

National Assembly for Wales' Legislation Committee No5 – consideration of the proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009

LC3(5)-09-09 p2 : Evidence from Prof. Colin H Williams, School of Welsh, Cardiff University.

Evidence to Committee – meeting 5 May 2009

The Assembly's Legislation Committee No. 5 is considering the proposed National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009, which will give the National Assembly the right to legislate in relation to the Welsh language and would like to invite you to give evidence to the Committee, given your expertise in this area.

The Members would appreciate your views on the proposed Order, to inform the Committee's work. The Committee is particularly interested in comparing the situation in Wales with any similar legislative frameworks in place in other European regions and beyond and the arguments for and against the voluntary and statutory approaches to the provision of bilingual services by public services, private businesses and voluntary organisations. Therefore I would be grateful if you could, firstly, send me information about any relevant academic papers that you have published on the subject and secondly, submit evidence.

PROPOSED WELSH LANGUAGE LCO

Memorandum

To:	National Assembly for Wales' Legislation Committee No5
From:	Colin H. Williams, School of Welsh, Cardiff University
Date:	8 April 2009
Re:	The National Assembly for Wales (Legislative Competence) (Welsh Language) Order 2009 ("Proposed Order")

Executive Summary

1. The Proposed Order would permit the National Assembly for Wales to consider and develop legislation that would allow for the creation of certain language rights for Welsh speakers, establish the office of Language Commissioner, and, if determined, establish a range of duties on the voluntary and private sector bodies with regard to the use of Welsh.

Introduction

2. I am a Research Professor in the School of Welsh at Cardiff University and the Director of the Research Unit on Language, Planning and Policy. I have some experience in advising governments, international organisations and NGOs in

Europe and North America on matters relating to language policy, education and legislation. I am also a member of the Welsh Language Board.

Evidence requested

3. I note that “the Committee is particularly interested in comparing the situation in Wales with any similar legislative frameworks in place in other European regions and beyond and the arguments for and against the voluntary and statutory approaches to the provision of bilingual services by public services, private businesses and voluntary organisations”.
4. The purpose of the Proposed Order is to allow the National Assembly for Wales to update the legislative framework for the protection of the Welsh language and users. Several aspects of previous legislation have a bearing on “the protection of the Welsh language and users”, but the central feature to date has been the *Welsh Language Act 1993*.
5. The most significant feature of the framework established by the 1993 Act is the establishment of the Welsh Language Board/Bwrdd yr Iaith Gymraeg. Its main statutory mechanism is the Welsh language scheme which it employs. In its early phase the Board was essentially a grant allocation body steering its partners into certain activities and approving and regulating the initial Welsh language schemes. The WLB was very conscious that it was involved in statutory intervention in an area where the Welsh language had hitherto been overly dependent on goodwill alone. In time the Board became a recognised language planning body and the main formal, officially sanctioned body influencing language policy in Wales. This structural change was the result of a number of factors, amongst which could be noted: the Board’s maturity and the increasing experience of its staff and members, a new operating framework and political system following the establishment of the Welsh National Assembly, a substantial increase in the Board’s funding and in consequence it’s ability to act and take a leading role in new areas e.g. marketing and the private sector. Most critical was the changing nature of the relationship between the WLB and its constituent public as one was less likely to hear accusations that it was an irrelevance, ineffective or as a former quango, a Governmental stooge unwittingly involved in the deflection of attention away from the fundamental issue of securing full and free rights for Welsh speakers.
6. Having chosen not to legislate in terms of specific language rights the framers of the 1993 Act sought to focus on increasing the opportunities to use Welsh by placing a duty on the public sector to provide additional and statutory opportunities for employment of Welsh in the conduct of public administration and service provision
7. Under the 1993 Act, Bwrdd yr Iaith Gymraeg has the power to require public bodies specified in the 1993 Act to prepare a Welsh language scheme. By virtue of section 5(1) and (2) of the 1993 Act, public bodies so required must prepare a scheme in which they set out the measures they will take as to the use of Welsh in connection with the provision of services to the public, for the purpose of giving effect, so far as is appropriate and reasonably practicable, to the principle that in the conduct of public business, Welsh and English should be treated on the basis

- of equality. Today some 500 Welsh language schemes are now fully operational and as a consequence far reaching changes have been instituted within the public sector in Wales and to a lesser extent also throughout the United Kingdom.
8. While the Act recognised that in principle Welsh and English should be treated on the basis of equality in the conduct of public business, it also recognised that there could be considerable differences in the ability of any particular public body to transform this principle into reality. Thus all Welsh language schemes have a core set of agreed responsibilities to which additional duties and services may be added in accordance with local geolinguistic circumstances and the policy decisions of the body in question. The Welsh language schemes are now in their third five-year iteration and a great deal of experience has been garnered both by Board staff and the language officers employed by public bodies who discharge their responsibilities in an increasingly flexible and mature manner. The schemes have become a mainstream element of public administration and do not constitute an unexpected or conflict-generating element of service delivery.
 9. In jurisdictions such as Ireland and Scotland in which similar conditions exist, recent legislation has followed the Welsh model and adopted language schemes (see, for example, the Irish *Official Languages Act 2003* or the *Gaelic Language (Scotland) Act 2005*). Between April 2008 and February 2009 I was a member of a consultative five person team commissioned by the Irish government to prepare a 'Twenty Year Strategy for the Irish Language'. This team reported its findings to the Irish Government in February 2009 and it, in turn, is considering the recommendations. It is no breach of confidence to suggest that the idea of a Language Scheme, as it has evolved in Wales, and may so do more fully in Ireland, is one of the very few successful language planning proposals world wide, which has been monitored and evaluated as to its capacity in increasing the range of opportunities available for employing a so-called 'lesser-used' official language.
 10. Despite specific failings, the schemes have demonstrated their utility as having added value to service provision in Wales, through, for example, bilingual signage and communication, providing enhanced opportunities to use Welsh in dealing with public bodies in Wales, and, in making competence in Welsh an essential or desirable job skill of those serving the Welsh-speaking public. Now consideration is being given to the extension of such schemes to parts of the voluntary and private sector. The basic debate is between the encouragement of a voluntary code of practice for bilingual service delivery versus a statutory obligation to provide such services. Much of the debate is based on raw emotion or rhetoric, there being little sustained evidence on the current success of language legislation or the likely impact of additional legislation on service provision or language usage. One exception to this general trend is the From Act to Action analysis, upon which I will draw below.

From Act to Action

11. I have undertaken sustained investigative and evaluative work on the implementation of language legislation in Europe as co-director of the 'From Act

to Action' research team. i In this submission I will focus on the 1993 Welsh Language Act and subsequent language planning initiatives, and will provide a partial summary of my findings below. The full report will be available in mid-summer 2009.

12. **Evaluating the Effect of Language Legislation: the 1993 Welsh Language Act.**

Several key questions guided our investigations, such as:-

What is the purpose of legislation?

What model of society do we envisage?

What is the relationship between the individual and the system?

How do language rights fit with other human rights?

What is practical and acceptable and to whom?

In order to attempt an answer some of these questions an evaluation was conducted of the impact of language legislation across Europe and specifically in Finland, Ireland and Wales. This memorandum uses some of that evidence together with material I have been collecting for many years. Thus the focus will be on Wales, Ireland and Canada. The From Act to Action investigation was structured along the following lines: the posing of key questions, the gathering of data from a number of institutions in Wales and other parts of the United Kingdom, the selection of units for in depth observation work, a critique of the history of certain organisations' involvement with the Act and with the Welsh Language Board in the regulation of language schemes, detailed interviews within a number of bodies, their heads of department, language officers, and other officers who were not directly involved with bilingual services, National Assembly for Wales and Westminster Ministers and PMs/AMs. The results were then compared with similar investigations undertaken in Ireland and Finland so as to produce generic, European examples of best practice and recommendations for systematic legislative and public administrative reform. Here the principal focus is on the effectiveness of language schemes as a precursor to their possible extension to other sectors.

13. **Welsh Language Schemes**

Under the 1993 Language Act language schemes were established as the main means of ensuring a bilingual service within the public sector, while treating both languages on the basis of equality. Section 11 of the Act notes that the Welsh Language Scheme applies to public bodies (all sectors) and Crown bodies, as well as organisations eligible under the public service remit e.g. water companies. Sections 5 to 16 concentrate on institutional duties, and on the form, content and process of the preparation, consultation, approval and review of language schemes. Sections 12 and 13 of the Act, specify that it is compulsory for a scheme to note a schedule for action, to offer a description of the manner in which a named body would ensure publicity for its scheme and how it would seek consultation with the public in accordance with the statutory guidance offered by Board. It maintained the right to review the guidelines and to review the schemes every three years for local authorities and every five years for educational bodies.

A single statutory guideline (section 9 of the Act) for all public bodies in Wales deals with the following:-

- A bilingual scheme
- Approach to service provision (in line with the principle of equality)
- New policies and initiatives
- Steps for the introduction of services
- Quality standards – for Welsh language services
- Dealing with the Welsh-speaking public
- The public face of the institution
- The implementation and supervision of the scheme.

The supervisory and implementation guidelines contain measures on evaluation and regulation in relation to include human resources, language and vocational training, the administration of third party agreement schemes, the supervision of the scheme, targets, publication of information.

Compliance is the basic principle underlying Sections 17 to 20 where four specific aspects are discussed, namely investigations (section 17), complaints about non-compliance (section 18), reports on investigations (section 19) and directives from the Secretary of State (section 20).

One may wish to question the original intention behind this method of service provision. Why was the language scheme chosen as the tool for changing expectations and behaviour within the public sector, and not, for instance, the recognition and reinforcement of individual language rights? Many other successful models for the protection and promotion of minority languages include an element of basic rights and an expression of fundamental principles in the form of a Charter of Fundamental Rights. At interview, some of the government lawyers who were responsible for drawing up the 1993 Welsh Language Act, argued that they did not believe that pursuing individual rights would be a productive approach. This was mainly because they believed that there was little or no agreement on the extent of any obligation in law to recognise the precise nature of individual rights. They were acutely conscious of several strategic changes within the field of international language legislation stemming from the United Nations declaration in 1948 which stated: -

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Universal Declaration of Human Rights 1948, Article 2

“Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.”

14. They also recognised that numerous proposals related to the development of human rights and to language rights in other contexts had been made since then. Thus the decision not to focus on a rights-based approach in Wales could not be attributed either to a lack of awareness or to a lack of understanding of this area, but rather to the desire to provide a bilingual service in response to the fairly long period of campaigning for bilingual forms, signage and so on. Consequently the only right created is under section 22 of the 1993 Act, in respect of the use of Welsh in legal proceedings.
15. The justification given for the Welsh language schemes was that they represented a fairly basic way of securing public recognition that Welsh could be an appropriate language for public administration and local government. Elsewhere I have critiqued this decision and offered an analysis of the weaknesses of current legislation as regards the Welsh language (Williams, 2005, 2007). Here I want to acknowledge one basic fact. Despite the Welsh lack of commitment to individual rights, it is evident from observations and interviews conducted in relation to international trends in language legislation, that a number of regulatory systems, such as Canada and Finland, regret the fact that they do not have anything similar to language schemes in place. Time after time in interviews with senior officials in the Canadian federal government or with high court judges, they alluded to the advantages of language schemes as a way of ensuring a bilingual service that was continually evolving and adapting.
16. In addition to the lack of language rights a second weakness of the current mechanism is the relative lack of purchase in the enforcement of the legislative framework. Under the 1993 Act, there is limited recourse available to Welsh speakers should they feel that a commitment of a public body under a Welsh language scheme is not being observed. On receiving a formal complaint and evaluating its merit against a set of agreed guidelines the WLB has the power to investigate and, should it conclude that a public body has failed to carry out its scheme, make recommendations for remedial action. Should the public body fail to act on the recommendations, the matter may be referred to the Welsh Assembly Government, which has the power to compel enforcement (1993 Act, sections 17 to 20).
17. My investigations suggest that the internal handling of complaints by Board staff demonstrates the utmost professionalism and in the overwhelming majority of cases a satisfactory outcome is achieved. However, the Board has launched relatively few formal investigations, eight in the period 21/09.07 to date. The From Act to Action study has proposed a number of recommendations for the Welsh Language Board's attention. In this context one significant finding is that consideration could be given to conducting a review of the Welsh language scheme implementation process, in line with recent Estyn or the Audit Commission's auditing processes. Clearly best practice conventions of agreeing and monitoring the WLS could be diffused to most organisations. A number of those representatives of public bodies operating a scheme asked for the Board's enforcement powers to be strengthened, so that the pressure to comply was not

- overly dependent upon the persuasive powers of the Language Officers and other conscientious regulators within the institution. In January 2008 the Board's internal systems for investigating complaints were strengthened. Consequently the Board's officers have less discretion than previously in the implementation of the statutory procedures. Following this change of emphasis the Board's aim in relation to sections 17 to 20 of the act is to ensure that its powers are used to their full potential. It follows therefore that there will be an increase in the number of Section 17 investigations that are conducted and it is reasonable therefore to expect that there will be an increase in referrals to the Heritage Minister.
18. But this new system is also unclear in the minds of a number of officers in public agencies in Wales and the UK who asked in the study for more clarification on the exact role and powers of the Assembly Government to ensure the effectiveness of language schemes and statutory compliance. The results of the research investigation indicate that bilingual services have improved dramatically, but that there has been a lack of consistency and quality which prevent the public from receiving an equitable service. Although the flexibility of the system of agreeing language schemes is to be welcomed the element of compliance needs to be strengthened in relation to extending the Board's statutory remit. A firm legal foundation and an effective language planning strategy would strengthen this aspect of language policy so as to construct a more robust national context within which a greater emphasis could be placed on service delivery at the local level.
 19. Should increased legislation relating to the Welsh language, and perhaps a more widespread adoption of the language scheme mechanism be adopted in the voluntary and private sectors, then clearly there will be more pressure on the compliance and regulatory aspects of the WLB's work. I accept that this NAFW Committee is not the place nor the time to rehearse the merits and details of instituting the Office of Language Commissioner. But how this is handled will have a major influence on the implementation of new legislation, especially if that favours a range of basic language rights and extends the operation of language schemes into new sectors.
 20. There is great merit in observing the operation of both the monitoring and regulatory aspects of other comparable regimes in at least two important respects (Williams, 2007). First, many regimes provide that the enforcement of the language regime is overseen by a Language Commissioner, the most mature example of which is the Canadian Office of the Commissioner of Official Languages (http://www.ocol-clo.gc.ca/html/index_e.php). Under the *Official Languages Act 1988* the Commissioner has broad powers to investigate complaints made by members of the public in respect of failures to observe the Act or other aspects of the language regime, make recommendations and, if necessary, to take action through the courts in order to enforce the law. A second and very relevant example is that of An Coimisinéir Teanga (<http://www.coimisineir.ie/>) which was created by the Irish *Official Languages Act 2003*.ⁱⁱ
 21. The current WAG discussions have included a commitment to the creation of a Language Commissioner and the extension of bilingual service provision into

- some elements of the voluntary and private sector. While the Proposed Order makes no detailed reference to remit, location or answerability of the office of Language Commissioner, it is logical that the general reference to promoting or facilitating the use of the Welsh language is sufficiently broad to allow for the creation of such an office under any Assembly Measure that is ultimately developed. This is a vital consideration for with increased domain usage, promotion, monitoring and evaluation of the Welsh language services and rights must be accompanied by legally enforceable regulation. This is best achieved through a distinctive Language Commissioner function, whether within or outwith the current Welsh Language Board ambit.
22. The Proposed Order allows for the imposition of duties on public authorities, and would potentially permit the imposition of duties on some voluntary and private sector bodies (for example, persons referred to in Matter 20.1 (e) (“persons providing services to the public who receive public money amounting to £200,000 or more”). I have no real insight into which elements of the former utilities, insurance, banking or retail sector should be specified, although I am conscious that the WLB’s submission does address this, but I do have two caveats gleaned from observing the general discussions to date. The first is that it would be tragic, if by attempting to extend the opportunity to use Welsh in a wider set of domains; unnecessary restrictions were placed in legislation which ultimately might lead to a diminution, rather than an expansion, of Welsh language rights and Welsh medium services. The second is a plea for flexibility in design of clauses so that future expansion and growth can be accommodated in a progressive and evolutionary manner.
 23. Several examples exist of the extension of original public sector rights and obligations into the private and voluntary sector, the most commonly cited of which are Quebec and Catalonia. Under its *Charter of the French Language*, every person has a right to have all enterprises doing business in Quebec deal with him or her in French (Article 2) and consumers of goods and services have a right to be informed and served in French (Article 5), and Title I, Chapter VII contains a range of provisions requiring the use of French by businesses in public notices, signage, labelling, contracts, invoices, and so forth (the legislation also has a significant impact on the use of French within the workplace, as it guarantees the right of workers to carry on their activities in French (Article 4) and provides for the general use of French (through “francization” schemes) in enterprises having more than 100 employees (Title II, Chapter V)). For details and an evaluation see Dumas (2007) and Gouvernement de Quebec (2003).
 24. In the Catalan case, Article 34(1) of the *Statute of Autonomy of Catalonia of 2006* provides that each individual, in his or her capacity as a user or consumer of goods, products and services, has the right to be served orally and in writing in the official language (Catalan or Spanish) of their choice, and Articles 30 to 33 impose a range of obligations regarding the use of Catalan in public notices, signage, labelling, invoices. Similar, if less comprehensive, provisions also characterise the Basque and Valencian cases in Spain.
 25. For comparative reference purposes I have included below some observations on the implementation of language legislation in Ireland and Canada.

Comparative Case Studies. Ireland.

26. In the Irish case, based to some extent on the 1993 Welsh Language Act, when the Official Languages Act was passed in 2003, the responsibility to offer a language service was combined with the right to receive a service. The 2003 Act places specific duties upon public bodies and also establishes the public's basic rights to receive public services through the medium of the Irish language. The Act enables the Government to require public sector bodies to draw up Language Schemes based on the Welsh experience. Currently there are approximately 900 official or semi-official bodies in existence, and of these 85 schemes have already been agreed in accordance with section 9 of the Act which outlines the obligation to draw up and implement a language scheme. In future it will be possible to extend the reach of the Act to encompass other sectors, such as energy providers, banks and insurance and telecommunications companies. As well as outlining arrangements for the provision of services to the public through the medium of Irish, the Schemes also deal with the internal use made by organisations of Irish. It is a requirement of all public organisation offices in the Gaeltacht that they conduct their administration through the medium of Irish and the Government has the power to set up a fund to compensate individuals who do not receive services in the Irish language. In order to safeguard rights and evaluate to what extent Language Schemes fulfil their obligations, the 2003 Act established an office of the Official Languages Commissioner, An Coimisinéir Teanga. Seán Ó Cuirreáin, the first such Commissioner has the power to consider complaints, conduct investigations and take legal action against any organisation that fails to provide the information requested. As well as submitting a complaint to the Commissioner, individuals can use the courts to secure their rights. These language rights have been accrued since independence and are promulgated:-

- Under the Irish Constitution
- Under Official Languages Act 2003
- Under certain other Acts (indirect)
- Within EU legislation as Irish has been an Official Language of EU since 1 January 2007

The key elements of recent language legislation since 2003 have been:-

- Official Languages Act in place since 2003
- Commencement Order S.I. 518 of 2003
- Commencement order S.I. No32 of 2004
- Coimisinéir Teanga appointed in February 2004
- Guidelines under Section 12 issued in September 2004
- S.I. 391 of 2008 (1 October Regulations under Section 9.1 of the Act in relation to the use of the Irish and English languages in pre-recorded oral announcements, on stationery and on signage by public bodies, including

government departments, local authorities etc. (inside the State) – not dealing with road signs or Safety, Health & Welfare at work commencing on different dates from 1 March 2009 to 1 January 2026.

The following details describe the operation and implementation of language schemes:-

- First Scheme in place in September 2004
- 85 schemes in place accounting for 155 public bodies as of 31 December 2008
- 22 Public Bodies preparing second schemes as of 31 December 2008
- Some further bodies have been notified by the Minister to prepare first or second draft schemes since 1 January 2009.

The From Act to Action investigation found that the following factors make the legislation work:-

- Statutory Duties
 - Correspondence in Irish
 - Simultaneous publication of certain public documents in Irish and English
 - when certain information is being provided to the public in general or a class of the public by post or email (mail shots), that such communication is provided in Irish or bilingually.
 - Courts must accept language of choice of person who has dealings with Court
 - Oireachtas has the duty of printing and publishing simultaneously every Act in Irish and English.
 - Public bodies have a duty to cooperate with the Office of the Coimisinéir Teanga with regard to complying with the functions of that office
 - Public bodies have a duty to agree a scheme with the Minister of Community, Rural and Gaeltacht Affairs

Duties in accordance with regulations

- Every public body has the duty of acting in accordance with regulations to be made by the Minister for Community, Rural and Gaeltacht Affairs regarding signage, notices, stationery headings and oral announcements (live or recorded). (signed 1 October 2008)- up to 2026 to fully implement)

Duties in accordance with Schemes

- Every public body has the duty to prepare a “scheme” (language plan) when requested to do so by the Minister for Community, Rural and Gaeltacht Affairs, and to implement the said scheme. (Section 11 of Official Languages Act)
- The scheme will describe the services which the public body proposes to provide through Irish only, through English only, or bilingually, and the measures which the body proposes to adopt to ensure that those services which are not being provided through Irish will be made available through Irish

Language Schemes in Ireland

- Schemes are statutory and as such must be implemented as agreed with the Minister
- Coimisinéir Teanga has indicated that a number of public bodies did not realise the implications of this

Functions of Coimisinéir Teanga

- to monitor compliance by public bodies with the provisions of this Act
- to take all necessary measures within his or her authority to ensure compliance by public bodies with the provisions of this Act,
- to carry out investigations, whether on his or her own initiative, on request by the Minister or pursuant to a complaint made to him or her by any person, into any failure by a public body to comply with the provisions of this Act that he or she or, as appropriate, the Minister, considers may have occurred,
- to provide, as he or she considers appropriate, advice or other assistance to the public regarding their rights under this Act,
- to provide, as he or she considers appropriate, advice or other assistance to public bodies regarding their obligations under this Act, and
- to carry out an investigation, whether on his or her own initiative, on request by the Minister or pursuant to a complaint made to him or her by any person, to ascertain whether any provision of any other enactment relating to the status or use of an official language was not or is not being complied with.

Factors that make the legislation work

Monitoring implementation of Act - through complaints from the public

• Complaints - Non Gaeltacht Areas	2005	2006	2007
• Forms in English only	21%	19%	13%
• Lack of Irish on road signs	13%	16%	13%
• Problem with use of name and/or address in Irish	14%	16%	10%
• Leaflets or circulars in English only	4%	5%	10%
• Lack of Irish on signage/advertisements	6%	6%	9%
• Replies in English to correspondence in Irish	10%	14%	8%
• Lack of Irish on websites	4%	3%	5%
• Election issues	-	-	4%
• Publications in English only	4%	3%	3%
• Official identity cards in English only	3%	1%	3%
• Provision of language scheme	-	-	2%
• Other (individual issues)	21%	17%	20%
<i>TOTAL</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

Monitoring implementation of Act - through complaints from the public

Total number of Complaints -

New complaints	2007	622
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Complaints brought forward from	2006	60
Total complaints – problems and difficulties		682

	<i>2005</i>	<i>2006</i>	<i>2007</i>
Advice provided in relation to complaints	176	285	282
Complaints examined and resolved	246	294	378
Complaints brought forward	28	60	22
TOTAL	450	639	682

Monitoring implementation of Act - through investigations

“An investigation is not normally carried out unless attempts at resolving the issue at hand through the Office’s informal complaints’ resolution mechanism have failed or it appears that the issue cannot be resolved satisfactorily without an investigation.

The investigation process is a complex procedure, the completion of which may require a substantial amount of time and resources from both the public body concerned and my Office, and is not normally undertaken without substantive cause.”

(Annual Report 2007 Coimisinéir Teanga p32)

Monitoring implementation of Act – through review of implementation of schemes

Compliance Form for review of implementation of schemes

Compliance Form covering each commitment made in a scheme is issued to that public body and the body is requested to report on compliance with commitment

From evidence supplied by three public bodies which are partaking in Act to Action it is obvious that non-compliance is viewed very seriously by the office of the Coimisinéir Teanga and carrying commitments over to the second scheme.

Examples available of completed forms

Difficulties with implementation of schemes as observed by Coimisinéir Teanga

- Communications - especially websites and press releases
- Failure to establish or apply suitable systems to ensure fulfilment of statutory obligations under scheme including public availability of information leaflets and application forms
- Reluctance to appropriately publicise the services available through Irish.

Canada

27. Paham Canada?

- Mae Canada wedi datblygu ffordd adeiladol o weithio yn y maes.
- Mae Canada yn parchu amrywiaeth ieithyddol.
- Mae eglurdeb deddfwriaeth ieithyddol wedi arwain at ei lwyddiant
- Mae Comisiynydd Iaith Canada yn chwarae rhan allweddol yn y broses
- Mae Llysoedd Canada wedi mynnu eu hawl i fod yn ganolog yn y broses o warchod hawliau ieithyddol.

1) Ymagwedd adeiladol dros amser

Pan sefydlwyd Canada ym 1867 nid oedd y Cyfansoddiad yn amgyffred dwyieithrwydd swyddogol fel cynsail i bolisi. Yn hytrach rhoddwyd mesur o ddwyieithrwydd ymarferol i lunwyr deddfwriaeth, a'r hawl i ddefnyddio'r Ffrangeg yn y Senedd

Erbyn y 60au, reit yng nghanol crisis y wladwriaeth, sefydlwyd Comisiwn Brenhinol i archwilio sut i wneud dwyieithrwydd yn realiti bob dydd.

Mae Deddf Ieithoedd Swyddogol 1969 yn sefydlu hawliau ieithyddol, o nawr ymlaen mae'r Ffrangeg a'r Saesneg i'w hystyried yn ieithoedd normadol y Llywodraeth a'r Senedd. Mynnwyd bod pob gwasanaeth ffederal i fod ar gael yn y ddwy iaith, ond ni roddwyd hawliau ieithyddol yn ddiamod, roeddynt i fod yn addas (proportional) yn dibynnu ar ydefnydd o'r iaith ("to the relative frequency of usage"). Yn olaf sefydlwyd Swydd Comisiynydd Iaith Canada a oedd yn atebol i'r Senedd, nid i Weinidog..

Ym 1982 pasiwyd Siarter Canada ar Hawliau a Rhyddid, The Canadian Charter of Rights and Freedoms, ac fe roddwyd le canolog i hawliau addysg drwy gyfrwng un o'r ddwy iaith swyddogol, ond nid oedd yr hawl yma yn un absoliwt, dim ond lle'r oedd nifer y plant yn teilyngu, "only where... the number of children... warrant[s]",

Gan fod y ddwy iaith nawr yn gyfansoddiadol ddiogel, fe gafwyd cyfle i ddiwygio Deddf 1969 ac yn 1988 pasiwyd Deddf Ieithoedd Swyddogol a oedd yn rhoi'r hawl am y tro cyntaf i weision sifil ffederal yr hawl i weithio yn ei dewis iaith. Unwaith eto nid hawl ddiamod, absoliwt a geir, ond hawl a gyfyngir i 'ranbarthau dwyieithog', ac ymhellach mae hawl y cyhoedd i dderbyn gwasanaeth yn eu dewis iaith yn drech na hawl y gwas sifil i weithio yn ei dewis iaith ef neu hi. Felly er bod nifer yn dweud fod hyn yn gyfystyr â hawl i weithio yn ddwyieithog oddi fewn i'r Gyfundrefn Ffederal, nid yw hyn yn gwbl wir.

Dyma farn swyddogol am y sefyllfa a roddwyd gan Warren Newman, Cwnsel Cyffredinol Canada,

“ensuring an effective environment for the use of the minority language within the internal activities of government, where the majority language tends to dominate is one of the most difficult goals to achieve in practice. In other words, the official languages policy on the language of work must be progressive, but its application must take into account the sociolinguistic, demographic and geographic realities of Canada.”(Newman, 2007)

Y mae cyfundrefn Canada yn esblygu ac yn adeiladol, ond wedi ei chyfyngu yn bwrpasol fel bo modd cynnig gwelliannau yn raddol unwaith i'r gyfundrefn ymdopi a braenaru'r tir yn wleidyddol a chreu'r sgiliau angenrheidiol.

Hyn a ddywedodd y Comisiwn Brenhinol am gydraddoldeb:-

“Thus, the equality of which we speak is not absolute, but begins to be realized almost automatically as soon as it is feasible in a given area.... If the minimal conditions are present, the linguistic systems automatically assure that equality will be realized in concrete situations. To view equality in this way does not mean that we think the two main linguistic groups will enjoy the same services everywhere; this would be absurd in practice. It does mean that wherever similar conditions are found, similar services will be offered.”

2) *Ceisio fod yn eglur iawn wrth gynnig deddfwriaeth.*

Ni ddylid diystyried yr elfen symbolaidd wrth drafod hawliau ieithyddol. Mae nifer o bethau eraill yn deillio o fodolaeth Siarter, neu o set o hawliau. Un peth amlwg yw awydd rhai ymysg y mwyafrif i ddysgu, i arddel ac i ddefnyddio'r iaith leiafrifol am ei fod yn iaith Swyddogol. Dyma brif symbyliad nifer o Anglophone uniaith wrth ddysgu'r Ffrangeg unwaith iddynt dderbyn swydd gyda'r system ffederal.

Ond mae'n bosib rhagweld elfen o gamu yn ôl os ydy'r ddeddfwriaeth yn amwys neu yn aneglur. Dwy enghraifft o waith, Marc Tremblay, Adran Cyfiawnder, Canada (mewn cyfweiliad â'r awdur, Mai 2008).

Nid oedd yn bosib i'r Llysoedd ddehongli deddfwriaeth 1969, hyd nes y cafwyd yr eglurhad o dan Ddeddf 1988, gan nad oedd neb yn sicr a oedd y datganiad fod y ddwy iaith i fwynhau'r un breintiau oddi fewn i sefydliadau Ffederal yn golygu'r hawl i ddefnyddio'r naill iaith neu'r llall wrth weithio. Felly pan oedd capteiniaid awyrennau Air Canada yn hawlio fod ganddynt yr hawl i ddefnyddio'r Ffrangeg, ni welodd Uchel Lys Canada unrhyw gyfiawnhad o dan Ddeddf Iaith 1969 gan fod hwn ond yn ddeddf yn ymwneud â dyhead ac nid ffaith absoliwt.

“The “declaration of status of languages” was merely that - a declaration; and it did not invest courts with the power to issue remedies. Therefore, the federal institution was allowed to bar the use of French on all flights. Roedd yna lu o broblemau yn y Llysoedd wrth dehongli beth yn union oedd ymrwymiad y Llwyodraeth, beth oedd disgwyliadau'r cyhoedd, sut a phryd yr oedd hawliau a wrthodwyd i'w gwella, ble mae'r pŵer, ymysg y Gwleidyddion, yn y Senedd yntau yn y Llysoedd?”

Y mae eglureb a manylder yn talu'r ffordd. O'r 5047 man cysylltu a ddarperir gan y Llywodraeth Ffederal, mae'r 3124 man, lle y cynigir Ffrangeg a Saesneg, wedi eu strwythuro lle mae rheolau iaith a 'r hyn a ddisgwylir o ran wasanaeth yn gwbl glir. Nid yw'r cyhoedd yn cael eu cam arwain.

3) *Rôle allweddol y Comisiynydd Iaith*

Dyma beth a ddywedodd yr Uchel Lys am swyddogaeth y Comisiynydd Iaith:-

“[T]he Commissioner of Official Languages plays an important role. It is his job to take the measures that are necessary in respect of the recognition of each of the two official languages, and to secure compliance with the spirit of the Official Languages Act, in particular in the administration of the affairs of federal institutions. It is therefore the Commissioner who has been given the mandate to ensure that the objectives of that Act are implemented. To allow him to fulfil a social mission of such broad scope, he has been vested with broad powers by the Parliament of Canada. For instance, he may conduct investigations into complaints that in any particular case the status of an official language was not recognised, or any provision of an Act of Parliament or regulation relating to the status or use of the two official languages, or the spirit or intent of the Official Languages Act, was not complied with.

The Commissioner may also exercise his persuasive influence to ensure that any decision that is made is implemented and that action is taken on the recommendations made in respect of an investigation. For instance, s. 63(3) of the Official Languages Act provides that he may request the deputy head or other administrative head of the federal institution concerned to notify him within a specified time of the action, if any, that the institution proposes to take to give effect to those recommendations. He may also, in his discretion and after considering any reply made by or on behalf of any federal institution concerned, transmit a copy of the report and recommendations to the Governor in Council, and the Governor in Council may take such action as the Governor in Council considers appropriate in relation to the report (s. 65(1) and (2)). The Commissioner may make a report to Parliament where the Governor in Council has not taken action on it (s. 65(3)). He also has the authority to apply to the Court for a remedy, with the consent of the complainant (s. 78).

The Official Languages Commissioner follow[s] an approach that distinguishes [him] from a court. [His] unique mission is to resolve tension in an informal manner: one reason that the office of ombudsman was created was to address the limitations of legal proceedings.

4) *Amddiffyn hawliau yn y Llysoedd.*

Pa mor bell gyrhaeddiol mae pwerau'r llysoedd? Daw'r ateb wrth gofio *ubi jus, ibi remedium*: h.y. lle mae na hawl, mae'n ofynnol fod yna ateb, ond rhaid i'r ymateb fod yn

sensitif i'r gwahaniaeth sylfaneol rhwng y Weinyddiaeth, gwneuthurwyr ddeddfwriaeth a'r llysoedd.

Mae Senedd Canada wedi chwarae rhan allweddol ond y Llysoedd sydd wedi gwarchod a diogelu diddordebau ieithyddol y ddwy iaith swyddogol hyd yma.

Gweddol ddi-brofiad ac ymylol mae'r Gymraeg wedi bod fel achos yn y llysoedd, heb sôn amdani fel gyfrwng hyd yma o feddwl am hanes penderfyniadau ein llysoedd ni yng Nghymru.

5) Diwedd glo

Mae cyfundrefn hawliau ieithyddol Canada wedi esblygu yn ôl yr hyn a oedd yn weithredol, derbynol ac ymarferol wrth i raglen yr Ieithoedd Swyddogol fynd rhagddi. Wrth i'r 'capacity' dyfu, felly hefyd y tyfodd y syniad fod datblygu ac ymestyn hawliau ieithyddol yn rhesymol dros amser. Hyn oedd ystyr weithredol cydraddoldeb ieithyddol.

Pan gafwyd anghydfod a gwrthwynebiad, Y Llysoedd a ddehonglodd unrhyw amwysedd a ddaeth o ddwylo'r drafftwyd seneddol. A phan oedd hwn yn rhy dechnegol, rôl y Comisiynydd oedd bod yn eiriolwr ac yn lladmeredd dros yr ieithoedd swyddogol a'u siaradwyr. Mae'r elfen ddeddfwriaethol a weithredol sydd wedi deillio o gyfeiriad y Llywodraeth Ffederal, gan amlaf wedi dilyn barn y Llysoedd ac yn sgil hwn wedi addasu a newid deddfwriaeth.

Prif wendid y system resymol ac ofalus hwn yw ei fod yn rhy araf i newid, bod nifer yn teimlo nad yw'r broses yn ddigon atebol i ofynion y 'cwsmer', bod y Llysoedd a'r cyfreithwyr yn or-bwerus, bod gweision sifil a gweision y Llywodraeth yn ganolog ond bod y cymunedau Ffrengig yn ymylol ac yn fregus, ac yn bennaf oll bod y system ei hun wedi'i lunio i geisio ateb gwleidyddol i fygythiad ymwahaniaeth Quebec ac nid i foddhau'r angen am wasanaethu cyfundrefn wirioneddol ddwyieithog.

Conclusion

Three issues remain. The first is the argument that by extending the range of bilingual services and introducing a new and innovative set of rights, the existing capacity of personnel able to handle the broader expectations and statutory rights of citizens, consumers and plaintiffs will be stretched. This is a serious consideration and demanding of government attention in planning for, and resourcing, Welsh medium training and professional development in a number of spheres. There is a real danger that without such investment and purposive planning, the foundation on which the promise of constructing a bilingual society in Wales will flatter only to deceive.

The second issue is that of usage. Typically opponents of the extension of language rights argue that usage and demand should be the sole criteria by which the effectiveness of new legislation and additional opportunities should be measured. Were language to be conceived solely in terms of a commercial transaction, there would be some merit in this argument. However, lesser used languages are increasingly seen in terms of being a public good, akin to other characteristics of a liberal, plural society, such as gender equality, disability legislation and the promotion of equal opportunities. There is no a

priori assumption in these cases that demand alone, rather than need and added value, should be a determining factor in deciding policy or instituting legislation.

A third issue is the relationship between language legislation, language policy and the capacity of the court system to interpret, protect and at times advance the interests of the target language, as has been seen in the creative way in which the Canadian courts have interpreted the 'spirit of legislation'. I have no expertise whatsoever in legal matters, but there is no doubt that new and innovative case law will be established in Wales as a result of the deliberations and findings of the respective committees charged with advancing this Proposed Order.

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ⁱ The 'From Act to Action' research work was carried out between 2005 and 2009, by a team of specialists in law, public administration and language policy team from Ireland, Finland and Wales. It was co-directed by Siv Sandberg, Peadar Ó Flatharta, Pádraig Ó Ceithearnaigh and Colin H Williams. The work was commissioned by Foras Na Gaeilge, Svensk Kulturfonden and the Welsh Language Board. I wish to thank Diarmait Mac Giolla Christ, Steve Eaves and Ifor Gruffydd for sharing the field work with me on case studies in Wales. An extension of this in my own work is an examination of the legislative situation and bilingual/multilingual services in Canada, USA, Catalonia and the Basque Country

ⁱⁱ In addition to being able to make complaints to a Language Commissioner or similar body, members of the public take a public body to court, usually through a Court Remedial Programme. For details and a sophisticated discussion see Dunbar (2007) and Newman (2007).