



Ein cyf/Our ref LA/05398/11

David Melding AM  
Chair of the Constitutional Affairs and  
Legislative Affairs Committee  
National Assembly for Wales  
Tŷ Hywel  
Cardiff Bay  
CF99 1NA.

6 July 2011

*Dear David*

### **CSI2 - The Welsh Language Commissioner (Appointment) Regulations 2011**

Thank you for your letter of 27 June drawing my attention to the report of the Committee on Statutory Instruments which considered the Welsh Language Commissioner (Appointment) Regulations 2011 ("the regulations") at its meeting on 22 June 2011. I note that you have made arrangements for the report to be drawn to the attention of the First Minister and Assembly Members and that the Committee agreed to invite the Assembly to pay special attention to this Instrument on the grounds "that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly" (Standing Order 21.3(ii)).

I responded to the points raised by your Committee in my Government response to the report as well as during the Plenary debate on the regulations on 28 June and I am grateful for the opportunity to further address these issues. The two main issues arising from the report relate to:

(i) concerns about the perceived independence of the Commissioner, particularly in light of the fact that the Commissioner is appointed by the First Minister as opposed to the National Assembly for Wales.

I am aware that during Assembly scrutiny of the Welsh Language (Wales) Measure 2011 ("the Measure"), Members raised concerns regarding the appointment of the Commissioner by the First Minister. I believe that it is appropriate for the Commissioner to be appointed by the First Minister. It should be borne in mind that the Commissioner's principal aim in exercising his or her functions will be to promote and facilitate the use of Welsh and that, in this respect, he or she will be instrumental in delivering the Government's policy aims with regard to the Welsh language. It will be important, therefore, to ensure some degree of cooperation. Appointment by the First Minister is consistent with the process for appointing the Children's Commissioner for Wales and the Commissioner for Older People in Wales.

At the same time, the Measure includes a number of safeguards which secure the Commissioner's independence, for example the duty on the Welsh Ministers, when exercising functions in relation to the Commissioner, to 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 activities, timetable and priorities.

The Measure, as approved by Members, does place a duty on the First Minister to appoint the Commissioner. However, I believe that the Welsh Government has responded to the wish expressed by Members to be involved in the appointment process. The regulations approved by the Assembly on 28 June include a provision which ensures an Assembly Member nominated by a committee of the Assembly will sit on the selection panel to interview candidates and make recommendations to the First Minister regarding the appointment. I am confident that these important provisions strike an appropriate balance between cooperation and independence for the Commissioner.

The Measure was amended, in line with the recommendation of the then Constitutional Affairs Committee, to ensure that the regulations are subject to the affirmative resolution procedure, therefore providing an opportunity for the National Assembly to debate the balance between cooperation and independence of the Commissioner. I am pleased that Members approved these regulations.

(ii) concerns about how the provision to invite a committee of the Assembly to nominate a member of the selection panel will work in practice.

As stated in my Government response, regulation 2(2)(d) is drafted to provide a degree of flexibility for Welsh Ministers in terms of how they seek a nomination for an Assembly Member. Normally, and I believe that this will usually be the case, the Government will invite a committee of the Assembly with responsibility for scrutiny of the Government's Welsh language policy to nominate an Assembly Member to sit on the panel. In future, the need to appoint a new Commissioner, and the consequent need to convene a selection panel, should be known sufficiently well in advance. This will enable the Government to make every effort to seek this nomination from the Assembly during term time.. However, in some exceptional circumstances it may be necessary to write to the Committee during a recess period.

In appointing the first Commissioner, however, I am keen to see the appointment being made as soon as possible in order to ensure that the successful candidate is able to make a valuable contribution to the important work that lies ahead in terms of establishing his or her office and in facilitating the transition from the current arrangements to the new system of language standards. Since a scrutiny committee had not been established, on 20 June I invited the Business Committee to provide this nomination. Of course, since that date, the Communities, Equality and Local Government Committee has been established and, as such, I have written to the Chair of the Communities, Equality and Local Government Committee inviting that Committee to make a nomination. This accords with the Business Committee's assessment, in their meeting on 28 June, that the Communities, Equality and Local Government Committee should make the nomination.,.

The Committee's report also makes reference to the provision contained in paragraph 3(1)(b) of Schedule 1 to the Measure which places a duty on the First Minister, in appointing the Commissioner, to take account of the recommendations made by the selection panel. In my view, this provision is entirely appropriate. As I stated during the plenary debate, the composition of the selection panel is consistent with well-established processes for public appointments but also includes a person with experience relevant to the field in which the Commissioner will work.

I am confident that the selection panel is appropriate and will provide a balanced view in its recommendations to the First Minister. However, the First Minister could legitimately take into account the panel's recommendations and appoint a different candidate. In such a situation, the First Minister would need to have legitimate grounds for doing so and be able to evidence that the panel's recommendations had been taken into account.

I hope the Committee finds this information helpful.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Leighton Andrews', written in a cursive style.

**Leighton Andrews AC / AM**  
Y Gweinidog Addysg a Sgiliau  
Minister for Education and Skills

