



ALN 13

Ymateb gan: Comisiynydd y Gymraeg
Response from: Welsh Language Commissioner

Comisiynydd y
Gymraeg
Welsh Language
Commissioner

20/02/2017

Dear Chair

Additional Learning Needs and Education Tribunal (Wales) Bill

The Welsh Language Commissioner welcomes the opportunity to contribute to the above inquiry.

1 Background

- 1.1 The principal aim of the Commissioner is to promote and facilitate the use of Welsh. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.
- 1.2 Two principles underpin the Commissioner's work:
 - The Welsh language should be treated no less favourably than the English language in Wales;
 - Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.
- 1.3 The comments below are provided in accordance with the role of the Commissioner under Section 4 of the Welsh Language (Wales) Measure 2011 to provide advice and submit comments to any person.



2 Context

- 2.1 It is recognised that the quality of additional learning support can depend on its provision in the language of the child or young person who needs it. Failure to provide assistance in Welsh to those who need it can compromise the effectiveness of the support and that in turn can be detrimental to the development and well-being of the child or young person. Recognising this, one of the strategic objectives of the Welsh Government's Welsh-medium Education Strategy (2010) was

'improved planning of Welsh-medium education provision and services for learners with additional learning needs (ALN) as an integral part of education provision at national, regional and local level'.

- 2.2 The Welsh Language Commissioner receives complaints and enquiries about deficiencies in Welsh-medium education, including some complaints about lack of support through the medium of Welsh for pupils with additional learning needs. I understand that the Children's Commissioner for Wales has also received complaints concerning that. As a result, the Children's Commissioner for Wales and I decided to conduct a joint exercise to gather information from local authorities in relation to Welsh-medium education, including their ability to provide support through the medium of Welsh for pupils with additional learning needs. Responses were received from a majority of the authorities and the main findings of the research in relation to the provision of additional education needs are:

- The standard assessments used to assess additional learning needs are not available through the medium of Welsh. Some local authorities have translated some assessments but the translations have not been validated and that is worrying in terms of the accuracy of the findings of those assessments. Some authorities do not have staff members who are able to carry out assessments through the medium of Welsh. One authority stated that it is conducting assessments in Welsh through observation alone as the standard assessments are not available in Welsh. On the whole, the capacity of local authorities to carry out assessments through the medium of Welsh is limited.
- The Welsh-medium resources that local authorities have to support pupils with additional learning needs vary widely. For example, while some authorities are able to offer assistance through the medium of Welsh in specialist settings, for example a specific unit within a Welsh-medium school, some authorities said they have no such specific Welsh medium facilities. A number of authorities rely on the use of resources that are available in neighbouring authorities and some evidence was seen of sharing resources at the regional level.
- While some authorities have reported that they can make provision in Welsh for all types of additional learning needs, the majority of authorities reported failure to make provision in Welsh for certain types of need at least. In particular,



reference was made to difficulties in making provision in Welsh for pupils with autism, speech and language difficulties and behavioural problems.

- The picture is mixed in terms of the availability of practitioners who can provide support through the medium of Welsh. Some authorities reported that they had access to a range of practitioners who can speak Welsh, while others are limited to educational psychologists only with Welsh language skills. Some evidence was seen of bilingual practitioners being shared between authorities.
- The information about the language of pupils recorded on statements of additional educational needs varies. Some authorities record the child's first language, others record the language medium of the child's learning, and one authority noted that no information about the child's language is currently being recorded.

2.3 In general, therefore, the evidence gathered demonstrates inconsistency in the support available through the medium of the Welsh language for pupils with additional learning needs. The planning and implementation of a new statutory framework to meet additional educational needs is an opportunity to address deficiencies in the provision through the medium of Welsh.



3 Additional Learning Needs and Education Tribunal (Wales) Bill

- 3.1 The Welsh Government introduced a 'Draft Additional Educational Needs and Education Tribunal Bill' in 2015 and a consultation was held on that Bill. That Bill did not contain any specific provisions in relation to the Welsh language. A number of persons including the Welsh Language Commissioner responded to that consultation, highlighting the need for a statutory framework that would ensure Welsh language provision for children and young people with additional learning needs.
- 3.2 The Welsh Government responded positively to the comments on the 2015 draft Bill. The explanatory memorandum published with the new draft Bill sets out the 10 core aims of the legislation. Although ensuring Welsh language provision is not part of those core aims, it is clearly stated in the memorandum that the Bill is intended to ensure that relevant organisations identify the language needs of children and young people with additional learning needs and that they make provision in accordance with those needs.
- 3.3 The latest draft Bill contains a number of specific provisions in relation to the Welsh language and that is to be welcomed. Some Welsh language issues are identified below that need to be considered further as part of the process of considering amendments to the Bill.
- 3.4 A 'Draft Version of the Additional Learning Needs Code' was published recently, to accompany the Bill. We note that one of the fundamental principles of that code is that organisations should take all reasonable steps to provide additional learning support through the medium of Welsh where a child or young person needs it, and that is to be welcomed.
- 3.5 I note that this is an inquiry into the General principles of the Bill. A series of comments on the draft Bill are offered below and it is possible that some of the specific issues raised go beyond the general principles of the Bill. If so, I trust those comments will be useful when the Committee considers the Bill in more detail in due course.



Individual Development Plans

- 3.6 Chapter 2 of the Bill places a duty on a person who will be drawing up an Individual Development Plan to '*decide whether additional learning provision should be made in Welsh*'. If so, a duty is placed on that person to indicate this in an Individual Development Plan. We note that what is contained in the Bill is a duty to determine whether the provision should be made in Welsh, not a duty to determine whether the provision should be made in Welsh or English. It can be argued that phrasing the duty in this way renders Welsh language provision exceptional, that is, it suggests that English will be the default language medium of the provision unless it is decided that it should be provided in Welsh. It is not clear what the practical implications of phrasing the duty in this way would be, if any at all. However, in order to treat both languages equally, we suggest paraphrasing the duty in order to require relevant persons to determine whether additional learning provision should be made in Welsh or in English. That would avoid any risk of relevant persons assuming that English will be the default language medium of the provision, when they draw up an Individual Development Plan. It is interesting to note that the wording of the relevant part of the draft code is different in this regard.

'2.3.2 If a governing body or a local authority is considering whether a child or young person has ALN, or if it is drawing up an IDP, it should consider whether English or Welsh is the child or young person's chosen method of communication.'

- 3.7 It appears that neither the Bill nor the draft code offers guidance to relevant organisations how to decide on the language of the provision. No advice is offered on the issues which should be taken into consideration when making a decision on that matter. Those issues would possibly include the language of the home, the language medium of the child or young person's education or care and, in the case of very young children who have not reached school age, the language medium of the statutory education the child is intended to receive in the future. In order to ensure that relevant organisations make correct decisions about the language of the provision, they will need to receive guidance how to determine that, before the provisions of the Bill come into force.

Supplementary Functions

- 3.8 Where an Individual Development Plan specifies that support should be provided through the medium of Welsh, the Bill places a duty on the relevant persons to 'take all reasonable steps' to ensure that the assistance has been provided in Welsh. This is not synonymous with placing an absolute duty on providers to make provision in Welsh where Welsh is the language of the child or young person who needs the support. Phrasing the duty in this way raises the question of who would decide, in case of dispute, whether all reasonable steps have been taken by the provider to make provision in Welsh and how that decision would be made.



- 3.9 Section 61 of the Bill places a duty on local authorities to make arrangements for avoiding and resolving disagreements between education bodies and children or young people concerning the provision of additional learning support. One supposes that an individual could use these arrangements to call an education body to account for its failure to provide support through the medium of Welsh. There is need to ensure that individuals are also able to hold a local authority or health board to account for failing to provide support through the medium of Welsh in accordance with the requirements of the Bill.
- 3.10 Section 63 of the Bill sets out those circumstances in which an individual may bring a case before the Education Tribunal. That section of the Bill allows an individual to bring proceedings against a governing body or local authority for failing to specify within an Individual Development Plan the need for provision through the medium of Welsh. But, this part of the Bill does not allow an individual to bring proceedings against a governing body or local authority for failing to provide support through the medium of Welsh, where an Individual Development Plan specifies that it should be provided in Welsh.
- 3.11 Therefore, neither sections 61 and 63 of the Bill, nor other parts of the Bill, establish a clear system to allow individuals to hold institutions accountable for failing to provide additional learning support through the medium of Welsh. In the event of a dispute concerning this, it is not clear who would decide whether a relevant person has 'taken all reasonable steps' to provide support to a child or young person through the medium of Welsh. I do not believe it would be reasonable to expect individuals to apply for a judicial review by a court as a means of resolving such a dispute. The Bill needs to establish a clear and accessible procedure to allow an individual to hold all relevant persons accountable for failing to provide additional education support through the medium of Welsh, whether that person be a local authority, a health board or an education body.
- 3.12 The draft Additional Learning Needs Code refers to the duties under the Welsh Language (Wales) Measure 2011.

2.29 'The Welsh language is supported by the Welsh Language (Wales) Measure 2011. The Bill restated the official status of the Welsh language in Wales, it established the principle that the Welsh language should be treated no less favourably than English and provided for the promotion and facilitation of the use of Welsh and standards relating to the Welsh language.'

*2.30 Where this is applicable, relevant bodies **must** ensure that their activities or their services are provided in accordance with the relevant Standards in relation to the Welsh language. The Standards with which the relevant bodies will be/are required to comply are set out in a notice of compliance issued by the Welsh Language Commissioner.'*



The Standards that have been imposed on local authorities in accordance with the Welsh Language (Wales) Measure 2011 do not refer specifically to the provision of additional learning support. In addition, no Standards have been imposed under the Welsh Language (Wales) Measure 2011 on health boards to date. No discussions have taken place hitherto concerning the introduction of Standards for school governing bodies. In view of this, I do not believe the Welsh Language (Wales) Measure 2011 offers one clear path which an individual might follow at all times in order to call relevant persons to account for failing to provide additional learning support through the medium of Welsh.

- 3.13 Reference is also made in the draft Code to the duties of local authorities under the School Standards and Organisation (Wales) Act 2013 to draw up Strategic Plans for the Welsh language in Education. The statutory guidance provided by the Welsh Government in accordance with the requirements of that Act places an expectation on local authorities to include measures within their strategic plans for the improvement of the provision of Welsh medium additional educational support. But, the statutory framework of that Act again does not offer a clear and accessible procedure to allow individuals to hold local authorities to account for failing to provide additional learning support through the medium of Welsh.
- 3.14 This matter needs to be addressed as a matter of urgency. Without a clear and accessible statutory procedure for holding relevant persons liable for failing to provide additional learning support through the medium of Welsh, there will be less pressure on those persons to ensure compliance with the duty in the Bill to take 'all reasonable steps' to make provision in Welsh.

Other Specific Issues

- 3.15 Section 54 of the Bill imposes a duty on school governing bodies to designate a person or persons as 'Additional Learning Needs Co-ordinator'. Similarly, section 55 of the Bill places a duty on health boards to allocate 'Designated Education Clinical Lead officers'. It appears that the functions of these persons will result in regular contact with children and young people and their parents. If so, it will be necessary to ensure that these persons are able to carry out their functions through the medium of Welsh where necessary. School governing bodies will have recruitment policies that will address the need for staff who can speak Welsh. Health boards will have workforce development plans that will address the need for bilingual staff. Nevertheless, in order to ensure that the persons allocated to these posts can speak Welsh where it is needed, it would be helpful if the Government were to provide guidance on the need to allocate bilingual individuals to these posts, taking into account issues such as the language medium of the child or young person's education, and the need for the post holders to be able to communicate with children, young people and parents and with other institutions in Welsh.
- 3.16 Section 60 of the Bill is concerned with the provision of goods or services related to additional learning provision. In section 60(2) it is noted that regulations may provide



for the terms and conditions in accordance with which goods and services may be supplied. It would be helpful to receive clarity from the Government on the types of goods or services that local authorities might need to provide to relevant persons. It is possible that section 60(2) of the Bill should allow for regulations to specify the need for local authorities to supply goods or services in Welsh to relevant persons.

- 3.17 Section 62 of the Bill places a duty on local authorities to provide a child or young person with an independent advocacy service in the event of a dispute before the Tribunal. Where Welsh is the language of the child or young person, the advocacy service will need to be available in Welsh. The Bill does not place a duty on local authorities to provide the advocacy service in Welsh where it is needed. The duties placed on local authorities in accordance with the Welsh Language (Wales) Measure 2011 do not refer specifically to advocacy services. It will be necessary to ensure that local authorities provide advocacy services in accordance with the requirements of this Bill through the medium of Welsh, where that is needed.

The Education Tribunal for Wales

- 3.18 The Bill changes the name of the Special Educational Needs Tribunal for Wales to the Welsh Education Tribunal and it provides for the preparation of regulations on the procedures of the Education Tribunal.
- 3.19 Children and young people who have additional educational needs will be part of the majority of cases, if not every case, coming before the Education Tribunal. It will be essential to ensure that those children and young people are able to use the Welsh language during the Tribunal hearings if necessary. That means both speaking Welsh and hearing Welsh during hearings. For example, if the Tribunal members were to question a young Welsh speaker with additional learning needs, that young person should be allowed to hear the questions in Welsh as well as answer them in Welsh. In agreeing the arrangements for the use of the Welsh language at the Tribunal Hearings, consideration should be given to whether the use of simultaneous translation would be appropriate in certain circumstances. For example, where the Tribunal members are questioning a child with additional learning needs, and where Welsh is the language of the child, consideration should be given to the extent to which it would be appropriate to facilitate that communication through simultaneous translation, or whether members themselves should be able to communicate in Welsh. It is probable that tribunals in Wales have already dealt with these issues and that good practice has been established for the Education Tribunal to follow.

4 Summary

- 4.1 This Bill is concerned with an area where making provision in accordance with the language needs of individuals is absolutely critical to the quality and effectiveness of the provision in question. Complaints submitted to the Welsh Language Commissioner demonstrate that failure to provide additional learning support through



the medium of Welsh can have a detrimental effect on the well-being of children and young people.

- 4.2 Research carried out jointly between the Children's Commissioner for Wales and myself shows inconsistency in the additional learning support provision that local authorities in Wales are able to offer through the medium of Welsh. This Bill offers an opportunity to address that.
- 4.3 The Welsh Government has responded positively to comments on the draft Bill published in 2015 by including within the new draft Bill a number of specific provisions for the Welsh language. At the same time, a number of Welsh language issues need to be considered further in the ongoing development of the Bill and in the implementation of the Bill through regulations and guidelines. Above all else, perhaps, there is need to ensure a clear procedure to allow individuals to hold relevant persons to account for failing to provide additional learning support through the medium of Welsh.
- 4.4 I trust the above comments will prove useful as the Committee scrutinises the Bill. I look forward to the opportunity to discuss these comments with the Committee shortly.

