

Department for Culture, Media and Sport
TOURISM DIVISION



CONSULTATION ON WELSH LANGUAGE FORMS AND DOCUMENTS TO BE PRESCRIBED UNDER THE LICENSING ACT 2003

March 2006

Introduction

1. The Licensing Act 2003 came fully into force on 24 November 2005. It replaced six existing regimes with one licensing system covering the supply of alcohol, public entertainment and the provision of late night food and drink. DCMS estimates that there are currently around 190,000 premises licences and club premises certificates issued under the 2003 Act. Regulations made in January and October 2005 prescribed the forms and other documents to be used by applicants and licensing authorities when engaging in the licensing regime. At the time of these Orders being made, DCMS had no Welsh Language Scheme and the forms and documents were prescribed only in English.
2. Following a number of representations during the summer and autumn of 2005, including those from Welsh Assembly Members, Welsh MPs, the Welsh Language Board and private individuals, DCMS Ministers confirmed that they had no policy objection to applications being made under the 2003 Act in Welsh and on Welsh language forms. Some licensing authorities in Wales had already indicated they were willing to accept Welsh language versions of the forms with most agreeing to use translations produced by Conwy County Borough Council. However, there was some concern that the absence of applications being prescribed in Welsh in legislation might call into question the legal validity of any applications submitted in Welsh on forms translated by Welsh licensing authorities. Ministers accepted that this might be a possibility and agreed in principle that the Welsh forms should be given the same statutory status as English forms.
3. Ministers agreed last year that they would consult on prescribing the application forms in Welsh. The Secretary of State proposes to exercise her powers under Sections 54, 91, 100(4) and 125(4) of the Licensing Act 2003 as extended by Section 26 of the Welsh Language Act 1993, and lay an Order before Parliament, which would be subject to negative resolution procedures. This means that the secondary legislation can technically come into effect immediately on being made, but it is laid before Parliament after it has been made and could be annulled by Order in Council if either House passed a resolution against it within 40 days. There is however an informal time limit, called the “21 day rule”, which embodies an undertaking to lay an instrument subject to the negative resolution procedure at least 21 days before it is to come into effect. Scrutiny of the instrument by the House of Lords Select Committee on the Merits of Statutory Instruments and the Joint Committee on Statutory Instruments is thus usually ensured before the provisions come into force.
4. DCMS is currently drafting its Welsh Language Scheme in consultation with the Welsh Language Board and hope to publish a draft for comment shortly.
5. The Better Regulation Executive of the Cabinet Office have confirmed that, as the prescribing of forms in Welsh does not represent a change to licensing policy, there is no need for a Regulatory Impact Assessment. The policy of placing Welsh and English on equal footing in relation to the provision of

public services in Wales, and its associated costs and impacts, have already been decided and assessed in the Regulatory Impact Assessment (RIA) for the Welsh Language Act. In addition, the detail and content of the prescribed forms have been subject to a RIA in relation to regulations laid under the Licensing Act 2003. However, the DCMS considers that it is good practice to consult stakeholders about any change that may affect the behaviour of business or the public sector. DCMS Ministers want to be satisfied that an Order prescribing Welsh forms would not negatively affect stakeholder groups and that these groups are aware of the changes.

6. We believe we can identify the key stakeholders who might be affected by the proposed changes and are therefore proposing a short consultation period of four weeks. The stakeholders who we have identified and written to directly to ask for views are listed in Annex B. We would, of course, welcome comments from any other individuals or organisations who would like to comment on these proposals and it would be useful if consultees would alert other interested groups or individuals to the consultation or pass on their details to the Department.
7. As well as commenting on proposed statutory changes, there are several elements of the licensing regime where documents and requirements are not prescribed in the Licensing Act 2003 or regulation made under it. Enabling applicants to conduct these parts of the process in Welsh or bilingually might simply be a matter of guidance. Where appropriate these matters can be considered as part of the Department's ongoing review and revision of the Guidance issued to licensing authorities under section 182 of the Licensing Act 2003.
8. We should like comments as soon as possible, but no later than 28th April 2006.

Where will Welsh language forms be used?

9. The main aim of prescribing forms in Welsh is to recognise the principle set out in the Welsh Language Act 1993 that the English and Welsh languages should be treated on a basis of equality in the conduct of public business and the administration of justice in Wales. The intention would be that Welsh forms could only be used to make applications to licensing authorities in Wales.
10. Simply prescribing the forms in Welsh would theoretically allow anyone to apply to any licensing authority in Welsh, even if it were an English authority with no provision for Welsh speakers. Any Order prescribing forms in Welsh will therefore either restrict their use to licensing authorities in Wales, or those authorities who provide services in Welsh as a requirement of the Welsh Language Act and their own Welsh language schemes. English licensing authorities are under no duty to provide services in Welsh, nor are we aware of any that do (but see section on personal licences below).

- 11. Do you agree that the forms should be prescribed so that they apply only where a licensing authority's Welsh language scheme requires them to provide services in Welsh?**

Costs

12. In considering whether to prescribe forms in Welsh, Ministers were keen that there should be no additional costs on licensing authorities or applicants. We believe that any additional costs arising from the provision of Welsh forms would not arise as a direct result of the Licensing Act, but as a result of the Welsh Language Act and their Welsh language schemes. The Welsh Language Board's statutory guidelines on the preparation of Welsh language schemes makes it clear that the costs of using Welsh should not be passed on directly to the user. The Welsh Assembly Government and the Welsh Language Board have assured DCMS Ministers that there should be no additional costs arising from prescribing forms in Welsh. Welsh authorities should already be making provision for translation of documents into English and Welsh to comply with the requirements of their Welsh language schemes and should have the capacity to deal with forms written in Welsh. In practice, we would expect the number of licensing applications made in Welsh to be relatively small and with most in those areas where local authorities would be most used to working bilingually.
13. The content of the forms themselves, as set out in the Licensing Act regulations: The Licensing Act 2003 (Personal licences) Regulations 2005 (SI 2005 No. 41), The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005 (SI 2005 No. 42) and The Licensing Act 2003 (Permitted Temporary Activities) (Notices) Regulations 2005 (SI 2005 No. 2918)) have already been the subject of an RIA and been considered by Parliament through the negative resolution procedure. The Welsh version of the form will not impose any additional requirement in terms of licensing and will mirror the existing form that is prescribed in English.
- 14. We would welcome any views on our assumption in relation to costs.**

Which forms ?

15. A list of the forms, which Ministers are minded to prescribe in Welsh, is set out in annex A. The Department is looking at whether it is possible to prescribe the Welsh versions of the forms that have already been translated by Conwy County Borough Council and which we understand have been made available by several licensing authorities.
- 16. Do you envisage any problems using the translations made by Conwy County Borough Council where they exist?**
- 17. Is the list of forms complete or are there others that should be included (note comments below on premises licences and certificates and summaries)?**
- 18. Should any of the proposed forms not be prescribed in Welsh?**

Other forms and notices

i. Premises licences, certificates and summaries

19. The Welsh Language Board (WLB) has raised with the Department the question of other documentation, which is required under the Licensing Act 2003. One option, favoured by the WLB, is that the actual premises licence and summaries, and club premises certificates and summaries, should be issued in Welsh when requested by the successful applicant. The WLB consider this to be in line with each local authority's Welsh language scheme.
20. This raises concern about the ability of those who might need to inspect the licence (for example police, fire authority, trading standards etc). The WLB's position is that these authorities all operate their own Welsh language schemes and should be able to work with Welsh language licences. In addition, the areas where there is likely to be most demand are those where there are a higher proportion of Welsh speakers in these organisations. The WLB also point out that information would also be available from the licensing authority in Welsh and English and that a non-Welsh speaker could check the details of the licence with the licensing authority if they are considering a complaint or alleged breach of the licence.
21. However, it is also important that both customers of licensed premises and interested parties (local residents and local businesses) should also be able to read and understand licence summaries displayed on the premises. Summaries show the main conditions under which trading may take place, for example, the access of children to the premises and the trading hours permitted. Interested parties need this information to establish if breaches are taking place, which might inform their applications to have licences reviewed. It cannot be guaranteed that all interested parties would be capable of understanding Welsh language documents.
22. We have considered whether the solution might be a bilingual licence and/or summary. However, premises licences and certificates and some summaries are likely to be quite lengthy when drafted in only one language and this may not be a practical option.
23. **We would welcome your views on the suggestion that licences and summaries should be available on request in Welsh or issued bilingually in Wales.**

ii. Personal licences

25. There are two options, which could be considered in relation to personal licences. The first would be to prescribe a Welsh version so that the personal licence can be issued in Welsh or English depending on the applicant's preference. However, the new licensing regime is specifically designed to recognise the mobile nature of the hospitality industry and a proportion of personal licence holders who live in Wales when they apply for their licence are likely to gain employment in England. The owner, manager or premises licence

holder may need to check the personal licence, as might the licensing authority and enforcement authorities. Such authorities in England are under no duty to use the Welsh language in the conduct of their public service. It is also unreasonable to expect a private citizen or business to deal with licences written in a language they cannot understand.

26. An alternative option is for licences to be issued bilingually to all licence holders who live in Wales. The Licensing Act and regulation detail the information that has to be included on a personal licence, but do not prescribe the licence itself, which suggests this may simply be a question of guidance and the Welsh language schemes of licensing authorities in Wales. However, it would be important to understand that personal licences issued in England may be used in Wales and it would remain the case over a period of years that many personal licences there would include details in English only.
- 27. We would welcome the views of stakeholders on the most appropriate approach.**

iii. Notice of application on the premises

28. While the 2003 Act and regulation detail the information which is required on the blue notice on premises advertising an application to grant or vary a licence or certificate, the notices are not prescribed in the same way as the forms or the premises licence.
29. The Welsh Language Board believes it would be good practice for notices to be issued and displayed bilingually at every premises in Wales that is making an application, but not a statutory requirement. The Department is reluctant to add a statutory requirement, which will add a cost burden to applicants, but is willing to consider recommending the voluntary approach.
30. The question has been raised as to whether the Act allows advertisements to be made in Welsh only. Our view is that there is nothing in the Act which prevents this, although in the case of a complaint or a dispute, the Court may have to decide whether the advertising has met the requirements to inform interested parties (i.e. - it could be argued that a notice in Welsh only would exclude non Welsh speakers) and applicants would need to consider this carefully, perhaps taking their own legal advice.
31. The requirement to use pale blue paper means that those who could not read the notice would at least be alerted to the fact that an application had been made and could seek further information in English from the licensing Authority.
32. It has been suggested that a notice in one language (be it English or Welsh) could include a sentence in the other language briefly explaining what the notice is about and where to find more information. As the notices are not prescribed, this would not be a statutory requirement but might form the basis of good practice guidance.

- 33. We would welcome your views on this issue and are particularly interested in the views of licensing authorities on whether a Welsh only notice would risk a legal challenge. It would be helpful to know of examples of arrangements for similar requirements for other regulatory regimes.**

iv. Newspaper advertising

34. The requirements in relation to newspaper advertisements are similar to those for a pale blue notice on the premises in that, while the required information is set out in the Act/regulations, the form of the adverts is not prescribed. There are similar considerations about whether an advertisement can be made in Welsh only. However, we do not think it would be appropriate for advertisements to be solely in Welsh, given the high proportion of non-Welsh speakers. The Welsh Language Board agree on this point in relation to English speaking newspapers but have also argued that the regulations would allow advertising in Welsh language newspapers (if circulating in the local area) and that this could be in Welsh.
35. This raises questions about the effectiveness of notifying interested parties of an application and whether the inclusion of a sentence in English which states the premises to which the application relates, the deadline for representations and where to go for further information would be sufficient to address those concerns.
36. We are not inclined to suggest that applicants should advertise bilingually as this would double the costs and be contrary to the principle that it is unreasonable for private individuals to incur additional costs because of Welsh language requirements.
- 37. We would welcome views on this issue.**

Related issues

Licensing register

38. We do not think that the provision of forms in Welsh and the submission of applications in Welsh should cause a problem for non-Welsh speakers, nor for licensing authorities in relation to the information they have to enter on the licensing register. Licensing authorities, under the terms of their Welsh language schemes, would be required to translate into English any applications received in Welsh if any person unable to speak Welsh wanted to understand the applicants' proposals.
39. It should also be noted that those other parties may wish to present their representations to the licensing authority in Welsh. We understand it would be normal practice for the authority to translate those representations before passing them on to third parties.

Hearings

40. We do not believe that prescribing forms in Welsh will have an impact on the conduct of licensing hearings. The Welsh Language Act gives individuals in Wales the right to speak in Welsh at legal proceedings. This is unlikely to be an issue for local authorities, particularly those in predominantly Welsh-speaking areas, who will be used to conducting business through a combination of Welsh and English.
41. **Do stakeholders and, in particular Welsh licensing authorities agree?**

Next steps

42. Subject to the views expressed during this consultation the Government wishes to make and lay the necessary Regulations, as soon as possible after Parliament returns following Easter. Ministers would therefore welcome views within a period of four weeks. Any views or comments should be sent **by 28th April 2006** to:

Stuart Roberts
Head of Licensing Implementation and Communications Team
DCMS
2-4 Cockspur Street
LONDON
SW1Y 5DH

Or by email to: Stuart.Roberts@culture.gsi.gov.uk

43. Respondents should be aware that we intend to make responses to the consultation publicly available unless you request otherwise. All information in responses, including personal information, may be subject to publication or disclosure under freedom of information legislation. If correspondent requests confidentiality and a request for disclosure is made under the Freedom of Information Act, this cannot be guaranteed and will only be possible if permissible under the legislation. Any such request should explain why confidentiality is necessary. Any automatic confidentiality disclaimer generated by your IT system will not be considered as such a request unless you specifically include a request, with an explanation, in the main text of your response.

LICENSING ACT 2003: FORMS AND DOCUMENTS WHICH MINISTERS PROPOSE TO PRESCRIBE IN WELSH

Permitted Temporary Activities

- Temporary Event Notice
- Temporary Event Counter Notice

Personal Licences

- Application for a personal licence
- Application to renew a personal licence
- Disclosure of convictions and declaration

Premises Licences

- Application for a premises licence
- Application for a provisional statement
- Application to vary a premises licence
- Application to vary premises licence to specify designated premises supervisor (DPS)
- Application to transfer premises licence
- Consent of premises licence holder to transfer
- DPS consent form
- Interim Authority Notice
- Notification of an interest in premises under 178

Club Premises Certificates

- Application for a club premises certificate
- Declaration for a club premise certificate to be granted
- Application to vary a club premises certificate

Reviews

- Application for the review of a premises licence or club premises certificate

**Organisations and individuals invited to comment on the proposal to prescribe
Licensing Act 2003 forms in Welsh.**

Welsh licensing authorities
English border authorities
Welsh Local Government Association
Local Government Association
Local Authority Coordinators of Regulatory Services (LACORS)
Welsh Assembly Government
Members of the National Assembly for Wales
MPs with Welsh constituencies
DCMS licensing stakeholders advisory group
Police forces in Wales
Network of Residents Associations
Civic Trust
Individuals who have contacted the Department about this issue
Welsh Language Board