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The Welsh Language Bill [HL] [Bill 146 of Session 1992-93]

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Introduction

The Welsh Language Bill [HL] was introduced into the House of Lords on 17 December 1992 and was sent to the Commons on 25 February 1993. The Bill seeks to promote and facilitate the use of the Welsh language in Wales, and in particular its use in the conduct of public business and the administration of justice on a basis of equality with English.

The Bill's main provisions would:

- Establish a statutory Welsh Language Board (Bwrdd yr Iaith Gymraeg).
- Require all public bodies providing services in Wales to produce Welsh language schemes in order to give effect to the Bill's purpose.
- Amend the law relating to the use of Welsh in legal proceedings and to the prescribing by Ministers of Welsh forms.
- Repeal certain spent enactments relating to Wales.

Background to the Bill is set out in the Lord's Library Paper "The Welsh Language Bill [HL] [Bill 54 of Session 1992/93]" copies of which are available in the Oriel Room and the Current Affairs Reading Room. It is the aim of this paper to highlight the main areas of the Bill around which discussion has taken place during its passage through the House of Lords. An outline and explanation of the Bill's clauses is contained in the appendix.

The status of the Welsh language

The Bill's removal from the statute book of the remnants of the 1536 and 1542 Acts of Union has been welcomed by Welsh language pressure groups as symbolically ending discrimination against the use of Welsh in public life. However, concern has been raised over the absence of any statement in the Bill conferring upon Welsh the status of an official language in Wales. Lord Cledwyn moved an amendment to insert a new clause during the Bill's Committee Stage in an attempt to rectify this:

> "Welsh and English are the official languages of Wales and have equal validity in the conduct of public business and in the administration of justice".
> [HL Deb 2.2.93 c 136]

In moving this amendment Lord Cledwyn argued that equality between the two languages could not be achieved unless it is laid down in law that Welsh is also an official language in Wales. Supporters of the amendment quoted heavily from the Report of the Welsh Language Board ["Recommendations for a new Welsh Language Act" (February 1991)] which states at paragraph 36, "Unless it be declared by an Act of Parliament that the Welsh language shall have equality of status with the English language it will continue in its existing state of inequality" and in paragraph 37, "Without such a declaration, the Welsh language will remain bereft of official status and will continue to be perceived as being inferior in all legal and administrative respects to the English language".

Particular concern was expressed during the debate over the Bill's use of the term "on a basis of equality" to describe the principle on which the English and Welsh languages should be treated, as the term traditionally used in this context is that of "equal validity". The Hughes Parry Committee, which was appointed by the Secretary of State for Wales in 1963 to "clarify the legal status of the Welsh language and to consider whether any changes in the law ought to be made", made the following recommendation on the status of the Welsh language:

> 172. For a number, of reasons we have decided to recommend the adoption of this Principle of Equal Validity as the basic principle of the policy governing the future use of Welsh in the administration of justice and the conduct of administrative business throughout Wales and Monmouthshire. Its adoption will, we think, satisfy the keen desire of the overwhelming majority of Welsh speaking people to see the legal status of the Welsh language raised to that of English. At the same time the raising of the status of Welsh will strike a sympathetic chord in the hearts and feelings of many Engish men and women who reside in Wales, as well as most Welsh persons who do not speak the language. The argument based on prestige will, we think, be fully met. The doubts and uncertainties concerning the present legal position will be removed. And abolition of the restriction on the use of Welsh in legal trials will ensure that justice is seen to be done. There will be important consequences following the adoption of this policy but in our view they will not be such as to involve great expense, undue delay or insurmountable practical difficulties. We recommend that the Principle of Equal Validity as outlined above should form the basis of the new legal status of the Welsh language and that a declaration giving this status should be embodied in a statute.

[Report of the Hughes Parry Committee "Legal Status of the Welsh Language" Cmnd 2785, October 1965]

This approach was endorsed by the Welsh Language Board in its 1991 report which defined the principle of equal validity as meaning "no more and no less than that any act, writing or thing done in Welsh in Wales shall have the like legal force and effect as if it had been done in English".

Earl Ferrers, on behalf of the Government gave the following reasons for rejecting Lord Cledwyn's amendment:

> Were the Government to contemplate even for a moment proceeding to legislate for such an untested principle as "equal validity", it is worth considering what the practical implications might be. The first and immediate consequence would be, as I suggested, a field-day for the legal profession. I agree with my noble friend Lord Thomas of Gwydir that, without an adequate definition of "equal validity", it would fall to the courts to determine what it meant in each individual case. I suggest, that that is no basis for a successful policy of support and encouragement for the Welsh language. We cannot leave the far-reaching changes which we want this Bill to secure to be dependent upon the uncertainty of perpetual recourse to the courts.
>
> The concept of Welsh being an official language raises similar concepts of definition and uncertainty. It is the Government's view that, whatever uncertainty there may have been in the past concerning the official status of Welsh, it should be removed by the Bill. I am afraid that that certainty would be reintroduced should the language once again become dependent on a general declaration which could only be defined in individual cases by recourse to the courts.
>
> It is also incumbent upon us to consider, as my noble friend Lord Crickhowell pointed out, the implication of a declaration of this nature on the two languages most commonly used in Wales if at the same time there is no provision in British law concerning the official status of English in England. That would introduce an imbalance which would be difficult to defend. One must remember that the Bill repeals the remaining provisions of the Laws in Wales Acts 1535 and 1542-the Acts of union. No longer, therefore, is there a blot on the language.
>
> [HL Deb 2.2.93 c 152]

The Earl went on to defend the use of the term "on an equal basis":

> That morass of uncertainty would be only the tip of the iceberg. It must be contrasted with what is contained in the Bill. The principle of equality is, in my view, a far more powerful formulation than equal validity in a number of important respects. It gives us a single principle which confirms the status of the Welsh language in the public sector in Wales. It also provides a framework which will enable the practical obstacles which govern the delivery of Welsh language services to be addressed and, wherever possible, to be overcome. Those practical issues will be addressed by the Welsh language schemes to which the Bill will give rise. Those schemes will reflect what "on a basis of equality" means in practice. Welsh speakers will not, therefore, be required to go to court to discover what equality means in individual cases. Instead what equality means will he set out in the schemes which public bodies will provide and, crucially, all schemes will be drawn up having regard to the Welsh Language Board's guidelines.
>
> The noble Lord, Lord Hooson, was concerned about the uncertainty surrounding the Government's principle of equality. I invite him to consider the vital role of the board's guidelines in illustrating clearly the meaning of equality. The amendment would leave it to the courts to decide.

[HL Deb 2.2.93 c 152-3]

The issue was returned to on Report where Lord Cledwyn moved an amendment to introduce a "purpose clause" into the Bill:

> "The purpose of this Act is to confer upon the Welsh language the status of an official language in Wales and to establish a framework for promoting and facilitating the use of the Welsh language in the conduct of public business and in the adminstration of justice on the basis of equality with the English language."
>
> [HL Deb 18.2.93 c 1250]

Lord Cledwyn explained the role of "purpose clauses" as follows:

> Perhaps I may say a brief word about "purpose clauses". They are not frequently used in Bills but there are many precedents. This is one Bill which for obvious reasons calls for a definition of purpose at the outset. A purpose clause does not impose a duty and is not therefore enforceable at law. That is acknowledged in textbooks and was referred to in the report of the Select Committee chaired by the noble Lord, Lord Renton. The report stated:
>
> "We agree that statements of purpose can be useful, both at the parliamentary stage and thereafter, for the better

understanding of the legislative intention and for the resolution of doubts and ambiguities".

The report further recommended that:

"statements of purpose should be used when they are the most convenient method of delimiting or otherwise clarifying the scope and effect of legislation".

I should add that purpose clauses have been used in about half a dozen Acts in the past 20 years, the last being in the Legal Aid Act 1988. Referring to it, the noble and learned Lord the Lord Chancellor said:

"I hope it provides the appropriate fanfare to start the Bill that many of your Lordships thought was needed".-[*Official Report, 29/2/88; col. 10*.]

Wales today would welcome such a fanfare, and I hope we get it.

[HL Deb 18.2.93 c 1250-1251]

In responding to this, and Amendments Nos 2 and 9 tabled by Lord Hooson, Earl Ferrers rejected calls to include in the Bill a declaration of Welsh as an official language in Wales on the basis that this would create legal uncertainty and would be lead to "statutory bilingualism":

I am concerned about the legal effect of a new clause of the kind proposed in Amendment No. 1 introduced by the noble Lord, Lord Cledwyn of Penrhos. He said that it is called a "purpose clause" and gave some examples. It is difficult if not impossible to establish that a clause of that kind would be just a purpose clause and that it would have no ulterior effect whatever. That would certainly be the case if there were to be any uncertainty as to whether the amendment reflected exactly the provisions in the rest of the Bill and did not do anything more. If it did-here I agree with my noble friend Lord Crickhowell; I fear that it does-the inclusion of the clause would then become a statement of law. The effect of making such a statement is simply not known. If we were to incorporate the provision, we may find that we had a tiger by the tail. We simply do not know where it will take us other than almost certainly and inevitably into the labyrinths of the courts. An important objective of the Bill is to keep the matter out of the courts. The amendment would alter the context in which the remainder of the Bill is read.

The noble Lord, Lord Cledwyn of Penrhos, referred to my noble and learned friend the Lord Chancellor who said that he had a purpose clause, and justified it by saying that we needed a fanfare. A purpose clause is perfectly possible, but I do not think it is what you might call the flavour of the month among parliamentary draftsmen. However, we could not have a clause which is supposed to be a purpose clause, but which has effects that go, or might go, much wider than just those of a purpose clause.

The Government understand the arguments of those who are in favour of giving the language a further symbolic and psychological boost-banging the drum, as the noble Lord, Lord Williams of Mostyn, called it last time, or creating a fanfare as the noble Lord, Lord Cledwyn, said. We understand those people who wish to see the Bill contain a great declaration of principle. However, without dismissing the entirely understandable feelings that underlie those arguments, the best contribution that we can make for the Welsh language is to establish a legal framework which will ensure that the position of the Welsh language in public life is more than just a fine-sounding principle over which lawyers can haggle for many years to come, as I suggest they will do. We can ensure that Welsh is incorporated into the every-day business of public bodies throughout Wales. That is what we want to do and in that way, the Bill will reflect and enforce the reality that Welsh is part and parcel of the every-day life of the people of Wales.

Our concern about the amendment is that it would cloud the interpretation of the detailed provisions in the Bill. Public bodies might legitimately ask themselves, "Is it the purpose of our scheme to confer upon the Welsh language the status of an official language in Wales?", as is stated in Amendment No. 1" or "Is it to give effect to the principle that English and Welsh be dealt with on the basis of equality?", as is stated in Clause 4. If the effects of those two statements in law were the same, the potential problems might not arise. However, if they are not the same-and our belief is that they are not-then the possibilities for dispute and uncertainty are legion.

Although the amendment very prudently does not attempt to define the meaning of "official language", the Government's understanding of the term is that it would

amount to something akin to statutory bilingualism; in other words, that for official purposes everything must be done in both languages. For example, every Act of Parliament that applies in any way to Wales would have to be printed in Welsh as well as in English, as would every statutory instrument, every decision of a government department and every copy of *Hansard* in both Houses. The statute books themselves might even have to be written in Welsh too. The task would be endless, as would be the imagination and the cost.

I turn now to Amendments Nos. 2 and 9, which the noble Lord, Lord Hooson, introduced and which stand also in the names of the noble Lords, Lord Geraint and Lord Elis Thomas, and on which my noble friend Lord Crickhowell looked with some favour. Amendment No. 2 is rather more than a purpose clause. It is more than a declaration of principle: it is a statement of law.

The first part of the principle which is referred to in the amendment is that English and Welsh:

"are the official languages of Wales".

I have already explained why the concept of legislating for an official language causes difficulty. The Government also believe that limiting the definition of "official language" only to the terms of the Bill could be said to circumscribe the status which the Welsh language currently enjoys in areas outside the scope of the Bill. That includes those other Acts of Parliament which underpin tile status of Welsh-notably the Education Reform Act 1988 which makes the language a foundation subject in the national curriculum in Wales and a core subject in Welsh medium schools.

The second part of the principle set out in the amendment, which concerned my noble friend Lord Elton, would also seem to introduce a conflict into the Bill with the provisions of Clause 4. In Amendment No. 2 public bodies are being told that English and Welsh:

"shall be treated on a basis of equality".

The noble Lord, Lord Hooson, said that those words are lifted deliberately from the provisions of Clause 4. In Clause 4 public bodies are told to prepare schemes which give effect to that principle, but it goes further and includes the words: "so far as is both appropriate in the circumstances and reasonably practicable".

If the Bill is not intended to achieve statutory bilingualism and all that that would entail-and I believe that we are all agreed on that - it follows that the qualifying phrases in Clause 4 are necessary. The Bill ensures that the qualifying phrases should apply to schemes and not to the principle of equality itself. That is as it should be. However, it means that an inconsistency would arise if an attempt were to be made to enact a principle which is not encumbered by such qualifying phrases as:

"so far as is both appropriate in the circumstances and reasonably practicable",

which is included in Clause 4.

Even though the words which are contained in the second part of the amendment proposed by the noble Lord, Lord Hooson, are similar to those which are already contained in the Bill, that does not mean that they can be moved to another part of the Bill without having an effect in law. The principle which is referred to in Clause 4(2) provides a purpose for the schemes which public bodies will prepare. Placing that principle, unqualified, in a new clause as suggested by Amendment No. 2 would have a very different legal outcome.

I have sought to explain some of the reasons, on grounds of both policy and law, why a clause along those lines would interfere with the aims of the Bill. I can only re-emphasise that I say that with no wish to dismiss or devalue the objectives or the aspirations which underlie the proposal. I do so because the concepts, laudable though they are, are not easy to introduce on to the face of the Bill without introducing uncertainty and damaging the great strength of the principle of equality which lies at the very heart of the Bill.

[HL Deb 18.2.93 cc 1265-1267]

Lord Cledwyn withdrew his amendment in favour of Lord Hooson's Amendment No 2 which was defeated by 125 votes to 84 on Division.

At Third Reading Earl Ferrers again set out the Government's position on the "status issue":

> The Government's view is that the official status of the Welsh language should not be dependent upon any single piece of legislation. Its status should be-and is-a reflection of its general position in the statute book and because it has been the everyday language of public administration in many parts of Wales for many years.
>
> The whole philosophy behind the Bill has been that the provision of public services in Welsh should be seen as part and parcel of the provision of public services in Wales. The intention is not to establish Welsh as an official language, but to reflect our view that it already is.
>
> We are not, therefore, proposing that Welsh language schemes should he drawn up in order to emphasise the status of Welsh as an official language. They will be prepared because Welsh already enjoys official status, and they will simply illustrate how individual public bodies intend to reflect that fact.
>
> Schemes are important because of the practical measures which they will contain. The basis of the Government's case is, though, that the status of the language must be about more than just the content of schemes.
>
> On Report we became immersed in the concept of a purpose clause. I think that it could be argued that the purpose of this Bill, in part, is to put right the legislative wrongs which have befallen the Welsh language over the past 500 years. The Bill is not, though, a magic wand which we can wave in order to overturn the course of history.

[HL Deb 25.2.93 c 347]

Despite these efforts to reassure the Welsh language lobby, Lord Prys-Davies and other Peers expressed continuing concern over omission from the Bill of a statement conferring official status on the Welsh language:

> My greatest sadness is that the Government did not use the Bill as a vehicle to confer upon the Welsh language the status of an official language in Wales. The Minister has dealt with that matter this afternoon but I believe I am right in saying that there is a strong body of opinion in Wales which is not satisfied with Clause I as it stands and will not be satisfied when they read the comments of the noble Earl. I add only the following. If Parliament continues to deny to the Welsh language the status as such of an official language in Wales, in the long run-and in the not so long run-the fruit of that failure may be bitter. I therefore hope that the Government will still reflect upon the purpose clause tabled bv noble friend Lord Cledwvn.

[HL Deb 25.2.93 c 349]

The Welsh Language Board

The establishment of a statutory Welsh Language Board charged with the function of promoting and facilitating the use of the Welsh Language (clauses 1-4), has been roundly welcomed by a majority of organisations and bodies in Wales. However, certain aspects of the proposed Board's membership and functions gave rise to debate during the Bill's various stages in the Lords.

Membership

As originally set out, clause 1 of the Bill provided for the establishment of a Board whose membership was to "consist of not more than fifteen members appointed by the Secretary of State". In seeking to amend this provision Opposition Peers argued that the future success of the Board would be to a large extent dependent on the ability of its members to inspire confidence in Welsh speaking consumers. They therefore moved an amendment to ensure an independent element amongst the Board's membership, to place a statutory duty on the Secretary of State to consult with appropriate bodies before making appointments to the Board and to insert criteria for the Board's membership [HL Deb 2.2.93 cc 156-157].

On report the Government moved an amendment which went some way towards accepting the above points. Amendment No 4 inserted a new clause 2 into the Bill which provides that:

> 2.-(1) The Board established under section I above (referred to in this Act as "the Board") shall consist of not more than fifteen members appointed by the Secretary of State.
>
> (2) In exercising his power of appointment under subsection (1) above the Secretary of State shall have regard to the desirability of securing that, within the Board's membership, there are reflected both the varying extent to which the Welsh language is used by those living in Wales, and the range of interests of the persons to whom the Board will offer advice.

While accepting that this was an improvement on the original membership provision, Lord Prys-Davies continued to express concern over the absence of an independent element in the Board's membership and the absence of a duty to consult relevant organisations as to their views on membership [HL Deb 18.2.93 c 1272]. On the latter point, Earl Ferrers responded "Personally I think it almost inconceivable that he will not take advice" [HL Deb 18.2.93 c 1272].

Functions

Clause 3 sets out the functions of the proposed Welsh Language Board:

> 3.-(1) The Board shall have the function of promoting and facilitating the use of the Welsh language.
>
> (2) Without prejudice to the generality of subsection (1) above, the Board shall in carrying out the function mentioned there-

(a) advise the Secretary of State on matters concerning the Welsh language;

(b) advise persons exercising functions of a public nature on the ways in which effect may be given 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;

(c)advise those and other persons providing services to the public on the use of the Welsh language in their dealings with the public in Wales.

(3)Subject to the following provisions, the Board may do anything which is incidental or conducive to the performance of its functions, and may in particular-

(a)make grants and loans and give guarantees;

(b)make charges for the provision of advice or other services;

(c)accept gifts of money or other property.

(4)The Board shall not-

(a)make a grant or loan,

(b)give a guarantee, or

(c)acquire or dispose of any interest in land,

except with the approval of the Secretary of State given with the consent of the Treasury.

During the Committee Stage Lord Prys-Davies moved an amendment to replace the word "function" in the above clause with the word "duty" [HL Deb 2.2.93 c 163] and Lord Elis-Thomas sought to include a reference to the Board's advisory role in relation to the private sector and voluntary organisations [HL Deb 2.2.93 c 167]. Both amendments were withdrawn, as was an attempt to insert a reference to the Board's role in reviewing the operation of the Welsh Language Act.

Lord Morris sought an explanation from the Government on the circumstances in which the Secretary of State would issue directions to the Board in accordance with clause 4. Earl Ferrers gave the following response:

Earl Ferrers: The Government obviously want the board to be independent. It is also important that the board is accountable. The Bill gives the board a very wide remit. We believe it is right to ensure that there is proper democratic regulation of how the board carries out its functions. If that is not the case many people in Wales may legitimately ask from whence the board has derived its authority.

The noble Lord, Lord Morris of Castle Morris, has said that we have used a steam-hammer to crack a peanut. That is a glorious phrase but I believe it is a slight exaggeration. The provision we have made concerning directions from the Secretary of State is not unique in legislation that sets up nondepartmental public bodies. I believe it is also the right model for this board and for the operation of the Bill.

The Committee will note that in dealing with the role of the board in agreeing Welsh language schemes and monitoring their operation, have have built in a very considerable element of flexibility. In a number of important places the board is able to proceed as it considers appropriate. It is absolutely right that we should not put the board in a straitjacket; it should be able to tailor its actions to the circumstances of each particular case. But ultimately the board must be accountable to the Secretary of State. That accountability has to be reflected in the Bill; otherwise, the board is just an organisation on its own with enormous powers and there is no facility for reining it back should it go wrong. The powers of direction of the Secretary of State are a very important reserve remedy in the unlikely event that the Secretary of State felt that the board was not conducting itself correctly or could profit from change.

When the Board receives a complaint under Clause 17 about an alleged breach of the scheme, we have provided, as it is necessary to do, for the board to determine whether to investigate that complaint. That would allow the board to dispense with vexatious or groundless complaints. If a complainant were ever to feel that the board had misjudged the importance of his complaint, to whom could he go for a second opinion? Here I believe that the Secretary of State's powers of direction are right because they ensure that he is in a position such that an individual could appeal to him to study his case. If it transpired that the Secretary of State was satisfied that the board had made a mistake he has the powers to act on behalf of the complainant.

I hope that your Lordships will see that those powers of direction for the Secretary of State are not an attempt to render the new Welsh Language Board a servile creature. If that were the case the board would be of no use to anyone. Its function is simply to be an independent champion of the Welsh language, but it must be accountable to the Secretary of State and, through the Secretary of State to Parliament. Clause 3, which follows a pattern which has been used for other non-departmental public bodies, ensures that it is.

[HL Deb 2.2.93 cc 194-195]

Welsh Language Schemes

Clauses 5 to 21 of the Bill require public bodies to prepare Welsh language schemes to be approved by the Board, provide for such schemes to be revised from time to time, and for the Board to investigate complaints arising from them.

"Wherever appropriate in the circumstances and reasonably practicable".

The requirement that public bodies prepare Welsh language schemes to ensure that in the conduct of their business English and Welsh are treated on a basis of equality "so far as is both appropriate in the circumstances and reasonably practicable", (now clause 5) was the subject of a probing amendment moved by Lord Hooson to seek out the precise meaning of the two phrases.

Welsh groups responding to the Bill's provisions expressed concern over the potentially limiting impact of these phrases on the development of Welsh language schemes. The National Language Forum's response comments "That it is appropriate and reasonable wherever and whenever in Wales to expect to conduct public business in Welsh". The Forum concedes that this principle may be more readily implemented in some parts of Wales than others and advocates a flexible time scale for implementation to take account of this [National Language Forum's Response to the Welsh Language Bill 1992/93 (January 1993)].

During the Bill's Committee Stage Lords Prys-Davies and Hooson argued for the deletion of the phrase "both appropriate in the circumstances and" on the basis that it could provide an escape route from the Act for unwilling public authorities. Earl Ferrers gave the following explanation and justification for retaining the two phrases:

I do not believe that any of your Lordships would have argued for unreasonable burdens to be placed upon public bodies. If we are agreed on this policy objective then it is essential that it should be reflected in the Bill, as it is in Clause 4(2) as drafted. Quite apart from the fact that the clause as drafted accurately reflects our intentions in this respect, perhaps I can explain why, in the Government's view, it would be a mistake to see the qualifying phrases, which are the subject of these amendments, as any sort of threat to the Bill's wider objectives.

First, the phrases apply to individual schemes and not to the underlying principle, which is established by the Bill. The principle is not therefore constricted in any way; only the extent to which individual public bodies are required to give effect to it. It is also important that both phrases are present.

The noble Lord, Lord Hooson, was worried about the words "reasonably practicable" and "appropriate". Many measures may be reasonably practicable, but they may not be appropriate given the circumstances of a specific organisation. The phrases have different meanings and both must be present if the duty which is established in the Bill is to correspond to the objectives which we are hoping to achieve. It may help to consider why both phrases are necessary in the light of a concrete example.

It could be argued, for example, that it is "reasonably practicable" for a local authority to recruit a Welsh speaking member of staff to perform a particular Welsh language function, wherever in Wales the body is located. But it may not be appropriate to do so if a local authority in, say, South-East Wales, is only called upon to provide that service once a year. In those circumstances the loccil authority and the board must have the flexibility to consider providing that service in some other way, possibly by recourse to a translation service. It is essential that the Bill can address such practical issues.

Then, as I have already made clear, public bodies will not be able to take a subjective view of what they believe to be,

"appropriate in the circumstances and reasonably practicable".

The interpretation will need to be objective in every case. It will need to have been agreed by the Welsh Language Board, and public bodies must be able to demonstrate that they, have had regard to the board's guidelines. Ultimately that could be tested in the courts.

[HL Deb 2.2.93 c 199-200]

Public Bodies

The requirement to prepare Welsh language schemes is placed by the Bill on "public bodies" notified by the Welsh Language Board (clause 5). Clause 6 defines "public bodies" for the purposes of the Bill.

The omission of government departments from clause 6 was justified by Earl Ferrers on the ground that the enforcement provisions in the Bill rely on the Secretary of State having the power to give directions, and that this could not apply to the Crown as the situation may arise

of the Secretary of State having to direct himself [HL Deb 2.2.93 c 202]. When pressed on the matter during Report, the Earl stated, "I have given the House absolute assurances that government departments providing a service in Wales will be preparing Welsh language schemes" [HL Deb 18.2.93 c 1283].

Opposition Peers also sought to include the privatised utilities within the definition of public bodies. In speaking to an amendment to this end the point was repeatedly made that as providers of essential services and as major employers, the privatised utilities should not be exempt from the requirement to prepare language schemes. The Government rejected the amendment preferring to leave it up to the utilities' to develop schemes voluntarily [HL Deb 2.2.93 c 205-206]. In requesting that the Government reconsider its position over the privatised utilities, Lord Prys-Davies stated:

> "It seems to me that the question of the ownership of the enterprise should not be the determining factor in whether the enterprise should produce a language scheme. The determining factor must be the nature of the service and whether it meets the fundamental needs of the individual." [HL Deb 2.2.93 c 207].

The position of private sector companies who carry out services on behalf of public bodies under compulsory competitive tendering arrangements, in relation to Welsh language schemes, was explained by Earl Ferrers during the Committee Stage:

> **Earl Ferrers**: Again, I find myself in some sympathy with the view that has prompted the amendment. Public bodies now provide services in increasingly diverse ways. They include the award of contracts to private sector organisations for the delivery of services such as refuse collecting, catering and so forth. We are anxious that that type of arrangement does not result in less provision being made for the use of the Welsh languaoe in the delivery of such services. The Bill already ensures that Welsh language schemes cover those types of services. The delivery of a service may be contracted out, but the responsibility for providing it still rests ultimately with the public body. It is the local authority, that has the statutory duty to provide a refuse collection scheme. That remains the case even where it has contracted a private company to carry out the collections. The public body with the responsibility for the service will be required to prepare a scheme and agree it with the board. It may be that excluding part or all of the scheme will fall to the private contractor, but that need not be a problem. The public body, will simply need to specify the requirements as to the use of Welsh as one of the elements of the contract.
>
> Therefore, I think that the amendment proposed by the noble Lord is unnecessary. It will also have the undesirable consequence of requiring the private contractor, once it has won a contract, to approach the board and agree a scheme. That will make such a private company unique in having itself to go through the procedure of preparing a scheme. It would also cut across the statutory responsibility for the delivery of the service, which remains with the public body. The Bill as drafted, therefore, provides for the Welsh language scheme for the service to be determined by the public body before any contract is awarded.
>
> The noble Lord, Lord Prys-Davies, asked three questions. He asked whether the public body will have a duty to put in a tender. If the public body has a duty to carry out such a task and is subcontracting that task to a tenderer, that would have to be included in the tender. He asked whether there was an obligation to monitor the service. As the public body is the body which is responsible for complying with the scheme then, of course, it has the right to monitor what is happening. The noble Lord also asked whether the public body would be able to take these matters into account when awarding contracts. The answer to that question is the same as to the first question. If the public body contracts one of its services and has an obligation to fulfil certain elements of the scheme it will be up to that public body to ensure that the contractor is able to carry, out those obligations, will carry them out and has carried them out.
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> [HL Deb 2.2.93 cc 209-210]

The Government refused to accept amendments to the Bill to include bodies such as the Commission for Racial Equality in Wales, the Equal Opportunities Commission in Wales, the Welsh National Board for Nursing, Health Visiting and Midwifery and the Central Council for Education and Training in Social Work, in the list of public bodies set out in clause 6. However, Viscount St Davids made a commitment on Report that each of the bodies referred to in the amendments would be required to produce Welsh language schemes in due course [HL Deb 18.2.93 c 1287].

Timetable for introduction

In Committee Lord Prys-Davies sought information on the proposed implementation date for Welsh language schemes and received the following reply:

> **Earl Ferrers**: The noble Lord asks a difficult question. It is hoped that the board will be set up within about two months of the Bill becoming law. After that it depends on the speed at which the board can deal with matters in front of it. It would be quite difficult to set a timetable and to give a reasonable indication because it depends on the number of bodies involved and the speed at which matters could be dealt with.

[HL Deb 2.2.93 c 212]

Scheme Guidelines

Clause 9 of the Bill requires the Board to issue guidelines as to the form and content of Welsh language schemes.

The Opposition moved an amendment to try and insert into the Bill general criteria to which Board would have regard when designing these guidelines [HL 4.2.93 c 352] however, the Government has preferred to leave the Board discretion in determining what the guidelines should contain. The Government did accept an amendment to clause 11 of the Bill which requires the Board to revise its guidelines "at such intervals as it thinks fit". Prior to amendment this clause provided that the guidelines could not be revised within five years of being issued.

Sanctions for failure to implement a scheme

During the Committee Stage the Opposition placed great emphasis on the need to give individual members of the public the right to sue for damages when a public body fails to discharge its statutory duty, following the approval of a scheme by the Board or the Secretary of State. Lord Williams moved an amendment to insert this right into the Bill:

> We merely suggest that, if the languages are of equal validity, are to be treated on a basis of equality, or are both official languages, and an individual is alegitimately

aggrieved, he or she should be able to go to the county court and sue for damages. They would of be relatively modest. One is thinking, I suppose. in terms of possibly £500 or £1,000. If the Minister wished to insert such a limit, we would find that unobjectionable.

Consequential to that legal right, power is given to the board to assist such a plaintiff in respect of legal expenses and, for the avoidance of any doubt, if there is a judicial review remedy for the individual, that would be maintained intact. It is important as a matter of principle that it should be understood and reflected in the Bill that those are rights for individuals.

Although the board will draw up schemes, and will have enforcement machinery, as will the Secretary of State, it is the individual who is aggrieved, not the board, not the Secretary of State. I understand of course what the Minister has said, that, in due time, if directions made by the Secretary of State are not complied with, then, by virtue of Clause 19(3), the Secretary of State, as the ultimate weapon, may go to the Divisional Court and ask for judicial review. Because of the underfunding of the court system and the lack of judges able to try these difficult questions, judicial review takes up to two years. An urgent application for judicial review, if one is exceptionally lucky, can get on within one year. So the hurt, the distress, the legitimate complaint, will inure for some time. Apart from that, these are rights for individuals which should, in rare circumstances, give the individual the right to sue in the county court.

It is not a probing amendment; it is not a questioning amendment. We, on this side, with great respect, regard it as fundamental. I beg to move.

[HL Deb 4.2.93 c 381]

On report Earl Ferrers set out the Government's reasons for rejecting this approach:

Earl Ferrers: My Lords, the contents of the amendment reflect a difference of approach between the Government and some noble Lords opposite as to how the objectives of the Bill can most effectively be achieved. The Government believe that having recourse to the courts is not the best means of overcoming practical difficulties which may be faced by Welsh speakers in receiving a service in Welsh. We believe that the difficulties are best overcome by providing a means by which questions of this nature can be rapidly investigated by a body which will develop considerable expertise in resolving just that kind of problem.

I think we all agree that individuals must have effective means of redress. I cannot see the court authorities-no matter how well blessed they may be with Welsh-speaking Welshmen-being able to compete with the expertise which would be available to the Welsh Language Board in resolving disputes of this nature speedily and effectively.

I suggest also that we ought to consider the means of redress which the Bill provides by comparison with other complaints against investigating machinery. The noble Lord, Lord Prys-Davies, referred to the local government ombudsman, and that is one example. I am sure that we all agree that the ombudsman provides an effective means of resolving disputes.

However, he is able to pursue his role without having recourse to the enforcement powers which will be available to the board.

The board's ability to investigate complaints is otherwise similar to that which is available to the ombudsman. I see no particular reason to think that the board will not become equally effective, if not more effective, as an agent for investigation of complaints concerning the Welsh language. It would lead to confusion were there to be a parallel route for seeking redress in the courts.

The noble Lord, Lord Williams of Mostyn, asked two questions. First, I think he asked-and he will correct me if I am wrong-whether an individual can take a body to judicial review. I think the answer is that that is correct because anyone can take a public body to judicial review.

The other point that he asked was about compensation. In theory and in fact the board can recommend compensation. It will have to take into account the obligations which may

> be laid upon the body concerned by statute as to whether that body is enabled to pay compensation. If it cannot pay compensation the board would not suggest that it should. If the board suggested that it should and it could, that is still only a suggestion. It is not an enforcing power.

[HL 18.2.93 c 1306-1307]

Race Relations Act 1976

Lord Prys-Davies sought to insert a new clause into the Bill in order to amend the Race Relations Act [HL Deb 4.2.93 c 390]. In effect, his amendment would have enabled bodies to lawfully stipulate that relative proficiency in the Welsh Language is a condition of employment without being in breach of Section 4 of the 1976 Act. Such a provision was also included in the Welsh Language Board's draft Welsh Language Bill ["Recommendations for a new Welsh Language Act" 1991 (para 74)]. Viscount St Davids explained the Government's objections to this amendment:

> I therefore have considerable sympathy with the objectives underlining this amendment. However, I do not believe that it is necessary to amend the Bill in this way. What is being suggested by the amendment is a clarification of the justification criterion contained in the Race Relations Act 1976. First, the concept of what is justifiable in this context is already to some extent defined by case law. Secondly, the Government's view is that, if required, it would be far preferable for clarification to be achieved by means of non-statutory guidance. I would expect the Welsh Language Board to have an important input in the content of such guidance. I understand that the board would expect the commission to play an important part in the guidance to which I have referred.

[HL Deb 4.2.93 c 393]

The use of Welsh in legal proceedings

During the Second Reading debate on the Bill the Government made a commitment to amend clause 22 to cover the use of written as well as spoken Welsh during legal proceedings in Wales. This was not done during the Bill's passage through the Lords and so an amendment is to be expected during the Commons Committee stage.

Welsh language pressure groups have viewed the Bill's lack of provision concerning the rights of Welsh speaking defendants to have their trials conducted before a Welsh speaking jury as highly significant. The Opposition moved an amendment to give Welsh speaking defendants this right and, on moving the amendment, Lord Williams advised "If the amendment is not accepted, the words about equal validity and about both languages being official will be exposed as a sham" [HL Deb 4.2.93 c 397].

Earl Ferrers, on behalf of the Government spoke, against the amendment during Committee and on Report arguing that it would interfere with the random selection of jurors and that it would not be in the interests of British justice to restrict the pool from which jurors are drawn to only those who can speak Welsh. Lord Williams withdrew the amendment but remarked that the arguments raised against it were "insubstantial and scanty" [HL Deb 18.2.93 c 1311].

Welsh Medium Education

The Bill contains no provisions concerning the right of individuals to receive Welsh medium education in Wales. The Welsh Language Education Development Committee (Pwyllgor Datblygu Addysg Gymraeg) expressed specific concern over this issue in a letter to Lord Prys-Davies of 15 January 1993:

> 2.2 that the Board will not have sufficient power to ensure that the bodies responsible for education (i.e. the Local Education Authorities at present but, eventually, it would appear, the Schools Funding Council in Wales):
>
> (a) will be required to establish Welsh-medium provision in accordance with parental wishes where this is not currently available;
> (b) will be required to guarantee, where bilingual schools are currently available, that Welsh-medium provision will continue;
>
> 2.3 that the Board will not have sufficient power to require Funding Councils for further and higher education in Wales to recognise the costs of providing for students who would opt to pursue vocational and professional courses through the medium of Welsh or for employees who would be keen to receive training both in Welsh and through the medium of Welsh in order to be able to respond to demands from the public; and therefore
>
> 2.4 that Wales will not have a bilingual workforce able to respond to increasing public demand, e.g. district nurses and the doctors who employ them, the employees of monopoly companies such as BT who are able to act in accordance with the wishes of the public.

Lord Elis-Thomas sought to amend the Bill to give the Welsh Language Board a role in providing advice to persons seeking to extend the provision of Welsh medium education, with a view to ensuring that such provision is available within a reasonable travelling distance of all pupils and students who desire it [HL Deb 2.2.93 c 176]. He described the amendment as "a compromise to draw attention to the need to develop further the whole area of Welsh medium education". Earl Ferrers gave the Governments's response:

> I can give the noble Lord, Lord Elis-Thomas, the satisfaction that he seeks in the amendment. I am aware of the anxiety surrounding the provision of Welsh medium education in Wales and indeed of the interest that has been expressed in the way that the matter is dealt with in

the Bill. But the Committee will be aware that in preparing the Bill the Government have been at considerable pains to avoid references to particular services. That is for one good reason: it is our intention that the Bill should apply to them all. I am only too happy to reassure the Committee that Welsh medium education is among those services. The organisations which are charged with the delivery of Welsh medium education will be among those which the board will advise. Welsh medium education will be included within the schemes. It will also be a subject on which the board will be expected to prepare guidelines. The effect of guidelines will be to assist the providers of education in carrying out their duties under the Education Act 1944.

[HL Deb 2.2.93 c 180]

Lord Elis-Thomas returned to the issue of Welsh medium education at the Bill's Report Stage where he expressed particular concern over the role of the Board in relation to language schemes to be developed by the various bodies involved in education policy and provision. In response, Earl Ferrers clarified the inter-relationship between the bodies concerned:

Earl Ferrers: My Lords, both Amendments Nos. 13 and 35 refer to the important matter of education. It is right to point out the way in which the Bill deals with education which is one of the issues concerning many people in Wales who have the interests of the Welsh language at heart. I am happy to be able to confirm once again therefore that schemes will extend to cover Welsh medium education. Every local education authority will be required to produce a scheme covering its policies in Welsh medium schools having regard to guidelines produced by the Welsh Language Board. It is not our intention to amend the terms of the 1944 Education Act under which Welsh medium education is provided. The role of the board in agreeing schemes will, however, ensure that every LEA is better able to discharge its responsibilities under that Act.

The duty to produce schemes will fall upon all bodies involved in the education service. The content of those schemes will be dependent upon the particular services for which those bodies are responsible. The responsibility to devise policies on the provision of Welsh medium education would primarily fall to local education authorities, which, as the noble Lord, Lord Elis-Thomas, said have done such good work, given their overall responsibilities for educational provision.

The noble Lord, Lord Morris of Castle Morris, said that there might be confusion. I believe that that confusion will be reduced by the role of the board. As I said, local education authorities will prepare schemes which will govern the provision of Welsh medium education. If schools desired to opt out rather than to stay in the grant-maintaihed sector, they would be responsible for their funding and a schools funding council would also be required to produce a scheme. Therefore, schemes will assist in ensuring continuity during any transitional period.

The statement of curriculum policy may well be one of the matters which the board will wish to take into account in considering schemes. It will also of course need to take account of the position which Welsh enjoys as a subject under the national curriculum. That is a matter already established in law. It is not therefore a matter which schemes will influence in any way.

Although the new curriculum body will be required to prepare a scheme, I see no need to require the board to consult ACAC on all matters relating to education. I hate using acronyms. The noble Lord, Lord Elis-Thomas, was kind enough to do so, When I tried to find out what ACAC stood for, it was completely impossible for me to use the words. The noble Lord, Lord Elis-Thomas, has been good enough to say what they are and I do not wish to defile his interpretation by trying to repeat the words.

It is not necessary for the board to consult ACAC on all matters relating to education. We are not after all requiring the board to consult any other body during the course of its duties. Despite the importance of education, I see little justification in requiring the board to consult the new curriculum authority.

The noble Lord asked why the new curriculum authority has not yet been included. The Education Bill is still before another place and has not yet received Royal Assent. Therefore, the body does not yet exist.

The new ACAC will have quite different responsibilities from those of the board. Its function would be to advise on curriculum and assessment matters. These are not therefore, matters with which the board will need to be concerned. Similarly, administrative matters concerning the provision of Welsh medium education are matters on which we expect the board to develop expertise.

Individual schools will also be required to produce schemes and these will need to reflect the services which they provide to the public. We would expect them to extend to dealing with queries from parents who may wish to communicate with the school in Welsh and to such matters as the use of bilingual signs. These are, of course, merely examples of the sort of matters which may need to be included in schemes. It would be for the Welsh Language Board to consider the matter in greater detail when it produces the guidelines which are required under the terms

of the Bill. The guidelines will be subject to widespread consultation before they are submitted to the Secretary of State and will then have to be approved by Parliament. The guidelines would not, of course, affect the position of Welsh in the national curriculum.

Although LEA schemes may also need to refer to their own dealings with members of the public, the Government believe that the key issue which they will eed to address is the provision of Welsh medium education in their area. Clause 12 of the Bill requires public bodies to consult with Welsh-speaking consumers during the course of the preparation of schemes. In the case of education, we would therefore expect LEAs to consult patents. The Government believe that that should help to ensure that the wishes of parents are reflected as closely as possible in the pattern of Welsh medium provision in all areas of Wales.

The Welsh Language Board's guidelines will not, though, impose the same pattern of Welsh medium provision in all areas of Wales. That is not what the 1944 Education Act requires and is not what we intend. Schemes covering education will need to be sensitive to local circumstances. The pattern of Welsh medium provision in Gwynedd can, therefore, be expected to be different from the pattern in Gwent, and we can expect the patterns in different areas to change over time. The inclusion of Welsh medium education as a matter to be covered by schemes will, though, ensure that the pattern of provision in both areas can evolve in response to the wishes of parents.

The duty which, under current arrangements, would be placed on the LEAs to devise schemes for Welsh medium education would also be placed on a schools funding council for Wales should it be established in future. I am afraid that I have given your Lordships rather a long answer but this is a complicated and sensitive subject. Your Lordships may wish to know what is our position.

[HL Deb 18.2.93 c 1291-1293]

Conclusion

When first issued the Bill was roundly criticised by Welsh language pressure groups as being too weak to effectively enhance the language in any way. The failure to secure any major amendments to the areas which have caused most concern, such as the inclusion of a statement referring to the language's official status in Wales, has given rise to further disappointment amongst these groups.

At Third Reading Lord Geraint summed up Welsh feeling towards the Bill as follows:

If the Bill continues its passage without giving Welsh the status of an official language in Wales, it will be decisively rejected. It has already been judged unacceptable in its present form by all the organisations in the Welsh Language Forum, as well as by other religious and cultural leaders throughout Wales and by the mass of public opinion. In my view, in short, it fails to come up to Welsh expectations.

The Welsh verdict on the Bill will be clear cut. As has been acknowledged by both sides of this House, we have

had four-and-a-half centuries of foul play, rigged rules and biased referees. That was to change with this Bill, but it has not. The Government's famous sense of fair play has failed. Make no mistake, the anger will be deep, the disappointment great, the result disharmony in Wales.

For nations to be good neighbours, especially when those nations are part of the same state, there must be mutual respect, mutual civility and mutual recognition. We looked for this Bill to establish a framework for that, but we do not have it. We understand from the Government's spokesman, Sir Wyn Roberts, that the Government sought to improve the Bill, but in this House we are told that Welsh is still not to be recognised in English law as an official language in Wales.

I say to Ministers, "You have both been courteous in manner, but you have not been just, fair or courteous in content. Saying 'no' nicely is not enough when justice demands you to say 'yes'". Wales wants a Welsh Language Bill-we are still waiting to see one.

[HL Deb 25.2.93 c 356]

It is therefore apparent that further efforts will be made to amend the Bill during its passage through the Commons.

Appendix

Part I

Clause 1 establishes Bwrdd yr Iaith Gymraeg ("the Board").

Clause 2 makes provision as to the membership of the Board.

Clause 3 gives the Board the function of promoting and facilitating the use of the Welsh language and, in particular, of advising the Secretary of State and other bodies on the use of that language. The Board is empowered to receive monies and to give financial assistance by way of grants or loans or guarantees.

Clause 4 requires the Board to comply with directions from the Secretary of State and to provide him with such information as he may require.

Schedule 1 provides for the constitution of the Board.

Part II

Clause 5 requires public bodies notified by the Board to prepare Welsh language schemes for the purpose of giving effect, wherever appropriate in the circumstances and reasonably practicable, to the principle that Welsh and English should be treated on a basis of equality.

Clause 6 defines "public bodies" for the purposes of the Bill and provides for the Secretary of State to specify further bodies by order as they appear to him to be exercising functions of a public nature.

Clause 7 empowers the Board to notify a public body, with regard to any of its services, that it is required to prepare and submit a scheme to the Board within a specified time limit, and requires the Board to send such a body a copy of its guidelines.

Clause 8 describes the procedure for registering objections to a time limit notified to the body under Clause 7, and for the resolution of disputes.

Clause 9 requires the Board to issue guidelines as to the form and content of schemes, subject to their approval by the Secretary of State.

Clause 10 requires the Board to consult on its draft guidelines, and describes the procedure for their approval by the Secretary of State and by Parliament.

Clause 11 requires the Board to revise its guidelines at such intervals as it thinks fit.

Clause 12 requires a notified public body to submit a scheme to the Board within an agreed time limit, and requires such a scheme to include certain supplementary information.

Clause 13 requires a public body preparing a scheme to ascertain the views of Welsh-speakers and to comply with directions from the Board in relation to this duty.

Clause 14 describes the procedure for approval and/or modification of schemes by the Board and for the resolution of disputes by the Secretary of State, including a power for him to decide on the terms of the scheme.

Clause 15 enables the Board, following the issue of revised guidelines, to require public bodies to review their schemes, and to require revised schemes to be submitted.

Clause 16 describes the procedure for amending schemes (on the initiative of either the Board or the public body) where the functions or circumstances of the public body have changed, and empowers the Secretary of State to resolve disputes.

Clauses 17 and 18 provide for the Board to investigate non-compliance with schemes, either following a complaint or otherwise.

Clause 19 provides for the Board to make reports on investigations, which may include recommendations.

Clause 20 provides for the Secretary of State to give directions where the Board's recommendations following an investigation have not been acted upon.

Clause 21 sets out the application of the Bill to the Crown where it has adopted or proposes to adopt a Welsh language scheme.

Part III

Clause 22 provides that the Welsh language may be spoken in court, subject to requisite notice being given.

Clause 23 provides for the Lord Chancellor to make rules prescribing translations of oaths and affirmations in Welsh for use in court.

Clause 24 enables the Lord Chancellor to make rules to provide for interpreters in courts in Wales.

Clause 25 confers power on Ministers to prescribe alternative Welsh names for statutory bodies, offices or places.

Clause 26 enables Ministers to prescribe a form of a document or form of words, which is to be or may be used for an official, public or other legal purpose, in Welsh, or partly in Welsh and partly in English.

Clause 27 provides that anything done in Welsh by virtue or clause 26 shall be of like effect as if done in English and makes supplementary provisions to clauses 25 and 26.

Clause 28 enables Industrial and Provident Societies to adopt fully Welsh titles.

Clause 29 enables Credit Unions to adopt fully Welsh titles.

Clause 30 sets out the procedure by which documents may be served under Part II of, or Schedule 1 to, the Bill.

Clause 31 and Schedule 2 repeal the enactments listed in that Schedule and make consequential amendments. The Laws in Wales Acts of 1535 and 1542 are repealed as spent.

Clause 32 provides for the Bill to come into force two months after Royal Assent.

Bibliography

1. Legal Statutes of the Welsh Language
Hughes Parry Committee Report Cmnd 2785, October 1965

2. Recommendations for a new Welsh Language Act
Welsh Language Board, February 1991

3. Welsh Language Bill 1993
Welsh Language Development Committee's letter to Lord Prys-Davies, 15 January 1993

4. Parliamentary Briefing: The Welsh Language Bill 1993
Welsh Consumer Council, January 1993

5. Parliamentary Briefing: The Welsh Language Bill 1993
The Royal National Eistedd fod of Wales, January 1993

6. Response to the Welsh Language Bill 1993
The National Language Forum, January 1993

7. Government's Language Bill: Welsh Language Board's Response
Welsh Language Board, December 1992

8. Plaid call for a definitive statement and commitment for comprehensive new language Act

Plaid Cymru Press Notice 30.1.93

9. Welsh Language Act: Second Reading
Wales Council for Voluntary Action, January 1993