



Comisiynydd y
Gymraeg
Welsh Language
Commissioner

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Comisiynydd y Gymraeg
Welsh Language Commissioner

Legislation, Justice and Constitution Committee
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Dear Chair

Consultation on making justice work in Wales

Thank you for the opportunity to respond to this consultation. Language has a key role to play in ensuring the fair and effective administration of justice; and the evidence below focuses specifically on the need for the justice system and the law to operate in Welsh as well as English in order to protect the rights of citizens.

In part one, in accordance with the consultation's terms of reference, I note the facts regarding the current situation and draw specific attention to some strengths or weaknesses that have come to light. In the second part, I identify which changes I believe need to be introduced to improve how the justice system works, for the benefit of the Welsh language and its speakers.

Part 1: Establishing the facts and looking to the future

Legislative background

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Individuals' rights to use the Welsh language in the field of justice has evolved over time, and now Welsh is one of the two languages of law and the administration of justice in Wales.

- The Welsh Courts Act 1942¹ and the Welsh Language Act 1967² gave individuals the right to speak Welsh in court proceedings.
- In 1993, the Welsh Language Act³ established the principle that 'in the conduct of public business and the administration of justice in Wales the English and Welsh languages should be treated on a basis of equality.'
- Article 6 of the European Convention on Human Rights⁴ gave any person accused of a crime the right to a fair trial which includes being informed promptly, in a language which they understand and in detail, of the nature and cause of the accusation against them.
- In accordance with the Wales Act 2006⁵ and the Senedd and Elections (Wales) Act 2020⁶, the English and Welsh texts of any Measure or Act by Senedd Cymru, which are in both English and Welsh when enacted, and any subordinate legislation which is in both English and Welsh when it is made, are to be treated for all purposes as being of equal standing.
- The Welsh Language (Wales) Measure 2011⁷ established the office of the Welsh Language Commissioner and gave the Welsh language official status in Wales. It also established the Commissioner's powers to impose standards on organisations and regulate these organisations, ensuring they uphold the standards and powers to receive and investigate complaints; as well as its function to promote and

¹ <http://www.legislation.gov.uk/ukpga/Geo6/5-6/40/enacted>

² <http://www.legislation.gov.uk/ukpga/1967/66/enacted>

³ <http://www.legislation.gov.uk/ukpga/1993/38/contents>

⁴ https://www.echr.coe.int/Documents/Convention_ENG.pdf

⁵ <http://www.legislation.gov.uk/ukpga/2006/32/section/156>

⁶ <http://www.legislation.gov.uk/anaw/2020/1/schedule/2/paragraph/1/enacted/welsh>

⁷ <http://www.legislation.gov.uk/mw/a/2011/1/contents/enacted/welsh>



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facilitate use of the Welsh language, investigate any suspicions of breaching the standards and investigate whether a person's freedom to use the Welsh language has been prevented. The Measure also established a Welsh Language Tribunal⁸ to hear cases relating to the Commissioner's decisions regarding the standards.

As a regulator, the Welsh Language Commissioner's role is an integral part of the administrative justice landscape in Wales and a research report,⁹ jointly published by academics from the universities of Bangor and Cardiff, details the role of the establishment in the national context. Sections 8-10 of the Measure gave the Commissioner permission to initiate or intervene in legal proceedings in Wales and England, and I can also provide legal assistance to individuals. As an office, we have published a framework document explaining how we will use these powers.¹⁰

As members of the Lord Chancellor's Standing Committee on the Welsh Language, we work with the sector to share specialist information as necessary. In March 2020, the Commissioner was appointed a 'permitted person' in order to be part of Family Court cases if necessary.

Implementing justice functions

In accordance with Section 21 of the Welsh Language Act 1993, the Ministry of Justice¹¹ and Her Majesty's Courts and Tribunals Service (HMCTS)¹² have Welsh language schemes, which require them to treat the Welsh and English languages on a basis of equality. The Welsh language schemes explain what services they will provide in Welsh, when and how. The legislation allows me as Commissioner to conduct statutory investigations if there is any suspicion they are failing to fulfil the Welsh language schemes.

⁸ <https://w elshlanguagetribunal.gov.wales/>

⁹ <https://mk0nuffieldfounpg9ee.kinstacdn.com/wp-content/uploads/2019/11/Public-Administration-and-a-Just-Wales-Final-Full.pdf>

¹⁰ <http://www.comisiynyddygybraeg.cymru/English/Publications%20List/Judicial%20review%20and%20other%20legal%20proceedings.pdf>

¹¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705855/HMCTS_Welsh_Language_Scheme_2018.pdf

¹² <http://www.comisiynyddygybraeg.cymru/English/Publications%20List/welsh-language-scheme-2018-web-welsh.pdf>



The Welsh Language (Wales) Measure 2011 introduced a new framework of statutory duties for organisations in the form of standards. The standards regime builds on the success of Welsh language schemes by raising expectations with regard to organisations' use of the Welsh language. In accordance with the objectives of the Measure, it is expected that an increase will be seen in the use of Welsh language services over the coming years as organisations implement the standards. Since March 2017, Welsh police forces and five tribunals¹³ have been required to comply with standards in five areas, namely service delivery, policy making, operational, promotion and record keeping standards. The Measure provides for imposing standards on the Ministry of Justice and HMCTS, with the consent of the Home Secretary, but until that happens, both organisations will be implementing Welsh language schemes. I have powers to investigate and enforce compliance with the Welsh language standards, but I have no powers to enforce compliance with Welsh language schemes.

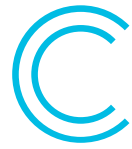
Particular challenges include ensuring that organisations who are involved in the administration of justice comply with their legal duties regarding the Welsh language, and ensuring that the Welsh language is treated no less favourably than the English language. The biggest challenge in this regard is keeping an eye on the performance of organisations who work in accordance with two different regimes, and the particular challenges that arise when these organisations work together or with other organisations.

Police forces

The Commissioner's annual assurance reports¹⁴ on the performance of organisations when carrying out their Welsh language duties draw attention to some of the actions that have been taken to improve the way the Welsh language is treated. Within police forces, these actions have included increasing the Welsh language skills of the workforce by

¹³ [Mental Health Review Tribunal for Wales](#); [Special Educational Needs Tribunal for Wales](#); [Residential Property Tribunal for Wales](#); [Valuation Tribunal for Wales](#); [Agricultural Land Tribunal Wales](#)

¹⁴ <http://www.comisiynyddygymraeg.cymru/English/Organisations/Compliance/assurancereports/Pages/The-Welsh-Language-Commissioner%E2%80%99s-Assurance-Reports.aspx>



developing their recruitment, promotion and training processes, and introducing self-regulation procedures to identify gaps and celebrate successes. As part of my regulatory work, and in order to improve and moderate the use of the Welsh language, I share successful practices between organisations, and police forces have been an integral part of this work.

The prison and probation service

Her Majesty's Prison and Probation Service (HMPPS) operates in accordance with the Ministry of Justice's Welsh language scheme.

In December 2018, my predecessor published a report 'The Welsh language in prisons: a review of the rights and experiences of Welsh speaking prisoners'¹⁵. The report was based on a series of interviews with prisoners, reviews of documentation and legislation, and evidence from organisations who provide prison services. The report highlighted some instances where prisoners avoided using the Welsh language or asking for Welsh services in prison because they feared it would make their lives in prison more difficult. It was also noted that there had been instances where some prison staff had impeded prisoners' freedom to speak Welsh with each other and their families.

Key prison services (health, care, education, libraries) are provided by other organisations. In Wales, these services are subject to Welsh language standards or Welsh language schemes. For staffing reasons, and because specific rights are established by legislation exclusively applicable to Wales, there are more legal rights and opportunities to use the Welsh language in prisons in Wales than in England. The opening of HMP Berwyn in Wrexham has led to an improvement in Welsh language provision, but there are still many instances where people from Wales are held in English prisons. This is particularly true

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<http://www.comisiynyddygymraeg.cymru/English/Publications%20List/20181130%20DG%20S%20The%20Welsh%20language%20in%20prisons%20-%20final.pdf>



with women as there are no women's prisons in Wales. The lack of provision for women in Wales is a cause for concern.

The review also highlighted other concerns about HMPPS's annual reports on the fulfilment of its Welsh language scheme:

- there is no certainty that HMPPS possesses data which shows exactly how many prisoners can speak Welsh across the estate. This makes it difficult to plan in terms of Welsh language needs and campaigns to promote the use of the language;
- there is no certainty that HMPPS has detailed data about the Welsh language skills of its staff, which would enable it to plan for the linguistic needs of the workforce;
- there is no certainty about the consistency of Welsh language services offered across the estate;
- S4C is not available in prisons in England;
- the Commissioner hasn't seen evidence that the Welsh language is considered when deciding to which prison prisoners are sent.

Courts and Tribunals

Many developments support the use of the Welsh language in Welsh courts. The Lord Chancellor's Standing Committee on the Welsh Language exists to promote the use of the Welsh language in the courts in Wales. Its members represent the judiciary, legal workers, police, the probation service and other bodies involved in the administration of justice, and my officers regularly attend the committee's meetings. The Justice Wales Network coordinates Welsh-medium training for public bodies involved in the administration of justice; and HMCTS has a specialist unit which promotes the use of the Welsh language in courts.

As is the case with all aspects of administering justice in Wales, it is vital that conditions and arrangements are in place to enable the public to use the Welsh language according to their preference. This is even more important with regard to family justice and some



tribunals¹⁶ as they deal with children who could be monolingual or far more confident speaking Welsh than English, or who are vulnerable and need to communicate in their mother tongue.

HMCTS has developed Welsh online services where applications for divorce and appeals to the Social Security and Child Support Tribunal can be processed. These systems give the public the option to use the online services rather than using forms or face to face interactions. Providing these new services in Welsh was built-in as part of the planning process from the outset.

A crucial element when developing technology for organisations in Wales is ensuring that the Welsh language is part of its development and use from the outset. It's crucial to ensure that any new digital approaches developed for the administration of justice support the use of the Welsh language. In that regard, it is encouraging that the need to provide interpretation is considered when new courts are built in Wales, such as the Caernarfon Criminal Justice Centre. Social distancing in light of the COVID-19 emergency has contributed a sense of urgency in terms of ensuring that any party is able to use the Welsh language in online courts. I have published practical guidance¹⁷ for organisations on how to continue to offer quality bilingual services during the emergency.

As there is currently no provision for allowing bilingual juries in Wales, it's important to ensure – for the individual being translated and those receiving the translation – that none of the evidence's original meaning is lost, and that witnesses aren't under any disadvantage for choosing to speak Welsh. I understand that Aberystwyth University is currently conducting research into measuring the impact of interpreting in court proceedings.

The legal profession and education

¹⁶ For example [Mental Health Review Tribunal for Wales](#); [Special Educational Needs Tribunal for Wales](#)

¹⁷ <http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20200507%20Holding%20bilingual%20video%20meetings.pdf>



As any party in court proceedings in Wales has a right to use the Welsh language, and as the Senedd produces legislation in Welsh and English where texts in both languages are equal, it is crucial that a sufficient number of members of the legal profession can speak Welsh in order to facilitate access to justice.

In a speech to mark the 50th anniversary of the Welsh Language Act 1967, Lord Justice Lloyd-Jones said that the 'Welsh speaking judiciary has developed. Including the part-time Judiciary, there are currently 40 judges who are fluent Welsh speakers. A quarter of Circuit Judges and District Judges in Wales can conduct proceedings in Welsh [...] As far as appointing judges is concerned, it is now possible to include Welsh speaking ability as an essential requirement for specific posts, and this occurs often. Similarly, it has been possible to advertise for Welsh speaking magistrates since 2010. Currently there are over 200 magistrates who can conduct proceedings in Welsh, and this will ensure that the number of magistrates who can speak Welsh can be maintained or even increased'.

Lawyers, barristers and judges could be required to deal with cases pertaining to Welsh law, which is specifically bilingual, as well as the laws of England and Wales. Beyond interpreting the law itself in the case of bilingual legislation, situations may arise where Welsh language only text would need to be interpreted and read with regard to cases relating to Welsh law and the laws of England and Wales.

Criminology and law modules and credits can already be studied through the medium of Welsh in many Welsh universities. This partly stems from the work of the Coleg Cymraeg Cenedlaethol in these areas. The Coleg's academic plans, which outline existing university provision, can be found on its website¹⁸.

Some members of the public contacted my predecessor expressing concern that the new exam for solicitors introduced by the Solicitors Regulation Authority (SRA) will not be

¹⁸ <https://www.colegcymraeg.ac.uk/en/thecoleg/academicplanning/>



available in Welsh. The matter was discussed with the SRA, the Legal Services Board and the Counsel General, Jeremy Miles MS, and advice¹⁹ was presented to the SRA under Section 4 of the Welsh Language (Wales) Measure 2011, asking it to reconsider the decision not to offer the exam in Welsh. I am in regular contact with the SRA to discuss offering SQE's new exam in Welsh, and on 5 June 2020 I received a letter from its Chief Executive confirming that the exam will be offered in Welsh, and that this will be introduced in a series of phases over the next four years. Another positive development recently was that the SRA, between February and April 2020, had consulted on a bid to amend its principles to include a requirement for qualified solicitors to show their Welsh and English language abilities, rather than English only. Amending the principles in this way would mean language requirements will ensure that applicants who wish to show their Welsh language ability are not under disadvantage. It will also reflect the bilingual society in Wales and the principle that the Welsh language should not be treated less favourably than English.

Part 2: How could the justice system in Wales operate more effectively

I have presented a general portrayal of the current situation in Part 1, and drawn attention to some areas of concern. In Part 2, I present some possible solutions to those concerns.

Language duties

There is clear evidence that the Welsh language standards have led to an improvement in people's experiences of using services. The standards have also brought about a situation where workers have more opportunities to use the language in their work and there is a duty to give consideration to the Welsh language in policy decisions. To ensure

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<http://www.comisiynyddygybraeg.cymru/English/Publications%20List/20180305%20LL%20S%20Awdurodd%20Rheoleiddio%20Cyfreithwyr.pdf>



consistency across organisations and different elements of the administration of justice, it would be beneficial to impose standards on the MOJ and HMCTS.

Legal and vocational education and training

Legal and vocational education and training need to reflect the requirements and reality of working within the context of a bilingual country. This means that exams and legal training should be available in Welsh at all levels. It also means that law courses need to teach, exemplify and interpret bilingual Welsh legislation and ensure that students are fully aware of the difference between Welsh and English legislation as the Senedd's powers are expanded. Likewise, students from Wales move to England to study and students from England come to Wales to study law and they could end up working in the legal profession in either country. I therefore believe that university law schools across the jurisdiction of England and Wales need to deal with matters relating to bilingual legislation and the administration of justice in Wales when teaching the process of interpreting statutes.

We need to continue to provide further opportunities to study law through the medium of Welsh and conduct campaigns to highlight the need to be able to use both languages in the field of law. Furthermore, I believe that high level linguistic training needs to be given to law students in order to prepare them for situations where they will be required to draft or interpret bilingual legislation, including expertise in developing legal terminology.

Workforce development

It is impossible for organisations in Wales to provide a full range of Welsh language services without a sufficient supply of bilingual staff. The organisations subject to the Welsh language standards have a duty to collect data regarding language skills in the workforce, but because some organisations are still implementing Welsh language schemes, this expectation is inconsistent across the sector. A thorough assessment of workers' language skills is needed in the field of justice, including the police, probation officers, judges, magistrates and other practitioners such as recorders who are part of court hearings, and there should be sufficient numbers of people with Welsh language



skills to enable the public to access justice and to be given a fair hearing in Welsh and English. The current lack of consistency further underlines why it would be beneficial to impose standards for the MOJ and HMCTS.

The need for Welsh speaking staff should be reflected in the employment policies and professional development policies of regulatory bodies and organisations, and professional bodies in the sector. The entire justice system should ensure that these needs are reflected in higher education and further education academic courses, and that students are fully aware of the opportunities available to them in the field of justice if they are able to work through the medium of Welsh.

In this context, the policy statement published by the UK Government regarding the points-based immigration system should be amended. The statement indicates that every person applying for citizenship must demonstrate they can speak English. I don't believe this reflects the official status of the Welsh language in Wales nor the need for a Welsh speaking workforce.

Prisons

17 recommendations are presented in the Welsh Language in Prisons report, and I urge you to consider this document as part of the consultation process. In terms of recommendations regarding the balance of judiciary powers, the recommendations relate to locating prisoners and the provision of Welsh language services.

It is recommended that prisoners who need Welsh services in prisons are located in the prisons most able to provide those services; and the needs of Welsh speaking women should be fully considered as part of any plans to develop the provision for female criminals under the Government's strategy. The arrangements for monitoring the availability and quality of Welsh language services offered in prisons should be enhanced, and support should be given to prisons to offer those services. It should also be ensured that the prison services provided by external organisations acknowledge that Welsh language services lead to better results for Welsh speakers.



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Thanks again for the opportunity to respond to this consultation. I hope the committee will find these comments useful.

Yours sincerely,

Aled Roberts

Welsh Language Commissioner