



ISPA Response to the Proposed Welsh Language Measure Inquiry

About ISPA

The Internet Services Providers' Association (ISPA) UK is the trade association for companies involved in the provision of Internet Services in the UK. ISPA was founded in 1995, and seeks to actively represent and promote the interests of businesses involved in all aspects of the UK Internet industry.

ISPA membership includes small, medium and large Internet service providers (ISPs), cable companies, web design and hosting companies and a variety of other organisations. ISPA currently has over 200 members, representing more than 95% of the UK Internet access market by volume. ISPA was a founding member of EuroISPA, the European Internet Service Providers Association based in Brussels, which is the largest umbrella organisation of ISPs globally.

Introduction and summary of main points

ISPA welcomes the opportunity to respond to the Committee's inquiry into the latest stage of the proposed measure. ISPA understands the Welsh Assembly Government's ambition to ensure equality between the English and Welsh language in Wales, and has noted the legislative process that it will undergo.

However, as the process has been ongoing for over a year, ISPA members would welcome greater clarity on what obligations will potentially be placed on those subject to the Measure. As the proposed Measure will impact upon ISPA members, it is important that in order to ensure that the Government's aims are met and the impact on industry is kept low, a clear process and timetable is set out. Policy and legislative development should be subject to rigorous and inclusive processes, with clear steps and definitions defined at the outset and a full impact assessment on costs. This will ensure that there is clarity over who is in scope and what will be required, and will help make the legislation more proportionate.

ISPA's main points are:

- Terms need to be defined from the outset, in particular who is subject to the Measure and a clear definition of what is proportionate.
- The Measure should formally require the Welsh Language Commissioner to prepare an independent advisory report before the Welsh Assembly Government brings forward

Standards. This should look at demand, definition of scope and a cost benefit analysis for the relevant sector.

- When bringing forward the draft Standards, Welsh Ministers should be required to include a full, rigorous impact assessment and consultation with those affected. The impact assessment included with the Measure may have underestimated the costs involved.
- It is important that the Measure is flexible so when drawing up the regulations the Commissioner should ensure appropriate advice on the affect to competition and the sector as whole.
- The Measure should make clear that requirements on sectors should only emanate from the Commissioner and not from elsewhere.
- The Standards listed in Schedule 9 should be reasonable and proportionate, with a clear definition, and subject to an impact assessment to judge whether or not their inclusion is justified.

Response to Questions:

1. Is there a need for a proposed Measure to deliver the stated objectives of (as set out in paragraph 3.10 of the Explanatory Memorandum):

ISPA understands and is supportive of the Welsh Assembly Government's long-term goal to increase the use of the Welsh language in Wales and wants to help ensure that a reasonable and proportionate framework is developed.

As the Welsh Assembly Government is minded to introduce the telecommunications aspect of the measure, it is imperative that any system imposed is proportionate and reasonable and drafted as clearly and as narrowly as possible to avoid unintended consequences. Any requirements should not be to the detriment of the development of a dynamic, competitive telecommunications sector in Wales. Thus, ISPA is keen to ensure that the Measure is underpinned by a thorough process that balances the development of the Welsh language with the impact on those subject to the measure.

The internet sector is homogenous and characterised by varied services, footprints and business models; the explanatory memorandum alludes to the fast-paced nature of the industry and the emergence of new technologies. This means that obligations placed on the sector will affect different players in different ways and any regulations that are drafted should take this into account. There is a concern that by drawing the Measure too widely, it may hamper the development of the sector and services to the Welsh market. To make this clearer, the impact

and proportionality test needs to take the diversity of the industry into account and should be defined and agreed on as a priority.

ISPA notes that the explanatory memorandum points out that that “Welsh Ministers’ general policy, as reflected in the proposed Measure, is not to impose duties on the private sector, including small businesses”. Therefore, the promotion of the Welsh language by private companies should be less burdensome and the Measure should be clear on this.

2. Is it easy to understand the practical implications of the proposed Measure for your organisation? Please explain the reasons for your answer.

It has not been that easy to understand the practical implications of the proposed Measure. There has been, and remains, a lack of clarity and detail of whom and what is actually covered by the proposed Measure.

The legislative process of the proposed Measure itself means that the exact nature of what is included will not be known until later in the process. This is confusing and unhelpful and makes it hard for members to understand the practical implications for their business. ISPA would call for an explicit requirement for early consultation to be included.

As ISPA represents a variety of companies that provide internet services, there is concern that the Measure has not been explicit enough about who will be subject to it. For instance, telecommunications has been specified throughout the process as a service that will be included. However, what this means in practice has not been set out – does it only relate to traditional telecommunications providers, or will the definition be drawn more widely? As the explanatory memorandum affirms (9.10), the telecommunications sector is characterised by rapid change and the “extent and nature of any standards” that will apply to the telecommunications sector will only be apparent at the end of the process. ISPA members would therefore welcome clarity at an early stage as to whom and what will be subject to the Measure rather than deciding who is subject at the end of the process.

3. Subject to any answer given in relation to question 2, how will the proposed Measure change what your organisation does currently and what impact will any such changes have?

ISPA represents a variety of companies involved in the internet sector, from small to corporate in size, to services including internet access, web hosting and communication. The impact on

members will therefore vary according to the size and scope of services offered. As outlined in the previous question, it is not easy to say definitively how the proposed Measure will impact on ISPA members until the proposed Measure passes through its legislative process or following a full cost benefit and impact assessment, which needs to be carried out earlier in the process.

Taking the above into account, the proposed Measure will however change what ISPA members do in a number of areas. Specific services such as telephone helplines and customer service will be impacted upon. For example, ISPs all operate large customer websites that are constantly updated and a Welsh language version would require significant funding to function on an equal footing. Providers also offer customer telephone helplines in English, which deal with a whole range of customer enquiries, so to provide the same service in the Welsh language would add significant cost. Small businesses often provide customer services themselves, as part of a small team who run the business; larger providers often use large call centres that may not be based in Wales or the UK. Due to the scarcity of Welsh speakers outside of Wales and the international basis of companies, Welsh language provision would be problematic.

4. Are the sections of the proposed Measure appropriate in terms of achieving the stated objectives?

ISPA has identified several potential concerns within the proposed Measure:

As currently drafted, companies that have to comply with the measure will only be able to challenge the notice on grounds of reasonableness and proportionality after it is served. The definition of proportionate need to be defined at the outset and it would be more appropriate for the proportionality test, as part of the rights to challenge, to be earlier on in the process. If the standards and compliance notices sent to those covered are reasonable and proportionate before they are sent, this will avoid unnecessary challenges. To ensure that the drafting of regulations is reasonable and proportionate, the Commissioner should look at the demand from consumers for Welsh language provision, an assessment of the scope of telecommunications and a cost benefit analysis. Then the reasonable and proportionality would be proved at the outset.

For the appeals to the Tribunal, a provider should be able to appeal against a compliance notice and not have to wait for the Commissioner to determine non-compliance. ISPA believes that 28 days is too short a period to make an appeal on what may be a complex issue. This would ensure that the system the Measure establishes is reasonable, proportionate and workable. As the standards placed on telecommunications providers could be quite significant, ISPA would

recommend a longer implementation period. Instead of 6 months to ensure compliance, as outlined in the proposed Measure, a longer period of say 12 months would be more appropriate.

ISPA notes that the powers will also give the Welsh Ministers powers to extend the standards included in Schedule 9 and extend those covered by Schedule 8. Any extension to the standards or those covered should require full consultation with those affected.

The Measure should give more detail on how the Commissioner will be involved in setting standards. As the body will be tasked with enforcing the standards, it would be appropriate for the Commissioner to have some kind of advisory role. This role should focus on the details for each sector, following consultation with stakeholders affected.

When preparing regulations for standards as the measure outlines, it is important that the impact on competition is factored in. As the explanatory memorandum states, for the “small minority” of private sector companies that may be subject to the Measure, the Welsh Assembly Government is seeking to have a neutral effect on competition. It is important that the Measure affords flexibility and is pragmatic as the effects of the Measure will vary on different companies and sectors. To ensure that this is the case, the Welsh Ministers, in drawing up the regulations, should ensure appropriate advice on competition issues is taken.

The Measure needs to give a formal role to the Commissioner to prepare an advisory report for the Welsh Ministers, before draft Regulations for standards are drawn up. At a minimum, the report should assess levels of demand, likely benefits to consumers and costs to providers. There also needs to be greater clarity as to the role of the Commissioner, including the extent of independence from government.

The Measure further provides for operational standards for public sector bodies. There is a concern that the operational standards for public bodies will create rules for providers which may stipulate that only those that provide Welsh language services will be able to provide services. As this could deter new entrants to the market, the Measure should make clear that requirements should not emanate indirectly from Operational and Policy Standards of public bodies. The Measure should be clear that only the Commissioner has the power to make recommendations.

Schedule 9 of the Measure contains areas where service delivery standards must be specified. Following an impact assessment the services listed under schedule 9 may not be justified so the text should read “can be” rather than “must be”. If these are included in the Measure, the extent to which is still not clear, they could have a disproportionate effect on ISPA’s members,

particularly its smaller members. Aside from changes to customer services, websites and online services, any obligations on other areas include in Schedule 9 should be subject to an impact assessment on the changes involved.

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

As the Measure is seeking to place additional burdens on telecommunication providers, there are a number of potential barriers. Again, the extent of these barriers for those in the telecommunications industry is not clear, but the following have been identified as potential barriers:

- Cost – the largest potential barrier is that of cost. Enforcing providers to deliver standards in Welsh will place significant financial burdens, both at the outset and ongoing, the exact extent to which is still not clear.
- Availability of Welsh speakers – as stated earlier, many ISPA members are not based in Wales and with a lack of Welsh language speakers outside of Wales, this is a potential barrier.
- Apportioning resources – with the continued roll out of next generation broadband, identified by all the main political parties as a priority for the UK, the telecommunications sector has to prioritise investment into this and other vital areas. Added to this, the competitive nature of the telecommunications market means that investment has to be fully justified. The Measure should reflect the competing priorities.
- Penalties for non-compliance – the publication of non-compliance, with the possibility of a £5000 civil penalty, are potential barriers and could mean companies are deterred from entering the Welsh market.

6. What are the financial implications of the proposed Measure for your organisation, 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 proposed Measure.

The telecommunications market in the UK is highly competitive and has resulted in historically low prices for UK consumers. Many ISPs operate on tight margins and do not have the budget to

impose Welsh language requirements without undue cost to business. Any cost could potentially be borne by the consumer UK-wide, rather than just Welsh consumers, and is not a fair use of resources. Therefore, a full economic impact assessment is needed from the Assembly Government as early possible to determine what is in scope and what is proportionate.

The proposed Measure would incur both costs at the outset to ensure that systems are in place and ongoing costs to operate the service. The impact assessment included in the explanatory memorandum does not fully take into account the numbers involved. The explanatory memorandum states that providing an estimate of the costs is a “difficult task” and that costs have not been “routinely measured”. ISPA would argue that a more detailed impact assessment is crucial for understanding the impact of the Measure and reasonableness and proportionality. ISPA acknowledges the difficulty in estimating costs of the proposed Measure. However, the IA does not take into account variations for different sectors or services. To better understand the financial obligations they may face, ISPA members would find it helpful if estimated costs contained more detail for specific sectors, such as telecommunications. The IA was also compiled using information from Wales-based companies where Welsh language speakers are more common.

The IA makes assumptions about small, medium-sized and large businesses. For small businesses the IA states that they “rarely expressed any concern about the cost of implementing a scheme”. However, smaller ISPA members have indicated that, due to the financial burdens, they would seriously consider discontinuing services in Wales if they were forced to operate Welsh language services and the Measure could deter new entrants to the market. This would be to the detriment of a competitive, innovative market in Wales and the Welsh consumer.

7. Are there any other comments you wish to make about specific sections of the proposed Measure?

The proposed Measure does not properly take into account the role of Ofcom. As the regulator of telecommunications in the UK, ISPA believes that Ofcom’s expertise in the area should be used in an advisory capacity.

ISPA represents companies who are consumer-facing, business-to-business or both. ISPA members would like confirmation whether the proposed Measure only applies to consumer providers or if it extends to B2B providers of telecommunication services.