**The Welsh Language Commissioner’s response to the consultation of the Independent Commission on the Constitutional Future of Wales from the perspective of regulating linguistic duties and reserved policy matters**

This paper is in two parts. Firstly, views on the regulation of linguistic duties under the current devolved regime are discussed. The second part discusses some of those policy areas reserved by the UK Government according to the Wales Act 2017 and their impact on the Welsh language.

The main points are:

* The Welsh Language (Wales) Measure 2011 and the resulting standards have been a huge step forward from the Welsh Language Act 1993 and the associated language schemes regime. People now have legal rights to use the Welsh language in a wide range of situations in their daily lives and the Commissioner has wide enforcement powers to ensure that those duties are implemented.
* However, the current devolution regime limits the Commissioner’s powers as a number of large, UK national organisations are not subject to the standards and instead continue to operate under the language schemes regime, where the Commissioner’s powers to ensure that those schemes are implemented are very limited.
* The Commissioner’s view is that more organisations, including these UK national organisations, need to be brought under standards. It is already possible to do so within the current legal framework, but boundaries within the devolution system are a barrier to this as it is dependent on political will or on obtaining the consent of the Secretary of State.
* Further legislation appears to be the main way of addressing these issues but there is a risk of losing the ability to bring these organisations under standards should the Senedd decide to legislate on the Welsh language in the future because of their competence to legislate. The Commissioner would not want that power to be compromised.
* Policy decision about reserved matters made on a UK level can impact the Welsh language. In theory, as a result of the requirements of relevant Welsh language schemes, the expectation is that the effect of policy decisions on the Welsh language will be considered. However, in practice this does not always happen. These matters include, but are not limited to justice, the economy and trade, immigration and broadcasting. Decisions about broadcasting are particularly important to the Welsh language in terms of its prominence and opportunities for people to hear and use the Welsh language on a daily basis.
* The fact that many of these UK Government departments making these policy decisions are not subject to the Welsh Language Standards significantly limits the Commissioner's ability to regulate them and to ensure that they consider the Welsh language in making their policy decisions.

**Part 1: Regulation of linguistic duties**

1. In responding to the Commission, it is important to consider the legislative background in order to understand the current situation in its full context. Two main statutes contain provision relating to the Welsh language, namely the Welsh Language Act 1993 and the Welsh Language (Wales) Measure 2011.

**Welsh Language Act 1993**

1. The Welsh Language Act 1993 established the principle that the Welsh and English languages should be treated on a basis of equality in the conduct of public business and in the administration of justice in Wales (so far as is appropriate in the circumstances and reasonably practicable). The right to use the Welsh language in the courts was upheld and strengthened, noting that anyone who wishes to use the Welsh language can do so. As that provision was not repeated in later legislation, this part of the 1993 act remains operational today, as are other parts of it.
2. The Welsh Language Act 1993 established a system whereby public bodies prepared language schemes explaining how they would provide services in Welsh. It also established a Welsh Language Board to oversee these language schemes, to advise on Welsh language issues, and to promote and facilitate its use. However, the 1993 Act was still a Westminster law and the 15 members of the Welsh Language Board were appointed by the Secretary of State for Wales. The Secretary of State also had the last word when a body failed to comply with its language scheme until the responsibility was transferred to Welsh Ministers as a result of devolution.
3. The effect of this was that the Welsh Language Board, the body that worked with the organisations in the first instance in order to agree their linguistic duties, and by now the Commissioner, had no powers to force organisations to use the Welsh language. Therefore, although the law substantially changed the legal status of the Welsh language, it remained tightly within the grasp of Westminster at the time of its creation.
4. To this day, a number of public bodies continue to implement Welsh language schemes that were prepared under this act. Further detail on the impact of this is given below.

**Welsh Language (Wales) Measure 2011**

1. This Measure established the role of the Welsh Language Commissioner and abolished the Welsh Language Board. This Measure was also the first language act to be created for Wales in Wales and which gives official status to the Welsh language in Wales. It also made provision in relation to promoting and facilitating use of the Welsh language and treating the Welsh language no less favourably than the English language. It introduced the system of imposing and enforcing standards where the Commissioner is responsible for investigating the compliance of public organisations with the standards imposed upon them. The Commissioner was also given the power to investigate interference with an individual's freedom to use the Welsh language.
2. By imposing and enforcing legal duties relating to the Welsh language on public organisations, the Welsh Language Measure created rights for Welsh speakers to use the Welsh language in their dealings with those organisations. The Measure also provided for the Welsh Language Tribunal which was established in 2015 to ensure that those linguistic rights were protected and to deal with appeals against decisions by the Welsh Language Commissioner in relation to Welsh language standards. This is the first tribunal established by the Assembly (as it was then).
3. All of this means that the Welsh language is now a core part of the administrative justice system in Wales. There are legal processes in place to ensure that individuals can exercise their right to use the Welsh language, and robust processes to be followed if an individual is deprived of that right. In such cases, access to the justice system is easy and cheap as an individual is able to submit a complaint to the Welsh Language Commissioner or the President of the Tribunal and there are enforcement powers available to ensure that duties are fulfilled.
4. The Welsh Language Measure was the last legislation to receive royal approval before the 2011 referendum was held on devolving further powers to Wales. Therefore, whilst members of the devolved Welsh assembly were responsible for drawing up the Welsh Language Measure, the legislative process was being driven (and restricted) to some extent by the legal regime of the Legislative Competence Order (LCO).[[1]](#footnote-2) Therefore, the legislature did not have unbridled freedom and the limitations of this procedure are visible in the Measure itself.
5. Despite the revolutionary nature of the Welsh Language Measure in terms of ensuring the legal status of the Welsh language, it is not without its shortcomings, as the report of the Culture, Welsh Language and Communications Committee, Supporting and promoting the Welsh Language, concluded in 2019. Reference is made there to the 'complexity and detail of the Measure' and to the common finding ‘that the Welsh language standards framework is complex and bureaucratic'.[[2]](#footnote-3) The slow process of introducing and implementing standards is also criticised.
6. However, there is no denying that the Measure is an important milestone in the history of the status of the language as it confirms the official status of the Welsh language for the first time and establishes legal rights for people to use the Welsh language. The standards have provided a level of assurance to organisations and users alike, creating new opportunities to use the Welsh language and further strengthening the status of the language. Indeed, the results of an opinion poll published by the Commissioner in his [‘Stepping Forward’](https://gbr01.safelinks.protection.outlook.com/?url=https://www.comisiynyddygymraeg.cymru/media/lzthr1qm/20210922-dg-c-camu-ymlaen-adroddiad-sicrwydd-2020-21-terfynol.pdf&data=04|01|Meinir.Jones@cyg-wlc.cymru|23bec6546d8a46bd430008d998759315|3d797281d2f14a60a41ac73eb9f7a877|0|0|637708453005779481|Unknown|TWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0=|1000&sdata=fpx0ycPWl4HRUHJT3dUc5WSrYYrflIMnn9O8JQ4KFa8=&reserved=0) report in September 2021 shows that the experiences of Welsh speakers have improved as a result of the Welsh language standards.
7. The Commissioner believes that more organisations need to be brought under the Welsh language standards and has already emphasised the importance of continuing the same momentum that has existed over the five years since standards came into force for the first time, using the Measure to its full effect. There are currently many more organisations named in the Measure than the Commissioner has been able to impose standards upon them and are therefore not required to implement standards as there are constraints and difficulties in enabling this to happen because of the boundaries of devolution[[3]](#footnote-4). For example, the Measure allows for making Welsh language standards specifically applicable to Ministers of the Crown only if the Secretary of State has consented to that. See attachment 1 for further details.
8. The Commissioner has also stated that it is vital that the Government undertakes to give stability to the structures and rights already in place, with a commitment to reconciling and improving the experiences of Welsh speakers within the current legislative framework. The Commissioner welcomes the Government's recent commitment to resume the process of imposing standards, bringing new organisations and sectors under that system. An action that would not only further establish the status of the language and the rights of users but also provide opportunities and contexts to use the language on a daily basis. Although 124 organisations now implement standards, we are still waiting for the Welsh Government to draw up regulations for a number of key sectors so that the Commissioner can impose standards on them. They include sectors with which the public has considerable day-to-day contact, such as housing associations, non-ministerial UK Government organisations such as Revenue and Customs, gas and electricity suppliers, and rail services and bus companies.

**UK Government organisations and Crown bodies**

1. The result of not imposing standards on the UK Government non-ministerial organisations and Crown bodies’ is that two statutory regimes are in operation in Wales today. This is confusing for the public as they have the right to approach us immediately to complain about organisations that are subject to standards (where the Commissioner has been able to give a compliance notice to the body in question) but do not have the same right to complain directly about failures in the context of key and high profile services of the Welfare State, for example as it isn’t possible for the Commissioner to impose standards without the consent of the Secretary of State. This is because the Commissioner's powers are much more limited under the language schemes system than the Welsh language standards.
2. As well as requiring a complainant to refer a complaint to the organisation in question first, before turning to the Commissioner, it is not possible to require Crown bodies to implement the Commissioner's recommendations (following an investigation) because sections 17 to 19 of the language act are not fully functional in the case of Crown departments and agencies. The effect of this is that some issues have been causing frustration for a long time. Here are some examples of matters that have come to our attention about Crown bodies:

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| Name of body | Issue(s) arising |
| Disclosure and Barring Service (DBS)  | Organisation has refused to prepare a Welsh language scheme. Receive regular complaints that the process of applying fully for a check in Welsh cannot be made online. Long delays in some cases in order to complete a paper form in Welsh, which can mean problems with recruitment for some local authorities in particular. Regular complaints also regarding the lack of Welsh/bilingual DBS certificates. |
| Cabinet Office | Problems have arisen with gov.uk's website since it became operational. There have been discussions for many years to get to the current point, namely that some organisations are able to input Welsh language material into the website themselves.The Civil Service Jobs website has also been the subject of discussion for a number of years and has prevented UK Government organisations from being able to recruit in Welsh effectively. However, changes are at a turn with the possibility of a new platform in the future. |
| Home Office | Births, deaths and marriages in Wales cannot be registered in Welsh only. Legislation needs to be passed to do so although this has been a recommendation in the Silk report (Part 2).'Prevent' counter terrorism training course that is a requirement for some staff/students to undertake is not available in Welsh.  |

1. One recent, specific case that highlights the shortcomings that arise with the system of language schemes compared to the Welsh language standards is the injustice faced by Welsh speakers if they wish to take their driving tests through the medium of Welsh. The Commissioner published a report on the basis of an investigation into the implementation of the Driver and Vehicle Standards Agency's (DVSA – who is an agent of the Crown) Welsh Language Scheme, in which he concluded that the agency was acting contrary to its commitment to treat the Welsh and English languages on the basis of equality. DVSA failed on the following three issues:
* The percentage of Welsh medium driving tests cancelled was almost three times higher than the percentage of English medium tests cancelled.
* It was necessary to wait five to six weeks longer before taking a practical driving test in Welsh compared to in English.
* If an individual wishes to apply to take a practical driving test through the medium of Welsh, they must state that they have ‘special requirements’.
1. The DVSA's Welsh Language Scheme, drawn up under the Welsh Language Act 1993, states that it ‘will treat the Welsh and English languages on a basis of equality’, and that 'driving tests in Welsh are available at all test centres [...] in Wales', and that 'the standard and quality of our services are consistent across Wales'. It also states that 'applicants will be able to opt to take a practical test in Welsh at the time of booking and we will provide a Welsh speaking examiner.'
2. Although ten years have elapsed since the Welsh Senedd passed a law giving official status to the Welsh language in Wales and established the principle of rights to use the language, this case proves that there are still far too many exclusions that undermine these objectives. In conducting the investigation, it became apparent that the practices of the DVSA do not come close to meeting the commitment it has made to the people of Wales in its Welsh Language Scheme.
3. Recommendations were made to the DVSA but there was also a wider message that, in the Commissioner's view, the only way to remedy this injustice was to bring the DVSA under the Welsh language standards regime, and to protect the right of applicants to take their driving tests in Welsh without suffering unfavourable treatment. That would also enable the Commissioner to enforce improvement rather than simply recommend it.
4. Therefore, there is a great need for the Government to re-examine the schedules to the Measure to identify further sectors on which standards could be introduced, and to be proactive in identifying new entities which could be brought under the system as they are created. As the Welsh language loses its status and protection within the European Union, it is more important than ever for Westminster to consider the Welsh language in non-devolved matters and in legislation introduced as a result of leaving the European Union.
5. The need to consider the Welsh language at a UK level – and ensure its status – was highlighted very clearly in the context of the COVID-19 pandemic when it was decided to procure and organise a number of key responses to the pandemic centrally by the Westminster Health and Social Care Department. The impact of centralising these efforts by a non-devolved department and unfamiliar with operating under the requirements of the standards was that not all of the services provided were designed with the Welsh language as a central consideration. Lessons must be learnt from this and ensure that the Welsh language has adequate constitutional and political status at a UK level to ensure the provision of necessary services to the citizens of Wales, particularly in times of crisis.
6. More generally, the Commissioner's, and the former Board's, experience in dealing with Crown bodies under the Welsh Language Act can be summarised as follows. Many of the agencies have been very innovative in preparing and implementing their scheme from the outset. Others have been less willing to co-operate fully. The result of this is that the schemes of Crown bodies have on average taken considerably longer to reach a standard that could be approved than some public bodies. Some recent examples include discussions on the language schemes of DEFRA, the Department for Health and Social Care together with the Department for Levelling Up, Housing and Communities.
7. In terms of implementing the schemes, the experience is similar. Some agencies take their responsibility seriously, while others are complacent, or ignore their scheme in delivering or reorganising their services. It is not entirely true to say that due to legal status or grasp the performance of UK departmental bodies would pose difficulties. While this is sometimes entirely deliberate, it is often a lack of awareness and understanding that is to blame. For example, their headquarters are usually outside Wales, and the nature of the workforce is less aware of the linguistic pattern of Wales. This inevitably affects compliance compared to devolved bodies. At the same time, it is possible to bear witness that some departments have established quality Welsh language services and that those have become embedded.

**To summarise**

1. The arrival of the Welsh language standards through the Welsh Language Measure has meant that people now have legal rights to use Welsh in their daily lives. The powers given through the Measure to the Commissioner to regulate the duties arising from the standards mean that they can be enforced, when necessary and a huge step forward from the language scheme regime established under the Welsh Language Act 1993.
2. Also, not all Crown bodies are set out in the Welsh Language Act 1993, as organisations that have to prepare a Welsh Language Scheme although some, such as the Home Office and the Ministry of Justice have done so despite this. Even where a language scheme exists, the Commissioner's powers are limited compared to the standards regime.The Commissioner's view therefore is that more organisations need to be brought out of the language schemes system and into the standards regime using the Measure to it’s full potential.
3. However, the current devolution system limits the Commissioner's powers under the Welsh Language Measure mainly for two reasons. Firstly, while some UK Government departments and organisations exercising functions on behalf of the Crown can be brought under standards within the current framework without the need for further consent, that depends heavily on political will. Secondly, in order to bring other organisations within the scope of the standards regime under the 2011 Measure, the consent of the Secretary of State would need to be obtained.

**Competence to legislate**

1. We note that the Wales Act 2017 has already affected the Welsh Senedd’s competence to legislate as the consent of UK Ministers is now required in order to include provisions in the Senedd’s Bills relating to reserved authorities. However, we are satisfied that the Wales Act does not affect the Welsh Language Measure or the standards regulations made under that Measure because the Act clearly states that it would not affect the continued operation of the Measures already in place.
2. The Wales Act is not retrospective and therefore only applies to Bills made since the Act was passed and to the subordinate legislation made under them. Therefore, UK Ministers’ consent is not required in the same way for regulations arising from the Welsh Language Measure relating to reserved authorities (other than Ministers of the Crown).
3. Should the Senedd decide to legislate for the Welsh language in the future, the effect of the Wales Act is that provision for the imposition, enforcement, alteration or removal of a function relating to the Welsh language on that entire range of persons could not be included in that Act without the consent of the Minister.[[4]](#footnote-5)
4. The effect of all this is that there is a case for continuing with the current framework or the Senedd could not legislate for the Welsh language without doing so within a context where its powers are substantially limited in terms of government departments and non-devolved authorities. We would therefore like this issue and the likely knock-on effects to be fully considered before any change is made. Any change to this effect would be of serious concern given that government departments and non-devolved authorities provide a very wide range of services to people in Wales.

**Part 2: Reserved Policy Issues of importance to the Welsh language**

The matters reserved by schedule 7A to the Government of Wales Act 2006 include a number which directly or indirectly affect the position of the Welsh language. They are detailed below.

**Broadcasting**

1. Media, Culture and Sport are matters which appear in schedule 7A of the Wales Act as reserved matters. Broadcasting in particular is vitally important to the Welsh language in terms of its prominence and opportunities for people to hear and use the Welsh language on a daily basis. Ensuring that the Welsh language is given prominence on digital services is a huge challenge and it is vital that the Welsh language is part of this movement.
2. In the [licence fee settlement for 2022-27](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1049248/BBC_2022_Final_settlement.pdf) the UK Government decided to freeze the fee for two years and then it would increase in line with inflation for the period until 2027.. S4C like the BBC now receives all its funding from the licence fee. DCMS [announced a settlement](https://www.gov.uk/government/publications/bbc-and-s4c-final-2022-licence-fee-settlement-letters/letter-from-secretary-of-state-to-s4c-on-final-determination-of-the-2022-licence-fee-settlement) of £88.85 million a year for 2022-23 and 2023-24. That will increase in line with inflation for the following four years. Essentially, it can therefore be summarised at this stage that broadcasting in Welsh receives all of the following funding from the licence fee in 2022-23:

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| S4C | £88.85 million |
| 520 hours for S4C from the BBC | Approx. £20 million |
| Radio Cymru  | Approx. £14 million |
| Cymru Fyw and digital services | Approx. £2 million |
|  | **Approx. £124.85 million** |

1. According to the BBC’s annual report for 2021/22 the current licence fee collected in Wales was £190 million. The total expenditure in Wales (covering S4C,Radio Cymru Radio Wales etc) was £188 million; but BBC expenditure on network programmes is additional to this. Of course, viewers/consumers in Wales also use the BBC’s network services. The UK Government will shortly be conducting a review of the licence fee funding model as there is a perception that collecting the licence fee as it stands is no longer sustainable. Therefore, beyond 2027 it is currently unclear how the BBC (and therefore its Welsh language services) and S4C will be funded. It is absolutely essential that Welsh language broadcasting receives the support it needs to thrive from 2027 onwards.
2. Although the summary below from the 5-year report predates the recent decision in early 2022 on the licence fee, the points remain relevant. They also summarise our position on devolving broadcasting, namely that broadcasting in Wales needs to reflect Welsh culture that includes the Welsh language, and it must be ensured that there is an adequate budget to enable broadcasting in the Welsh language to flourish:

*The COVID-19 crisis highlighted a serious and misleading lack of understanding by the British media of the difference in public policy between Wales and the rest of the United Kingdom, which has already led to further discussion about devolving broadcasting to Wales. The discussion will be bound to continue following the publication of the Culture, Welsh Language and Communications Committee’s report, and broadcasting to meet the requirements of Wales in Welsh and English will certainly be subject to discussion during the next Senedd period.*

*There is no doubt that there are real risks to Welsh culture due to the current reliance on publicly funded broadcasting services, and specifically the BBC. A number of key decisions are made about broadcasting at a British level and it must be ensured that the views and priorities of the Welsh Government and the Welsh Parliament are fully respected in such decisions. It is essential that S4C’s final financial settlement enables the channel to adapt and thrive in the future and to continue the work of supporting the Cymraeg 2050 vision to which it has already been a contributor. Sufficient support and funding must be made available in the future to ensure that S4C, the BBC and others are able to provide suitable provision in Welsh to coincide with the changes in the digital world and to contribute fully to the vision of Cymraeg 2050.*

1. An Expert Panel on the Devolution of Broadcasting has recently been published by the Welsh Government (in line with the Collaboration Agreement between the Welsh Government and Plaid Cymru) to pave the way for the devolution of broadcasting and communications powers to Wales. The Commissioner welcomes this step forward.[[5]](#footnote-6)

**Justice**

1. Schedule 7A of the Government of Wales Act indicates that Senedd Cymru cannot legislate on the individual legal Jurisdiction of England and Wales. In 2018 we gave evidence to the Commission on Justice in Wales[[6]](#footnote-7) explaining that the Welsh language was established as one of the two languages of law and the administration of justice in Wales because:
* In accordance with the Government of Wales Act 2006[[7]](#footnote-8), the English and Welsh texts of any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, and any subordinate legislation which is in both English and Welsh when it is made, are to be treated for all purposes as being of equal standing.
* The Welsh Courts Act 1942 gave any party or witness the right to use the Welsh language in court proceedings in Wales if not doing so would put them at a disadvantage. The Welsh Language Act 1993 established the principle that 'in the conduct of public business and in the administration of justice in Wales the Welsh and English languages should be treated on a basis of equality...' and the Act went on to say that any party, witness or other person wishing to use the Welsh language has the right to speak Welsh in any legal proceedings in Wales.[[8]](#footnote-9)
* Article 6 of the European Convention on Human Rights[[9]](#footnote-10) gives any person accused of a crime the right to a fair trial which includes being informed promptly, in a language which they understand and in detail, of the nature and basis of the accusation against them.
* The Welsh Language (Wales) Measure 2011 makes the Welsh language an official language in Wales. The standards regime builds on the success of language schemes by raising expectations with regard to organisations' use of the Welsh language. Since the end of March 2017, Welsh police forces and five tribunals have been required to comply with standards in four areas, namely service delivery, policy making, operational and record keeping standards.
1. It is therefore absolutely essential that the justice system and the law are able to operate in both Welsh and English to ensure the rights of citizens. Inevitably the position of the Welsh language within justice has developed significantly. It should be noted, however, that it has not been easy over the years to ensure that the whole sphere of justice in Wales complies with Welsh language duties as the sector as a whole is not subject to Welsh language standards. It is also crucial that different parts of the administration of justice system, from top to bottom, work together to facilitate the implementation of the duties imposed on all relevant organisations and, in doing so, ensure the rights of Welsh speakers to access justice through the medium of Welsh. One of the relevant bodies is discussed below.

**Prisons**

1. Her Majesty's Prison and Probation Service (HMPPS) operates in accordance with the Ministry of Justice's Welsh language scheme. At the end of 2018 the Commissioner published a report on the Welsh language in prisons[[10]](#footnote-11). Key prison services (e.g. health, care, education, libraries) are provided by other organisations such as health boards and local authorities. In Wales, these services are subject to Welsh language standards or Welsh language schemes, but not in England, of course. It is likely therefore that the Welsh language provision for prisoners is better in prisons in Wales for staffing reasons and because specific rights are created by legislation which is only relevant to Wales. However, there are no women's prisons or prisons for young adults between the ages of 18 and 20 in Wales. The lack of provision for women and young people in Wales is a cause for concern. The report found that there was a mixed picture of the availability of services and opportunities to speak Welsh in prisons and that:
* there was no certainty that HMPPS had data indicating the exact numbers of Welsh speaking prisoners in its estate, which makes it difficult to plan for needs and campaigns to promote the use of Welsh e.g. in January 2018, HMPPS's Annual Monitoring Report stated that Welsh is the preferred language of 2 individuals in HMP Berwyn, but it also referred to a focus group of 12 Welsh speakers;
* there was no certainty that HMPPS has detailed data about the Welsh language skills of its staff, which would enable it to plan for the linguistic needs of the workforce;
* there was no certainty regarding the consistency of Welsh language services offered across the estate;
* S4C was not available in prisons in England;
* the Commissioner had not seen evidence that the Welsh language was considered when deciding to which prison prisoners are sent.
1. The Welsh Affairs Committee echoed the concerns expressed in the report by the Commissioner in its report on [Prison Provision in Wales](https://publications.parliament.uk/pa/cm201719/cmselect/cmwelaf/742/742.pdf) published in 2019 noting that:

*We recommend that the UK Government ensure that HMPPS collect accurate data about Welsh-speaking prisoners regularly, both in Welsh and English prisons, and provide Welsh-language services accordingly. Detailed data about Welsh speakers should be published and made available to inform service planning. HMPPS should also collaborate fully with the Welsh Government in creating and implementing its new Welsh-language scheme. The Welsh language should also be strongly considered in decision-making about the placement of prisoners.*

**The legal profession and legal technology**

1. Given that any party has the right to use the Welsh language in court proceedings in Wales, it is essential to ensure that enough members of the legal profession are able to speak Welsh in order to facilitate public access to justice. Senedd Cymru creates legislation in both English and Welsh and the texts of both languages are equal. Whether their headquarters are located in Wales or England, solicitors, barristers and judges may therefore be required to deal with cases relating specifically to bilingual Welsh law, as well as the laws of England and Wales. Beyond interpreting the law itself in the case of bilingual legislation[[11]](#footnote-12), situations may arise where Welsh language only text would need to be interpreted and read with regard to cases relating to Welsh law and the laws of England and Wales. Solicitors, barristers and judges need to be aware of these considerations and understand their implications. Increasingly, therefore, we would expect that legal professionals in Wales need to be able to work with and interpret both languages used in legislation and justice in Wales. The need for Welsh speaking staff with an understanding of the legal position of Wales should be reflected in organisations' employment and professional development policies. The entire justice system should ensure that these needs are reflected in higher education and further education academic courses in England and Wales and that students are fully aware of the opportunities available to them in the field of justice if they are able to work through the medium of Welsh.
2. However, it was only after considerable discussion and persuasion by the Welsh Language Commissioner, the former Counsel General, Jeremy Miles MS and others that the Solicitors Regulation Authority (SRA) agreed to move towards a situation over time where the Qualifying Examination for Solicitors would be available in Welsh and enable candidates to prove that they were qualified in English or Welsh (and not solely in English). In this respect, we should note that barristers' standards and competences, as stated in the Professional Statement for Barristers[[12]](#footnote-13), refer to high level English language skills, however, there is no reference to Welsh language skills, and the document "Future Bar Training: Curriculum and Assessment Strategy"[[13]](#footnote-14) states:

*"The language of assessment is English. Written assessments may be provided in Welsh if requested. The requirements of the Welsh Language Act 1993 are recognised, but candidates who can only satisfy the assessment requirements in Welsh will not be competent to practise at the Bar of England and Wales".*

1. Increasingly there is a move towards greater use of technology in the justice process, with the Covid crisis having contributed to that. Given that parties in court proceedings in Wales have the right to use the Welsh language, it is essential that any new digital methods developed for the purpose of administering justice support rather than prevent the use of the Welsh language. Previous efforts to adopt digital methods of administering justice have led to the loss of Welsh language services and prevented individuals in Wales from using the language in their dealings with the justice system. This was highlighted in the Commissioner's response to the Ministry of Justice's consultation on the provision of court and tribunal services in Wales and the response to Lord Justice Briggs' review of the Civil Courts Structure. If the aim is to develop legal technology such as online courts using methods such as video-conferencing, careful and detailed planning will be required to ensure that parties can use any part of that court system through the medium of Welsh. Court proceedings in Wales may need to be conducted in Welsh, English or bilingually, and this will need to be carefully considered before and during the development of online courts.

**Economy and Trade**

1. There is general recognition that economic viability is vital to ensuring the prosperity of the Welsh language. [Cymraeg 2050](https://gov.wales/cymraeg-2050-welsh-language-strategy) notes the importance of economic development to the vitality of the Welsh language:

*The economy is vital to creating the social conditions where Welsh speakers can stay in Welsh-speaking communities, or return to those communities. Although we are unable to control all factors that influence economic growth, there are things that we can influence. These include skills, the importance placed on the Welsh language, the location of public sector jobs, clusters, ensuring that the Welsh language is seen as a valuable skill in major developments, and opportunities to use these skills.*

1. Financial and Economic Affairs; Trade and Industry are reserved matters in Annex 7A of the Wales Act so the Senedd cannot legislate on these matters. However, the Welsh Government has policies in the area of the economy, business and innovation specifically [*Prosperity for All: the economic action plan*](https://gov.wales/prosperity-all-economic-action-plan) which includes a regional economic development model which means regional frameworks are designed to meet the needs of each region. Specifically in terms of the Welsh language during the 2016–20 Senedd, the Welsh Government introduced the Arfor experimental fund, which is a fund of £2m for creating more, and better, jobs in the Welsh-speaking heartlands and supporting the growth of the language in Anglesey, Gwynedd, Ceredigion and Carmarthen. Following an evaluation of the project, a new £11million Arfor scheme over a three-year period is now underway with the above local authorities currently developing their plans. The Welsh Government also established an Economy and Language Roundtable during the last Senedd.
2. Following Britain’s departure from the European Union the UK Government introduced the Internal Market Act 2020 which amongst other things enables the UK Government to provide funding in devolved areas that would sit alongside any funding provided by the devolved administrations in those areas. Its ‘levelling up’ agenda and economic plans such as the [Shared Prosperity Fund](https://www.gov.uk/government/publications/uk-shared-prosperity-fund-prospectus/uk-shared-prosperity-fund-prospectus) and the [Levelling Up](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1052046/Executive_Summary.pdf)  white paper aim to reduce inequality economically and widely across the UK. Substantial areas of north and west Wales received Objective 1 funding from Europe because they were so poor. These are the areas where there are a number of communities where the Welsh language continues to be spoken by high percentages of the population. It must be ensured that the economic policies of the UK and Wales together ensure the economic prosperity of these communities in order to contribute to the viability of the Welsh language and that the expenditure coming directly from the UK Government specifically does so.There is evidence that in the past European funding has set targets specifically relating to the Welsh language.
3. The UK Government’s trade policies and more recently Free Trade Agreements negotiated by the UK Government following Brexit have the potential to affect the viability of small, family farms in Wales. Family farms are central to the rural economy, the culture of Wales and the vitality of the Welsh language. Welsh farms are on average substantially smaller than farms in England and Scotland. According to the National Census figures 43% of agricultural workers speak Welsh, compared to 19% of the population as a whole. This is the employment sector with the highest proportion of Welsh speakers. It is possible that agreements without tariffs or quotas could mean that British meat prices fall over time, with high standards of food production in Britain making it difficult for farmers to compete with foreign producers with lower standards. There is no guarantee that buyers would support Welsh farmers. Lower prices may be much more important than higher production standards, particularly for customers who do not receive high wages. In addition, if free trade agreements allowed the sale of food in Britain produced to a lower standard, the EU could block British exports to protect the Union’s food standards. This would mean that not only are Welsh farmers competing with increasing imports into this country, but would lose access to other countries’ markets. In this respect in its report on the [Economic and cultural impact of trade and environmental policies on family farms in Wales](https://committees.parliament.uk/publications/9583/documents/162242/default/) the Committee noted the following:

*As we concluded in our report on the implications for Wales of the UK/Australia FTA, we are acutely aware of the concerns held by Welsh farmers of the potential competitive threat posed by FTAs. However, while it is far from certain that the UK will be flooded with produce from countries that the UK Government is negotiating FTAs with, it is important that due thought is given to the impact of FTAs on the agricultural sector, food and drink production in Wales. One particular concern is negotiating tactics which will have a disproportionate impact on Wales, because of the greater reliance on agriculture and food production sectors—for example, subverting the interests and protections on agricultural and food production sectors in order to secure preferential access for larger domestic markets, such as, say, financial services.*

1. This example highlights that decisions at a UK level can be made without considering their impact on the Welsh language even in areas that are not directly associated with the Welsh language.

**Benefits**

1. Social Security, Child Support, Pensions and Compensation are also reserved matters. A recent report by the [Welsh Affairs Committee on benefits](https://committees.parliament.uk/publications/9281/documents/160433/default/) notes important data on issues relating to the economic condition of Wales covering issues such as employment levels; poverty and deprivation; in-work poverty etc. ONS data on 17 May 2022 noted that between 1 January 2022 and 31 March 2022 that the unemployment rate was 3% (3.75% is the British rate) amongst people aged 16+ but that the rate of 16–64-year-olds who were economically inactive was 23.6% (the British rate is 21.4%). The Welsh Affairs Committee report also refers to the fact that a number of areas in Wales are very dependent on tourism including Gwynedd (17.7%), Conwy (17.1%) and Pembrokeshire (16.2%). It also notes that ‘Wales’ has the highest poverty rates among all UK nations, with 31% of children living in poverty and 71% of those children living in working households. More generally, average hourly earnings are lower in Wales than across the UK.
2. We are not aware of data and research looking specifically at deprivation and reliance on benefits in communities where there are high percentages of Welsh speakers or amongst Welsh speakers in general. However, given the fact from section 4 that so many of those areas where the Welsh language is spoken are eligible for Objective 1 funding because of their poverty it can be imagined that benefit take-up rates in many post-industrial areas such as the north-western quarrying areas and the anthracite areas of the west are relatively high. It must be ensured that the UK and Welsh governments are aware of the impact of poverty on the Welsh language and communities where it is spoken and that their policies on benefits and economic development contribute to the viability of those communities where the Welsh language is spoken by a large percentage of the population.

**Immigration**

1. In early 2020 the British Government outlined its intentions for a points-based immigration system for the UK. Those applying for a visa for a skilled worker will have to be able to speak English to qualify, and will receive points to reflect this as part of their application. The policy did not reflect the fact that Welsh was an official language in Wales and that it was a requirement for a number of posts. Following correspondence from the Commissioner and Welsh Government Ministers, the Home Office is considering introducing a method that would recognise the Welsh language skills of visa applicants. This example highlights that decisions at a British level can be made without considering their impact on the Welsh language even in areas that are seemingly unconnected with the Welsh language.

**Welsh place names**

1. There is no statutory naming authority, or legislation specifying official forms in the United Kingdom. It is somewhat misleading, therefore, to consider the place-names policy field as a reserved one. However, it is a field where specific challenges arise in relation to the Welsh language – and as a result of the bilingual nature of the place-names of Wales – which are further compounded by the current relationship with British institutions. The lack of awareness, or priority given, to the specific needs of the Welsh language and its speakers is a cause of constant obstacles in this field.
2. For example, Ordnance Survey is the UK's leading mapping agency. Since 2015 it has been a private company wholly-owned by the UK Government and accountable to the Secretary of State for Business, Energy and Industrial Strategy. Ordnance Survey has [a Welsh Language Scheme](https://www.ordnancesurvey.co.uk/documents/resources/welsh-language-scheme-in-welsh.pdf) under the Welsh Language Act 1993 dating back to 2006, but the [Welsh Names Policy](https://www.ordnancesurvey.co.uk/documents/resources/welsh-names-policy.pdf) (updated 2016) is the key document in relation to Welsh names as it sets out how Ordnance Survey will deal with Welsh and bilingual names. This policy does not commit Ordnance Survey to recording forms in both languages and explicit priority is given to English forms as highlighted in the following quote: ‘However, where for cartographic reasons space is limited, map preference will be given to the English only depiction.’ It is easy to understand how this approach has led to a situation where the Welsh public feels that Welsh names are not given sufficient prominence or status in Ordnance Survey products as highlighted by [recent stories in the press](https://www.bbc.co.uk/news/uk-wales-61811395).
3. It must be recognised that the Welsh place names data field is a complex and multi-faceted one and it is not possible to attribute all the failings of the current situation to one agency. Organisations in Wales have their part to play and we welcome the Welsh Government's recent commitment in its [Collaboration Agreement](https://gov.wales/co-operation-agreement-2021) to: 'Ensure Welsh language place names in the built and natural environments are safeguarded and promoted.' However, without further powers to legislate and influence over British organisations, it is difficult to see how this commitment can be fully realised.

**Welsh Language Infrastructure**

1. Devolution has driven major development in the translation profession in Wales, not least in the professional translation services that directly support the work of the Senedd and Welsh Government. The Welsh Government's Translation Service and the Senedd’s Translation and Reporting Service have developed considerable expertise in their fields and have pioneered innovation that has led directly to strengthening the position of the Welsh language, for example the collaboration with Microsoft to create [Microsoft Translate for the Welsh language](https://senedd.wales/senedd-now/news/welsh-on-the-world-stage-assembly-teams-up-with-microsoft-to-launch-powerful-welsh-translation-system/?PageSize=1&Page=4&ViewModelType=Related&IsSubSearch=false&PageId=5451&Culture=en-GB&SiteHomePageId=1417&Tags=false). Another of the spin-offs to this development is the [BydTermCymru](https://gov.wales/bydtermcymru) resource which shares terminology standardised by the Welsh Government's Translation Service and other linguistic resources with external translators and the public. It is an indispensable resource for those who wish to use Welsh in professional contexts. There will be a need to plan investment in this service should there be further amendments to the constitution of Wales to ensure that the necessary linguistic infrastructure is in place to support working through the medium of Welsh in this new context.

**To summarise**

1. The examples above highlight a situation where decisions made at a UK level have an impact on Welsh speakers. Decisions made are not always seen to give full consideration to their impact on the Welsh language. As noted in Part 1 of this paper, the fact that many of these UK Government departments making these policy decisions are not subject to the Welsh Language Standards significantly limits the Commissioner's ability to regulate them and to ensure that they consider the Welsh language in making their policy decisions.

**Appendix 1 – List of UK bodies that could be made subject to Welsh language standards without the consent of the Secretary of State**

|  |  |
| --- | --- |
| **Name of body** | **Status of body** |
| Welsh Revenue Authority | Welsh Government non-Ministerial Department |
| HM Revenue and Customs | UK Government non-Ministerial Department |
| HM Courts and Tribunals Service | Executive agency (Ministry of Justice) |
| HM Prison and Probation Service | Executive agency (Ministry of Justice) |
| Money and Pensions Service | Executive non-departmental public body (DWP) |
| Office of the Public Guardian | Executive agency (Ministry of Justice) |
| Companies House | Executive agency (Department for Business, Energy & Industrial Strategy) |
| Financial Conduct Authority | Other body (HM Treasury) |
| Animal and Plant Health Agency | Executive agency (DEFRA & Welsh Government) |
| Food Standards Agency | Non-Ministerial Department |
| Driver and Vehicle Licensing Agency | Executive agency (Department for Transport) |
| Valuation Office Agency | Executive agency (HMRC) |
| Health and Safety Executive | Executive non-departmental public body (DWP) |
| HM Land Registry | Non-Ministerial Department (Department for Business, Energy & Industrial Strategy) |
| National Heritage Memorial Fund | Executive non-departmental public body (DCMS) |
| Meat Promotion Wales | Public body |
| Intellectual Property Office | Executive agency (Department for Business, Energy & Industrial Strategy) |
| Office for National Statistics | Public body |
| Disclosure and Barring Service | Executive non-departmental public body (Home Office) |
| Driver & Vehicle Standards Agency | Executive agency (Department for Transport) |

The Commissioner's understanding is that [paragraph 1 of Schedule 6 of the Welsh Language (Wales) Measure 2011](https://www.legislation.gov.uk/mwa/2011/1/schedule/6/enacted/welsh) states that the entry relating to government departments or persons exercising functions on behalf of the Crown is to be treated separately to Ministers of the Crown. It therefore appears that the consent of the Secretary of State is only required to make a Minister of the Crown subject to Welsh language standards, and that the consent is not required for government departments or those who exercise functions on behalf of the Crown.

**Appendix 2 – List of UK organisations that could be made subject to standards with the consent of the Secretary of State**

|  |  |
| --- | --- |
| **Minister of the crown** | **Ministerial department** |
| Prime Minister | Prime Minister's Office, 10 Downing Street |
| Attorney General | Attorney General's Office |
| Minister for the Civil Service | Cabinet Office |
| Secretary of state for Business, Energy & Industrial Strategy | Department for Business, Energy & Industrial Strategy |
| Secretary of state for Digital, Culture, Media & Sport | Department for Digital, Culture, Media & Sport |
| Secretary of state for Education | Department for Education |
| Secretary of state for Environment, Food & Rural Affairs | Department for Environment, Food & Rural Affairs |
| Secretary of state for International Trade | Department for International Trade |
| Secretary of state for Levelling Up, Housing & Communities | Department for Levelling Up, Housing & Communities |
| Secretary of state for Transport | Department for Transport |
| Secretary of state for Work & Pensions | Department for Work & Pensions |
| Secretary of state for Health & Social Care | Department of Health & Social Care |
| Secretary of State for Foreign and Commonwealth Affairs | Foreign, Commonwealth & Development Office |
| Chancellor of the Exchequer | HM Treasury |
| Secretary of State for the Home Office | Home Office |
| Secretary of state for Defence | Ministry of Defence |
| Secretary of state for Justice | Ministry of Justice |
| Secretary of State for Northern Ireland | Northern Ireland Office |
| Advocate General for Scotland | Office of the Advocate General for Scotland |
| Leader of the House of Commons | Office of the Leader of the House of Commons |
| Leader of the House of Lords | Office of the Leader of the House of Lords |
| Secretary of State for Scotland | Office of the Secretary of State for Scotland |
| Secretary of State for Wales | Office of the Secretary of State for Wales |
|  | UK Export Finance |

1. For a comprehensive introduction to the history of drawing up the Measure and the impact of the system that existed at the time on the Bill, see Thomas Glyn Watkin, ‘Competence and Complexity: The Role of the Welsh Language Commissioner’, pp. 125–46. [↑](#footnote-ref-2)
2. National Assembly for Wales Culture, Welsh Language and Communications Committee, [Supporting and promoting the Welsh language](https://senedd.wales/laid%20documents/cr-ld12636/cr-ld12636-e.pdf) (July 2019), p. 12, p. 7. [↑](#footnote-ref-3)
3. This restriction follows the boundaries of the Government of Wales Act 2006 (as revised by the Wales Act 2017). [↑](#footnote-ref-4)
4. Paragraph 11, part 1, schedule 7B of the Government of Wales Act 2006 (as amended by the Wales Act 2017) states that no Act of the Senedd Cymru may remove or modify any of the following unless the appropriate Minister consents to the provision: (a) the functions of a Minister of the Crown relating to a qualified devolved function (b) any function of a Minister of the Crown exercisable in relation to the Welsh language (c) any function a Minister of the Crown exercisable in relation to water supply, water quality, water resource management, pollution control water resources, sewerage, rivers and other watercourses, land drainage, flood risk management or coastal defence (d) has any function of a Minister of the Crown under Chapter 1 of Part 3, or section 58, of the Marine and Coastal Access Act 2009 (e) any power of the Secretary of State under section 6 of the Railways Act 2005 (financial assistance relating to railway services etc.), or (f)any function of the Treasury under section 138(2) or 141(4). [↑](#footnote-ref-5)
5. [Expert panel on the devolution of broadcasting announced | GOV.WALES](https://gov.wales/expert-panel-devolution-broadcasting-announced) [↑](#footnote-ref-6)
6. Unfortunately, there is no copy of the response on the Website of the Commission on Justice. A copy can be provided if necessary. [↑](#footnote-ref-7)
7. http://www.legislation.gov.uk/ukpga/2006/32/section/156 [↑](#footnote-ref-8)
8. https://www.legislation.gov.uk/ukpga/1993/38/contents [↑](#footnote-ref-9)
9. https://www.echr.coe.int/Documents/Convention\_ENG.pdf [↑](#footnote-ref-10)
10. [the-welsh-language-in-prisons.pdf (welshlanguagecommissioner.wales)](https://www.welshlanguagecommissioner.wales/media/gqsbjcq4/the-welsh-language-in-prisons.pdf) [↑](#footnote-ref-11)
11. See Driver v Rhondda 2020 [Driver -v- Rhondda Cynon Taf County Borough Council - Welsh Language Summary (judiciary.uk)](https://www.judiciary.uk/wp-content/uploads/2020/12/Driver-v-Rhondda-Cynon-Taf-County-Borough-Council-Welsh-Language-Summary.pdf) as an example of such a case. [↑](#footnote-ref-12)
12. https://www.barstandardsboard.org.uk/media/1787559/bsb\_professional\_statement\_and\_competences\_2016.pdf [↑](#footnote-ref-13)
13. <https://www.barstandardsboard.org.uk/uploads/assets/0426fe70-72e5-48be-8618f7af3a28f1b0/curriculumandassessmentstrategy1april2019.pdf> [↑](#footnote-ref-14)