

Bill Summary
National Assembly for Wales
(Official Languages) Bill

February 2012

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February 2012

Owain Roberts

Paper number: 12/005

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Bill Summary – *National Assembly for Wales (Official Languages) Bill*

1. Introduction

Introduction date: 30 January 2012

Member in charge: Rhodri Glyn Thomas AM, the Commissioner responsible for citizen engagement, communications, national and international outreach, and the Assembly Commission’s Welsh language functions and policy.

Assembly Committee undertaking Stage 1 scrutiny of the Bill: Communities, Equality and Local Government Committee

Stage 1 reporting deadline: 4 May 2012

Since it was established in 1999, the Assembly has been required by law to treat both the English and Welsh languages on the basis of equality in the conduct of its business. Recent legislative developments in relation to the use of the Welsh language in the delivery of public services however have led to calls for the Assembly’s own provision of bilingual services to be placed on a firmer statutory footing.

In order to achieve this, the Assembly Commission has introduced the *National Assembly for Wales (Official Languages) Bill* (“the Bill”).¹ The Bill aims to amend provisions in the *Government of Wales Act 2006*² in order to:

- state that the official languages of the Assembly are English and Welsh;
- state that both languages must, in the conduct of Assembly proceedings, be treated on the basis of equality; and
- place a statutory requirement on the Assembly Commission to adopt and publish an “Official Languages Scheme”, to be reviewed every five years, which would specify the measures which the Commission proposes to take in order to comply with the various statutory duties outlined in the Bill.

This Bill only applies to the Assembly – the democratically elected parliamentary body that represents the people of Wales and its people, makes laws for Wales and holds the Welsh Government to account. The Bill as a result does not apply to the Welsh Government or any other individual, company or organisation.

¹ *National Assembly for Wales (Official Languages) Bill*

² *Government of Wales Act 2006* (Chapter 32)

2. Timeline

The current legal situation regarding the use of languages in the Assembly emanates from provisions that were included initially in the *Government of Wales Act 1998*³ (“the 1998 Act”) and subsequently by its successor, the *Government of Wales Act 2006*⁴ (“the 2006 Act”).

2.1. *Government of Wales Act 1998*

The 1998 Act, which first established the Assembly as a single body corporate (incorporating both legislative and executive branches of government) in **May 1999**, included the following provision:

The Assembly must, in the conduct of Assembly proceedings, give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on the basis of equality.⁵

This duty was based on a similar provision included in the *Welsh Language Act 1993*⁶ (“the 1993 Act”) which requires Welsh Language Schemes to demonstrate how public bodies propose to give effect:

... so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages are treated on the basis of equality.⁷

Although the Assembly conducted its proceedings bilingually from the start, attempts to formalise its bilingual services were not made until the end of the Assembly’s first term. This was in part as a result of developments and changes to the Assembly’s internal structure during the first years of devolution.

In light of the Assembly’s early experiences, an informal separation between the executive and legislative branches was introduced in **November 2001**.⁸ This was achieved through the introduction of the term “Welsh Assembly Government” to describe the policies and actions of the executive branch and the creation of a new “Office of the Presiding Officer” (later renamed the “Assembly Parliamentary Service” in March 2004)⁹ with its own budget which carried out the Assembly’s legislative and parliamentary functions.

This split led to the executive and legislature adopting distinct approaches to the delivery of their bilingual services. The Welsh Assembly Government introduced

³ *Government of Wales Act 1998* (Chapter 38)

⁴ *Government of Wales Act 2006* (Chapter 32)

⁵ *Ibid*, Section 47

⁶ *Welsh Language Act 1993* (Chapter 38)

⁷ *Ibid*, Section 5(2)

⁸ National Assembly for Wales, *Key events in the developments of the National Assembly for Wales, First Assembly: 1999-2003*, page 23

⁹ National Assembly for Wales, *Key events in the developments of the National Assembly for Wales, Second Assembly: 2003 - 2007*, page 7

its own Welsh Language Board-approved Welsh Language Scheme¹⁰ in **October 2002** to describe how it would deliver Welsh language services to the public and how it would reflect Welsh language considerations in policy areas. As this scheme did not extend to the parliamentary functions of the Assembly, a separate non-statutory Bilingual Services Statement was produced and published by the Assembly Parliamentary Service which set out how it would give effect to the language provisions of the 1998 Act. The Statement included a commitment to provide bilingual services in relation to:

- proceedings of the National Assembly in plenary session, and all connected information and documentation;
- proceedings of the National Assembly's committees (subject committees, regional committees, standing committees and others) and all connected information and documentation;
- the public information service of the Assembly Parliamentary Service and the visitor and education services;
- the management of the National Assembly Estate in Cardiff Bay and elsewhere;
- the organisation of the National Assembly's presence at external events such as the National Eisteddfod; and
- other public services provided by the Assembly Parliamentary Service.¹¹

The Statement lasted **between 2002 and 2007** and was monitored through an annual report produced by the Assembly Parliamentary Service which was sent to the Assembly's House Committee.¹²

2.2. Government of Wales Act 2006

The 2006 Act - which came into force following elections to the third Assembly in **May 2007** - formally gave effect to the separation of the parliamentary and executive branches and created the Assembly and Welsh Assembly Government (later renamed as the "Welsh Government") as two legally distinct organisations. The 2006 Act also established the Assembly Commission as the legal body responsible for the provision of property, staff and services required for the Assembly's purposes.

In relation to the use of languages in the Assembly, the 2006 Act restated the duties placed on the Assembly by the 1998 Act and in addition made provisions for primary laws passed by the Assembly to be made in both languages.¹³ The

¹⁰ National Assembly for Wales, *Welsh Language Scheme for the Welsh Assembly Government*, October 2002

¹¹ National Assembly for Wales, *Bilingual Services Statement*, updated June 2006, paragraph 1.3

¹² National Assembly for Wales, *Welsh Language Scheme*, July 2007, paragraph 2.1

¹³ *Government of Wales Act 2006* (Chapter 32), sections 35(1) and 98(5)

principle of the equal treatment of both languages was also extended to cover the exercise of the Assembly Commission's functions.¹⁴

As a result of its new separate legal status, the Assembly Commission voluntarily decided to prepare a Welsh Language Scheme under Section 21 of the 1993 Act and according to guidelines published by the Welsh Language Board under Section 9 of that Act. It came into effect on **11 July 2007** when the Assembly approved it in plenary.¹⁵

The Scheme covered the Assembly's commitment to providing bilingual services in relation to its proceedings and in its engagement functions through the public information and external events services.¹⁶ It also set out in detail how the Assembly would deal with the Welsh speaking public; how it would promote itself as a bilingual institution to the public; and how it would provide the necessary administrative arrangements required in order for the Scheme to take effect.¹⁷

Further commitments relating to the Assembly's language duties as set out by the 2006 Act were also included in the Standing Orders for the third Assembly. These included:

- **Standing Order 8:** which required simultaneous translation facilities to be available in plenary for proceedings to take place in either Welsh or English.
- **Standing Order 10:** which required simultaneous interpretation facilities to be available in committees for proceedings to take place in either Welsh or English and for persons other than Members to address committees in other languages by prior agreement with the chair;
- **Standing Order 23:** which required all proposed Assembly Measures (primary laws) to be introduced in English and Welsh, except for in certain specified circumstances; and
- **Standing Order 30:** which required minutes of plenary and committee proceedings to be published in English and Welsh as soon as reasonably practicable after the meeting took place.

The Standing Order also required an edited verbatim record of proceedings to be published in English and Welsh as soon as reasonably practicable after each plenary meeting. In practice, bilingual transcripts of plenary meetings were published within 24 hours of the end of the meeting by the Assembly's Translation and Reporting Service.

¹⁴ *Government of Wales Act 2006* (Chapter 32), paragraph 8(3) of Schedule 2

¹⁵ National Assembly for Wales, *RoP Plenary*, 11 July 2007

¹⁶ National Assembly for Wales, *Welsh Language Scheme*, July 2007, paragraph 1.1

¹⁷ *Ibid*

In relation to committees, the Standing Order required an edited verbatim record to be published in the language spoken in the committee with an edited record of any simultaneous translation from Welsh to English.¹⁸

2.3. Independent Review Panel on Bilingual Services

In a meeting held on **7 July 2009**,¹⁹ the Assembly Commission approved the draft budget for 2010-2011 which incorporated savings of some £250,000 per annum flowing from a change in the arrangements for translating the record of proceedings in the Assembly's plenary sessions. This included translating plenary contributions made in Welsh into English but not vice versa, as with the practice in producing transcripts of Assembly committees.²⁰

Following the Commission's agreement to this proposal however, objections were received from a number of Assembly Members. As a result, new proposals for the enhancement of the provision of bilingual services in the Assembly were outlined and considered by the Commission at a meeting on **21 September 2009**. Minutes of the meeting state:

The Commission discussed the recommendations to translate the Record of Proceedings from English to Welsh within 3-10 days, to introduce the facility for proceedings relating to legislation to be translated from English to Welsh, to establish an independent review to examine bilingual communications prior to the formal review of the Welsh Language Scheme in 2010, to take steps to propose legislation to put the equal status of Welsh and English onto a sound statutory footing and to release a written statement Assembly Members outlining the proposals. The Commission agreed the recommendations by a majority vote.²¹

Such a statement was issued by the Commission on **30 September 2009**²² and the Review Panel began its work on **17 December 2009**.²³ Its terms of reference included considering the operation of all current bilingual services provided by the Assembly Commission and to recommend a way forward for the fourth Assembly and beyond. The Review Panel held various meetings and evidence sessions through until **April 2010** and its deliberations coincided with the introduction of the *proposed Welsh Language (Wales) Measure* by the Welsh Government on **4 March 2010** (see paragraph 2.4 below for further details). The Review Panel's subsequent report, entitled a *Review of Bilingual Services in the National Assembly for Wales*, was published in **May 2010**.

¹⁸ National Assembly for Wales, *Standing Orders of the third Assembly*

¹⁹ National Assembly for Wales, *AC2009(4) Minutes*, 7 July 2009

²⁰ National Assembly for Wales, *AC2009(4) Paper 2 Draft Budget 2010-11*, 7 July 2009

²¹ National Assembly for Wales, *AC2009(5) Minutes*, 21 September 2009, item 3

²² National Assembly for Wales, *Press Release: Written statement by the Assembly Commission on the bilingual services provided by the National Assembly for Wales Commission*, 30 September 2009

²³ National Assembly for Wales, *Press Release: Independent review of National Assembly's bilingual services begins*, 17 December 2009

The Review Panel's report stated that "three arguments were made in favour of a Measure dealing specifically with the use of languages by the Assembly".²⁴ These were that:

- (i) A Measure could be introduced to meet the specific circumstances of the Assembly more quickly than it would be possible to apply the proposals in the Government's Welsh Language Measure to those circumstances ...
- (ii) Currently detailed provisions regarding the use of the language are contained in Standing Orders. These can be readily amended or suspended. The inclusion of appropriate provisions in a Measure would embed those provisions and give them added status.
- (iii) A specific Measure for the Assembly would avoid the unsatisfactory arrangements for accountability that exist currently: a Commission accountable through its Welsh Language Scheme to the Welsh Language Board that is accountable to a Minister who is accountable to the Assembly. The Government's proposed Measure, if applied to the Assembly, would apply in the same way, with standards being substituted for Schemes and the Language Commissioner for the Board.²⁵

The Review Panel therefore concluded that "We consider that the merits of a *National Assembly for Wales (Language) Measure* are worth exploring further".²⁶

In relation to the translation of the Record of Proceedings, the Review Panel recommended that:

... the verbatim text Record of Proceedings be published in the original language(s) spoken, together with a record of the contemporaneous translation from Welsh to English, as is heard in the Chamber at the time.²⁷

The Commission accepted this and all of the other recommendations made by the Review Panel at a meeting on **19 May 2010**.²⁸ The publication of a fully bilingual Record of Proceedings as a result ceased in **July 2010**.

The Standing Orders in relation to reporting proceedings were also revised for the fourth Assembly in line with the recommendation of the Review Panel in order to provide that the same approach to recording and reporting applies to both committee and plenary proceedings.²⁹

The remaining Standing Orders in relation to addressing plenary and committee meetings in both English and Welsh and the requirement for primary laws to be introduced bilingually in the Assembly remained unchanged.

²⁴ National Assembly for Wales, *Independent Review Panel: Review of Bilingual Services in the National Assembly for Wales*, May 2010, paragraph 25

²⁵ Ibid

²⁶ Ibid, paragraph 28

²⁷ Ibid, paragraph 68

²⁸ National Assembly for Wales, *Assembly Commission Minutes AC2010(3)*, 19 May 2010, item 2

²⁹ National Assembly for Wales, *Business Committee, Review of Standing Orders in preparation for the Fourth Assembly*, March 2011, page 38

2.4. *Welsh Language (Wales) Measure 2011*

On **4 March 2010**, the Welsh Government introduced what became the *Welsh Language (Wales) Measure 2011* (“the 2011 Measure”).³⁰ The Measure – which received Royal Approval on **9 February 2011** (but will be brought into force by commencement orders made by Welsh Ministers) - aims to modernise the existing legal framework largely governed by the 1993 Act regarding the use of the Welsh language in the delivery of public services. The Bill in particular:

- makes provisions about the official status of the Welsh language;
- establishes the office of the Welsh Language Commissioner, which replaces the Welsh Language Board;
- allows for the development of languages “standards” covering the integration of the Welsh language in the development and delivery of services to the public by a range of organisations which will, over time, replace Welsh Language Schemes;
- gives the Commissioner the power to investigate complaints from Welsh speakers who believe that their freedom to use Welsh with one another has been interfered with; and
- creates a Welsh Language Tribunal that can hear appeals against the Commissioner’s decisions, both regarding the detail of standards or outcome of investigations.

Neither the Assembly nor the Assembly Commission are included as bodies which may be subject to language “standards”, which can be issued through regulations made by Welsh Ministers. This reflects a constitutional position in which Welsh Ministers have no jurisdiction over the National Assembly.

As a result of their omission from the 2011 Measure therefore, the Assembly and Assembly Commission remained subject only to the statutory duties imposed on them by the 2006 Act in relation to the use of the English and Welsh languages.

2.5. *Draft Bill and consultation*

At its meeting on **19 May 2010**, the Assembly Commission agreed the proposed legislative approach outlined in the Review Panel’s report.³¹ Following elections to the fourth Assembly in **May 2011** the newly appointed Commission agreed a consultation timetable for the draft *National Assembly for Wales (Official Languages) Bill* (“the draft Bill”) and accompanying draft Bilingual Services Scheme at a meeting on **14 July 2011**. At the same meeting the Commission agreed in principle that they wanted to provide a fully bilingual Record of Proceedings,

³⁰ *Welsh Language (Wales) Measure 2011* (nawm3)

³¹ National Assembly for Wales, *Assembly Commission Minutes AC2010(3)*, 19 May 2010, item 2

should a long term solution be found at a reasonable cost.³² In the meantime however the current practice of not providing a fully bilingual Record of Proceedings would continue.³³

Both the draft Bill and Scheme were published for consultation on **3 August 2011**. The closing date for submissions was **14 October 2011**. A total of 59 consultation responses were received.³⁴ Full details about the consultation, including copies of all the consultation responses received are available on the Assembly's website.³⁵

The Assembly Commission considered the submissions received in response to the consultation at its meeting on **24 November 2011** (a list of the changes made to the Bill in light of these responses are included in paragraph 4.1). At the meeting the Commission decided that a duty to provide a fully bilingual Record of Plenary Proceedings would not be included on the face of the Bill.³⁶ Rather, the Commission agreed that the Record of Proceedings would be published bilingually within 5 working days from **January 2012** onwards through a combination of machine translation and proof reading at a cost which would not exceed £95,000.³⁷

The other proposed revisions to the draft Bill as suggested by respondents were however agreed by the Commission.³⁸ The Commission also agreed that a revised Bill and Scheme would be introduced in **January 2012** and that Rhodri Glyn Thomas AM would be authorised to be the member in charge of the Bill.³⁹

³² National Assembly for Wales, *Assembly Commission Minutes AC(4)2011(3)*, 14 July 2011, Item 4

³³ Ibid

³⁴ National Assembly for Wales, *National Assembly for Wales (Official Languages) Bill: Explanatory Memorandum*, January 2012, page 7

³⁵ See National Assembly for Wales, *Pre-legislative public consultation on Bilingual Services*

³⁶ National Assembly for Wales, *Assembly Commission Minutes AC(4)2011(6)*, 24 November 2011, Item 2

³⁷ Ibid

³⁸ Ibid

³⁹ Ibid

3. The Bill's objectives

The Commission's Explanatory Memorandum⁴⁰ states that the Bill's main objectives are to:

- update the current legislative framework which governs the Assembly and Assembly Commission's bilingual services, in light of the 2011 Measure which does not place requirements on the Assembly and which supersedes the system of language schemes outlined in the 1993 Act;
- place the duties of the Assembly and the Assembly Commission in relation to the provision of bilingual services on a sound statutory footing; and
- build on the bilingual services delivered by the Assembly and the Assembly Commission in order to enhance public confidence in the Assembly's commitment to bilingualism which will enable the Assembly Commission to position itself as an exemplar provider of such services in the parliamentary context.

⁴⁰ National Assembly for Wales, *National Assembly for Wales (Official Languages) Bill: Explanatory Memorandum*, January 2012, pages 5, 6, 15 and 16

4. Summary of the Bill's provisions

The Bill is made up of 3 sections which amend Section 35(1) and paragraph 8 of Schedule 2 to the 2006 Act. The Bill's main provisions can be summarised as follows:

- It states that the English and Welsh languages are the official languages of the Assembly (Section 1);
- It outlines provisions defining the Assembly Commission's duties in relation to the use of the English and Welsh languages, including treating both languages on the basis of equality (Section 2); and
- It provides a framework for ensuring compliance of those duties through an Official Languages Scheme (Section 2).

As a result of these provisions, the Bill will make it clearer that accountability for the Assembly Commission's bilingual services will be directly to the Assembly rather than to the Welsh Language Commissioner and Welsh Ministers as in the case of public bodies on which "standards" are imposed under the 2011 Measure.

4.1. Differences between the Bill as introduced and the draft Bill

In light of the responses received to the consultation on the draft Bill, the Assembly Commission has agreed to make a number of changes to the Bill as introduced.⁴¹ The main changes are summarised below:

- A new subsection (1B) is included under Section 1(2) of the Bill to make it clear that all persons have the "right" to use either official language when participating in Assembly proceedings.
- The name of the statutory scheme in the Bill has been changed from a "Bilingual Services Scheme" to an "Official Languages Scheme".
- A new subsection (7) is inserted under Section 2 of the Bill which requires the Official Languages Scheme to include provisions relating to the receipt, investigation and consideration of complaints of failures to give effect to the Scheme.
- A new subsection (8) is inserted under Section 2 of the Bill which requires the Assembly Commission to lay an annual report before the Assembly detailing how it has given effect to the Scheme over the year.
- The new subsection (9)(a) is amended so that the Scheme is required to be reviewed every 5 (rather than every 4) years.

⁴¹ National Assembly for Wales, [AC\(4\)2011\(6\) Paper 2 - Bilingual Services](#), 24 November 2011

As mentioned in paragraph 2.5 above, the Assembly Commission agreed on 24 November 2011 that a duty to provide a fully bilingual Record of Plenary Proceedings would not be included on the face of the Bill.

5. Financial implications

The explanatory memorandum states that the Bill will “give rise to the need for the Assembly Commission to provide a scheme outlining its bilingual services”.⁴² Costs emanating from the Bill will as a result “be determined by the scope and content of the statutory Official Languages Scheme”.⁴³ In aiming to provide an estimate of these costs however, the memorandum states that:

There are some difficulties in quantifying the costs of bilingual services provision as these services have been embedded in the running of the Assembly since its establishment in 1999.⁴⁴

As a result, the memorandum states that:

For the consideration of any costs associated with the Bill, we have attempted to highlight the costs of some of the services provided as outlined in the 2007 Welsh Language Scheme, and also the cost of any additional services included in the draft Official Languages Scheme 2012.⁴⁵

These costs include:

- **Translation (external contractors):** Projected to cost £142,500 for 2011/12 and £242,500 per annum for 2012/13 and 2013/14. The costs for 2012/13 and 2013/14 also include the cost of producing a fully bilingual Record of Proceedings within five working days which is projected to cost £95,000 per annum.
- **Translation (staff costs):** Projected to cost £530,000 for 2011/12, £540,000 for 2012/13 and £550,000 for 2013/14.
- **Translation (Assembly Members’ text translation):** Projected to cost £24,000 per annum for 2011/12, 2012/13 and 2013/14.
- **Welsh language tuition (Assembly Members and support staff):** Projected to cost £15,200 for 2011/12 and £16,000 per annum for 2012/13 and 2013/14.
- **Welsh language tuition (Assembly staff):** Projected to cost £16,500 for 2011/12 and £17,000 per annum for 2012/13 and 2013/14.

⁴² National Assembly for Wales, *National Assembly for Wales (Official Languages) Bill: Explanatory Memorandum incorporating the Regulatory Impact Assessment*, January 2012, paragraph 10.1

⁴³ Ibid

⁴⁴ Ibid

⁴⁵ Ibid, paragraph 10.3

6. Initial stakeholder reaction

In response to the Assembly Commission's decision on 24 November 2011 to agree that the Record of Proceedings would be published bilingually within 5 working days from January 2012 onwards, the Chair of Cymdeithas yr Iaith, Bethan Williams, gave a cautious welcome:

We partially welcome the news that the Cofnod will be available bilingually again, it shows that the campaigning of thousands of people has started to bear fruit. However, the plans continue to treat the language as inferior given there will be a five day delay to get a Welsh copy, contrary to the practice between 2005 and 2009. Obviously, given the £2 million underspend at the Commission, this is not a matter of cost, but a matter of political will.

We also remain concerned that the Commissioners have rejected the Language Board's recommendation to protect the provision of a Welsh language Cofnod in law. So, we'll be asking AMs to amend the Official Languages Bill during the legislative process to get that statutory assurance.⁴⁶

The Welsh Language Board also welcomed the Assembly Commission's decision to produce a bilingual Record:

We as a Board are extremely pleased to hear that the Assembly Commission has reached this decision. We held a statutory inquiry into the decision not to provide a fully bilingual Record of Proceedings, and we very much welcome the fact that members of the Commission have acted upon the recommendations of that investigation report.

We look forward to see how this decision will have an influence on other organisations operating in Welsh and their use of technology to increase translation memories. I thank members of the Commission and the Presiding Officer for making this decision, and for treating Welsh as an official language in Wales's main democratic institution.⁴⁷

⁴⁶ Cymdeithas yr Iaith website, [*Press Release: Assembly Cofnod will be available bilingually again*](#), 24 November 2011

⁴⁷ Welsh Language Board website, [*Press Release: Board welcomes fully bilingual Record of Proceedings in the Assembly*](#), 24 November 2011