

Proposed Welsh Language LCO

Written Submission from Cymdeithas yr Iaith Gymraeg (The Welsh Language Society)

1. Is the LCO request in the spirit and scope of the devolution settlement?

Cymdeithas yr Iaith Gymraeg welcomes the opportunity to submit evidence to the pre-legislative scrutiny of the proposed Legislative Competence Order in Council on the Welsh Language. Cymdeithas yr Iaith Gymraeg has led a prominent public campaign calling on the Welsh Assembly Government since its inception to introduce legislation on the Welsh language. We believe that there is a moral duty on the Welsh Assembly Government to legislate on the Welsh language and we call for the transfer of all powers from Westminster in relation to the Welsh language to the National Assembly of Wales. We call for comprehensive and effective Language Measure(s) that will give the Welsh Language official status, define linguistic rights so that all people in Wales can make full use of and gain fair and equal access to the Welsh language in all aspects of life as well as establish a Commissioner for the Welsh language.

Indeed, we strongly believe that this draft LCO is insufficiently broad and needs to be significantly widened in its scope and detail. In particular, the duties imposed on persons in “*Matter 20.1 should* include all persons who provide goods, services or facilities to the public in relation to promoting or facilitating the use of the Welsh language; and the treatment of the Welsh and English languages on the basis of equality. Quite simply, if the National Assembly saw fit at some point in the future to add a further category of public service provider to those listed (e.g. Supermarkets) or even merely to add a further service provider similar in nature to those included (e.g. Buses) the Welsh Assembly Government would once more have to go through this laborious and time consuming process. There is no easy way of adding one or more categories to those persons listed in the LCO therefore there is a need for the list in this Order to be longer and more comprehensive in order to cover every provider of goods, facilities and services.

The Order could follow the pattern set out in the Disability Discrimination Act 1995(a.19).¹ The Order could therefore be amended to read, “*This matter does not include putting duties on persons with the*

¹ 19 Discrimination in relation to goods, facilities and services

[1] It is unlawful for a provider of services to discriminate against a disabled person—

- (a) in refusing to provide, or deliberately not providing, to the disabled person any service which he provides, or is prepared to provide, to members of the public;
- (b) in failing to comply with any duty imposed on him by section 21 in circumstances in which the effect of that failure is to make it impossible or unreasonably difficult for the disabled person to make use of any such service;
- (c) in the standard of service which he provides to the disabled person or the manner in which he provides it to him; or
- (d) in the terms on which he provides a service to the disabled person.

[2] For the purposes of this section and sections 20 and 21—

- (a) the provision of services includes the provision of any goods or facilities;
- (b) a person is “a provider of services” if he is concerned with the provision, in the United Kingdom, of services to the public or to a section of the public; and
- (c) it is irrelevant whether a service is provided on payment or without payment.

[3] The following are examples of services to which this section and sections 20 and 21 apply—

- (a) access to and use of any place which members of the public are permitted to enter;
- (b) access to and use of means of communication;
- (c) access to and use of information services;
- (d) accommodation in a hotel, boarding house or other similar establishment;
- (e) facilities by way of banking or insurance or for grants, loans, credit or finance;
- (f) facilities for entertainment, recreation or refreshment;
- (g) facilities provided by employment agencies or under section 2 of the [1973 c. 50.] Employment and Training Act 1973;
- (h) the services of any profession or trade, or any local or other public authority.

exception of those persons who provide goods, services and facilities to the public be that for payment or not” and list (a to i) in the Proposed Order could be omitted. The Heritage Minister has already explained that he is unsure as to whether the limited powers in the current draft will be used in a Measure since it is the aim of the Order to ensure that the powers are available to be used rather than to legislate as such, therefore to replace the present list with broader wording would not mean that the Assembly would *have to* exercise all these powers at once or even at all- it would be a matter for the elected members of the National Assembly of Wales to decide which powers to use and when.

Our concern is that the draft Order places a 'No Entry' sign on the road ahead for the Welsh language. There has been a significant increase over the past decade in the number of children and young people who receive their education through the medium of Welsh. We must ensure that young people have the right to use the Welsh language outside of the education system and provide adequate opportunities for all people in Wales to work through the medium of Welsh and to use the language in all aspects of life.

In this sense we would therefore obviously strongly oppose any move by Members of the Westminster Parliament to restrict or weaken this LCO

2. Is the use of the LCO mechanism in accordance with the Government of Wales Act 2006?

It is crucial that the Welsh Assembly Government takes full advantage of this historical opportunity to realize the vision set out in Iaith Pawb: “...*a truly bilingual Wales, by which we mean a country where people can choose to live their lives through the medium of either or both Welsh or English and where the presence of the two languages is a source of pride and strength to us all.*” We have widespread evidence that demonstrates the weaknesses and inadequacies of the current legislation. There is a clear and pressing need to clarify the legal status of the language and to establish statutory linguistic rights in order to ensure effective bilingual services; services that are accessible, fair and within easy reach of all citizens. As a result we strongly believe that any person or body that provides goods, services or facilities to the public should be included within the Order – irrespective of whether that person/body belongs to the public, private or voluntary sector.

It is essential that the Welsh Assembly Government establishes rights so as to defend and promote the dignity of the people of Wales when attempting to use the Welsh language. The Welsh language needs to be considered within the context of ensuring equality and challenging discrimination; the rights of women, disabled people, gays, and racial and ethnic minorities are recognised in law yet the people of Wales have very few actual legal rights in relation to the use of Welsh.

3. Is the use of an LCO more appropriate than, for example, the use of framework powers in a Westminster Bill?

Cymdeithas yr Iaith believes that it is the obvious moral right of the Welsh Assembly Government to legislate on the Welsh language. The Welsh language forms the basis of our unique national identity and it is the Welsh Assembly Government on behalf of the people of Wales who should rightfully legislate on the Welsh language. We, therefore call for the transfer of full powers from Westminster to the National Assembly in relation to the Welsh language.

However, it is essential that the LCO has sufficient power to enable Measures that will establish the following specific rights:

- the right to receive Welsh medium education
- the right to receive goods, services, and facilities in Welsh.
- the right to a court hearing in Welsh and to insist on a Welsh-speaking jury
- the right to respect, and to be treated equally, and not to suffer discrimination or any disadvantage when using the Welsh language

4. The extent to which there is a demand for legislation on the matter(s) in question?

The Welsh Language is an essential part of the fabric of modern Wales. It belongs to all the people of Wales. There is a will within the Welsh people for the language to survive and flourish. However, this cannot be achieved without making changes to the conditions that have led to the decline of the language. The UNESCO Endangered Languages List published in February 2009 noted that Welsh is still 'endangered'. All evidence points to the fact that languages cannot survive without supportive linguistic environments and this includes legislation. The Catalan language, however, has now been removed from the Endangered Languages List for the first time, and we know that this language has a supportive linguistic environment that is underwritten by language legislation.

Legislation alone cannot lead to language revitalization. However, legislation is an important part of the process in order to effectuate linguistic change. Negative language legislation has led to the demise of the Welsh language. It is now opportune to reverse the negative legislation of the past.

There is a widespread belief in Wales that the Welsh language is part and parcel of our collective cultural identity. In the 21st century it makes little sense to maintain the current status quo of the Welsh language not being an official language with no defined rights to use it.

Indeed, we believe that this proposed Order is far too narrowly defined; it is constrained by adhering too closely to the Welsh language Act of 1993 as its focus is almost entirely only on the public sector. Contemporary society has changed significantly and in particular the public sector has shrunk since 1993. Increasingly, services are provided by cross-sector partnerships or they have been privatised. If the Order was passed in its present form the Assembly would have only acquired a few more powers than it has now to legislate on matters concerning the Welsh language. It would not have the powers to fulfil its vision of creating a truly bilingual society with equality between Welsh and English. As things stand now the people of Wales are not able to live their lives through the medium of either Welsh or English according to their choice; anyone can choose to live their lives through the medium of English but no one can live their life fully through the medium of Welsh. In certain areas, Welsh can be used fully, in other areas Welsh can be used up to a point at certain times, but in other areas Welsh cannot be used at all. The latter two areas are more prominent than the first. It is not clear to the citizen what Welsh language services are available and because of the piecemeal nature and the inconsistent quality of bilingual services, people's expectations tend to be very limited. The present situation is one of inequality and oppression.

The Explanatory Memorandum promises so much more: "*A key principle underpinning these proposals, however, is that citizens should have a clear understanding of the level of Welsh language services they can expect to receive irrespective of the nature of the public provider.*" (ME 21). But despite the rhetoric the nature of the provider is central to this Order i.e. only public bodies, or bodies that provide on behalf of public bodies, or bodies that used to be described as public bodies (i.e. Utilities) are included. By now a whole generation of people has grown up who don't remember that gas companies used to be public utilities, and therefore will hardly understand why these have been included and why petroleum companies have been excluded - since both provide fuel.

It appears to us that the Welsh Assembly Government, a coalition of two Socialist parties, have given in to the persistent demands of big business not to be regulated or required to provide a bilingual service. The CBI and others would argue that voluntary self-regulation is the best policy. Over the last few months we have witnessed the ineffectiveness of the banking sector in relation to self-regulation, and the Government, along with every citizen in this country, has had to pay for the soft touch approach of self-regulation. The failure of the business sector to voluntarily offer a comprehensive high quality bilingual service despite much persuasion and talk of the importance of good will now makes it essential that the Government intervenes in order to safeguard the rights of the citizen. Short-term profit, regardless of the cost governs the thinking of any large corporation despite the empty rhetoric of 'social responsibility'. It is the responsibility of Government to make sure that their actions does not

infringe on the rights of the citizen.

Recently Cymdeithas yr Iaith Gymraeg conducted a small survey of private companies asking them if they would leave Wales if legislation was passed to require bilingual services. Here are some of the responses we received;

Boots: "We do not intend to bring to an end any of our activities in Wales following the Welsh language LCO, or the anticipated measure following the LCO."

O 2: "No we are committed to providing a great experience to our Welsh customers."

CO-op: "If the order which is given will transfer the power to create Acts from London to the Welsh Assembly is passed I can confirm that this shouldn't have an impact upon The Co-operative Bank operations in Wales."

Abbey: "With regard to your question the answer is no."

The CBI in Wales and others are only too ready to muddy the waters and embark on scaremongering. Claims of private companies leaving countries because of language legislation are totally false. International companies are prepared to conform with linguistic legislation in those countries where they wish to do business.

If you take a look at IKEA's website (<http://www.ikea.com/>) the websites for Belgium, Hong Kong and Canada are bilingual, the website for Switzerland is tri-lingual – that is because bilingualism or indeed multilingualism is seen as the norm in those countries. The page for Spain is in Spanish only, but if you were to visit the page for l'Hospitalet in Catalonia, the information relevant to that shop is in Catalan only. You can download various leaflets on kitchens, cupboards, beds etc. in Catalan or Spanish. Recently Alun Pugh (former Minister for the Welsh Language) and The Welsh Language Board congratulated IKEA for erecting a few bilingual signs in their Cardiff store. But their gentle persuasion was not as effective as the language laws in Catalonia. If you were to visit the page for the shop in Cardiff (http://www.ikea.com/ms/en_GB/local_home/cardiff.html), there is not a word of Welsh to be seen. IKEA know that they are not under any legal obligation to offer a Welsh language service. At the end of the day the cost of partially translating a website or erecting a few bilingual signs will not prevent a large international company like IKEA from coming to Wales.

There is a strong and important argument that introducing Welsh into the private sector on a statutory basis could give an enormous boost to the Welsh economy – if we are to have a bilingual service, resources have to be made available. Quite often these companies already have the necessary manpower – a Welsh speaking staff but they have been prohibited from speaking the language in the workplace or the companies have not made the best use of them. In certain fields staff will need to be trained – they will have to re-learn or improve their language skills or they may have to be trained in how to provide a bilingual service. Translators and editors will be needed. Techniques will need to be developed to help companies and customers to communicate with each other bilingually. Its nonsense to claim that Tesco, PC World or Lloyds TSB would close all their stores/branches in Wales with the introduction of a comprehensive New Welsh Language Act. If they were obliged to prepare leaflets, posters, and bilingual staff to work in shops or answer the phone they are far more likely to establish a head office in Wales to deal with these matters, and that will create MORE work. As things stand South Wales is usually served from offices in the West of England and North Wales from North West England. It would be ridiculous for staff from these offices to prepare a bilingual service and there is a valid argument for moving the headquarters to Wales, where it would be possible to print all the posters. Leaflets and the own brand food leaflets bilingually using a bilingual staff.

In our opinion the draft Order includes some important issues, but they can be seen as marginal in relation to every day life. For example; 60% go shopping at least once a week, with 24% shopping even

more frequently. 90% of us shop in supermarkets.² There is no doubt that supermarkets, especially the four larger ones (Tesco, Asda, Morrison and Sainsbury) are a powerful influence on our every day life. As well as food they provide us with goods, services and commodities and are there to take care of us from the cradle to the grave. As well as baby foods and nappies there are facilities to save money for your children or you can go on a childcare course (Baby Safe Course) – all in English. You can even purchase your last will in Tesco (in English of course) and leave something to your children. It is true that these supermarkets offer a certain amount of Welsh language service i.e. A few signs in the shop but the service is sparse and irregular. There are scanning machines in Tesco and M&S with Welsh as an option but not in the others. There is some Welsh on the Morrison website (<http://www.morrisons.co.uk/Cymreag/>) but the others have no Welsh on their website.

If the Government is to effectively enable the citizens of Wales to live their lives through the medium of either Welsh or English according to their wish, the private sector must be included in its entirety. The private sector and more has had twenty years to offer a voluntary Welsh language service but it has been a piecemeal offering, and that is how things will be until we have legislation.

We propose a system of establishing codes of conduct and regulations notifying the appropriate steps for a provider within each sector, taking the following into consideration:

- a) the number of people employed by the service provider
- b) the location of the service provider
- c) the linguistic nature of the area where the service provider is based as described in an atlas commissioned by the Welsh Language Council referred to in sub section 7(2)(d)
- ch) the nature of the service users
- d) the nature of the service provided

Therefore the expectations would be higher in a supermarket employing 50 in an area where 70% of the population is Welsh speaking rather than in a bicycle repair shop in Pembroke Dock employing only two people. The supermarket offers a general service aimed at the public in general. The bicycle repair shop offers a specialised service for specialists. Both premises would be expected to conform to a basic level of service wherever they were located in Wales e.g. a sign in Welsh explaining the nature of the business on the outside, but it is possible that the code would demand that a business such as the supermarket would put up internal signs in Welsh, make their announcements bilingually, and ensure there are Welsh speaking staff available to deal with the public.

We also note that we do not agree that any threshold be set in relation to matter 20.1 sub-section (e). How is it realistic to expect that the citizens of Wales keep an eye on which companies receive this amount of money before they can expect a comprehensive service? Will a company continue to provide a bilingual service beyond the period of the annual sum?

5. To what extent might the transfer of functions proposed have wider implications for the UK budget?

The implementation of all legislation requires adequate levels of funding. It would be inappropriate to suggest that legislation in relation to the Welsh language would be any different.

6. To what extent might the transfer of functions impact on reserved functions?

Cymdeithas yr Iaith believes that it is clearly the moral right of the Welsh Assembly Government to legislate on the Welsh language. The Welsh language forms the basis of our unique national identity and it is the Welsh Assembly Government on behalf of the people of Wales who should rightfully

² http://www.competition-commission.org.uk/inquiries/ref2006/grocery/pdf/working_paper_grocery_shoppers.pdf

legislate in relation to the Welsh language. We, therefore call for the transfer of full powers from Westminster to the National Assembly in relation to the Welsh language.

7. Are there any cross-border issues relating to the LCO? (Would legislation subsequently be required in England?)

In order to create a supportive linguistic environment within which the Welsh language can flourish it is essential that citizens are able to access Welsh language provision with ease and equality of opportunity.

Citizens should not be expected to carry with them at all times knowledge of the complicated devolution settlement and adjust their linguistic expectations accordingly. Therefore, providers of goods, services and utilities to the people of Wales should be expected to comply with this proposed legislation wherever they are located.

For this reason also we strongly disagree with the provision in the LCO for the exemption of Ministers of the Crown from this legislation as noted in S. 5. -- (2) Ministers should be punished if they contravene the rights of the people of Wales to use the Welsh language. If they do what is expected of them then they have nothing to fear. But we have evidence to prove that certain Government Departments in London do not treat the Welsh language on the basis of equality with English. No Government agent should be above the law especially with regard to ensuring parity of service and equal opportunity to all citizens of the devolved nations.

We also strongly disagree with the fact that the courts are not included in the LCO as stated in 3.—(2) We also note that in relation to Matter 20.2, we believe that this freedom should be redefined as a matter of right so that there will be an end to any discrimination against any citizen that wishes to make use of the Welsh language in Wales. We already have the freedom – it is the right that we demand. We would not agree to any limits on that right.

8. Would the proposed LCO necessitate the formation or abolition of Welsh institutions and structures? If so, where does the legislative competence to exercise such changes lie?

It will be necessary to establish the office of a Commissioner for the Welsh language in order to ensure that people are made aware of their rights and that those rights are properly implemented and maintained. We now have in Wales Commissioners who champion the rights of children and young people and older people and those structures have made a significant difference in real terms to the quality of life of the people of Wales. The Commissioner for the Welsh language would investigate complaints and either prosecute bodies or persons who contravene the law or provide help for individuals who wish to pursue their rights through the courts.

It will also be necessary to establish a National Council for the Welsh language who would instigate extensive research and a programme of socio linguistic planning with democratic membership to guide its work.

Cymdeithas yr Iaith Gymraeg
March 2009