Thank you for the opportunity to submit evidence to the committee on the draft Wales Bill. We note that evidence is requested in relation to two specific questions, namely:

- Are the Government's proposals, particularly in respect of the reserved powers model, sound? If not, how could the draft Bill be improved?
- Do the provisions of the draft Wales Bill deliver the policy intentions of the UK Government? Could the wording of the draft Bill be improved or changed?

The comments are provided below in relation to these two questions, with a clear focus on the draft Bill's relevance to the Welsh language and the Welsh Language Commissioner's functions.

**Background**

The principal aim of the Commissioner is to promote and facilitate the use of the Welsh language. This is done by highlighting the fact that the Welsh language has official status in Wales and by imposing standards on organisations. This, in turn, will lead to the establishment of rights for Welsh speakers.

Two principles underpin the Commissioner's work:

- In Wales, the Welsh language should be treated no less favourably than the English language;
- Persons in Wales should be able to live their lives through the medium of Welsh if they wish to do so.

New powers to set and enforce standards on organizations are currently coming into force via secondary legislation. At the same time, the Commissioner continues to inspect statutory language schemes through the powers inherited under the Welsh Language Act 1993.

The post of Commissioner was created by the Welsh Language (Wales) Measure 2011. The Commissioner may investigate failure to implement a language scheme; interference with the freedom to use Welsh in Wales and, in future, complaints regarding the failure of organisations to comply with standards.

One of the Commissioner's strategic objectives is to influence the consideration given to the Welsh language in policy developments. The Commissioner provides
In attempting to answer this question, we focus below on the relevance of the proposals within the draft Bill to the Welsh language.

**Legislative Competence**

Section 3 of the draft Bill defines the Assembly’s legislative competence, and in doing so it is noted that it is not within the Assembly’s competence to include within an act provision that is relevant to a reserved matter.

‘3 Legislative competence

(2) A provision is outside that competence so far as any of the following paragraphs apply—
(c) it relates to reserved matters (see Schedule 7A)’

The matters listed in Schedule 7A of the draft Bill as ones that will be reserved include some matters which the Assembly has already included provision in legislation in relation to them. For example, the Welsh Language (Wales) Measure passed by the Assembly in 2011 allows for the imposing of statutory language duties upon persons providing postal services, railway services and upon the BBC. In accordance with Section 3(2) of the draft Bill, there is a risk that it will not be within the Assembly's competence to do so in the future. This in turn could reduce or limit the jurisdiction of the Welsh Language Commissioner. That is, if the Assembly legislates in the future to change the functions of the Welsh Language Commissioner and should it have to do so in accordance with the restrictions upon its legislative competence in Section 3(2)(c) of the draft Wales Bill, then it is possible the legislation would not be able to allow the Welsh Language Commissioner to exercise her functions in relation to reserved matters. Welsh language services such as those provided by the post office, train companies and the BBC, areas that are reserved in the draft Bill, are among the most important to the users of Welsh language services.

Section 3(5) of the draft Wales Bill notes

‘(5) The question whether a provision of an Act of the Assembly relates to a reserved matter is to be determined by reference to the purpose of the provision, having regard (among other things) to its effect in all the circumstances.’
The Committee has asked a question regarding the robustness of the proposals in the draft Wales Bill. In terms of the above Section of the draft Bill, it is unclear who would be responsible for deciding whether a provision within one of the Assembly's acts is relevant to a reserved matter. Neither is it clear how that decision would be made. Also, the meaning of ‘having regard (among other things) to its effect in all the circumstances’ in Section 3(5) of the draft Bill is not clear as the ‘circumstances’ are not defined. There is a considerable lack of clarity in relation to Section 3(5) of the draft Bill and this could lead to a dispute, including in cases where the Assembly wishes to legislate for the Welsh language and to include in the legislation provision relating to reserved matters. There are doubts whether the proposals in Section 3 of the Bill are robust as there is a lack of clarity in relation to them and as they could lead to a legal dispute between two governments. I believe that the only way to tackle this would be to produce new proposals that define more clearly the Assembly's competence to include within legislation provisions in relation to reserved matters.

Equal Opportunities

Schedule 7A of the draft Wales Bill lists reserved matters. One of those matters is ‘equal opportunities’ (Schedule 7A, Section N1). ‘Equal opportunities’ are defined in that Section of the draft Bill as follows

“Equal opportunities” means the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation or social origin, or of other personal attributes, including beliefs or opinions, such as religious beliefs or political opinions, but not including language1.

It is possible that the words underlined in the last sentence of the clause have been included because the Welsh language is a matter that has been devolved and in order to avoid having an impact upon that. I believe three important questions arise regarding this definition of ‘equal opportunities’ and that there is a need to consider these questions in detail in order to decide whether there is a need to amend or improve this Section of the Bill.

1) Will excluding ‘language’ from this definition of equal opportunities mean that it will not be within the competence of the UK Parliament to legislate in future in order to prevent, remove or regulate discrimination against individuals based on the fact that they speak Welsh or another language? Is that within the competence of the UK parliament at present, and if so, is limiting that competence via this Bill a deliberate step?

2) Could defining ‘equal opportunities’ in this way in Section 2 of the draft Bill set any legal precedent in terms of how equal opportunities are defined in Wales in other contexts?

---

1 Underlined by the author of this paper
3) Is it foreseen that defining ‘equal opportunities’ like this in Section 2 of the draft Bill could lead to any unintentional impacts on the Welsh language?

These are legal, constitutional questions and it is not the place of the Welsh Language Commissioner to answer them. At the same time, I feel that it is necessary for relevant persons to consider them in detail and to amend the Bill where it is felt there is a need to do so to avoid unintentional effects.

Do the provisions of the draft Wales Bill deliver the policy intentions of the UK Government? Could the wording of the draft Bill be improved or changed?

In March 2014, the Silk Commission published a report on the second part of its work ‘Empowerment and Responsibility: Legislative powers to strengthen Wales’. Based on evidence I provided, it was recommended in the section 12.2.3 of that report

‘We believe that all areas mentioned by the Commissioner should be reviewed by the UK and Welsh Governments, with a view to amending the law to give equal status to the Welsh language. More generally, we believe that the UK Government and Welsh Government should systematically assess and then keep under review the way in which the Welsh language is used across government.’

This recommendation was based on evidence I shared that a number of laws passed by Westminster do not recognize the official status of the Welsh language in Wales or support the use of Welsh. I enclose a list of those laws. The laws in question prevent use of the Welsh language at important and difficult times in the lives of individuals, times when an obstacle to using their first language could affect the well-being of individuals.

In responding to the Silk report in February this year, the Wales Office noted in its command paper ‘Powers for a purpose: Towards a lasting devolution settlement for Wales’ a political consensus in favour of implementing the above recommendation. That recommendation has not be incorporated in the draft Wales Bill and it is not clear how else this recommendation will be implemented, or when it is proposed to do so. I have corresponded with the Secretary of State for Wales recently on this matter.

Therefore, to answer the question, if the ‘policy intentions of the UK Government’ include implementing the St David's Day commitments, then the draft Bill will not carry out one of those commitments, namely the intention to ‘amend the law to give equal status to the Welsh language’. I believe that the laws in question could be amended within the Wales Bill, i.e. legislation relating to matters such as civil registration and the Cremation Regulations 2008, thus achieving the first part of the
recommendation quoted above. I would be prepared to propose wording for that amendment to the Bill, should it be of interest to the committee. I recognize that the second part of the recommendation would not be achieved through legislating, but rather by establishing purposeful arrangements for ‘systematically assessing the way in which the Welsh language is used across government’.

I trust these comments will be useful to the committee as it scrutinizes the Bill.

Yours faithfully,

Meri Huws
Welsh Language Commissioner

20 November 2015