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Llywodraeth Cymru  
Welsh Government

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Huw Irranca-Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
Cardiff Bay  
Cardiff

1 November 2023

Dear Huw,

**The future of Welsh law: A programme for 2021 to 2026  
Annual Report 2022-23**

I enclose a copy the second Annual Report on the Government's programme to improve the accessibility of Welsh law, which is being laid before Senedd Cymru as required by section 2(7) of the Legislation (Wales) Act 2019.

The report also includes, in the form of an Annex, the review of the Legislation (Wales) Act 2019, as agreed during the scrutiny of the Bill.

Yours sincerely,

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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.



Llywodraeth Cymru  
Welsh Government

# The future of Welsh law: A programme for 2021 to 2026

## Annual Report 2022-2023



“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*

## Purpose of report

1. This annual report is the second to be prepared under section 2(7) of the Legislation (Wales) Act 2019. It sets out the progress made under the Government's programme to improve the accessibility of Welsh law: [The Future of Welsh Law: a programme for 2021 to 2026](#), from 15 October 2022 to 30 September 2023.
2. The previous annual report covered the period from 21 September 2021 (when the programme was laid) to 14 October 2022. For consistency future annual reports are intended to cover the year from the beginning of October to the end of September.

## Background to programme

3. Each programme prepared under the Legislation (Wales) Act 2019 must include projects that:
  - a. contribute to an ongoing process of consolidating and codifying Welsh law
  - b. maintain the form of Welsh law (once codified)
  - c. promote awareness and understanding of Welsh law
  - d. facilitate use of the Welsh language.
4. The first programme under the 2019 Act was laid before the Senedd on 21 September 2021 and contains a blend of legislative and non-legislative projects designed to achieve this requirement. The [first annual report](#) on the programme was published on 7 November 2022.
5. This second annual report provides a further update on these projects by reference to our overarching aims in respect of:
  - a. classification of Welsh law
  - b. consolidation of Welsh law
  - c. codification of Welsh law, and
  - d. communication of Welsh law.
6. This report also includes a review of the 2019 Act, as agreed with the (then) Constitutional and Legislative Affairs Committee and the Finance Committee of the Fifth Senedd, during their scrutiny of the Legislation (Wales) Bill. The Government's commitment to review the 2019 Act has also been referred to in evidence from the Counsel General to the Legislation, Justice and Constitution Committee of this Senedd. This review has been conducted at the mid-way point through this Senedd term, as originally agreed, and is set out in the Annex to this report.

## Classification of Welsh law

### Programme commitments:

During this Senedd term the Government 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.

### *Progress during reporting period*

7. It has not been possible to progress the work on settling the taxonomy beyond the initial identified Codes of Welsh law and preliminary work reported upon in the first annual report. It remains the case that the taxonomy will benefit from user testing, which will be taken forward when The National Archives are able to work with us on better organising Welsh legislation on the legislation.gov.uk website.
8. As reported in the last annual report, The National Archives has prioritised work on improving the functionality of the legislation.gov.uk website to enable amendments to Welsh law in the Welsh language to be displayed in context (see below).

## Consolidation of Welsh law

### Programme commitments:

During this Senedd term the Government will develop:

- a. a consolidation Bill that brings together the law on the historic environment.
- b. a consolidation Bill that simplifies and modernises the law on planning.
- c. a consolidation Bill that 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.

We will also:

- a. 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.

- b. develop the package of subordinate legislation expected to be required to implement the historic environment Bill.
- c. undertake a phased project of consolidating key town and country planning subordinate legislation.
- d. remake and update the rules of the conduct of local government elections in Wales.
- e. prepare the 'Representation of the People Order' bilingually ahead of the general election to the Senedd in 2026.

### ***Progress during reporting period***

#### *Historic Environment (Wales) Act 2023 and supporting subordinate legislation*

9. The Welsh Government's first consolidation project – the Historic Environment (Wales) Bill – was unanimously approved by Senedd members on 28 March 2023. The Business Committee appointed the Legislation, Justice and Constitution Committee to be the Committee responsible for scrutiny of the Bill during its ten-month passage through Senedd Cymru. Amongst other matters, the Committee considered whether:
  - a. the scope of the consolidation was appropriate,
  - b. relevant enactments had been included,
  - c. enactments had been correctly consolidated and their effect preserved, and
  - d. the law had been consolidated clearly and consistently.
10. During its scrutiny of the legislation, the Committee took evidence from the Law Commission as well as relevant historic environment stakeholders. In its report on the initial consideration of the Bill,<sup>1</sup> the Committee commented on the consistently positive response that stakeholders gave to the consolidation and the improved accessibility that it gave to the law. Indeed, when three representatives of the Law Commission appeared before the Committee on 26 September 2022, the Commission's Chair, Sir Nicholas Green, remarked:

***...as individuals we think it's an impressive piece of work... we think it's a very high-quality piece of work.***
11. The Committee recognised "the importance of the Bill as the first of its kind for the Senedd and for Welsh law" and acknowledged the benefits that consolidation would bring. The legislation received Royal Assent on 14 June 2023<sup>2</sup> and it is now possible to discuss these benefits in more concrete terms. The Act will transform the accessibility of

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<sup>1</sup> [Legislation, Justice and Constitution Committee, Report on the Historic Environment \(Wales\) Bill \(December 2022\)](#)

<sup>2</sup> <https://www.legislation.gov.uk/asc/2023/3/contents/enacted>



the law for owners and occupiers of scheduled monuments and listed buildings, third-sector groups, public authorities and others. For the first time, it brings the principal legislation for the historic environment together in one place, states it explicitly for Wales without confusing references to other jurisdictions, and provides the law and its supporting documentation in fully bilingual form. Furthermore, the law has been reorganised and restated in clear, everyday language so that it will be easier for everyone to use and understand. To help users navigate and understand the new legislation, an enhanced suite of supporting documents has been prepared and is available alongside the legislation and the explanatory notes on [legislation.gov.uk](https://legislation.gov.uk)<sup>3</sup>. Also fully bilingual, these documents include origins and destinations tables, which helpfully relate provisions in the new Act to the legislation that has been consolidated, and drafters' notes, which set out decisions taken during the consolidation.

12. The Act is also explicitly part of a Code of Welsh law, reflecting that consolidation and codification were identified in *The future of Welsh law* as two fundamental mechanisms for bringing clarity and order to the law of Wales<sup>4</sup>. The Act, together with the new subordinate legislation that will be enacted to support it, will form a Code of Welsh historic environment law and will be published together. If changes to the law are needed in the future, they will be made by amending the Code rather than by making new “stand-alone” enactments, unless there is very good reason to do so. This will maintain the order that has been imposed on the historic environment law for Wales by the consolidation exercise.
13. Although the Historic Environment (Wales) Act 2023 has become law, it will not be commenced until later in 2024, after the secondary legislation required to support it has been brought into force. A substantial amount of well-established secondary legislation was incorporated into the Act, but much remains to be restated in several sets of regulations covering a range of procedural and other matters affecting scheduled monuments and listed buildings. This work is now under way and progress on making these regulations will be set out in future reports. The approach taken to the subordinate legislation will mirror that taken in the consolidation, to improve the accessibility of the law by restating and reorganising it while preserving its effect. Each set of regulations will also form part of the Code of historic environment law for Wales.

#### *Simplification and modernisation of planning law (including subordinate legislation)*

14. Significant progress has been made during the reporting period on consolidating the main Acts that provide the legislative framework for the planning system in Wales:
  - a. the Town and Country Planning Act 1990 ('the TCPA')

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<sup>3</sup> <https://www.legislation.gov.uk/asc/2023/3/resources>

<sup>4</sup> [The future of Welsh law: A programme for 2021-2026 \(Welsh Government 2021\)](#)

- b. the Planning and Compulsory Purchase Act 2004, Parts 3 to 6
- c. the Planning Act 2008, Part 11.

15. Work is also underway to consolidate provisions currently found in other Acts relevant to planning to improve accessibility and clarity. These include provisions in:

- a. the Public Health Act 1936
- b. the Local Government Act 1972
- c. the Planning and Compensation Act 1991
- d. the Environment Act 1995
- e. the Planning (Wales) Act 2015.

16. It is anticipated that the consolidation will provide an opportunity to incorporate relevant provisions from secondary legislation into the Act where appropriate. This course may be taken when the secondary legislation is well established and is not likely to require frequent amendment, or where it modifies the primary legislation – a similar position was taken during the consolidation of historic environment law.

17. Although the final form and content of the Bill is still be developed, it is expected to cover:

- a. planning authorities
- b. development plans
- c. development management
- d. certificates of lawfulness of existing and proposed uses of land
- e. enforcement of development management regime
- f. compensation and purchase notices
- g. acquisition and appropriation of land for planning purposes
- h. planning obligations and Community Infrastructure Levy
- i. planning for minerals and waste
- j. statutory undertakers
- k. highways (affected by development)
- l. regulation of outdoor advertising
- m. trees and woodlands
- n. maintenance of unsightly land
- o. blighted land.

18. These elements, together with the general provisions, and consequential, transitional and saving provisions, are expected to produce approximately 450 pages of legislation in each language.



19. Given the scale and complexity of the consolidation involved we are currently aiming to introduce the Bill into the Senedd in the summer of 2024; this is being kept under review and Members will be updated in due course.
20. Work on the subordinate legislation to implement the Bill will begin after it has been approved by the Senedd and received Royal Assent.

#### *Bill previously referred to as the Statute Law (Repeals) (Wales) Bill*

21. Following the consultation on a draft Statute Law (Repeals) (Wales) Bill that was launched on 7 October 2022 (and noted in the last annual report), the Government published a [summary report](#) of the responses received.
22. Overall, only a limited number of responses were received and most only commented on one or two matters. Most responses on these areas were in favour of making the proposed amendments and repeals. Of the concerns and comments received, many related to minor technical and drafting matters. All of the comments and concerns raised have been considered further as work on the Bill has progressed during 2023.
23. Further consideration is being given to the short title of the proposed legislation, in order to express in a more modern way the intention of what the Bill will achieve. It is intended the Bill will be introduced when time permits in Year 3 of the Government's legislative programme (most likely in the first half of 2024).

#### *Scoping of further subject areas*

24. As noted in the Government's response<sup>5</sup> to the Legislation, Justice and Constitution Committee's report<sup>6</sup> on the Environment (Air Quality and Soundscapes) (Wales) Bill, consideration was given to consolidating relevant parts of the Environment Act 1995 during the preparation of the Bill. However, to do so would result in a reduction in the executive competence of the Welsh Ministers due to the constraints of Senedd legislative competence.
25. As set out in the first report, work on scoping future projects will be undertaken later in this programme.

#### *The National Assembly for Wales (Representation of the People) Order 2007*

26. Work has begun on consolidating and remaking the National Assembly for Wales (Representation of the People) Order 2007, ahead of the Senedd elections in May 2026.

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<sup>5</sup> [Eich cyf \(senedd.wales\)](#)

<sup>6</sup> [Report on the Environment \(Air Quality and Soundscapes\) \(Wales\) Bill \(senedd.wales\)](#)

The 2007 Order currently contains over 270 pages and is available in English only (apart from the forms contained in the Schedules), but the new Order will be fully bilingual and will incorporate all the necessary changes from both the Senedd Reform and Electoral Reform projects currently being pursued. A consultation will be held on a draft of the proposed Order, to inform further work.

## Codification of Welsh law

### Programme commitments:

There were no immediate proposals to codify Welsh law in the programme, but this is being kept under review.

### Historic Environment (Wales) Act 2023

27. The consolidation of historic environment law has resulted in the Historic Environment (Wales) Act 2023 forming part of a Code of law on the historic environment in Wales. This Code will also include subordinate legislation made under the 2023 Act (see paragraphs 9 to 13 of this report).

### Codification of planning law

28. As well as the creation of a Code of historic environment law our intention is that a Code of law will also be created relating to planning in Wales through the consolidation of planning law. Although the final content of that Code is yet to be determined, a declaration of this status is intended to help persons interested in the law on a particular topic — town and country planning in this instance — find and classify it more easily. This Code of planning law will also contain subordinate legislation.

### Changes to Standing Orders

29. During the Counsel General's evidence to the Legislation, Justice and Constitution Committee on the (then) Historic Environment (Wales) Bill, he reiterated previous commitments to engage with the Llywydd on possible changes to Standing Orders in respect of Codes of Welsh law. The intention is that future changes to the law that forms part of a Code are made by amending or replacing the enactments rather than making different, "stand-alone", provisions that would again lead to a complex proliferation of laws.

30. The next annual report will set out progress on this.

## Communication of Welsh law

### Programme commitments:

During this Senedd term the Government will:

- a. work with the team behind the [legislation.gov.uk](https://legislation.gov.uk) site to ensure that bilingual Acts and Statutory Instruments are available in an up-to-date form in both languages.
- b. significantly expand and improve the content of the [Cyfraith Cymru/Law Wales](https://cyfraith.cymru) website to achieve a 'one stop shop' for accessing and understanding Welsh law.
- c. explore ways to move from a model of promulgating legislation based on 20th century printed versions to a modern, digital-based system.
- d. develop our approach to preparing bilingual legislation, using linguistic technology to its full potential.
- e. explore the potential for using machine learning and artificial intelligence to make Welsh law more accessible.

### *Progress during reporting period*

#### *[Ensuring Welsh law is available in up-to-date form on legislation.gov.uk](https://legislation.gov.uk)*

31. As set out in the first report, the editorial team in The National Archives' Legislation Services division has developed the functionality of [legislation.gov.uk](https://legislation.gov.uk) so as to enable amendments to Welsh language texts of legislation to be made.
32. Since the new system went live in October 2022 a small team within the Legislative Codes Office of the Welsh Government has been applying the annotated amendments to both English and Welsh language texts of Welsh law on the site. This means that not only are the bilingual texts of Acts, Measures and Statutory Instruments being updated, the annotation explaining each effect is also available bilingually for readers of Welsh legislation, for the first time.
33. In total, over 104,000 "effects" (changes that need to be implemented in order to present amended legislation in up-to-date form, and to explain what has happened) have been made to Welsh legislation since 1999. By the end of September 2023 nearly 60% of these had been applied. Amendments to the English language text were previously dealt with by The National Archives own editorial team, but now all of the Welsh language texts have been dealt with by the Legislative Codes Office together with a number of amendments to the English language texts. In the first twelve months of the project, approximately 40,000 effects have been applied.

34. The emphasis has been on bringing primary legislation up to date, but as we have begun to conclude that part of the work we have also started to focus efforts on updating specific groups of statutory instruments. We have been prioritising those relating to the Renting Homes Acts and some local government legislation. We are now targeting the legislation that is most viewed on [legislation.gov.uk](http://legislation.gov.uk), for example in relation to student support and food safety.
35. The current position is that:
- a. 96% of Welsh Acts and Measures are up to date in both languages. Our priority is now to keep these up to date as and when they are amended by legislation made either by the Senedd or the UK Parliament.
  - b. 43% of Welsh Statutory Instruments (of which there are over 6,100) are up to date in both languages, and there are just over 40,000 effects to be applied (about 29,000 to Welsh language texts and 11,000 to English language texts).
36. Although significant progress has been made in the first year, the scale of the work yet to be done – particularly in relation to Welsh language texts – means this is a long-term project and one in which the end point is always moving: although 40,000 effects have been dealt with in the first twelve months, this only reduces the overall backlog by 10,000 because during the same period an additional 30,000 effects were added to the system to be applied. In addition, the number of effects does not realistically reflect the work involved: for example, in recent work on the Additional Learning Needs and Education Tribunal (Wales) Act 2018 one task required 436 different annotations and amendments to be made.
37. The Legislative Codes Office continues to work closely with The National Archives to identify and resolve any unexpected issues that have arisen with the editorial process. This close working relationship has been instrumental in achieving the significant progress made to date.
38. The Counsel General has issued Written Statements on progress to Members during the first year of the annotation programme; future updates are expected to be set out in subsequent annual reports.

*[Expanding and improving the Cyfraith Cymru/Law Wales website](#)*

39. During the year work has begun on developing a substantial new section of the Cyfraith Cymru/Law Wales website referred to as “Legislation in Wales”. This lists each piece of primary legislation made in Wales since devolution by year, and when the section is fully developed, each Act or Measure will have its own dedicated page. So far, the pages for

all Acts from January 2019 to May 2023 have been published, and the remaining pages should be available by the end of 2023.

40. Each dedicated Act page contains:
  - a. a summary of what the Act does
  - b. a link to the Act itself on [legislation.gov.uk](http://legislation.gov.uk)
  - c. a link to the Explanatory Notes and Explanatory Memorandum
  - d. key dates including Royal Assent and coming into force
  - e. key information on the introduction of the Bill
  - f. consideration of the Bill by the Senedd with links to the Senedd's website for further details
  - g. a list of all subordinate legislation made under the Act, which includes links to the legislation on [legislation.gov.uk](http://legislation.gov.uk) and the Explanatory Memorandum (if available) or links to the relevant subordinate legislation made other than by statutory instrument on the [gov.wales](http://gov.wales) website
  - h. supporting articles, guidance, or information.
  
41. Undertaking this work has shown that the Bill pages on the Senedd's website do not always contain the final version of the Explanatory Memorandum to a Bill (usually updated after the Bill has been passed and published on the [gov.wales](http://gov.wales) website). To ensure the Senedd website holds the full suite of information, the Senedd will be provided with the last revised versions of Explanatory Memorandums to Bills in future, and the Act pages on [Cyfraith Cymru/Law Wales](http://Cyfraith Cymru/Law Wales) will link to those latest versions.
  
42. These new pages are expected to strengthen the accessibility of the law in Wales as they will be the only resource available in which all the subordinate legislation made under an Act is available in one place – something which we know that stakeholders have asked for in the past. Including the subordinate legislation made other than by statutory instrument (such as directions, schemes, guidance, declarations) will also improve the availability of information for users.
  
43. Additional content has also been included on the site from external contributors (predominantly legal firms working in Wales), in the form of articles.
  
44. The Law Council of Wales, established by the Welsh Government following the report of the Commission on Justice in Wales, has recently commissioned research on public legal education in Wales. Although that report is awaited, in an evidence-gathering session with advice providers and networks, academics and others (held in the summer of 2023), the use and relevance of the [Cyfraith Cymru/Law Wales](http://Cyfraith Cymru/Law Wales) website was acknowledged. There were also calls to strengthen and develop the information available on it.

### Identifying opportunities to improve digital accessibility of legislation

45. Some of the commitments in the programme relating to digital accessibility require engagement with the King's Printer and officials at The National Archives. As noted in the previous report and earlier, they have continued to prioritise the annotation of Welsh language texts of Welsh law over the past year. They remain committed to working with us to continue to develop and improve the digital accessibility of legislation, but we had hoped to make further progress.
46. See also paragraphs 61 and 62 on the form and structure of Welsh legislation.

### Strengthening arrangements for registering, publish and retaining subordinate legislation

47. Work has begun on developing options to strengthen the arrangements for registering, publishing and retaining subordinate legislation made by the Welsh Ministers (including both statutory instruments and non-statutory instruments). It is anticipated that this will be progressed during the next twelve months, subject to the availability of staffing resources, and reported upon in the next annual report.

### Reviewing the Government's approach to preparing bilingual legislation

48. The Welsh Government's Translation Service has completed the process of procuring new translation memory and terminology management software. Testing was undertaken over the summer the system became fully operational on 18 September 2023. It is anticipated that the new system will make the translation process more efficient and accurate, as well as enabling more efficient ways of researching terminology, standardising terms and consulting upon them to be adopted.
49. The normal terminology standardisation processes associated with Bill projects have continued during the year. For example, the standardisation process has been applied to democracy legislation, covering the Elections and Elected Bodies (Wales) Bill and the Welsh Parliament (Members and Elections) (Wales) Bill. These terms will also be valuable for future legislative work in this area. The work on the democracy legislation resulted in 95 new, revised or confirmed terms in the [BydTermCymru](#) database.
50. During the reporting period a review of the legislative reference materials available on BydTermCymru has been undertaken. As a result of the review, and ongoing discussions between Translation Services, the Office of the Legislative Counsel and the Legal Services Department, a total of 38 records were added or updated between October 2022 and September 2023.
51. The Translation Service has also held induction sessions for new members of the Office of the Legislative Counsel, which focussed on how the translation process can help to

improve the text in both languages. In addition, an information session for all Legal Services Department staff included a contribution focussing on cooperation between the Legislative Translation Unit and the Legal Services Department of the Welsh Government.

52. As part of a procurement process to establish a new Framework Agreement to provide written and simultaneous translation services for the Welsh Government, a dedicated sub-lot was established for the legislation subject area. The hope is that this will provide an opportunity to build further expertise in the field among external suppliers.
53. The Welsh Linguistic Infrastructure Policy was published at the end of June 2023. One of the aims of the Policy was to establish a new Unit within the Welsh Government to be responsible for the linguistic infrastructure of the Welsh language. That unit is now in place. Another of its aims was to create a new website to market and promote the available resources, such as dictionaries and terminology, to make it easier for people to use them and find solutions in the Welsh language. This service will ultimately help to ensure that standardised legislative terminology is widely available and will increase the profile of the work already being undertaken in this area.
54. The Welsh Government has provided funding<sup>7</sup> to the Language Technologies Unit at Bangor University to develop a suite of language technology resources. This included developing domain-specific machine translation for the law. Those working in the fields of justice and the law can now use a new machine-translation tool that has been specifically designed using legislative data. The aim of the tool is to provide more accurate translations than that provided by general machine-translation, and initial testing conducted in March 2023 (by measuring the difference between an automatic translation and human-created reference translations of the same source sentences) indicated an unusually high degree of accuracy. This is very promising in terms of the practical use of the tool in future.
55. Of course, the resulting text must then be edited by a competent translator or editor before it is published. As machine-translation technology is becoming ever more sophisticated and dependable, the role of the translator is therefore beginning to evolve into more of a specialist editorial function, allowing translators to focus on making greater use of their linguistic skills. Consideration is also being to how these developments could enable more of the text to be produced simultaneously by legislative counsel subject to an editorial review of both languages.
56. The tool can be accessed by going to [Machine Translation in specific domains. \(techiaith.cymru\)](#) and selecting the Legislation tab.

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<sup>7</sup> £350k was allocated to develop this suite of resources in 2022-23



### Updating guidance and preparing additional guidance

57. Work on revising the Office of the Legislative Counsel drafting guidance, *Writing Laws for Wales*, has started and it is anticipated that an updated version will be published during the next reporting period. This work occurs alongside the regular internal meetings held by Legislative Counsel to discuss general drafting issues and agree common approaches on points of detail. A user group has also been established to share best practice and optimise the use of the drafting software, Legislative Workbench 360.

## Other projects

### Programme commitments:

During this Senedd term the Government will continue to work with the Law Commission.

### *Progress during reporting period*

#### Working with the Law Commission

58. The Law Commission of England and Wales has yet to publish its proposals for its 14th Programme of Law Reform, but it remains the case that the Commission is committed to working with the Welsh Government and stakeholders in Wales to identify suitable projects relating to the law in Wales.

59. The Welsh Ministers will continue to use their powers to refer matters to the Law Commission for the Commission's advice and information. Such references have previously led to completed projects that are now being taken forward within the Welsh Government – the Welsh Ministers laid their [eighth annual report](#) on the Implementation of Law Commission Proposals before the Senedd on 15 February 2023.

60. The Ministry of Justice and the Attorney General's Office have asked the Law Commission to review the law on both criminal and civil contempt. The Law Commission aims to publish a consultation paper in early 2024, inviting views on their provisional proposals for reform. In September 2023 the First Minister asked the Law Commission to include the devolved tribunals within the scope of this project.

#### Form and structure of Welsh legislation

61. In 2021 the Counsel General wrote to the Llywydd setting out some proposed changes to the form and structure of Welsh Acts and Statutory Instruments. It was anticipated that the Senedd would consider these matters, but as the Legislation, Justice and Constitution Committee does not currently have the capacity to take this forward, the

Government intends to consult upon the proposals itself, with a view to any final changes being agreed with the Llywydd (where these changes affect the form of Senedd Bills), the King's Printer, The Stationery Office, The National Archives (where the changes would affect the printing and publication of Welsh legislation), and others as relevant.

62. At present it is anticipated the consultation will cover:

- a. whether both a 'long' and 'short' title to a Bill/Act of the Senedd is required;
- b. overview provisions in Bills/Acts of the Senedd;
- c. simplifying or omitting the words of enactment in Acts of the Senedd;
- d. the use of dates in Acts of the Senedd (for example, in relation to the date of Royal Assent);
- e. adopting navigation aids within Acts of the Senedd, and possibly also Welsh Statutory Instruments, such as adding headers in the document to indicate the relevant Part or Schedule;
- f. the typeface used in both Acts of the Senedd and Welsh Statutory Instruments;
- g. adopting solutions that support improving both digital and print accessibility.

## Other matters

### *Corrections to Welsh Statutory Instruments*

63. The Legislation, Justice and Constitution Committee have written to the Counsel General on two occasions in the period covered by this report, regarding correcting Welsh Statutory Instruments. The Counsel General has also responded on this matter as part of follow-up correspondence to oral evidence sessions with the Committee.

64. The Government is putting a new process in place to ensure that Members of the Senedd are made aware of any corrections of a minor or technical nature that are made prior to the making of a draft affirmative instrument.

### *Commonwealth Association of Legislative Counsel – Europe conference 2023*

65. In May 2023, officials from the Office of the Legislative Counsel were involved in arranging the 2023 Europe Conference of the Commonwealth Association of Legislative Counsel (CALC). The objective of the Association is to promote cooperation in matters of professional interest among people engaged in legislative drafting or in training people in legislative drafting.

66. This year's Europe conference was held in the Principality Stadium in Cardiff and attended by 140 delegates from across the globe. Accessibility of the law and clarity in

drafting legislation was a constant thread running through the two day event, which included:

- a. a keynote speech on the first day by The Rt Revd and Rt Hon Dr Rowan Williams, the former Archbishop of Canterbury, who shared his reflections on law and sovereignty and questions of definition, gleaned from his role as co-chair of the Independent Commission on the Constitutional Future of Wales;
- b. a keynote speech on the second day by Eleanor Sharpston KC, former Advocate General at the European Court of Justice, who shared her thoughts on legislative drafting in the multilingual, multicultural EU environment, and the compromises that must be made in settling legislative texts in those circumstances;
- c. an address by Dylan Hughes, the Government's First Legislative Counsel, entitled *Canon to confusion: what has happened to the law? Reflections on the statute book, the legal response to the pandemic and the rule of law*, where he reflected on the experience of legislating bilingually in Wales during the Covid-19 pandemic, and the considerable efforts made to ensure the public understood the restrictions in force at any given time;
- d. various breakout sessions led by other Welsh Government officials, with a particular focus on bilingual drafting and updating and annotating legislation in Welsh and English on legislation.gov.uk.

#### *Inter-office meetings to discuss approaches to legislation on an UK basis*

67. In February 2023 a time-limited group was established to consider legislative drafting issues that arise on an UK basis. The group consists of representatives from the four UK drafting offices (Wales, England/UK, Scotland and the Republic of Ireland) and from The National Archives. Its remit is to consider:

- a. whether there are things the four drafting offices might agree to do consistently or principles they might all apply when operating in the same areas (e.g. should they be aiming to create separate texts, should parallel texts be avoided etc.);
- b. whether there are things the Office of the Parliamentary Counsel do in UK Acts that make life more complex for the other drafting offices (and vice versa).

68. The group meets monthly and intends to submit its recommendations for consideration at the next Heads of Drafting Offices meeting in early 2024.

## **Revisions to the programme**

69. Section 2(6) of the Legislation (Wales) Act 2019 permits the Welsh Ministers and Counsel General to revise the programme.

70. It is intended that the programme will be revised to include:

- a. a commitment to create a Code of law in relation to planning, and to show that a Code of law for the historic environment has been created

- b. information about the project to strengthen the publication of subordinate legislation, and
- c. a commitment to consult on proposals to improve the form and structure of legislation.

71. The revised programme will be laid before the Senedd later this year.

## Concluding matters

72. Notable achievements over the last twelve months include the passing of the Historic Environment (Wales) Act 2023 in March 2023 (forming the first Code of Welsh law), and the good progress made by Welsh Government staff in applying annotated amendments to English and Welsh language texts of Welsh law on the [legislation.gov.uk](https://legislation.gov.uk) site. Both are major steps forward in treating both languages equally and developing Welsh as a language of the law.

73. The National Archives remains a vital partner in aiding the delivery of improved accessibility of the law – both in terms of how legislation is printed and published, and how it is made available in a free to access and use digital form. However, unless and until they are able to progress the priorities in the programme to develop the functionality on the site to enable Welsh legislation being accessed by subject, there is limited scope for the Welsh Government to take this project forward.

74. Overall, we conclude that the programme remains on track and are pleased to report both the good progress made and the proposals to expand the programme to reflect further work being undertaken.

## Review of the Legislation (Wales) Act 2019

### *Summary of the Act*

1. The [Legislation \(Wales\) Act 2019](#) (“the 2019 Act”) was passed by the (then) National Assembly for Wales on 16 July 2019 and received Royal Assent on 10 September 2019. The 2019 Act makes provision about the interpretation and operation of Welsh legislation, and requires the Counsel General and the Welsh Ministers to take steps to improve the accessibility of Welsh law:
  - a. Part 1 imposes duties on the Counsel General to the Welsh Government and the Welsh Ministers relating to the accessibility of Welsh law.
  - b. Part 2 makes general provision about the interpretation and operation of the 2019 Act itself and of Welsh legislation enacted after Part 2 comes into force.
  - c. Part 3 gives the Welsh Ministers powers to replace descriptions of dates in Welsh legislation and to make subordinate legislation in different forms, and provides for the combination of subordinate legislation that is subject to different procedures in the (now) Senedd.
  - d. Part 4 contains general provisions, including consequential amendments to other legislation and provision about when and how the 2019 Act would come into force.
2. The 2019 Act forms part of the Welsh Government’s wider programme of improving the accessibility of Welsh law and clarifying and simplifying the operation of Welsh legislation.

### *Commitment to review the 2019 Act*

3. When the Bill<sup>8</sup>, that would become the 2019 Act, was introduced into the National Assembly the Government committed that legislation would be reviewed in 2026 at the end of the first Assembly term in which a programme under Part 1 of the 2019 Act would have been delivered. During the scrutiny of the Bill, the responsible Committee

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<sup>8</sup> The Record of Proceedings and further information on the passage the Bill can be found on the National Assembly for Wales’ website at: <http://www.senedd.assembly.wales/mgIssueHistoryHome.aspx?IId=23311>

for the Bill – the Constitutional and Legislative Affairs Committee – considered this commitment. In the Stage 1 report of that Committee, they recommended<sup>9</sup>:

*Recommendation 6. Subject to the Bill receiving Royal Assent, the Counsel General should commit to a review of the legislation at the mid-way point of the first Assembly term in which the legislation takes effect, i.e. by the end of 2023.*

4. The Counsel General, as the Member in Charge of the Bill, accepted this recommendation, together with a related recommendation that annual (rather than periodic) reports be made on progress against a programme prepared under Part 1 of the Bill. In the General Principles debate on the Bill held on 2 April 2019, the Counsel General explained<sup>10</sup> that as part of the annual reporting process “we will also review the effectiveness of Part 1 of the Bill at the midway point of the next Assembly term.”
5. The Finance Committee also reported<sup>11</sup> on the Bill during Stage 1 of the National Assembly’s consideration. They recommended:

*Recommendation 2. The Committee recommends that relevant review activity associated with the Bill consider the resourcing and financial implications of delivering the Bill’s objectives.*

6. This recommendation was also accepted by the Government.
7. On 18 June 2019, following the Stage 2 proceedings on the Bill, the Counsel General laid a revised Explanatory Memorandum to the Bill before the National Assembly. He also wrote<sup>12</sup> to the Chair of the Constitutional and Legislative Affairs Committee, setting out that:

*...the mid-term review would primarily do two things: firstly, it would report on the progress of implementing the programme to improve the accessibility of Welsh law and to consider whether the proposed content of it should be changed; and secondly (and more generally) it will provide post-legislative scrutiny of the Bill itself, including the Parts 2 and 3.*

8. During the Stage 2 proceedings before the Constitutional and Legislative Affairs Committee, the Counsel General was invited to write to the Committee with the

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<sup>9</sup> Available at: [cr-ld12462-e.pdf \(senedd.wales\)](#)

<sup>10</sup> See Record of Proceedings: [Plenary 02/04/2019 - Welsh Parliament \(assembly.wales\)](#)

<sup>11</sup> Available at: [Financial implications of the Legislation \(Wales\) Bill \(senedd.wales\)](#)

<sup>12</sup> Available at: [Letter from the Counsel General and Brexit Minister - 18 June 2019.pdf \(senedd.wales\)](#)

Government's views on how Assembly Members could influence the content of the mid-term review. The Counsel General's letter of 18 June 2019 offered to:

*...make my officials available to the Committee ... to understand what the Committee would consider important, and to gain a fuller appreciation of how current Members could envisage a future Assembly engaging in the process of the mid-term review. I hope that these conversations could help shape any views this Committee may want to pass on to its successor towards the end of this Assembly.*

9. The Committee did not subsequently provide any views on this matter either to Government officials or in any published report to its successor Committee. However the Legislation, Justice and Constitution Committee of the current Senedd reported<sup>13</sup> on the *Welsh Government's draft budget for 2023-24*, and recommended:

*Recommendation 4. The Counsel General should, by the end for March, provide an analysis of whether the anticipated additional staffing costs to the Welsh Government set out in the Explanatory Memorandum to the Legislation (Wales) Bill are proving to be accurate.*

10. In response<sup>14</sup> the Counsel General explained:

*The Government has previously committed to set out details of the resourcing and financial implications of delivering the first programme aimed at improving accessibility of Welsh law, and other costs arising from implementing [the 2019 Act]. This commitment was given in response to recommendations made by the Fifth Senedd Constitutional and Legislative Affairs Committee and Finance Committee, following their Stage 1 scrutiny of the Legislation (Wales) Bill. The Government agreed to include these details in the annual report under section 2(7) of the 2019 Act that would be made in 2023. I will therefore provide this information in the report due later this year.*

11. This report therefore reviews Parts 1 to 3 of the 2019 Act and considers the resourcing implications of the Act.

## **Implementing the 2019 Act**

### Commencement

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<sup>13</sup> Available at: [LJC Committee: The Welsh Government's draft budget for 2023-24 \(senedd.wales\)](#)

<sup>14</sup> Available at: [Eich cyf \(senedd.wales\)](#)



12. The 2019 Act received Royal Assent on 10 September 2019. Section 43 made provision about when and how the Act would come into force:
- a. Part 1 of the Act came into force the day after the Act receives Royal Assent, namely 11 September 2019. However, section 2 had no immediate effect in practice, because the duty to prepare a programme arose for the first time with the Senedd term that began after the section came into force (in other words, the Sixth Senedd that began after the general election held on 6 May 2021).
  - b. The provisions of Part 2 of the 2019 Act that apply to the interpretation and operation of the 2019 Act itself came into force on 11 September 2019. The power in section 5(2) and (3) to amend Schedule 1 also came into force the day after Royal Assent, in case the Schedule needed to be amended before it came fully into force. This was not ultimately required, although amendments to Schedule 1 were made after it was fully in force – see paragraph 20(f) below.
  - c. An order was made by the Welsh Ministers to bring Part 2 into force in relation to other Assembly Acts and in relation to Welsh subordinate instruments. The Government’s expectation during the development of the Bill was that the order would bring Part 2 fully into force at the start of a calendar year, so that it would be possible to tell from the year included in the title of an Act or instrument whether Part 2 applies to it or whether the Interpretation Act 1978 applied. This expectation was achieved, with the [Legislation \(Wales\) Act 2019 \(Commencement\) Order 2019](#) bringing the remaining aspects of Part 2 into force on 1 January 2020.
  - d. Parts 3 and 4 also came into force the day after the Act received Royal Assent. This meant provisions in Part 3 could be relied upon in statutory instruments that the Welsh Ministers made from that date onwards (or that they laid before the Senedd in draft on or after that date, in the case of instruments subject to draft affirmative procedure).

### *Powers of the Welsh Ministers*

13. The 2019 Act conferred a limited number of powers to make subordinate legislation on the Welsh Ministers, some of which of have been exercised (see Table 1).

Table 1 – Powers to make subordinate legislation and use

Section of 2019 Act	Description of power	Use
Section 6(2)	The Welsh Ministers may add, remove or amend definitions within Schedule 1 to the Bill, as necessary.	<a href="#">Legislation (Wales) Act 2019 (Amendment of Schedule 1) Regulations 2020</a>
Section 38(1)	Enables the Welsh Ministers to amend legislation describing a date or time so that it states the actual date or time.	First used in the <a href="#">Legislation (Wales) Act 2019 (Commencement) Order 2019</a> (but see also paragraph 20(b))
Section 42(1)	Enables the Welsh Ministers to make further provision in consequence of, or to give full effect to, the Act.	Not yet used
Section 44(2)	Power to commence the statutory interpretation provisions, insofar as they apply to Welsh subordinate instruments and to Assembly Acts other than the 2019 Act itself, into force on a particular date.	<a href="#">Legislation (Wales) Act 2019 (Commencement) Order 2019</a>

14. The 2019 Act also contained two provisions about the exercise of powers in other legislation:

- a. section 39 enables the Welsh Ministers to exercise powers to make regulations, rules or orders by making any other of those forms of subordinate legislation.
- b. section 40 deals with the combination in a single statutory instrument of subordinate legislation made by the Welsh Ministers that would attract different Assembly procedures, and ensures that the instrument is subject to the stricter of those procedures.

Detail on the subsequent use of these enabling provisions is set out in paragraph 38 onwards below.

### Guidance for implementation

15. At paragraph 205 of the Explanatory Memorandum to the Bill, the Government noted some actions that could be taken to support implementation of what would become the 2019 Act:

- a. Preparation and delivery of guidance – the Government set out it would develop and publish non-statutory guidance for drafters of subordinate legislation. The cost would be incurred by the Government. The intention was that the guidance would coincide with the coming into force of the interpretation provisions. Preparation costs were to be absorbed within the normal course of business but had been estimated at £5,000 (a one-off cost arising in 2019/2020). The guidance was to be published online only.
- b. Information about forthcoming changes – two potential actions were identified:
  - i. Notification – it was anticipated that Welsh Government drafters, other devolved Welsh authorities that make subordinate legislation, legal professionals, the judiciary and Welsh law schools would need to be made aware of the changes in relation to statutory interpretation. The original intention was to alert relevant organisations and bodies about the new Act, potentially using the Cyfraith Cymru/Law Wales website and providing information to the guidance for drafters of subordinate legislation mentioned above.
  - ii. Training – bodies such as the Law Society or the Bar Council could choose to provide training or other information on the new legislation to their members. It was also anticipated that information sessions would be provided internally within the Welsh Government.

16. On 27 May 2020 the Government published *'Parts 2 and 3 of the Legislation (Wales) Act 2019: Guidance for preparing Welsh legislation'*<sup>15</sup>. This was published later than anticipated (partly to take account of changes brought about by the Senedd and Elections Act 2020<sup>16</sup>), but an early draft was available for use within Welsh Government pending final publication. No costs, other than opportunity costs associated with the time of a member of the Office of the Legislative Counsel in preparing the advice, were incurred. The final guidance is mainly relevant to:

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<sup>15</sup> Available at: [Parts 2 and 3 of the Legislation \(Wales\) Act 2019: Guidance for preparing Welsh legislation | GOV.WALES](#)

<sup>16</sup> Separate guidance on the implications of Part 2 of the Senedd and Elections (Wales) Act 2020 for legislative drafting has also been published

- a. lawyers and officials within Welsh Government who draft Bills and statutory instruments for the Welsh Ministers;
  - b. officials within Welsh Government who prepare subordinate legislation;
  - c. lawyers and other officials who draft subordinate legislation for devolved Welsh authorities (such as byelaws and schemes made by county and county borough councils).
17. No feedback has been received on the guidance since its publication necessitating its update, and it remains available as a helpful guide.
18. Two in-person training sessions were held in October and November 2019 on, primarily, Parts 2 and 3 of the Act for drafting lawyers within Welsh Government. Approximately 100 lawyers attended over the two events. More recently a “top up session” was held in July 2023, this time via MS Teams. This session was attended by approximately 70 members of staff and is also available to be viewed as part of an ongoing bank of resources for lawyers within the Government. No costs, other than opportunity costs associated with preparation and attendance, have been incurred.
19. Information about the 2019 Act was published on the Law Wales/Cyfraith Cymru website, with the most recent iteration of that information being published in August 2023. A new element of the site is currently being developed – information on a single page about each Act of the Senedd, together with links to any subordinate legislation made under it. The latest version of the information for the 2019 Act has been included as part of that work. This report will be added to that page after it has been laid before the Senedd.

#### *Amendments to the 2019 Act*

20. The 2019 Act has been amended several times since it was enacted. The changes have been numerous in part because of the United Kingdom’s withdrawal from the European Union and we do not anticipate that the Act will be changed as frequently in future. Changes have been made as follows:
- a. When Part 2 of the 2019 Act was commenced via the [Legislation \(Wales\) Act 2019 \(Commencement\) Order 2019](#), the Welsh Ministers used the power in section 38(1) of the 2019 Act. The Order therefore amended provisions in the 2019 Act that refer to the day on which Part 2 comes into force, so that they refer instead to 1 January 2020.

- b. Part 2 of the [Senedd and Elections \(Wales\) Act 2020](#) changed the name of the National Assembly for Wales to Senedd Cymru with effect from 6 May 2020. Schedule 1 to that Act amended the 2019 Act to replace references to the National Assembly for Wales and Assembly Acts with references to Senedd Cymru and Acts of Senedd Cymru, and to insert definitions into Schedule 1 to the 2019 Act relating to Senedd Cymru and Acts of Senedd Cymru.
- c. The [European Union \(Withdrawal Agreement\) Act 2020](#) implemented the Withdrawal Agreement, as agreed between the United Kingdom and the European Union. The Act was required to implement the Withdrawal Agreement for it to have domestic legal effect and to enable the UK Government to ratify the Withdrawal Agreement. Consequently, that Act amended the 2019 Act to insert, substitute and amend entries relating to the Withdrawal Agreement and, in particular, the implementation period.
- d. [The Direct Payments to Farmers \(Legislative Continuity\) Act 2020](#) and [the Direct Payments to Farmers \(Legislative Continuity\) Act 2020 \(Consequential Amendments\) Regulations 2020](#) made consequential amendments to the 2019 Act (and other legislation relating to the interpretation of Welsh law and other law), to ensure that EU legislation incorporated into domestic law under the Direct Payments to Farmers (Legislative Continuity) Act 2020 is treated in the same way as EU legislation incorporated into domestic law under the European Union (Withdrawal) Act 2018.
- e. The [Fisheries Act 2020](#), amongst other matters, extended the legislative competence of the Senedd Cymru so as to enable the Senedd to make primary legislation on fishing, fisheries and fish health matters in the Welsh zone. Consequently, section 46 of the Fisheries Act 2020 amended the 2019 Act to insert a definition of “Welsh zone” into Schedule 1 and adjust references in Parts 1 to 3 of the 2019 Act to legislation relating to Wales in order to reflect the new description of the “Welsh zone”.
- f. The Welsh Ministers made the [Legislation \(Wales\) Act 2019 \(Amendment of Schedule 1\) Regulations 2020](#) that came into force on 27 November 2020. These Regulations amended Schedule 1 to the 2019 Act, to insert provisions about the meaning of four additional expressions<sup>17</sup> and to amend the definition of the “standard scale” of fines for summary offences because of the Sentencing Code (the restatement of sentencing legislation set out in the Sentencing Act 2020).

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<sup>17</sup> “Equality and Human Rights Commission”; “National Trust”; “Public Accounts Committee”; and “Sentencing Code”

- g. [The European Union Withdrawal \(Consequential Modifications\) \(EU Exit\) Regulations 2020](#) amended the 2019 Act (and related interpretation legislation) to insert provisions about the effect of references to EU instruments that form part of relevant separation agreement law (as defined in the European Union (Withdrawal) Act 2018) on or after the implementation period completion day<sup>18</sup>.
21. Further changes will be made to the 2019 Act by the [Retained EU Law \(Revocation and Reform\) Act 2023](#). This Act will, when fully in force, enable the amendment of retained EU law (known as “REUL”) and remove the special features it has in the UK legal system. It makes amendments to the 2019 Act to replace references to “retained EU law” (and related terms) with “assimilated law” (and related terms). The amendments include changes to Schedule 1 to the 2019 Act, which will supersede all of the amendments made to the 2019 Act by the Direct Payments to Farmers (Legislative Continuity) Act 2020.

### ***Part 1 of the 2019 Act***

22. To inform the process of making Welsh law more accessible, section 1(1) requires the Counsel General (as the Law Officer for Wales), to keep the accessibility of Welsh law under review. Section 2 requires the Welsh Ministers and the Counsel General to develop a programme of action designed to improve the accessibility of Welsh law for each Senedd term beginning with the term following the general election on 6 May 2021. Although the specific content of a programme will be a matter for the Welsh Ministers and the Counsel General, section 2(3) requires each programme to make provision for measures that are intended to consolidate and codify Welsh law, maintain codified law, promote awareness and understanding of Welsh law, and to facilitate use of the Welsh language.
23. The first programme, [The Future of Welsh Law: accessibility programme 2021 to 2026](#), was developed following the general election for the Sixth Senedd and agreed by the Welsh Ministers and Counsel General before being laid before the Senedd on 21 September 2021.
24. Section 2(7) of the 2019 Act requires an annual report to be made on progress against the programme. The first annual report was laid before the Senedd on 7 November 2022. This report forms part of the second annual report now being laid before the

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<sup>18</sup> The ending of the 11-month period from 31 January 2020 during which the UK continued to be subject to EU rules. (This period was known in the Withdrawal Agreement between the UK and the EU as the 'transition period'.)

Senedd. Both annual reports summarise the work that has been achieved against each programme (and which is not repeated here).

25. Details regarding the resourcing implications of this first programme are set out later in this report.
26. The main purpose of Part 1 was to entrench a commitment to making Welsh law more accessible. This was intended to take effect both as an outward-facing promise to make the rights and obligations of the people of Wales clearer, and as a means of ensuring that improving the situation remains an ongoing priority within the Welsh Government. To date the Part has in our view had the desired effect. Codification in particular has received considerable support from stakeholders and awareness, on the part of ministers and officials, of the practical difficulties caused by inaccessible legislation.
27. The coronavirus pandemic put this commitment to the test in a way that had never been expected. On the one hand, the pandemic led to some of the limited resources allocated to projects designed to make the law more accessible being redeployed, however on the other the Government's legal response – with communicating requirements clearly to the Welsh public at its heart – was an example of good practice and how things could be improved in relation to all legislation in future. The Government recognised from an early stage that it needed to do more to make sure the law itself was easily available and to explain the effect of the law. Considerable effort was given, as a result, to publishing the law quickly – in up-to-date form in both languages, to guidance and to simple messaging in “FAQ” format. The end result, according to a King's College study, was that the restrictions were significantly better understood in Wales than in England.

## ***Part 2 of the 2019 Act***

28. Part 2 of the 2019 Act makes provision about the interpretation and operation of legislation made by the Senedd or under powers it has conferred, and other subordinate legislation made by the Welsh Ministers and other devolved Welsh authorities.
29. The position before Part 2 came into force was that the Interpretation Act 1978 (“the 1978 Act”) governed the interpretation and operation of legislation of these types. The 1978 Act continues to apply to legislation that was made before 1 January 2020 (when Part 2 came fully into force)<sup>19</sup>. Part 2 applies only to legislation made after that date (and to the 2019 Act itself).

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<sup>19</sup> The 1978 Act also continues to apply to some very limited categories of instrument that are made by the Welsh Ministers and other devolved Welsh authorities under certain powers after 1 January 2020, if those instruments also contain provisions that are made by bodies that are not devolved Welsh authorities or provisions that apply otherwise than in relation to Wales.



30. Part 2 has therefore applied to the 12 Acts of the Senedd enacted since 1 January 2020, and to 1,176 Statutory Instruments made by the Welsh Ministers, together with approximately 270 items of subordinate legislation made during this period by the Welsh Ministers and further legislation made other bodies (details of which are not held by the Government)<sup>20</sup>.
31. Most of the provisions in Part 2 were intended to have the same effect as provisions in the 1978 Act, even if they were expressed in different terms. However, there were some differences that were identified and described in the Explanatory Notes to the 2019 Act.
32. One of the main differences between the two Acts is that the 2019 Act does not contain a provision corresponding to section 11 of the 1978 Act. That section provides that expressions used in subordinate legislation have the meaning which they bear in the Act or Measure (or the retained direct EU legislation) under which the subordinate legislation is made. As such drafters of Welsh subordinate instruments need to consider how best to ensure the words used in the instrument have the same meaning as in the primary legislation (where that is the intention). [Writing Laws for Wales](#) (the Government’s guidance on drafting legislation) and the guidance issued on Part 2 of the 2019 Act cover this in more detail. Evidence from statutory instruments made since the passing of the 2019 Act show a range of approaches are being used, depending on the effect required and other factors, for example whether a specific meaning is derived from caselaw. Anecdotal discussions with drafting lawyers within the Government has shown the guidance on this matter and the context of the instrument being prepared all influence the approach that is adopted, and no single approach is being favoured.
33. Section 35 of the 2019 Act makes general provision about the effects of repealing and re-enacting existing legislation. It is based on very similar provisions in section 17(2) the 1978 Act, but was made wider in some respects to facilitate Senedd consolidation Acts (in particular, section 35 is not limited to cases where the repeal and re-enactment are both in the same Act, and it enables references to a repealed enactment to be read as “including” its restatement for Wales where that is appropriate). Nevertheless, Part 1 of Schedule 14 to the Historic Environment (Wales) Act 2023 made a number of additional transitional provisions dealing with references to that Act and the Acts that it replaces. Consideration is being given to whether it would be helpful to have general provisions of that kind, so that they do not need to be made separately in each Senedd Act that restates existing legislation.

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<sup>20</sup> For the period up to and including 30 September 2023

34. Because section 35 provides that where a Senedd Act restates an earlier Act, subordinate legislation made under the earlier Act continues to have effect as if made under the new one. This may mean that subordinate legislation to which the 1978 Act applied now has to be treated as being subject to the 2019 Act. That will generally make no difference, given the close similarity between the two Acts and the fact that nearly all of their interpretation provisions are subject to any contrary intention in the legislation in question. However, in connection with the Government's ongoing work on consolidation of the law, consideration is being given to whether there might be any cases in which it could have unwanted effects.
35. As noted earlier in this report, Schedule 1 to the 2019 Act has been amended on several occasions. Only one of these has been through the exercise of the powers at section 6(2) of the 2019 Act. The Government intends to periodically consider further amendments to Schedule 1, to include new definitions of terms or to update terms, as necessary.

### ***Part 3 of the 2019 Act***

36. As noted earlier, Part 3 gives the Welsh Ministers powers to replace descriptions of dates in Welsh legislation (section 38); to make subordinate legislation in different forms (section 39); and provides for the combination of subordinate legislation that is subject to different procedures in the Senedd (section 40).
37. The first use of the enabling power in section 38 was in the commencement order made under the 2019 Act, which amended the Act itself. The power has subsequently been used in another commencement order: the [Renting Homes \(Wales\) Act 2016 \(Commencement No. 2 and Consequential Amendments\) Order 2022](#). That order brought the Renting Homes (Wales) Act 2016 into force, to the extent that it was not already, on 1 December 2022. In addition, the order amended 12 statutory instruments to replace references to the day on which section 239 of the Act comes into force with a reference to 1 December 2022. This is precisely the type of change envisaged when the enabling power was created, it ensures that readers of those 12 statutory instruments could see the relevant date without having to undertake further research.
38. Section 39 has been used to make regulations instead of orders and rules – see for example, the [Firefighters' Pension Schemes and Compensation Scheme \(Wales\) \(Amendment\) Regulations 2020](#) and the [Local Elections \(Miscellaneous and Consequential Amendments\) \(Wales\) Regulations 2022](#). The “Firefighter Pension Scheme” regulations are an example of why the enabling power was created – the approximately 20 enabling powers required to make those regulations are set out in several Acts, and in one case (section 34(4) of the Fire and Rescue Services Act 2004) were originally envisaged to be exercised by order. Without section 39 of the 2019 Act,

two separate instruments would have to have been made – one set of regulations and separately the order. Section 39 permitted a combined instrument to be made, making the law more accessible for the reader.

39. Section 39 has also been used to make an order, rather than regulations – see the [Education Workforce Council \(Additional Categories of Registration\) \(Wales\) Order 2023](#). This Order also relied upon the powers in section 40 of the 2019 Act, which permits subordinate legislation subject to different Senedd procedures to be combined into one instrument.
40. Section 40 has been used on at least 22 occasions since the power came into force (including for the Order mentioned immediately above). The purpose of this section is to facilitate the combination in a single statutory instrument of provisions that are subject to different procedures, whether they are made under powers in the same Act or different Acts, and to avoid any procedural difficulties that would be caused by combining provisions in this way. It ensures that the instrument is subject to the most stringent of the procedures that would otherwise apply. Six instruments were subsequently made under the made affirmative procedure, and 16 under the draft affirmative procedure.
41. Reference to section 40 has generally been included as a footnote from the introductory text of the Statutory Instrument, but in a few cases this was not in the Statutory Instrument but instead drawn to the attention of the Legislation, Justice and Constitution Committee in the Explanatory Memoranda that accompanies Statutory Instruments on laying. In one case, both the instrument and the Explanatory Memorandum included a reference to section 40. The Committee has also identified at least one occurrence where section 40 was relied upon, but this was not referenced in either the instrument or the Explanatory Memorandum. Drafting lawyers have been reminded of the guidance on citing section 40<sup>21</sup>.
42. Anecdotal discussions with drafting lawyers within the Government has shown that sections 39 and 40 have generally been used to provide for a more logical and coherent position for the users of the legislation or because it has been administratively convenient to make one instrument rather than multiple instruments.

## **Resourcing**

### *Developing, reporting on and revising the programme under Part 1 of the 2019 Act*

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<sup>21</sup> Welsh Government (2020) *'Parts 2 and 3 of the Legislation (Wales) Act 2019: Guidance for preparing Welsh legislation'*

43. Preparation of the programme was estimated in 2019, to be an opportunity cost of approximately £12,000 (based on 8 weeks full time activity for one Grade 7/Executive Band 2 official)<sup>22</sup>.
44. The first programme was developed during a period of intense activity for the Legislative Codes Office relating predominantly to the preparation, registration and publication of legislation relating to the pandemic. Work on the programme was undertaken alongside that other activity, and it is not possible to determine whether it equated to the original estimate of time.
45. Alongside the annual reports, reporting on the programme was also anticipated to happen as an occasional event – for example through the Counsel General answering questions, making statements or as part of evidence sessions to Committees. The costs associated with this were not quantifiable but would be opportunity costs. Activity of this type has occurred since the first programme was prepared. Information for this is generally prepared by the Head of the Legislative Codes Office as part of other duties.
46. The opportunity cost of preparing the annual report was estimated, in 2019, to be approximately £3,000 (representing two weeks of full-time activity by one Executive Band 2 grade)<sup>23</sup>. Two annual reports have been prepared to date. In both cases they have been led by one Management Band 1 grade member of the Legislative Codes Office, as part of other duties, collating contributions from across the organisation on progress under each project. Actual timings for this work have not been collated, but it is considered the original estimate was less than the actual time taken.
47. The opportunity cost of revising the programme was estimated, in 2019, to be approximately two-thirds of the cost of preparing the main programme<sup>24</sup>. To date the programme has not been revised, so no costs of this kind have been incurred.

*Delivering the programme required under Part 1 of the 2019 Act*

48. During the passage of the Bill, including in the supporting information such as the Explanatory Memorandum, it was emphasised that the actual cost of each individual programme would be dependent upon the scale of the activity included in it and the resource allocated to that activity. Best estimates of an indicative programme were set out in the Explanatory Memorandum<sup>25</sup>, and some costs relating to the anticipated additional staffing that could be required to increase drafting and translation capacity,

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<sup>22</sup> See paragraph 139 and Table 4 of the Explanatory Memorandum to the Legislation (Wales) Bill (laid 18 June 2019)

<sup>23</sup> See paragraph 140 of the Explanatory Memorandum to the Legislation (Wales) Bill (laid 18 June 2019)

<sup>24</sup> See paragraph 141 of the Explanatory Memorandum to the Legislation (Wales) Bill (laid 18 June 2019)

<sup>25</sup> See paragraphs 144 to 147

as well as other staff to work on the non-legislative projects were included (reproduced at Table 2).

Table 2 – Estimated annual cost of delivering a programme of accessibility set out in Explanatory Memorandum to the Bill in 2019

<b>Estimated additional annual cost of delivering a programme of accessibility including 4 to 5 consolidation bills over 5 years</b>	
Cost of drafting resource equivalent to four Legislative Counsel	£376,900
Cost of translation resource equivalent to two Legislative Translators	£93,000
Cost of one Management Band 2 and two Management Band 3 staff delivering rolling programme of accessibility projects	£118,500
<b>TOTAL ESTIMATED COSTS</b>	<b>£588,400</b>

49. In relation to the costs for each consolidation Bill, the Explanatory Memorandum to the Bill made clear<sup>26</sup>:

*...the figures quoted [for each consolidation Bill] are little more than indicative estimates, and should not be considered definitive or representative of any or all consolidation projects. This is because the Welsh Government has not yet undertaken consolidation exercises of the type envisaged; secondly, each project will have different demands and requirements based on the existing law being consolidated and codified.*

50. The only costs that could be quantified at that time were the anticipated additional drafting and translation costs.

51. Experience gained from producing the Historic Environment (Wales) Act 2023 and preparing two other Bills relating to the accessibility of law programme, has shown that there is very little difference in the grade or type of staff involved between a consolidation Bill and a law reform Bill. Policy professionals, subject lawyers, legislative and general translators and drafting counsel are all required. It represents a significant commitment of time and expertise from all involved and is a cross-Government activity. This was reflected in the Counsel General's evidence paper<sup>27</sup> to the Legislation, Justice and Constitution Committee for his attendance on 16 January 2023, where he explained:

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<sup>26</sup> Paragraph 146

<sup>27</sup> Available at: [LJC6-02-23 - Paper 2 - Paper from the Counsel General and Minister for the Constitution 21 Decemb.pdf \(senedd.wales\)](#)

...our work to deliver the legislative programme is an element of the work of the Government as a whole and this is the same for the accessibility of law programme – the total overall costs, including that of the Bill work, are met from across a number of portfolios as part of the wider legislative activity of the organisation.

52. Whilst it is not possible to quantify the exact costs associated with the policy professionals, subject lawyers, general translators and terminology professionals involved, most of whom have been working on other matters alongside their work on the individual consolidation projects, it is possible to set out the additional drafting and translation resource that has deployed since October 2021 when the first programme began (in Table 3 below):

Table 3 – Actual numbers of Legislative Counsel and Legislative Translators working on consolidation projects

	<b>Legislative Counsel</b>	<b>Legislative Translators</b>
Historic Environment (Wales) Bill	1 x Assistant Legislative Counsel 1 x Legislative Counsel 1 x Senior Legislative Counsel <i>See Notes A and D</i>	2 x Senior Legislative Translators    <i>See Note E</i>
Legislation (Repeals) (Wales) Bill <sup>28</sup>	3 x Assistant Legislative Counsel 1 x Senior Legislative Counsel <i>See Notes B and D</i>	2 x Senior Legislative Translators    <i>See Note F</i>
Planning (Wales) Bill <sup>29</sup>	2 x Assistant Legislative Counsel 1 x Legislative Counsel 1 x Senior Legislative Counsel <i>See Notes C and D</i>	2 x Senior Legislative Translators    <i>See Note F</i>
<b>Notes:</b>		
(a) The ALC allocated to this project worked on one aspect of the Bill alongside other projects; the SLC was promoted to this grade (from LC) during this project, and joined the project part of the way through. See also Note (c)		
(b) All four legislative drafters have worked on this project in occasional periods of quieter time on their other projects, rather than all working on this for a dedicated period of time. Work on this project continues and the drafting resource may change in the future		

<sup>28</sup> Indicative short-title being used to refer to a Bill that will repeal obsolete and spent provisions in relation to Wales

<sup>29</sup> Indicative short-title being used to refer to the consolidation of planning law in Wales

Legislative Counsel	Legislative Translators
<p>(c) Work on the planning project has been undertaken by some of the same legislative Counsel who worked on the Historic Environment project, and during overlapping time periods. Work on the planning project continues and the drafting resource may change in the future. The work of the LC on this project has taken place during gaps in other projects</p> <p>(d) Legislative equivalence has been undertaken by several members of the Office of the Legislative Counsel on all three Bills, it is not possible to quantify the numbers or grades (or percentage of time) taken to do this</p> <p>(e) One senior legislative translator to produce the initial translation and one to edit. Both also contributed to the legislative equivalence process. In addition to this, several other members of the Legislative Translation Unit were brought in at key points of the project</p> <p>(f) One senior legislative translator to produce the initial translation and one to edit. Both will also contribute to the legislative equivalence process. Work on this project continues and the translation resource may change in the future</p>	

### Projects to improve subordinate legislation

53. It is not possible to quantify the exact costs associated with the policy, subject lawyers and translation staff involved in the preparation of the subordinate legislation projects set out in the programme. Most of these staff have been or are working on other matters alongside this work, which is being undertaken as part of their ongoing duties and responsibilities.

### Non-legislative projects within the programme

54. The Explanatory Memorandum to the Bill set out<sup>30</sup> that:

*Activities within a programme which do not involve consolidation or codification are likely to include those undertaken to improve the publication and explanation of Welsh law. For example, the further development of the Cyfraith Cymru/Law Wales website, further involvement in the publication of the law and the investigation and utilisation of emerging technologies relevant to these tasks. Part of the focus would be on issues relating to the Welsh language where, as noted by the Law Commission, there are significant failings in the current systems. These activities would be undertaken in the main by a team of Welsh Government 3 administrative staff at management band 2 and 3 working full time. The estimated cost of this is £118,500 per year. The combined additional costs (to Welsh Government) of delivering an example programme are set out in Table 5 below.*

(see also line 3 of Table 2 above)

55. The Legislative Codes Office was formed at the end of 2019 following the enactment of the 2019 Act. The purpose of the team is twofold:

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<sup>30</sup> Paragraph 147



- a. to oversee and, in some cases, lead on key projects within the Government's accessibility programme. This includes providing Bill management and governance resource to support consolidation and codification of the law; and
- b. to ensure subordinate legislation made by or on behalf of the Welsh Ministers is correctly made, registered and published.

56. Existing resources were utilised:

- a. one Grade 7 and one Higher Executive Officer, who had been working on the Bill, Cyfraith Cymru/Law Wales and other projects relating to the accessibility of the law;
- b. two Executive Officers, who had been involved in making and registering subordinate legislation.

57. To this, a further HEO and two EO staff were recruited (the resources identified in the Explanatory Memorandum to the Bill). One of the original Executive Officer posts became vacant through this recruitment exercise and was subsequently removed from the structure.

58. From early 2020 to late 2022 both the pandemic and preparations regarding EU exit significantly increased the number of statutory instruments (in particular) that were being made by the Welsh Ministers. This had an impact on the work of the Legislative Codes Office, not only in processing these instruments but also because the team were involved, in some cases, in the preparation, publication and explanation of the subordinate legislation itself. An additional Senior Executive Officer and Higher Executive Officer were bought in to supplement the team.

59. From September 2021 to August 2022 the team was joined by a "Fast Stream" civil servant who worked on, amongst other matters, the technological developments project that was reported upon in the annual report laid before the Senedd in 2022.

60. The current posts within the team dedicated to legislation management and accessibility of the law are:

- one Grade 7
- one Senior Executive Officer
- three Higher Executive Officers
- three Executive Officers.

Note: some are not full-time posts and some post holders also work on matters other than legislation management and accessibility of the law, and at the time of this report the team is carrying one vacancy.

61. The projects within the current programme that fall to the Legislative Codes Office include:

- a. work on the consolidation Bills, which at the present time includes the Legislation (Repeals) (Wales) Bill, the Planning (Wales) Bill and identifying potential further consolidation and codification projects;
- b. the annotation of Welsh law published on the legislation.gov.uk. As noted in the Counsel General's evidence paper<sup>31</sup> to the Legislation, Justice and Constitution Committee earlier this year:

*There are three Executive Officer grade staff and one Higher Executive Officer staff trained to work on annotation, and they perform this work alongside other duties, primarily work associated with making, registering and publishing subordinate legislation.*

- c. the maintenance and development of the Cyfraith Cymru/Law Wales website;
- d. the wider organisation and publication of the law projects, which include classification of legislation.

62. Alongside this the Office also acts as the main liaison point for the Government with the Law Commission.

*Additional costs not part of the formal programme*

63. Although not part of the formal programme to improve the accessibility of Welsh law, the Counsel General updated<sup>32</sup> the Legislation, Justice and Constitution Committee about work being undertaken by Bangor University:

*...an indicative sum of £350,000 [has been allocated] in the Draft Budget for 2023- 24 to Canolfan Bedwyr of Bangor University for language technology work, which includes machine translation. Part of this funding will go towards continuing to*

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<sup>31</sup> Available at: [LJC6-02-23 - Paper 2 - Paper from the Counsel General and Minister for the Constitution 21 Decemb.pdf \(senedd.wales\)](#)

<sup>32</sup> See paragraph 4.3 of [LJC6-02-23 - Paper 2 - Paper from the Counsel General and Minister for the Constitution 21 Decemb.pdf \(senedd.wales\)](#)

*gather training data to develop domain-specific machine translation for the justice domain which we started in the 2022-23 financial year.*