

# Memorandum of understanding between the Welsh Language Commissioner and Welsh Government

## 1. Background

- 1.1. This Memorandum outlines the working relationship between the Welsh Language Commissioner ("the Commissioner") ("the body") and the Welsh Government ("the Government"). Its purpose is to ensure that the Commissioner and the Government collaborate effectively and constructively to implement the Welsh Language (Wales) Measure 2011 ("the Measure"). Both bodies also commit to contribute jointly to the objectives of the Programme for Government, and *Cymraeg 2050* – the Government's Welsh Language Strategy. In undertaking their work, they will work towards the seven well-being goals in the Wellbeing of Future Generations Act (Wales) 2015, especially the goal to create "a Wales of vibrant culture and thriving Welsh language".
- 1.2. To achieve this both bodies will act in accordance with the principles laid out through the five approaches (Long Term Thinking, Integration, Involvement, Collaboration, Prevention). This Memorandum and the arrangements set out in it have been agreed by the Cabinet Secretary for Finance and Welsh Language on behalf of the Welsh Ministers, and by the Commissioner.
- 1.3. This Memorandum is not legally binding, but the Commissioner and the Government agree to act in accordance with it. The Memorandum does not replace or take precedence over the provisions in the Measure.
- 1.4. This Memorandum establishes working arrangements that demonstrate a clear alignment between the Commissioner's work, the Programme for Government and the *Cymraeg 2050* strategy. The Commissioner should consider the Programme for Government and the *Cymraeg 2050* strategy in preparing an annual work plan.

## 2. Legislation

- 2.1 The Welsh Language Commissioner was established under the Welsh Language (Wales) Measure 2011. Part 2, Paragraph 3, to the Measure states that the Commissioner's principal aim in exercising her functions is to promote and facilitate the use of the Welsh language. The actions the Commissioner must undertake in exercising functions in accordance with subsection (1) include (but are not limited to) working towards increasing -
  - (a) the use of the Welsh language in the provision of services,  
and
  - (b) other opportunities for persons to use the Welsh language.
- 2.2 In exercising functions in accordance with subsection (1), the Commissioner must have regard to -
  - (a) the official status which the Welsh language has in Wales

- (b) the duties to use Welsh which are (or may be) imposed by law, and the rights which arise from the enforceability of those duties,
- (c) the principle that, in Wales, the Welsh language should be treated no less favourably than the English language, and
- (d) the principle that persons in Wales should be able to live their lives through the medium of Welsh if they choose to do so.

### **3. Principles**

- 3.1 The Government respects the need for the Commissioner to act independently of Welsh Ministers in order to fulfil her statutory functions effectively.
- 3.2 The provisions in [Schedule 1, paragraph 1\(4\) of the Measure](#) safeguard the ability of the Commissioner to act independently of Welsh Ministers by ensuring that Welsh Ministers have regard to the fact that it is desirable to ensure that the Commissioner is under as few constraints as reasonably possible. Linked to this, [Section 16 to the Measure](#) states when the Welsh Ministers may give directions to the Commissioner.
- 3.3 The Welsh Ministers respect that the Commissioner needs to work independently in order to be an independent and strong voice for the Welsh language and be able to scrutinise the Government's work. The Measure confers powers on the Commissioner to make recommendations and give advice to the Welsh Ministers, and it is important that she has the confidence to do so without being influenced by the Welsh Ministers.
- 3.4 The Welsh Ministers have the power to give directions to the Commissioner. Section 16 of the Measure states the exceptions to these powers:

#### **Welsh Ministers' power of direction**

- (1) The Welsh Ministers may give directions to the Commissioner.
  - (2) But the Welsh Ministers may not direct the Commissioner in relation to the following matters -
    - (a) giving a compliance notice to a person under Chapter 6 of Part 4 (including the content of a compliance notice to be given to a person);
    - (b) Part 5 (enforcement of standards);
    - (c) Part 6 (the freedom to use Welsh);
  - (3) The Commissioner must comply with directions given by the Welsh Ministers.
- 3.5 Schedule 1 to the Welsh Language Measure describes the status of the Commissioner and the correlation between that status and the need for Welsh Ministers to refrain from placing restrictions on the work of the Commissioner:

#### **Status**

- 1 (1) The Commissioner is a corporation sole.
- (2) The Commissioner is not to be regarded as a servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown.
- (3) The Commissioner's property is not to be regarded as property of,

or property held on behalf of, the Crown.

(4) In exercising functions in relation to the Commissioner, the Welsh Ministers must have regard to the fact that it is desirable to ensure that the Commissioner is under as few constraints as reasonably possible in determining his or her —

- (a) activities,
- (b) timetables, and
- (c) priorities

- 3.6 In relation to the introduction of standards (Part 4 of the Welsh Language Measure), the Commissioner and the Government's Cymraeg 2050 Division will share factual information with each other promptly and proactively, to the extent that it is appropriate to release information.
- 3.7 In relation to the duty placed on the Welsh Ministers to comply with the Welsh language standards, the Commissioner will treat the Government in the same way as any other institution it regulates.
- 3.8 The Government considers the Commissioner to be a key partner in delivering the Government's Welsh Language Strategy – [Cymraeg 2050](#). The Government and the Commissioner commit to work in partnership in order to meet the objectives and targets of the *Cymraeg 2050* strategy.
- 3.9 Working together to realise these targets is central to the relationship between the Government and the Commissioner, as is ensuring that both understand how the other contributes to this. The two main targets in *Cymraeg 2050* are as follows:
- the number of Welsh speakers to reach 1 million by 2050
  - the percentage of the population that speak Welsh daily, and can speak more than just a few words of Welsh, to increase from 10% (in 2013-15) to 20% by 2050.
- 3.10 The Commissioner considers the Government to be a key partner. The Commissioner agrees to provide regular updates on her work programme and any other important matters, so that the Welsh Ministers are briefed in a timely and appropriate manner. Similarly, the Government will provide any information relevant to the Commissioner's work, including information regarding Government projects and policies and any financial and funding issues that affect the Commissioner. Section 5 provides more detail on sharing documents and statements.

#### **4. Governance**

- 4.1 This section sets out the Commissioner's governance arrangements.

##### Accounting officer function

- 4.2 The Commissioner is appointed by the First Minister under the provisions of the Measure. Paragraph 16(1), Schedule 1 to the Measure states that the Commissioner is the Accounting Officer for the office of the Commissioner.
- 4.3 As the Accounting Officer, the Commissioner is responsible for maintaining a robust system of internal control that supports the achievement of the policies, goals and objectives of the position.
- 4.4 The Accounting Officer's responsibilities include, amongst other things, the signing of accounts and accepting personal responsibility for the propriety and regularity of the public finances for which she is responsible. The Accounting Officer is also responsible for ensuring the economy, efficiency and effectiveness with which resources are used whilst protecting the public funds and assets for which she is personally responsible, in accordance with the responsibilities assigned in *Managing Welsh Public Money*. The use of resources must be regular, proper and represent value for money.
- 4.5 Legislation and the Commissioner's terms of appointment as Accounting Officer provide for the Deputy Commissioner to act as an Accounting Officer in certain circumstances (if the post is vacant or the Commissioner is unable to exercise her functions). The Commissioner or Deputy Commissioner should advise the Cymraeg 2050 Division as soon as possible if such circumstances arise.
- 4.6 The full responsibilities of the Accounting Officer are set by the UK Treasury.

#### Governance of the Commissioner's office

#### 4.7 **Advisory panel**

Section 23 of the Measure provides that the Welsh Ministers must appoint persons to be members of a panel of advisers to the Commissioner. The Measure also specifies that the Welsh Ministers must secure that there are at least 3, but not more than 5 members of the Advisory Panel at any time. When appointing members, the Welsh Ministers will act in accordance with regulations - the current regulations (on signing this Memorandum) are the [Advisory Panel to the Welsh Language Commissioner \(Appointment\) Regulations 2012](#).

- 4.8 The Commissioner may consult the Advisory Panel on any matter.<sup>1</sup> The role of the Advisory Panel is to advise the Commissioner in relation to her functions in accordance with the Measure. If the Commissioner consults with the Advisory Panel in connection with the exercise of a function, the Commissioner must have regard to the advice given in exercising the function.<sup>2</sup> The Advisory Panel is not concerned with the day-to-day work of the Commissioner.
- 4.9 The Commissioner will consult with the Advisory Panel in accordance with the provisions of the Measure.

---

<sup>1</sup> Part 3, Paragraph 24(1) of the Measure.

<sup>2</sup> Part 2, Section 17 of the Measure.

4.10 When a Panel member's term of office ends, the Welsh Ministers will discuss with the Commissioner what the Panel's needs are in terms of expertise before starting a public appointments process (this could include reappointing members if appropriate).

#### 4.11 **Audit and Risk Committee**

As accounting officer, the Commissioner is responsible for ensuring that the office of the Commissioner is managed economically, efficiently and effectively to ensure value for public money. The Commissioner has an Audit and Risk Committee to provide assurance of this to the Welsh Ministers, the Senedd and the public. The Audit and Risk Committee advises the Commissioner on the strategic processes for risk, control and governance. It is for the Commissioner to determine the number of members, to appoint members and to arrange meetings.

#### 4.12 **Leadership team**

The Commissioner determines the membership of the Leadership team and the frequency and form of meetings. The main purpose of this team is to provide support and advice to the Commissioner on the body's strategic direction and programme of work. The Leadership team is responsible for the strategic leadership of the body and for the day to day management of its activities.

### 5. **Information sharing**

#### Documents

5.1 When publishing a report or document on the Government or an area of government policy, the Commissioner will provide a draft version in advance and provide the Government with an opportunity to consider and comment on the report before publishing a final version.

5.2 Where the Welsh Ministers must approve or give consent for a document drawn up by the Commissioner, the Commissioner will provide an early draft and consider any comments prior to consultation. The Welsh Ministers will respond to any request for approval or consent as soon as is practicable, and through discussion with the Commissioner.

5.3 The Commissioner will inform the Government at least 2 working days in advance of any intention to publish a report or document (including reports and documents on which the Government has already commented) and provide a copy. The Government will not discuss or share these externally before the Commissioner has made an announcement.

5.4 Similarly, the Government will inform the Commissioner at least 2 working days in advance if it intends to publish any report or document that directly affects the Commissioner's work and provide a copy. The Commissioner will not discuss or share these externally before the Government has made an announcement.

- 5.5 Reports drawn up under Part 5 of the Measure (enforcement of standards) and on matters in Section 16(2) of the Measure (see point 3.4 of the Memorandum) are excluded from this arrangement.
- 5.6 When the Commissioner responds to a consultation by the Government, a copy of the response will be sent to the Cymraeg 2050 Division.

### Statistics and research

- 5.7 The Commissioner and the Government will share information and identify opportunities for joint working in statistics and social research, with the aim of promoting the following principles:
- develop a robust and comprehensive evidence base regarding the needs of the Welsh language and its speakers
  - strategic forward planning and avoiding duplication of work
  - avoiding an unnecessary burden on stakeholders, respondents and research partners
  - making best use of resources.
- 5.8 The Commissioner and the Government will share information regarding statistics and social research. This will include:
- providing information on research that is ongoing within both organisations
  - providing information on research that is being planned by both organisations
  - providing information regarding the publication of statistics or research products (for example, reports, seminars)
  - sharing information about wider research developments that may be of interest to the other organisation.
- 5.9 Paragraphs 5.1 to 5.4 apply equally in relation to documents and reports on statistics and social research.
- 5.10 The Government and the Commissioner will share information on research work that is ongoing or has been completed through, but not limited to, the following methods:
- Meetings between Government officials with responsibility for statistics and social research and the Commissioner at least every six months.
  - Meetings of the Welsh Statistical Liaison Committee.
  - Seminars, conferences and other forums organised to promote joint working with partners in research and evaluation.
  - The Government's Welsh language research and statistics plans.
- 5.11 The principle of sharing information and data will be subject to legal rights, with appropriate agreements in place, and any [conditions related to the requirements of relevant professional bodies](#). These include the compliance requirements of the Government Statistical Service (GSS) and the

[Government's Social Research Code](#) (GSR).<sup>3</sup> In some instances, it will not be appropriate for the Commissioner and the Government to share information.

- 5.12 Where appropriate, the Government and the Commissioner will engage in joint working on statistics and research. The Government and the Commissioner will agree collaboration arrangements in advance. In some instances, it will not be appropriate for the Commissioner and the Government to engage in joint working.
- 5.13 The Commissioner is a Producer of Official Statistics, and the Government will offer advice and support to the Commissioner on specific matters.
- 5.14 The Government will share data with the Commissioner at the request of the Commissioner, to be analysed and included in the 5-year report. This will be subject to legal rights, with appropriate agreements in place. The Government will provide information and advice to the Commissioner on issues relating to the report, to ensure the factual accuracy of the report or to confirm that appropriate sources have been explored.

### Statements

- 5.15 The Commissioner and the Government will notify the other in advance of any intention to publish a press release regarding the other's work. A copy of the release will then be shared as soon as practically possible.
- 5.16 The Government will notify the Commissioner in advance if a Minister intends to make an oral or written statement to Assembly Members regarding the Commissioner's work and will provide a copy after the statement has been made.

### **Information requests**

- 5.17 All organisations must follow the necessary Freedom of Information (FOI) and Data Protection (DPA) legislation. Both organisations will notify each other if they have received a Freedom Information request or Data Protection request relating to the other's work.

### **6. Meetings**

- 6.1 Meetings between the Cabinet Secretary with responsibility for the Welsh language and the Commissioner  
The Cabinet Secretary will meet with the Commissioner quarterly to share information on their respective activities and progress against objectives, including in the context of working towards the targets in *Cymraeg 2050*. The agenda for the meetings will be agreed one week prior to the date of the meeting.

---

<sup>3</sup> This includes the [Code of Practice for Statistics](#), and the [Official Pre-Release Statistics View Order \(Wales\) 2009](#).

6.2 Meetings between the Commissioner and other Cabinet Secretaries and Ministers:

Occasionally, the Commissioner may wish to meet with Cabinet Secretaries and Ministers who are responsible for other policy areas. The Cabinet Secretary responsible for the Welsh language will be informed of such meetings in advance via the Commissioner's office sharing information with the Cymraeg 2050 Division, but it will be for the Commissioner to liaise directly with the offices of other Cabinet Secretaries/Ministers to arrange these meetings.

6.3 Communication between the Commissioner and officials:

The day-to-day point of contact for the Commissioner and her office in dealing with the Government is the partnerships branch within the Cymraeg 2050 Division ("the partnership team"). The partnership team will support the Commissioner's office in answering queries and will be available to discuss issues and provide advice to the Commissioner. Regular meetings will be held during the year to facilitate this.

**7. Principles for joint working**

- 7.1 When exercising their functions, the Commissioner and the Government are in agreement that they should act as follows:
- 7.2 Members of the Cymraeg 2050 Division's Management team and the Commissioner's Leadership team will meet formally at least twice a year. The purpose of these meetings will be to plan programmes of work and ensure a shared understanding of how their respective activities contribute to the delivery of the *Cymraeg 2050* objectives.
- 7.3 Committees will be established as necessary with officials from both bodies in order to discuss specific areas of work. Some committees will be permanent and others will be temporary in order to address a specific issue or project.
- 7.4 The Commissioner and the Government will both embrace collaboration, coproduction and the sharing of information and expertise.
- 7.5 The Commissioner will create partnerships across different sectors and inspire others to act for the benefit of the Welsh language.
- 7.6 The Commissioner will also offer practical support and guidance to help bodies that are subject to Welsh language schemes or Welsh Language Standards to increase the use of their Welsh language services.
- 7.7 The Office of the Commissioner and the Deputy Director of the Cymraeg 2050 Division will share details of key contacts and staff structures, providing updated versions following any staff changes.

**8. The Commissioner's annual report**



8.1 Section 18(2) of the Measure requires an annual report to be produced and Section 19(3) states that each report must be published no later than 31 August in the financial year following the financial year to which the report relates.

8.2 Section 18(2) makes the following provision:

- (2) An annual report must include the following matters—
  - (a) a summary of actions taken in the exercise of the Commissioner's functions;
  - (b) a review of issues relevant to the Welsh language;
  - (c) a summary of the Commissioner's work programme;
  - (d) the Commissioner's proposals for a work programme for the following financial year;
  - (e) a summary of the complaints made in accordance with the procedure established under section 14.

## **9. Funding for the Commissioner**

- 9.1 Paragraph 17, Schedule 1 of the Measure provides that the Commissioner must prepare annual estimates. In accordance with paragraph 17(2), the Commissioner must submit the estimate to the Welsh Ministers at least five months before the beginning of the financial year to which it relates. The Welsh Ministers will examine the estimate and must then lay it before the Senedd.
- 9.2 Following the approval of the Government budget by the Senedd, the Commissioner will be informed as soon as possible of the budget available for the following financial year.
- 9.3 The Government may transfer funds to the Commissioner for specific purposes. In such circumstances, the terms will be set out clearly in a letter.
- 9.4 The Commissioner will notify the Government when funding needs to be received from the annual allocation by using the appropriate form. The funds will appear in the Commissioner's bank account within 10 working days of submitting the form. When making a claim, the Commissioner will need to indicate whether funding is being drawn down from the revenue allocation or the capital allocation.
- 9.5 The Commissioner recognises that the Permanent Secretary, as the Government's Principal Accounting Officer, has a duty to put in place suitable arrangements to ensure that the annual allocation is used with regularity, propriety and value for money. In this respect, the Commissioner will provide any information that the Government may require in advance for discussions at relevant meetings.
- 9.6 The Government will notify the Commissioner and the Audit and Risk Committee as soon as possible of any audit or review it intends to carry out which could affect the Commissioner's office. The Government will provide information about the audit or review and will send the final report to the Commissioner as soon as possible. The Commissioner commits to provide any assistance necessary to prepare for and carry out reviews and audits.

## **10. Budget planning**

- 10.1 The Government's budget planning is governed by the requirements of the Government of Wales Act 2006 and the Standing Orders of the Senedd.
- 10.2 The Commissioner must work with the Partnership team by providing all the support and information that is necessary for the Government to proceed with its budget planning decisions.
- 10.3 The Cabinet Secretary will confirm the net revenue budget and capital resources budget and also the amount of grant-in-aid funding (cash) provided for the next financial year. As part of the net resources budget allocation, the Cabinet Secretary will also confirm the level of income the body may keep in order to fund activity during the financial year. This usually happens within a month after the Senedd has agreed the final budget. Any funding for the year in question must be authorised by the Senedd in the Annual Budget Proposal.
- 10.4 When possible, the Cabinet Secretary will also provide indicative revenue and capital resource budgets for subsequent years to inform budget planning. However, budget details for indicative years may decrease or increase according to Government priorities, changes to the portfolios of Cabinet Secretaries and Ministers, variations in budgets and/or concerns about the efficiency and/or effectiveness of the body. The body may need to model different options for activity depending on the funding available.
- 10.5 When determining revenue and capital resource budgets and grant-in-aid (cash) requirements, consideration will need to be given to the levels of reserves (if any) held by the body and the income expected from other sources.

## **11. Staffing**

- 11.1 The Commissioner is responsible for staffing decisions. This includes policies covering the terms and conditions of staff; offering a pension scheme; and ensuring that robust, appropriate and fair job evaluation and recruitment practices are followed. However, the Government should be made aware of any specific proposals for changes to the workforce, including redundancy arrangements.

## **12. Payments to third parties for services**

- 12.1 The Commissioner has the power to do anything that is considered appropriate in connection with the payment of a fee to a third party for services. As the Government assumes the role of providing hybrid working space to public organisations, it is considered appropriate for the Commissioner to rent public sector space in buildings owned by the Government. Doing so does not compromise the Commissioner's judgment, her responsibilities and duties or the exercise of her functions. Such an arrangement shall not affect the working relationships that exist between the Commissioner's officials and the Government or other institutions it regulates.

### **13. The security of information technology**

13.1 The Commissioner is responsible for maintaining IT systems and ensuring that there is a security policy in place and a secure IT environment for the operation of her office and for handling data, including personal data. If the Commissioner's office detects a major security-related incident, for example an attack by malware or data security breach, the Commissioner will need to report the incident to the following:

- the National Cyber Security Centre to report the incident online (or the NCSC incident helpline – 0300 200 973 if there is no access to ICT);
- the Police (Action Fraud);
- Information Commissioner's Office;
- relevant insurance companies; and
- refer to the National Cyber Security Centre guidelines.

13.2 The Commissioner should also contact the Government and the partnership team as soon as possible after a problem has been identified, by using a safe method such as a device other than a work device or calling the Partnership team in the Cymraeg 2050 Division.

### **14. The Welsh Government and the Cymraeg 2050 strategy**

14.1 The Welsh Ministers have a duty under Section 78 of the Government of Wales Act 2006 to prepare a strategy on how they intend to promote and facilitate the use of Welsh. The current strategy is *Cymraeg 2050*. Therefore, the Government is responsible for setting national policies in relation to the Welsh language and for establishing annual plans, structures and systems to implement the strategy.

14.2 The Government will use all policy tools available to it to take forward the objectives of the *Cymraeg 2050* strategy. To this end, the Cymraeg 2050 Division will work to mainstream the Welsh language across all aspects of the Government's activities.

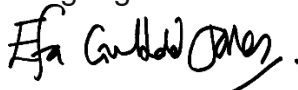
14.3 The responsibilities of the Government and the Commissioner are outlined in Annex 1. They will be reviewed as necessary to ensure that the objectives of *Cymraeg 2050* are being realised effectively.

Signed by:



---

The Rt Hon Mark Drakeford MP, Cabinet Secretary for Finance and the Welsh Language



## **ANNEX 1**

As noted in 14.3 above, this division of responsibilities will be reviewed annually to ensure that the objectives of *Cymraeg 2050* are realised.

1.1 The Welsh Language Commissioner will exercise the statutory functions of the Welsh Language Measure including the setting, monitoring and enforcement of the Welsh language standards, as well as implementing the Welsh language scheme system adopted under the Welsh Language Act 1993. The Commissioner shall also be responsible for the following areas:

- third sector: working with charities and voluntary organisations to increase the provision and use of Welsh language services
- work with banks, supermarkets and large businesses to increase the provision and use of Welsh language services
- provide advice to local authorities and others on place names
- provide advice to local authorities on the development of 5 year language strategies in line with the Welsh language standards
- developing policy to increase the use of Welsh in workplaces and to help bodies plan their workforces
- independently scrutinise the Government's policies for the Welsh language.

1.2 The Welsh Government will ensure that the principles of language planning are followed when implementing policies in line with the *Cymraeg 2050* work programme. This includes:

- Welsh language transmission
- increasing the use of Welsh amongst children and young people
- technology and the Welsh language
- corpus and terminology
- Welsh in Business
- hosting 'Helo Blod', to refer individuals and businesses to appropriate sources of support in order to increase the use of Welsh
- language planning interventions on a regional/area level: for example, Welsh in Education Strategic Plans; town and country planning; economic development; mentrau iaith.etc
- lead on research, data and evaluation
- Language awareness initiatives (as part of the Understanding Bilingualism and Leading in a Bilingual Country programmes) and appropriate messages to increase the use of Welsh
- the use of Welsh in communities.