

Communities, Equality and Local Government Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
7 March 2012

Meeting time:
09:30 – 12.00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Gareth Williams
Committee Clerk
029 2089 8120 / 029 2089 8120
CELG.committee@wales.gov.uk

Agenda

1. Introductions, apologies and substitutions

1.1 Apologies for absence have been received by Peter Black and Rhodri Glyn Thomas, given their roles on the Assembly Commission. Eluned Parrot and Alun Ffred Jones will be substituting respectively, in accordance with Standing Order 17.48.

2. National Assembly for Wales (Official Languages) Bill: Stage 1 Evidence Session – Welsh Language Society 09:30 – 10:15 (Pages 1 – 14)

Paper 1

Colin Nosworthy
Ceri Phillips
Osian Rhys

10:15 – 10:30 Break

3. National Assembly for Wales (Official Languages) Bill: Stage 1 Evidence Session – Association of Welsh Translators 10:30 – 11.00 (Pages 15 – 17)

Paper 2

Geraint Wyn Parry, Chief Executive
Berwyn Prys Jones, Chairman

4. Private Session: Consideration of Key Issues on the Local Government Byelaws (Wales) Bill 11:15 – 12:00 (Pages 18 – 36)

The Committee will be invited to resolve to exclude the public from item 4 of the meeting in accordance with Standing Order 17.42(vi):

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) the Committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person.

Communities, Equality and Local Government Committee

National Assembly for Wales (Official Languages) Bill

Paper 1: Welsh Language Society

1. Is there a need for a Bill to make provision about the use of the English and Welsh languages in proceedings of the National Assembly and by the Assembly Commission in the discharge of its functions? If so, why? If not, what alternatives do you propose?

Yes; the Society believes that the legal framework needs to be updated, following the agreement of the Welsh Language Measure 2011, which does not include the Assembly as one of the bodies on which duties relating to standards can be imposed.

However, it is important that this need is viewed as an opportunity rather than a threat. The Welsh Language Measure 2011 will place additional duties on public bodies in Wales. The Bill should not, therefore, seek to maintain the status quo. There is a need to ensure that the status and use of the Welsh language in the Assembly increase substantially during the next few years and across all areas of the Assembly's work.

2. Do you think the Bill delivers the purpose of the Bill as referred to in question 1 and paragraphs 4.1 to 4.4 on page 6 of the Explanatory Memorandum? Please explain your answer.

No, we do not. The Bill does not realise the moral right of the people of Wales to engage with their legislature in the Welsh language. The Bill allows for a situation in which those who wish to use Welsh are discriminated against by the institution.

It does not give the Welsh language strong foundations for the future either. Section 2(6) of the Bill allows for the perpetuation of a situation where there is uncertainty over the extent of the institution's Welsh-language provision by undermining the purpose of making Welsh an official language at the Assembly.

Instead, we recommend removing section 2(6) in its entirety and adding a list of basic services to be provided through the medium of Welsh, such as ensuring that fully bilingual documents are available to the public, producing a fully bilingual Record of Proceedings for Plenary meetings, provision of simultaneous interpretation from Welsh to English in all Assembly meetings, making continual progress with regard to the internal use of Welsh within the Commission and ensuring that it is possible for everyone (the public, staff and everyone else) to engage with the Assembly in the language of his or her choice.

3. Section 1(2) of the Bill replaces section 35(1) of the Government of Wales Act 2006 and introduces four new provisions relating to the equality of treatment between English and Welsh in the Assembly. What is your view of these provisions?

The Society agrees with the statement about the Welsh language's official status, which will be on the face of the 2006 Act after the Bill is passed. We also agree with the intention to omit the wording of the 1993 Act, which sets conditions in stating that there will be equality between the English and Welsh languages 'when it is appropriate in the circumstances and reasonably practicable'. Such a wording would weaken the statement both symbolically and practically.

However, we are concerned about the limitations set in sections (1A) and 35(1B), which apply only to 'Assembly proceedings'. These sections should be wider in scope.

The equal and official status of the Welsh and English languages needs to be underlined by noting some further principles in the Bill itself. At the very least, these should include provisions stating that public documents will be fully bilingual, that a fully bilingual Record of Proceedings for Plenary meetings will be produced, that simultaneous interpretation from Welsh to English will be provided in all Assembly meetings, that continual progress is needed with regard to the internal use of Welsh within the Commission, and ensuring that it is possible for everyone (the public, staff and everyone else) to engage with the Assembly in the language of his or her choice. We accept that further details about these issues will be included in the Scheme, but we believe that some of these principles are fundamental and should be enshrined in the Bill once and for all, so that public debates about issues that should be set in stone are not reignited each time that the Scheme is revised.

In this context, section 2(6) of the Bill completely undermines the general principles in section 1. We believe that this section is unnecessary, and that it should be removed if the Assembly is serious about the commendable principles contained in section 1.

To deal with the example given as justification for section 2(6), the Society believes that simultaneous interpretation should be available from English to Welsh as well as from Welsh to English. We called for this when the Assembly was set up at the end of the 1990s, and we still believe that there should be two-way simultaneous interpretation so that everyone can hear the Assembly's proceedings in the language of their choice. In addition, adopting this principle would be consistent with the policy of the European Parliament for its official languages. Similarly, we believe that fully bilingual records of committee meetings should be prepared, so that everyone can read them in the language of their choice. These are two things that do not happen at present, and we believe that they would lead to an increased use of oral Welsh in the Chamber; therefore, we believe that the Assembly should take a phased approach toward achieving this. The use of technology could assist in preparing translations, as we mentioned in our evidence to Arwel Ellis Owen's 'independent panel' almost two years ago. The introduction of a new regime is an opportunity to begin this work.

If the Commission insists that a similar clause to section 2(6) is required, we believe that its generality needs to be limited, so that it does not allow the provision of simultaneous interpretation from Welsh to English to cease even in some instances; for example, when creating or revising a Scheme. Limiting the impact of such a clause is, therefore, crucial to safeguard the status quo. This could be achieved by inserting sub-clauses, stating that certain things are essential to fulfil the principle in the new section 35(1) of the Act.

As noted above, these sub-clauses would need to include, at the very least, ensuring that fully bilingual documents are available for the public, producing a fully bilingual Record of Proceedings for Plenary meetings, provision of simultaneous interpretation from Welsh to English in meetings (including meetings for the public), making continual progress with regard to the internal use of Welsh within the Commission, and ensuring that it is possible for everyone (the public, staff and everyone else) to engage with the Assembly in the language of his or her choice.

4. Section 2(2) introduces 9 new subparagraphs to paragraph 8 of Schedule 2 to the Government of Wales Act 2006 (listed as subparagraphs (3) to (11)). These contain detailed provisions defining the Commission’s duties in relation to the use of English and Welsh in the Assembly, and are explained in paragraphs 12.1 to 12.12 on pages 22 – 24 of the Explanatory Memorandum.

What is your view of these provisions?

In setting out your views you may wish to consider the following points:

(i) new subparagraph (4) says the Commission must publish an Official Languages Scheme specifying the measures it proposes to take in order to comply with its duties under new subparagraph (3).

Do you think it is appropriate for the Commission’s duties to be delivered by means of an Official Languages Scheme and if so, why? If not, what alternative do you suggest?

If the intention is to set out the details of how to achieve the principle of bilingualism in a Scheme, we believe that several changes to the Bill are needed to ensure that those arrangements are robust.

(ii) new subparagraph (5) deals with some of the issues that the Scheme would need to address, namely the provision of simultaneous interpretation and the publication of documents bilingually.

What is your view of this provision?

We believe that it would be possible to amend subparagraph (5) to list those elements that the Assembly would be compelled to provide, instead of the current wording. As noted above, this should include, at the very least, ensuring that fully bilingual documents are available for the public, producing a fully bilingual Record of Proceedings for Plenary meetings, provision of simultaneous interpretation from Welsh to English in meetings (including meetings for the public), making continual progress with regard to the internal use of Welsh within the Commission, and ensuring that it is possible for everyone (the public, staff and everyone else) to engage with the Assembly in the language of his or her choice.

(iii) new subparagraph (6) provides that not necessarily “all words spoken or written in one of the official languages” would be required to be interpreted or translated.

What is your view of this provision?

The subparagraph completely undermines the purpose of making Welsh an official language of the Assembly. As noted above, section 2(6) of the Bill completely undermines the general principles in section 1. We believe that this section is unnecessary, and it should be removed if the Assembly is serious about the commendable principles noted in Section 1.

(iv) new subparagraph (7) requires the Scheme to explain how complaints should be dealt with.

What is your view of this provision?

We agree that the Assembly Commission should be accountable to the Assembly in drawing up the Scheme and implementing the Bill. However, we believe that elements of external input are needed with regard to some aspects of the work of implementing the Bill.

We believe that a permanent external panel should be established to be responsible for monitoring the Scheme on behalf of the Assembly. Only a small panel would be needed, with its members appointed for a period of, say, five years. The panel would be responsible for drafting the Scheme in the first place, and for keeping a quasi-external overview of how it is implemented.

We do not believe that members would require reimbursement for their work; the panel could meet around six times a year and could request reports and information from the Commission's staff as and when necessary. We believe that a panel specifically established to undertake this work could give priority to ensuring that the Bill's provisions are properly implemented, and that it would be independent of the Commission's officials. We also believe that external experience and expertise could assist with this work. As the Scheme's review periods approach, we would expect the panel to have an important role to play in the revision process, based on its experience of reviewing the Scheme's implementation.

As well as the aforementioned panel, which would in effect undertake a continuous soft regulatory role and assist the Assembly, it is clear that an independent regulatory mechanism is needed that will ensure in an impartial way that the Assembly Commission complies with the provisions of the Bill. We welcome the change made to the scheme in referring to the role of the Public Services Ombudsman for Wales in dealing with complaints about the Scheme's implementation when a complainant is not satisfied with the response of the Assembly Commission. However, as part of that, we believe that it will be necessary to ensure that the Commission can be compelled to comply with the Scheme if the regulator asserts that it has not done so. The Welsh Language Measure 2011, under limited circumstances, allows appeals to the courts. As the Assembly's actions as a legislature are already accountable to the courts, it would be appropriate for the courts to be able to compel the Commission to act in accordance with its Scheme under certain circumstances.

In terms of the two related issues above, the principles underpinning these provisions need to be set out clearly in the Bill.

(v) new subparagraph (9) requires the Scheme to be reviewed at least once every five years.

What is your view of this frequency of review?

In the Assembly Commission consultation, we noted our opinion that the Scheme could run concurrently with National Assembly terms, and so a term of five years seems reasonable for the Scheme. However, we do not necessarily believe that the best time to revise the Scheme would be at the beginning of each new Assembly. Perhaps it would make more sense to do that close to mid-term, when Commission members will have gained experience in their areas and at a less political time than an election year.

(vi) new subparagraph (10) sets out the process for the adoption of a Scheme.

Is the process clear? Please explain your answer.

We are of the opinion that this process is reasonably clear, and that it will allow for changes to be made to the scheme relatively easily. Of course, this strengthens the case for stating some fundamental commitments in the Bill rather than in the Scheme.

Does there need to be a specific reference to any consultation? Please explain your answer.

Yes; we believe that the Bill should make it clear that there will be a specific period of public consultation, so that it would not be possible to change the scheme on a whim, and to give assurances that the people of Wales will have an opportunity to express their opinions on the draft Scheme.

(vii) new subsubparagraph (10)(b) specifically refers to the Assembly Commission considering representations made about the Scheme by (i) members of the public and (ii) the Assembly.

Should any other person or organisation be specifically included in the list? If so, who?

We believe that the Welsh Language Commissioner should be on this list. We understand that the process within the Bill will be beyond the provisions of the Welsh Language Measure and the functions of the Commissioner in relation to standards, but as a recognised regulator in the area of the Welsh language, the Welsh Language Commissioner would, we feel, have an interest in this process, as well as relevant expertise that would be of use to the process.

5. Overall do you think the right balance has been struck between the specific requirements contained on the face of the Bill and the provisions to be included in the Scheme? Please explain your answer.

No, we do not. In our opinion, some specific duties need to be included on the face of the Bill. As the Assembly Commission itself reports, a lack of legislative clarity has led to the situation described in paragraphs 10.4 and 10.5 of the Bill's explanatory memorandum:

"10.4: In 2008-09, the costs of providing a fully bilingual Record of Plenary Proceedings published within 24 hours of the conclusion of Plenary was in excess of £290,000. In 2009, the Assembly Commission agreed to amend the timescale for the provision of a fully bilingual record of Plenary proceedings to within five working days. This decision was implemented from September 2009 pending a report from the Independent Review Panel on Bilingual Services. The panel published its report in May 2010 and recommended that the record of Plenary proceedings should be published in the original language spoken, together with a record of the interpretation from Welsh to English. The translation of English text to Welsh ceased in July 2010.

"10.5: At its meeting on the 14 July 2011, the Assembly Commission of the fourth Assembly agreed to reinstate the service, provided that the arrangement was sustainable in the long term and demonstrated good value for money."

The Welsh-medium provision of the Record of Proceedings changed three times in three years, even though the Assembly's language Scheme did not change.

In June 2011, after receiving complaints from the public, the Welsh Language Board ruled that the Commission had been violating its statutory language scheme. This meant that the Commission had been violating its language scheme for 17 months, from July 2010 until January 2012. As well as violating its language scheme, the Commission ignored a recommendation from the Board about

when to start complying again. The Welsh Language Board's report recommended: *'Immediately following the commencement of the Fourth Assembly, the Commission should produce a fully bilingual record of the Plenary Proceedings as was the practice prior to September 2009.'*

The Commission ignored that recommendation by continuing to violate its language scheme until January this year, the month in which the Official Languages Bill was announced.

Recent experience shows clearly, therefore, that the Assembly Commission is willing to break commitments in its scheme. We are not of the opinion that the new system, as it stands, would prevent that from happening again.

As the Welsh Language Commissioner will not have a comparable role to the current function of the Welsh Language Board in terms of ensuring that the Assembly Commission adheres to its language scheme, there will be even less external power to ensure that the Assembly adheres to its scheme. That is why the new system bolsters the case for listing some fundamental Welsh-language services on the face of the Bill. Without that step, this legislation would put the Welsh language on an even less sure footing than before.

6. What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

One obvious barrier is the language skills of Assembly staff. In our opinion, the Bill does not address this issue sufficiently, and we feel that this issue requires significant financial investment and effort if the Assembly is to become a *truly* bilingual institution.

7. What are your views on the financial implications of the Bill, if any? In answering this question you may wish to consider Part 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the Bill.

The memorandum shows that expenditure on Welsh-language services has fallen significantly over the last three years – a reduction of 12% without adjusting for inflation – while the Assembly Commission budget in its entirety has risen. If the same services could be offered at a lower cost, we would support that, but the Assembly's bilingual services have deteriorated considerably during the period in question, first with the disappearance of the bilingual Record and now with the five-day delay between publishing the English-language Record and publishing the bilingual Record—a delay that contravenes best practice in the public sector as a whole.

8. On 3 August 2011 the Assembly Commission published a Draft Bill for consultation. The Bill was changed by the Commission to take account of the consultation responses received. Paragraph 6.18 on page 11 of the Explanatory Memorandum explains the changes made. What comments, if any, do you have on these changes?

We welcome the changes that have been made to the Bill since the draft was published in August—particularly the reference to the 'right' to use the Welsh language in Assembly proceedings, which is an important step forward, as well as the change of the name of the Scheme to the 'Official Languages Scheme', which is broader than the previous title and is, therefore, more flexible.

There are a number of issues that were raised in the consultation on the draft Bill that the Bill does not fully address. There is a reference to one of these in section 6.20 of the Memorandum, namely the decision not to include specific duties on the face of the Bill itself, including the duty to produce a fully bilingual Record of Assembly Plenary Proceedings. Most of the responses to the consultation, including those from the Welsh Language Society and the Welsh Language Board, noted that this was necessary, and we do not believe that there is a sufficient explanation in the Explanatory Memorandum as to why this was not done.

In addition, a number of other important points were identified in the consultation that the Bill, in our view, does not address sufficiently, and we feel that these have not been given sufficient attention (if at all) in the Explanatory Memorandum.

9. Are there any other comments you wish to make about specific sections of the Bill?

We have made our comments above. We feel strongly that specific duties need to be included in the Bill, as noted above. It is also essential that there is a stronger element of externality in respect of ensuring compliance, and that that is included on a statutory basis on the face of the Bill.

10. What are your views on the Draft Official Languages Scheme, included as Annexe B to the Explanatory Memorandum?

Many weaknesses have already been noted. One thing to add is that there is a lack of detail and ambition in the draft Scheme as it currently stands. As has been mentioned already, an external panel could make a useful contribution to the work of drafting the Scheme, including looking at best practice. However, some, at least, of that panel's members—in contrast to the 'independent panel' that Arwel Ellis Owen chaired and which reported last year—should have direct experience of implementing language schemes or policies within public organisations, and all members should have experience of promoting Welsh in some way.

First, we note that we are making some suggestions on the content of the Scheme in this response, but it is not a comprehensive response and it is difficult for it to be one, as some broad aspects of the Bill need to be settled—as well as establishing the regime under which the Scheme will operate—before the details of the Scheme can be discussed fully.

We are of the opinion that the Bill needs to be amended and that it ought to be put before the Assembly to be passed, but without a Scheme. Another draft of the Scheme should then be drafted on the basis of this consultation, on the basis of broader research to what should be in such a Scheme and on the basis of the final Bill as passed. There should then be public consultation on the more developed draft Scheme. That would mean a longer wait for a Scheme under the new regime, but would mean that satisfactory consultation had taken place and that the Scheme, as a result, would be more mature and on more robust ground, having had a fair opportunity to develop into something that is more akin to what the people of Wales—and the Assembly on their behalf—would wish to see.

In terms of what can be said now, apart from suggestions on specific issues that we set out below, we can state that on the whole we welcome the general statements which state that the Assembly is to be a truly bilingual organisation, that acting in accordance to the Scheme is a matter of compliance and so on. However, it should be noted that there is a lack of detail in the Scheme as to

how to achieve this. It is too nebulous and vague when it should be comprehensive, robust and innovative, and should aim for something more assertive. More than anything, the Scheme should have clear targets that show ambition and indicators against which the whole of Wales could see progress (or otherwise).

The Scheme includes a narrow definition of “the public” as those who could receive bilingual services, something that derives from the 1993 Act and is completely unnecessary under this Bill, which is meant to establish a new regime. That definition of the public should, therefore, be removed.

Furthermore, when referring to services, it should be clear throughout the Scheme that that is relevant to the public, Assembly Members and their staff, the Commission’s staff, other organisations and all who come into contact with the Assembly in any way. The Welsh Language Measure 2011 has taken significant steps in the fact that standards drawn up under it can be much broader than ‘delivering services’ alone. It is, therefore, essential that the bilingual regime for the Assembly—the heart of our democracy—should be as broad as that of other public service bodies in Wales; indeed, the Assembly should be leading the way.

We note below some specific issues that need to be raised in the present draft of the Scheme.

It is stated twice (para. 48 and 49) that:

“Documents...which have been drafted by the Assembly Commission, Assembly Members (with the exception of those undertaking Ministerial duties) and staff of the Assembly will be available simultaneously in Welsh and in English”.

The text between parentheses highlights the fact that the Government is responsible for ensuring that its papers are bilingual. However, the Assembly could and should insist that such documents be provided bilingually by the Government, and that monolingual documents will not be accepted. It is not the Assembly’s responsibility to translate them, but it is the Assembly’s responsibility to insist that the Government respects the Assembly’s bilingual principle.

It is stated in paragraph 51 that there would be an expectation for organisations that have Welsh language schemes, standards or policies to submit any papers to the Assembly’s committees, and so on, bilingually. It is further noted that where it is not possible to have documents in both languages (we suspect that this is because they are from individuals or bodies that are not under any legal obligation in relation to bilingualism), that they are published monolingually, as submitted.

We do not believe that ordinary people should be asked to submit their comments bilingually when responding to a consultation or when writing to a committee; they have a choice to do so either in Welsh or English. However, if these become public documents, they should be available bilingually. The only answer is for the Assembly to provide translations of such papers, as well as the resources to do so.

There is a reference to simultaneous interpretation from Welsh to English in Plenary and committee meetings. The Society is of the opinion that there should be simultaneous interpretation from English to Welsh as well. This would ensure that there would be a way for anyone to listen to the Assembly’s proceedings in Welsh if they so wished. Apart from the basic issue of equality, this would

facilitate more oral use of Welsh in the Chamber—something that has reduced significantly in recent years—and it could also facilitate the work of providing a fully bilingual Record.

In our opinion, paragraph 12.8 of the Memorandum, by using what is happening in Ireland to justify section 2(6), highlights the lack of wisdom of that decision. Unfortunately, the state of the Irish language has deteriorated in the century since Ireland's independence.

The status of Irish is high on paper, but its real status is low, as is its use, and Ireland's parliament is not a bilingual one. Certainly, the path that the Irish language has taken during the last century is not something that the Welsh language would want to emulate. Each country and language has its own circumstances, and the situation in Wales is that we are building a nation where both languages are essential.

As noted, the Record of Proceedings was fully bilingual from the beginning of devolution in Wales until 2009. Since then, there has been a mass campaign to return to a bilingual Record, and over 1,500 people have signed a petition on the issue. The Assembly is the heart of Welsh democracy; as a result, the Record is one of the most important documents that is published with such regularity, and it is a matter of the utmost importance to the status of the language that this document is fully bilingual when it is first published; a monolingual English draft, with a bilingual copy to follow, is not acceptable if there is parity between the languages. The new position of publishing an English Record within 24 hours, but with a delay of 5 working days for a bilingual Record, is completely unacceptable, and this duty needs to be amended so that a fully bilingual Record is ready within 24 hours, as happened without difficulty between 1999 and 2009.

We do not believe that the Assembly can continue to ignore the fact that Welsh is by now an official language in Wales, and it is evident that politicians from all parties are supportive of that campaign. We are confident, therefore, that there is a way of making a commitment to publish a fully bilingual Record of Plenary Proceedings, and that that commitment is not only included in the Scheme, but safeguarded on the face of the Act itself, so that it is not a decision that can be made on a whim again. The Society believes that the Assembly should ensure that the Record for committee meetings is also fully bilingual.

On the issue of committee correspondence, it is stated that the Scheme is not relevant to correspondence between Assembly Members and their constituents. That is accepted, but we believe that more leadership could be shown by stating that the Assembly expects its Members to respect the principle of bilingualism when dealing with the public and anyone else, and we believe that the minor amendment made to the Scheme since the draft in August is not sufficient. It was also noted that the translation service should be a free facility for Assembly Members and their staff (and Commission staff) to use in their work, without limiting it by a specific allowance or special conditions on its use. It should also be available to translate internal messages and so on—and not restricted to 'public' material.

If Assembly Members are to communicate successfully with their constituents in both of Wales's languages, there needs to be an unconditional and unrestricted translation service. It is also crucial, as noted in the Scheme, that the proofreading service that is available is developed and promoted so that Commission staff, Assembly Members and their staff can draft in Welsh, improve their skills and increase their confidence.

It is noted that Commission staff will “aim to communicate in writing with individual Members, party groups, or other forums bilingually or in Welsh or English when a choice has been expressed.” We believe that the wording “aim to” is weak, that such correspondence should be bilingual as a matter of course when corresponding with groups and that correspondence with individuals could be in one language if the language of choice is known.

The use of words such as “Our ambition is...” and “We will aim to...” is weak and needs to be replaced by a more assertive wording. Apart from the matter of principle, such weak wording is likely to lead the Commission’s staff—who should be complying with the Scheme—to think that what is in the Scheme is not a specific requirement, and they would be likely to ignore it, thereby leading to non-compliance.

Paragraph 68, which begins “When we cannot deliver the bilingual services outlined...”, is a matter of concern. The paragraph is inconsistent with what we would expect in that it is rather apathetic about lack of compliance with the Scheme. It is accepted, of course, that rare cases where the Scheme is breached are inevitable, and such honesty is welcomed, but there also needs to be an emphasis on the seriousness of the matter, and that the intention of the Scheme is that such cases will be very rare.

Paragraph 81, on communications, highlights one of the major weaknesses of the organisation at present. Although the measures noted are small steps in the right direction, in reality, the lack of bilingual skills among Assembly staff is a fundamental problem that needs to be addressed in a thorough and robust manner. The section on individual meetings, especially the latter half, highlights those deficiencies even more, and they are not acceptable. We talk more about staff skills below when we come to the relevant section of the Scheme.

The Assembly’s general principle is that the Welsh text appears above the English or to the left where both languages appear together. We agree with that principle, of course; indeed, such a boost to the status of a threatened language such as Welsh could have an important practical impact. However, we would like to draw attention to the disclaimer in paragraph 86: “For search and indexing purposes, the information on some of our social media profiles is published English first and Welsh second”. This sentence further confirms that English is the important language in the eyes of the Assembly. It does not intend to state that, and, indeed, it does not say so directly, but the suggestion—that English is the language in which it must be ensured that there is a way of searching and indexing—highlights the Assembly’s underlying view about the status of the two languages: it is English that is important, and those whose chosen language is Welsh have to be satisfied with using English, like everyone else.

Paragraph 90 refers to events and exhibitions that are sponsored by Assembly Members. It is stated that there is a requirement for organisations that have Welsh-language standards, policies or schemes to host such events bilingually, to all intents and purposes; however, other organisations should only be encouraged to do so. In our view, there should be an insistence that any such event or exhibition is bilingual, whoever hosts them. Would it be acceptable for the Assembly to allow a number of organisations, such as large multinational companies, not to provide bilingual exhibitions or not to provide interpretation equipment in an event because they do not have a language policy?

Other public organisations insist that these provisions are made; therefore, there is no reason why the Assembly should not do so. This is a fundamentally different matter to sending a response to a consultation as mentioned above—where you cannot require individuals to respond bilingually. If anyone hosts an event at the Assembly, however small, their relationship with the Assembly is different.

During a recent consultation event, Commission staff stated that enforcing this would be difficult because some small bodies do not have the funding to provide interpretation. We return here to the Assembly's interpretation resources—in cases where bodies cannot provide their own interpretation for financial reasons, and it is evident to the Assembly that this is the case, we are of the opinion that the Assembly should provide a free interpretation service from its own resources. Once again, other organisations do this, so the Assembly could as well.

The section on visitors to the Assembly estate states that it would not be possible to ensure that Welsh-speaking members of the front of house staff are always available. Given the nature of the posts, it should be asked on what basis individuals were appointed to those posts in the first place. The same is true of at least some of the Assembly's officials in the regions—we received a complaint from a member of the Society that an Assembly official who works in an area where Welsh is spoken widely, and where the main objective of the post is public engagement, involvement with community groups and schools and so on, does not speak a word of Welsh.

We have already heard it said that one third of the Assembly's staff already speaks Welsh, but it is evident that, thus far, this has not been achieved comprehensively through the strategy. The two examples above relate to the next part of the Scheme and some of the areas that need to be changed most at the Assembly in our view, namely the Welsh-language skills of staff, recruitment and the internal use of Welsh. We welcome the stated intention to address these issues seriously by means of a bilingual skills strategy. This document will be essential to the success of the Bill and the Scheme, and in that respect—and the fact that it is not possible to respond fully to these issues here—we strongly believe that that document should also go through a process of public consultation before adopting it in its final form.

In preparing the document, there need to be specific targets that are realistic but also ambitious and far-reaching for improving the language skills of staff. Raising awareness of the opportunities to learn Welsh or identifying the number of Welsh-speaking staff is not sufficient without a strategic plan to improve the language skills of all staff over a set period of time.

Essentially, we need to move to a situation where there is a presumption that fluency in Welsh is needed for all jobs at the Assembly, and that all staff work toward increasing their Welsh-language skills. The Assembly should make it clear to staff that this is an opportunity rather than a threat, and an opportunity to learn an increasingly valuable skill through the Assembly's investment in its staff. Staff are encouraged in the workplace to develop their skills continually in areas of relevance to their work. This should be as true for courses on the Welsh language as for other courses at all staff levels.

We welcome the statement that new staff will be given mandatory training on language awareness. We respectfully suggest that such training should not be given to new staff only; indeed, there should be mandatory language-awareness training every year or every two years for Assembly staff,

and Assembly Members and their staff should be strongly encouraged to receive that training if it is not possible to make it mandatory for them.

Taking steps to ensure that everyone will be able to answer the phone bilingually by 2012 is a start, but it will not allow the Assembly to provide bilingual services. It should also be understood that learning to answer the phone only does not do justice to Assembly staff when they should be learning intensively in the workplace so that, in a few years' time, they can deal fully with Welsh speakers in their chosen language because, by then, they will be Welsh speakers themselves. These sections are too rhetorical, and there need to be specific disclaimers and specific undertakings—ambitions, targets and a timetable—in this Scheme as well as in the bilingual skills strategy itself.

On recruitment, the goal of being an equal opportunity employer is a commendable one, and we do not disagree with it. However, in a small but vitally important public body such as the Assembly, we believe that the posts where fluency in both of the languages of Wales is a qualification of some sort are very few. All posts should be considered on their own merits, of course, but we believe that a level of ability in Welsh should be an essential qualification for most Assembly positions.

We strongly suggest that, in preparing a bilingual skills strategy, good practice at other public bodies that have been implementing language skills strategies for years should be looked at. There are plenty of them, but one cannot neglect to name North Wales Police as an excellent example of what can be done when the will is there. Some level of ability in Welsh is essential before one can be interviewed for a job there, and there is an expectation that everyone, from the Chief Constable down, will continually work on their language skills. A significant investment has been made there, of course, to ensure the project's success, and there has been strong staff support in terms of leadership and resources. If all public bodies in Wales acted similarly, the Welsh language would be saved within a decade. It is not an easy task—indeed, there needs to be a massive attitudinal shift—but if an organisation such as North Wales Police, with over 2,500 people working in it, can do it, so can an organisation of a few hundred, like the Assembly.

Regarding the reference in your Scheme to posts for which fluency in Welsh is essential, and appointing someone who is not fluent to such a post, we believe that it should be made clear that learning Welsh to the expected level should be essential for passing the probationary period, and that those who fail to do so would fail their probationary period. Of course, it is essential that the Assembly provides all appropriate support, along with a specific number of weekly lessons, to ensure that there is a way of learning the language to that level.

Internal bilingual communication with staff is essential, as is increasing the internal use of Welsh throughout the Assembly. We welcome, therefore, the developments since 2007, and the attempts that have been made to build on them, but even more ambition is needed. Prioritising public documents is not enough: if the Assembly really wishes to become a “truly bilingual organisation”, action needs to be taken, from top to bottom.

The section on communication technology is not sufficient. We believe that any software that is available in English should, where possible, also be available in Welsh and that the Assembly should use bilingual software where it is available.

The section on working in partnership needs to be strengthened—the Assembly should insist that any partnership of which it is a part complies fully with the principle of linguistic equality between Welsh and English. The Assembly could use its influence to that effect, and there is a moral responsibility on it to do so.

The conditions attached to providing Welsh-language services (asking people to continue in English where it is not possible to provide Welsh-language services, stating that publications with a short lifespan need not necessarily be provided bilingually and so on) are not at all fair on Welsh speakers. Evidence shows that the use of Welsh-language services is low and that this is often due to people's lack of confidence in the existence of quality Welsh-language services. Attaching any conditions to Welsh-language services reinforces that perception and undermines one of the main objectives of the Bill.

There needs to be a section in the Scheme that refers to ensuring that the Assembly's legislation contributes to, rather than undermines, the principle of equality between the Welsh and English languages.

Matters such as internal bilingualism need to be seriously addressed. The Scheme, therefore, needs to expand a great deal on the internal use of Welsh, with a distinct section and clear targets. There needs to be a revolution at the Assembly to implement this, but it need not be a painful revolution and there is a way of operating sensitively. If one third of staff can already speak Welsh, there is a strong foundation on which to build to create Welsh-speaking workplaces. Creativity and inspiration are needed to create progressive schemes that will work towards transforming the internal culture of the organisation; for example, by placing Welsh speakers and Welsh learners next to each other physically, whatever their jobs, and by creating twinning schemes and a myriad of similar schemes. Other public organisations have been working on such projects, and there is much good practice that can be emulated. It will require a great deal of energy, but that is the only way to turn the Assembly into a truly bilingual organisation.

We emphasise again that a consultation on the Scheme is needed after it has been further developed and after passing the Bill. We also emphasise the importance of specific, clear and ambitious targets in the Scheme—leaving it vague, as it is now, will mean that it is difficult to implement and that it is difficult to get anything out of it. The Scheme as it stands is not far-reaching or ambitious enough, because it does not set clear targets and a specific timeframe to deliver changes that will make a difference on a day-to-day basis. The rhetoric of facilitating and encouraging is all very well, but what is needed in a Bill and Scheme like these is a strong commitment that demonstrates an intention to make progress within a specific period of time, including a clear action plan on how that progress will be achieved.

11. The Commission also published, with the draft Bill, the draft Scheme for consultation in August 2011. The Scheme has been changed by the Commission to take account of the consultation responses received. Paragraph 6.19 on page 11 of the Explanatory Memorandum explains the changes made. What comments, if any, do you have on these changes?

We note that the new Scheme includes additional text regarding the Record of Plenary Proceedings, but we believe that the Welsh version should be available within 24 hours and that there should be a

guarantee of a fully bilingual Record on the face of the Bill. We welcome the change to the name of the Scheme.

In our response to question 10 above, we have covered many important issues that require consideration, many of which have been raised by us and others during the Commission's consultation on the Bill and the draft Scheme. The number of those comments that have been repeated bears witness, in our opinion, to the fact that the Assembly has not made a sufficient number of amendments following the previous consultation. In addition, it strengthens our argument above that the Bill should be passed in its final version before presenting a draft Scheme for full public consultation, where members of the public and the Commission itself can focus on improving the Scheme. This is essential if, as it is claimed, we are to create a truly bilingual Assembly.

Communities, Equality and Local Government Committee

National Assembly for Wales (Official Languages) Bill

Paper 2: Cymdeithas Cyfieithwyr Cymru

1. Response to questions about the draft Official Languages Scheme

1.1 Question 10

1.1.1 Cymdeithas Cyfieithwyr Cymru is generally of the opinion that the draft Official Languages Scheme will allow the National Assembly for Wales to realise its ambition of being a truly bilingual institution and by doing so will give the people of Wales a strong and practical lead.

1.1.2 We very much welcome the statement in paragraph 98, page 47, “that only accredited translation and interpretation staff undertake text translation and simultaneous interpretation, and they will be encouraged to be members of the Association of Welsh Translators and Interpreters[*], or a similar professional organisation”. The Translation and Reporting Service has already demonstrated its commitment to this principle in 2011 by stating that only the Association’s Full and Interpretation members would be considered for its on-call translation contract.

* please note that the registered name of the association is Cymdeithas Cyfieithwyr Cymru. Please use our official company name in this paragraph. You may wish, for explanatory purposes only, to include the English ‘translation’ in parenthesis.

1.1.3 Technology has an important role to play in translation, whereby specialist translation software embodying translation memory software is used in conjunction with machine translation software. Software alone, however, will not ensure linguistic and factual accuracy. The only way to ensure a quality translation is by entrusting the work to professionally qualified translators and editors.

1.1.4 We also agree with the statement in the second part of paragraph 98 that there shouldn’t be an over-reliance on translators and that Welsh speaking staff with the necessary skills should be encouraged to provide a bilingual service. We would encourage you to emphasise, where appropriate, the need to improve the skills of National Assembly staff to write Welsh as part of the commitment to develop Welsh-language and bilingual skills. We also hope that the bilingual skills strategy to be published before the end of March 2012 will accord its proper place to measuring the written skills of staff and that sufficient resources will be allocated to provide the necessary training.

It is equally important to encourage National Assembly Members and staff to improve their spoken Welsh, and the use of interpretation services at meetings will provide opportunities not only to speak Welsh but to gain greater confidence in using the language. Issuing instructions regarding the chairing of bilingual meetings will be important in this context.

1.1.5 We welcome the statement, in paragraph 51, page 37, that external organisations will be expected to submit responses in both Welsh and English as this will lead to strengthening the use of Welsh in public institutions throughout Wales.

1.1.6 In paragraph 77, page 41, does 'preferred language' mean any language in which the applicant sends a request? As this is, presumably, not the intention, we suggest that it should be made clear that the 'preferred language' is limited to Welsh and English.

1.2 Question 11

We welcome the fact that the Assembly Commission has agreed to re-establish a fully bilingual Record of Proceedings and has provided for this in the Official Languages Scheme.

We believe that providing a fully bilingual Record of Proceedings should be at the heart of the National Assembly's ambition of being a truly bilingual institution which allows its Members and staff to work in both languages.

In August 2009 we released a statement deploring the decision of the Assembly Commission to stop producing fully bilingual transcriptions of plenary meetings of the National Assembly. At the time we were concerned that this could set a precedent for other institutions in the public sector to reduce the number of important documents being translated. This is especially true today at a time when institutions have to face difficult decisions about reducing services.

A fully bilingual Record of Proceedings should be central to the National Assembly's intention, as stated in paragraph 46, page 36, of "empowering Assembly Members with bilingual materials and the means to communicate with each other and the public bilingually." It is important that a Welsh translation of all statements and debates are factually and linguistically correct and are consistent.

2. Response to questions about the Bill

2.1 Questions 1,2 and 3

2.1.1 Given that the Official Languages Scheme is not governed by the legal framework outlined in the Welsh Language (Wales) Measure 2011, a Bill which provides for the use of both Welsh and English in the discussions of the National Assembly and by the Assembly Commission in undertaking its duties is appropriate in setting legal obligations on a strict legal footing.

2.1.2 We believe that the Bill achieves the purpose as stated in paragraphs 4.1 to 4.4, page 6, of the Explanatory Memorandum.

2.1.3 We welcome the fact that section 1(2) of the Bill confirms the official status of the Welsh language in the National Assembly and that Welsh and English will enjoy equal status. It must be acknowledged, however, that the provision in paragraphs 58-60, page 38, of the Explanatory Memorandum does not fulfil the aim of treating the two languages on the basis of equality in that priority is given to providing a quick translation into English (for very valid reasons) of words spoken in Welsh whereas any equivalent translation into Welsh must wait.

2.2 Question 4

We believe that there is a danger that the new sub-paragraph (6), that nothing is to be interpreted as requiring all words spoken or written in one of the official languages to be interpreted or translated into the other, could be construed to mean that the Assembly Commission will not have to provide a fully bilingual Record of Proceedings.

This ambiguity should be removed from the Bill and specific reference should be made to the Record of Proceedings to make it clear that a fully bilingual record will be published.

3. And finally

We welcome the comprehensive review you propose to undertake in the summer of 2012 of the effectiveness of the system adopted by the National Assembly to translate the Record of Proceedings and we would be happy to contribute. We would also urge you to seek the views of the Canolfan Bedwyr Language Technologies Unit at Bangor University which has developed a number of translation aids over the years, including a new platform which integrates them into one comprehensive system tailor-made to meet the needs of English-Welsh/Welsh-English translation.

Cymdeithas Cyfieithwyr Cymru would be glad to assist the Assembly Commission as you consider the best means of providing translation and interpretation services.

Agenda Item 4

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted

Carl Sargeant AC / AM
Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref LF/CS/0066/12

Ann Jones AM
Chair
Communities, Equalities and Local Government Committee
National Assembly for Wales
Ty Hywel
Cardiff Bay
Cardiff
CF99 1NA

 March 2012



Local Government Byelaws (Wales) Bill

During my recent appearance before the Communities, Equalities and Local Government Committee, I undertook to provide further clarification of a number of issues of interest to the Committee. These are set out below.

Possible inclusion of the Swansea City Council (Tawe Barrage) Act 1986 and the West Glamorgan Act 1987 in the Bill as byelaw powers to be subject to the 'no confirmation' procedure

The Committee raised a query regarding the identification of further byelaw making powers contained within the Swansea City Council (Tawe Barrage) Act 1986 and the West Glamorgan Act 1987, which have come to light during the stage one evidence and scrutiny process. I am grateful to the Committee for bringing these byelaw powers to our attention. This highlights the difficulties faced in identifying all relevant byelaw powers and supports the need for clause 9 of the Bill which enables the Welsh Ministers to amend the list of byelaws in Part 1 of Schedule 1 which are subject to the no confirmation procedure.

We will review the byelaw-making powers in these and other Local Acts which have been identified as a consequence of the Committee's query to determine whether the 'no confirmation' procedure is appropriate.

Discretion of local authorities to delegate functions relating to byelaws to a committee

I agreed to clarify the comment in my letter of 16 February 2012, concerning the discretion of local authorities to delegate functions relating to byelaws to a committee.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence: Carl.Sargeant@wales.gsi.gov.uk
Printed on 100% recycled paper

The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 ('the regulations') provide that the power to make, amend, revoke or re-enact a byelaw is not a power for which an authority's executive is to be responsible. The effect of this is that the power is the responsibility of the authority. I take the view that the regulations sufficiently and appropriately provide for the full council to be engaged to a proportionate degree with regards to the key aspects of the byelaw process.

Section 101 of the Local Government Act 1972 provides a general power for a local authority to arrange for the discharge of any of its functions by a committee, sub-committee or an officer of the authority. It is for individual authorities to determine the precise arrangements, including whether it is appropriate for the matter to be referred to a committee, and I have no intention of interfering in that.

Mike Hedges queried the role of overview and scrutiny committees. The Local Government Act 2000 ('the 2000 Act') makes provision for overview and scrutiny committees. Section 21(2)(c) of the 2000 Act provides that an overview and scrutiny committee has the *power to review or scrutinise decisions made, or other action taken*, in connection with the discharge of *any functions which are not the responsibility of the executive of the authority*. Section 21(2)(d) of the 2000 Act provides that an overview and scrutiny committee *can make reports or recommendations* to the authority with respect to the discharge of any functions which are *not the responsibility of the executive*, of which the byelaw process would form part.

Process for obtaining a person's name and address if they fail to provide it and powers of arrest

Clause 14 of the Bill provides an authorised officer who proposes to issue a fixed penalty notice for breach of a byelaw the power to require the person to whom the notice is issued to give their name and address. Any person who fails, without reasonable excuse, to provide their name and address or gives a false name and address will commit an offence and is therefore liable on summary conviction to a fine not exceeding level three on the standard scale, which is currently £1000.

Similar provisions are contained within the Clean Neighbourhoods and Environment Act 2005 ('the 2005 Act') in relation to environmental offences. This enforcement mechanism is therefore already used widely by authorities in Wales.

Guidance issued on the 2005 Act suggests that local authorities agree working protocols with their police authority so that police officers and police community support officers may assist in situations where an alleged offender refuses to supply details. I anticipate that similar arrangements would be appropriate in relation to byelaws.

To assist legislating authorities further with enforcement in this regard, the Bill also makes provision at clause 18 for the Welsh Ministers to issue statutory guidance. This includes guidance on the procedures for the enforcement of byelaws. Accordingly, the guidance will seek to help legislating authorities in seeking to enforce fixed penalty notices and may, for example, recommend a well publicised lead-in period prior to any fixed penalty notices being issued. This will further help to engage the public and generate public support for fixed penalty notices and the associated process.

During committee we touched upon the powers of local authority officers to make a citizen's arrest in the eventuality that a person failed to provide their name and address and I undertook to provide a note. Section 24A of the Police and Criminal Evidence Act 1984 ('the 1984 Act'), provides that a person other than a constable may, subject to certain qualifications, arrest anyone who is, or who they reasonably believe to be, in the process of committing an 'indictable' offence. Accordingly, it appears that a citizen's power of arrest

will depend upon whether the offence is an 'indictable' offence and if so whether the conditions of section 24A of the 1984 Act are met.

The offences detailed within the Bill provide that contravention of a byelaw is an offence that is liable on 'summary' conviction rather than being an 'indictable' offence, as such, it seems a citizen or indeed a local authority officer could not lawfully make an arrest for such a contravention pursuant to the 1984 Act. The Local Government Byelaws (Wales) Bill does not seek to change this position.

I trust this will assist the Committee's further deliberations.



Carl Sargeant AC / AM

Y Gweinidog Llywodraeth Leol a Chymunedau
Minister for Local Government and Communities