

## **‘Every one of us...’**

The Welsh Language Board's response to the Discrimination Law Review consultation paper

“A Framework for Fairness: Proposals for a Single Equality Bill for Great Britain”.

September 2007.

## Table of Contents

Introduction .....	2
The Welsh Language as an Equality Issue.....	3
Precedents for treating the Welsh language as an Equality Issue.....	3
The Welsh language and the individual.....	4
Discrimination against those who use the Welsh language .....	5
The unique value and status of the Welsh language in Wales .....	6
Harmonising and Simplifying the Law .....	8
The proposals set out in the Discrimination Law Review .....	9
The Board and the CEHR working together.....	13
Other issues of interest to the Board .....	14

## Introduction

1. This is the Welsh Language Board's response to the Discrimination Law Review consultation paper.
2. The Board is a statutory body, established to promote and facilitate the use of Welsh – and to advise the Government<sup>1</sup> about Welsh language matters in general.
3. In preparing this paper we had three guiding principles in mind. They were:
  - a. that we should consider whether the review recommendations could also apply to the difficulties faced by Welsh speakers
  - b. that we should ensure that the protection and support (legal or otherwise) available to Welsh speakers should be at least as robust as that enjoyed by the other equality strands. This would be in line with the UK Government's aim of ensuring a common approach between each strand (page 13 of the consultation document)
  - c. that we should plan for and ensure the best possible cooperation between the Board and the Commission for Equality and Human Rights.
4. We are encouraged to read that '*there will be special arrangements to ensure that the Single Equality Bill is tailored to the needs of Scotland and Wales*' (page 4).
5. The Welsh language is one issue that clearly distinguishes Wales from the rest of the UK. We are therefore disappointed to find no reference whatsoever to the language in the consultation paper. Considering the document's aim to consider '*how every*

---

<sup>1</sup> Both the UK and Welsh Assembly Governments.

*one of us is treated at work, as a customer and as a consumer, and by our public services'* this omission is significant.

6. We strongly believe that '*every one of us*' should include those whose preferred means of communication is the Welsh language. In October 2006 we wrote to the Secretary of State for Communities and Local Government, advising that the language be considered and included in the document. We believe that this omission must therefore reflect a lack of understanding or appreciation of the importance of this issue as it affects Wales. It risks giving the impression that the UK Government does not regard the fate of Welsh speakers, or the Welsh language, as worthy of attention in the context of this review<sup>2</sup>.
7. This response discusses:
  - a. why the language is an equality issue;
  - b. the value of the language and the difficulties it faces;
  - c. The proposals set out in the Discrimination Law Review. and their relevance to the Welsh language.

## The Welsh Language as an Equality Issue

### Precedents for treating the Welsh language as an Equality Issue

8. In the Welsh Language Act 1993, the UK Government recognised the need for a statutory body established for the sole purpose of promoting and facilitating the use of Welsh, and set out:

*'... 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**'*<sup>3</sup>

9. In the Scotland Act 1998, the UK Government interpreted equal opportunities (in Schedule 5) as:

*'...the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, **language or social origin**, or of other **personal attributes, including beliefs or opinions**, such as religious beliefs or political opinions'.*<sup>4</sup>  
(our emphasis)

10. Chapter 3 ('Equality') of the proposed Charter of Fundamental Rights of the European Union<sup>5</sup> states:

*'Any discrimination based on any ground such as sex, race, colour, ethnic or **social origin**, genetic features, **language**, religion or belief, political or **any other opinion, membership of a national minority**, property, birth, disability, age or sexual orientation shall be prohibited'.*  
(our emphasis)

---

<sup>2</sup> The same could be said with regard to the other indigenous languages of the UK, such as Scottish Gaelic.

<sup>3</sup> Part II, Subsection 5 (2)

<sup>4</sup> Schedule 5, part 2, head L

<sup>5</sup> [http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

11. The Welsh Assembly Government's statutory Welsh Language Scheme, approved by the Board in December 2006, states<sup>6</sup>:

*'Linguistic equality is part of the Assembly Government's equal opportunities agenda and will be integrated into its equal opportunities work. The Government will expect other organisations to adopt the same approach. Where reference is made to equality of opportunity in documents and statements issued by the Welsh Assembly Government, the Welsh language will be inserted with other equality interests.'*

12. The National Assembly for Wales' Equality of Opportunity Committee has issued a report on Mainstreaming Equality, which explicitly describes the Welsh Assembly Government's action plan for the Welsh language (*laith Pawb*<sup>7</sup>) as an 'equality strategy'<sup>8</sup>.

13. With the assistance of the Welsh Assembly Government, the Welsh Local Government Association has prepared a generic Equality Standard for adoption by local authorities in Wales. The published summary of this document is:

*'The Equality Standard recognises the importance of fair and equal treatment in local government services and employment and has been developed as a tool to enable authorities to mainstream race, the Welsh language, gender and disability into council policy and practice at all levels.'*<sup>9</sup>

There are legal precedents at UK and European level for treating languages as an equality issue. In Wales, all levels of Government have made unequivocal commitments that treat the Welsh language as part of the equalities agenda. The UK Government should adopt this approach as it takes this issue forward, following this consultation.

## The Welsh language and the individual

14. As shown above, the Welsh language is already accepted in Wales as a valid equality strand.
15. The language spoken by an individual (especially the language spoken at home during childhood years) is part of that person's identity, like religion and other aspects of ethnicity. People may choose to change their language preference, but there are also other equality issues which are mutable.
16. Language is in most cases an integral and involuntary part of an individual's culture - reflecting their history, mediating their relationships with family, friends, co-workers and the wider community. Barriers that prevent the use of Welsh corrode these relationships instead of strengthening them, and often undermine self-worth and self-esteem.

<sup>6</sup> At para 3.3.9

<sup>7</sup> <http://new.wales.gov.uk/about/departments/dlgc/localgovculturepubs/1236615/laithPawb?lang=en>

<sup>8</sup> <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-second/bus-committees-second-eoc-home.htm>. Para 6.4: "...there are a number of sectoral or specific equality strategies and statements which policy makers should be responding to, for example *laith Pawb*: the National Action Plan for a Bilingual Wales and the Assembly Government's Welsh Language Scheme.

<sup>9</sup> <http://www.wlga.gov.uk/uploads/publications/453.pdf>

17. The Welsh language belongs uniquely to Wales. It is sustained by the small percentage of households where Welsh is spoken, by Welsh medium education, and by the efforts of a host of private, public and voluntary organisations. Nevertheless, the language remains fragile, and its survival is not a given. Any further decline could be irreversible, and would certainly be a loss to all the people of Wales, present and future. That is why the Welsh Assembly Government, together with others, are committed to supporting the language and promoting its use.

The Welsh language is greatly valued, but faces significant challenges. Including the Welsh language as an equality strand would protect its future prospects.

### **Discrimination against those who use the Welsh language**

18. Many people in Wales prefer to use the Welsh language or choose to use the Welsh language because of their social origin and personal opinions. Some, particularly the young and old, prefer to use the Welsh language because they are better able to express themselves in Welsh than in English. A few, generally the very young and old, must use the Welsh language because they have not yet developed, or have lost, the ability to use English.
19. The types of discrimination faced by these groups include the following:
- a. **Care for the elderly** can be difficult to obtain through the medium of Welsh. This is of particular concern for those whose first language is Welsh, and who lose ability in English – for example following stroke or dementia.
  - b. **Healthcare** can be difficult to obtain through the medium of Welsh. This is of concern to all those who find themselves in need of healthcare, but is of particular concern to those from four key vulnerable groups: those with mental health problems; people with learning difficulties and other special needs; older people; and young children. A report by the Wales Consumer Council in 2000 concluded that 'in the case of Welsh speaking patients, there are instances where they cannot be treated effectively except in their first language, or in both languages'.<sup>10</sup>
  - c. **Childcare** can be difficult to obtain through the medium of Welsh. This is of particular concern for children from Welsh-speaking homes, who have very little ability in English. The lack of provision discriminates against the children themselves, by denying them a healthy, learning environment, and disrupting the interface between the Home Learning Environment and the formal learning environment. It also discriminates against parents, who may be unable to return to work because they are unable to find appropriate childcare.
  - d. **Education** can be difficult to obtain through the medium of Welsh, at every level. This is of particular concern for those with special educational needs, and for those who need educational therapy. Even where Welsh medium education is available, free school travel may not be. Welsh medium primary and secondary schools are often over-subscribed, denying school places to

---

<sup>10</sup> Welsh in the Health Service: The Scope, Nature and Adequacy of Welsh Language Provision in the Health Service in Wales

many. In most subjects, Welsh medium further and higher education provision is incomplete.

- e. **Services** of all kinds are often difficult to obtain though the medium of Welsh, especially when communication needs to be face-to-face. There has been improvement in this area since the passing of the 1993 Welsh Language Act, but much remains to be done to make access to Welsh and English services in Wales truly 'equal'.
- f. **In the Workplace** Welsh speakers have faced blanket bans on speaking Welsh – even when to do so would not affect the business of the organisation they work for. Welsh speakers in Wales are unable to protect themselves from such discrimination using the Race Relations Act (although Welsh speakers outside Wales are able to do so). The Commission for Racial Equality has recently called for new legislation to ensure that such bans would be seen in law as discriminatory.

- 20. Many of these examples are self-reinforcing. Each negative experience suffered whilst seeking a Welsh language service can undermine resolve to seek such a service in future. For those lacking time, confidence or determination, it becomes increasingly easy to 'settle for' the English medium service, even though they would prefer to receive the same service in Welsh, and would do so if the service was equally accessible in both languages.
- 21. There is a long history of frustration with these types of discrimination against Welsh speakers, which has been expressed most notably in sustained campaigns of civil disobedience or non-violent protest. Many of these campaigns have secured increases in the level of Welsh medium services, in response to a clearly expressed demand for them.
- 22. At the same time, Welsh speaking communities are being profoundly negatively affected by cultural and demographic changes. Invariably, the result is the erosion of Welsh as the natural language of the community, which denies Welsh speakers the opportunity to use their preferred language in their daily life, and may undermine their sense of status and self-worth.
- 23. Welsh speakers should not belong to a second class equality tier – if it is deemed unacceptable to discriminate 'some of the time' against other protected groups, then the same should be true for Welsh speakers.

<p>Many people in Wales are unable to use the Welsh language where they would prefer to, need to, or would be better served by being able to. These people are being discriminated against, and the best way to address that discrimination is by unequivocally establishing the Welsh language as an equality issue in law.</p>
--

### **The unique value and status of the Welsh language in Wales**

- 24. It is widely accepted that the Welsh language in Wales should be considered differently to other minority languages in Wales and the UK. Because it is a vital and valuable part of Welsh identity and British history, it deserves particular consideration in both Welsh and UK contexts.

25. The UK government has recognised this over many years, passing legislation which explicitly protects and promotes the language in Wales, most recently the 1993 Welsh Language Act.

26. The UK Government has stated that Welsh is an official language in Wales. During the Welsh Language Bill's passage through Parliament, in July 1993, the Right Honourable Sir Wyn Roberts M.P. (Minister of State at the Welsh Office at the time) explained:

*"... Welsh is an official language in this country."*<sup>11</sup>

27. The Welsh Assembly Government has outlined its policy in relation to the Welsh Language in *Dyfodol Dwyieithog : A Bilingual Future*, which was followed by *Iaith Pawb: A National Action Plan for a Bilingual Wales*. These documents have the aim of creating:

*'a truly bilingual Wales, by which we mean a country where people can choose to live their lives through the medium of either or both Welsh or English and where the presence of the two languages is a source of pride and strength to us all.'*

28. The Welsh Assembly Government has also recently declared its intention to work towards:

*'... a new Assembly Measure to confirm official status for both Welsh and English, linguistic rights in the provision of services and the establishment of the post of Language Commissioner.'*<sup>12</sup>

29. Although it is now spoken mostly in Wales, the Welsh language is part of a common inheritance - the oldest known literature in any language native to Britain was written in Welsh in what is now southern Scotland. Together with Scottish and Irish Gaelic, which are also specifically protected by UK legislation, it is an essential part of the UK's valuable linguistic history and diversity.

30. Unlike many other minority languages in the UK, Welsh is not supported by any overseas national linguistic community, which makes it comparably vulnerable and less sustainable. We believe that further legislation would be appropriate to protect the interests of those who speak indigenous languages used to a significant degree in the UK – when those languages remain in danger of decline or dying out over the next century. In these cases, the law would preserve the language, as well as promote its use.

31. Languages thrive on being used. Legislation to protect and promote the Welsh language has focussed on the provision of services. These measures, which are designed to encourage language use, will not succeed if those who prefer to or need to use the Welsh language continue to be discriminated against as shown above.

The Welsh language in Wales has distinct value, is purposefully supported in legislation by the UK government, and has a recognised status in Wales beyond that of other minority languages. This provides strong precedent for including the Welsh language in Wales as a valid equality strand.

---

<sup>11</sup> House of Commons, 15 July 1993

<sup>12</sup> One Wales: [http://new.wales.gov.uk/docrepos/40382/40382313/40382/one\\_wales\\_document.pdf?lang=en](http://new.wales.gov.uk/docrepos/40382/40382313/40382/one_wales_document.pdf?lang=en)

## Harmonising and Simplifying the Law

32. The Discrimination Law Review recognises that equality considerations have evolved since the first equality laws were passed – and that further changes are now required. Similarly, the Welsh Assembly Government has recognised the need to review Welsh language legislation<sup>13</sup>.
33. One reason for this is that Welsh language schemes have not always ensured equal treatment for Welsh speakers. The adoption of a scheme is but the beginning of a process - it sets out how a public body proposes to deliver services in Welsh, but its success depends on many things, including the resolve and commitment of the public officials involved, and the resources available to them. Crucially, an individual's relationship with a public body is not framed by any legal rights or status, but by the contents of the scheme; the timetable for improving services which is set out in the scheme; and by progress in delivering the scheme. It is an inevitably bureaucratic process, which is generally inconsistent and opaque to the general public.
34. By contrast, an organisation which discriminates against a person on the grounds of race, disability or any other protected ground can face legal action, with all the associated risk to reputation. This is a scenario which significantly outweighs the risks faced by a public body which has failed to comply with its language scheme. To be accused of '*failing to comply with a scheme*' is simply not as serious, or emotionally charged, as being accused of '*discriminating against an individual*' (and all of those who share a characteristic with that individual).
35. We strongly recommend, therefore, that the UK and Welsh Assembly Governments agree the extent to which discrimination law should be extended to cover Welsh speakers in Wales<sup>14</sup> (as was suggested by the Board in our letter to the Secretary of State for Communities and Local Government in October 2006). This will give Welsh speakers the status, rights and confidence to build a complete relationship with public bodies whilst using their preferred language.
36. The Welsh Assembly Government has proposed establishing a Language Commissioner, as well as establishing linguistic rights<sup>15</sup>. We believe that including Welsh in discrimination law will give individuals the linguistic rights they need, within a legal framework which has stood the test of time as far as the other equality strands are concerned. It will also provide a framework which will be consistent with the other equality strands. We believe that a Language Commissioner would be the best person to ensure that public, private and voluntary sector bodies comply with the law and to take the necessary action when cases of discrimination against Welsh speakers arise – as the CEHR will do with regard to the other equality strands.
37. The fact that the language is mainly a Wales-based issue does not mean that it is solely an issue for the Welsh Assembly Government. The proposed legislation will extend to Wales, as well as to the remainder of the UK. Primary legislative responsibility for Wales still rests largely with the UK parliament and it is for the UK Government to discuss with the Welsh Assembly Government the most appropriate and effective way forward.

---

<sup>13</sup> One Wales: [http://new.wales.gov.uk/about/strategy/one\\_wales/?lang=en](http://new.wales.gov.uk/about/strategy/one_wales/?lang=en)

<sup>14</sup> N.B. Under statutory language schemes prepared in accordance with the Welsh Language Act 1993, public bodies based outside Wales are required to provide services in Welsh to the public in Wales. Discrimination law should operate on a similar basis, therefore, so that public bodies based outside Wales would need to avoid discriminating against Welsh speakers based in Wales.

<sup>15</sup> One Wales: [http://new.wales.gov.uk/about/strategy/one\\_wales/?lang=en](http://new.wales.gov.uk/about/strategy/one_wales/?lang=en)

As discrimination law is harmonised across the UK and across each equality strand, we believe that discrimination law should be extended to protect Welsh speakers. The UK and Welsh Assembly Governments should agree to introduce discrimination legislation which includes the language alongside the other equality strands in the most effective and appropriate manner.

## The proposals set out in the Discrimination Law Review

38. Our initial view with regard to appropriate discrimination legislation for the language is set out below.<sup>16</sup>
39. It would not be appropriate to include Welsh speakers within legislation covering **direct discrimination**. There is little evidence in recent years of Welsh speakers being treated less favourably, simply on the grounds that they speak Welsh. We have no evidence to suggest that any company or organisation uses these grounds to refuse to provide goods or services of any kind (in any language) to Welsh speakers. Similarly, we have no evidence to suggest that any employer is refusing to employ Welsh speakers, simply because they speak Welsh.
40. In addition, we have no evidence to suggest that discrimination on the grounds of **perception and association** has caused any difficulty in relation to Welsh speakers or those who associate with them.
41. Similarly, although the ability to speak Welsh should be accepted as a genuine occupational requirement for some posts, we see no need to prepare a **list of circumstances** in which an employer can use a genuine occupational test to justify discriminating directly against others whilst recruiting Welsh speakers. It would be possible to include in such a list jobs such as teachers in Welsh medium schools, or actors to appear in Welsh language plays. We believe, however, that such a list would be fairly small. We are not aware of any case brought against an employer recruiting to fill these and similar positions.
42. We would support the use of a **genuine service requirement test** to ensure that employers are better able to justify seeking Welsh speaking staff, or providing Welsh medium services, to help deliver a statutory Welsh language scheme (in the public sector), or any other Welsh language scheme or policy (in the private and voluntary sectors).
43. It would be entirely appropriate to include Welsh speakers as a protected group within legislation covering **indirect discrimination**. As discussed above, Welsh speakers find most services difficult to obtain in their preferred language. Welsh language schemes in themselves have not proved rigorous enough to ensure that public bodies plan appropriately to provide services in Welsh. The prospect of facing a charge of indirect discrimination, however, would focus minds, whilst ensuring an equal level of protection for Welsh speakers and the other protected groups. We also believe that indirect discrimination legislation should ensure that employers may not discriminate against Welsh speaking employees (by, for instance, issuing a blanket ban on speaking Welsh in the workplace).

<sup>16</sup> The issues are discussed (mainly) in the order in which they appear in the consultation document.

44. We agree with the Government's proposal to base **the test for discrimination** on 'a provision, criterion or practice putting people at a particular disadvantage' rather than 'a requirement or condition which a considerably smaller proportion of a group can comply with'. This, we feel, would make it easier for Welsh speakers to prove discrimination should they suffer it. We recognise that this test may prompt more people to initiate complaints against employers who seek to recruit Welsh speakers, but we are satisfied that the ability to demonstrate objective justification (see below) should ensure that those who genuinely need Welsh speaking staff should not fall foul of the law.
45. We are of the view that any Welsh speakers unable to receive services through the medium of Welsh would be '**at a particular disadvantage**'. We recognise that the level of disadvantage varies - the most severe obstacles are faced by the young, the old, and those experiencing stress or personal difficulties – but we are of the view that there is a particular disadvantage even for those who simply have a preference for receiving services in the Welsh language, or feel more comfortable doing so.<sup>17</sup>
46. We also agree with the Government's proposed test for **objective justification**, namely 'a proportionate means<sup>18</sup> of achieving a legitimate aim...which correspond with a real need on the part of the employer or service provider'. In this context, of course, the need to fulfil the commitments set out in a Welsh Language Scheme would constitute a legitimate aim. The Board (or the proposed Language Commissioner, see below) would work in partnership with other bodies to prepare guidance and codes of practice for this area, as the CEHR will do for the other equality strands.
47. In its discussion of **goods, facilities, services and public functions**, the Government says 'we want to make sure that people are treated fairly by public authorities... and for public sector staff to know when it is acceptable to differentiate between people...to address a particular person's individual needs'. It further states 'the same is true for private and voluntary organisations'. We are of the view that any indirect discrimination legislation which is relevant to the activities of public, private and voluntary sector organisations must also include Welsh speakers as a protected group. The Board (or the proposed Language Commissioner, see below) would work in partnership with other bodies to prepare guidance and codes of practice for this area, as the CEHR will do for the other equality strands.
48. We are of the view that legislation must protect Welsh speakers from **victimisation**. This would, for example, enable a member of staff to bring a case against an employer who had sought to ban the use of Welsh in the workplace, without fear of subsequent victimisation by the employer.

---

<sup>17</sup> In this context, it is important to consider the views of the courts and the Home Office, The Welsh Courts Act 1942 enabled the use of Welsh in court in Wales by any party who considered that they would otherwise be at a disadvantage by reason of their natural language of communication being Welsh. Crucially, it was not for the court to decide whether an individual would be at a disadvantage in English, but rather it was for the individual to decide. This interpretation was supported by a Home Office letter, issued in 1943, but later contradicted in the case of R. v. Merthyr Tydfil Justices, ex parte Jenkins in 1967. In response to a defendant's request to speak Welsh, Widgery J. responded '*I think it is quite clear that the proper language for Court proceedings in Wales is the English language. It is to my mind a complete misapprehension to believe that anybody at anytime has a right to require that the proceedings be conducted in Welsh*'. That view, however, was seen to betray '*an appalling lack of sensitivity to a very real social, political and cultural problem*'. The Welsh Language Act 1967 allowed for the use of Welsh in the courts in Wales and Monmouth by any party who desired to use it, establishing the principle that it is not for the State to decide whether an individual would be at a disadvantage using English; it for the individual to decide.

<sup>18</sup> It is important to note that '*proportionate means*' can be different for organisations based in Wales, compared to organisations based outside Wales. It can also be different for organisations based in different parts of Wales – and for different kinds of organisations.

49. We believe that the need to operate in accordance with a statutory Welsh language scheme should be included as a category under '*statutory authority*' in the **list of statutory exceptions** listed in table 1, annex a of the Discrimination Law Review consultation paper.
50. We support the use of **positive action** designed to address the under representation of particular groups in a variety of roles and situations. We would like to see positive action measures extended to include Welsh speakers as a group to be supported, so that organisations are better able to recruit Welsh speaking staff, or to improve the language skills of existing staff. This would improve and extend the availability and quality of goods, facilities, services and public functions that meet the needs of Welsh speakers. This kind of work is already supported by the Welsh Assembly Government through initiatives such as Potentia<sup>19</sup>, which seeks to encourage more Welsh speakers to become entrepreneurs (prior research had shown a comparatively low percentage of Welsh speaking entrepreneurs).
51. We note with interest the intention to require public bodies to prepare single **equality schemes**. We believe that the process described in the Discrimination Law Review paper has considerable merit – and we welcome the intention to ensure that these schemes should address disadvantage, promote respect, meet different needs and promote equal participation.
52. We also support the intention to **require public bodies** to: set priorities; agree strategic equality outcomes; consult; collect evidence; work transparently and develop and train their staff as they undertake this duty. We believe that the Welsh Assembly Government should always be consulted by public bodies providing services to the public in Wales as they agree their priorities and strategic equality outcomes.
53. We welcome the intention to **mainstream equalities** in policy and service development, in procurement and in employment.
54. We also welcome the intention to **focus on outcomes** and the suggestion that the CEHR should work with public inspectorates to help ensure compliance.
55. We support the proposal for the CEHR to issue **compliance notices**, enforceable through the courts, if a public body fails to comply with its scheme. We believe the Board (or the proposed Welsh Language Commissioner) should have the same enforcement powers with regard to the provision of services through the medium of Welsh.
56. We support the need for the CEHR to agree memoranda of understanding with the **public service inspectorates**. We believe that the Board (or the proposed Welsh Language Commissioner) should have similar memoranda agreed with the inspectorates. (We are already discussing with the CEHR transition team the need to agree such a memorandum between the CEHR and the Board).
57. The Board is preparing guidelines on **procurement** and the Welsh language, in liaison with Value Wales<sup>20</sup>. We will wish to ensure that the CEHR's guidelines on procurement will be consistent with ours.
58. We support the proposals for *voluntary equality standards* for **private sector companies** (as employers and service providers). We believe that a similar approach

---

<sup>19</sup> <http://www.potentiacymru.com>

<sup>20</sup> <http://wales.gov.uk/about/departments/dpsp/PolicyDelivery/VWOverview/?lang=en>

would be entirely appropriate with regard to the private sector's relationship with Welsh speaking customers, and would accordingly wish to see the language included in the standards where that would be reasonable and appropriate. We believe that the most appropriate approach would be self-assessment supported by periodic, independent assessments to gauge the success of the standard in embedding equality into the work of the private sector. We agree that some companies<sup>21</sup> should report on their progress in complying with the standard, under provisions compliant with the Companies Act 2006, and we believe that these reports should include reference to each company's progress in meeting the needs of Welsh speakers.

59. We agree with the proposal to introduce alternative **dispute resolution** techniques - and with the proposal to establish special courts to deal with discrimination cases. These courts must be able to deal with cases through the medium of Welsh.
60. As more and more young people learn Welsh in school, we currently have different percentages of Welsh speakers in different age groups. We do not foresee any serious difficulties with regard to cases of **age discrimination** brought against employers seeking Welsh speaking staff. Any decision to seek such staff should, in any case, be justifiable with regard to the entire range of equality strands.
61. **Clubs and private associations** exist in Wales that operate entirely through the medium of Welsh. This is in some cases their principal purpose, because in most social settings the language of a group tends to shift from Welsh to English if any one of those present is unable to speak Welsh. It will be important to ensure that cases of discrimination cannot be brought against these clubs on the basis that the language used by them is Welsh.
62. **Harassment:** We believe that discrimination law should make it an offence to harass a person because that person speaks, or wishes to speak, Welsh. This would help deal, *inter alia*, with those cases where an employer seeks to impose a blanket ban on speaking Welsh in the workplace (as discussed above). In the Board's view, such actions can 'violate a person's dignity' and 'create an intimidating, hostile, degrading, humiliating or offensive environment' (being the legal definition of harassment in this context).
63. We note the reference to the fact that **purpose clauses** are not common in UK legislation (page 62). Even so, we support the Welsh Assembly Government's intention to confirm the status of Welsh as an official language in Wales<sup>22</sup> - and we ask the UK Government to support that intention. To do so would help ensure equal status for the language - and offer both moral and legal support to Welsh speakers currently unsure about their status in relation to their dealings with public bodies.
64. We agree with the need to ensure that **strong institutions** exist to promote the equality agenda in the UK. We believe, also, that Welsh speakers need an equally strong institution to safeguard their interests.
65. We wish to work in close cooperation with the CEHR in preparing **guidelines and codes of practice**. We would want the proposed Memorandum of Understanding between the CEHR and the Board to ensure that this happens.
66. **A consistent approach:** We agree that discrimination law should be consistent across the protected fields - and practical and easy to understand. We wish to see

---

<sup>21</sup> They would need to do this, and prepare voluntary equality standards, only if they have dealings with the public in Wales, in a situation where using Welsh could be considered both reasonable and appropriate.

<sup>22</sup> One Wales: [http://new.wales.gov.uk/docrepos/40382/40382313/40382/one\\_wales\\_document.pdf?lang=en](http://new.wales.gov.uk/docrepos/40382/40382313/40382/one_wales_document.pdf?lang=en)

this principle applied to protect Welsh speakers as well as the other protected groups.

## **The Board and the CEHR working together**

67. All of the above proposals are of interest to the Board, with regard to our work with the Welsh language and with regard to our relationship with the Commission. We will therefore wish to consider whether the guidance and best practice to be developed by the CEHR will contain ideas that could be adopted with regard to the Welsh language. We would like to consider whether public bodies should also investigate the needs of Welsh speakers as they consult - and collect evidence - to support their equalities work. We think that this approach should be supported by the UK and Welsh Assembly Governments, when and if it proves to be appropriate.
68. We would also like to consider whether, in certain circumstances, it would be appropriate to ensure that public bodies, the Board and the CEHR work together as single equality schemes are developed, so that the Welsh language aspects can be included as the work is taken forward. This could result either in the simultaneous preparation of a separate Welsh language scheme, or the preparation of clauses to be appended to the single equality scheme.
69. Either approach would offer public bodies one equality 'process' (from the initial consultation and research to the monitoring work) rather than one process for the CEHR strands and a separate process for their language scheme. It could reduce costs, and the administrative burden - whilst making it easier for the public to understand how public bodies deal with the equality agenda. It would also enable the State to deal with Welsh speakers 'as a whole person', rather than reverting to the outdated method of dealing with each equality strand as a separate issue (enabling, for instance, better provision for a seventy year old disabled Welsh speaker).
70. We would need to be convinced that any new procedures would offer a sound and effective framework in which to mainstream the Welsh language in policy and service development. They would also need to cope with the different legal framework offered by the Welsh Language Act 1993 and the proposed Single Equalities Act. Without these reassurances, we may not wish to depart too far from the procedures currently in use to approve, implement and monitor Welsh language schemes.
71. We will also need to consider the extent to which public sector officials will be able to deal with the wide range of issues that a unified approach will involve. Some public servants in Wales, whose prime responsibility is to coordinate the delivery of Welsh language schemes, have developed considerable expertise in the field of language planning. We would not want to lose that expertise.
72. For the following reasons, therefore, we will wish to work closely with the CEHR as it develops its guidelines and codes of practice:
  - a. Firstly, in order to ensure that the needs, status and legal position of the Welsh language and Welsh speakers are properly recognised and provided

for (this will include the need to ensure that nothing is published in the CEHR's documents which could undermine the position of the language)<sup>23</sup>.

- b. Secondly, we will need to consider to what extent the CEHR, the Board and individual public bodies (as appropriate) should work together as single equality schemes are developed, implemented and monitored. The CEHR, the proposed Single Equalities Act and single equality schemes will all be new additions to the equality landscape, invested with considerable political capital. We expect considerable focus to be placed on single equality schemes, and we will work to ensure that new arrangements do not come at the expense of the Welsh language. This supports the need for the Board, the CEHR and public bodies to work in partnership, in line with the Government's intention to deal with equality issues together (a desire shared by many public bodies).
- c. Thirdly, we can also expect that **Crown bodies** will be required to prepare single equality schemes, when requested by the CEHR<sup>24</sup>. At present, the Board cannot require Crown bodies to prepare Welsh language schemes. Instead, Crown bodies 'may' prepare schemes, under Section 21 of the Welsh Language Act. On occasion, it has been difficult to ensure cooperation. Our experience suggests that the best way to ensure an appropriate response from Crown bodies would be to make it a statutory requirement for them to prepare single equality schemes.

## Other issues of interest to the Board

73. Although not specifically covered in the Discrimination Law Review consultation, we believe the following issues, which could impact on the language, should form part of the considerations during the review.
74. **Welsh in the workplace:** We wish to ensure that statutory language schemes include clauses related to promoting the use of Welsh in the public workplace in Wales (i.e. by staff working for public and Crown bodies). The discrimination legislation discussed above should help ensure that employers can recruit Welsh speakers, as required – and that employers may not issue blanket bans on speaking Welsh in the workplace. What is also needed, however, is to encourage the use of Welsh at work. People who work spend much of their waking lives doing so – and if the language is to survive, it must be seen as relevant to the workplace as well as the home and social circles. Public bodies in Wales need, therefore, to develop workforces able to work bilingually.
75. **Partnerships:** more and more public policy and services are developed and delivered by several organisations working together in formal and informal partnerships. We believe that the UK Government (in the context of the Discrimination Law Review) and the Welsh Assembly Government should take steps to ensure that the legal, and other, provisions to be established in support of the equalities agenda, including the Welsh language, will also apply to partnerships.

---

<sup>23</sup> Similarly, we would wish to invite the CEHR's comments on any guidance and codes of practice to be prepared by the Board, or by the proposed Language Commissioner.

<sup>24</sup> We fully support the need to include Crown bodies amongst those who will be required to prepare schemes

76. **Statutory guidelines on the preparation of Welsh language schemes:** If we are to work closely with the CEHR, including the possibility of working with it and other public bodies as single equality schemes are prepared, it may prove necessary to amend the statutory guidelines prepared by the Board (and approved by Parliament) in 1995. We believe, however, that the right to approve, or reject, any revised guidelines should rest with the National Assembly for Wales, following appropriate consultation with the Welsh Assembly Government, Parliament and others.

Welsh Language Board  
September 2007