

CBI Wales Response to the Welsh Language Legislative Competency Order consultation

Introduction

1. This paper is the response of the membership of CBI Wales to the consultation on the Welsh Language Legislative Competency Order (LCO).
2. The CBI is the UK's foremost business representative body dealing principally with cross-sector issues, which affect the business environment in which all companies operate. The CBI's strength lies in its breadth of membership, which includes companies of every size, including over 200 trade associations and academic institutions, and from all sectors of the economy – manufacturing, construction, retailing, financial services, e-commerce, leisure, transport and so on. The CBI represents companies employing about 50% of the private sector workforce in Wales.
3. Business in Wales welcomes the opportunity to take part in this consultation on the Welsh Language LCO. We hope the considered views of industry in Wales will help craft a final LCO that is better positioned to increase the use of the Welsh language.
4. Due to the lack of detailed proposals in the LCO on the exact Welsh language duties certain companies will be compelled to perform, a more detailed reaction by industry on the implications of the legislation will take place at Measure stage.

Executive summary

5. The LCO contains a number of proposals affecting business:
 - **The intention to transfer specific powers over the Welsh language to the Assembly:** We believe this is appropriate. It seems logical for the Welsh Assembly to have legal responsibility for the Welsh language.
 - **The intention to confirm official status for both English and Welsh languages in Wales:** At this stage in the legislative process, we are unclear what the exact implications of this clause will be on the private sector in Wales.
 - **Enable the Assembly to legislate to protect, via a future Measure, the freedom of individuals to speak Welsh with each other:** We are unclear what the impact of this proposal will be in the private sector. Employers and employees must act reasonably, with the understanding that core company procedures in the majority of companies take place in English.
 - **Compelling certain private sector companies (largely the former privatised utilities) to deliver Welsh language services:** We do not support these proposals. We believe a voluntary demand-led approach will achieve more for the Welsh language. If the Assembly still wishes to pursue the compulsion route affected companies should be expected to treat the Welsh and English languages on the basis of equality *as far as is reasonable and practicable*.
 - **To require persons providing services to the public receiving £200,000 or more in a financial year to be required to deliver some Welsh language services:** This clause seems appropriate if it is intended to cover such public sector organisations as the Wales Millennium Centre. However as worded it has the potential to cover a wide variety of companies. We recommend it is amended to remove such confusion.
6. CBI member companies operate throughout many parts of Wales- rural and urban, traditional Welsh-speaking areas and industrial anglicised areas. Members generally have a very positive attitude towards the language and a desire to see it extended in business where there is a demand from employees and customers. Many companies in Wales have in different ways, increasingly built the Welsh language into their marketing and customer relations. Many

businesses now provide services through the medium of Welsh- even though there is no legal requirement to do so. Utility bills are available in English and Welsh, some banks provide a Welsh language service, shops such as Tesco and Marks & Spencer provide signage in Welsh and English and Microsoft has produced a Welsh language version of their key software platform- Windows.

7. To date, many companies have had a constructive relationship with the Welsh Language Board, which has worked effectively with business to strengthen use of the language on a voluntary, demand-led basis underpinned by its private sector strategy. Business continues to support the goals of the Welsh Assembly Government's National Action Plan for a Bilingual Wales, *Iaith Pawb* for a truly bilingual Wales based on support and encouragement for the Welsh language. It is these conditions and approaches that have unquestionably helped increase the favourable approach of the private sector towards the Welsh language.
8. CBI members therefore are clear that they support the adoption and development of the Welsh language in the private sector when it is done on a voluntary basis. The technical, capacity, administration and management costs of complying with legislation in the absence of sufficient demand/financial return are something businesses in Wales should not be required to do at this time.
9. The key barrier to the voluntary extension of Welsh services in the private sector is the low level of usage. We would much prefer the Welsh Assembly Government to use its significant resources to create the business case for using Welsh. This includes the use of Welsh by consumers, giving the skills and training to individuals to have the confidence to use the Welsh language in a formal setting. If this were to be done effectively additional usage would enable more businesses to provide Welsh language services and encourage the extension of current provision by a greater number of companies than currently targeted by this LCO.

The economy

10. The CBI believes that a strong and thriving private sector is key to the future of Wales, and that a successful economy is necessary to underpin the health, education and social justice aspirations expressed by the Assembly Government.
11. The Welsh market for most businesses is relatively small (population of less than 3m) and not particularly affluent (relative GDP per head is low). Companies which have the aspiration to grow therefore have to address markets outside Wales – in the UK and internationally – as well as at home. Companies therefore will compete vigorously with competitors based in other parts of the UK and overseas on a daily basis. Against this background the nature of the business environment in which the business is based is critical.
12. The current economic backdrop to this debate should not be ignored. At the time of the consultation, Wales is in recession. This is a challenging period for all private sector employees in Wales. Companies are implementing efficiencies and are looking to new markets to sell their goods or services. The Welsh *Industrial Trends Survey* of manufacturing activity the last quarter of 2008 revealed output volumes falling more sharply than Welsh manufactures had expected- reaching the fastest rate of decline since January 1999. Unemployment as a result is continuing to rise while new employment opportunities shrink. At such a time governments inevitably need to ensure the evidence-base upon which all policy decisions are taken reflects current economic realities and due consideration is given to decisions that will directly impact the private sector.

Process

13. The definition of what is actually meant by Welsh language 'services' remains unknown at this stage in the legislative process, only to be revealed at the Measure stage. This lack of certainty means we do not know what actions companies affected will need to take to comply with the legislation. As a result, it is difficult to accurately state the impact/cost this new statutory

requirement will have. The effect of this on companies is a prolonged period of uncertainty which is not ideal given current market conditions. It would benefit everyone if the Welsh Assembly Government were to discuss with business what compliance with the legislation would look like as soon as possible.

14. We strongly hope that all parties involved handle the LCO, Measure and implementation stages of these proposals in such a way that the continued goodwill and engagement on the Welsh language of those companies outside the scope of this LCO is preserved.

Demand-led

15. We recognise that a consequence of greater choice for the Welsh consumer is a more complex network of public services. Private companies now provide a range of formerly public services and some markets- such as telecommunications- have diversified with new technologies allowing for many new services and new ways of communicating with a service provider. However, we believe the demand-led, voluntary approach of the private sector working in partnership with the Welsh Language Board, consumer groups and the Welsh Assembly Government has enabled the growth of the Welsh language in these areas.
16. Business attitudes to the Welsh language are far more positive today than they have been in the past based on this approach. That 60% of private sector employers in Wales now support the use of Welsh at work is evidence of this.¹ More needs to be done but this is illustrative of the progress that has been made.
17. Former nationalised utilities have by-and-large needed no legal compulsion to make Welsh language services available to their customers. Companies such as BT have responded excellently, embracing a voluntary Welsh language scheme. BT have invested significantly- establishing a range of Welsh language services including a Welsh Language Bureau comprising a dedicated customer service centre for customers handling billing, sales and repairs; a dedicated customer service number for businesses; a 25 hour Welsh language directory enquiries; Welsh language content in The Phone Book and all phoneboxes.
18. The motivation for the provision of private sector Welsh language services vary. Some respond to customer requests, others to staff but the majority of companies in our experience use the Welsh language due to a commitment to Wales and to their Welsh consumers. The investment in such services does not secure a return and would not pass the usually rigorous analysis of mainstream company expenditure. The lack of Welsh language services in other companies is almost always down to the lack of consumer demand.
19. Compelling certain companies to provide Welsh language services risks losing goodwill within the private sector towards the language. It changes the perception of the language from a positive statement of a commitment to Wales to a compliance issue, the costs of which tend to be managed and minimised.
20. The Welsh Assembly Government has suggested that the implementation of such services on the companies affected could be different in and between sectors and vary in different parts of Wales. This would enable companies to proportionately provide levels of Welsh language public services, according to their locality. We believe such an approach can work under a voluntary system. However, it is not feasible to propose different statutory duties on companies competing to provide the same services. Under statutory scheme, competition law would not allow such a bespoke approach. A statutory code must provide a level playing field between companies within affected sectors.
21. The need to ensure a level playing field will prove difficult in many sectors, especially in the fragmented markets such as telecoms with many different delivery channels. Failure to

¹ 2004-06 Welsh Language Use Survey, p30, Welsh Language Board.

adequately capture all competitors in a market will put Welsh based companies at a disadvantage and is likely to result in legal challenges.

22. Furthermore, there are a growing number of niche energy suppliers which provide utilities to small groups of consumers. The choice of a 'green energy' utility supplier for example is available in Wales. We would not want to see the unintended result of the Welsh language becoming a de facto barrier to these smaller utility companies operating in Wales.
23. We welcome the Welsh Language Board's '*Investing in Welsh*' kite mark scheme. This voluntary accreditation approach, with the appropriate marketing, has the potential to gain wider private sector support than the group of sectors the LCO singles out for legislation. Twinned with a publicity campaign to increase consumer demand and work to understand why Welsh speakers are reluctant to use the Welsh language in official capacities. This approach has the potential for to deliver the increased use of the language across the private sector.
24. The scheme enables the promotion of existing Welsh language services and it helps those currently not providing a service to make a positive start. The scheme captures which services many companies in Wales currently provide and it does so in a reasonable and balanced way. For example it requires the equal treatment of English and Welsh- 'so far as is reasonable and practicable;' that new permanent signs are bilingual, that all staff respond politely to Welsh language enquiries; the use of the 'investing in Welsh' mark; the recognition of the usefulness of speaking in Welsh when working in Wales and the development and promotion of the company's Welsh language policy. Such an approach, we believe, is best for businesses in Wales and best for the Welsh language.

Analysis of the Legislative Competency Order

As previously stated, we do not believe that the route of legislative compulsion of the private sector is the right one. However, if the Welsh Assembly Government pursues this route we have some detailed observations on the draft LCO.

25. We support many of the intentions that would enable the introduction of the Welsh Language LCO. We, like the Welsh Assembly, wish to sustain Welsh as a living language and to increase the number of public services available in Welsh. We, like the Welsh Assembly, support the use of the Welsh language in the private sector and believe that the use of the language has cultural and commercial advantages.

Transfer of power to Welsh Assembly

26. We believe the Assembly is the logical place for the powers over the Welsh language to reside therefore we support the proposal to transfer specific power over the Welsh language from Westminster to the Assembly so that that the Welsh language becomes the Assembly's legal responsibility.

Linguistic rights

27. We note the proposal in the LCO would enable the Assembly to legislate to protect (through a future Measure) the freedom of individuals to speak Welsh to each other. We are unclear what the impact of this proposal will be in the private sector, above and beyond that currently provided by the 1993 Welsh Language Act. Employers and employees must act reasonably, and we support the rights of employees to speak Welsh to each other in the workplace.
28. While most employers act reasonably in this regard, respecting the choice of individual workers to communicate in their own language where appropriate, it is important to recognise that the language of the workplace for the vast majority of employers is English and the great majority of employees in Wales do not speak Welsh. It is reasonable therefore to require business discussions involving non-Welsh speakers to be conducted in English. This is an area where common sense must be allowed to break out.

Basis of equality

29. As there is no definition of 'basis of equality' it is not clear what compliance will mean in practice. Looking at the public sector, it appears to impose very high requirements. We believe this needs amending to require companies to implement services that are reasonable and practicable- which is what the Welsh Language Board currently requires in its voluntary code.
30. The treatment of both languages on the basis of equality comes from the 1993 Welsh Language Act and is currently required of public bodies. In 2006 the Welsh Language Board stated that this requirement has not been implemented effectively in the public sector with 'schemes unevenly and partially implemented, and it is not clear to the public what they can expect to receive in terms of Welsh language services.'² It is a cause for concern if this is the result in the public sector- with its investment of significant time and money in the creation of such systems within organisations that solely operate in Wales and have been dealing with the Welsh language for many years prior to the 1993 Act.
31. It is therefore the *extent* of the provision of the services and the *uncertainty* over the breadth and depth of the duties which we question. As a result, we suggest an amendment. 3(2) currently reads: 'promoting the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality,' We believe this statement should be amended to read 'promoting the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality *as far as is reasonable and practicable*'. We suggest this is inserted as a new clause after 3(2) (g) and before 3(2) (h).
32. The source for this amendment is from the Welsh Language Board's own interpretation of equality between Welsh and English in the workplace. The board's 'Investing in Welsh Scheme' is aimed at enabling any private sector company to provide a range of customer services. The principles of reasonableness and practicality in the promoting/facilitating of the language are central to its scheme and would allow businesses to implement the requirement in a smarter and more effective manner.

Public services

33. We note that in clauses 3(2) (a) to (e) it states that the LCO will impose a duty on persons 'providing services to the public.' The phrase is found in the 1993 Act but was only ever applied to public bodies. We believe the clause intends to cover private companies providing public services and not private companies providing 'services to the public.'
34. As the clause currently stands it has the potential to be misunderstood and there is a danger of the private sector being required to deliver a far greater level of their services bilingually than the Welsh Assembly Government intends, if the intention is to implement the spirit of the 1993 Act.
35. We prefer the term- found in the 1993 Act- of 'functions of a public nature' and would like this phrase to replace 'providing services to the public' in the LCO. This term is more accurate and focuses on delivering an original intention of the LCO- to update Welsh language service provision to match the more complex modern-day delivery of public services.

Telecommunications

36. The telecommunications sector has changed beyond recognition since the 1993 Act. Since the privatisation of BT in 1984 competition has developed strongly. This fast changing market now has over 170 fixed telecommunications providers, around 10 mobile operators, over 60 mobile service providers and around 700 internet service providers.

² The Legislative Position of the Welsh Language, 2006, p5. Welsh Language Board.

37. Historically the market has been driven by fixed line telephony. However, new wave services such as broadband and mobile utilisation has revolutionised the market and delivered new products and services to the consumer including mobile broadband, 3G and VoIP (voice over internet) options. As this has taken place new suppliers have entered the market. We now see high street supermarkets active within the mobile phone market and as a result, both the number of services, their method of delivery, the technology used and the business location are more varied now than ever before.
38. We are unsure exactly what companies/activities the Welsh Assembly Government intends to cover by including 'telecommunications services' under the auspices of the LCO. At its heart, telecommunication is the assisted transmission of signals over a distance for the purpose of communication. If such a definition were adopted a very wide range of products and services provided to the public by the private sector would be included in the LCO. Clarification is urgently needed in this area.
39. UK consumers spend more annually on mobile phones than they do via landlines. The use of mobile broadband, PDAs and 3G networks means the LCO has potentially serious implications for the telecommunications industry- to what extent remains uncertain. Is texting and email included in the LCO? If so, what does that mean? Does it mean only bilingual phones will be permitted to be sold in Wales? Does it mean that mobile devices that use public WIFI to send messages (like Apple's iPod Touch) will be covered? If so, what does compliance with the legislation look like for these industries? The Welsh Assembly Government must engage with the private sector to discuss these issues as soon as possible and not wait until the LCO process has completed. It must also be very clear that it will be able to enforce compliance across such a varied sector and preferably without reducing the level of competition in the market to the detriment of Welsh consumers.

'£200,000 or more in a financial year'

40. We note the provision within the LCO to require 'persons providing services to the public who receive public money amounting to £200,000 or more in a financial year' to deliver Welsh language services. This clause seems appropriate if it is intended to cover such public sector organisations as the Wales Millennium Centre. However as worded it has the potential to cover a wide variety of companies. We recommend it is amended to remove such confusion in the following ways:
 - We suggest that the clause is amended to read 'each' financial year and not 'in a' financial year. This amendment will target more precisely a group of companies that is continuing to rely on the Welsh Assembly Government for public funding each year.
 - As mentioned above, we would like the LCO amended so that 'services to the public' is changed to 'providing services of a public nature.' This amendment is likely to better target those services that were previously carried out by the public sector. The evidence by the Heritage Minister that as drafted this clause could apply to companies participating in the Assembly's ProAct scheme is hardly helpful.

Duties

41. As previously mentioned, we remain concerned over the Welsh Assembly Government's failure to define exactly what duties affected companies will be required to deliver in order to comply with the legislation. However, it should be made clear that there remain a number of barriers to the prompt introduction of certain services, should they be required by a Measure.
42. There are a number of capacity issues both within the private sector and public sector to promptly respond to the request to deliver Welsh language services. The availability of suitably qualified staff is often a barrier to certain companies extending the provision of Welsh language services. There will be lead times for Welsh language training to a conversational standard. Achieving the

internationally recognised standard for translation services is not a quick process, which will require even longer if a technical vocabulary is required. There also remain significant technological barriers for the implementation of some aspects of company activity- as identified by the Welsh Language Board strategy on information technology.³ All this will require significant additional resource from the public and private sectors to enable the appropriate structures to be put in place.

Conclusion

43. Business in Wales remains to be convinced that at the end of the process the appreciation and vitality of the Welsh language will have been improved more so than the current voluntary approach. If the private sector begins to see the Welsh language in terms of compliance and regulatory requirement then we will know the LCO will have failed.

**CBI WALES
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³ Information Technology and the Welsh Language: a strategy document. Welsh Language Board.