

Consultation Response

IG9(3) - Welsh Language Society

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LC5 (proposed Welsh Language LCO)

Legislation Committee No. 5, National Assembly for Wales

Consultation on the Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009

Response paper by the Welsh Language Society

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].

The Welsh Language Society welcomes the opportunity to give evidence to the Legislation Committee on the proposed Order on the Welsh language. The Welsh Language Society has lead a strong public campaign calling on the Welsh Assembly Government to introduce legislation on the Welsh language. Indeed, we believe that the Assembly Government is morally responsible for legislating on the Welsh language and we call upon the Assembly to ask the Westminster Government to transfer all powers on the Welsh language, without any restrictions, to the National Assembly in Cardiff. We are calling for a full and efficient language Measure/Measures which will establish official status for the Welsh language, defining clear rights for the people of Wales, to allow them to use Welsh and to have fair access to the Welsh language in all aspects of life, as well as establishing a Welsh Language Commissioner.

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].

It is vital that the National Assembly for Wales should take this historic opportunity to fulfil the vision in Iaith Pawb, that is: *"a truly bilingual Wales, by which we mean a country where people can choose to live their lives through the medium of either or both Welsh or English and where the presence of the two languages is a source of pride and strength to us all"*. We have wide-ranging evidence which shows the weaknesses and failure of the current legislative situation. There is a great need to establish linguistic rights that will guarantee effective bilingual services; accessible, fair services which are visible to the public. As a result, we strongly believe that every person or body that provides goods, services or facilities to the

public should be included in the Order – regardless of that person/body's status in relation to the public, private or voluntary sector.

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].

We believe that the Assembly Government should legislate to establish not only people's right to speak Welsh to each other, but also to establish people's right to use their Welsh in all aspects of life. A lack of rights creates a situation of oppression and inequality where people who use the Welsh language and who try to access the Welsh language are unfairly discriminated against. The Government has a responsibility to establish rights to defend and promote Welsh people's dignity in using the Welsh language. Welsh needs to be considered in the context of equality; e.g. the rights of women, disabled people, gay people, people of different races and ethnic backgrounds are established through legislation. The Order should contain enough powers to enable the Assembly to pass a Measure/Measures to establish specific rights, as follows,

- ☐ The right to education through the medium of Welsh
- ☐ The right to receive services, information, facilities and goods in Welsh
- ☐ The right to a court hearing and jury in Welsh
- ☐ The right to respect and equality and not to suffer discrimination or disadvantage in using or championing the Welsh language

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

We agree with the principle.

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).

We agree with the principle but we do not agree with any limitations.

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?

This is a technical question. However, we note that the principles of the Welsh Language Act 1993 should be expanded to respond to the needs of the age and to build upon lessons that were learnt in drawing up innovative language legislation in other countries, such as the Basque Country and Catalonia, which is not limited to the public sector.

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).

The scope of the proposed Order is too narrow; it sticks too closely to the 1993 Act in concentrating almost entirely on the public sector. Contemporary society has changed and the public sector has shrunk since 1993. An increasing number of services are now provided by cross-sector partnerships or are fully privatized. If the Order were to be passed in its present form, the Assembly would have a few more powers than it does at present to legislate in the field of the Welsh language, but it is quite clear that it would not have sufficient powers to achieve the aim of creating a bilingual society. The truth of the matter is that, at present, the people of Wales are not free to choose to live their lives in Welsh or English according to their preference. Anyone can choose to live their lives in English, but no one can live their lives entirely through the medium of Welsh. In some fields, it is possible to use the Welsh language across the board, in others the Welsh language can be used to an extent on some occasions and, in other fields, the Welsh language cannot be used at all. The two latter cases are the most common. It is not apparent to the citizen which services are available in Welsh and because of the fragmented nature of current bilingual services, and their poor quality, citizens' expectations and confidence in the services are low. The current situation is not equal.

If the Assembly Government is going to achieve the objectives that it set out for itself in *Iaith Pawb*, it will need the will and the power to do so. Legislation cannot provide the will to do so, but it can provide the power. This is a historic opportunity to transfer all the powers that are needed to create a bilingual Wales. However, unfortunately, the Order as it stands merely reiterates the contents of the 1993 Act with some additions. The Explanatory Memorandum promises much more. *"A key principle underpinning these proposals.. 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."* (EM para 21). Despite the rhetoric, the nature of the provider is central to this Order - i.e. only public bodies, other bodies that provide on behalf of public bodies or former public bodies (i.e. utilities) are within the scope of the Order. By now, there is a generation of people who do not remember that gas companies were ever public utilities and, therefore, it will not be clear to them why these companies are being included, whereas car petrol companies are excluded – they are both fuel providers.

It seems to us that the Assembly Government, which is a coalition of two socialist parties, has given in to the persistent calls from large businesses that do not want to be regulated in terms of providing bilingual services. The CBI and others argue that it is better to depend upon the voluntary principle and self-regulation. Over recent months, we have seen how ineffective the banking sector is at "regulating" itself and government, and eventually the country's citizens, have had to pay a heavy price for

years of “light touch regulation”. The business sector’s failure to provide full, high-quality bilingual services on a voluntary basis has made it necessary for government intervention in the same way to protect citizens’ rights. The activity of large businesses is governed by making short-term profit, no matter how much it costs, despite the empty rhetoric of “social responsibility”. It is a government’s responsibility to ensure that this does not infringe upon citizens’ rights.

In our opinion, there is an element of scaremongering and stirring up trouble by the CBI. Recently, the Welsh Language Society conducted a survey of private companies and asked whether they would leave Wales if legislation was introduced to establish bilingual services. Here are some of the companies’ responses;

Boots UK Ltd: *“We do not intend to bring to an end any of our activities in Wales following the Welsh Language LCO, or the anticipated measures following the LCO.”*

O² UK Ltd: *“No, we are committed to providing a great experience to our Welsh customers.”*

Co-operative Group Limited: *“If the order, which if given will transfer the power to create Acts from London to the Welsh Assembly, is passed I can confirm that this shouldn’t have an impact upon The Co-operative Bank operations in Wales.”*

Abbey: *“With regard to your question, the simple answer is no.”*

In all seriousness, where in Europe are there examples of companies that have left following the introduction of language legislation? International companies are willing to comply with language legislation in countries where they wish to trade.

To look at the IKEA website as an example, (<http://www.ikea.com/>) the websites for Belgium, Hong Kong and Canada are bilingual; the website for Switzerland is trilingual – bilingualism/multilingualism is official in those countries, and it is the norm. The main page for Spain is monolingual, but if you visit the pages for l’Hospitalet in Catalonia, the details on the page which specifically relate to that store only appear in Catalan! Various pamphlets on kitchens, cupboards, beds etc can be downloaded in Catalan and Spanish. Some time ago, Alun Pugh (former Minister for the Welsh Language) and the Welsh Language Board were generous in their praise since the IKEA store in Cardiff had a few bilingual signs. However, they were not as persuasive as language legislation in Catalonia. If you visit the equivalent page for the Cardiff store (http://www.ikea.com/ms/en_GB/local_home/cardiff.html), there is not a word of Welsh to be found. If you visit that website and ‘Ask Anna’ whether she speaks Welsh, she will reply with a mouthful of gibberish! IKEA knows that it does not have to provide services in Welsh. At the end of the day, the cost of translating parts of a website or some signs will not be much of a hinderance for a large international company such as IKEA.

However, it is important to give consideration to the argument that ‘Welshifying’ the private sector would give a huge boost to the economy in Wales – in order to provide a bilingual service, resources are needed. The companies often already have the human resources – Welsh-speaking staff – but either they are not allowed to speak

Welsh in work, or the companies do not make the best possible use of them. In some areas, staff will need training – either language learning, or language improvement and/or training in how to provide a service in Welsh. Translators and editors will be needed. Also, technologies will need to be developed that can help companies and customers to communicate with each other bilingually. Bringing the Welsh language into the private sector will give a huge boost to language industries in Wales. It is nonsense to say that Tesco, PC World and Lloyds TSB would close their shops/branches in Wales if comprehensive Welsh language legislation were to be brought forward. If an obligation were to be placed on them to provide Welsh-language leaflets, posters, shop staff, telephone staff etc for customers in Wales, they would be more likely to set up a department in Wales to deal with these issues, which would mean MORE work in Wales. At present, south Wales is usually served by a head office based somewhere in the south west of England and north Wales by a head office in the north west of England. It would not make sense to have staff in those offices co-ordinating the Welsh-medium provision, so this is a strong argument in favour of establishing a head office for Wales as an entity based in Wales, where the posters, leaflets, labels for own-brand produce etc can be printed bilingually, with bilingual staff.

We have noted our comments on the specific clauses (a) to (h);

(3)(2)(a) Local authorities

Nothing new here – similar to the Welsh Language Act.

(3)(2)(b) Contracting out

Nothing new here – Welsh Ministers can already do this under the Government of Wales Act s.6(1)(o)(ii).

(3)(2)(c) Bodies established by an enactment

Nothing new here – similar to the Welsh Language Act.

(3)(2)(d) Bodies upon whom functions of providing services to the public are conferred by an enactment

Similar to the above.

3(2)(e) Bodies that receive £200,000 or more from the taxpayer

It is not clear why a threshold of £200,000 was chosen.

3(2)(f) Bodies that regulate professions

This is important in terms of including the Welsh language in the world of work.

3(2)(g) Social landlords

It is good that they have been included.

3(2)(h)(i) Utilities (gas, water, electricity)

The Water Boards have already been brought into the world of language schemes through the Welsh Language Act.

(ii) Sewerage services

How many of these are there in Wales or to what extent do they involve the public?

(iii) Postal services and post offices

The Royal Mail and Post Offices have already been incorporated through the Act, but it is likely that other postal services such as TNT, *couriers* etc would be included, which is a good thing.

(iv) Telecommunication services

It is good that they are included. We have just presented a petition of over 1,400 names, calling for mobile phone services to provide bilingual services in Wales. We have noted the '3' phone company's disgraceful response.

"We understand that the majority of Welsh speakers also speak English as either a first or second language... Whilst we are unable to offer a dedicated Welsh language service to these people we are also in such a position with the roughly 600,000 people who each speak Arabic, Bengali, Pahari, French or Polish and reside in the UK"

However, as the Order has been drawn up, Tesco Mobile would be included but Tesco supermarkets would not be included. There is no clarity or consistency for the citizen.

(v) Education bodies

It is good that they have been included.

(vi) Railway services

Why only railway services? What about buses, aeroplanes, ships, ports? Arriva Trains would be included but not Arriva buses. There is no clarity or consistency for the citizen.

(vii) Examining boards

It is good that they have been included.

(i) Volunteers

It is good to hear that people can opt in.

In our opinion the Order concentrates on things that are important but peripheral to day-to-day life. For example, around 60% of us shop at least once a week, and 24%

of us shop more than once a week. Over 90% of us shop in supermarkets.¹

There is no doubt that supermarkets, especially the big four (Tesco, Asda, Morrisons and Sainsbury's) are hugely influential in our daily lives. As well as food, they sell products, services and facilities to look after us from the cradle to the grave. As well as baby food and nappies, you can save money on behalf of your children in a Child Trust Fund by Tesco or can follow childcare courses (BabySafe Course) – all through the medium of English; or if you are thinking about leaving anything to your children and grandchildren after you have passed away, you can buy a will in Tesco (in English, of course). It is true to say that every one of the supermarkets offer some services in Welsh i.e. some signs in the stores, but provision is thin and uneven. You can self-scan your shopping in Tesco and M&S, but not in the others. There is some Welsh on the Morrisons website (<http://www.morrisons.co.uk/Cymraeg/>) but there is not a word of Welsh on the others' websites.

If the Government is serious about ensuring that Welsh citizens can live their lives in Welsh or in English, according to their preference, the private sector must be included in its entirety. The private sector has had over twenty years to volunteer to provide bilingual services, but it has done so bit by bit, and that is how it will be without legislating.

We are proposing a system of establishing codes of practice noting what the appropriate action is for providers within each sector, giving consideration to the following:

- (a) the number of persons employed by the service provider
- (b) the location of the service provider
- (c) the linguistic nature of the area served by the service provider, as described by the atlas commissioned by the Council for the Welsh Language, as mentioned in subsection 7(2)(d)
- (d) the nature of service users
- (e) the nature of the services provided.

Therefore, it is likely that more would be expected of a supermarket that employs 50 people, in an area where 70% of the population speaks Welsh, than a small bike repair shop in Pembroke Dock which employs two people. The supermarket provides general services, which are targeted at the general public. The bike repair shop provides a specialist services for specialists. Both would have a duty to comply by providing a basic level of service - e.g. a sign in Welsh on the exterior stating the nature of the business - but it is possible that the code would also obligate businesses such as the supermarket to put up interior signs in Welsh, to make loudspeaker announcements in Welsh and to ensure that Welsh-speaking staff are available to assist customers.

¹ http://www.competition-commission.org.uk/inquiries/ref2006/grocery/pdf/working_paper_grocery_shoppers.pdf

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?

It seems that the definition is appropriate, though the definition should be clarified for citizens when it is time to draw up a Measure.

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?

It is vital that the definition of telecommunications services and postal services (especially given the steps taken to privatise part of this service) remain as they are to ensure consistency when it is time to draw up a Measure.

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")?

As a result of funding complications, with money coming from Central Government to the Assembly Government to Assembly-sponsored bodies, such as the Arts Council, to a theatre company, as an example, it is important that "directly" and "indirectly" should be noted to encompass everything.

(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?

We do not agree that there should be any threshold. Should the citizens of Wales be expected to keep an eye on what companies receive such an amount before they can expect a comprehensive service? Will a company continue to provide a bilingual service for a period of over a year following the receipt of that amount?

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?

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. We do not agree with any limitations on that right.

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?

Articles 4 and 5 are too generous to Crown Ministers – they should be open to punishment as offenders if they trespass against the people of Wales's right to use the Welsh language. 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. We are sure that they would agree with the principle that no-one is above the law.

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?

If the Assembly wanted to add another category of public service provider to the list in the future (e.g. supermarkets) or even a similar provider that was not named (e.g. buses), it would be necessary to go through this cumbersome process of drawing up an LCO and laying it before the Assembly, the House of Commons and the House of Lords. There is no easy way of adding one or more categories to the list, therefore either the list within this Order needs to be longer and more comprehensive to include every provider of products, services or facilities to the public, or, as is preferable in our view, the wording should be broader to place the duty to provide bilingual services on "*persons who provide goods, services and facilities to the public*". The pattern which is set out in The Disability Discrimination Act 1995 could be followed (section 19).²

² 19 Discrimination in relation to goods, facilities and services

[1] It is unlawful for a provider of services to discriminate against a disabled person—

(a) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide, to members of the public;

(b) in failing to comply with any duty imposed on him by section 21 in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service;

(c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or

(d) in the terms on which he provides a service to the disabled person.

[2] For the purposes of this section and sections 20 and 21—

(a) the provision of services includes the provision of any goods or facilities;

(b) a person is "a provider of services" if he is concerned with the provision, in the United Kingdom, of services to the public or to a section of the public; and

(c) it is irrelevant whether a service is provided on payment or without payment.

[3] The following are examples of services to which this section and sections 20 and 21 apply—

(a) access to and use of any place which members of the public are permitted to enter;

(b) access to and use of means of communication;

(c) access to and use of information services;

(d) accommodation in a hotel, boarding house or other similar establishment;

- (e) facilities by way of banking or insurance or for grants, loans, credit or finance;
- (f) facilities for entertainment, recreation or refreshment;
- (g) facilities provided by employment agencies or under section 2 of the [1973 c. 50.] Employment and Training Act 1973;
- (h) the services of any profession or trade, or any local or other public authority.

The Order could therefore 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. The Minister has already explained to this Committee that he is not sure whether all the limited powers in the current draft will be included in a Measure since the Order’s aim is to ensure that powers are available to be used, rather than legislating, as such, thus replacing the current list with broader wording would not mean that the Assembly would *have* to use all these powers at once, or at all – it would be up to the Assembly Members, elected by the people of Wales, to decide what to use and when to do so.

Our concern is that the Order, as it stands, places a ‘No Entry’ sign on the road ahead for the Welsh language. Indeed, the Order hinders the Assembly in terms of its ability to pass Measures that will safeguard Welsh people’s rights, enabling them to live their lives in Welsh or in English in accordance with the vision set out in *Iaith Pawb*. There has been a huge increase in the number of people who receive their education through the medium of Welsh, to the point that those over 25 years old cannot comprehend. It must be ensured that they have the right to use Welsh beyond their education and opportunities must be provided for them to work in Welsh and to receive services in Welsh.

Powers need to be transferred from London to Cardiff to enable the Assembly to legislate over providers of goods, services and facilities in all sectors. It must be ensured that rhetoric is not the only aim of *Iaith Pawb*. It must be ensured that giving official language status to the Welsh language is a fundamental principle which would pervade the nature of any other legislation that emerges in relation to the Welsh language field and in all other fields. The creation of the post of Welsh Language Commissioner should ensure that far-reaching developments take place to safeguard the rights of the people of Wales to use the Welsh language.

The Welsh Language Society
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