

National Assembly for Wales
Finance Committee

Report on the Financial Implications of the
Proposed Welsh Language (Wales) Measure)

August 2010



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Finance Committee

The Finance Committee's remit is to ensure that proper scrutiny is given to the budget and expenditure of the Welsh Government, the Assembly Commission, the Ombudsman, the Children's Commissioner, the Older People's Commissioner and various Welsh Government Sponsored Bodies and NHS Bodies.

The Committee has in broad terms three main functions:

- to consider and report on Assembly budget proposals;
- to consider and, where it sees fit, report on the financial information presented in support of Assembly Measures;
- to consider any other matter relating to, or affecting, expenditure by the Government or out of the Welsh Consolidated Fund.

Powers

The Committee was established on 26 June 2007. Its powers are set out in the National Assembly for Wales' Standing Order 14. These are available at www.assemblywales.org

Committee Membership



Angela Burns (Chair)
Carmarthen West and South
Pembrokeshire
Welsh Conservative Party



Lorraine Barrett
Cardiff and South Penarth
Labour



Peter Black
South Wales West
Welsh Liberal Democrats



Andrew Davies
Swansea West
Labour



Chris Franks
South Wales Central
Plaid Cymru



Brian Gibbons
Aberavon
Labour



Ann Jones
Vale of Clwyd
Labour



Nick Ramsay
Monmouth
Welsh Conservative
Party



Janet Ryder
North Wales
Plaid Cymru

Proposed Welsh Language (Wales) Measure

Introduction

1. Standing Order 14.2 states:

The [Finance] Committee may also consider and, where it sees fit, report on:

financial information in explanatory memoranda accompanying proposed Assembly Measures;

2. Standing Order 23.18 states:

At the same time as [the Member in charge] introduces a proposed Measure, he or she must also lay an Explanatory Memorandum which must:

(vi) set out the best estimates of:

(a) any administrative, compliance and other costs to which the provisions of the proposed Measure would give rise;

(b) the timescales over which such costs would be expected to arise; and

(c) where the costs would fall;

3. The Minister for Heritage, Alun Ffred Jones, AM, presented the proposed Welsh Language (Wales) Measure to the Finance Committee at its meeting on 17 June 2010. The Finance Committee also considered written evidence on the proposed measure from the Welsh Language Board and took oral evidence on 1 July 2010 from Meirion Prys Jones, its Chief Executive, and Gwyn Jones, its Director of Policy & Terminology. In considering this proposed Measure the Finance Committee also had regard to the responses received by Legislation Committee 2 in its consultation on the proposed Measure.

Background

4. The Explanatory Memorandum says that the proposed Welsh Language (Wales) Measure is intended to modernise the existing legal framework largely governed by the Welsh Language Act 1993 regarding the use of the Welsh language in the delivery of public services. The proposed Measure includes provision with regard to the official status of the Welsh language. It establishes the office of Welsh

Language Commissioner which will replace the Welsh Language Board established under the 1993 Act.

5. The Commissioner will have the general function of promoting and facilitating the use of the Welsh language and to promote equality between the Welsh and English languages. This will include the power to investigate alleged interferences with individuals' freedom to use Welsh with one another in certain circumstances. The Commissioner will be supported by an Advisory Panel.

6. The proposed Measure makes provision with regard to the development of standards of conduct relating to the Welsh language which will gradually replace the existing system of Welsh language schemes provided for by the 1993 Act.

7. The proposed Measure also includes provisions in respect of the enforcement of duties contained in standards and the ability of individuals to challenge those duties as they apply to them. This will include the creation of a Welsh Language Tribunal.

Costs associated with the Measure

8. The Explanatory Memorandum says¹ that the direct costs of establishing the structure provided for by the proposed Measure will be borne from the £13.8 million currently used by the Welsh Assembly Government to sponsor the Board with the exception of the one-off costs associated with managing the implementation project. The latter is assessed at £200,000 and will be met from existing Welsh Assembly Government budgets. The Explanatory Memorandum also says² that there will be other costs associated with the implementation of the project, such as training, induction, ICT and accommodation and facilities costs, which are expected to be around £270,000 and will come from the Board's financial allocation. They can however be spread over two years.

9. The Explanatory Memorandum says³ that the best estimate of running costs for the structure provided for by the proposed Measure is £4.2 million per annum and that the remaining £9.6 million (less the

¹ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.56

² Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.51

³ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.57-8.58

£270,000 implementation costs) will continue to fund programmes aimed at promoting and facilitating the use of Welsh, whether by the Commissioner or the Welsh Assembly Government. A breakdown of all the costs associated with the Measure, and identified in the EM, and The Minister for Heritage's letter of 29 June, is given below

Costs to be met from the Welsh Language Board budget

- a. **Establishing the structure provided for by the proposed Measure** (including £270,000 for training, ICT etc (see above) but not the project implementation costs of £200,000 which will be funded directly from the Welsh Assembly Government.)
- b. **Running costs for the Commissioner**
£4.0 million⁴ based on costs associated with funding the Welsh Language Board.
- c. **Other costs** in relation to:
 - Challenges to the imposition of standards. The Explanatory Memorandum quotes a figure of £2,000 per day for legal costs⁵ and says⁶ that it expects the number of challenges to be low but it is not possible to predict the average cost of a challenge because the nature of each will be for the organisation to decide.
 - Investigating alleged breaches of standards. The Explanatory Memorandum says these costs will depend on demand and it is not possible to predict the average costs of such an investigation⁷. On the basis of 'illustrative' figures it suggests a figure £6,000 to £10,000 per year⁸.
 - Costs for appointing and remunerating members of the advisory panel. Between £40,000 and £70,000 per annum⁹.
 - Running costs for the tribunal secretariat. Costs, unknown¹⁰.
 - Tribunal costs. A figure of £115,000 per year plus £20,000 for one-off costs is suggested 'as an illustration'¹¹ but actual costs will depend on demand.

⁴ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.42

⁵ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.34

⁶ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.36

⁷ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.38

⁸ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.39

⁹ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.45

¹⁰ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.47

- Investigations by the Commissioner into alleged interferences with the freedom to use Welsh. The costs of these will vary according to the number of complaints received but most recent figures suggest total costs of £600 per year¹².
- The Commissioner's powers to provide an individual with legal assistance. The Explanatory Memorandum gives an estimate of £10,000 per year¹³ but the actual cost will depend on demand.
- Costs of consultation processes as part of standards investigations. Not given¹⁴ – depends on demand.

Costs for the Welsh Assembly Government

- One-off costs associated with managing the implementation project (assessed at £200,000, to be taken from the Department for Heritage);
- the cost of preparing Regulatory Impact Assessments for standards and regulations, these costs have not been included in the Explanatory Memorandum¹⁵.

Costs for outside organisations

Organisations which currently have Welsh Language schemes

10. The Explanatory Memorandum does not give figures for the likely costs that organisations will have to meet, the standards they will be required to attain or the regulatory system that will enforce them. It says¹⁶ that standards will be developed by the Commissioner and the process of legislating using secondary powers will require a Regulatory Impact Assessment to be prepared. As such, the exact nature of the standards to be imposed on bodies under the framework established by the proposed Measure will become apparent only at the end of that process. The Explanatory Memorandum says¹⁷ that the overall cost of complying with schemes has not been routinely measured.

¹¹ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.48

¹² Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.54

¹³ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.55

¹⁴ Finance Committee FIN (3)-12-10 paper 4, *Financial Implications of the Proposed Welsh Language (Wales) Measure – Additional Information from the Minister for Heritage*, 1 July 2010

¹⁵ Ibid

¹⁶ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.22

¹⁷ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.24

11. The Explanatory Memorandum goes on to say¹⁸ that the vast majority of organisations which fall within the scope of the 1993 Act, and that provide services to the public in Wales, already have schemes in place. The Explanatory Memorandum says they should, therefore, already be providing a range of Welsh language services to the public. It is not therefore, expected that the introduction of standards will lead to significant new financial burdens on those organisations affected. The Explanatory Memorandum notes that the cost of using the English language to provide a service is not something that is routinely measured and says the same principle should apply to the Welsh language.

Organisations placed under duties

12. The Explanatory Memorandum does not give figures for the likely costs that organisations will have to meet, the number of organisations that will be impacted on by this Measure, the standards they will be required to attain or the regulatory system that will enforce these. It says¹⁹ that the costs of complying with Welsh Language Schemes under the 1993 Act have not been routinely measured and hence providing any accurate estimate of the costs associated with complying with duties is a difficult task. It refers to a range of issues that might affect an organisation having to comply including the approach followed by the Commissioner in setting standards, the timescale over which they are implemented, and the size of the organisation.

13. The Explanatory Memorandum says that ‘Recent research undertaken by the Board’ provides a snapshot of the range of costs that could be incurred in implementing their schemes²⁰. This indicates²¹ ‘typical’ costs for organisations implementing a Welsh language scheme as no more than £1,000 per year for small organisations, no more than £100,000 for medium-sized organisations and £200,000 for large organisations. It goes on to say²² that it would not be appropriate or accurate to attempt to extrapolate from these figures to estimate the total costs for the types of organisation listed in Schedule 6 of the proposed Measure. Similarly, the Explanatory

¹⁸ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.25

¹⁹ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.27

²⁰ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.28

²¹ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.29

²² Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.30

Memorandum says²³ that costs with regard to Schedule 8 organisations cannot be predicted prior to consultation with regard to the standards that will apply to them. The Explanatory Memorandum notes also²⁴ the Government's general policy not to impose duties on small businesses.

Discussion

14. In examining the financial aspects of a proposed Measure the Finance Committee does not take a view on the merits of the policy intention behind the Measure but seeks to examine the financial impact of the proposals so that decisions can be taken with a knowledge of their financial implications. In many cases this can be seen in the context of the need for the Government to make future budgetary provision to give effect to the legislation. The Finance Committee has noted in previous reports that an inadequate assessment of the financial implications of a policy or legislation can result in inadequate budget provision and the risk that this will lead to a failure to deliver a policy because of the funds running out. Alternatively, if an inadequate financial assessment leads to budget provision being higher than is needed, this can result in funds being denied unnecessarily to other programmes and policies.

15. This proposed Measure is one of a number the Government is bringing forward which might have a significant impact on outside organisations and the Finance Committee considers that in making legislation the Assembly should be aware of, and have properly scrutinised, the financial impact of the legislation on such organisations.

Commissioner's office

16. The Finance Committee noted that the general approach of the proposed Measure was to meet the costs of establishing the Commissioner's office out of the funding currently provided for the Welsh Language Board. The Minister for Heritage²⁵ told the Committee that it was expected that a similar level of resources will be required to fulfil the regulatory and promotional functions under the new arrangements. Asked whether the new system would be more

²³ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.31

²⁴ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.32

²⁵ RoP p12, 17 June, Finance Committee

complex or bureaucratic, the Minister said²⁶ that he did not think it would be. While there would initially be “a lot of work” to create the standards and to impose them, once a system was in place it would be much simpler. The Minister said²⁷ that the Commissioner would have a lot of work to do in the first 2 or 3 years to establish the new system but, in the longer term, he was confident that this system will ensure that resources are freed up. The Finance Committee notes the Minister’s comment but has some concern that this is ambitious

17. The Finance Committee asked the Welsh Language Board for their view on the likely costs involved in establishing the Commissioner’s office. They said²⁸ it was difficult to respond because the role of the commissioner will be quite different from the current role of the board and there was at present no description of the extent of the commissioner’s role. They said also that they had provided a document to the Government that briefly noted the cost of maintaining a language scheme and implementing it. But they had not been part of any discussion or modelling of the increased volume of work likely to arise from the proposed Measure.

Number of organisations affected by standards

18. The Committee noted that the Explanatory Memorandum says²⁹ there are currently around 550 organisations which have Welsh Language schemes and asked the Minister for Heritage how many organisations he expected to have standards imposed upon them. The Minister responded³⁰ by saying that all the organisations that are covered at present will be included, and there are other sectors that will be brought in under the powers of the proposed Measure, which will add to the dimensions. However neither he nor officials offered a figure. The Committee noted that simply by considering the names in the schedule to the proposed measure the number was likely to run into thousands. Commenting on this the Minister said³¹ that it was important the standards provided flexibility and that the Commissioner would need to take into account reasonableness and proportionality.

²⁶ RoP p14, 17 June, Finance Committee

²⁷ RoP p39, 17 June, Finance Committee

²⁸ RoP p208, 1 July, Finance Committee

²⁹ Proposed Welsh Language (Wales) Measure, Explanatory Memorandum, para 8.27

³⁰ RoP p66, 17 June, Finance Committee

³¹ RoP p77, 17 June, Finance Committee

Costs for outside organisations

19. The Committee was concerned about the costs that would fall on organisations in order for them to comply with the standards of compliance with standards and the lack of information on these in the Explanatory Memorandum. The Minister for Heritage admitted³² that this was a difficult area but noted that there was 35 years of experience of providing bilingual services throughout Wales and a number of companies already did this. What the Government was asking was for a 'level playing field' for the customer. He went on to say³³ that while the Explanatory Memorandum did not provide a detailed analysis of these costs, a regulatory impact assessment of any set of duties imposed on any person would be made at the time.

20. The Committee noted the evidence presented to Legislation Committee 2 by the Confederation of British Industry³⁴, the Mobile Broadband Group³⁵, and some of the utilities companies, including Scottish Power³⁶, which said that the proposed Measure would impose significant costs on them, as global companies. Some Members asked the Minister for Heritage³⁷ if the requirements of the proposed Measure would be seen as a disincentive to companies to invest in Wales.

21. Responding to this, the Minister said³⁸ that he did not think this would be the case. Many private companies have already shown their commitment to the Welsh language in various ways, and he thought they would continue to do so. He added that any cost estimates that had been provided should be treated with caution because the standards have not yet been developed or imposed. He said he could not therefore envisage what the costs will be but emphasised that impact assessments would run alongside the duties and that the requirements must be reasonable and proportionate.

³² RoP p97, 17 June, Finance Committee

³³ RoP p101, 17 June, Finance Committee

³⁴ RoP, 10 June, Legislation Committee No 2

³⁵ Legislation Committee No 2 LC2(3)-09-10 paper 3, *Mobile Broadband Group*, 13 May 2010

³⁶ Legislation Committee No 2 LC2(3)-08-10 paper 3, *Scottish Power*, 29 April 2010

³⁷ RoP p114, 17 June, Finance Committee

³⁸ RoP p115, 17 June, Finance Committee

Standards

22. The Finance Committee notes the lack of financial detail that is currently available on the standards as these will be set by subordinate legislation. It strongly urges the Government to ensure that in considering their financial reasonableness the Government has regard to adequate and measurable assumptions being included in the tests of proportionality in order to take into account the variations in the use of the Welsh Language.

Challenges

23. The Committee was concerned that the new requirements and the new approach proposed in the Measure would lead to an increased number of challenges. Members asked whether there would be an increase in legal costs because legal support would be available to those who wanted it. The Minister for Heritage said³⁹ that he did not envisage any huge costs being involved. Officials told the Committee⁴⁰ that historically very few cases to do with the Welsh Language have ended up in court. Their hope was that the provisions in the proposed Measure that deal with the freedom to speak Welsh will reduce the number of those cases.

Costs to be met directly by Welsh Assembly Government

24. In relation to the costs to be borne directly by the Welsh Assembly Government, the Minister for Heritage said that the £200,000 for managing the implementation project, which is staff salary costs, would be borne from the Departmental running costs for the Department for Heritage⁴¹.

Conclusion

25. The major part of the Government funding for the Proposed Welsh Language Measure is intended to come from the budget of £13.8 million that currently supports the Welsh Language Board. The Explanatory Memorandum identifies a number of new and changed activities which will need to be funded from this, but provides very little analysis of either their impact on current programmes, or on future activity levels, and hence their likely effects on funding

³⁹ RoP p16, 17 June, Finance Committee

⁴⁰ RoP p20, 17 June, Finance Committee

⁴¹ Finance Committee FIN (3)-12-10 paper 4, *Financial Implications of the Proposed Welsh Language (Wales) Measure – Additional Information from the Minister for Heritage*, 1 July 2010

requirements. The Committee was unable to make an informed judgement given the lack of detail in the Explanatory Memorandum.

26. There is also predicted expenditure of around £200,000 which will come directly from Government budgets. This is a comparatively small amount with little detail provided. The Minister for Heritage said that the £200,000 for implementing the project would be borne from the Departmental running costs for the Department for Heritage but this does not include the cost of preparing the Regulatory Impact Assessment for each standard⁴².

27. While the Explanatory Memorandum outlines some of the cost factors that might fall to 'typical' outside organisations that will have to comply with future standards, these are based on very limited research. The Explanatory Memorandum also indicates that this does not provide a basis on which to extrapolate to estimate the total costs falling on organisations affected by the proposed Measure. There is therefore no substantive information in the Explanatory Memorandum on which to assess the overall financial impact that the measure might have on external organisations.

28. The evidence received from the commercial sector indicated that the costs associated with the proposed Measure could be seen by global companies as a significant cost. However, the lack of information in the Explanatory Memorandum makes it difficult for the Committee and those affected by the Measure to assess its financial impact.

29. The Finance Committee notes the Minister's view that the number of challenges, and more specifically the costs of these, are unlikely to rise with the proposed Measure. However, the Committee considers there is insufficient evidence to come to a judgement.

30. The Finance Committee accepts that future regulations and standards will be accompanied by a Regulatory Impact Assessment. However it believes that there should be sufficient information presented in support of an 'enabling' measure to allow an informed understanding of its financial implications to be made because secondary legislation usually attracts a lower level of scrutiny. The

⁴² Finance Committee FIN (3)-12-10 paper 4, *Financial Implications of the Proposed Welsh Language (Wales) Measure – Additional Information from the Minister for Heritage*, 1 July 2010

lack of analysis, detail and adequate financial information at this stage makes it difficult for the Finance Committee to make a proper assessment of the full financial implications of this proposed Measure.

31. The Finance Committee calls on the Government to ensure that when secondary legislation to set standards is laid, it is subject to a full financial scrutiny.

Angela Burns
Chair, Finance Committee