

Proposals for a Welsh Language Bill - White Paper Consultation

Part 1: Promoting the Welsh language

Option 1: No change

- The Commissioner would continue to monitor and enforce compliance with the Standards and retain the existing legal powers to promote and facilitate the use of Welsh.
- Commissioning and managing the majority of promotional activity would continue to be undertaken by the Welsh Government.

Option 2: Establish a Welsh Government Executive Agency to promote the Welsh language

- Establish an Executive Agency within the Welsh Government, staffed by members of the Civil Service, with own management structure and budget. Similar to Visit Wales
- Responsible for the commissioning and management of the general promotion Welsh language
- The Commissioner would monitor and enforce compliance with the standards and any promotion activity in relation to that work
- The Commissioner would have a specific duty to provide support to public bodies in relation to their language planning duties

Option 3: Establish a new body separate from the Welsh Government to promote the Welsh language

- An independent body would be created to be responsible for promoting the Welsh Language.
- The new body would
 - be accountable to the Welsh Government
 - have its own budget,
 - be accountable for its own spending decisions and
 - be subject to audit by the Auditor General for Wales.
 - Structure – Chair and board - appointed through public appointments system; Chief executive and staff – appointed by the board
- The Commissioner - responsibilities the same as in option 2.
- Responsibilities of the three distinct bodies:
 - Welsh Government – policy, legislation etc
 - The commissioner - monitoring and enforcing compliance with Standards including promotional work directly related to the standards and language planning duties

- Independent body – responsible for the commissioning and management of the general promotional functions

Option 4: A single body responsible for promoting Welsh as well as ensuring bodies comply with Standards

The body would be responsible for:

- monitoring and enforcing compliance with Welsh language duties by:
 - monitoring bodies to ensure they are complying;
 - working with bodies to help them comply with their Standards, for example by providing training, holding workshops, creating resources, organising forums etc.
 - providing practical support to public bodies in relation to their language planning duties, such as workforce planning, strategies for promoting the language in an area, assessing the impact of policies etc.
 - issuing guidance in relation to bodies' language planning duties;
 - responding to complaints from the public where bodies have not complied with their Standards;
 - taking action to put things right where necessary;
- leading and managing projects and programmes to promote and facilitate the use of Welsh,

Implications

Option 1 - there would be no change to the current position.

Option 2 - there would be little or no implications with the establishment of an Executive Agency.

The Commissioner's role in relation to monitoring and enforcing compliance would remain the same. The proposed specific duty to provide support for the language planning duties would only reinforce that aspect of the Commissioner's current role.

Option 3 - the creation of a third body to promote the Welsh language would create yet another layer of bureaucracy. It is likely to become increasingly difficult to determine which body does what as the lines will inevitably become blurred and so will have detrimental effect on what the standards themselves are trying to achieve.

Option 4 - locally this proposal would provide clarity as to the organisation's responsibilities, a single point of contact relating to the

Welsh language as well as the potential for all work streams to mutually benefit each other for a more positive outcome.

We have identified previously that all standards play a significant role to promote the language and are not limited to the promotion standards themselves. This appears to be reflected in this proposal as well as in proposal for 'introducing' language planning duties.

Part 2: Governance and accountability

Option 1 - Transfer additional resources for promotion to the Commissioner within the Commissioner's existing governance arrangements

Option 2: Welsh Language Commissioner with a Governing Board

- The Commissioner would remain a corporate sole, retaining current responsibilities with the addition of promoting the Welsh language
- The Governing Board responsibility to approve certain key documents, monitor progress and advise commissioner but without powers to veto decisions.

Option 3: Welsh Language Commission

- a corporation aggregate – functions and duties of the Commission vested in the members collectively
- chair and members of the Commission appointed through a public appointments system
- responsible for setting the body's strategic plan, enforcement policy and corporate governance framework
- certain functions could be delegated to staff of the Commission but all decisions would be treated as those of the Commission
- Chief Executive, appointed by and accountable to the Commission, would appoint staff, manage and account for the budget, ensure the body delivers its objectives and implement financial and risk management arrangements in line with corporate governance framework

Implications

Option 1 - there would be limited implications for us. The additional promotion responsibilities could however, prove to be challenging should the Commissioner impose additional requirements on us without consideration of the current resource constraints we face.

Option 2 - the establishment of a governing body would provide additional 'checks and balances' to the work of the Commissioner. However, as the Commissioner's role would remain the same it is unlikely that we would experience any impact as a result of these changes.

Option 3 - this option appears to be a return to the principles of the previous Welsh Language Board.

The proposed commission would appear to be a more streamlined body and would seem to reflect the structure of the organisations it would support. There is potential for a more balanced approach given its proposed structure and governance arrangements.

We have argued in the 'call for evidence' that the role of the Welsh Language Commissioner should be similar to that of the Equality and Human Rights Commission; a balance between the role of regulator and that of providing support and guidance.

Additionally, we have been critical of the Commissioner's current role and the processes that have been employed and this proposal appears to have assuaged our criticisms and concerns. However, we must not be complacent should this proposal be agreed, as a new 'commission' is likely to bring its own issues and concerns.

Part 3: The Welsh Language Standards

Option 1: No change

Option 2: Reforming the current system of Standards

- Remove or amend Standards which do not contribute directly to improving services or are costly to implement but produce little public benefit.
- Introduction of
 - a periodic review of standards
 - a general duty to secure improvements
 - a convergence principle (over time all bodies converge towards the same standards)
- to how to balance the convergence principle against ensuring that the Standards are reasonable and proportionate to be considered

Option 3: Small set of more general standards on the face of primary legislation

- a few general Standards would be set out in the Welsh Language Bill.
- The Bill would allow exceptions to the Standards so that they are reasonable and proportionate for different bodies.
- 'Switch off' dates for exceptions required to reduce the number over time

Option 4: Regulated exceptions schemes based on a small set of more general Standards

- bodies would consider if standards would be reasonable and proportionate to achieve
- the commission to monitor the general duty to seek continuous improvement

Option 5: Rights for individuals to use Welsh set out in primary legislation

Implications

Option 1 - the situation would remain the same in relation to the standards already applied to us, the outcome of the challenge, monitoring and enforcement requirements, etc.

Any difficulties we have/have had in complying with the standards will continue and may lead to investigations by the Commissioner into non-compliance.

Option 2 - in principle this would provide a more reasonable and appropriate set of standards which take into account the difficulties that we have experienced since the imposition of the standards. A reduction in the number of standards is welcomed, especially where these are superfluous and/or have little public benefit.

We have argued at length that the standards as drafted and applied are inflexible and do not reflect the circumstances of individual organisations and as a result have proved difficult and in some cases impossible to fully comply with, even though we support the aim behind the standards.

Codes of practice would be a welcome addition particularly in providing clarity in the interpretation standards as an individual body and when working in collaboration with partners.

Given our experience of the Commissioner's interpretations of 'reasonable and proportionate' we would not wish to have a similar experience with any new system. We cautiously welcome the proposal of 'more opportunities to exercise reasonable judgment' in relation standards and could support this if any such discretion would rest with individual bodies.

The idea of incremental improvements is a positive approach and along with the convergence principle, is one which we have long supported. Complying in part with some of the standards is something that we have been able to demonstrate but the inflexible nature of the current system is unable to acknowledge this.

However there does not appear to be an acknowledgement of the more systemic issues that we, along with other bodies, experience which would in our view require the intervention of Welsh Government, e.g. IT systems that are not geared to the Welsh language, cost of purchasing systems to accommodate the Welsh language, etc.

Even though concerns raised over clarity, parity for improvement and the financial resources required to implement the standards have been recognised there is little acknowledgement of the ongoing costs that would inevitably accompany the proposed option given the current and ongoing financial situation.

Option 3 - the number of exceptions we would wish to have considered would be dependent on the nature of the general standards and the whole process would once again be resource intensive. However it is likely that as the standards would be of a general nature there would be a high number of exceptions.

The inevitable difficulties for Welsh Government in setting such standards could result in difficulties for us; particularly where circumstances outside our control adversely impact on our ability to meet the standards, even with the exceptions in place, e.g. limitations in meeting the Cymraeg 2050 targets which in turn reduces the possible recruitment of Welsh speakers.

The interpretation of reasonable and proportionate would once again be key. However, with a different process and body to deal with, one that potentially has some understanding of the various constraints we face, we could possibly reach agreement without the difficulties we have faced under the current system.

Option 4 - this would involve a significant amount of work to consider the practical implications of these 'new' Standards, to identify any exceptions and to prepare an exception scheme for approval by Welsh Government.

Having already undertaken a similar resource intensive exercise in relation to the current standards this additional work would further hinder us in providing as best a Welsh language service as we possibly can to the public in Neath Port Talbot.

The interpretation of reasonable and proportionate would also be a major area of concern given past experiences. .

Option 5 - the Welsh Government considers that the current system has taken into the constraints faced by those organisations already subject to the Standards by imposing only ones which are reasonable and proportionate. It doesn't acknowledge that the standards themselves have been written in such a way that offers no flexibility to meet them and as such has presented inordinate problems

If this inflexible approach would be continued then this option would prove unworkable for us as any exceptions would need to be identified as in option 4, and potentially lead to an excessive number of exceptions within individual organisations as well as across Wales itself.

This situation would lead to confusion and frustration amongst the public and could lead to an increase in complaints as a result.

Classes of Welsh Language Standards

Current

Service delivery Standards

Policy making Standards

Operational Standards

Promotion Standards

Record keeping Standards

Proposed

Standards

Relating to services which people (public and staff) receive

Language Planning Duties
includes all other corporate duties

Implications

The proposed changes would appear to be a purely administrative change to differentiate between the public facing and corporate requirements.

However, the potential for other closely related planning duties e.g. WESP, to be brought together under this proposal could prove problematic, especially with established monitoring and review arrangements.

To alleviate the proposed commission will take on a monitoring role and report on the progress made in meeting language planning duties; a change to the current Commissioner's investigation and enforcement powers.

We have identified previously that all standards play a significant role to promote the language and are not limited to the promotion standards themselves. This appears to be reflected in this proposal as well as in proposal for 'introducing' language planning duties.

While it may be helpful to have all language planning duties 'under one roof' there may be some concern that a publically appointed, rather than democratically elected, body would be responsible for the strategic future of the Welsh language e.g. Welsh in education in particular.

This being the case the level of review and monitoring would need to be carefully considered.

Making, imposing, implementing and enforcing Standards

- The Welsh Government would be responsible for making and imposing standards
- The commission would be responsible for monitoring enforcing compliance

Complaints

- The Commission would have a similar role as the Public Service Ombudsman for Wales; complaints dealt with by the organisations first and then by the Commission if the complainant is unhappy with the outcome.
- The Commission would only take action if the original decision was unreasonable or where the complaints process has not been followed.

Enforcement

- The focus would be remedial rather than punitive
- Stronger action is only in the most serious cases
- Stronger enforcement powers include, directing a body to take action, imposition of a fine or asking a court to make the body take action

Implications

It is likely that the distinction between the imposition and enforcement roles would lead to a clearer and more workable position.

The proposed complaints process would enable us to respond to complainants and address any issues more promptly. In addition the proposal would ensure that issues were dealt with proportionately and so encourage a more supportive environment for the Welsh language.

Welsh Language Tribunal

- Tribunal to hear appeals relating to the Commission's enforcement decisions and appeals relating to the Welsh Government's decisions to impose Standards on bodies.
- to only hear appeals where there is a reasonable chance of the appeal being successful or where there is some other compelling reason why the Tribunal thinks they should hear the appeal.

Implications

While it is not something that we would wish to utilise the Tribunal would provide recourse to the imposition of standards. However, it is slightly disconcerting that this avenue would be only possible here the appeal had a reasonable chance of success. There doesn't appear to be any acknowledgement of whose decision this would be nor of the process where the possible outcome is more unclear.

Part 4: The scope of bodies covered by Welsh language legislation

- restrictions to be removed on the type of bodies that can be required to comply with standards (The Welsh Language (Wales) Measure 2011).
- standards could potentially be placed on more private businesses
- any extension of the Standards system to more private sector businesses and the associated costs of doing so would need to be considered very carefully.
- propose the Standards for private businesses should be restricted to services provided to customers and only as part of a wider programme of working with the sector to ensure they are prepared for the advent of Standards.

Implications

While this proposal has little impact on us, it would have a much more significant impact on the wider public with possibly greater opportunities to Welsh.

However if the definition of customer includes business customers then the possibility of accessing services in Welsh could alleviate potential issues we have in providing Welsh language services.