



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

Planning Bill Team
Planning Division
Welsh Government
Cathays Park
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CF10 3NQ

25 February 2014

Dear Sir/Madam

Consultation Document: Positive Planning and the Draft Planning Bill

The Welsh Language Commissioner welcomes the opportunity to contribute to the consultation on the Draft Planning Bill.

The principal aim of the Commissioner is to promote and facilitate the use of Welsh. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers. Two principles underpin the Commissioner's work:

- The Welsh language should be treated no less favourably than the English language in Wales;
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until then, the Commissioner will continue to inspect statutory Welsh language schemes through the powers inherited under the Welsh Language Act 1993.

The office of Commissioner was created by the Welsh Language (Wales) Measure 2011. The Welsh Language Commissioner may investigate failure to implement a language scheme, interference with the freedom to use Welsh in Wales and, in future, complaints regarding the failure of organizations to comply with standards.

One of the Commissioner's priorities is to scrutinise policy developments with regard to the Welsh language. Thus, the Commissioner's main role is to provide observations in accordance with this remit, acting as an independent advocate on behalf of Welsh

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speakers in Wales who might be affected by the proposed changes. This approach is advocated to avoid any potential compromise of the Commissioner's regulatory functions and should the Commissioner wish to conduct a formal review of the organization's performance in accordance with the provisions contained in the Measure.

The Commissioner's response to the consultation is in two parts. The Government asked respondents to respond to the consultation by completing the questionnaire form provided. A copy of the questionnaire is found in annex 1 with the Commissioner's replies to relevant questions. However, the questions on the whole deal with the minutia of the consultation document; they do not provide the opportunity to express a broader opinion of the planning system and the opportunities that arise from the intention to reform the system. With that in view, this letter contains the Commissioner's general comments on the consultation and proposes amendments to the draft Bill that would strengthen the status of the Welsh language within the planning system.

References to the Welsh language already exist in the Planning Policy Wales 2012 and there is further guidance for planning authorities on the Welsh language in Technical Advice Note 20 (TAN20). The Policy states:

*"All local planning authorities should consider whether they have communities where the use of the Welsh language is part of the social fabric and, where this is so, it is appropriate that this be taken into account in the formulation of land use policies."*¹

Furthermore, the Policy also states:

*"It should be the aim of local planning authorities to provide for the broad distribution and phasing of housing development taking into account the ability of different areas and communities to accommodate the development without eroding the position of the Welsh language."*²

There are other references in the Policy concerning the ability of areas, taking cultural factors (including the Welsh language) into account, to cope with more housing, and regarding the need to consider the impact on the Welsh language when determining which sites to assign to housing. It appears therefore that Planning Policy Wales allows and supports the need for local authorities to consider the impact on the Welsh language when drawing up development policies; when considering the extent and the scale of development; and when considering location and development sites.

The document that provides advice and guidance to local authorities on how to do this is TAN20. A new version of the document was published in October 2013 and it outlines a framework for when to give consideration to the Welsh language. The document does not, however, offer a methodology on how to consider the Welsh language, and it is explained that the intention is to publish a detailed methodology during 2014. The framework

¹ 2012 Planning Policy Wales, chapter 4.13.2

² Ibid., chapter 4.13.3



proposed in TAN20 suggests that local authorities should consider the Welsh language as part of the Development Plan Sustainability Appraisal. It is explained that a robust evidence base is required in order to reach conclusions in the light of the assessment.

There are gaps in TAN20 as it stands, and until the detailed methodology for the linguistic impact assessment is published, the advice document does not provide the necessary guidance. Having said that, the Government's policy in Planning Policy Wales and TAN20 support the principle that local planning authorities need to take the impact on the Welsh language into consideration in the formulation of their land use policies. But the Commissioner's research shows that the consideration given to the Welsh language in the planning system hitherto has been inconsistent and inadequate. It appears that the consideration given to the Welsh language by some local authorities has been scant and a variety of linguistic impact assessment methods have been used by the remainder. In contrast to other elements of the planning system, there is no statutory duty on planning authorities to comply with the guidance and policy on the Welsh language; therefore they are not compelled to assess the linguistic impact of their development plans. The Commissioner is of the opinion that the Planning Bill is a unique opportunity to resolve this issue by putting a statutory framework in place for the Welsh language. To do so would be a means of ensuring that Planning Policy Wales would be consistently implemented.

The new system proposed in the Planning Bill offers a structure that includes a National Development Framework, Strategic Development Plans and Local Development Plans. This means that there may be, for the first time, development plans for land use at national, regional and local level. It is essential therefore that an assessment of the impact on the Welsh language takes place in accordance with the new framework. It will not be sufficient to consider the Welsh language at the local level alone. It must be ensured that the National Development Framework and the new Strategic Development Plans (as well as the Local Development Plans) are subject to statutory assessments of their impact on the Welsh language.

The Strategic Development Plans will set targets for housing numbers, and this raises questions about the extent to which the impact on the Welsh language will be taken into account when targets are determined for a wide regional area. Doubts already exist about the effect of local housing targets, which are usually based on the Government's population projections, on the Welsh language. There is a risk that the consideration given to the Welsh language, when determining development targets at strategic/regional level, will be even less. If that is to be the pattern in future, then there should be detailed and robust research to support linguistic impact assessments and the findings of the assessments should influence the final policy. Where the evidence suggests a negative effect on the Welsh language, it should be resolved either by changing the strategy or by identifying mitigating measures.

Finally, the Bill refers to developments of national significance. It is explained that the planning authorities will be required to produce a local impact report indicating the effect of the proposed developments on the local area. It is disappointing that the Government has decided to establish a new impact assessment procedure in the Bill, and yet has chosen



not to give statutory recognition to a procedure for assessing the impact on the Welsh language. The Commissioner is of the view that the local impact assessment of developments of national significance should also include a duty to assess the impact on the Welsh language.

The table below proposes amendments to the draft Bill in order to ensure a statutory basis for the process of assessing impact on the Welsh language.

Section of the Bill	The Commissioner's Amendment	The Purpose of the Amendment
Part 2 60A(1)(b)	Add "... including an assessment of the impact on the Welsh Language, and" at the end of the sentence.	To place a statutory duty on the Welsh Ministers to assess the impact of the National Development Framework on the Welsh language.
Part 2 60G(7)(a)	Add "... including an assessment of the impact on the Welsh Language;" at the end of the sentence.	To place a statutory duty on planning authorities to assess the impact of a Strategic Development Plan on the Welsh language.
Part 4 62H(1)(a)	After "the authority submitting the report", add: "including (but not limited to) an assessment of the impact on the Welsh Language".	To place a statutory duty on planning authorities to include an assessment of the impact on the Welsh language within the local impact assessment of developments of national significance.
Schedule 1; Part 1; Planning and Compulsory Purchase Act 2004	Add a new clause: "In section 62 (local development plan), subsection (6) instead of paragraph (a) insert – "(a) carry out an appraisal of the sustainability of the plan, including an assessment of the impact on the Welsh Language;"	To place a statutory duty on planning authorities to assess the impact of a Local Development Plan on the Welsh language.

The inclusion of the amendments above would place a legal duty on the Welsh Ministers and local planning authorities to consider the impact of their development plans on the Welsh language. The amendments would also create a duty to consider the impact on the Welsh language within local impact reports on individual developments of national significance.

It is important that these duties should rest on planning authorities in order to avoid the inconsistency that has existed hitherto in the process of taking the Welsh language into



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account. A statutory duty already exists on planning authorities to conduct a Sustainability Appraisal and there should be a similar duty to conduct an assessment of the impact on the Welsh language. The duty should also give rise to research in order to ensure there is an adequate understanding of the impact of development on the Welsh language and in order to ensure that development strategies and housing targets are based on robust evidence.

The Commissioner is of the opinion that the Planning Bill is a unique opportunity to give the Welsh language a statutory basis within the planning system. Without a legal duty on authorities, supported by appropriate advice and guidance, the uncertainty and the inconsistency will persist. That, in turn, could have a negative effect on the welfare of the Welsh language and Welsh speaking communities.

Yours faithfully

Meri Huws

Welsh Language Commissioner