



Llywodraeth Cymru
Welsh Government

The future of Welsh law

A PROGRAMME FOR 2021-2026



“And by the common counsel and agreement ... they examined the old laws, and some of them they allowed to continue, others they amended, others they wholly deleted, and others they laid down anew.”

Book of Iorwerth 1240

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Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

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Foreword

In 2019 the Welsh Government and the Senedd took an important step in our journey to develop a modern, accessible and bilingual body of law for Wales with the enactment of the Legislation (Wales) Act 2019. This Act requires the Government to prepare a programme setting out the steps it will take over a five year period towards the goal of making the law more accessible, in particular through consolidating and codifying existing law.

I am delighted to set out the programme for 2021 to 2026.

We know that the task ahead is not easy, nor will it happen quickly, but we must make a start and start as we mean to go on. This programme includes three Bills to consolidate – bring together – the law, and later in this Senedd term I intend to update the programme to include further consolidation Bills. Consolidating the law, for example in relation to planning (as is underway), is not merely a legal tidying up exercise. This will bring real life practical benefits by making the application of the law, for example administrative procedures, more efficient and transparent. And most fundamentally it helps the citizens of Wales understand both their legal rights and their legal obligations.

Equally important are the non-legislative projects to improve access to, and understanding of, the law in Wales by better publication and the provision of more explanatory material. Projects such as the Cyfraith Cymru/Law Wales website are designed to help people find the law which applies to them and help them understand it.

I am also very pleased that this work will increase the amount of law that is available bilingually. Producing more law in Welsh, accompanied by a range of explanatory and supporting material, makes it easier for the Welsh language to be used in the law and in our public administration in Wales.

Summary

The first programme to improve the accessibility of Welsh law will contain projects to:

- a. Prepare a taxonomy of subjects of Welsh law.
- b. Expand functionality on the legislation.gov.uk site so users may access Welsh law by subject.
- c. Draft consolidation Bills to bring the law on the following subjects into single statutes:
 - i. Historic Environment;
 - ii. Planning.
- d. Implement the subordinate legislation necessary to support the consolidation of historic environment and planning law.
- e. Prepare a consolidation Bill to remove provisions that are obsolete, spent, or are no longer of practical utility in Wales.
- f. Scope additional subject areas with a view to identifying at least a further two consolidation projects to be drafted during this Senedd term.
- g. Ensure Welsh law is available in an up-to-date form on legislation.gov.uk, and enable the Welsh and English language texts of Welsh legislation to be viewed side by side.
- h. Expand and improve the Cyfraith Cymru/Law Wales website.
 - i. Identify opportunities to improve digital accessibility of legislation.
 - j. Review the Government's approach to developing bilingual legislation.
- k. Explore the potential for using machine learning and artificial intelligence to make Welsh law more accessible.
- l. Update, as necessary, guidance on drafting legislation as well as preparing and publishing additional guidance on the processes and procedures involved in preparing consolidation Bills.

Developing the programme

In late 2019 the Government published a consultation, *The Future of Welsh Law*, which set out the approach we intend to take to improving accessibility of the law. This explained that the following steps need to be taken concurrently for progress to be made –

- a. **classification** of legislation by subject matter so that we have a structure for future work and a method by which users can locate and use legislation;
- b. **consolidation** of existing law: this is time consuming and complex, but will make the most significant contribution to making the law accessible;
- c. **codification** of the law will maintain the order we achieve through classification and consolidation;
- d. **clarification** and **communication** of the law will see effective publication, up-to-date texts, explanation, guidance and illustrative materials.

The Senedd has endorsed the Government’s ambitions by enacting the Legislation (Wales) Act 2019. Under the Act, the Welsh Ministers and the Counsel General must prepare and lay a programme to improve the accessibility of Welsh law.

Each programme must make provision to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and facilitate use of the Welsh language.

Programme

In preparing the programme we have taken account of existing commitments – for example to consolidate the law on the historic environment, and to simplify and modernise planning law – and sought to identify further projects which meet one or more of the following criteria:

- a. the project concerns one of the areas of the law most in need of consolidation due to the complexity of the existing law;
- b. the project would have a significant impact on the citizen due to the nature of the law concerned;
- c. the project is feasible taking account of what can be achieved within the context of competing legislative priorities, the availability of resource and the current devolution settlement;
- d. the project is topical or otherwise connected to the expected work of the Government over the coming Senedd term.

Details of each project in the programme is set out below.

Classification of Welsh law

In the *Future of Welsh Law* (2019) the Government set out its intentions to organise the legislation applicable to Wales according to its subject matter, and to establish a method whereby users can employ technological solutions to locate Welsh legislation. This form of classification of the law is important firstly to help users find legislation more easily, and secondly to provide an organisational structure for future consolidation and codification work.

During this Senedd term we will:

- a. review and revise the existing draft taxonomy of subjects (originally prepared and consulted upon in 2019) so as to establish which enactments in devolved areas of law should belong to each tier of the taxonomy.
- b. work with The National Archives team responsible for legislation.gov.uk to provide additional functionality on that site so that users may access Welsh law by subject.

Consolidation of Welsh law

The purpose of consolidating legislation is to revise legislation that has become out-dated, heavily amended and disorganised. Legislation on most subjects has proliferated over time and the sheer number of Acts and Instruments on the subject often makes it hard to find, let alone understand. Consolidation involves bringing together all or most of the (generally primary) legislation on a specific subject so that it can be easily found, and by modernising the form and drafting of the law to make it easier to understand and apply. Consolidation will often bring together a number of existing Acts on a subject, updating and harmonising the provisions, to create a new, single, Act at the end.

The Government intends to prepare a number of consolidation Bills during this Senedd term for scrutiny by Senedd Cymru; if approved they will become Acts of Senedd Cymru. We will develop:

- a. a consolidation Bill which brings together the law on the **historic environment**.

It is expected that this will consolidate relevant provisions from the Historic Buildings and Ancient Monuments Act 1953; Ancient Monuments and Archaeological Areas Act 1979; Planning (Listed Buildings and Conservation Areas) Act 1990; and the Historic Environment (Wales) Act 2016.

The existing legislation has become increasingly convoluted in recent years due to repeated amendments (often done differently for Wales, England and Scotland), and now presents the owner of a scheduled monument or a listed building with a bewildering challenge that can sometimes even confound a legal professional. However, the statutes are not just difficult to navigate; their language is sometimes outdated, provisions are occasionally obsolete, and they are, for the most part, only available in English.

Consolidation of the existing law will form a coherent body of historic environment law for Wales. The aim will be to make its provisions as accessible and intelligible as possible, and the new legislation will be fully bilingual. This approach will result in distinct legislation for Wales, without provision incorporating references to England and Scotland.

b. a consolidation Bill which simplifies and modernises the law on **planning**.

This Bill forms an important part of wider, longer term improvements needed to the planning system. The need for the Bill is long standing and was clearly demonstrated when the Law Commission’s report on Planning Law in Wales concluded that it is an area of law needing urgent attention. Their report highlighted the detrimental impacts and inefficiencies the inaccessibility, quality and complexity of the law is having on the operation of the planning system. The need to consolidate this area of law and the recommended scope of the Bill were accepted by the previous Welsh Government in their interim response to the Report published in May 2019¹, with a detailed response published in November 2020 setting out the Government’s position on each of the 192 recommendations in the Report².

The consolidation will bring together provisions relating to planning from numerous Acts, including the Town and Country Planning Act 1990; the Planning and Compensation Act 1991; the Local Government (Wales) Act 1994; the Environment Act 1995; the Planning and Compulsory Purchase Act 2004; the Planning Act 2008; the Localism Act 2011; and the Planning (Wales) Act 2015.

Simplifying and consolidating planning law through this Bill will create a more efficient and effective planning system designed for the specific needs of Wales. This will be done by creating a planning framework which enables all stakeholders operating, using or engaging in the system to clearly access and understand the law directly affecting them. Importantly, it will facilitate use (by public bodies and the private sector) of the variety of powers and tools available to them through land use planning legislation to drive forward a values-based economic recovery from the pandemic.

c. a consolidation Bill which **repeals or disapplies** legislative provisions from across the statute book that are **obsolete, spent, or are no longer of practical utility in relation to Wales**.

Sometimes such Bills are known as ‘statute law repeal’ Bills and have typically been a periodic feature in UK Parliament legislation; it is anticipated a Bill such as this will feature in most programmes to improve the accessibility of Welsh law. This Bill will help to modernise and simplify the law. Removing unnecessary provisions helps to “declutter” the statute book, and amending these provisions so that they no longer apply in relation to Wales helps to bring clarity about which parts of the Statute apply (and do not apply) to Wales.

The Government will review the existing legislation in a number of areas with a view to identifying a further two consolidation projects to be prepared during this Senedd term. Potential areas for consolidation under active consideration include:

- a. Allotments;
- b. Building Regulations;
- c. Hazardous substances planning;
- d. Housing;
- e. Public health.

1 Interim response to the Law Commission report on planning law in Wales
gov.wales/interim-response-law-commission-report-planning-law-wales

2 Detailed response to the Law Commission report on planning law in Wales
gov.wales/detailed-response-law-commission-report-planning-law-wales

We will also consider those areas of law that have been most affected by the United Kingdom's withdrawal from the European Union, with a view to identifying subjects in which the need to reconcile domestic law and retained EU law is most acute.

There will also be two projects to supplement the consolidation Bills on historic environment and planning law:

- a. a package of subordinate legislation is expected to be required to implement the historic environment Bill.

This is intended to be done after any Bill is passed by the Senedd.

- b. a phased project of consolidating key town and country planning subordinate legislation.

Some of this legislation needs to be consolidated due to its age (so the language and format needs to be modernised), but also because of the number of amendments made to them over the years which impacts on their accessibility. A fuller analysis will be undertaken once drafting of the consolidation Bill has concluded, but current priorities include:

- i. The Town and Country Planning (Use Classes) Order 1987;
- ii. The Town and Country Planning General Regulations 1992;
- iii. The Town and Country Planning (Control of Advertisements) Regulations 1992;
- iv. The Town and Country Planning (General Permitted Development) Order 1995;
- v. The Town and Country Planning (Trees) Regulations 1999; and
- vi. The Town and Country Planning (Development Management Procedure) (Wales) Order 2012.

Additionally, during this Senedd term work we will also seek to identify other opportunities to consolidate and update subordinate legislation. For example:

- a. remaking and updating the rules for the conduct of local government elections in Wales.

This project will include taking the provisions for Wales out of the existing Local Elections (Principal Areas) (England and Wales) Rules 2006 and the Local Elections (Parishes and Communities) (England and Wales) Rules 2006, and updating the provisions to reflect changes made through the Local Government and Elections (Wales) Act 2021. This will result in two items of Wales specific, bilingual legislation governing the conduct of local elections in Wales.

- b. preparing the 'Representation of the People Order' bilingually ahead of the general election to the Senedd in 2026.

The existing National Assembly for Wales (Representation of the People) Order 2007, an English-only text instrument, sets out the manner in which the election and election campaign is conducted and includes provision for legal challenge. It has been amended a number of times and there is no updated version freely available to the public. This legislation will be consolidated and remade bilingually in advance of the Senedd election.

Codification

When we have categorised Welsh law through the classification process, and made progress in consolidating some areas of law, it is important to preserve the order that will have been achieved. To do this we intend to codify the law. The Legislation (Wales) Act 2019 explains that ‘codifying Welsh law’ includes –

- a. adopting a structure for Welsh law that improves its accessibility;
- b. organising and publishing consolidated Welsh law according to that structure.

In practice, codification means publishing the law on particular subjects together in one place and taking steps to preserve the structure of legislation on a particular subject once it has been brought to order. So where we have one Act on a particular subject, either because it has been consolidated or there has been wholesale reform of the law in the area, we should continue to have one Act. When a proposal is made to change the law in relation to the subject that change should be made by amending that Act, not making a new one that sits alongside it, unless there is a very good reason not to.

As this is the first programme to improve the accessibility of Welsh law, there are no immediate proposals to codify Welsh law. As the projects to classify and consolidate the law are achieved, it will be possible to begin codifying the law. We will, however, review existing areas of legislation where we have already made significant inroads into setting out the law on a subject (such as social care) to determine what additional work may be required to codify the law. The programme will be updated as necessary over the Senedd term.

Communication and clarification

The projects set out above involve remaking the law, but modern communication techniques coupled with the expectations of users of legislation, mean that the law itself is routinely supplemented by additional information which helps to clarify the impact and meaning of the law.

During this Senedd term we will seek to improve free-to-access publication of the law and information about the law. We will:

- a. Work with the team behind the legislation.gov.uk site to ensure that bilingual Acts and Statutory Instruments are available in an up-to-date form in both languages.

Currently the site is able to update English language texts only, but we will work with them to ensure that both language texts of Welsh law include any amendments made to the legislation after it has originally been made.

- b. Significantly expand and improve the content of the Cyfraith Cymru/Law Wales website to achieve a 'one stop shop' for accessing and understanding Welsh law.

As part of this work we will also explore the lessons gained from legislating during the coronavirus pandemic to improve the way the law is explained, for example by working alongside communications experts to produce focussed guidance and ensuring it is updated as legislation changes; by ensuring updated versions of key legislation (including explanatory notes) are published bilingually on-line; by publishing "question and answer" documents, some aimed at specific stakeholder groups, thereby ensuring that simple, consistent and legally accurate messages are conveyed.

- c. Explore ways to move from a model of promulgating legislation based on 20th century printed versions to a modern, digital-based system. This will include considering technological solutions for viewing and interpreting bilingual legislation and moving away from the dual column printed format of Statutory Instruments. We are keen to emphasise the point that in Wales, legislation is made bilingually and both language texts are of equal standing.
- d. Develop the Government's approach to preparing bilingual legislation, using linguistic technology to its full potential as we seek to improve efficiency, continue to ensure accuracy and use natural syntax and 'plain language'. We will:
 - i. accelerate the publication of additional standardised Welsh language legislative terminology on TermCymru;
 - ii. identify how the Government's proposed new translation memory and machine translation system can enable us to work more efficiently, highlight improvements that can be made to the original text, and facilitate improved consultation on technical terms;
 - iii. review internal guidance on style to identify opportunities to make the text clearer and more natural in both languages;
 - iv. agree processes for legislative translators and legislative counsel to collaborate to improve the original drafting as well as ensure that the translation is correct; and
 - v. hone editorial skills by sharing expertise between legislative translators and legislative counsel.
- e. Explore the potential for using machine learning and artificial intelligence to make Welsh law more accessible. This will involve collaboration with Swansea University and others to explore the opportunities to use technology to improve and accelerate the process of making the law more accessible.

The Government has previously prepared guidance on developing primary legislation. Although it is internal guidance for the Welsh Government Civil Service, it has been published to aid understanding of the law-making process and the development and drafting of legislation. During this Senedd term the Government intends to review and update, as necessary:

- a. The Legislation Handbook on Senedd Bills;
- b. Common Legislative Solutions (guidance that helps public officials understand commonly recurring issues and learn from what has been done in the past to resolve them);
- c. Writing Laws for Wales (the legislative drafting guidance of the Office of the Legislative Counsel).

We will also prepare and publish additional guidance on the processes and procedures involved in preparing consolidation Bills.

Other projects

We will continue to work with the Law Commission of England and Wales to identify one or more projects relating to Welsh law for inclusion in its Fourteenth Programme of Law Reform which will begin in 2022. This could include law reform projects or reviews of technical areas of the law, such as the electoral law underpinning local and Senedd elections, or the law governing online publication of statutes and statutory instruments. These are illustrative examples of areas of the law where the Law Commission could support the Government's ambitions to simplify and modernise the law. This programme will be updated to include relevant Law Commission projects within it, if needed.

Reporting on the programme

Under the Legislation (Wales) Act 2019, the Counsel General is required to report annually to the Senedd on the progress of the programme. The first report will be due in 2022.