



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

WRITTEN STATEMENT BY THE WELSH ASSEMBLY GOVERNMENT

Title: The Welsh language Legislative Competence Order

Date: 6 October 2009

By: Alun Ffred Jones, Minister for Heritage

The purpose of this statement is to update Members on the Welsh Assembly Government's proposals to strengthen the Welsh language and secure legislative competence in this field for the National Assembly for Wales.

The LCO process has provided an opportunity for a wide-ranging debate about the role of legislation in safeguarding and promoting the Welsh language. I am pleased that during this process a clear consensus has emerged across all political parties in Wales that there is now a need to update the current legislative framework.

The Welsh Assembly Government's vision is of a truly bilingual Wales where both Welsh and English are recognised as official languages, where Welsh language services are available and well used by the public and where both languages continue to be visible and audible sources of pride to all of the people of Wales.

One Wales sets out the practical steps to which we have committed during the course of this Assembly. At the heart of the programme for Government is the commitment to seek enhanced legislative competence on the Welsh language to enable the National Assembly for Wales to legislate to confirm official status for both English and Welsh, provide for linguistic rights in the provision of services, and establish the post of Language Commissioner.

Pre-legislative scrutiny

As Members are aware the proposed Welsh language LCO, which was published on 2 February, has been scrutinised by Legislation Committee No. 5 at the National Assembly and the Welsh Affairs Committee. The committees published their reports on 5 June and 7 July respectively, and we are grateful for their thought provoking recommendations. Over the summer the Welsh Assembly Government has been engaged in discussions with the UK Government to consider the recommendations of both committees, alongside the evidence which was submitted by stakeholders.

We are now reaching the final stages in the process of obtaining the competence which will allow us to achieve our *One Wales* commitments on Welsh language legislation. Today, before the final draft of the LCO is produced, I would like to take this opportunity to update members on the agreement that has been reached with the UK Government at this point.

Responding to pre-legislative scrutiny

The Welsh Assembly Government is pleased that both scrutiny committees recognise that the National Assembly is the appropriate place to legislate on the Welsh language. This is the view also of the vast majority of stakeholders who submitted evidence to the scrutiny committees.

We are also pleased that both committees recognise the important role of public, private and voluntary bodies in delivering services to the public in Wales, and the key role of rapidly evolving technologies, such as telecommunications services, in promoting and facilitating language use, especially amongst young people.

The scrutiny committees drew similar conclusions in some areas but in other areas there was no clear consensus.

However, the reports of both committees and the evidence of stakeholders have enabled us and the UK Government to revisit the proposed LCO and identify areas where the scope of competence can be changed to incorporate some of the recommendations.

The main recommendation of the Welsh Affairs committee was that the LCO should be redrafted to contain “clear principles against which the Assembly Measures can be tested... [which] might include a test of reasonableness, a test of proportionality, and a consideration of the cost”. The Welsh Assembly Government and the UK Government do not think that conferring competence based solely on such principles and tests would provide the clarity which we are all seeking.

The Welsh Assembly Government has always made clear that the principles of reasonableness and proportionality, which have guided the Welsh Language Board’s approach to Welsh language schemes, should also guide

the formulation of future duties in relation to the language, and has agreed with the UK Government to make this explicit on the face of the LCO. The LCO will provide that duties may be imposed under matter 20.1 on a person only where there is a means for that person to challenge the duties as they apply to that person on the grounds of reasonableness and proportionality.

The main recommendation made by Legislation Committee No. 5 was that in relation to the Welsh Language there should be “the transfer of a broad scope of legislative power to the Assembly”. However, it is also UK Government policy* that a single LCO should not give the National Assembly legislative competence over an entire field in Schedule 5 of the Government of Wales Act (* Better Governance for Wales White Paper). The Minister for Heritage is satisfied that the agreed scope is broad enough to deliver the policy intention as set out in the One Wales agreement.

The Welsh Assembly Government welcomes the agreement of the scrutiny committees that, under paragraph (e), persons in receipt of substantial sums of public money, such as the National Theatre and the Wales Millennium Centre, should come within competence. Concerns have, however, been raised during scrutiny that the threshold set at £200,000 would bring within competence a considerable number of organisations, including many small organisations.

Following discussions with the UK Government it has therefore been decided to raise the minimum threshold to £400,000 to minimise the possibility of bringing small organisations within competence based solely on their receipt of public money.

Legislation Committee No. 5 agreed with the policy intention of the Welsh Assembly Government that duties should not be placed on persons receiving one-off grants. The Welsh Affairs Committee also concluded that having a situation where bodies can move in and out of competence according to one-off grant being given in a particular year does not seem satisfactory.

In order to provide clarity on this matter, it has been decided to exclude from competence under paragraph (e), persons in receipt of one-off payments. As a result, a person receiving public money amounting to £400,000 or more in a financial year cannot fall within competence under paragraph (e) unless they have also received public money in a previous financial year or a decision has been made that that person will receive public money in a subsequent financial year.

The Welsh Assembly Government and the UK Government agree with Legislation Committee No. 5 that, under paragraph (h), bus services should be within competence (in addition to railways services).

Legislation Committee No. 5 agreed with the Welsh Assembly Government that, under Matter 20.1, duties should not be placed in relation to the editorial freedom of broadcasters, and we have agreed with the UK Government to modify the LCO accordingly.

The Welsh Assembly Government and UK Government have also agreed that, in relation to paragraph (c), a more focussed approach to persons established by prerogative instrument should apply based on additional criteria, to reflect the core objectives in the charters of those bodies which deliver key services to the public.

In accordance with the Welsh Assembly Government's policy intention, matter 20.1 will be modified so that the provision of services related to the services listed in paragraph (h) in shops which primarily sell goods will not be within competence under paragraph (h) save to the extent that the related services comprise post office counter services, sell tickets or provide timetables for bus and railway services.

Following discussions with the UK Government, the Welsh Assembly Government is also going to modify the LCO in relation to paragraph (h), so that only training funded wholly or partly by public money will come within competence.

In order to respond to the concern about the inclusion of references to electricity and gas production and transmission - parts of the energy sector which have almost no public interface – references to production and transmission will be deleted from paragraph (h) of the LCO.

The Welsh Assembly and UK Governments agree that partnerships should not be specified under Matter 20.1, as those partnerships which are constituted of bodies within scope would be within competence.

In relation to Matters 20.1 and 20.2, the Welsh Assembly Government and UK Government agree that the proposed competence would provide for the freedom for persons to communicate with each other in English or Welsh to be protected and there is no need to amend the LCO.

Welsh language Measure

In tandem with our ongoing work on the Welsh language LCO, we have been preparing for the Welsh language Measure, which was announced in the First Minister's legislative statement on 14 July. The Welsh Assembly Government looks forward to publishing the Welsh language Measure as soon as the National Assembly has the necessary competence to legislate on the Welsh language.

The Welsh Assembly Government is confident that the scope of the competence of the LCO which we have agreed with the UK Government would provide the National Assembly with the competence to respond effectively to promote and facilitate the Welsh language in the future, and enable the Welsh Assembly Government, by Measure, to fulfil its *One Wales* commitments.

Next steps

As Members will be aware the Secretary of State for Wales has arranged for the Welsh Grand Committee to debate the Welsh language LCO on 14 October, and we look forward to hearing the views of that Committee.

Following the completion of discussions with the UK Government the Draft LCO will be laid as soon as possible before the National Assembly.

Assembly Members will have the first opportunity to debate the Draft LCO, and subject to its approval, the Welsh Assembly Government will look to engage with Members in taking forward our proposed Welsh language Measure.