

Alun Ffred Jones AC/AM
Y Gweinidog dros Dreftadaeth
Minister for Heritage



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Ein cyf/Our ref LF AJ 0040 09

Mark Isherwood AM
Chair
Legislation Committee No. 5
National Assembly for Wales

7 May 2009

Dear Mark,

Thank you for the opportunity to provide evidence to Legislation Committee No. 5 on 28 April 2009. You asked for further information on two issues. The first requesting clarification as to whether or not paragraph (b) of proposed matter 20.1 could cover agreements other than, for example, outsourcing agreements between public bodies and private sector companies e.g. broadcasting licences provided by Ofcom, which are not outsourcing arrangements. The second relating to partnerships.

Licensing arrangements

Paragraph (b) of matter 20.1 of the proposed Welsh language LCO confers competence on the Assembly to impose duties in relation to the Welsh language on persons providing services to the public under an agreement, or in accordance with arrangements, made with a public authority.

This paragraph will bring within competence persons providing services to the public for example, under outsourcing arrangements, and competence to legislate under this paragraph is limited to the services provided under the arrangements in question.

Paragraph (b) covers the circumstances where a public authority commissions the delivery of services to the public by another person because the public authority requires the service to be delivered.

Although OfCOM is a public authority for the purposes of the LCO, unless it is acting through its licensing activities to intervene, for example, where there is a specific statutory duty to work towards a public policy goal which markets alone cannot achieve, its licensing arrangements are unlikely to constitute arrangements or agreements for the purposes of paragraph (b) of proposed matter 20.1 of the draft Welsh language LCO.

Partnerships

Under the competence proposed to be conferred by the Welsh Language LCO, the National Assembly will be able in future to legislate by Measure to impose duties in respect of the

Welsh language on individuals or bodies who match the criteria in paragraphs (a) to (i) of proposed matter 20.1, namely persons who are either exercising functions of a public nature, who are providing services to the public or undertaking particular functions in the contexts set out in paragraphs (b) to (h) or who have opted or agreed to be subject to the imposition of duties.

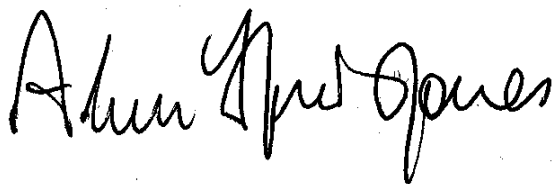
Where there is a “partnership” or joint working arrangement for the exercise of a function of a public nature or delivery of services to the public, as opposed to the functions being exercisable or services delivered by a member of the “partnership” having consulted with the other members, the Assembly may be able to impose duties upon the “partnership” in relation to the Welsh language if the partnership is a “person” in the eyes of the law and also meets the relevant criteria in any of the paragraphs set out in matter 20.1 e.g. the partnership provides services to the public under an agreement made with a public authority.

The relevant legal definition of “person” is set out in section 5 of and Schedule 1 to the Interpretation Act 1978. In that Schedule of that Act, “person” is defined as including “a body of persons corporate or unincorporate”. Joint working arrangements and partnership arrangements may come within this definition depending on their constitution.

There are a number of examples of “partnerships”, joint working or cooperation arrangements between persons engaged, or with a particular interest, in the delivery of services to the public in relation to Wales. Before the Assembly could legislate by Measure to impose duties in relation to the Welsh language on such groupings as groupings, it would need to be satisfied that the grouping was a person in the eyes of the law and was either in its own right a public authority for the purposes of the Human Rights Act 1998, or was providing services to the public in any of the circumstances set out in paragraphs (b) to (h) of the draft Welsh language LCO.

Even if it could not impose duties on such a group, the Assembly could legislate by Measure to impose Welsh language duties on individual members of such a group or partnership who are within its legislative competence. Such individual members could be required to ensure that any activities undertaken by them, or to which they were a party, in connection with the work of the partnership, complied with duties imposed by the Assembly by Measure.

I trust that this information is of assistance to you.

A handwritten signature in black ink, appearing to read 'Alun Ffred Jones', written in a cursive style.

Alun Ffred Jones AC/AM

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