

Legislation Committee No. 5

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

Consultation Response
IG18(o) – Wales Council for Voluntary Action

Written Evidence



Legislation Committee No.5
National Assembly for Wales
Consultation on the Proposed National
Assembly for Wales
(Legislative Competence)
(Welsh Language) Order 2009

A response from WCVA

March 2009

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Wales Council for Voluntary Action

A response to Legislation Committee No.5 National Assembly for Wales Consultation on the Proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009

Introduction

Wales Council for Voluntary Action (WCVA) represents the interests of voluntary organisations, community groups and volunteers in Wales. It has over 2,600 organisations in direct membership and is in contact with many more through national and regional networks.

WCVA's mission is to strengthen voluntary and community action at the heart of a civil society in Wales that:

- is inclusive and offers equality of opportunity;
- empowers people to participate and fosters community leadership;
- encourages and promotes the independence of voluntary action;
- celebrates and reflects linguistic and cultural diversity and choice, and
- engages in genuine partnership with other sectors on a "who does what best" basis.

WCVA has consulted its entire membership on this issue and this evidence has been compiled following feedback from third sector organisations Wales.

Background to the third sector and the Welsh language

The third sector in Wales has done and continues to do a great deal to support and develop the Welsh language through its activities and internal working practices.

The third sector and the Welsh language services they provide are integral to the everyday lives of the people of Wales not only in terms of cultural activities but also in terms of vital health, social care and well being services. Many of these organisations are vital to the survival and growth of Welsh as a community language as they provide opportunities for people to volunteer in Welsh and enable people to receive services in their first language, as well as celebrating the language and its associated traditions. A great deal of community regeneration, engagement and cohesion work is also carried out through the medium of Welsh language activities. This is particularly important because for the language to survive at the community level, the community itself must take responsibility for it, as recognised by the Welsh Assembly Government in *Iaith Pawb*.

Currently there is no statutory requirement that voluntary organisations should draw up a language policy, however a large number of voluntary bodies prepare and implement Schemes not out of necessity but rather as they recognise that it brings with it a number of benefits to the services they offer and their profile as well as going hand in hand with many voluntary organisations' equal opportunities and customer care policies.

If a voluntary organisation provides services on behalf of a public body (such as local councils or health bodies) it must conform to the language policy of that public organisation.

Additionally in 2007 the Welsh Language Board issued 'Guidance on Awarding Grants, Loans and Sponsorship: Welsh Language Issues' which gives advice to organisations that award grants funded by public money to ensure that the principle of language equality is reflected by their grant supported activity.

As the recent consultation (January 2009) on a Compact between the Welsh Language Board (WLB), Welsh Assembly Government (WAG) and the Third Sector demonstrated, the third sector shares WAG and WLB's aspirations that there should be more opportunities for service users to use the Welsh language in the Third Sector, more Welsh speaking volunteers across Wales and that the Welsh language becomes mainstreamed throughout all policy developments and funding allocations.

Consultation questions

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].

WCVA's Board has agreed the following position for WCVA's support for LCOs and Measures:

- We generally support the transfer of powers from Westminster to the National Assembly for Wales as we feel that it is in the best interests of the third sector in Wales.
- We would give our support to any LCO proposal where there is a broad significance for the sector as a whole

We therefore agree that, as set out in the LCO, the National Assembly for Wales should be able to make laws on the promotion and use of the Welsh language.

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].

WCVA agrees that the National Assembly for Wales should be able to make laws about which statutory services (i.e. services that are required to exist by law) the public should be able to receive bilingually, regardless of what sector is delivering these services.

We do not agree that the National Assembly for Wales should be able to make laws that encompass the core activities of third sector organisations where they are *not* being commissioned to deliver statutory services on behalf of a public body.

We feel that further regulation would contradict the recognition of the sector's independence set out in the Welsh Assembly Government's Voluntary Sector Scheme which says;

- that voluntary and community organisations are independent organisations which determine their own priorities and manage their own affairs;
- that voluntary sector organisations operate within the principles upon which they are founded, and are accountable to their members and the individuals and communities with whom they work.

We feel that a voluntary demand-led approach has already achieved a lot for the Welsh language since the 1993 Act and could continue to do so in the future. We would therefore recommend that the correct option would be to maintain the status quo for those non-public service delivering third sector organisations, whilst at the same time investing in targeted ways to enable all types of third sector organisations to develop their ability to work bilingually and offer bilingual services.

This is not to say that the status quo cannot be improved upon, but we do not feel that legislation is needed to do so.

There is a huge amount of good will towards the language in the sector and many organisations would like to increase their bilingual working but recognise that in order to do so in a proportionate and sustainable way a Welsh Language Scheme (which is the only 'recognised' option currently available to them) may not be the best way in which to achieve this. However, information on finding alternative methods of increasing bilingual working in creative and where possible cost-neutral ways is sparse.

The advice currently offered by the Welsh Language Board is focused on drafting a Welsh Language Scheme and working towards getting it endorsed. Help and advice on developing bilingualism is available from the *Estyn Llaw* project and the *Mentrau Iaith* (both funded by the WLB) and even though the services they offer are well regarded there exists a much greater need than they have capacity to meet at present.

We would welcome a move away from an emphasis on the development of a Welsh language scheme being the only option to third sector organisations but rather more encouragement (through guidance and support from sources such as the Welsh Language Board and its supported projects) of an approach to bilingualism which is realistic, proportionate and relevant to the work of third sector organisations; along with a clear recognition that this approach is as valid and valuable as developing a formal scheme.

Obstacles currently in the way of third sector organisations who want to increase their bilingual working and services include:

- The perceived and real financial cost of bilingual working
- Difficulty recruiting Welsh speaking staff
- That only providing some aspects of your services in Welsh due to financial or staff constraints could be perceived as 'tokenistic'
- The fear that you will not be able to meet all the targets you set yourself in a Welsh language scheme due to the above factors, and will be judged harshly for it.
- The time, cost and personal commitment implications of staff learning or improving their Welsh as part of their job.

We would also welcome more guidance to organisations about how to mainstream the cost of working bilingually into future funding applications, current problems include;

- Bilingualism not being considered resulting in organisations struggling to deliver any services through the medium of Welsh due to financial constraints
- Organisations applying for some translation costs without having an idea of the real demand for their services in Welsh
- Organisations assuming that a Welsh speaking member of staff will be able to act as the organisational translation service
- Organisations not thinking beyond blanket translating of materials when considering how to offer a Welsh language service.

In summary, for the majority of the third sector the proposed LCO does not represent a better way forwards in terms of enabling it to improve its ability to work bilingually or to offer more bilingual services than the current voluntary approach. If the third sector is made to engage with the Welsh language through the medium of compliance and regulation then this would represent a step back both in terms of respect for the sector's independence and recognition for the huge amount of good work achieved voluntarily since 1993.

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].

As we understand, this matter would not require bodies to take positive steps to facilitate the use of the Welsh language between individuals, but rather to respect the freedom to use the language; this is a principle that WCVA supports.

4. What are your views on the general principle that legislative competence in the area identified in Matters 20.1 and 20.2 be conferred on the Assembly? i.e.

- **Matter 20.1: Promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality**
- **Matter 20.2: Provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on it).**

We agree with these principles, as outlined in our answers to questions 1 and 3 above.

5. The Explanatory Memorandum states that Matter 20.1 would echo and build on the principles that underpin the Welsh Language Act 1993 and would allow the Assembly to legislate on the range of functions carried out at present, by the Welsh Language Board, and to build on these functions. Do you agree that it will allow the Assembly to do this? If not, how should it be amended?

This seems reasonable as it is currently defined in the Explanatory Memorandum.

6. What are your views on the scope of the proposed Order with respect to the categories of persons on whom it would allow the Assembly to impose duties to provide particular services bilingually to the public e.g. is it too narrowly or broadly drawn

(Matter 20.1 (a) - (i))? Please indicate clearly to which sub-section(s) your comments relate i.e. (a) - (i) and any particular sub-sub-sections under (h).

In our opinion the scope of the proposed Order as it relates to the third sector is unclear.

Our comments refer specifically to sub-section (b) and (e).

We feel that more clarity is needed about what kinds of third sector organisations would be covered by the sub-sections below; thus far attempts to tease out the kinds of organisations and services that will be covered by any new law have focused on private sector examples.

We are clear that sub-section (b) does not represent a change to the status quo i.e. a voluntary organisation providing services on behalf of a public body must conform to the language policy of that public organisation; we have no objection to this as stated in our response to question 2.

However, this makes it unclear as to what kind of third sector organisations would then be covered by sub-section (e) who would not already be covered by sub-section (b) - we have explored this further in response to question 9 below.

7. Is the definition used for “public authorities” for this Matter appropriate (“each public authority within the meaning of section 6 of the Human Rights Act 1998”)? If not, what definition should be used and why?

We have no other definition to offer.

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?

We have no comment to make on this issue.

9. In relation to Matter 20.1 sub-section (e) - persons providing services to the public who receive public money amounting to £200,000 or more in a financial year”, and includes “moneys made available directly or indirectly”:

(i) Is it necessary to set out the definition of “public money” in the proposed Order? If so, is it appropriate (as set out under “Interpretation of this field”)?

(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?

The definition of ‘public money’ is given in the explanatory memorandum as money; *‘provided directly by the Assembly, the Welsh Ministers, the UK Parliament, Ministers of the Crown or from an institution of the European Communities, or indirectly by or from these bodies (for example, through local authorities or Assembly Government Sponsored Bodies).’*

This definition of 'public money' is clear and should remain in the proposed Order for the purposes of clarity.

We would however welcome further clarity on whether Lottery funding is defined as 'public money' and will therefore come under the scope of the proposed LCO; as lottery funding is subject to the principle of 'additionality' we would not agree that it falls under the definition of 'statutory funding'.

It is absolutely imperative that sub-section (e) is re-worded to give equal clarity to the terms 'services to the public'; i.e. does this mean statutory services (i.e. services that are required to exist by law) or any type of services or activities aimed at the public, including non-statutory. The answer to this question is of key importance to those third sector organisations who are recipients of more than £200,000 of public money to support their core activities who need to be aware if they will be subject to the scope of the LCO and any new laws.

As outlined in our response to question 2 above, we do not feel that it is appropriate or realistic for third sector organisations receiving more than £200,000 to deliver their normal core activities (which are non-statutory) to be included under the scope of the LCO. We feel improvements could be made to increase the sector's ability to develop their bilingual working practices and services without the need to legislate, as outlined in response to question 2 above.

10. Is the scope of Matter 20.2 appropriate ("provision about or in connection with the freedom of persons wishing to use the Welsh language to do so with one another (including any limitations on it")? Will it allow the Assembly to legislate in future to implement the policy proposal as outlined in the Explanatory Memorandum?

As noted in response to question 3 above; as we understand this matter would not require bodies to take positive steps to facilitate the use of the Welsh language between individuals, but rather to respect the freedom to use the language; this is a principle that WCVA supports.

11. What are your views on Articles 4 and 5 of the proposed LCO which deals with the application of the proposed LCO to Crown bodies?

It would seem reasonable that Crown bodies come under the proposed LCO in the same manner as other public bodies.

12. Are there any other issues which would have implications for the effectiveness of any future Measures, because the proposed LCO is insufficiently broad? If so, can you suggest how the proposed LCO would have to be broadened to address these issues?

No.

WCVA
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