1. Introduction

1.1. Cymdeithas Yr Iaith Gymraeg (the Welsh Language Society) is an organisation that has for half a century been undertaking a non-violent campaign on behalf of the Welsh language, as part of the international revolution for rights and freedom. As a movement we have supported devolution for decades and have given our full support to securing more powers for the National Assembly.

1.2. In two referendums, the people of Wales have voted in favour of granting more powers to the Assembly to act for the Welsh language. In 2011, we voted in favour of granting legislative powers over the Welsh language to our National Assembly, without having to obtain the permission of Parliament or the Westminster Government.

1.3. As an organisation, we have not had an opportunity, within the committee’s tight timetable, to seek detailed legal advice regarding the possible effects of the changes to the country’s constitution proposed via the most recent Wales Bill in its draft form. However, a number of important concerns and questions arise in looking at other analyses of the possible effect, and the uncertainty, which the draft Bill in its present form, could cause. We would also like to emphasise that the following are initial comments only.

2. Conclusions: Wales Bill means loss of powers over the language and the creation of an unclear system

2.1. In our opinion, under the new settlement, the Assembly’s powers to legislate regarding the Welsh language will be less clear than they are under the present settlement. It is also likely that the Assembly will have fewer powers to legislate for the language than under the present settlement.

2.2. We believe it is fair to say that linguistic legislation in Wales is more developed than in Scotland and Northern Ireland, and so their systems of ‘reserved’ powers are not appropriate to the needs of the Welsh language, a matter that overarches a number of matters which the Bill recommends should be ‘reserved’.

2.3. Among our main concerns regarding the Bill are the following matters:

- lack of clarity regarding whether it will be possible to legislate on the Welsh language in the private sectors and in British bodies as the Welsh Government prepares to amend the Welsh Language (Wales) Measure 2011
- lack of clarity regarding the Assembly’s ability to create clear and consistent rights to the Welsh language for our citizens in whatever sector they use the language
- failure to devolve powers over devolution to Wales

2.4. We therefore suggest that consideration should be given to creating a general exception for the Welsh language from the reserved matters that would allow the Assembly to legislate in the area of the Welsh language as the restrictions (‘relates to’) and others in the new section 108A suggested in clause 3 of the draft Bill, together with the reserved powers clauses, such as those regarding telecommunication, the internet, banks and post offices, create more uncertainty than the existing
constitutional situation. We also note the concerns voiced by the Leader of the Liberal Democrats regarding reserving powers over equality.

**Welsh Language (Wales) Measure 2011 - considerations**

3.1. **Complexities resulting from the Legislative Competence Order (LCO) system**

3.1.1. The Welsh Language (Wales) Measure 2011 is more complex legislation than it should be partly due to constitutional lack of clarity resulting from the settlement before the last referendum. A number of restrictions were imposed, via the Legislative Competence Order (LCO), which led to a Measure that is more difficult to implement than would be desirable. Due to the Welsh Government's desire to create language rights in the private sector, a complex system of appeals and schedules was created to deal with the restrictions in the Legislative Competence Order (LCO).

3.1.2. Therefore, we already have language legislation that is much too complex and creates difficulties for bodies such as the Welsh Government and the Welsh Language Commissioner, and more importantly, which will create difficulty for people in terms of understanding their language rights, partly due to those complexities.

3.1.3. We believe that a number of those constitutional problems, in relation to the Welsh language, have been overcome due to the new legislating powers that came into force as a result of the 2011 referendum. However, the draft Wales Bill certainly creates a strong possibility that the Assembly will have fewer powers when looking to amend the Measure. This could lead to a situation that is even more complex, where it would be possible to amend the law regarding some of those matters legislated upon in the Measure in 2011, but not regarding other matters such as telecommunications due to the wider restrictions in the new Schedule 7A.

3.2. **Problems in implementing the Welsh Language Measure and the Welsh Secretary’s Consent**

3.2.1. Under section 43(2) Welsh Language (Wales) Measure 2011, the consent of the Welsh Secretary is needed before the Welsh Language Standards can be imposed on Crown bodies. Five years after the Measure was passed, and despite several attempts by the Welsh Language Commissioner, consent has not been given for the Standards to become operational on Crown bodies. This means that two regulation systems will operate side by side, causing all kinds of complexity and confusion. For example, the Crown Prosecution Service will come under the Standards framework but the courts will continue under the old system of language schemes established under the Welsh Language Act 1993.

3.2.2. We believe that the provisions regarding the receipt of consent in Schedule 7B(8) of the draft Bill will only exacerbate the situation, as it will be necessary to secure consent not only for Crown bodies but any ‘protected authorities’. Looking at amending the Welsh Language Measure in order to solve a number of the problems resulting from the constitutional mess under the LCO system, things could be exacerbated further under this draft Bill.

3.3. **Extending rights for the Welsh Language and the Standards to other private sectors**

3.3.1. We believe that the combination of provisions in the new section 108A together with the reserved powers in the new schedules 7A and 7B are likely to prevent the Assembly from extending the system of rights for the Welsh language to other private sectors. Our understanding of the present constitutional situation is that it is possible now for the Assembly to extend the Welsh Language (Wales) Measure 2011 to sectors such as banks and supermarkets. However, there would
be uncertainty regarding whether this would be possible under the provisions of the draft Bill. This would mean a substantial backward step.

4. Complexities in Reserving Private and Criminal Law

4.1. The Welsh Language (Wales) Measure 2011 creates an enforcement system that allows the Welsh Language Commissioner to fine bodies that offend the language rights of citizens. These are civil penalties. According to our understanding of the draft Bill, it would not be possible to legislate again to create or strengthen these penalty powers, and that it would be possible to argue that they are not necessary as a less powerful system of enforcement could be followed although it proved ineffective in terms of improving Welsh language services in the past.

5. Devolution of Broadcasting

5.1. We deplore the fact that the Bill does not devolve powers over broadcasting, despite clause 29 of the Bill regarding the Communications Office. An opinion poll commissioned by the Silk Commission showed that the majority of the people of Wales wanted broadcasting to be devolved to Wales. We submitted an argument before the Silk Commission in favour of devolving broadcasting; it can be read here: http://cymdeithas.cymru/dogfen/comisiwn-silk-rhan-ii-ein-hymateb

6. Conclusions

6.1. We would like to emphasise again that the above are initial comments on the proposals of the draft Bill. However, from our first look at the draft Bill, we believe the proposed legislation, at the very least, is going to create substantial uncertainty regarding the Assembly’s powers to legislate in the area of the Welsh language. Indeed, we believe it is likely that the Assembly would have fewer legislative powers over the Welsh language under the settlement outlined in the draft Bill.

6.2. Therefore, we would be resolute in our objection to the passing of the Bill as it stands. The effort needed to ensure the future of the Welsh language as the flourishing vernacular language of Wales requires substantial freedom for the national legislature to be able to legislate across a range of matters without being fettered by lack of clarity and unnecessary restrictions on its ability to operate.

6.3. We believe that the committee should question the United Kingdom Government regarding the points we raise above.

6.4. Furthermore, consideration should be given to creating a general exception to the list of reserved powers for the Welsh language so that the National Assembly’s present legislative powers are not lost.

20 November 2015