

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 LF/AJ/0048/10

Val Lloyd AM
Chair
Legislation Committee No. 2
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA.

30 June 2010

Dear Val

The Proposed Welsh Language (Wales) Measure

I very much appreciated the opportunity to appear before your Committee on 17 June to discuss further the provisions within the proposed Measure. During the meeting I promised to send you a note on three matters about which members of the Committee had requested further clarification. The additional information is given below.

Definition of telecommunications services included in Schedule 7 to the proposed Measure.

Telecommunications service, as defined in Schedule 7, 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.

I believe Mike German, who raised the issue, accepted my assurances that there is no intention to impose duties in respect of services such as Skype, Facebook, Twitter and Yahoo, but questioned how this intention can be made clear.

Although our intention is to focus on mobile phone and landline services, the Government believes that the Measure, in Schedules 5 and 7, should reflect the full breadth of the Assembly's legislative competence in terms of the persons in respect of whom duties may be imposed under matter 20.1 of Schedule 5 to the Government of Wales Act 2006.

Additionally, we believe that it is important that the Measure should provide adequate future-proofing in an area of technology that is continually evolving, and for those reasons have included the wording as it currently appears in the proposed Measure. In so doing, the

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Measure is sufficiently flexible to enable standards to respond swiftly to changing service delivery mechanisms, within the scope of the Assembly's competence.

Nevertheless if the Committee has any suggestions regarding how the proposed Measure, including Schedule 8 could be amended to better reflect the Government's policy intent then I would be happy to consider it.

Which persons would be liable to receive compliance notices on behalf of a particular body or a group of bodies from the Language Commissioner following a standards investigation

The relevant compliance notice will be sent to the legal person responsible for complying with the standard. This may be an individual or a group as appropriate. In carrying out any standards investigation into postal services, the Commissioner will need to identify the class of persons to whom standards could ultimately apply. This work will include ascertaining who are the legal persons involved and with which standards would it be reasonable or proportionate for that person to be required to comply. No person can be served with a compliance notice without having first been consulted. In addition, service of a compliance notice will give the person affected the right to challenge the standards on the grounds that they are not reasonable or proportionate as they apply to that person (see section 53).

How different offences would be classified in section 82 of the proposed Measure and whether multiple offences would result in multiple fines.

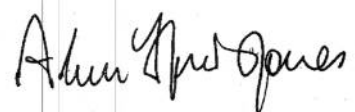
For each alleged breach of a standard which gives rise to a complaint, the Commissioner may consider whether or not to investigate (see section 94). Where the Commissioner does investigate and concludes that there has been a breach of a standard, the Commissioner may choose to take no action, or he or she may choose from a wide range of enforcement options of which civil penalties is one (see sections 76 and 77).

The Commissioner's intended approach to the exercise of these enforcement options must be set out in his or her enforcement policy document, which must be approved by Welsh Ministers (see section 97).

Before imposing any enforcement action, the Commissioner must first consult with the person in respect of whom he or she is proposing to act, about the nature of the penalty the Commissioner proposes to impose and provide a statement of the reasons for proposing to take that action - as well as give that person the opportunity to make representations about the proposals (see section 84). Once imposed, the person has the opportunity to challenge the Commissioner's enforcement action to the Tribunal on the grounds that it is unreasonable or disproportionate (see section 91(3)).

If there were a number of separate breaches, it would be possible to place a civil penalty of up to a maximum of £5,000 in each case. However, before the Commissioner imposes civil penalties, section 82(1) would require the Commissioner to have regard to the matters set out in section 82(2) when determining whether to impose a civil penalty on any person, and the amount of any civil penalty. The matters set out in section 82(2) are: the seriousness of the matter in respect of which the civil penalty is to be imposed; the circumstances of the person on whom the civil penalty is to be imposed; and the need to prevent the continuation or repetition of the matter in respect of which the civil penalty is to be imposed.

I hope the Committee finds the above information helpful.

A handwritten signature in black ink, reading "Alun Ffred Jones". The signature is written in a cursive style with a large initial 'A'.

Alun Ffred Jones AC/AM

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