

**Y Pwyllgor Deddfwriaeth,
Cyfiawnder a'r Cyfansoddiad**

**Legislation, Justice and
Constitution Committee**

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Rt Hon Mark Drakeford MS
Cabinet Secretary for Finance and Welsh Language

24 October 2024

Annwyl Mark

Welsh Language and Education (Wales) Bill

Thank you for appearing before the Committee on 21 October 2024 to inform its consideration of the Welsh Language and Education (Wales) Bill.

As a Committee, we would be grateful if you could provide further information in respect of some matters. These matters are set out in the Annex.

Please could you respond by Friday 15 November 2024.

Yours sincerely,



Mike Hedges

Chair



**Senedd Cymru
Welsh Parliament**

Annex

1. Have you undertaken a human rights impacts assessment for this Bill and what was the outcome of that assessment?
2. What does this Bill enable you to achieve that you cannot within the existing legislative framework?
3. The Explanatory Memorandum states that this “is the first piece of primary legislation to be introduced for the purpose of realising the long-term objective” of the Cymraeg 2050 strategy. As the strategy was announced on 10 July 2017, why has it taken over 7 years to bring this legislation forward?
4. According to the Statement of Policy Intent, there is currently no policy intent to use several of the regulation-making powers in the Bill and the powers are there to “future-proof the Bill”. Can you therefore explain why such powers are included?
5. Can you confirm whether section 3(1) and 3(2)(b) confer regulation making powers or duties? The Statement of Policy Intent is inconsistent in its description.
6. Section 3(1) of the Bill enables the Welsh Ministers to make regulations specifying the data to be used in order to calculate the number of Welsh speakers. Section 3(2) then goes on to explain that, whether a person is a Welsh speaker is to be decided by self-assessment or, in the case of a child, on the basis of an assessment by their parent or carer or any other method specified by regulations. Can you explain to us the interaction between sections 3(1) and 3(2)? The Statement of Policy Intent indicates that section 3(2) is a limitation on the power in section 3(1), but this is not clearly set out on the face of the Bill.
7. Section 10(1) of the Bill requires the Welsh Ministers to make regulations specifying the amount of Welsh language education provided for each language category. Section 13(1) enables the Welsh Ministers to make further provision about the school language categories. The Statement of Policy Intent states that it will be important to consult before making regulations; can you explain why there is no duty for the Welsh Ministers to consult on the face of the Bill?
8. Section 13(1) says the Welsh Ministers may by regulations make further provision about the school language categories. What are the limits of this “further provision” and why can you not be more specific about what this power will be used for?
9. Section 13(5) requires the Welsh Ministers to decide whether to exercise their power to increase the minimum amount of Welsh language education provision for the Primarily English Language, partly Welsh category within 5 years of that power coming into force, and after that within 5 years of each period following their most recent decision. Can you confirm the intention behind this provision

– can the power be exercised as regularly as the Welsh Ministers determine, as long as no more than 5 years elapse between decisions as to whether it should be exercised?

10. Sections 14(3), 29(1) and 44(8) specify that start dates for plans or planning periods shall be set out in regulations. If the dates are not set out on the face of the Bill, is there a danger that the powers may not be exercised and that the provisions are not commenced?

11. Why is “lifelong” in brackets in section 23(1)(b), and “national” in brackets in section 23(5)(b)?

12. Section 28(3)(a) requires a local Welsh in education strategic plan to include “information on the education practitioners working in the local authority’s area”. The term “information” is vague – what information do you envisage the local Welsh in education strategic plan including and why is appropriate detail not included on the face of the Bill?

13. Sections 30 and 32 allow the Welsh Ministers to issue directions to local authorities in relation to local Welsh in education strategic plans that they have prepared. No procedure is applicable to such directions. Given that this power allows the Welsh Ministers to interfere with a subjective decision making process of the local authority, why is it not subject to a scrutiny procedure?

14. Section 33 of the Bill contains a power for the Welsh Ministers to make regulations relating to a wide range of matters relating to local Welsh in education strategic plans, as listed in the Statement of Policy Intent.

- a. Given the breadth of this power, do you consider that it would be more appropriate to subject it to the affirmative scrutiny procedure?
- b. In section 33(2), what do you mean when you say regulations could “apply sections 28 to 32 with modifications” for the purpose of producing joint local Welsh in education strategic plans – what would such modifications look like?
- c. Why is there no detail on the face of the Bill relating to joint local Welsh in education strategic plans?

15. Paragraph 2 of Schedule 2 to the Bill allows the Welsh Ministers to make regulations that vary the number of members of the new National Institute for Learning Welsh. The Explanatory Memorandum states that this is subject to the negative scrutiny procedure, but as the power can only be exercised to amend paragraph 2(1) of Schedule 2, can you confirm that it is in fact subject to the draft affirmative procedure in accordance with section 52(4)(b)?

16. Paragraph 18 of Schedule 2 to the Bill deals with the obligations of the Auditor General for Wales in relation to the new National Institute for Learning Welsh. Can you provide us with the details of any consideration you gave as to whether paragraph 18 complies with paragraph 5(3) of Schedule 7B to the Government of Wales Act 2006?

17. Paragraph 15(4) of Schedule 2 allows the Welsh Ministers to specify the responsibilities that the accounting officer of the new Institute will have. How are these responsibilities to be specified in practice and will the Senedd have the opportunity to scrutinise them? Why can they not be definitively listed on the face of the Bill, rather than the non-exhaustive list in paragraph 15(5)?

18. The Bill uses the term “Welsh language education” which is defined separately in section 8(2)(a) for Part 3, and section 35(a) for Part 4. Both definitions are the same. The term is also used in sections 1(1)(c)(i) and 39(2) but is not defined for those purposes. Why was one definition not inserted into section 49(3) of the Bill which would then apply throughout the Bill, and do you agree that the lack of a definition for ‘Welsh language education’ in sections 1(1)(c)(i) and 39(2) could cause confusion in interpretation?

19. Section 50 deals with the publication of documents, and states that where a person has a duty to publish a document electronically and they have their own website, the document has to be published on that website. Where is it to be published if they do not have their own website?

20. These further points have been identified in relation to the Statement of Policy Intent and the Explanatory Memorandum:

- a. In the English language version of the Explanatory Notes, which are included in Annex 1 to the Explanatory Memorandum, in relation to section 11, the description in the table entry for the Welsh language learning goal of Primarily English Language, partly Welsh schools states that ‘By a date specified by the Welsh Ministers by regulations, that pupils are basic users...’ however this does not reflect the drafting of section 11(3)(a). The Welsh language version of the Explanatory Notes read ‘Hyd at ddyddiad’, meaning ‘Until a date.’
- b. The Statement of Policy Intent on pages 14 and 18, in relation to sections 10(1), 10(2), 13(2) and 13(4), says that ‘Section 13(5) states that the Welsh Ministers must decide every 5 years whether to revise/amend the language categories’. However, section 13(5) requires the Welsh Ministers to decide every 5 years whether to exercise the power to make regulations under section 13(2)(b), which is the regulation making power to increase the minimum amount of Welsh Language education provision for the “Primarily English Language, partly Welsh” category.
- c. In relation to section 16(6)(c), Table 5.2 of the English language version of the Explanatory Memorandum states that it is a power conferred on the Welsh Ministers, when it is in fact conferred on local authorities. The Welsh language version of the Explanatory Memorandum is correct.
- d. In relation to section 20(4), Table 5.1 in the Explanatory Memorandum states that ‘It imposes a duty to make provision, in relation to voluntary designation, including modifying Part 3 of the Bill’ and ‘The power enables the Welsh Ministers to amend primary

legislation', however the power is to make regulations that apply Part 3 with modifications, it is not a power to amend primary legislation.

- e. In relation to section 23(9), Table 5.1 in the Explanatory Memorandum states that 'The power enables the Welsh Ministers to amend the impact of primary legislation', however the power in section 23(9) enables Welsh Ministers to amend primary legislation, not merely its impact.
- f. In relation to sections 28(4)(b)(ix) and 29(1)(a), in the Statement of Policy Intent, there are references to a 'section' of the Welsh in Education Strategic Plans (Wales) Regulations 2019 as opposed to 'regulation'.
- g. In relation to paragraph 3(f) of Schedule 2, Table 5.1 of the Explanatory Memorandum states that 'The power enables the Welsh Ministers to amend primary legislation', however the power is to specify, in regulations, the holder of an office, or a member of a body or a member of staff of a body that are disqualified from being a non-executive member of the National Institute for Learning Welsh; these regulations will not amend primary legislation.

Can you confirm that these points will be addressed and that the Statement of Policy Intent and the Explanatory Memorandum will be amended accordingly?

21. Finally, while a response will not be required in respect of the matters set out below, we wish to bring them to your attention:

- a. In section 32(4), the word "Minsters" should instead be "Ministers".
- b. In section 37(3)(d), the word "on" after "National Framework" should instead be "for".