

# Agenda – Constitutional and Legislative Affairs Committee

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Meeting Venue:

**Committee Room 1 – Senedd**

Meeting date: Monday, 30 January  
2017

Meeting time: 14.30

For further information contact:

**Gareth Williams**

Committee Clerk

0300 200 6565

[SeneddCLA@assembly.wales](mailto:SeneddCLA@assembly.wales)

**1 Introduction, apologies, substitutions and declarations of interest**  
(14.30)

**2 Instruments that raise no reporting issues under Standing Order  
21.2 or 21.3**

(14.30 – 14.35)

(Pages 1 – 2)

**CLA(5)–03–17 – Paper 1 – Statutory Instruments with clear reports**

Negative Resolution Instruments

**SL(5)049 – The Non–Domestic Rating (Small Business Relief) (Wales) (Amendment)  
Order 2017**

**SL(5)052 – The Council Tax (Administration and Enforcement) (Amendment)  
(Wales) Regulations 2017**

**SL(5)054 – The Council Tax (Demand Notices) (Wales) (Amendment) Regulations  
2017**

**3 Papers to note**

(14.35 – 14.40)



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

**Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill:  
Correspondence from the Cabinet Secretary for Finance and Local Government**

(Pages 3 – 12)

**CLA(5)–03–17 – Paper 2 – Correspondence from the Cabinet Secretary for Finance and Local Government, 23 January 2017**

**Consolidation Bills: Correspondence from the Llywydd – 26 January 2017**

(Pages 13 – 18)

**CLA(5)–03–17 – Paper 3 – Correspondence from the Llywydd to the Committee, 26 January 2017**

**CLA(5)–03–17 – Paper 4 – Correspondence from the Counsel General to the Llywydd, 12 December 2016**

**4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(14.40)

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person; and

(ix) any matter relating to the internal business of the Committee, or of the Assembly is to be discussed.

**5 Public Health (Wales) Bill: Draft report**

(14.40 – 14.55)

(Pages 19 – 33)

**CLA(5)–03–17 – Paper 5 – Draft report**

**6 Constitutional and Legislative Affairs Committee: Forward work programme**

(14.55 – 15.05)

(Pages 34 – 36)

**CLA(5)–03–17 – Paper 6 – Forward work programme**

**Date of the next meeting**

Monday 6 February 2017

# Statutory Instruments with Clear Reports **Agenda Item 2**

30 January 2017

## SL(5)049 – The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2017

**Procedure: Negative**

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This Order amends the Non-Domestic Rating (Small Business Relief) (Wales) Order 2015 (“the 2015 Order”). The 2015 Order provides for a rate relief scheme and a temporary rate relief scheme which applies only to certain categories of hereditament. When originally made, the 2015 Order provided for the temporary rate relief scheme to run from 1 April 2015 to 31 March 2016.

The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2016 extended that temporary rate relief scheme to 31 March 2017.

Article 2 of this Order further amends the 2015 Order by extending the period of time for which the temporary rate relief scheme is to apply to 31 March 2018.

**Parent Act:** Local Government Finance Act 1988

**Date Made:** 16 January 2017

**Date Laid:** 19 January 2017

**Coming into force date:** 10 February 2017

## SL(5)052 – The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2017

**Procedure: Negative**

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The Council Tax (Administration and Enforcement) Regulations 1992 (“the 1992 Regulations”) make provision about the billing, collection and enforcement of council tax.

The 2017 Regulations amend the 1992 Regulations in relation to Wales to take account of the introduction of council tax premiums on long-term empty homes and second



homes under sections 12A and 12B of the [Local Government Finance Act 1992](#) inserted into that Act by the [Housing \(Wales\) Act 2014](#).

These Regulations enable the premiums to be billed for and enforced.

**Parent Act:** [Local Government Finance Act 1992](#)

**Date Made:** 23 January 2017

**Date Laid:** 25 January 2017

**Coming into force date:** 15 February 2017

## SL(5)054 – The Council Tax (Demand Notices) (Wales) (Amendment) Regulations 2017

**Procedure:** Negative

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The [Regulations](#) amend the [Council Tax \(Demand Notices\) \(Wales\) Regulations 1993](#) (SI 1993/255) ('the 1993 Regulations'), which make provision about matters to be contained in, and information to be supplied with, council tax demand notices. The amendments made to the 1993 Regulations are to reflect the introduction of the council tax premiums on long-term empty homes and second homes from 1 April 2017.

**Parent Act:** [Local Government Finance Act 1992](#)

**Date Made:** 23 January 2017

**Date Laid:** 25 January 2017

**Coming into force date:** 15 February 2017



Mark Drakeford AM/AC  
Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government

Agenda Item 3.1



Llywodraeth Cymru  
Welsh Government

Simon Thomas AM  
Chair  
Finance Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

23 January 2017

Deu Simon,

## LAND TRANSACTION TAX AND ANTI-AVOIDANCE OF DEVOLVED TAXES (WALES) BILL

Thank you once again for your consideration of the Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill during stage 1. I am pleased that the general principles of the Bill have been agreed, and I thank both the Finance Committee and the Constitutional and Legislative Affairs Committee for their recommendations in this regard.

During the General Principles debate on the Bill on 10 January, I confirmed that I would provide a detailed response to your Committee's Stage 1 report and its 18 recommendations. I have set out below my response to the recommendations; this includes details of where I agree there is need to put forward amendments to the Bill. I have already tabled 23 Government amendments and will table further amendments before the close of the tabling period.

I have already set out my response to the three recommendations made by the Constitutional and Legislative Affairs Committee in my letter to them on 10 January. I have accepted two of these recommendations, and welcome the positive comments from the Chair of this Committee at the General Principles debate in relation to this Bill.

I hope that the attached information helps to inform your further scrutiny as the Bill progresses through Stage 2. I look forward to working with Committee members on the details of the legislation in the future.

Bae Caerdydd • Cardiff Bay  
Caerdydd • Cardiff  
CF99 1NA

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

I am copying this letter to the Chair of the Constitutional and Legislative Affairs Committee.

*Best wishes,*

*Mark*

**Mark Drakeford AM/AC**

Ysgrifennydd y Cabinet dros Gyllid a Llywodraeth Leol  
Cabinet Secretary for Finance and Local Government

# Land Transaction Tax and Anti-avoidance of Devolved Taxes (Wales) Bill - Stage 1

## Finance Committee Report recommendations

### Recommendation 1

The Committee recommends that the general principles of the bill should be agreed by the National Assembly. It does, however, make a series of recommendations in this report which it believes should be addressed by the Welsh Government in order to strengthen the provisions in the Bill.

I am grateful for all the input from the Assembly Committees who have contributed to the robust scrutiny of the Bill, and am pleased that they have been able to recommend to the National Assembly that the general principles are agreed.

### Recommendation 2

The Committee requests that the Cabinet Secretary keeps the National Assembly and the Committee informed of progress in establishing the WRA. It recommends this is done through statements once per Assembly term.

I **accept** this recommendation and will continue to keep the National Assembly and the Committee informed of progress in establishing the WRA. I am happy to provide this on a termly basis.

### Recommendation 3

The Committee recommends that formal Memoranda of Understanding are established with HMRC and the Land Registry on both sharing information and access to expert knowledge.

I **accept** this recommendation. My officials continue to work closely with HMRC and Land Registry. There will be formal agreements in place on specific issues such as data sharing, and on developing processes between both organisations and the WRA.

Specifically, discussions are underway with HMRC in regards to establishing a Memorandum of Understanding on broader strategic relationships. An Information Sharing Agreement (ISA) is already in place between Welsh Government and HMRC and it is expected that an ISA will be established this year with both HMRC and Land Registry.

### Recommendation 4

The Committee recommends that the Welsh Government establishes a working group of practitioners as soon as possible to discuss technical and practical operational issues. The responsibility for such a group should be passed to the WRA as soon as practicable; The Committee believes the workings of this group should be as transparent and open as possible.

I **accept** this recommendation. As the Committee will be aware, the Welsh Government set up three external groups in 2014 which have, since this date, assisted the Welsh Government in the development of the devolved taxes policy and legislation - these are the Ministerial Tax Advisory Group, the official-level Tax Forum, and the tax-specific Technical



Expert Groups. The Tax Forum is attended by professionals and representative organisations on tax policy and administration, and leads discussions on technical and practical operational issues for all devolved Welsh taxes. Dyfed Alsop, Implementation Director for the WRA, has recently taken over as chair of the Tax Forum.

In addition to these groups, a working group will be established to help with the drafting of guidance. The WRA Implementation Programme will lead on the arrangements for this group.

Furthermore, an operational working group will also be formed shortly to test the digital systems and processes with agents.

### **Recommendation 5**

The Committee recommends that the WRA engage with relevant professions from the outset on the production of LTT guidance.

I am happy to **accept** this recommendation. I previously set out in a letter to the Chair of the Finance Committee on 11 October that the development of operational guidance and advice should be through discussions with taxpayers and agents to ensure that it meets their needs.

The development of guidance will be the responsibility of the WRA, and this is an opportunity for the WRA to develop and consolidate strong working relationships with taxpayers and agents. There have been calls from stakeholders to improve existing guidance in some areas, and also there are aspects of our Bill which are new or require more detailed guidance, such as the relief TAAR.

As I set out under **Recommendation 4**, a working group will be established in the first part of this year to help with the drafting of guidance – both to improve existing guidance and develop and test new guidance. My officials set out their early thinking and principles for developing guidance at a well attended Tax Forum workshop, on 7 December, and I would like to thank stakeholders and practitioners for continuing to give their time and to contribute to these important discussions. I anticipate that the WRA will have final versions of guidance ready to share with taxpayers and agents from early 2018 – in good time to help their understanding of the new tax regime.

### **Recommendation 6**

The Committee recommends that a table outlining the differences between Land Transaction Tax and Stamp Duty Land Tax should be included in guidance.

I recognise the importance of providing clear and robust guidance, and as part of the development of the guidance I would expect the WRA to provide an outline summary of the main differences between SDLT and LTT, including practical examples of how the differences might affect some transactions.

I will expect the WRA to work closely with stakeholders to ensure that the information is available in an accessible and useful format. On this basis, I **accept** this recommendation.

### **Recommendation 7**

The Committee recommends that, should the National Assembly agree the provisions in the Bill, the Welsh Government should commission the Land Registry to carry out the work of providing a map of the border between Wales and England in readiness for the commencement of Land Transaction Tax.

I recognise the potential complexities in identifying borders for cross-title properties.

It is of paramount importance that a collaborative approach is adopted with Land Registry. This work is in progress - the WRA Implementation Team is exploring with Land Registry how to best assist taxpayers and practitioners in identifying where the border lies on the respective titles and the scope and cost of the work involved.

I will provide an update on this to the Committee as soon as is practicably possible. It is on these grounds that I **accept** this recommendation.

### **Recommendation 8**

The Committee recommends that further information is produced by Welsh Government explaining how it intends the legislation to determine the apportioning of the consideration payable on cross-border property transactions. This information should cover issues such as "just and reasonable apportionment", and clarity on requirement for two transfers for cross-border transactions. This information should be available before any Stage 2 considerations.

I **accept** this recommendation, and consider that a joint operational approach needs to be taken to cross border property transactions, as set out in my recent letter of 10 January. I intend to share with the Committee before Stage 2 proceedings, on 16 February, a joint letter from WRA and HMRC providing more information on this intended integrated approach.

In my letter of 10 January, I set out that the WRA will lead on developing guidance on cross border and cross title properties, including consideration of apportionment on a 'just and reasonable' basis. There will be a clear indication of how the border will be established in these cases. The guidance will be developed with stakeholders.

### **Recommendation 9**

The Committee recommends that the Welsh Government publishes a communications plan, including the likely resource implications, for the period leading up to the coming into force of any Land Transaction Tax provisions.

I am happy to **accept** this recommendation. Work is underway to engage with key stakeholders and this will continue during the period leading to the commencement of Land Transaction Tax in Wales.

My officials have established a joint Devolved Welsh Taxes Transition Project with HMRC. This project will include a joint communications group of core stakeholders in both administrations to develop a comprehensive, joined-up communications strategy to support the transition to devolved taxes more generally. The key aim of this work is to ensure that there is a smooth transition between the existing and new systems and to minimise disruption for those purchasing property in Wales.

A technical briefing has been arranged with the Committee on **8 February**, on the progress of establishing the WRA, which will include an update on developing a communications plan.

### **Recommendation 10**

In order to address witnesses' concerns, the Committee recommends that the Cabinet Secretary commits to a full and extensive consultation on rates and bands in advance of the Welsh Government's determination.

As I set out at the General Principles debate and my recent letter of 10 January, I am committed to ongoing engagement and dialogue with a wide range of stakeholders in relation to tax rates and bands.

However, the decision to set tax rates and bands is a key function of government. This view has been supported by those who responded to the LTT consultation and agreed that setting tax rates and bands is a policy matter for the Welsh Government.

It is important to recognise that the National Assembly has a crucial role in this process. The Bill requires the first set of regulations specifying the tax rates and bands to be laid and approved by the Assembly by the affirmative procedure before they can come into force. Any variation to those tax rates and bands would be given effect through further regulations which will be subject to the provisional affirmative procedure.

One of the main reasons for adopting the provisional affirmative procedure is to ensure changes can happen quickly, avoiding the potential for forestalling within the market. Undertaking a public consultation on tax rates and bands could revive the risk of forestalling in the property market, something we are keen to avoid.

I am confident that the procedures adopted in this Bill will ensure ample opportunity is taken to scrutinise the tax rates and bands framework at the suitable time and ensure it is appropriate for Wales. I therefore **do not accept** this recommendation. This does not, however, preclude ongoing engagement and dialogue to which we remain committed.

### **Recommendation 11**

The Committee recommends that the Welsh Government should make provision for appropriate reliefs for Property Authorised Investment Funds and Co-ownership Authorised Contractual Schemes through amendments at Stage 2 in order to ensure that commercial investment in property in Wales is not dis-incentivised inadvertently.

I **accept** this recommendation. I tabled **Amendment 1**, to Part 5 of the Bill, on 11 January. This proposes a general rule that sets out how Co-ownership Authorised Contractual Schemes (CoACS) are to be treated for tax purposes and ensures that LTT is not charged on the transfer of an interest within a Scheme and only on the acquisition of property by the Scheme itself.

This rule *does not* provide a seeding relief for CoACS or Property Authorised Investment Funds (PAIFs) as I do not consider there is a strong enough case to include such a relief in the Bill at this point. However, I am making provision so that we may also introduce a seeding relief in the future if needed through regulations made under section 30. This is as

an important step, as I recognise it may attract more investment into the Welsh property market.

This is a new relief and therefore will require work to be undertaken to start analysing the potential effect of the relief in Wales, and indeed to consider whether it is appropriate to replicate it in Wales. I do not consider the SDLT seeding relief for PAIFs and CoACS can be simply transposed and it be assumed that the relief will work in Wales. It is crucial that the relief is framed appropriately for Wales to ensure that it targets the right transactions and is not exploited by the unscrupulous.

One particular area where change may be necessary concerns the eligibility conditions for claiming the relief, and the 'portfolio test'. This condition requires the transaction to involve a minimum number of properties (10 non-residential properties or 100 residential properties) and a minimum value of £100 million. Even though these types of transactions in Wales would be very rare, I would like the opportunity to explore whether there may be a case for different eligibility conditions.

As part of our work to understand the potential effect of the relief in Wales, my officials will be engaging with key stakeholders, including HMRC, to consider whether this portfolio test should be adjusted to ensure that the relief is framed appropriately for Wales.

#### **Recommendation 12**

The Committee recommends that the Welsh Government should monitor carefully the impact of all reliefs, in particular the multiple dwelling relief, with a view to using the regulation making powers to amend the provision of reliefs should it be necessary to address any perverse incentives.

I **accept** this recommendation. I recognise that both Assembly Members and stakeholders have emphasised the importance of monitoring carefully the impact of all reliefs. It is also worth reiterating that stakeholders have emphasised the advantages in maintaining a degree of consistency between the reliefs proposed for LTT and those that are currently provided by SDLT; there will be no change for change's sake.

*Table 2* of the Explanatory Memorandum provides a summary of the most common residential and non-residential reliefs claimed in Wales in 2014/15. You will see that we are already assessing the take up and value of SDLT reliefs in Wales on an annual basis. This will continue in the run up to April 2018 and after LTT goes live.

The provision of reliefs is likely to have cost implications so it will be important to have confidence that any amendments to existing reliefs, or any proposed new relief will benefit the target group and have the desired policy outcome.

As I set out at the General Principles debate, the policy approach to changing reliefs or introducing new reliefs in the future will replicate the Welsh Government approach to considering new taxes. This has a clear process and evidence-gathering stage, which includes ensuring that potential new reliefs should be aligned with the Welsh Ministers' priorities, cost-effective, and reach their intended policy target.

### **Recommendation 13**

The Committee recommends that guidance is provided on the implementation of the TAAR.

I **accept** this recommendation, although note it will be for the WRA to lead on the provision of guidance.

I acknowledge the need for clear and robust practical guidance to accompany this new rule; and I am keen to ensure that the WRA works with stakeholders to develop this guidance on the underlying principles behind this rule. This guidance should include examples of how the TAAR will be applied; including how it is intended to apply to non-devolved taxes.

The WRA Implementation Programme will lead on the arrangements for the working group established to help in the drafting of guidance, this will include input from policy experts where required.

### **Recommendation 14**

The Committee recommends that a statement of policy intent for each of the reliefs, including the new reliefs recommended by the Committee, be included in detail in the explanatory notes to the Bill.

I **accept the guiding principle** and acknowledge calls from stakeholders that greater clarity and certainty could be provided to explain the purpose behind certain reliefs in this Bill.

Additional information will be provided in the explanatory notes to clarify the intended purpose of key reliefs such as multiple dwelling relief, charities relief, group relief and alternative property finance relief.

The WRA will also make available detailed guidance to ensure practitioners and taxpayers are clear about when a relief may be claimed. I am confident that these steps will ensure that taxpayers and their advisers will have sufficient information about the reliefs provided by this bill.

*Table 2* of the Explanatory Memorandum sets out the take-up and value of reliefs in Wales, and this will be used as a guide to establish where it would be appropriate to provide this additional information and clarity.

I will lay the revised Explanatory Notes ahead of Stage 3 proceedings.

### **Recommendation 15**

The Committee recommends that detailed guidance be provided to deal with the application of the TAAR, particularly as it is intended to apply to non-devolved taxes and to ensure that its purpose remains narrow and focused as set out by the Cabinet Secretary's letter to the Committee of 2 November.

I **accept** this recommendation, although note it will be for the WRA to lead on the provision of guidance.

As I set out under **Recommendation 13**, I acknowledge that detailed guidance should be provided on how the TAAR will be applied, and this will include how it is intended to apply to non-devolved taxes.

I have previously responded to a letter from the Chair of this Committee on my position in relation to the development of guidance. WRA will engage with stakeholders in the preparation of guidance with the aim of having this ready for taxpayers and their agents from early in 2018.

#### **Recommendation 16**

The Committee recommends that the Welsh Government should consult with stakeholder groups prior to making regulations on the form of the certificate required under section 64 of the Bill, to ensure that their views are taken on board.

I **accept** this recommendation. I recognise the importance of engagement with the Land Registry prior to making regulations on the form of the certificate. The Land Registry will be the key stakeholder who will receive the certificate issued by the WRA once the return has been made. It is therefore important that the form of the certificate is acceptable to both the WRA and the Land Registry.

I expect discussions regarding the certificate to form part of the ongoing engagement between my officials and the Land Registry in preparation for April 2018.

#### **Recommendation 17**

The Committee recommends that the preparation of guidance on the implementation of the general anti avoidance rule should be an immediate priority for the WRA. It recommends that the WRA should work with stakeholders on the production of guidance, possibly through establishing a GAAR advisory panel.

I **accept** that the preparation of guidance on the GAAR should be a priority for the WRA. I am keen to ensure that WRA works with stakeholders to develop this new guidance on the underlying principles behind this rule.

As I have set out previously, a working group will be established in this first part of this year to help with the drafting of guidance, on which the WRA Implementation Team will lead, utilising trusted external experts to take advice on the development of this guidance.

#### **Recommendation 18**

The Committee recommends that the Cabinet Secretary provides updated estimated costs before any Stage 2 proceedings with particular reference to IT and establishment costs.

As I set out at the General Principles debate and in my recent letter of 10 January, I am committed to providing the Finance Committee with an update on the costs to establish the WRA during the passage of this Bill. The main costs are the people needed to operate the WRA from April 2018, and the provision of digital ICT services for it to collect and manage its taxes.

The WRA will be small organisation with a modest sized yet highly-skilled workforce (around 40 staff). Work on defining the workforce requirements is continuing and recruitment will start later this year.

In the first instance, we will look to use existing Welsh Government and wider civil service skills and expertise. In particular, utilising the knowledge and skills we have already nurtured in the Welsh Government during tax policy development and the implementation of the authority, building on this to develop capability in tax collection. We will also continue to work closely with HMRC and draw on their expertise and knowledge. We will consider possible staff loans and secondments to develop and enhance the WRA's compliance expertise.

I **accept the principle** of this recommendation. I have previously set out my intention to provide an update on the work to develop cost estimates and on when a revised estimate will be available before Stage 2 proceedings.

In addition to this, a technical briefing will take place on **8 February** to provide an update to Committee members on the progress of establishing the WRA.

Huw Irranca-Davies AM  
Chair  
Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

26 January 2017

Dear Huw

## CODES OF WELSH LAW

I am writing to update you informed of developments related to the consolidation of law in Wales, following the previous Constitutional and Legislative Affairs Committee's October 2015 report on Making Law in Wales.

As you will be aware, in its report the Constitutional and Legislative Affairs Committee recommended that the Business Committee introduce a Standing Order on consolidation Bills.

In response, the Fourth Assembly's Business Committee noted that the Welsh Government had commissioned the Law Commission to carry out an advisory project on The Form and Accessibility of the Law Applicable to Wales. The Business Committee therefore agreed to the Constitutional and Legislative Affairs Committee's recommendation in principle, with the intention of awaiting the project's findings before an Assembly procedure for considering Consolidation Bills was drawn up.

Subsequently, in June 2016, the Law Commission published its report on Form and Accessibility of the Law in Wales. On 13 December 2016, the Counsel General set out the Welsh Government's intention, to "instigate a project of consolidation, codification and better publication of the law as a pilot, to be evaluated towards the next year". The Counsel General also wrote to me setting



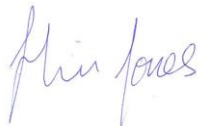


out that the Welsh Government agreed “with the Law Commission that for consolidation and codification to work effectively, suitable procedures within the Assembly need to be in place.” I have attached a copy of the Counsel General’s letter at Annex 1.

At its meeting of 9 November, Business Committee agreed that officials should resume work on developing a set of consolidation procedures. The development of such procedures will benefit from consideration of consolidation procedures in other Parliamentary bodies, as well as collaborative working between Assembly and Government officials.

The Counsel General has also indicated a desire to work collaboratively not only on procedural matters, but also on the process of codifying the law in Wales more generally. Given the Constitutional and Legislative Affairs Committee’s previous work in this area, I would be grateful if you would indicate whether your Committee is currently thinking of undertaking further consideration of this matter?

Yours sincerely

A handwritten signature in blue ink that reads "Elin Jones". The signature is written in a cursive style.

**Elin Jones AM, Presiding Officer  
Chair, Business Committee**



Mick Antoniw AC/AM  
Y Cwnsler Cyffredinol/Counsel General



Y Swyddfa Breifat

12 DEC 2016

PO 127

Private Office

Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref  
Elin Jones AC/AM  
Llywydd  
National Assembly for Wales  
Cardiff  
CF99 1NA

12<sup>th</sup> December 2016

Dear Elin,

## CODES OF WELSH LAW

In June this year the Law Commission published its report, *Form and Accessibility of the Law Applicable in Wales*. I have today written to the Chairman of the Law Commission providing the Welsh Government's Interim Response to that Report, and I attach a copy of my letter for your information.

Tomorrow I will be making an Oral Statement to the Assembly setting out the Welsh Government's intentions to undertake a pilot programme during 2017 for consolidation, codification and better publication of Welsh law. This pilot will enable the Government to start work on this important area, but without committing us to a long term position which could be unsustainable from a resource perspective, or indeed impractical from a legislative and constitutional position.

Although this will be a time limited pilot, there is still much work that can be done. This work, however, is not in my view a matter for the Government to pursue alone. I hope very much that we will be able to work in partnership with the Assembly, its Committees and Members who have for some time been concerned about the issues raised in the Law Commission's report.

One specific issue that is likely to require immediate attention is the development of an appropriate Assembly procedure that while transparent will facilitate the promotion of consolidation bills. Both the Constitutional and Legislative Affairs Committee and the Business Committee recommended that suitable procedures be developed during the last Assembly. At the time the Welsh Government indicated that we would prefer to wait until the Law Commission reported and we had the chance to consider their recommendations, before we engaged with the process of developing and changing Standing Orders on this matter.

The Welsh Government agrees with the Law Commission that for consolidation and codification to work effectively, suitable procedures within the Assembly need to be in place to support this work. This is of course, however, a matter for you and for the Assembly as a whole to decide.

Following my announcement tomorrow to the Assembly, I hope that we can begin a process of co-operation not only on procedural matters (vital though they are) but also on the process of codifying the law more generally. I have discussed this with the Leader of the House, and my officials stand ready to work with Commission staff to begin this process if you are content. I would be grateful also if you could spare the time to meet in person to discuss our intentions, and what part the Assembly could play.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mick Antoniw', with a large, stylized flourish at the end.

Mick Antoniw AC/AM  
Cwnsler Cyffredinol  
Counsel General

Mick Antoniw AC/AM  
Y Cwnsler Cyffredinol/Counsel General



Llywodraeth Cymru  
Welsh Government

Eich cyf/Your ref  
Ein cyf/Our ref  
The Right Honourable Lord  
Justice Bean  
Chairman  
Law Commission of England  
and Wales  
1st Floor, Tower  
52 Queen Anne's Gate  
London SW1H 9AG

12<sup>th</sup> December 2016

**INTERIM RESPONSE TO FORM AND ACCESSIBILITY OF THE LAW APPLICABLE IN WALES**

Firstly may I reiterate my thanks, on behalf of the Welsh Government, to you and to Nicholas Paines QC and the Public Law Team for the work undertaken to produce your Report on the form and accessibility of Welsh law. I am grateful also to your predecessor, Lord Justice Lloyd Jones, for his personal interest and commitment to the project. This letter is the Welsh Government's Interim Response to that Report, issued in accordance with the Protocol between the Law Commission and the Welsh Ministers (July 2015).

The Report responds to concerns that have been raised for many years about the complexity of the law in Wales (and the UK more generally) and the state of the statute book. The Law Commission's conclusions that a sustained, long term programme of consolidation and codification of Welsh law would deliver clear societal and economic benefits, certainly accords with the Welsh Government's own views that action is required to ensure the laws of Wales are accessible. Taking action will also make our work in developing new laws – and in scrutinising them – considerably more straightforward and therefore more efficient.

I am therefore pleased to advise the Welsh Government will be undertaking a pilot programme during 2017 for consolidation, codification and better publication. We believe a form of codification to be a necessary part of ensuring the law is published together in a single place and in an accessible manner. During the pilot we will be looking at different options for what a 'Code' amounts to, consider what can be achieved during the timeframe with the scarce resources we have available and consider the extent to which stakeholders and society more generally consider our initiatives to be of benefit. The success (or otherwise) of the pilot will be evaluated before decisions can be taken as to whether a long term commitment can be made.

Bae Caerdydd • Cardiff Bay  
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The Welsh Government agrees with the Law Commission that for consolidation and codification to work effectively, suitable procedures with the Assembly need to be in place to support this work. For this reason I have today written to the Llywydd indicating the Government's wish to work with the Assembly, its Committees and Members. In my view it is imperative we all agree an appropriate way to scrutinise the Bills that the Government will need to bring forward. I have copied this letter to the Llywydd and will also be making it available to all Assembly Members.

The Welsh Government welcomes the consideration by the Law Commission of ways of improving the approach to law making, including the Report's consideration of legislative standards. This is a matter which I will be considering further during the pilot period, and I expect that by the time of the Welsh Government's final response to the Report next year, I will be in a position to inform you of our position.

You will be aware that the Welsh Government has recently consulted on its proposals for the Government's long term vision for the Welsh language. We are currently considering the many responses received, and those views will shape the new strategy for the Welsh language that will come into force from April 2017. Our response to the Law Commission's recommendation 24, that the Welsh Government be formally recognised as responsible for the standardisation of Welsh language legal terminology, will be considered within that context. We are also concerned that we maintain the same flexibility that we have with the English language when drafting the Welsh language text of Bills.

We will also work closely with colleagues in the National Archives who are responsible for the operation and maintenance of publication through legislation.gov.uk. I am pleased the Law Commission sees value in both that website, and our own Cyfraith Cymru/Law Wales site; the Welsh Government is keen to see more work done to ensure primary and secondary legislation published on legislation.gov.uk, in both Welsh and English, is brought up to date and is accessible. We believe both sites have a key role in meeting the needs of users in Wales. This letter is, therefore, also being copied to the Queen's Printer, Carol Tullo.

The Law Commission has rightly identified there are resource implications in pursuing a programme of consolidation and codification, and in improving the publication and promulgation arrangements for legislation. Very careful consideration and evaluation needs to be given to any commitment to these initiatives, given our scarce resources and other priorities.

I look forward to continuing to work with the Law Commission on the detail of the Report, and other projects, including the *Planning Law in Wales* project you are also undertaking which of course forms part of the codification initiative.

Yours sincerely,



Mick Antoniw AC/AM  
Cwnsler Cyffredinol  
Counsel General

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# Agenda Item 6

By virtue of paragraph(s) ix of Standing Order 17.42

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