

Number: WG32353



Llywodraeth Cymru  
Welsh Government

Welsh Government  
White Paper Consultation Document

# Striking the right balance: proposals for a Welsh Language Bill

Date of issue: 9 August 2017  
Action required: Responses by 31 October 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

# Striking the right balance: proposals for a Welsh Language Bill

**Overview** The purpose of this consultation is to seek views on the Welsh Government's proposals for a Welsh Language Bill. Our proposals relate to the arrangements to promote and facilitate the use of the Welsh language, and make improvements to the Welsh Language Standards system.

**How to respond** Responses to this consultation should be e-mailed/posted to the address below to arrive by **31 October 2017** at the latest.

**Further information and related documents** **Large print, Braille and alternative language versions of this document are available on request.**

*Preparing for a Welsh Language Bill – Call for evidence: summary of responses*  
[gov.wales/docs/dcells/publications/170718-wl-bill-sor-en.pdf](http://gov.wales/docs/dcells/publications/170718-wl-bill-sor-en.pdf)

*Cymraeg 2050: A million Welsh speakers*  
[gov.wales/docs/dcells/publications/170711-welsh-language-strategy-eng.pdf](http://gov.wales/docs/dcells/publications/170711-welsh-language-strategy-eng.pdf)

The consultation documents can be accessed from the Welsh Government's website at [www.gov.wales/consultations](http://www.gov.wales/consultations)

**Contact details** For further information:

Welsh Language Bill Team  
Welsh Language Division  
Welsh Government  
Cathays Park  
Cardiff  
CF10 3NQ

e-mail:  
[UnedlaithGymraegWelshLanguageUnit@gov.wales](mailto:UnedlaithGymraegWelshLanguageUnit@gov.wales)  
Tel: 0300 0604400

## **Data protection**

### **How the views and information you give us will be used**

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

# Contents

<b>Ministerial foreword</b>	<b>2</b>
<b>Our vision for the Welsh language</b>	<b>3</b>
<b>Structure of this White Paper</b>	<b>13</b>
<b>Summary of the proposals of this White Paper</b>	<b>14</b>
<b>Part 1: Promoting the Welsh language</b>	<b>15</b>
<b>Part 2: Governance and accountability</b>	<b>25</b>
<b>Part 3: The Welsh Language Standards</b>	<b>36</b>
<b>Part 4: The scope of bodies covered by Welsh language legislation</b>	<b>60</b>
<b>Part 5: Assessing the impact of our proposals</b>	<b>63</b>
<b>Next steps</b>	<b>65</b>

## Ministerial foreword

This is an exciting period in the history of the Welsh language in Wales. 75 years since the Welsh Courts Act 1942 and 50 years after the Welsh Language Act 1967, we have a great and growing ambition for the Welsh language. The Assembly's primary law-making powers enable us to take bold steps which were not available to the generations who were responsible for those pieces of legislation.

This generation's responsibility is to imagine and to create a country where the Welsh language is strong and sustainable. I would like to see the Welsh language woven inextricably into the fabric of modern twenty first century society, with bilingualism threaded through communities and workplaces across the country. That is the vision which is at the heart of *Cymraeg 2050*.

The Welsh Government has a duty to ensure the legislative foundations for the Welsh language are also strong and sustainable. The Welsh Language (Wales) Measure 2011 broke new ground by establishing rights to use Welsh and this is something we must preserve. However, in times of austerity and economic uncertainty in light of the UK Government's intention to leave the European Union, we cannot justify a bureaucratic and costly system which threatens to choke off goodwill towards the Welsh language. If we are to realise our vision, we must make wise decisions and do the things which will make the biggest difference. We must foster people's desire and confidence to learn and to use the language if we are to ensure that the next generation embraces bilingualism as a normal part of everyday life.

This White Paper includes the Welsh Government's proposals for new legislation. This document should be read in conjunction with *Cymraeg 2050* and the summary of responses to the call for evidence, *Preparing for a new Welsh Language Bill*. My intention is to give new energy to our efforts to promote the language through establishing a Welsh Language Commission, whilst preserving rights, simplifying bureaucracy and establishing new arrangements for language planning across public services. We must ensure we are legislating according to the Assembly's competence under the Wales Act 2017 so that we can extend standards to any applicable body.

I hope these proposals will spur an energetic discussion and that there will be the widest possible consensus for the new Welsh Language Bill.

**Alun Davies AM**

Minister for Lifelong Learning and Welsh Language

## Our vision for the Welsh language

1. In our Programme for Government, *Taking Wales Forward*, we made firm commitments to the Welsh language. We committed to:
  - work towards a million Welsh speakers by 2050;
  - work to encourage more people to use Welsh; and
  - amend the Welsh Language (Wales) Measure 2011('the Measure').
2. In response to a legal duty<sup>1</sup> on the Welsh Government<sup>2</sup> to set out how we will promote and facilitate the use of the Welsh language, we recently published our Welsh language strategy, *Cymraeg 2050*. *Cymraeg 2050* confirms our ambition to reach a million Welsh speakers by 2050 and sets out a roadmap to make this vision a reality. As required by law, we will develop and publish a plan setting out how the Welsh Government will implement the proposals set out in *Cymraeg 2050*.
3. The Welsh language is one of Wales' national treasures. It is part of what defines us as a people and as a nation. By 2050, we want the Welsh language to be part of the fabric of everyday life in Wales, in common use at home, in the community, and at work. We want the Welsh language to be appreciated by everyone for its contribution to culture and society in Wales, and valued for its role in the economy.
4. Achieving the vision in *Cymraeg 2050* will require concerted action by the Welsh Government alongside the commitment of our partners, most especially perhaps, local authorities. We have already announced some of the actions we are taking across Welsh Government, including reviewing Welsh in Education Strategic Plans, establishing a continuum of Welsh learning in the curriculum, enhancing early years provision and reviewing the role of the Coleg Cymraeg Cenedlaethol and the importance of the Welsh language in further education. We firmly believe that this level of ambition is essential if we are to make a real difference where the Welsh language is concerned.
5. The purpose of this White Paper is to seek views on our proposals to bring forward a new Welsh Language Bill to improve promotion of the Welsh language, support public services to improve their capacity to deliver services in Welsh, and consider the way we impose and enforce Welsh language duties. In this chapter we set out some of the challenges we face. In Parts 1 to 4, we set out our proposals for changes to the law.
6. Your views on our proposals are essential to help us ensure the legislation is suitable to support us working towards a million Welsh speakers by 2050 and help us to deliver our commitments in *Taking Wales Forward*.

## Why we need to change the law

7. Governments can do different things to make sure their policies are successful. These include:
  - influencing the behaviour of people by running campaigns which inform and educate (e.g. healthy eating)

---

<sup>1</sup> s.78 Government of Wales Act 2006

<sup>2</sup> In this paper we refer to Welsh Government but the functions are legally vested in the Welsh Ministers.

- financial incentives to encourage some behaviours (e.g. no VAT on books) and discourage others (e.g. excise duty on tobacco and alcohol)
  - intervening in markets to make them work better (e.g. labelling on food and drink)
  - introducing self-regulation and voluntary codes of practice (e.g. advertising standards), and
  - imposing rules and standards that must be complied with (e.g. food standards).
8. Often, it is not enough to do just one of these things and action must be taken on many fronts at the same time. This White Paper makes proposals on how we think the law as it relates to the Welsh language needs changing. In particular, by looking at what we currently do and how it could be done better, we believe we need to look again at the mix of policy approaches we are taking. This means considering the duties we place on public bodies and the current arrangements for imposing and enforcing Welsh Language Standards, and the many different ways we promote and facilitate use of the Welsh language.
9. Our objectives are to :
- strike the right balance between promoting and facilitating the use of the Welsh language and regulating Welsh language duties;
  - reduce bureaucracy and ensure value for money.
10. It should be noted that promoting the Welsh language and facilitating the use of the Welsh language mean different things. In this White Paper, however, for the sake of economy we will use the phrase ‘promoting the Welsh language’ to mean promoting and facilitating the use of the Welsh language. Occasionally, for the sake of clarity, we will set out what we mean more fully.

## **Striking the right balance between promotion and regulation**

11. Regulation and promotion can both contribute to increasing the use of the Welsh language but each brings benefits and costs of different kinds. In this paper, regulation generally means placing Welsh Language duties on bodies, currently known as Welsh language Standards (“Standards”) through regulations and compliance notices, and monitoring and enforcing compliance with those Standards. Regulation is aimed at guaranteeing the availability of certain Welsh language services. It can also have an impact on the use of those services by making them easily accessible and by ensuring bodies promote the availability of the Welsh language services they provide. It also provides people in Wales with rights in relation to their dealings with providers of public services. Regulation has an impact on the way public services are organised, on workforce planning and skills requirements, on systems and procedures. It also has an impact on the wider social and cultural environment, making the language more visible and affirming the language’s official status in the public eye.
12. Policies and actions for promoting the Welsh language are primarily aimed at increasing the number of Welsh speakers, increasing levels of fluency and literacy, and making speakers more confident to use the language in a range of social and business settings. This includes increasing the uptake of Welsh language services. In addition to funding the Welsh Language Commissioner (“the Commissioner”) to undertake some of these tasks – the principal aim of the Commissioner is to promote and facilitate use of the Welsh language – the Welsh Government also funds national

bodies such as the National Centre for Learning Welsh, Coleg Cymraeg Cenedlaethol, Mudiad Meithrin, the Urdd and the National Eisteddfod, regional language centres (Canolfannau Iaith), as well as a range of grant funded activities down to community level. The section below entitled Promotion gives an overview of the extent of promotional activity, and in Table 1 in Part 1 we set out which of the activities of the Welsh Government and the current Commissioner that are within the scope of this White Paper.

## Use of Welsh language services

13. Although the provision of Welsh language services is becoming more consistent as bodies providing public services move from Welsh language schemes to operating under the Standards, the evidence suggests uptake of those services is still low. The Commissioner's report *The Position of the Welsh Language 2012-2015*<sup>3</sup> uses survey data to show 86% of Welsh speakers feel it is important or fairly important to be able to access local authority services and information in Welsh. Around half of Welsh speakers (53%) said they tried to use Welsh at least occasionally when dealing with public services and they were always, almost always or usually successful 85% of the time. 37% of Welsh speakers say they try to complete official forms in Welsh.
14. However, quantitative data on actual uptake of services in Welsh is scarce and there is a pressing need to collect systematic data so we can understand the impact of our legislation and policies. We are committed to working with public service providers to collect and publish this data.
15. Swansea Council reports on its website that in June 2017, there were 4,515 unique visitors to the Welsh language pages, compared with 207,458 to the English language site (2.2%).<sup>4</sup> Wrexham County Borough Council published website and contact centre measures in its *Welsh Language Annual Monitoring Report* for 2016/17.<sup>5</sup> In 2016/17, 1.6% of homepage visits to its website were in Welsh, and 1% of transactions conducted through the website were in Welsh. 0.5% of calls/visits to its contact centre were in Welsh but just 8 customers out of 122,446 chose to conduct their business in Welsh over the phone or in face to face meetings.
16. The DVLA publishes data relating to online applications for driving licences and vehicle licensing. In 2014/15, 6,431 'tax discs' (i.e. vehicle excise duty) were renewed in Welsh. There are approximately 1.3 million cars in Wales, so this represents around 0.5% of the total. Similarly the Driving Standards Agency records that in Wales in 2013/14, 78 theory tests were taken in Welsh (0.17%), compared with 46,309 in English. The number of practical tests taken in Welsh in 2013/14 was 217 (0.76%), compared with 28,418 in English.<sup>6</sup>
17. There will be many reasons why these figures are so low, not least that government and administration in Wales have historically been conducted in English and services provided in English. The social and cultural barriers to changing people's behaviour appear to be deeply rooted and difficult to shift. Nevertheless, these figures make

---

<sup>3</sup> <http://www.comisiynyddygydraeg.cymru/English/Publications%20List/Adroddiad%205-mllynedd%20-%205-year%20Report.pdf>

<sup>4</sup> <http://www.swansea.gov.uk/article/8169/Website-statistics>

<sup>5</sup> [http://www.wrexham.gov.uk/assets/pdfs/welsh\\_language\\_standards/welsh\\_annual\\_monitoring\\_report\\_2016\\_17.pdf](http://www.wrexham.gov.uk/assets/pdfs/welsh_language_standards/welsh_annual_monitoring_report_2016_17.pdf)

<sup>6</sup> <http://gov.wales/docs/dcells/welsh-language/publications/160929-wls-annual-en.pdf>



uncomfortable reading. It is clear that there is a lot of work to do to encourage people to access public services in Welsh and to close the gap between potential demand (the number of Welsh speakers in an area who access services but choose not to do so in Welsh) and the actual demand.

18. The service providers under Welsh language duties will be key to making this happen, in terms of the extent to which they develop their own bilingual organisational culture, and the extent to which they actively and effectively promote the Welsh language services they offer. Whilst there are many examples of good practice, many bodies will need significant support to increase their own capacity to provide Welsh language services and to promote those services effectively. We recognise that the vision of a million speakers will not be achieved unless we focus on increasing demand for Welsh-medium education. In the same way, we will need to ensure the demand for further and higher education courses, and vocational and professional training, increases in line with the requirements for a bilingual workforce capable of delivering public services in Welsh.
19. The challenge, therefore, is to ensure we are paying sufficient attention to the capacity of bodies to adapt to the significant increase in the level of Welsh language service provision required of them, to the uptake of those services, and to wider efforts to promote the Welsh language.

### **Promotion**

20. Promoting the Welsh language covers a wide range of activities, undertaken by a wide range of bodies. Some bodies are focused entirely on the Welsh language but many bodies undertake promotional work as part of their main responsibilities. The contributions made by all these bodies, from national campaigns to community grass-roots work and the efforts of individuals, is essential if we are to achieve our ambition of a thriving Welsh language. Given the breadth of activity, it is important to co-ordinate the work of different bodies to ensure public funding has the greatest overall impact.

### **Funding support**

21. The Welsh Government provides grant funding to support bodies involved in language development, such as the Mentrau Iaith, Merched y Wawr and Wales Young Farmers' Clubs, community activities such as local eisteddfodau and the Papurau Bro, and national bodies such as the Urdd, the National Eisteddfod and Mudiad Meithrin. The Welsh Government, working in partnership with local authorities and colleges of further education, has also provided capital funding to establish a network of 10 Canolfannau Iaith (language centres) to provide opportunities for Welsh speakers and learners to participate in a range of cultural, social and economic activities in Welsh. Although the Welsh Government does not provide revenue funding to these centres, many of the bodies which run or use the centres receive Welsh Government grants.

### **Marketing and media campaigns**

22. In addition, the Welsh Government carries out work to promote the Welsh language through national marketing and media campaigns and distributing promotional materials to support various aspects of the language. These campaigns use a variety of traditional and social media to focus on priority groups, such as encouraging

parents to consider Welsh-medium education for their children, and encouraging young people to use Welsh outside school and college. The Commissioner also undertakes some media and promotional activity in relation to the Standards and the availability of public services in Welsh, such as two recent campaigns relating to Standards and rights to access services in Welsh.

23. A number of the bodies which receive grant funding also run their own marketing campaigns. These include local bodies at the county and community level, but also national bodies such as the National Centre for Learning Welsh and the Coleg Cymraeg Cenedlaethol. There are challenges when a number of bodies are undertaking media and marketing work at the same time, such as ensuring messages are consistent, that key marketing priorities are not diluted, and that the quality of campaigns and use of media channels is as effective, and as cost effective, as possible.

## **Supporting business**

24. A further Welsh Government priority for promotional work is in relation to private businesses, in particular those businesses which are not currently subject to Standards. Generally speaking, that means businesses other than utilities companies in services such as gas, electricity, water and telecoms. It has long been an important policy objective to influence and persuade businesses to make signage, documents, forms and services available in Welsh. Some of this promotional work is aimed at large businesses such as banks and supermarkets, but it also involves making various forms of support available to small and medium-sized enterprises. It is a critical time at present because digital technology is transforming business practices and the progress businesses have made in the past in providing Welsh language services is at risk of being lost. For example, the move to digital, online and telephone services means there is much less reliance today on customers accessing services face-to-face in buildings made of bricks and mortar, or by completing paper forms.
25. The business support services provided by the Welsh Government's Business Wales service (through its website and a helpline) are available in Welsh.<sup>7</sup> Many of the Welsh Government's face-to-face Welsh language business support services are delivered through regional and local contractors. In addition, the Mentrau Iaith and other bodies (some supported by Welsh Government grants) work directly with local businesses. The Commissioner also undertakes promotional work aimed at the private sector. This includes the 'Hybu' website ("Promoting the Welsh Language: for businesses and third sector organisations").<sup>8</sup> This website includes case studies, tools to self-assess and plan to improve a business's Welsh language provision, a proof-reading service, occasional training events, and guidance on various topics. A small team of the Commissioner's officers work directly with businesses and third sector organisations. Whilst there is considerable activity by a number of bodies. We believe there is insufficient coordination between the bodies who carry out this work and a lack of clarity about who is responsible for setting strategic priorities. There is also certainly scope to increase the monitoring of the effectiveness of this promotion work.

---

<sup>7</sup> <https://businesswales.gov.wales/>

<sup>8</sup> <http://www.comisiynyddygyymraeg.cymru/hybu/en/home/Pages/home.aspx>

## Knowing where to turn for help

26. One service that was lost following the abolition of the Welsh Language Board was the Llinell Gyswilt helpline. In its simplest form, a helpline is a first point of contact, a website, telephone number or app that any person can contact to get initial information, advice and practical help about the Welsh language. A helpline can usually provide some services directly, or signpost clients to the appropriate provider. This is not a facility either the Welsh Government or the Commissioner currently provides. The Commissioner's primary focus on the Standards means the main website (other than the 'Hybu' microsite referred to previously) primarily invites customer contact in relation to complaints about the Standards. So how do we respond to a member of the public, the parents of a small child, a business owner or an official in a local authority when they ask, who can point me in the right direction or who can answer my question? At present, it is far from clear where they could or should turn, in the absence of a service designed around the needs of the user. We make it difficult when we should make it easy.

## Language planning

27. One of the disciplines which underpins language promotion is known as language planning. It is a branch of the study of language and society (sociolinguistics) and is concerned with deliberate efforts to change the legal status of a language, to develop language resources (its grammar, vocabulary etc.) and to influence language acquisition and usage. The Measure is itself an instrument of language planning at a national level, because it clarifies the status of Welsh as an official language, ensures people have a freedom to use the Welsh language with each other, and requires public bodies to provide Welsh language services to a certain standard.
28. An understanding of language planning helps bodies determine how to prioritise resources and actions to greatest effect, for example, in order to improve the resilience and use of the language in geographic areas (from national to local scale), in different social circumstances (at work, in social settings), amongst particular demographic groups (such as young people or in-migrants) or in particular sectors (such as public services and businesses). In different ways, language planning supports the development of national policy, commissioning specific projects and interventions, and mitigating the impact of new risks, such as large infrastructure developments or changes in population trends.
29. A number of duties placed on bodies in legislation reflect our contemporary understanding of how language planning can support minority languages. These duties include the national well-being goals and the sustainable development principle which are incorporated in the Well-being of Future Generations (Wales) Act 2015, some of the Standards themselves, such as those relating to assessing policy impact, strategies to promote the use of the language in a local area and workforce planning, and the requirement for strategic plans for Welsh-medium education. Responding to these duties effectively requires a complex mix of language planning skills to integrate elements of strategic planning, organisational development, interventions to support behavioural change and collaboration between the various partners. If public sector bodies in Wales are to contribute to improving promotion of the Welsh language, they must be supported to develop language planning skills. One of the ways this can be done is through the provision of appropriate training, sharing good practice, as well as creating and supporting networks of practitioners.

## **Practitioner networks and sharing good practice**

30. Feedback we have received from bodies under the Standards through our call for evidence shows that maintaining such networks is seen by practitioners as an essential element to support their own efforts to promote the use of the language locally and within their organisations. However, they report a decline in support for practitioner networks in recent years, despite the fact that the demands of new legislation and the ambitious vision set out in *Cymraeg 2050* may seem to place more, not less importance, on such networks.
31. The Welsh Government has continued to bring a wide range of bodies together to share intelligence and knowledge but these are essentially information sharing opportunities rather than networks which are aimed at developing the knowledge and skills of practitioners directly in promoting Welsh. Government is not always best placed to support practitioner networks although we value those networks highly for the opportunities they offer to learn from case studies and best practice and to test out policy thinking. The Commissioner also makes use of such networks for information sharing, workshops and seminars but is not a sponsor of the networks themselves. Regional and national networks play an important role as a conduit for information to reach the wealth of county and community networks which exist locally.

## **Changing behaviour**

32. The Standards require bodies to promote the Welsh language services they provide. As noted above, there is little systematic data about the use of Welsh language services but what there is suggests actual levels of use may be low compared with the numbers of Welsh speakers in the population. It is not yet clear whether we have found effective solutions to bring about long-term changes in the way people choose which language to use when receiving services. Some of our universities are carrying out important work in this area which we now need to test out in practice. The work of bodies in promoting local services is likely to be more effective if it is informed by best practice and supported as part of wider efforts to promote language use at the regional and national level.

## **Future challenges**

33. Looking forward, we know we cannot stand still. The world is changing at an extraordinary rate. Negotiations to take the UK out of the EU have started. This marks the beginning of a period which will profoundly shape the political and economic future of the UK. Social and demographic changes have been accelerating in Wales, with an increasingly diverse and mobile population and strong emerging city regions. People are increasingly networked and connected in their social and work lives in ways we could not have dreamed of fifteen years ago. Digital technologies are transforming the shape of the economy, of our services and our daily lives. If we are to achieve our ambition of a million Welsh speakers by 2050, we know the challenges will change and we will need to do very different things to promote the Welsh language over the next five to ten years, and that we will need to reach out to and have a significant influence over the choices of people who do not speak Welsh.
34. This overview of current and emerging promotional work gives a sense of the scale of the challenges for the future. At the very least, there is a need to:

- set clear priorities and objectives for a programme of work to promote the Welsh language;
- co-ordinate and integrate local and national work to promote the language;
- provide practical support for bodies in the public, private and third sectors;
- have an advocate for the language;
- provide a 'one stop shop' for the public;
- lead change across many organisations; and
- reduce duplication and ensure value for money.

35. This will require applied and focused leadership with the resources to make things happen. The ambition of *Cymraeg 2050* can be supported by legislation but it cannot be legislated for. *Cymraeg 2050* can only be achieved if there is a transformation in the our combined efforts to promote the Welsh language.

## Reducing bureaucracy

36. Against this backdrop, it is unfortunate that some aspects of the Standards introduced by the Measure have dominated the perception of Welsh language policy in the past few years. The Measure was a very significant step forward in language policy because it established extensive rights for people in Wales to access services in the Welsh language. Part 3 of this White Paper sets out our analysis of the Standards system introduced by the Measure. After considering a number of options in Part 3 of this White Paper, the Welsh Government is of the view that Standards continue to be the most effective option for ensuring the public's rights to access services in the Welsh language. We think that more bodies should be brought under the Standards. The evidence we have collected shows the Standards are generally welcomed by the bodies which are required to meet them, they are beginning to make a difference to the scope and quality of services that are available, and they are having an impact on wider awareness of the language and its value.
37. There is no doubt, however, that the way the system works imposes a significant administrative burden on public services. The evidence from bodies which are now under the Standards – bodies from various sectors and in all parts of Wales – is clear that the complexity of the consultation, monitoring, compliance and reporting procedures has tied up significant organisational time and effort. Some respondents say this time and effort would be better spent on improving Welsh language services, promoting those services to the public, and promoting the language both within the organisation and in the local area. A number of bodies say that during a prolonged period of financial austerity, their Welsh language officers have been diverted from the real challenge in order to run systems and procedures for monitoring and reporting which are of little direct benefit to the public.
38. In addition, there is a real risk that the language of 'imposition', 'compliance' and 'enforcement' undermines efforts to build consensus and goodwill towards the Welsh language. The evidence suggests that since the introduction of Standards and the way they are enforced, there has been an impact on the perception of the Welsh language by members of the public service workforce, both those who speak and those who do not speak Welsh. The responses to the call for evidence suggest some Welsh speakers worry about having additional work placed on them because they speak Welsh and fear being 'caught out' by the Standards because their Welsh is not up to

scratch. For non-Welsh speakers, the language of imposition, compliance and enforcement, and procedures which can lead to small mistakes being the subject of lengthy formal investigations, erodes goodwill and a desire to embrace and support the language.

39. Some of this reflects the teething problems which are bound to follow the introduction of a new system. Nevertheless, we believe it also reflects real problems with the way the Standards currently work. There is an urgent need to make changes so we avoid undermining the confidence of Welsh speakers and the goodwill of people who don't speak Welsh.
40. To date, 107 bodies have been required to comply with Standards. Based on evidence we have collected from those bodies and other stakeholders, we believe the way the current system is administered is too complex, time consuming and costly to implement. Under current arrangements, it takes a long time to put things right and ensure the public get the services they are entitled to. We want a system which puts things right quickly and is less burdened by bureaucracy so that more resources are available to tackle the challenges we face.
41. Our conclusion is that we need to refocus our efforts on promotion and make changes to the way regulation works as a matter of urgency. To deliver Cymraeg 2050, to attain our well-being goal of 'a Wales of thriving Welsh language', we need to make sure everyone feels part of the journey to a million Welsh speakers. As the Welsh Government, we will ensure Welsh speakers' rights to Welsh language services continue to grow but we will also make sure we are reaching out to everyone, whether or not they speak Welsh, to take pride in, value and use the Welsh language.

## **Evidence from bodies subject to Welsh Language Standards**

42. At the beginning of this Assembly, we stated we would seek to amend the Measure. Following this, we published a call for evidence on 31 January 2017. Our aim was to engage with partners and stakeholders to collect initial evidence to inform our proposals for reform. The Minister for Lifelong Learning and Welsh Language asked respondents to address the following questions:
  - 1) What is your experience or opinion of the Standards regime? I would like to hear in particular about the processes of setting and enforcing standards, and your experience of implementing or preparing to implement the standards within your organisation.
  - 2) The Welsh Language Commissioner's role includes regulatory functions and responsibilities for promoting and facilitating use of the language. Is the balance right?
  - 3) What is your experience or opinion on the current arrangements for promoting and facilitating the use of the Welsh language. In particular I would like to hear your views on who should be responsible for promoting the Welsh language, whilst keeping in mind the confusion that may arise where a number of bodies are operating in the same field.
43. 49 officials of public bodies attended workshops and we received 35 written responses from a wide range of organisations, including public bodies, the third sector, academia

and groups who campaign for the Welsh language. A report analysing the main themes in the responses has been published on the Welsh Government website.<sup>9</sup>

44. The main themes which were raised in responses were:

- bodies subject to the Standards see the benefits of the system which has raised the profile of the Welsh language within their organisations;
- implementing and monitoring a large number of Standards creates problems in both large and small bodies;
- there are issues in interpreting the Standards, particularly given the absence of guidance or codes of practice;
- the way complaints are handled is thought to be too burdensome and has a negative impact on the morale of staff within the bodies;
- bodies believe they should be given the opportunity to resolve complaints themselves before a complaint is made to the Commissioner via the formal route;
- bodies do not feel there is sufficient balance between the Commissioner's regulatory functions and the activities to promote and facilitate the use of the Welsh language;
- in terms of the future arrangements for promotion and facilitation, there is no agreement amongst respondents about who should take the lead in this field.

45. We refer to the evidence in this report in this White Paper and readers are encouraged to read the report. We are grateful to all those who responded and helped us shape the proposals in this White Paper.

---

<sup>9</sup> <http://llyw.cymru/docs/dcells/publications/170718-wl-bill-sor-en.pdf>

## **Structure of this White Paper**

46. This paper deals with the key issues in the following order:

Part 1: Promoting the Welsh language

Part 2: Governance and accountability

Part 3: Welsh Language Standards

Part 4: The scope of bodies covered by Welsh Language Standards

Part 5: Assessing the impact of our proposals



## Summary of the proposals of this White Paper

47. There is a lot of detail in this White Paper and it covers a wide range of issues. In order to assist the reader to understand the full picture, we think it would be helpful to set out a summary of the main proposals. The rationale behind those proposals, the key issues and options we have considered, are set out in the main body of the White Paper.
48. We make the following principal proposals:
- i. A single body should be established to be the main body with responsibility for promoting the Welsh language and monitoring and enforcing compliance with Standards.
  - ii. That single body should be a Welsh Language Commission and therefore the Welsh Language Commissioner should be abolished.
  - iii. The Welsh Government should be responsible for national Welsh language strategy, national policy, for managing and funding some bodies of national significance, and for some specified areas of work. The Welsh Government should transfer the budget and resources for other specified promotion work it currently undertakes to the Welsh Language Commission.
  - iv. The concept of Welsh Language Standards should be retained.
  - v. Standards should only apply to services. Other corporate duties currently in the Standards system which do not create enforceable rights for individuals, should be termed 'language planning duties' and should be statutory duties on bodies on the face of the legislation.
  - vi. The Standards bodies are required to comply with should be reviewed from time to time and, where appropriate, additional Standards placed on bodies or current exceptions granted to the bodies removed.
  - vii. The Welsh Government should be responsible for making and imposing Standards on bodies, and for issuing guidance and codes of practice. The Commission should be responsible for monitoring and enforcing compliance with the Standards.
  - viii. Bodies should be required to deal with complaints about the Standards in the first instance. The Commission should only investigate complaints in serious cases.
  - ix. The Welsh Language Tribunal should be retained. Bodies should be able to appeal against the imposition of a Standard on them by the Welsh Government to the Tribunal.
  - x. The Standards should be capable of being applied to any body, so long as the requirements are reasonable and proportionate and within the powers of the National Assembly for Wales ("the Assembly") (which includes the European Convention on Human Rights).

## Part 1: Promoting the Welsh language

### The Welsh Government's role

49. As the democratically elected and accountable national government, we believe the Welsh Government has certain responsibilities in relation to the Welsh language which only national government can undertake. They are to:
- prepare a national strategy under s.78 of the Government of Wales Act 2006 and a plan to implement the strategy;
  - set national policies for the Welsh language;
  - propose and make legislation, with the consent of the Assembly (in Part 3, we will propose that imposing Standards on bodies will also be government responsibility);
  - put in place practical arrangements to deliver the national strategy;
  - provide resources to support the Welsh language;
  - monitor the performance of bodies involved in delivering the strategy and review the strategy from time to time;
  - maintain inter-governmental relations with other countries and regions with minority language concerns;
  - be accountable to the Assembly.
50. Many other areas of national policy which are critical to the Welsh language are also functions of the Welsh Government. For example, the Welsh Government is responsible for national education policy in Wales and should continue to lead on developing national policy. We recognise that delivery of compulsory education rests with local authorities and schools' governing boards. Without their consent and commitment we will struggle to achieve our ambition. The Welsh Government will continue to work with these partners to develop the provision of Welsh-medium education, for example, through support for Welsh education planning, capital programmes for new schools and the development of the curriculum. There are a number of other important education partners, such as the regional education consortia, schools, colleges and higher education institutions, as well as bodies funded by the Welsh Government to deliver specific services, such as the Coleg Cymraeg Cenedlaethol and the National Centre for Learning Welsh.
51. A similar principle applies in relation to developing early years policy and provision, particularly in light of our commitment in *Taking Wales Forward* to deliver 30 hours free childcare. The choices parents make in their children's first years are critical to ensuring the number of Welsh speakers increases in the future. The Welsh Government's support for bodies such as Mudiad Meithrin to develop the Welsh-medium early years workforce and provision are essential for delivering our ambition for the Welsh language. Planning, local government, social services and health are amongst other policy areas which have an important impact on the vitality of the Welsh language.
52. There are also specific fields in which the credentials of government can be an advantage to ensure progress to deliver *Cymraeg 2050*. Government has significant influence due to its leading role across many areas of policy, the resources it has available, the academic, scientific and other expertise it can draw on, its ability to introduce legislation, and the political leadership of national government. Whilst we believe the Welsh Government should be responsible for giving leadership in these

fields, this does not mean the Welsh Government can deliver the desired outcomes alone, or without working in partnership with public, private and other bodies. We do not rule out the possibility that in the future it might be appropriate if other bodies took the lead in some of these fields.

53. The following are indicative of areas where we believe the Welsh Government should have a leading role in response to the current opportunities and challenges which face the Welsh language:

- Developing the role of the **Welsh language in technology**, where the authority and status of the Welsh Government is an advantage in convening a wide range of public and private bodies and bringing influence to bear on global technology companies. The reach of the Welsh Government across a wide range of policy areas can help identify what must be done to ensure digital technology supports the Welsh language and the influence of the Welsh Government can help secure the necessary resources and investment. In most cases, Government will not itself be a leading deliverer of innovative or new digital technologies but can play an important role agreeing standards and procuring national contracts.
- Oversight of the **Welsh corpus**, that is the vocabulary and grammar of the Welsh language including work to record and standardise usage of the language. The Welsh Government itself is not best placed to undertake many services related to the corpus, but it is well placed to co-ordinate and support the work of national institutions, such as the National Library of Wales, our universities and archives. We must also recognise the importance of the Assembly in supporting the Welsh corpus.
- Funding and relationship management of **key national organisations** which are essential to the delivery of the wider objectives of the Welsh Government, for example, in relation to education, early years, post-16 education, arts and culture and economic development policy. We consider these organisations include the National Eisteddfod, the Urdd, Mudiad Meithrin, the National Centre for Learning Welsh and the Coleg Cymraeg Cenedlaethol. Whilst these organisations would continue to be funded directly by the Welsh Government, we would expect them to co-ordinate their own marketing and promotion activities with those of the body which is responsible for the general promotional functions set out in Table 1 (see next section).
- **Research** into the Welsh language and evaluation of the effectiveness of actions taken to deliver *Cymraeg 2050* to help support the development of national policy and to help monitor progress.

54. In this paper, the functions set out in this section are referred to as 'Government promotion functions'.

## Other Welsh Government resources

55. At present, the Welsh Government also funds, manages and co-ordinates general promotion activity which primarily involves local partners, networks of community organisations, and small and medium-sized businesses. These are the activities set out in Table 1. However, we believe we may not necessarily be in the best position to continue doing this. These are delivery activities which require a close relationship

between the funding body and grant recipients, a good understanding of the language dynamics in local communities, and the ability to manage relationships with large numbers of clients, such as the public or businesses.

56. Whilst we believe the Welsh Government should continue to maintain strategic oversight and ensure the system as a whole works effectively, we should also consider whether a different body would be in a better position to provide practical support to bodies promoting and using the Welsh language, to develop practical language planning expertise and support networks of practitioners, to foster collaboration with and between community groups, and to innovate in marketing and media campaigns.
57. In addition, as part of the budget settlement for 2017/18, the Welsh Government allocated an additional £2m to enhance promotion of the Welsh language. Initially, this will include establishing a helpline service to provide access to information on using the Welsh language, and better support for business. This work is currently managed by the Welsh Government. The Minister for Lifelong Learning and Welsh Language has appointed a Planning Board to advise the Welsh Government on the priorities for a programme of promotional work for the transitional period until permanent arrangements have been agreed. Parts 1 and 2 of this White Paper set out our proposals for those permanent arrangements.
58. We also include the resources of the Welsh Language Commissioner in our considerations because the principal aim of the Commissioner is to promote and facilitate the use of the Welsh language through the exercise of his or her functions. We consider the Standards are a crucial aspect of promoting the Welsh language.
59. Table 1 sets out our best estimate at this stage of the current Welsh Government programme budgets (£7.751m) which should be available to any body or bodies which we consider under the options in paragraphs 61-80. In this paper the work undertaken under these budgets is described as 'general promotional functions'. Table 1 excludes programme budgets and staff resources allocated to the Government promotional functions which we consider should remain the responsibility of the Welsh Government.
60. The budgets and activities in Table 1 are indicative of the current position and subject to change, depending on future decisions and priorities of the Welsh Government, and to the following caveats:
  - i. the total does not include funding for staff currently employed by the Welsh Government to undertake the general promotional functions identified in Table 1, and small project funds which vary from time to time. This will result in a net increase in the funding indicated in Table 1;
  - ii. an adjustment will be required in order to take account of our proposal in Part 3 that the Welsh Government should be responsible for imposing Standards. If accepted, this proposal would result in both the functions and associated resources for imposing Standards transferring from the Commissioner to the Welsh Government. This would result in a net decrease in the funding indicated in Table 1.

**Table 1: General promotional functions**

<b>Organisation</b>	<b>Budget for 2017-18</b>	<b>Examples of work</b>
Welsh Government	£2.7m plus £2m additional funding for 2017-18	<ul style="list-style-type: none"> <li>• Grants to organisations to promote Welsh: <ul style="list-style-type: none"> <li>— Mentrau Iaith Cymru</li> <li>— 20 Menter Iaith</li> <li>— Merched y Wawr</li> <li>— Wales Young Farmers' Clubs</li> <li>— Cymdeithas Eisteddfodau Cymru</li> <li>— Papurau bro</li> <li>— Cymdeithas Cyfieithwyr Cymru</li> </ul> </li> <li>• Promoting the use of Welsh by businesses</li> <li>• Media and marketing campaigns</li> <li>• Establishing a helpline service to ensure access to information on using the Welsh language</li> </ul>
Welsh Language Commissioner	£3.051m	<ul style="list-style-type: none"> <li>• Imposing Standards on bodies and monitoring and enforcing compliance with those Standards</li> <li>• Monitoring existing Welsh language schemes</li> <li>• Working with medium and large businesses to create voluntary Welsh language policies</li> <li>• Preparing guidance on using Welsh in particular cases (such as a Welsh language technology guide)</li> <li>• Conducting research to build an evidence base to support decision-making in promoting Welsh.</li> </ul>
<b>Total</b>	£7.751m	

**Consultation questions**

1. In paragraphs 49-54, we have set out the role we propose the Welsh Government should play in promoting the Welsh language, i.e. the Government promotional functions. Do you agree with our proposal?

Agree/Disagree/Neither agree nor disagree

Supporting comments, including whether any fields should be added or taken away from the list in paragraph 53

2. In Table 1 we have outlined the resources related to general promotional functions which we think should be available to any body or bodies involved in promoting the Welsh language and monitoring and enforcing compliance with standards. Do you agree with our proposal?

Agree/Disagree/Neither agree nor disagree

Supporting comments

## Options

61. We have considered four options for arrangements to promote the Welsh language. The key issues are the extent to which the body is independent from government, and whether promotional and monitoring and enforcement functions relating to the Welsh language are exercised by the same or different bodies. All these options are predicated on the Welsh Government (not the Welsh Language Commissioner) having the function of setting and imposing Standards (see Part 3 for more details of this proposition).
62. The four options we have considered are:
1. No change – the Commissioner monitors and enforces compliance with the Standards and the Welsh Government undertakes a range of promotional activity
  2. A new Welsh Government Executive Agency to undertake the general promotional functions, with the Welsh Language Commissioner continuing to monitor and enforce compliance with the Standards
  3. A body separate from the Welsh Government to undertake the general promotional functions, with the Welsh Language Commissioner continuing to monitor and enforce compliance with the Standards
  4. A single body responsible for undertaking the general promotional functions, as well as monitoring and enforcing compliance with the Standards

### Option 1: No change

63. Under Option 1, the Commissioner would monitor and enforce compliance with the Standards and retain the existing legal powers to promote and facilitate the use of Welsh. The Commissioner would continue, as now, to determine the extent of promotion work he or she will undertake in the exercise of the Commissioner's functions. The commissioning and management of the majority of promotional activity would continue to be undertaken by the Welsh Government.
64. It is likely, as has been the case in the recent past, that if the current arrangements continue, the Commissioner's promotional work will be increasingly limited to activities directly related to the Standards system, not least because of the heavy administrative and resource cost of imposing and enforcing Standards as required by the Measure. If that happens, we believe the Commissioner will become even more firmly associated with relatively narrow functions related to monitoring and enforcing compliance with Standards. Given the prominence of the Commissioner's role, we believe this would make it more difficult to strike the right balance between promotion and regulation of the language.
65. It would be possible to provide more resources to the Commissioner to undertake a wider range of promotional work. In practice, this would mean transferring some or all of the budgets identified in Table 1 to the current Commissioner. For the reasons set out in Part 2, we do not believe the governance and accountability arrangements of the Commissioner as currently constituted are sufficiently robust for taking on such a broad range of additional responsibilities and significant additional budgets without fundamental change.

66. For these reasons, and in light of the challenges we face in the future, we do not believe this option would be sustainable in the long term.

### **Option 2: Establish a Welsh Government Executive Agency to promote the Welsh language**

67. Under Option 2, the commissioning and management of the general promotional functions (Table 1) would transfer to an Executive Agency of the Welsh Government. The Commissioner would continue to monitor and enforce compliance with Standards and only undertake promotional activity directly related to that work. The Commissioner would also have a specific duty to provide support to public bodies in relation to their language planning duties, such as workforce planning, strategies for promoting the language in an area, assessing the impact of policies etc. The Welsh Government would continue to fulfil the wider policy and legislation functions set out in paragraphs 49-54.
68. An Executive Agency would have its own public identity, management structure and budget. Its staff would be members of the Civil Service and it would be directly accountable to the Welsh Government for its spending decisions and its performance. Visit Wales is a helpful comparison. Visit Wales has a recognisable identity and exercises promotional functions in relation to tourism and the identity of Wales in the wider world, but is part of the Economy, Skills and Natural Resources Group of the Welsh Government.
69. The responsibilities of an Executive Agency could include:
- plan how the agency will deliver specified outcomes in the Welsh Government's national Welsh language strategy, Cymraeg 2050;
  - commission work through grant schemes and procurement of services;
  - run media and marketing campaigns to promote the use of the Welsh language, increase demand for Welsh language services and promote the benefits of Welsh language skills in work and professional life;
  - be a first point of contact for the public;
  - be a first point of contact and provide services relating to the Welsh language for businesses and third sector bodies, such as advice, support materials, training, translation etc.;
  - convene bodies involved in language promotion to ensure an understanding of shared priorities and objectives, and co-ordination and coherence of programmes of work;
  - work with the Commissioner to ensure the objectives and activities of the two bodies are aligned and complementary.
70. This set of responsibilities is also relevant to Options 3 and 4.
71. Under Option 2, the Welsh Government would be responsible for policy and related matters through the Welsh Language Division, and for promotion through the Executive Agency. The Commissioner's functions in monitoring and enforcing bodies' compliance with Standards would continue to be exercised as at present, with co-ordination and collaboration between the Welsh Government and the Commissioner managed through the existing framework agreement.

### **Option 3: Establish a new body separate from the Welsh Government to promote the Welsh language**

72. Under Option 3, an independent body at arm's length from Government would be created to be responsible for promoting the Welsh language. The legislation would set out the functions required by the new body to deliver its responsibilities. These would essentially be those set out in paragraph 69. The general promotional functions currently undertaken by the Welsh Government (Table 1) would transfer to the new body.
73. The Commissioner would have the same responsibilities as in Option 2.
74. The Welsh Government would provide the new body with a budget and it would be accountable for its own spending decisions and subject to audit as a body in its own right by the Auditor General for Wales. In terms of structure, it is likely the new body would comprise a chair and a board, appointed through the public appointments system, and a chief executive and staff. The staff would be employed by the new body and would not be members of the Civil Service. The body would be accountable to the Welsh Government for its performance in achieving the outcomes it was tasked to deliver. These would be set out in the body's strategic plan which would require the approval of the Welsh Government.
75. Under Option 3, there would be three distinct bodies with different functions: the Welsh Government (policy, legislation etc. as set out in paragraphs 49-54), the Commissioner (monitoring and enforcing compliance with Standards, including promotional work directly related to the Standards and language planning duties as in Option 2), and an independent body responsible for commissioning and management of the general promotional functions set out in Table 1.
76. Whilst the Welsh Government would continue to have duties in relation to the promotion of the Welsh language, as set out in the Government of Wales Act 2006, we would exercise these functions primarily by funding and resourcing the Commissioner and the new body, and exercising the functions set out in paragraph 69.

### **Option 4: A single body responsible for the general promotional functions as well as monitoring and enforcing compliance with the Standards**

77. Under Option 4, there would be one body responsible for promoting the Welsh language as well as monitoring and enforcing bodies' compliance with Standards. Option 4 would combine the current monitoring and enforcement functions and resources of the Commissioner and the general promotional functions in one body.
78. In addition, we consider there should be a duty on the body to ensure its general promotional functions and functions relating to the Standards should complement and support each other. For example, the information gained from monitoring bodies' Welsh language services and an understanding of the barriers they face in terms of capacity and capability to deliver those services could be used to design and deliver programmes to help bodies improve their capacity to deliver services in Welsh.
79. The body would be responsible for:
  - monitoring and enforcing bodies' compliance with their Welsh language duties by:



- monitoring bodies to ensure they are complying;
- working with bodies to help them comply with their Standards, for example by providing training, holding workshops, creating resources, organising forums etc.
- provide practical support to public bodies in relation to their language planning duties, such as workforce planning, strategies for promoting the language in an area, assessing the impact of policies etc.
- issuing guidance in relation to bodies' language planning duties;
- responding to complaints from the public where bodies have not complied with their Standards;
- taking action to put things right where necessary;
- leading and managing projects and programmes to promote and facilitate the use of Welsh, as set out in paragraph 69.

80. Whilst the Welsh Government would continue to have duties in relation to the promotion of the Welsh language, as set out in the Government of Wales Act 2006, we would exercise these functions primarily by funding and resourcing the body proposed in this option, and by exercising the functions set out in paragraph 69.

## **Weighing up the options**

81. For the reasons set out in paragraph 60, we do not believe Option 1 (no change) is sustainable. We have considered Options 2-4 with reference to the clarity of the resulting arrangements, the opportunities for synergy between enforcement and promotion functions, and value for money.

### **Clarity**

- Establishing an Executive Agency or an independent body with a strong brand solely to promote the Welsh language, as in Options 2 and 3, could make it clearer to people who is responsible for promoting Welsh than is currently the case. However, it would introduce another body which increases the risk of confusion, exacerbated by the fact the Commissioner would retain responsibility for promoting Welsh through helping bodies to comply with Standards and promoting Welsh language rights to the public. There would be a risk of the public, businesses and public services being passed between one body and the other.
- Option 4, a single body to undertake the general promotional functions and to monitor and enforce Standards, would mean there is one body whose role is to establish relationships with communities and community bodies across Wales, with bodies funded by grants to promote Welsh, and with the bodies who are required to comply with Standards. It would be in a position to ensure collaboration between bodies at local and national level (including the promotional activities of national organisations funded directly by the Welsh Government), and to assist public services and community and other groups work together more effectively. It would be the lead body for promotion and would provide a first point of contact for matters related to the Welsh language. This would make it clear where to go for advice and support.

### **Synergy between promotion and enforcement functions**

- There are significant constraints on the ability of bodies to deliver Welsh language services to the same standard in different sectors and in different parts of Wales. These are labour market constraints (the availability of the right Welsh language

skills in the right roles in the right place), the capacity of bodies to undertake effective language planning, and the capacity to influence and change people's behaviour in relation to the language. These constraints will make it difficult to achieve our ambitions in Cymraeg 2050 if they are not tackled. Option 4 provides a single body with the capacity and resources to identify these issues through its role in monitoring and enforcing compliance, and then work to address those problems directly through its promotional work and by providing support to public services. It would also be suitably placed to run campaigns which aim to increase the number of people who use Welsh language services.

- The body proposed in Option 4 will possess a blend of functions ranging from enforcement of Standards, monitoring of compliance (and, therefore, the reasons for non compliance), the giving of advice and guidance on effective language planning through to general promotional functions. The objective of the exercise of this blend of functions will be continuous improvement in the delivery of services to the public in Welsh. In turn that objective will assist the Welsh Government to meet another of the policy objectives set out in this White Paper (paragraph 139iii) which is that over time the Standards imposed on bodies will be reviewed with the aim that in due course the rights of the public to the delivery of services in Welsh will be the same across Wales
- Options 2 and 3 would not provide this sort of synergy between promotion and monitoring/enforcement functions. There would be a risk of conflicting priorities between a Commissioner with primarily enforcement and monitoring functions, and a separate body (whether that was an Executive Agency of the Welsh Government or a separate body) whose primary functions were to undertake general promotional functions. This risk would be reduced if a single body had both 'carrot and stick' approaches at its disposal.

### **Ensuring value for money**

- In our view, Options 2 and 3 would require significant initial investment to set up a new body in addition to the Commissioner, such as recruiting staff, renting office space, setting up IT systems etc. Scarce resources would need to be used on two sets of management teams, running costs and overheads. This would divert money away from services which would make a real difference to the public.
- We believe Option 4 can avoid some of these additional costs by having a single body, making better use of existing systems and resources.
- We will need to set out a full appraisal of the costs and benefits of these options in the Regulatory Impact Assessment which we will publish with the Bill. On the face of it, however, we believe spending public money on running two separate bodies would be less cost effective than running a single body and we do not believe it would be sustainable in the long term. There is a significant risk we would be asking whether we really needed two separate bodies in five years' time.

### **Conclusions**

82. There are positive features to both Options 2 and 3 but we believe they would introduce additional complexity which in the long term would hinder the delivery of Welsh language policy and provision. We consider Option 4 is the best option to enable us to face the challenges of the future. It would provide a single body with a

wide range of powers, significant resources, and a focal point for language development in Wales. It would ensure maximum clarity for stakeholders about where to go for advice, information and support on matters related to the Welsh language. Its role in promoting the Welsh language and monitoring and enforcing compliance with Standards would enable the body to provide a supportive approach to regulation, and help public services overcome the complex challenges of providing and promoting services in Welsh. We also believe it would provide the best value for public money.

83. We have set out in Table 1 the resources which we consider would form the core funding of this body, subject to the caveats in paragraph 60. We have set out what we consider the key promotional challenges are (paragraphs 33-35), what we think the role of the Welsh Government should be (paragraphs 49-54), and what we consider the functions of the body should be in relation to promotion (paragraph 69). We welcome your views on all these matters.

### **Consultation questions**

3. Do you agree with our preferred option (Option 4) to have a single body responsible for promoting the Welsh language as well as monitoring and enforcing compliance with Standards?

Agree/Disagree/Neither agree nor disagree

If not, please state which option (including options we have not discussed in the White Paper) you believe we should consider.

Supporting comments

4. We have based our preference for a single body on the grounds of clarity, synergy and value for money. Do you agree with our rationale?

Agree/Disagree/Neither agree nor disagree

Supporting comments

5. What other relevant issues should we consider in making our final proposal as to which body or bodies should carry out work to promote the Welsh language and monitor and enforce compliance with Standards?

Supporting comments

6. Do you have any further comments on Part 1 of the White Paper?

## Part 2: Governance and accountability

84. If our proposal to have one body to undertake general promotion work and monitor and enforce compliance with Standards is accepted, this would create a powerful body with important responsibilities and substantial resources to carry out its work. This body will not, we propose, be responsible for imposing Standards (see paragraphs 186-196 for more detail on this proposal). Whilst the Commissioner at present undertakes some promotional activity, we are proposing the body should have a significantly enhanced budget attributable to promotional activity. It will be essential that the body is well governed and accountable.
85. Good governance will assist the body to spend public money wisely, to exercise its functions effectively, and to win the trust and confidence of the public, bodies which it monitors and has power to enforce against, and bodies which depend on it for funding. Given this prominent role in the Welsh language, the body must be open and transparent in its decision-making, and engage with its stakeholders extensively in the exercise of its functions.

### Governance

86. We set out above the promotional challenges facing the body (paragraph 69) and the kind of actions we believe it will need to undertake (paragraph 34). These challenges cover a wide range of disciplines and skills, aimed at individuals, communities and organisations with very different needs. It is reasonable to assume that many new opportunities and challenges will present themselves over the course of delivering Cymraeg 2050. At the same time, the body will also be required to monitor and enforce compliance with the Standards.
87. In our view, to be successful, the body will have to work with a wide range of stakeholders with diverse interests, in order to facilitate collaboration, co-ordinate activity and collectively mobilise resources. Effective promotion of the language will need to draw extensively on social capital and community networks. It will need to be able to adapt flexibly to changing circumstances. This will require high levels of trust and confidence in the body, so that stakeholders believe they have a say in how the body sets its objectives and allocates its resources. In our view, this can best be achieved if the body accommodates a range of voices to participate in its governance.
88. One model is a body lead by an individual with an overseeing board. Many large and complex organisations are led by an individual. In the majority of cases, one or more boards provide checks and balances to that individual's powers. Typically, this means a non-executive board which includes independent members (members who are not employees of the body), and an executive board of senior leaders. Mixed boards of independent members and senior leaders are also found. The function of executive and non-executive boards is to ensure a breadth of expertise can be brought to bear on the organisation's key decisions through a system of checks and balances, such as having powers to scrutinise decisions, providing approval for certain decisions, or having to provide advice which the leader must follow or take into account. This is more common in the private sector than it is in the public sector. Examples in the public sector include Estyn, where Her Majesty's Chief Inspector of Education and Training in Wales is supported by a (non-statutory) strategy board and an executive board.

89. The usual alternative model is a body governed by a group of people (in the form of a board or commission) which is collectively responsible for the body's most important decisions, such as setting its objectives, setting its annual budget and determining its key policies. Members of the Board or Commission are appointed with a view to ensuring the body has a mix of experience, knowledge and skills which is appropriate to its functions. The staff of the body, led by a chief executive, are tasked with delivering the body's objectives. This is a common model in the public sector. An example in Wales is the Arts Council for Wales. In its review of regulation in the UK, the House of Lords recommended this is the model (a body governed by a board rather than an individual) that should be adopted for regulators.<sup>10</sup>
90. Both models involve a group of individuals who have a decisive influence over the objectives and decisions of the body. The critical distinction between them is that the functions of the body rest on the shoulders of an individual in the first example, with the board exercising a moderating influence and a power of veto, whilst in the second, the board itself makes the key decisions.

## **Accountability**

91. The body will be spending significant sums of public money and appropriate arrangements need to be in place to ensure the money is spent wisely. One way of ensuring this is to provide for a separation of duties between the person or persons responsible for setting the body's objectives and those responsible for how the body's spending and performance is managed through employing staff and undertaking programmes of work. In a local authority, for example, the Cabinet of elected members is responsible for determining the Council's spending priorities, and the chief executive is responsible for employing staff and commissioning services to achieve those priorities. In the case of the Arts Council, the Council sets the priorities and the chief executive and officers of the Council implement grant schemes and commission work to achieve the Council's objectives.
92. It is also usual in public sector organisations that there is a corporate governance framework in place which sets out who can make decisions and how those decisions are made. These controls are designed to protect the organisation's integrity and reputation. In order to ensure these controls are working effectively, an audit committee provides advice on matters such as the quality of the body's financial accounting arrangements, how decisions are delegated and how the body is prepared for the risks which it faces. It is common practice that the chair of an audit committee is not an employee of the body or a member of one of its boards.

## **General requirements**

93. In addition to the above, we consider there are some general requirements concerning the body's governance and accountability which should apply, whichever option is chosen. These are:
- The body to produce a strategic plan. The strategic plan should set out the body's proposals and forward work plan for monitoring and enforcing compliance with Standards, and for promoting the Welsh language. The strategic plan must show how the body will contribute to delivering the Welsh Government's priorities, as set

---

<sup>10</sup> <https://www.publications.parliament.uk/pa/ld/ldrgltrs.htm>

out in Cymraeg 2050 and the annual plan, by setting objectives and allocating resources to achieve them. The strategic plan will require Welsh Government approval.

- The body to produce an annual report setting out how it has used its resources to achieve its objectives.
- The body to produce a policy in relation to its functions for monitoring and enforcing compliance with Standards so that the public and bodies subject to Standards know what to expect of the regulator. The policy would require Welsh Government approval.
- The body to have the functions which the Commissioner has in relation to the freedom to use Welsh.<sup>11</sup>
- The body to prepare estimates of income and expenditure for the following financial year for the Welsh Government. In turn, the Welsh Government would be required to examine the estimates submitted by the body and lay the estimates (along with any amendments they think appropriate) before the Assembly.
- The Welsh Government to have powers to direct the body which the body would be required to comply with. The Welsh Government should not be able to direct the body in regards to the exercise of its functions of enforcing Standards (whether arising from its own monitoring activities or from complaints made to the body) or its functions in respect of the freedom to use Welsh. This is to protect the integrity of the body's monitoring and enforcement functions.

94. Finally, it is essential that the body is able to build the trust and confidence of stakeholders and the public. It will be required to lead change, reach out to new and different groups and build goodwill towards the language. Over the life of Cymraeg 2050, the body will be required to make difficult and challenging decisions. In order to take such decisions and maintain the confidence of stakeholders, the body will need to involve its stakeholders and take their views and interests into account when developing policies, as well as being open and transparent about its reasons for making decisions.

95. We propose that the legislation will make provision to require the body to engage extensively with the public and stakeholders on its key decisions and policies (such as its strategic plan and its enforcement policy), and to publish the outcome of any investigations it conducts and its reasons for enforcement decisions.

### **Consultation questions**

7. In paragraphs 93-95 we have set out some general requirements regarding the body's governance and accountability arrangements. What are your views on these general requirements, and are there other checks and balances you believe should apply to the proposed body?

Supporting comments

---

<sup>11</sup> Part 6 of the Measure.

## Options

96. Taking these considerations into account, we think there are three options to consider:
- Option 1: Transfer additional resources for promotion to the Commissioner within the Commissioner's existing governance arrangements
  - Option 2: Welsh Language Commissioner with a Governing Board
  - Option 2: Welsh Language Commission
97. In Part 3 of this White Paper we set out our proposals for transferring the functions of setting and imposing Standards to the Welsh Government (paragraph 186-196) and for broadly retaining the Welsh Language Standards system but in a modified form (paragraph 151-153). The following options are, therefore, considered against that background.

### **Option 1: Transfer additional resources for promotion to the Commissioner within the Commissioner's existing governance arrangements**

98. Under Option 1, the Commissioner's current governance arrangements would continue and the Welsh Government would transfer additional funding to the Commissioner relating to promoting the use of the Welsh language (Table 1).
99. The Measure establishes the Commissioner as a corporation sole. This means that the functions of the Commissioner are vested in an office that is held by an individual, and the use of the Commissioner's powers and functions is at the discretion of the Commissioner of the time. The Commissioner alone, therefore, determines what the body does, such as implementing an enforcement policy, conducting investigations and issuing codes of practice, as well as how the body does it, for example, by employing staff, determining a management structure and setting its internal policies.
100. The Measure makes no provision for a board structure to provide checks and balances on the Commissioner's exercise of his or her functions, although there is a statutory Advisory Panel which the Commissioner must consult on certain matters. The Commissioner is not obliged to follow the advice of the Panel but he or she must take it into account. The current Commissioner has established an Audit and Risk Assurance Committee (although not obliged to do so), and the Commissioner is subject to audit by the Auditor General for Wales.
101. The Commissioner is required to comply with directions which may be given by the Welsh Government. However, to protect the Commissioner's independence as a regulator, the Measure prevents the Welsh Government from giving directions to the Commissioner in relation to enforcing Standards and the freedom to use Welsh.
102. The Commissioner is required to consult with the public and bodies subject to duties on certain matters, and is required to publish certain information, including some information about decisions and an annual report.
103. Some changes would be required under Option 1, if our proposals relating to the Standards system are accepted. For example, the Commissioner would no longer be responsible for imposing Standards.

## **Option 2: Welsh Language Commissioner with a Governing Board**

104. Option 2 would retain an individual Commissioner who would have functions to promote the Welsh language and monitor and enforce bodies' compliance with Welsh language duties. As at present, the Commissioner would be accountable to the Welsh Government. This option would provide for a Governing Board whose purpose would be to provide certain checks and balances on the exercise of the Commissioner's functions. A broadly similar approach has been taken in England in relation to Her Majesty's Chief Inspector of Education Children's Services and Skills (HMCI) and Ofsted. The primary functions are vested in HMCI but a board provides statutory checks and balances on how they are used.
105. Under Option 2, the Welsh Language Commissioner would be appointed by the First Minister in the same way as at present, for a single fixed term (in order to remove the risk that the way a Commissioner delivers work is guided by his or her intention to seek reappointment) and with safeguards against unreasonable dismissal. The Commissioner would be solely responsible for appointing staff, managing and accounting for the budget, ensuring the body delivers the Commissioner's objectives, and implementing appropriate financial and risk management arrangements in line with the corporate governance framework. The corporate governance framework should set out how the Commissioner and Governing Board will work together, and the arrangements the Commissioner will establish to secure oversight of governance, strategy, performance, compliance and integrity, and risk. We propose that it would be a responsibility of the Governing Board to approve the corporate governance framework and that there would be a statutory audit committee to monitor its implementation. The chair of the audit committee should be a member of the Governing Board.
106. The Board should have functions to approve certain key documents of the Commissioner, such as the strategic plan and enforcement policy, prior to the Commissioner being able to submit them to the Welsh Government. It should be required to monitor the Commissioner's progress in achieving his/her objectives in the strategic plan and require the Commissioner to produce a report if there are concerns whether the objectives in the plan will be achieved. The Board should be able to advise the Commissioner, but should have no power of veto on other decisions of the Commissioner, including decisions in individual cases relating to enforcement action or freedom to use Welsh. The Board would use its breadth of experience to inform the Commissioner's work. This additional tier of assurance would give both the Commissioner and the Welsh Government greater confidence that the Commissioner's exercise of his or her functions was balanced and appropriate.
107. The Governing Board should be appointed by the Welsh Government through a public appointments procedure. The majority of the Board should be independent members (i.e. not members of the Commissioner or the Welsh Government's staff), constituted to ensure there is a balance of experience, skills and knowledge to exercise the functions of the Board effectively. However, we also consider there should be employee representation on the Board. This represents good practice and is found in a number of bodies, such as the Wales Audit Office.



### **Option 3: Welsh Language Commission**

108. Under Option 3, we propose establishing a Welsh Language Commission which would be made up of a chair and a number of members. The Commission would be a corporation aggregate, that is, the functions and duties of the Welsh Language Commission would be vested in the members collectively. The Commission would have certain defined functions reserved to it (such as approving the strategic plan and enforcement policy before they are submitted ) which it must exercise jointly but it should be given the power to delegate the exercise of any of its other functions to staff of the Welsh Language Commission. The Commission should also be given a power to delegate some of its functions to individual members of the Commission. This could mean, for example, that a specified member of the Commission had delegated responsibility for monitoring and enforcing compliance with Standards. In such circumstances, the decisions of the delegated Commission member would be treated as decisions of the Commission. There would need to be a mechanism for finding resolution in circumstances where the members of the Commission did not agree, for example, by a majority vote. We welcome views on how this might work.
109. In order to secure a separation of functions, we propose the Commission should appoint a Chief Executive who would be responsible for appointing the Commission's staff, managing and accounting for the Commission's budget, ensuring the body delivers the Commission's objectives, and implementing appropriate financial and risk management arrangements in line with the corporate governance framework. The corporate governance framework should set out the roles of the Commission (oversight of governance, strategy, performance, compliance and integrity, and risk) and management (policies and practices e.g. in relation to strategy, operations, finance and risk). It is a responsibility of the Commission to approve the corporate governance framework. The Chief Executive would be employed by and accountable to the Commission.
110. The Commissioner is currently appointed by the First Minister but we propose under Option 3, that the chair and members of the Welsh Language Commission would be appointed by the Welsh Government (i.e. the Cabinet Secretary or Minister responsible for Welsh language policy), under a public appointments procedure. We propose that the Chief Executive should be nominated by the Commission and approved by the Welsh Government, although transitional arrangements might need to apply in the case of the first appointment of a Chief Executive.

### **Weighing up the options**

111. In considering the options, we have been guided by the governance and accountability criteria set out in paragraphs 86-92.

### **Governance**

112. Two of the options we have considered would ensure a group of appointed individuals (a Governing Board in Option 2, or a Commission in Option 3) have a role in either approving or setting the body's strategic plan.
113. Under Option 2, the functions of the office are vested in an individual, therefore that individual must be fully responsible for the strategic plan, enforcement policy and good governance of the body in order to be held accountable for them. The Governing

Board essentially has three roles: to approve key documents, to advise and to provide assurance in relation to strategy (through its monitoring function) and corporate governance (through its role in the audit committee). It would be required to approve or reject the Commissioner's proposals. It would have a power of veto but it could not be directly involved in the preparation of the strategic plan or enforcement policy. If the Board used its power of veto, it would signal a significant difference of opinion and/or breakdown of relations between the Commissioner and the Board. The power of veto acts as a deterrent and would encourage dialogue between the Commissioner and the Board in the development stage of the Commissioner's key decisions about strategy, enforcement policy and governance.

114. Option 3 (Welsh Language Commission) would provide significantly greater opportunity for the skills, knowledge and expertise of the members of the Commission to shape the body's strategic decisions. The key functions of the Commission would be reserved to and vested collectively in the members. The strategic plan and enforcement policy, as well as the body's allocation of resources to its different functions and priorities, would have to be agreed by the Commission collectively. The members would need to be fully engaged in the development of the policies and objectives set out in these key documents, and collectively responsible for approving them prior to submission to the Welsh Government. This option would give more certainty than in Option 2 that members could use their individual experience and skills to help shape the Commission's key policies and decisions at an early stage.
115. Under Option 1, a single individual would continue to be responsible for all the body's functions but without the moderating effect of the Governing Board which is provided in Option 2. There would continue to be a statutory Advisory Panel whose role would be consultative only. The Panel would have no power of veto and it might have little practical influence on the Commissioner's key decisions.

### **Accountability**

116. Under Option 1 and 2, there would be no separation of functions. In both cases, the Commissioner would be responsible for setting the body's strategic plan and its enforcement policy, as well as for appointing members of staff, organising the delivery of the body's objectives and controlling the body's resources. Under Option 1, the Welsh Government would have to approve the Commissioner's enforcement policy and budget but there would be no formal mechanism for ensuring the Commissioner's promotion objectives and spend were helping to deliver the priorities of Cymraeg 2050.
117. Option 2 offers additional checks and balances by way of a Board with approval, advice and assurance roles, with a deterrent power of veto. Under Option 2, the Commissioner would require the approval of the Governing Board for the strategic plan and enforcement policy prior to their submission to the Welsh Government but the Board would have only monitoring and advisory powers to influence how the organisation is run and managed or whether it is performing efficiently and effectively. The Board would provide an assurance role, and as a last resort, could exercise its power of veto, but it could not performance manage a Commissioner who is a corporation sole. The Welsh Government would have powers to direct the Commissioner but powers of direction are not to be used lightly. Powers of direction are not an appropriate mechanism for day-to-day performance management.

118. Option 3 provides a clear separation between a Commission, which is responsible for setting the body's strategic plan and enforcement policy, and a Chief Executive who would be accountable to the Commission for appointing staff, for day-to-day operational decision-making, and for the administration of any delegated functions. The Commission would set objectives for the Chief Executive and would require the Chief Executive to report to them on all aspects of the body's performance. If the body was not performing well or did not demonstrate the capacity to improve its performance, the Commission would be in a position to take action to rectify the situation and, subject to the usual constraints of employment law, in the last resort, remove the Chief Executive and appoint a new one.

## Conclusions

119. On balance, our view is that Option 3 (Welsh Language Commission) is the preferred option for establishing a body to undertake the general promotional functions and to monitor and enforce bodies' compliance with Standards.

120. Option 3 provides the greatest opportunity for a body of members with a breadth of experience and skills (and either directly or indirectly representing a range of stakeholder views) to shape the body's strategic plan and its enforcement policy, to determine how the body's resources are used, and to ensure they strike a balance between the body's different functions. The Commission could delegate specific functions to members of the Commission if it felt a need to provide some separation between them, for example, between promotion and enforcement functions, whilst retaining overall responsibility for all its functions. It would provide a clear separation of duties between the strategic functions of the Commission and the operational functions of the Chief Executive and staff of the body. This would be an effective mechanism for managing the body's resources and its performance in achieving its objectives. We consider Option 3 offers the greatest likelihood of success in transforming outcomes and supporting our ambitions in Cymraeg 2050.

### Consultation questions

8. Do you agree with our preferred option (Option 3) to establish a Welsh Language Commission to promote and facilitate the use of the Welsh language and monitor and enforce bodies' compliance with Standards?

Agree/Disagree/Neither agree nor disagree

Supporting comments

9. What are your thoughts on the analysis we have provided which supports our preference for Option 3? Are there any other considerations we should take into account in making any final proposal?

10. Do you believe Option 3 provides sufficient safeguards in relation to the independence of the proposed Commission in exercising its functions in monitoring and enforcing bodies' compliance with Standards?

Yes/No/Unsure

Supporting comments

## Transfer of staff, property and liabilities

121. Our proposals to create a Commission will have a number of important practical consequences which we will need to consider. These include:

- transfer of staff from the Commissioner to the Commission, and transfers of staff between the Welsh Government and the Commission;
- application of TUPE (or TUPE equivalent terms if TUPE did not apply) to any staff transfers;
- harmonisation of terms and conditions of service, for example, approaches to travel and subsistence payments, flexible working hours and voluntary severance and redundancy packages;
- job evaluation/grading;
- pensions;
- transfer of property;
- the continuation of rights and liabilities, including in relation to imposing, challenging and enforcing Standards.
- 

122. We do not consider there should be any redundancies as a result of our proposals. As our proposals develop further, and following consultation on this White Paper, we commit to engaging fully with the Trade Unions and employees who may be affected by these proposals.

### Consultation questions

11. Are there any additional matters to those listed in paragraphs 121-122 that we should consider regarding arrangements to establish the proposed Commission?

Yes/No/Unsure

Supporting comments

## Welsh Government duties under section 78 of the Government of Wales Act 2006

123. Section 78 of the Government of Wales Act 2006 ('GoWA') requires the Welsh Government to consult on and adopt a Welsh language strategy, to report annually on the strategy and to lay a copy of the report before the Assembly. The Welsh Government is also required to publish a plan each financial year to show how the Welsh language strategy will be implemented.

124. We propose in Part 2 that the strategic plan of the proposed Commission is required to contribute directly to the priorities of the Welsh Government and the ambition of the Welsh Government to achieve a million Welsh speakers by 2050. The analysis of the steps we need to take and the priorities which we have identified are set out in Cymraeg 2050. This strategy is made by the Welsh Government in order to fulfil their duty to adopt a strategy under s.78 of GoWA.

125. Given the direct connection we propose between the Welsh Government's Welsh language strategy and the strategic plan of the proposed Commission, we should

consider whether it would be beneficial to bring the requirements in s.78 of GoWA within the proposed Welsh Language Bill, in order that the proposed inter-relationship of the Welsh Government's strategy and the delivery of its priorities by the Commission is explicit and clear.

126. Cymraeg 2050 is a long term strategy and any changes will only occur slowly. Our most reliable data on progress – the Census – is only conducted every 10 years, and many of our ambitious programmes, such as changing the school curriculum, take several years to develop, implement and have effect. This means there is likely to be little progress to be reported annually but progress should be evident in the medium term. In practice, the incoming Welsh Government at the beginning of each Assembly is likely to review the strategy and implementation plan, and refresh them in the light of progress and circumstances at the time.

127. We welcome your views on a proposal that the requirement on the Welsh Government to:

- a. publish an annual plan setting out how it will implement the strategy; and
- b. publish an annual report on how the strategy was implemented

should be amended so that the requirement is to publish these documents once in every Assembly term (i.e. every 5 years under the current electoral arrangements) and not annually. The Welsh Government would still be required to lay the Commission's annual report before the Assembly each year, and Ministers would continue to be subject to scrutiny by the Assembly in the exercise of their functions relating to the Welsh language.

### Consultation questions

12. Do you agree with our proposal to move the requirement on the Welsh Government to produce a Welsh language strategy from the Government of Wales Act 2006 to the new Welsh Language Bill?

Agree/Disagree/Neither agree nor disagree

Supporting comments

13. Do you agree with our proposal that the Welsh Government should report to the Assembly on the Welsh language strategy every five years instead of annually?

Agree/Disagree/Neither agree nor disagree

Supporting comments

14. Do you agree with our proposal that the Welsh Government should publish a plan setting out how it will implement the strategy every five years instead of annually?

Agree/Disagree/Neither agree nor disagree

Supporting comments

## The Welsh Language Partnership Council

128. The Measure created a body called the Welsh Language Partnership Council.<sup>12</sup> Its purpose is to give advice or make representations to the Welsh Government on its Welsh language strategy (currently Cymraeg 2050) and action plan.
129. Our proposal for a body to both undertake promotion of the Welsh language and monitor and enforce compliance with Standards aims to create a body with a significant amount of expertise in terms of promoting and facilitating the use of the Welsh language.
130. In light of that, we think that the proposed Commission will be best placed to provide the Welsh Government with advice on matters relating to Welsh language policy. This will ensure the Welsh Government can benefit from the expertise of the body and make sure the Welsh Government is acting effectively to deliver its vision of a million Welsh speakers by 2050. We therefore propose that the Welsh Government should have a power to request advice from the Commission on any matter relating to the Welsh language and that the Commission should be required to provide such advice when asked to do so. We would need to ensure exercise of this power could not jeopardise the independence of the Commission in exercising its monitoring and enforcement functions, and functions relating to the freedom to use Welsh.
131. If this proposal is accepted, we believe that the Commission would fulfil the Welsh Language Partnership Council's current role. Consequently, we propose to abolish the Welsh Language Partnership Council.

### Consultation questions

15. Do you agree with our proposal to abolish the Welsh Language Partnership Council and provide the Welsh Government with a power to request advice from the proposed Welsh Language Commission?

Agree/Disagree/Neither agree nor disagree

Supporting comments

16. Do you have any further comments on Part 2 of the White Paper?

---

<sup>12</sup> s.149 Welsh Language (Wales) Measure 2011

## **Part 3: The Welsh Language Standards**

### **Introduction**

132. The Standards system is still new. Bodies subject to the Standards and indeed, the Commissioner, are still working out precisely what the practical impact and effect of the new duties are. The first set of Standards came into force in March 2016 but the process for making the Standards (conducting Standards investigations etc.) commenced approximately eighteen months earlier.
133. The evidence we have gathered suggests there is a belief the Standards are making a difference in the quality and consistency of services in the Welsh language. It is important to state that having considered the options carefully, we continue to believe Standards are the best way to ensure people can access public services and deal with public bodies in the Welsh language if they so choose.
134. At the same time, and notwithstanding the teething problems that are likely to emerge with any new system of duties, the responses to the call for evidence make it clear that bodies and other stakeholders consider the system is difficult to understand, implement and monitor. In Part 3 of this White Paper, we focus on proposals to improve the way the Standards system works.
135. We also believe we can and should simplify the process for determining which bodies can have Standards imposed on them. At present, this is a complex procedure which is a result of the constraints on the Assembly's powers when the Measure was passed. The Assembly's powers no longer require such constraints and there is an opportunity to simplify the process considerably. Part 4 of this White Paper deals with this matter in detail.

### **What we are trying to achieve with legislation**

136. The policy objectives at the time of enacting the Measure remain essentially unchanged, that is, to ensure the Welsh language has official status in Wales, that the Welsh language is treated no less favourably than the English language, that people in Wales are free to use the Welsh language, and in the context of services, to ensure:
- a. consistency and quality in the provision of Welsh language services,
  - b. accountability of bodies for providing those services, and
  - c. enforcement if the Standards are not met.
137. However, on the basis of the responses to our call for evidence and an analysis of the complaints and investigations the Commissioner has dealt with, we believe there should be a shift in emphasis from 'enforcement' (investigating even minor breaches of Standards) to 'remedy' (where a body is not compliant, the objective should be to put things right and take steps to ensure the failure doesn't reoccur), and 'improvement' (recognising not all bodies can provide the same level of service now but that the quality and scope of Welsh language services must improve over time).
138. The Measure is a complex piece of legislation and with the experience of five years since the Measure came into force we can make some preliminary assessments of how it works in practice and its impact in the context of wider Welsh language policy.

139. The key considerations at this stage are:

- i. Standards. We must acknowledge that if we are to maintain a policy of 'enforceable rights', whilst there are improvements and simplifications that could be made to the current system, any alternative system is likely to be just as complex. The capacity of the Welsh-medium education system, constraints on Welsh language skills in the workforce, and the functions and circumstances in which bodies subject to Standards operate make this inevitable, at least in the medium term. A key issue is whether the duties imposed can become more uniform and show less variation in the future, as bodies' capacity to deliver Welsh language services improves.
- ii. Bureaucracy. The process of making and imposing Standards is complex. There is a strong case for reviewing whether the current arrangements can be simplified whilst ensuring that the process is democratically accountable, transparent and efficient. In addition, the present enforcement procedures are resource intensive, slow and potentially confrontational. There is no way of quickly 'putting things right' when a Standard has not been met, in a way which supports public service providers to acknowledge shortcomings, make improvements and ensure users get the service they need in a timely fashion.
- iii. Improvement. The present system does not incorporate a formal mechanism for improving the capacity and capability of bodies to meet more demanding Standards. We consider it should be a principle of the system that over time, all bodies should converge towards the same Standards, so that a person's rights in relation to Welsh language services are the same, wherever they live in Wales. If we are to achieve this, the capacity of bodies to undertake effective language planning (that is, their ability to effectively plan services and their organisation's development to ensure it can provide services bilingually, as well as to support the development of the language in the local area) must improve significantly.

140. In this paper we conclude, after considering alternative options that the Standards should be retained (see paragraphs 166-171). As a result of that conclusion, in reviewing the Measure our objectives are to:

- i. review procedures and responsibilities relating to the Standards with a view to securing the most transparent, accountable and efficient system;
- ii. review enforcement action regarding Standards to ensure the needs of service users are met through remedy and improvement;
- iii. review the role of the Welsh Language Tribunal.

## **Current situation**

141. The purpose of the Standards is to ensure providers of public services meet a specified level of quality, consistency and accessibility when providing Welsh language services to the public and to their employees. Standards currently also encompass a range of other duties relating to activities such workforce planning, collecting information, assessing the impact of policies on the Welsh language, and for local government bodies, the promotion of the Welsh language in their area.

142. The Standards are standards of conduct, which are intended to stimulate cultural change by requiring bodies to adopt new behaviours and ensure their staff deliver services in accordance with those Standards. They also give the public certain rights



and assurances about the services they can expect to receive in Welsh.

143. The Standards replace Welsh language schemes under the Welsh Language Act 1993 (“1993 Act”). The schemes themselves were a statutory requirement but they were not seen to achieve the policy objectives set out in paragraph 136 above because there was no way to compel bodies to meet the commitments in their schemes.
144. The system established by the Measure is intended to create greater certainty for both the public and bodies subject to the Standards by defining in regulations the type of behaviour which is expected in different circumstances. This puts the onus on the Welsh Government, the Commissioner and the bodies themselves to foresee all the possible circumstances for each body in which Standards should apply when they are drafting regulations and compliance notices. The regulations have been prepared sector by sector, and have followed a programme set by the Commissioner by undertaking Standards Investigations (discussed below at paragraph 186).
145. The result is a large number of Standards in each set of regulations. The sets of regulations made so far – which mostly affect devolved public bodies – each contain around 170-180 Standards, excluding any sub-categories labelled A, B etc., which provide a menu of options which can be imposed on different bodies. Private sector companies, primarily utilities of various descriptions, are potentially subject to a somewhat smaller number of service and information gathering Standards. Nevertheless, they are still numerous. There are 76 Standards in the draft regulations for water and sewerage companies which were the subject of consultation in the first part of 2017.

## Responses to the call for evidence

146. Our engagement with bodies under the Standards and evidence from other stakeholders suggest a number of significant areas to consider:
  - **Clarity for public bodies:** The current approach is intended to create a set of detailed rules so that bodies are clear what they have to comply with. Some of the Standards leaves people in no doubt as to what is required of that individual Standard. However, in trying to capture all eventualities, we know there are some overlaps between the Standards which lead to uncertainties as to which Standard applies to particular circumstances. We know that bodies find it difficult to monitor whether they have complied with all the requirements on them at any time. Some have proposed that groups of Standards, such as those relating to correspondence, can be merged under a single Standard.
  - **Clarity for the public:** One reason for introducing Standards was the argument that if services are more easily and consistently available to the public in Welsh, more people will use those services and use of the Welsh language will increase. However, the large number of the Standards means it is currently difficult for the public to understand which Standards apply to which bodies and in which circumstances.
  - **Areas of uncertainty:** The number of Standards and the level of detail gives a false impression of how black and white the rules actually are. In reality, there are grey areas. A number of bodies report difficulties with interpreting the Standards. Local authorities and others report difficulties interpreting the Standards in the context of

collaboration, joint commissioning and partnership working, where the partners may be subject to different Standards, or where each body interprets certain Standards in different ways (see further discussion in paragraphs 203-207). Greater use of codes of practice could help alleviate some of these uncertainties but none have been issued under the current arrangements.

- **Complexity:** An ideal system of universal Standards would have few, easily understandable Standards which all bodies could be expected to reach, given time. In practice, because of the limited number of Welsh speakers there are constraints on Welsh language skills in the labour market which make a system of universal Standards impossible to achieve at this point in time, unless those Standards are so basic that they offer no real rights to service users. This means any system which seeks to impose reasonable and proportionate Standards in the context of the Welsh language is likely to be inherently complex.

## Options

147. To address these issues, we have considered a range of options. These options are:

- No change
- Reforming the current system of Standards
- Having a small set of more general Standards on the face of primary legislation instead of Regulations
- Regulated exceptions schemes based on a small set of more general Standards
- Rights for individuals to use Welsh set out in primary legislation

148. It is important to note that under any of the options there is a trade off between the general and the specific. Fewer, more general Standards could potentially increase uncertainty because the bodies and the public would be less clear what exactly the 'new', general Standard caught, and there could be a longer, more complex list of exceptions (whether as part of the Standards themselves, or otherwise). By contrast, a larger number of more detailed Standards potentially increases certainty and reduces the need for so many exceptions but creates a large body of more detailed Standards which, as we noted above, create their own difficulties.

149. In developing our options for reform, we have sought to strike a balance between upholding and developing people's rights to receive services in Welsh against the current capacity of bodies to deliver these services in Welsh, as well as the potential for improvement in those bodies' capacity to deliver services in Welsh in the future. In our view, that balance is best ensured through continuing to require duties placed on bodies to be reasonable and proportionate. We consider that any duties placed on bodies under any of the proposed options should continue to be reasonable and proportionate for the body to which they would apply.

### Option 1: No change

150. As we make more sets of regulations, the body of Standards will continue to grow in number and variety and there is a risk it will become increasingly difficult for the public to understand what services they have a right to receive in Welsh. The present arrangements do not have a built-in improvement mechanism. Taken together with the many issues highlighted by stakeholders in the call for evidence, we do not consider no change to be a viable option.

## **Option 2: Reform the current system**

151. It would be possible to simplify the current approach in a number of ways:

- Standards which impose burdens but which do not contribute directly to improving services could be removed or amended. For example, the number of record-keeping and supplementary Standards could be reduced significantly.
- Where a Standard relates to a service or activity which is provided directly to the public, if it is costly to implement but produces little public benefit it could be removed or amended. Examples include Standards which require the costly translation of extensive corporate and technical documentation which are little read by the public in either language.
- Bodies could be provided with more opportunities to exercise reasonable judgement in relation to particular Standards, without undermining the general principle of enforceable Standards. Further work is required to determine how this might work in practice, but the principle is not novel. A degree of discretion is already permitted in some of the Standards, for example when a body may select between different translation methods, or undertake an assessment to determine whether there is demand for a service in Welsh.
- Greater use could be made of statutory codes of practice or guidance, although further consideration needs to be given to the extent to which guidance could be used to exempt a body from a statutory requirement or to vary it. There is also potential scope for codes of practice to be used to provide clarity to bodies as to which Standards apply where two or more bodies under the Standards system have entered into partnership working arrangements. However, this will need to be explored further as we develop our proposals.

152. Reform should incorporate provision to ensure improvement i.e. that bodies raise the quality and extend the scope of their Welsh language services as their capacity to deliver those services improves. One way to do this might be to require that the Standards imposed on a body are reviewed and remade periodically, for example, every 10 years. This could be linked to a general duty to secure improvement, and to take into account the principle that over time, all bodies should converge towards the same Standards, so that a person's enforceable rights in relation to Welsh language services are the same, wherever they live (the 'convergence principle').

153. The ambition here is that as bodies' capacity improves and as the projected increase in Welsh speakers set out in Cymraeg 2050 begins to have an effect, we can expect improvements in those bodies' capacity to provide Welsh language services. However, were this pursued further, we acknowledge consideration would need to be given to how to balance the convergence principle against ensuring that the Standards imposed on the body are reasonable and proportionate.

## **Option 3: A small set of more general Standards on the face of primary legislation**

154. Under Option 3, we considered the option of placing a small set of general Standards in the primary legislation itself. In order to ensure the Standards were reasonable and proportionate for individual bodies, this option would require us to set out exceptions to

the Standards bodies are required to comply with. Under Option 3 it would be possible to attach 'switch off' dates to the exceptions so that the number of exceptions reduced over time. As bodies' capacity to provide Welsh language services improved, it could be possible to foresee a date, 2030 or after perhaps, when all bodies were operating under the same Standards with no or very few exceptions remaining.

155. There are, however, significant difficulties with this option. The number of initial exceptions would be high and it would be no easier for the public to understand what their rights are. We should not underestimate the difficulties involved in setting Standards now which are intended to come into force – and be reasonable – several years in the future. There are many factors which could render such Standards unreasonable by the time they came into force. As part of this, we would need to consider a number of factors such as what support we could provide to public services to improve their capacity and capability to deliver services in Welsh, the capacity of the education system to deliver a workforce with the right skills, other labour market constraints, and mechanisms for extending exceptions if the conditions which would enable switching off the exceptions did not exist at the relevant time.
156. In addition, it would be difficult and time consuming to amend Standards set out in primary legislation, for example, in response to changes in technology or the way public services are delivered. It would be more difficult for the system to respond flexibly to new developments and changes.

#### **Option 4: Regulated exceptions schemes based on a small set of more general Standards**

157. Under Option 4, we considered the option of introducing regulated Welsh language exceptions schemes. The intention would be to set out more general Standards in legislation, possibly on the face of primary legislation. Bodies would be required to consider whether the Standards were reasonable and proportionate for them to achieve. Bodies (working with the Commission) would be best placed to understand their areas and what they can deliver. Where they did not consider a Standard to be reasonable or proportionate, they would be required to submit a scheme setting out the proposed exceptions. In our view, these schemes would require the approval of the Welsh Government so as to ensure consistency. The Welsh Government could also have a power to issue guidance. In order for their scheme to be approved, each body would be required to justify why they wish to create exceptions to the Standards. Given the body would be required to seek approval for its exceptions scheme, this could be a way to encourage bodies to increase their capacity to meet the Standards and so avoid seeking approval for exceptions. The Standards, as they applied to a body, would be enforceable.
158. The exceptions schemes could be tied to a general duty to seek continuous improvement. Continuous improvement would be monitored by the Commission who would also provide advice and assistance, for example in respect of language planning. As with Option 3, we would seek to switch off the exceptions over time as bodies' capacity to deliver Welsh language services improved, for example by conducting a periodic review of their exceptions schemes.
159. In our view, this option would be expensive and complex to manage, given the need to agree an exception scheme for each individual body. There are likely to be over 500 such bodies, if the number of bodies with Welsh language schemes is used as a

guide. That number could rise significantly if, for example, community councils were required to produce a scheme. There are 735 community and town councils in Wales. Community councils are amongst the bodies which could be brought under the Standards at present and if their role as service providers at the local level continues to expand, it is likely we would wish to see some or all of them subject to some Standards. Depending on how broadly the Standards are drawn, each exception scheme could well be very lengthy. The resource implications are very significant.

### **Option 5: Rights for individuals to use Welsh set out in primary legislation**

160. Some stakeholders advocate setting out on the face of the legislation basic rights for the public to use Welsh with bodies in Wales. This is what we considered under Option 5. We know that in some cases bodies find it difficult to deliver Welsh language services because of shortages in the Welsh language skills of the workforce and similar constraints in the labour market. The current arrangements recognise these constraints by only permitting Standards to be placed on bodies which are reasonable and proportionate.
161. If we moved to a system of general rights in law to use Welsh, we would have to make provision for very extensive exceptions for individual bodies in their particular circumstances. In our view, the more general the right to use Welsh, the greater the number of exceptions there would need to be to ensure it was reasonable and proportionate for bodies to comply. For this reason, we do not believe a rights-based system would be any less complicated in practice than the Standards.

### **Weighing up the options**

162. We considered these options taking into account the need to ensure clarity for the public, the capacity of the system to secure improvement over time, and the costs of change.

#### **Clarity**

163. None of the options is inherently simple and we have explained why we think this is the case in paragraph 139i. We do not believe Options 4 and 5 offer any greater clarity than the current arrangements. Option 3 (a small set of general Standards in primary legislation) is potentially attractive. As with the other options, it would give rise to extensive lists of exceptions. The main disadvantage of Option 3 is the significant legal and practical difficulties in predicting what would be reasonable and proportionate for bodies to comply with some years in the future. In our view, Option 2 would lead to incremental improvements and provide a practical solution which we could begin to work towards under existing legislation. This means we could begin to make progress, without having to wait for new legislation to come into force.

#### **Capacity for improvement**

164. A key issue is whether the system is designed to ensure the quality of Welsh language services improves over time. The kinds of features which would enable improvement are that Standards and/or compliance notices must be reviewed and remade periodically, or that exemptions are time limited. Options 2, 3 and 4 all offer a way to secure improvement and offer benefits over the current arrangements.

## Costs of change

165. If we were to change to a different system of Standards (such as in Options 3-5), there would be additional costs. Whilst it is difficult at this stage, without conducting a full analysis, to predict the actual costs, it is likely that if we introduce an entirely new system, these costs could be very significant. A number of respondents to the call for evidence noted that scarce resources had been diverted away from improving Welsh language services to administering the new Standards. At a time of continuing austerity, we believe there is little appetite for further wholesale change. Responses to the call for evidence make it clear is that whilst the number of Standards is an issue, the greatest concerns relate to the procedures for making and enforcing the Standards.

## Conclusions

166. Options 2 and 3 can be understood as being on a continuum of reform. We believe Option 3 would give rise to many complex issues and practical difficulties in that we would need to predict for each core Standard not only what is realistically achievable for each body in 2018/2019 (by way of exceptions in subordinate legislation) but also what is realistically achievable for them in 2030 (or whatever future date we set).
167. Option 3 would also require significant investment of time and resources upfront and a detailed analysis of all the bodies to be brought under the system. Experience has shown that the work required to prepare Standards and associated exceptions for a particular sector is a lengthy and time consuming process. Setting Standards and exceptions for multiple sectors at the same time would increase that time. The complexity of the task could lead to a long delay before the Standards were made. Our commitment to delivering rights for people to receive Welsh language services, in our view, makes this delay (and therefore this option) intolerable.
168. Option 2 would enable us to build on the progress that has been made in improving Welsh language service delivery and enhance the prospects for continuing improvement. It would provide continuity of practice and learning for public bodies, whilst not requiring the public to understand a new system for ensuring their rights to Welsh language services. Option 2 could also achieve the same results as Option 3 but on a progressive, appropriately incremental basis. In our view, the reforms proposed by Option 2 would be a proportionate response to stakeholders' concerns with the current arrangements, without imposing the cost of changing to a completely new system.
169. We consider that Option 2 – incremental reform of the Standards – offers the best way forward. We welcome your views on this option and on the other options we have presented and any alternatives that we have not.
170. If Option 2 was taken forward, there would be an opportunity to revisit existing sets of regulations to ensure the Standards reflect this reformed approach. This could be undertaken as part of the proposed process to review the Standards bodies are required to comply with, or as part of the work which will be undertaken to implement any future legislation. The resource implications are significant and we would not wish to raise undue expectations of progress in the short term. However, we would wish to

engage with bodies already subject to the Standards at an early stage to see what improvements could be considered.

171. We would also need to consider the extent to which the intention to adopt a reformed approach could have an impact on the current programme of making regulations to bring bodies under the Standards. For example, we have consulted on draft Standards regulations for health bodies and water and sewerage service providers. It is likely we would wish to review those regulations before laying them before the Assembly, and provide an explanation for any changes we make in the explanatory memorandum.

### Consultation questions

17. We propose that a reformed model of the Standards (Option 2) should be adopted as the best way to ensure people's rights to receive Welsh language services. Do you agree with this proposal?

Agree/Disagree/Neither agree nor disagree

Supporting comments, including (if relevant) any further reforms you would like to see made to the current system, or any alternative approaches you think we should consider

18. We have based our preferred proposal for reformed Standards (Option 2) on the grounds of the clarity, capacity for improvement and the costs of change associated with each option (paragraphs 163-165). Do you agree with our analysis?

Agree/Disagree/Neither agree nor disagree

Supporting comments, including (if relevant) any other factors we should take into account in making any final proposals

### The classes of Welsh Language Standards

172. Standards currently must fall within one of the five classes set out in the Measure. These are:

1. *Service delivery Standards*: placing duties on bodies which relate to the delivery of services in Welsh
2. *Policy making Standards*: requiring bodies to consider the Welsh language as part of developing their policies and plans
3. *Operational Standards*: placing duties which (i) assist staff to use Welsh at work and when dealing with their employer, and (ii) relate to the bodies' internal use of Welsh including the Welsh language skills needed by their workforce
4. *Promotion Standards*: promoting the Welsh language
5. *Record keeping Standards*: keeping records on aspects of operating the Standards

173. There are additional *Supplementary Standards* which specify other matters related to Standards in these classes (such as the requirement to have a complaints procedure, collect and provide information, and issue reports).

174. There is a question whether these are the right classes, whether we should consider different classes or, indeed, whether there is any need to distinguish between the different types of Standards in this way in the future.

175. Under the Measure, not all bodies can be required to comply with each class of Standards:

**Table 2: Classes of Standards**

Class	Welsh Government & Local Government	Most devolved & non-devolved bodies	Most utilities and private sector service providers
Service delivery	✓	✓	✓
Policy making	✓	✓	x
Operational	✓	✓	x
Promotion	✓	x	x
Record keeping	✓	✓	✓

176. The service delivery Standards are the Standards which define service users' and customers' rights to Welsh language services. They are the Standards of most interest to the public and which have the greatest direct impact on individuals. Some of the operational Standards are of direct interest to people who work for public service providers because they set out the internal services which are available in Welsh to those workers, such as the right to receive certain documents in Welsh or to have a disciplinary procedure conducted in Welsh. In both cases, the Standards create rights for individuals and it is accurate to describe them as 'standards'.

177. The remaining Standards impose corporate duties on providers of public services which relate to their functions but they do not create rights for individuals. The relevant Standards are:

- *policy making Standards*
- the remaining *operational Standards* which relate to the way a body must develop its capacity to work in Welsh, such as duties to develop Welsh language skills through planning and training the workforce, and duties in relation to recruiting and appointing staff;
- *promotion Standards*
- *record keeping and supplementary Standards*

178. We consider these duties deal with matters related to public service language planning and should be considered as language planning duties. Language planning expertise is essential to help bodies develop their own capacity to work in Welsh and provide Welsh language services, as well as to help bodies work effectively to maintain and improve the position of Welsh within communities and everyday life.

179. In bringing these duties together as language planning duties, we believe it would provide a coherent framework for developing policy to support area-based language planning and to support improvements in bodies' capacity and capability to provide services in Welsh. It would be our intention, for example, to require the proposed



Commission to monitor bodies' compliance with their language planning duties and to provide practical support to help bodies fulfil their language planning duties effectively. Our engagement with bodies as part of the call for evidence have shown that many bodies under the Standards would welcome this support.

180. We therefore propose to abolish the classes of Standards and recast the Standards that do not create rights for individuals as language planning duties.
181. Table 3 sets out the matters covered by the Standards and the language planning duties, and which bodies will be affected.

**Table 3: Proposed Standards and language planning duties**

	<b>Standards</b>	<b>Language planning duties</b>
What matters do they deal with?	<ul style="list-style-type: none"> <li>• Services to the public</li> <li>• Services to employees</li> </ul>	<ul style="list-style-type: none"> <li>• Area and population based language planning and promotion</li> <li>• Language planning and promotion within public services</li> </ul>
Bodies affected	All Schedule 6 and Schedule 8 bodies in the Measure (i.e. all bodies subject to Standards)	Schedule 6 bodies (with minimal record keeping duties on Schedule 8 bodies) in the Measure (devolved and non-devolved public service providers, with record keeping duties on certain private sector bodies)
Purpose	Provide the public and employees with rights to services in Welsh	Provide a statutory framework for language planning

182. If it was decided to proceed with this proposal, we would need to undertake a review of the scope of the matters to be included as language planning duties. There may be a case, for example, for considering whether there are opportunities for consolidation of some closely related language planning duties, such as those relating to Welsh in Education Strategic Plans (WESPs), which have recently been subject to an external review for the Minister for Lifelong Learning and Welsh Language.
183. We also need to consider whether the current Commissioner's investigation and enforcement powers in respect of the Standards should continue to extend to the language planning duties in relation to the proposed Welsh Language Commission. The current Commissioner can enforce a body's compliance with its duty, for example, to prepare a strategy for promoting the Welsh language in an area. However, compliance with the Standard says little about the quality of the strategy. We propose that whilst a body should be required to comply with its statutory language planning duties, rather than enforcing compliance, we believe it is more important that bodies are monitored and supported to develop the capacity and capability they need to fulfil their duties effectively.
184. We are of the view that the proposed Commission should have a monitoring role and be required to report on how bodies are exercising these duties, and to provide

programmes of practical support to help bodies develop the language planning skills. The Commission should also have general powers to conduct examinations into how bodies meet their Welsh language duties and be able to require information in relation to both Standards and language planning duties.

### **Consultation questions**

19. Do you agree with the proposal to abolish the current classes of Standards and differentiate between 'Standards' (which would relate to services) and 'language planning duties' (which would relate to corporate duties)?

Agree/Disagree/Neither agree nor disagree

Supporting comments

20. Are you of the opinion that provisions relating to the Welsh in Education Strategic Plans should be included within the new legislation as language planning duties?

Yes/No/Unsure

Supporting comments

21. Are there any other matters which you believe should be included in the new legislation as language planning duties?

Yes/No/Unsure

Supporting comments

22. Do you agree that the proposed Commission should have general powers to conduct examinations into how bodies meet their Welsh language duties, which would include both the Standards and the language planning duties?

Agree/Disagree/Neither agree nor disagree

Supporting comments

23. Do you agree with our proposal that the proposed Commission should monitor and support bodies in relation to their language planning duties, rather than enforce them?

Agree/Disagree/Neither agree nor disagree

Supporting comments

### **Procedures for making, imposing, implementing and enforcing Standards**

185. The responses to our call for evidence highlighted a number of issues with the current procedures which we believe can be improved. These issues primarily relate to:

- procedures for making and imposing the Standards;
- how complaints and investigations are handled under the current system; and
- an enforcement regime which is seen as punitive rather than remedial, with insufficient focus on supporting bodies to improve.

### **Making and imposing Standards on bodies**

186. The process of making Standards begins when the Commissioner holds an investigation into certain bodies known as a Standards Investigation. The Commissioner produces a report based on the investigation which is given to the Welsh Government. The report is intended to identify what activities the bodies do and which Standards, in general terms, these bodies should be subject to.
187. The Welsh Government uses the report as part of the evidence to draft regulations which set out individual Standards. Once the regulations are drafted, the Welsh Government consults with the public and the affected bodies to find out their views on the draft regulations. The draft regulations are amended if needed and laid before the Assembly for approval before they are made.
188. Once the regulations are made, the Commissioner issues a draft compliance notice to each body which sets out which specific Standards a body must comply with, and a date by when it must comply. The Commissioner can vary the times and circumstances where individual Standards must be complied with. The Commissioner consults with the body on the draft notice before issuing a final compliance notice.
189. If a body believes one or more of the Standards in its final compliance notice are unreasonable or disproportionate for it to comply with, it can ask the Commissioner to reconsider. The Commissioner then decides whether or not to change the compliance notice. If the Commissioner decides not to change the compliance notice, the body can appeal to the Welsh Language Tribunal to review the Commissioner's decision.
190. After the date set in the compliance notice, bodies must comply with the Standards unless they are waiting for the Commissioner to reach a decision about a Standard they have challenged, or until the Tribunal has made a decision.
191. We believe there are too many steps in the current process for making and imposing Standards on bodies. It is time consuming, typically taking over 18 months, and the bodies are consulted three times during this time. It is only at the final stage, when a draft compliance notice is issued, that a body knows for certain which Standards it must comply with. We believe the involvement of both the Welsh Government and the Commissioner in this process is potentially confusing and wasteful.
192. We propose to simplify this process by making the Welsh Government responsible for drafting the regulations and for giving compliance notices (or another mechanism for imposing specific Standards on a body). Regulations should be subject to public consultation before seeking the approval of the Assembly. The proposed Welsh Language Commission should be responsible for monitoring and enforcing bodies' compliance with the Standards.
193. We propose that a body could ask the Welsh Government to reconsider a final compliance notice on the grounds that it is not reasonable or proportionate for it to

comply with a Standard. An avenue of appeal to the Welsh Language Tribunal would be available if the body disagreed with the Welsh Government's decision.

194. We believe that making one body (the Welsh Government) solely responsible for making and imposing the Standards on bodies, and another (the Commission) solely responsible for monitoring and enforcing compliance will make the system less bureaucratic, more cost effective, and give clarity about who does what at each stage.
195. As a consequence of the proposed changes to the process of making and imposing the Standards, we consider the current Commissioner's power to conduct a Standards Investigation (paragraph 186) would no longer be required.
196. In light of the role we propose for the Welsh Government, we also propose the Welsh Government should have a power to issue codes of practice with respect to the requirements of any Standards. We have heard the views of bodies through our call for evidence about the difficulties they face in the absence of codes of practice at the moment, and know how codes could be useful to help bodies understand the practical requirements of the Standards.

### **Consultation questions**

24. Do you agree with our proposal for the Welsh Government to be responsible for imposing Standards on bodies either through a compliance notice or other mechanism?

Agree/Disagree/Neither agree nor disagree

Supporting comments

25. Do you agree with our proposal that all regulations to make Standards should be subject to a full public consultation before seeking the approval of the Assembly?

Agree/Disagree/Neither agree nor disagree

Supporting comments

26. Do you agree with our proposal to abolish Standards Investigations?

Agree/Disagree/Neither agree nor disagree

Supporting comments

27. Do you agree with our proposal that the Welsh Government should be given powers to issue codes of practice or guidance relating to the Standards?

Agree/Disagree/Neither agree nor disagree

Supporting comments

## **Making and imposing Standards on sectors**

197. There are sectors which comprise many individual bodies which are already within the scope of the Measure and on which we may wish to place Standards in the future e.g. community councils. Under the present arrangements, each individual body must be issued with a compliance notice. In such cases, it would be helpful to be able to impose Standards by regulations alone, following consultation, without the need for a compliance notice or other such mechanism. The requirement for Standards to be reasonable and proportionate would still apply. Having to give each body within that sector a compliance notice would be highly resource intensive and costly, and maintaining up to date registers would be a formidable task.
198. The regulations imposing Standards on a defined sector would be consulted on. It is likely, given the requirement for the Standards to be reasonable and proportionate for all the bodies within a sector, that the Standards would either be minimal and/or include alternative Standards for the same activity, and which Standard would apply to a particular body would depend on factors such as their size or geographic location. We would need to consider further whether individual bodies in such cases should retain the right to challenge the imposition of a Standard, or whether there should instead be an enhanced consultation process, for example, a requirement to consult initially with the sector on an outline proposal, including any criteria relating to categories of body within a sector and how they might apply.
199. We are therefore seeking views on a proposal that the Welsh Government should be able to impose Standards on all the bodies in a sector by regulations alone, and we are seeking your views on related matters, including the factors we should take into account in drafting Standards to be imposed directly on bodies within a sector, and whether individual bodies should retain the right to challenge the imposition of a Standard or whether we should introduce an enhanced consultation process in such circumstances.

### **Consultation questions**

28. Do you agree with our proposal that the Welsh Government should have a power to impose Standards on all the bodies in a sector directly through regulations without the need for a compliance notice or other such mechanism?

Agree/Disagree/Neither agree nor disagree

Supporting comments, including your views on the factors we should take into account in drafting Standards to be imposed directly on bodies within a sector, whether individual bodies should retain the right to challenge the imposition of a Standard, and whether there should be an enhanced consultation process

## **Standards to be imposed on the Welsh Government**

200. If the proposal that the Welsh Government should make and impose Standards is accepted, then we would need to make appropriate arrangements for imposing Standards on the Welsh Government itself.

201. There is nothing unusual in governments making laws which subject the government itself to regulation. For example, the Welsh Government is subject to regulation in a number of fields, such as planning and the environment. However, Standards are applied specifically to a body, and exceptions or conditions specific to the body may be included in a compliance notice. As such, the Welsh Government would be required to conduct an assessment of which Standards are reasonable and proportionate for itself to comply with. In order to preserve the integrity of the system, we would need to ensure this process is fair and transparent.
202. One option would be to consider giving the Assembly a role in the process of imposing Standards on the Welsh Government, for example by having to consider and approve the Welsh Government's compliance notice.

### Consultation questions

29. What factors should we take into account or what procedure should we follow in order to ensure the process for imposing Standards on the Welsh Government is fair and transparent?

Supporting comments

### Standards in the context of joint working between bodies and local government reform

203. In responses to the call for evidence, a number of partners, mainly but not only local authorities, commented on the difficulties they face in determining which Standards apply in the context of partnership working, collaboration and joint commissioning. These bodies also note the likelihood that present trends towards more extensive partnership working will continue. As things stand, the different bodies in these arrangements may be subject to different Standards, for example, in relation to the documents they must publish in Welsh or meetings they must hold in Welsh. Some bodies may not yet be subject to Standards and may still be operating schemes under the 1993 Act.
204. Each body in one of these types of arrangements is, of course, responsible for meeting its duties, whether under the Measure or the 1993 Act. However, bodies note the practical issues they face when deciding how best to work together. It may be that a solution could be to provide guidance to bodies in different partnership working arrangements through a code of practice, although further consideration needs to be given to the extent to which guidance could be used to exempt a body from a statutory requirement or to vary it in such circumstances.
205. In addition, at the beginning of 2017, the Welsh Government consulted on a White Paper, *Reforming local government: resilient and renewed*.<sup>13</sup> In June the First Minister announced the Welsh Government's intention to bring forward a bill to implement local government reform in the 2017/18 Assembly year. The bill will establish a new

<sup>13</sup> <https://consultations.gov.wales/consultations/reforming-local-government-resilient-and-renewed>

relationship between the Welsh Government and local government, create greater transparency in decision-making and ensure greater collaboration through mandatory regional working arrangements.

206. It is intended that regional arrangements will take the form of a joint governance committee. This will be a new form of joint committee and so consideration will need to be given as to whether they will need to be listed in Schedule 6 to the Measure, together with existing joint committees and joint boards which will remain available as a means of joint working for local authorities.<sup>14</sup> We will also need to consider which Standards should be specifically applicable to joint governance committees, although this will depend on which functions they exercise and whether, for example, they exercise those functions concurrently with the constituent local authorities. We would also wish to consider whether any language planning duties on local authorities would be more effectively exercised through the regional arrangements.
207. We commit to engaging with local authorities following consultation on the proposals in this White Paper and as the proposals for a Local Government Bill develop further.

## **Complaints to bodies**

208. Complaints by the public that they have not been able to access services in Welsh are the most important measure of whether bodies are complying with the Standards. The first Standards came into force on 31 March 2016, affecting 22 local authorities, 3 National Park authorities and the Welsh Government. At present, we have no information about complaints received by the bodies themselves. This is information they are currently required to collect and in due course they will be required to report on it.
209. We are better informed about complaints made directly to the Commissioner as these must be recorded in an online register. In the nine month period after the first Standards came into force (April to December 2016), the Commissioner recorded 62 cases where a member of the public alleged a body had failed to comply with the Standards. At the end of this period, 5 investigations had been completed, 10 discontinued and 47 were ongoing. Of the ongoing investigations, 34% were complaints about the same Standards (81 (promotion of Welsh language services), 84, 86 (education courses)) lodged on the same date against 16 different councils.
210. In the 5 completed investigations, the Commissioner made the following findings:
- a. Cardiff Council failed to deal with a call made to its Planning Department in Welsh and was found to have failed to comply with Standards 18 and 20.
  - b. Caerphilly Council did not fail to comply by using the hashtag “GweithioiGaerffili” for “WorkforCaerphilly”, or by using the phrase “Ystafelloedd Newid Dan Do” (indoor changing rooms) on signage in a leisure centre, but was found to have failed to comply with Standard 58 (using accurate language on signs) when it misspelt “rhentu” as “rhenti”.
  - c. Two complaints related to (what appear to be) the same instance of Cardiff Council erecting English only temporary road signs and they were found to have breached Standard 61.

---

<sup>14</sup> Although not currently required to comply with Standards, being listed in Schedule 6 means that local authority joint committees and joint boards could be required to comply with Standards. The effect of being listed in Schedule 6 is discussed in more detail in Part 4 of this White Paper.

d. Wrexham Council failed to comply with Standard 64 relating to reception services when a visitor was made to wait to receive a Welsh language service.

211. In one case, no enforcement action was taken. In the remaining cases, the body was reminded of the requirement to comply with the Standards. Each case took between five and seven months to conclude. It would be difficult to argue convincingly that service users had their rights upheld effectively by having to wait between five and seven months for a decision, or that any of these incidents should be considered sufficiently serious to be the subject of a lengthy regulatory investigation procedure, given the costs this incurs for the Commissioner and the body concerned.
212. The responses we received to the call for evidence raised a number of issues relating to complaints, not least that when a public body is alleged to be failing to comply with a Standard, the complainant is under no obligation to draw that complaint to the notice of the body so that a service failure can be put right. This is the case even though the regulations require bodies subject to the Standards to have a complaints procedure and to keep records and report about complaints.
213. At present, the Measure permits the complainant to go directly to the Commissioner who must consider whether to conduct an investigation if the complaint is valid (that is, that it meets certain basic administrative criteria). This means that small errors of the kind which arise in the course of business of all public services can be rapidly escalated into a formal investigation, and the failure can continue or be repeated for many months while the investigation is ongoing. The service user is no better off.
214. Enforcement should be proportionate. We consider bodies should have an opportunity to investigate and remedy any alleged failure through their own complaints procedure before the matter can be considered for referral elsewhere. The Public Services Ombudsman Wales (PSOW) cannot investigate a complaint unless the relevant body has first had the opportunity to investigate and take remedial action (section 9(3) of the Public Services Ombudsman (Wales) Act 2005). We believe this is the right procedure to follow in the case of complaints about the Standards and that the complainant must exhaust the body's own complaints procedure before the complaint can be referred to the Commissioner. A public body which is required to investigate its own alleged defects is more informed about its own performance, is more likely to provide timely remedy, and is in a position to learn from its mistakes and improve.
215. Complainants must have confidence that bodies will fairly and properly investigate complaints into alleged failures to comply with Standards. We propose that a body's complaints procedure must adhere to an approved complaints procedure, such as the one set out in the Model Concerns and Complaints Policy issued by the Welsh Government in 2011,<sup>15</sup> and must state clearly the time limits within which a decision must be reached regarding a complaint. If a body finds it has failed to comply with a Standard, it should set out in its response to the complainant how it will remedy the failure to comply and how it will ensure that it complies with its requirements in the future. The body should also publish the basic facts and outcomes of each complaint investigated on its website so that the public and the Commission can see whether an individual case forms part of a trend or pattern.

---

<sup>15</sup> [https://www.ombudsman-wales.org.uk/~media/Files/Documents\\_en/Model%20Complaints%20Policy%20Final%20PSOW.ashx](https://www.ombudsman-wales.org.uk/~media/Files/Documents_en/Model%20Complaints%20Policy%20Final%20PSOW.ashx)



### **Consultation questions**

30. Do you agree with our proposal that complaints should have to be dealt with through the relevant body's complaints procedure first before the proposed Welsh Language Commission can investigate an alleged failure?

Agree/Disagree/Neither agree nor disagree

Supporting comments

31. Do you agree with our proposal that bodies must adhere to an approved complaints procedure, such as the Model Concerns and Complaints Policy?

Agree/Disagree/Neither agree nor disagree

Supporting comments

### **Complaints to the Commission**

216. We proposed earlier in this paper that a new Commission should be established to deal with monitoring and enforcing compliance with Standards as well as promoting the Welsh language. If a complainant is dissatisfied with the result of a body's complaints procedure, they should be able to refer the complaint to the Commission.

217. The Commission should conduct an assessment to determine whether it should take any action. The assessment should be based on the complainant's statement, and the body's response and decision. The Commission should be able to request further information from any of the parties before making its decision. If the Commission finds (as a result of that assessment) that the body has dealt with the complaint in accordance with its procedure and reached an appropriate decision (a decision which was reasonable on the basis of the available evidence), then the Commission should take no further action.

218. If the Commission finds the body has not dealt with the complaint in accordance with its procedure or that it has reached a decision which is not reasonable on the basis of the available evidence, then the Commission should be required to take action. The actions open to the Commission will depend on whether the assessment has shown that either the breach of the complaints procedure or the breach of a Standard (or both) is likely to be serious.

219. We are seeking your views on what would amount to a serious breach. We consider this may include the following:

- a. where a person has been denied the substance of the right conferred by the Standard. So, for example, small, minor or insignificant breaches of a Standard may not be regarded as sufficiently serious;
- b. repeated breaches of the same or different Standards;
- c. failure by a body to remedy a breach (of the complaints procedure or of a Standard) where it has been agreed or been required to take action to do so; or

- d. failure by the body to follow its complaints procedure so that the substance of the complaint could not be investigated properly. In this case, minor procedural mistakes which could not affect the outcome of the investigation into the complaint may not be regarded as sufficiently serious.

220. If the Commission's assessment finds there has been a breach of the complaints procedure or of a Standard but that it is not likely to be serious, then it should have the following courses of action open to it:

- a) take no action;
- b) provide advice and/or assistance to the body in respect of the subject matter of the complaint or how it handled the complaint (e.g. to advise the body to offer an apology); and/or
- c) require the body to reconsider all or part of its decision.

221. If the Commission's assessment finds that the breach is likely to be a serious breach of the complaints procedure or of a Standard, the Commission should be required to conduct an investigation.

222. The Measure currently sets out a procedure for investigations conducted by the Commissioner. Responses to the call for evidence suggested the procedure may be too complicated and drawn out. We believe our proposals mean investigations would only take place in serious cases, when a thorough procedure would be warranted, but we welcome views on ways to simplify the investigation procedure whilst continuing to ensure investigation is fair and thorough. As at present, the Commission should be able to discontinue an investigation.

223. Whilst this is the procedure we propose for complaints, we would not wish to prevent the Commission from conducting an investigation of its own initiative in other circumstances. For example, a matter might come to the attention of the Commission through monitoring bodies' compliance with Standards which suggested something was not right. The Commission might possess only limited information, in the absence of the kind of evidence a complaints procedure would have provided. In such circumstances, an investigation could be warranted and the Commission should be enabled to initiate one.

### **Consultation questions**

32. Do you agree with our proposal that the proposed Commission should only take further action regarding a complaint if it believes the alleged breach of a Standard or complaints procedure is serious?

Agree/Disagree/Neither agree nor disagree

Supporting comments, including any comments on our definition of a 'serious breach' in paragraph 219

33. Do you agree with our proposal to allow the proposed Commission to conduct an investigation of its own initiative?

Agree/Disagree/Neither agree nor disagree

Supporting comments

## **Enforcement action following an investigation**

224. Throughout this White Paper we have stressed the importance of remedy, of enforcement which is proportionate and aimed above all at putting things right, and of supporting public services to improve the quality and consistency of service provision in the Welsh language. The proposed procedures for handling complaints and the proposal that the Commission should ensure a balance between its promotional and monitoring and enforcement functions, and to provide support for bodies relating to their language planning duties, are meant to help achieve this. Nevertheless, there will be circumstances when directive action is required.
225. Where the Commission has conducted an investigation and found that a body has breached the Standards, the Commission should have the following options available to it (the first three options are those set out previously in paragraph 220):
- a) take no action;
  - b) provide advice and/or assistance to the body in respect of the subject matter of the complaint or how it handled the complaint (e.g. to advise the body to offer an apology); and/or
  - c) require the body to reconsider all or part of its decision.
  - d) direct the body, or accept undertakings from the body, to take steps to:
    - i. remedy the failure to comply (with a complaints procedure or a Standard);
    - ii. ensure that the body complies with their requirements properly in future;
  - e) impose a civil fine;
  - f) request a court order in the County Court to require the body to take action.
226. At present, the Commissioner has powers to impose a civil fine up to £5000 and, in some circumstances, to request a court order to require a body to take action. These powers are primarily intended to have a deterrent effect. We are not aware that they have been used to date. We propose these powers are retained as powers of last resort. We welcome views on these proposed powers and the maximum civil fine that the Commission may impose.
227. We do not propose to retain either the settlement agreement powers (s.91-92) or the publicity powers (ss.81-82) which are currently in the Measure. We consider the proposed enforcement powers set out in paragraph 222 replace the settlement agreement powers. In relation to publicity, the model complaints procedure proposed in paragraphs 186-196 will require bodies to publish the outcome of complaints procedures and we have proposed that the Commission should be required to publish

its decisions and the reasons for decisions. We do not consider therefore that the powers in ss.81-82 and 91- 92 of the Measure are required.

### **Consultation questions**

34. Do you agree that the actions set out in paragraph 225 provide an effective range of enforcement action?

Agree/Disagree/Neither agree nor disagree

Supporting comments, including any thoughts on alternative enforcement actions that have been rejected or not considered in the White Paper

35. Currently, the Commissioner has powers to impose a civil fine of up to £5,000 and in some circumstances to request a court order to require a body to comply. Do you agree with our proposal that these powers should be retained?

Agree/Disagree/Neither agree nor disagree

Supporting comments, including any comments on the maximum civil fine that the proposed Commission should be able to impose (if at all)

### **Appeal to the Welsh Language Tribunal**

228. The Welsh Language Tribunal's current role is to enable members of the public and bodies to appeal against a decision of the Commissioner. If the Tribunal did not exist, a person who wished to challenge a decision of the Commissioner would have to seek judicial review in the High Court. The Tribunal provides the public and public bodies with a more accessible and less costly justice than judicial review in the High Court. We believe this should continue to be the case.

229. We propose that the Tribunal is retained in relation to the Commission's decisions regarding enforcing bodies' compliance with the Standards. It will not deal with any other decisions made by the Commission, for example, in relation to its promotion work or monitoring of language planning duties. We propose the Tribunal will also deal with appeals against the Welsh Ministers' decisions in imposing Standards (paragraphs 186-196). Although we have proposed that imposing Standards should be a responsibility of the Welsh Government (rather than the body tasked with monitoring and enforcing compliance with Standards), the fundamental issue of whether it is reasonable and proportionate to impose a Standard on a given body has not changed. Therefore we believe the right to challenge the imposition of a Standard should be retained, and that the Tribunal provides more accessible justice than judicial review in this case also.

230. The Measure currently provides that, in some circumstances, the Tribunal must give permission for an applicant to apply to the Tribunal. The Tribunal must give permission where it considers that the application stands a reasonable chance of success or if there is a compelling reason why the application should be heard. Whilst we wish justice to be accessible, we also believe that the Tribunal should not be the place to resolve disputes which could reasonably be expected to be resolved at a

lower level, either between the parties or with the involvement of the Commission. This is a principle which applies to the judicial system generally in England and Wales.

231. It is reasonable to consider that only cases of substance should reach the Tribunal. We propose that in relation to decisions of the Commission relating to enforcement of Standards, there should be a mandatory first stage in which the Tribunal should have to give permission on the grounds that an application stands a reasonable chance of success or that there is a compelling reason why the application should be heard.
232. In the case of bodies challenging a decision of the Welsh Government to impose a Standard on them, there is just one avenue of appeal, to request the Welsh Government to reconsider their decision. There is no equivalent of a second tier of appeal to the Commission, as in the case of complaints. There is a case, therefore, that the mandatory first stage should not apply in relation to applications for appeal to the Tribunal against a decision of the Welsh Government to impose a Standard. However, we would welcome views on whether it would be desirable that all appeals should be subject to a mandatory first stage so that the Tribunal only considers cases that have a reasonable chance of success or where there is a compelling reason why the application should be heard.
233. We would need to consider in detail which decisions of the Commission relating to enforcement might be subject to a Tribunal decision.

#### **Consultation questions**

36. Do you agree with our proposal to retain the Tribunal's role in relation to the proposed Commission's decisions regarding enforcing bodies' compliance with Standards?

Agree/Disagree/Neither agree nor disagree

Supporting comments

37. Do you agree with our proposal that the Tribunal should also deal with appeals against a decision of the Welsh Government to impose Standards on a body?

Agree/Disagree/Neither agree nor disagree

Supporting comments

38. We propose to introduce a mandatory first stage for the Tribunal in relation to appeals against the proposed Commission's decisions concerning enforcing Standards. The first stage would require the Tribunal to give permission on the grounds that an application has a reasonable chance of success or another compelling reason why the application should be heard. Do you agree with our proposal?

Agree/Disagree/Neither agree nor disagree

Supporting comments

39. Do you believe that the proposed mandatory first stage should apply to appeals

against a decision of the Welsh Government to impose Standards on a body?

Yes/No/Unsure

Supporting comments:

40. Do you have any further comments on Part 3 of the White Paper?

## **Part 4: The scope of bodies covered by Welsh language legislation**

234. Before a body has to comply with Standards, it has to be named or has to fall within a category listed in Schedule 6 or Schedule 8 to the Measure.<sup>16</sup>
235. The Welsh Government can, by order, amend Schedule 6 to include a new body, or a new category of bodies. However, any new body or category added to Schedule 6 must fall within one of the categories in Schedule 5. There are eight categories in Schedule 5 and these include bodies which are public authorities for the purpose of the Human Rights Act 1998, bodies which receive £400,000 or more of public money in two consecutive years, and bodies which provide services to the public which are either established by an enactment or which are required to provide those services by an enactment.
236. Similarly, the Welsh Government can, by order, add bodies or a category of bodies to Schedule 8, but only if they fall within one of more of the categories in Schedule 7. Bodies in Schedule 8, who are more likely to be private sector bodies, can only be made to comply with service delivery and record keeping Standards. The categories in Schedule 7 include utility providers, postal service providers, telecommunication service providers and bus and railway service providers.
237. Orders to add new bodies or categories of bodies to Schedule 6 or Schedule 8 must be approved by the Assembly.
238. There is therefore an established principle that the Welsh Government can add to the list and categories of bodies on which Standards can be imposed. However, the power is constrained by the necessity of new bodies having to fall within one of the categories in either Schedule 5 or 7. The Welsh Government cannot amend the categories of bodies in Schedules 5 or 7. Amendments to those categories could only be achieved by primary legislation.
239. Standards have increased the availability of Welsh language services and the language is now seen and heard in more places. As a result of this, and given the prominence of businesses in providing the services which people rely on in their everyday lives, some stakeholders believe that more private sector businesses should come within the Standards system. Banks and supermarkets have been subject to calls by some stakeholders with an interest in the Welsh language as bodies that are currently not within the scope of the Measure, but should be included in the future. However, stakeholders from the business community have expressed concern at the possibility of more private sector businesses being included within the Standards system and have advocated making progress on a voluntary basis, working with the Welsh Government and others.

### **Removing the constraints of Schedules 5 and 7**

240. The current legislation was made under a previous devolution settlement when permission from the UK Parliament was required before the Assembly was allowed to legislate. The Assembly's power to legislate (its competence) when the Measure was

---

<sup>16</sup> There are other conditions which have to be met before a body has to comply with Standards, but being in Schedule 6 or 8 is the relevant condition for this part of the White Paper.

made included the constraints featured in Schedule 5 and 7. The Assembly's competence has expanded significantly since the Measure was passed, and it is appropriate that any new Welsh language legislation should reflect that.

241. We propose that the constraints set out in Schedule 5 and 7 are removed. This would give the Welsh Government the power to impose Standards on a body provided it was reasonable and proportionate. Our proposal would result in more agile and flexible legislation, which could respond to changing policy needs whilst ensuring that the Welsh Government is fully accountable through the Assembly's scrutiny procedures before that power is exercised.

## **Removing the requirement to be listed in Schedules 6 or 8**

242. As a consequence of the proposal to remove the requirement to fall into a category in Schedule 5 or 7, the rationale for retaining the list system in Schedules 6 and 8 also falls away. One of the benefits of retaining the list system is to give bodies and the public an opportunity to express a view as to whether or not the body should come within the Standards system. This benefit can be realised by requiring that there should be consultation on draft regulations which impose Standards on any bodies.

243. We therefore propose that the requirement to be listed in Schedules 6 and 8 should be removed.

## **Conclusions**

244. Whilst these proposals, taken together, remove a number of current constraints, other important constraints will be in place. Those would be:

- any Standards regulations in relation to bodies would be subject to a statutory consultation;
- any Standards prepared for a body would have to be reasonable and proportionate for that body;
- in the case of private businesses, Standards would only relate to services provided to customers;
- any Standards regulations would have to be approved by the Assembly;
- any Standards regulations would have to be within the Assembly's competence which includes being compatible with the European Convention on Human Rights.

245. We are not proposing that the Welsh Government will imminently be imposing Standards on bodies which do not currently come within the Standards system. Given the current economic uncertainty following the decision to leave the EU, further pressures on private sector companies and inward investment would certainly carry a risk. Any extension of duties to private sector businesses and the associated costs would therefore need to be considered very carefully, especially in terms of attracting new business and employment. Our proposal relates to an important constitutional and democratic principle, that the Welsh Government can propose, and the Assembly can approve, making all bodies subject to service delivery Standards (as described in paragraph 176). We do not wish the legislation to be constrained by arbitrary and unnecessary restrictions.

246. The Welsh Government commits to considering the appropriateness and likely effectiveness of bringing new private business bodies or sectors within the Standards



system. If new private businesses are included within the Standards system, then it would be done as part of a wider programme of work that would include promotional work and working with the sector to ensure that they are prepared for the advent of Standards.

247. We have already noted the importance of fostering goodwill towards the Welsh language in order to help us to deliver Cymraeg 2050. In the first instance, our priority would be to ensure the Commission, through its strategic plan, develops programmes of work to support businesses to develop Welsh language services and to promote their Welsh language services to their customers.

### **Consultation questions**

41. Do you agree with our proposal to remove the constraints in the Measure so that the Welsh Government has the power to make Standards applicable to any body within the Assembly's legislative competence?

Agree/Disagree/Neither agree nor disagree

Supporting comments

42. Do you agree with our proposal that private sector businesses should only be liable to comply with Standards that relate to the services they provide to their customers?

Agree/Disagree/Neither agree nor disagree

Supporting comments, including your views on any limits that should be placed on the powers to impose Standards on private businesses:

43. Do you agree with our proposal that Standards should only be imposed on private businesses as part of a wider package of promotional and awareness raising initiatives?

Agree/Disagree/Neither agree nor disagree

Supporting comments

44. If the Welsh Government is given powers to impose Standards on any body within the Assembly's competence, do you believe that Standards should be imposed on any body or sector that is not currently within the scope of Welsh language legislation?

Yes/No/Unsure

Supporting comments

45. Do you have any further comments on Part 4 of the White Paper?

## **Part 5: Assessing the impact of our proposals**

### **Welsh Language Impact Assessment**

248. The Welsh Ministers are legally required to consider the impact of their policy decisions on opportunities for people to use the Welsh language and ensuring the Welsh language is treated no less favourably than English. To fulfil this duty, the policy proposals in this White Paper have been subjected to a Welsh Language Impact Assessment which is available to view on the Welsh Government's website.

249. The principal conclusions of the assessment are:

- our proposals to ensure improved structures to promote the Welsh language and ensure rights to use Welsh deliver multiple positive impacts on the Welsh language. These are documented throughout this White Paper and in the impact assessment.
- our assessment acknowledged the potential impact of considering the services people need and use in making Standards.

### **Children's Rights Impact Assessment**

250. The Rights of Children and Young Persons (Wales) Measure 2011 requires Welsh Ministers to have due regard to the United Nations Convention of the Rights of the Child (UNCRC) when exercising their functions. To ensure compliance with the Measure, a Children's Rights Impact Assessment has been carried out on the proposals in this White Paper. A copy of the assessment is available on the Welsh Government's website. No conflict has been identified between the proposals in our White Paper and the provisions within the UNCRC.

251. The principal conclusions of the assessment are:

- the potential consolidation of legislation which supports the planning of Welsh-medium education (the Welsh in Education Strategic Plans) into the proposed language planning duties is the main proposal in this White Paper which could directly affect children, young people and their families.
- our proposals for simplifying the way the Standards system works could have a positive impact on children and young people through giving greater clarity on their rights to use Welsh.

### **Equality Impact Assessment**

252. The Welsh Ministers are required to consider the impacts of their decisions on the protected groups identified in the Equality Act 2010. As such, our proposals in this White Paper have been subjected to an Equality Impact Assessment. A copy of the assessment is available to view on the Welsh Government's website.

253. The principal conclusions of the assessment are:

- our proposals for simplifying the way the Standards system works could have a positive impact on children and young people, older people, people with learning

difficulties, and people with mental health problems through giving greater clarity on their rights to use Welsh;

- we have recognised that providing information to people bilingually can pose problems both for Welsh speakers and non-Welsh speakers when using screen readers, and for people with learning disabilities.

## Regulatory Impact Assessment

254. We will use responses to this consultation to inform us as we finalise our proposals to amend the current arrangements for promoting Welsh and monitoring and enforcing compliance with Standards. When we have formed firm proposals, we will conduct a Regulatory Impact Assessment to identify the impact of our proposals. We will publish our Regulatory Impact Assessment alongside our proposed Welsh Language Bill.

### Consultation questions

46. We have assessed the impact of our proposals on equality, children, young people and their families, and the Welsh language. Do you have comments on any of these assessments?

47. We would like to know your views on the effects that the proposals in our White Paper would have on the Welsh language, specifically on:

- i) opportunities for people to use Welsh;
- ii) treating the Welsh language no less favourably than the English language.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

48. Please explain how you believe the proposed options could be formulated or changed so as to have:

- i) positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language;
- ii) no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

49. We have asked a number of specific questions in this White Paper. If you have any related issues which we have not specifically addressed, please use this space to report them.

## **Next steps**

255. In this White Paper, we have set out our proposals to make new Welsh language legislation to assist us in delivering Cymraeg 2050.
256. We welcome responses to the questions we have asked throughout this paper and any other comments. Your responses will help to inform our next steps and any legislative action we may decide to take.
257. The closing date for the consultation is 31 October 2017.
258. Following the consultation on this White Paper, we will consider all responses carefully and publish a summary of responses on the Welsh Government website.