



## INSTITUTE OF DIRECTORS

### WALES DIVISION

17 March 2009

Mr Mark Isherwood AM  
Chair, Legislation Committee No 5  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

Dear Mr Isherwood

#### **INSTITUTE OF DIRECTORS' RESPONSE TO THE PROPOSED WELSH LANGUAGE LEGISLATIVE COMPETENCE ORDER**

I enclose a copy of the response provided by the Institute of Directors in Wales to the consultation on the Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order. This has been carefully considered by our Wales Management Committee.

The proposed Order has raised significant concerns among members of the IoD in Wales which explains this letter, which I am copying to others with responsibilities for considering the Legislative Competence Order. Before highlighting those concerns – set out in more detail in the attached response – I should make it clear that members are supportive of the principle of the National Assembly having the legislative competence to promote and facilitate the use of the Welsh language in Wales.

The concerns of our members relate primarily to the proposed power to impose duties on businesses, increasing the regulatory burden with implications for the costs of conducting business in Wales, and thus the competitiveness of business. The Explanatory Memorandum defines the range of services covered by the draft Order as “tightly drawn”. The IoD does not share that view, with the business sectors identified covering many existing concerns, with the potential to create barriers to new businesses. The IoD’s concerns are exacerbated by the reference to powers to cover “related services”, a term not explained in the supporting documentation and potentially capable of a wide interpretation. It is notable that there is no quantification of the amount of economic activity within Wales that falls within the scope of the draft Order.

The IoD support the principle that people in Wales should be free to communicate with each other in the Welsh language. But any such legislation must be soundly based in addressing a real problem, and with safeguards designed to ensure that the nature and effectiveness of business and/or public administration is not compromised.

#### THE BUSINESS LEADERS

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The IoD has significant doubts about the proposition that legislation is currently necessary to take forward this issue of freedom to communicate, with the risks of legislative rigidity developing around an issue on which no evidence of a material problem has been advanced in the Assembly Government's Explanatory Memorandum. The oxygen of publicity can often be more flexible and effective than the rigidity of legislation..

The IoD well understands that any agreement to the Legislative Competency Order by the UK Parliament does not bring in any legislative burdens of itself, and that the process is concerned with the competence of the National Assembly for Wales. However the nature of the Order provides apparent evidence of a policy intent to legislate. In the view of the IoD any such action is likely to have the adverse consequences of:

- Increasing the regulatory burden on businesses within the (wide range of) defined areas;
- In consequence impacting adversely on costs and competitiveness;
- Acting as a disincentive to businesses considering Wales as a location for both new facilities and in restructuring existing multi-site activity. The simple publication of the draft Order, with the corresponding uncertainty, will itself have such a disadvantage.

Against the background of the current economic situation, and the longer-term issue of raising Wales' GDP in relation to the UK and European averages, the IoD has to question the timing and priorities in looking to take forward this Order for which such little evidence of need has been advanced.

Given the strength of the Institute's concerns I am copying this letter to the First Minister, Deputy First Minister, Culture Minister, Secretary of State for Wales and the Chair of the Welsh Affairs Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gareth Williams', is written over a light blue horizontal line.

Gareth Williams  
Chairman, IoD Wales

Cc Rt Hon Rhodri Morgan AM  
Mr Ieuan Wyn Jones AM  
Mr Alun Fred Jones AM  
Rt Hon Paul Murphy MP  
Dr Hywel Francis MP

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# RESPONSE OF THE INSTITUTE OF DIRECTORS TO THE PROPOSED NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE COMPETENCE) (WELSH LANGUAGE) ORDER 2009

1. The Institute of Directors (IoD) in Wales welcomes the opportunity to respond to Legislation Committee No. 5 on the proposed Welsh Language Legislative Competence Order (WLLCO).

2. The IoD was founded in 1903 and obtained a Royal Charter in 1906. The IoD is a non-party political organisation with almost 1,000 members in Wales and upwards of 52,000 members in the United Kingdom and overseas. Membership includes directors from right across the business spectrum – from media to manufacturing, e-business to the public and voluntary sectors. Members include CEOs of large corporations as well as entrepreneurial directors of start-up companies.

3. The IoD believes that the Legislative Committee has performed a helpful service to consultees in identifying 3 broad questions as copied below:

***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].***

***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].***

***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].***

4 The Institute draws a sharp distinction between powers to promote the Welsh Language (positive measures) and powers which impose duties and thus regulatory burdens. Many businesses can and do conduct activities in Welsh and are keen to do so. The legislative environment should encourage and support that, but not impose regulatory burdens which undermines individual businesses judgements as to the nature of the services they provide within a commercial environment. The draft Order does not make a clear distinction of this nature and would be much improved if it did.

5. The proposed Order has raised significant concerns among members of the IoD in Wales. Before addressing those concerns the IoD should make clear its view that is not opposed to the principle of the National Assembly having the legislative competence to promote and facilitate the use of the Welsh language in Wales. But the nature of the detailed proposals, and supporting argumentation in the Explanatory Memorandum, provides little comfort that the Welsh Assembly Government's plans have been thoroughly thought through. The IoD awaits the results of the Committee's deliberations with much interest.

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6. The IoD's main concerns relate to the duties the National Assembly would be able to impose on businesses as set out in Section 3 of the Draft Statutory Instrument. The nature of this section seems clear evidence of a policy intent to legislate in these areas, increasing regulatory burden, adversely impacting on costs and competitiveness and providing real and perceived disadvantages to Wales as a location for business activity.

7. Turning to specific questions the Legislation Committee has asked:

***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?***

***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?***

8. IoD is content with the proposal to transfer powers to impose obligations over the public sector, including over private sector contractors undertaking functions of the public sector under contract to it. Similarly those providing services under enactments might reasonably be covered by duties, though care will be needed if they are in competition with other agents.

9. The IoD's principal concerns are with section (e) – discussed further below – and the range of activities identified in section (h) which includes:

- those providing the public with services, or with related services (a term **not** exemplified or defined) in the areas of gas, electricity & water; sewerage; postal; telecommunications; education, training or career guidance; rail; awarding educational or vocational qualifications.

This is an extremely broad range of activity, often with difficulties of definition, an issue which extends beyond posts and telecommunications. The Explanatory Memorandum justifies the range of activities here as reflecting bodies which fall within existing provision or "which currently fall outside the scope of the 1993 Act but which provide key public services. " The assertion that there are material public services outside the scope of 1993 Act is not evidenced, and the need for action not justified in the supporting documentation. This seems extraordinary given the scope of the proposals and the potential burden that could ensue. There are many private sector businesses operating in the range of activities identified above all of whom could potentially be adversely affected. It is notable that there is no quantification of the amount of economic activity within Wales that falls within the scope of the draft Order.

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***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")?***

10.. The IoD believes the consultation on this issue falls short of helping to inform the public. The Explanatory Memorandum informs the consultee that the category includes all public bodies within the meaning of the Human Rights Act. That seems particularly unhelpful and the IoD is unable to comment beyond noting the inadequacy of the consultation.

***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?***

11. The case for this wide provision has nowhere been made. And its intended scope is unclear. The Explanatory Memorandum provides little guidance apart from noting that this category includes bodies which are national in character such as the Wales Millennium Centre, Welsh National Opera, and the National Botanic Garden. But the language of the provision in the draft Order runs much wider.

12. The IoD would also question the need for any such legislative provision for these bodies identified in the Explanatory Memorandum. They are in receipt of regular funding from the Assembly Government, and the Assembly Government can readily include grant conditions to meet Welsh Language requirements without the need for any specific legislative provision, yet alone one as widely drawn as this.

13. To summarise the IoD believes this provision is unnecessary, with no justification for such a wide provision identified, nor any need in relation to the bodies identified in the Explanatory Memorandum. Given the clear disadvantages to potential investors of such a power, and no compensating advantage identified, the IoD believes the provision should be dropped.

#### **The Freedom to use the Welsh language**

14. The IoD support the principle that people in Wales should be free to communicate with each other in the Welsh language. But any such legislation must be soundly based in addressing a real problem, and with safeguards designed to ensure that the nature and effectiveness of business and/or public administration is not compromised. The IoD has significant doubts about the proposition that legislation is currently necessary to take forward this issue of freedom to communicate, with the risks of legislative rigidity developing around an issue on which no evidence of a material problem has been advanced in the Assembly Government's Explanatory Memorandum. The oxygen of publicity can often be more flexible and effective than the rigidity of legislation.

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#### Summary

15. The IoD well understands that any agreement to the Legislative Competency Order by the UK Parliament does not bring in any legislative burdens of itself, and that the process is concerned with the competence of the National Assembly for Wales. However the nature of the Order provides apparent evidence of a policy intent to legislate. In the view of the IoD any such action is likely to have the adverse consequences of:

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**Institute of Directors, Wales**  
**March 2009**

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