

## **Proposed Welsh Language Measure 2010**

### **Evidence from Welsh Language Society (Cymdeithas yr Iaith)**

*“We will be seeking enhanced legislative competence on the Welsh Language... with a view to a new Assembly Measure to confirm:*

- *official status for both Welsh and English*
- *linguistic rights in the provision of services and*
- *the establishment of the post of Language Commissioner.”*

One Wales Agreement, 2007

*“Our vision is a bold one... Our aspiration - a truly bilingual Wales, by which we mean a country where people can choose to live their lives through the medium of either or both Welsh or English and where the presence of the two languages is a source of pride and strength to us all.”*

Iaith Pawb, Welsh Assembly Government, 2003

### **Introduction**

What difference will a Welsh Language Measure make to the everyday lives of the people of Wales? This is the question that we must ask in order to keep sight of the relationship between the Welsh language and the people of Wales.

Over the last year people have been asking the Welsh Language Society what will change in terms of their right to use the Welsh language as a result of the new Welsh Language Measure. Will they have the right to Welsh-language education for their children? Will phone companies be offering services in Welsh? Will they be able to have Welsh lessons as part of their work-based training?

The Welsh language is about to disappear as a community language. The 2001 Census revealed a substantial decline in the number of Welsh speakers in Welsh communities: from 60% to 52% in Ceredigion, and from 73% to 69% in Gwynedd. It also revealed a sharp decline in the numbers of wards where over 80% of the population speak Welsh – from 32 (in 1991) to 17 wards (in 2001). The figures show how important sustainable future planning is for our communities. A Welsh Language Measure provides an opportunity to look at community regeneration as well as securing the Welsh language’s status as the natural language of the community.

The Welsh Language Society has been calling for a language Measure that includes the following three things: official status for the Welsh language, statutory rights for the people of Wales to use Welsh, and an independent Language Commissioner with the power to regulate the Measure. By now, because of the restrictions of the LCO, the vast majority of the private sector has avoided any requirements regarding basic services in Welsh – supermarkets, banks, companies such as Asda, RBS and others; they can continue to ignore the Welsh language and confirm that it is a second class, tokenistic language in Wales. Also, the shops of every company, even the devolved ones, have been exempted from the Order.

In 2007, when the One Wales agreement was signed, the Welsh Government promised the people of Wales three things, including the establishment of rights to use the Welsh language, official status, and a Commissioner to protect those rights. As the Heritage Minister said in February 2009, the government *undertook three promises with regard to the Welsh language... to give Welsh speakers rights, and to create a Commissioner who would safeguard those rights..*” However, this is not what we see in the proposed Measure. The Welsh Language Board’s legal advisers and experts accept that the Measure in its present form does not establish an official status for the Welsh language nor for the rights of individuals either.

We believe that establishing *the right to use the Welsh language* raises the expectations of the people of Wales with regard to their relationship with the Welsh language. Empowering people to use the language would increase the confidence of speakers, learners and those who currently put their faith in the future of the Welsh language by sending their children to Welsh-medium schools. If no guidance is given regarding the way forward for the Welsh language from the fickle ‘bilingualism’ that we have at present, confidence will decline and the opportunity for the Welsh language to progress as a vibrant medium for the people of Wales will be lost.

Furthermore, we believe that the Government needs to be very clear when communicating the purpose of the Welsh Language Measure. In our opinion, the purpose of any language measure is to correct the historic injustice whereby the Welsh language was treated as subordinate and, as a result, rights need to be established to give the people of Wales certainty regarding the language. It is only by dealing with the imbalance of power that exists between the Welsh language and the English language, and by establishing specific measures to counteract the pattern, that we can be sure of the value and effectiveness of language legislation. The Welsh language must benefit from the experience and understanding gained during the campaigns for rights undertaken over the past decade and incorporate these lessons into new Welsh language legislation. With the arrival of such laws as the Disability Discrimination Act 1995 and The Employment Equality (Sexual Orientation) Act 2003, we see that the Welsh Language Act 1993 and the proposed Measure are ineffective with regard to ensuring rights and justice for the Welsh language and the people of Wales.

Failing to include rights, will mean that the Measure will lack the strength to deal with the relationship between the people of Wales and the Welsh language. We believe that official status is a vital part of ensuring status and better treatment for the language. It is only by introducing comprehensive rights along with status that we can step towards normalising the language in Wales. The proposed Measure fails to empower people to, in the words of Iaith Pawb, “*choose to live their lives through the medium of either or both Welsh or English*”.

The major defect in the proposed Measure is that it is in the same vein as the 1993 Welsh Language Act and does not establish a level of linguistic rights. According to the proposed Measure, the Language Commissioner’s role is ‘*promoting and facilitating use of Welsh and promoting equality with English*’ rather than enabling the people of Wales to use the Welsh language by establishing rights. This highlights the neo-liberal roots of the legislation – a tradition that has seen the role of the state as ‘arm’s length promoters’ rather than agents who guarantee rights. So, according to the Measure, we as Welsh speakers need to be compelled and educated in order to opt in to the Welsh language and to ask for more services through the medium of Welsh, rather than to be **empowered** and **enabled** – through rights – to be able to use the Welsh language naturally.

At present, our members must fight on a daily basis to receive services in Welsh, even from public bodies (see the appendix for examples). Bestowing rights on the individual is

the only way that we can ensure that public bodies, private bodies and the government do not ignore the wishes of the people, especially people who do not have strong voice, such as children and older people, to receive services through the medium of Welsh.

- Consider a child who speaks Welsh, whether that is at home or only in school, who has no opportunity to attend extra-curricular activities through the medium of Welsh. The figures collated by the Welsh Language Society show that access to swimming lessons, for example, is very low.
- Consider a young person who wishes to use a Welsh-language service but the council or the phone company tells them that there is no-one available or that they will have to wait for a call back the next day or later? What effect will this have on the use of the Welsh language among young people?
- Consider older people who receive medical treatment, who in their most private moments, wish to speak their first language. Is this the correct way to treat older people who have spent a lifetime contributing to Welsh language community life?

As the members of Legislation Committee No. 2 scrutinise the proposed Measure, we ask them to focus on putting the future of the Welsh language in the hands of the people of Wales and not to the whims of the free market and Government Ministers.

### **Aspects of the Proposed Welsh Language Measure**

#### **No rights for the Welsh language, no status for the Welsh language – a lack of principles**

The Measure does not create rights for the Welsh language, nor does it establish an official status, which breaks the promises of the One Wales document. If it is not amended, the Welsh Language Society will have to campaign for a brand new language Measure because of the absence of these vital principles. It is principles that should be guiding the Measure's provisions, which would be the work of the Commissioner and the government, and access to the Welsh language for the people of Wales in their everyday lives. Establishing official status for the Welsh language would have an important legal and psychological effect.

#### **Rights for companies, but not for powerless individuals**

The standards in the proposed Measure neither secure nor lead to rights. Rights empower people and communities in their everyday lives – there is not one right in the bill for individuals. The only mention of rights in the bill is the right of companies and bodies to challenge the standards imposed upon them (c. 53, the Welsh Language Measure). Individuals should have similar rights.

#### **Uncertain, unclear standards**

The Measure will not ensure that people know what their rights are in relation to using the Welsh language, because the system is totally dependent upon standards that vary from body to body and from area to area. There is no certainty that people will not continue to endure a standard of inferior service either e.g. having to make a specific request for services through the medium of Welsh.

#### **No freedom to speak, no right to speak**

The Measure will prevent discrimination against people who wish to work through the medium of Welsh. The Commissioner would have the power to hold inquiries but would not have the power to compel companies or bodies to change their practices. Despite clear

consensus during the Thomas Cook case, when members of staff were banned from speaking Welsh, and in many subsequent cases, the Measure does not strengthen the individual's position.

### **No right to Welsh-medium education**

The Measure does not include any steps towards improving the provision of Welsh-medium education: that is a general right to Welsh-medium education.

### **A community language**

We believe that the true strength of a new Welsh Language Act would be that it should not only establish rights for individuals, but also establish basic rights for the Welsh language so that it can **survive as a community language**. If the Welsh language is to survive, then Welsh-language communities must survive and, indeed, the Welsh language must be given the **right to be revived** as an integral and fundamental part of life for all communities in Wales. Securing these community rights and these deductions would set a precedent to strengthen the present provision in planning legislation *to consider the Welsh language as a planning factor* (Welsh Assembly Government Technical Advice Note on the Welsh language in planning procedure).

### **Technology**

In light of developments in technology and trends in globalisation, in many areas we have lost what had been gained in previous years in terms of real status for the Welsh language.

### **A more independent Commissioner**

Several elements of the Measure threaten the Commissioner's independence: a) the possibility that the Commissioner would be responsible for the role of language promotion as well as regulating bodies; b) that the First Minister rather than the National Assembly will appoint the Commissioner; c) the absence of a duty to protect the rights of people; d) the absence of a principle to drive his/her work; e) and the absence of a declaration of official status that could empower the Commissioner in his/her post.

### **The absence of Official Status (Clause 1)**

*"I simply suggest that by running away from the declaration of official status for Welsh...the Government are running away from the aspirations of the people of Wales."*

Alex Carlisle MP, Debate on the Welsh Language Bill 1993

*"The Government is introducing a Welsh Language Bill, but it has made no reference to what it seeks to achieve. ...We believe that the Government should not only cease to try to uproot the language and get rid of it altogether, but confer official status on it..."*

*"We are very concerned that the Welsh Language Board, in the absence of a reference to official status, will be working in a vacuum..."*

Rhodri Morgan, Debate on the Welsh Language Bill 1993

*"As we all know, 'Iaith Pawb' is the Government's strategy document aimed at promoting and supporting the Welsh language. The key target in the strategy is to increase the number of Welsh speakers by 5 per cent by 2011, from the 2001 census figure of 21 per cent. To achieve that, we must have a robust framework in place, which is why we, as a party, are putting forward a motion to give the Welsh language official status and to create an independent language commissioner, which is imperative."*

Paul Davies AM, June 2007

*"The first thing that needs to be done... is to ensure official status for the Welsh language in a new act. The symbolism of this step is hugely important ... The time has come ... to acknowledge the civil rights of Welsh speakers and to do that in the eyes of the law. Language Rights make it clear to the public what is the nature of the service they can expect... Wales has waited a long-time to ensure official status for her language, and the people of Wales have waited too long for the right to service in Welsh in their own country. It's a matter of self-respect as well as acknowledging the civil rights of Welsh speakers. Wales is our country and the Welsh language, with her treasure and history, her oral and written culture belongs to everybody who lives here."*

Ieuan Wyn Jones, Plaid Cymru Leader, 2006

Factually, the Measure does not establish official status for the Welsh language – lawyers have already provided advice confirming our viewpoint:

*"It is not stated unambiguously that the Welsh language has official status in Wales... That's a pity."*

Emyr Lewis, Solicitor and Partner, Morgan Cole - Golwg, 11 March 2010

*"The Measure has been drafted in a way which assumes that the Welsh language already has some status as an official language. We believe there needs to be a clear and unambiguous statement in law that the Welsh language is an official language in Wales in order to realise the Government's objective. To date, no such statement has been made."*

An open letter from 13 lawyers, Western Mail, Daily Post and Golwg, 18 March 2010

*"So far as the status of the Welsh language is concerned, we ask: if the status of Welsh is already confirmed in several Acts, why can't its status be declared simply and unambiguously in this legislation? Why not use some such wording as 'The Welsh language is an official language in Wales'?"*

Welsh Language Board, evidence for the scrutiny committee

Why an official status?

The barrister Gwion Lewis, notes for the Celebrating our Language lecture, given on 8 February 2010: *"I have heard some politicians asking: what will this [official status] add to other measures? Is this not adding another layer of complication that we could well do without? I do not see things that way, for this would not be some symbolic*

*declaration announcing that the Welsh language is an official language in Wales, and nothing more. There is a definite legal significance to the principle. If someone looks at legal cases where courts of law have agreed that it is reasonable and therefore lawful to take steps in order to promote one specific language, they will almost invariably have declared that the policy is a reasonable one because the language in question is the official language of that particular country.”*

**PART OF A LETTER TO THE CHIEF EXECUTIVE OF YSBYTY GWYNEDD  
FROM BETHAN WYN JONES**

Dear Sir/Madam

I am sorry that I must write to you with a complaint.

Yesterday, I visited the Endoscopy Unit at Gwynedd Hospital for an examination. I had read the handbook carefully before going in and had signed the consent form on the Welsh-language page. After entering the treatment room, I was greeted kindly by the surgeon xxxx, but he asked me whether I would be willing to sign the English language consent form as well as the Welsh form. When I asked “Why?”, another man in the room, who was young and had a beard, but whose name I did not catch, said that this was because the Welsh language has no legal validity.

xxxx’s explanation was that he did not understand Welsh, and he indicated that he had signed the Welsh section. I was not happy with this at all and I asked for my husband to be allowed into the room. Since no-one went to get him, I did so myself. Although it was completely against my will, I signed the English section as well as the Welsh because it was implicit in the attitude of those present that I would not be examined if I did not do so. I would like to make it quite clear that I am not complaining at all about the medical care that I received from everyone with whom I was involved but several things worry me about what happened.

On the North West Wales NHS website, you note “The North West Wales NHS Trust has adopted the principle that in the conduct of public business it will treat the English and Welsh languages on a basis of equality.” However, even though you have adopted this principle, it would seem that you have not put it into action.

It was clear in the Endoscopy Unit treatment room on 14 March 2009 that English and Welsh were not equal. I was hurt and concerned by this and I was already nervous enough about the treatment that lay ahead. I do not think that this counts as ‘caring’ for patients.

I would like to receive a full, unequivocal apology for what happened to me and an assurance that no-one will have to suffer as I did, by having their signature on a Welsh language form being rejected.

Bethan Wyn Jones

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The Welsh Language Society believes that the Welsh language needs to be treated in a particular way and that this can be achieved by establishing official status for the language.. The language is spoken and learnt by the people of Wales and we believe that it is a language for all who wish to make Wales their home. This does not mean that the Welsh language has higher status than the English language, but it would acknowledge that there is a need to create fairer conditions so that it can compete on a fairer level with English in the linguistic environment in Wales. This happens in other areas of human rights e.g. acknowledgement of ethnic minorities’ human rights so that they can compete fairly in a society with a white majority, and the same is true in the field of rights for disabled people and gay people. For some reason, people find it difficult to apply this principle within the linguistic context because they believe that it is contrary to the idea of equality between the Welsh and English languages. Nevertheless, the jurisprudence in other fields of equality shows that some parties must be treated differently in order to reach the ideal of being equal in the long run.

### **What is the practical effect?**

It would erase the confusion that exists in the public's mind at present regarding the legal status of the Welsh language. This has become evident, time after time, for example when employers try to prohibit members of staff from speaking Welsh, or even as civil servants within the Assembly argue that English is the only official internal language within the organisation.

### **The UTECA Case**

This case dealt with the legality of the Spanish law that compelled television producers to reserve 3% of their revenue every year to finance films through the medium of one of the official languages of Spain. The policy was challenged by an Organisation of Commercial Television Companies in Spain, who alleged that this limited many of their freedoms within the European Union (including the freedom to work anywhere within the Union under similar conditions).

The court refused the application and referred to some of its decisions in the past (including Groner) where the Court had accepted that protecting and promoting one or more of the **official** languages within the Member State was an example of an "extremely important reason" that justified the policy.

The significance of official status would be to make it easier for the Assembly Government to justify policies that promote the Welsh language from the perspective of European law. If we state in law that the Welsh language is an official language and that it should be treated on an equal basis with the English language, this puts pressure on us to show how we propose to maintain that aim – that is, to establish basic linguistic rights.

### **What is the psychological effect?**

Emyr Lewis said in his evidence to the Legislative Committee that proclaiming the official status of the Welsh language would be an important psychological and social change: 'Confirming in a Measure that the Welsh language is an official language in Wales, and is equal to the English language, would be an appropriate and effective way to bring to an end the destructive effect of the laws that established, over centuries, the norm of excluding the Welsh language from Welsh public life, and from so many other domains; a norm that is still a real psychological and social power in our society.'

### **But does making a language official go against the British tradition of lawmaking?**

No, it does not. The 'British North America Act 1867' and 'Canada Act 1982' established official languages e.g.: 'English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the Parliament and government of Canada.'

So we agree with the view of independent lawyers which has also been endorsed by the Welsh Language Board that there is a need for a clear and unequivocal declaration that the Welsh language is an official language in Wales. There is no need to change the status of the English language as it is a strong, world-wide language and the only de facto language of Wales at present.

### **The Welsh language as a unique language of Wales**

The Welsh language is a unique language of Wales. It is the common heritage of all the citizens of Wales, whether they are Welsh speakers or not. The Welsh language has a

unique relationship with Wales. It is one of the elements that contribute towards making Wales special as a country and it is a powerful symbol of Welsh identity.

Wales is a multilingual country, as it has always been to varying degrees, through the languages of the Romans, the Irish, the Vikings, the English, the Normans and the Flemings and the languages spoken by the ethnic communities of Wales – but, throughout its history, the Welsh language has been a living medium and the primary basis for our national identity.

This principle of a unique language is not specific to Wales. It is the basic principle that forms the basis of linguistic legislation in the Basque Country and Catalonia as well as the Universal Declaration of Linguistic Rights introduced by UNESCO.

We believe that it is an important principle due to its symbolic and practical power. On a symbolic level, acknowledging that Welsh is a unique language of Wales would explain the feeling that the people of Wales have towards the Welsh language and the special and unique relationship that the language has with this part of the world. On a practical level, including this principle within a language measure would offer a robust legal and normalising foundation to the kind of plans that we would like to implement in the future. For example, the principle of a unique language could offer justification for the measures that positively discriminate in favour of the Welsh language as well as setting a precedent to ensure that everybody in Wales has access to Welsh learning courses in the workplace.

### **Amendments**

- Delete section 1(1) and insert the words “The Welsh language is a unique language of Wales.”
- Delete sub-section (2) and (3) and insert the words “The Welsh language is an official language in Wales”

### **The Commissioner (Clause 2 onwards)**

We want the government to create a Commissioner who will be a powerful and independent champion and who will protect the rights of all in Wales to use the Welsh language, through consultation, and if needs be, by enforcing the law.

We see the role of the Commissioner as similar to that of the Auditor General, with responsibility over the Welsh Government and powers to penalise. One of the most important things that will ensure the independence of this post would be a source of funding that is not dependent upon the decisions of the Welsh Government.

Even though we welcome the aim of the Measure to establish the role of Commissioner, we are concerned by many elements of the post:

- There is no statutory principle or purpose driving his/her work. (clause3(1)).
- There is no duty upon the Commissioner to protect rights, or even protect standards. The Commissioner can promote the use of the Welsh language, facilitate the use of the Welsh language and promote equality between the Welsh and English languages (clause 3(1)). However, the Children’s Commissioner has a clear remit: “*The principal aim of the Commissioner in exercising his functions is to safeguard and promote the rights and welfare of children to whom this Part applies.*” s. 72A DCPC
- We also completely disagree with the idea of incorporating the Welsh Language Board’s current promotional role with the new regulatory role of the



commissioner – we do not believe that any one body should be responsible for promoting and regulating the language at the same time.

- There is no mention of acknowledging official status within the Commissioner's role (c. 3(1)(c)).
- There is no duty upon the commissioner nor does he/she have any specific role in voicing an opinion about the private sector as a whole, including non-devolved sectors (c. 3(2)).
- We do not agree with the limitations upon the ability of the Commissioner to conduct investigations under schedule 2.
- It is not clear why Welsh Ministers have the right to give the Commissioner direction (c.15).
- Furthermore, the purpose of the advisory panel is not clear (c.22), the Children's Commissioner does not have such a panel, neither does the Commissioner for Older People.
- We do not agree that the appointment of the Commissioner should be left to the First Minister alone because the Commissioner will have a regulatory role and will be scrutinising the work of the Welsh Government, for example.
- There should not be a right to re-appoint one Commissioner in order to consolidate his/her independence.

#### What about the future of the Welsh Language Board?

We acknowledge that promoting the Welsh language is an extremely important role. However, it is not possible for one body to be responsible for promotion on the one hand and to regulate effectively on the other. When the Welsh Language Board has been abolished, we recommend that a Welsh Language Council should be established as a corporate promoting body appointed by the National Assembly of Wales that would be a totally separate body to the Commissioner.

#### What is the Welsh Language Council?

In order to ensure the participation of a wide range of statutory, voluntary and private bodies in the work of creating a future for the Welsh language, we call for the establishment of a Welsh Language Council; which would be an inclusive forum for the Welsh language. A forum of this kind could act as an advisory body to the Government in the field of the Welsh language and it would ensure a partnership between the different sectors for the benefit of the Welsh language. The Welsh Government has established similar partnerships in other fields such as the voluntary sector.

Included in the Council's duties would be:

- co-ordinating efforts in relation to the Welsh language
- safeguarding a long-term strategy for the Welsh language
- accepting comments from individuals and groups on matters related to the Welsh language
- giving advice to the Commissioner and the Assembly Government on matters pertaining to the Welsh language
- commissioning research into aspects of the current position of the Welsh language.

At present, opportunities to discuss implementation points on a strategic level, nationally or locally, in relation to the Welsh language are few and far between. The Welsh Language Society would welcome the chance to take part in a wide-ranging, dynamic and purposeful discussion that is needed across Wales in order to safeguard the future of the Welsh language.

For a full explanation, see our wording on the role of the Welsh Language Commissioner and the Welsh Language Council in the *Mesur yr Iaith Gymraeg 2007 (Welsh Language Measure 2007)* document, published by the Welsh Language Society in 2007.

### Suggestions

- Establishing the Welsh Language Council as the corporate promoting body separate to the Commissioner.
- The National Assembly should appoint the Commissioner and the members of the Welsh Language Council by using a different appointment system, including pre-appointment public hearings so that the National Assembly can scrutinise the Welsh Ministers' nominations for these posts.
- Establish a main statutory objective for the Commissioner and a duty upon him or her to protect and promote the rights of the people of Wales to the Welsh language.
- Add a specific role to voice an opinion on the use of the Welsh language in the whole of the private sector.

### Amendments

- In the section 3(1), insert 'must' instead of 'may'
- Add a new section 3 (1) – *“The Commissioner’s main objective is to protect and promote the rights of the people of Wales to use, learn, hear and see the Welsh language, and to ensure its official status.”*
- Add a new sub-section under 3(2) *“(k) to voice publicly an opinion on the use and the treatment of the Welsh language by companies in the private sector not limited to the kinds of companies listed in the Schedules to this Measure.”*
- In section 134(2), before the words "functions" insert "regulatory and determining" and add a new sub-section (5) "The functions of promoting and facilitating the Welsh language to be transferred to the Welsh Language Council".
- In section 82(4) instead of "5,000" insert "10,000".
- Delete section 15 (Welsh Ministers' powers of direction)
- Delete sections 22 and 23 (The Welsh Language Commissioner Advisory Panel)
- Insert Part 7 'Welsh Language Council' of *Mesur yr Iaith Gymraeg 2007 (Welsh Language Measure 2007)* published by the Welsh Language Society in 2007. (A copy has been submitted along with our response.)

### Not rights, but standards (Clause 24 etc)

In 2006 the Welsh Language Board said:

***“The board fully appreciates that creating a truly bilingual Wales depends upon the goodwill and support of non-Welsh speakers. We strongly believe that legislation which promotes the language and protects the rights of the minority will develop the consensus rather than endangering it... Legislation has an important role to play in promoting the practical use of Welsh and we believe that now is the time to amend the present framework to strengthen the arrangements for normalising the use of Welsh and establishing Welsh speakers' civil rights.”***

The Legislative Position of the Welsh Language, Welsh Language Board, 2006

This Measure does not create rights in the way that is traditional in British law, by imposing a duty so that the individual can challenge it through the courts, nor in the general international way of establishing common rights that consider the reasonableness and proportionality of those rights.

The Assembly government argues that the standards placed upon bodies will ‘lead to rights’ – an argument that is totally misleading in legal terms:

***“It [the proposed Measure] does not, however, create rights.”***

Emyr Lewis, Solicitor and Partner, Morgan Cole - Golwg, 11/3/10

***“Despite planned sanctions for breaches, imposing standards in this way does not establish linguistic rights for individuals.”***

An open letter from 13 lawyers, Western Mail, Daily Post and Golwg, 18 March 2010

***“...we recognise that we need a system that empowers the citizen. I do not see evidence of that when reading this proposed Measure. What we will have is a structure, based on standards, that places responsibilities on the provider, rather than giving rights to the citizen.... From reading the proposed Measure, we feel that this creates duties rather than rights for individuals.”***

Meri Huws, Chair, Welsh Language Board, evidence to the scrutiny committee

### **Unfairness**

The only right in the proposed Measure is the right for companies/bodies to challenge standards (c.53). Why is there no similar right for the individual? We suggest therefore that basic rights should be established for the people of Wales to use, learn, hear and see the language. We also believe that a system should be created to empower the citizen to take advantage of these rights, instead of depending on the attitude of the Commissioner or the Welsh Government of the day. The only way to ensure that bodies, companies, the Commissioner and the Welsh Government realise the vision outlined in Iaith Pawb in 2003, is by ensuring that individuals, in the end, can challenge them if they do not implement their rights.

Without official status behind their work how is the Commissioner or the tribunal supposed to determine what is unreasonable or disproportionate as a standard? (c.55)

### **Rights in addition to standards**

The Government promised to establish “linguistic rights” in the One Wales document. The Government would be breaking their promise to the people of Wales, were they not to realise this.

We support regulations that detail the services that people could expect, on the proviso that there are basic legal rights behind them. The ability to place consistent duties across the sectors is the main advantage of standards as opposed to language schemes. Nevertheless, without basic rights, there is a danger that the standards could be just as unclear and ineffective as languages schemes from the individual’s point of view.

Without establishing rights, the individual would have no power to ensure that the Commissioner and the government will protect their moral right to use the Welsh language. The standards regime is dependent upon the goodwill of one politician and one

commissioner but, with rights, the legal responsibilities would be continuous upon any government and commissioner to realise people's basic rights forever. Individuals have no more power under this Measure than under the Welsh Language Act of 1993.

This does not mean that all the responsibility is upon the individual to demand everything; as with other Measures, built on the basis of rights, the standards or duties shall note what can be expected in Welsh during that period. We believe that the basic principle is missing and that it should explain and drive the need for standards, and that principle is the human right of individuals and society to use the Welsh language.

Rights are flexible and would mean that any standards would be clear to the public, and would be updated in line with technological and social developments.

Gwion Lewis argues in his book *Hawl i'r Gymraeg*:

*"The individual is not truly free to use any language if it is difficult and laborious work. In less than a decade, it is unlikely that any of us will be typing text messages into our mobile phones... [perhaps] the phone will create the message straight from the words we utter... It is not difficult to foresee what will happen to the Welsh language then if Orange's apathy towards the language continues."*, p. 40

Standards without the clarity of rights behind them will not ensure clear rights for people or better provision of Welsh language services because they may vary from body to body and area to area (c.38(2), 40(c), 43(2)(a)(b)) like Welsh language schemes.

### **The Private Sector**

The responsibility for the provision of goods, facilities, information and services in Welsh should rest with the provider(s) in accordance with consumer rights whatever the status of the provider(s). The Disability Rights Bill (1995) defines public services as any service for the public or section of the public – whether the provider is in the private sector, public sector, voluntary sector, or a combination of any of them.

The tendency at present is to argue that extending the legislation to the private sector would undermine economic success – without offering any kind of evidence. We argue that economic success goes hand in hand with strong policies for normalising language. In the first place a bilingual workforce can be marketed as a workforce with more skills than a monolingual workforce. This would be in accordance with the Assembly Government's strategy of emphasising the worth of the 'information economy'. Furthermore, a strong policy that promotes a language creates new internal markets that are beyond the reach of outside competitors, thus giving an advantage to the indigenous industry.

### **Scottish and Southern Energy – Aled D Jones, Llandysul**

Dear X

I would like to complain in the strongest terms possible as you refuse to offer a Welsh language phone service or send me bills in Welsh.

I have endeavoured to receive services in Welsh ever since becoming customers of yours in June 2009. In spite of this, my bills remain in English only. Your customer phone line (0800 052 5252 0800 052 5252) is always answered in English. More often than not, the employee cannot transfer me to a Welsh speaker. This is what happened when I called to complain today that my most recent bill (dated 26 April 2010) was not in Welsh.

The electricity company for this area is SWALEC. Most of the inhabitants of this area are Welsh speakers and your unwillingness to provide your services in Welsh is disgraceful. I shall be expecting you to overcome these shortcomings in your customer services forthwith.

Yours sincerely,

The Reverend Aled D. Jones, Llandysul

### **Scottish & Southern Electricity – Chris Griffiths, Maesteg**

Chris Griffiths's customer bills from Scottish and Southern Electricity arrive late, or not at all, because he has asked for them in Welsh. As a result, he receives bills warning him about late payment, but they are in English only. He has written to the company to complain about the situation, but without success. Chris told us, "In terms of this policy, who would choose to ask for a bill in Welsh?"

### **The Public Sector**

This sector was the sector most affected by the Welsh Language Act 1993 as public organisations were required to implement Welsh-language schemes to be approved by the Welsh Language Board. While this suggests that the Act has an element of authority, in practice, things are very different. In general, the emphasis is on not acting too quickly, and avoiding being too forceful in order to avoid offending the organisation in question. As a result, the system works in favour of the provider rather than the Welsh language. Ultimately, this means that the process of developing Welsh-language policy becomes no more than a superficial administrative exercise that public organisations must deliver. Little consideration is given to the implications of adopting a Welsh-language scheme. On the whole, it is considered that receiving a certificate from the Welsh Language Board and employing a Welsh-language officer, as well as one or two translators, is adequate.

Of all the local authorities in Wales, only Gwynedd Council has adopted Welsh as the language of internal administration. This means that for local authorities in Wales, Welsh is a language to be translated into and that there is no expectation that officers should use Welsh in their day-to-day work, except in a very tokenistic manner. Cymdeithas yr Iaith believes that a new Welsh Language Act should place an expectation on local authorities in Wales and other public organisations to adopt policies of working towards using the Welsh language as the language of internal administration. This is the most effective way of ensuring that the public is able to deal with public organisations in Welsh and receive services in Welsh as a matter of course.

### **HM Revenue and Customs**

Recently, businesses were informed by HM Revenue and Customs that it was no longer possible to submit the Employer Annual Returns in paper form. On the Welsh page of its website (<http://www.hmrc.gov.uk/cymraeg/paye-online/menu.htm>) it explains that it is not possible to register online in Welsh. Businesses operating through the medium of Welsh have contacted Cymdeithas yr Iaith and claimed that, as a result of the delay by HM Revenue and Customs in providing a Welsh-language service on the website, they will no longer be able to continue to register through the medium of Welsh. As this organisation is subject to the Welsh Language Act 1993, a complaint was made to the Welsh Language Board. The Welsh Language Board informed us that it was not possible to force HM Revenue and Customs to do so, as it

is a Crown organisation, but that it would conduct an investigation if the organisation did not agree to provide the service.

### **The Passport Office – a letter from Sioned Williams**

I have received a disgraceful level of service from the Passport Office recently. I have made an official complaint about this but I have not received a response as yet.

Basically, I went to my Post Office to ask for a Welsh-language passport renewal form. There was no form available and I was told that forms would be ordered. I returned a week later but there were no forms available. I was asked to return a week later, which I did – but there were none available. Therefore, I was advised to visit the Passport Office’s website. I did so – and filled out a page that was supposed to send me a Welsh-language form. I waited for a fortnight but received nothing . I called the Passport Office’s Welsh-language line – I had to leave a number and wait for them to call me back. I was called back after a few hours and I explained that I wanted them to send me a Welsh-language form. A week later I received an English language form through the post. I called back again – and although I pressed the button for the Welsh-language service, a woman answered my call in English. I explained patiently and politely that I wanted to conduct my conversation in Welsh. She said, while almost laughing, "I don't speak Welsh but I can help you." Her attitude was disgraceful, and after asking whether I could be transferred to someone who could speak Welsh, she said "Oh no - you'll have to phone back - better luck next time!"

I have made a complaint since my experience shows clearly that the service that is provided does not encourage people to use Welsh-language forms. Furthermore – the last time that I dealt with the Passport Office – back in 2004 – I had the same sort of problem with someone answering a Welsh-language email with the words "Don't understand Welsh - please translate." I received an official apology at that time – but it is clear that they have not improved in 5 years.

Yours faithfully, Sioned Williams

As the Minister for Heritage stated to the Scrutiny Committee: ***“It must be understood that the standards are a development of the Welsh language schemes. They are not something else, or something different. They will be a development of something that is already required very often within the schemes.”***

We believe that there are weaknesses regarding the existing Welsh-language-scheme system, particularly as public organisations do not deliver what they promise. The danger is that individuals or communities will have to rely on the attitude of the Commissioner as the system is based on 'standards' as opposed to empowering the individual by providing a 'rights' system.

### **A lack of swimming lessons is ‘damaging the Welsh language’**

According to data gathered by Cymdeithas yr Iaith Gymraeg, almost half of the councils in Wales are unable to provide swimming lessons in Welsh, even in areas where a large number of children are learning the language.

Nine local authorities in Wales, including Cardiff Council, provide lessons in English only, and six authorities did not record data on the languages used in lessons.

In Carmarthenshire, the local authority admitted that less than 1% of swimming lessons – 10 lessons out of a total of 6,200 – were provided in Welsh in Ammanford swimming pool last year, although 62% of the town's population and 50% of the county's population speak Welsh. In Powys, less than 2% of the lessons were taught through the medium of Welsh, in a county where over 20% of the population speak Welsh. One in four children throughout Wales receives his or her education through the medium of Welsh.

### **Proposals**

- The Measure should include a general statement that the people of Wales have a right to use Welsh as far as is reasonable under the circumstances.
- Other fundamental rights should be established including: the right to receive an education through the medium of Welsh; the right to receive services information, facilities and goods in Welsh when dealing with the public, private and voluntary sectors; the right to use and learn Welsh in the workplace; the right to respect and equality and not to suffer discrimination or be disadvantaged when using or supporting the Welsh language.
- It should be the Commissioner's duty to protect and promote those rights.
- Individuals should have the right to challenge the Government, the Commissioner and the standards that organisations are required to apply on the basis that they are not delivering their rights, in the same way that companies have the right to make challenges under the existing Measure.
- The standards should be considered as regulations that add detail to the general right; a duty should be placed on the Government and the Commissioner to set standards that are as explicit as possible from the perspective of the individual who wishes to use the Welsh language.
- Standards that promote and facilitate the Welsh language should not be limited to local government in Wales and the Welsh Government only; standards on promoting the use of the Welsh language should be imposed on all organisations and companies.
- Minimum standards that people should expect from any organisation or company should be set, irrespective of where in Wales they live, in order to make it more clear what they can expect.

### **Amendments:**

- Insert a new part as follows:

“The Right to Receive Services in Welsh

(1) Every person in Wales has the right to receive services, goods and facilities through the medium of Welsh, irrespective of whether those services, goods and facilities are free or not.

(2) Those rights include, but are not limited to, the right to have an education through the medium of Welsh, the right to receive services, information, facilities and goods in Welsh when dealing with the public, private and voluntary sectors; the right to use and learn Welsh in the workplace; the right to respect and equality and not to suffer discrimination or be disadvantaged when using or supporting the Welsh language.

(3) In accordance with section (1) above, providers of services, goods and facilities must take all appropriate action to provide their services, goods and facilities in Welsh."

- To add a section that establishes the right of the individual to challenge standards in two types of situation (i) when the standard has been breached or (ii) where the individual believes that the standards do not sufficiently deliver his or her rights to receive services in Welsh. In our document, *Mesur yr Iaith Gymraeg 2007 (Welsh Language Measure 2007)*, we explain how this would work in a Measure based on rights.
- Delete 'on the basis of equality' and insert 'equally'
- Minimum standards should be set. In determining the minimum standards required, due regard must be given to including Welsh-language schemes produced under section 5 of the Welsh Language Act 1993 and to ensuring that the minimum standards required do not weaken the commitments made in these schemes in terms of number, range or standard (Part 7, *Mesur yr Iaith Gymraeg 2007*)

### **Freedom to speak Welsh (Clause 100)**

The clauses that deal with the freedom to use the Welsh language are not worth retaining unless the Commissioner has powers of enforcement or punishment, where appropriate, in order to ensure the rights of individuals to use Welsh in their everyday lives.

### **Education**

We are surprised that no mention is made of education in the Measure as it is a vital sector in terms of the future of the Welsh language. We envisage many challenges to the future of Welsh-medium education throughout Wales, such as the threat to village schools and the fact that not every child has the opportunity to be wholly bilingual when leaving school. Therefore, we believe that the Commissioner has a role to play in ensuring that the Welsh language is treated as an essential educational skill for every child in Wales.

### **Other Matters**

Schedule 9 – The list of services that the Government must include under the standards listed in Schedule 9 should include software, information technology, skills training and the use of Welsh in the workplace.

We are concerned that clause 65 could mean that telecommunication services are outside the scope of this Measure.

The funding currently spent on the Welsh language by the Government must be secured and increased in order to successfully implement the new structures under the Measure.

### **Links**

An open letter from 13 solicitors in the Western Mail, Daily Post and Golwg, 18 March 2010



<http://cymdeithas.org/pdf/llythyr-cyfreithwyr.pdf>

The Children's Commissioner for Wales Act

[http://www.opsi.gov.uk/acts/acts2001/ukpga\\_20010018\\_en\\_1#l1g2](http://www.opsi.gov.uk/acts/acts2001/ukpga_20010018_en_1#l1g2)

The comments of the Minister for Heritage, Legislation Committee No. 2

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-perm-leg/bus-committees-third-lc2-agendas.htm?act=dis&id=174416&ds=3/2010>

The Legislative Position of the Welsh Language, the Welsh Language Board (2006)

<http://www.byig-wlb.org.uk/English/publications/Pages/PublicationItem.aspx?puburl=/English%2fpublications%2fPublications%2f3637.pdf>

The Record of the Proceedings of the Assembly and the UK Parliament:

<http://www.assemblywales.org/bus-home/bus-chamber/bus-chamber-third-assembly-rop.htm?act=dis&id=54731#rhif4>

[http://www.publications.parliament.uk/pa/cm199293/cmhansrd/1993-07-15/Debate-3.html#Debate-3\\_spnew17](http://www.publications.parliament.uk/pa/cm199293/cmhansrd/1993-07-15/Debate-3.html#Debate-3_spnew17)

[http://www.publications.parliament.uk/pa/cm199293/cmhansrd/1993-05-26/Debate-5.html#Debate-5\\_spnew4](http://www.publications.parliament.uk/pa/cm199293/cmhansrd/1993-05-26/Debate-5.html#Debate-5_spnew4)