

## **Communities, Equality and Local Government Committee**

### **National Assembly for Wales (Official Languages) Bill**

#### **Paper 1: Language, Policy and Planning Research Unit, School of Welsh, Cardiff University**

#### **1.0 Introductory matters**

1.1 This paper is in response to the National Assembly for Wales (Official Languages) Bill and the draft Official Languages Scheme. These are described as ‘the Bill’ and ‘the Scheme’ respectively in the remainder of this paper.

1.2 We understand that the intention of the Bill and Scheme is to place the duties of the National Assembly for Wales in relation to bilingual services on a ‘sound statutory footing’ to ‘enhance public confidence in the Assembly’s commitment to bilingual services’ (10.9, Explanatory Memorandum).

1.3 This paper deals with aspects of the Bill in the first instance (2.0), and aspects of the Scheme in the second (3.0).

1.4 We wish to note some introductory matters in relation to accountability.

1.5 The Scheme notes that the Assembly Commission is not subject to the new legal arrangements of the Welsh Language (Wales) Measure 2011 due to its ‘special constitutional position in Wales, and the fundamental constitutional principle that Welsh Ministers should be accountable to the Assembly rather than the Assembly being accountable to Ministers’ (paragraph 16 of the Scheme). The Explanatory Memorandum notes that ‘these provisions [the Bill] will make it clear that accountability for the Assembly Commission’s bilingual services will be directly to the National Assembly [...] rather than to the Welsh Language Commissioner and Welsh Ministers as in the case of public bodies on whom standards are imposed under the Welsh Language (Wales) Measure 2011’ (12.5, Explanatory Memorandum).

1.6 Under the Welsh Language (Wales) Measure 2011, Welsh Ministers are named as a ‘person/category’ under the Welsh Language (Wales) Measure 2011 (Schedule 6); Welsh

Ministers are, therefore, accountable to the Welsh Language Commissioner in relation to the standards and services that are in their care. Similarly, the Welsh Government's Welsh Language Scheme (2011-2016) is accountable to the Welsh Language Commissioner (Welsh Language Scheme (2011-2016) of the Welsh Government, page 1). The Welsh Government's Welsh Language Scheme will ultimately be superseded by standards. In the same way, a 'Minister of the Crown', 'a government department' and 'a person exercising on behalf of the Crown functions conferred by or under an Act or Measure' are named as a 'person/category' in the Welsh Language (Wales) Measure 2011.

1.9 Due to the fact that the Assembly Commission is not named as a 'person/category' under the Welsh Language (Wales) Measure 2011, the Assembly Commission is not accountable to the Welsh Language Commissioner for its Language Scheme and standards. The Assembly Commission is, instead, accountable to the National Assembly for Wales. To engender the public's confidence in the Assembly Commission's commitment to bilingual services, the arrangements of the National Assembly for Wales need to be robust and clear. To strengthen the arrangements in relation to the accountability of the Assembly Commission for the Scheme, it would be beneficial if there were a way to note the exact mechanism (for example, a sub-committee/specialist committee) that the Assembly Commission will have to use to report on the implementation of the Scheme. It should also be noted in what ways the public, stakeholders and other interested parties can contribute to this process.

## **2.0 National Assembly for Wales (Official Languages) Bill**

2.1 The Bill aims to amend section 35 of the Government of Wales Act 2006 as follows:

*For subsection (1), substitute -*

*(1) The official languages of the National Assembly are English and Welsh;*

*(1A) The official languages must, in the conduct of National Assembly proceedings, be treated on a basis of equality;*

*(1B) Either official language may be used by any person when participating in National Assembly proceedings;*

*(1C) Paragraph 8 of Schedule 2 makes provision about how the Assembly Commission must enable effect to be given to subsections (1), (1A) and (1B).*

2.2 The Explanatory Memorandum notes (11.2) that section 1 contains ‘a clear, simple statement that the English and Welsh languages are the official languages of the National Assembly’ and that this reflects the ‘legislation governing other bilingual legislatures (e.g. the New Brunswick Official Languages Act 2002...)’. We also note section 6 of this Act, which states that ‘English and French are the official languages of the Legislature’. The Explanatory Memorandum refers (11.3) to a proposed change (subsection 1A) in relation to section 35 (1) of the 2006 Act so that Welsh and English are treated ‘on the basis of equality’ and that this ‘reflects a parallel change made by the Welsh Language (Wales) Measure 2011’. The Explanatory Memorandum refers (11.4) to a proposed change (subsection 1B) that will note clearly on the face of the governing legislation the right to use the two languages in Assembly proceedings.

2.3 There are several matters that should be considered in this context, in relation to the international model of New Brunswick. The Explanatory Memorandum explains that section 1 of the Bill ‘reflects’ the Official Languages (New Brunswick) Act 2002. If this is the case, that reflection is incomplete. There are significant differences between the Bill and the Official Languages (New Brunswick) Act 2002 regarding the status of the languages in question, the rights of speakers and ways of operating.

2.4 For example, the Official Languages (New Brunswick) Act 2002 notes that French and English have, as official languages as a matter of constitutional fact, ‘equality of status and equal rights and privileges as to their use in all institutions of the Legislature and Government of New Brunswick.’ The Act goes on to state in detail the practical implications of this, including the use of both languages in the legislature, for example:

*6 English and French are the official languages of the Legislature and everyone has the right to use either language in any debate and other proceeding of the Legislative Assembly or its committees;*

*7 Simultaneous interpretation of the debates and other proceedings of the Legislative Assembly shall be made available by the Legislature;*

*8 The records, journals and reports of the Legislative Assembly and its committees shall be printed and published in English and French and both language versions are equally authoritative.*

2.5 The Official Languages (New Brunswick) Act 2002 is much clearer and more robust than the Bill and Scheme. This is abundantly clear when considering matter 12.8 in the Explanatory Memorandum. It is noted here that the Bill ‘makes it clear that the Act does not necessarily require the Scheme to provide for interpretation and translation both from Welsh into English and from English into Welsh in all situations’. The intention of the Bill is, therefore, to amend paragraph 8 of Schedule 2 of the Act (the principles in accordance with which functions are to be fulfilled) in different ways, including placing a duty on the Assembly to adopt and publish a Scheme. This proposed change includes the following explanation:

*6 Nothing in section 35(1) or in sub-paragraphs (3) or (5) of this paragraph 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.*

This is completely different to the way that the legislature of New Brunswick operates.

2.6 In addition, the Explanatory Memorandum explains that this will ‘limit the duty to provide a fully bilingual written record of proceedings to plenary (but not to committee) proceedings, again in line with current practice’ (12.8, Explanatory Memorandum) and that this ‘reflects’ the Irish Official Languages Act 2003, particularly the fact ‘that contributions (whether oral or in writing) in either of the official languages by persons may be published therein solely in that language.’ In practical terms, the Irish legislation means that it is possible for a contribution of this kind to be published in Gaelic or English only. The intention of the Scheme in this regard is different in that it stipulates publishing a contribution of this kind in English only, if English was the language in which the contribution was made, and publishing the contribution in Welsh and English if the initial contribution was made in Welsh. Operating in this way is entirely contrary to what was intended by Irish Official Languages Act 2003. The Irish legislation allows for publication in Gaelic only on the basis of that language’s status as a national and official language of the

Irish state as a matter of constitutional fact. Is the intention of subsection 6 to allow publication of some contributions in Welsh only?

2.7 On its choice of international models, the Explanatory Memorandum mentions only one part of the relevant legislation in New Brunswick. However, rather than pursuing that example, which places provisions on the face of the legislation, it turns to another example from another legislature, namely the Irish legislature, which does not do this. The reasons for such a sudden change from one legislative context to another, which may appear to be inconsistent, are not given in the Memorandum.

2.8 The Explanatory Memorandum notes the following:

*The Commission gave careful consideration to the proposal that a duty to provide a fully bilingual record of plenary proceedings should be placed on the face of the Bill rather than being left to be specified in the Scheme. The Commission took into account the fact that the Scheme itself would be required to be approved by the Assembly and that, once approved, the Commission would be under a duty to give effect to it. The Commission therefore decided that to include, in addition, an inflexible legal duty on the face of the Bill itself would not be necessary or desirable. (6.20, Explanatory Memorandum).*

2.9 There are a number of matters to consider here. Status is the first. It is clear that the Scheme does not have the same legal status as the Bill. Looking at other socio-linguistic situations—as has been done as part of this process, including the work of the ‘Independent Review Panel (2010)’—namely situations in Scotland, Catalonia, the Basque Country, the Republic of Ireland, New Brunswick and Switzerland, it is clear that the legislatures in the jurisdictions that are most similar to Wales from a socio-linguistic point of view (that is the numbers of speakers of the different official languages, population size, linguistic development and so on) have adopted means of placing on the face of relevant legislation statements and duties in relation to language status, language rights and the use of a language within and across legislative procedures and governance. There is one simple reason for doing this—it gives assurance and clarity to the public.

2.10 The second matter in this context relates to public confidence. Among the results of the consultation process was ‘general support for placing a duty to provide a fully bilingual record of Plenary proceedings on the face of the Bill from almost all respondents’ (6.13, Explanatory Memorandum) regarding the responses in favour. It is unclear whether any of the responses against contained any comments on the exact contents of the face of the Bill (6.15, Explanatory Memorandum). If the intention of the proposed changes is to ‘enhance public confidence in the Assembly’s commitment to bilingual services’ (10.9, Explanatory Memorandum), the results of the public consultation suggest that there is an opportunity here to increase the confidence of the likely users of the Assembly’s Welsh-language services. It should be noted that the Bill and Scheme are related to the use of Welsh, because it is Field 20, Schedule 7 of the Government of Wales Act 2006 under which the legislative competence of the Assembly falls in this context (2.9, 2.10 & 2.11, Explanatory Memorandum).

2.11 The third matter is a result of the unique and special status of the Assembly in Welsh life. Academic publications that discuss devolution propose that one of the fundamental principles of developing a Welsh polity is adopting a form of Welsh civic citizenship that is neutral in terms of identity characteristics. Considering the legislative, democratic and symbolic role of the Assembly’s Record of Proceedings, it is difficult to see how translating the Record of Proceedings from Welsh to English and not from English to Welsh can be reconciled with an inclusive and civic definition of citizenship. It is also difficult to see why the supremacy of any linguistic identity should be sanctioned in the most important civic space in Wales, namely the Assembly’s Plenary sessions, because it should be neutral.

2.12 In addition, the Bill mentions that ‘All persons have the right to use either official language when participating in Assembly Proceedings’, a wording that is based on the legislation of New Brunswick, according to the Explanatory Memorandum (11.4). However, these rights are not extended to the citizen who exercises his or her democratic right to read or listen to these proceedings. This problem does not exist in the legislation of New Brunswick, because the rights of those who contribute are also extended to the citizen who is reading or listening. However, this problem exists in the Bill in its current form.

2.13 It appears, therefore, that the argument in favour of including a duty to provide a fully bilingual Record of Plenary Proceedings on the face of the Bill is a strong one.

2.14 On other matters in the Bill, the Explanatory Memorandum notes (11.5) that ‘The National Assembly can only comply with the duties in subsections (1A) (which states that ‘The official languages must, in the conduct of National Assembly proceedings, be treated on a basis of equality/Wrth gynnal trafodion y Cynulliad, rhaid trin yr ieithoedd swyddogol ar y sail eu bod yn gyfartal’ [the Welsh version of the Explanatory Notes]) and (1B) (which states that ‘Either official language may be used by any person when participating in National Assembly proceedings/Mae gan bob person yr hawl i ddefnyddio’r naill iaith neu’r llall wrth gymryd rhan yn nhrafodion y Cynulliad’ [the Welsh version of the Explanatory Notes]) insofar as the Assembly Commission provides the National Assembly with the staff and other facilities to enable it to do so.’ The way that this explanation is worded suggests that the Assembly’s commitment to the proposed statutory duties under the Bill are conditional and that if ‘staff and other facilities’ are not provided, the Assembly will not be able to implement 1A and 1B. Usually, exercising a statutory ‘right’ [1B] is not dependent on the daily matters of running an institution, such as staffing and facilities. Furthermore, trying to impose such a condition would be an echo of the examples of weaker practices in the context of ‘language schemes’ in Wales.

2.15 Considering the importance of providing staff and other facilities, the Schedule should note that the Scheme must contain a bilingual skills strategy rather than a commitment to providing language skills strategies in future (paragraph 100 of the Scheme). By incorporating it in the Scheme, the language skills strategy will also be open to consultation with the public and other stakeholders. As part of the Scheme, the language skills strategy will be subject to scrutiny, monitoring and approval in the same way as the remainder of the Scheme. If implementing 1A and 1B is contingent (11.5, Explanatory Memorandum) on providing staff, then language skills strategies are a crucial matter and should be treated as a matter of the highest priority rather than as an addendum of some sort to the Scheme.

### **3.0 The draft Official Languages Scheme**

3.1 There are weaknesses in the Scheme regarding its implementation and regarding monitoring and reporting.

3.2 The section on 'Authority and responsibility for co-ordinating this Scheme' (paragraphs 20-23 of the Scheme) states that the Chief Executive and Clerk of the Assembly will be responsible for 'co-ordinating, monitoring and [...] advising on revising its content (paragraph 21 of the Scheme).' It is also stated that 'every manager has a delegated responsibility for operating those aspects of the Scheme that are relevant to their work' (paragraph 23 of the Scheme) and also that 'Each Assembly service area will nominate a Scheme Co-ordinator to be responsible for providing advice on the delivery of the Scheme in their area; reviewing progress against the Scheme's requirements on a quarterly cycle via the Official Languages Scheme Co-ordinators Forum; continuously keeping the Translation and Reporting Service informed of any changes to delivery commitments' (paragraph 24 of the Scheme). As is usual in Welsh Language Schemes that aim toward best practice, the Assembly Commission should provide a detailed action plan at the same time as the Official Languages Scheme is introduced, noting the exact responsibilities of those who are responsible for implementing it, the targets to be achieved and the timetable for completing the work. The Welsh Government's Welsh Language Scheme Corporate Action Plan (2011-2016) is an excellent example of this. By doing this, it will become abundantly clear how it is intended that the Scheme will be implemented.

3.3 The section in the Scheme that deals with 'Monitoring and reporting' (paragraphs 25-27 of the Scheme) is very superficial. No details are given on monitoring other than to outline the basic commitment to monitoring compliance with the Scheme. It is also possible to pursue best practice on Welsh Language Schemes in this context; for example, the best Schemes make use of 'key performance indicators'; see Annex 2 of the Welsh Government's Welsh Language Scheme (2011-2016).

3.4 There is some ambiguity in relation to the wording of some clauses of the Scheme; for example:

(paragraph 48) 'at short notice' – what exactly is the definition of 'short notice'?

(paragraph 49) 'at short notice' – what exactly is the definition of 'short notice'?

(paragraph 50) 'as far as reasonably practicable' – what exactly is the definition of 'reasonably practicable'?

(paragraph 51) 'where it is not possible to secure documents in both languages' – if the organisations have language schemes or are subject to standards it is difficult to see any reason why some documents, at the request of the Assembly, would not be available bilingually. Under circumstances where the other organisation, which has a Language Scheme or is subject to standards, has not provided a document in Welsh, why is it not possible to request an explanation and for that to be published as well? Is it not possible to draw the Welsh Language Commissioner's attention to the fact that an organisation, which has a Language Scheme or is subject to a standards regime, has failed to provide documentation in Welsh in accordance with the statutory expectations?

(paragraph 70) 'our ambition is to enable' – it should, rather, note that 'the Assembly Commission will enable...', which is much more definite.

(paragraph 71) 'we will aim to deliver' – why can it not state 'we will deliver'?

(paragraph 82) 'where reasonably practicable' – what is the exact definition of 'reasonably practicable'?

(paragraph 82) 'at short notice' – what is the exact definition of 'short notice'?

(paragraph 85) 'particularly short lifespan' – what is the exact definition of 'particularly short lifespan' in the context of this paragraph?

(paragraph 85) 'as a matter of urgency' – what is the exact definition of 'a matter of urgency.'?

It should be possible to avoid ambiguity of this kind.

3.5 The implications of paragraphs 59 and 61 of the Scheme are to give priority to the English language (see part 2.0 above). The proposed arrangement for translating

submissions received in Welsh only into English is weaker than the international model for the Scheme in this instance, namely the Irish Official Languages Act 2003.

3.6 It is noted in the Scheme that ‘it will not be possible to ensure the presence of Welsh speakers as part of our front of house service but we are committed to improving the Welsh language skills of staff who offer these services’ (paragraph 94 of the Scheme). According to best practice in Welsh Language Schemes, the Assembly Commission should note in an action plan the steps to be taken and the timetable for getting to grips with this work. Best practice in this area is also being directed by documents published by the Welsh Language Board, entitled ‘Guidelines for Promoting and Facilitating Bilingual Workplaces’ and ‘Guidelines for Recruitment and the Welsh Language’.

3.7 It is noted in the Scheme, under the ‘Managing and encouraging Assembly staff’s bilingual skills’, that ‘this is an area we need to develop further in the future’ (paragraph 99 of the Scheme). Again, providing an ‘action plan’ in relation to this need corresponds with best practice in the field. More specifically, in order to observe best practice in this field, it should be noted in the Scheme that ‘mandatory language awareness training’ (paragraph 97 of the Scheme), the ‘bilingual skills strategy’ (paragraph 100 of the Scheme) and the section on ‘Recruitment’ (paragraphs 101-106 of the Scheme) are driven by the documents of the Welsh Language Board entitled ‘Guidelines for Promoting and Facilitating Bilingual Workplaces’, ‘Guidelines for Recruitment and the Welsh Language’, ‘Guidelines for Organising Welsh Language Training in the Workplace’ and a Language Awareness Training Package (for example, see Section 7 of the Welsh Government’s Welsh Language Scheme (2011-2016)).

3.8 On the matter of ‘Working in partnership’, in order to observe best practice in the field, it should be noted that the Scheme will follow the guidelines of the Welsh Language Board on ‘Partnerships and the Welsh Language’ (for example, the Welsh Government’s Welsh Language Scheme (2011-2016)).

3.9 It is noted in the Scheme that the Assembly Bills that are considered by Assembly ‘will be available in both languages and Assembly Members may undertake their scrutiny role in either language’ (paragraph 56 of the Scheme). It is also noted that there are possible exceptions under Standing Order 26.5. Standing Order 26.5 notes the following:

*A proposed Measure must be introduced in both English and Welsh except in the following cases:*

*(i) when, in respect of a government proposed Measure, the Member in charge states in writing that, for specified reasons, it would not be appropriate in the circumstances or reasonably practicable for the proposed Measure to be introduced in both languages; or*

*(ii) when not doing so is in accordance with determinations issued by the Presiding Officer under Standing Order 26.3.*

*(Standing Orders of the National Assembly for Wales, November 2011).*

For the sake of clarity, it would be useful if it were possible for the Scheme to contain examples of the kinds of circumstances that would mean that is not appropriate or practically reasonable to table a Bill in both languages.

3.10 A few factual errors in the documentation should be noted, namely:

Paragraph 16 of the Welsh version of the Scheme states that the Welsh Language (Wales) Measure 2011 was approved in 2012.

(2.2, Explanatory Memorandum) ‘Welsh Language Act 2003,’

(12.8, Explanatory Memorandum) ‘Irish Official Languages Act 2002’.

(paragraph 90 of the Scheme) The English version of the Scheme states that: ‘Organisations without language schemes will be encouraged to operate in accordance with our outlined principles’, while the Welsh version states these organisations will be encouraged to operate in accordance with the principles of their schemes (‘Anogir sefydliadau nad oes ganddynt gynlluniau iaith i weithredu’n unol ag egwyddorion eu cynlluniau.’).

#### **4.0 Conclusions**

4.1 The Bill and Scheme include weak interpretations of the international models of comparable legislation, namely New Brunswick (Canada) and the Republic of Ireland. It is as if the international examples have been sifted, collecting the chaff rather than the wheat.

4.2 There is a strong argument in favour of including the duty to provide a fully bilingual Record of Plenary Proceedings on the face of the Bill.

4.3 The Scheme, as it stands, does not reflect best practice on Welsh Language Schemes, including the Welsh Language Scheme of the Welsh Government.

## **5.0 References**

(Draft) National Assembly for Wales (Official Languages) Bill.

Welsh Language Scheme (2011-2016), the Welsh Government.

Draft Official Languages Scheme, National Assembly for Wales Commission.

Welsh Language Act 1993.

Irish Official Languages Act 2003.

Official Languages (New Brunswick) Act 2002.

Government of Wales Act 2006.

Explanatory Memorandum for the National Assembly for Wales (Official Languages) Bill (January 2012).

Welsh Language (Wales) Measure 2011.

Independent Review Panel (2010), 'Review of Bilingual Services in the National Assembly for Wales', National Assembly for Wales Commission.

Standing Orders of the National Assembly for Wales (November 2011).