

Comisiwn y Cynulliad Assembly Commission

NAFWC 2014 (Paper 4 Part 1)
Bilingual services for the Fourth Assembly

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



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Bilingual services for the Fourth Assembly

This paper has been prepared for consideration by the National Assembly for Wales Commission. It has been deemed suitable for publication after such consideration in line with the Commission's rules for conduct of business. Premature publication or disclosure of the contents of this paper is not permitted as this might prejudice the Commission's deliberations

1.0 Purpose and summary of issues

1.1 At its meeting on 19 May 2010 the Commission agreed that the Chief Legal Adviser should prepare detailed proposals for a Measure to place the duties of the Assembly and of the Commission in relation to the provision of bilingual services on a sound statutory footing. This paper now sets out, for discussion and approval by the Commission, a draft set of detailed proposals for such a Measure.

1.2 This paper also updates the Assembly Commission on progress to enhance our bilingual services following the Independent Review which reported to the Assembly Commission in May 2010 and seeks confirmation of the arrangements proposed to bring forward a new Official Languages Scheme under the proposed legislative framework.

2.0 Recommendations

2.1 The Assembly Commission is asked to:

NAFWC 2014 (Paper 4 Part 1)

Bilingual services for the Fourth Assembly

- approve the legislative principles and proposals (subject to any modifications that the Commission wishes to make), (paragraphs 3.8, 3.13 and 3.15 below and Annexes A and B)
- note proposals for a new Official Languages Scheme in 2011 (paragraph 4.1);
- agree the consultation timetable for the principles, draft proposed Measure and our draft Official Languages Scheme (paragraph 5.1);
- note the progress in implementing some of the key recommendations of the Independent Review of our bilingual services (paragraph 6.1 and Annex C); and
- note the latest position regarding the proposed statutory investigation by the Welsh Language Board (paragraph 7.1)

3.0 Discussion – The current legal position

3.1 The Government of Wales Act 2006 provides that:

“The Assembly must, in the conduct of Assembly proceedings, give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.”

(Section 35(1))

“In the exercise of the functions of the Assembly Commission effect must be given, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.”

(Schedule 2, paragraph 8(3))

3.2 Although the provisions of the Welsh Language Act 1993 do not apply to the Assembly itself, article 6 of the National Assembly for Wales Commission (Crown Status) (No.2) Order 2007 provides that the Commission is to be treated as a

Bilingual services for the Fourth Assembly

Crown body for the purposes of the Welsh Language Act 1993, thereby enabling the Commission to adopt a Welsh Language Scheme which would be subject to monitoring by the Welsh Language Board.

The need for reform

3.3 Section 35(1) of the Act has not given rise to any difficulty. It is however couched in language which reflects that of the Welsh Language Act 1993, the relevant parts of which will be repealed by the Welsh Language (Wales) Measure which is currently being considered by the Assembly (and whose general principles have already been approved). Although the current wording of section 35(1) might not justify legislation on its own, the need to revise Schedule 2, paragraph 8(3) presents the opportunity to bring section 35(1) up to date and more into line with the language of the corresponding statutory provisions that apply to other bilingual legislatures.

3.4 The effect of Schedule 2, paragraph 8(3) and its interrelation with the NAW Commission (Crown Status) (No.2) Order 2007 is in need of clarification and reform. The issue of the applicability of these provisions to the current Welsh Language Scheme prepared partly before the coming into force of the Government of Wales Act 2006 by the former Assembly (which was a Crown body and hence automatically subject to the 1993 Act) and partly after the 2006 Act came into force by the Commission, and adopted by the Assembly (which is not, and cannot be, a Crown body) has been the source of uncertainty and controversy. In addition, even if the 1993 Act does (contrary to the Commission's view) provide a framework for ensuring effective practical provision of bilingual services by the Commission, the relevant provisions of that Act are (as explained above) likely to be repealed in the near future.

Legislative competence

3.5 Legislative competence to make the necessary modifications is conferred on the Assembly by Matters 13.2 (Conferral of functions on the Assembly Commission for and in

Bilingual services for the Fourth Assembly

connection with facilitating the exercise by the Assembly of its functions.) and 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). Schedule 5 Part 2 paragraph 6(2) of the Government of Wales Act 2006 enables an Assembly Measure to amend section 35(1) and Schedule 2 paragraph 8(3).

Options for reform – section 35(1)

- 3.6 An obvious exemplar for a modernised section 35(1) is section 6 of the New Brunswick Official Languages Act 2002:

“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.”

- 3.7 Another is section 6 of the Irish Official Languages Act 2003:

“6. (1) A member of either House of the Oireachtas has the right to use either of the official languages in any debates or other proceedings in that House or of a committee of either House, a joint committee of both Houses or sub-committee of such a committee or joint committee.

(2) A person appearing before either House of the Oireachtas or before such a committee, joint committee or sub-committee as aforesaid has the right to use either of the official languages.

(3) Every official report of the debates and other proceedings of the Houses of the Oireachtas shall be published in each of the official languages, except that contributions (whether oral or in writing) in either of the official languages by persons may be published therein solely in that language.”

- 3.8 It is proposed that, drawing on these examples, but adapting them to Welsh circumstances, an appropriate wording for a set of principles and a revised section 35(1) of the Government of Wales Act 2006 would be that set out in Annexes A and B.

Options for reform – Schedule 2, paragraph 8(3)

- 3.9 In the case of the Assembly, the facilities which are needed in order to deliver bilingualism effectively, not only in relation to Assembly proceedings but also in relation to the public, are provided by the Commission. Legislation therefore needs to deal effectively with the role of the Commission in doing so.**
- 3.10 The option of setting out the Commission’s duties in detail on the face of the legislation would give rise to practical difficulties. In particular, it would make responding to unforeseen changes of circumstance very difficult (an amending Measure would be needed).**
- 3.11 Another option would be to bring the Assembly and the Commission within the ambit of the Proposed Welsh Language Measure (i.e. to enable Ministers and the Welsh Language Commissioner to impose standards on the Assembly and Commission and for those standards to be enforceable by the Commissioner). This would not be constitutionally appropriate in that it would make the Assembly effectively accountable to Ministers in relation to bilingual provision whereas constitutionally Ministers are required to be accountable to the Assembly.**
- 3.12 A more flexible alternative (which also has the advantage of building on existing practice) would be to require the necessary detailed provisions to be incorporated by the Commission into a Scheme to be approved by the Assembly. Such a Scheme would generally resemble the form of the Assembly’s current Scheme and the Measure could incorporate transitional provisions so that any existing Scheme would be treated as the one required by the Measure.**
- 3.13 It is therefore proposed that paragraph 8(3) of Schedule 2 to the Government of Wales Act 2006 be amended (and expanded) as set out in Annex B.**

Bilingual services for the Fourth Assembly

3.14 Following a period of consultation (see paragraph 5.1 below), it is proposed that the Measure will be introduced early in the Fourth Assembly for scrutiny by a legislation committee.

Principles underpinning the proposed Measure

3.15 The provisions of the Government of Wales Act 2006 which relate to equal treatment for the English and Welsh languages by the Assembly and the Assembly Commission would be up-dated as follows:

- there would be a clear, simple statement, modelled on those that apply to other bilingual legislatures, that the two languages are the official languages of the Assembly and should be treated equally;**
- the right of anyone who takes part in Assembly proceedings (including witnesses as well as Members) to do so in either language would be set out on the face of the Act (again in line with the normal practice in other bilingual legislatures);**
- the Assembly Commission would be placed under a duty to make the practical arrangements to enable the Assembly to operate bilingually (e.g. by providing the necessary interpretation and translation facilities), as well as to treat the two languages equally when conducting its own activities;**
- the details of how the Commission would enable the Assembly to comply with its duty to treat the two languages equally, and of how the Commission would itself operate bilingually, would be set out in an Official Languages Scheme (which would dovetail with the Assembly's current Welsh Language Scheme which is due to expire next year);**
- the Scheme would need, amongst other things, to identify arrangements for simultaneous interpretation and translation of documents;**
- the Scheme would also need to incorporate a mechanism for dealing with complaints of non-compliance with the Scheme, whether made by Members or by the public;**

NAFWC 2014 (Paper 4 Part 1)

Bilingual services for the Fourth Assembly

- **the Commission would need to consult with Assembly Members and with the public on the contents of a draft of the Scheme and the Scheme in its final form would have to be approved by the Assembly; and**
- **the Scheme, once adopted, could be revised from time to time. Revisions would be subject to the same requirements for consultation and approval by the Assembly as apply to the Scheme itself.**

4.0 Proposed new Official Languages Scheme

4.1 The Assembly Commission will be aware that the existing Welsh Language Scheme is due to come to an end in 2011. It is currently being reviewed in the light of the report of the Independent Review of Bilingual Services, experience over the last three and a half years and good practice elsewhere. It is proposed that the draft Official Languages Scheme should come into force, on a transitional basis, for the Fourth Assembly. It could then be approved as the Scheme for the Assembly and Commission in Plenary at the same time as the Measure is approved.

5.0 Consultation

5.1 It is proposed that public consultation on the principles, the draft proposed Measure and draft Official Languages Scheme take place early in 2011 for six to eight weeks. This timeframe would then allow comments to be taken into account prior to the introduction of the Measure for scrutiny and for any amendments to be made to the draft Scheme.

6.0 Independent Review of our Bilingual Services

6.1 Since the publication of the Independent Review report, work has been progressing to start implementing some of the recommendations. The Assembly Commission will wish to note that the majority of the recommendations will feature as specific points or targets in our new draft Official Languages Scheme and others will be progressed outside of those arrangements e.g. the recommendation on developing an Archiving Scheme is noted in the draft Information

Bilingual services for the Fourth Assembly

Management Strategy. Progress on some of the key recommendations is noted in Annex C.

7.0 Welsh Language Board Investigation

7.1 The Commissioners will be aware that the Welsh Language Board wrote to the Chief Executive and Clerk on 24 September confirming that they were going to formally investigate the issues around our decision not to provide a full translation of the Record of Proceedings from the beginning of the new term in September and whether we were in breach of our existing Welsh Language Scheme. We understand that this will involve a review of the papers held by the Board. The Board has now written to us about arrangements for the review (copy of correspondence attached at Annex D). Once the investigation is completed, a report will be provided to us and copied to the Heritage Minister and if the Board concludes that we are in breach of our Welsh Language Scheme, recommendations will be included in the report. We will update the Assembly Commission with any additional information during the progress of the investigation.

Amendment to Section 35(1) of the Government of Wales Act 2006

“(1) The official languages of the Assembly are English and Welsh and must, in the conduct of Assembly proceedings, be treated on a basis of equality.

(1A) Either official language may be used by any person when participating in Assembly proceedings.

(1B) Paragraph 8 of Schedule 2 makes provision about the duty of the Assembly Commission to enable effect to be given to subsections (1) and (1A).”

Amendment to Schedule 2 paragraph 8(3) of the Government of Wales Act 2006

- “(3) The Assembly Commission must, in the exercise of its functions—**
- (a) treat the English and Welsh languages on a basis of equality, and**
 - (b) make arrangements to enable effect to be given to sections 35(1) and (1A).**
- (4) The Assembly Commission must—**
- (a) adopt, and**
 - (b) publish**
- an Official Languages Scheme (“the Scheme”) specifying the measures which it proposes to take in order to comply with its duties under sub-paragraph (3).**
- (5) The Scheme must include (amongst other things) provision relating to—**
- (a) simultaneous interpretation from one official language into the other;**
 - (b) publication of documents in both official languages, and**
 - (c) procedures for dealing with complaints by Assembly members and by members of the public that the Scheme has not been complied with.**
- (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.**
- (7) The Assembly Commission—**
- (a) must, at least once every four years, review the Scheme and**
 - (b) may, at any time, adopt a new Scheme or an amendment to the existing Scheme.**

- (8) A Scheme, or an amendment to the existing Scheme, may not be adopted by the Commission unless—**
- (a) a draft of the Scheme (or of the proposed amendment) has been—**
 - (i) published, and**
 - (ii) laid before the Assembly,**
 - (b) the Commission has invited representations on the draft by Assembly Members and by members of the public and has given a reasonable opportunity for such representations to be made,**
 - (c) the Commission has considered any such representations, and**
 - (d) the Scheme (or the amendment), incorporating such modifications as the Commission may, as a result, make has been laid before, and approved by resolution of, the Assembly.**
- (9) The Commission must give effect to the Scheme.**
- (10) The Commission must, in respect of each financial year—**
- (a) prepare and**
 - (b) as soon as possible after the end of that year, lay before the Assembly,**
- a report describing how the requirements of the Scheme have been complied with during the period to which the report relates.**

Progress on recommendations of the Independent Review of Bilingual Services – November 2010.

The full translation of the Record of Proceedings ceased at the start of the new term. There were initially a small number of requests for translated versions of the Cofnod and we are in receipt of a request for information under the Freedom of Information Act.

A fully bilingual Cofnod Cryno/Concise Record has been published, on a pilot basis, since the beginning of the autumn term designed to better engage the public in our proceedings. We will review this early in the spring and consider any changes that need to be made to ensure we fully deliver the recommendation in the Panel's report.

Work to develop the bilingual greeting skills of the security team has taken place over the summer and into the autumn term. Internal bilingual staff have been delivering the training to a cohort of some 20 security staff. We have been impressed with the progress made so far and are beginning to receive positive feedback. Classroom training will now become on the job application. Through recruitment to create a more bilingual security team and on-going training of the whole cohort, we are confident that this will contribute to the bilingual ethos of the organisation over time.

Assembly Members are now being provided with Welsh and English suggested questions in Committee through the clerking teams to encourage greater use of Welsh in our proceedings. New research papers and Quick Guides produced by the Research Service made available on the Assembly's website are also published bilingually. In addition to a strengthened relationship with the Translation Service, a greater percentage of bilingual staff is now situated within the Members' Research Service.

The project team is in touch with other organisations mentioned in the Independent Review report and is developing a working relationship with them to build best practice into our bilingual services going forward.

Dragon Naturally Speaking has been updated for all users within the Translation and Reporting Service and we will continue to

review developments in voice recognition software to ensure that when it is sufficiently developed, it can be used efficiently for our purposes.

Archiving arrangements have been built into our draft Information Management Strategy.

A high level Welsh Language Champion, represented on the Management Board has been appointed.

1 November 2010

Claire Clancy
Chief Executive and Clerk
National Assembly for Wales
Cardiff Bay
CARDIFF
CF99 1NA

Dear Claire

Investigation into the Welsh Language Scheme

Thank you for your letter dated 30 September 2010.

As was explained to you, the Board has decided to conduct an investigation under section 17 of the Welsh Language Act 1993 (the Act). This investigation is based on the Commission's decision to provide a Record of the proceedings of Assembly plenary sessions in a new format and the Board's doubts that the new format could contravene the commitments made in the Language Scheme. Specifically (but without limiting the possible findings of the investigation) the Board believes that the new provision could contravene the commitments made in paragraph 4.8 of the Welsh Language Scheme and also statements made in section 2.

The decision to conduct an investigation in this case was not based on a complaint. The Board can, in accordance with section 17 of the Act, decide to conduct an investigation based on a complaint or on the basis of "other" evidence. The evidence which formed the basis of the decision was the Record of proceedings of the Assembly plenary session on 21 September 2010.

We welcome your commitment to co-operate with the investigation. Section 17(2) of the Act gives the Board considerable discretion in deciding the procedure for conducting an investigation.

The steps we plan to take in this case are outlined below. If you have any suggestions or comments on how they should be amended, please provide them by

15 November 2010. We will give reasonable consideration to any suggestions you have that are received by the date mentioned. Otherwise, we will continue to proceed as follows:

1. The investigation will be conducted by a delegated officer of the Board, namely Dyfan Sion, or an individual nominated by the Board from time to time.
2. The Board will seek evidence and information from the Commission, and from others that the Board consider appropriate. Written evidence is expected in the first instance. Please find enclosed the call for evidence and information from the Commission in appendix 1. The Commission is also invited to provide any other evidence that is relevant to the investigation.
3. We expect the Commission to respond to the call for evidence by 30 November 2010.
4. Any evidence received from other parties as part of the investigation will be shared with the Commission, and the Commission will have an opportunity to respond in writing within 20 working days of it being received by the Board.
5. The Board will consider all the evidence and information. Following that the Board may ask the Commission for additional evidence or information. We will ask the Commission to respond within 20 working days of the Board's request.
6. The Board, having considered the initial evidence, may invite a witness or witnesses to be interviewed in order to provide oral evidence. The decision on whether or not to accept the invitation lies with the individual. Any interview will be in private, but the notes may be published as part of the Board's report, and they will be shared with the Commission. The Board will consider the need to redact or summarise statements in order to safeguard individuals in some cases. The Commission will have an opportunity to respond in writing to witness statements within 20 working days of them being received.
7. The Board intends to finish collecting evidence by January 2011, but the process may take longer than that.
8. The Board's delegated officer will prepare a draft report based on the evidence and information collected. We will send a copy of the draft report to the Commission for comments. The Commission will need to provide any comments within 20 working days of receiving the draft report.
9. The Commission's comments on the draft report will be considered in full by the Board's delegated officer. The Board will be willing to share any relevant evidence or information used to draw the conclusions of the investigation with the Commission.
10. The draft report will be submitted to the Board's Complaints and Statutory Investigations Panel, whose remit is to discuss the contents of investigation reports and decide on recommendations that may need to be made in the report in accordance with section 19(3) of the Act.

11. The Board will send the final report including the recommendations to the Commission, with a copy sent to the Government's Minister for Heritage. The report will be published on the Board's website.
12. The Board will give fair consideration to any request for added time with good reason, but the Board reserves the right to set a final date for receiving information, evidence and responses, and to draw any reasonable conclusions if specific evidence or information is not submitted.

I believe that the information above answers the questions in your letter dated 30 September. I trust that the proposed process is clear, but if any questions arise, I would be grateful if you could contact us in advance.

Yours sincerely

A handwritten signature in black ink that reads "Meirion Prys Jones". The signature is written in a cursive style with a large initial 'M'.

Meirion Prys Jones

Chief Executive

Appendix 1

Call for evidence and information from the National Assembly for Wales Commission for an Investigation into the Welsh Language Scheme

Commitments of the Welsh Language Scheme

1. Does the Commission believe that the new format of the Record of Proceedings published for the first time in September 2010 complies with the commitment made in section 4.8 of the Welsh Language Scheme? Please provide any relevant evidence which supports your answer.

"A bilingual verbatim record is published of each Plenary meeting, as soon as practicable"

2. Does the Commission believe that the new format of the Record of Proceedings complies with the requirements of the Government of Wales Act 2006 which are further highlighted in clause 2.1 of the Welsh Language Scheme? Please provide any relevant evidence which supports your answer.

"Section 35(1) of the Government of Wales Act 2006 requires the Assembly, in the conduct of Assembly proceedings, to give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality"

3. In the Commission's opinion, what effect does the change to the Record have on the ambition and mission outlined in clause 2.2 of the Welsh Language Scheme? Please provide any relevant evidence which supports your answer.

"(i) enabling the Assembly to conduct every aspect of its business through the medium of Welsh and English on an equal basis"

"(iii) Providing a fully bilingual public information, education and visitors' service"

Decision to change the format of the Record by September 2010

4. What considerations led to the Commission's decision to change the format of the Record? Who made the decision to change the format of the Record? Please provide copies of any documents and records associated with the decision.

5. Has there been any consultation or seeking of opinion regarding the latest decision to change the format of the Record - e.g. with Assembly members? Please provide copies of any relevant documents.

6. Has the Commission consulted with any other organisations regarding the possible implications of not providing a Welsh translation of English contributions in the Record? Please provide copies of any relevant documents.

7. The terms of reference of the Independent Review Panel that conducted the Review of Bilingual Services in the National Assembly for Wales stated that there is a need to "*d) recommend a way forward for the Fourth Assembly and beyond (by when the current Welsh Language Scheme will have ended)*". In its meeting on 19th May 2010 the Commission agreed "*the implementation timetable outlined in the report*". Can you therefore explain why the recommendation about the Record in paragraph 68 of the Review Panel's report was implemented during the third Assembly? Please provide copies of any documents and records associated with the decision.

8. Has standing order 30, "*Reports of Proceedings*", been reviewed recently following the change to the format of the Record of Proceedings? Are there any plans to reconsider or modify standing order 30 in future following recent developments? If so, what would the procedure be for doing so? Please provide copies of any relevant documents and records.

Review of Bilingual Services in the National Assembly for Wales

9. The Independent Review Panel's report contains 30 recommendations in all. Please provide information on any plan or timetable that has been agreed for implementing the other recommendations.

10. One of the Panel's recommendations notes that "*senedd.TV should become the principal comprehensive stored record for researchers and future historians*" (paragraph 71). Has the Commission considered abolishing the written Record in its entirety? Is this likely to be considered in future? Please provide copies of any relevant documents or records.

11. One of the Panel's other recommendations was to develop a "Citizens' Cofnod" (now called the "Concise Record"). The Concise Cofnod has appeared on the Assembly website since the start of the new term. Has there been any assessment made to date about the usage or success of this new resource? Is there an intention to conduct such an assessment? Please provide copies of any relevant documents or records.