

NATIONAL ASSEMBLY FOR WALES (OFFICIAL LANGUAGES) ACT 2012

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the National Assembly for Wales (Official Languages) Act 2012 which was passed by the National Assembly on the 3 October 2012 and received Royal Assent on 12 November 2012. They have been prepared by the National Assembly Commission to assist the reader of the Act. They should be read in conjunction with the Act, but are not part of it.
2. This Act amends the current provisions of the Government of Wales Act 2006 that set out the general duties of the National Assembly and of the Assembly Commission in relation to use of the Welsh language (section 35(1) and Schedule 2 paragraph 8(3)).
3. In these Explanatory Notes, previous Acts of Parliament are referred to as follows:
 - “the 1993 Act” means the Welsh Language Act 1993;
 - “the 1998 Act” means The Government of Wales Act 1998; and
 - “the 2006 Act” means The Government of Wales Act 2006.
4. The Government of Wales Act 1998 required the National Assembly:
 - “in the conduct of its business (to) give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.”
5. The 2006 Act re-stated the duty imposed on the National Assembly by the 1998 Act, although by reference to National Assembly “proceedings” rather than National Assembly “business”, reflecting the fact that the National Assembly is now a solely parliamentary body. Under section 35(1) of the 2006 Act –
 - “(1) The Assembly must, in the conduct of Assembly proceedings, give effect, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.”

6. It also imposed a parallel duty on the newly-established Assembly Commission (paragraph 8(3) of Schedule 2 to the 2006 Act) –

“(3) In the exercise of the functions of the Assembly Commission effect must be given, so far as is both appropriate in the circumstances and reasonably practicable, to the principle that the English and Welsh languages should be treated on a basis of equality.”

7. In all these cases, the duty was framed so as to reflect the provisions of the Welsh Language Act 1993, which require Welsh language schemes to demonstrate how public bodies propose to give effect:

“so far as is both appropriate in the circumstances and reasonably practicable, to the principle that in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality.”

8. The law relating to the Welsh language has since moved on. The Welsh Language (Wales) Measure 2011 (“the Measure”), which became law on 9 February 2011 will repeal the 1993 Act and the system of language schemes, replacing it with “standards” imposed by Ministers and enforceable in the courts by a Welsh Language Commissioner. The Measure has also abolished the Welsh Language Board.
9. Neither the National Assembly itself nor the Assembly Commission will be subject to these new arrangements under the Measure, overseen by Ministers, and they remain subject instead to the duties imposed by the 2006 Act. This reflects the constitutional principle that Welsh Ministers are accountable to the National Assembly, and not the reverse.
10. This Act only makes provision for the making of a scheme by the Assembly Commission, and contains no powers to make subordinate legislation.
11. This Act will apply only in relation to Wales.

COMMENTARY ON SECTIONS

Section 1 - Amendment to section 35 of the Act (Equality of treatment)

12. This section replaces section 35(1) of the 2006 Act with five new subsections.
13. The new subsection (1) contains a clear, simple statement that the English and Welsh languages are the official languages of the National Assembly.
14. Subsection (1A) re-states, in a modified form, the principle previously contained in section 35(1). The change in the way in which the duty is expressed, which refers simply to a duty to treat the languages “on a basis of equality”, reflects a parallel change made by the Welsh Language (Wales) Measure 2011 (see section 1(3) (a) “enactments which require the Welsh and English languages to be treated on the basis of equality in the conduct of the proceedings of the National Assembly for Wales”).
15. Subsection (1B) again reflects the practice of bilingual legislatures elsewhere of placing the right to use both languages clearly on the face of the governing legislation. The subsection also makes it clear that the right to use either English or Welsh extends not only to Assembly Members but also to others who participate in proceedings, e.g. witnesses giving evidence to committees (this accords with current practice but is not explicitly stated in legislation.)
16. Subsection (1C) requires reports of proceedings of the National Assembly as defined in section 1(5)(a) of the Government of Wales Act 2006 (proceedings of the Assembly as a whole i.e. in plenary) to be fully bilingual. This means not only a full record of what was said in the language in which it was said, but also a full translation into the other official language. It therefore enshrines in statute the Assembly’s current practice.
17. The National Assembly can only comply with the duties in subsections (1A) to (1C) insofar as the Assembly Commission provides the National Assembly with the staff and other facilities to enable it to do so. Subsection (1D) is a pointer to Schedule 2, paragraph 8, which contains the related duties on the part of the Assembly Commission.

Section 2 - Amendment to Schedule 2 to the Act (Assembly Commission)

18. This section replaces subparagraph 8(3) of Schedule 2 to the 2006 Act with ten new subparagraphs containing detailed provisions defining the Assembly Commission's duties in relation to use of the English and Welsh languages, including support by the Commission to enable the National Assembly to carry out its duties under section 35(1)-(1C) of the 2006 Act (as amended).
19. The new subparagraph (3) firstly requires the Assembly Commission to treat the two languages on a basis of equality. This restates, in modified form, the duty in the previous subparagraph (3) of Schedule 2. However, in addition, the new subparagraph requires the Assembly Commission to make arrangements for enabling the National Assembly to fulfil its duties under section 35 (as amended).
20. The remaining new subparagraphs supplement the duties under subparagraph (3) by providing machinery for ensuring effective compliance with those duties.
21. The vehicle for doing so is to be an Official Languages Scheme specifying the measures which the Assembly Commission proposes to take in order to comply with its duties under subparagraph (3). Subparagraphs (4), (10) and (11) deal with the process for preparing, adopting and reviewing the Scheme. A draft of the Scheme will have to be published and laid before the National Assembly and consulted upon. The Assembly Commission will need to consider representations made about it by those whom it has consulted and by the National Assembly (for example the report of any Assembly committee that has considered the draft Scheme). The Scheme (as amended in the light of this consultation process) will then need to be approved by the National Assembly.
22. These provisions will make it clear that accountability for the Assembly Commission's bilingual services will be directly to the National Assembly (and therefore to the public) rather than to the Welsh Language Commissioner and Welsh Ministers as in the case of bodies on whom standards will be imposed under the Welsh Language (Wales) Measure 2011.
23. Subparagraph (11) makes it clear that it will be open to the Assembly Commission to adopt a Scheme which has been prepared in compliance with the requirements of this Act even if the necessary steps were taken before the Act comes into force.
24. Subparagraphs (5), (6) and (7) deal with some (but not all) of the issues that the Scheme will need to address. In subparagraph (5) the following are specified:

(a) simultaneous interpretation;

- (b) the publication of documents bilingually;
 - (c) public engagement ;
 - (d) measures to foster and improve freedom of choice of official language;
 - (e) the setting of targets and timescales for implementing the Scheme;
 - (f) the allocation of responsibilities for that implementation;
 - (g) objective means of measuring the progress of that implementation;
and
 - (h) a language skills strategy for staff.
25. Subparagraph (6) includes a specific requirement for the Scheme to include provisions regarding the receipt, investigation and consideration of complaints of any failures to give effect to the Scheme.
26. Subparagraph (7) requires the Scheme to identify services to be provided in the official languages and to explain how they are to be provided consistently with subparagraph (5).
27. Subparagraph (8) introduces a duty on the Assembly Commission to prepare an annual report on the operation of the Scheme, which will be laid before the National Assembly. Subparagraph (9) specifies matters that must be included in that report.
28. Subparagraph (10) requires the Commission to review the Scheme as soon as possible after each ordinary general election of Assembly Members. Subparagraph (11) sets out the consultation requirements referred to in paragraph 21 above. The same arrangements will apply after each extraordinary general election that (by virtue of section 5(5) of the Government of Wales Act 2006) results in the following ordinary general election not being held because the extraordinary election takes place less than six months before the date on which the ordinary election would otherwise have been held.
29. Subparagraph (12) makes it clear that, once the Scheme has been formally adopted, the Assembly Commission is under a duty to give effect to it.

Section 3 - Short title and commencement

30. This contains the title of the legislation and provides for the legislation to come into force the day after the Bill receives Royal Assent.

These notes refer to the National Assembly for Wales (Official Languages) Act 2012 (anaw 1) which received Royal Assent on 12 November 2012

RECORD OF PROCEEDINGS IN THE NATIONAL ASSEMBLY FOR WALES

31. The following table sets out the dates for each stage of the Act's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Act can be found on the National Assembly for Wales' website at: <http://www.assemblywales.org/bus-home/bus-legislation.htm>

Bill introduced	30 January 2012
Stage 1 - Committee consideration of general principles	1 & 9 February 2012, 7, 15, 21 & 29 March 2012, 25 April 2012
Stage 1 - Debate in plenary on general principles	16 May 2012
Stage 2 - Committee consideration of amendments	21 June 2012
Stage 3 - Plenary consideration of amendments	3 October 2012
Stage 4 - Passing of the Bill in Plenary	3 October 2012
Royal Assent	12 November 2012

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