



# Welsh in education: strengthening through legislation

Legislating for Welsh-language provision in childcare,  
education and training

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Communications Fund

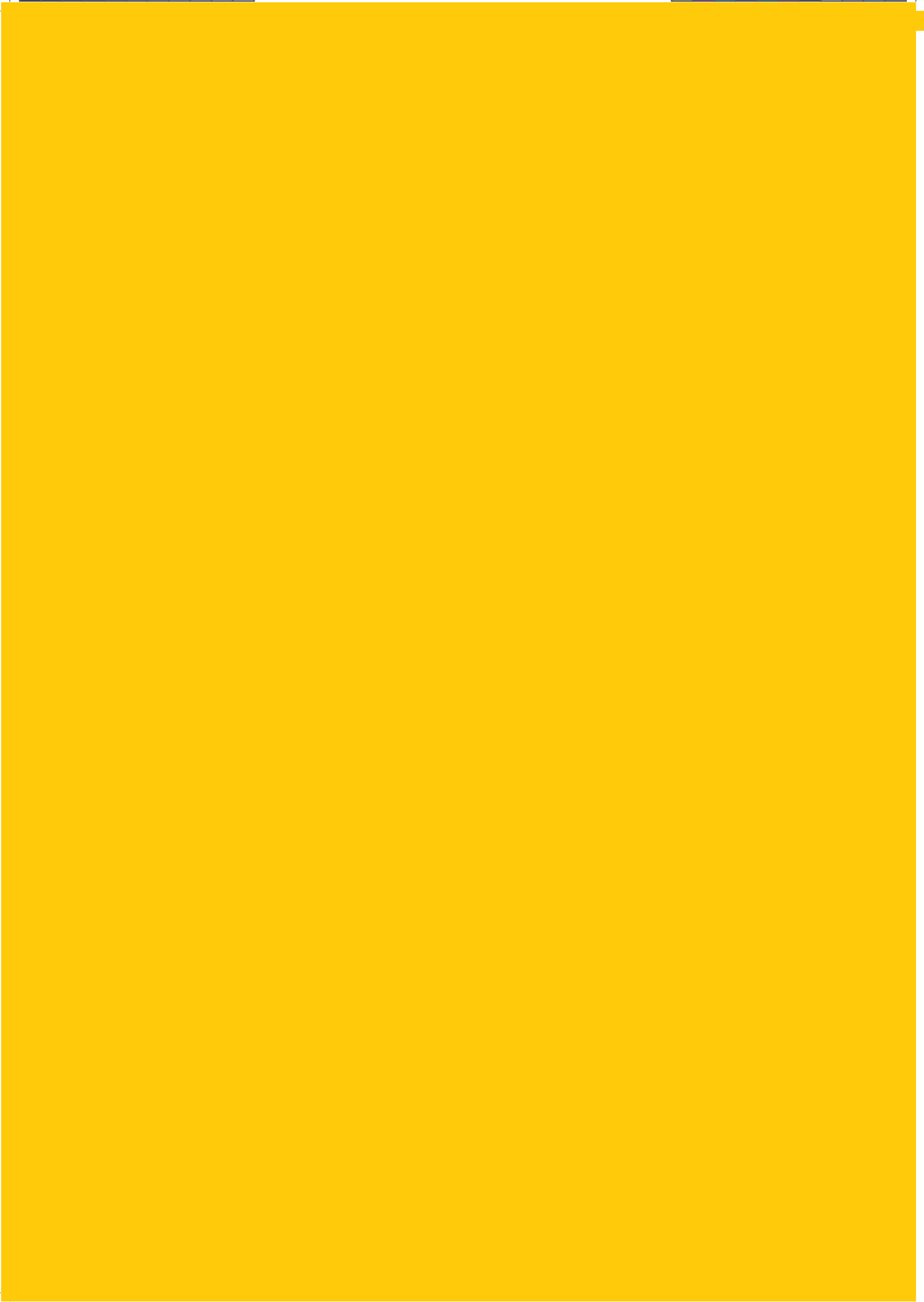


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## Introduction

The backdrop of this work is the public discussion concerning **strengthening the position of the Welsh language in education as a legislative priority.**

The main aim of the work is to outline those areas which would probably form the core of a comprehensive Welsh Language Education Act, to be introduced as part of the Assembly's legislative programme, with consideration also being given to the feasibility of introducing such an act.

We seek here to build on and develop conceptual work already carried out by others, in addition to the work of the Welsh in Education Strategic Advisory Board, in an attempt to ascertain a practical understanding and progress the discussion concerning a possible Welsh Language Education Act.

The report contains references to the following:

- the **length and breadth of activities and specific sectors** regarding the teaching of Welsh which should be considered for inclusion within the remit of a proposed act
- the advantage of having **specific primary legislation to plan and provide for Welsh-medium education**, rather than alternative vehicles (e.g. the current situation of semi-voluntary action plans), referring in places to the experience of other countries
- how best to (i) place **statutory responsibilities on the various levels of the education system** to ensure strategic planning and consistency of implementation, and (ii) **ensure appropriate and effective accountability** for each level bearing statutory responsibilities
- a **statutory responsibility** to plan and develop the Welsh-medium education workforce

Due to the breadth of the field, some issues have not been given sufficient consideration to date, including consideration of which general statements/duties should be placed on the face of an act; evaluate the likelihood of proposed policy method(s) achieving the Government's target of a million Welsh speakers; fuller consideration of the experiences of other countries; fiscal considerations.

Many experts and leading organisations with an interest in the field have contributed to background conversations and discussions which have been of considerable assistance in preparing the report, but the responsibility for any deficiencies in facts or balance lies with the author.

**The hope is that the report will contribute to the emerging public discussion currently underway in this field, and lay the foundation for the more detailed work necessary when drawing up legislation.**

Gareth Pierce, Spring 2019



## Strategic Considerations

The general opinion among stakeholders is that the targets in **Cymraeg 2050: A Million Welsh speakers<sup>(1)</sup>** are challenging, particularly bearing in mind the recent lack of increase in the Welsh-medium secondary sector, and concerns regarding sufficient staff to teach through the medium of Welsh. Barriers and frustrations not easily overcome under the current legislative framework have been revealed, and it is suggested that a holistic view needs to be taken when bringing forth new legislation.

This is supported in comments by the Welsh in Education Strategic Advisory Board in its recent report, **Improving the Process of Planning Welsh-medium Education<sup>(2)</sup>**, which identifies the “legal restrictions of current legislation” in the matter of Welsh in Education Strategic Plans (WESPs). Specifically, the Board noted that it was “problematic in regard to current legislation” to seek to “expand the scope of the Plans to include pre-school and post-16 provision” despite the “importance of these areas to the growth and expansion of Welsh-language provision”. The Board emphasises the need for “effective linguistic planning across the 0-25 age range” if the aim of Cymraeg 2050 is to be achieved, and that any future relevant legislation must go beyond the “limitations of compulsory 3-16 education plans”.

Another strategic consideration is the way in which responsibilities may be moved between organisations over a period of several years. Recent examples include shifting some responsibilities from local authorities to the regional educational consortia, and the transfer of some aspects of planning initial teacher education from the Higher Education Funding Council for Wales to the Education Workforce Council. There are thus arguments for ensuring that legislation includes sufficient flexibility to make sure that medium term requirements and duties remain clear, robust and seamless even if responsibilities are transferred from one body to another.

As regards the rationale for legislation Gwion Lewis in his book **Hawl i'r Gymraeg<sup>(3)</sup>** emphasises the principle of providing “linguistic assurance”, namely the conditions which ensure that the individual is “free to use his language with dignity”. He also suggests that it may be appropriate in some situations for legislation to define rights with the conditional clause “insofar as it is reasonable under the circumstances”, noting that “reasonableness” is an “obvious legal principle guiding all cases of discrimination” and which can therefore be weighed up in court in cases of dispute.

1 Welsh Government, *Cymraeg 2050: A Million Welsh Speakers*, 2017

2 Welsh Government, *Improving the Process of Planning Welsh-medium Education: Recommendations of the Welsh in Education Strategic Advisory Board*, 2019

3 Gwion Lewis, *Hawl i'r Gymraeg* (Y Lolfa, 2008)





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An act may set out a framework, and detail specific themes, and there might also be a need for regulations in order to set standards and explain the administrative requirements. Primary legislation should include a statement or policy objective, note the scope of the act and its relationship to existing legislation; it is also necessary to identify who may be governed by the act, procedures to be followed and how to ensure compliance. Details which may be open to regular revision and adaptation can be included in subordinate legislation or regulations.





## Specific Considerations

### 3.1 Planning

Within the **School Standards and Organisation (Wales) Act 2013<sup>(4)</sup>**, section 84 places a requirement on a local authority to draw up a Welsh in Education Strategic Plan (known as “**WESP**”); section 85 requires that the plan be submitted to the Welsh Government for approval before publication; and section 86 allows the Government to make it compulsory for a local authority to carry out an “assessment of demand amongst parents in its area for Welsh-medium education for their children”.

Regulations<sup>(5)</sup> relating to the **WESP** identifies the nature of the consultation the local authority must hold concerning the draft plan, and Schedule 2 also identifies the issues which must be dealt with in a plan, including:

- a strategy to **increase the number of 7 year old children** taught through the medium of Welsh (number 1 on the schedule list)
- the steps to be taken to meet **the demand for Welsh-medium childcare** (3)
- a strategy to **increase the opportunities** to participate in intensive Welsh-medium education and increase access to latecomers’ centres (6)
- a strategy to **increase the percentage of pupils** at the end of the third key stage (**KS3**) following a Welsh “first language” programme of study (10)
- a strategy to ensure the **continuation of Welsh-medium education** when children transfer [**nursery; KS1 to 2; KS2 to 3; KS3 to 4**] (11)
- a strategy for increasing the amount of Welsh-medium education provided in schools teaching through the **medium of Welsh and English** (12)
- a strategy to increase the **percentage of children aged 15 and over** studying for qualifications through the medium of Welsh (13)
- a strategy to **work with partners to maintain and improve the provision** of Welsh-medium education for 14 to 19-year olds (16)
- a strategy to improve the provision of Welsh-medium education, and the standards of Welsh-medium education, for pupils studying **Welsh as a “second language”** (19)
- a strategy to improve Welsh-medium education for pupils needing **additional learning assistance** (21)
- a strategy to ensure a **sufficient supply of teaching staff** to meet the demand for Welsh-medium education (22).

When looking at the comprehensive range of issues requiring a strategic response within the WESP, stakeholders might reasonably ask why the plans are not considered effective or successful. Is there

<sup>4</sup> School Standards and Organisation (Wales) Act 2013

<sup>5</sup> Welsh in Education Strategic Plans Regulations and Assessing the Demand for Welsh-medium Education (Wales) 2013 Wales Statutory Instruments No. 3084 (Cy.307)



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a lack of ambition and proactive goodwill when drawing up the plans? Is the vision in the plans stifled by current financial constraints and the lack of Welsh-medium teaching staff? Or is there a lack of robustness in the legislation which laid the base for the WESP?

In its comments to the Minister, the **Welsh in Education Strategic Advisory Board** recommends the following:

- “considerably strengthen the **process of linguistic and educational planning** which will ensure that a much higher percentage have the opportunity to speak Welsh over these next decades”
- “**more appropriate and effective legislation** to tackle all these developments [changes in the structures for providing, improving and monitoring education in Wales; changes in the curriculum and the role of local authorities, regional consortia and schools] creating a procedure which will be more inclusive and ambitious than the current one”
- “legislation which would deal with **areas outside the local authorities’ “education functions”** (specifically, childcare and post-16 education)”.

When planning and implementing Welsh-medium education, the aspects to be strengthened through legislative requirements may include the preparation processes and the subsequent detailed scrutiny. In other areas, a standard process would include drawing up a draft plan for consultation and public verification through independent review. The act would also define a duty to report back thoroughly; there could be a requirement to do this annually when it is important to maintain momentum towards targets.

Typically, the need to set targets would be included in an act, and the nature of the targets could be defined within legislation. On the other hand, the quantitative aspects of the targets would be agreed within the planning and scrutiny process, to allow them to be adapted over time as the plan proceeds. The force of the targets would derive from the requirement to report back thoroughly and regularly, and the act could include the right for the government to intervene directly in situations where targets are not being achieved.

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## Specific Considerations

### 3.2 The Curriculum and Language Categorisation of Schools

The system of categorising schools derives from the definition of a “Welsh medium” school in Section 105 (7) of the **2002 Education Act**<sup>(6)</sup>. In their policy document, *laith Pawb*<sup>(7)</sup>, the Welsh Government in 2003 identified Welsh-medium provision in schools as a priority. Following extensive consultation, this led to the publication of the information document “**Defining schools according to Welsh-medium provision**”<sup>(8)</sup> by the Welsh Government in 2007, with the requirement that the category and the description be included in the prospectus of every school from September 2007 on.

The **Welsh in Education Strategic Advisory Board** concluded that it was “now clear that the current method of categorisation does not deal appropriately with the linguistic provision in many of our schools”. They note the intention to consult in the autumn (2019) on “new draft definitions” and a need for “a better understanding of the effect of the curriculum’s linguistic continuum on the categorisation of schools according to their Welsh-medium education”.

If the opportunities arising from the linguistic continuum are realised, schools might be expected to respond by progressing with the two following dimensions: **(i)** the percentage of pupils achieving the higher outcomes of the linguistic continuum, and **(ii)** the portion of the curriculum provided through the medium of Welsh. If so, it is possible that a local authority might be required to ensure that each school demonstrates constant progress in both dimensions (apart from those already providing the entire curriculum through the medium of Welsh and where all pupils achieve the higher outcomes of the continuum). Such legislation may indeed be feasible, and could be more relevant than a new system of categorisation, reflecting an evolutionary intention for each school rather than seeking to describe the current situation through a category.

Other questions arise in relation to the curriculum, bearing in mind the proposal to legislate by referring to Areas of Learning and Experience rather than to individual languages/subjects. Although the consultation document, **A Transformational Curriculum**<sup>(9)</sup>, notes that Welsh will remain compulsory until the learner is 16, Welsh will be within the “languages, literacy and communication” Area of Learning and Experience which also includes English and modern foreign languages. There appears there is no certainty, therefore, as to the proportion of time which will be provided for Welsh, and thus no certainty as to how to lay firm foundations to ensure that all pupils in Wales can progress in relation to the continuum outcomes. It is possible therefore that the situation of Welsh within the Area of Learning and Experience is a

6 2002 Education Act

7 Welsh Assembly Government, *laith Pawb*: A National Action Plan for a Bilingual Wales, 2003

8 Welsh Assembly Government, *Defining schools according to Welsh-medium provision*, 2007

9 Welsh Government, *Our National Mission: A Transformational Curriculum: proposals for a new legislative framework*, 2019



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matter to be considered in the legislative context, since this area also includes English and modern foreign languages.

### 3.3 Pre-school provision

Under the current system, the **Foundation Phase in Wales** is the statutory developmental curriculum for children of 3 to 7 years of age. Within this, the element for children of 3 and 4 years of age is referred to as **Nursery provision in the Foundation Phase (NFP)**, and the Welsh Government published guidelines<sup>(10)</sup> for this in September 2018. The NFP is also part of the Childcare Offer for Wales.

The guidelines for NFP are partly statutory, under section 118(b) of the **Schools Standards and Framework Act**<sup>(11)</sup>, and partly non-statutory under section 10 of the 1996 Education Act<sup>(12)</sup>. The act required local authorities to ensure sufficient full-time and part-time nursery education provision for children in their area. This is also the source for the **Education (Nursery Education and Early Years and Childcare Development Plans (Wales) Regulations 2003**<sup>(13)</sup> and subsequent amendments in 2005<sup>(14)</sup>, with the requirement to provide a nursery place following the child's third birthday.

Although this is within the statutory part of the guidelines (section 3), the Welsh Government is expressing an "opinion" when noting that local authorities should ensure at least 10 hours of **NFP** provision per week (for 39 weeks) to satisfy the duty of ensuring sufficient nursery education for children in their area. This provision should either be in a nursery in a school ("maintained setting") or a day nursery, play group, or childminder ("non-maintained setting"). The need to ensure flexibility and accessibility for parents is stressed.

When planning and offering provision, the guidelines for local authorities include ensuring that "sufficient Welsh-medium provision is available" and also that "NFP places are available within reasonable travelling distance of the child's home". They are also expected to consider working in partnership across sectors (maintained and non-maintained) to ensure the most appropriate provision.

Local authorities are expected to provide a wide range of information, advice and assistance to parents and prospective parents, including "helping them to understand what provision is available, in maintained or non-maintained settings, including Welsh-medium provision, to enable parents to choose what is suitable for their family".

In this respect, the Childcare Offer<sup>(15)</sup> is currently being trialled, before its roll-out across Wales from September 2020. The scheme provides

10 Welsh Government, Foundation Phase Provision for children of three and four years of age: Guidelines for local authorities in Wales 2018

11 School Standards and Framework Act 1998

12 Education Act 1996

13 Welsh Government, The Education (Nursery Education and Early Years and Childcare Development Plans (Wales) Regulations 2003

14 Welsh Government, Amendments to the Education (Nursery Education and Early Years and Childcare Development Plans (Wales) Regulations 2005

15 Welsh Government, The Childcare Offer: Guidelines for Local Authorities who are Early Implementers 2018



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30 hours early education and childcare, funded by the government, for children of 3 and 4 years of age, to working parents who qualify, for up to 48 weeks a year.

The main aims of the **Childcare Offer** policy is to enable more parents, particularly mothers, to return to work; to increase the disposable income of working people, and help to eradicate in-work poverty for people on low incomes; and to help children develop and be ready for school. Within the Childcare Offer, the exact division per hour between NFP and childcare depends on the nursery provision currently available from the local authority or individual school, but the NFP element must be at least 10 hours per week across 39 weeks.

This is an important policy area in the context of promoting employment in Wales, but does depend on the availability of provision. September 2017 saw the publication of a study<sup>(16)</sup> commissioned by the Welsh Government into childcare capacity in Wales, seeking to map the provision against possible demand. No specific attention was paid to Welsh-medium provision, but the general findings were that the areas with the most capacity cannot provide “much more than six hours per child” while “some areas had no available childcare”. A further evaluation is being carried out in the six areas where the Childcare Offer is being trialled (**Swansea, Blaenau Gwent, Caerphilly, Flintshire, Rhondda Cynon Taff, Ynys Môn and Gwynedd**).

Policies and plans in this area are key in ensuring a linguistic balance in provision across Wales. Since considerations of travel distance are vital for children aged 3 and 4, provision must be planned on a very local level (the capacity study notes that data is available on the number of children living in the Census “**production areas**”, usually around 100 to 150 households (e.g. a small village or cluster of suburban streets).

Investing in plans for children of 3 and 4 years of age while not being able to ensure Welsh-medium provision could undermine parents’ intentions and wishes regarding a Welsh education for their children. There is possibly a need therefore for primary legislation to ensure linguistic balance within local provision, recognising that the availability of Welsh-language skills within the care and early years workforce is vital.

### 3.4 Additional learning needs

The years since 2015 have been a period of preparation for legislative reform in the area of additional learning needs, formerly identified as “special educational needs”, with the Code of Practice<sup>(17)</sup> which had been in force since April 2002. That Code was based on the

16 Welsh Government, The Childcare Capacity in Wales: Mapping the childcare provision against the potential demand for it, Childcare Capacity Study, 2017

17 Welsh Assembly Government, Special Educational Needs (Wales) Code of Practice, 2004



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requirements of **Part IV of the Education Act 1996** and the new rights and duties in the Special Educational Needs and Disability Act 2001<sup>18</sup>.

The latest act, the **Additional Learning Needs and Education Tribunal (Wales) Act** (2018)<sup>19</sup>, states that a person has “additional learning needs” if he or she has “a learning difficulty or disability” (whether as a result of a medical condition or not), requiring additional learning provision. A person has “a learning difficulty or disability” if he or she has substantially more difficulty in learning than the majority of the same age, or has a disability which prevents him or her from using education or training facilities generally provided for others of the same age (in mainstream schools or a mainstream institution in the further education sector).

The second chapter of the act explains that the basis of the provision is the “individual learning plan”, which includes (a) a description of the person’s additional learning needs and (b) a description of the additional learning provision necessary because of the person’s learning difficulty or disability.

Section 14(5) of this act demands that the local authority drawing up or maintaining the individual learning plan to “consider whether the additional learning provision should be provided in Welsh” for the child or young person. If the local authority decides that the specific type of provision should be provided in Welsh, the plan must set out that this should be provided in Welsh. Section 19(3) places the same onus on the local authority in relation to looked after children.

Furthermore, if the plan states that the specific type of learning provision should be provided in Welsh, section 14(10) demands that the local authority should “take all reasonable steps to ensure it is provided in Welsh for the child or young person”. Section 19(7) places the same onus on the local authority in relation to looked after children.

The act places similar requirements as regards provision in Welsh on National Health Service bodies when they provide a treatment or service likely to be of benefit when dealing with a child or young person’s additional learning needs. Also, section 40(6) includes corresponding considerations on authorities providing services for persons held in custody.

When a young person with an individual development plan enrolls as a student in a further education institution in Wales, the act (section 36) permits a local authority to request that the governing body of that institution to become responsible for maintaining the plan.

18 Special Educational Needs and Disability Act 2001

19 Additional Learning Needs and Education Tribunal (Wales) Act 2018





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If the governing body fails to accede to the request, the local authority may refer the matter to the Welsh Government.

The act (section 80) places a requirement on the Welsh Government to organise reviews every five years of the adequacy of additional education provision in Welsh and to publish the results.

As noted in section 3.1 above, regulations pertaining to the WESP, in Schedule 2, require “a statement identifying the local authority’s strategy as to how to they will improve Welsh-medium education for pupils who need additional assistance as a result of any difficulty a pupil has when learning in relation to other pupils of the same age who find no difficulty in learning”.

The next step in this area will be the publication of a new guideline in the form of an **Additional Learning Needs Code for Wales**, following consultation (which ended in March) on the draft version. The second chapter of the draft Code<sup>20</sup> includes basic principles. At the end of that chapter, reference is made to the need to take “all reasonable steps” to deliver additional learning provision in Welsh when this has been specified in the plan for the individual. This appears a more robust requirement than the wording of the current Code, namely that local education authorities must “seek to satisfy” the parents’ choice of language medium. The present Code also places conditional limitations on a parent’s right to say which of the local authority’s schools they wish their child to attend: one of those conditions is “making effective use of the LEA’s resources”.

In their summary of responses<sup>21</sup> to the consultation on the Code, the Welsh Government notes that responses in respect of Welsh are quite positive (questions 63 and 64), but that some expressed concern about the supply of staff with the appropriate expertise to provide the services needed in Welsh.

A study<sup>22</sup> of the provision of oracy, language and communication support in Wales for ages 0-25, by **Duncan Holtom and Rhodri Bowen in 2016**, commissioned by the Welsh Government, refers also to the “multiple challenges” in the area, including “workforce development” and “specialist provision” in Welsh, and also the need to ensure that more specific resources (e.g. specialist assessments) are available in Welsh.

<sup>20</sup> Welsh Government, Draft Additional Learning Needs Code, Wales 2018

<sup>21</sup> Welsh Government, Draft Additional Learning Needs Code: Consultation – summary of responses 2019

<sup>22</sup> Duncan Holtom & Rhodri Bowen, Study to map current provision of support for oracy, language and communication in Wales, for ages 0-25 2016





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Concerns about Welsh-medium services were reiterated in a report<sup>23</sup> (2012) commissioned by the Welsh Government on dyslexia provision in Wales. *[On the other hand, in the literature review<sup>24</sup> forming part of the same study, there are positive comments regarding the acquisition of reading skills in Welsh because of the language's transparent orthography, but that any advantage diminishes by the age of ten. It notes, however, that little research has been carried out into dyslexia and bilingualism, despite the fact that bilingualism and multilingualism are common in school age populations worldwide].*

Since the new act places a positive emphasis on taking all reasonable steps to provide in Welsh, in the area of additional learning needs, it appears that the main challenge at present is ensuring an educational and specialist workforce with the appropriate skills in Welsh, rather than further legislative amendments.

### 3.5 Post-16 Education and Training

Following the recent expansion in the remit of the **Coleg Cymraeg Cenedlaethol** (see also section 3.10) to include the post-16 sector, the Government commissioned a Welsh-medium action plan<sup>25</sup> from the Coleg as part of its new responsibility. Since learners in the Further Education and Apprenticeship sectors are very likely to remain in the communities where they studied, the action plan suggests that there is “tremendous potential for these sectors to make a substantial contribution to the aim of a million Welsh speakers by 2050”.

Although about 15% of the students said that they had fluent or conversational skills in Welsh, and about another third had basic skills, 90% study through the medium of English only.

The skills development model suggests proposing **four** areas on which to concentrate when carrying out detailed planning work: **awareness** of Welsh and the way it engages with their programmes of study; **understanding** a basic conversation in Welsh; **confidence** to use their Welsh skills; and **fluency** where learners can operate bilingually with confidence in their chosen occupation. It is suggested that all learners in the Further Education and Apprenticeship sector be targeted with interventions on one or more levels to increase their awareness, understanding, confidence or fluency.

For the strategy to succeed, attention must be given to the learner's experience; staffing capacity; provision; resources; assessment and qualifications (see also section 3.8); and employer engagement. Regarding provision, some priority areas are suggested: health and social care; childcare; public services. There is an identified need for

<sup>23</sup> Welsh Government, Current provision for literacy and dyslexia in Wales: report on the benchmarking study 2012

<sup>24</sup> Welsh Government, Research into dyslexia provision in Wales: a literature review of the condition of research into children with dyslexia 2012

<sup>25</sup> Coleg Cymraeg Cenedlaethol, Welsh-medium Further Education and Apprenticeships action plan



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resources to support providers where, historically, there has been no bilingual provision, or where it is scarce. With employers, the aim is to ensure that they understand, develop and appreciate bilingual workplace skills.

In legislation, section 33B of the **Learning and Skills Act 2000**<sup>26</sup> places a duty on the Welsh Government to promote availability and access to Welsh-medium learning programmes. The Learning and Skills Measure 2009<sup>27</sup> saw the introduction of the idea of a “local curriculum” for ages 14-19 and the guidelines<sup>28</sup> reminded those responsible for planning curricula of the need to promote Welsh-medium provision and the importance of linguistic continuity. Reference was also made to Colegau Cymru’s bilingual strategy. However, this did not give rise to any significant progress.

Another relevant consideration is the recommendation in the **Towards 2030**<sup>29</sup> report concerning a framework for post-16 education in Wales. A lack of strategic thinking at all levels has led to a lack of co-operation, a lack of critical mass and too much competition for scarce resources; also, there is a lack of alignment with the social, cultural and economic requirements of Wales, regionally and nationally. The Welsh Language Commissioner and the **Coleg Cymraeg Cenedlaethol** have an interest and responsibilities in relation to education, and that a more co-ordinated planning framework is needed for many aspects, including Welsh-medium provision.

The Welsh Government responded by publishing a **White Paper on the Development of a Revised Post-compulsory Education and Training System**<sup>30</sup> in June 2017 and followed by a detailed consultative document in April 2018, **Public Interest and a Prosperous Wales**<sup>31</sup>.

The consultation includes a specific section on supporting the Welsh language and in the context of establishing a Commission for the sector; it notes that “the Welsh language and Welsh provision will be considered throughout the process of developing any legislation”. It also notes the need for a decision regarding the relationship of both the **Coleg Cymraeg Cenedlaethol** and the **National Centre for Learning Welsh** and the Commission, specifically as regards the funding and accountability of both bodies (see also section 3.10). Also important as regards Welsh-medium provision, the government’s offer is that sixth form provision should fall within the Commission’s remit.

<sup>26</sup> Learning and Skills Act 2000

<sup>27</sup> Learning and Skills Measure 2009

<sup>28</sup> Welsh Assembly Government, Local Curriculum Guidelines for students aged 16 to 18 2010

<sup>29</sup> Ellen Hazelkorn, *Towards 2030: A review of the overview of post-compulsory education in Wales, with particular reference to the role and work of the Higher Education Funding Council for Wales in future* 2016

<sup>30</sup> Welsh Government, *White Paper on the Development of a Revised Post-compulsory Education and Training System* 2017

<sup>31</sup> Welsh Government, *Public Interest and a prosperous Wales – the next steps (consultative document)* 2018



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We can see therefore that we are in a transitional period regarding post-16 education and training as the role of the **Coleg Cymraeg Cenedlaethol** extends and the possible establishment of a Commission for post-compulsory education and training (**PCET**). Careful consideration needs to be given therefore to legislative requirements in order to strengthen Welsh-medium provision in this context.

### 3.6 Learner travel

Section 10 of the **Learner Travel (Wales) Measure 2008**<sup>32</sup> includes a general duty that “all local authorities and the Welsh Ministers to promote access to education and training through the medium of Welsh when they exercise functions under this Measure”.

The duty to provide free transport is based on the concept of the “nearest suitable school”: the local authority needs to provide this when a primary pupil lives two miles or more from the “nearest suitable school” and for a secondary pupil when that distance is three miles or more.

In the guideline document, **Learner Travel: Statutory Requirements and Operational Guidelines 2014**<sup>33</sup>, the Welsh Government confirmed the need for local authorities to implement their duty to promote education and training through the medium of Welsh when deciding on the “nearest suitable school”. It further notes that section 6 of the Travel Measure gives the local authority discretion to provide transport for a pupil who does not attend his “nearest suitable school” because of linguistic choice. But the suggestion that the “nearest school” can be “suitable” although it does not provide a language medium of choice is misleading and derives from the fact that the concept of a “suitable school” is defined in the Measure in relation to “the child’s age, ability and talents and any learning difficulties he might have”. There is no reference at all here to the suitability of the language medium of the education provided, and this therefore seems a basic weakness when seeking to set duties arising from the legislation.

Beyond this basic weakness, this area is also difficult because of the limitation on the duty to provide free transport for compulsory education ages (5 to 16) only. Providing for the travel requirements of age groups on both sides of compulsory education ages is also key as regards the promotion of education and training in Welsh. The Travel Measure gives local authorities discretion to provide transport for categories such as children under 5 who attend nursery units or schools or post-16 students pursuing education or training; however, if this is done at all (through powers under section 6) then provision must be made for all learners in similar circumstances within the local authority area.

<sup>32</sup> Learner Travel Measure (Wales) 2008

<sup>33</sup> Welsh Government, Learner Travel: Statutory Requirements and Operational Guidelines 2014





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It thus appears that it would not be possible to exercise discretion to provide transport which would promote Welsh-medium education for the ages 3-5 or post-16 unless such provision was available for all learners of those ages within the area. This situation persists despite the fact that distances travelled in order to access Welsh-medium education in many areas are more than distances to access English-medium education. Circumstances arising from financial austerity do, of course, limit the possibilities for action by local authorities at present, but beyond this, the question arises as to the appropriateness of legislating positively for Welsh-medium education where distances are longer.

### 3.7 Training and the workforce

The comparatively recent developments in **Cymraeg Gwaith**, under the **National Centre for Learning Welsh** (see also section 3.10) suggest that employers should adopt a Language Skills Strategy (LSS) which would enable an organisation to plan sufficient levels of Welsh language skills amongst its workforce to respond to the requirements of those using its services. The three basic elements of a LSS are: identifying the organisation's language needs; identifying the workforce's language skills; planning to maintain and increase the workforce's language skills to answer the needs<sup>34</sup>. A number of public bodies and institutions are required to respond with such a strategy due to the requirements of the Welsh Language Standards introduced under the Welsh Language Measure 2011<sup>35</sup>.

The Centre has developed a **National Welsh for Adults Curriculum** which follows the competency levels seen in the Common European Framework of Reference (CEFR) for languages. There is a relationship between the levels and WJEC Welsh for Adults qualifications (e.g. A1 – Mynediad; A2 – Sylfaen; C1 – Hyfedredd).

The provision available under Cymraeg Gwaith includes a 10 hour online course (“**Croeso Cymraeg Gwaith**”) which introduces simple Welsh greetings and phrases suitable for the workplace; a provision of intensive courses (“**Learning Workplace Welsh**”) over an extended period, provided locally for the workplace by one of the Centre's providers; and 5-day residential courses (“**Using Workplace Welsh**”). The centre's information pack emphasises the need to support the employee on the learning journey.

<sup>34</sup> The National Centre for Learning Welsh, Workplace Welsh: Information for Employers

<sup>35</sup> Welsh Language Measure (Wales) 2011



## Specific Considerations

While recent developments are encouraging, it might be as well to compare the steps taken in some European countries in setting rights to language training, insisting that language skills are acquired, and the financial investment in this. One of the many sources of information is the Language for Work website provided by the European Centre for Modern Languages<sup>36</sup>.

For instance, in Sweden, immigrants into the country have a legal right to study Swedish as a second language: the provision is funded through the immigration service, the employment service and the local authorities and achieves level B1 of the European framework (corresponding to the Intermediate level of Welsh for Adults qualifications).

**Denmark** legislated in 2010 on training in Danish for foreign adults. This provides for 250 hours of training in Danish in the context of the workplace and gives a right of access to a three-year course in the language. This is funded by the ministry of education and the local authorities.

The *Financial Times* reported in 2016<sup>37</sup> that **Germany** was providing a budget of 559 million for 660 hour language courses for immigrants into the country, which made provision for 300,000 people (1,700 euros per head). But this average cost most probably reflects a provision where learners on the whole are in a cluster arrangement.

It is interesting also to note the example of **Estonia**, a country with a population of 1.3 million, which has re-established the status of its national language since gaining independence in 1991 and which has in its population an element (mostly of Russian origin) where over half the adults have no skills in the Estonian language. One of the recommendations in a report<sup>38</sup> in 2018, referring to the progress already made, concerns the need to continue to provide training in the Estonian language as a service for the labour market, and also in a wider context to promote integration and social engagement.

Each national context, naturally, has its own specific features, but bearing in mind what has been achieved in other countries, it would be appropriate to consider the advantages which could arise from legislating on rights of access to training provision in Welsh for adults and also to set statutory requirements for employers.

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36 European Centre for Modern Languages, Language for Work website:  
<https://languageforwork.ecml.at>

37 Financial Times, Germany helps refugees bridge language gap 2016

38 Centar (Estonia Centre for Applied Research), Estonian Language Training for Adults with Other Native Languages 2018







## Specific Considerations

### 3.8 Qualifications

Qualifications (**GCSE, GCE and vocational**) are provided by a number of awarding bodies which are regulated, as regards their provision in Wales, by Qualifications Wales. The provision of assessments through the medium of Welsh depends on:

- **the language policy of the awarding body** (e.g. WJEC, the chief provider of GCSE and GCE qualifications in Wales ensures that Welsh-medium assessments are available on demand)
- any **conditions laid down by the regulator**, Qualifications Wales (e.g. when commissioning new vocational qualifications for the Health and Care and Childcare sectors, there was an expectation that the successful provider [WJEC and City & Guilds in partnership] would provide Welsh -medium assessments when requested).

Therefore, the risk of lack of Welsh-medium provision arises from **(i)** weaknesses in the language policies of awarding bodies (which are not at present compelled to provide a Welsh Language Scheme for the attention of the Welsh Language Commissioner), and **(ii)** situations where Qualifications Wales chooses not to impose conditions on awarding bodies in order to secure Welsh-medium provision (although they have the power to do so, and also to provide a grant which would assist an awarding body in the context of additional costs of providing assessments in both languages).

Elements of nervousness influence the situation as regards the two considerations above:

- awarding bodies can be anxious when committing to provide assessments through the medium of Welsh because of **(a)** uncertainty about their ability to meet the need by securing assessors who are confident to work in Welsh, and **(b)** concerns about the (financial) penalties the regulator may impose should there be an error in an assessment (in whatever language, but concerns may be deeper when an awarding body does not have the internal capacity to verify the accuracy of all aspects of Welsh-medium assessment)
- the regulator may be concerned as to the effect of enforcement actions on an awarding body to provide Welsh-medium assessments, since that may cause the awarding body not to provide qualifications at all in Wales: that would create a difficult situation as to the range of vocational provision in Wales because of the substantial dependence on awarding bodies from outside Wales.



## Specific Considerations

This area could be difficult from a legislative standpoint, because in the vocational areas, the chief providers are awarding bodies to whom Wales is not a main priority (indeed, Wales could be 5% or less of their market for a specific qualification). While a positive and supportive attitude by Qualifications Wales could be a means of alleviating the concerns of the awarding bodies, we must accept the possibility that capacity must be created within Wales so as to eradicate completely the risk of a situation arising where an awarding body would be unwilling to provide Welsh-medium assessments.

### 3.9 The Education Workforce

Recent legislation has led to important elements of change in some issues relevant to the education workforce. Under the Wales Act 2017<sup>39</sup>, and through the **Welsh Ministers (Transfer of Functions) Order 2018**<sup>40</sup> powers to set teachers and leaders' pay and conditions in Wales was transferred to the Welsh Government. The **Independent Salary Review Body for Wales** was established to present recommendations to the Education Minister concerning salaries and conditions of service from September 2019 on. Thus, Wales, (as in Scotland and Northern Ireland) can now make its own decisions about the pay and conditions of teachers and leaders, and should there be an intention to introduce variations specific to the needs of Welsh-medium education, then the powers to do so are available.

The importance of a quality professional workforce is reflected in the first “enabling objective” in the **Welsh Government's action plan for 2017-21, Education in Wales: Our National Mission**<sup>41</sup>, namely “the development of the highest quality education profession”. The action steps identified include:

- **reinforcing** teachers' initial education by using new accreditation criteria
- **attracting** more quality candidates and very able mature graduates into the teaching profession and retaining them
- **developing** new professional standards for teachers and other members of the education workforce which will concentrate on the essential elements of successful teaching
- **developing** career-long continuing professional learning which can foster ability after initial teacher education
- **establishing** a more effective system for workforce planning to ensure enough able teachers, including those who can work through the medium of Welsh, and people working in a wide range of additional learning needs (ALN) roles.

<sup>39</sup> Wales Act 2017

<sup>40</sup> Constitutional Act: The Welsh Ministers (Transfer of Functions) Order 2018

<sup>41</sup> Welsh Government, Education in Wales: Our National Mission – an Action Plan 2017-21 2017



## Specific Considerations

Among the steps to assess progress, the Government will “monitor the demand for staff in special areas compared with supply, including Welsh-medium provision” and also “monitoring whether there is sufficient Welsh-medium provision available for learners”. Regarding the second enabling objective, “leaders who inspire and co-operate to raise standards”, one of the progress assessment steps is “demonstrating improvement in the number of quality applicants for leadership posts in schools”.

The **Education Workforce Council (EWC)** now accredits initial teacher education programmes. The latest Welsh Government statistics<sup>42</sup> show that only about 17.5% of students in the first year of initial teacher education in 2017-18 were training to teach through the medium of Welsh, with the numbers being fairly even between the primary and secondary sectors. Statistics published by the EWC<sup>43</sup> show that only 22 students successfully completed an initial teacher education programme in 2017-18 to teach Welsh (secondary) while the target for the subject in 2019-20 was 75 students. The evidence that the recruitment and training of quality teachers is challenging is general: Welsh Government statistics<sup>42</sup> for 2017/18 show that the number of trainees for the secondary sector is lower than the target of 40%, while numbers for the primary sector are slightly below target for the third year running.

The possibility in the context of legislation is that the requirement on the Government to model transparently the demand for Welsh and Welsh-medium teachers needs to be strengthened, and a requirement also to report promptly every year to the Assembly on achievement against the targets arising from the model. Thus it would be possible to hold the Government to account regarding recruitment to the Welsh-medium education workforce.

Although local authorities are required within the WESP to identify their strategy for ensuring sufficient teaching staff to meet the demand for Welsh-medium education, under the **Welsh Education Act**<sup>44</sup>, one of the chief responsibilities of the EWC is the promotion of careers in the education workforce. In October 2018, the Welsh Government asked the EWC to undertake the responsibility for the Discovering Teaching campaign, initiated jointly by the regional Consortia.

<sup>42</sup> Welsh Government, Statistical Bulletin; Initial Teacher Education in Wales 2017-18 2019

<sup>43</sup> Education Workforce Council, Initial teacher education – student results 2017-18 2019

<sup>44</sup> Education Act (Wales) 2014



## Specific Considerations

The Welsh Government has powers under section **14-17 of the Education Act 2000** to offer financial assistance to promote the recruitment or retention of teachers or non-teaching staff. The provision through the “**Welsh-medium improvement scheme**”<sup>45</sup> and the “**Language Incentive Scheme for Tomorrow’s Teachers**” scheme<sup>46</sup> comes under these powers.

### 3.10 Non-statutory status of key organisations

Some bodies which play a key role in education and training in Welsh have non-statutory status, and the relevant question is whether or not this is a disadvantage as regards their contribution, their influence and their continuation. We consider here two such institutions, the **Coleg Cymraeg Cenedlaethol** and the **National Centre for Learning Welsh**.

The **Coleg Cymraeg Cenedlaethol** was established in 2011, after a period of a decade when there was a Welsh-Medium Higher Education Unit (then a Centre) funded by the Higher Education Funding Council for Wales. It is a charity and company limited by guarantee. In partnership with the universities, the Coleg secures more opportunities for students to study through the medium of Welsh, funds, develops and trains Welsh-medium lectures, and develops modules, courses and resources. It works through branches located in the universities, which serve as a local contact point for students and supports the Coleg’s work. At the end of 2017, the Welsh Government announced that the Coleg would co-operate with the further education sector and apprenticeship providers to develop Welsh-medium provision. For the year to March 2019, the Coleg received funding of £5.92m from the Welsh Government (£150k of this for “developments within the post-16 sector”).

The **National Centre for Learning Welsh** was established through a tendering process following the publication of the report “**Raising our Sights: a Review of Welsh for Adults**”<sup>47</sup>. It is an arms-length body from the Welsh Government, which funds it, and the University of Wales, Trinity St. David’s, which won the tender in May 2015. The Centre is a company limited by guarantee, with no share capital, and the University is the sole company member. Since August 1 2016, the Centre has been responsible for all aspects of the community education programme Welsh for Adults, from the curriculum to resources to research, marketing and the e-learning. Among the strategic priorities, an innovative programme of attractive courses was developed for learners and a network of providers established. During the 2017-18 academic year, the Centre received about £1.85m to provide strategic leadership for the sector and to develop resources, about £8.81m to be distributed to providers, and about £2.5m towards the **Workplace**

<sup>45</sup> Welsh Government, Evaluation of Welsh-medium Provision in Initial Teacher Education 2018

<sup>46</sup> Welsh Government, Language Incentive Scheme for Tomorrow’s Teachers 2018

<sup>47</sup> Welsh Government, Raising our Sights: a review of Welsh for Adults – Report and Recommendations of the Welsh for Adults Review Group 2013



## Specific Considerations

**Welsh** scheme.

Amongst recent examples of new statutory bodies in Wales is **Education and Health Improvement Wales** (EHIW). EHIW was established to offer substantial added value in care for patients by providing education and improvement assistance to health bodies. Within its role, the body has powers to commission professional education in the health sector in areas agreed with the Welsh Government, to plan for workforce needs in the health sector, and to provide leadership and development to the health workforce.

The **Education Workforce Council** is a statutory education body, and an independent regulatory body whose objectives are to contribute to improving educational standards and the quality of teaching; maintaining and improving standards of professional conduct; safeguarding the welfare of learners, parents and the public and maintaining the public's trust and confidence in the education workforce.

Although the nature and ethos of these statutory bodies are not vastly different from the remits of the **Coleg Cymraeg Cenedlaethol and the National Centre for Learning Welsh**, it should not be assumed that statutory status is always advantageous or necessary. It is true to say that statutory status is needed for regulatory powers and that such status ensures that formal legislative processes would be necessary before any government could abolish the body or amend it substantially. On the other hand, an independent body with no statutory basis could evolve its methods of working with fewer restrictions, and this may include taking on additional duties without the need for a legislative process which may be very time-consuming.

Whether their status is statutory or non-statutory, the Coleg and the Canolfan to a degree may be considered as public bodies since they are funded by the Welsh Government. Therefore, the key to the success of their mission is the continuation of this financial support on a level appropriate to their aims and targets, with sufficient flexibility within the Grant Letter to allow for the evolution of working methods to respond to challenges and circumstances. Since the continuation of financial support derives from a strategic relationship and government intentions, it may be said that the legislative basis of those strategies is the key factor, rather than any need for the bodies themselves to obtain statutory status.





# Conclusions and next steps







## Casgliadau

**On the basis of what has been investigated to date, the strongest possibilities regarding the feasibility of legislation are the following:**

- **more thorough preparation and scrutiny processes** for the Welsh in Education Strategic Plans, together with a robust requirement to report back on the outcomes (section 3.1 above)
- **a requirement on a local authority to ensure that all schools demonstrate consistent progress in both dimensions:** (i) the percentage of pupils attaining the higher outcomes of the linguistic continuum, and (ii) the proportion of the curriculum provided through the medium of Welsh (section 3.2)
- the situation of Welsh within the “languages, literacy and communication” **Area of Learning and Experience** (section 3.2)
- a **legislative basis** to ensure linguistic balance within local provision for the **Foundation Phase nursery and Childcare** (section 3.3)
- careful consideration to what is needed in legislation concerning the Welsh language in the context of the **possibility of establishing a Commission for post-compulsory education and training [PCET]** (section 3.5)
- **include the language of education unambiguously within the definition of the “nearest suitable school”** in the context of learner travel arrangements (section 3.6)
- **the possibility that travel arrangements for ages 3-5 and post-16 should be more favourable** when distances travelled tend to be longer (section 3.6)
- the **possibility of legislating for the provision of vocational qualifications**, even in a context when so many of the providers and bodies are external to Wales (section 3.8)
- strengthening the requirement for the Government to be **transparent in modelling the demand for teachers of Welsh and Welsh-medium**, also placing a requirement for prompt annual reporting to the Assembly on achievement against targets derived from the model (section 3.9).





## Next Steps

Following discussion of what has been summarised in this report, specific recommendations need to be developed regarding the instructions for drafting a piece of legislation which will be appropriate in the context of the promotion of childcare, education and training policies and which will be suitable for the **realisation of the main objectives of the Welsh Government's Welsh language strategy, Cymraeg 2050: A Million Welsh Speakers.**



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# Notes









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**Genedlaethol Sir**  
**Conwy 2019**

Published by  
**Siân Gwenllïan**  
**AM, National**  
**Eisteddfod**  
**Conwy 2019**

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Talwyd am yr adroddiad  
hwn gan Gynulliad  
Cenedlaethol Cymru ac  
argraffwyd gan Uned Gopio  
y Cynulliad.

This report has been funded  
by the National Assembly  
for Wales and printed by the  
Assembly's Copy Unit.



Cynulliad Cenedlaethol **Cymru**  
National Assembly for **Wales**