



# **Proposed Welsh Language (Wales) Measure**

## **Summary of amendments passed at Stage 2**

**This briefing has been produced by the Members' Research Service for Assembly Members ahead of the Stage 3 debate in Plenary on 30 November. The paper summarises the changes made to the proposed Welsh Language (Wales) Measure during Stage 2 proceedings by Legislation Committee No.2 on 14 and 21 October.**

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## Related Information

### [Proposed Welsh Language \(Wales\) Measure](#)

### [Explanatory Memorandum to the Proposed Welsh Language \(Wales\) Measure 2010](#)

### [Legislation Committee No.2, Stage 1 Report on the proposed Welsh Language \(Wales\) Measure, 22 July 2010](#)

Constitutional Affairs Committee, *Report on the proposed Welsh Language (Wales) Measure*, July 2010

Finance Committee, *Report on the Financial Implications of the proposed Welsh Language (Wales) Measure*, August 2010

### [Record of Proceedings, Proposed Welsh Language \(Wales\) Measure Stage 1 debate, 21 September 2010](#)

### [Notice of Amendments, 5 October 2010](#)

### [Notice of Amendments, 6 October 2010](#)

### [Notice of Amendments, 7 October 2010](#)

### [Notice of Amendments, 8 October 2010](#)

### [Notice of Amendments, 14 October](#)



[Marshaled List of Amendments, 14 October 2010](#)

[Marshaled List of Amendments, 21 October 2010](#)

[Record of Proceedings, Legislation Committee No.2, 14 October 2010](#)

[Record of Proceedings, Legislation Committee No.2, 21 October 2010](#)

## Key points of this paper

The proposed Welsh Language (Wales) Measure (“the proposed Measure”) was introduced by the Minister for Heritage, Alun Ffred Jones AM, on 4 March 2010 and subsequently referred by the Business Committee to Legislation Committee No.2 for Stage 1 scrutiny.

The proposed Measure was approved at Stage 1 by the National Assembly following a debate on its general principles in Plenary on 21 September 2010. This briefing explains the changes made to the proposed Measure during Stage 2 proceedings on 14 and 21 October by Legislation Committee No.2, ahead of the Stage 3 debate in Plenary on 30 November.

This paper is intended to provide Assembly Members with a summary of the amendments agreed and not agreed to the proposed Measure during Stage 2 proceedings, in addition to the arguments put forward in relation to those amendments.

The main changes agreed to by the Committee to the proposed Measure at Stage 2 included:

- The insertion of a new statement on the official status of the Welsh language (**Amendment 5 - Section 1**).
- The extension of the appointment period of the Welsh Language Commissioner from 5 to 7 years and the limiting of that appointment to a single term (**Amendments 66 and 67 - Schedule 1**).
- The introduction of additional safeguards to ensure the Welsh Language Commissioner’s independence from Welsh Ministers (**Amendments 12 and 64 - Section 15 and Schedule 1**).
- The amendment of the long title at the beginning of the proposed Measure to clarify its aims and objectives; namely to promote the use of the Welsh language and to establish a Welsh Language Commissioner with the core aim of promoting the Welsh Language (**Amendment 3 - Long Title**).
- The insertion of a new section to clarify the purpose of the office of a Welsh Language Commissioner, namely to promote and facilitate the use of the Welsh language (**Amendment 6 - new Section**).
- The extension of promotional standards to cover National Park Authorities in addition to Welsh Ministers and local authorities (**Amendments 77 and 22 - Section 37 and Schedule 6**).
- The omission of Liquefied Petroleum Gas suppliers from being subject to standards regulations made by Welsh Ministers (**Amendments 123, 124 and 125 - Schedule 8**).
- The placing of new duties on the Welsh Language Commissioner to consult with the public in carrying out standards investigations (**Amendments 43 and 44 - Section 61**).
- The insertion of new subsections to ensure the impartiality of the Welsh Language Tribunal and the independence of the Tribunal president (**Amendments 56, 57 and 58**).



- Sections 113, 122 and 124).

- The placing of new duties on Welsh Ministers to publish a Welsh Language Strategy Action Plan to coincide with the publication of the Welsh Government's statutory annual Welsh Language Strategy (**Amendment 60 – new Section**).
- The establishment of a Welsh Language Partnership Council to give advice and make representations to the Welsh Ministers in relation to the Welsh Government's Welsh Language Strategy (**Amendment 61 – new Section**).

## 1. Introduction

The proposed *Welsh Language (Wales) Measure* (“the proposed Measure”) was introduced by the Minister for Heritage, Alun Ffred Jones AM, on 4 March 2010 and subsequently referred by the Business Committee to Legislation Committee No.2 for Stage 1 scrutiny.

The proposed Measure was approved unanimously at Stage 1 by the National Assembly following a debate on its general principles in Plenary on 21 September 2010. Stage 2 proceedings commenced on 22 September. A total of 192 amendments were tabled (144 of which were tabled by the Welsh Government). Legislation Committee No.2 considered and disposed of the amendments during its meetings on 14 October and 21 October.

This briefing explains the changes made to the proposed Measure during Stage 2 proceedings, ahead of the Stage 3 debate in Plenary on 30 November.

## 2. Legislation Committee No.2 Stage 1 Report

Legislation Committee No.2 published its Stage 1 report on the general principles of the proposed Measure on 22 July 2010. It made numerous recommendations. The Committee issued a press release to coincide with the publication of the report which summarised the main changes that the Committee wanted to see being made to the proposed Measure at Stage 2. Speaking on behalf of the Committee, the Chair, Val Lloyd AM, stated that:

We believe that an overarching statement needs to be incorporated within the measure clearly stating that the purpose of the legislation is to promote and develop the Welsh language, consistent with retaining the support and goodwill of non-Welsh speakers.<sup>1</sup>

Other recommendations proposed by the Committee included:

- a clear statement in section one of the Measure clearly stating that English and Welsh are the official languages of Wales;
- a mechanism contained in the Measure whereby the Welsh Language Commissioner is nominated by the First Minister and then approved by the National Assembly;
- that the Minister review the provisions in the Measure that exert some form of Ministerial control over the Welsh Language Commissioner;
- that the budget for regulating and promoting the Welsh Language should be subject to annual scrutiny by an Assembly committee;
- that members of the Advisory Panel should be nominated by Welsh Ministers and then approved by the National Assembly;
- there should be a duty to consult organisations on standards regulations;
- the Language Commissioner must also consult with the public when carrying out a standards investigation;

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<sup>1</sup> [National Assembly for Wales, \*Improvements needed to proposed new Welsh Language Measure in order to make law work for everyone in Wales\*, July 22 2010 \[Accessed 12 October 2010\]](#)

- that for the sake of clarity and accuracy, and in addition to the powers of the Language Commissioner, that any instances concerning an individual's freedom to use Welsh should be dealt with by current race relations and equality legislation.<sup>2</sup>

### 3. Stage 1 debate on the General Principles of the proposed Measure

The Stage 1 debate on the General Principles of the proposed Measure took place on 21 September 2010. During the debate, the Minister for Heritage, Alun Ffred Jones, addressed the recommendations made by Legislation Committee No.2 in their Stage 1 report and gave an outline of the amendments that the Welsh Government would bring forward at Stage 2.

On the official status of the Welsh language, the Minister stated:

I can confirm today that the Government has considered how the statement can be made even clearer with regard to official status, and an amendment will be tabled in due course.<sup>3</sup>

The Minister also stated that amendments would be tabled in relation to the independence of the Welsh Language Commissioner ("the Commissioner") and the Welsh Language Tribunal ("the Tribunal"):

The independence of the commissioner is very important and there has been considerable discussion of that since the publication of the proposed Measure. Therefore, I will table amendments that will help to confirm our intention to create an independent commissioner. The same is true regarding the independence of the Welsh language tribunal and I will also, therefore, introduce amendments that will help to confirm our intention to create an independent tribunal.<sup>4</sup>

In addition, further amendments would be tabled to clarify the focus and nature of the Commissioner's functions:

On the focus of the commissioner's work, we will want to strengthen those parts of the proposed Measure relating to the functions of the commissioner to ensure that the Welsh language is the focus of the work and to ensure that the intention of the regulatory work is to make sure that the Welsh language is not treated less favourably than English. The commissioner will also be expected to reflect the fact that the language has official status as he or she goes about implementing the proposed Measure.<sup>5</sup>

In response to the Committee's Stage 1 recommendations, the Minister stated that amendments would be brought forward to strengthen the Commissioner's duties to consult with stakeholders before the publication of standards regulations by Welsh Ministers:

I would like to strengthen the section that enables the commissioner to consult with the public when considering the nature and content of the proposed language standards. That was the intention from the start, but perhaps it is not apparent to all in the way that the proposed Measure is worded at the moment. I am also considering the role of the public in

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<sup>2</sup> [National Assembly for Wales, \*Improvements needed to proposed new Welsh Language Measure in order to make law work for everyone in Wales\*, July 22 2010 \[Accessed 12 October 2010\]](#)

<sup>3</sup> [RoP, 21 September 2010](#)

<sup>4</sup> [RoP, 21 September 2010](#)

<sup>5</sup> [RoP, 21 September 2010](#)

cases where it is alleged that a standard has been breached, and where an appeal is made against any decision by the commissioner in favour of the complainant.<sup>6</sup>

The Minister was not convinced however by the Committee's arguments to remove Part 6 of the proposed Measure relating to the freedom to use Welsh:

Although I have had suggestions that that part which relates to freedom to use Welsh should be deleted, having weighed up the arguments I am still of the opinion that those important provisions should be retained in the proposed Measure. They make a clear statement about the role of the commissioner to conduct inquiries into alleged interference with the freedom of individuals to speak the Welsh language to each other.<sup>7</sup>

The Minister also defended the new standards framework included in the proposed Measure:

I still believe strongly, if not more strongly than ever, that the proposed Measure that I proposed in the spring represents sensible, useful and purposeful legislation. The proposed Measure will set a firm foundation and a framework. Once passed, we will be able to introduce subordinate legislation to create standards that will, in turn, lead to better services for Welsh speakers and provide the right for them to receive services through the medium of Welsh. The standards will also ensure that public bodies and others will need to consider the Welsh language in developing new policies and services.<sup>8</sup>

Finally, the Minister announced that amendments would be tabled in order to establish a Welsh Language Partnership Council to ensure a regular dialogue between Ministers and a cross-section of organisations that have an interest in the Welsh language:

Although the commissioner and the advisory panel will be in a position to advise the Government on issues relating to the Welsh language, I am of the opinion that the Government would also benefit from ensuring a regular dialogue between Ministers and a cross-section of organisations that have an interest in the Welsh language and that have a contribution to make in promoting the language—and which, indeed, already make a contribution to promoting the Welsh language. These are the organisations that have an interest in the introduction of the Government's language strategy. Therefore, I will propose an appropriate amendment to the proposed Measure to ensure that, by creating a Welsh language partnership council.<sup>9</sup>

Following the Stage 1 debate, the Assembly agreed unanimously to the general principles of the proposed Measure.

#### 4. Stage 2

Stage 2 proceedings took place over two meetings of Legislation Committee No.2 on 14 and 21 October 2010. A summary of all the amendments tabled in relation to each Section of the proposed Measure are included below under the groupings which they were debated by Members in Committee.

Under Standing Order 23.33 any Assembly Member may table amendments for

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<sup>6</sup> [RoP, 21 September 2010](#)

<sup>7</sup> [RoP, 21 September 2010](#)

<sup>8</sup> [RoP, 21 September 2010](#)

<sup>9</sup> [RoP, 21 September 2010](#)



consideration by a Committee at Stage 2, but, as is stated in Standing Order 23.35, only members of the Committee can move and vote upon those amendments. An Assembly Member may however, with the permission of the Chair, participate in a Committee (but not vote at Stage 2) under Standing Order 10.43.

Leanne Wood, who was not a member of Legislation Committee No.2, tabled numerous amendments to the proposed Measure but only attended the second meeting of Stage 2 proceedings of the proposed Measure on 21 October 2010.

#### 4.1. *Part 1: Official Status of the Welsh Language*

##### **Official Status of the Welsh Language (amendments 5 and 153):**

Amendment 5, proposed by the Minister, was agreed by the Committee. The amendment leaves out the whole of subsections (1) and (2) in Section 1 and inserts completely new subsections relating to the official status of the Welsh Language. The full amendment is included below:

Page 12, line 13, leave out subsections (1) to (2) and insert—

- ( ) The Welsh language has official status in Wales.
- ( ) The official status of the Welsh language is given legal effect by the enactments about—
  - (a) duties on bodies to use the Welsh language, and the rights which arise from the enforceability of those duties, which enable Welsh speakers to use the language in dealings with those bodies (such as the provision of services by those bodies);
  - (b) the treatment of the Welsh language no less favourably than the English language;
  - (c) the validity of the use of the Welsh language;
  - (d) the promotion and facilitation of the use of the Welsh language;
  - (e) the freedom of persons wishing to use the Welsh language to do so with one another;
  - (f) the creation of the Welsh Language Commissioner; and
  - (g) other matters relating to the Welsh language.
- ( ) Those enactments include (but are not limited to) the enactments which—
  - (a) require the Welsh and English languages to be treated on the basis of equality in the conduct of the proceedings of the National Assembly for Wales;
  - (b) confer a right to speak the Welsh language in legal proceedings in Wales;
  - (c) give equal standing to the Welsh and English texts of—
    - (i) Measures and Acts of the National Assembly for Wales, and
    - (ii) subordinate legislation;
  - (d) impose a duty on the Welsh Ministers to adopt a strategy setting out how they propose to promote and facilitate the use of the Welsh language;
  - (e) create standards of conduct that relate to the use of the Welsh language, or the

treatment of the Welsh language no less favourably than the English language, in connection with—

- (i) delivering services,
  - (ii) making policy, and
  - (iii) exercising functions or conducting businesses and other undertakings;
- (f) create standards of conduct in promoting and facilitating the use of the Welsh language;
- (g) create standards of conduct for keeping records in connection with the Welsh language;
- (h) impose a duty to comply with those standards of conduct that are created, and create remedies for failures to comply with them; and
- (i) create the Welsh Language Commissioner with functions that include—
  - (ii) promoting the use of the Welsh language,
  - (iii) facilitating the use of the Welsh language,
  - (iv) working towards ensuring that the Welsh language is treated no less favourably than the English language
  - (v) conducting inquiries into matters relating to the Commissioner's functions, and
  - (vi) investigating interference with the freedom to use the Welsh language.<sup>10</sup>

In speaking to amendment 5, the Minister stated:

The Government has given careful consideration to its amendment in light of the strength of the views put forward during the committee's consideration of the proposed Measure at Stage 1 that section 1, as drafted, did not achieve the 'One Wales' objective of confirming official status. The result is seen in amendment 5, which confirms the official status of the Welsh language and provides certainty as to how the law gives legal effect to the concept of official status for the Welsh language. To this end, new subsection 1 states that the Welsh language has official status in Wales. New subsection 2 provides that legal effect is given to official status through legislation about the matters described in that part of the legislation. New subsection 3 provides examples of the types of enactments that give legal effect to the official status of the Welsh language. New subsection 4 states that the proposed Measure does not affect the status of the English language in Wales. In Wales, the English language already enjoys the status of being the language of default of the Governments of the UK. Therefore, it is important to stress that the rights of English speakers are not affected.<sup>11</sup>

Amendment 153, proposed by Jenny Randerson, was not agreed by the Committee. This amendment sought to leave out section 1 in its entirety, and to insert an alternative statement on the official status of the Welsh language to that proposed by the Minister.

In speaking to the amendment, Kirsty Williams told the Committee:

... we believe that the Minister's amendment is very complex. It sets out several areas where the official status of the language is guaranteed, such as in the proceedings of our own

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<sup>10</sup> Notice of Amendments tabled on 5 October 2010, Amendment 5

<sup>11</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 20

institution, the National Assembly, by setting standards for the use of Welsh. Nevertheless, we believe that there is a danger in this approach. By setting out in such detail the circumstances in which Welsh is equal, it inevitably implies that anything not included on the list does not have equal status. Our amendment is simple and clear. It is directly based on the committee's report and previous work, including a specific proposed amendment. We believe that the inclusion of a clear, unambiguous statement of official status is an important symbolic action. Without that, the whole proposed Measure is undermined.<sup>12</sup>

Paul Davies supported amendment 153 and felt it to be a better alternative to the Government's proposed amendment:

I understand the Government's amendment, and that it endeavours to strengthen the proposed Measure, but it does not go far enough. If we want to create a truly bilingual Wales, it is crucial that Welsh and English are recognised as official languages of Wales and that they are treated equally.<sup>13</sup>

In response, the Minister stated the reasons why he would not be supporting the alternative statement on the official status of the Welsh language as proposed by Jenny Randerson :

For the most part, critics of section 1 as drafted have advocated the insertion of a broad statement along the lines of amendment 153. However, an amendment such as is proposed is completely unpredictable and ambiguous in terms of its legal effect. It should be borne in mind that a key part of the Assembly's role as a democratically elected legislature is to produce clear and certain legislation, and what is proposed in amendment 153 represents the opposite of these aims and would result in lawyers challenging and, ultimately, courts of law determining the effect of this section. I cannot for the life of me believe that that is what Members of this Assembly would want.<sup>14</sup>

#### 4.2. *Part 2: The Welsh Language Commissioner*

##### **Appointment (amendments 158, 66, 67 and 159):**

Amendments 66 and 67, proposed by the Minister, were approved by the Committee. These amendments increase the duration of the Commissioner's appointment from five to seven years and limits it to a single term without reappointment. In speaking in support of these amendments the Minister stated:

Taking both together, the purpose of the amendments is to increase the duration of the commissioner's appointment from five to seven years, and limit it to a single term without reappointment. Together, these amendments will ensure that the commissioner holds office for a sufficient amount of time to be able to make a difference, and removing the provision for reappointment would mean that the commissioner would be unconcerned by the prospect of reappointment at the end of his or her tenure, and would be able to carry out his or her functions independently until the end of the appointment period. That is consistent with the appointment of the Children's Commissioner for Wales. I therefore urge the committee to support amendments 66 and 67.<sup>15</sup>

Amendments 158 and 159, proposed by Paul Davies, were not agreed by the Committee.

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<sup>12</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 13

<sup>13</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 14

<sup>14</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 18

<sup>15</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 40

These amendments sought to change the appointment process of the Commissioner so that he or she would be appointed by a resolution of the National Assembly on a motion proposed by the First Minister.

In speaking to his amendments, Paul Davies told the Committee that:

The purpose of these amendments is to ensure the independence of the commissioner, which is crucial to this process. My amendments ensure that the process is open and transparent. I do not believe that the appointment of the commissioner should be carried out by the First Minister or by the Ministers, because it is crucial that there should be an arm's length between Ministers and the commissioner.<sup>16</sup>

He also emphasised that the amendments reflected the recommendations of the Committee's Stage 1 report:

I also remind the committee that it was this committee, at Stage 1 of the proposed Measure, that suggested exactly what my amendments are endeavouring to achieve.<sup>17</sup>

Kirsty Williams supported the amendments and added:

We feel that with a commissioner who must, perhaps, at some stage—not necessarily with this Minister, but with Ministers in years to come—go head to head with a Minister over an issue, a situation could arise in which the commissioner could be seen to be weak in failing to challenge the Government in its handling of issues surrounding the language. We believe that amendments 158 and 159 will strengthen the hand of the commissioner by making this more at arm's length than is currently envisaged.<sup>18</sup>

The Minister in his response did not accept that the appointment process needed changing and defended the provisions relating to the appointment of the Commissioner which were already contained in the proposed Measure:

It is worth emphasising once again that the method that we recommend, that the First Minister makes the appointment, is totally consistent with the process of appointing the Children's Commissioner for Wales and the Commissioner for Older People in Wales. It is exactly the same process. I have listened to the evidence that has been presented regarding the Assembly's role in appointments. The proposed Measure, as drafted, allows the First Minister to take heed of the views of the National Assembly, the committees of the National Assembly and individual Members, in undertaking the task of appointing a commissioner. Furthermore, checks and balances have been built in to that process to ensure that it is open, transparent and fair.<sup>19</sup>

In responding to the debate, Paul Davies disagreed with the Minister and stated that a different appointment process was justified in this instance given the relatively extensive statutory powers of the Commissioner:

I have listened carefully to the Minister's comments on the appointment of other commissioners, but there is a difference between the appointment of the children's commissioner or the older people's commissioner and the appointment of the language

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<sup>16</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 31

<sup>17</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 32

<sup>18</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 33

<sup>19</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 35

commissioner, because the language commissioner will have more powers. Therefore, for the public to have confidence in the system, it is important that they see that the commissioner should be appointed independently, and the most effective way of doing that is to ensure that it is done by the National Assembly.<sup>20</sup>

### **Welsh Ministers' functions in relation to the Welsh Language Commissioner (amendments 64, 181 and 12):**

Amendments 64 and 12, proposed by the Minister, were approved by the Committee. These amendments sought to strengthen the independence of the Commissioner from the Welsh Government. In supporting both amendments, the Minister stated that:

[Amendment 64] will place a duty on the Welsh Ministers when exercising functions in relation to the commissioner to have regard to the desirability of ensuring that the commissioner is under as few constraints as reasonably possible when determining his or her own activities, timetables and priorities. Such a duty would require the Welsh Ministers, when exercising any functions in relation to the commissioner, to give careful consideration to the way in which the function is exercised. Any failure on the part of the Welsh Ministers to comply with the duty to have regard to the desirability of minimising the constraints placed upon the commissioner could be subject to the overview of the courts by way of judicial review. As such, I believe that this amendment will provide an additional safeguard in relation to the commissioner's independence from Government ...

I have responded to the view expressed by some stakeholders, and also raised in the committee's Stage 1 report, of the wish to see additional safeguards included in the proposed Measure to secure the commissioner's independence from Government. I have therefore tabled amendment 12, which provides exceptions to the Welsh Ministers' power to give direction to the commissioner under section 15—a power that I would expect to be used only in exceptional cases in any event. That will mean that the Welsh Ministers will not be able to give directions to the commissioner in relation to giving a compliance notice to a person, under Part 5 of the proposed Measure, 'Enforcement of Standards', and Part 6 on the 'Freedom to use Welsh'. In other words, this amendment will secure the commissioner's independence from Government in undertaking his or her key regulatory function of imposing and enforcing standards on organisations and investigating alleged interferences with a person's freedom to use Welsh.<sup>21</sup>

Amendment 181, proposed by Leanne Wood, was not moved and therefore not voted upon.

### **Technical and Miscellaneous Amendments (amendments 65, 68, 70, 11, 14, 15, 16, 17, 71, 72, 73, 74, 75, 76, 122, 23, 24, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 39, 41, 126, 127, 128, 129, 130, 131, 132, 46, 47, 49, 53, 133, 134, 135, 136, 138, 139, 54, 55, 59, 63 and 4):**

All the above amendments, proposed by the Minister, were approved by the Committee. They made only technical and consequential changes to the proposed Measure.

### **Finance (Amendment 69):**

Amendment 69, proposed by the Minister was agreed by the Committee. In moving the

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<sup>20</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 41

<sup>21</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 46-47

amendment, the Minister stated:

Amendment 69 provides the Welsh Ministers with an express power to fund the commissioner. It was always the intention that the commissioner should be funded by the Welsh Ministers ...<sup>22</sup>

### **Functions (Amendments 185, 186, 10, 160 and 6)**

Amendments 6 and 10, proposed by the Minister, were agreed by the Committee. Amendment 10 made drafting improvements by providing consistency between the drafting of other sections within the proposed Measure.

Amendment 6 sought to clarify the purpose of the office of the Commissioner. The Minister explained that this amendment was in response to the comments of stakeholders during the Stage 1 scrutiny of the proposed Measure that “felt that the purpose of the office of a Welsh language commissioner needed to be more clearly articulated in the proposed Measure”.<sup>23</sup> He further explained that this new approach:

... clearly sets out the commissioner’s principal aim and therefore the expectations on him or her as a result of the proposed Measure. I have tabled amendment 6 to ensure that the commissioner’s principal aim in exercising his or her functions is to promote and facilitate the use of the Welsh language. The proposed new section also places a duty on the commissioner in exercising any of his or her functions in accordance with the same to undertake certain actions that include working towards increasing the use of the Welsh language in the provision of services and increasing other opportunities for persons to use the Welsh language.

Amendment 6 also requires the commissioner in exercising his or her functions in accordance with the principal aim to have regard to the official status that the Welsh language has in Wales ; the duties to use Welsh that are or may be imposed by law and the rights that arise from the enforceability of those duties; the principle that, in Wales, the Welsh language should be treated no less favourably than the English language; and the principle that persons in Wales should be able to live their lives through the medium of Welsh. For these reasons, I urge the committee to support amendment 6, which I have tabled.<sup>24</sup>

Amendment 160, proposed by Paul Davies, was not approved by the Committee. This amendment sought to “separate the responsibilities for promoting and regulating the Welsh language” so that each function would be completely independent of each other. In speaking to his amendment, Paul Davies stated:

Some fear that a situation in which one person has responsibility for promoting and policing the Welsh language could create problems in the future. It would be far more desirable if regulating and promoting the Welsh language were completely independent of each other, so as to avoid inconsistency ...

This amendment proposes that the deputy commissioner, or another individual in the office of the commissioner, should be responsible for promoting the Welsh language, while the

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<sup>22</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 72

<sup>23</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 130

<sup>24</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 130-132

commissioner is responsible for policing and regulating it. I believe that this amendment provides the flexibility necessary for the commissioner to structure the office of the commissioner as he or she sees fit. The commissioner would therefore decide how the responsibilities for policing and promoting the language would be carried out. This amendment is appropriate, as it separates the promotional and regulatory responsibilities within the office of the commissioner.<sup>25</sup>

In response, the Minister felt that such an amendment was inappropriate as it would constrain the structure of the Commissioner's office and the scope of his / her work:

I would like to state, Paul, that you would be trying to tell the commissioner how exactly he or she would have to operate. We will have one commissioner and one office. Trying to state—in a proposed Measure—how the commissioner will operate, in this manner and in this field, is inappropriate. There is no certainty regarding where the main promotional work will rest. That decision has not yet been made. For the sake of clarity, and for the reasons I have already identified, I do not believe that this amendment should be accepted.<sup>26</sup>

Amendments 185 and 186, proposed by Leanne Wood, were not moved and therefore not voted upon.

#### **Treatment of Welsh and English (amendments 7, 18, 19, 20, 21 and 3):**

Amendments 7, 18, 19, 20, 21 and 3, proposed by the Minister, were agreed by the Committee.

The Minister explained that the purpose of these amendments were to change the long title at the beginning of the proposed Measure in order to outline in clear terms the purpose and intention of the proposed Measure from the outset. These reflect the recommendations made by the Committee in its Stage 1 report:

Taken together, amendments 7, 18, 19, 20, 21 and 3 reflect the discussions held during Stage 1 of the scrutiny regarding the aims of the proposed Measure. The committee suggested that the proposed Measure should state more clearly that its purpose is to promote and develop the Welsh language. The intention with these amendments is to reflect its aims, which are to promote the use of the Welsh language and to establish a commissioner with the core aim of promoting the Welsh language.

Amendment 7 will ensure that, in exercising his or her general functions, the commissioner may do anything that he or she thinks appropriate to work towards ensuring that the Welsh language is treated no less favourably than the English language. Amendment 18 will ensure that service delivery standards are intended to promote and facilitate the use of the Welsh language and will work towards ensuring that it is treated no less favourably than the English language.

Amendments 19, 20 and 21 will ensure that policy-making standards are intended to focus on the effects of policy decisions on the promotion and facilitation of the use of the Welsh language and on working towards ensuring that it is treated no less favourably than the English language. Amendment 3 is required to ensure that the long title of the proposed

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<sup>25</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 138-139

<sup>26</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 141

Measure accurately reflects those amendments.

The proposed Measure is designed to promote and facilitate the use of the Welsh language and to bring Welsh-language services up to the level of English-language services, because, as a rule, it is Welsh speakers who face difficulties obtaining services in Welsh. By and large, English speakers are well provided for with regard to their choice of language.

So, the purpose of these amendments is to give the work of the commissioner a clear direction and focus. The core aim behind the creation of these standards and those relating to policy is to strengthen the position of the Welsh language. I believe that these amendments reflect the discussions that took place in the committee at Stage 1, and I ask you to support them.<sup>27</sup>

### **Reporting Requirements (amendments 8 and 13):**

Amendments 8 and 13, proposed by the Minister, were agreed by the Committee. These amendments remove the duties imposed on the Commissioner to send copies of his five year and annual reports to the House of Commons and House of Lords.

In supporting this amendment, the Minister stated:

Having reviewed the content of the proposed Measure since its introduction, I have concluded that the commissioner's duty to publish his or her five-year report and an annual report is sufficient to ensure that interested MPs and peers will be able to access copies of these reports should they wish to do so ... The proposed Measure already rightly provides that these reports must be laid before the National Assembly. In publishing the reports, I am sure that the commissioner will wish to bring them to the attention of as wide an audience as possible and will utilise the most effective means of achieving this aim, including the internet.<sup>28</sup>

### **Inquiries (amendment 9):**

Amendment 9, proposed by the Minister, was agreed by the committee. This amendment removes subsection 6(8)(d), relating to the inquiries the Commissioner may conduct, from the proposed Measure. The Minister explained the rationale behind the removal:

Having reviewed section 6 of the proposed Measure as introduced, which provides the commissioner with a power to conduct inquiries into any matter relating to his or her functions, I have concluded that subsection 6(8)(d) needs to be removed ...

Briefly, the effect of section 6(8)(d) is to exclude from the inquiry any aspect that relates to the person under investigation and, in so doing, the provision goes beyond placing a restriction on inquiring into the suspected failure to comply with the relevant requirement. That section could result in the commissioner's having to discontinue or suspend an inquiry. My concern regarding this provision is that it could lead to a situation where the effectiveness of inquiries would be impaired because they would, as far as possible, have to refrain from looking into any aspect relating to the person under investigation, or which could require that person's involvement. Additionally, the commissioner could have to discontinue or suspend numerous inquiries which, among other things, could lead to a waste of public money. Such circumstances could also lead to the credibility of the

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<sup>27</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 86-90

<sup>28</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 108



commissioner's office and other inquiries conducted by the commissioner being undermined. The effect of amendment 9 will be to allow the commissioner freedom to continue with those aspects of an inquiry that relate to the person being investigated under Part 5 ... Deletion of the current provision would allow an inquiry under section 6 and an investigation under Part 5 to run in parallel and avoid the situation that an inquiry could not continue to look at any aspects of a particular person's conduct.<sup>29</sup>

#### 4.3. *Part 3: Advisory Panel to the Welsh Language Commissioner*

##### **Advisory Panel to the Welsh Language Commissioner (amendments 182, 161, 152, 162 and 183):**

Amendments 161 and 162, proposed by Paul Davies, were not agreed by the Committee. These amendments, which were similar to amendments 158 and 159 in relation to the appointment of the Commissioner, sought to change the appointment process for the Advisory Panel so that its members would be appointed by a resolution of the National Assembly on a motion proposed by the First Minister. In supporting his amendments, Paul Davies stated:

The amendments will protect this and future Governments from the possibility of being accused of influencing the process. By accepting the amendments, we will ensure that everyone has confidence in the system and that the process is independent, clear and transparent. These amendments also exactly reflect the recommendations made by this committee during Stage 1 of the proposed Measure.<sup>30</sup>

The Minister refused to accept these amendments and explained his reasons for doing so to the Committee:

I will take amendments 161 and 162 from Paul Davies together. As I have done in relation to the appointment of the commissioner, I have listened carefully to the evidence presented regarding giving the National Assembly a role in the process of appointing members to the advisory panel. Given that the purpose of the advisory panel is to provide expert advice and to act as a sounding board to assist the commissioner—as opposed to being Welsh Language Board mark 2—representing a wide variety of interests in Wales, it is entirely appropriate that its members should be appointed by Welsh Ministers. This is consistent with the fact that the commissioner will be appointed by the Government. An important principle that should be maintained is that the duty to appoint members of the advisory panel and the powers to dismiss them should rest with the same person. As such, it follows that the Welsh Ministers should be responsible for the dismissal of a member of the advisory panel, if they are satisfied that the person is unfit to continue as a member of panel, or is unwilling or unable to do so. Accordingly, I cannot support either of the amendments and urge the committee to resist amendments 161 and 162.<sup>31</sup>

Amendment 152, proposed by Jenny Randerson AM, was not agreed by the Committee. This amendment sought to ensure that the make-up of the Advisory Panel was representative of the Welsh population. In supporting the amendment, Kirsty Williams

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<sup>29</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 115-116

<sup>30</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 182

<sup>31</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 190

argued that:

Amendment 152 relates to the make-up of the advisory panel. We believe that the advisory panel has a role to play in advising and reflecting experiences and needs across the country. We would like to ensure that the panel is as diverse as possible to include representatives from a range of geographical areas in Wales whose experience of using services and use of Welsh in the community is very different. It could also look at reflecting the diversity of those people who speak the language—everything from people whose first language is Welsh to those who are learning the language. I appreciate that such diversity might be difficult to achieve given the current size of the panel, which at present is set to be three to five people. If this amendment was to be accepted, it would be the Welsh Liberal Democrats' intention to bring forward a further amendment at Stage 3 to allow the diversity to be accommodated in a larger panel, which it is currently unable to do, given its proposed size.<sup>32</sup>

The Minister was not persuaded by the arguments in favour of the amendment:

... The purpose of appointing a commissioner is to create a language champion. The commissioner will be such a champion and a very prominent figure who will be able to represent the interests of Welsh speakers from the point of view of imposing duties on bodies and ensuring that they are implemented. The panel will only act in an advisory capacity, and will not be involved with the commissioner's daily work. It will also not be involved in decision making, only as a source of expertise for the commissioner if required from time to time. Members of the panel may be recruited from within Wales but it is possible that they may be recruited from other countries in order to secure international expertise as regards language planning, or any other specialist field. It will be a small panel of three to five people in order to reflect the fact that its intention is to give expert advice to the commissioner, and not to act, as the board currently does, as some kind of body representing the whole diversity of Wales. It is not this panel's intention to create a language board mark 2.

Therefore, amendment 152 as proposed by Jenny Randerson seems to stem from a desire to create another Welsh Language Board and fails to appreciate the intended role of the panel, which is to advise the commissioner and not to represent particular interests.<sup>33</sup>

Amendments 182 and 183, proposed by Leanne Wood, were not moved and therefore not voted upon.

#### 4.4. *Part 4: Standards*

##### **Standards and bodies subject to standards (amendments 156, 155 and 154):**

Amendments 156, 155 and 154, proposed by Jenny Randerson, were not agreed by the Committee. The purpose of these amendments was to place a duty on Welsh Ministers to consult with the Commissioner and other relevant bodies before standards regulations are made under Section 25. In explaining the reasons behind proposing these amendments, Kirsty Williams told the Committee:

Under section 25, the Ministers have powers to set regulations in relation to standards and

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<sup>32</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 186

<sup>33</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 187-188



they can specify the different levels of performance, promotion and service delivery standards that the various organisations must meet. A common factor in the Government's approach to legislation at this time is that a lot of the devil is in the detail, which comes through in regulations at a later stage rather than being on the face of a Measure. These regulations have the potential to alter substantially the demands on various organisations covered by the proposed Measure. Therefore, it is reasonable for the Minister to consult with the commissioner and other relevant persons before making the regulations.

In addition, the Minister has the ability to add or remove organisations and public bodies from the list in Schedule 6, which details who is and who is not covered by the proposed Measure. Amendment 155 again says that, before using these powers to amend that list in Schedule 6, either to add or to remove persons, the Minister—this, of course, is not just about conferring powers to this individual Minister, but the generations of Ministers to follow—will be required to consult with the commissioner and others. Amendment 154 introduces a requirement to consult with the commissioner in relation to the specific standards that apply to particular organisations. The purpose behind all three amendments is to ensure that, before the Minister makes regulations under section 25, he consults with the commissioner and relevant bodies.<sup>34</sup>

In response, the Minister argued that there was no need to place such duties to consult on Welsh Ministers and that “there is plenty of provision within the proposed Measure for consultation in general”<sup>35</sup>. He added:

... Amendment 156 would require the Ministers, before making regulations under section 25, specifying standards, to consult the commissioner and such other persons as they consider appropriate. However, when it comes to making regulations, I have previously given assurances that a regulatory impact assessment would be prepared with regard to regulations dealing with the imposition of duties on persons, to be tabled alongside the regulations in each case. That assurance was spelt out in paragraph 5.3 of the explanatory memorandum accompanying the proposed Measure. As such, the Welsh Ministers will need to operate in accordance with the Welsh Ministers' regulatory impact assessment code for subordinate legislation, produced under section 76 of the Government of Wales Act 2006. That code includes a section on carrying out consultation in connection with regulatory impact assessments for subordinate legislation made by the Ministers. As part of the regulatory process, and in compiling any regulatory impact assessment, the Welsh Ministers are expected to carry out proper and appropriate consultation with those who are likely to be affected and those who have an interest in the overall impact of the legislation, such as the Welsh-language commissioner.

Regulations under section 25 would also be subject to the affirmative process, which will ensure scrutiny by the Assembly. Therefore, with the provisions set out in the Welsh Ministers' RIA code for subordinate legislation, there is no need for these amendments, as sufficient consultation will take place.

Amendment 155 would require the Ministers, before making an Order under section 34 amending the Schedule 6 and Schedule 8 tables to add or remove persons from those tables, to consult the commissioner along with the persons whom it was proposed to add or remove from Schedule 6 or Schedule 8 and other persons as they considered

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<sup>34</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 206-207

<sup>35</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 209

appropriate. In accordance with assurances given previously that a RIA would be prepared with regard to subordinate legislation dealing with the imposition of duties on persons, the Welsh Ministers will need to operate in accordance with the Welsh Ministers' regulatory impact assessment code for subordinate legislation and they would be expected to carry out proper and appropriate consultation with those who are likely to be affected and those who have an interest in the overall impact of the legislation.

An Order under section 34 that added or removed a person from Schedules 6 or 8 would also be subject to the affirmative procedure, which ensures scrutiny by the Assembly. In addition, to the extent that a standards investigation looks into whether P should be liable to comply with standards—where P is in Schedules 5 or 7, but not 6 or 8, P would be consulted as a relevant person. Again, therefore, I believe that there is no need for this amendment, since sufficient consultation will take place.

Amendment 154 would require Ministers, before making regulations under section 38 authorising the commissioner to give a person a compliance notice requiring that person to comply with a standard, to consult the commissioner, the person to whom it is proposed to make the standards specifically applicable, and such other persons as they consider appropriate. Again, in accordance with assurances given previously that a regulatory impact assessment would be prepared with regard to regulations dealing with the imposition of duties on persons, Welsh Ministers would need to operate in accordance with the Welsh Ministers' regulatory impact assessment code for subordinate legislation. So, again, there is no need for this amendment, since sufficient consultation will take place.<sup>36</sup>

#### **Specification (amendments 175, 178, 26, 184, 42, 176 and 177):**

Amendments 26 and 42, proposed by the Minister, were agreed by the Committee. These amendments give powers to the Welsh Ministers not to apply service delivery standards to certain persons in circumstances where it would be unreasonable or disproportionate to do so. In supporting these amendments, the Minister stated:

Without amendments 26 and 42, under section 41 of the proposed Measure as introduced, and to the extent that service delivery standards have been specified in regulations, the Welsh Ministers have to make service delivery standards specifically applicable in relation to all Schedule 9 activities carried out by a person. Therefore, it is implicit that the commissioner, in turn, is charged with recommending a service delivery standard that is reasonable and proportionate in relation to each Schedule 9 activity carried out by a person. That could create difficulties where the commissioner is of the view that, in relation to a particular Schedule 9 activity carried out by a person, no standard can be concluded to be reasonable and proportionate.

Therefore, amendments 26 and 42 will ensure that the commissioner has a discretion to conclude that in relation to a particular Schedule 9 activity carried out by a person, it would be unreasonable and/or disproportionate to make a service delivery standard applicable to that person, and that the Ministers, in turn, have the discretion not to make service delivery standards specifically applicable to a person in relation to a particular Schedule 9 activity.<sup>37</sup>

Amendments 175, 178, 184, 176 and 177 proposed by Leanne Wood, were not moved and

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<sup>36</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 209-214

<sup>37</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 54-55

therefore not voted upon.

**Promotion Standards (amendments 147, 77, 145, 146, 148, 149, 150, 151 and 22):**

All these amendments relate to Schedule 6 of the proposed Measure, which contains a list of the public bodies that are covered by the proposed Measure and the type of standards applicable to them.

Amendments 77 and 22, proposed by the Minister, were agreed by the Committee. These amendments add promotion standards to the standards that National Park Authorities in Wales could be subject to under Schedule 6 of the proposed Measure. In explaining the reasons behind extending promotion standards to National Park Authorities, the Minister stated:

National parks carry out, in very specific areas, functions that would normally be carried out by local authorities, such as making planning decisions, awarding grants and running educational courses for the public. The fact that legislative provision relating to national park authorities has an effect for the purpose of conserving and enhancing the natural beauty, wildlife and cultural heritage of an area, and of promoting opportunities for the understanding and enjoyment of those areas by the public suggests that national park authorities could, potentially, have an important strategic role to play regarding the promotion of the Welsh language.<sup>38</sup>

The Minister also explained that amendment 22 inserts a new subsection (e) to Section 37 which:

... provides the opportunity for persons in Schedule 6 to give consent to the promotion standards being potentially applicable to them. Amendment 22 also defines what is meant by consent and provides for any person who has given consent to be required to comply with promotion standards to be able to free themselves from this commitment at a later date, subject to the agreement of Welsh Ministers, as is the case in relation to persons volunteering to be within other kinds of standards.<sup>39</sup>

The Minister highlighted that both amendments were “brought forward in response to a recommendation contained in your committee Stage 1 report to reconsider the range of bodies in respect of which promotion standards could apply”<sup>40</sup>.

Amendments 147, 145, 146, 148, 149, 150 and 151, proposed by Jenny Randerson, were not agreed by the Committee. The amendments proposed sought to add promotion standards to the standards that various cultural organisations in Wales, such as the Arts Council of Wales, the National Museum of Wales and community councils, would be subject to under Schedule 6 of the proposed Measure. In supporting the amendments, Kirsty Williams stated:

At Stage 1, the committee recommended that the proposed Measure be amended so that those organisations that have the Welsh language as a core function of their operations should have promotion standards added to the set of standards that would apply to them.

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<sup>38</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 255

<sup>39</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 256

<sup>40</sup> RoP, Legislation Committee No.2, 14 October, Paragraph 257

These amendments are intended to achieve that objective.

In addition, these amendments would apply promotion standards to community councils in order to achieve parity with local authorities and national parks. I believe that it is the Minister's intention to add to the Schedule, and I support that.

It should be noted that, potentially, these standards could be applied to some community councils, where it is thought appropriate, while those community councils where it is not deemed appropriate would not have the standards applied, thereby affording some flexibility. However, I believe that community councils should be included.<sup>41</sup>

In response, the Minister outlined his objections to these amendments:

The policy intention is that promotion standards would apply only to those organisations that already have a wide role to play with regard to shaping and developing communities. They should apply to organisations that already provide a strong lead as far as community development is concerned, and which have available to them the expertise, influence and authority that will enable them to take that lead. It is those types of organisations that will be in a position to exercise a widespread influence on local communities in relation to the use of Welsh. Promotion standards are about taking a wider view; they are about developing new initiatives and strategies aimed at promoting the use of Welsh within and across communities.

They are not suitable for organisations that have a specific focus to their work and that were established to deliver services related to specific fields. It would not be right or proper to expect those organisations to develop strategies to promote the use of Welsh in the wider sense of these words within the communities that they serve. Community councils, the Arts Council of Wales, the BBC, the National Library of Wales, National Museum Wales, S4C and the Welsh Books Council all have a crucial role to play in promoting the Welsh language. However, they do so through the undertaking of their core functions. In this sense, all of the organisations listed in Schedule 6 could have a role to play with regard to promoting the use of Welsh, but as part of their ongoing core activities and as part of the services that they offer or in policy development in their specific areas.<sup>42</sup>

**Public bodies subject to Standards (amendments 78, 79, 80, 81, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 143, 144, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 141, 142, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120 and 121):**

Amendments 78, 79, 80, 81, 82, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 143, 144, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 141, 142, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120 and 121, proposed by the Minister, were agreed by the Committee. All these amendments make changes to Schedule 6 of the table. The Minister explained the reasons behind the proposed changes:

These amendments all make changes to the Schedule 6 table. The amendments either remove references to persons from column 1 of the Schedule 6 table, and remove the entries detailing the class of standard potentially applicable to those persons in column 2 of that table, such as when bodies cease to exist, and as a result of mergers, or they add persons to column 1 of the Schedule 6 table and insert references in column 2 to the class

<sup>41</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 245-247

<sup>42</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 249-250

of standard potentially applicable to those persons, such as newly created bodies, and, having reflected on the list again, bodies that were omitted from the original list. It also ensures that standards can be imposed on those organisations that are located outside of Wales but that operate in relation to Wales, by amending references that capture only the Wales branch of an organisation, or correct the names of organisations listed in column 1 of the Schedule 6 table. I am happy to explain any of these amendments individually, should the committee wish me to do so.<sup>43</sup>

### **Other persons liable to comply with Standards (amendments 123, 124 and 125):**

Amendments 123, 124 and 125, proposed by the Minister, were agreed by the Committee. These amendments directly addressed a recommendation made by the Committee in their Stage 1 report which suggested that standards should not apply to suppliers of Liquefied Petroleum Gas (LPG). The Minister stated:

These amendments were tabled as a direct response to the concerns expressed by stakeholders and the recommendation of this committee's Stage 1 report that 'Schedule 8 be amended to clarify that the standards will not apply to LPG providers'.

Unless Members wish me to give further information, I trust that the members of the committee will support these amendments.<sup>44</sup>

### **Standards – Application for right of challenge (amendments 187 and 188):**

Amendments 187 and 188, proposed by Leanne Wood, were not moved and therefore not voted upon.

### **Appeals against the imposition of Standards (amendments 37, 40 and 38):**

Amendments 37, 40 and 38, proposed by the Minister, were agreed by the Committee. Amendments 37 and 38 clarify Section 57 of the proposed Measure which deals with the right of a person to appeal to the High Court against the decisions of the Tribunal on a point of law. In supporting these amendments, the Ministers stated:

Amendment 37 improves the drafting in relation to the right of appeal under section 57. Under that section a person may make an appeal to the against the commissioner's decision that to comply with a standard, or to comply with a standard in a particular way, is not unreasonable or disproportionate. The amendment clarifies that section 57 is subject to the rules of the tribunal, which, among other things, can make provision in relation to the way in which appeals under section 57 may be brought forward. The amendment will ensure consistency with section 91, which makes provision about appeals to the tribunal regarding the commissioner's decisions and enforcement actions taken by him in relation to a breach of a relevant requirement, such as an alleged breach of a standard. Therefore, I urge you to support amendment 37.

Amendment 38 provides a route by which to appeal against the decisions of the tribunal under section 57 of the proposed Measure. In a situation where the tribunal has come to a decision on an appeal under section 57, amendment 38 would enable a person to appeal to the High Court against that decision on a point of law. The permission of the tribunal and

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<sup>43</sup> RoP, Legislation Committee No.2, 14 October, Paragraphs 267

<sup>44</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 9-11

the High Court would be required before an appeal could be made to the High Court. The amendment ensures consistency with section 93, which makes provision for bringing an appeal to the High Court on points of law in relation to the commissioner's decisions and enforcement action taken by the commissioner regarding a breach of a relevant requirement, such as alleged breach of a standard.<sup>45</sup>

Amendments 40 made drafting improvements to the proposed Measure in light of the changes proposed by amendments 37 and 38.

### **Standards investigations (amendments 43, 44, 163 and 45):**

Amendments 43, 44 and 45, proposed by the Minister, were agreed by the Committee. Amendments 43 and 44 relate to the Committee's Stage 1 report recommendations which suggested that Section 61(2) be amended to place a duty on the Commissioner to consult with the public when carrying out a standards investigation. According to the Minister:

Amendments 43 and 44 will ensure that the commissioner must consult each relevant person as defined in section 61(4), the advisory panel and the public. However, the commissioner will not be required to consult the public if, or to the extent that, the commissioner considers it to be inappropriate to do so.<sup>46</sup>

As a result of the changes proposed by amendments 43 and 44, amendment 45 removes the provision requiring the Commissioner to send a copy of a standards report following a standards investigation to Welsh Ministers in addition to each person he or she consulted. According to the Minister, this would be:

... impractical and a waste of public money. In any case, it would be undesirable for the commissioner to be under a duty to send a copy of the report to persons with no interest in the outcome of an investigation. However, these amendments will ensure that any person who responds to a consultation undertaken by the commissioner will receive a copy of the standards report.<sup>47</sup>

Amendment 163, proposed by Paul Davies, was not agreed by the Committee. This amendment sought to place a duty on the Commissioner to consult any professional or statutory body that has an interest in an investigation by the Commissioner. In supporting his amendment, Paul Davies told the Committee:

It is essential that the commissioner's investigations are open and transparent, so it is vital that statutory and professional bodies have the right to have their say in an investigation into non-compliance with standards and that the commissioner consults them. Although some organisations will not have a direct interest in an investigation, it is important that the commissioner consults as widely as possible. In doing this, the commissioner will ensure that the investigation is thorough, and this will also give people confidence in the system by ensuring that organisations have the right to be consulted.<sup>48</sup>

The Minister stated that he was not in favour of such an approach and was content that there would be sufficient time for stakeholders to submit their views to the Commissioner

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<sup>45</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 97-98

<sup>46</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 118

<sup>47</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 122

<sup>48</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 124



during standards investigations:

I am not minded to single out specific additional categories of persons whom the commissioner must consult beyond each relevant person, the advisory panel and the public. There is a risk that, by imposing amendment 163 as a duty on the commissioner, we would place an onerous administrative burden on the commissioner. If we were to single out specific categories of persons, why stop at relevant regulatory or professional bodies? Once we start down this road, we could conclude that we should add further specific categories. For example, we might conclude that we should add organisations that fund the relevant persons or organisations that are regulated by the relevant person and so on.

The commissioner would be placed under a duty to identify and contact all compulsory consultees individually in order to discharge his or her duty. That would be the case even if the standards related only to the internal activities of the body subject to investigation. Such consultation could be onerous for both the commissioner and the regulatory bodies consulted. There is nothing in the proposed Measure to prevent a professional or regulatory body from participating in a public consultation. Participants in a consultation will be sent a copy of the commissioner's standards report as a result of the amendments to section 62 of the proposed Measure. I am content that there will be sufficient opportunities for professional or regulatory bodies to participate in the development of standards without having to include specific provision in the proposed Measure that would place such onerous duties on the commissioner.<sup>49</sup>

#### 4.5. *Part 5: Enforcement of Standards*

##### **Enforcement – Investigating failure to comply with Standards (amendments 157, 48 and 52):**

Amendments 48 and 52, proposed by the Minister, were agreed by the Committee. These amendments amend the duties placed on the Commissioner under Section 84(6) ('Consultation before final determination etc') of the proposed Measure. According to the Minister:

Amendment 48 will amend the duty placed upon the commissioner under section 84(6) of the proposed Measure. Under section 84, where the commissioner undertakes a section 70 investigation to, for example, breach of a standard, before the commissioner makes a final determination, or settles the investigation through his report, he or she must give the person being investigated, as well as the person who made the complaint that led to the investigation, the opportunity to make representations about the proposals. The commissioner must also give the person being investigated the opportunity to make representations about the further action, if any, that the commissioner proposes taking. Rather than having to consider any representations made by the person being investigated and the person whose complaint led to the investigation, the commissioner will have due regard to those representations before the commissioner does anything to which the representations relate.<sup>50</sup>

Amendment 52 made similar changes to the proposed Measure:

This amendment requires the commissioner to inform the person whose complaint led to

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<sup>49</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 119-120

<sup>50</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 189

the investigation about the lodging of the appeal and its outcome, in both cases, as soon as is reasonably practicable after the commissioner becomes aware of the appeal and its outcome. This will have the effect of ensuring that the person who made the initial complaint is kept informed of any developments following a section 70 investigation.<sup>51</sup>

Amendment 157, proposed by Jenny Randerson, was not agreed by the Committee. This amendment sought to expand the circumstances in which the Commissioner may conduct an investigation. In supporting the amendment, Jenny Randerson stated:

This amendment simply links section 70 with section 94. The purpose of this is to ensure that the commissioner may investigate without having received a complaint. It may be that the commissioner may have other evidence that leads him or her to feel that an investigation is necessary.<sup>52</sup>

The Minister believed that the amendment was “unnecessary”<sup>53</sup> and added that:

... the commissioner’s power to investigate under section 70 is not restricted, either expressly or implicitly, to cases where a valid complaint has been made under section 94. Section 70 provides that the commissioner is given the power to investigate a failure to comply with the relevant requirement as defined in the section. The only limitation placed on the commissioner’s power to investigate by section 70 is that contained in sub-section 70(3). This sub-section provides that:

‘If the relevant requirement is a duty to comply with a standard, the Commissioner may undertake an investigation under this section only if he or she suspects that D has failed to comply with the relevant requirement.’

Sub-section 70(3) does not state that the suspicion may be based only on a complaint made under section 94.<sup>54</sup>

### **Enforcement – Civil Penalties (amendment 180):**

Amendment 180, proposed by Leanne Wood, was not moved and therefore not voted upon.

### **Enforcement relating to Standards Appeals (amendments 164, 165, 166, 167, 168, 169, 50, 170 and 51):**

Amendments 50 and 51, proposed by the Minister, were agreed by the Committee. These amendments relate to Sections 92 (‘Powers of Tribunal on appeal’) and 93 (‘Appeals from the Tribunal’). In speaking to the amendments, the Minister stated:

Amendment 50 will have the effect of ensuring that the tribunal must notify a person who has appealed under section 91 against a decision by the commissioner relating to the enforcement of standards of its decision. The tribunal will also have to notify the commissioner of its decision ...

Amendment 51 clarifies the period of time within which an application may be made to the tribunal or the High Court for permission to appeal to the High Court, on a question of law, against a decision made by the tribunal on an appeal under section 91.<sup>55</sup>

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<sup>51</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 190

<sup>52</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 140

<sup>53</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 142

<sup>54</sup> Ibid

Amendments 164, 165, 166, 167, 168, 169 and 170, proposed by Paul Davies, were not agreed by the Committee. These amendments sought to enhance the rights of appeal of individuals within the proposed Measure. In supporting the amendments, Paul Davies stated:

The purpose of the amendments in this group is to give the individual a central role in this proposed Measure. It is vital that the role of the individual is central to such a Measure, and that is not the case at present. Currently, the role of the citizen ends after complaining to the commissioner. My amendments give the same rights of appeal to individuals as organisations and institutions in the proposed Measure. At present, organisations and institutions that have a complaint made against them have the right to appeal but the individual complainant does not have the same right. It is important that we ensure fairness in the proposed Measure and it is essential that we have equality for all. Currently, the proposed Measure is inconsistent, because it is obvious that it gives more rights to organisations and institutions that have a complaint made against them. I have received several representations from individuals and organisations saying that the proposed Measure is currently unfair. Indeed, this committee expressed concern about this at Stage 1 of the proposed Measure, and the report clearly states that there is a lack of a role for the citizen in the proposed Measure and that the Government must strengthen that role. The committee also stated in the report that the individual has very limited powers in the proposed Measure, so my amendments seek to place more emphasis on the individual and ensure that the citizens have the same rights as organisations and institutions.<sup>56</sup>

In response, the Minister refused to support the amendments on technical grounds:

Amendment 168 would appear to suggest that the date for beginning to calculate the 28 days in a case where P may appeal is the date upon which the commissioner gives both P and D a decision notice. If the decision notice is, for any reason, given on different days, D or P are unlikely to become aware of the date upon which the other was given the notice in order to calculate the 28-day period. Furthermore, there is no mechanism for resolving which day is the correct date. These points seem very minor and technical, but this is exactly the kind of thing that can create difficulty in legislation.

I draw your attention to amendment 169, where there is another technical error. Amendment 169 refers to an appeal by P, but it is set in a sub-section that deals with D, which is the body that has caused the offence. Therefore, technically, amendment 169 is inaccurate. I have listened to the committee's comments, and therefore I ask you, Paul, not to proceed to a vote on these amendments.<sup>57</sup>

The Minister did however add that "I hope to consider carefully your comments and the committee's discussion at a later date".<sup>58</sup>

In replying to the debate, Paul Davies pushed the amendments to a vote and in so doing expressed disappointment with the Minister's reasons for refusing to support his amendments:

I am disappointed that the Government is resisting the amendments in my name on a

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<sup>55</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 207-208

<sup>56</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 202

<sup>57</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 205-206

<sup>58</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 206

technicality. I am not clear, having heard the Minister's response, whether the Government intends to propose other amendments at Stage 3 in this particular area. Therefore, given that the Minister has not clarified this issue, I wish to proceed to a vote.<sup>59</sup>

#### 4.6. *Part 6: Freedom to Use Welsh*

##### **Freedom to Use Welsh – Appeals to the Welsh Language Tribunal (amendments 190, 191 and 189):**

Amendments 190, 191 and 189, proposed by Jenny Randerson, were not agreed by the Committee. These amendments sought to provide individuals with the right to appeal to the Welsh Language Tribunal in circumstances where the Commissioner decides not to investigate instances where an individual believes his freedom to use Welsh has been interfered with, or in circumstances where the Commissioner decides to discontinue such an on-going investigation. In speaking to the amendments, Jenny Randerson stated:

This set of amendments is based very closely on the recommendations of the committee, which stated that provision could also be made for the complainant to appeal to the tribunal against decisions by the commissioner. It is all part of empowering ordinary people through the whole of this process. Amendment 189 would insert a new section giving the public the right to appeal to the Welsh language tribunal against the commissioner's decision not to investigate or not to continue with an investigation. It gives the tribunal the power to direct the commissioner to investigate or to continue to investigate, and hence it gives more strength to ordinary people as complainants.<sup>60</sup>

In response, the Minister felt that the appeals provisions already included in the proposed Measure in relation to the freedom of individuals to use Welsh was sufficient:

The approach set out in Part 6 is for the commissioner to make recommendations and ... to report annually to Ministers with regard to the adequacy and effectiveness of the law in protecting the freedom of persons to speak Welsh with one another. We are not dealing with rights and duties here; we are dealing with a freedom to speak Welsh and enabling the commissioner to investigate and make recommendations. This is a light-touch approach and, as such, it is not necessary or appropriate to involve a tribunal in the process. Let us not forget that this committee has described the provision in Part 6 as being 'too complex and cumbersome.' I do not agree with that view, but I would suggest that adding an appeals mechanism would make this part of the proposed Measure more complex.<sup>61</sup>

#### 4.7. *Part 7: Welsh Language Tribunal*

##### **(amendments 171, 172, 137, 140, 56, 57 and 58)**

Amendments 137, 140, 56, 57 and 58, proposed by the Minister, were agreed by the Committee.

Amendment 137 extends the grounds for disqualification from membership of the tribunal contained in Paragraph 14 of Schedule 11. According to the Minister "this amendment maintains public confidence in the Tribunal's work by ensuring that persons who are

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<sup>59</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 210

<sup>60</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 230

<sup>61</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 234

subject to a moratorium under a debt relief Order are disqualified from membership of the tribunal".<sup>62</sup> Amendment 140 made drafting improvements to ensure consistency within Schedule 11 of the proposed Measure.

Amendments 56, 57 and 58 relate to the impartiality of the Tribunal. The changes made by these amendments were explained by the Minister:

Amendments 56, 57 and 58 relate to the impartiality of the tribunal and its independence or remove provision-placing duties upon the tribunal president. Amendment 56 removes the Welsh Ministers' power to require tribunal rules to be made. As introduced, the proposed Measure would confer power upon Welsh Ministers to give the president written notice that they consider it expedient for tribunal rules to include provision that would achieve a specified purpose. The president would then have to make such tribunal rules as he or she thinks necessary to achieve that purpose.

Amendment 57 removes the requirement for the president of the tribunal to give his or her annual report on the tribunal's exercise of its functions in that financial year to Welsh Ministers. Instead, this amendment requires the president of the tribunal to lay a copy of the report before the National Assembly for Wales. The amendment also removes the duty on the Welsh Ministers to send a copy of the tribunal's annual report to the House of Commons and the House of Lords. You may recall that a similar amendment, amendment 13, was accepted by the committee last week, removing the requirement on the commissioner to send copies of the annual report to the House of Commons and the House of Lords.

Amendment 58 removes the requirement for the president of the tribunal to undertake annual assessments of the performance of the other members of the tribunal.<sup>63</sup>

Amendments 171 and 172, proposed by Paul Davies, were not agreed by the Committee. These amendments sought to ensure the independence of the Tribunal and to ensure openness and transparency in the processes relating to the appointment of the Tribunal. In speaking to the amendments, Paul Davies stated:

I do not believe that Ministers should appoint a tribunal, because it is vital that the tribunal is at arm's length from Ministers. These amendments will protect this Government, and future Governments, from any possibility of accusations that they influence the process. By accepting these amendments, we will ensure that everyone has confidence in the system and that the process is truly independent, transparent and clear. These amendments also reflect the exact recommendation of this committee during stage 1 of the proposed Measure.<sup>64</sup>

In response, the Minister gave reasons why he would not support both amendments:

I firmly believe that it is not appropriate for the legislature to appoint members of the tribunal. The involvement of the Executive in appointing members of the tribunal is not a new development. It does not prevent the tribunal from acting independently in making decisions.

Amendment 172 would require the Welsh Ministers to seek the agreement of the National

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<sup>62</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 249

<sup>63</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 251-253

<sup>64</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 245

Assembly before dismissing a member of the tribunal. I do not support amendment 171, which seeks to change the way that members of the tribunal are appointed. I am firmly of the view that those provisions addressing dismissal should remain consistent with the arrangements for appointment.<sup>65</sup>

#### 4.8. *Part 9: Welsh Language Board, Welsh Language Schemes etc*

##### **Welsh Language Board functions under the Welsh Language Act 1993 (amendment 173):**

Amendment 173, proposed by Paul Davies, was not agreed by the Committee. The amendment sought to leave out subsection (3) under Section 134 ('Abolition of Board and transfer of functions') in order to "ensure the independence of the Welsh language from any political influence"<sup>66</sup>. Paul Davies explained the reasons behind the amendment to the Committee:

The purpose of this amendment is to ensure that the Government cannot take direct responsibility for promoting the Welsh language. It is imperative that there is arm's length between the Government and promotion of the language. This amendment would ensure, as a matter of principle, that the Welsh language is totally independent of Government and politicians. It would ensure that the Welsh language would not be used as a political football. I do not for one moment suggest that this Minister or this Government would do that, but the amendment would ensure that future Governments cannot use the language in a political way.<sup>67</sup>

In response, the Minister believed that agreeing amendment 173 would be "a big mistake" and that "it would prevent the functions of the board to promote and facilitate the use of Welsh from being transferred to Welsh Ministers".<sup>68</sup> The Minister added that:

Much of the evidence has indicated that regulation should not be tied to promoting the language. Therefore, it is difficult to imagine where promotion would take place if it did not lie with the Ministers.<sup>69</sup>

In addition, the Minister also told the Committee that it was important for the proposed Measure to retain a degree of flexibility "to enable the board's functions, or some of the board's functions, in relation to promoting and facilitating the use of Welsh, to be given to Welsh Ministers after the board is abolished".<sup>70</sup>

In response to the Committee's recommendations in its Stage 1 report that the Minister should announce whether the promotion of the language should be the responsibility of the Commissioner, or the Welsh Minister prior to the Stage 2 debate, the Minister stressed that:

These are issues that I need to discuss further with the Welsh Language Board, with a view to making it clear in the draft Welsh-language strategy how the responsibility for promoting

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<sup>65</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 247-248

<sup>66</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 308

<sup>67</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 301

<sup>68</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 303

<sup>69</sup> Ibid

<sup>70</sup> Ibid

the use of Welsh should be dealt with. Let me be quite clear, however, that I believe that there are clear advantages in retaining a strong and independent body outside of Government with the ability to deal with a wide range of issues and to advise the Government, and others, with regard to language policy.<sup>71</sup>

#### 4.9. *Part 10: Supplementary*

##### **Transitional stages (amendment 174):**

Amendment 174, proposed by Paul Davies, was not agreed by the Committee. The amendment sought to address the concerns raised by stakeholders about how the transition from the current system to the new structure would work in practice, and to ensure an effective transition. Paul Davies argued that such a transition was crucial so that “the board’s experience and expertise”<sup>72</sup> would not be lost. He added:

It is also important that we do not lose the goodwill that has been built up in developing the current voluntary arrangements. That is exactly what was stated in the committee’s report on the Stage 1 discussions of the proposed Measure. It is not clear in the proposed Measure as it stands how the new system will be introduced and how the old system will be abolished. We need clarity in the proposed Measure in order to give people confidence that the transition will be effective. The aim of this amendment is to ensure that the current system continues until the new standards are ready to take its place. The amendment will ensure a clear and effective transition, exactly as the committee suggested in its report.<sup>73</sup>

These arguments were supported by Jenny Randerson:

The key is to ensure that there is not a vacuum. So much momentum could be lost in the transition from schemes to standards. We see that with other initiatives of all kinds throughout Government, and so it is really important to have provisions so that we know how it will go forward.<sup>74</sup>

The Minister did not accept these arguments and told the Committee that the amendment was unnecessary:

I do not disagree with anything that Paul said about the importance of maintaining the goodwill and the relationships that the language board has built up with these various organisations. However, there is no need for this amendment as it is perfectly clear in the proposed Measure that language schemes will continue until the standards come into being. The effect of amendment 174 will be to add a new sub-section to section 136 that would prevent the revocation of Part II of the Welsh Language Act 1993 in its entirety until the language schemes of every public sector organisation have been superseded by the standards. That is not needed because the proposed Measure provides for a three-step transitional process, as outlined in its sections 134 to 136. Section 135 notes the beginning of the second transitional stage. It provides for the move from language schemes to standards, and section 135(2) is relevant in the context of this amendment. As a result of section 135(2), a ‘public body’ under Part II of the 1993 Act will become subject to

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<sup>71</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 303

<sup>72</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 312

<sup>73</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 313

<sup>74</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 314

standards and Part II will no longer apply.<sup>75</sup>

#### 4.10. *Other amendments*

##### **Subordinate Legislation (amendment 62):**

Amendment 62, proposed by the Minister, was agreed by the Committee. This amendment changed the procedures that two statutory making powers would be subject to under the proposed Measure. These changes were made in light of recommendations suggested by the Constitutional Affairs Committee.<sup>76</sup> The Minister explained the reasons for the amendment to the Committee:

Amendment 62 changes the procedure attached to two statutory-instrument-making powers in the proposed Measure. Both powers are currently subject to the negative resolution procedure. The first power is contained in section 143 and is the power to make an Order to make transitional and consequential provisions in respect of the proposed Measure. This amendment proposes to change the procedure attached to this Order-making power to the affirmative resolution procedure if the Order contains provision that makes a change to an Act of Parliament or an Assembly Measure, for example. The second power is contained in paragraph 7(1) of Schedule 1, and gives the Welsh Ministers the power to make regulations about the appointment of the commissioner. This amendment proposes to change the procedure attached to this Order-making power to the affirmative resolution procedure.

In coming to the decision to table amendments in this respect, we gave careful consideration to the arguments and recommendations of the Constitutional Affairs Committee in its report. We agree that the procedures for making statutory instruments under the powers contained in section 143 and paragraph 7(1) of Schedule 1 should be amended.<sup>77</sup>

##### **Welsh Language Strategy Action Plan and Welsh Language Partnership Council (amendments 60, 61 and 2):**

Amendments 60, 61 and 2, proposed by the Minister, were agreed by the Committee.

Amendment 60 places a new duty on Welsh Ministers to publish an annual plan in relation to the Welsh Language Strategy that they are required to adopt under section 78 of the *Government of Wales Act 2006*<sup>78</sup>. The Minister explained that a plan was required to “set out how the Welsh Ministers will implement proposals set out in the Welsh language strategy during the year”<sup>79</sup>. He added:

The strategy will have a relatively long shelf life and it will be important therefore to ensure that a plan is developed each year to set out the actions to be taken to deliver on the commitments contained in the strategy.<sup>80</sup>

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<sup>75</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 315

<sup>76</sup> Constitutional Affairs Committee, *Report on the Proposed Welsh Language (Wales) Measure*, July 2010

<sup>77</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 325

<sup>78</sup> Government of Wales Act 2006 (c.32)

<sup>79</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 345

<sup>80</sup> Ibid



Amendment 61 proposes the establishment of a Welsh Language Partnership Council. According to the Minister, the Council “may give advice or make representations to the Welsh Ministers in relation to their strategy and the plan”<sup>81</sup>. The Minister also outlined the Council’s functions:

The partnership council’s function will be to give advice and make representations to the Welsh Ministers in relation to the Government’s Welsh language strategy and, in addition, to give advice or make representations about the Welsh Ministers’ action plan to implement the proposals set out in the strategy.<sup>82</sup>

The Minister told the Committee that the establishment of the Council will:

... ensure that there is an enduring statutory requirement for the Government to work in partnership with those who have an interest in the Welsh language and in the Government’s Welsh language strategy.<sup>83</sup>

He further emphasised the importance of making “the most of the wide range of experience that is available to us in relation to the Welsh language”.<sup>84</sup>

The amendment also included details regarding the Council’s membership and placed “a requirement on the Welsh Ministers to make standing orders to regulate the arrangements of the council”<sup>85</sup>.

### **Rights in relation to Standards (amendments 177 and 192):**

Amendment 177, proposed by Leanne Wood, was moved for debate by the Chair<sup>86</sup>. Amendment 192, proposed by Leanne Wood, was not moved and therefore not voted upon. Amendment 177 introduced an entirely new section which sought to establish general rights to accompany standards. The amendment stated that:

Everyone has the right to use the Welsh language in Wales as far as that is reasonable and proportionate in the circumstances.<sup>87</sup>

Leanne Wood told the Committee that the amendment:

... seeks to put a guiding principle at the heart of the proposed Measure that explains to all, the public, the commissioner and the Government, the reason for setting standards for bodies to provide Welsh-language services. Establishing that general right would raise the expectations of people in Wales with regard to their relationship with the Welsh language, which is one problem that undermines its use. It would put flexibility in the proposed Measure and would mean that standards would automatically develop to reflect technological developments and substantial changes to the way in which services are provided to the public.

Gareth Jones also expressed concerns that there was a lack of balance in the proposed

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<sup>81</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 346

<sup>82</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 347

<sup>83</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 348

<sup>84</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 351

<sup>85</sup> RoP, Legislation Committee No.2, 21 October, Paragraphs 349-350

<sup>86</sup> Under Standing Order 23.35 only a member of the Committee may move an amendment.

<sup>87</sup> Notice of amendments tabled on 7 October 2010, Amendment 177

### Measure in relation to rights for Welsh speakers:

... we cannot avoid the fact that powerful bodies and organisations have the right to appeal, and they could do so with all manner of support and financial backing. However, as far as I can see, the same right is not extended to individuals, and the trust is all placed in the hands of the commissioner. It is possible for even the best people to fail sometimes, and the commissioner could get things wrong. In fairness to human rights, there should be some fall-back system to enable individuals to make a further appeal.<sup>88</sup>

Jenny Randerson believed that “a fundamental statement of rights would do a lot to strengthen the proposed Measure”<sup>89</sup> especially given the rejection of other amendments by the Committee during Stage 2 proceedings which were designed to strengthen individual rights in various ways.

In response to the discussion, the Minister stated:

It is not true to say that there is no reference to rights, as it is in the long title of the proposed Measure. In Part 1(2) of the proposed Measure we refer to the duties on bodies, which then become rights for individuals, and those rights are supported by the commissioner and through legislation. Therefore, we have moved a relatively long way in stating that the rights of users will be enshrined in Welsh legislation.<sup>90</sup>

The Minister also stated the Government’s intention to bring forward proposals at a later date in relation to the right of the individual to appeal against a decision made by the Commissioner:

We hope to bring forward a proposal that will respond to the comments that Gareth Jones made earlier in the next Stage. This issue merits very careful treatment. The last thing that we want to do is to create a system that ties the commissioner into processes that take up a great deal of time, resources and money. Therefore, in bringing proposals forward, we must be careful that that is not the inevitable outcome of those proposals. I hope that they will respond to what Paul said earlier, while also accepting the arguments presented by Leanne and Gareth in this debate.<sup>91</sup>

After replying to the debate, Leanne Wood did not want a vote on the amendment and in effect sought to withdraw it. However, withdrawal of an amendment can only take place by leave of the Committee (i.e. unanimous agreement under Standing Order 23.77). Jenny Randerson asked for a vote and the amendment was defeated.<sup>92</sup>

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<sup>88</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 372

<sup>89</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 374

<sup>90</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 375

<sup>91</sup> RoP, Legislation Committee No.2, 21 October, Paragraph 377

<sup>92</sup> Under Standing Order 23.35 only members of the Committee are allowed to vote and so Leanne Wood was not permitted to vote.



## **5. Stage 3**

The Stage 3 debate, where all Assembly Members will have a further opportunity to debate and vote on detailed amendments to the proposed Measure in Plenary, will take place on Tuesday, 30 November.

Assembly Members may table amendments via the Legislation Office. The deadline for tabling amendments will be 6pm on Tuesday, 23 November.