not the intention to catch somebody one year and let them fall out the next year. By placing the bar fairly high, you are talking about organisations that are here for the long term.”¹⁶⁴

5.42. The Minister explained that any monetary threshold included in a future Measure could be any sum above £200,000 or could be varied to be any higher sum over time (e.g. through Ministerial regulations), but not any lower than what would be provided for in the proposed Order. He explained that a threshold was necessary because:

“Were we not to have a limit at all, it would open the debate on whether individual companies who are in receipt of a grant might suddenly fall

¹⁶⁰ An Coimisiúneir Teanga, written evidence, IG2(c)

¹⁶¹ See also paragraph 3.79 above

¹⁶² RoP, paragraph 67, 5 May 2009, Legislation Committee No. 5

¹⁶³ Ibid, paragraph 68

¹⁶⁴ RoP, paragraph 97, 24 February 2009, Legislation Committee No. 5

within the scope of the legislation and be subject to duties and so on.”¹⁶⁵

5.43. The Minister stated that they have not sought to identify the service providers that would be captured by the £200,000 threshold, as who would be covered would be a matter for any subsequent Measures.¹⁶⁶ In response to the comments made by the WCVA, that £200,000 was not a relatively large grant for some third sector organisations, the Minister did accept that it was “conceivable” that some very small organisations may well fall within the scope of paragraph (e). When asked whether small third sector organisations should fall within its scope, the Minister stated:

“All that I am saying is that £200,000 per annum, which is a sum that can be increased over the years, is still a substantial amount of public money, and it is therefore right and proper that such organisations be considered to fall within the scope of any future Measures, with any duties that they might impose.”¹⁶⁷

5.44. The Minister indicated in evidence that the persons that he intended to be affected were those in receipt of regular amounts rather than one-off payments, but was open to suggestions as to how this may be clarified. The Minister rejected the CBI’s suggestion to amend it to those in receipt of monies “in each financial year” as that would be interpreted as only applying to organisations receiving £200,000 per annum in perpetuity.

5.45. The Minister went on to explain that there would be practical obstacles to trying to impose duties on an organisation for one year but not the next.

“The whole point of developing Welsh-language schemes is that you have to develop processes and staffing that are able to provide that level of service, which is something that can only be done over a number of years. It is inconceivable that any future Government would want to impose any duties on the sort of individual companies or bodies that, over time, will sometimes fall within and sometimes outside the threshold.”¹⁶⁸

“What I am trying to suggest is that these are organisations that are in place for a period of time; you cannot develop your Welsh-language services and processes within a particular year.”¹⁶⁹

5.46. The Minister is not in favour of amending paragraph (e) to exclude certain sectors, for example banks, from the scope of that paragraph, saying it would be “dangerous territory to start to exclude certain sectors from the Act”¹⁷⁰ (see further discussion on “Financial Institutions” in paragraphs 5.133 - 5.142 below).

¹⁶⁵ RoP, paragraph 68, 28 April 2009, Legislation Committee No.5

¹⁶⁶ RoP, paragraph 68, 28 April 2009, Legislation Committee No. 5

¹⁶⁷ RoP, paragraph 109, 28 April 2009, Legislation Committee No. 5

¹⁶⁸ Ibid, paragraph 68

¹⁶⁹ Ibid, paragraph 97

¹⁷⁰ Ibid, paragraph 146

5.47. The Minister's legal adviser clarified that the duty could only be imposed in relation to the year in which the public funds had been received:

“As a matter of practicality, if a body receives a truly one-off grant, it is very difficult, in practical terms, to impose a duty on it within that financial year and to get it to comply with that duty within the financial year. Therefore, there is a protection of practicality in the drafting here. It would be very difficult for the Assembly to achieve that goal within the year and if the body did not receive over £200,000 of public money the following year the duty could not attach to that body or could not be enforceable beyond the financial year of the receipt of the money.”¹⁷¹

5.48. The Minister did not think that using the number of employees as an alternative threshold was a good idea:

“I would contest that this figure has the benefit of simplicity and clarity, whereas the number of employees may very well shoot up or down, depending on the nature of the organisation. Would you include the people who are sub-contracted into the company, whatever that organisation may be in the future?”¹⁷²

5.49. The Minister stated that lottery funding was excluded from the interpretation of “public money” which appears in paragraph (e) because “we deem lottery money to be outside the usual definition of public money”.¹⁷³

Our View

5.50. We support the underlying objective of paragraph (e) of Matter 20.1 and believe that it is appropriate in principle to impose duties on organisations providing public services and in receipt of public funding.

5.51. However, we have concerns about the way in which it is proposed to capture such organisations by using an arbitrary monetary threshold. We do not believe that any convincing rationale has been given as to why it is set at the level of £200,000, and therefore recommend that no financial limit is included in the proposed Order – it should be specified in the Measure.

5.52. We feel that little evidence was put forward to clarify the intent behind the scope and to justify the criteria proposed. We do not feel that any convincing alternatives were proposed which would provide a satisfactory solution.

5.53. We recognise that the Minister's intent may not be to impose duties on all organisations which fall within the definition of paragraph (e). We believe that this is right, as it would not be appropriate to impose duties on an organisation which receives a one-off grant of £200,000 in one year and which is delivering what could be interpreted to be ‘a service to the public’.

¹⁷¹ RoP, paragraph 99, 28 April 2009, Legislation Committee No. 5

¹⁷² Ibid, paragraph 74

¹⁷³ Ibid, paragraph 114

5.54. We have considered a number of options which might meet the objective of targeting those in receipt of regular amounts of public funding rather than a one-off payment. This could be done by reference to the amount received every year for more than a year or total over more than a one year period, or an average over consecutive years. It is also not clear from the evidence, what the implications are for when duties may be imposed and for how long e.g. for a limited amount of time or in perpetuity, although we accept that this is a matter to be discussed at the Measure stage.

5.55. We believe that there is merit in the approach adopted by other nations and regions whereby alternative criteria are used, such as the approach adopted by the Catalans, where requirements are underpinned by legislation yet the level of duties imposed correlates with the number of employees.

5.56. As stated above, our preferred approach is to remove all categories in Matter 20.1. This would avoid the need to insert the provision in paragraph (e) at the stage of the proposed Order using flawed criteria in order to provide sufficient flexibility to future proof or ensure a catch-all approach.

5.57. We believe that this provision which is intended to categorise those in regular receipt of public funds, should be more precisely and sensibly defined in subsequent Measures. Again, they should be specified by reference to the nature of the services provided to the public, the size of the organisation and its legal status, rather than an arbitrary monetary threshold.

5.58. Any reference to “public money” in the proposed Order should include lottery funding as well as all monies received from public bodies.

5.59. In conclusion, we are not satisfied that these are workable solutions nor the best option to ensure the underlying objective is met.

Paragraph (f) “persons overseeing the regulation of a profession, industry or other similar sphere of activity”

5.60. The Explanatory Memorandum gives two examples of the type of persons or bodies which will fall within paragraph (f): Central Nursing and Midwifery Council, the General Dental Council and so forth. It explains that

“A ‘similar sphere of activity’ would include, for example, bodies which regulate the ability of a member of the public to earn a livelihood in a given sector, discipline or area of activity.”¹⁷⁴

Many of these bodies are already subject to the 1993 Act.

5.61. The Chartered Institute for Marketing raised a specific point relating to subsection (f) of Matter 20.1 of the proposed Order:

¹⁷⁴ GPO-10-EM, paragraph 38

“We note that [20.1 (f)] imposes duties upon “persons who oversee the regulation of a profession, industry or other similar sphere of activity”. We do not oppose this in principle but would seek clarification of the definition of such persons. Professional bodies are normally based in England and whilst we support the view that our Wales-based staff should provide, within reason, a bilingual service, much of The Institute’s support for members and regulation of members originates from England and therefore should not fall within the scope of the legislation.”¹⁷⁵

Our View

5.62. Given the Minister’s intention to build on the spirit of the 1993 Act, we agree that it is appropriate to include persons overseeing the regulation of a profession, industry or other similar sphere of activity within the scope of the Matter.

Paragraph (g) “social landlords”

5.63. The proposed Order states that ‘social landlords’ (paragraph (g)) is defined by reference to the definition in field 11. This definition will be inserted into Schedule 5 of the 2006 Act by matter 11.1 contained in the proposed National Assembly for Wales (Legislative Competence) (Housing) Order 2009.

5.64. Community Housing Cymru are supportive of the proposal to include paragraph (g) “social landlords” within the scope of Matter 20.1.

Our View

5.65. We agree that social landlords should fall within the scope of the Matter (as defined in paragraph (d)).

Paragraph (h) persons providing the public with services and any related services

5.66. The Explanatory Memorandum accompanying the proposed Order states the following:

“Paragraph (h) would enable the Assembly to legislate to impose duties upon persons providing the public in Wales with certain listed services, as well as related services. This covers key services provided to the public as well as incidental services. The infrastructure of certain sectors and changes in the way public services have been delivered have meant that some public facing parts of certain sectors have fallen outside the scope of the 1993 Act. This paragraph is designed to give the Assembly sufficient flexibility to be able to legislate to impose duties on bodies even if the public interface of key public services changes over time...”¹⁷⁶

¹⁷⁵Chartered Institute of Marketing, written evidence, IG35(o)

¹⁷⁶ GPO-10-EM, paragraph 40

“There is an important caveat in relation to paragraph (h) that proposes to limit the Assembly’s competence in this context - the Assembly would only be able to legislate to impose duties on service providers in respect of the services mentioned, and then, only where they are delivered in Wales, and not in respect of their other functions or activities (unless they otherwise fall within the competence conferred on the Assembly by paragraphs (a) to (g) and (i)).”¹⁷⁷

5.67. Several respondents¹⁷⁸ expressed concern at the potentially very wide scope of paragraph (h) as it includes the phrase “providing the public with the following kind of services or with other services which relate to any of those services”.

5.68. Persons providing the public with the following kinds of services could be required to comply with obligations introduced under any subsequent Measure:

- (i) gas, water or electricity services (including supply, production, transmission or distribution);
- (ii) sewerage services (including disposal of sewage);
- (iii) postal services and post offices;
- (iv) telecommunication services;
- (v) education, training or career guidance (including services to encourage, enable or assist participation in education, training or career guidance);
- (vi) railway services;
- (vii) services to develop or award educational or vocational qualifications.

Evidence from the Minister

5.69. The Minister explained that the purpose of including other related services in this provision was to future proof against any changes in the way that some of these services are delivered to the public so that it includes “any break-up of any provision as it now stands.”¹⁷⁹

Our View

5.70. We note the Minister’s explanation that the insertion of the phrase “or with other services which relate to any of those services” in paragraph (h) ensures future proofing. We agree that any other services which relate to public services of the type listed should be within the scope of the Matter.

(h)(i) Gas, water or electricity services

5.71. The Energy Retail Association did not submit any evidence to the Committee as their members’ views on the proposed Order vary. In the

¹⁷⁷ *ibid*, paragraph 42

¹⁷⁸ Mobile Broadband Group, written evidence, IG48(o); BT Cymru, written evidence, IG55(o); Institute of Directors written evidence, IG25(o)

¹⁷⁹ RoP, paragraph 168, 28 April 2009, Legislation Committee No. 5

absence of a single industry view, some of their members have made individual representations to the Committee.

5.72. British Gas support the principle of the proposed Order, but does not want to be included under any future Measure as it believes that a voluntary approach would be more productive. They also argue that any legislation would not deliver a level playing field as “the breadth and scope of organisations operating in this area is vast”. They object to the legislative route on the grounds of costs and the potential for it to reduce the scope of Welsh services available to the public.

5.73. RWE npower also preferred the voluntary approach, arguing that there is no demand for Welsh language services.¹⁸⁰ Scottish Power gave no view but provided strong evidence of the success of their Welsh Language Voluntary Scheme which was first launched in April 1997.¹⁸¹ Our conclusions on these concerns and arguments have been discussed in section 3 above.

5.74. E.ON supports the principle of the proposed Order and agrees that they should fall within the scope of the proposed Order as “electricity and gas supply are essential services for consumers in Wales”. They are keen to ensure that any future Measures would allow for flexibility in the implementation of the duties.¹⁸²

5.75. E.ON also highlights two apparent anomalies in the scope of paragraph (h):

- It covers only gas and electricity, excluding oil, LPG and biomass. E.ON considered that the National Assembly for Wales should determine the scope of the legislation, rather than excluding particular energy suppliers from the proposed Order.
- It covers electricity production, although “there is no direct service provided to consumers”.¹⁸³

Evidence from the Minister

5.76. The Minister explained the scope of paragraph (h)(i):

“Electricity services are included, and electricity can be created by any and every form of energy source, including biomass, oil and anything else. Those companies that provide electricity to homes and businesses would fall within the scope of the legislation. As for energy companies generally, all those that operate power lines and pipelines already have a public duty imposed on them with regard to provision. It is therefore right and proper that they also fall within the scope of the legislation.”¹⁸⁴

¹⁸⁰ RWE npower, written evidence, IG68(o)

¹⁸¹ Scottish Power, IG64(o), IG12(a)

¹⁸² E.ON, written evidence, IG57(o)

¹⁸³ Ibid

¹⁸⁴ RoP, paragraph 189, 28 April 2009, Legislation Committee No. 5

5.77. When questioned on whether the scope of paragraph (h) should be widened to “energy suppliers”, the Minister did not agree:

“you would be creating a difficult situation in terms of small providers and small, private companies, and I think that that would create more problems than it would solve”.¹⁸⁵

Our View

5.78. We believe that all energy services should be included within the scope of the Matter. It should not be limited to gas, water and electricity services. This would future proof this provision and eliminate any potential for inconsistencies within the sector.

(h)(ii) Sewerage services

5.79. In his evidence to the Committee, the Minister confirmed that it was not his intention to capture small local sewerage businesses. No evidence has been received directly from water or sewerage services.

Lesley Griffiths: “In the list that Mick [Bates] referred to in category (h), sewerage services are included. Do you intend to capture one-man-band businesses that empty cesspits?”

Minister: “Water and sewerage services are within the scope of the 1993 Act anyway. The technical answer is that it is a matter for any Measures that follow. However, I think that ‘no’ is the answer.”¹⁸⁶

Our View

5.80. We agree that sewerage services should be included within the scope of the Matter.

5.81. We note the Minister’s reassurances that it is not his intention to impose duties on small sewerage services.

(h) (iii) “Postal services and post offices”

5.82. Under their powers granted in the 1993 Act, the Welsh Government recently notified Royal Mail Group plc that they would be subject in future to a compulsory scheme¹⁸⁷.

5.83. The Royal Mail Group expressed a desire that customers use the current Welsh language provision on offer which at present “is disappointingly low”. The Royal Mail Group support the CBI’s view of the proposed Order and favour a voluntary approach rather than legislation, but they do not

¹⁸⁵ Ibid, paragraph 191

¹⁸⁶ RoP, paragraphs 186 - 189, 24 February 2009, Legislation Committee No. 5

¹⁸⁷ Royal Mail Group, written evidence IG28(o); see Welsh Language Schemes (Public Bodies) Order 2008/1851

envisage that a statutory requirement "would create any significant new burdens for us."¹⁸⁸

5.84. The Minister explained that the definition of "postal services" is taken from section 125 of the Postal Services Act 2000. This has not been challenged in evidence.¹⁸⁹

Our View

5.85. We believe that it is appropriate for postal services to fall within the scope of the Matter.

5.86. One Member of the Committee holds concerns about the impact of any future legislation on the viability of small Post Offices without any additional support, and that this should be borne in mind in any subsequent Measures (see also our concluding remarks, section 10 below).

(h)(iv) "telecommunication services"

5.87. The Mobile Broadband Group, BT and the UK Competitive Telecommunications Association all consider that "telecommunications services" should be removed from the proposed Order.¹⁹⁰ They prefer the voluntary approach to delivering Welsh language services.

5.88. British Telecom requested that if telecommunications companies are to be included in the scope of the proposed Order, that all such companies should be included to ensure a level playing field between competitors. The CBI also made the same point saying "it must also be very clear that it will be able to enforce compliance across such a varied sector".

5.89. The CBI called for urgent clarification of "telecommunications services", in that it could capture a very wide range of products and services provided to the public by the private sector.

5.90. In addition, the Mobile Broadband Group considered that requiring the provision of bilingual services in Wales would arrest progress in developing mobile broadband and provide no net benefit to Wales, and that the legislation could lead to a reduced range of mobile phones for sale in Wales, at increased cost:

"We are approaching it from what our customers are telling us that they really want — what their priorities are. I have to say that the priorities of customers in Wales, very predominantly, are the same as the priorities of customers elsewhere in the UK, and those priorities are to reduce costs, to make the service affordable, to improve coverage and to have a

¹⁸⁸ Royal Mail Group, written evidence, IG28(o)

¹⁸⁹ RoP, paragraph 191, 24 February 2009, Legislation Committee No. 5

¹⁹⁰ Mobile Broadband Group, written evidence; IG48(o), BT Cymru, written evidence; IG55(o); UK Competitive Telecommunications Association, written evidence, IG53(o)

wide range of affordable handsets. So, it is very much driven by the priorities of our customers.”¹⁹¹

5.91. The Mobile Broadband Group explained that the extent of the Welsh language services they currently provided were limited to the retail estate. There is no Welsh language component to the mobile network service or the customer services helpline.¹⁹²

5.92. The Mobile Broadband Group believes that it would be more effective to promote and facilitate the use of the Welsh language through the development of new innovative tools and applications which can be downloaded to customers’ phones.¹⁹³

“It is not about legislation forcing the manufacturers and the telecommunications providers to second-guess what you think customers want through legislation; it is about providing them with the tools by which they tailor it to their own use.”¹⁹⁴

5.93. In its additional evidence to the Committee, the Welsh Language Society disagreed with the arguments put forward on the basis of cost and presented research on the comparative costs of prices for mobile phone customers in Belgium and the UK, which they argue fail to substantiate the suggestion that prices are higher in Belgium because of multilingual services.¹⁹⁵ They also presented anecdotal evidence from their supporters about their disappointment at the lack of Welsh language customer services provided by the mobile phone companies¹⁹⁶.

5.94. The Welsh Language Society also provided evidence which they had collected on the extent to which mobile phone companies use Welsh signage in their stores in Cardiff (of those checked by them, some did, most did not).¹⁹⁷

5.95. The Mobile Broadband Group considered that "there are many smaller telecommunications providers that would be deterred by such measures from offering services in Wales at all, to the detriment of Welsh consumers".¹⁹⁸

5.96. The Mobile Broadband Group also argued that telecommunications policy should remain the sole remit of the UK Government and Ofcom because present systems and regulations are established on a UK-wide basis.¹⁹⁹

5.97. The Catalan Government provided evidence on their experiences in dealing with major mobile phone manufacturers and operators to introduce

¹⁹¹ RoP, paragraph 33, 31 March 2009, Legislation Committee No. 5

¹⁹² Ibid, paragraph 23

¹⁹³ Mobile Broadband Group, additional evidence, IG11(a)

¹⁹⁴ RoP, paragraph 65, 31 March 2009, Legislation Committee No. 5

¹⁹⁵ Welsh Language Society, additional evidence, IG4(a)

¹⁹⁶ Welsh Language Society, additional evidence, IG10(a)

¹⁹⁷ Welsh Language Society, additional evidence, IG4(a)

¹⁹⁸ Mobile Broadband Group, written evidence, IG48(o)

¹⁹⁹ Ibid

Catalan in the menus of their terminals. The Catalan Government is obliged to foster, drive and promote the presence of products and information in Catalan on telematic information networks under article 29 of the Language Policy Act. They have agreements in place with major mobile phone manufacturers to gradually introduce Catalan into their devices and customer services. These are underpinned by their legal requirements to ensure that any communication with their customers can be in Catalan.

5.98. Mr Jordi Bosch, the Secretary for Telecommunications explained how these agreements had come about progressively over 10 to 15 years, with significant financial support from the Catalan Government and the use of public procurement to bring about change.²⁰⁰ He also stated:

“However, it is always important to have legislation so that you can force IT and telecommunication companies to discuss with you the terms of compliance. Once they agree that they need to act according to the legislation, we can forget the legislation and start to discuss how we can help them to comply.”²⁰¹

5.99. They also presented arguments to mobile phone operators based on the business opportunity of serving the Catalan speaking market. With regards to Catalan language handsets, they worked with the operators to convince them of demand. In 2007, 10 handsets were available, today there are more than 100 handsets with menus in Catalan. They felt that developments in technology and responding to a global multilingual market, would make it increasingly easier to incorporate language options into the device after it is provided to the customer.

Evidence of the Minister

5.100. The Minister explained why telecommunication services are included in the proposed list of categories under Matter 20.1. The Welsh Government regard telecommunications as “an essential component of the way in which we live”, as demonstrated by “the statement at Westminster where broadband will now have to be provided by statute to all homes in the UK.”²⁰²

5.101. He explained the importance of this category to young people in particular:

“We wanted to include this because the Welsh language, if it is to survive and prosper in the future, must be part of the lives of young people, who are the greatest users of new means of communication, in contrast with others that I could name, such as myself. It is important that the Welsh language is part of this new, exciting and developing world, and that is why these providers will come under the scope of the

²⁰⁰ RoP, paragraphs 31-35, 5 May 2009, Legislation Committee No. 5

²⁰¹ Ibid, paragraph 47

²⁰² RoP, paragraph 160, 28 April 2009, Legislation Committee No. 5

proposed LCO. However, what duties might be imposed is a matter for a Measure that will follow.²⁰³

5.102. He did not agree that it would prove too complex or costly to mobile companies to provide services in Welsh:

“With regard to mobile phone operators, many of these companies are international companies and they operate all over Europe. There is legislation in place in many countries regarding the language of choice. With some new mobile phones, you can choose an interface language, and those will include the language of Catalunya, Galicia and the Basque country, which are imposed by legislation in those countries, areas and regions. If that can be done in Galicia, why can it not be done in Wales?”²⁰⁴

5.103. The Minister was questioned on how it would be possible to enforce compliance with any duties imposed on any telecommunications company based outside Wales or the UK, for example, Skype, in a way which would ensure a level playing field between organisations. The Minister’s legal adviser explained the legal channels available to enforce legislation in other jurisdictions:

“In terms of legal jurisdiction and enforcement, Assembly Measures apply in relation to Wales, but the legal jurisdiction of an Assembly Measure will be England and Wales. Therefore, persons based in England, for example, who are providing services in relation to Wales, but subject to duties under a Measure, could be the subject of enforcement action within the legal jurisdiction of England and Wales. Many international bodies will have a corporate presence in England and Wales in any event. Where persons are based outside of England and Wales but still provide services in relation to Wales, they can still be the subject of enforcement action. Both provisions in UK statutes within the different jurisdictions in the United Kingdom, but also in other jurisdiction statutes, allow for what is called ‘mutual enforcement’ of actions concluded in one country. Therefore, you can enforce, for example, a judgment that you receive in England and Wales, through mechanisms in another country. Therefore, that is a possibility at law.”²⁰⁵

5.104. The Minister stated that the definition of telecommunication services is included within the proposed Order, and is taken from two definitions that appear in the Regulation of Investigatory Powers Act 2000²⁰⁶ and said that it was drafted to include “the whole gambit of the services provided” and to future proof the legislation.

Our View

²⁰³ RoP, paragraph 202, 24 February 2009, Legislation Committee No. 5

²⁰⁴ RoP, paragraph 26, 28 April 2009, Legislation Committee No. 5

²⁰⁵ RoP, paragraph 42, 28 April 2009, Legislation Committee No. 5

²⁰⁶ RoP, paragraph 196, 24 February 2009, Legislation Committee No. 5

5.105. We agree that telecommunication services should fall within the scope of the Matter.

5.106. Our conclusions on many of the concerns and arguments put forward by BT and the Mobile Broadband Group around compliance costs, the need for a level playing field and lack of demand have been set out in section 3 above.

5.107. Nonetheless, we note that it may prove challenging to impose duties on international internet service providers which fall within the definition included in the proposed Order.

5.108. We were impressed by the Catalan Government's approach in respect of telecommunication services which proves that, although difficult, it is not impossible to change the mindsets of these companies with a gradual, medium term approach to ensuring they comply with their legal obligations. However, we believe that this is a discussion which should take place when proposals for Measures and their subsequent implementation are considered.

(h) (vi) "Railway services" and the exclusion of other transport services

5.109. Arriva Trains Wales is opposed to the transfer of legislative competence in the absence of further clarity on the intention of future Measures. They questioned both the omission of other transport organisations "such as airlines, airports and bus companies", and the lack of clarity regarding whether or not all railway companies which operate in Wales are to be included under the scope of the legislation.²⁰⁷

5.110. National Rail Enquiries "do not see the point in compulsion" when they report low level of demands for their Welsh language services and therefore wish to be excluded from the scope of the proposed Order.²⁰⁸

5.111. The Welsh Language Board argues that the proposal to include rail services, but exclude bus services does not follow the Minister's commitment to the underlying principle of the proposed Order that it should focus on citizen-centred services.

5.112. Several organisations²⁰⁹ and many individuals have submitted evidence to the Committee calling for all means of public transport to be included within the proposed Order.

5.113. When the Welsh Language Board were questioned on this view and whether they would wish taxi services to fall within the scope of the proposed Order, they believed they would not be caught:

"I do not believe that a citizen would consider a taxi service to be a public service. Perhaps it is not a scientific definition but, from our

²⁰⁷ Arriva Trains, written evidence, IG24(o)

²⁰⁸ RoP, paragraph 237, 17 March 2009, Legislation Committee No. 5

²⁰⁹ Welsh Language Board, written evidence, IG2(o); Welsh Language Society, written evidence, IG9(o) , Celebrating our Language, additional evidence, IG6(a) and others

experience, as the legislation evolves, notifying the citizen of what is available through the medium of Welsh is an important step forward.”²¹⁰

5.114. It was brought to our attention that some bus companies may nonetheless fall under paragraph (e) of the proposed Order (“persons providing services to the public who receive public money amounting to £200,000 or more in a financial year”). At the request of the Committee, the WLGA provided information about the amount of public funding provided to bus companies in Wales in subsidies, which would mean that some may fall within the scope of the proposed Order. However, they were not able to identify which individual bus companies had received more than £200,000 in public money:

“There are three grant schemes for bus operators in Wales which could provide grants of over £200,000 a year, namely:

- Local Transport Services Grant - total approx. £10.8M
- Concessionary Fares subsidies – budget for 2009/10 approx £52M
- Bus Services Operators Grant – approx. £18-20M

The detailed information relating to the amount of grant funding provided to each bus company is not available from local authorities, as the funding is often administered elsewhere.”²¹¹

5.115. We sought the views of the Confederation of Passenger Transport Cymru (CPT Cymru) on this issue (May 2009). While they are supportive of the general principle of the proposed Order, they believe that the voluntary approach to providing Welsh language services is better than through imposing legal requirements.²¹²

5.116. They do not believe that any of their companies fall within the scope of paragraph (e) because they receive public funds through the Concessionary Fare Schemes, arguing that it falls outside the definition of “public money”:

“The highly successful all-Wales Concessionary Fares Scheme was established through partnership with WAG, WLGA and bus operators. Following negotiations, a reimbursement formula was agreed, which pays operators for carrying concessionary pass holders on a ‘no better, no worse off’ basis. Payment of this money is, therefore, neither a publicly funded grant nor a subsidy, but a repayment for a service provided. The draft LCO refers solely to ‘public money’ and does not differentiate between straight forward grants or subsidies and other repayments.”²¹³

5.117. The Explanatory Memorandum states that persons receiving public monies “by way of payment for services or goods supplied by them will not be

²¹⁰ RoP, paragraph 77, 3 March 2009, Legislation Committee No. 5

²¹¹ WLGA, additional evidence, IG9(a)

²¹² Confederation of Public Transport Cymru, additional evidence, IG16(a)

²¹³ Ibid

included under paragraph (e)".²¹⁴ However, it is correct that it is not stated in the proposed Order. Whether the concessionary fares scheme falls within it or not is not clear.

Evidence from the Minister

5.118. In response to the question of whether bus companies do or should fall within the scope of Matter 20.1, the Minister stated:

"In general terms, it is not the current intention of the Government to go after individual bus companies because of the fragmented nature of the service. That does not mean that certain bus companies might not come under the competence if that was deemed to be necessary..."²¹⁵

5.119. At the meeting on 28 April, the Minister provided further clarification as to the scope and why bus services are excluded:

"Some, but not all, aspects of railway services are included under the 1993 Act. For example, if I am correct, ticketing is not included, although it is probably the main interface with the public. Therefore, we have sought to provide consistency in the wording of the proposed Order. Buses are not mentioned, partly because they were not included in the 1993 Act. However, they could come within the scope of this legislation if the company in question was in receipt of public money via a contract with a local authority, for example, or indeed with the Assembly Government. We believe that we are talking about a plethora of bus companies, small and large, and the larger ones would often have contracts with public bodies, which might mean that they fall within the scope of the proposed Order."²¹⁶

5.120. The Minister explained that some larger bus companies which receive funding via central government grant schemes or other schemes could fall within the scope of the proposed Order under paragraph (e), but that it will be a discussion for the Measure stage as to whether they are included. However he was not able to specify which these would be, other than to say that they would be "companies that are capable of delivering a level of bilingual service, and it is right and proper that they fall within the scope of this legislation".²¹⁷

5.121. When questioned on how this piecemeal approach squares with his arguments about the need for consistency of services within sectors and from the point of view of the citizen, he conceded that it was partly because the smaller companies would have difficulties in providing a consistent bilingual service.²¹⁸ He suggested that it is "possible and feasible" to impose duties on rail services "because you have one central contract". However, bus services are "more difficult" because of the fragmentation.²¹⁹

²¹⁴ GPO-10-EM, paragraph 37

²¹⁵ RoP, paragraph 161, 24 February 2009, Legislation Committee No. 5

²¹⁶ RoP, paragraph 172, 28 April 2009, Legislation Committee No. 5

²¹⁷ Ibid, paragraphs 176 and 184

²¹⁸ Ibid, paragraph 180

²¹⁹ Ibid, paragraph 184

5.122. When asked why airport and ferry services were not included within the scope of the proposed Order, the Minister stated:

“The simplest way to answer that is to say that there is political agreement on the categories that have been defined. I am not saying that there were political disagreements about anything else, but these are the areas that we defined as being most important.”²²⁰

Our View

5.123. We do not accept the Minister’s reasons for excluding other forms of transport apart from railway services from the scope of the proposed Order as currently drafted. We reject his justification that it would be too complex to include some sectors and therefore they should be excluded from the outset, especially given that some transport operators may nonetheless fall within paragraph (e).

5.124. We believe that there should be a consistent approach across the public transport sectors. We believe that the Assembly should have the competence to legislate to impose duties on bodies providing railway, bus, air and sea passenger transport services to the public and their associated facilities. If the Minister is not minded to widen the scope of the Matter as set out in our foremost recommendation above (see paragraph 2.24), we recommend that paragraph (h)(vi) should be amended to reflect our view.

5.125. We note the Minister’s view that it would not be feasible to expect some of the smaller companies to provide a fully bilingual service. It would be a matter for subsequent Measures which services and operators should be subject to duties.

(h) (v) and (vii) Education, training or careers guidance and qualifications services

5.126. Paragraphs (h) (v) and (vii) of Matter 20.1 would cover careers services such as Careers Wales; Learn Direct; National Training Federation for Wales and examination boards e.g. WJEC. The proposed Order does not cover education matters in relation to the Welsh language. The Assembly already has legislative competence in relation to education (Field 5, Schedule 5 of the 2006 Act) and it is dealt with in other legislation.

5.127. UCAC welcomed the inclusion of paragraphs (h)(v) and h(vii) as “these are essential in view of educational developments such as the 14-19 Learning Pathways, the Learning and Skills Measure etc”.²²¹

5.128. Rhieni Dros Addysg Gymraeg requested that clauses relating to education be included in the proposed Order, in particular to enable the

²²⁰ RoP, paragraph 204, 24 February 2009, Legislation Committee No. 5

²²¹ UCAC, written evidence, IG45(o); see also Welsh Language Board, written evidence, IG2(o), paragraph 6

rectification of Local Education Authorities' failures to follow the requirements for Welsh education plans. Mentrau Iaith Cymru and Merched y Wawr also felt that education should be included “to ensure Welsh medium education and access to Welsh lessons for everyone in Wales”.²²²

5.129. The Powys Association of Voluntary Organisations questioned how “training” would be interpreted, as many third sector organisations deliver training to their beneficiaries, from the very informally delivered to fully accredited qualifications. They questioned whether these would be subject to duties in subsequent Measures and raised the issue of cost and capability of the smaller third sector organisations – “this would again suggest a need for proportionality in the imposition of duties.”²²³

Evidence from the Minister

5.130. The Minister has stated that the Assembly already has powers that allow it to legislate in the field of education and therefore it did not need to be specified within the proposed Order.²²⁴

Our View

5.131. We agree that education, training or career guidance and services to develop or award qualifications should fall within the scope of the Matter (paragraphs (h) (v) and (vii)).

5.132. We note that the Assembly already has competence to legislate in the field of education with respect to the provision of Welsh medium education.

Financial institutions

5.133. Several organisations²²⁵ have called for the widening of the scope of the proposed Order to include banking and insurance services.

5.134. It was brought to our attention that some financial institutions may fall under paragraph (e) of the proposed Order (“persons providing services to the public who receive public money amounting to £200,000 or more in a financial year”), given that they have received financial support from the UK Government during the recent financial crisis. Also, as noted above (paragraph 5.13), some banks will fall within the scope of paragraph (c) (“established by prerogative instrument”), such as the Bank of England and the Royal Bank of Scotland.

5.135. We sought the views of the financial sector via the British Banking Association and the Building Societies Association.

²²² Mentrau Iaith Cymru, written evidence, IG4(o)

²²³ Powys Association of Voluntary Organisations, written evidence, IG43(o)

²²⁴ RoP, paragraph 206, 24 February 2009, Legislation Committee No. 5

²²⁵ Welsh Language Board, written evidence, IG2(o); Celebrating our Language, written evidence, IG11(o); Welsh Language Society, written evidence, IG9(o); Parents for Welsh Medium Education, written evidence, IG37(o); Urdd Gobaith Cymru, written evidence, IG8(o);, Mentrau Iaith Cymru, written evidence, IG4(o); Flintshire County Council, written evidence, IG61(o); Ceredigion County Council, written evidence, IG49(o);, Glyndwr University, written evidence, IG52(o); 210 individual respondents - IG29(i)

5.136. The Building Societies Association did not believe that building societies would fall under paragraph (e) “as we are not aware of a situation where a society would receive £200,000 or more of public money in a financial year. However, the definition of “public money” is vague and we would support a strict definition so as to avoid confusion.”²²⁶

5.137. Lloyds Banking Group welcome the proposed Order, but they “do not support a legal obligation requiring certain private companies to provide information bilingually” given that there is not much customer demand for the services they currently provide. They feel that the costs involved would be “disproportionate to the consumer benefit”. They are concerned that the “ambiguity” of paragraph (e) may bring certain banks but not others within the scope of the proposed Order, and that they would be at a competitive disadvantage to others.²²⁷

5.138. NatWest (Royal Bank of Scotland Group), did not give a view on the proposed Order but highlighted some of the services they currently provide bilingually.²²⁸

Evidence of the Minister

5.139. During discussions on the scope of paragraph (e), the Minister confirmed that the banking sector does “potentially” fall within the scope of the paragraph “because of recent developments”, “although it was not the intention of the Assembly Government in drawing up the proposed Order.”²²⁹ At the 24 February meeting, he stated that “there was an interesting debate to be had on the inclusion of financial services” however, “the Welsh Government did not believe they should be included at this time.”²³⁰

Our View

5.140. There is some uncertainty as to whether and which banks or building societies would fall within the scope of the proposed Order under paragraph (e) as currently drafted. This could potentially allow the Assembly to legislate to impose duties on some banks or building societies but not others. The need for a level playing field between all organisations within a sector is a principle with which we agree.

5.141. We recommend that all large financial institutions providing services to the public should fall within the scope of Matter 20.1. This is due to the need to ensure a level playing field between all companies.

5.142. In accordance with our general recommendation in section 2 (paragraph 2.23), we believe it would not be appropriate to impose duties on credit unions, which are mostly small scale operations.

²²⁶ Building Societies Association, additional evidence, IG13(a)

²²⁷ Lloyds Banking Group, additional evidence, IG15(a)

²²⁸ NatWest, Royal Bank of Scotland Group, additional evidence, IG14(a)

²²⁹ RoP, paragraph 146, 28 April 2009, Legislation Committee No. 5

²³⁰ Ibid, paragraph 170

Broadcasting

5.143. The Explanatory Memorandum states that S4C would fall within the scope of the proposed Order under paragraph (c) and the BBC under paragraph (e).

5.144. The BBC and S4C have expressed their concern that the Assembly could be given the powers to pass legislation which could affect their editorial freedom. S4C want a clear dividing line between the competence of the Assembly in relation to the Welsh language and the non-devolved matter of broadcasting.²³¹

Evidence from the Minister

5.145. In his evidence on 28 April, the Minister assured Committee Members that they had no intention to use the powers to intervene with the editorial freedom of broadcasters.²³²

5.146. The Minister was also questioned on whether licensing arrangements provided by Ofcom would fall within the scope of paragraph (b) - services to the public provided under agreements or arrangements with public authorities. In his letter to the Committee, the Minister confirms that Ofcom's licensing arrangements are "unlikely to constitute arrangements or agreements for the purposes of paragraph (b)".²³³

Our View

5.147. We note that duties may be imposed on public service broadcasters to provide bilingual services to the public as they fall within the scope of the Matter under paragraph and we believe that this is right.

5.148. We are content with the Minister's assurance that this competence would not be used in a way which would affect broadcasters' editorial freedom.

²³¹ BBC, written evidence, IG62(O); S4C, written evidence, IG67(o)

²³² RoP, paragraph 222, 28 April 2009

²³³ Letter from the Minister for Heritage, 7 May 2009 (see Annex 5)

6. The scope of Matter 20.2

6.1. Matter 20.2 includes provision "about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it)".

6.2. The Explanatory Memorandum states:

"The protection afforded under current legislation is limited. This matter would enable the Assembly to legislate to protect individuals' freedom to speak Welsh with each other.

"This matter would not require bodies to take positive steps to facilitate the use of the Welsh language between individuals, merely to respect the freedom to use the language."²³⁴

6.3. The main issues raised in relation to Matter 20.2 were:

- whether it is necessary to include the competence to legislate on a freedom which already exists in law;
- whether it should also refer to the English language;
- whether it should be drafted as a "freedom" or a "right" to use the Welsh language;
- concerns that it includes the potential to legislate to limit the freedom;
- the territorial extent of the freedom.

Evidence from consultees

6.4. The Welsh Language Board and many other organisations²³⁵ and individuals supported the inclusion of the Matter and argued that such a provision was needed:

"we welcome the principle, particularly if legislation will prevent once and for all those unfortunate situations which have arisen in the past when attempts were made to stop Welsh speakers from speaking Welsh together at work. This is nothing less than oppression, and, as such, every step should be taken to eradicate it in a civilised society."²³⁶

6.5. Mentrau Iaith Cymru stated:

²³⁴ Explanatory Memorandum, paragraphs 44-45

²³⁵ Written evidence: Welsh Language Society, Stonewall, Urdd, CYDAG, Mentrau Iaith, Merched y Wawr, WLGA, Mudiadau Dathlu'r Gymraeg, Cyngor Sir Ynys Môn, RHAG, UCAC, Rhwydiaith, Bridgend County Borough Council, Ceredigion County Council, ACPO, South Wales Fire and Rescue Authority, Flintshire County Council, Children's Commissioner for Wales

²³⁶ Welsh Language Board, written evidence, IG2(o)

“Ensuring that individuals have the freedom and right to use the Welsh language with each other is vital, and we believe that the National Assembly for Wales should be able to legislate in this area. Welsh speakers have the right to equal treatment as do English speakers. There is also a need to put an end to situations where Welsh speakers are forced to speak English against their will by employers etc.”²³⁷

6.6. CYDAG stated that “many people do not realise that we do not have fairly basic linguistic rights.” Anglesey County Council believed that this would clarify the status of the language and would get rid of any linguistic prejudices. One individual respondent highlighted that they had experienced limitations on using Welsh in the workplace. A few examples are given in the dossier of individuals’ evidence submitted by the Welsh Language Society.²³⁸

6.7. The WLGA asked for a more detailed discussion with the Welsh Government on how any new policy proposal could affect local government.

6.8. Representatives of the private sector were more ambivalent in their views, although many supported the principle, they questioned why it was needed and whether it would confer any obligations on business (British Gas, CBI, Institute of Directors, BT). The CBI believed that it was “reasonable to require business discussions involving non-Welsh speakers to be conducted in English” and that this was an area “where common sense must be allowed to break out”. In their written evidence, the Institute of Directors stated:

“...any such legislation must be soundly based in addressing a real problem, and with safeguards designed to ensure that the nature and effectiveness of business and/or public administration is not compromised. The IoD has significant doubts about the proposition that legislation is currently necessary to take forward this issue of freedom to communicate, with the risks of legislative rigidity developing around an issue on which no evidence of a material problem has been advanced in the Assembly Government’s Explanatory Memorandum. The oxygen of publicity can often be more flexible and effective than the rigidity of legislation.”²³⁹

6.9. The WCVA gave their qualified support:

“As we understand, this matter would not require bodies to take positive steps to facilitate the use of the Welsh language between individuals, but rather to respect the freedom to use the language; this is a principle that WCVA supports.”²⁴⁰

6.10. Llantrisant Fawr Community Council²⁴¹ and a few individual respondents questioned why it was needed if the freedom already exists. The North Wales Chamber of Commerce did not agree with its inclusion.²⁴²

²³⁷ Mentrau Iaith Cymraeg, written evidence, IG4(o)

²³⁸ Welsh Language Society: The Need For New Legislation, March 2009, additional evidence, IG10(a)

²³⁹ Institute of Directors, written evidence, IG25(o)

²⁴⁰ WCVA, written evidence, IG18(o)

²⁴¹ Llantrisant Fawr Community Council, written evidence, IG21(o)

Evidence from the Minister

6.11. The Minister stated:

“I do not think that any legislation should be an unnecessary burden on companies or be overly bureaucratic. So, in that sense, I have sympathy with the CBI and I agree with it in essence. However, because of the unreasonable behaviour of certain people in the past, this freedom to communicate with other people in Welsh and in English should be protected in law.”²⁴³

6.12. He also dismissed the CBI's fear that this may result in vexatious litigation by workers.

6.13. The Minister was questioned why the Matter did not include the freedom to use the English language as well as Welsh. He replied:

“Matter 20.2 is not intended to confer competence to legislate in relation to the protection of other languages because this legislation is primarily to do with the rights of Welsh speakers. We are confident that the Welsh Assembly Government's proposals under the competence, as set out in proposed matter 20.2, to protect the freedom to communicate in Welsh would comply with the convention rights...”²⁴⁴

6.14. However, he also stated that as Matter 20.1 allows for the treatment of the Welsh and English language on the basis of equality, “the Assembly could also legislate to protect the freedom of those wishing to communicate with each other in English.”²⁴⁵

6.15. The Explanatory Memorandum states that the proposed Order would permit the Assembly to legislate by Measure in relation to the use of the Welsh language in Wales.²⁴⁶ When questioned about the geographical limits of the application of Matter 20.2, the Minister's legal adviser explained:

“The Government of Wales Act 2006 requires the provisions of future Assembly Measures to be in relation to Wales, therefore you would have to assess whether any future provision was in relation to Wales. As you said, by and large, that will mean that it is within the territory of Wales, but that is not to say that it cannot sometimes apply elsewhere, but it would very much depend on the nature of the individual provision that you will consider in due course.”²⁴⁷

²⁴² North Wales Chamber of Commerce, written evidence, IG22(o)

²⁴³ RoP, paragraph 230, 28 April 2009, Legislation Committee No. 5

²⁴⁴ Ibid, paragraph 232

²⁴⁵ Ibid, paragraph 234

²⁴⁶ GPO-10-EM, paragraph 47

²⁴⁷ RoP, paragraph 232, 24 February 2009, Legislation Committee No. 5

6.16. When questioned about whether this would include prison services outside Wales, the Minister said that it may be “a subject for discussion in the future, but not in terms of the proposed LCO itself.”²⁴⁸

“Freedom” or “right” to use the Welsh language

6.17. Many organisations²⁴⁹ question or argue that Matter 20.2 should be drafted in terms of a “right” to use the Welsh language rather than a “freedom” to use it. In their written evidence, the Welsh Language Society stated:

“We believe that this freedom should be redefined as a right in order to prevent any oppression of citizens who wish to use the Welsh language in Wales. We already have the freedom to do so – it is the right that is important.”²⁵⁰

6.18. RHAG (Parents for Welsh Medium Education) stated:

“This reference to ‘freedom’ should be re-defined as a ‘right’ to speak Welsh in order to eliminate any ambiguity and remove any restrictions on citizens wishing to use the Welsh language in Wales. Central to this issue is the fact that the people of Wales will have a basic and equal choice to use their chosen language without having to think twice. What is the purpose of having rights unless they make a real difference to the lives of the ordinary citizens of Wales?”²⁵¹

6.19. The Welsh Language Society also wish to go further than conferring a freedom on or rights to individuals to use it with each other and wish to see legislation which would “establish people’s rights to use their Welsh in all aspects of life”. They point to the experience of the Catalans where rights have been established:

“We do have the freedom to use the Welsh language - we are using it now - but we do not have the right in certain situations to tell organisations that we have a right, and that it is up to them as to how they respond within the expectations that we will discuss. In other countries, there is a right to use and a right to expect a certain level of services in the language - Catalonia has moved on to say that there is an expectation that you should be understood. Therefore, that is our starting point.”²⁵²

6.20. This was confirmed by the Catalan Government in their evidence to the Committee, as they explained how their legislative framework had evolved over time from freedom to rights based legislation.

²⁴⁸ Ibid, paragraph 230

²⁴⁹ Welsh Language Board, Welsh Language Society, Urdd Gobaith Cymru, Mentrau Iaith, Celebrating our Language, RHAG, UCAC, Flintshire County Council, Children’s Commissioner for Wales

²⁵⁰ Welsh Language Society, written evidence, IG9(o)

²⁵¹ RHAG (Parents for Welsh Medium Education), written evidence, IG37(o)

²⁵² RoP, paragraph 103, 17 March 2009, Legislation Committee No. 5

6.21. The Welsh Language Board touched on this issue in their evidence to the Committee:

“The board fully understands how difficult it is to create legislation on the basis of rights. We understand and discuss that as a board regularly. A right is more absolute than freedom. Defining right is relatively easy in legislation; implementing that right on that basis is far more difficult. I do not think that we should avoid this debate as we undertake this constitutional change in Wales. Having such an Order allows us to have that discussion as we create Measures.”²⁵³

6.22. The Committee also received written evidence from some other countries which had addressed multilingualism. The evidence suggested a broad range of approaches, from situations where no linguistic clauses are stated, such as in the Netherlands, through countries where rights are stated but limited to dealings with specified public bodies, such as in Finland and New Brunswick, through to the approach such as in Catalonia, where citizens not only have the right to speak Spanish and Catalan, but also the duty to know them. A summary table of the approaches used by the countries in our sample can be found at Annex 6.

Evidence from the Minister

6.23. The Minister’s legal adviser explained the difference between a freedom and a right to use the language as follows:

“Matter 20.2 is not concerned with the right to expect someone to provide you with a service through the medium of Welsh - a claim right, so that you can go somewhere and ask for a particular service in Welsh. It deals with the freedom of persons to communicate with each other in the language of their choice and the protection of that freedom. Accordingly, the term ‘freedom’ has been used in matter 20.2 and is entirely appropriate to describe, at law, what we are talking about here. It is the protection of a pre-existing freedom. A right would have associated duties, but the freedom is already there and any proposed legislation under this competence can then set out how that freedom cannot be unlawfully interfered with.”²⁵⁴

Limitations on the freedom to use the Welsh language

6.24. Matter 20.2 would also allow the Assembly to legislate to limit any freedom to use Welsh. Several organisations²⁵⁵ have expressed concern at the inclusion of the potential to impose any limitation on the use of Welsh or wish it to be removed from the proposed Order.

²⁵³ RoP, paragraph 112, 3 March 2009, Legislation Committee No. 5

²⁵⁴ RoP, paragraph 225, 28 April 2009, Legislation Committee No. 5

²⁵⁵ Welsh Language Board, Welsh Language Society, Urdd Gobaith Cymru, Mentrau Iaith Cymru, Merched y Wawr, Mudiadau Dathlu'r Gymraeg, UCAC, Rhwydiaith

6.25. The Welsh Language Board states that they “have some concerns about limiting the freedom of persons desiring to use Welsh” in their written evidence:

“The Assembly Government’s Memorandum should have explained more clearly what is meant: for example, would it be possible to prevent prisoners from Wales from speaking Welsh with their families, or from corresponding with them in Welsh?”²⁵⁶

6.26. In their written evidence, UCAC²⁵⁷ and other organisations have expressed concern that any provisions limiting the freedom to use Welsh needs to be considered carefully for compliance with the Human Rights Act 1998 and international human rights law which is binding on the United Kingdom.

6.27. Arriva Trains stated that they would not want issues of safety comprised by any duties or obligations imposed by subsequent legislation in relation to the freedom to use Welsh.²⁵⁸

Evidence from the Minister

6.28. The Minister has stated that an example of a potential limitation would be health and safety in certain circumstances. However, he felt that it was an issue for discussion at the Measure stage (24 February).²⁵⁹

Our View

6.29. We agree in principle to the inclusion of Matter 20.2 within the proposed Order which will enable the Assembly to protect the freedom of individuals to use the Welsh language with one another and to ensure that unacceptable restrictions on the use of Welsh between colleagues do not happen.

6.30. We recommend that the Assembly should be given the competence to legislate on the freedom of persons to use the Welsh or the English language with one another, and that Matter 20.2 should be amended as follows:

Provision about or in connection with the freedom of persons wishing to use the Welsh or English language to do so with one another (including any limitations upon it).

6.31. We did consider whether it should be a “right” or a “freedom”. We believe that “freedom” is the appropriate term in this context, given the stated objective behind this Matter.

²⁵⁶ Welsh Language Board, written evidence, IG2(o)

²⁵⁷ UCAC, written evidence, IG45(o)

²⁵⁸ Arriva Trains, written evidence, IG24(o)

²⁵⁹ RoP, paragraph 226, 24 February 2009, Legislation Committee No. 5

6.32 We agree with the Minister that any limitations on the freedom to use the Welsh language (or English, in accordance with our recommendation above) will be a matter for discussion at the Measure stage.

7. Amendments to the Government of Wales 2006 Act (Article 4 of the proposed Order)

7.1. The Explanatory Memorandum states:

“Article 4 proposes to provide competence for the Assembly to legislate by Measure to amend sections 35(1), 78 and paragraph 8(3) of Schedule 2 of the [Government of Wales Act] 2006 Act in order to be able to legislate as regards itself, the Welsh Ministers or the Assembly Commission. This would allow the Assembly to place those bodies on the same footing as other public bodies.”²⁶⁰

7.2. Section 78 of the 2006 Act imposes a duty on the Welsh Ministers to adopt a Welsh language strategy and scheme. Sections 35(1) of, and paragraph 8(3) of Schedule 2 to the 2006 Act places a requirement on the National Assembly for Wales and the Assembly Commission respectively to treat the English and Welsh languages on the basis of equality where it is appropriate in the circumstances and reasonable practicable.

7.3. The other provision of the 2006 Act which relates to the Welsh language is Section 61(k) of the 2006 Act (support of culture etc.) which provides that the Welsh Ministers may do anything which they consider appropriate to support the Welsh language. There is no power to amend section 61 in the same way.

Evidence from the Minister

7.4. When the Minister was questioned on whether section 61(k) should be included in the list of provisions that can be amended by section 4 of the proposed Order, the Minister’s legal adviser explained:

“The sections already included in section 4 are 35 and 78, as is paragraph 8(iii) of Schedule 2 to the Government of Wales Act 2006. They concern duties and functions exercised by the institutions referred to - that is, the Assembly Commission, the National Assembly for Wales, and the Welsh Ministers - and how they conduct themselves in relation to the Welsh language. Section 61(k) is a discretionary power for the Ministers to exercise. That is the technical explanation for the difference between both. So, with regard to the way in which the institutions conduct themselves in relation to the language, competence is being sought to be able to amend those provisions. Competence is not being sought in relation to amending section 61(k).”²⁶¹

Our View

7.5. We recommend that the Minister inserts the power to amend section 61(k) of the 2006 Act in article 4 of the proposed Order for the avoidance of

²⁶⁰ GPO-10-EM, paragraph 49

²⁶¹ RoP, paragraph 256, 28 April 2009, Legislation Committee No. 5

any conflict or doubt which may arise between the discretion in section 61(k) and any duties placed on Welsh Ministers by a subsequent Measure.

8. Ministers of the Crown (Article 5 of the proposed Order)

8.1. Paragraph 53 of the Explanatory Memorandum states:

“This Article is required in order to give the Assembly the competence to be able to avoid a multi layered system from existing in the future, where Ministers of the Crown would provide a different level of service to the remainder of the public sector. Article 5 would allow the Assembly the flexibility to be able to provide a consistent and straightforward system across the public sector.”²⁶²

8.2. Article 5 provides for an amendment to the 2006 Act to allow the Assembly to legislate to confer or impose duties on Ministers of the Crown, in respect of the Welsh language with the consent of the Secretary of State. However, article 5 provides that, even if the Secretary of State consents to an Assembly Measure placing duties on Ministers of the Crown, action may not be brought against them for a criminal offence if they do not comply with their duties.

Evidence from consultees

8.3. Many respondents have questioned why Ministers of the Crown should be treated differently to other public authorities, and some argue that they should be liable to criminal prosecution in the same way.²⁶³

8.4. The Welsh Language Society believes that these are too generous to UK Ministers:

“If they are doing what they should be doing, they have nothing to fear. However, we have plenty of evidence to show that some Government departments in London, as well as some Assembly Government Ministers, have failed to / have chosen not to treat both languages on the basis of equality, but there is no way of imposing that duty upon them.”²⁶⁴

8.5. The Welsh Language Board felt that the most important issue was that they are included within the scope of the proposed Order, as they were not included within the scope of the 1993 Act. Indeed, eight departments currently adopt Welsh Language Schemes voluntarily, whereas seven departments have not acted on the Welsh Language Board’s invitation to prepare one.²⁶⁵

“That is why we are so pleased to see Crown bodies included here. It is more important that those bodies are included than that we penalise Ministers... We cannot see a clear reason why there is a need to secure the Secretary of State’s permission, but if that gives the process

²⁶² GPO-10-EM, paragraph 53

²⁶³ The Law Society, written evidence, IG51(o); Glyndwr University, written evidence, IG52(o)

²⁶⁴ Welsh Language Society, written evidence, IG9(o)

²⁶⁵ Welsh language Board, additional evidence, IG1(a)

more status and authority, we would welcome it. However, drawing these bodies in is what is important, however that happens.”²⁶⁶

8.6. The Welsh Language Board also commented:

“Perhaps I should add that there are Crown bodies - Government departments - that refuse to produce language schemes. The Foreign and Commonwealth Office utterly refuses to agree a language scheme with us, even though it is the department that is responsible on a European level for the language schemes of the countries within Britain, which is slightly ironic.”²⁶⁷

Evidence from the Minister

8.7. The Committee was provided with a list of Ministries who do and do not have Welsh Language Schemes. The Minister was questioned on whether this situation would change, if the duties would still be subject to the Secretary of State’s consent. The Minister responded:

“Certain ministries and Ministers of the Crown have Welsh-language schemes that have been developed with the Welsh Language Board over the years, and some of those schemes are very successful. Others have not been quite as forthcoming. Some are more important to the people of Wales, of course, in that they have a real presence on the ground, and they are the ones that we need to concentrate our efforts on. Hopefully, however, all ministries will be included eventually.”²⁶⁸

8.8. The Minister explained that these provisions follow the normal convention that the Crown will not be subject to criminal sanctions and that the prior consent of the Secretary of State would be required.²⁶⁹

Our View

8.9. We agree that, in principle, Ministers of the Crown should be subject to duties in relation to the Welsh language.

8.10. We note that the requirement to seek the consent of the relevant Secretary of State before any duties are imposed on Ministers of the Crown by means of an Assembly Measure is a general constitutional principle, as set out in the 2006 Act, which is not specific to the field of the Welsh language.

8.11. We accept that any duties imposed on Ministers of the Crown should be subject to the consent of the Secretary of State, in accordance with the constitutional settlement.

²⁶⁶ RoP, paragraphs 125 and 127, 3 March 2009, Legislation Committee No. 5

²⁶⁷ Ibid, paragraph 119

²⁶⁸ RoP, paragraph 249, 28 April 2009, Legislation Committee No. 5

²⁶⁹ Letter from the Minister for Heritage, 3 March 2009 (see Annex 5)

9. Responses from members of the public

9.1. As well as the general consultation on the legislative proposals, groups and individuals were also invited to have their say through a poster campaign²⁷⁰ urging people to send their views in on three specific questions, which asked if the Assembly should be able to make laws on:

1. the promotion and use of the Welsh Language;
2. which services the public should be able to receive bilingually; and
3. the freedom of persons to use the Welsh language with each other.

9.2. Altogether, there were 283 responses to the consultation, with 53 signatories providing individual messages, 12 anonymous responses, 210 individual responses submitting a response co-ordinated through the Welsh Language Society website, 2 messages with 2 signatures on each message, and 1 message with 4 signatures.

9.3. Responses to the questions were in the affirmative in 240 cases for the first two questions, and 239 for the final question, while 16 responses were negative towards the three questions. Hence respondents indicated a generally positive reaction to transferring legislative competence to the Assembly.

9.4. While it was possible to infer positive or negative responses to the three questions from the majority of the respondents, some respondents tended either not to address the questions directly, or used the consultation as an opportunity to highlight broader issues. For example, it was suggested that the Assembly should not receive competence in this area because it had enough powers already, while others were of the opinion that the issue is not of relevance to most people, or that there are other more pressing issues than legislating on the Welsh language.

9.5. Respondents also took the opportunity to explain the reasons behind their views, and raise further concerns and issues relating to their current experiences and attitudes towards Welsh language legislation. The more common themes highlighted in the contributions are considered below.

Laws relating to the Welsh language within the competence of the Assembly

9.6. It was considered that it was more relevant that the Assembly (or less relevant that the UK Parliament) had powers relating to the Welsh language, while conversely, the opinion was raised that further legislation was not necessary.

²⁷⁰ See Annex 3

Scope of the legislation

9.7. We heard arguments for more services to be included within the scope of the legislation to enable the Welsh Government to draft comprehensive language Measures and, conversely, for services to be specified, or limited.

9.8. The removal of the £200,000 limit was called for, as was the need to place expectations on the public sector to ensure consistency, clarity and simplicity for the service user.

9.9. There were calls to extend the list of bodies named in the proposed Order to normalise the use of the Welsh Language to include shops and private companies, leisure facilities, retail outlets, entertainment facilities, restaurants and taverns, banking and financial services, and all modes of public transport.

9.10. The arguments for limiting services could, in a number of cases, be attributed to concerns about costs, or the misallocation of resources towards a provision for which there was considered to be little need or demand.

9.11. The concern was also raised that legislation in this area might provide employment opportunities based on Welsh language ability rather than ability to do the job, and/or may lead to discrimination against non-Welsh speakers.

9.12. Other respondents believe that language legislation might be divisive, with one respondent considering that the legislation feels antagonistic, expensive and unnecessary, and another fearing that the current proposals may ignite language extremism.

Freedom to use the Welsh language

9.13. In relation to the freedom of persons to use the Welsh language with each other, respondents questioned the need to legislate in this area as it was considered to be a basic human right, or that this freedom was already held. A number of respondents said that they had experienced limitations on using Welsh in the workplace, or in receiving limited service in terms of poor adherence to the existing Welsh language legislation or Welsh Language Schemes, suggesting that where existing freedoms exist, they are not always being adequately applied or adhered to. While one respondent considered that English speakers had this freedom, another suggested that if legislation was imposed in this area in relation to Welsh speakers, then it would be necessary to apply similar freedoms to English speakers.

9.14. Respondents also considered that, in addition to establishing the freedom to speak through the medium of Welsh in the workplace, the right to work through the medium of Welsh should be established.

Other issues

9.15. Respondents noted that the proposed Order does not include provision to establish the right to a Welsh speaking jury and asked how this right could be realised.

9.16. The concern was raised that the legislation as drafted is too restrictive and promotes the mindset that language promotion is a separate area of public policy rather than integrated into all aspects. Respondents also raised concerns that the legislation did not make specific reference to education.

9.17. Tailoring policy and/or legislation to the needs and requirements of the locality was raised. However, while it was considered that differing Welsh language usage across the whole of Wales weakened the argument for a Wales-wide legislative approach, the counter argument was made that this was a reason for legislation across the whole of Wales.

9.18. One respondent called for more research into people maintaining their skills gained through Welsh language education, which relates to the broader issue of ensuring that adequate resources need to be in place if the long-term aspirations behind the legislation are to be realised.

9.19. The Committee was also asked to lend its support to the need to establish official status for the Welsh language, statutory rights to use the Welsh language in every aspect of people's lives, and establish a Commissioner for the Welsh language with the necessary powers.

Our View

9.20. We wish to thank all individuals who contributed to our work by submitting their views to us. These views have helped inform our scrutiny of the proposed Order and our discussions in Committee meetings when questioning the Minister and other witnesses. Many of the issues raised are dealt with in the relevant sections of the report.

9.21. The views submitted to the Committee are generally either at one end or the other in the spectrum of support for the Welsh language. This fact and the level of public debate on the proposed Order and what may follow in subsequent Measures, demonstrates the need for the Minister to engage with the public to explain how the Welsh Government intends to apply legislation in this area to underpin its policy.

10. Concluding Remarks

10.1. To conclude, while our remit is to scrutinise the proposed Order and the transfer of legislative competence to the Assembly, we believe it necessary to respond to the large body of evidence received and to set out our expectations as to how the Minister will take forward any subsequent proposals on the Measure.

10.2. Subject to our recommendations, the proposed Order should provide the Assembly with the legislative competence to achieve the social objective which would allow the people of Wales to live their lives through the medium of either English or Welsh. We believe that this is best done through emphasis on cooperation and consensus building.

10.3. The Catalan Government have shown us what determination and pragmatism can achieve to make their language legislation work. They also provided various means of support to build a consensus and ensure the commitment of all involved.

10.4. We agree with the Minister that legislation is only one tool to help achieve our shared objective. We are therefore concerned that the Welsh Language Board's small grants scheme available to small businesses has come to an end as highlighted in the evidence of the Federation of Small Businesses. We believe that it will be important to continue to provide financial and other types of support to organisations to help them bring about the required change.

10.5. We believe that stronger legislation in this field should be a positive, not a punitive step, which is designed to create a sea change in attitudes to providing bilingual services and the citizen's expectations of it. Legislation on the Welsh language should not be regarded as a minority issue, but needs to be considered as part and parcel of the social change policies we wish to see happening in Wales.

D R A F T S T A T U T O R Y I N S T R U M E N T S

2009 No.

CONSTITUTIONAL LAW

DEVOLUTION, WALES

**The National Assembly for Wales (Legislative Competence)
(Welsh Language) Order 2009**

Made - - - - []

Coming into force in accordance with Article 1

At the Court at Buckingham Palace, the day of 2009

Present,

The Queen’s Most Excellent Majesty in Council

In accordance with section 95(5) of the Government of Wales Act 2006(a), a draft of this Order has been laid before, and approved by resolution of, the National Assembly for Wales and each House of Parliament.

Accordingly, Her Majesty, in pursuance of section 95(1) of the Government of Wales Act 2006, is pleased, by and with the advice of Her Privy Council, to order as follows:-

Citation and commencement

1. This Order may be cited as the National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009 and shall come into force on the day after the day on which it is made.

Amendments to the Government of Wales Act 2006

2.—(1) Section 94 of the Government of Wales Act 2006 is modified in accordance with this article.

(2) Paragraph (b) of subsection (6) does not prevent the repeal of any provision of the Welsh Language Act 1993(b) from having the same extent as the repealed provision.

(a) 2006 c.32.
(b) 1993 c.38

3.—(1) Part 1 of Schedule 5 to the 2006 Act is amended in accordance with this article.

(2) In field 20 (Welsh language), insert—

“Matter 20.1

Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality.

This matter does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than the following—

- (a) public authorities;
- (b) persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority;
- (c) persons providing services to the public established by an enactment or prerogative instrument;
- (d) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
- (e) persons providing services to the public who receive public money amounting to £200,000 or more in a financial year;
- (f) persons overseeing the regulation of a profession, industry or other similar sphere of activity;
- (g) social landlords within the meaning of field 11;
- (h) persons providing the public with the following kinds of services or with other services which relate to any of those services—
 - (i) gas, water or electricity services (including supply, production, transmission or distribution);
 - (ii) sewerage services (including disposal of sewage);
 - (iii) postal services and post offices;
 - (iv) telecommunication services;
 - (v) education, training or career guidance (including services to encourage, enable or assist participation in education, training or career guidance);
 - (vi) railway services;
 - (vii) services to develop or award educational or vocational qualifications;
- (i) persons opting or agreeing to be subject to the imposition of the duties.

With regard to imposing duties in relation to paragraph (b), this matter only includes duties in respect of services to the public provided under an agreement, or in accordance with arrangements, made with a public authority.

With regard to imposing duties in relation to paragraph (h), this matter only includes duties in respect of the services mentioned.

Matter 20.2

Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations upon it).

Interpretation of this field

In this field—

“enactment” includes any future enactment;

“postal services” means the service of conveying letters, parcels, packets or other articles from one place to another by post and the incidental services of receiving, collecting, sorting and delivering such articles;

“public authority” means each public authority within the meaning of section 6 of the Human Rights Act 1998;

“public money” means—

- (a) moneys made available directly or indirectly by—
 - (i) the National Assembly for Wales;
 - (ii) the Welsh Ministers;
 - (iii) Parliament;
 - (iv) Ministers of the Crown; or
 - (v) an institution of the European Communities;
- (b) moneys provided by virtue of any enactment;

“telecommunications services” means any service that consists of providing access to, or facilities for making use of, any system which exists (whether wholly or partly in the United Kingdom or elsewhere) for the purpose of facilitating the transmission of communications by any means involving the use of electrical, magnetic or electro-magnetic energy (including the apparatus comprised in the system), but does not include broadcasting, radio, or television.”

4.—(1) Part 2 of Schedule 5 to the 2006 Act is modified in accordance with this article.

(2) For paragraph 6(2) substitute—

“Sub-paragraph (1) does not apply to—

- (a) sections 20, 22, 24, 35(1), 36(1) to (5) and (7) to (11), 53, 54, 78 and 156(2) to (5);
or
- (b) paragraph 8(3) of Schedule 2.”

5.—(1) Part 3 of Schedule 5 to the 2006 Act is modified in accordance with this article.

(2) Renumber the existing paragraph 7 as 7(1) and insert the following new sub-paragraph 7(2)—

“(2) Part 2 does not prevent a provision of an Assembly Measure relating to matter 20.1 or 20.2 of Part 1, conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to the provision, but functions so conferred or imposed may not be enforced against Ministers of the Crown by means of criminal offences.”

Name
Clerk of the Privy Council

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Government of Wales Act 2006 (“the 2006 Act”). The Order extends the legislative competence of the National Assembly for Wales to make laws known as Measures of the National Assembly for Wales (referred to in the 2006 Act as “Assembly Measures”). The legislative competence conferred by this Order is subject to general limitations on the exercise of that legislative competence, which apply by virtue of section 94 of, and Schedule 5 to, the 2006 Act (as amended by this Order).

Article 2 modifies the effect of section 94(6)(b) of the 2006 Act. This ensures that any future repeal of provisions of the Welsh Language Act 1993 will not be prevented from having the same extent as the provisions repealed.

Article 3 inserts matters 20.1 and 20.2 as well as interpretation provisions into field 20 (Welsh Language) of Part 1 of Schedule 5 to the 2006 Act.

Matter 20.1 is about promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality, but does not include the use of the Welsh language in courts.

This matter does not include imposing duties on persons other than—

- (a) public authorities;
- (b) persons who provide services to the public under agreements, or in accordance with arrangements, made with public authorities;
- (c) persons providing services to the public and established by an enactment or prerogative instrument;
- (d) persons upon whom functions of providing services to the public are conferred or imposed by an enactment;
- (e) persons providing services to the public who receive public money amounting to £200,000 or more in a financial year;
- (f) persons who oversee the regulation of a profession, industry or other similar sphere of activity;
- (g) social landlords;
- (h) persons providing the public with the following services, or connected services—
 - (i) gas, water or electricity services (which includes supply, production, transmission or distribution);
 - (ii) sewerage services (which includes disposing of sewage);
 - (iii) postal services and post offices;
 - (iv) telecommunications services;
 - (v) education, training or career guidance (including services that encourage, enable or assist participation in education, training or career guidance);
 - (vi) railway services;
 - (vii) services to develop or award educational or vocational qualifications;
- (i) persons who opt or agree to be subject to the imposition of duties.

Duties imposed in relation to paragraph (b) are limited to duties in respect of services to the public that are provided under an agreement or in accordance with arrangements made with a public authority.

Duties imposed in relation to paragraph (h) are limited to duties in respect of the services mentioned (and connected services).

Matter 20.2 is about the freedom of persons who wish to use the Welsh language to do so with one another, and includes any limitations upon that freedom.

Article 4 inserts a provision that modifies paragraph 6(2) of Part 2 of Schedule 5 to the 2006 Act to add sections 35(1), 78 and paragraph 8(3) of Schedule 2 to the list of sections of the 2006 Act which may be modified by Assembly Measure or by subordinate legislation made under a Measure.

Article 5 inserts provision that modify paragraph 7 of Part 3 of Schedule 5 to the 2006 Act. Paragraph 7 is renumbered as 7(1) and a new sub-paragraph 7(2) is inserted. The new sub-paragraph 7(2) provides that Part 2 will not prevent a provision of an Assembly Measure relating to matters 20.1 or 20.2 from conferring or imposing, or conferring power by subordinate legislation to confer or impose, any function on a Minister of the Crown if the Secretary of State consents to that provision, but also provides that such functions may not be enforced against Ministers of the Crown by means of criminal offences.

A full regulatory impact assessment has not been prepared for this Order as no impact on the private or voluntary sectors is foreseen.

MEMORANDUM FROM THE WELSH ASSEMBLY GOVERNMENT

CONSTITUTIONAL LAW: DEVOLUTION, WALES

The National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009

Proposal for a Legislative Competence Order on the Welsh Language

Introduction

1. This Memorandum has been prepared and laid in accordance with Standing Order (SO) 22.14. It sets out the background to the provisions in the attached government proposed Legislative Competence Order which would confer additional legislative competence upon the National Assembly for Wales. It is laid in accordance with SO 22.13 and explains the scope of the power requested.
2. The constitutional context to this request is set out by the Government of Wales Act 2006 (“the 2006 Act”) and the UK Government’s policy. The UK Government’s White Paper “Better Governance for Wales” published in June 2005 set out the UK Government’s commitment to enhance the legislative powers of the National Assembly for Wales, as a democratically elected institution with its own detailed scrutiny procedures.
3. Section 95 of the 2006 Act empowers Her Majesty, by Order in Council, to confer competence on the National Assembly for Wales to legislate by Assembly Measure on specified matters. These matters may be added to Fields within Schedule 5 to the 2006 Act. Assembly Measures may make any provision which could be made by Act of Parliament (and therefore can modify existing legislation and make new provision), in relation to matters, subject to the limitations provided for in Part 3 of the 2006 Act. An Order in Council under Section 95 of the 2006 Act is referred to as a Legislative Competence Order (“LCO”) in this memorandum.

4. Matters may be inserted into the fields contained in Schedule 5 to the 2006 Act, by either an Act of Parliament or an LCO, approved by the Assembly and both Houses of Parliament. The latter route enables the Assembly to initiate the process for conferral of such competence, via an LCO.
5. The proposed LCO would confer further legislative competence on the Assembly, in the field of the Welsh Language (field 20 within Schedule 5 to the 2006 Act). [Attached at Annex A is a copy of Schedule 5 showing the legislative competence that the Assembly has acquired to date].
6. New legislative powers in respect of the specified 'matters' will enable the Welsh Assembly Government, Assembly Members and Assembly Committees to bring forward proposals for legislation, in the form of Measures. These Measures will be subject to thorough scrutiny and approval by the Assembly.

Background

7. The Welsh language is one of the defining characteristics of the UK's cultural heritage and the everyday lives of Welsh speakers in Wales are affected by its expansion or decline. The 2001 census indicated that nearly 600,000 people now speak and use the language. This represents a slight increase on previous figures following more than a century of decline. However, even though the language has enjoyed something of a renaissance over recent years, its sustainability as a living language of our communities remains under threat. There is a general acceptance that the action taken by public, private and voluntary agencies – along with the growth in Welsh-medium education – can play a key role in securing its health and vitality. The purpose of the proposed LCO is to ensure that the National Assembly for Wales has the necessary legislative competence in relation to the Welsh language to enable these actions to be built on in the future.
8. The Welsh Assembly Government's National Action Plan for a Bilingual Wales, *Iaith Pawb* 2003, stated that it wanted Wales to be a truly bilingual nation. This was not defined as implying that everyone in Wales should be able to speak both Welsh and English. It was defined as a country where people can choose to live their lives through the medium of either Welsh or English, and where the presence of the two languages is a visible and audible source of pride and strength. *Iaith Pawb* reflected what has been the policy of successive governments – at Wales and UK level – to support and encourage the use of the language in all aspects of life in Wales. The scope of the proposed LCO reflects this approach to ensure that the language can continue to be a prominent and vibrant part of people's everyday lives.
9. The Welsh Assembly Government also recognises that members of the public in Wales can still face inconsistencies and difficulties in accessing

services through the medium of Welsh. In many areas mechanisms for delivering services to the public in Wales have changed since 1993. The framework set by the Welsh Language Act 1993 does not enable these changes to be taken into account in a consistent way. Legislative competence in relation to promoting and facilitating the use of the Welsh language in Wales would enable the Assembly to bring the legislative framework up to date and provide a consistent basis for improving access to services through the medium of Welsh.

Current legislative framework

10. Successive UK Governments have recognised that legislation has a part to play in promoting and facilitating the use of the Welsh language. The Welsh Courts Act 1942 conferred limited rights upon any party or witness to use the Welsh language in courts in Wales where a person would otherwise be under a disadvantage by reason of his natural language of communication being Welsh. The Welsh Language Act 1967 conferred on any party, witness or other person an absolute right to use the Welsh language in the courts (subject to giving prior notice), and also empowered Ministers to prescribe Welsh or bilingual versions of statutory forms.
11. The most recent and substantial statutes in relation to the language are the Welsh Language Act 1993 ("the 1993 Act") and the 2006 Act (which contains sections that relate to the use of the Welsh language by the Assembly, the Assembly Commission and the Welsh Assembly Government).
12. The 1993 Act is founded on two principles - the need to promote and facilitate the use of the Welsh language and the treatment of the English and Welsh languages on the basis of equality.
13. The 1993 Act established the Welsh Language Board (latterly an Assembly Government Sponsored Body), upon which the function of promoting and facilitating the use of the Welsh language is conferred.
14. The 1993 Act also lists certain categories of bodies as public bodies upon whom a requirement to prepare Welsh language schemes can be placed. It gives the Welsh Ministers the power to add further 'persons' to the list by Order, where it appears to them that those persons match the criteria set out in the 1993 Act.

Citizen-centred government

15. Much has been achieved under the auspices of the 1993 Act but there remains plenty of scope to improve the legislative framework under which public agencies operate and to clarify for Welsh speakers what level of service they can expect to receive. This is very much in line with the Welsh Assembly Government's commitment to a citizen centred model of improving public services. Following the

recommendations of Sir Jeremy Beecham's Review of Local Service Delivery (2006) the Welsh Assembly Government is investing in a programme of action to deliver efficient, effective, citizen centred public services. The *One Wales* coalition agreement commits the Government to putting in place a strategy for the continual improvement of local services through a Public Service Improvement Programme. Responding to the particular needs of Welsh speaking citizens is an integral part of this programme.

The need for change and the One Wales commitments

16. The 1993 Act – and in particular the power for the Welsh Language Board to require public bodies to prepare Welsh language schemes - effectively recognised that there are particular challenges surrounding the delivery of the appropriate level of Welsh language services when 20% of the population speaks Welsh, and that proportion varies from over 80% to less than 10% from one local authority area to another. Consistency of approach therefore lies in the consistent application of the principle of reasonable and practicable provision. Responding to these challenges requires organisations to make the most effective use possible of their resources, including Welsh speaking staff and ICT. Since the introduction of the 1993 Act much has been done to improve the quality of services provided to Welsh speakers. The proposed LCO would provide competence to enable the Assembly to revisit and update the legislative framework established by the 1993 Act to address specific shortcomings that have become apparent during the intervening period.
17. The competence sought under the proposed LCO would, for example, allow the Assembly to legislate to achieve greater clarity for citizens with regard to the categories of bodies that can be required to produce a Welsh language scheme.
18. The need for greater clarity has arisen in part from changes to the structure of certain key public services and as a consequence of the emergence of new service delivery mechanisms which have resulted in the public face of some sectors and certain key services falling outside the scope of the 1993 Act. The Welsh Ministers have the power to specify some bodies from within these sectors under the 1993 Act, but not all. This creates the potential for an uneven playing field within these sectors and a lack of clarity about service expectations for end users.
19. The 1993 Act also confers powers on the Welsh Language Board to investigate alleged breaches by public bodies of their respective Welsh language schemes, and to report on its investigations. Failure to provide information in support of investigations, however, is not enforceable.

20. Furthermore the 1993 Act only provides a single formal mechanism for investigating breaches of Welsh language schemes and does not provide for any graduated alternatives. One mechanism for investigating breaches with regard to commitments made in Welsh language schemes may not be appropriate in all cases, and may not achieve the right results for all users. The Welsh Ministers believe that arrangements should be simple to understand and operate and allow for appropriate and proportionate methods for dealing with complaints and addressing areas of concern.
21. Policy responsibility for many of the public services to be encompassed by the proposed LCO has been devolved to the Welsh Ministers. A key principle underpinning these proposals, however, is that citizens should have a clear understanding of the level of Welsh language services they can expect to receive irrespective of the nature of the public provider. As is the case at the moment, therefore, it is proposed that government departments responsible for non devolved services would have a crucial contribution to make. Agencies such as Job Centres, Her Majesty's Revenue and Customs and the Driver and Vehicle Licensing Agency have been at the forefront of the development of Welsh language services to date.
22. Beyond addressing the weaknesses that have emerged in the system established by the 1993 Act, the Welsh Assembly Government's *One Wales* programme of Government included a commitment to seek legislative competence to enable it to bring forward Assembly Measures to confirm official status for both Welsh and English, linguistic rights in the provision of services and the establishment of the post of Language Commissioner.
23. The Welsh Ministers currently have functions in relation to the Welsh language, but these are limited. Under the 1993 Act, the Welsh Ministers' functions include the power to appoint members of the Welsh Language Board, the power to adjudicate where the Welsh Language Board and 'public bodies' fail to reach agreement on matters in relation to Welsh language schemes, and the power to add to the list of 'public bodies' that may be required to produce Welsh language schemes. Under section 61(k) of the 2006 Act, the Welsh Ministers may do anything they consider appropriate to support the Welsh language (although this does not extend to proposing or making legislation). However the National Assembly for Wales does not have any legislative competence with which to alter the legislative framework so as to respond to changing needs and circumstances in the manner envisaged in the *One Wales* programme of Government.

Scope

24. It is proposed that two matters be inserted into Field 20: the Welsh Language of Schedule 5 to the Government of Wales Act 2006, to

enable the Assembly to legislate on these issues by way of an Assembly Measure.

25. Article 3 of the proposed LCO would insert a new Matter 20.1 into Field 20. This matter would echo, and build upon, the principles that underpin the 1993 Act, namely to promote and facilitate the use of the Welsh language; and the treatment of the English and Welsh languages on the basis of equality. This could include, for instance, marketing, providing support for organisations, developing ICT tools and so forth within any given sector, echoing and building on the range of functions carried out, at present, by the Welsh Language Board.
26. This matter does not extend to the use of the Welsh language in the courts. The relevant functions relating to the use of the language in courts under the 1993 Act are currently exercised by the Lord Chancellor, and the proposed LCO does not seek competence to modify the position.
27. Matter 20.1 makes it clear, however, that the Assembly would not be permitted to impose duties under this matter on persons other than those falling within the categories listed in paragraphs (a) to (i). The proposed LCO would provide competence, for example, permitting the Assembly to impose duties on persons falling within these categories requiring particular services to be provided bilingually to the public in Wales. Provisions contained in section 94(5) of the 2006 Act would permit the Assembly to provide appropriate remedies for a breach of such duties, and the proposed LCO does not seek to extend those provisions in any way.
28. Section 6(1)(o) of the Welsh Language Act 1993 gives the Welsh Ministers the discretion to specify as public bodies, persons which appear to them to meet defined criteria. The Welsh Ministers are provided with a discretion as to the persons who can become eligible to be required to produce a Welsh Language Scheme. It would not be possible in an LCO to provide the Assembly with a similar element of discretion to decide upon the categories of persons in respect of whom duties could be imposed through a future Measure as the Assembly cannot be permitted in an LCO to determine the limits of its own competence. Accordingly, matter 20.1 establishes clear categories of persons in respect of which the National Assembly will be able to legislate to impose duties in relation to the Welsh language. The categories of persons listed under matter 20.1 is tightly drawn to reflect existing bodies which fall within the scope of section 6(1) of the 1993 Act together with persons from certain sectors which currently fall outside the scope of the 1993 Act, but which provide key public services. The categories as drawn provide the Assembly with the scope to deal with changes in infrastructure and to provide for a level

playing field in specified sectors without which the flexibility currently permitted under the 1993 Act would be lost. It will be for future proposed Assembly Measures and subordinate legislation made under those Measures to specify the bodies or persons upon whom duties will or may be imposed.

29. Paragraph (a) confers competence on the Assembly to legislate by Measure to impose duties on 'public authorities'. Public authorities is defined to include all public authorities within the meaning of the Human Rights Act 1998, and would include local authorities, local health boards etc. A similar definition is used in several UK statutes, including the Anti-terrorism, Crime and Security Act 2001, the Climate Change and Sustainable Energy Act 2006 and the Identity Cards Act 2006, and the same mechanism has also already been used in The National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008.
30. Where public bodies outsource the delivery of services to the public, the Assembly would be able to legislate under paragraph (b) to place duties in relation to the Welsh language on contractors, but only in relation to the services provided in Wales under the outsourcing arrangements. Accordingly, any future Measure could not impose duties in respect of the Welsh language in relation to any of a contractor's other activities (unless they fell under paragraphs (a) to (i) for other reasons).
31. Paragraph (b) is based on the discretion given to the Secretary of State (since transferred to the Welsh Ministers) under paragraph 6(1)(o)(ii) of the 1993 Act to specify as public bodies, persons carrying out activities conducted under an agreement or in accordance with arrangements made with a public body or servants or agents of the Crown.
32. Paragraph (c) would confer competence on the Assembly to legislate to impose duties in relation to the Welsh language on bodies which have been established by enactment (for example, the Big Lottery Fund, the Electoral Commission and S4C), or by prerogative instrument (for example, the National Library for Wales, the Sports Council for Wales and the British Council).
33. Paragraph (d) would confer competence on the Assembly to legislate to impose duties on bodies that have functions of providing services to the public conferred or imposed upon them by an enactment. This would include, for example, the Royal Commission on the Ancient and Historical Monuments of Wales, Consumer Focus and Investors in People UK.
34. 'Functions' is a term widely used in the 2006 Act to encompass both powers and duties. The principle behind this is that the only persons that would fall within the competence proposed by paragraph (d) are those upon whom Parliament has already conferred functions of

providing services to the public. The competence will only extend to legislating in relation to bodies or persons with functions relating to Wales.

35. Paragraph (e) would give the Assembly the competence to legislate to impose requirements in relation to the Welsh language on persons providing services to the public in Wales who are in receipt of public money amounting to, or above, a threshold of £200,000 in a financial year, either provided directly by the Assembly, the Welsh Ministers, the UK Parliament, Ministers of the Crown or from an institution of the European Communities, or indirectly by or from these bodies (for example, through local authorities or Assembly Government Sponsored Bodies). The underlying principle in all these cases is that persons benefiting from substantial public funds should qualify to fulfil public responsibilities. Bodies falling within the competence proposed by paragraph (e) include those which are national in character, such as the Wales Millennium Centre, the Welsh National Opera and the National Botanic Garden of Wales.
36. Paragraph (e) would also confer competence on the Assembly to legislate to impose duties on persons in relation to their activities in Wales if they are in receipt of monies amounting to, or above, £200,000 in a financial year provided by virtue of an enactment, for example, the BBC, which receives licence fee monies under the Communications Act 2003.
37. Persons who receive money directly or indirectly from the National Assembly, the Welsh Ministers, the UK Parliament, Ministers of the Crown or any of the European Institutions by way of payment for services or goods supplied by them will not be included under paragraph (e) because of having received those monies.
38. Paragraph (f) proposes to confer competence on the Assembly to legislate to impose duties on bodies engaged in the regulation of a profession or industry, or other sphere of activity of a similar nature to a profession or industry in relation to their activities in Wales. A 'similar sphere of activity' would include, for example, bodies which regulate the ability of a member of the public to earn a livelihood in a given sector, discipline or area of activity. Persons or bodies which fall within competence under paragraph (f) will include bodies such as the Central Nursing and Midwifery Council, the General Dental Council and so forth.
39. Paragraph (g) would enable the Assembly to legislate to impose requirements in relation to the Welsh language on social landlords. 'Social landlords' is defined by reference to the definition in field 11, proposed to be inserted into Schedule 5 of the Government of Wales Act by matter 11.1 contained in the National Assembly for Wales (Legislative Competence) (Housing) Order 2009. A copy of the definition is attached at Annex B.

40. Paragraph (h) would enable the Assembly to legislate to impose duties upon persons providing the public in Wales with certain listed services, as well as related services. This covers key services provided to the public as well as incidental services. The infrastructure of certain sectors and changes in the way public services have been delivered have meant that some public facing parts of certain sectors have fallen outside the scope of the 1993 Act. This paragraph is designed to give the Assembly sufficient flexibility to be able to legislate to impose duties on bodies even if the public interface of key public services changes over time.
41. The sub-paragraphs within paragraph (h) list the services proposed to fall within competence. These services include the utilities (i and ii), postal services and post offices (iii), telecommunication services (iv), education, training or career guidance (including services to encourage, enable or assist participation in education, training or career guidance, such as UCAS, Sector Skills Councils and Careers Wales) (v), railway services (including passenger rail companies, Network Rail and rail enquiries and ticketing services) (vi), and exam boards (vii).
42. There is an important caveat in relation to paragraph (h) that proposes to limit the Assembly's competence in this context - the Assembly would only be able to legislate to impose duties on service providers in respect of the services mentioned, and then, only where they are delivered in Wales, and not in respect of their other functions or activities (unless they otherwise fall within the competence conferred on the Assembly by paragraphs (a) to (g) and (i)).
43. Finally, paragraph (i) of matter 20.1 would confer competence on the Assembly to legislate to impose duties on persons who volunteer or enter into an agreement to subject themselves to such requirements. This would provide for bodies to continue to opt-in to Welsh language schemes or successor mechanisms, in much the same way that bodies opt-in to Investors in People and other such standards.
44. The second matter proposed to be inserted into Field 20 by the LCO (matter 20.2), would provide the Assembly with the competence to legislate in relation to the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on such a freedom, which could include, for example, Health and Safety limitations where that was justified). The protection afforded under current legislation is limited. This matter would enable the Assembly to legislate to protect individuals' freedom to speak Welsh with each other.
45. This matter would not require bodies to take positive steps to facilitate the use of the Welsh language between individuals, merely to respect the freedom to use the language.

Effect of other provisions in the 2006 Act

46. The effect of the proposed LCO needs to be considered in the context of the overall provisions of the 2006 Act.

Geographical limits of any Assembly Measure

47. The proposed LCO would permit the Assembly to legislate by Measure in relation to the use of the Welsh language in Wales.
48. Article 2 of the proposed LCO would ensure that, if the Assembly was minded to repeal any provisions of the 1993 Act, any such repeal would have the same extent as the original provision. This would permit the Assembly, by Measure, to repeal any provision of the 1993 Act which extends beyond the competence conferred upon the Assembly by the 2006 Act (i.e. where the 1993 Act extends to Scotland or Northern Ireland). This article is limited to the repeal of provisions and would not permit the making of any 'new' legislation. It would, in any event, be subject to the requirements set out in the 2006 Act to seek the consent of the Secretary of State if any repeal would lead to the removal or modification of a function of a Minister of the Crown.

Modifications to the Government of Wales Act 2006

49. Article 4 proposes to provide competence for the Assembly to legislate by Measure to amend sections 35(1), 78 and paragraph 8(3) of Schedule 2 of the 2006 Act in order to be able to legislate as regards itself, the Welsh Ministers or the Assembly Commission. This would allow the Assembly to place those bodies on the same footing as other public bodies.
50. The ability to amend these sections is required in order to allow the Assembly the flexibility to avoid having a multi layered system in the future; the aim being to provide the end user with as straightforward and effective a system as possible. To provide an example, section 78 states that the Welsh Ministers must adopt a Welsh language scheme. If the Assembly was minded to legislate to move away from Welsh language schemes then, without the competence to amend section 78, the Welsh Ministers would be the only persons left operating under the 'old' system.

Minister of the Crown functions

51. The Welsh Ministers intend to require Crown bodies, including Ministers of the Crown, to comply with broadly the same duties as all other public bodies, where the Secretary of State consents. This will require a limited amendment to the 2006 Act, in relation to Field 20: the Welsh language only. The proposed amendment will permit the Assembly to confer or impose new duties or powers on Ministers of the

Crown, but only with the consent of the Secretary of State, and not so as to make Ministers of the Crown liable to punishment for criminal offences.

52. Government Ministers, during the passage of the 1993 Act, gave an undertaking that Crown bodies, including Ministers of the Crown, would prepare Welsh language schemes. Consequently, to allow the Assembly to make provisions for the equitable and consistent application of functions across all public bodies, Article 5 of the proposed LCO would modify paragraph 7 of Part 3 of Schedule 5 to the 2006 Act to confer competence on the Assembly to legislate to confer or impose duties upon Ministers of the Crown in relation to the Welsh language, with the consent of the Secretary of State.
53. Currently, paragraph 7 of Part 3 of Schedule 5 to the 2006 Act allows a provision of an Assembly Measure to remove or modify functions of a Minister of the Crown with Secretary of State consent, but no such provision exists to allow conferral or imposition of functions. Article 5 of the proposed LCO replicates the provisions of the current paragraph 7 in a new sub-paragraph 7(2), to allow a provision of a future Assembly Measure to confer or impose functions on Ministers of the Crown in respect of the Welsh language with the Secretary of State's consent. This Article is required in order to give the Assembly the competence to be able to avoid a multi layered system from existing in the future, where Ministers of the Crown would provide a different level of service to the remainder of the public sector. Article 5 would allow the Assembly the flexibility to be able to provide a consistent and straightforward system across the public sector.
54. The proposed LCO in itself does not seek to modify or remove any functions of a Minister of the Crown. By virtue of Part 2 and Part 3 of Schedule 5 to the 2006 Act, the Assembly may not by Measure alter the functions of a Minister of the Crown without the consent of the Secretary of State. In relation to any future proposals that may impact on Minister of the Crown functions, the appropriate UK Government Departments will be consulted, and agreement will be sought to any future proposals to change or modify such functions.

Conclusion

55. For the reasons outlined above, the Welsh Assembly Government wishes to propose that legislative competence should be conferred on the National Assembly for Wales in relation to the Welsh language, in the terms of the proposed draft LCO attached.

January 2009

Annex A

For the full Explanatory Memorandum and Annex see the Committee's website <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10.htm>

Consultation Letter

Pwyllgor Deddfwriaeth Rhif 5

Legislation Committee No. 5



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff CF99 1NA

12 February 2009

Dear Colleague

Public Consultation (closing date 20 March 2009)

The Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009

I am writing to invite you to submit written evidence to the Committee on the proposed *National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009* ('the proposed Order') by Friday 20 March 2009.

The proposed Order was laid before the Assembly on 2 February 2009, by the Minister for Heritage, Alun Ffred Jones AM and has been referred to the National Assembly for Wales' Legislation Committee No. 5 for detailed consideration. The Committee is due to report its views on the proposed Order during the first half of the summer term.

The Committee's work will focus on considering whether the Assembly should have the power, in principle, to legislate by Measure in the area identified in the proposed Order:

- to promote and facilitate the use of the Welsh language, including imposing duties on certain categories of persons to provide particular services bilingually to the public in Wales; and
- the freedom of persons to communicate in Welsh with each other.

At its first meeting on 10 February 2009, the Committee agreed the scope of its scrutiny of the proposed Order, considering in particular:

- (i) the general principles of the proposed Order and whether legislative competence in the area identified in Matters 20.1 and 20.2 be conferred on the Assembly; and

(ii) whether the terms of the proposed Order are too broadly or too narrowly defined.

As is the general practice of legislation Committees when considering proposals for Legislative Competence Orders, the Committee will avoid reviewing existing policies in this area, or engaging in detailed discussions on the specific proposals for Measures which could be brought forward as a result of the conferral of legislative competence, for example, views relating to how Measures should be implemented. This will be a matter for scrutiny by the Assembly at a later date.

Further information on the proposed Order, its accompanying Explanatory Memorandum, details of the Committee and Guide to the Legislative Process can be found on the Legislation pages of the Assembly's website (Business / Legislation / LCOs / No.10 - Welsh Language):

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10.htm>

Anyone with an interest in the proposed Order is invited to submit evidence on it, to help inform the Committee's work. In preparing your submission, it would be helpful if you could address the questions posed by the Committee - please see **Annex 1**. Details of how to respond are set out in **Annex 2**.

If you have any queries about the consultation or the work of the Committee, please contact the Clerk, Anna Daniel (tel. 029 2089 8144), or Olga Lewis, the Deputy Clerk (tel. 029 2089 8154).

Mark Isherwood AM
Chair
Legislation Committee No.5

Legislation Committee No.5, National Assembly for Wales

Consultation on the Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009

The Committee has launched a general consultation focusing on three key questions in relation to the Order. The Committee is also seeking views on more detailed questions in relation to the scope of the proposed Order. Please respond in the way that you feel is most appropriate to your level and area of interest in the proposed Order.

General Consultation:

We want to hear your views on whether the National Assembly for Wales should be able to make laws in relation to the Welsh language.

1. Should the National Assembly for Wales be able to make laws on the promotion and use of the Welsh language? [See also questions 4 and 5, 11 below].
2. Should the National Assembly for Wales be able to make laws about which services the public should be able to receive bilingually? [For more detailed consideration of this aspect, see questions 6 - 9, 11 below].
3. Should the National Assembly for Wales be able to make laws on the freedom of persons to use the Welsh language with each other? [See also question 10 below].

Detailed consultation:

4. What are your views on the general principle that legislative competence in the area identified in Matters 20.1 and 20.2 be conferred on the Assembly? i.e.
 - Matter 20.1: Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality
 - Matter 20.2: Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on it).
5. The Explanatory Memorandum states that Matter 20.1 would echo and build on the principles that underpin the Welsh Language Act 1993 and would allow the Assembly to legislate on the range of functions carried out at present, by the

Welsh Language Board, and to build on these functions. Do you agree that it will allow the Assembly to do this? If not, how should it be amended?

6. What are your views on the scope of the proposed Order with respect to the categories of persons on whom it would allow the Assembly to impose duties to provide particular services bilingually to the public e.g. is it too narrowly or broadly drawn (Matter 20.1 (a) - (i))? Please indicate clearly to which sub-section(s) your comments relate i.e. (a) - (i) and any particular sub-sub-sections under (h).

7. Is the definition used for "public authorities" for this Matter appropriate ("each public authority within the meaning of section 6 of the Human Rights Act 1998")? If not, what definition should be used and why?

8. Matter 20.1 would allow duties to be imposed on "telecommunications services" and "postal services and post offices" (Matter 20.1 sub-section (h)(iii) and (h)(iv)). Are the definitions used for "postal services", "telecommunication services" under the "Interpretation of this field" section in the proposed Order necessary and appropriate? If not, how should they be re-drafted and why?

9. In relation to Matter 20.1 sub-section (e) - persons providing services to the public who receive public money amounting to £200,000 or more in a financial year", and includes "moneys made available directly or indirectly":

(i) Is it necessary to set out the definition of "public money" in the propose Order? If so, is it appropriate (as set out under "Interpretation of this field")?

(ii) Duties would only be imposed on the recipients of more than £200,000. Is £200,000 the right threshold for the assembly to have legislative powers?

10. Is the scope of Matter 20.2 appropriate ("provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on it)")? Will it allow the Assembly to legislate in future to implement the policy proposal as outlined in the Explanatory Memorandum?

11. What are your views on Articles 4 and 5 of the proposed LCO which deals with the application of the proposed LCO to Crown bodies?

12. Are there any other issues which would have implications for the effectiveness of any future Measures, because the proposed LCO is insufficiently broad? If so, can you suggest how the proposed LCO would have to be broadened to address these issues?

How to Respond to this Consultation

If you would like to respond to the consultation, please keep the following in mind:

- Your response should be as succinct as possible. Please reference your response using the title applied below.
- Please indicate whether you are responding on behalf of an organisation, or as an individual.
- The National Assembly normally makes responses to public consultation available for public scrutiny, for example through the Assembly's website, and they may also be seen and discussed at Committee meetings. Normally the name and address (or part of the address) of its author are published along with the response. **If you do not want your response or name and address (or part of the address) published it is important that you specify this clearly to us in writing at the end of your submission.**

In order to reduce the amount of paper used in this consultation exercise, please submit a response electronically wherever possible by completing and emailing it to:

legislationoffice@wales.gsi.gov.uk

Alternatively, you can post your response (on disk or in hard copy) to:

Legislation Committee No. 5
Legislation Office
National Assembly for Wales
Cardiff Bay
CF99 1NA

Please entitle your email or submission: *"Consultation LC 5 (Welsh Language LCO)"*.

Submissions should be received by Friday 20 March 2009. It may not be possible to take into account responses received after this date.

The Committee welcomes contributions in English and Welsh. If you are interested in being contacted as part of any future consultation in this area, please indicate this in your response.

If you have any queries, please contact the Clerk, Anna Daniel (tel: 029 2089 8144), or Olga Lewis, the Deputy Clerk (tel.: 029 2089 8154).

Have your say

We want to hear your views on whether the National Assembly for Wales should be able to make laws:

1. on the promotion and use of the Welsh language?
2. on which services the public should be able to receive bilingually?
3. on the freedom of persons to use the Welsh language with each other?

legislationoffice@wales.gsi.gov.uk

Closing date for the consultation is 20 March 2009.

For more information visit www.assemblywales.org

List of Written Evidence

Responses from Organisations

Responses	Organisations
IG1(o)	Salvation Army
IG2(o)	Welsh Language Board
IG3(o)	Stonewall Cymru
IG4(o)	Mentrau Iaith Cymru
IG5(o)	CYDAG
IG6(o)	Federation of Small Businesses
IG7(o)	West Wales Chamber of Commerce
IG8(o)	Urdd Gobaith Cymru
IG9(o)	Welsh Language Society
IG10(o)	CBI
IG11(o)	Mudiadau Dathlu'r Gymraeg
IG12(o)	South Wales Chamber of Commerce
IG13(o)	Llanedi Community Council
IG14(o)	Central Monmouthshire Rural Forum
IG15(o)	Merched y Wawr
IG16(o)	Welsh Local Government Association
IG17(o)	City and County of Swansea
IG18(o)	Wales Council for Voluntary Action
IG19(o)	Britton Town Ferry Council
IG20(o)	Bagillt Community Council
IG21(o)	Llantrisant Fawr Community Council
IG22(o)	North Wales Chamber of Commerce
IG23(o)	National Rail Enquiries
IG24(o)	Arriva Trains
IG25(o)	Institute of Directors
IG26(o)	Anonymous
IG27(o)	Menter Iaith Ceredigion
IG28(o)	Royal Mail Group
IG29(o)	The Presbyterian Church of Wales
IG30(o)	Breast Cancer Care Cymru
IG31(o)	Menter Iaith Sir Benfro
IG32(o)	Angelsey County Council
IG33(o)	Wales TUC
IG34(o)	Bishops of the Church in Wales
IG35(o)	The Chartered Institute of Marketing
IG36(o)	Mentrau Iaith Cymru
IG37(o)	Parents for Welsh Medium Education
IG38(o)	National Childminding Association
IG39(o)	Abergele Town Council
IG40(o)	Carmarthenshire County Council / Cyngor Sir Gâr
IG41(o)	British Gas
IG42(o)	Community Housing Cymru

IG43(o)	Powys Association of Voluntary Organisations
IG44(o)	Consumer Focus Wales / Llais Defnyddwr Cymru
IG45(o)	UCAC
IG46(o)	Network of Welsh language officers in Wales
IG47(o)	Bridgend County Borough Council
IG48(o)	Mobile Broadband Group
IG49(o)	Ceredigion County Council
IG50(o)	Virgin Media
IG51(o)	The Law Society
IG52(o)	Glyndŵr University Wrexham
IG53(o)	UK Competitive Telecommunications Association
IG54(o)	The Governing Council of the Valuation Tribunal Service for Wales
IG55(o)	BT Cymru
IG56(o)	Powys County Council
IG57(o)	E.ON UK plc
IG58(o)	ACPO Cymru
IG59(o)	Independent Police Complaints Commission
IG60(o)	South Wales Fire and Rescue Authority Equalities Sub-Committee
IG61(o)	Flintshire County Council
IG62(o)	BBC National Trustee for Wales
IG63(o)	Denbighshire County Council
IG64(o)	Scottish Power
IG65(o)	Old St Mellons Community Council
IG66(o)	RNIB Cymru
IG67(o)	S4C
IG68(o)	RWE npower Ltd
IG69(o)	Letter submitted by branches of Merched y Wawr - 67 branches
IG70(o)	Children's' Commissioner Wales

Responses to the consultation can be found at:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10/nafw_lc5-wl_consultation/nafw_lc5_wllco_responses_from_organisations.htm

Consultation Responses – Individuals

IG1(i)	Llewelyn Rhys
IG2(i)	Anonymous
IG3(i)	Mrs L Williams
IG4(i)	Dave Humphreys
IG5(i)	Morwen Rowlands
IG6(i)	Huw Dixon
IG7(i)	Cllr W Gwyn Hopkins
IG8(i)	Regina Evans
IG9(i)	Pete Keohane
IG10(i)	Peter Dutton
IG11(i)	Hywel Evans
IG12(i)	Malcolm Taylor
IG13(i)	Mr B Griffiths
IG14(i)	J A Jones
IG15(i)	Medwyn Roberts
IG16(i)	H. Hughes-Roberts
IG17(i)	R.D Jones and Mererid Jones
IG18(i)	Brian W Baldwin
IG19(i)	Spencer Harris
IG20(i)	Michael Edwards
IG21(i)	Siôn Jones
IG22(i)	Anonymous
IG23(i)	Anonymous
IG24(i)	J. M. Lowe
IG25(i)	A. V Matthews MBE
IG26(i)	Dr David Dalby
IG27(i)	Diane Fontenoy
IG28(i)	Anonymous
*IG29(i)	Message calling for the broadening of the LCO - 210 signatories
IG30(i)	Dr Bruce Griffiths
IG31(i)	Eirian Hughes
IG32(i)	Maggie Sims
IG33(i)	Anonymous
IG34(i)	Miss M Jones, Gwynedd
IG35(i)	P Jones, Llanelli
IG36(i)	Eric George
IG37(i)	Mr M Jackson
IG38(i)	Anonymous
IG39(i)	M. L. Simmons, Chepstow
IG40(i)	Mr and Mrs A Humsden, Montgomery, Powys
IG41(i)	Anonymous
IG42(i)	Huw Jones, Porthaethwy
IG43(i)	Melissa Toombs
IG44(i)	Ffred Ffransis, Sir Gaerfyrddin
IG45(i)	Lionel G Roberts Bennetto

IG46(i)	Eveline Clarke, Bill Clarke, Edward Lofts and Carolann Lofts
IG47(i)	Anonymous, Cardiff
IG48(i)	Richard Foster
IG49(i)	Glynne A Tidmarsh, Pembrokeshire
IG50(i)	A. Waring
IG51(i)	Dafydd Chilton
IG52(i)	Peter Johns
IG53(i)	Anonymous
IG54(i)	Emrys Roberts, Flintshire
IG55(i)	L. Parc, Gwynedd
IG56(i)	Liz Perry
IG57(i)	Anonymous
IG58(i)	Geraint Bevan, Carmarthen
IG59(i)	Richard Hennessey, Wrexham
IG60(i)	Dilys R. Davies
IG61(i)	Gordon W. Triggs
IG62(i)	Iwan Williams (awaiting translation)
IG63(i)	Anonymous (awaiting translation)
IG64(i)	Aled Lewis Evans
IG65(i)	David Geldart
IG67(i)	Roy Edwards
IG68(i)	Anne Jones, Dyffryn Ardudwy
IG69(i)	Robert Lloyd
IG70(i)	Anonymous

Responses to the consultation can be found at:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10/nafw_lc5-wl_consultation/nafw_lc5_wllco_individual-reponses.htm

*IG29(i) The Message was submitted by the following:

Hedd Gwynfor, Pontyberem
Alexander Vaughan-Thomas,
Uxbridge
Lleucu Meinir, Caerdydd
Beryl H Griffiths, Gwynedd
Ieuan Pritchard
Robin Huw Roberts, Ynys Môn
Caryl Parry Jones, Y Bontfaen,
Mererid Jones, Bala
Mr B Griffiths, Miss M Griffiths
(Both On One Email),
Dinbych/Denbigh
John Williams, Gwynedd
Robert Joseph Jones,
Schenectady, Usa

Phil Steele, Ynys Môn
Owain Schiavone, Ceredigion
Anthony Zack Thomas Williams,
Caerdydd
J Roberts, Bangor
Gwenno Dafydd, Ceredigion
Tegau Andrews, Gwynedd
Rhisiart Ap Gwilym, Rhisiart Ap
Gwilym
Eryl Humphries, Eryl Humphreys
Rhys Clyburn, Sheffield
Lyndon Jones, Blaenau Gwent
Arwel Roberts, Gwynedd
Manon Fflur Williams, Rhuthun
Nia Higginbotham, Llandudno

Iwan Gwyn Williams, Rhuthun
Delwyn Tibbott, Caerdydd
Darren John Lewis, Penmain
Bedwyr Davies, Bedwyr Davies
Selwyn Lloyd, Gwynedd
Sian Harris, Caerdydd
Daniel Gwydion Williams,
Pontardawe
Thomas Geraint Marks, Sir
Gaerfyrddin
Tamsin Elizabeth Cathan Davies,
Powys
Rhys Ap Gwilym, Caerdydd
Lowri Jones, Gwynedd
Esyllt Jones, Gwynedd
Rhodri Glyn, Conwy
Catrin Stevens, Abertawe
Gareth Thomas, Gwynedd
Osian Rhys Thomas, Aberystwyth
Gareth Haulfryn Williams,
Gwynedd
Hefin Jones, Caerdydd
Siân Cwper, Gwynedd
Hywel Iorwerth, Caerdydd
Geraint Northam, Gwynedd
Mr Rhys Ap Rhobert, Sir
Gaerfyrddin
Tomos Michael Rogers, Bro
Morgannwg
Gareth Jamie Bevan, Merthyr
Tudful
Sian Howys, Aberystwyth
Glenys Morgan, Ceredigion
Aeddan Ap Garth, Conwy
Mali Llywelyn Lewis, Beo
Morgannwg
Marged Haycock, Aberystwyth
Anna Felicity Roberts, Ceredigion
Owain Llyr Davies, Ceredigion
Ellir Jones, Llanelli
Lewis Robert, Bangor
Sam Sheridan
Michael Payne, Merthyr Tudful
Lowri Angharad Jones, Ynys Mon
Rhian Morgan Ellis
Valerie Wakefield, Ynys Môn
Tegwyn Jones, Ceredigion
Samuel Lloyd Williams, Sir Fynwy
Chris Lewis, Caerdydd
Rhodri Evans, Abertawe

Simon Rees Williams, Sion Rees
Williams
Rhys Ap Trefor, Caerdydd
Dewi Owen Jones, Gwynedd
Timothy Huw Davies, Gwlad Belg
John Pritchard, Wreccsam
Pol Wong, Sir Dinbych
Dr Ian Garth Higginbotham, Conwy
Robin Glyn, Caernarfon
Sion Llewlyn Jones, Gwynedd
Lowri Ifan, Gwynedd
Andrew Evans, Swansea
Dafydd Hywel Evans, Sir Ddinbych
Mirian Llwyd Owen, Caernarfon
William Gwyn Hopkins, Llanelli
Phyl Griffiths, Merthyr Tudful
Dewi Wyn Evans, Penarth
Gwilym Morus, Caernarfon
Rhodri Graham Daniel, Avon
Huw Jones, Ynys Mon
Ioan Teifi, Pencader
Sioned Haf, Sir Gar
Gwawr Evans, Ynys Mon
Huw Morgan Jones, Caerdydd
Alwen Ann Jones, Ceredigion
Roger Lewis Howell, Merthyr
Tudful
Manon Wyn, Gwynedd
Evie Wyn Jones, Gwynedd
Rhys David Jones, Merthyr Tydfil
Eryl Bryn Davies, Caernarfon
Winifred Davies, Ceredigion
Carys James, Ceredigion
Miren Begoña Olaizola, Gwlad Y
Basg
Osian Ap Garthm, Conwy
Pryderi Ap Rhisiart, Gwynedd
C Griffiths, Maesteg
Gethin Lewis, San-Cler
Arwel Wyn Jones, Rhymney
Aled Llion Jones, Llanymddyfri
William H Howells, Aberystwyth
Eifion Hughes, Merthyr Tydfil
Robert Hughes, Treharris
Steffan Rogers, Llanelli
Delyth Morgan-Coghlan, New
Zealand
Steffan Ap Owain, Gwynedd
Gareth Llwyd, Gwynedd
William Paul Maddocks, Caerdydd

Huw Bowen, Abertawe
Cerith Rhys Jones, Sir Gar
Daff Davies, Merthyr Tudful
Randal Isaac, Sir Gaerfyrddin
E. Wyn James, Caerdydd
Alcwyn Deiniol Evans, Bro
Morgannwg
Huw Parry-Evans, Caerdydd
Mared Fflur Ifan, Caerfyrddin
Fflur Gwenllian Roberts, Gwynedd
Anne Loughran, Caerfyrddin
Nest Tudur Evans, Sir Conwy
Morgan Rhys Hopkins, Caerdydd
Elisabeth June Huws, Caerdydd
Eleri David, De Morgannwg
Simon Evans, Caerdydd
Owen Gwilym Jones, Gwynedd
Janet Jones, Gwynedd
Mr Howard Huws, Gwynedd
Ifan Prys Edwards, Aberystwyth
Hazel Charles Evans, Rhydaman
R. Gareth Jones, Pontypridd
Heini Gruffudd, Abertawe
Colin Jones, Sit Y Fflint
Richard Coupe, Ynys Mon
Gerald Coles, Pencader
Sion Britton, Gwynedd
Stephen Edward Lake, Caerdydd
Ffred Ffransis, Pencader
Hefina Roberts, Gwynedd
Malcolm Davies, Ceredigion
Leighton P Cody, Caerdydd
Alison Carden, Gwynedd
Christopher Bailey, Powys
Menna Machreth, Bangor
C. Ciaran
Seran Dolma, Gwynedd
Ifor Glyn Efans, Eryri
Catherine Jones, Llanelli
Rhian Wyn Jones, Gwynedd
Heledd Awen Jones, Sir
Gaerfyrddin
Lowri Angharad Jones, Rhondda
Cynon Taf
Ffion Mair Jones, Rhondda Cynon
Taf
Caryl Davies, Ceredigion
Gwenllian Jones, Sir Gar
Rhian Mair Andrews, Belfast
Geraint Owen Morse, Llundain

Dewi Wyn Owen, Ceredigion
Angharad Griffiths, Caernarfon
Carwen Williams, Ceredigion
Llinos Manon Williams, Gwynedd
Phil Evans, Ceredigion
Elliw Alwen, Conwy
Jen Llywelyn, Ceredigion
Patrick Béchard, Llydaw
Elin Mair Morgan
Sioned Elias Regan Pierce,
Gwynedd
Mair Owen Price, Gwynedd
Sioned Elias Regan Pierce,
Gwynedd
Paulina Maria Bloor, Caerffili
Andrew David Ralph Settatee,
Caernarfon
Dr Rowland Iestyn Daniel,
Aberystwyth
Melanie Davies, Ceredigion
Lowri Johnston, Caerfyrddin
Joseff Phylip Rhys, Casnewydd
Linda Brown, Gwynedd
Gareth Huw Ifan, Maesteg
Angharad Tomos, Penygroes
Nerys Thomas, Bae Colwyn
Gwyndaf Ap Steffan, Caerdydd
Markus A. Wursthorn, Lörrach
Mary Steele, Powys
Gwenno Dafydd
Caren Brown, Gwynedd
Garmon Ap Garth, London
Megan Eluned Jones, Gwynedd
Geoffrey Jones, Sir Ddinbych
Rhys Thomas, Neath Port Talbot
Nia O' Marah, Bethesda
Sara Orwig, Caerdydd
Mair Stuart, Bedwas
Elis Davies, Gwynedd
Hywel Meilyr Griffiths, Ceredigion
Gwen Elis-Parri, Conwy
Einir Sion, Pontypridd
Sion Owain, Sir Ddinbych
Meredydd Owen, Rhct
Lois Angharad Wyn, Gwynedd
Dr D Davies, Caerfyrddin
Branwen Niclas; Gwynedd
Olwen Peris Griffiths, Conwy
Sian Lloyd Roberts
Nia Davies, Caerdydd

Siân Eleri Roberts, Gwynedd
 Omer Williams, Casnewydd
 Mair Angharad Jones, Caernarfon

Gruffydd Williams, Gwynedd
 Elin Wyn Jones, Caerdydd
 Andrew Williams, Caerdydd

Additional Evidence

IG1(a)	Welsh Language Board
IG2(a)	Mentrau Iaith Cymru
IG3(a)	Cwmni Iaith (November 2007), Creating a truly bilingual Wales: Opportunities for legislating and implementing policy (Submitted by Mentrau Iaith Cymru)
IG4(a)	Cymdeithas yr Iaith Gymraeg
IG5(a)	Cymdeithas yr Iaith Gymraeg: Welsh Language Measure 2007
IG6(a)	Celebrating our Language
IG7(a)	Wales Council for Voluntary Action: As good as our words - Good practice guidelines for developing the use of Welsh in the voluntary sector
IG8(a)	Prof Colin Williams, School of Welsh Cardiff University
IG9(a)	Welsh Local Government Association
IG10(a)	Welsh Language Society: The Need For New Legislation, March 2009
IG11(a)	Mobile Broadband Group
IG12(a)	Scottish Power
IG13(a)	Building Society Association
IG14(a)	NatWest, Royal Bank of Scotland Group
IG15(a)	Lloyds Banking Group
IG16(a)	Confederation of Passenger Transport Cymru

Responses to the consultation can be found at:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10/nafw_lc5-wl_consultation/nafw_lc5_wllco_tystiolaeth_ysgrifenedig_ychwanegol.htm

Evidence from Other Countries

IG1(c)	Commissioner of Official Languages for New Brunswick
IG2(c)	An Coimisinéir Teanga (Irish Language Commissioner)
IG3(c)	Catalan Government
IG4(c)	Basque
IG5(c)	Swedish Assembly of Finland
IG6(c)	Province of Fryslân: Frisian Language Atlas
IG7(c)	Mercator: Study on the Devolvement of Legislative Power & Provisions
IG8(c)	Québec: language of work and francization of business
IG9(c)	Québec: FAQs

Responses to the consultation can be found at:

http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-legislative-competence-orders/bus-legislation-lco-2009-no10/nafw_lc5-wl_consultation/nafw_lc5_wllco_tystiolaeth_ysgrifenedig_ychwanegol-2.htm

Schedule of Oral Evidence

Date	Witnesses
24 February 2009	Alun Ffred Jones AM, Minister for Heritage
3 March 2009	Welsh Language Board Mentrau Iaith Cymru
10 March 2009	Federation of Small Businesses West Wales Chamber of Commerce South Wales Chamber of Commerce North Wales Chamber of Commerce Confederation of British Industry Wales
17 March 2009	The Welsh Language Society Celebrating Our Language National Rail Enquiries
24 March 2009	Wales Council for Voluntary Action Welsh Local Government Association
31 March 2009	British Telecom Mobile Broadband Group Scottish Power RWE npower
28 April 2009	Alun Ffred Jones AM, Minister for Heritage
5 May 2009	Government of Catalonia (via video conference) Professor Colin H. Williams, School of Welsh, Cardiff University

Transcripts of oral evidence sessions can be found at:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-lc5-agendas.htm>

Letter from Alun Ffred Jones AM, Minister for Heritage, to Mark Isherwood AM, Chair of Legislation Committee No. 5, dated 3 March 2009

Alun Ffred Jones AC/AM
Y Gweinidog dros Dreftadaeth
Minister for Heritage



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref LFAJ001709

Mark Isherwood AM
Chair
Legislation Committee No. 5
National Assembly for Wales

03 March 2009

Thank you for your letter dated 25 February 2009, and for the opportunity to answer the outstanding questions of Legislation Committee No. 5 on the proposed Welsh language LCO.

The answers to the outstanding questions are given at Annex A. Annex B gives a note on the interpretation of 'services to the public'.

I look forward to appearing before Committee again.

Alun Ffred Jones AC/AM
Y Gweinidog dros Dreftadaeth/Minister for Heritage

Annex A Outstanding questions from legislation Committee No. 5

1. What is expected of Crown bodies under the proposed LCO that cannot be delivered under current legislation?

Under the Government of Wales Act 2006, any Assembly Measure can modify existing functions of a Minister of the Crown, or remove them, provided the Secretary of State consents; but it cannot – as Schedule 5 currently stands – confer or impose new functions on a Minister of the Crown.

Article 5 of the proposed legislative competence order provides for a limited amendment to paragraph 7 of Part 3 of Schedule 5 to the Government of Wales Act 2006, but only in relation to Field 20: the Welsh language.

As paragraph 51 of the explanatory memorandum to the proposed LCO explains this would enable the National Assembly to legislate to “require Crown bodies, including Ministers of the Crown, to comply with broadly the same duties as all other public bodies, where the Secretary of State consents”.

The nature of any duties which the National Assembly may confer or impose, subject to approval of the proposed LCO, would be a matter for an Assembly Measure.

This provision would enable the National Assembly to legislate to formalise the existing approach adopted by Ministers of the Crown. When the Welsh Language Bill was passing through the House of Lords in 1993, the Government of the day undertook to ensure that government departments and Crown bodies would behave in practice as if the Bill placed formal obligations on them.

2. Why are Ministers of the Crown proposed to be exempt from criminal enforcement?

Our approach follows normal convention in these matters, where there is an expectation that the Crown will behave in a way which does not break the law but the Crown will not be subjected to criminal sanctions.

3. Which Secretary of State's consent is required in order for functions to be imposed (the Secretary of State for Wales, or each Ministry's Secretary of State)?

The reference to "the Secretary of State" follows normal drafting convention in these matters. In the same way as references in statute to "the Welsh Ministers" means that, at law, any Welsh Minister may act, references in statute to "the Secretary of State" means that any Secretary of State may lawfully act. It is a matter for the UK Cabinet in each case to decide on who is the appropriate Secretary of State.

4. Why is the consent of the Secretary of State required to impose functions on Ministers of the Crown?

The requirement to obtain the prior consent of the Secretary of State to Measure provisions which affect the functions of UK Government Ministers is consistent with normal practice. For example, the UK Government's Devolution Guidance Note 9 requires that the consent of the Welsh Ministers be obtained to Parliamentary Bill provisions which would affect their functions.

5. Given the discussions that have taken place between officials from the Welsh Assembly Government and Whitehall, in the Minister's opinion, how likely is it that all Secretaries of State will consent to such functions?

I can not answer for the UK Cabinet but I can report that we have had positive discussions with Whitehall departments in advance of publishing the proposed LCO for pre-legislative scrutiny.

6. It would also be helpful if you could clarify whether lottery funding would fall within the scope of "public money" as defined in the proposed Order.

The definition of 'public money' will not include lottery money where that money is made available by one of the statutory lottery distribution bodies to another body. Therefore, bodies in receipt of lottery funding from a statutory, lottery money, distribution body will not come within the scope of the LCO unless, for other reasons, they come within the criteria set out in paragraphs (a) to (i) of proposed matter 20.1.

The definition of 'public money' in the proposed LCO will only include lottery funding in circumstances where, for example, lottery funding is made available to the statutory, lottery money, distribution bodies as this would constitute "moneys provided by virtue of any enactment".

1. Proposed matter 20.1 of the Welsh Language LCO sets out the categories of persons upon whom the National Assembly for Wales may, by Measure, impose duties in relation to the Welsh language.
2. Each one of paragraphs (b) to (e) and (h) of proposed matter 20.1 contains a two stage test which will be applied to determine whether or not persons are within the scope of the National Assembly for Wales’ legislative competence.
3. The first stage of the test in each case entails ascertaining whether or not a person is “providing services to the public”. The second stage of the test in each case establishes whether or not the person has specified characteristics.
4. This two stage approach closely mirrors the approach to the requirements to prepare a Welsh Language Scheme contained in sections 5 and 6 of the Welsh Language Act 1993. Section 6 of the 1993 Act sets out the characteristics that will bring persons within the scope of that Act, permitting the Welsh Language Board to require them to prepare a Welsh Language Scheme. Section 5 of the 1993 Act provides that persons may only be placed under a duty to prepare a Welsh language scheme in certain circumstances which include where persons are providing “services to the public”.
5. The proposed LCO does not contain any definition of “services to the public” in the interpretation provisions to be included in Field 20. This is because the expression already appears in statutory provisions concerning the Welsh language without definition.
6. For example, the expression appears three times in the Welsh Language Act 1993 (sections 3 (Functions of the Board), 5 (Duty of notified public bodies to prepare schemes) and 21 (Persons acting on behalf of the Crown)) and twice in the Government of Wales Act 2006 (section 78 (the Welsh language) and Schedule 2 (Assembly Commission)).
7. In both Acts, the UK Parliament was content to enact legislation containing this expression without the need for any definitions.
8. The proposed LCO will amend the Government of Wales Act 2006 and, in so doing, add a further reference in that Act to the provision of “services to the public”. Inclusion of a definition of the expression in Field 20 – the Welsh language might suggest that a different meaning was therefore intended from that in sections 78 and Schedule 2 of that Act. As the meaning of the phrase in section 78 is clearly intended to reflect the meaning of the expression in the Welsh Language Act, to open up the possibility of such an interpretation would undermine the LCO’s strategy of building upon the approach of the 1993 Act.
9. In the sixteen years since the Welsh Language Act 1993 became law, none of the persons that have been required under that Act to prepare a Welsh Language Scheme has challenged the interpretation of the expression “services to the public” in Court. Although this means that there is no case law on the interpretation of the expression, it demonstrates that the expression has proved workable in practice and has been applied without difficulty.

**Letter from Alun Ffred Jones AM, Minister for Heritage, to Mark Isherwood AM,
Chair of Legislation Committee No. 5, dated 7 May 2009**

Alun Ffred Jones AC/AM
Y Gweinidog dros Dreftadaeth
Minister for Heritage



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Ein cyf/Our ref LF AJ 0040 09

Mark Isherwood AM
Chair
Legislation Committee No. 5
National Assembly for Wales

7 May 2009

Dear Mark,

Thank you for the opportunity to provide evidence to Legislation Committee No. 5 on 28 April 2009. You asked for further information on two issues. The first requesting clarification as to whether or not paragraph (b) of proposed matter 20.1 could cover agreements other than, for example, outsourcing agreements between public bodies and private sector companies e.g. broadcasting licences provided by Ofcom, which are not outsourcing arrangements. The second relating to partnerships.

Licensing arrangements

Paragraph (b) of matter 20.1 of the proposed Welsh language LCO confers competence on the Assembly to impose duties in relation to the Welsh language on persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority.

This paragraph will bring within competence persons providing services to the public for example, under outsourcing arrangements, and competence to legislate under this paragraph is limited to the services provided under the arrangements in question.

Paragraph (b) covers the circumstances where a public authority commissions the delivery of services to the public by another person because the public authority requires the service to be delivered.

Although OfCOM is a public authority for the purposes of the LCO, unless it is acting through its licensing activities to intervene, for example, where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve, its licensing arrangements are unlikely to constitute arrangements or agreements for the purposes of paragraph (b) of proposed matter 20.1 of the draft Welsh language LCO.

Partnerships

Under the competence proposed to be conferred by the Welsh Language LCO, the National Assembly will be able in future to legislate by Measure to impose duties in respect of the

Welsh language on individuals or bodies who match the criteria in paragraphs (a) to (i) of proposed matter 20.1, namely persons who are either exercising functions of a public nature, who are providing services to the public or undertaking particular functions in the contexts set out in paragraphs (b) to (h) or who have opted or agreed to be subject to the imposition of duties.

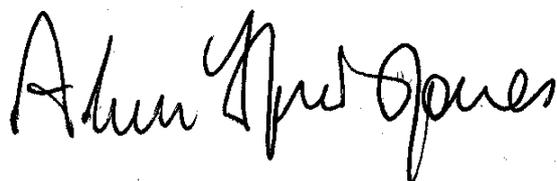
Where there is a “partnership” or joint working arrangement for the exercise of a function of a public nature or delivery of services to the public, as opposed to the functions being exercisable or services delivered by a member of the “partnership” having consulted with the other members, the Assembly may be able to impose duties upon the “partnership” in relation to the Welsh language if the partnership is a “person” in the eyes of the law and also meets the relevant criteria in any of the paragraphs set out in matter 20.1 e.g. the partnership provides services to the public under an agreement made with a public authority.

The relevant legal definition of “person” is set out in section 5 of and Schedule 1 to the Interpretation Act 1978. In that Schedule of that Act, “person” is defined as including “a body of persons corporate or unincorporate”. Joint working arrangements and partnership arrangements may come within this definition depending on their constitution.

There are a number of examples of “partnerships”, joint working or cooperation arrangements between persons engaged, or with a particular interest, in the delivery of services to the public in relation to Wales. Before the Assembly could legislate by Measure to impose duties in relation to the Welsh language on such groupings as groupings, it would need to be satisfied that the grouping was a person in the eyes of the law and was either in its own right a public authority for the purposes of the Human Rights Act 1998, or was providing services to the public in any of the circumstances set out in paragraphs (b) to (h) of the draft Welsh language LCO.

Even if it could not impose duties on such a group, the Assembly could legislate by Measure to impose Welsh language duties on individual members of such a group or partnership who are within its legislative competence. Such individual members could be required to ensure that any activities undertaken by them, or to which they were a party, in connection with the work of the partnership, complied with duties imposed by the Assembly by Measure.

I trust that this information is of assistance to you.

A handwritten signature in black ink, reading 'Alun Ffred Jones'. The signature is written in a cursive, flowing style.

Alun Ffred Jones AC/AM

Y Gweinidog dros Dreftadaeth/Minister for Heritage

Summary of legislative frameworks for lesser used languages in other regions and countries

Country/Region	Language Status	Language Rights or Freedom	Private Sector Duties
Republic of Ireland	The Irish language as the national language is the first official language, while the English language is recognised as a second official language, although provision may be made by law for the exclusive use of either of the languages for official purposes.	The right to speak Irish is enshrined in the Constitution of Ireland, though provisions of the 2003 <i>Official Languages Act</i> in particular refer to a person's right to conduct his or her business before the Houses of the Oireachtas, before Oireachtas committees, sub-committees and joint committees through Irish; and the right to use Irish in any court or in any business with any court.	Certain bodies, organisations or groups may be identified as public bodies if prescribed by the Minister, though there have been no such organisations prescribed in this manner by the Minister to date.
Netherlands (Fryslân)	Within the Netherlands' constitution, there is no special clause on any language, though the General Administrative Law Act meant that the central government formally recognised the bilingual status of the province of Fryslân.	See language status.	Not stated in evidence
Finland	According to the Constitution of Finland, the national languages of Finland are Finnish and Swedish.	According to the Constitution of Finland, an individual has the right to use his or her own language, Finnish or Swedish, before authorities. The public authorities shall provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis.	The legislation does not cover any services provided by private companies nor voluntary organisations, unless they are providing public services via procurement.

Quebec (Canada)	The 1977 Charter of the French Language determines that French is the official language of Quebec.	According to le Secrétariat à la politique linguistique, the Charter of the French language is fully in line with the provisions of the Canadian constitution and the Québec and Canadian charters of rights and freedoms, as they are applied today.	The Charter of the French language gave legal status in making French the normal and everyday language of work, commerce and business.
New Brunswick (Canada)	New Brunswick is Canada's only official bilingual province (English and French). The languages of aboriginal groups are not recognised as official languages of the province.	The Official Languages Act (OLA) has no bearing on the language a person speaks in private or in public. The OLA gives the right to a citizen to communicate and to receive services from specified institutions in their official language of choice.	The OLA is mainly about allowing citizens to communicate and to receive governmental services in their official language of choice and has no bearing on the private or voluntary sector, though third parties offering services on behalf of the province must provide services in French and English.
Catalonia (Spain)	Catalan is the official language of Catalonia, together with Castilian, the official language of the Spanish State.	All persons have the right to use the two official languages and citizens of Catalonia have the right and the duty to know them.	Each individual, in his or her capacity as user or consumer of goods, products and services, has the right to be attended orally or in writing in the official language of his or her choice.
Basque Autonomous Community (Spain)	The Basque language is the official language of BAC, together with Castilian, the official language of the Spanish State.	Whilst Spanish is the official language of Spain and all Spaniards have the duty to know it and the right to use it, there is no corresponding duty to know Basque.	Not clear from evidence.