

Finance Committee  
Draft Public Services Ombudsman (Wales) Bill  
DB PSOW 07 Welsh Language Commissioner

Meri Huws  
Comisiynydd y Gymraeg  
Welsh Language Commissioner

01/04



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Clerk to the Committee  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

06/01/2016

Dear Clerk,

**Consultation on the Draft Public Services Ombudsman (Wales) Bill**

The Welsh Language Commissioner (the Commissioner) welcomes the opportunity to provide written evidence to the Finance Committee as part of its consultation on the Draft Public Services Ombudsman (Wales) Bill.

**Context**

The principal aim of the Commissioner is to promote and facilitate the use of the Welsh language. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. 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 the Welsh language if they choose to do so.

In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until then, the Commissioner will continue to inspect statutory language schemes through the powers inherited under the Welsh Language Act 1993.

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

One of the Commissioner's priorities is to scrutinize policy developments in terms of the Welsh language. Therefore the Commissioner's main role is to provide comments in accordance with this remit and to act as an independent advocate on behalf of Welsh speakers. This approach is used to avoid any possible compromise of the Commissioner's regulatory functions.

### **The Ombudsman's use of the Welsh Language**

The Commissioner notes that the draft Bill does not place a duty on the Ombudsman to use the Welsh language in Wales, despite the fact that the Welsh language has official status in Wales. Although the Ombudsman is not subject to the Standards based on the Ombudsman's constitutional status, the Ombudsman does have a role in providing services to the public. Rather than reserving it as a matter of discretion, there should be an expectation that a public post holder uses the Welsh language in exercise of their functions.

The Commissioner wishes to see specific reference to the use of Welsh by the Ombudsman in the draft Bill. At present, it is not clear what the Ombudsman's duties are in terms of providing services through the medium of Welsh. The Commissioner would welcome it if the Committee were to place specific duties on the Ombudsman in the draft Bill in relation to the use of Welsh. Another possible way of achieving the same aim would be to make the Ombudsman subject to the standards as in the case of the Auditor General, e.g. one of the requirements of Section 8 of the draft Bill is to provide guidance for persons wishing to make a complaint. If the Bill is approved, it is likely that the Ombudsman will allow complaints made orally in the future. In light of this change, the Bill should ensure a duty to give full consideration to the Welsh language in relation to drawing up this guidance.

The Commissioner is of the view therefore, that it is vital that the draft Bill includes, and is clear with regard to, the Ombudsman's duties in using the Welsh language in the administration and exercise of the Ombudsman's functions.

### **Matters which may be investigated**

Investigating matters relating to the Welsh language fall under the functions of the Welsh Language Commissioner. At present, section 11, and specifically section 11(3), do not make it clear what powers the Ombudsman has in terms of matters relating to the Welsh language. Therefore, there is a risk of misunderstanding and conflict between the functions of the Commissioner and the Ombudsman.



Comisiynydd y  
Gymraeg  
Welsh Language  
Commissioner

Consideration must also be given to ensuring clarity and understanding for members of the public with regard to any differences between the role of the Ombudsman and Commissioner in dealing with complaints relating to the Welsh language. Regarding this point, one could question the purpose of including a Welsh language remit within the Ombudsman's remit at all.

The Commissioner would also like to draw attention to inconsistencies in the wording of Section 11 (3) of the Bill between the Welsh and English versions. The Welsh version states “..., mae i'w hystyried at ddibenion isadran (1)(a) yn swyddogaeth a gyflawnir...” whilst the English version states “..., it is to be regarded for the purposes of subsection (1)(a) as discharged...” It appears therefore that a word is missing in the English version.

### **Working jointly and collaboratively**

The Welsh Language Measure and the draft Bill allows the Commissioner and the Ombudsman to work collaboratively or jointly if a "matter" or "subject of investigation" is relevant to the functions of both organizations. The Commissioner and the Ombudsman signed a memorandum of understanding in 2013 stating the way in which both organisations would work together to ensure there is no discord in terms of functions.

In relation to the Public Services Ombudsman for Wales, it is useful to note that the Welsh Language Measure states that “*investigation*” (“*ymchwiliad*”)...*includes examination and inquiry, and cognate expressions are to be construed accordingly;*”<sup>1</sup> ,

However, it appears that the wording used to explain the joint working arrangements of the Ombudsman and the Commissioner varies between the draft Bill<sup>2</sup> and the Welsh Language Measure<sup>3</sup>. Also, there is much more detail in section 20 of the Welsh Language Measure relating to joint working between the Ombudsman and the Commissioner. The Commissioner is keen to ensure a clear and consistent context for joint working between the Ombudsman and Commissioner, and therefore would ask you to ensure consistency between the two so that no unintended difficulties arise in terms of working jointly once the draft Bill is passed.

The Commissioner does not foresee any problem with the new definition of "member of the public". Although the definition in the context of complaints varies slightly to that set out in the Measure, it appears that both definitions are broad enough not to cause any difficulties were the Ombudsman and Commissioner to decide to work jointly together.

### **Other comments**

<sup>1</sup> Section 21 Welsh Language (Wales) Measure 2011

<sup>2</sup> Section 62, 63 and 64, Draft Public Services Ombudsman (Wales) Bill

<sup>3</sup> Section 20-22 Welsh Language (Wales) Measure 2011

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Gymraeg  
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Section 4 of the Welsh Language Measure lists the Commissioner's general powers including the power to carry out an investigation. The Commissioner may investigate in one of two ways: by conducting an inquiry<sup>4</sup> or by conducting an investigation.

The Commissioner has a number of documents e.g. an Enforcement Policy and criteria for conducting investigations and inquiries that may be useful to the Ombudsman. The Committee may find a number of these documents and procedures on the Commissioner's website.<sup>5</sup> Furthermore, the Commissioner would be prepared and willing to share experiences with the Ombudsman in relation to conducting investigations and inquiries.

Thank you for the opportunity to provide comments on the Committee's consultation on the draft Bill. I would also like to note that I am prepared to give oral evidence to the Committee if it so wishes.

Yours faithfully,

**Meri Huws**

**Welsh Language Commissioner**

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<sup>4</sup> Section 7 Welsh Language (Wales) Measure 2011

<sup>5</sup> <http://www.comisiynyddygybraeg.cymru/english/Pages/Home.aspx>