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Is-adran y Gymraeg  
Welsh Language Division



Llywodraeth Cymru  
Welsh Government

17 December 2012

Meri Huws,  
Comisiynydd y Gymraeg  
Siambrau'r Farchnad  
5-7 Heol Eglwys Fair  
Caerdydd  
CF10 1AT

Dear Meri,

Thank you for your letter of 28 November to the Minister for Education and Skills, Leighton Andrews, enclosing your report following the non-statutory consultation on Welsh language standards. The Minister has asked me to respond.

Firstly, I would like to note that the Minister would have appreciated receiving the letter and the recommendations prior to them being published on the internet. I would be grateful if you could adhere to this principle in future, in keeping with that agreed with Emyr Roberts in the Framework Agreement.

Turning to your recommendations, we will meet with your officers in Broneirion later in the week, Wednesday 19 December, to reflect on the recommendations in more detail, and discuss the next steps. However, in the meantime, I think it would be useful for me to outline some issues that I'd like to discuss. These issues reflect the content of Emyr Roberts' letter to you (dated 9 August) and the content of the Explanatory Memorandum presented to the National Assembly for Wales in 2010 with the proposed Measure, as amended following stage 2 of the scrutiny process. A copy of the Explanatory Memorandum is available here: <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=204445&ds=12/2010>

The Minister is keen to ensure that any standards presented to the Assembly reflect the "Measure's objectives", as noted in paragraphs 3.7 to 3.10 of the Memorandum. The objectives include:

- Establish language rights in terms of providing services:
  - to provide greater clarity and consistency for Welsh speakers in terms of the services they can expect to receive in Welsh
  - to reduce the administrative demands placed upon those subject to duties by moving the focus away from the preparation of schemes;
  - to establish a system that will ensure that duties imposed on bodies are both reasonable and proportionate;
  - within particular sectors, ensuring that there is greater consistency in terms of those bodies subject to duties with the aim of ensuring a level playing field;

to develop a more effective enforcement regime in relation to any duties that will be imposed;

These are the objectives as agreed by the Assembly. It will be important for us therefore to realise them while developing the standards.

I am keen to discuss how the draft standards presented to the Minister at the end of November can be further developed to ensure that they reflect the Measure's objectives. We are of the opinion that the model proposed is more complicated than the present system of developing language schemes. We would specifically like to discuss the following:

- i. In respect of the model proposed, will the public will be able to easily understand which services can be expected in Welsh. Also, will the model lead to clear linguistic rights. Likewise, will the 'practical' expectations for bodies subject to standards be clear;
- ii. It is not clear to us that you have considered whether it would be reasonable or proportionate for an individual to comply with the proposed standards (in addition to this, some draft standards include the words "reasonable or appropriate", which differs from the wording of the Measure);
- iii. If it is the intention to introduce, through compliance notices, the need for duties to be reasonable or proportionate, then the form and content of these notices as well as their effect in terms of the relationship between codes of practice and standards is not clear to us;
- iv. The Measure provides that the Minister may, following a report on standards, and with the approval of the Assembly, determine the range of duties that could be a body could be required to comply with, while your model, by setting broadly scoped standards leaves the details of what bodies are expected to do down to the Commissioner by means of the compliance notice. That changes the emphasis in terms of democratic accountability from what was foreseen when the Measure was passed.
- v. We are not certain that the model you propose will lead to more consistency in relation to the services to be provided by bodies that are subject to duties. We believe that the process of asking bodies to draft compliance strategies will undermine this aim;
- vi. There is a risk that the process of asking bodies to draft compliance strategies, reflecting compliance notices, that will, in turn, present the need for duties to be reasonable or proportionate, will lead to more opportunities for you and the bodies that are subject to duties, coming to different opinions with regards the practical expectations on these bodies. There is a risk, in turn, that this will lead to more bodies appealing to the Tribunal, following your decisions;
- vii. It is not clear how it will be possible for you and a body subject to duties to resolve any dispute arising between you with regards to the content of a compliance strategy;
- viii. We believe that the standards, in their present form, do not make it possible for bodies that could be subject to duties to prepare a detailed estimate of the cost of compliance with the standards, or the possible range of the cost. This would create significant difficulties in relation to preparing an effective regulatory impact assessment to coincide with the statutory instruments to be fulfilled under Section 26 of the Measure;
- ix. It is possible that the process you are recommending expands the scope of questions that will be considered by the Tribunal;

We also have matters to discuss with you with regards to the content and the wording of some of the draft standards, however, I would prefer to concentrate on the principles rather than the details for the time being.

I greatly welcome the dialogue which you have initiated in terms of the standards. We are also supportive to the principles and aspirations behind many of the standards you propose. I believe that these principles and aspirations could be the basis for further work on the standards, and a basis to develop a model which will fully reflect the objectives and content of the Measure.

I look forward to discussing the above with you at our meeting with your officials on Wednesday. During that meeting, I will also be keen to discuss next steps. The Welsh Government is of the opinion that the next appropriate step for you would be to carry out a statutory standards

investigation, in compliance with Chapter 8 of Part 4 of the Measure, with the bodies that will be subject to the first set of standards (and, in doing so, collect evidence on whether the standards are reasonable and proportionate – and the cost of fulfilling the standards, that will assist us to prepare a Regulatory Impact Assessment – see paragraph 8.31 of the Memorandum). This will reflect the process described in a letter to the Chair of the Assembly's Legislation Committee 2 on 14 June 2010. It can be expected therefore that Assembly Members will expect that process to take place before the Minister presents the standards to be approved by them.

I look forward to discussing further

Yours sincerely

**Dr Caroline Turner**  
**Deputy Director, Welsh Language Division**