

NATIONAL ASSEMBLY FOR WALES (OFFICIAL LANGUAGES) BILL

Briefing note in relation to legislative competence

1. The above Bill is due to receive its Stage 3 (final amending stage consideration) and Stage 4 (final approval stage) on Wednesday 3 October.
2. The Bill, *which is solely concerned with the internal workings of the Assembly* (Assembly proceedings and the functions of the Assembly Commission) contains the following provision:
“The official languages of the Assembly are English and Welsh”.
3. The Bill makes a number of further provisions:
 - Restating the requirement of the Government of Wales Act 2006 that the two languages be treated on a basis of equality;
 - Making provision for bilingual interpretation and reporting of Assembly proceedings;
 - Requiring the Assembly Commission to prepare a Scheme, to be subject to approval by the Assembly, for giving effect to the principle of equality of the two languages in relation to Assembly proceedings, the internal working of the Assembly and its dealings with the public.
4. The Wales Office have questioned the Assembly’s power to include in the Bill the provision quoted in paragraph 2 above. Their basis for doing so is that under heading 20 in Schedule 7 to the Government of Wales Act 2006 the Assembly may legislate in relation to the *Welsh* language but not in relation to the English language.
5. The Assembly Commission’s legal advisers do not agree, and believe that the above provision is within the Assembly’s legislative competence.
6. It is not in dispute that the Assembly can legislate in relation to the Welsh language and an Act of the Assembly could, therefore, provide that “Welsh is an official language of the Assembly”. The inclusion of a reference to the English language, in a way that makes it clear that both languages have the status of official languages, does not change the status of the English language in any way. But it would be potentially misleading to refer to Welsh being an official language of the legislature without also referring to the other official language.
7. The reference to the English language is therefore incidental to the provision that the Bill makes in relation to the Welsh language and, as such, is within the Assembly’s legislative competence under section 108(5)(b) of the Government of Wales Act 2006.
8. The above basis for the Assembly’s legislative competence was set out in full in paragraph 2.11 of the Explanatory Memorandum which accompanied the Bill. It was the ground on which the Member in Charge of the Bill certified that the Bill was within the Assembly’s legislative competence and on which the Assembly’s Deputy Presiding Officer expressed the same view. The

Deputy Presiding Officer has now reviewed his decision and has confirmed that he remains of the same opinion. No contrary arguments were expressed by anyone to the Committee scrutinising the Bill and the Assembly Commission has received no representations from any source other than the Wales Office (e.g. from the Welsh Government or the Counsel General) that any provision of the Bill is outside the Assembly's legislative competence.

9. Section 112 of the Government of Wales Act 2006 gives the Attorney General (or the Counsel General) the power to refer the particular provision in question to the Supreme Court if the Bill is approved. The Assembly Commission is confident that such a step would not be justified.
10. The Assembly Commission has also (on 18 September 2012) been approached by the Wales Office seeking a deferral of the final approval of the Bill in order to enable the Wales Office to seek to promote an Order in Council under section 109 of the Government of Wales Act 2006 amending heading 13 in Schedule 7 to the 2006 Act ("National Assembly for Wales") to add a specific subject (e.g. "Treatment of the English and Welsh languages in relation to Assembly proceedings") which would place beyond all doubt the Assembly's ability to include the provision in question in the Bill and therefore eliminate the possibility of any reference to the Supreme Court.
11. The Assembly Commission gave urgent and serious consideration to the proposal (including consulting leaders of all parties in the Assembly) but identified a number of specific difficulties associated with it:
 - the Assembly Commission is confident in its understanding of the Assembly's legislative competence and does not believe that such an Order is necessary;
 - it would involve further postponement, for an indefinite period, of the approval of this Bill which has attracted almost universal support both within the Assembly and amongst the public and whose provisions are needed in order to fill a gap left by the fact that the Welsh Language Act 1993 has now been superseded by the Welsh Language (Wales) Measure 2011 (which does not apply to the Assembly or Commission);
 - although there is no reason to doubt that the Wales Office can secure general UK government support for the bringing forward of a draft order, there can be no absolute certainty that this is would be the case;
 - an Order in Council under section 109 could not realistically be made until the end of the year, and quite possibly well into the New Year;
 - a draft Order would require affirmative resolutions of both Houses of Parliament and of the Assembly and it cannot be taken for granted that Assembly would approve such an Order, whose provisions would be limited to the specific issue in question;

- the making of an Order, with the approval of the Assembly could, depending on its precise wording and scope, have wider implications in relation to the Assembly's current legislative competence than are able to be properly assessed at present.

12. In the light of these factors the Assembly Commission has concluded that the right course of action is that the Bill should proceed as originally intended.

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