Written evidence submitted by the Welsh Language Commissioner (PPW006)

Following the recent statement regarding the above inquiry, I hereby present my evidence to the Committee. I welcome the fact that the Committee is looking once again at the experiences of Welsh prisoners, and the way in which prison provision takes account of their needs. I provided evidence on the subject to the Committee in 2014-15, and I am eager to engage positively with the current inquiry too.

The Welsh Language (Wales) Measure 2011 establishes the principles that Welsh is an official language in Wales and that the Welsh language should not be treated less favourably than the English language. This means that the citizens of Wales should be able to engage with the state in the language of their choice, and should not be treated less favourably if they wish to use the Welsh language.

Language plays a vital role in the fair and effective administration of justice. This is reinforced, in a specific context, by Article 6(3)(a) of the European Convention on Human Rights, which gives a person who has been accused of a crime the right to be informed promptly, in a language that he or she understands, and in detail, about the nature and basis of the accusation made. I believe that creating opportunities for Welsh prisoners to use the language in accordance with their preference is crucial in rehabilitating those people effectively.

For the Committee’s convenience, I have set out my evidence in accordance with the four areas identified in the above statement. As you know, I have begun my own review into the rights of prisoners to use the Welsh language and the experiences of Welsh speakers when engaging with the prison system, and the attached evidence includes information about the review. I would welcome a discussion with you about planning the work which we will both undertake in such a way that ensures that the findings have the greatest impact and to avoid duplicating work unnecessarily.

Thank you for the opportunity to provide evidence to the inquiry. I would welcome an opportunity to discuss these comments further should the Committee wish to do so. Otherwise, I look forward to reading the findings of the inquiry in due course.
1. **Provision for women prisoners and young offenders in Wales**

1.1 In my evidence to the Committee’s previous inquiry into this subject in 2014-15, I stated that ‘[i]t is currently unclear whether the new prison [i.e. Berwyn] will accommodate young and female offenders’. I noted that the Committee’s previous reports had highlighted deficiencies, and urged the Government ‘to address the significant lack of Welsh provision for young and female offenders identified in the committee’s previous reports as soon as possible’.

1.2 It is now known that HMP Berwyn houses only male prisoners, and there is therefore no capacity to house prisoners in Wales who are female, or young adults between 18 and 20 years of age.

1.3 As highlighted below, I believe that Welsh language provision for prisoners is likely to be better in prisons located in Wales, for staffing reasons and because specific rights are created by legislation that applies only to Wales. The continuing lack of provision in Wales for women and young people is therefore a cause for concern.
2. Welsh language provision in prisons

Welsh Language Act 1993

2.1 The Welsh Language Act 1993 establishes a basis of equality for the Welsh and English languages in public life in Wales. It places a duty on the public sector to treat both languages equally when providing services to the public.

2.2 Under the Act, public bodies must prepare language schemes to explain which services they will provide through the medium of Welsh, how they will do so, and when. Although the Welsh Language (Wales) Measure 2011 introduces the standards regime for some public bodies, it is likely that most UK Government institutions will operate language schemes for some time to come.

2.3 Her Majesty’s Prison and Probation Service (HMPPS, formerly the National Offender Management Service – NOMS) has a Welsh language scheme. For convenience, I will refer to HMPPS throughout the evidence, although the service was called NOMS until 2017.

2.4 With regard to the services provided in prisons, the language scheme operated by HMPPS states that:

- a minimum service in Welsh will be required within all prisons in England and Wales;
- the prisoner’s preferred language shall be recorded at the first point of contact;
- the organisation shall ensure that there are no obstacles in prescribed forms, regulations, rules or procedures which inhibit the use of Welsh where the services are provided to people in Wales, or prisoners in England whose preferred language is Welsh;
- the organisation shall ensure the availability of Welsh speaking staff in Wales in proportion to the number of Welsh speakers in the community that they provide services to;
- “[e]fforts will be made to develop Welsh speaking offenders’ language skills and provide opportunities for Welsh speakers to retain links with their linguistic background”;
- a stock of library books and DVDs will be available, as well as access to Welsh-language television and radio channels, where possible;
- complaints can be submitted in Welsh, but it notes that they may need to be translated and therefore take longer to be processed;
- prisons will provide learning and skills services in Welsh as necessary, depending on demand;
prisoners may write letters in the language of their choice (with some exceptions for high-risk situations);

Welsh-speaking prisoners shall be able to speak Welsh if they choose to do so (with some exceptions for high-risk situations);

the visits policy will refer explicitly to the use of Welsh, and is being amended to ensure that it is clear that there is an entitlement to conduct visits in Welsh.

2.5 HMPPS reports to me annually on the implementation of the language scheme. This has given me assurance that:

- HMPPS has arrangements for collecting data that show how many prisoners choose Welsh as their preferred spoken language or preferred written language, and the ability to speak Welsh as a second language;

- internal monitoring arrangements are in place for the Welsh language scheme, in accordance with HMPPS’s 2018-20 Equality Strategy;

- efforts and campaigns to promote Welsh are undertaken centrally (HMPPS reports that the local response in individual prisons varies);

- technology in prisoners’ rooms and some common areas is available in Welsh in prisons in Wales.

- efforts are being made in some prisons in Wales to identify Welsh speakers and to set up societies and groups for them in order to understand their needs.

2.6 However, as a result of the complaints outlined below, and as these matters are not reported on specifically, I am not assured as to the following:

- that HMPPS has data showing the exact number of prisoners across the estate who are able to speak Welsh, which makes it difficult to plan for needs and for campaigns to promote the use of Welsh;

- that HMPPS has data about the level of Welsh language skills among its staff, which would enable it to plan for the workforce’s language needs;

- consistency in the Welsh language services offered across the estate.

2.7 HMPPS is in the process of amending its Welsh language scheme.
### Complaints

2.8 Since 2012, I have received seven complaints against HMMPS, as follows:

<table>
<thead>
<tr>
<th>Complaint</th>
<th>Actions and findings</th>
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<tbody>
<tr>
<td>A complaint on behalf of a prisoner who claimed that they were unable to sit exams through the medium of Welsh in the prison.</td>
<td>Following correspondence with the organisation, it was established that there was no evidence of a failure to comply with HMPPS’s Welsh language scheme.</td>
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<tr>
<td>According to the complainant, their preferred language was not recorded on being received into HMP Swansea.</td>
<td>Following correspondence with the organisation, it was established that there was no evidence of a failure to comply with HMPPS’s Welsh language scheme.</td>
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<tr>
<td>A claim that S4C was no longer broadcast within prisons.</td>
<td>The complaint was invalid as it had not been submitted to HMPPS in the first instance.</td>
</tr>
<tr>
<td>Lack of provision of Welsh-language forms for visitors to HMP Prescoed.</td>
<td>Following correspondence with the organisation, it was established that there was no evidence of a failure to comply with HMPPS’s Welsh language scheme.</td>
</tr>
<tr>
<td>No Welsh-language forms available for visitors to HMP Prescoed.</td>
<td>The complaint was invalid as it had not been submitted to HMPPS in the first instance.</td>
</tr>
<tr>
<td>Lack of provision of Welsh-language or bilingual forms for prisoners at HMP Cardiff.</td>
<td>Following correspondence with the organisation, HMPPS acknowledged that there had been a failure to comply with the Welsh language scheme. It committed to taking steps to ensure that the failure would not reoccur.</td>
</tr>
<tr>
<td>A prisoner had been forbidden from speaking Welsh on the phone with her family.</td>
<td>Following correspondence with the organisation, HMPPS acknowledged that there had been a failure to comply with the Welsh language scheme. It committed to taking steps to ensure that the failure would not reoccur.</td>
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HMP Berwyn inquiry

2.9 Following a request by HMPPS, I advised it on the provision of Welsh language services at HMP Berwyn in 2015, as part of the planning process for establishing the prison.

2.10 In 2016, following correspondence and meetings between my officers and HMPPS, I suspected that it was not complying with the requirements of the Welsh language scheme when recruiting for positions at HMP Berwyn.

2.11 I received correspondence and statements of concern from individuals, including elected members, about the lack of a ‘Welsh essential’ designation for positions at HMP Berwyn. The recruitment process had also received public attention. The content of letters I received from HMPPS during the period of preparation for the new prison raised doubts about the recruitment process in respect of the language scheme. Following meetings with HMPPS officers, I continued to have doubts about the recruitment process. As a result, I decided to conduct a statutory inquiry into the recruitment process with regard to HMP Berwyn, under section 17 of the Welsh Language Act 1993.

2.12 The inquiry concluded that HMPPS was not complying with the requirements of its Welsh language scheme with regard to recruitment and planning for HMP Berwyn, in particular clause 5.1. If HMPPS had complied with clause 5.1 when recruiting staff for HMP Berwyn, it would have:

- advertised job vacancies bilingually;
- assessed the need to deem the Welsh language an essential or desirable skill for each position;
- forecast the linguistic profile of service users;
- followed the Commissioner’s recruitment guidelines;
- ensured that HMPPS’s officers in Wales gave guidance on how to consider the Welsh language;
- included Welsh language skills within HMPPS’s recruitment guidance;
- considered specific criteria when considering whether Welsh language skills are essential, desirable, or not required; and
- employed a sufficient number of bilingual staff to ensure that work can be undertaken effectively.
2.13 I made the following recommendations following the inquiry:

1. The guidance on recruitment should be amended to ensure that clause 5.1 of the Welsh Language Scheme is implemented fully.

2. The service should assess the language needs of each vacancy and advertise every post with the appropriate language designation.

3. When the service places prison services on contract they should adopt a procedure to ensure that they consider the need to impose conditions on assessing language needs for jobs in the contract.

4. Contracts with other organisations that provide services within prisons should include full details of the Welsh language services expected of providers.

2.14 HMPPS accepted the findings of the inquiry and agreed to implement the recommendations.

**Social Services and Well-being (Wales) Act 2014**

2.15 The Social Services and Well-being Act, which came into force in April 2016, creates a legal framework to improve the well-being of people who require care and support, with the aim of transforming social services in Wales.

2.16 Before the Act came into being, there was ambiguity as to who was responsible for prisoners' care and support needs.

2.17 The act's Part 2 Code of Practice (General Functions) states that the care and support duties for adult prisoners must fall to the local authority where the prison is located. This means that local authorities in whose boundaries a prison is located must support adult prisoners with care and support needs in the same way as they would support someone in the community.

2.18 The Act does not create any rights for adult prisoners who are located in a prison outside Wales.

2.19 The responsibility for the care and support needs of a child in a secure institution in Wales and England falls to the home local authority, that is, the local authority of the area where the child usually lived before being placed into custody. If the child does not have a known usual place of residence, the responsibility for his or her care and support needs falls to the local authority where the child is being held, whether that authority is in Wales or in England.
2.20 There are exemptions to the rights of prisoners to some services under the Act, but these exemptions do not relate to language.

2.21 According to the Part 2 Code of Practice, section 6 of the Act outlines a number of overarching duties that apply when persons are exercising functions under the Act in relation to: a) an individual who has, or may have, needs for care and support; b) a carer who has, or may have, needs for support; or c) looked after and accommodated children.

2.22 In addition, the Part 2 Code of Practice states:

For many Welsh speakers, language is an integral element of achieving their care, and securing rights and entitlements will be about being able to use their own language to communicate and participate in their care as equal partners. Local authorities should make sure Welsh language services are built into planning and delivery and that Welsh language services are offered to Welsh speakers without them having to request it.

2.23 This suggests that local authorities should offer Welsh language services to prisoners in Wales proactively, and that local authorities need to plan to ensure that this is possible.

2.24 The Part 2 Code of Practice states that local authorities must provide information and advice on care and support, and help with accessing care and support in Welsh and English. This means that prisoners can expect to receive information about their care and support from a local authority in Welsh if they wish.

2.25 The right to receive information about care in Welsh is reinforced in the Part 11 Code of Practice (Miscellaneous and General), which states:

Local authorities must ensure that the information, advice and assistance offered is accessible for all individuals who need it and the profile of each of the secure settings will be important in deciding how to deliver information, advice and assistance to those in the secure estate. This includes the need to provide access to this service through the Welsh language where this is the wish of the individual.

2.26 The Part 3 Code of Practice (assessing the needs of individuals) details the process for assessing an individual’s care and support needs, and is therefore applicable to adult prisoners in Wales and Welsh children in secure institutions.
2.27 The Part 3 Code of Practice explains:

The assessment process must recognise the concept of language need and practitioners should ensure that the active offer principle is embedded in practice. This means that the local authority should be proactive in its approach and the individual should be asked which language they would prefer at the beginning of the process. This will ensure that they are able to receive services in their own language throughout the process of identifying and meeting care and support needs. Language is an integral element of the care that people receive and it is the responsibility of the local authority to deliver appropriate services which includes meeting users' linguistic needs. Only by doing this can they provide care that is safe and effective. Therefore assessments should be conducted through the medium of English or Welsh as appropriate to the individual or family concerned. The requirement for an assessment to be in the medium of Welsh should not delay the process.

2.28 When it is judged that an individual’s needs are eligible and that a care and support plan is required, the whole of the core data set must be completed. The preferred language is part of the core dataset.

2.29 In summary, a prisoner who is placed in a prison in Wales should be able to expect the right to have the local authority offer a choice of language during the first point of contact. A prisoner should also be able to expect to receive further services in Welsh based on language choice, and not to experience delay as a result of that choice.

The Care Act 2014

2.30 The Care Act 2014 (which applies to England) came into force in April 2015, and its aim is to give service users and their carers greater control over care and support. The Act combines several pieces of legislation that determined how social care was organised in the UK.

2.31 The Act does not make any reference to the Welsh language.

2.32 The UK Government’s guidance document in relation to the Care Act confirms that the responsibility for the care of adult prisoners falls to the local authority where the prison is located, and that prisoners have the same rights as anyone else who lives there. This is exactly like the situation in Wales under the Social Services and Well-being (Wales) Act 2014.
The guidance document also refers to the following:

- groups that have particular requirements with regard to receiving information and advice about care and support, including people who do not have English as a first language;

- using advocates when an individual has substantial difficulty in expressing his or her views, wishes, or feelings (it would therefore be reasonable to provide a Welsh-speaking advocate for Welsh prisoners who have substantial difficulty speaking English);

- that the process for requesting a review of a care plan should be accessible and that versions should be available in multiple languages, based on the needs of the local population (but the provision of documentation in Welsh would depend on the local authority identifying prisoners that use Welsh as a group that has needs within its boundaries).

Data

In December 2014, the Committee reported that there were 4,679 prisoners with a home address in Wales. Of these prisoners, 2,026 (43%) were located in prisons outside Wales. More recent figures would be useful in this regard.

Other data that would be useful in conducting a comprehensive assessment of the situation include:

- figures showing the distribution of Welsh prisoners per prison, including information broken down by demographic group (e.g. age, gender);

- figures showing prisoners’ level of ability in the Welsh language, as the official preferred language does not necessarily show the number of Welsh speakers in the system, and the distribution of Welsh speakers per prison;

- the number and percentage of officers who speak Welsh, broken down by function and prison.
3. **Cross-border issues, including the placement of prisoners from Wales in English prisons**

3.1 Clause 2.3 of HMPPS’s Welsh language scheme states that it will look to accommodate Welsh prisoners in Wales as far as practicable. However, I do not have sufficient information at present about the implementation of this commitment.

3.2 HMPPS’s Welsh language scheme states:

> Within all prisons in England and Wales a minimum service in Welsh will be required. Some prisons in Wales may decide to do more, or may already be doing so.

3.3 This suggests that individual prisons in Wales are able to offer a higher level of Welsh language service. This is reasonable as prisons in Wales are more likely to be able to recruit Welsh-speaking staff.

3.4 There are examples in HMPPS’s Welsh language scheme of differentiation between the services offered in Welsh and English prisons. For example, it is not possible to watch S4C in prisons in England as S4C is not broadcast on free-to-air television in England.

3.5 As outlined in section 2 of this paper, prisoners who are placed in England do not have the same rights to Welsh language services under the Care Act 2014 as prisoners who are placed in Wales, who have rights under the Social Services and Well-being (Wales) Act 2014.

3.6 In essence, it is likely that prisoners will have considerably more opportunities to speak Welsh if they are placed in prisons in Wales. I am not assured at present that this is considered when deciding where male prisoners are to be placed, and, as I noted above, it is not possible to place women or young people between 18 and 20 years of age in prisons in Wales.
4. The potential for new prisons in Wales

4.1 The Secretary of State for Justice announced in March 2017 that she had chosen a site in Port Talbot for the construction of a new prison.

4.2 In my evidence to the Committee in 2014-15, I reported that HMP Berwyn would provide an opportunity to recruit a bilingual workforce that can communicate with prisoners in Welsh or English. My inquiry into HMP Berwyn suggests that this was not realised to the extent that it should have been, and that there are lessons to be learned before planning the provision for the proposed prison in south Wales.

4.3 I stated further in 2014-15 that HMP Benw Wyn would provide an opportunity for the Government to address the significant lack of Welsh provision for Welsh-speaking young and female offenders in custody. There is no evidence that that has occurred in the development of HMP Berwyn, and therefore planning the new prison’s provision would be an opportunity to address these important issues.
5. Prisons and the Welsh language – the Welsh Language Commissioner’s review

5.1 The purpose of the review is to enable me to better understand the context in which prisons operate in order to be able to respond more effectively to events and developments in future. I began the review in the autumn of 2017 and intend to publish my findings in the autumn of 2018. I will be making recommendations, if appropriate, in order to encourage organisations to improve their arrangements.

5.2 The review aims to answer the following questions:

- What rights do prisoners have to use the Welsh language, and which laws or codes of practice support those rights?
- Which organisations are responsible for prisoners’ rights to use the Welsh language, and how are they accountable for this? What relationships have developed between the relevant organisations, and how do they communicate with each other to enable prisoners to use Welsh?
- What are the experiences of prisoners and their families who want to use Welsh in prisons in Wales and England? Does belonging to different groups of prisoners (e.g. women) affect their ability to use Welsh in prisons?
- To what extent are prisoners able to access internal and external complaints processes, and how do rules on prisoners’ correspondence and calls affect this?
- What considerations have there been with regard to providing Welsh-language services when building new prisons in Wales and England over the past 10 years?

5.3 I will use three main methods to gather information:

- a desktop review of the relevant legislation and literature;
- structured interviews with prisoners (this work has been contracted to an external provider and is underway);
- interviews and other input from officers of organisations associated with the prisons system.

5.4 I will consider the evidence submitted to the Committee, its comments and its findings in preparing my own report on this matter.

February 2018