

Cynulliad Cenedlaethol Cymru  
Y Pwyllgor Materion Cyfansoddiadol a  
Deddfwriaethol  
Bil deddfwriaeth (Cymru)

National Assembly for Wales  
Constitutional and Legislative Affairs  
Committee  
Legislation (Wales) Bill

CLA(5) LW08  
Ymateb gan Comisiynydd y Gymraeg

Evidence from the Welsh Language  
Commissioner

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Thank you for the opportunity give evidence on the general principles of the Legislation (Wales) Bill. I should note that I have previously provided evidence in this field. I responded to the *Interpreting Welsh legislation Consultation Document: Considering an interpretation Act for Wales* in 2017<sup>1</sup>. My officers also provided detailed comments to the Chief Jurilinguist on the draft translation of Schedule 1 of the Interpretation Act 1978. I also responded to the Law Commission's consultation document on the *Form and Accessibility of the Law*

*Applicable in Wales*<sup>2</sup> which addresses many of the matters covered in the legislation. Finally,

I responded to the Counsel General for Wales' consultation on the Draft Legislation (Wales) Bill which is attached.<sup>3</sup> The response to this consultation is in the spirit of the consultations above and I would encourage you to consider those responses, in particular the response to the Counsel General for Wales when considering the Bill. I will respond to two of the points included in the terms of reference, namely:

- The general principles of the Legislation (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives;
- Any potential barriers to the implementation of the provisions and whether the Bill takes account of them.

General principles of the Legislation (Wales) Bill and whether there is a need for legislation to deliver the Bill's stated policy objectives

1. Part 1 of the Bill places the duty on the Counsel General to keep the accessibility of Welsh law under review and that Welsh Ministers and the

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<http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20170817%20LI%20S%20Ymateb%20i'r%20ymgyngghoriad%20Ystyried%20Deddf%20ddehongli%20i%20Gymru.pdf>

<sup>2</sup>  
<http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20151002%20S%20DG%20Ymateb%20Comisiynydd%20y%20Gymraeg%20i%20Ffur%20a%20Hygyrchedd%20y%20Gyfraith.pdf>

<sup>3</sup>  
[http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20180612%20S%20LI%20Llythyr%20Bil%20Deddfwriaeth%20\(Cymru\)%20Drafft.pdf](http://www.comisiynyddygydraeg.cymru/English/Publications%20List/20180612%20S%20LI%20Llythyr%20Bil%20Deddfwriaeth%20(Cymru)%20Drafft.pdf)

Counsel General must prepare a programme setting out what they intend to do to improve the accessibility of Welsh law (2 (1)). The Bill requires for the programme to include activities relating to consolidating and codifying Welsh law; maintaining the form of Welsh law once codified and facilitating the use of the Welsh language. On the basis of the above I welcome the duty placed on Welsh Ministers to review Welsh legislation and that any programme includes provision to facilitate the use of the Welsh language. In my response to the Law Commission's consultation document on the *Form and Accessibility of the Law Applicable in Wales*, I expressed my view that consolidating and codifying legislation would benefit the Welsh language. Therefore, I also welcome the proposal that each programme to improve the accessibility of Welsh law would make provision to consolidate and codify Welsh legislation.

2. However, I also note sections 15-18 of Professor Thomas Glyn Watkin's<sup>4</sup> evidence which raises some doubt about the status of the two languages when legislation that was not legislated bilingually. I would encourage you to consider this matter further in order to ensure that Welsh and English versions of consolidated and codified legislation have the same status.

### Sections 5-8

3. I provided comments in my response to the Counsel General on sections 5-8. I generally welcome these sections and I have no comments further to my original comments.
4. However, I would like to draw particular attention to my comments on Section 7.

Section 7 states that 'words denoting a gender are not limited to that gender'. I understand the intention of this section. There is no provision in the legislation however, that makes it clear that Welsh nouns have different grammatical genders which are not equivalent to gender/*rhywedd* that the legislation provides for. This has both grammatical consequences and also in relation to meaning that could be relevant with regards to this section. Reference was made to my comments<sup>5</sup> in the summary of responses to the Counsel General's consultation but I would welcome that further

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<sup>4</sup><http://www.senedd.cynulliad.cymru/documents/s82900/CLA5-02-19%20%20Papur%20%20Saesneg%20yn%20Unig.pdf>

<sup>5</sup><https://beta.gov.wales/sites/default/files/consultations/2018-08/summary-of-responses-legislation-bill.pdf>

consideration is given to this either in the legislation or in guidelines or provisions resulting from the Bill.

5. I provided evidence to the Counsel General's Consultation on the following matters that are raised in the Bill's Explanatory Memorandum (EM):

- use of Welsh translation of enactments and bodies which do not have Welsh language titles or names (82-87 of the EM)
- interpretation of bilingual legislation and the relationship between Welsh and English versions of legislation h (76-77 of the EM)
- arrangements for publishing Welsh law and the process of making and organising statutory instruments (e.g. 79-81 of the EM)

The Government states its intention to give further consideration to these matters. I note this explanation in the explanatory memorandum and welcome the intention to give further consideration to these matters.

**Potential barriers to the implementation of the provisions and whether the Bill takes account of them**

6. In the assessment of the effect of the Bill on the Welsh language the explanatory memorandum states that the Bill will have 'a positive impact on those wishing to use the Welsh language as a language of law, for example legal professionals, the judiciary, academics and court users wishing to conduct court proceedings in the medium of Welsh.' I welcome this. I should state however that I foresee that the process of implementing the programme to improve the accessibility of Welsh legislation in Welsh and English will require linguists and lawyers who have high level skills in their fields of work in both Welsh and English. I would encourage the Welsh Government to discuss with Welsh universities, the Coleg Cymraeg Cenedlaethol and relevant organisations from the field of law, such as the Law Society and the judiciary to plan in order to ensure that there is a source of bilingual linguists, terminologists and lawyers with the required skills to implement this programme and the aims of the Bill.

I hope that these comments will be of help as you scrutinize the Legislation (Wales) Bill. You are welcome to contact me if you require further explanation of the points raised.

12/06/2018

Dear Jeremy Miles AM,

Thank you for the opportunity to respond to your consultation on the Draft Legislation (Wales) Bill. I responded to the *Interpreting Welsh legislation Consultation Document: Considering an interpretation Act for Wales* in 2017<sup>6</sup>. My response to this consultation echoes the spirit of that response. My officers also provided detailed comments to the Chief Jurilinguist on the draft translation of Schedule 1 of the Interpretation Act 1978. I also responded to the Law Commission's consultation document on the *Form and Accessibility of the Law Applicable in Wales*<sup>7</sup> which addresses many of the matters covered in the draft legislation. In light of these responses, I welcome the introduction of this Bill that facilitates the use of the Welsh language in Welsh legislation. It represents an important step towards recognising the equal status of Welsh and English in legislation, as laid out in section 156 of the

Government of Wales Act 2006. I will not respond to every consultation question but will focus mainly on the sections that are most relevant to the Welsh language.

## 1. Welsh Language Commissioner

- 1.1 The principal aim of the Commissioner in exercising her functions is to promote and facilitate the use of the Welsh language. In doing so the Commissioner will seek to increase the use of the Welsh language with regard to the provision of services, and via other opportunities. In addition, she will also address the official status of the Welsh language in Wales and, by imposing standards, place statutory duties on organisations to use the Welsh language. One of the Commissioner's strategic aims is to influence the consideration given to the Welsh language in legislation, as is the case here. Further information on the Commissioner's work can be found on the website: [comisiynyddygybraeg.cymru](http://comisiynyddygybraeg.cymru).

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<http://www.comisiynyddygybraeg.cymru/English/Publications%20List/20170817%20LI%20S%20Ymateb%20i'r%20ymgyngoriad%20Ystyried%20Deddf%20ddehongli%20i%20Gymru.pdf>

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<http://www.comisiynyddygybraeg.cymru/English/Publications%20List/20151002%20S%20DG%20Ymateb%20Comisiynydd%20y%20Gybraeg%20i%20Ffur%20a%20Hygyrchedd%20y%20Gyfraith.pdf>

## Part 1 – Accessibility of Welsh law – Questions 1 and 2

- 2.1 Chapter 1 of the consultation document outlines the Government's aim to legislate to impose a duty on the Counsel General to keep Welsh law under review. The Counsel General would be required to do this when the Welsh Ministers are considering whether to propose new legislation. Additionally, for each Assembly term, the Welsh Ministers and the Counsel General would be required to develop and implement a programme of activity designed to improve the accessibility of Welsh law. Furthermore, the Bill would require each programme to make provision to consolidate and codify Welsh law; maintain codified law and to facilitate the use of the Welsh language. Consolidating the law, improving publication arrangements and providing more commentary on the law in both languages are some of the elements which would facilitate use of the Welsh language according to the consultation document. Other possible elements include producing more legal glossaries and developing agreed terminology. This, in particular, would be a very positive development, not only in terms of facilitating the process of legislating in Welsh but also in terms of teaching and administering the law through the medium of Welsh. More detailed commentary on terminology can be found in my response to the Law's Commission's consultation on the *Form and Accessibility of the Law Applicable in Wales*.<sup>8</sup>
- 2.2 Based on the above, I welcome the proposal to impose a duty on the Welsh Ministers to keep Welsh law under review and that any review programme must make provision to facilitate use of the Welsh language. In my response to the Law Commission's consultation document on the *Form and Accessibility of the Law Applicable in Wales*, I expressed my view that consolidating and codifying legislation would benefit the Welsh language. The consultation document also notes that the law will be consolidated and then codified in both languages. Therefore, I also welcome the proposal that

each programme to improve the accessibility of Welsh law would make provision to consolidate and codify Welsh legislation.

## 2. Part 2 – Statutory interpretation of Welsh law

### 2.1 Question 6

3.1.1 Question 6 asks for comments on what has, or has not been, included in Schedule 1 to the Draft Bill. I understand from the consultation document that the Bill includes a limited number of words and expressions which are only cross-references to other Acts. You argue that this although not ideal can on occasion be the best way to define a word or expression .

3.1.2 I understand that section 5 of the draft legislation is generally equivalent to section 5 of the Interpretation Act 1978 and that Schedule 1 of the draft bill is equivalent to Schedule 1 to the 1978 Act but that some words and expressions have been omitted and included. I welcome the fact that there will now be Welsh language versions and definitions of words included in Schedule 1 to the 1978 Act, of course. On the whole, these words and expressions appear in legislation not enacted by the Assembly although they apply, of course, to Wales. Although I understand the desire to define only those terms which are essential or most useful, the criteria for including words and expressions in Schedule 1 to the draft Bill are unclear to me. For example, is there scope to consider including definitions in some acts that are specific to Wales? With respect to this, I refer to the term

'well-being', for example, which forms a crucial part of the Well-being of Future

Generations Act and has, as a result, developed a very specific meaning to Wales, but is also used elsewhere<sup>9</sup>. This was one of the terms I referred to in my response to the *Interpreting Welsh legislation Consultation Document: Considering an interpretation Act for Wales* as terms whose interpretation has proved to be crucial in order to ensure clarification, certainty and

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<sup>9</sup> See the Welsh Language Standards Regulations, e.g. [http://www.legislation.gov.uk/wsi/2015/996/pdfs/wsi\\_20150996\\_mi.pdf](http://www.legislation.gov.uk/wsi/2015/996/pdfs/wsi_20150996_mi.pdf)

consistency in implementing the Welsh Language Measure and associated regulations.

## 2.2 Question 7

3.2.1 You ask whether we agree with the approach in section 7 that 'words denoting a gender are not limited to that gender'. I am unclear whether the current wording explains clearly enough that Welsh nouns also have a grammatical gender that is not equivalent to gender. I notice that in the Welsh language impact assessment you intend to make it clear that this rule does not apply to the gender of nouns. It would be useful to receive further information and examples with regards to this decision. For example, the Welsh word 'nyrs' (nurse) is feminine whilst the Welsh word 'meddyg' (doctor) is masculine. These Welsh words do not denote gender but rather the words themselves have a grammatical gender. However, there would be need to clarify that the grammatical gender of these words is not equivalent to the gender of those undertaking those roles. In much the same way, the gender of the noun 'Comisiynydd' is masculine, but currently many females fulfil the role of commissioner in a number of public bodies in Wales. Further considerations follow as well, the gender of the Welsh noun could influence the use of the suffixed pronoun, for example, and cause mutations following the prefixed pronoun depending on the gender of the noun. Section 8 of the draft legislation does consider this last point, however.

## 2.3 Question 8

3.3.1 You ask whether we agree with the proposed approach taken in section 8 of the Draft Bill. You explain that its intention is to 'put beyond doubt the application of the definition or meaning of the word... so as to avoid ambiguity in practice, and to facilitate more naturalistic drafting in both English and Welsh'. You explain that this applies to any mutations of a word or variations of an expression arising due to rules about word order and sentence structure. I welcome this proposed approach as it acknowledges variations of Welsh words (such as mutations) and would therefore facilitate Welsh language drafting and interpretation.

## 3. Part 3: Other matters which could be addressed – Question 23

- 4.1 You ask in question 23 whether we have any views on some of the other matters that you have considered during the development of this Draft Bill which could be addressed by way of future legislation. I refer below to matters which apply to the Welsh language.
- 4.1 You state that you considered the desirability of restating section 156 of the Government of Wales Act 2006 which concerns the equality of the Welsh

language and English language texts of bilingual legislation. I would endorse steps to restate this provision in the legislation as it naturally complements the nature of the Bill and would highlight the importance of equality between texts. I understand the difficulties outlined in the consultation document and I encourage you to continue to investigate appropriate mechanisms to enable the restatement of section 156 of the Government of Wales Act 2006 within this draft legislation.

- 4.2 You state that you are considering arrangements for publishing the law and that legislation.gov.uk is being updated in this respect, but that there is no mechanism in place to update Welsh language texts. In order to ensure equality for Welsh language and English language legislation as provided by section 156 of the Government of Wales Act 2006, I believe that this matter must be addressed promptly. I am pleased to note that the Welsh Ministers intend to assess how existing arrangements could be modernised to reflect the needs of Wales and the digital age. It is important to ensure that the Welsh language is given due consideration in any future technological developments. In order to facilitate such future development, it is important that there exists a substantial corpus of bilingual texts (for example codes). For your information, I have published an advice note *Technology, Websites and Software: Welsh Language Considerations* which provides guidelines for designing bilingual software and information technology of high quality. I would recommend that you consider these guidelines as you develop new technologies that will facilitate access to Welsh law through the medium of Welsh and English.<sup>10</sup>
- 4.3 You devote a section to the relationship between the Welsh language and English language text of legislation. As you note, the Law Commission's report on the *Form and Accessibility of the Law Applicable in Wales* covers this matter in detail and I expressed my views in my response to the consultation document. I would be interested in learning more about your intentions with regard to considering whether action should be taken to further clarify the relationship between Welsh language and English language versions when interpreting legislation.
- 4.4. The consultation document discusses in detail the use of Welsh translations of enactments and bodies which do not have Welsh language titles or names as well as current practice and the recent change to the current practice. It also discusses the use of courtesy names for bodies and offices which are not established by statute and which do not have Welsh language names, and the names registered at Companies House or the Charity Commission for private companies and charities. I do not have strong feelings on these matters but it could be argued that the recent change to current practice (described in paragraph 229) is clearer in terms of the name of acts. The key

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<sup>10</sup> Available online at <http://www.comisiynyddygybraeg.cymru/English/ReportsGuides/Pages/Technology,-Websitesand-Software-Welsh-Language-Considerations-.aspx>



issue here is ensuring consistency, and providing further public guidance would be useful – especially if you were required to explain the citation system. I also welcome the reference to the potential of using technology to aid those who read online and I would encourage you to further consider this possibility.

- 4.5 I acknowledge, however, that it is more difficult to establish a consistent protocol in the context of naming bodies. As explained in paragraph 236, the current practice of using Welsh courtesy names for bodies such as the UK Parliament (known as “Senedd y DU” in Welsh) is well established, and it is unlikely that using the Welsh form would cause confusion. As a corollary, using technologically correct English names instead of the Welsh name in the middle of Welsh language text is more likely to disrupt the flow of the text. I should emphasise also that the practice established in legislation is bound to be adopted by solicitors and Welsh language authors in other contexts.

I trust these comments will be useful to you in developing the Draft Legislation (Wales) Bill.