

Consultation on the Curriculum and Assessment (Wales) Bill

Evidence submitted to the [Children, Young People and Education Committee](#) for Stage 1 scrutiny of the

Curriculum and Assessment (Wales) Bill.

About you

Organisation: Welsh Language Commissioner. The principal aim of the Welsh Language Commissioner is to promote and facilitate the use of the Welsh language. One of the ways in which the Commissioner achieves this aim is by influencing policy, and it is in this capacity that the following response has been formulated.

1. The Bill's general principles

1.1 Do you support the principles of the [Curriculum and Assessment \(Wales\) Bill](#)?

Partly

1.2 Please outline your reasons for your answer to question 1.1

(we would be grateful if you could keep your answer to around 1500 words)

We support the majority of the principles and objectives of the Curriculum and Assessment (Wales) Bill. We do, however, have significant concerns regarding the extent to which the Bill's legislative proposals are likely to realise the curriculum's vision of a significant increase in the number of pupils leaving the statutory education sector speaking both Welsh and English with confidence. This concern is founded upon two key issues with the Bill as it stands:

- It does not provide a strong basis for Welsh medium education, and it does not support the Government's policy ambition of expanding Welsh medium education across Wales.
- It fails to provide sufficiently strong statutory expectations and instruction that are required to instigate the far reaching reforms needed to the way the Welsh language is

taught and used in English and bilingual schools – that is, in order to reflect the objectives and targets of the Governments Cymraeg 2050 strategy.

The Welsh Government's Welsh language strategy, Cymraeg 2050, is absolutely clear in terms of its vision that the education system in Wales will provide opportunities for all children to develop fluency in Welsh. The strategy states the need 'to increase substantially the number of learners in the statutory education sector who develop Welsh language skills, and ensure that each learner develops skills in Welsh to a standard which will enable them to use the language in their everyday lives.' (p.37)

The vision of the new curriculum also clearly states the aspiration for all children to develop bilingual skills (Welsh and English), regardless of the linguistic medium of the school they attend.

There is therefore no doubt that one of the core policy objectives of the new curriculum is to improve the language skills of pupils in Wales in both Welsh and English. This is of course one of the core assumptions underlying the trajectory to a million Welsh speakers. The Government intends to deliver this ambitious vision through two related strategies. Firstly, and in line with the unequivocal evidence regarding the success of immersion education in creating bilingual individuals, there are ambitious plans to significantly increase the number of pupils attending Welsh-medium education. Secondly, by introducing a new curriculum for Wales the intention is to reform the way in which Welsh is taught and used in English-medium and bilingual schools in order to significantly increase the number of pupils in these schools going on to become confident Welsh speakers. As the Cymraeg 2050 strategy explains:

'The English-medium sector has an important contribution to make to our aim of developing Welsh speakers. To reach a million speakers, we need to transform how we teach Welsh to learners in all other schools, in order that at least half of those learners report by 2050 that they can speak Welsh by the time they leave school. We intend to develop a single continuum for the teaching of Welsh as a language, with an emphasis on learning Welsh predominantly as a means of communication, particularly oral communication. All schools in Wales will be required to introduce the language continuum to all learners over time, and embed the acquisition of Welsh language skills across the curriculum. Through this we aim to ensure that by 2050 at least 70 per cent of all learners develop their Welsh language skills and are able to use the language with confidence in all aspects of their lives by the time they leave school.'

Given this clear vision regarding the importance of immersion education and the need to reform the way in which the Welsh language is introduced in the English-medium sector,

one would expect the Curriculum Bill to fully support these objectives. That is, by providing a strong basis for Welsh-medium education and by setting a robust legislative framework in order to transform the way in which the Welsh language is taught and used in English-medium schools.

We do not believe that the Curriculum Bill supports the Government's policy objectives in relation to the Welsh language in the statutory education sector, and we cannot therefore support the Bill as it stands. As we explain in detail below, the Bill currently jeopardises the foundation and status of Welsh-medium education as it currently stands, and does not provide a robust framework for ensuring that arrangements for teaching Welsh in English-medium and bilingual schools will lead to raising standards in future. Both of these issues need to be addressed in a meaningful and comprehensive way. We are of the view that the Government needs to introduce three changes to the Bill:

1. Changes to clauses on the face of the Bill in relation to Welsh-medium and immersion education, including changes to the mandatory elements of the curriculum and the ability to disapply English as a mandatory element. (see response to question 2.1)
2. Include a requirement in the Bill for Welsh Ministers to introduce a code on the teaching of Welsh consistent with the intention to publish other relevant codes in part 1 of the Bill. The code would include further guidance and detail to ensure that Welsh language teaching arrangements across schools in Wales lead to raising pupils' Welsh language standards in line with curriculum objectives and the Government's Welsh language strategy. (see response to question 6.1)
3. School language categories in Wales need to be defined and placed in legislation. The curriculum white paper published in 2019 included a commitment to give ministers power through curriculum legislation to make regulations for this purpose. This work is central in terms of curriculum planning and arrangements for teaching Welsh across different schools. It is not clear to us why this commitment is not included in the draft Bill. (see response to question 5.1)

The points above highlights our general opinion that the Bill as it currently stands, fails to embody an important principle. That is, the principle that the Welsh language ought to be provided particular support in order to realise the government's vision that an increasing number of pupils will leave statutory education as confident Welsh and English speakers. We do not believe that the Bill currently reflects the policy objectives of the Welsh government in relation to the Welsh language in education.

This aspiration to ensure that more pupils in Wales receive the educational, social and personal benefits of bilingualism is commendable and just. Whilst bilingualism is the overarching objective, it does not necessarily follow that there is a need to treat the Welsh and English languages equally in order to achieve this. In this context, it is vitally important to consider the social and linguistic context in Wales. It is not a level playing field between a majority language and a minority language in relation to the Welsh and English languages in Wales, and there are clear differences in the position of the two languages that justify differential treatment in terms of legislation. This general principle appears to be accepted at a general level (the existence of the Welsh Language (Wales) Measure 2011 is one obvious example of Welsh being made an official language in Wales. It makes no provision for English). It is not the principle here that the Welsh language should be favoured or prioritised at the expense of the English language, but rather that the Welsh language needs more intensive support in order to ensure full and effective equality in terms of outcome. The key issue here is whether there exists a rational and objective basis for such measures in the first place.

If one of the objectives of the curriculum is to ensure that as many individuals as possible leave the statutory education system using both Welsh and English with confidence, then the evidence strongly suggests that specific attention and support is needed for the Welsh language. As far as we are aware, there are no systemic problems or problems at a national level in terms of pupils' English language skills in Wales. Given of course that there is always a need to aim to improve the English language skills of pupils in Wales, there are no fundamental shortcomings in pupils' acquisition and confidence in English, including those attending Welsh-medium education. On the other hand, there is strong evidence that the vast majority of pupils in Wales do not develop sufficient skills in Welsh in order to be able to use the language in a meaningful way outside school.

The position of Welsh as a minority language together with the evidence of the failures of the education system in developing confident Welsh speakers in the past, offers a rational justification for providing the Welsh language particular support in the curriculum legislation. The aspiration to treat the two languages of Wales equally in curriculum legislation is understandable, but misleading, and will hinder the realisation of the Government's vision of increasing numbers of pupils who speak Welsh and English with confidence.

1.3 Do you think there is a need for legislation to deliver what this Bill is trying to achieve?

(we would be grateful if you could keep your answer to around 500 words)

Yes. As we outline in our answer to question 1.2, we believe the legislation should include further provision and support for the Welsh language.

Firstly, the legislation should provide a strong foundation to Welsh medium education, and not undermine the Welsh language immersion education model. (see our more in 2.1 below)

Secondly, the legislation needs to include much stronger provisions in relation to the teaching of Welsh (specifically in English-medium schools) if the Government is to realise its ambition of transforming the linguistic outcomes of pupils in English medium and bilingual schools. The Government's vision in terms of abolishing 'Welsh as a second language' and introducing a single continuum for teaching Welsh, and the ambitious targets linked to such reforms in the Cymraeg 2050 strategy, requires far reaching and comprehensive changes to the way Welsh is taught and used in English medium and bilingual schools. It is unrealistic to believe such a transformation will happen on the basis of school and head teacher discretion. The legislation must support these ambitious policy objectives. (see our comments regarding the need for a code of practice for teaching Welsh in 6.1).

Lastly, there are clear benefits if the Bill could include provisions for forming regulations for the purpose of defining school language categories. Such provision was included in the Government's White Paper in 2019, alongside a clear recognition of the importance of such work 'for the purpose of curriculum planning and school organisation.' (p.38)

2. The Bill's implementation

2.1 Do you have any comments about any potential barriers to implementing the Bill? If no, go to question 3.1

(we would be grateful if you could keep your answer to around 500 words)

The main barrier is that including English as a mandatory element will undermine Welsh medium education.

We welcome the proposal to impose a statutory duty to teach Welsh as a compulsory element of the new curriculum. For the reasons set out below, we strongly oppose the duty on all schools and nursery settings to teach English as a compulsory element also. Including English as a mandatory element is at odds with the essence of Welsh-medium education, and undermines the Government's Welsh-medium education strategy.

Although there is a difference between teaching a language as a subject and the issue of school language medium, both are linked, particularly in the context of teaching a language in nursery settings and primary schools. Making English compulsory in nursery settings and primary schools will necessarily mean using the language as a teaching medium for a significant part of the curriculum.

Although sections 26 and 27 of the Bill contain powers for head teachers and governing bodies to disapply English as a statutory element for pupils up to the age of 7, this does not deal with the fundamental problem of including English as a mandatory element for two main reasons.

Firstly, the legislation presents immersion and Welsh-medium education as a departure from the norm. The idea that head teachers and governing bodies will need to make a decision to disapply a compulsory element of the curriculum in order to continue to operate as they currently do, and to follow an educational model that is central to the Government's language strategy, is unacceptable from a principled and practical point of view. Welsh-medium schools, and immersion for pupils in the foundation phase, are an established system across Wales. It is unacceptable to force such schools to take additional steps to continue to operate as they currently do. It introduces additional and unnecessary bureaucratic requirements. The Government's plans assume that 40% of pupils will attend Welsh-medium schools by 2050, and it is unreasonable to expect such a large proportion of schools in Wales to disapply a mandatory element of the curriculum. The Government's vision of ensuring that more pupils develop bilingual skills, and the unequivocal evidence of the success of immersion education in this context, should again be emphasised here.

Secondly, head teachers and governing bodies of Welsh-medium schools will have discretion not to disapply English as a mandatory element. It is a reasonable concern that a number of Welsh medium schools will decide not to disapply English as a mandatory element (for example, in order to avoid the bureaucratic process which places additional demands on such schools, as outlined in section 26(5) of the Bill). This may lead to problems with regard to the Government's Welsh-medium education strategy, and the expectations on local authorities to expand Welsh-medium education through the WESPs. It is possible in some parts of Wales that this discretion over time will erode the Welsh-

medium immersion education model and undermine the Government's vision for the Welsh language.

2.2 Do you think the Bill takes account of these potential barriers?

(we would be grateful if you could keep your answer to around 500 words)

No. For the reasons outlined above, the current proposal in terms of displacing English as a mandatory element is not acceptable in practice or in principle.

The current legislative proposals appear to be a solution to a problem that should not have arisen in the first place, and has led to an unnecessary legislative cul de sac. We believe that there are two options to resolve this issue:

1. Including the Welsh language, and not English as a mandatory element on the curriculum

Following the principles outlined in our answer to question 1.2. it is not necessarily the case that Welsh and English must be treated exactly the same. There are justifiable reasons for including Welsh as a mandatory element in the curriculum and such reasons do not exist in the case of English. This does not mean that English is not a key part of the curriculum but rather that there is no reason to provide particular support for it by including it as a mandatory element. This is accepted for other subjects and key areas for example mathematics and science. English is already a core part of the Languages, Literacy and Communication Area of Learning and Experience, as well as the progression steps for this AoLE and the emphasis on literacy as a mandatory cross-curricular skill. The reason for including the Welsh language as a mandatory element is the concern that schools across Wales will not pay enough attention to the Welsh language in order to develop pupils' bilingual skills. There is no corresponding concern that schools will not pay enough attention to English. Including Welsh as a mandatory element, and not English, would be consistent with the Government's vision of a significant increase in the number of pupils leaving the education system in Wales using both Welsh and English with confidence.

2. Include further clauses in the Bill (section 1[3]) that makes it explicitly clear that English will not be a mandatory element in 'Welsh medium nursery settings', and that English will not be mandatory in 'Welsh medium schools' until pupils are 7 years of age. It could also be clarified that Welsh and English would be mandatory from the outset for English medium and bilingual schools and nursery settings.

This second option would mean that the mandatory elements of the curriculum would vary in line with the linguistic category of the school or nursery setting, and therefore dependant on the educational preferences of parents and pupils.

Although it would be possible to follow the precedent set in the Education Act 2002, which includes a definition of Welsh language schools in the Bill, a preferred option would be to include such definitions in regulations. In terms of funded non-maintained nursery education settings, it will be the responsibility of Ministers to publish a suitable curriculum, and it is therefore likely that the curriculum specification and documentation could provide further guidance on what constitutes a 'Welsh medium setting' and the differing expectations in terms of language medium and teaching.

3. Unintended consequences

3.1 Do you think there are there any unintended consequences arising from the Bill? If no, go to question 4.1

(we would be grateful if you could keep your answer to around 500 words)

As we have stated in our response to question 1.2. we think that two outcomes are likely to emerge from the Bill as it stands.

Firstly, making English a mandatory element of the curriculum will undermine Welsh-medium education, and go against the Government's own Welsh language strategy.

Secondly, we believe that the lack of legislative provisions in terms of how Welsh should be taught and used in the new curriculum will undermine one of the core objectives of the curriculum – to significantly increase the number of learners who leave English-medium schools able to speak Welsh confidently. We believe that this will have serious implications in terms of achieving the objectives and targets of the Welsh Government's Cymraeg 2050 strategy.

4. Financial implications

4.1 Do you have any comments on the financial implications of the Bill (as set out in Part 2 of the [Explanatory Memorandum](#))? If no, go to question 5.1

(we would be grateful if you could keep your answer to around 500 words)

Substantial investment will be required in terms of the workforce and resources, especially for English medium and bilingual schools if they are to expand Welsh provision and work towards achieving the objectives of the curriculum.

5. Powers to make subordinate legislation

5.1 Do you have any comments on the appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Chapter 5 of Part 1 of the [Explanatory Memorandum](#)). If no, go to question 6.1.

(we would be grateful if you could keep your answer to around 500 words)

Further powers are required in the Bill that will allow ministers to introduce regulations for the purpose of providing school language categories a statutory basis.

When the Welsh Government published its white paper outlining the proposals for a new legislative framework for the new curriculum in January 2019, there was a commitment to providing Welsh Ministers with a power 'that will allow them to prescribe the definitions for school language categories by way of subordinate legislation' (p.35). Since the start of the development of the new curriculum, the Government has stated that different expectations will be placed on schools in different linguistic categories. For example, an integrated impact assessment published alongside the white paper stated:

'Clear expectations along one continuum of learning for Welsh will be set out in the form of different Achievement Outcomes for pupils learning Welsh in English-medium and Welsh-medium schools. The Achievement Outcomes will set out the differentiated outcomes that different linguistic categories of schools will be expected to reach, and they will be updated as schools improve over a period of time.' (p.42 and 43)

The white paper expanded on this:

'In order to set out which Achievement Outcomes will apply to different schools during the transition period, the legislation will include a Regulation making power for the Welsh

Ministers that will allow them to prescribe the definitions for those school language categories. These definitions will be used for the purpose of curriculum planning and school organisation.' (p.38)

There are clear advantages of including such provision within the curriculum legislation:

- it provides as a crucial tool for curriculum design and school organisation in terms of the Welsh language
- it is one option in terms of dealing with the problem regarding English as a mandatory element in Welsh medium schools. That is, the Bill could make reference to 'Welsh medium schools' for the purpose of excluding such schools from having to include English as a mandatory element before the age of 7, and the detailed definitions of the language categories themselves could be set out in regulation
- it would facilitate the process of creating a code of practice for the teaching of Welsh, that would provide further instruction and guidance regarding the different expectations placed on schools in different language categories.
- the curriculum guidance explicitly refers to Welsh and English medium 'settings, locations and streams' for the purpose of identifying which description of learning are most appropriate for such schools. Nonetheless, there exists no clarification or definition of such categories.
- it is vital in terms of education language planning. This work is crucial in the context of the Welsh in Education Strategic Plans of local authorities, which are a central aspect of the Government's Cymraeg 2050 strategy.
- it is important in terms of providing clear definitions of the linguistic nature of different schools in Wales, and by doing so provide clarity to parents and pupils regarding the likely linguistic outcomes for learners.

6. Other considerations

6.1 Do you have any other points you wish to raise about this Bill?

(we would be grateful if you could keep your answer to around 1000 words)

**A code of practice for teaching Welsh along one language continuum. (this would sit alongside the existing codes included in Part 1 of the Bill)

The Welsh Government's Cymraeg 2050 strategy sets a huge challenge in the context of the contribution of the English-medium sector to the aim of increasing the number of Welsh speakers. Achieving the strategy's targets for the English-medium sector will mean transforming the current situation where very few pupils in the English-medium education system become confident Welsh speakers in the long term. Making Welsh a compulsory part of the curriculum is not sufficient to achieve this. The Government needs to provide more robust support and guidance, as well as setting further legislative requirements for ensuring that, over time, schools change the way in which the Welsh language is taught and used.

Although the Government has an ambitious vision to replace Welsh second language with a single linguistic continuum, it is not clear at this stage how this will lead, over time, to transforming the linguistic outcomes of pupils in the English-medium sector. Removing the term 'second language', and developing a single continuum for describing and assessing pupils' linguistic skills, does not amount to explaining in detail what will have to change in the arrangements for teaching and using Welsh in order to raise pupils' standards.

The new curriculum guidance states that different expectations will be placed on pupils in Welsh-medium schools compared to pupils in bilingual and English-medium schools. Despite the discussion about a 'linguistic continuum' and the commitment to 'abolish Welsh second language', it appears that the new system will, in the short term at least, continue to set differing expectations based on schools' language medium (which is what happens currently).

We accept that the above situation is inevitable to some extent in the short term. The key point is that the Government's policy objective is that the new curriculum and linguistic continuum will be a platform for stimulating more gradual, substantial and long-term reforms to the way in which Welsh is taught in English-medium schools. The Explanatory Memorandum (point 3.137, p.37) states that 'one of the key transformational changes that will be required within the statutory education sector in order to achieve the vision is to transform how we teach Welsh to all learners in order that by 2050 at least 70 per cent of those learners report that they can speak Welsh by the time they leave school.' The integrated impact assessment published alongside the Bill also states that descriptions of learning for Welsh in English medium settings, schools and streams 'will be reviewed periodically with the intention in the long term of removing this scaffold and having all

schools use the same Descriptions of Learning for Welsh in order to realise the ambition of 1 million Welsh speakers by 2050.' (p.14)

If so, what fundamental changes will be needed exactly, how will they be introduced, and how will the Government ensure that schools operate in line with the vision? Neither the curriculum guidance nor associated legislation provides any guidance or detail on these key issues.

Whilst the Government harbours an ambitious and far-reaching vision, there are no policy and legislative commitments that match these objectives and neither does the Curriculum Bill, as it stands, reflect them. Apart from the descriptions of learning included in the curriculum guidance, there are no details regarding the expectations that will be placed on schools in different linguistic categories. There are no details or guidance on how and where these expectations and delivery outcomes sit on a Welsh language continuum, nor on how exactly these expectations will be revised to 'gradually increase the challenge'. There is also no guidance or support for schools and head teachers in terms of the fundamental changes that will be needed to be able to raise standards and to move pupils along a linguistic continuum.

Without setting out stronger guidance in the legislation, the concern is that the success of the new curriculum in terms of the Welsh language will be largely dependent on the discretion and goodwill of schools themselves, as well as the education strategies of local authorities. This type of strategy has not worked in Wales in the past.

The significant changes needed to achieve the Government's policy objectives with regard to the Welsh language justify the need for a code on Welsh language teaching. We suggest that the code of practice should provide further guidance on the following key issues:

- Clear and detailed expectations and achievement outcomes for schools in different linguistic categories: Head teachers and governing bodies currently have complete discretion as to how they will teach Welsh and what outcomes and progression steps are most relevant to their learners. The different expectations on different schools need to be set out in a code of practice, in relation to the most appropriate progression steps and achievement outcomes.
- Set these differentiated expectations on one Welsh language continuum framework indicating when and at what pace it is expected that these expectations will be revised: a legislative mechanism is required to provide clarity on the expected scale of progress in

terms of these expectations, and a framework that maps out the process of working towards the Cymraeg 2050 targets.

- Guidance and support for schools in developing the Welsh language curriculum: guidance should be provided to head teachers in relation to the content and nature of a curriculum that is likely to meet the expectations placed on different schools in terms of the Welsh language. This may include practical examples of how the teaching of Welsh would vary from one setting to another, and how schools should improve their provision over time.

- Guidance and support for the use of Welsh across the curriculum: further guidance is needed in terms of how and to what extent schools should increase opportunities for pupils in English-medium and bilingual schools to use Welsh throughout the curriculum, as well as in activities outside the classroom.

