

Explanatory Memorandum to the Welsh Language Schemes (Public Bodies) Order 2012

This Explanatory Memorandum has been prepared by the Department for Education and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with:

Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Welsh Language Schemes (Public Bodies) Order 2012. I am satisfied that the benefits outweigh any costs.

Leighton Andrews AM
Minister for Education and Skills
13 December 2012

1. Description

1.1 The purpose of the Order is to specify the Natural Resources Body for Wales (NRBW) as a 'public body' for the purposes of Part II of the Welsh Language Act 1993 ('the 1993 Act'). Under part II of the 1993 Act, the Welsh Language Board may give notice in writing to any organisation which is a 'public body' to produce a Welsh Language Scheme. The Welsh Language Board has now been abolished and the function of giving notice under Part II of the 1993 Act has been transferred to the Welsh Language Commissioner by virtue of the Welsh Language (Wales) Measure 2011.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

3.1 This Order is being made under section 6(1)(o) of the 1993 Act. Section 6(1)(o) provides that any person (whether or not a body corporate or unincorporate) who appears to the Secretary of State to be exercising functions of a public nature and who is specified by order made by the Secretary of State for the purposes of Part II of the 1993 Act is a 'public body'.

3.2 The power of the Secretary of State, so far as exercisable in relation to Wales, was transferred to the National Assembly for Wales by virtue of the National Assembly of Wales (Transfer of Functions) Order 1999 (SI 1999/672). Those functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30, of Schedule 11 to the Government of Wales Act 2006.

3.3 The NRBW was established by the Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903(W.230)).

3.4 The Order is subject to annulment (the negative procedure) by virtue of section 6(2) of the 1993 Act.

4. Purpose & intended effect of the legislation

4.1 The purpose of the Order is to specify the NRBW as a 'public body' for the purposes of Part II of the Welsh Language Act 1993. Section 6 of the Act lists various public bodies for the purposes of part II of the Act and provides that the Secretary of State may specify further public bodies for those purposes. This power was transferred to the National Assembly by the National Assembly for Wales (Transfer of Functions) Order 1999.

4.2 Under section 7 of the Welsh Language Act 1993, the Welsh Language Commissioner may give notice in writing to any organisation which is a 'public body' to produce a Welsh Language Scheme. The purpose of Schemes is to give effect to the principle established in the Act that in the conduct of public business and the administration of justice in Wales, the Welsh and English languages should be treated on a basis of equality. The purpose and effect of this Order will be to enable

the Commissioner to give notice to the NRBW to prepare a Welsh Language Scheme.

4.3 It was the intention, when the Act was passed, that the coverage of the public sector would be comprehensive. Section 6 of the 1993 Act was broadly drafted in order to enable the Secretary of State to name a broad spectrum of bodies carrying out functions of a public nature. Six previous Orders naming additional bodies have previously been made.

4.4 If this Order were not made then the Welsh Language Commissioner would not be able to serve a notice on the NRBW requiring it to produce a Welsh Language Scheme.

4.5 The Regulatory Impact Assessment (RIA) at annex 1 discusses the costs associated with the preparation, by NRBW, of a statutory scheme.

5. Consultation

5.1 The Welsh Ministers have consulted with the Chief Executive of NRBW and the Living Wales Programme Board, which is responsible for delivering the new single environment body, NRBW on 1 April 2013. The outcome of that consultation is included in the RIA at annex 1.

Annex 1

Regulatory Impact Assessment

Options

With regard to the NRBW, the Welsh Ministers considered the following options:

a) Do nothing

The Welsh Ministers considered the appropriateness of making an Order to enable the preparation, by NRBW, of a Welsh Language Scheme at a time when the policy (introduced by the Welsh Language (Wales) Measure 2011) is to move from schemes to Welsh language standards. However, the NRBW will constitute a new and high profile organisation, with considerable public interest in its work - and with a wide range of stakeholders. It will also be formed by the merger of three organisations with approved Welsh Language Schemes, elements of which are regarded by many as being at the forefront of good practice.

In addition, it is likely to be some time before the Welsh Language Commissioner will be in a position to issue the NRBW with a compliance notice under section 45 of the Welsh Language (Wales) Measure 2011, requiring it to comply with standards. Before that notice can be issued the Welsh Ministers would have to make an order to amend Schedule 6 of the Measure to include NRBW as a body potentially liable to comply with standards. Regulations will need to be made to specify standards and to authorise the Welsh Language Commissioner to give NRBW a compliance notice requiring it to comply with the specified standards. In the meantime, were the NRBW *not* to have an enforceable Welsh Language Scheme in place, this would be likely to leave a long period in the transition from the three existing bodies (the Countryside Council for Wales, the Forestry Commission and the Environment Agency), with their enforceable Schemes, to the imposition of standards on the NRBW.

The NBRW could prepare a voluntary Scheme in the meantime. However, were that option to be followed, the Welsh Language Commissioner would not be able to deal with non-compliance with the Scheme. This could lead to a criticism of the Welsh Ministers for not having specified the body under Section 6 of the Welsh Language Act 1993.

b) Designate NRBW under Section 6(1)(o) of the Welsh Language Act 1993

Including NRBW in an Order will result in it having to prepare a statutory Welsh Language Scheme under the Welsh Language Act, following notification by the Welsh Language Commissioner. The Scheme would have to be prepared in accordance with Guidelines and Statutory Advice issued by the Welsh Language Board and would specify the measures NRBW proposes to take for the purposes of giving effect to the principle that, in the conduct of public business and the administration of justice in Wales, the Welsh and English languages should be treated on a basis of equality.

The Living Wales Programme Board, which is responsible for delivering the new single environment body, NRBW, on 1 April 2013, took an early decision to proceed with developing a formal Welsh Language Scheme for NRBW that could be approved by the Welsh Language Commissioner and come into effect on 1 April 2013. The preparation of a statutory Scheme would also help facilitate a unified ambition in

relation to the Welsh language within NRBW. In addition, preparation of a statutory Scheme would enable the Welsh Language Commissioner to deal with any instances of non-compliance with the Scheme.

Costs & benefits

a) Benefits

The Order will allow a statutory Welsh Language Scheme to be developed and implemented by the NRBW.

The Scheme will improve accessibility to public services to people wishing to communicate with the NRBW through the medium of Welsh. The detailed benefits to service users in Wales will depend on the terms of the NRBW's Scheme and cannot, therefore, be foreseen precisely at this stage. Nevertheless, the Scheme would need to conform to guidelines approved by Parliament in July 1995, and advice and guidance issued by the Welsh Language Board.

The Order will enable the application of the principle that the Welsh and English languages should be treated on a basis of equality to be further extended. The Order is consistent with the Welsh Government's policy of supporting the use of Welsh. It will also contribute to one of the aims of the Welsh Government's Welsh language Strategy: *A living language: a language for living* [[Welsh Government, March 2012] (Strategic area 5: Welsh language services).

Not making an Order, and relying on NRBW to prepare a voluntary Welsh Language Scheme could result in the same benefits. However, the Welsh Language Commissioner would be unable to deal with any instances of poor performance by the NRBW with regard to the provision of Welsh language services.

b) Costs

Just as it is not possible to foresee precisely the detailed benefits which will accrue to service users in Wales as a result of the Welsh Language Scheme which this Order will make possible, it is likewise not realistically possible to forecast accurately the costs involved. However, no costs are likely to be incurred by the National Assembly for Wales or the Welsh Government.

The Welsh Language Act 1993 requires that Schemes be prepared with regard to what is "reasonably practicable and appropriate in the circumstances" for the organisation concerned.

The costs of implementing any new Welsh Language Scheme will also depend on the current level of service provision in Welsh, and that planned for the future. Providing a bilingual service is accepted as good practice and is becoming much more common in Wales. Some organisations have developed voluntary Welsh language Schemes or policies - or provide some bilingual services voluntarily - since they see them as both good practice and good public relations. Where an organisation has already moved in that direction, the costs of implementation will be lower than that of organisation which has taken few steps towards bilingual provision.

The 1993 Act was passed on the basis that any additional costs which might be incurred would be met from the body's mainstream budget; this was stated in a Financial Memorandum submitted to Parliament at the time, with the Bill. To take an

alternative view would be to imply that public funding was intended to secure only an English language service.

The costs involved will be met by the NBRW. There will be no costs, otherwise, to local government, the third sector, or to the business sector.

Each of the public bodies which will be merged to form the NBRW (namely, the Countryside Council for Wales, the Forestry Commission and the Environment Agency) already operate in accordance with Welsh Language Schemes approved by the Welsh Language Board. As such, the recurring costs for the NBRW of implementing a Scheme will be lower than would be the case were the three bodies concerned not currently implementing Schemes. The Living Wales Programme Board has been given the opportunity to provide an estimate of the costs which they might envisage in implementing their Scheme.

The Chief Executive of the NBRW has confirmed that the NBRW Board is eager to publish a draft Scheme as soon as possible, with a view to implementing a Welsh Language Scheme from 1 April 2013. He has also confirmed that the NBRW notes the need to mainstream the costs of implementing a Welsh Language Scheme and that, since the NBRW is being made up of organisations that currently have Welsh Language Schemes, a budget for implementing such a Scheme has already been earmarked, in order that a Scheme can be prepared and implemented.

Not making an order, and relying on NBRW to prepare a voluntary Welsh Language Scheme could result in the same costs for the organisation.

Consultation

The Welsh Government has written formally to the Chief Executive of NBRW and the Living Wales Programme Board consulting it about the proposed changes. Discussions have also been held with the Living Wales Programme Board, and between that Board and the Welsh Language Commissioner, in order to clarify with it what will be expected of the NBRW. Following those discussions, no objection has been raised to having to produce and implement a Welsh Language Scheme. As indicated above, NBRW is eager to implement its Welsh Language Scheme from 1 April 2013 and is therefore content to be named in the Order.

Post implementation review

Monitoring implementation of NBRW's Welsh Language Scheme will be a matter for the Welsh Language Commissioner.