

# LEGISLATIVE DEVOLUTION AND LANGUAGE REGULATION IN THE UNITED KINGDOM

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## Introduction

These are challenging and historic times for the governance of the Celtic languages within the United Kingdom and Ireland. Following the devolution of government to Northern Ireland, Scotland and Wales, new opportunities, priorities and forms of engagements have increased the salience of the Celtic languages on the political agenda. The recent restoration of political control to the Northern Ireland Assembly, following the St Andrew's Agreement of 2006, includes a commitment to legislate an Irish Language Act for Northern Ireland. A similar commitment has already been honoured by the Scottish Parliament with the passage of the Gaelic Language Act 2006 and the strengthening of the *Bord na Gaeilge*. In Wales, as we shall see, 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, the most important of which 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. At the international level the UK is subject to the provisions of the ICCPR. That is the right to freedom of expression, guaranteed in provisions such as Article 19 of the United Nations' *International Covenant on Civil and Political Rights*, which protects the rights of persons to use their languages in public and private without interference from the state. 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"). In Ireland the appointment of a Language Commissioner (Seán Ó Cuirreáin), a new Official Languages Act (2003) and a modified language planning agency *Foras na Gaeilge*, are the tripartite official pillars supporting government attempts at revitalizing the Irish language.

This essay will concentrate on Wales where language policy has been determined largely by an agency of the state which has operated at arm's length from the daily pressures of national government. This "arm's length" principle, a function of the quango governance inheritance, has been abandoned by the Government of Wales as it has integrated formerly "independent" agencies such as the Welsh Development Agency, the Wales Tourist Board, into the routine departments of state, and plans to integrate the Welsh Language Board sometime after April 2007. Two sorts of justification have been offered. One is to increase accountability and to avoid duplication of functions. The second is a claim that not all parts of Welsh society have had "equal access" to the services provided by such agencies. The Welsh Language Act 1993 provided a statutory framework for the treatment of English and Welsh on the basis of equality. 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.

Having established itself as an innovative, influential agency during the period 1993-2007, the future of the Welsh Language Board is now under review and its post-integration remit is unclear. Thus there will be a significant transitional period occasioning a debate on a range of issues concerning language and governance. These include how language policy is to be determined in the medium term future? Which agencies will undertake language planning and consider strategic language policy issues? What is the relationship between central, national and local government and such para-public agencies? How is this likely to change and with what effect both in terms of increasing the effectiveness of language policy and in integrating and/or mainstreaming language considerations into all aspects of governance in Wales?

The Government White Paper on Devolution *Better Government for Wales*, published in mid-June 2005, presented proposals for amending the Government of Wales Act and is the Government's response to the Richard Commission's. This latter commission had investigated proposals for strengthening the powers of the National Assembly for Wales and for changing the Assembly's electoral arrangements (See Richard 2004). The Paper sets out how the Assembly's powers could be increased, giving it more freedom from Westminster legislation, how its structure could be reformed, separating the legislative aspect from the Welsh Assembly Government, and how its electoral arrangements could be changed. The White Paper's proposals offer the opportunity to transfer further responsibilities to the Assembly in future to legislate in specific areas. 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, 687).

An obvious and unique area where these new legislative powers would be an advantage is in the formulation of language and education policy in Wales. Of course everything depends upon how the London and Cardiff governments would interpret their new relationship. But in theory, should the negotiations following the Government of Wales Act 2006, suggest bilingualism as a special policy area under the Welsh Government, this could give a significant boost to unique legislation in the area of bilingualism. The "Orders in Council" are the key to this. They 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.

I have argued and lobbied that the Assembly Government should make the transfer of powers pertaining to the Welsh language a priority in this respect (Williams 2005a; 2005b; 2006). The creation of a bilingual Wales is a long-term project and it will be necessary to amend the relevant legislation on a regular basis. Bearing in mind that the Assembly has executive functions pertaining to the Welsh language, it makes sense for the Assembly to have the power to change the legislation rather than having to compete for legislative time in Westminster. Any transfer of legislative powers should be broad enough to deal with a range of situations and policy areas pertaining to the Welsh language. What are the necessary steps in the proposed legislative devolution?

1. The Assembly Government and the Assembly submit an “Order” to the Secretary of State.
2. The Secretary of State lays the Order before Parliament.
3. House of Commons and House of Lords committees investigate the evidence and justification.
4. Debates of up to 90 minutes in both Chambers.
5. Approval from the Queen and Privy Council.
6. The Orders are subject to affirmative resolution but not to Assembly legislation
7. The Orders include enablement conditions to allow the Assembly to prepare legislation.

In practice, this means that the Assembly can act as an informal Parliament, developing its powers in appropriate areas without having to go back and forth to Westminster. It is possible for the Assembly to claim that it has the responsibility and expertise to act on behalf of the language and therefore under this interpretation of the White Paper, Assembly could request a near monopoly of power on developing its policies on bilingualism.

The relevant clause for such an Order in Council would be “to protect and promote the Welsh language”. This would accord with clause 32 of the Government of Wales Act, 1998. But in order for the Assembly to convince the Secretary of State, the Assembly is required to rely on Welsh civil society, prior to, during and following such legislation. In this respect, we would have a more comprehensive and constructive democracy than a number of other European countries, as henceforth the Assembly would be completely reliant on the public. A further implication would be to increase the legislative work load of Assembly Members, but recall that all pieces of legislation would have to be bilingual. But I would add a note of caution both in terms of the Assembly’s lack of legislative experience and its tolerance for bilingual working practices. Rawlings has reminded us (2003, 250) that “the scope for mismatch between the enabling statutes and subordinate legislation is bound to be increased by the disaggregation of the traditional central government model of doing business, and so call for even more careful policing in Wales...” As one would expect, the situations for “adverse reporting” set out in standing orders closely echo the Westminster ones, for instance:

- doubt whether the legislation is within the Assembly's powers
- the legislation appears to make unusual or unexpected use of the powers
- the form or meaning needs further explanation
- the drafting appears to be defective.

The chief addition, naturally, is the bilingual element. The (Legislation) committee thus reports "if there appear to be inconsistencies between the English and Welsh texts" which translates as seeking to ensure there are not. (2003, 250)

Speaking generally of legislative matters Rawlings warns of the need for vigilance against boredom and complacency for "while there is an occasional nugget, so much of the committee's business is tedious in the extreme: an ambiguity here, a mis-translation there, and so on. It is worthy and necessary work, but from the view point of the political animal it represents the short straw. Against the backdrop, not only of subordinate legislation, but also of laws often driven from elsewhere, this is part of the grim realities of the life of the Assembly as a legislature." (250)

Naturally, all this raises fundamental questions regarding devolution. The implications of the full devolution of powers to legislate on the Welsh language for United Kingdom bodies which provide services in Wales would have to be considered. The Assembly should be responsible for setting the direction and determining the content of policies pertaining to the Welsh language. Given the appropriate powers so to do, legislative devolution of this kind would exemplify Rawlings' "deepening" and "widening" of Assembly responsibilities. For as he has observed items such as "culture, recreation and the Welsh language" speak for themselves. Fingered in an earlier age by the Kilbrandon Commission, it is inconceivable that a scheme of legislative devolution for Wales would not include them. If the Assembly cannot be trusted with full legislative responsibilities for such matters, which bear so directly on the 'particularity' or national identity of Wales, what sensibly can it do?' (Rawlings 2003, 521)

The logic of legislative devolution would require a restructuring of the campaign for new Welsh language legislation through the "Orders in Council," which would require Westminster's seal of approval, but which would in turn transform the development and implementation of language policy made in Wales. This would involve the following steps:

- 1) New Language Legislation through the mechanism of 'Order in Council';
- 2) Mainstreaming the Welsh language as a consideration and as a constitutional language in the preparation of the Assembly's secondary legislation and as part of Westminster's general legislative programme;
- 3) Establishing the office of Welsh Language Commissioner;
- 4) Strengthening the Assembly's powers;
- 5) Democratize the contribution of civil society by providing a truly valuable Language Forum or Welsh Language Council;
- 6) Integrate the work of the Board into the heart of Government and not as a marginal department;
- 7) Seek to convince the public and 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.

It looks doubtful that government will follow this procedure. Its more piecemeal reform of the legislative process will introduce an element of uncertainty both in relation to the position of the Welsh Language Board and in terms of establishing an independent regulatory authority to deal with breaches of agreed language policy.

Established in 1989 the Welsh Language Board has matured to become a professional, para-public institution, an arm of government backed by United Kingdom parliamentary legislation, a champion of radical and innovative measures, a critic of many aspects of Welsh public and commercial life. It has, in turn, been severely criticised at various junctures for its grant allocation decisions, its prioritising of some cultural and youth-rated activities over others and its regulatory behaviour *vis-à-vis* some public institutions. It has also been accused of being naïve in advancing neo-liberal presumptions regarding its capacity to intervene in the market-place, to influence the language choice and child-rearing practices of parents and for its quango-like relationship with government. However, because of its relative autonomy of action it has forged a wide variety of enabling partnerships, at one step removed from the day to day concerns of government, which has given it its own legitimacy as the authoritative language planning body. In Wales, the style of intervention becomes almost as critical as the content of reform. The enforcement of compliance with Welsh language schemes is dependent on action by the National Assembly for Wales. Public bodies believe that the Board has far more powers than it actually has to enforce its recommendations. Consequently the largely constructive, consensual approach of the WLB, especially when dealing with large organisations that do not have an obvious self-interest in promoting bilingualism, has paid off.

National Assembly decisions have strengthened the WLB and made more urgent its deliberations in terms of constructing a bilingual society. However, there is a certain political imperative for the Assembly government to incorporate the Board as part of a routine department of state. Depending upon how the integration is handled several features could be lost in such incorporation. The most critical is the loss of an authoritative body exercising an overview function and undertaking the strategic language planning of Welsh. The Board has also exercised flexibility of action, in part because of the specialist input of the Board's members and the close working relationship with a wide variety of bodies in Welsh civil society. They in turn recognise that while the Board has authority it is not necessarily conceived to be the public face of the Government on language matters.

On the other hand, the establishment of a vibrant, dynamic language planning and policy unit at the center of Government could accelerate the mainstreaming of Welsh and fulfil many of the policy initiatives identified in *Iaith Pawb* and beyond. In Catalonia and the Basque Country this is the norm, where a powerful, centrally placed department of government is answerable directly to the President and Cabinet. As in so many other matters of public life much depends upon the relationship such a department/unit establishes both with other constituent units of the National Assembly and with the general public. Such an opportunity to influence all aspects of policy would offer an unprecedented boost to official bilingualism. The horizons for Welsh may seem a little clouded at present but that is only to be expected given the radical and incursive nature of constructing a bilingual society within part of the evolving United Kingdom.

## Alternative Regulatory Models

Two alternative models are under discussion. The Government favors the establishment of a *Dyfarnydd*, literally a regulator or adjudicator; I among others favor the establishment of a Language Commissioner (Williams 2005a; 2005b)

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 assume a two stage process. First, the Assembly Government proposes 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 proposes to establish a statutory regulator, the *Dyfarnydd*, under the legislative arrangements proposed within the Government of Wales Bill.

The WAG (2006) consultation paper does not discuss the Residual Body at any length. But this is a key part of the process and such transitional arrangements could last for a significant period. No precise timetable is proposed for the establishment of the *Dyfarnydd* since the Government cannot warrant that they will be in a position to establish the *Dyfarnydd*. The proposal presupposes 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.

Legal specialists have suggested that there are two ways in which the Assembly Government, using powers which it currently holds, could establish a regulatory framework which would reflect the principles of the 1993 Act. The Board could retain its existing regulatory functions and the Assembly retain its existing appellate functions under the 1993 Act, even if all the other functions of the Board are transferred to the Assembly. Alternatively the Assembly could transfer all the Board's functions to itself, including its regulatory functions and its current appellate functions could be discharged by a Committee of AMs which would/could consider representations made under section 8(8) or 14(2) of the 1993 Act. There is a precedent for this in the Standing Orders of the Assembly in relation to independent planning appeal Committees comprising AMs whose decisions bind the Assembly.

However, it is accepted that the Government would assume responsibility for the preparation and revision of Language Schemes Guidelines and for the preparation of circulars on the implementation of Welsh Language Schemes. It follows also that

Government would undertake the role of agreeing, monitoring and revising Language Schemes. If instead the *Dyfarnydd* undertook these responsibilities, that would necessitate direct involvement in policy development. Board officials have long argued that there is a need for keeping together the functions of agreeing and monitoring the implementation of schemes.

What of complaints and compensation regarding the failure to implement agreed Language Schemes? It is possible to argue that the *Dyfarnydd* 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. Board officials recognise that if these functions were separated, performance would be considered separately from the agreement on the content, and thus the *Dyfarnydd* would only consider the content of a language scheme and the complaint in question.

It is also possible to strengthen the *Dyfarnydd's* remit by adding powers to conduct investigations where appropriate. Alongside this, consideration would need to be given as to whether the Government could also have the power to conduct investigations; since the Government’s developmental work might draw attention to examples of non-compliance. An extension of this is the nature of the *Dyfarnydd's* adjudicative role in relation to a dispute between the Board 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.

What would happen if the *Dyfarnydd* 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? Is this an essential function for the *Dyfarnydd*? Would there need to be reference to a further completely impartial body 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?

A key issue is whether the *Dyfarnydd* 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. Section 3 of the current Act would enable the *Dyfarnydd* to undertake this role but the boundary between the *Dyfarnydd's* functions and those of the Government would not be clear. New legislation could provide more clarity on this matter, conferring on the *Dyfarnydd* the right, and duty, to operate independently within a defined mandate.

Additional questions need to be addressed before government decides on the *Dyfarnydd* option. Should the appointment of a *Dyfarnydd* be a Ministerial appointment, or rather an appointment that is confirmed by the Assembly? Should the

*Dyfarnydd* be an administrator or a public figure? Would a *Dyfarnydd*, or a Language Commissioner better serve the interests of the Welsh language? As it stands Government thinking about the role of the *Dyfarnydd* begs a number of questions. For example, there is little specification as to how members of the public might be able to complain directly to a *Dyfarnydd*, who may or may not be a publicly recognizable figure with a well understood remit. Neither is it clear how the *Dyfarnydd* would enforce the implementation of language schemes. Current arrangements do not require public bodies to provide information on request during an investigation, neither is there much evidence that individual bodies share their experience with other public bodies in dealing with such complaints. A stronger interventionist role for the *Dyfarnydd* could lead to a more consistent handling and resolution of complaints.

Presumably the *Dyfarnydd* 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 *Dyfarnydd's* judgments. 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 *Dyfarnydd*. As a minimum it seems logical to revise current legislation so that the *Dyfarnydd* 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 Board a statutory remit in relation to Crown bodies. The 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.

There is a risk that the *Dyfarnydd* would only concentrate on the essential matters under the current legislation, namely the implementation of Language Schemes, and that other parts of the work of actuating and promoting Welsh would be lost within the office of the Assembly's Administrative Ombudsman. But as the Assembly Government has established independent commissioners for children and the elderly, the same independence, strategic overview and same status should be secured for the proposed regulator for the Welsh language.

Therefore it is vital that the proposed regulator be an independent voice for the implementation of the Act. This appointment should be for a fixed term, and should be made by the National Assembly rather than the Assembly Government. This would follow the pattern mooted in *Better Government for Wales*, for the Public Services Ombudsman and the Auditor General. It should be ensured that the proposed regulator has the appropriate powers and resources to undertake his/her duties in a timely and effective fashion and has the defined role of supervising and implementing the linguistic legislation, in the exact same way as the other responsibilities provided, such as race and disability. 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 other Commissioners in areas, such as Administration, Children, the Elderly, Health and Welfare.

The following considerations were uppermost in the WLB's response to the Government's consultation paper (WAG 2006) concerning the integration of the Language Board:

- “It is difficult to predict what effect the change will have on the position of the Welsh language. It could strengthen the position of the Welsh language, but it is quite possible that it will weaken it.
- The independent regulator suggested is not strong enough in terms of practical functions or arrangements. The independent regulator should be responsible for agreeing and monitoring the implementation of language schemes, and should be accountable to the National Assembly.
- The proposed regulatory structure has been complicated rather than simplified, with a risk that public services will decline and resources will be duplicated.
- There is a lack of clarity with regard to the arrangements for the interim period and when the *Dyfarnydd* will be established. Given this, would it not be more appropriate to establish the *Dyfarnydd* on a statutory basis before any powers are transferred. In making this proposal, it is not our intention to introduce any unnecessary delay into the process, but to ensure that the process and regulatory framework are both cogent and consistent, and build on the 1993 Act.
- The statutory function of promoting the Welsh language should be transferred to the Government or become the responsibility of the Government and the independent regulator.
- It will be necessary to maintain the flexible working methods and regional structure of the Board .
- The staff's right to work through the medium of Welsh must be protected and the staff must be maintained as a single entity.
- Success and progress should be measured on the basis of *Iaith Pawb* targets, the implementation of the Government's Welsh language Scheme and a strong statistical foundation.” (Welsh Language Board 2006)

Establishing the role of *Dyfarnydd* would be a considerable improvement upon current arrangements. But in many respects this appears to be the soft option, an administrative tidying up exercise which falls far short of what is required.

### **The Case for a Language Commissioner**

To whom should appeals for establishing the office of a Language Commissioner be made? Welsh speakers, civil society, the National Assembly and the UK Parliament. Each of these targets will be persuaded by a different set of considerations. For Welsh speakers, appeals to natural justice and to live a bilingual life would predispose some to favour an independent advocate, a champion on language matters. For civil society appeals to a more complete equality agenda and to democratic accountability are likely to be convincing. For a National Assembly, an independent arbiter and advocate investigating complaints regarding the delivery of bilingual services and language rights is likely to be a major asset. This is especially true if it serves to depoliticize a party-political cleavage concerning the extent to which public services and possibly commercial activities are regulated. For the UK Parliament there is the attraction of extending the devolutionary arrangements. As

Rawlings (2003, 377) notes “with the ambition of an accountable and responsive public administration, independent complaint machinery is an integral part of the devolutionary scheme. This refers not only to ‘fire-fighting’(redress of grievance) but also to the classic ombudsman role of ‘fire-watching’, identifying deficiencies with a view to promoting improvements, and further to the especially important legitimising function in the case of the Assembly of buttressing public confidence.”

The changing face of public-sector service delivery 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 is to be supplemented by a Commissioner for Older People. None of the established posts has 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 2001-2002 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, 379).

Such considerations appear to favor *y Dyfarnydd* rather than a Language Commissioner. The ombudsman model for local government would be read across to the language arena so that adverse publicity and political embarrassment would act as the principal instruments for compensation and restitution. Soft law, speedy internal processes of dealing with complaints, accurate feedback into policy and performance would all give the impression of responsive, open government. By integrating *y Dyfarnydd* into an enlarged office comprising the WAO, the HSCW and others, systematic, routine procedures for dealing with complaints could be finessed with the minimum of disruption to the machinery of administration and good government.

What reasons then would one muster for establishing the office of a Language Commissioner? I recognize that the promotion of a threatened language is far greater than an issue of administrative convenience and routine, but by insisting on a Language Commissioner, attention will have to be paid to the unresolved question of language-related rights. The principal merit 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 example, Welsh medium education or bilingual services. The 1993 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 generalize 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. Welsh is part of the equalities agenda 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. The second major 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.

The two most pressing issues are the establishment of basic rights for individual speakers of Welsh and a new system whereby complaints may be investigated. It is essential that the Language Commissioner be an independent office charged with holding an overview of Welsh language legislation, dealing with complaints and undertaking investigations into the implementation of Language Schemes. It may or may not be advisable to ask such an Ombudsman to also act as a legal champion for the language, investigating issues regardless of whether or not an official complaint has been entertained. The National Assembly is the obvious forum for the enactment of legislation focussing specifically on the Welsh language to ensure that it can execute its policy responsibilities appropriately and fully.

A systematic examination of language rights would conclude that it is in dealing with services to the public where the greatest discrimination appears. In an interesting synthesis both *Cymdeithas yr Iaith Gymraeg* (2005) and the Welsh Language Board have acknowledged that the origin of a service, whether it be offered by the public, private and voluntary sectors, is no longer as pertinent as the character of the service under discussion. Similarly the Board notes that since the Welsh Language Act was passed in 1993, many parts of what was the public sector, such as the utilities, are now in private ownership. Sectoral boundaries are now fluid and it is increasingly common to see private or voluntary bodies providing services on behalf of the public sector.

A key priority would be establishing under what condition individuals would have a right to receive Welsh-medium education, the right to use Welsh in a number of cases in dealing with the Health System, or in the workplace, the right to correspond in Welsh which come within the scope of the Act, and to receive correspondence or information through the medium of Welsh. A Welsh Language Charter would be an appropriate place to signal such new rights in education, the economy, public services, and the media and so on.

Secondly, in consideration of such rights there should be no legislative differentiation on a geographical basis, and this for two reasons; first because it weakens the concept of equality within the nation, and secondly because in comparable cases in Ireland, Belgium, Finland, South Africa, the pressure to alter the boundaries (*i.e.* to shrink them, not to extend them) about every ten years, diminishes the success of any activity to strengthen the community. Therefore although I support programs targeted on the Welsh-speaking Heartland, I do not favor a statutory definition of the Welsh-speaking Heartland, à la the *Gaeltacht*, whether for reasons of linguistic rights or economic services.

Thirdly, both the Assembly Government and *Cymdeithas yr Iaith* propose a democratic forum, a “Council for the Welsh language” to discuss policy issues related to Welsh. I recognize that such a Council or Forum has an essential role in offering evidence, and giving a voice to those who otherwise excluded from mainstream politics and the policy community. But should it seek to achieve more than that? What would be the Council’s exact function and responsibilities? Would it be a new

expanded Welsh Language Board without the civil servants? The real need is to translate rhetoric into action and thus attention needs to be focussed on the trigger factors which allow civil society to influence the policy process. This might take the form of reporting to a strong committee of experts who would convert sound ideas into practical proposals which politicians could implement.

## Conclusion

Legislative devolution in Wales would go a long way to matching the powers which the Scottish Parliament now enjoys and the Northern Ireland Assembly should exercise, once devolution has been fully re-established there. Having contributed to the formulation of policy I am conscious that there remain considerable difficulties in implementing the proposed Irish Language Act for Northern Ireland (POBAL 2006b). Scotland has taken significant steps to ameliorate some of the democratic deficiencies surrounding the treatment of Gaelic, but faces a Herculean task in restoring Gaelic as a vibrant community language in many conventional contexts, even as fresh hope is offered by the construction of new networks of speakers in new domains. Some commentators, such as Éamonn Ó Gribín (2006) argue that the Gaelic Act falls so far short of the status accorded Welsh that one would be foolish or naïve to believe that any substantial change will occur in the fortunes of the language as a result of *Bòrd na Gàidhlig's* efforts. Given the reluctance/refusal of Scottish politicians to give Gaelic and English equal official status in Scotland, perhaps it would have been better to have fought to secure it such a status in the “Highland and Islands” and maybe also in the large cities, and leave English or Scotch English to the Lowlands!

Asymmetrical Devolution and the attendant Constitutional Settlement was designed to address the legitimacy deficiency within the UK's outer regions. Under the Scotland Act 1998, the Scottish Parliament enjoys a general power to make laws within its legislative competence. The passing of the Gaelic Act of 2006 marked a new stage in language governance within these isles, although its remit is limited to “national” rather than “UK wide” affairs in comparison with the Westminster Welsh Language Act of 1993 legislation which established the Welsh Language Board. This limits the scope of the Gaelic Act for it does not cover many significant UK departments and agencies which have a remit and service provision in Scotland. This may be one of the unanticipated side effects of devolution and will doubtless create a series of quasi-constitutional and territorial bureaucratic uncertainties as the devolved assemblies acquire greater primary legislative powers.

My view is that Scottish devolution has created a fresh impetus and by implementing the Gaelic Act of 2006 has created a statutory obligation to act in support of Gaelic. This recognition is both symbolic and practical. It is symbolic in that it recognizes that the responsibility for the future of Gaelic is a national political matter and not one which can be hived off only to a Parliamentary Committee or a new specialist agency. It is eminently practical in that it provides both a statutory body and initial requisite resources to implement the National Plan for Gaelic. In that one respect the governance of the language augurs well if *Bòrd na Gàidhlig* partnerships and political initiatives can influence behavior and boost confidence in the actual use of Gaelic in worthwhile domains.

However, it is in Wales that such new opportunities promise to deliver significant policy advances in terms of the Celtic languages. The Government of Wales Act 2006 will not settle the constitutional uncertainties, for given the Assembly's small size, lack of legislative experience and quasi-dependent relationship on Whitehall, Westminster legislation will be a constant in the relationship. Nevertheless, should the Assembly begin to exercise primary legislative powers in the twenty fields for which it holds exclusive responsibility, then a major step in the transfer of real power within the unwritten British constitution will have been taken. Trench (2006, 693) argues that as Wales remains part of the single jurisdiction of England and Wales, and Wales is not intended to have powers over civil or criminal law, the Assembly would not exercise the same level of power in respect of 'reserved' matters as does the Scottish Parliament. If in turn the Assembly embraces its new powers to give robust effect to its ambition to create a bilingual society then the prospects for the future of the Welsh language look brighter than at any other time in its modern history. Of course, I am conscious that we are dealing with the vagaries of responsible politics and that any number of decisions can be taken which will disappoint language activists. But the framework for a more open, inclusive and deliberative debate concerning the exact role of Welsh within society is now being constructed in a democratic manner.

### Works Cited

- An Coimisinéir Teanga. Annual Report, 2005*, Galway: *An Coimisinéir Teanga*, 2006.
- Belfast Agreement. *The Belfast Agreement-An Agreement Reached at the Multi-Party Talks on Northern Ireland*, Cm. 3883, 1998. Belfast: Northern Ireland Office, 1998.
- Commissioner of Official Languages. "Annual Report 2004-5," Ottawa: Office of the Commissioner of Official Languages, 2005.
- Cymdeithas yr Iaith Gymraeg. Deddf Iaith Newydd-Dyma'r Cyfle*, Papur Trafod, Aberystwyth: *Cymdeithas yr Iaith Gymraeg*, 2005.
- Higgs, G. Williams, C.H. and Dorling, D. "Use of the census of population to discern trends in the Welsh language," *Area* 36, 2 (2004): 187-201.
- Lambert, D. "The Government of Wales Act: An act for laws to be ministered in Wales in like form as in this realm?" *Cambrian Law Review* 30 (2000): 60-70.
- National Assembly for Wales. *The National Assembly (Transfer of Function) Order 1999*, (S.I. 1999/672). Cardiff: National Assembly for Wales, 1999.
- Rawlings, R. *Delineating Wales*. Cardiff: University of Wales Press, 2003.
- Richard Commission. *Report of the Commission on the Powers and Electoral Arrangements of the National Assembly for Wales*. Cardiff: National Assembly for Wales, 2004. Available at [www.richardcommission.gov.uk](http://www.richardcommission.gov.uk)
- Trench, A. "The Government of Wales Act 2006: The next step in devolution for Wales," *Public Law* 4 (2006): 687-696.
- Wales Office. *White Paper "Better Government for Wales" by the Wales Office, part of the United Kingdom Government*, 15 June 2005. Cardiff and London: Wales Office, 2005. Can be viewed at [http://www.walesoffice.gov.uk/2005/better\\_government\\_for\\_wales\\_report.pdf](http://www.walesoffice.gov.uk/2005/better_government_for_wales_report.pdf)

- Welsh Assembly Government. *Iaith Pawb: National Action Plan for a Bilingual Wales*. Cardiff: Welsh Assembly Government, 2003.
- Welsh Assembly Government. *Consultation by the Welsh Assembly Government on the merger with the Welsh Language Board*. Cardiff: Welsh Assembly Government, 2006.
- Welsh Language Board. *Response by the Welsh Language Board to the Consultation by the Welsh Assembly Government on the merger with the Welsh Language Board*. Cardiff: Welsh Language Board, 2006.
- Welsh Office. *A Voice for Wales, Llais dros Gymru*, (Cm. 3718 of July 1997). Cardiff and London: Welsh Office, 1997.
- Westminster. *A House for the Future (Westminster, 2000)* Cm.45334. Westminster: House of Lords, 2000.
- Williams, C. H. *Deddf Iaith Newydd. Dyma'r Cyfle a'r Ymateb*. Address to *Cymdeithas yr Iaith* Meeting. Urdd Eisteddfod, Cardiff, May 30<sup>th</sup>, 2005a.
- Williams, C. H. *Deddfwriaeth Newydd a'r Gymraeg*, lecture delivered at the Eryri National Eisteddfod and published in *Contemporary Wales*. Vol. 19 (2005b).
- Williams, C. H. "The Role of Para-governmental Institutions in Language Planning," *Supreme Court Law Review* 31 (2006a): 61-83.
- Williams, C. H. "Indigenous Language Rights and Legislation" in POBAL, ed. *An Irish Language Act for Northern Ireland*, Belfast: POBAL, 2006b: 5-19.