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Llywodraeth Cynulliad Cymru
Welsh Assembly Government

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Val Lloyd AM
Chair
Legislation Committee No. 2
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA.

14 June 2010

Dear Val,

The Proposed Welsh Language (Wales) Measure

Thank you for your letter dated 26 May 2010 on behalf of Legislation Committee no 2, in which you seek clarification in relation to the Welsh Language Commissioner's role in making standards - and the process to be followed prior to the making of standards by the Welsh Ministers (under section 25 of the proposed Measure).

You also request that I provide a draft standard for illustrative purposes.

I would like to take this opportunity to emphasise that the information provided in this letter is purely illustrative and intended only to provide an indication as to how the Commissioner could exercise his or her powers, and as to how standards could look. The actual form of standards that will be developed will result from the processes outlined in the proposed Measure.

The role of the Welsh Language Commissioner and the process to be followed

With regard to the process for developing and making standards, the proposed Measure enables the Commissioner to play a significant role, including providing powers for the Commissioner to undertake *standards investigations* (sections 59 to 61). During these investigations the Commissioner will consult with the organisations concerned (i.e. those on whom he or she proposes to impose duties via standards) and may consult any other interested parties (which can include the public).

It will be possible for the Commissioner to undertake standards investigations on a sectoral basis. For instance, the Commissioner may wish to undertake a standards investigation focused on local authorities.

In undertaking standards investigations the Commissioner will be able to take into account the progress achieved following fifteen-years' experience of language schemes. An analysis of the schemes currently in place for local authorities (for instance), could provide a baseline

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indication of the commitments with regard to delivering Welsh language services that those authorities have, to date, entered into.

The analysis could also provide the Commissioner with evidence with regard to good practice as well as where service delivery improvements are possible. The analysis could also provide evidence with regard to any variations that might exist between authorities.

After considering the evidence of the steps currently taken by local authorities to deliver services in Welsh and having had regard to the views expressed in any consultation exercise, the Commissioner could conclude that some variations will be needed in the standards that he or she would recommend should apply to different authorities. The Commissioner will need to decide, in making his or her recommendations, how any variations should be reflected, either in the standards themselves or through the use (for a particular standard) of different imposition days for different authorities (as set out in section 45).

The analysis could inform the Commissioner's work as he or she consults with local authorities with regard to moving from language schemes to standards whilst taking into account - and when appropriate building on - the existing commitments set out in their schemes. The consultation could also seek views with regard to imposition days (i.e. how long each authority would require to comply with each standard) and collect information which could inform the preparation of the Regulatory Impact Assessment by Welsh Ministers, which would need to accompany each SI making standards.

Following a standards investigation, the Commissioner will send a report to Welsh Ministers, setting out his or her view on whether or not any standards should be specifically applicable to the organisations consulted. Under section 64 of the proposed Measure, Welsh Ministers must have due regard to that report in deciding whether, and how, to exercise their powers to make standards, as conferred on them by Part 4 of the Measure.

A more detailed note on the individual steps involved in the process for placing bodies under a duty to comply with standards is attached at Annex 1.

A Draft Standard

You also asked if I could provide you with an example of a draft standard.

It might be helpful for the Committee to consider how standards covering an area such as correspondence might be developed, where the content of Welsh language schemes demonstrates that there is a commonality of approach across public organisations delivering services to the public at present.

In its simplest form, and reflecting the fact that standards can build on Welsh language schemes, a correspondence standard could see a scheme commitment such as:

Every letter received by the Council in Welsh will receive a signed reply in Welsh whenever a reply is required... The time targets will be the same when replying to Welsh letters as they are when replying to English letters. (Pembrokeshire County Council)...

...changing to a standard which states:

When someone writes to an organisation in Welsh the organisation must issue a signed reply in Welsh (if a reply is required). The target time for replying will be the same as for replying to letters written in English.

In addition to the above, however, the following issues could be considered in relation to standards dealing with correspondence:

- the need for Welsh or bilingual signatures and contact details to appear on replies sent by e-mail
- setting out the expectations with regard to any enclosures sent with a reply
- the issues to consider when initiating correspondence (including how to take decisions with regard to the language to be used, whether Welsh, English or both).

The Committee will be aware that the Measure provides for different types of standards to be made. Considering each in turn:

Service delivery standards must deal with the activities listed in Schedule 9 of the proposed Measure (although they are not limited to those activities), to the extent that an organisation or group of organisations undertakes those activities – these activities all feature in existing schemes and they cover the bulk of an organisation's interaction with the public.

Policy making standards are intended to build on the content of schemes where they relate to the process of developing policy. It may be helpful for the Committee, in this regard, to consider the following example, from the Welsh language scheme prepared by Flintshire County Council:

When the Council plans and formulates new policies or revises its existing policies, it will take every opportunity to move the organisation closer towards implementing the principle of equality between the Welsh and English languages by: ensuring that planning for bilingual services is an integral part of service planning; assessing the linguistic consequences to ensure that they meet the commitments given in this Scheme; ensuring that policies, plans and initiatives promote and facilitate the use of Welsh by the Council itself and members of the public.

Policy-making standards could set out a process to follow rather than specific actions an organisation needs to take whilst developing policies. In addition, the Commissioner could issue a code of practice for policy development. A policy-making standard might read:

When policy decisions are made, consideration must be given to:

- *the effect, if any, of those decisions on opportunities for other persons to use the Welsh language*
- *how those decisions could be made so that they have positive effects, or increased positive effects, on opportunities for other persons to use the Welsh language*
- *how those decisions could be made so that they do not have an adverse effect, or have a decreased adverse effect, on opportunities for other persons to use the Welsh language.*

Operational standards are intended to build on the content of schemes with regard to developing the ability of an organisation's workforce to provide a bilingual service.

Promotion standards provide an opportunity to apply more widely an approach to promoting the language which reflects the current duty imposed on Welsh Ministers under section 78 of the Government of Wales Act 2006 which requires them to adopt a strategy setting out how they propose to promote and facilitate the use of the Welsh language. These standards will also be able to build on the commitments with regard to the language set out for local

authorities in the Welsh Assembly Government's document: *Local Vision – Statutory Guidance on Developing and Delivering Community Strategies*¹.

Record keeping standards can also be developed, as set out in the proposed Measure. They could require organisations, for example:

- to keep records on the manner in which they comply with other standards (such as service delivery standards); and
- to maintain details of allegations of non-compliance with other standards.

I trust that this information provides you with the additional clarification you requested. I look forward to appearing before the Committee again on 17 June when I would be happy to explore these issues with you further.

Yours sincerely,
Alun Ffred

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¹ <http://wales.gov.uk/topics/localgovernment/publications/localvisionguidance/?lang=en>

Annex 1: Process for placing bodies under duty to comply with standards

1. The Commissioner may carry out a standards investigation (see section 60) in order to ascertain:
 - Whether a body, should, or should continue to be included in Schedule 6 or 8 (potentially liable to be required to comply with standards);
 - If a body is within Schedule 6, which standards (e.g. service delivery, policy-making etc) should, or should continue to specifically apply to it;
 - If a body is within Schedule 8, what services provided by that body, should be, or should continue to be included within column (2) of its entry in Schedule 8;
 - What standards, if any, should be, or should continue to be specifically applicable to the body; and
 - Any other question which the Commissioner considers to be relevant to the extent to which the body may be placed under the duty in section 24 to comply with standards.
2. In carrying out a standards investigation which relates to a particular person or group, the Commissioner will have:
 - provided a notice in writing, at least 14 days before beginning an investigation, informing the body in relation to whom the investigation will be undertaken that the Commissioner is proposing to carry out the investigation and specifying the subject matter of that investigation (exploration notice);
 - consulted the body in relation to whom the investigation is undertaken and consulted the Advisory Panel; and
 - had regard to the need to secure that requirements for bodies to comply with standards are not unreasonable or disproportionate.
3. The Commissioner will have the power to consult any other person the Commissioner considers to have an interest in the outcome of the investigation.
4. After carrying out a standards investigation, the Commissioner must produce a standards report.
5. A standards report will reflect the conclusions reached by the Commissioner following an investigation into the standards with which a particular body or group of bodies should have to comply (standards

investigation). To the extent that standards of the kind recommended by the Commissioner have not previously been specified under section 25, the standards report must set out the standards that are not specified.

6. Copies of the Commissioner's standards report must be sent to each body consulted during the carrying out of the standards investigation as well as to the Welsh Ministers.
7. The Welsh Ministers must have due regard to the standards report in deciding whether and how to exercise the powers conferred on them by Part 4 of the Measure, for example, to specify standards and make them specifically applicable to bodies or groups of bodies.
8. The Welsh Ministers may then legislate by statutory instrument to specify standards and make them specifically applicable to particular bodies or groups of bodies.
9. After standards have been so specified, the Commissioner may give one or all of those bodies a compliance notice, together with a copy of any relevant code of practice and information as to the body's right of challenge.
10. The Commissioner must consult a body before giving it a compliance notice, unless the Commissioner is satisfied that the body has already been consulted, or given the opportunity to be consulted, on that matter in connection with a standards investigation (see section 46).