

**Constitutional and Legislative Affairs Committee
Inquiry into Making Laws in the Fourth Assembly
ML10 – Welsh Language Commissioner**

(This response was received in the medium of Welsh and has been translated by the Assembly Commission)

Meri Huws
Welsh Language Commissioner

Gareth Williams
Clerk
Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
CF99 1NA

27/06/2014

Dear Mr Williams

Committee Inquiry: Making Laws in the Fourth Assembly

The Welsh Language Commissioner welcomes the opportunity to comment on the inquiry.

The Commissioner's primary aim is to promote and facilitate the use of the Welsh language. This is done by highlighting the fact that the Welsh language has equal status in Wales, and by imposing duties on organisations to comply with standards. In turn, this will lead to establishing rights for Welsh speakers. The Commissioner's work is based on two principles:

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

Over time, new powers to impose and enforce duties on organisations to comply with standards will come into force through subordinate legislation. Until that happens, the Commissioner will continue to review statutory Welsh language schemes through the powers she inherited under the Welsh Language Act 1993.

The Commissioner's role was created by the Welsh Language (Wales) Measure 2011. The Commissioner may investigate failures to implement language schemes, interference with the freedom to use the Welsh language in Wales and, in future, complaints regarding the failure of organisations to comply with standards.

One of the Commissioner's priorities is to scrutinise the development of Welsh language policies. Therefore, the Commissioner's main role is to provide comment in line with this remit, acting as an independent advocate on behalf of Welsh speakers in Wales who might be affected by the proposed amendments. This approach was adopted to avoid any potential compromise in terms of the

Commissioner's regulatory functions, or if the Commissioner wished to formally review an organisation's performance in line with the provisions set out in the Measure.

The Welsh Language Commissioner has recently held discussions with Carwyn Jones, the First Minister, regarding the law-making process, and consideration of the Welsh language during that process.

The discussions arose because of concerns that the Welsh language does not seem to be a central consideration in legislation, and many Bills are published without any reference to the language. It was discussed that the Welsh Language (Wales) Measure 2011 should not be solely relied upon to answer all of the Welsh language's legal needs.

A paper was submitted which included an analysis of the present situation and recommendations on how to strengthen consideration of the Welsh language in legislation and ensure consistency of approach. The recommendations made are the basis for this response. In his response to the report, the First Minister explained that the Welsh Government is developing a framework to ensure that the Welsh language is considered at an early stage when making new policies and that new Bills and public consultations will be part of that regime.

Developing and explaining policies

The Welsh Language Commissioner recently published a Standards Report in relation to Welsh Ministers, which comes to the conclusion that Welsh Ministers should ensure that regulations provide for policy making standards to be specifically applicable to Welsh Ministers¹.

Welsh Ministers have already committed to take every opportunity to ensure that Welsh Government legislation and subordinate legislation support the Welsh language². Following on from this, the Welsh Language Commissioner reported that Welsh Ministers should specify a particular standard in regulations for their legislative functions and subordinate legislation made in Wales, whilst also considering any legislation made jointly or concurrently with the UK Government³.

When developing new policy and legislation, we recommend that the principles of the Welsh Language (Wales) Measure 2011 should be followed, by considering:

- what effects, if any, the legislation would have on opportunities for other persons to use the Welsh language, or treat the Welsh language no less favourably than the English language;
- how legislation might be developed so that it had positive effects, or increased positive effects, on opportunities for other persons to use the Welsh language, or treat the Welsh language no less favourably than the English language;
- how legislation might be developed so that it did not have adverse effects, or so that it had decreased adverse effects, on opportunities for other persons to use the Welsh language, or treat the Welsh language no less favourably than the English language.

When it comes to public consultation, the current methods do not encourage respondents to consider broader issues, such as the Welsh language. This leads to a situation where only organisations and individuals who have a direct interest in the Welsh language refer to the language.

¹ Welsh Language Commissioner's Standards Report – Section 64 Welsh Language (Wales) Measure 2011, Welsh Ministers, Page 26.

² Section 4.1, Welsh Government Welsh Language Scheme 2011-2016

³ Welsh Language Commissioner's Standards Report – Section 64 Welsh Language (Wales) Measure 2011, Welsh Ministers, Page 42.

When conducting consultations, respondents should be encouraged to consider the above principles in order to ensure that the commitments of the Welsh Language Scheme, and standards in relation to the Welsh language in due course, are fully implemented.

Assembly Scrutiny

At present, when it comes to considering the Welsh language in legislation, the scrutiny process is not effective. The National Assembly for Wales' committees each have their own subject areas. The subject-based nature of scrutiny limits the ability of committees to consider cross-cutting issues, such as the Welsh language.

The Commissioner has requested that the Welsh Affairs Committee and the Joint Committee on Human Rights in Westminster should consider the requirements of the Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011 when scrutinising UK legislation. Likewise, the paper submitted to the First Minister included a recommendation to formalise the internal arrangements for considering the extent to which the Welsh language should be included in draft legislation. In other words, although the Communities, Equality and Local Government Committee is responsible for scrutiny of the Welsh Language, different legislation is scrutinised by different committees. A regime is needed to ensure that each committee gives full consideration to the Welsh language when scrutinising legislation.

Using the Joint Committee on Human Rights as an example, the committee employs a Legal Adviser to consider all UK Government Bills to see whether they are significant enough to be considered by the members of the Joint Committee. The criteria in terms of the Bill's significance include issues such as the number of people affected by the Bill and their level of vulnerability. Other considerations include the Bill's political and public effects, the press coverage it has attracted, and the extent to which the Bill promotes and protects human rights, or whether it has the potential to promote and protect those rights but does not do so. The Joint Committee will also report whether the issue has been previously addressed by the committee, but the UK Government has failed to incorporate any of the recommendations made.

By sifting and scrutinising each Bill in such a way, reporting can take place at an earlier stage of its passage through Parliament, strengthening the impact of any reports issued by the Joint Committee. We would question whether the Assembly has the legal resource to work in such a way, with regards to consideration of the Welsh language in particular.

Drafting Techniques

In considering drafting techniques, and specifically bilingual drafting and translation, the Welsh Government will need to look carefully at its capacity to draft bilingual legislation in future and invest strategically in order to meet this demand.

The tender process for the Welsh Government's Translation and Interpretation Framework revealed that very few freelance translators who applied had the necessary skills and experience to meet the needs of the Government and the wider public sector. The Government needs to ensure that it is not overly dependent on the translation profession to meet the need for bilingual drafting of legislation. Rather, the Welsh Government should innovate in this field, ensuring that officials are trained and equipped in the legal and linguistic skills in order to ensure drafting of the highest standard in both languages. The use of technology should also be considered, in order to further facilitate this work, to ensure consistency and quality as well as financial savings.

A Living Language: A Language for Living notes that the Welsh Language Commissioner is responsible for "coordinating developments with regard to Welsh language terminology". In light of

this responsibility, the Commissioner conducted a survey of current activity in the field to scrutinise the gaps in provision. One of the matters that came to light in the course of this research was the importance of selecting a standard terminology for the Welsh and English versions of Bills from the outset, in order to facilitate the process of dealing with a particular subject area. This is particularly true in a legislative context. It should be ensured that time is allocated at the start of the drafting process in order to select or coin standard terminology by conducting standardising projects that draw on the linguistic expertise and specialist knowledge of relevant departments.

Furthermore, it is important to ensure an effective method of sharing this information with the media and other stakeholders that may wish to discuss the Bill. This will ultimately ensure consistency and avoid the use of multiple terms that confuse the public and others. The Welsh Government should lead the way by ensuring that standard terminology – and any other language resources developed – are shared with internal and external stakeholders in the most accessible way possible, in order to promote and facilitate the use of Welsh in this area.

Thank you for the opportunity to comment on the inquiry into Making Laws in the Fourth Assembly.

Yours sincerely,

Meri Huws

Welsh Language Commissioner