

National Assembly for Wales

Constitutional and Legislative Affairs Committee

CLA637 - The Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6) Order 2016

Procedure

Affirmative

Background

The Order amends Schedule 6 to the Welsh Language (Wales) Measure 2011 ('the Measure'), which sets out (i) the organisations (referred to as "persons" in the Measure) who are liable to be required to comply with Welsh language standards and (ii) which classes of standards are potentially applicable to each organisation.

The Order makes changes such as omitting the names of organisations that no longer exist, including new organisations, and amending the names of others to reflect changes that have occurred since the Measure was made.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3(ii) in respect of this instrument (that the Order is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly):

1. The power to amend the list of organisations set out in Schedule 6 to the Measure is contained in section 35 of the Measure. In order to be added to Schedule 6, the organisations must come within a category specified in Schedule 5 to the Measure. These include public authorities, regulators and persons receiving more than £400,000 of public money in a financial year. Neither the Order itself nor the Explanatory Memorandum explains which of the categories in Schedule 5 applies to each of the organisations that the Order intends to add to Schedule 6. The absence of this information will make it more difficult for Assembly Members and the organisations concerned to satisfy themselves that the power has been appropriately exercised.



2. The Explanatory Memorandum explains that inclusion in Schedule 6 to the Measure is the first step in the process of the imposition by the Welsh Language Commissioner of a requirement to comply with standards under the Measure. Nevertheless, it is striking that no consultation in relation to this Order has been undertaken with the bodies listed. Reference is made to earlier participation by all but two of them in an investigation by the Commissioner, but no further information is provided as to the views that the organisations expressed to the Commissioner.

Government Response

The Government response is attached as Annex 1.

Committee Consideration

The Committee considered the instrument and the Government response at its meeting on 11 January 2016 and reports to the Assembly in line with the merits reporting points above.



Annex 1 - Government Response

Officials have considered the points raised by the Constitutional and Legislative Affairs Committee on their Merit Report on The Welsh Language (Wales) Measure 2011 (Amendment of Schedule 6) Order 2016

Categories of Persons

To aid transparency the table indicates, for organisations being inserted in Schedule 6, which Schedule 5 category the Welsh Ministers consider that they fall within. Where there is potential for the organisation to fall within more than one category only one category has been noted.

Body	Category in Schedule 5
Board of Community Health Councils in Wales	Category (2): Persons providing services to the public established by an enactment.
The British Film Institute	Category (3): Persons established by prerogative instrument— (b) to collect, preserve or provide access to recorded knowledge or to objects and things which further understanding, © to support, improve, promote or provide access to heritage, culture, sport or recreational activities,
British Transport Police Authority	Category (1): Public Authority
The Canal and River Trust	Category (4): Persons upon whom functions of providing services to the public are conferred or imposed by an enactment.
Career Choices Dewis Gyrfa Limited	Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where— (a) that person also received public money in a previous financial year, or (b) a decision has been made that that person will receive public money in a subsequent financial year.
Civil Nuclear Police Authority	Category (1): Public Authority



Coleg Ceredigion	<p>Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where—</p> <p>(a)that person also received public money in a previous financial year, or</p> <p>(b)a decision has been made that that person will receive public money in a subsequent financial year.</p>
Coleg Sir Gâr	<p>Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where—</p> <p>(a)that person also received public money in a previous financial year, or</p> <p>(b)a decision has been made that that person will receive public money in a subsequent financial year.</p>
The General Pharmaceutical Council	<p>Category (6): Persons overseeing the regulation of a profession, industry or other similar sphere of activity.</p>
Gofal Cymru	<p>Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where—</p> <p>(a)that person also received public money in a previous financial year, or</p> <p>(b)a decision has been made that that person will receive public money in a subsequent financial year.</p>
Hafal	<p>Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where—</p> <p>(a)that person also received public money in a previous financial year, or</p> <p>(b)a decision has been made that that person will receive public money in a subsequent financial year.</p>
Her Majesty's Chief Inspector of Education and Training in Wales	<p>Category (1): Public Authority</p>
The Human Fertilisation and Embryology Authority	<p>Category (6): Persons overseeing the regulation of a profession, industry or other similar sphere of activity.</p>



The Human Tissue Authority	Category (6): Persons overseeing the regulation of a profession, industry or other similar sphere of activity.
Leonard Cheshire Disability	Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where— (a)that person also received public money in a previous financial year, or (b)a decision has been made that that person will receive public money in a subsequent financial year.
The National Association of Citizens Advice Bureaux	Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where— (a)that person also received public money in a previous financial year, or (b)a decision has been made that that person will receive public money in a subsequent financial year.
Police and Crime Commissioners	Category (1): Public Authority
Qualifications Wales	Category (6): Persons overseeing the regulation of a profession, industry or other similar sphere of activity.
Royal Voluntary Service	Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where— (a)that person also received public money in a previous financial year, or (b)a decision has been made that that person will receive public money in a subsequent financial year.
The Statistics Board	Category (2): Persons providing services to the public established by an enactment.
Wales Audit Office	Category (1): Public Authority
Wallich-Clifford Community	Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where— (a)that person also received public money in a previous financial year, or



	(b)a decision has been made that that person will receive public money in a subsequent financial year.
WEA YMCA CC Cymru	<p>Category (5): Persons providing services to the public who receive public money amounting to £400,000 or more in a financial year, where—</p> <p>(a)that person also received public money in a previous financial year, or</p> <p>(b)a decision has been made that that person will receive public money in a subsequent financial year.</p>

Consultation

It was not considered necessary to consult on this Order as it does not in itself place any duties on the organisations, and the process of requiring an organisation to comply with standards provides a number of opportunities for an organisation to engage in the process and raise any concerns it may have.

The organisations in the Order that participated in the Welsh Language Commissioner’s Standards Investigation are engaged in and aware of the process of making standards. The Commissioner has presented an analysis of their responses along with her conclusions in a series of reports to the Welsh Ministers.

Section 66(2) of the Welsh Language (Wales) Measure 2011 (‘the Measure’) places a duty on the Welsh Ministers to have due regard to the standards investigation reports prepared by the Commissioner when deciding whether and how to exercise the powers to specify standards and make them specifically applicable. Any concerns raised by an organisation are considered by the Welsh Ministers during this process.

Furthermore before giving the organisation a compliance notice the Commissioner must consult with them in accordance with section 47 of the Measure (unless the Commissioner is satisfied that they have already been consulted or given the opportunity to be consulted on that matter in connection with a standards investigation). A compliance notice sets out which standards (and in which circumstances or areas) the organisation has to comply with. The compliance notice will also give the date from which the organisation has to comply.

There is also a clear procedure for an organisation to challenge the requirements to comply with a particular standard on the grounds of whether it is reasonable and proportionate to require it to do so. In the first place, an organisation will be able to present a challenge to the Commissioner. If the organisation wishes to appeal the Commissioner’s decision, they may appeal to the Welsh Language Tribunal, and thereafter to the High Court.

The organisations who were not included in the Commissioner’s second or third investigations are the British Film Institute who have taken over the functions of the UK Film Council and the Canal and Rivers Trust which is the successor organisations of the British Waterways Board. Both these organisations are currently named in Schedule 6 to the Measure and the inclusion of the British Film Institute and the Canal and Rivers Trust in the Order brings Schedule 6 up to date. Qualification Wales was not established



until after both of the Commissioner's Investigations had come to an end. There is a commitment in the Regulatory Impact Assessment that accompanied the Qualifications Wales Bill that the organisation will be brought within the group of bodies named in the Welsh Language (Wales) Measure 2011, who are liable to have to comply with Welsh language duties, known as Welsh Language Standards under the system established by the Measure.

These bodies cannot be required to comply with Welsh language standards until the conditions set out in section 25 of the Measure are met, and consultation on the compliance notice (in accordance with section 47) has been undertaken.

The Welsh Ministers intend to withdraw the Explanatory Memorandum and re-lay an updated version to include the information provided above.

