

Welsh language legislation and arrangements for promoting the Welsh language

Introduction

1. I welcome the Committee's inquiry into this matter, and welcome the opportunity to contribute evidence as part of the inquiry. The inquiry is being conducted at an important time in the early days of implementing our ambitious strategy, *Cymraeg 2050*,¹ published in July 2017.
2. As a number of witnesses who have contributed to this inquiry have noted, we must focus our attention in the field of language policy on achieving the targets which are in the strategy:
 - 1 million Welsh speakers by 2050;
 - the proportion of the population which speaks Welsh every day, and which can speak more than a few words of Welsh, to increase from 10 percent (2013-15) to 20 percent by 2050.
3. These targets are deliberately ambitious in order to create momentum for working towards the national goal in the Well-being of Future Generations (Wales) Act 2015 of *A Wales of vibrant culture and thriving Welsh language*. This desire to significantly expand the number of people who speak and use Welsh requires a shift in attitude and resources in order to reach a better balance between:
 - regulating in order to give rights to existing Welsh speakers;
 - systematic planning to increase the numbers who learn Welsh; and
 - a programme of work to increase the use of Welsh in family, social and workplace settings.
4. As part of this work, the Welsh Government committed to reviewing the Welsh Language (Wales) Measure 2011 ("the Measure"). *A Call for evidence – Preparing for a Welsh Language Bill*, was conducted in early 2017,² and a White Paper, *Striking the right balance: proposals for a Welsh Language Bill*,³ was published for consultation in the second half of the year. The core of the proposals in the White Paper was a desire to simplify the system of Standards established by the Measure and to establish appropriate structures to achieve the aims of *Cymraeg 2050*, specifically to increase the use of the Welsh language.
5. As Members of the Committee will be aware, on 1 February I issued a Written Statement that the First Minister, Cabinet and myself are in agreement we should not proceed with introducing a Welsh Language Bill at this time. This paper explains the reasons for that in more detail.

¹ <https://beta.gov.wales/cymraeg-2050-welsh-language-strategy>

² <https://gov.wales/topics/welshlanguage/legislation-for-the-welsh-language/preparing-for-a-welsh-language-bill/?skip=1&lang=en>

³ <https://beta.gov.wales/welsh-language-bill-white-paper>

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Promoting the Welsh language: the importance of outcomes and language planning

6. There is no unanimity amongst stakeholders on how to interpret “promoting the Welsh language”. The Welsh Government interprets the term according to the outcome we are trying to achieve, that is, to ***increase the use of the Welsh language***.
7. This is consistent with the aims of *Cymraeg 2050*
 - to increase the number of Welsh speakers and
 - to increase the use of the Welsh language.
8. These aims are achieved by using recognised behaviour change techniques which are appropriate for the circumstances, such as encouraging, rewarding, enforcing and so forth. But effective language interventions can only be designed by first engaging in language planning. Language planning permits us to understand the threats and opportunities the language faces in different contexts, and to choose the most effective interventions to stimulate change.
9. It is not necessary therefore for us to define “promotion” as a list of activities but it is essential to be able to show that the activities lead to measurable outcomes. The Welsh Government prefers the term “increasing the use of the Welsh language” as it describes the outcome we are seeking and suggests indicators we can use as a measure of the effectiveness of specific policies.

Reviewing the Measure

10. It was inevitable the Welsh Government would review its priorities for the Welsh language following a fall of 20,000 in the number of Welsh speakers in the 2011 Census. As a consequence, we published a new strategy *Cymraeg 2050*, we reviewed the Measure in order to ensure the Commissioner’s role and the system of Standards support the aims of *Cymraeg 2050*, and secured an increase in spending on the Welsh language as part of the agreement with Plaid Cymru of £5 million a year.
11. In the White Paper, *Striking the right balance*, the Welsh Government argues that the policy emphasis has moved too far in the direction of regulation at the cost of work to increase the use of the Welsh language. Proposals are made in the White Paper to simplify the system of Standards and strengthen the arrangements to increase the use of Welsh. The Welsh Government stands by this analysis but by now we have stated we do not intend to introduce new legislation in this Assembly. The following sections explain why we do not wish to legislate and the actions we are planning to deal with the issues identified in the White Paper.

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The Standards system

12. The *Call for evidence* showed considerable discontent amongst bodies under Standards with the complexity and bureaucracy of the system. A number of complicated and lengthy processes were identified which could be simplified, and proposals were made to improve those processes. The main concerns are the number and complexity of Standards, how complaints are dealt with, and the length and bureaucracy of complaints investigations.
13. Having listened to the views of stakeholders, in response to the White Paper and in evidence to this Committee, I am now of the opinion that the majority of stakeholders would prefer to persist with the current system than implementing a new system. I shall not therefore be pressing on with reforms to the Standards system in primary legislation. Despite that, I am determined that the Welsh Government and the Commissioner must respond to stakeholders concerns by simplifying the way we make and enforce Standards within the existing legislation.
14. For example, the Welsh Government can reduce the number and complexity of Standards in regulations. We have already taken steps in this direction. The regulations for health bodies contain 121 Standards compared with the 176 Standards on local authorities. This is not because the Standards on health bodies are lower in some way, it is because we have improved the way we work, by merging Standards and avoiding duplication, for example. I believe it is possible to go further.
15. In addition, the Commissioner has said she would like to adopt a policy of early resolution of complaints. At the request of the Commissioner, I have advised her that the Welsh Government is of the opinion that the Measure does not prevent her from adopting such a policy. This could include a policy of referring a complaint to the relevant body in order for that body to have an opportunity to come to a resolution before the Commissioner decides whether to investigate or not. Even in cases where the Commissioner concludes that it is likely a body has failed to comply, the Commissioner can conclude that it is not possible to justify an investigation on the basis that there is evidence a body has changed its practice, that the ground for complaint has been removed and/or the best use of resources. A decision of the Welsh Language Tribunal in July 2018 (TyG/WLT/18/3) is relevant:⁴

“The Commissioner was entitled, based on her belief, at the relevant time, that the council in question had changed its practice so as to remove the ground for complaint, to decide that an investigation would involve making use of resources in a way which was disproportionate to any beneficial impact on users of Welsh.”
16. It is important to note that such a policy would not affect the rights of the complainant or the powers of the Commissioner.

⁴ <https://gov.wales/docs/wlt/180903-decision-aled-powell-final.pdf>

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17. So I am proposing that the principles we will have regard to as we implement Standards in the future will be:
- a) keep the number of Standards on any body to the minimum required to achieve the policy objective;
 - b) reduce the requirements on bodies to collect data and prepare reports unless there is a clear reason otherwise;
 - c) the Commissioner to implement a policy of early resolution in order to ensure cases of breach of Standards are corrected quickly and to reduce the number of full investigations.
18. Implementing these improvements will require a mutual understanding between the Welsh Government and the Commissioner of the issues raised by the consultation which need addressing, agreement on the principles set out above and the actions which both bodies must take, and how progress is to be monitored. These are matters which we can progress over the next few months.
19. Although the Welsh Ministers cannot, and do not wish to, give directions to the Commissioner in the exercise of her regulatory functions, it is required of us to ensure the bodies we fund operate in the most efficient and effective manner. I will expect the Commissioner to benchmark his or her performance as a regulator against other bodies which investigate complaints, such as the Public Services Ombudsman for Wales, and to report on that in his or her annual report.

The impact of Standards – the use of services in Welsh

20. The Commissioner's reports note improvements in the provision of services in Welsh and awareness of them as a result of the Standards:
- 76% of those asked were of the opinion that public bodies' Welsh language services were improving, and 98% of Welsh speakers were aware they had rights to use the Welsh language.⁵
21. Nevertheless, there is scant evidence that the Standards have led to more use of the Welsh language by the public when using services. This is a matter of concern as the value of the Standards is not just the rights they give people but the use people make of those rights and their impact on choices made by the public.
22. The little evidence we have is in the annual reports of bodies under the Standards. See, for example, local authorities' annual reports for 2017/18:
- Swansea Council (11.4% of the population speak Welsh):⁶

⁵ The Commissioner's response to the White Paper consultation – our translation
<http://www.comisiynyddygyrmaeg.cymru/Cymraeg/Rhestr%20Cyhoeddiadau/20171030%20LL%20C%20Ymat%20Papur%20Gwyn%20CYG%20.pdf>

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- 1,676 calls in Welsh to the switchboard and Corporate Call Centre out of a total of 435,657 calls, i.e. 0.4%;
- 1,866 calls in Welsh to the Revenue and Benefits Department out of a total of 151,173 calls, i.e. 0.12%.

Wrexham County Borough Council (12.9% speak Welsh):⁷

- 1,387 calls/visits to the Contact Centre out of a total of 250,952 calls/visits, i.e. 0.6%, compared with 0.5% in 2016/17 and 0.1% in 2015/16;
- 11,613 transactions in Welsh on the website out of a total of 1,318,807 transactions, i.e. 0.9%, no significant change from 1% in the previous two years.

Bridgend County Borough Council (9.7% speak Welsh):⁸

- 5 face to face interactions in Welsh the Customer Contact Centre out of a total of 26,578 interactions, i.e. 0.02%;
- 301 calls in Welsh to the Telephone Contact Centre out of a total of 160,528 calls, i.e. 0.2%.

Neath Port Talbot County Borough Council (15.3% speak Welsh):⁹

- 1,303 calls in Welsh via the main telephone number out of a total of 125,094 calls, i.e. 1%;
- 24,192 hits on Welsh language web pages out of a total of 2,845,526 hits, i.e. 0.9%, compared with 0.8% in the two previous years.

23. This evidence may not be entirely reliable. The sample is small – just 4 out of 22 local authorities report on service use – and it is possible these cases are in some way unusual. Nevertheless, it is not possible to ignore this evidence until more complete data about the use of services in Welsh is available. I will expect the Commissioner to prioritise the task of identifying a set of comparative measures for the use of local authorities’ Welsh language services and to collect this data and report on it annually, starting from the next financial year, 2019/20. I will expect the Commissioner to do the same for Local Health Boards as soon as their Standards become operational.

24. The Welsh Government accepts the general argument that it will take time for the availability of services in Welsh under the Standards to have an impact on the behaviour of the public. We also accept the argument that the Standards make an important contribution towards by raising awareness of the importance of the Welsh language and its official status in workplaces and organisations.

⁶ <https://www.swansea.gov.uk/cymraeg>

⁷ <https://www.wrexham.gov.uk/english/council/documents/welsh-language-standards.htm>

⁸ <https://www.bridgend.gov.uk/my-council/equalities-and-engagement/welsh-language/>

⁹ <https://www.npt.gov.uk/1507>

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25. However, it is clear that the contribution of the Standards towards increasing the use of Welsh by the public is limited and only a small proportion of Welsh speakers choose to use services in Welsh at the present time. Changing the behaviour of Welsh speakers in this regard is a priority. I will expect the Commissioner to invest in actions to increase the use of services in Welsh by the public, in order to reinforce the efforts of the bodies themselves, whether they are under Standards or not, and to report on the success of those actions in his annual report.

Increasing the use of Welsh

26. Some stakeholders have argued in favour of establishing a new body or agency to promote the Welsh language. The Welsh Government does not accept these arguments, on the basis of complexity and efficiency. An additional body operating in the field of promoting the Welsh language would create confusion for the public with a high risk of duplicating functions. It would also create additional costs and overheads, taking scarce funding from programmes and services which would be of direct benefit to increasing the use of Welsh. It is important that the bodies subject to Standards see the Commissioner's office as a body that will be able to provide leadership and advice to ensure they can comply with Standards rather than being language police only.
27. In the White Paper, our concern about giving wider responsibilities for promoting the use of Welsh to the Commissioner related to the governance arrangements of the body as a corporation sole rather than a corporation aggregate. The Measure secures the independence of the Commissioner in relation to his or her regulatory functions and that is entirely appropriate. The same arguments do not stand up in the context of the Commissioner's general functions to increase the use of the Welsh language, for the following reasons.
28. Any body leading on increasing the use of the Welsh language must work in partnership and harness the energy of all the bodies, communities and individuals which work for the benefit of the Welsh language. It must operate in a manner which is transparent (for example, where bodies are relying on the grant decisions of the body) and inclusive (drawing on the skills, expertise and advice of others), and it must foster a rich and meaningful relationship with the people of Wales. It is not clear to me that the Commissioner's office meets these requirements at the present time. This is the reason we proposed to establish a Commission as a corporation aggregate, drawing on a range of expertise and with wider horizons than regulating Standards. However, it is clear there is no agreement amongst stakeholders with this proposal. This is one of the reasons I have decided not to proceed with the proposal to establish a Commission. The Commissioner must work in a transparent and inclusive way and in order to ensure that there isn't too much power in the hands of one individual. We believe that there is a need to look at the Commissioner's governance arrangements. This is something we will discuss with the new Commissioner.
29. Recent discussions with the current Commissioner and early discussions with the new Commissioner have led me to believe that it is possible to take significant action within the

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current legislation to address the relevant issues. It is worth noting the Commissioner says in her response to the White Paper (2.10), “I believe that Option 2, a Welsh Language Commissioner with a Governing Board, offers continuity and the necessary clarity whilst developing accountability arrangements... The Governing Board would be a means to ensure additional expertise and accountability especially when implementing promotion plans.”

30. The challenge I am setting the Commissioner, therefore, is to put in place transparent and inclusive governance arrangements, such as a Governing Board with clear and firm responsibilities, as an essential preliminary step to prepare the body for taking responsibility and being accountable for, programmes of work to increase the use of the Welsh language. This will not affect the independence of the Commissioner in exercising his or her regulatory functions.
31. If I am reassured the Commissioner has met these conditions over the next year, I will be prepared to consider transferring some responsibilities and their associated resources from the Welsh Government to the Commissioner. This will put in place the foundations for enabling the Commissioner to accomplish its principal aim of promoting and facilitating the use of the Welsh language in a more comprehensive and balanced way. I am confident there is no conflict between regulatory and promotion functions and, indeed, that is made clear in the the Measure which states “*The principal aim of the Commissioner in exercising his or her functions is to promote and facilitate the use of the Welsh language*” (section 3(1)).
32. In considering what responsibilities might be transferred if the conditions I have set out above are met, it is necessary first to have clarity about the respective responsibilities of the Welsh Government and the Commissioner. The starting point is our strategy, *Cymraeg 2050*, and the contribution each body can best make to achieving our aims. The basic principle is that the Welsh Government must lead on Theme 1 (increasing the number of Welsh speakers) and Theme 3 (creating favourable conditions for the Welsh language), whilst the Commissioner should be chiefly responsible for Theme 2 (increasing the use of the Welsh language). As these themes overlap, it will be necessary to discuss the details with the Commissioner, to take the advice of the Partnership Council, and to listen to the views of wider stakeholders – including considering the report of the Culture, Welsh Language and Communications Committee – before making final decisions.
33. However, I wish to make it clear at the outset that one of the top priorities will be to strengthen local and regional language planning, and the importance I place on language planning as a rational basis for designing policies to increase the use of the Welsh language. In many important respects, the success of *Cymraeg 2050* is in the hands of local communities, local groups and local authorities. *Cymraeg 2050* is a challenging and ambitious national strategy, and that ambition must be reflected in the local strategies and the work of local partnerships. For example, there is often only a tenuous connection between those strategies and the Welsh in Education Strategic Plans. Aled Roberts, the next Commissioner, is in a unique position to get to grips with this field, based on his experience of reviewing the most recent cycle of Welsh in Education Strategic Plans.

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34. Raising the quality of local and regional language planning is an essential step to realising the ambition in *Cymraeg 2050*. The Government will discuss with the Commissioner and other stakeholders what additional steps are required to add to the language planning work and who should have the main responsibilities for this. .

The private sector

35. The current Measure permits us to place Standards on some parts of the private sector, such as companies operating in some utilities markets which were once part of the public sector, e.g. water, gas and electricity, telecommunications, buses and trains, the Post Office and Royal Mail, and others. This list does not include banks.

36. I have stated that we will restart the programme of making Standards regulations and we will bring forward Standards regulations for those sectors in turn. I am not going to make promises about the timetable at present because of the uncertainty over Brexit and the potential impact on the timetable of Government business.

37. As we no longer intend to make primary legislation, it will not be possible to extend the Standards to other parts of the private sector, such as banks and supermarkets. This will not prevent us from redoubling our efforts and setting out clearly and simply what our expectations of these sectors are and to push hard for them to do more. The Commissioner has led on this work in the past and it is a priority that that work continues, with the full support of the Welsh Government.

The Welsh Language Tribunal

38. The White Paper noted some essential changes which are required to correct deficiencies in the Measure relating to the Welsh Language Tribunal, such as matters relating to the appointment, discipline and removal of Tribunal members. These changes derive from correspondence between the Lord Chief Justice and the First Minister at the time the Measure was passed, and the creation of the office of President of Welsh Tribunals under the Wales Act 2017. Primary legislation is required to make changes to the organisation and powers of the Tribunal.

39. On 23 July 2018, the First Minister announced that the Law Commission is to undertake a new project to review the law governing the operation of the devolved Welsh tribunals and make suggestions for reform.¹⁰ The project will consider matters such as the appointment and discipline of Tribunal judges and other members, and the appointment of Presidents/Deputies. The project will consider issues relating to a new Tribunals Bill for Wales, designed to regulate

¹⁰ <https://beta.gov.wales/written-statement-welsh-tribunals-law-commission-project>

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the operation of a single system for tribunals in Wales. I foresee that matters relating to the Welsh Language Tribunal could be dealt with in that Bill, if it is introduced in due course.

40. In the meantime, the Welsh Government will continue with the practical arrangements which are operating at the moment.

Reviewing progress

41. This paper sets out the basis for a new partnership between the Welsh Government and the Commissioner in order to deal with the issues identified in the White Paper and in order to ensure we work effectively towards achieving the aims in *Cymraeg 2050*.
42. I intend that the priorities that have been identified and any further priorities identified in discussion between us are to be included in a Framework Agreement between the Welsh Government and the Commissioner. The Framework Agreement will be subject to review at our regular quarterly meetings.
43. I will monitor progress over the rest of this Assembly and report on it in due course in our *Cymraeg 2050* annual reports.