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Dear Hywel,

I am writing to set out the response of the UK Government and the Welsh Assembly Government to the Welsh Affairs Committee's report on the proposed Welsh Language Order. I understand that the Welsh Heritage Minister will also be making a statement to the National Assembly

I would first like to thank the Committee for undertaking an extremely thorough and valuable scrutiny of this high profile Order, and for producing such a comprehensive report, including some challenging and thought-provoking recommendations. Both the UK Government and the Welsh Assembly Government have considered the report very carefully, in tandem with the findings of the National Assembly's scrutiny. I was pleased to meet you and members of your committee on 21st July to discuss the recommendations, and found our discussion highly informative in understanding the approach you recommend.

I agree with the Committee's conclusion that the National Assembly is the appropriate place to legislate on the Welsh language. I believe that our response to the reports of both scrutiny committees responds appropriately to the recommendations and meets the objectives of the Welsh Assembly Government in delivering its *One Wales* commitments on the language.

Your Committee noted a concern that the proposed LCO, as drafted, was sufficiently open-ended for the National Assembly to go well beyond the scope of the 1993 Act. It rightly observed the need for clarity in the scope of the legislative competence being devolved, and recommended the Order be reviewed with a view to providing greater clarity and precision.



A key recommendation was that the Order should contain clear principles against which subsequent Assembly Measures could be tested. These might include a test of 'reasonableness', a test of 'proportionality' and a consideration of the cost-effective benefit to the public in terms of the use of the Welsh language. This would mean, in effect, a different approach in terms of defining competence, whereby a Measure would need to satisfy the tests specified in the LCO, rather than the Order defining who may be affected by subsequent Measures.

I found the Committee's proposal imaginative and original. I believe there is much to be found in its favour: it would certainly provide for a less fettered approach to conferring competence and should help frame future legislation. However, I do not agree that conferring competence based solely on principles and tests would provide the clarity which we are all seeking.

I am not therefore persuaded away from defining competence in terms of sectors and organisations to which Welsh language duties could apply. But I agree wholeheartedly that the principle of applying duties reasonably and proportionately should be embedded in the LCO. Having discussed the issue with the Welsh Assembly Government in some detail, we are accordingly modifying the Order. The Assembly will be able to impose duties on a body only if there is some means (such as a review or appeal procedure) by which the body can challenge the reasonableness and proportionality of the duties as they apply to it. The effect would be that anyone creating or imposing duties by, or under, an Assembly Measure would have to consider the reasonableness and proportionality of their proposals. These tests are similar to those set out in the Welsh Language Act 1993. The detail of the challenge mechanism would be set out by Assembly Measure.

I believe this proposal fulfils the spirit of your Committee's recommendation, and provides a robust reassurance and safeguard against any inappropriate imposition of duties. It ensures that the reasonableness of duties will be a key consideration in the development of an Assembly Measure. It provides an important safeguard against disproportionate obligations being imposed on any body, and especially smaller organisations (which your Committee rightly highlighted as an important consideration). It also provides for an independent and impartial process as a check and balance in the imposition of Welsh language duties.

We will be making other modifications to the Order, within the existing category-based structure, to better align the boundaries of competence and more clearly define the scope.

I note the Committee agreed it is appropriate that persons benefitting from substantial public funds should fall within scope of the LCO. I am aware that both the concept of including a threshold of public funding in the LCO, and the amount at which it was set (public funding of £200,000 or more in a financial year), attracted criticism during scrutiny. Nevertheless I believe it is appropriate to set a clear boundary in order to define what is considered to be "substantial" public



funding. Following discussions with the Welsh Assembly Government, it is proposed to increase the threshold to £400,000, thereby ensuring smaller organisations are less likely to be included in scope by virtue of the public funding they receive. Setting the threshold at this amount will ensure that certain bodies of a national character, such as the National Botanic Garden and the Wales Millennium Centre, come within scope of the Order, which is a key objective of the Welsh Assembly Government. By contrast, local voluntary, charitable and sporting bodies will not.

The Committee recommended redrafting the paragraph to ensure that bodies in receipt of one-off payments are excluded. I agree that it is sensible to rule out one-off payments from scope, and following discussions with the Welsh Assembly Government we plan to ensure that a body receiving public money amounting to £400,000 or more in a financial year cannot fall within scope of the LCO unless it has either received public money in a previous financial year or will do so in a subsequent financial year. This change would serve to confirm the policy intention of the Welsh Assembly Government not to place Welsh language duties on bodies receiving one-off grants.

Your Committee made a number of recommendations about the detailed drafting of the Order which, following discussions between the UK and Welsh Assembly Governments and taking account of the Assembly Committee's own conclusions, we will be accepting.

First, the Committee expressed concern that the LCO included within scope all bodies established by Royal Charter including, for example, the Girl Guides and Royal British Legion. It considered that any criteria for their inclusion should focus on the nature of the services provided by the chartered body rather than the fact that a body is established by Royal Charter. The First Minister and I agree with this, and are therefore making changes to specify more exactly which types of chartered body are included.

Second, your Committee noted that the proposed LCO risked establishing inconsistencies in terms of public transport by including only railway services. It rightly pointed out that some bus companies would come within other categories, but it could not be said for certain that all bus companies would be included by these means. We are working to modify the Order so that bus services are included within scope. Bus services will need to be defined clearly, so that scheduled coach services come within scope but services chartered for private use do not. Your Committee's point is well made about unintentionally imposing disproportionate burdens on very small bus companies, and I am confident that the challenge mechanism I have previously described will minimise the risk of duties being imposed unreasonably.

Third, the Committee was unconvinced of the need to include energy production and transmission services in the proposed Order. I agree that these activities do not serve the public directly, and can therefore be seen as distinct from other



to ensure duties are not applied unreasonably or disproportionately, particularly to smaller organisations.

My overall aim, which I am sure the Committee shares, is to ensure a strong and healthy future for the Welsh language, building on the solid foundations established since 1993 in a commonsense, evolutionary way, and ensuring that the Welsh language is a source of pride for everyone in Wales – for Welsh and English speakers alike.

I look forward to debating the Order at the forthcoming Welsh Grand Committee on 14 October. Following that debate, I will reflect further and, subject to the Assembly's approval, I intend to present the draft LCO to Parliament later in the autumn.

I am copying this letter to all Welsh MPs and the Shadow Secretary of State for Wales.

Yours sincerely,

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