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18/12/2014

Dear Minister

Advice under section 4 of the Welsh Language (Wales) Measure 2011 – Learner Travel (Wales) Measure 2008

Thank you for your letter dated 4 November 2014 and for meeting with my officials on 11 December 2014 to discuss the Learner Travel (Wales) Measure 2008 (the Measure).

Section 10 of the Measure imposes a duty on local authorities to promote access to Welsh-medium education. Recently, some local authorities have announced changes to their transport and travel to school policies, and others will do so over the next few months. It seems that the primary motivation for this is the need to find budget savings. However, it appears that decisions to abolish the transport arrangements, or to charge a fee for their use, could be very damaging to the future of post-16 Welsh medium education given that the new arrangements will not be affordable to the majority.

Upon receiving correspondence from a number of parents, pupils and RHAG (Parents for Welsh Medium Education) expressing concern about the situation, I have taken some steps to highlight the adverse effect of some of these decisions. This includes corresponding with and gathering information from some local authorities, and holding discussions with the Minister for Education and Skills and the First Minister. I have now taken legal advice on the meaning of Section 10 of the Measure and I will outline below my interpretation of that Section, and the actions that need to be taken by local authorities in order to comply with it as they reform their transport and travel to school policies.
Interpretation of the Measure

Section 10 of the Measure states:

*Each local authority and the Welsh Ministers must promote access to education and training through the medium of the Welsh language when exercising functions under this Measure.*

It places a duty on local authorities when exercising functions under the Measure. It imposes a duty to *promote access* to Welsh-medium education, not a duty to "give due consideration to" or to give due consideration to "the importance of" doing so, and it is applicable to each function and duty placed under the Measure. Therefore, it is relevant in relation to Section 2 and Section 6 and includes those sections relating to post-16 education.

Section 2(2) places a duty on local authorities to assess annually the travel needs of learners who have not attained the age of 19 (and also some learners who are over 19) for the following academic year. In doing so, Section 2(4) requires them to give due attention to:

*the nature of the routes which learners could reasonably be expected to take to the relevant places where they receive education or training.*

Section 6 gives power to local authorities to make travel arrangements for learners and to charge for its use. It enables the local authority to provide or fund transport for post-16 education. It does not, however, impose duties. The Section creates powers that the authority has discretion whether or not to implement, and how to implement them.

In addition, the Welsh Ministers have issued guidelines to which all local authorities must consider and give due attention. The guidelines currently in force were issued in June 2014. The guidelines state that:

*Authorities should make clear in their school admissions documents their policy on providing free or assisted travel to schools teaching through the medium of Welsh or English. Preference for either language should be treated equally.*

This means that a person wishing to receive Welsh medium or English medium education should not be treated less favourably in terms of access to education in their chosen language. In other words, if pupil X chooses Welsh medium or English medium education, it should not be more onerous for the pupil to gain access to one or the other.

In interpreting sections 2, 6 and 10 of the Measure in relation to revising transport and travel to school policies I have come to the following conclusions:
Conclusion 1

In each academic year, a local authority must conduct a meaningful assessment of the travel needs of learners in the area for the following academic year. It does not appear to me that not all local authorities have ensured adequate consideration to the requirements of Section 10 of the Measure when conducting their assessments.

Conclusion 2

When considering matters where a decision was made to

i) stop providing transport to schools for post-16 learners
ii) continue to provide transport to schools, but with a requirement for post-16 earners to pay the full cost of transport
iii) continue to provide transport to schools, but increasing the cost for post 16 learners

a situation arises where transport arrangements already exist, but a change occurs that makes access to Welsh medium education more difficult or less affordable. These changes are introduced as a result of the discretion given in Section 6 to make travel arrangements and to charge for the use of the provision. In my opinion, such changes (with the possible exception of reasonable and affordable increases in the charge for the transport) do not comply with Section 10.

Conclusion 3

When considering the Welsh Ministers guidelines, a person wishing to receive Welsh or English medium education should not be treated less favourably in terms of access to education in their language of choice. It is erroneous to consider that equality can only be ensured by securing that all learners pay the same cost irrespective of the chosen language of their education. Equality between those who wish to receive Welsh or English medium education should be interpreted on the basis of the opportunity provided to receive education in those languages, rather than the learner's traveling costs being the same.

It is therefore clear that changes to the policies and the transport arrangements will have a disproportionate impact on those who wish to receive Welsh medium education, as learners who want to receive Welsh medium education are more likely to be dependent on transport than those wanting to receive English medium education. In one case where the transport and travel to school policy was amended, the local authority declared that only 1 in 10 of the county's pupils would be affected by the changes. But, in the context of
learners who choose Welsh medium education, the changes had the potential to impact on 9 out of 10 pupils.

Linguistic progression between educational stages is an important consideration for parents when deciding on their children’s education. Parents who would have chosen Welsh-medium education for their children if it were accessible in all stages of education could now choose English-medium education. Such decisions could have a knock-on effect on the sustainability of Welsh medium education in those areas, as the numbers who choose Welsh medium education fall under the thresholds of sustainability set by the local authorities, putting the provision at further risk.

This conclusion is supported by anecdotal evidence, as well as the findings of research carried out by RhAG. Research conducted by RhAG has found that there will be a significant fall in numbers choosing to stay in Welsh-medium post-16 education if travel costs are increased to the extent that is envisaged. In one area of Swansea, it was observed that the higher costs would mean that the percentage of those who would to continue in post-16 education through the medium of Welsh would drop from 76% to 23%.

I therefore ask you to consider the content of this letter, and recommend that you correspond with all Welsh local authorities, drawing their attention to the issues outlined above in order to ensure clarity and an understanding of the implications of the Measure.

Yours Sincerely

Meri Huws
Welsh Language Commissioner