

Jeremy Miles MS
Counsel General

9 October 2020

Dear Jeremy

The drafting of Welsh Bills

At our meeting on **5 October 2020** we undertook scrutiny of the **Curriculum and Assessment (Wales) Bill** and heard from Kirsty Williams MS, Minister for Education. The session was, in our view, very positive and we are grateful to the Minister for her full and detailed responses to our questions.

Scrutiny of this Bill has brought to the forefront how the Welsh Government approaches the drafting of legislation. From our scrutiny of the Legislation (Wales) Bill – now **Legislation (Wales) Act 2019** – we are aware that, from the Sixth Senedd, the Welsh Ministers and the Counsel General will be under a duty to prepare a programme of action with the aim of improving the accessibility of Welsh law. This is something that we very much welcome. We are also aware that, in keeping the accessibility of Welsh law under review, the Welsh Ministers should consider how a proposal for new legislation could impact on the accessibility of law. Again, this is something we welcome.

Last November you **shared** with the Committee a copy of the Welsh Government's guidance on drafting legislation, **Writing laws for Wales**. This was ahead of your attendance at our committee meeting on **18 November 2019** where we discussed your plans for the classification, consolidation and codification of Welsh law.

We agree that the consolidation of Welsh law, particularly for reasons of accessibility, is an important and worthwhile task. We hope that the Sixth Senedd does see a concerted effort from the Welsh Government to tackle the proliferation of law that applies in Wales and the inherent complexity that exists.

Within the Welsh Government's recent primary legislative programme, it is unclear how consideration has been given to partial consolidation of existing law. We are also unsure as to whether the Welsh Government, in creating new legislation, has sought to use the opportunity to remove spent provisions. Further, we would be interested to know how decisions are made during the development of a draft Bill on whether or not to restate provisions in existing UK-wide – and therefore in English-language only – Acts.



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We have noted the following paragraph in the Welsh Government's Writing laws for Wales guidance:

4.11(1) - If a Bill or statutory instrument uses a term which is intended to have the meaning it has been given in an existing piece of legislation, always consider whether it would be better to restate the definition in full rather than applying the existing definition. (Do not do both.) Copying the definition out may be more helpful if it is important or relatively short; and if the existing legislation was enacted only in English, restating the definition will ensure that there is also a version in Welsh.

Using the Curriculum and Assessment (Wales) Bill (the Bill) as a case study, while we accept that the Bill does not extend to the field of education in its broadest sense, we note that the Bill does not provide definitions (within the Bill itself) of a number of key terms, including the definition of 'parent' for example. Instead, section 77(2) provides that expressions in the Bill which are not defined have the same meaning as that in the Education Act 1996 (the 1996 Act). 'Parent' is defined in section 576 of that Act.

We accept that the consolidation of education-related law as it applies in Wales is a major project and the Bill forms only part of a wider programme of education reform in Wales, and we acknowledge the helpful views provided by the Minister and her official during our meeting on 5 October. However, specifically in relation to this Bill, we would welcome your views as to why, as a general drafting approach, an opportunity has not been taken to restate all relevant definitions from the 1996 Act in the Bill, particularly as a way of making provision for bilingual definitions of key terms. We note that some definitions are referenced, for example "pupil referral unit (section 76 (1) and "agreed syllabus" (paragraph 9 of Schedule 1). As part of your views, we would welcome your thoughts on alternative approaches to re-stating definitions in legislation, for example through the use of explanatory notes.

I wish to emphasise that in writing this letter, we are seeking to gain a better understanding of the challenges faced by legislative drafters when it is necessary to draw on definitions contained in legislation that pre-dates devolution.

I have copied this letter to the Minister for Education. I look forward to receiving your response at the earliest opportunity.

Yours sincerely



Mick Antoniw AM
Chair

Croesewir gohebiaeth yn Gymraeg neu Saesneg
We welcome correspondence in Welsh or English

