

# GOVERNANCE AND PARTICIPATION: KEY IMPERATIVES WHICH MAY FLATTER TO DECEIVE

by Colin H Williams  
williamsch@cardiff.ac.uk  
School of Welsh, Cardiff University

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## PAPER SUMMARY

1. The statutory elements of the Welsh Language Act of 1993: The Welsh Language Board and Language Schemes. Query just how much value has been added to public administration and bilingual service delivery by the adoption of such schemes? Has language-related behaviour changed? Whither the notion of language rights?
2. UK Constitutional Devolution and its impact on language policy.
3. 'From Act to Action Research Project' (2005-7) investigated the process by which the Language Schemes became operational, how they were received within their host authority, what difficulties were experienced in carrying out the requirements of the Language Schemes and how such schemes have been modified both in the light of experience and by the necessity of having to be resubmitted and reapproved by the Welsh Language Board.
4. Key determinants of the Welsh-based case studies and main findings.
5. Case Study: Home Office Language Scheme; leadership; staffing; partnership and resources; processes;
6. The regulatory mechanisms and further options currently under consideration following increased legislative devolution granted to the National Assembly for Wales.
7. a) to preserve the WLB as a central agency for lan-

guage policy and planning, at arm's length from the Government of Wales; b) to integrate fully the responsibilities of the WLB within the Assembly Executive; c) to establish the office of Welsh Language Commissioner; d) to establish a Commission for the Welsh Language which would absorb the WLB *in toto* housing both promotional and regulatory aspects of language policy and planning, but with additional powers and responsibilities as determined by new legislation.

8. Current Legislative Considerations.
9. Conclusion and Implications.

## INTRODUCTION

The principal thrust of the argument presented here is that within the limitations of the Welsh Language Act of 1993, a great deal of innovative and regulatory work has been undertaken by the responsible official agencies in partnership with public bodies to promote Welsh and provide bilingual services. From an organizational perspective the language landscape has changed markedly. However, from the perspective of the individual citizen the current language planning and legislative framework flatters to deceive on three grounds. First, it is not clear what is the nature and extent of presumed language 'rights' which are cable of being exercised by citizens. Secondly, when tested the current regulatory aspects of language scheme compliance are not as robust as is often presumed. Thirdly the current optimism regarding the strengthening of language legislation, ex-

tending the scope of language schemes into other domains and reconfiguring the language planning agencies as more powerful regulatory instruments is very dependent on the political process. This contingent position may result in a far more robust role and position for the Welsh language in society, but it may also herald a new set of challenges and the forging of new relationships as the language becomes 'mainstreamed' and integrated into the equalities agenda. This will call for a more syncretic and multi-faceted analysis of the role of Welsh within an increasingly plural society. It will also demand a more critical interpretation of the response of both Welsh and UK governments, so that the political rhetoric in favour of constructing a bilingual society is matched both by the allocation of adequate funding so to do and the political will to sustain the project as an integral element of national policy.

This paper will focus on the statutory elements of the Welsh Language Act of 1993 and evaluate the various regulatory options currently under consideration following various structural reforms and increased legislative devolution granted to the National Assembly for Wales as part of the constitutional evolution of the UK.<sup>1</sup> It will argue that while issues of governance have been addressed of late (see Williams, 2007) those of civic participation are under developed at present.

The Welsh Language Act 1993 provided a statutory framework for the treatment of English and Welsh on the basis of equality.<sup>2</sup> Its chief policy instrument was the re-fashioned and strengthened Welsh Language Board, established on 21 December 1993, as a non-departmental statutory organisation. It was funded by a grant from the Welsh Office, which, for example, in the year ending 31 March 1998, prior to devolution, totalled £5,756,000. It had three main duties:

1. Advising organisations which were preparing language schemes on the mechanism of operating the central principle of the Act, that the Welsh and English languages should be treated on a basis of equality.
2. Advising those who provide services to the public in Wales on issues relevant to the Welsh language.
3. Advising central Government on issues relating to the Welsh language.

The Board's primary goal is to enable the language to become self-sustaining and secure as a medium of communication in Wales. It has set itself four priorities; 1) to increase the numbers of Welsh-speakers; 2) to provide more opportunities to use the language; and 3)

change the habits of language use and encourage people to take advantage of the opportunities provided, and 4) to strengthen Welsh as a community language. The eleven Board members were appointed by the Secretary of State for Wales and they devoted two days a month to the activities of this quango. The day to day work of the Board was undertaken by 30 staff members divided into seven areas of responsibility, namely Policy, Public and Voluntary Sector, Grants and Private Sector, Education and Training, Marketing and Communication, Finance, Administration.

The 1993 Act details key steps to be taken by the WLB and by public sector bodies in the preparation of Welsh language schemes, which are designed to implement the central principle of the Act, which is to treat Welsh and English on the basis of equality. In this paper I will focus on the implementation of language schemes as a method of evaluating to what extent administrative support encourages the development of language choice and the realization of Welsh as a language of work and service provision within the system.

However, this obligation is not absolute; public bodies need only implement the principle 'so far as is both appropriate in the circumstances and reasonably practicable'. The Act provides that the Board must issue guidelines as to the form and content of schemes, to which each public body must have regard in preparing their scheme, that the public body must carry out consultations in the preparation of the scheme, and the scheme must be submitted to the Board for approval. The guidelines require details on how the body's scheme will deal with the Welsh-speaking public, in terms of correspondence, telephone communication, the conduct of meetings, together with the organisation's identity, iconography, signage, publishing and printing material, official notices, press notices, publicity and advertising.

Between 1995 and 1999, 67 language schemes had been approved including all 22 local authorities. On the eve of devolution notices had been issued to a further 59 bodies to prepare schemes. Under the spirit of the 1993 Act, the Board had also developed partnerships with the 22 Unitary Authorities through Rhwydiath (Network), with the Welsh Consumer Council, the Welsh Council for Voluntary Action and with a range of private sector organisations. During the financial year 1997-97 grants totalling £2,254,792 were distributed under the Board's main grants scheme to organisations as varied as the National Eisteddfod, the Welsh Books Council and Shelter Cymru (Welsh Language Board, 1998).

The Board also had the right to extend its remit in

other sectors covered by the Act, and had given priority to education and training. By June 1998 the Welsh education schemes of two local authorities had been approved and a further 15 were being developed (Welsh Language Board, 1998). Further and higher education colleges, together with Welsh-medium pre-school provision have also received attention. Between 1998 and its incorporation into the NAFW in 2006, Education Learning Wales (ELWa), with input from the Board, had co-ordinated a national strategy for Welsh for Adults, and this sector benefited from a more robust and systematic provision of service, accreditation of Adult Tutors, resource development and strategic intervention related to skills acquisition in key areas of the economy, such as insurance and banking, retail sales and the legal profession. In total grants of £2,027,000 were distributed in the year 1997-98 to local authorities to promote Welsh language education.

## THE NATIONAL ASSEMBLY FOR WALES

On devolution in 1999 many of the functions previously entrusted to the Welsh Office were transferred to the National Assembly for Wales, a deliberative body which was established and still functions as a bilingual institution. This puts into operative effect the reality of two official languages for governance as acknowledged in the Welsh Language Act of 1993. A key question was whether or not the Assembly would have the authority to grant to the Welsh Language Board the right and the duty to monitor Assembly deliberations and actions with regard to the Welsh language. The Assembly has three types of functions under the current statutory arrangements: a) Functions relating to the establishment of the regulatory framework (Sections 8, 9, 10, 11); b) Adjudicative functions (between the Board and public bodies) in preparing and revising language schemes (Sections 14, 15, 16); c) Functions relating to the enforcement of the terms of language schemes (Section 20). The Board became answerable to the Minister for Culture, the Welsh Language and Sport and received an annual remit letter which detailed its priorities for the short term. In most cases such letters reflected the advice and problem areas identified by the Board as indicated to the Minister in the previous year.

Devolution has ushered in a new era of language planning, a political commitment to establish a bilingual society and a whole series of, as yet, unresolved issues, which stem directly from new forms of governance, and changes in the political landscape. The two most important issues are the future of the Welsh Language Board

and the need for fresh regulatory arrangements consequent to the Government of Wales Act 2006 which granted substantially enhanced legislative powers to the National Assembly for Wales.<sup>3</sup> The 2006 Act transferred additional responsibilities to the Assembly to legislate in specific areas, and in the period 2008-2010 it is anticipated that legislative powers in respect of the formulation of language and education policy in Wales will also be transferred.<sup>4</sup> Current negotiations prompted by the Government of Wales Act 2006, suggest that the Welsh language should be a distinct policy area under the Welsh Government; this would require an 'Orders in Council'. Such 'Orders' are measures and not acts as such and it is wholly possible to identify the specific issues for which the Assembly would have statutory responsibility in ruling, say on linguistic matters, or education. Only those elements reserved either to Parliament or to the Secretary of State would be exempted from Assembly control.

Elsewhere I have detailed the steps necessary for such legislative powers to be enacted through the current preferred instrument of a Legislative Competence Order, (LCO) (Williams, 2007).<sup>5</sup> Current expectations are that the Welsh language will be identified as an LCO theme by late Summer 2008 and that the details of proposed legislation will be known by late 2010.<sup>6</sup>

In the first part of the paper I want to focus on the current operation of the Welsh language schemes as the principal instrument by which language policy is implemented. In the second part I want to evaluate the four possible options for future regulatory reform which are under currently review.

## LANGUAGE SCHEMES

The language scheme is the principal statutory instrument given to the WLB by the Welsh Language Act 1993 whereby the improvement in the provision of bilingual services may be determined. When named, a public body has to prepare a language scheme in accordance with WLB guidelines, which details how it proposes to provide a Welsh medium/bilingual service to its customers. Once this has gone out to general consultation and agreed with the WLB, the scheme becomes operative and subject to periodic review every five years or so. To date over 351 language schemes have been approved by the Welsh Language Board and they cover named institutions within Wales and those official departments and agencies who, though located elsewhere within the UK, serve the Welsh populace. In May 2008 a further 58 institutions will be named and required to prepare

language schemes.<sup>7</sup> It is important to recognise that the legislation pertaining to the interests of the Welsh language was passed by the UK parliament, and unlike the Gaelic Language Act of 2006 is not restricted to bodies operating within the national territory ( whether Scotland or Wales) but rather is state-wide.

It is recognised that many agreed language schemes can remain symbols of good intent rather than genuine services at the point of local demand. This not only reflects an inefficient delivery of service but also suggests an absence of genuine participatory democracy. This is why I make the claim that such intervention can flatter only to deceive. Secondly there is a critical need to monitor the aims and impact of language schemes, whether at UK, Welsh national or local government level, for many such schemes are now being renegotiated as they enter their renewal phase. The crunch question is just how much value has been added to public administration and bilingual service delivery by the adoption of such schemes? Has language-related behaviour changed? More philosophically if it can be shown that language issues are rooted within a national infrastructure and not conceived as 'add-ons' to an already over-worked if not overwhelmed public service., then devolution's promise of strengthening empowerment, ownership, participation and partnership will have been realised.

Recent research undertaken within the 'From Act to Action' project has provided a great deal of information on the working of the language schemes<sup>8</sup>. Here I present two types of case study. The first is an overall review of eight representative Welsh public authorities who have implemented language schemes in accordance with the requirements of the Welsh Language Act 1993 and whose statutory provisions are overseen by the WLB. Investigative work on the operation and implementation of these language schemes was undertaken within five Local Authorities namely Caerffili, Conwy, Gwynedd, Carmarthen and Cardiff. In addition research was undertaken within Carmarthen Health Board, Pembroke National Park Authority and the North Wales Police Force.

At one end of the language continuum stands Gwynedd Council where 69% of the population can speak Welsh and 60% of residents are able to read, write and speak Welsh. The Council's internal administration is conducted primarily through the medium of Welsh. This, if anywhere, should reveal to what extent it is both desirable and feasible to conduct Local Authority transactions and provide public services in a fully functional

bilingual manner. Secondly, the project team analysed Carmarthenshire, a very populous Welsh speaking county with c.50.39% of its population able to speak Welsh and 39.9% able to read, write and speak Welsh. Both Gwynedd and Carmarthen, together with their chief towns, Caernarfon, Bangor and Carmarthen, constitute historically significant actors in the promotion of Welsh medium services, bilingual education and are perceived by the general public as logical contexts wherein Welsh medium services would be provided and utilized to a greater extent than one might anticipate in many other parts of Wales. The third case study, Conwy, has c.30% of its population as Welsh speaking with 23% able to read write and speak Welsh. This is a linguistically divided county with a preponderance of Welsh speakers in the upland, more rural, districts and an overwhelming concentration of English speakers on the coastal fringe. Yet even within the urban coastal fringe there is a greater concentration of Welsh speakers per square kilometre than in the upland tracts. This has clear implications for the provision of services and for bilingual facilities and is a reminder that planners should address issues of spatial concentration and density in addition to the proportionate dominance so beloved of mapped census returns on language capacities. The fourth case study, Caerffili, is a modern town, which acts as suburban, overspill development for neighbouring Cardiff, just over the mountain to the south. In its industrial heyday it was an archetypical coal mining and railway centre and thus it is representative of the more prosperous coalfield communities which following partial deindustrialisation have become transformed into relatively diversified local economies. Its Welsh speaking population at 11.2% in 2001, appears low, but in numerical terms this population has doubled in ten years from 9,710 to 18, 237 a proportionate increase of 5.2%, and thus one of the most significant in Wales. Fully 8.52% of its population is reported as able to read, speak and write Welsh. The final case study is that of Cardiff, the dynamic capital of Wales. Here 11% of the population declare themselves able to speak Welsh, while 8.75% are reported as able to read, write and speak Welsh. Cardiff acts as a magnet for young well qualified Welsh speakers from all over Wales and thus could be said to represent an alternative sociolinguistic context than that which normally prevails within the country.

The predominantly Welsh speaking counties, such as Gwynedd, Carmarthen and Conwy have lost population; in Carmarthenshire's case a particularly severe loss of 5,025 (14.5%) between 1991 and 2001. By contrast

both Caerffili and Cardiff have gained considerably. In Caerffili's case an additional 8,527 (5.2%) and in Cardiff's case an extra 14,415 (4.4%). In part this is due to the educational policies of the Local Authorities in providing bilingual schools, in part it is due to considerable in-migration from other parts of Wales and in part it is the effect of Welsh Adult Education classes, many of whose students are the parents and other relatives of children attending Welsh medium schools from non-Welsh speaking homes. Each of these case studies thus represents a different phase and context in the vicissitudes of the fortunes of the Welsh language. No claim is made here that they are entirely representative of the national picture, but they are sufficiently diverse as to allow some measure of confidence in judging to what extent the provisions of the Welsh Language Act, 1993, have been put into action by the local authorities.

The research investigated the process by which the Language Schemes became operational, how they were received within their host authority, what difficulties were experienced in carrying out the requirements of the Language Schemes and how such schemes have been modified both in the light of experience and by the necessity of their having to be resubmitted and re-approved by the Welsh Language Board. In each case in-depth interviews were held with civil servants and local government officers, especially the Language Officer responsible for the scheme, together with other appropriate personnel from within the Unitary Authority or the Public Body. In most cases the views of selected political representatives at County Council level have also been sought. The corresponding case officer at the Welsh Language Board, together with the sectional heads and senior managers of the WLB, have also been interviewed. Full and free access to the case files and policy papers of the WLB was also granted, but this paper does not repeat the details of individual, confidential correspondence. Such material has been used to ascertain the nature of the issues involved in navigating Language Schemes through the administration of Local Government and Public Bodies in Wales. It has also been used to gauge the tenor or character of the dialogue to judge to what extent the Local Authorities were active supporters or reluctant reformers in the implementation of the requirements of the Welsh Language Act concerning the provision of a bilingual service. The general findings will suffice in this discussion of new forms of governance and participation. By and large the language schemes were successful to the degree that the following key determinants were supportive.

## KEY DETERMINANTS OF THE CASES STUDIES

- Capacity building and ownership of the language scheme
- The crucial role of staffing policies and of managerial attitudes
- Very different institutional mechanisms – but very similar challenges for individual authorities
- Supply and demand of bilingual services
- Position/status of minority language within the organizations

## CENTRAL FINDINGS FOR WALES

- Language schemes operate well at a procedural level
- Official complaints to the WLB are handled professionally and with integrity
- Relatively wide variation in terms of implementation within the organizations
- Internal arrangements also vary considerably
- Stronger organizations appreciate the interactive dialogue with the WLB
- Weaker organizations argue that the WLB should be more pro-active and involved, adopting a firmer regulatory approach to lack of compliance in language scheme implementation
- Evolving network of local government language officers allows for some degree of flexibility and relative independence from WLB initiatives
- Need for a debate on other aspects of language legislation
- Public often confused as to what are their 'rights' and whose responsibility it is to regulate language schemes.

In this research no systematic attempt has been made to ascertain the views of the general public or of specialist agencies involved in the delivery of a bilingual public service. That lay beyond the brief of this research enquiry. At times therefore it can appear that the implementation of the Language Schemes is wholly encompassed within the triangular relationship created between a Local Authority, its Language Officers and the decisions and perceptions of Welsh Language Board members and staff. This is clearly not the whole picture. But it is my contention that unless the principal partners enjoy a constructive dialogue whereby the statutory obligations of the agreed Language Schemes are fully recognised

and implemented, then it is unlikely that the general public will be in a position to maximise its assumed rights in the provision of bilingual services.

## CASE STUDY: HOME OFFICE LANGUAGE SCHEME

A second type of case study involves those UK-wide government departments who have a statutory remit to serve Wales. Again I emphasise below the role of key determinants in triggering action and compliance with the agreed language scheme. In this paper I have chosen to report on the Home Office, the largest department which has a significant impact on the daily lives of residents in Wales as elsewhere in the UK. The current Home Office language scheme was approved by the Welsh Language Board on the 14<sup>th</sup> of January 2002. During the initial period between notification and approval, the Home Office gave the impression that they were reluctant to operationalise their plans as their final scheme had not been given full approval. There followed a difficult period where members of the public, other government departments and the WLB became frustrated at the lack of progress. Fairly regular correspondence between the WLB and the Head of the Information Services Group at the Home Office intensified from January 2000 onwards when the WLB insisted on “asking for a formal explanation for the long delay in presenting the Report on consultation and the final Scheme for approval.” (Letter dated 31 January 2000, refs. 1304/RD/8/1/7). The scheme by then was three years late in being submitted for approval.

In February 2005, the Secretary of State, Charles Clarke, in a letter to the Chair of the WLB, wrote “Under the terms of the Home Office Welsh Language Scheme we are required to formally notify you that the schemes has been officially approved by the Department’s management board and minister. We are pleased to confirm that this is now the case. The Home Office scheme was fully endorsed by the Welsh Language Board in January 2002 and we have been fully applying the principles of the scheme ever since. However, it has been brought to our attention that formal approval was a necessary part of the implementation process and can only apologise for the delay in taking this forward. We will continue to apply the principles of the Scheme and report to you on a regular basis.”

## LEADERSHIP/CO-ORDINATION/ MANAGEMENT

In accordance with the requirements of the Scheme, the Minister, together with the Home Office Management Board is responsible for the corporate co-ordination of the implementation and monitoring of the Scheme. The operation of the scheme is monitored centrally by the Welsh Language Co-ordinator in the Communication Directorate. There is an annual monitoring exercise across the Home Office, in which Directorates are required to report on their performance, compared to the standards set out in this Scheme.

The monitoring provisions include those who provide or administer services on behalf of the organisation. The Welsh Language Co-ordinator’s role at the Home Office may be summarised thus: - a). Maintaining a record of material available; b). Acting as first point of contact and adviser to staff and general public; c). Advising all departments of the Home Office on the conditions of the Welsh Language Scheme.

In this role, it is the duty of the Welsh Language Co-ordinator to provide an annual report on the implementation of the Scheme to the Management Board of the Home Office and to the Welsh Language Board. Currently the Welsh Language Co-ordinator meets with the responsible officer at the WLB c.three times per annum to discuss progress and address outstanding issues. The relationship between the Home Office and the WLB is healthy and characterised by constructive dialogue.

The next step in this process is to develop the implementation side of the scheme so that the details and fine-tuning are addressed. In accordance with the requirements of the Scheme, the Management Board have responsibility for implementing the relevant aspects of the Scheme in their departments; managers are responsible for ensuring that members of staff are aware of the requirements and implications of the Scheme.

## STAFFING

Guidance is given on the implementation of the Scheme in relation to staffing its services to the public. Under the Scheme, language skills are not considered in staff appointments. No analysis of language skills is applied to posts. Under the Scheme, support is provided for bilingual services in the form of contracted professional translators.

## PARTNERSHIP AND RESOURCES

Under the Scheme, the Home Office is committed to the Welsh language in a number of ways, depending upon the nature of the partnership. When the Home Office is leading a partnership, whether strategically or financially, it will ensure that public provision is in accordance with its own Scheme. When the Home Office joins a partnership another body is leading, Home Office input to the partnership will conform with its own Scheme and the other parties will be encouraged to conform with the Scheme of the Home Office. Also, when the Home Office joins with or forms a partnership, it will ask the other proposed partners for their Welsh Language Schemes, language policies or the manner in which they intend to operate bilingually.

Under the Scheme, other organisations delivering services to the public in conjunction with or on behalf of the Home Office are required to deliver such services in accordance with the requirements of the Scheme as pertaining to the Home Office itself. Details of the requirements, standards and principles arising from the Scheme are specified as part of the conditions in tenders, agreements and contracts. Under the Scheme, the public image of the Home Office in Wales is increasingly bilingual, Welsh-English. This includes signs, printed material, forms, press releases, advertisements, publicity material, consultative material, official notices and public notices.

## PROCESSES

The implementation of the Scheme by the Home Office is subject to ongoing monitoring. However, in accordance with a changing pattern of reporting adopted by the Welsh Language Board in recent years there is less emphasis on an annual report which seeks to cover all aspects of the operation of the Scheme. In its place the Welsh Language Board and the Home Office conduct face to face meetings c. three times a year and an 'exception report' is produced which cites those areas where the Scheme has yet to make its full impact or where it is wanting. This can be considered a diagnostic report as it aims to identify issues which seek remedial action and then proposes solutions to redress the grievances or the operational procedures which hamper the full implementation of the Scheme.

## DISCUSSION: THE INSIDER'S PERCEPTION

At interview Martin Richardson, the Home Office Welsh Language Co-ordinator, offered the following comments as to how the Home Office viewed the operation of the scheme. He was originally given responsibility for drafting the scheme in 1997 and the Scheme took an inordinate amount of time to be approved internally by both civil service managers and by successive Secretaries of State. Nevertheless, despite not gaining formal WLB approval, many aspects of the Scheme were implemented within the Home Office, thus the failure to submit the Scheme should not be read to indicate that no action was taken whatsoever in relation to providing a service in the Welsh language in Wales. However, it was recognised that the Home Office was the last major UK government department to submit its Scheme and gain WLB approval.

Initially the Welsh Language Act 1993 was considered by the Home Office as being problematic. Four Home Secretaries chose to ignore or slow down the process of seeking approval, while Charles Clarke, when he became Minister of State at the Home Office on the 29<sup>th</sup> of July 1999, choose to act swiftly and as a result the Scheme was given priority. The clear message is that leadership and direction from the Secretary of State is crucial if the Scheme is to be a success. Under Clarke the 'Mandarin Gates' were thrown wide open and full compliance with the scheme was given urgent attention. The question remains why was it that this piece of binding legislation, which had been enacted 6 years earlier, had been able to be ignored with impunity by several ministers and a whole raft of senior civil servants?

If part of the answer was a change of style and emphasis by Minister of State Clarke, then another part of the answer was increased pressure by the interested public, for much of the impetus for change came from the core businesses and services for which the Home Office is responsible. An excellent example of this was the pressure brought to bear by several senior officers within the Police Force on the operation of the Police and Criminal Evidence Act which necessitated close liaison with legal specialists at the University of Wales, Swansea to produce new Welsh language terminology and general bilingual guidelines on the implementation of the Act.

Another consideration at the start of the process was the likely cost involved in implementing the language scheme. This was used as a justification for inaction, there were no additional resources allocated to

implement the language scheme. To date the costs have been minimal. There is a small additional expenditure on printing, design work and translation. But the chief consideration has been to prioritise the translation into Welsh of the many thousands of documents which the Home Office produces each year. Consequently the principal reason for inactivity was that the senior civil service management team at the Home Office had concluded that the interests of the Welsh language service they provided was of such low priority that it kept being shelved until a change of Minister and increased pressure from its own professional clients, such as the Police, Fire and Ambulance Service forced a change of attitude. Legislation by itself had not been a sufficient guarantor in securing a service.

## REGULATORY MECHANISMS

Unlike Canada, Ireland and other jurisdictions where constitutionally-entrenched rights form an important part of the promotional and regulatory aspects of language policy, Wales does not conceive of its inhabitants as having absolute language rights, other than those who wish to use Welsh in the Courts of Wales: rather named institutions have responsibilities to deliver bilingual services. Having considered the strengths and weaknesses of the delivery of such services we may now turn to investigate how complaints and compensation regarding the failure to implement agreed Language Schemes are handled. What mechanisms exist or are currently being considered to regulate the implementation of language policies?

Currently it is the compliance officers of the Welsh Language Board which deals with any difficulties with Language Schemes and formal complaints made under the provisions of the Welsh Language Act, 1993. My investigation concluded that such arrangements were handled in an exemplary manner and that the compliance teams sought not only to seek a resolution to the complaints at hand, but also through mentoring and close dialogue sought to reduce the amount of avoidable duplication of complaints by tutoring the responsible authorities in how best to prepare improved bilingual services. The compliance team are clearly conscious of the limitations of current legislation and are active participants in gleaning international best practice from other regulatory regimes so as to anticipate and contribute to probable developments in Wales which will give a stronger legal underpinning to the whole regulatory framework.

However, the future remit and very existence of the

WLB was thrown into doubt following an announcement of its dissolution by the Welsh Assembly Government made on 30 November 2004. This policy change derived from the ‘bonfire of the quangos’ speech made by the First Minister in which he declared that by April 2007 the Welsh Language Board would be dissolved and parts of its remit would be integrated into the normal machinery of government administration.<sup>9</sup> In order to satisfy the statutory regulatory aspects of the WLB’s work in agreeing and monitoring Language Schemes and in handling complaints the government proposed to establish the office of a regulator *Y Dyfarnydd*. The First Minister noted the following in his statement on 30<sup>th</sup> November 2004:

“An office of the Dyfarnydd will be established to undertake the Board’s regulatory functions. The office will oversee the Welsh language schemes of public sector bodies, including the Assembly’s Welsh Language Scheme. The office will be established initially in an advisory capacity, and will be placed on a statutory footing when the opportunity for legislation arises...The post will be undertaken by an individual who will be entrusted with undertaking the regulatory functions which cannot or should not be undertaken by the Language Board once it is incorporated, as this would mean that we [the Government] would regulate ourselves. It will be necessary to regulate the Assembly and other public bodies, and it is better that this is done independently, and independence in this respect is protected.... The regulatory part (of the Welsh Language Board’s remit) is quasi-judicial, and it must be independent, and this is why there will be an independent office of the Rheoleiddiwr or Dyfarnydd.”

The Government’s proposals for the merger of the Board’s functions assumed a two stage process. First, the Assembly Government proposed to merge the majority of the Board’s functions by April 2007, keeping a Residual Body to deal with specific aspects of the regulatory framework. Secondly, the Government proposed to establish a statutory regulator, the Dyfarnydd, under the legislative arrangements proposed within the Government of Wales Bill.

The WAG (2006) consultation paper did not discuss the Residual Body at any length. But this was a key part of the process and such transitional arrangements could last for a significant period. No precise timetable was proposed for the establishment of the Dyfarnydd since the Government could not warrant that they would be in a position to establish the Dyfarnydd. The proposal presupposed the enactment of the Government of Wales Bill, and a request for powers to establish the Dyfarnydd

under the legislative arrangements set out in the Bill.<sup>10</sup>

In the event the government's proposed timetable whereby such integration would be achieved was stalled by a successful Opposition motion (NDM2613 on 11<sup>th</sup> October 2005).<sup>11</sup> This development signalled two important changes in the discourse surrounding language. It demonstrated the Opposition's capacity to frustrate Assembly Government plans, in this case through a fairly acrimonious attack on the Government's record regarding the promotion of the Welsh language. Secondly the setback created a great deal of uncertainty, not only about the future direction and structure of the Welsh Language Board, but also in terms of how the Government was to handle the 'integration' process.

Faced with the possibility that part or all of the WLB would be integrated into government without adequate regulatory and statutory provision, the debate focused on other forms of language regulation and turned around the key question as to whether a Dyfarnydd or a Language Commissioner might better serve the interests of the Welsh language?<sup>12</sup> Choosing the latter would be in conformity with the changing face of public-sector service delivery which is reflected in the establishment of a Welsh Administration Ombudsman, with the promise of a revamped Wales Public Services Ombudsman, the Office of a Local Commissioner for Wales and Health Service Commissioner in Wales (HSCW) while the Children's Commissioner has been supplemented by a Commissioner for Older People. (Williams 2007)<sup>13</sup>

The WLB mounted an evidence-based campaign to draw attention to the limitations of the WAG proposals. It also warned against the 'salami slicing' of a dynamic team of language specialists and their redistribution throughout the NAFW system and throughout Wales (78 staff at present). Finally it formally championed the idea of a Language Commissioner and a robust legislative programme to clarify and extend language rights.<sup>14</sup>

Two reasons may be given for preferring the Language Commissioner option over and above that of Y Dyfarnydd. The first is that the language struggle is far greater than an issue of administrative convenience and routine. The second is that by insisting on a Language Commissioner attention will have to be paid to the range of language-related rights, for the principal considerations of Canadian, Irish and other language regimes is the establishment of minimal rights and expectations which citizens might enjoy in respect of official language provision and services. In Wales, it is difficult to be precise as to what exactly citizens may expect from government in respect of access to, for ex-

ample, Welsh medium education or bilingual services. The 1993 Welsh Language Act places a duty on public bodies to treat both languages on a basis of equality in the provision of services to the public. These language schemes are unevenly and partially implemented, and consequently it is hard to generalise or predict the exact nature of the service being offered. Extending the range of language rights would fit into a pattern of explicating the nature of fundamental human rights.

The Welsh language has become part of the equalities agenda in Wales but does not figure prominently in comparison with discussions based upon discrimination on the basis of race, gender, sexual orientation or disability. The absence of such measures slows the growth of the use of the Welsh language in public bodies, and inhibits the development and provision of Welsh language public services. Another strategic weakness is the absence of an official advocate for bilingualism, independent of government, but obliged by statute to take government and others to task if they fail to implement their own Language Schemes.

In the event in July 2006, Alun Pugh the Culture Minister to whom the Welsh Language Board was answerable, announced that moves towards the integration of the Board would be suspended until several of the outstanding issues had been resolved.<sup>15</sup>

The debate then broadened into one which sought to evaluate alternative legislative measures related to the Welsh language. This was couched both in terms of fresh legislation at Westminster to replace the 1993 Welsh Language Act and to implement a Legislative Competence Order (LCO) relating to Welsh within the restructured National Assembly for Wales following the granting of increased legislative powers after May 2007.<sup>16</sup> In addition the failure of the Labour Party to form a government following the Spring 2007 Assembly elections, forced it to enter into partnership government with Plaid Cymru as its junior partner. Among the portfolios agreed with Plaid Cymru was the Cabinet post of Minister of Heritage (which includes responsibility for the Welsh language) held by Rhodri Glyn Thomas, former chair of the National Assembly for Wales Culture Committee.<sup>17</sup> Together with his cabinet colleagues he has the opportunity to shape the form of the Legislative Competence Order which would transfer responsibility for legislating on aspects of the Welsh language from Westminster to Cardiff. Having established this element of legislative devolution the next logical step would be to seek to mainstream the Welsh language as a consideration and as a constitutional language in the prepa-

ration of the Assembly's legislative remit.<sup>18</sup> This would contribute to the case for strengthening the Assembly's powers as a legislature.<sup>19</sup>

## CURRENT OPTIONS

Four options present themselves.

First, to preserve the WLB as a central agency for language policy and planning, at arm's length from the Government of Wales, but responsible to the respective Cabinet Minister who would determine the remit and budget of the organisation.

Secondly to integrate fully the responsibilities of the WLB within the Assembly Executive.

Thirdly to establish the office of Welsh Language Commissioner which would take over the statutory responsibilities currently exercised by the WLB and implement additional responsibilities as determined by new legislation. The strategic and promotional elements currently exercised by the WLB would then be mainstreamed as core NAFW functions.<sup>20</sup>

Fourthly to establish a Commission for the Welsh Language which would absorb the WLB *in toto* housing both promotional and regulatory aspects of language policy and planning, but with additional powers and responsibilities as determined by new legislation.

Option three and four are more realistic, thus the discussion will focus on these changes.

A Language Commissioner would:

- Operate as an independent agency charged with conducting periodic and systematic investigations into the operation of Welsh Language Schemes and of monitoring the rights of Welsh speakers.
- Investigate complaints and initiate investigations into breach of compliance.
- Supplement the Commissioner's traditional role as an ombudsman by expanding this protective role and serve as an educator, to better inform the Welsh people of their rights, and to consolidate the place of linguistic duality at the heart of Welsh identity.<sup>21</sup>

By contrast the wider remit of the Commission for the Welsh Language would contain an array of language planning expertise that would, *inter alia*, offer advice to the Government on specific topics, at the Government's request and on the Commission's own initiative, on other topics: there would be an obligation on the Government to respond to this advice.

The Commission would also monitor and facilitate compliance with the new Act, and that could initiate

and proceed with actions when it was of the view that an offence had taken place.<sup>22</sup>

As far as advisory functions are concerned, the Commission could:

- a. "prepare for the Assembly Government a National Plan on the Welsh language to build on the task of creating a bilingual Wales initiated by *Iaith Pawb*, a Plan that the Government would have to present (with or without amendment) for approval by the National Assembly for Wales;
- b. report biennially to the Government on the state of bilingual education in Wales, and present recommendations for action on the basis of these reports;
- c. give advice to the Government in areas such as signage, other planning issues, promoting and facilitating the use of the Welsh language in the private sector (by means of voluntary Language Agreements and the like), and mainstreaming the Welsh language in the workplace;
- d. operate, in consultation with the Government, as the national body for standardising terminology in areas of interest to public administration in Wales, and for standardising Welsh place-names;
- e. create and maintain user panels (as in the case of the Children's Commissioner) to advise Government from the perspective of those who use the Welsh language in their daily lives." (Welsh Language Board, 2008)

## DISCUSSION

Establishing the role of Commissioner would involve strengthening the regulatory powers to enforce compliance with Language Schemes and to offer compensation for failure to implement such schemes. It is possible to argue that the Commissioner could handle complaints as part of the 'regulatory cycle', as happens currently in some bilingual jurisdictions within the Commonwealth. This arrangement would also reveal how well bodies were implementing their language schemes. In previous discussions the WLB has recognised that if these functions were separated, performance would be considered separately from the agreement on the content, and thus the Commissioner would only consider the content of a language scheme and the complaint in question.

It is possible to strengthen the Commissioner's remit by adding powers to conduct investigations where appropriate. Consideration would then need to be given as to whether the Government could also have the pow-

er to conduct investigations; since the Government's developmental work might draw attention to examples of non-compliance. An extension of this would be the nature of the Commissioner's adjudicative role in relation to a dispute between the Assembly and a public body, both in terms of the preparation of language schemes and in terms of their enforcement. A major weakness of the current system is that the Welsh Language Board has little real direct power to enforce compliance. Clearly it has recourse to normal procedures, but when non-compliance is an obstacle to the implementation of the Act the only indirect avenue for the Board is to ask the political authorities, particularly its sponsoring Minister to intervene.

A key issue is whether the Language Commissioner should also be given a general advocacy role in relation to the language. This would be critical in relation to the implementation of the Assembly Government's Language Scheme and the Assembly Government's leadership of this particular policy area. Without this advocacy role, the Welsh language would be the only equality area lacking an advocate independent from Government. There are obvious dangers for the language in this respect. New legislation could provide more clarity on this matter, conferring on the Commissioner the right, and duty, to operate independently within a defined mandate.

What would happen if the Commissioner were given the responsibility of adjudicating in any dispute between the Assembly Government itself and a public body regarding the content of a body's language scheme? Would this be an essential function for the Commissioner? Would there need to be reference to additional court remedies to determine the contours of language scheme enforcement? If not how would the Assembly Government seek to handle cases where it itself was a plaintiff, an adjudicator and an ultimate arbiter for action?

Presumably the Commissioner would have the right to ask a Court of Law for an order to enforce the recommendations. This, in essence, would be the opportunity to appeal against the Commissioner's judgements. This power would essentially mirror what is already included in the 1993 Act. A second issue would be whether or not bodies could be fined for language scheme non-compliance, and this would be related to the implementation of recommendations made by the Commissioner. As a minimum it seems logical to revise current legislation so that the Commissioner could consider the use of Welsh within public bodies, and within Crown bodies. It would also be possible to give specific powers to

the Government to change the administrative language of its own offices, and those of other public bodies. A similar power has been established in Ireland under the Official Languages Act 2003.

Current legislation does not give the WLB a statutory remit in relation to Crown bodies. The Welsh Assembly Government will inherit this problem if it assumes responsibility for agreeing and monitoring language schemes. Placing the Language Schemes of Crown Bodies on a statutory basis would strengthen and simplify the regulatory system, even if in terms of current legislation it is constitutionally invalid, a point to which we shall return below.

In time one could imagine a network of Language Commissioners from Canada, Ireland, Wales, Northern Ireland, Finland and other parts of the world sharing their experience with Commissioners in areas, such as Administration, Children, the Elderly, Health and Welfare.

The final option is for the WLB to be reconfigured as a Commission for the Welsh Language. By incorporating both the strategic/promotional and regulatory aspects the Commission could act as a real power-house driving forward the interests of language in the creation of a bilingual society. Its core remit of developing corpus and status planning, bilingual education strategies, the use of Welsh in the workplace and the wider economy, the health service etc would enable it to undertake an overview function which the current arrangements do not allow. Undergirding this would be the statutory obligation on institutions and service providers to agree Language Schemes with the Commission, with recourse to the intervention of the Commissioner in cases of non-compliance. There is a precedent for this type of dual function, witness the remit and responsibilities of OFCOM, which has both a promotional and regulatory function in respect of broadcasting and the communication services.<sup>23</sup>

However, there is some disquiet as to whether both promotional and regulatory aspects should be contained within the same body. From an administrative point of view it makes a great deal of sense to harmonise both aspects, to garner best practice, to anticipate problems which might arise in the discussion/deliberative phase of agreeing new or renewed language schemes, to train staff in various competencies etc. However, if and when real legal challenges or politically charged decisions have to be made, there is great merit not only in the separation of functions between the promotional and regulatory aspects of language policy, but to be

seen to be independent agencies, the one steering and advising, the other regulating, enforcing and penalising recalcitrant or disobedient bodies. In such a context, if a Commissioner for the Welsh Language is to be established it might be prudent to consider adopting a name other than 'Commission' for the main body responsible for the language, perm one from any number of organisational titles, such as 'Authority', 'Department' 'Office' 'Secretariat' etc. A great deal of additional and urgent work would have to be done to give force to the general constitutional right to determine the nature of language requirement in matters of acute dispute. The legislative authority to regulate languages depends on the court system and the matters before it. But the extension of Language Schemes (however they are defined) both to Crown Bodies and to elements within the private sector, will test the capacity of the judicial system in the application of language rights. To what extent a full panoply of 'progressive legislation' will have to be established prior to the establishment of a Commission is an unknown element at present.

## LEGISLATIVE CONSIDERATIONS

How both option three and four might happen is very reliant on the outcome of current legislative devolution, which relates to the possible terms and scope of Assembly powers to make legislation relating to the Welsh language. Under the Government of Wales Act (Legislative Powers) 2006 (C.32), the Welsh language is identified as Field 20. The current progression of the Legislative Competence Order, (LCO) <sup>24</sup> instrument to advance legislative devolution is of great significance. However, to date there is no agreed understanding as to what exactly might be subsumed within an LCO devoted to the Welsh language. It might be assumed that an LCO would make reference to an enhanced status for Welsh, the requirement to extend the current language scheme framework to include additional services rendered to the public in for example, electricity supply or communications, a clearer specification of individual language rights especially in the world of work. But should an LCO include access to Welsh-medium education at all levels? Or is this likely to complicate the issues and allow some to forestall the process? If education were included would it be limited to statutory education only? Should such requirements be conditional on reasonable access to existing Welsh medium schools or should a more flexible but robust clause be inserted which made reference to access to Welsh medium ed-

ucation in the community? There is a danger in over loading the first LCO on language and complicating the subsequent drafting of legislation. This is especially true when one recalls that clauses related to the Welsh language may be inserted in future LCOs.

The fundamental operative factor is the proposed powers that the Assembly would get after a referendum on 'primary legislative powers', which are set out in Schedule 7. These include the 'Welsh language' *tout court*, with an exception relating to the use of the language in courts, but with a set of restrictions relating to functions of Ministers of the Crown under pre-commencement enactments (i.e. legislation passed before the 'primary legislative powers' in Part 4 of the 2006 Government of Wales Act come into effect). That effectively exempts UK Government functions from the scope of any legislation made by the Assembly. In addition, legislation made by the Assembly can only have effect within Wales, not UK functions affecting Wales but exercised from outside Wales.<sup>25</sup>The problem is that this will lead to a fracture in responsibility for legislating for the language: the Assembly will have competence for devolved functions, but not non-devolved ones, and UK Ministers may well prove unresponsive to language issues as they affect functions retained at UK level, either because they are uninterested or because they are simply unaware of them. It is important to remember that total spending tells us what government does what, that UK Government remains responsible for just over half of all identifiable public spending in Wales (identifiable spending excludes defence, overseas aid and foreign affairs, so it's 'real' government activities). Thus it is not entirely clear to what extent a revised Welsh Language Act at Westminster is a necessary corollary of such developments in Cardiff. It is a logical development but may not be a politically expedient development until such time as the overall division of responsibilities for duties and the exercise of powers is determined.

A number of areas of government would be affected by this, as was identified in the 'From Act to Action' research project discussed above. Social security and tax (DWP and Revenue & Customs) functions are top of the list. Policing and the courts are also very important, as are the responsibilities and services exercised by Department of Business Enterprise and Regulatory Reform, (<http://www.berr.gov.uk/>) which deals with investment, micro-economic regulation and a wide range of significant partners.<sup>26</sup>

It would be opportune to suggest that any Legislative Competence Order relating to the Welsh language

should extend to those non-devolved functions as well as devolved ones. These functions would need to be explicitly designated which would ensure that legislation to implement language policy could continue to be made in a joined-up way and benefit both the administration of policy and the rights of individual speakers of the language, as they would not find that their rights were (at least potentially) subject to change depending on which government they were dealing with. This is an important consideration in terms of the relationship between the Welsh language and the UK Constitution, especially when multi-level governance is an increasingly operative factor in determining the scope and realisation of language rights and bilingual services. Otherwise, the risk is that either language policy is different for reasons that will not be very clear, or that inordinate amounts of time are spent co-ordinating policy when this is only of limited interest to the UK Government departments involved.

It could be anticipated that UK Government may well dislike this approach, but their objections are likely to be policy ones, not (as far as one can foresee) legal ones. The way devolution has been put in place means there is no legal doctrine of intergovernmental immunities that would act as a legal bar to this approach as would be the case in federal systems like Canada (see Williams, 2007). A further problem may arise with this approach when the time comes to bring in Part 4 of the 2006 Act, with the move to 'primary legislative powers' for the Assembly. But that is not insuperable.

## CONCLUSION: A MEDLEY OF PASSING DISSONANCES

The discussions to date have largely been preoccupied by issues of the redress of past injustices, a concern with constitutional change and increasing the power of the Assembly, the defence or reconfiguration of the WLB as a Commission, the promotion of language rights without full cognisance of the legislative framework and judicial implications, the selection of the office of a Language Commissioner as the answer to many of the regulatory deficiencies of the past and a bureaucratic/technical discourse which dominates the virtual triangle established between Ministers/politicians, senior civil servants and the WLB.

And yet the collective pressure for so many of these issues derives from a long established consortium of social movements which have been agitating and organising for structural reforms and the extension of language services and rights for well nigh fifty years.<sup>27</sup> How are

these influences to be systematised and brought to bear of managing language issues in the medium term? One answer is through representative democracy and the party political system which certainly has been more immediate as a result of Welsh devolution and the greater participation of hitherto 'minority parties' within the UK such as Plaid Cymru and the Liberal Democrats.

At the level of civil society there would need to be a means of democratising the process further by providing a truly valuable Language Forum or Welsh Language Council. Current attempts to engage with the interested parties at a systematic level are too infrequent and stage managed within the Language Forum scheme as operated by the NAFW Labour Government between 2004-2007.

Over and above all these structural and legislative reforms there would need to be a systematic campaign which sought to convince the public and service providers to change their behaviour in response to a combination of legislation, political ideology and the effect of the education system in creating greater linguistic awareness.

For analysts of both new forms of governance and participation the current developments in Wales offer an intriguing set of insights into how reform is initiated and carried through. However, the overwhelming conclusion in relation to language policy must be that although very many features have improved out of all recognition in the post-devolution period, the ultimate determinant of the scale and nature of change continues to be the party political interests of the dominant party, the Labour Party, which governs the UK and has formed a partnership government with Plaid in the NAFW.<sup>28</sup> To a large extent the exact contours of devolution, as it progresses in Wales, are directly related to the internal decisions of Labour strategists and to the electoral fortunes of the party in the coming elections.

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## ENDNOTES

<sup>1</sup> Clearly the Welsh Language Board is involved in a plethora of non-statutory initiatives to promote the greater use of Welsh within a number of contexts. I do not consider these in this paper.

<sup>2</sup> Independent commentators had questioned the original settlement of the Welsh Language Act 1993 and had concluded that in vesting public institutions with language obligations, whilst eliding over the issue of individual language rights, the 1993 Act had fallen far short of establishing Welsh as a co-equal language (Williams, 1998; 2000).

<sup>3</sup> At the international level the UK is subject to the provisions of the ICCPR; however, the minority standards set out in Article 27 thereof have been significantly expanded upon and clarified in a number of international treaties, the most important of which are two treaties of the Council of Europe to which the UK is subject, the *Framework Convention for the Protection of National Minorities* (the "Framework Convention") and the *European Charter for Regional or Minority Languages* (the "Languages Charter").

<sup>4</sup> The White Paper and later Bill (introduced into Parliament in December 2005) implemented one key recommendation of the Richard Commission forthwith, namely splitting the single body corporate into a National Assembly (the deliberative body, which may acquire legislative powers) and a Welsh Assembly Government which acquires the Assembly's existing executive functions (Trench, 2006, p.687).

<sup>5</sup> Ratification of the first such LCO (in relation to special needs

and disability education) was made in the Houses of Parliament, on March 19<sup>th</sup> 2008, thus establishing the process as an integral feature of the transfer of functions and responsibilities to the NAFW.

<sup>6</sup> Together with colleagues in the Welsh Language Board I am preparing draft versions of both the LCO and the related legislation, conscious that a parallel effort is underway within government itself. Our aim is to influence responsible Ministers and their associated senior civil servants as well as to inform and influence public opinion on this issue.

<sup>7</sup> Although welcome, as it extends the range of institutions which are covered by legislation, this extension also poses capacity issues for WLB staff who have to administer these additional language schemes.

<sup>8</sup> This project is investigating language legislation in Finland Ireland and Wales and is co-directed by Siv Sandberg, Peadar Ó Flaharta and myself under the auspices of the Svenska Kulturfonden, Helsinki.

<sup>9</sup> At the National Eisteddfod in 1995, the then Shadow Welsh Secretary Ron Davies said Welsh public life was suffering from "a democratic deficit". He argued that the only solution was to create a devolved National Assembly for Wales and to hold 'a bonfire of the quangos.' The first three quangos to be integrated were the Welsh Development Agency, ELWa and the Wales Tourist Board. On 30 November 2004 First Minister Rhodri Morgan announced that the Welsh Language Board, the qualifications and curriculum authority ACCAC and Health Professions Wales would have their duties and staff transferred to the assembly government.

<sup>10</sup> For details on the Dyfarnydd option see the discussion in Williams, (2008) pp.279-85.

<sup>11</sup> Plaid Cymru AM Jocelyn Davies (South Wales East) proposed that: "The National Assembly instructs the Welsh Assembly Government to postpone the merger of the Welsh Language Board with the Assembly until the Assembly approves a motion which satisfactorily deals with the operation of the regulatory functions of the Board and the powers of monitoring the plans of local education authorities for the promotion of the language." The motion was carried by a single vote as follows: - For 29; Abstain 0; Against 28; Total 57.

<sup>12</sup> One might also add without adequate discussion as to the consequences. For a similar knee-jerk reaction in terms of abolishing another former quango, the Welsh Arts Council, see the inside story of the former Chair, Geraint Talfan Davies (2008).

<sup>13</sup> None of the established posts have been over burdened with complaints from the public, partly, according to Rawlings, as a result of the lack of interface between public administration and civil society. Nevertheless for the period 2001-2 the WAO 'received fifty-six complaints, concluded fifty-nine cases without investigation (chiefly for lack of jurisdiction or no prima facie evidence of maladministration); and moved to a full investigation in only five cases. Although much higher (155 new complaints), the case load as Health Service Ombudsman also appears unexceptional from the comparative viewpoint, both in terms of the rate of complaints and the subject matter.' Rawlings, (2003), p. 379.

<sup>14</sup> For over a decade successive senior Board staff and members have been involved in garnering evidence as to the operation of alternative regulatory systems in such constituencies as Canada, Quebec, Catalonia and the Basque Country. Together with Foras na Gaeilge and Svenska Kulturfonden, the WLB commissioned the 'From Act to Action' programme undertaken by Siv Sandberg, Peadar Ó Flaharta and Colin H Williams, which sought to compare

the implementation of language legislation in Finland, Ireland and Wales.

<sup>15</sup> The vacancy in the Blaenau Gwent constituency was occasioned by the death of Peter Law on April 25<sup>th</sup> 2006 who held the seat at both the Westminster and Assembly elections. His Westminster seat was won on June 29<sup>th</sup> by Dai Davies and his Assembly seat by Trish Law the widow of the former incumbent. Both representatives sat as Independents. Four reasons may be given for this decision. First a general lack of preparedness on behalf of the Culture Department and of the Assembly Government to facilitate a smooth integration within the anticipated timescale. Secondly, a reaction to the specialist advice offered by the Welsh Language Board to the Assembly in relation to a number of key features regarding the consequences of its abolition and the need for further legislative reform. Thirdly the general drift of over 240 responses received as a result of the Assembly's Spring 2006 consultation process on the abolition of the Language Board. Fourthly the political ramification of Labour's failure to win the Blaenau Gwent National Assembly and Westminster seats on June 29 2006

<sup>16</sup> In a Press Release on February 18 2008 Meri Huws, Chair of the Board, said: 'We have already discussed as a Board what should be contained in new legislation from the National Assembly, after that body has secured the right to legislate on the Welsh language from Cardiff. Broadly speaking, we should like to see legislation which includes, *inter alia*: an announcement of the official status of the Welsh language in Wales; a declaration of individuals' language rights in relation to the receipt and provision of services, and also the rights of workers to use Welsh in the workplace; the establishment of a Welsh Language Commission having statutory and developmental powers.

<sup>17</sup> The Minister for Heritage responsibilities are tourism, heritage and the historic environment, the national strategy and policy for culture in Wales; sponsorship of the Arts Council the Sports Council, the National Museum of Wales and the National Library of Wales, responsibility for Welsh Assembly Government funding of the Wales Millennium Centre; the Welsh language – including overseeing and coordinating general Welsh language policy, (other Ministers are responsible for Welsh language issues within their policy areas); Ministerial functions emanating from the Welsh Language Act 1993; sponsorship of Bwrdd yr Iaith Gymraeg/Welsh Language Board, including appointments of the Chair and Board Members; policy on broadcasting as it affects Wales; sponsorship of the Welsh Books Council.

<sup>18</sup> *One Wales* (2007) names three elements for inclusion in new legislation, a) "to confirm official status for both Welsh and English; b) linguistic rights in the provision of services; and c) the establishment of the post of Language Commissioner"

<sup>19</sup> I do not forget the parallel effort which is needed to secure the interests of the Welsh language as part of Westminster's general legislative programme.

<sup>20</sup> The wisdom of such an arrangement would have to be tested by a robust debate and a probing of the alternative scenario whereby both functions are discharged by independent bodies. For a very early attempt at such integration see the discussion and diagrams contained in Williams 1989, 1994;

<sup>21</sup> For over thirty years I have been championing the case for a Welsh Language Commissioner and much of my thinking on this has been informed by a systematic analysis of the Canadian model since 1973 (see Williams 1981, 1984 and 1996) and more recently by my involvement with the 'From Act to Action Project' and the

WLB consultations.

<sup>22</sup> In this context, the Minister should set up a scheme to enable public bodies to pay compensation to individuals.

<sup>23</sup> Ofcom is the independent regulator and competition authority for the UK communications industries, with responsibilities across television, radio, telecommunications and wireless communications services.

<sup>24</sup> An LCO can be proposed by the Assembly Government, an Assembly committee, or an Assembly Member. Once approved by the Assembly, the LCO is sent to the Secretary of State to be laid before both Houses of Parliament and, if approved, made by Her Majesty in Council. In the Assembly, the approval of an LCO involves a 2-stage process: Pre-legislative scrutiny of a proposed LCO by an ad-hoc LCO committee; Approval in plenary of a draft LCO. For details on the progress of LCOs see <http://www.assemblywales.org/>

<sup>25</sup> Compare this development with the current Scottish situation where the measures of the Gaelic Act of 2006 apply within Scotland only and not at a UK-wide level.

<sup>26</sup> DBERR delivery partners include Executive Agencies such as Companies House, executive Non-Departmental Public Bodies such as the Regional Development Agencies, non-Ministerial Departments such as OFT and advisory bodies such as the Low Pay Commission.

<sup>27</sup> The dominant influence has been Cymdeithas yr Iaith Gymraeg (The Welsh Language Society), more recently but episodically Cymuned while currently much of the agenda is being advanced by Mudiadau Dathlu'r Gymraeg.

<sup>28</sup> So much of the contours of devolution, including the operation of LCOs and the continued transformation of the National Assembly, are a result of Labour's pragmatism and at times its inability to provide clear, robust constitutional leadership. Consequently an intriguing feature of Welsh devolution is its lack of clarity of purpose and process as it seeks to carve out a distinct set of political relationships with the UK Parliament, Whitehall and the other devolved administrations, all of which are characterised by a different set of political alliances and oppositions.