

Report on the Welsh Language and Education (Wales) Bill

December 2024



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Legislation, Justice and Constitution Committee
Welsh Parliament
Cardiff Bay
CF99 1SN

Tel: **0300 200 6565**

Email: **SeneddLJC@senedd.wales**

Twitter: **[@SeneddLJC](https://twitter.com/SeneddLJC)**

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About the Committee

The Committee was established on 26 May 2021. Its remit can be found at www.senedd.wales/SeneddLJC

Current Committee membership:



Committee Chair:
Mike Hedges MS
Welsh Labour



Natasha Asghar MS
Welsh Conservatives



Alun Davies MS
Welsh Labour



Adam Price MS
Plaid Cymru

Contents

1. Introduction	5
Purpose of the Bill	5
The Committee’s remit	6
2. Legislative competence	8
Human rights implications	8
Our view	9
3. General observations	11
The need for the Bill	11
Consultation on the Bill’s proposals	15
The absence of a definition of a Welsh speaker	16
Delegated powers and the balance between what is on the face of the Bill and what is left to subordinate legislation	16
Our view	20
4. Specific observations on particular Parts and sections of the Bill	24
Part 1 (Promotion and facilitation of use of the Welsh language)	24
Our view	26
Sections 8 to 10 (Welsh language education and school language categories)	26
Our view	30
Section 13 (Regulations on school language categories)	30
Our view	32
Sections 14 and 15 (School Welsh language education delivery plans and their approval)	33
Our view	33

Sections 18 to 20 (Minimum amount of Welsh language education: temporary and further exemption; and community special schools: plans and language category designation)	33
Our view.....	35
Section 23 (National Framework for Welsh Language Education and Learning Welsh).....	35
Our view.....	37
Sections 28 to 34 (Local Welsh in education strategic plans)	38
Our view.....	43
Part 5 and Schedule 2 (National Institute for Learning Welsh).....	45
Our view.....	50
Section 49 (Interpretation).....	51
Our view.....	51
Section 50 (Publication)	51
Our view.....	52

1. Introduction

On 15 July 2024, the then Cabinet Secretary for Economy, Energy and the Welsh Language, Jeremy Miles MS, introduced the Welsh Language and Education (Wales) Bill¹ (the Bill), and accompanying Explanatory Memorandum² (the EM).

1. On 9 July 2024, the Business Committee referred the Bill to the Children, Young People and Education Committee, and set a deadline of 13 December 2024 for reporting on its general principles.³
2. On 15 July 2024, the then Cabinet Secretary for Economy, Energy and the Welsh Language also issued a statement of policy intent for subordinate legislation to be made under the Bill (the statement of policy intent).⁴
3. On 17 September 2024, the First Minister of Wales, the Rt Hon Eluned Morgan MS, wrote to the Llywydd, the Rt Hon Elin Jones MS, to provide notification that the Cabinet Secretary for Finance and Welsh Language, the Rt Hon Mark Drakeford MS (the Cabinet Secretary), had been authorised to be Member in charge of the Bill.⁵ This followed the First Minister’s announcement of a new cabinet.⁶

Purpose of the Bill

4. On its introduction, the then Cabinet Secretary for Economy, Energy and the Welsh Language set out the purpose of the Bill as follows:

“We have committed to contribute towards the aim of ensuring one million Welsh speakers by 2050. This Bill will meet that objective by aiming to ensure that all pupils are independent

¹ [Welsh Language and Education \(Wales\) Bill, as introduced](#), July 2024

² [Welsh Language and Education \(Wales\) Bill, Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes](#), July 2024

³ Business Committee, [Timetable for consideration: Welsh Language and Education \(Wales\) Bill](#), July 2024

⁴ [Welsh Language and Education \(Wales\) Bill, Statement of Policy Intent for Subordinate Legislation to be made under this Bill](#), July 2024

⁵ [Letter from the First Minister to the Llywydd, 17 September 2024](#)

⁶ Welsh Government, [Written Statement: A new Government delivering for Wales](#), 11 September 2024

Welsh language users, at least, by the time they reach the end of compulsory school age. Furthermore, the aim is for all pupils to develop oral skills equivalent to level B2, at least, of the Common European Framework of Reference for Languages.”⁷

5. In summary, the Bill proposes to:

- provide a statutory basis for the target of one million Welsh speakers by 2050, as well as other targets relating to the use of the language, including in the workplace and socially;
- establish a standard method for describing Welsh language ability based on the common reference levels of the Common European Framework of Reference for Languages⁸;
- make provisions for designating statutory language categories for schools, along with requirements relating to the amount of Welsh language education provided (including a minimum amount), and Welsh language learning goals for each category;
- link linguistic planning at a national level (by placing a duty on the Welsh Ministers to prepare a National Framework for Welsh Language Education and Learning Welsh (the National Framework)), at local authority level (by placing a duty on the local authorities to prepare local Welsh in education strategic plans), and at school level (by placing a duty on schools to prepare Welsh language education delivery plans); and
- establish a National Institute for Learning Welsh (the Learning Welsh Institute; occasionally referred to by its Welsh name, the Athrofa) as a statutory body responsible for supporting people of all ages to learn Welsh.

The Committee’s remit

6. The remit of the Legislation, Justice and Constitution Committee is to carry out the functions of the responsible committee set out in Standing Orders 21 and 26C. The Committee may also consider any matter relating to legislation, devolution, the constitution, justice, and external affairs, within or relating to the

⁷ Welsh Government, [Written Statement: Introduction of the Welsh Language and Education \(Wales\) Bill](#), 15 July 2024

⁸ Available at: www.coe.int/en/web/common-european-framework-reference-languages/level-descriptions

competence of the Senedd or the Welsh Ministers, including the quality of legislation.

7. In our scrutiny of Bills introduced into the Senedd, our approach is to consider:

- matters relating to the competence of the Senedd, including compatibility with the human rights protected by the European Convention on Human Rights (the ECHR);
- the balance between the information that is included on the face of the Bill and that which is left to subordinate legislation;
- whether an appropriate legislative procedure has been chosen in relation to the granting of powers to the Welsh Ministers to make subordinate legislation; and
- any other matter we consider relevant to the quality of legislation.

8. We took evidence from the Cabinet Secretary on 21 October 2024.⁹ Following the evidence session, we wrote to the Cabinet Secretary on 24 October 2024 including a series of additional questions in relation to the Bill.¹⁰ At the same time, we brought a series of textual inconsistencies within the Bill and the EM to the Cabinet Secretary's attention.

9. The Cabinet Secretary responded to our questions on 15 November 2024, and also committed to correct the textual inconsistencies which we raised.¹¹

⁹ Legislation, Justice and Constitution (LJC) Committee, [21 October 2024, Record of Proceedings](#)

¹⁰ [Letter to the Cabinet Secretary for Finance and Welsh Language, 24 October 2024](#)

¹¹ [Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024](#)

2. Legislative competence

The Welsh Government is satisfied that the Bill would be within the legislative competence of the Senedd.¹²

10. We considered the Bill under the reserved powers model of legislative competence, as set out in section 108A of the *Government of Wales Act 2006* (the 2006 Act).

11. In her statement on legislative competence, the Llywydd stated that the provisions of the Bill would be within legislative competence.¹³

12. The Cabinet Secretary confirmed in oral evidence that he was satisfied the Bill is within the Senedd's legislative competence.¹⁴

Human rights implications

13. The EM does not discuss the Bill's impact on human rights. We therefore asked the Cabinet Secretary to provide further details regarding the impact that the Bill will have on children and their families, with particular reference to Article 2 of Protocol 1¹⁵ to, and Article 14¹⁶ of, the ECHR. In response, he told us:

"... this is a Bill that essentially operates within the framework that already exists; children already attend school, and all the arrangements around their education are set out in earlier legislation. Chapter 9 of the EM does provide a summary of the impact assessments that were undertaken in order to give us confidence that the Bill is Human Rights Act 1998 compliant. That summary is a distillation of a series of separate impact assessments that were published together when the Bill was introduced to the Senedd on 15 July, and I think you will find

¹² EM, Member's Declaration, page 1

¹³ [Presiding Officer's Statement on Legislative Competence: Welsh Language and Education \(Wales\) Bill](#), 15 July 2024

¹⁴ LJC Committee, 21 October 2024, RoP [83]

¹⁵ Article 2 of Protocol 1 of the ECHR protects the right to education, and provides as follows: "No person shall be denied the right to education. In the exercise of any functions which it assumes in relation to education and to teaching, the State shall respect the right of parents to ensure such education and teaching in conformity with their own religious and philosophical convictions."

¹⁶ Article 14 of the ECHR protects from discrimination, and provides as follows: "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

that the children's impact assessment is clearly available to colleagues there. That gives us confidence that the human rights considerations that have to be satisfied in order for the Bill to be within competence—. The children's rights impact assessment gives us confidence that those aspects have been properly considered.”¹⁷

14. In correspondence, we asked the Cabinet Secretary whether the Welsh Government had undertaken a human rights assessment for the Bill, and to set out the outcome of that assessment. In response, the Cabinet Secretary told us:

“During the Committee discussion both the human rights impact and the Children’s Rights Impact Assessment were discussed together.

As with all Senedd Bill proposals, the Welsh Government carries out a full human rights assessment before introduction, this is done as part of the legislative competence consideration. We are satisfied that the provisions of this Bill are compliant.

Chapter 9 of the Explanatory Memorandum provides a summary of the impact assessments undertaken as part of the development of the Bill. The full impact assessments required for this Bill were published in the Integrated Impact Assessment¹⁸ to the Welsh Government’s website upon introduction of the Bill on 15 July – this includes a Children’s Right’s Impact Assessment.”¹⁹

Our view

15. We note both the views of the Cabinet Secretary and the Llywydd that the provisions of the Bill would be within the legislative competence of the Senedd.

16. We also note the Cabinet Secretary’s confirmation that the Welsh Government has conducted a “full” human rights assessment for the Bill, and in particular has completed a Children’s Rights Impact Assessment which forms part of the Integrated Impact Assessment for the Bill which appears on its website.

¹⁷ LJC Committee, 21 October 2024, RoP [85]

¹⁸ Welsh Government, [Welsh Language and Education \(Wales\) Bill: impact assessment](#), 15 July 2024

¹⁹ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 1

17. However it is unclear to us whether the Welsh Government’s assessment of the Bill’s implications on human rights had regard to the rights protected by the ECHR, in particular Article 2 of Protocol 1, and Article 14. While we acknowledge that the Children’s Rights Impact Assessment published on the Welsh Government’s website²⁰ considers the effect of the Bill in the context of the United Nations Convention on the Rights of the Child, it does not, however, appear to make a reference to the ECHR. The published Integrated Impact Assessment does not make such a reference either, and for both of these reasons we believe that further clarity should be provided on this matter.

Recommendation 1. The Cabinet Secretary should outline any assessment made by the Welsh Government of the Bill’s engagement with the rights protected by the European Convention on Human Rights, and in particular Article 2 of Protocol 1 to, and Article 14 of, the Convention.

18. As we have stated previously²¹, we believe that an assessment of a Bill’s engagement with the rights protected by the ECHR should be included as a matter of course within the accompanying EM, and that assessment should also set out any steps which have been taken to make that engagement proportionate. We believe that following this approach would assist Members of the Senedd in their consideration of a Bill.

Conclusion 1. We note the Cabinet Secretary’s comments in respect of the Bill’s impact on human rights, but believe that, as a matter of good practice, an Explanatory Memorandum should always include a commentary on the consideration given to such implications.

²⁰ Welsh Government, Welsh Language and Education (Wales) Bill: impact assessment, 15 July 2024, Annex A – Children’s Rights Impact Assessment

²¹ See, for example, conclusion 1 of our [report on the Elections and Elected Bodies \(Wales\) Bill](#) and conclusion 1 of our [report on the Environment \(Air Quality and Soundscapes\) \(Wales\) Bill](#).

3. General observations

The need for the Bill

19. In July 2017, the Welsh Government published its strategy Cymraeg 2050: A million Welsh speakers (the Cymraeg 2050 strategy). The strategy set the following main targets:

- The number of Welsh speakers to reach 1 million by 2050.
- The percentage of the population that speak Welsh daily and can speak more than just a few words of Welsh to increase from 10% (in 2013 to 2015) to 20% by 2050.²²

20. The Cymraeg 2050 strategy included a series of commitments to drive “transformational changes”, one of which was to:

“Review the legislation which underpins the Welsh language to ensure it offers a strong foundation for promoting and facilitating the use of Welsh.”²³

21. The EM states that, since the publication of the Cymraeg 2050 strategy:

“A number of proactive steps have been taken ... and many aspects of the infrastructure supporting the Welsh language have been strengthened. This Bill is the first piece of primary legislation to be introduced for the purpose of realising the long-term objective of the strategy, which is to ensure the viability of the Welsh language for generations to come.”²⁴

22. The EM goes on to state that, while some successes have been achieved since the Cymraeg 2050 strategy was published²⁵, the results of the 2021 census²⁶ have highlighted the need for the Welsh Government “to act purposefully, and it is therefore appropriate to take further action by introducing primary legislation.”²⁷

²² Welsh Government, [Cymraeg 2050: A million Welsh speakers](#), July 2017

²³ Welsh Government, [Cymraeg 2050: A million Welsh speakers](#), July 2017, page 12

²⁴ EM, paragraph 3.1

²⁵ EM, paragraph 3.2

²⁶ The [results of the 2021 census](#) estimated that there were 538,000 Welsh speakers in Wales, a decrease of around 23,700 (1.2 per cent) since the 2011 census.

²⁷ EM, paragraph 3.3

23. The EM further states:

“... the Bill introduces an ambitious programme of change that requires action on many levels. While legislation is essential in laying the groundwork for this change, it is important to note that this piece of primary legislation is only one part of the picture. In due course we will also introduce secondary legislation. Additionally, other activities and interventions such as policies across education, funding, engagement and behaviour change will also have a key role to play.”²⁸

24. The EM separately states:

“... this Bill is not the starting point. Over many years, we have established a non-statutory infrastructure and supported the Welsh language in the education sector and beyond. Statutory action has also been taken with the introduction of the Welsh in Education Strategic Plans and Assessing Demand for Welsh Medium Education (Wales) Regulations 2013, and the Welsh in Education Strategic Plans (Wales) Regulations 2019. These regulations and the WESP regime have transformed the way local authorities plan their Welsh language education provision, and we must build on the progress that has already been made.”²⁹

25. The EM also refers, among other relevant legislation³⁰, to the *School Standards and Organisation (Wales) Act 2013* (the 2013 Act)³¹. The 2013 Act places a requirement on all local authorities in Wales to produce a Welsh in Education Strategic Plan (WESP) which includes a local authority's proposals on how it will carry out its education functions in order to improve the planning of the provision of Welsh medium education in its area, and improve the standard of Welsh-medium education and the teaching of Welsh in its area.³² The Bill omits these provisions in the 2013 Act, and replaces them with provisions which require all local authorities in Wales to produce a local Welsh in education strategic plan. With regard to these provisions, the EM states that the Bill “builds on the progress made” by the WESPs.³³

²⁸ EM, paragraph 3.7

²⁹ EM, paragraph 3.13

³⁰ EM, paragraphs 3.16 to 3.30

³¹ Available at www.legislation.gov.uk/anaw/2013/1/contents

³² EM, paragraph 3.19

³³ EM, paragraph 3.20

26. In correspondence, we asked the Cabinet Secretary to set out what the Bill enables the Welsh Government to achieve that it cannot within the existing legislative framework. His response was as follows:

“The Bill will provide a coherent framework and clear direction of travel to drive the changes required to achieve our 2050 aim.

The Bill places a duty on the Welsh Ministers to prepare a Code to describe Welsh language ability. Such a duty on the face of the Bill provides clarity and cohesion in our national approach to describing Welsh language ability. Alongside this new approach, the Bill sets a duty on the Welsh Ministers to review the Welsh language standards. Placing this duty on the Bill indicates that the Code will also be considered in the context of the existing legislative framework.

Introducing a statutory system for school language categories and the requirement for a school to have a Welsh language education delivery plan, in comparison with the current non-statutory guidance on school language categories, will be key in driving schools to increase their Welsh language education provision where this is reasonably practicable. The plan will strengthen both the accountability aspect and the focussed support that can be provided by local authorities to ensure that sufficient progress is made towards their WESP targets set in the National Framework. The statutory categories will, through regulations, specify a minimum amount of Welsh language education provision alongside the Welsh language learning goals set in the Bill.

The Bill will provide the Welsh Ministers with the power to set statutory national targets as well as targets on local authorities to meet through their WESPs. This will bridge the gap that currently exists between the Cymraeg 2050 strategy target of one million Welsh speakers and the delivery of WESPs at local authority level.

The Bill also creates a statutory body to support people to learn Welsh, and facilitate their progress, so that more people (of all ages) are learning the language. There are currently no legislative measures with this role. Creating the Athrofa as a

statutory body through this Bill therefore provides stability and a long-term approach to the lifelong learning of Welsh.”³⁴

27. We also asked the Cabinet Secretary, in correspondence, to explain why seven years had elapsed between the publication of the Cymraeg 2050 strategy and the laying of the Bill. In response, he told us:

“Whilst this Bill is the first piece of primary legislation to be introduced for the purpose of realising the long-term objective of the strategy, it is also important to note that this Bill is not the starting point. We made a deliberate decision to build an incremental approach to making changes to the system to build on the goodwill towards the language and to bring people with us. As such, many of the Bill’s provisions build upon work that has already taken place.

We introduced non-statutory guidance on school language categories in 2021, and those categories have been implemented in the PLASC³⁵ since January 2024. In introducing that non-statutory guidance, the Minister’s foreword stated that we would explore the benefits of making the categories statutory over the coming years.

While this Bill is the first primary legislation introduced since Cymraeg 2050, statutory action has also been taken with the introduction of the Welsh in Education Strategic Plans (Wales) Regulations 2019. ...

Building on both non-statutory and statutory actions taken since introducing Cymraeg 2050, we believe that now is the time to introduce this primary legislation as the next natural step as we work to realise our ambition of reaching one million speakers.”³⁶

³⁴ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 2

³⁵ The pupil level annual school census (PLASC) collects pupil and school-level data provided by maintained schools.

³⁶ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 3

Consultation on the Bill's proposals

28. In March 2023, the Welsh Government issued a consultation on proposals for a Bill on Welsh language education (the White Paper).³⁷

29. The EM notes:

“The provisions of the Bill as introduced are based on the proposals of the White Paper and the responses to the questions of that consultation. However, it is worth highlighting a provision in Part 1³⁸ which was not part of the White Paper consultation, and which was a new policy development during the drafting of the Bill.”³⁹

30. The Welsh Government did not consult on a draft version of the Bill. The EM provides the following justification for taking this approach:

“On the whole, the provisions in the Bill are in alignment with the proposals set out in the responses to the White Paper, as noted above. Also, given the broad and detailed engagement in respect of the policy areas over a prolonged period, it was not considered necessary to consult on a draft Bill.”⁴⁰

31. The Cabinet Secretary explained to us in oral evidence why the Welsh Government had not consulted on a draft Bill:

“This has been a Bill in gestation for a long time. The original ideas that culminate in the Bill were there in documents that were published and discussed prior to the pandemic, and the pandemic had the same impact on capacity to legislate here as it did on so many other things. We did not choose to publish a draft Bill because of the depth of discussion that had already been carried out, and preferred instead to publish a White Paper. ... A draft Bill would have pushed the legislative timetable even further towards the end of this Senedd term,

³⁷ Welsh Government, [Consultation: Proposals for a Welsh Language Education Bill](#), March 2023

³⁸ The provision in question places a duty on the Welsh Ministers to review the Welsh language standards specified under section 26 of the *Welsh Language (Wales) Measure 2011*, which is included within section 4 of the Bill.

³⁹ EM, paragraph 4.52

⁴⁰ EM, paragraph 4.98

and I think that would have eroded confidence that we could complete its Stages during this Senedd term.”⁴¹

The absence of a definition of a Welsh speaker

32. We asked the Cabinet Secretary to explain to us why a definition of a Welsh speaker is not included on the face of the Bill. In response, he told us that the Welsh Government would be adhering to the “principle of self-identification”, for the following reason:

“... it's a fundamental principle, which is now reflected in this Bill, that if Welsh belongs to everybody, then it is for individuals to say whether or not they believe themselves to be speakers of the language, rather than for the Government to instruct them as to whether they are or not, and that does lead you into some difficulties of how do you define who is a Welsh speaker or not.”⁴²

Delegated powers and the balance between what is on the face of the Bill and what is left to subordinate legislation

33. The Bill contains 55 sections, divided into six Parts, and two Schedules.

34. Tables 5.1 and 5.2 of the EM provide a summary of the delegated powers in the Bill, which comprise of the following powers for the Welsh Ministers:

- 26 powers to make regulations⁴³;
- 1 power to make a commencement order;
- 3 powers to issue directions⁴⁴;
- 2 powers to issue guidance; and
- 1 power to issue a code.

⁴¹ LJC Committee, 21 October 2024, RoP [88] to [89]

⁴² LJC Committee, 21 October 2024, RoP [127] to [128]

⁴³ Table 5.1 of the EM lists 27 regulation-making powers for the Welsh Ministers, but one of these powers is within section 56 of the *Curriculum and Assessment (Wales) Act 2021*, instead of within this Bill.

⁴⁴ Table 5.2 of the English version of the EM lists four powers for the Welsh Ministers to issue directions, however one of those listed (within section 16(6)(c)) is instead a power for a local authority.

35. According to Table 5.2 of the EM, the Bill also contains:

- 2 powers for an individual local authority to issue directions⁴⁵;
- 1 power for the Learning Welsh Institute to issue a direction; and
- 1 power for the Learning Welsh Institute to issue rules.

36. The Cabinet Secretary told us that he was content with the balance between what is on the face of the Bill and what is left to subordinate legislation.⁴⁶ He elaborated as follows:

“There are subordinate legislation powers in the Bill, but the majority of them are for use through the affirmative procedure. There is more on the face of the Bill than the White Paper suggested. So, we have moved more things into the primary legislation than was originally planned, and that was in response to some of the points raised in the White Paper consultation. I think that those powers that are subject to the negative procedure—I think there are eight of them in the Bill all together—genuinely do conform to the guidance that the Welsh Government has published—that's to say that they are technical in nature, and administrative in nature—and where there are powers in the Bill to proceed via regulation, any of those that have a substantive impact will be subject to further scrutiny by the Senedd through its own subordinate legislation procedures.”⁴⁷

37. We asked the Cabinet Secretary to explain why the Bill does not provide a direct link on its face between the statutory target included in Part 1 of the Bill and the Welsh language learning goals included in Part 3, as suggested in the White Paper⁴⁸, and instead leaves such matters to regulations. An official accompanying the Cabinet Secretary stated in response:

⁴⁵ Table 5.2 of the English version of the EM lists a single power for a local authority to issue a direction, however one of the powers listed for the Welsh Ministers (within section 16(6)(c)) is instead a power for a local authority.

⁴⁶ LJC Committee, 21 October 2024, RoP [159]

⁴⁷ LJC Committee, 21 October 2024, RoP [159]

⁴⁸ Paragraph 30 of the White Paper states that “the linguistic outcome we are trying to achieve, and which is an organising principle of the proposals in this paper, is to ensure that, by 2050, all pupils leaving statutory education can confidently speak Welsh. We define this as at least a level that is synonymous with level B2 of the Common European Framework of Reference for Languages. Our intention is to link the expected level to a level on the Welsh language skills continuum.”

“Part 1 outlines the target of reaching a million Welsh speakers on the face of the Bill, and that means that everyone who would be leaving the education system would need to be Welsh speakers—independent speakers. So, there's a link between the million target and moving the system along the language continuum.”⁴⁹

38. On three separate occasions, the statement of policy intent refers to there being “correlation” between the powers or duties in various sections of the Bill.⁵⁰ When asked to clarify the nature of this correlation, the Cabinet Secretary told us that the inclusion of the term:

“... is there simply to make sure that different strands across the Bill are drawn together when they have a cumulative impact on the policy intention that the Government is pursuing, because this is a Bill with five different Parts. They are interrelated in a number of different ways, and for the sake of trying to make sure that the policy intent is clearly conveyed to those who are interested in it, we used that term in that sense.”⁵¹

39. An official accompanying the Cabinet Secretary provided a further explanation and an example of this correlation:

“... it's about the interrelationship and the sequencing ... between the different Parts. So, Part 2, which is the code to describe the common European framework, then needs to be in place for other bits of the Bill to work.”⁵²

40. According to the statement of policy intent, many of the Bill’s regulation-making powers are included to “future-proof” the legislation.⁵³ When asked to justify the inclusion of these powers, the Cabinet Secretary told us in correspondence:

⁴⁹ LJC Committee, 21 October 2024, RoP [125]

⁵⁰ See pages 4, 5 and 9 of the statement of policy intent.

⁵¹ LJC Committee, 21 October 2024, RoP [174]

⁵² LJC Committee, 21 October 2024, RoP [175]

⁵³ See pages 20, 24 and 35 of the statement of policy intent.

“Language planning is a long-term pursuit, and our journey towards 2050 will require us to review progress and adapt over time as circumstances change.”⁵⁴

41. The Cabinet Secretary also told us that the Welsh Government had sought to provide “as much detail as possible” in the statement of policy intent. He then went on to repeat the explanations provided in the statement for the inclusion of the six powers in the Bill which the Welsh Government has no current intention to use.⁵⁵ We consider some of these powers in the next chapter of this report.

42. We also asked the Cabinet Secretary, in correspondence, to explain why the Bill does not include on its face the start dates for the plans or planning periods which it establishes.⁵⁶ We further asked whether, in the absence of such dates on the face of the Bill, there was a danger that the relevant regulation-making powers may not be exercised, and the relevant provisions would not be commenced. In response, he told us:

“There is no danger that these powers may not be exercised. The School delivery plan and the local Welsh in Education Strategic Plans are key elements in the implementation of the Bill.

I am of the view that it is appropriate that the Welsh Ministers specify the start date for the first 5-year period of the local Welsh in education strategic plan in regulations (section 29(1)), as their preparation is dependent on the date of publication of the National Framework for Welsh Language Education and Learning Welsh. The Welsh Ministers have a duty to lay the first National Framework before the Senedd before 31 July 2028 (section 26(3)). This is the latest date for laying the National Framework. It can, if circumstances permit, be laid sooner than that. It is therefore appropriate to offer flexibility in setting the first date for the local Welsh in education strategic plan in secondary legislation.

In a similar way, I consider it to be appropriate to allow the Welsh Ministers the flexibility to specify the school year in which the first school delivery plan starts by regulations (section 14(3))

⁵⁴ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 4

⁵⁵ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 4

⁵⁶ Specifically, in respect of sections 14(3), 29(1) and 44(8) of the Bill.

to ensure that the statutory language categories are operational (that is, the amount of Welsh language education provision for each category under section 10(1)) and to allow the relevant local Welsh in education strategic plan to be considered (s14(2)(a)).

The National Institute for Learning Welsh must prepare a strategic plan, therefore the Welsh Ministers will exercise the power in section 44(8)(a) detailing the first planning period. Subsequent planning periods will last 3 years unless the Welsh Ministers make regulations specifying a different period under the regulation making power in section 44(8)(b). Regulations give the Ministers the flexibility to set the planning phases for the Institute as necessary.”⁵⁷

43. The Cabinet Secretary went on to say that, as the above examples illustrate, “there are a number of interdependencies in terms of the sequencing of various aspects of the Bill”⁵⁸, and provided us with an indicative timeline for its proposed implementation.⁵⁹

Our view

44. We note the Welsh Government’s explanations for why the Bill is needed, as provided in the EM and set out to us by the Cabinet Secretary.

45. However we also note that – while the Cymraeg 2050 strategy referred to the need for “transformational” changes – it has taken over seven years for the Welsh Government to introduce primary legislation to seek to achieve such changes.

46. We also acknowledge that the Welsh Government has undertaken “broad and detailed” engagement on the policy proposals which underpin the Bill over a “prolonged period”. The Cabinet Secretary similarly told us that the Bill had been “in gestation for a long time”.

47. It is therefore unclear to us why it was not possible for the Welsh Government to consult on a draft version of the Bill during this time. We have previously stressed the importance of consulting on draft Bills as a matter of good legislative

⁵⁷ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 10

⁵⁸ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 10

⁵⁹ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, pages 13 to 15

practice, and have shared our belief that time should be built into the Welsh Government's legislative timetable to allow for such consultation as a matter of course.

48. The Cabinet Secretary told us that consulting on a draft Bill will have caused delays to its legislative timetable, which would have “eroded confidence that we could complete its Stages during this Senedd term.” However, we believe that time should have instead been set aside earlier in the Bill's timetable to enable draft provisions to be shared for publication instead of the publication of the White Paper in March 2023, to enable broad consultation on a draft version of the Bill to take place ahead of its introduction. Furthermore, we believe that consulting on a draft Bill would have aligned with what the Cabinet Secretary described as the Welsh Government's decision to “build an incremental approach” to making changes in this policy area; a decision which we acknowledge.

49. We also acknowledge the Cabinet Secretary's explanation for why the Bill does not include a definition of a Welsh speaker, in line with the Welsh Government's principle that the Welsh language “belongs to everybody”.

50. We however believe that the question of who is a Welsh speaker is central to the aims of the Bill, and leaving out such a definition risks undermining how meaningful some of its core provisions will be.

51. We note that the Bill – by virtue of the Table in Schedule 1 – sets out types of “Welsh language users” and common reference levels for describing the ability of those types of Welsh language users. It is unclear to us why the Bill does not use these provisions as the basis for individuals to assess their language ability for the purpose of calculating the number of Welsh speakers in Wales, rather than providing for such information in guidance and regulations.

Recommendation 2. The Cabinet Secretary should explain why the Bill does not use the common reference levels for describing the ability of those types of Welsh language users, as introduced in the Table in Schedule 1, as the basis for individuals to assess their language ability for the purpose of calculating the number of Welsh speakers in Wales in accordance with provisions in Part 1.

52. Furthermore, we are concerned that the Bill's inclusion of two different terms – “Welsh speakers” in Part 1 and “Welsh language users” in Parts 2 and 3 – may lead to possible confusion, especially as the Bill will require individuals to assess their own language ability. We believe that clarity should be provided as to the level of detail which will be contained in the guidance and Code to be issued under the Bill to help limit any scope for confusion.

Recommendation 3. The Cabinet Secretary should confirm whether the Welsh Government believes the Bill's inclusion of both terms "Welsh speakers" and "Welsh language users" may lead to any confusion, and if so, set out the steps it will take to limit this.

53. We also note the Cabinet Secretary's comments in general terms about the balance between what is on the face of the Bill and what is left to subordinate legislation, and that he is content with this balance.

54. We are broadly content with this balance, and we similarly broadly welcome the level of detail provided in the statement of policy intent.

55. However, we question the Welsh Government's taking of regulation-making powers in order to "future-proof" legislation, and note that there are a number of such powers in the Bill which the Welsh Government has no current intention to use. We reflect on particular examples of such powers in the Bill in the next chapter of this report.

56. It is also unclear to us why the Bill does not include some provisions on its face which would reflect policy proposals which were subject to consultation by the Welsh Government, in particular: an absence of a direct link between the statutory target included in Part 1 of the Bill and the Welsh language learning goals included in Part 3. We believe that further clarity should be provided as to why such a matter will now be left to regulations, under the Bill as drafted.

Recommendation 4. The Cabinet Secretary should explain why the Bill does not include on its face a clear and direct link between the statutory target of one million Welsh speakers by 2050 included in Part 1 of the Bill and the Welsh language learning goals included in Part 3, as proposed in the White Paper for the Bill.

57. We note the Cabinet Secretary's explanation for why the Bill does not include on its face the start dates for the plans or planning periods which it establishes. We similarly note the Cabinet Secretary's view that there is "no danger" that the relevant powers in the Bill may not be exercised, and that the school delivery plans and the local Welsh in education strategic plans are "key elements" in the implementation of the Bill.

58. However, according to the indicative timelines shared by the Cabinet Secretary, the powers to implement the Bill are to be exercised by a future government. We therefore do not concur with the Cabinet Secretary's view that there is no danger such powers may not be exercised.

59. We believe that further consideration should be given to including on the face of the Bill specific dates by which the Welsh Ministers must exercise their regulation-making powers under sections 14(3)(a), 29(1)(a) and 44(8)(a) to specify when the first period of school delivery plans and local strategic plans, and the first planning period for the Learning Welsh Institute’s strategic plan, will begin. We believe this to be important given that these are “key elements” in the implementation of the Bill, as stated by the Cabinet Secretary, and will provide certainty to bodies who will be central to the Bill’s implementation.

Recommendation 5. The Cabinet Secretary should consider whether to include on the face of the Bill specific dates by which the Welsh Ministers must exercise their powers to make regulations in respect of specifying the start dates of the first periods for school Welsh language education delivery plans and local Welsh in education strategic plans, and the first planning period for the Learning Welsh Institute’s strategic plan.

4. Specific observations on particular Parts and sections of the Bill

Part 1 (Promotion and facilitation of use of the Welsh language)

60. Part 1 of the Bill comprises four sections.

61. Section 1 provides a statutory basis for the Welsh Government's target of a million Welsh speakers by 2050, by requiring its inclusion within the Welsh Government's Welsh language strategy (as issued under section 78 of the 2006 Act⁶⁰).

62. We asked the Cabinet Secretary to explain the purpose of this section. He told us in response:

"What the Bill does is to give it [the Welsh Government's target] statutory force, and, in that sense, statutory stature as well; it just reinforces the importance of it. ... Making it statutory, I think, ensures that we can futureproof it as a target, and give a clear context to support future decision making."⁶¹

63. We also asked the Cabinet Secretary to set out the consequences of the target not being met. In response, he told us:

"... the consequences are reputational rather than legal, because I don't think it's right to place legal jeopardy on the shoulders of people who are not in control of the outcome that you are seeking to achieve. There are so many things that Ministers can do and so much that the Senedd can do, but in the end, you are not in charge of all the different factors that would contribute to whether or not that target is achieved."⁶²

64. Section 2 requires the Welsh Ministers to include set matters within a report issued under section 78(8) of the 2006 Act, and also includes measures to ensure their accountability to the Senedd in respect of meeting set targets.

65. Section 3 makes provision in relation to how to calculate the number of Welsh speakers for the purposes of sections 1 and 2. In particular, section 3(1)

⁶⁰ Available at: www.legislation.gov.uk/ukpga/2006/32/section/78

⁶¹ LJC Committee, 21 October 2024, RoP [91]

⁶² LJC Committee, 21 October 2024, RoP [92]

enables the Welsh Ministers to make regulations, subject to the draft affirmative procedure, to state the sources of data to be used to make these calculations. However, the section also provides that data from the census must be taken into account when making such calculations.

66. The EM states that it is appropriate to include this information in regulations “to give the Welsh Ministers the flexibility to vary the data sources over time.”⁶³

67. The Cabinet Secretary further explained to us the rationale underpinning section 3(1):

“... the Bill gives powers to Ministers to use new forms of data, new possibilities that are coming to us over the time to come. We've been dependent on the census, but we know that the future of the census isn't entirely clear. In the last Government, there were many things that were said about reinventing the census altogether. So, we've put powers in the Bill to use the census, as we have done, when that is available, but also to use different sources of data in order to help us in this area. As the committee knows, there is a big difference between the census on the one hand and the other figures that are published every year. So, the Bill helps us because it will help us do more in the future to use the data where new possibilities arise.”⁶⁴

68. Section 3(2)(a) provides that the Welsh language ability of an individual aged 16 years and over will be based on a self-assessment, and section 3(2)(b) provides that the Welsh language ability of a child under the age of 16 will be decided either on the basis of a self-assessment, or an assessment by a parent or carer, or any other method specified in regulations. Such regulations would be subject to the draft affirmative procedure, and the EM states that the inclusion of this power is appropriate “to give the Welsh Ministers the flexibility to adapt to new methods over time.”⁶⁵

69. We asked the Cabinet Secretary, in correspondence, to explain the interaction between sections 3(1) and 3(2) of the Bill. He told us in response:

“Whether a person is a Welsh speaker for the purposes of sections 1 and 2 has to be decided in accordance with the provisions of section 3(2). Regulations under section 3(1) must

⁶³ EM, page 82

⁶⁴ LJC Committee, 21 October 2024, RoP [132]

⁶⁵ EM, pages 82 to 83

specify the data that is to be used for calculating the number of Welsh speakers for the purposes of sections 1 and 2. Section 3(2) is a limitation on the power in 3(1) as the data used to count Welsh speakers must be linked to the meaning of Welsh speaker in 3(2).

For example, whether a person aged 16 or over is a Welsh speaker is to be decided on the basis of self-assessment (section 3(2)(a)). The data specified in regulations made under section 3(1) to calculate the number of Welsh speakers aged 16 or over would have to therefore capture those who have self-assessed themselves as Welsh speakers.”⁶⁶

70. The Cabinet Secretary also confirmed to us that section 3(1) of the Bill imposes a duty on the Welsh Ministers to make regulations, and section 3(2)(b) provides a regulation-making power, and that erroneous references to these in the English version of the statement of policy intent would be corrected.⁶⁷

Our view

71. We note the evidence received by the Cabinet Secretary in respect of Part 1 of the Bill.

72. In particular, we note the purpose of section 1 of the Bill, as explained by the Cabinet Secretary. We similarly acknowledge the Cabinet Secretary’s explanation for why there are no consequences included on the face of the Bill of not reaching the statutory target of a million Welsh speakers by 2050, based on the fact that many of the levers to reach such a target are not in the gift of either the Senedd or the Welsh Ministers.

73. We also acknowledge the explanation provided by the Cabinet Secretary of the interaction between section 3(1) and 3(2) of the Bill.

Sections 8 to 10 (Welsh language education and school language categories)

74. Section 8 of the Bill provides an overview of Part 3 of the Bill, and states that for the purposes of that Part, the term “Welsh language education” means

⁶⁶ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 6

⁶⁷ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 5

teaching Welsh, and education and training through the medium of Welsh, in a maintained school, to pupils of compulsory school age.

75. We asked the Cabinet Secretary to explain why the Bill uses the term “Welsh language education” instead of the more established term⁶⁸ “Welsh medium education”. He told us in response:

“The Bill supports Welsh-medium education and we want to see more children in Wales being given a Welsh-medium education, and the Bill is supportive of that objective. But we also know that, at present, the majority of children in Wales receive, more or less, an entirely English-medium education, and the Bill also focuses on them.

So, alongside the support that the Bill gives to Welsh-medium education, we use this broader term of ‘Welsh language education’, because we will not succeed in getting to that 1 million speakers unless we can turn out, from primarily English-medium schools, children who are better able to use the Welsh language than they are now, 30 years after it became a compulsory subject in mostly English schools. ... the term is there because it is broader than Welsh-medium education, although the Bill is absolutely supportive of Welsh-medium education and the wish to see that an expanded part of our future.”⁶⁹

76. Section 9(1) provides that each school is designated a language category, in accordance with Part 3 of the Bill, that determines the amount of Welsh language education provided in the school, and the school’s “Welsh language learning goal”.

77. Section 9(2) provides that the language categories are:

- “Primarily Welsh Language”;
- “Dual Language”; and
- “Primarily English Language, partly Welsh”.

78. Section 9(3) provides that a school may be designated more than one language category. According to the statement of policy intent, the ability to

⁶⁸ The 2013 Act, for example, refers to “Welsh medium education”.

⁶⁹ LJC Committee, 21 October 2024, RoP [134] to [135]

designate more than one category to a school is necessary “to provide clarity to stakeholders.”⁷⁰

79. Subsection (3) also enables the Welsh Ministers, by regulations subject to the draft affirmative procedure, to make provision in relation to such a school, including provision that applies Part 3 of the Bill with modifications. According to the statement of policy intent, it is not appropriate for such provision to be included on the face of the Bill for the following two reasons:

“Designating more than one language category to a school is a multilayered issue. It may be a fair reflection of the education provision, it may be a proactive way of gradually moving a school into a higher category, or it may run counter to the policy ambition to increase Welsh language education by allowing a lower category to be designated where it is not desirable. This level of detail is better suited for inclusion in regulations.

It is appropriate to consult more widely with the sector to hear the views of those who will implement the policy. This can be done at the same time as the consultation on the amount of Welsh language education provision to be specified in each category under section 10(1).”⁷¹

80. Section 10 of the Bill requires the Welsh Ministers to make regulations – subject to the draft affirmative procedure – to determine the amount of Welsh language education for each language category. The amount must be expressed as a range, referring to the Welsh language education as a percentage of the education and training provided over a school year during school sessions for pupils of compulsory school age. In accordance with section 10(3), the minimum end of the range for the category “Primarily English Language, partly Welsh” may not be set at less than 10%.

81. The Cabinet Secretary provided us with the following justification for the inclusion of the power within section 10:

“... we have placed 10 per cent on the face of the Bill, so that's where we are starting from. In the future, if that is amended, I don't think that the best way to go about it would be to go back to a new Bill to amend that figure. So, that will be done

⁷⁰ Statement of policy intent, page 11

⁷¹ Statement of policy intent, page 11

through regulations and so on, and that is just a practical thing. I agree that it creates a sort of challenge at present, because that will be happening in the future. But that is the way to keep the Bill alive, and the Bill is going to have an impact on the field of education and opportunities for children over a decade and beyond. That's the opportunity for us to put things in place to help us to do this in the longer term, and that's why it's important to retain an element of flexibility through subordinate legislation.”⁷²

82. The Cabinet Secretary also explained to us how the provision in section 10(3) will work in practice:

“The obligation is on the school not on the individual, so the school must ensure that a minimum of 10 per cent of the compulsory part of the school day is devoted to the Welsh language. ... that doesn't mean that the whole of that has to be teaching Welsh; it can be delivering a sports lesson using the Welsh language as the medium of instruction. But it's for the school to achieve that 10 per cent. You can't place that at the level of an individual pupil. Children fall ill. Children are not in school for other reasons as well. ... placing the obligation at the school level does allow that bit of leeway to accommodate the requirements of the Bill with the circumstances of an individual child.”⁷³

83. According to the statement of policy intent, it will be “important to consult” on the details of the language categories before making such regulations under section 10.⁷⁴ In light of this, we asked the Cabinet Secretary in correspondence to explain why a duty to consult is absent from the face of the Bill. His response was as follows:

“We generally do not place duties in legislation to consult on subordinate legislation. The general public law requirements will apply. It is the Welsh Government's standard practice to consult publicly where appropriate to seek views on the subordinate legislation – and at the appropriate time to do so.

⁷² LJC Committee, 21 October 2024, RoP [166]

⁷³ LJC Committee, 21 October 2024, RoP [95]

⁷⁴ Statement of policy intent, page 13

As we have set out in the Statement of policy intent, we are of view that these regulations will require a public consultation.”⁷⁵

Our view

84. We note the evidence received by the Cabinet Secretary in respect of sections 8 to 10 of the Bill.

85. We also note the Cabinet Secretary’s explanation for why the Bill includes the term “Welsh language education” instead of the more established term “Welsh-medium education”, in that the aims of the Bill are broader than supporting the Welsh-medium education sector.

86. However, given that the term “Welsh-medium education” is extensively well understood, we believe that any departure from the use of that term in primary legislation should be on a sound basis.

Recommendation 6. The Cabinet Secretary should share with the Committee any assessment undertaken by the Welsh Government on the impact on understanding and accessibility of the law arising from the use of the term “Welsh language education” in the Bill.

87. We acknowledge the inclusion on the face of the Bill of the requirement that the minimum range for the school language category “Primarily English Language, partly Welsh” may not be less than an average of 10% of education and training during school sessions over a school year. We similarly acknowledge the Cabinet Secretary’s justification for the regulation-making power within section 10 – in that it will allow for flexibility to amend this figure as time progresses – and acknowledge the application of the draft affirmative procedure to regulations made under this power.

88. We note the Cabinet Secretary’s view that, in general, the Welsh Government does not place duties in legislation to consult on subordinate legislation, as the “general public law requirements” will apply.

Section 13 (Regulations on school language categories)

89. Section 13(1) gives the Welsh Ministers the power to make regulations, subject to the draft affirmative procedure, to make further provision about school language categories.

⁷⁵ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 7

90. Section 13(2) provides that the Welsh Ministers may also, by regulations subject to the draft affirmative procedure:

- amend section 9 so as to add or revise a language category; or
- amend section 10(3) so as to increase the minimum amount of Welsh language education provision for the “Primarily English Language, partly Welsh” category.

91. The statement of policy intent provides an example of how the power in section 13(1) may be used:

“... This could be either because the Bill does not include all the detail of the categories, or in response to other regulations that will be drawn up in the same area to ensure that the language categories remain current and compatible with other provisions.”⁷⁶

92. In correspondence, we asked the Cabinet Secretary to explain what are the limitations on the power in section 13(1) to make further provision, and why no further detail is provided on how it may be exercised. In response, he told us:

“Section 13 is limited by Part 3, and in particular by the provisions in section 9. This power is to make ‘further provision’. In terms of what the power will be used for, the intention is to ensure that the Welsh Ministers have sufficient powers to respond to changing circumstances without having to amend primary legislation.

Specificity is provided in section 13(2) in terms of the potential amendments that may be needed to section 9 over time, but the wider power to make further provision in section 13(1) is a power to elaborate on the existing provision in section 9 – to provide more detail on language categories.”⁷⁷

93. Section 13(5) requires the Welsh Ministers to decide whether to exercise their power to increase the minimum amount of Welsh language education provision for the “Primarily English Language, partly Welsh category” within 5 years of that

⁷⁶ Statement of policy intent, page 17

⁷⁷ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 8

power coming into force, and after that within 5 years of each period following their most recent decision.

94. We asked the Cabinet Secretary, in correspondence, to set out the intention behind this provision. We also asked the Cabinet Secretary to explain whether the power could be exercised as regularly as the Welsh Ministers determine, as long as no more than 5 years elapse between decisions as to whether it should be exercised. In response, he told us that the power in section 13(2)(b) may be exercised at any point, and the purpose of section 13(5) is to give an “assurance” that the Welsh Ministers will consider exercising the power in section 13(2)(b) every 5 years.⁷⁸

Our view

95. We note the Cabinet Secretary’s explanation for why no further detail is provided on the face of the Bill in respect of the power in section 13(1) to make further provision about school language categories.

96. We acknowledge the Cabinet Secretary’s statement that section 13(2) provides for specificity as to what such further provisions may include, in that regulations may amend section 9 so as to add or revise a language category. However, we also note that section 13(2) also provides that regulations may amend section 10(3) so as to increase the minimum amount of Welsh language education provision for the “Primarily English Language, partly Welsh” category.

97. In taking the provisions included within section 13(2) into account, it is unclear to us as to which further scenarios may be captured by section 13(1). As currently drafted, we believe this to be a broad provision, and in the absence of examples of its use being provided by the Welsh Government, we believe that further limitations should be placed upon this power.

Recommendation 7. The Cabinet Secretary should provide examples of the types of further provision which regulations made under section 13(1) may include.

Recommendation 8. The Cabinet Secretary should consider which further limitations may be placed on the regulation-making power to make further provision within section 13(1) and table an appropriate amendment to the Bill.

98. We also acknowledge the Cabinet Secretary’s confirmation that the regulation-making power in section 13(2)(b) may be exercised at any point, and acknowledge his explanation that the purpose of section 13(5) is to give an

⁷⁸ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 9

assurance that the Welsh Ministers will consider exercising the power in section 13(2)(b) every 5 years.

99. We similarly acknowledge the application of the draft affirmative procedure to regulations made under the Henry VIII power⁷⁹ in section 13(2) of the Bill.

Sections 14 and 15 (School Welsh language education delivery plans and their approval)

100. Section 14 requires a school’s governing body to prepare a plan in relation to the Welsh language (Welsh language education delivery plan). Subsections (1)(a) to (g) detail what must be included in such a plan.

101. Section 15(1) requires a school’s governing body to submit to their local authority a draft of the delivery plan it has prepared in accordance with section 14, and section 15(4) provides that the local authority may either approve the plan as submitted, approve it with modifications, or reject the delivery plan.

102. We asked the Cabinet Secretary to outline any potential implications of a school’s governing body and a local authority being unable to agree a delivery plan. In response, he told us that the Welsh Ministers would “ultimately” be able to use their existing powers under the 2013 Act⁸⁰ in such an event.⁸¹

Our view

103. We acknowledge the Cabinet Secretary’s confirmation that the Welsh Ministers could ultimately use their existing powers under the 2013 Act in the event that a school’s governing body and a local authority are unable to agree a Welsh language education delivery plan.

Sections 18 to 20 (Minimum amount of Welsh language education: temporary and further exemption; and community special schools: plans and language category designation)

104. Section 18 allows a “Primarily English Language, partly Welsh” school to submit – within their first delivery plan – a request for a temporary exemption to

⁷⁹ A Henry VIII power allows the executive to make changes to primary legislation through the making of subordinate legislation.

⁸⁰ Section 85(2)(c) of the 2013 Act allows the Welsh Ministers to reject a Welsh in education strategic plan prepared by a local authority, and prepare another plan which is to be treated as the authority’s approved plan.

⁸¹ LJC Committee, 21 October 2024, RoP [148]

the requirement in section 10 to provide the minimum amount of Welsh language education required of that category of school (set at 10% under the Bill).

105. Section 19 allows such a school to submit a request for a further exemption (up to an additional three-year period).

106. We asked the Cabinet Secretary to explain, in the event that the Welsh Ministers use their regulation-making powers under section 13(2)(b) of the Bill to increase the minimum amount of Welsh language education provision for the “Primarily English Language, partly Welsh” category of schools, whether the Bill would allow a school which has already been allowed two exemptions to request further exemptions. In response, he told us that this would not be the case, as follows:

“... we've provided exemptions in order to help schools meet the 10 per cent level and those schools have a decade to reach that point. When they are at that level, anything that future Governments will do to raise that level, that will come out of the work that we're doing with schools, so that floor will already be there. At the moment, we don't think it would be reasonable to provide more opportunities after that to have further exemptions. So, there are exemptions in order to help people meet the level. After that, the intention or the ambition is to raise that level, but I don't see a strong case to provide more opportunities after that to use exemptions to delay our ambition to raise the level.”⁸²

107. Section 20 of the Bill requires the governing body of a community special school to prepare a community special school Welsh language education plan.

108. Subsection (2) enables the Welsh Ministers, by regulations subject to the made negative procedure, to make further provision about community special school Welsh language education plans, including about the duration and timing of a plan, consulting on a plan, approving a plan, and reviewing and amending a plan.

109. We asked the Cabinet Secretary to explain why such matters are left to regulations and not set on the face of the Bill, since such matters are included on the face of the Bill in respect of other schools. In response, he told us:

“... the Bill makes it a requirement for schools of that kind to draw up a plan and to have a plan as part of the new system

⁸² LJC Committee, 21 October 2024, RoP [137]

*that we're creating. But the Bill doesn't make it a requirement for schools to be in any one category and that just reflects the fact that pupils will have many ... different needs.*⁸³

Our view

110. We note the Cabinet Secretary's confirmation that the Bill will not allow further exemptions for a school which has already been allowed two exemptions to the requirement placed on it to provide the minimum amount of Welsh language education. We consider that this is provided by section 18(1) and section 19(1) of the Bill, and therefore agree with this assessment.

111. We also acknowledge the Cabinet Secretary's explanation for why the Bill does not include further provision about community special school Welsh language education plans on its face, in that pupils at such schools will have many different needs.

Section 23 (National Framework for Welsh Language Education and Learning Welsh)

112. Section 23 requires the Welsh Ministers to prepare a National Framework for Welsh Language Education and Learning Welsh.

113. Section 23(1)(b) includes the word "lifelong" in brackets, and in section 23(5)(b) the word "national" appears in the same way. When asked in correspondence to explain why this was the case, the Cabinet Secretary told us:

"In section 23(1)(b) the brackets are intended to provide clarification that Welsh language learning has a broader more general meaning than has been used in the Bill so far, it is not limited to Welsh language learning in a compulsory school age setting.

*Similarly, in section 23(5)(b) brackets are used to provide clarity that targets in this paragraph are to reflect the national targets, not local targets referred to in section 23(5)(a)."*⁸⁴

114. Sections 23(3) to (6) contain requirements as to what the Welsh Ministers must set out and include in the National Framework, and subsection (7) enables the Welsh Ministers to set targets on the Learning Welsh Institute for the purpose

⁸³ LJC Committee, 21 October 2024, RoP [139] and [141]

⁸⁴ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 11

of facilitating the achievement of national targets relating to supporting people to learn Welsh.

115. Section 23(9) enables the Welsh Ministers, by regulations subject to the draft affirmative procedure, to amend sections 23(3) to (7) of the Bill to amend what is required or permitted to be included in the National Framework.

116. The statement of policy intent states in respect of this Henry VIII power:

“The power is needed to give Ministers the flexibility to vary the requirements as to what should be included in the National Framework, when necessary, in order to respond to new situations that may arise in the future. For example, changes to existing structures around how education is delivered, changes to requirements around school language categories or other unpredictable changes in society. ...

The Welsh Ministers have no plans to use this power immediately. Rather, the intention is that the power is available to Ministers so that it can be used to change the requirements around the content of the National Framework in response to new situations as described above.”⁸⁵

117. When asked to justify the inclusion of this power, and the fact that its inclusion would result in a limited ability for the Senedd to undertake scrutiny of future amendments to the legislation, the Cabinet Secretary stated:

“... The procedures that the Senedd has to have overnight of and scrutiny of subordinate legislation, I think, are very significant. Whether the Senedd uses them to the extent that it should is a matter for the Senedd, of course, not for Ministers. You will have sat, and I have sat, many times in the Senedd when subordinate legislation is brought forward, where it is using the affirmative procedure, or even sometimes the superaffirmative procedure, often at the urging of committees, and the debate goes like this: the Minister introduces the regulations; the Llywydd says, 'I have no further speakers, does the Minister wish to respond?', and it's all over. So, if I was to identify a weakness in the system, it would be less in the way in which legislation creates subordinate ways of doing things than that the Senedd

⁸⁵ Statement of policy intent, pages 26 to 27

itself doesn't always make full use of the powers of scrutiny that it has in the making of that legislation.

Now, I believe that this Bill gets the balance right. When there are merely administrative changes, it's a negative procedure; where there are more significant uses of subordinate legislation, this Bill provides the Senedd with, I think, a suitable opportunity to make sure that things are scrutinised.”⁸⁶

Our view

118. We note the Cabinet Secretary’s explanation for surrounding the words “lifelong” and “national” in brackets within section 23 of the Bill.

119. We are however concerned that the inclusion of brackets around these words could lead to doubt about their status within the legislation. It continues to be unclear to us why the use of brackets is necessary, or otherwise, why the Bill does not provide the necessary context for these words.

Recommendation 9. The Bill should be amended to remove the brackets surrounding the words “lifelong” and “national” within section 23 of the Bill, and if deemed necessary, the Bill should be further amended to include fuller context for these words in order to aid understanding.

120. We also note the information provided in the statement of policy intent in respect of the Henry VIII power in section 23(9) which enables the Welsh Ministers, by regulations, to amend section 23(3) to 23(7). In particular, we note that the Welsh Ministers have no immediate plans to use this power.

121. We similarly note the Cabinet Secretary’s view that the Senedd does not always “make full use of the powers of scrutiny” available to it when subordinate legislation is laid for such scrutiny, noting that – at “many times” – instruments are passed without any observations made about them on the floor of the Senedd.

122. However, while it may be the case that the current Senedd – at times – may have no observations to make about the exercise of powers by the current Welsh Government, it is far from unconceivable that a future Senedd may form a very different view on the way a future Welsh Government exercises the powers it holds. We express a similar view in our annual report for 2023/24.⁸⁷

⁸⁶ LJC Committee, 21 October 2024, RoP [163]

⁸⁷ LJC Committee, [Annual Report 2023/24](#), November 2024, paragraph 100

123. It is for this reason that we believe that rigorous safeguards should be placed on the face of primary legislation to ensure that the Senedd holds the appropriate powers of scrutiny of subordinate legislation. We believe this to be especially important when Henry VIII powers are taken by a current executive which has no immediate plans to use them.

124. With particular regard to the power in section 23(9): if it is exercised, it will be done so by potentially different set of Welsh Ministers in a future Senedd, and by its use those Ministers will be able to change the content of five subsections of a Bill with limited oversight. We view this provision to be an inappropriate delegation of power.

125. For these reasons, we believe that regulations which amend section 23(3) to (7) of the Bill, made under section 23(9), should be subject to statutory consultation providing an opportunity for thorough policy scrutiny. We believe that such scrutiny should provide sufficient time for Senedd committees to undertake detailed scrutiny of proposals contained in such regulations, given the breadth of this power. We believe section 53 of the *Agriculture (Wales) Act 2023*⁸⁸ may offer one possible approach.

Recommendation 10. The Bill should be amended to include a duty for the Welsh Ministers to consult before laying draft regulations under section 23(9).

Recommendation 11. The Bill should be amended to require that regulations made under section 23(9) shall not be made until 60 days have elapsed since the laying of draft regulations.

Sections 28 to 34 (Local Welsh in education strategic plans)

126. Section 28 requires each local authority to prepare a local Welsh in education strategic plan. Subsections (1) to (3) set out what a plan must include, and subsection (4) provides that, in preparing a plan, each local authority must have regard to the National Framework, and must also consult with the following:

- its neighbouring local authorities;
- the head teacher of every school it maintains;
- the governing body of every school it maintains;
- the principal of every further education institution in its area;

⁸⁸ Available at: www.legislation.gov.uk/asc/2023/4/section/53

- in relation to any foundation or voluntary school in its area, the person who appoints the established governors, and if the school is a school with a religious character, the appropriate religious body;
- His Majesty's Chief Inspector for Education and Training in Wales;
- the Learning Welsh Institute;
- the Welsh Language Commissioner; and
- persons specified in regulations made by the Welsh Ministers.

127. We asked the Cabinet Secretary to set out the feasibility of all of the above listed consultees being able to engage with all local authorities during the concurrent preparation of their individual Welsh in education strategic plans. He told us in response:

"... the consultation requirements that this Bill sets out essentially reflect the consultation arrangements around the WESPs that were set out in the founding Act, the School Standards and Organisation (Wales) Act 2013.⁸⁹ The obligation to consult neighbouring authorities, for example, is in that Act and has been part of WESP preparation ever since.

There are a couple of new consultees identified in this Bill, but they are not ones I think you'd regard particularly burdensome. There's a requirement, for example, to seek the views of the Welsh Language Commissioner. The commissioner will have views and the commissioner will be publishing material on this, so you wouldn't have to make a special effort to hear from the Welsh Language Commissioner. The national institute that the Bill brings into being is also a consultee for these purposes."⁹⁰

128. Section 28(3)(a) requires a Welsh in education strategic plan to include "information" on the education practitioners working in the local authority's area. We asked the Cabinet Secretary to explain what type of information it is envisaged a Welsh in education strategic plan would include, and why further detail on such matters is not included on the face of the Bill. In response, he told us that such information:

⁸⁹ These requirements are set out in section 84(4) of the 2013 Act.

⁹⁰ LJC Committee, 21 October 2024, RoP [97] to [98]

“... could include numbers of practitioners or their Welsh language ability, or age. The intention is that regulations under section 33 will be able to provide more detail on what is required to be included in the local Welsh in education strategic plan. This could change as time goes on – our journey towards 2050 will require us to review progress and adapt over time as circumstances change.”⁹¹

129. Sections 29 to 32 make further provision in respect of local Welsh in education strategic plans.

130. In particular, section 30 requires a local authority to submit a draft of its local Welsh in education strategic plan to the Welsh Ministers, who may then either approve the plan as submitted, approve it with modifications, or reject the plan. Should they reject it, they may give a direction to the local authority to reconsider the plan.

131. Similarly, in accordance with section 32, the Welsh Ministers may issue a direction to a local authority if they consider that the local authority is unlikely to meet a target that applies to it in the National Framework, and to require it to consider amending its local Welsh in education strategic plan.

132. As we similarly asked in respect of section 15, we asked the Cabinet Secretary to outline any potential implications of a local authority and the Welsh Ministers being unable to agree a local Welsh in education strategic plan. In response, he told us that the Welsh Ministers would “ultimately” be able to use their existing powers under the 2013 Act⁹² in such an event.⁹³

133. The Bill provides that directions issued by the Welsh Ministers under sections 30 and 32 will not be subject to any Senedd scrutiny procedure. We asked the Cabinet Secretary to explain why this is the case; in response, he told us:

“Sections 30 and 32 of the Bill are direction-making powers that are “executive” in nature, as opposed to being quasi-legislative. Where primary legislation makes provision about the

⁹¹ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 12

⁹² Section 85(2)(c) of the 2013 Act allows the Welsh Ministers to reject a Welsh in education strategic plan prepared by a local authority, and prepare another plan which is to be treated as the authority’s approved plan.

⁹³ LJC Committee, 21 October 2024, RoP [148]

power to make directions of this kind it is not usual for such directions to be subject to a procedure in primary legislation.”⁹⁴

134. Section 33(1) enables the Welsh Ministers, by regulations subject to the made negative procedure, to make further provision about local Welsh in education strategic plans. Such provision may include but would not be limited to provision about the following:

- the form and content of a plan;
- timing in relation to the preparation of a plan;
- the process of consultation when preparing a draft plan;
- the procedure for approval of a plan;
- how and when to publish a plan; and
- reporting on the implementation of the plan.

135. The statement of policy intent states in respect of the power in section 33(1):

“It is appropriate that regulations provide the Welsh Ministers with the flexibility to make further provision about local Welsh in education strategic plans. These regulations will prescribe technical and administrative matters. ...

These powers could be used to ask local authorities to highlight in their plans how programmes, policies and their wider statutory duties have been considered in pursuit of the targets imposed on them ... It is therefore appropriate that this level of detail is a matter for subordinate legislation as it is likely to vary over time.”⁹⁵

136. In correspondence, we asked the Cabinet Secretary to explain – given the breadth of this power – whether it would be more appropriate for regulations made under section 33(1) to be subject to the draft affirmative procedure. In response, he told us:

⁹⁴ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 13

⁹⁵ Statement of policy intent, page 33

“A number of key concepts relating to the local Welsh in Education Strategic Plans (WESP) are legislated for in the Bill, for example:

- *what must be included in the WESP,*
- *the duration of the WESP and*
- *who must be consulted.*

The power in section 33 enables the Welsh Ministers to make further provision about the plan, but those matters are largely technical and administrative in nature and supplement what is in the Bill, for example:

- *the timing of the plan (but not its duration),*
- *consultation process, and*
- *approval process.*

This would lean towards a negative procedure, as set out in the Welsh Government’s guidelines on subordinate legislation.

There is also scope under the power for the regulations to make provision about the content of the plan, which will build upon the express requirements in section 28, and allows the Welsh Ministers to make specific and more detailed provision (as is the case in the current WESP Regulations).

It would also allow the Welsh Ministers to respond to changes in circumstances and priorities over time. That power will be limited by the scope of section 28 – the provisions in the regulations about the content must fall within the ambit and scope of section 28.

Using of the Negative procedure replicates the existing procedure in the School Standards and Organisation (Wales) Act 2013. I consider that a negative procedure is justifiable on the basis that it follows existing practice and legislation.”⁹⁶

⁹⁶ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 14a

137. In accordance with section 33(2), regulations made under section 33(1) may also make provision enabling two or more local authorities to produce a joint local Welsh in education strategic plan, and any such regulations may make provision to apply sections 28 to 32 with modifications for that purpose. When asked in correspondence to set out what type of modifications these could be, the Cabinet Secretary told us:

“This applies where local authorities are permitted to prepare joint plans as a result of regulations made under section 33(2). In such a scenario it may be necessary to modify some of the requirements of sections 28 to 32 to reflect the joint nature of the plan and that it will cover more than one authority’s area. It may also be necessary to modify in order to reflect the separate targets the local authorities will receive in the Framework.

This reflects the power in the current WESP statutory framework (section 87 of the School Standards and Organisation (Wales) Act 2013).”⁹⁷

138. We also asked the Cabinet Secretary to explain why there is no detail on the face of the Bill relating to joint local Welsh in education strategic plans. In response, he told us:

“Dealing with joint plans in regulations means that consultation can be undertaken about what kind of joint plans might be sought. That might be different in different parts of Wales. Having a regulation making power will allow a more purposeful and specific mechanism for such plans. This reflects the power in the current WESP statutory framework (section 87 of the School Standards and Organisation (Wales) Act 2013).”⁹⁸

Our view

139. We note the evidence received from the Cabinet Secretary in respect of sections 28 to 34 of the Bill.

140. In particular, we note the Cabinet Secretary’s statement that the list of consultees provided by section 28(4) reflect those provided by the 2013 Act. We also note his view that the addition of the Welsh Language Commissioner and the

⁹⁷ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 14b

⁹⁸ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 14c

Learning Welsh Institute to that list will not result in additional work for local authorities that would be regarded as “particularly burdensome”.

141. In addition, we note the Cabinet Secretary’s explanation for why the section 28(3)(a) does not provide further detail on what type of “information” a local Welsh in education strategic plan should include in relation to education practitioners working in a local authority’s area. In this regard, we acknowledge the examples provided by the Cabinet Secretary of what this information may include, such as numbers of practitioners or their Welsh language ability, or age. Since the inclusion of such details within a plan appear to be central to achieving the aims of the Bill, we believe that the Cabinet Secretary should give further consideration to including further detail within section 28(3)(a).

Recommendation 12. The Cabinet Secretary should consider whether the Bill should be amended to include further detail on what type of “information” a local Welsh in education strategic plan should include in relation to education practitioners working in a local authority’s area.

142. We acknowledge the Cabinet Secretary’s confirmation that the Welsh Ministers could ultimately use their existing powers under the 2013 Act in the event that a local authority and the Welsh Ministers are unable to agree a local Welsh in education strategic plan.

143. We also note the Cabinet Secretary’s view that the direction-making powers within section 30 and 32 of the Bill are “executive” in nature, and as such should not be subject to any scrutiny procedure. However, we believe that given that these powers allow the Welsh Ministers to interfere with a subjective decision-making process of a local authority, it is instead appropriate that such directions should be subject to a level of Senedd scrutiny.

Recommendation 13. The Bill should be amended to provide that directions issued under section 30 and 32 of the Bill are subject to the made negative procedure.

144. We note the Cabinet Secretary’s view that the attachment of the made negative procedure to regulations made under section 33(1) of the Bill replicates the existing procedure in the 2013 Act, and is therefore justifiable on that basis.

145. We also note the justification provided by the Cabinet Secretary for why the Bill does not include detail on joint local Welsh in education strategic plans, for the reason that providing such detail in regulations will allow for a “more purposeful and specific mechanism” for such plans, and for consultation to be

undertaken on their content. We similarly note that this provision reflects existing provision in section 87 of the 2013 Act.

146. However, despite the fact that section 33(2) reflects the existing power in the 2013 Act, we believe that this Bill provides an opportunity to include on its face a sufficient level of detail in respect of joint local Welsh in education strategic plans, instead of leaving all such detail to be set out in regulations. We believe there would be merit in this approach, as it would provide more certainty for local authorities and also make the legislation more accessible.

Recommendation 14. The Cabinet Secretary should consider whether the Bill should be amended to provide further detail on the information which must and may be included in a joint local Welsh in education strategic plan, in addition to the mechanism for their approval and their publication, and the review and amendment process for such plans.

Part 5 and Schedule 2 (National Institute for Learning Welsh)

147. Part 5 of the Bill comprises eight sections, one of which introduces a Schedule.

148. Section 36 provides for the establishment of the Learning Welsh Institute as a corporate body with specific powers and duties in relation to facilitating and supporting the learning of Welsh. The section introduces Schedule 2 to the Bill, which makes further provision about the Institute.

149. Paragraph 2(1) of Schedule 2 provides that the chair and non-executive members of the Learning Welsh Institute are to be appointed by the Welsh Ministers.

150. In respect of these provisions, the EM states:

“The Institute will be a Welsh Government sponsored body, operating at arm’s length from government but within a strategic planning and funding framework established by Welsh Ministers. This framework will mirror the standard framework document for a Welsh Government Sponsored Body.”⁹⁹

151. We asked the Cabinet Secretary to set out how it is intended that the Learning Welsh Institute will operate as an arm’s-length body, given that its chair

⁹⁹ EM, paragraph 3.214

and its non-executive members will be appointed by the Welsh Ministers, and the fact that it will be expected to operate within a strategic planning and funding framework established by those Ministers. In response, he told us:

“... the national institute will operate in just the same way as any other arm's-length body that is established by the Welsh Government. Of course ... the chair and the board will be appointed by Welsh Ministers, but that's not an arbitrary process. As you know, we are governed by a code of conduct for public appointments. The involvement of the commissioner is always part of that. Ministers will get advice in which the commissioner will have been directly involved. ... And, yes, the chief funding stream for the institute will be the Welsh Government, but it will have its own accountable officer, who will be responsible for the financial oversight of the organisation and will have independent legal obligations and capacities of their own.”¹⁰⁰

152. Paragraph 2(4) of Schedule 2 enables the Welsh Ministers, by regulations, to vary the number of members of the Learning Welsh Institute. The EM states that the inclusion of this power “allows the Welsh Ministers the flexibility to change the number of non-executive and executive members as necessary”, and as the regulations made in exercise of the power will prescribe “technical and administrative matters”, the made negative procedure has been chosen.¹⁰¹ The statement of policy intent similarly states in respect of this power:

“We envisage that this power may be used alongside the power to make regulations that give additional functions to the Institute under section 38(1). For example, if Ministers needed to give supplementary functions to the Institute, this power could be used to increase the number of members if necessary to enable the Institute to exercise its supplementary functions.”¹⁰²

153. However, in accordance with section 52(4)(b), it appears that regulations made in exercise of this power will instead be subject to the draft affirmative procedure. We therefore asked the Cabinet Secretary, in correspondence, to confirm this was the case. He told us in response:

¹⁰⁰ LJC Committee, 21 October 2024, RoP [105]

¹⁰¹ EM, page 98

¹⁰² Statement of policy intent, page 37

“We agree with the Committee that regulations made under paragraph 2(4) of Schedule 2 to the Bill would amend paragraph 2(1) of Schedule 2 to the Bill, as it is a power to amend a provision in the Welsh Language and Education (Wales) Act. We agree that the effect of section 52(4)(b) is that the affirmative procedure applies to the regulations. We will consider whether an amendment is required to section 52(4)(a) of the Bill and will amend Table 5.1 of the Explanatory Memorandum to ensure it reflects the text of the Bill.”¹⁰³

154. Paragraph 15(4) of Schedule 2 allows the Welsh Ministers to specify the responsibilities of the accounting officer of the new Learning Welsh Institute. Paragraph 15(5) sets out the responsibilities that may be specified, which include:

- responsibilities in relation to the signing of the accounts;
- responsibilities for the appropriateness and regularity of the finances of the Learning Welsh Institute;
- responsibilities for the economy, efficiency and effectiveness of the use of the Institute’s resources; and
- responsibilities owed to the Welsh Ministers, Senedd Cymru or its Public Accounts Committee.

155. In correspondence, we asked the Cabinet Secretary to set out how these responsibilities are to be specified in practice, and whether the Senedd will be provided with an opportunity to scrutinise them. We also asked the Cabinet Secretary to explain to us why a definitive list of responsibilities could not be included on the face of the Bill, instead of the non-exhaustive list included in paragraph 15(5). In response, he told us:

“The Athrofa will be a Welsh Government sponsored body, operating at arm’s length from government but within a strategic planning and funding framework established by the Welsh Ministers. This framework will mirror the standard framework document for a Welsh Government Sponsored Body and will detail the terms and conditions under which the Welsh Ministers provide resources to the Athrofa, the roles and responsibilities of the Welsh Ministers and the Athrofa as well as

¹⁰³ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 15

the relationship between them. This includes the roles and responsibilities of the Accounting Officer (AO) and individual Board members.

The AO will have specific responsibilities for the propriety and regularity of the public finances for which they are responsible which will be included in a separate memorandum under the framework, including their accountability to the Senedd, the Welsh Government and the Athrofa's board. The Accounting Officer's responsibilities are derived originally from the Treasury – and the Permanent Secretary has a role in ensuring that the responsibilities of the Accounting Officer reflect those responsibilities. The Senedd has no power to intervene in that regard.

The reason for providing a non-exhaustive list is to give broad parameters of the role but also provide flexibility in relation to the chief accounting officer's functions that are agile enough to reflect Welsh Ministers' evolving requirements on financial accountability within the funding framework. Quite often, primary legislation does not say anything at all about the duties of the Accounting Officer when setting up a new statutory body, so the aim of paragraph 15 is to give a broad indication of what those duties will be without being unduly prescriptive.

In addition, general accounting principles apply to bodies handling Government funds.¹⁰⁴

156. Paragraph 18 of Schedule 2 enables the Auditor General for Wales to carry out examinations into the economy, efficiency and effectiveness with which resources have been used in discharging the Learning Welsh Institute's functions.

157. We asked the Cabinet Secretary, in correspondence, to provide us with the details of any consideration given as to whether paragraph 18 of Schedule 2 complies with paragraph 5(3) of Schedule 7B to the 2006 Act.¹⁰⁵ In response, he told us:

¹⁰⁴ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 17

¹⁰⁵ Paragraph 5(3) of Schedule 7B to the 2006 Act provides that a provision of an Act of the Senedd cannot, unless it is an oversight provision and also a non-governmental committee provision, make modifications of section 8(1) of the *Public Audit (Wales) Act 2013* so far as that section relates to

“Paragraph 18 of Schedule 2 to this Bill provides a power for the Auditor General to carry out a financial examination, states that policy objectives are outside the scope of the discretion provided to the Auditor General, and provides what the Auditor General must do before and after conducting a financial examination. There is no provision in paragraph 18 controlling or directing the use of the Auditor General’s financial examination functions and the provision complies with paragraph 5(3) of Schedule 7B to the Government of Wales Act 2006.”¹⁰⁶

158. Section 37 sets out the objective of the Learning Welsh Institute – to support people to learn Welsh, and facilitate their progression, so that more people learn the language and improve their skills – and places duties on it to meet this objective. Some of these duties involve engagement with a number of third parties; for example, subsection (2)(g) provides that the Learning Welsh Institute must develop and maintain a national curriculum for Welsh language learning for learners over compulsory school age.

159. We asked the Cabinet Secretary to explain how the duties within section 37 are intended to be exercised in practice, and what, if any, consequences will there be for any third parties which do not comply with any of the Institute’s requirements of them. He told us in response:

“... the relationship is essentially a contractual one. So, the national institute will contract with a number of Welsh language learning providers. You would expect the institute to monitor that contract, to monitor compliance with that contract, and if a provider was not carrying out the terms of the contract, to intervene to secure compliance. In the end, the consequence for the provider, for the third party, is that they lose the contract. So, there is a significant potential penalty for an organisation, in that relationship with the national institute, if it fails to deliver what it has been contracted to deliver.”¹⁰⁷

the Auditor General’s exercise of functions free from the direction or control of the Senedd or Welsh Government, or confer power by subordinate legislation to do so.

¹⁰⁶ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 16

¹⁰⁷ LJC Committee, 21 October 2024, RoP [101]

Our view

160. We note the evidence received from the Cabinet Secretary in respect of Part 5 of, and Schedule 2 to, the Bill.

161. We acknowledge the Cabinet Secretary's explanation for the approach taken in respect of paragraph 2(1) of Schedule 2. In particular, that while the chair and the board of the Learning Welsh Institute will be appointed by the Welsh Ministers, a number of safeguards will ensure that it can effectively operate at arm's length from the Welsh Government.

162. We also acknowledge the Cabinet Secretary's confirmation that – by virtue of section 52(4) of the Bill – regulations made under paragraph 2(4) of Schedule 2 will be subject to the draft affirmative procedure, rather than the made negative procedure (as stated in the EM). We note that the Cabinet Secretary will consider whether an amendment will be required to section 52(4) of the Bill.

163. While the EM states that regulations made under paragraph 2(4) of Schedule 2 will prescribe “technical and administrative” matters, we believe that the matter of changing the number of non-executive and executive members of an arm's-length body does not meet this criteria, and as such we believe the application of the draft affirmative procedure to such regulations to be appropriate. We therefore believe that clarity should be provided on the outcome of any consideration given to the scrutiny procedure attached to this regulation-making power.

Recommendation 15. The Cabinet Secretary should confirm whether the Welsh Government intends to bring forward an amendment to the Bill at Stage 2 to add paragraph 2(4) of Schedule 2 to section 52(4), and if this is not the intention of the Welsh Government, the Cabinet Secretary should explain why this is the case.

164. We note the Cabinet Secretary's explanation for why a definitive list of responsibilities for the Learning Welsh Institute is not included on the face of the Bill, instead of the non-exhaustive list provided by paragraph 15(5) of Schedule 2.

165. We also note the Cabinet Secretary's view that paragraph 18 of Schedule 2 complies with paragraph 5(3) of Schedule 7B to the 2006 Act, in that none of its provisions control or direct the use of the Auditor General's financial examination function.

166. Furthermore, we note the Cabinet Secretary's view that the relationship between bodies directed by the Learning Welsh Institute under section 37 of the Bill will be a contractual one, and that the ultimate consequence for a learning

provider which does not follow the requirements of the Institute would be a loss of contract.

Section 49 (Interpretation)

167. Section 49 provides definitions for some of the terms used in the Bill.

168. Within both section 8(2)(b) and section 35(a), an identical definition of “Welsh language education” is provided for the purposes of Parts 3 and 4, respectively. In contrast, the term is used in section 1(1)(c)(i) and section 39(2) but is not defined for those purposes.

169. In correspondence, we asked the Cabinet Secretary to explain why a single definition of “Welsh language education” is not provided within section 49 of the Bill. We also asked whether he considered that the absence of a definition of the term in respect of section 1(1)(c)(i) and section 39(2) was likely to cause any confusion in terms of interpretation.

170. In response, the Cabinet Secretary said that he agreed with us that the term “Welsh language education” is not defined in section 1(1)(c)(i) and section 39(2), and stated the Welsh Government would “consider this matter further.”¹⁰⁸

Our view

171. We acknowledge the Cabinet Secretary’s commitment to give further consideration to there being no definition of “Welsh language education” for the purposes of section 1(1)(c)(i) and section 39(2) of the Bill.

172. We believe that the inclusion of an single overarching definition of the term within section 49 of the Bill will assist the users of the legislation, especially as it is a newly-introduced term (as we reflected upon in the previous chapter).

Recommendation 16. The Bill should be amended to include a definition of “Welsh language education” in section 1(1)(c)(i) and section 39(2).

Section 50 (Publication)

173. Section 50 provides that where the Bill imposes a duty on a person to publish a document, it must be published electronically, and if that person has their own website, they must publish the document on that website.

¹⁰⁸ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 18

174. In correspondence, we asked the Cabinet Secretary to explain, if a person does not have their own website, where that person is expected to publish such a document. In response, he told us:

“The provision is similar to section 171 of the Local Government and Elections (Wales) Act 2021. Welsh Government policy at the time was that where a duty to publish electronically fell on a community council under that Act and that community council did not have a website they could ask the local authority to publish the material on their website.

In this context, if a school did not have a website they could ask the local authority to publish it. In relation to the Local Government and Elections (Wales) Act 2021, there were no concerns that the bodies on whom that duty was imposed would have any problems discharging it.

On the duty to publish “electronically”, a school could also publish documents via an app and section 50(1) allows for that. Other digital or social media platforms may also be used in the future.”¹⁰⁹

Our view

175. We note the Cabinet Secretary’s explanation that, in line with the Bill’s provisions, if a school did not have a website – or an app – it could ask a local authority to publish any documents it is required to publish on its behalf.

176. However, we believe that, as currently drafted, the Bill does not provide sufficient certainty that this option would be open for a relevant school¹¹⁰ to choose. In that regard, we believe that such legal certainty should be provided on the face of the Bill.

Recommendation 17. The Bill should be amended to provide that where the Bill imposes a duty on a maintained school to publish a document electronically, and it does not have its own website, it may ask a local authority to publish the document on its behalf.

¹⁰⁹ Letter from the Cabinet Secretary for Finance and Welsh Language, 15 November 2024, response to question 19

¹¹⁰ For example, it appears that eight of the 39 [primary schools maintained by Ceredigion County Council](#) do not have their own website.
