



Ein cyf/Our ref: MA-L/CG/0379/19

Llyr Gruffydd AM
Chair, Finance Committee
National Assembly for Wales

3 May 2019

Dear Llyr

LEGISLATION (WALES) BILL

During the Stage 1 debate on 2 April, I said that I would write to the Committee responding in detail to your report on the financial implications of the Bill. This letter sets out the Government's response to the four recommendations made in the Committee's report.

Recommendation 1

The Committee recommended the Government undertakes further work on analysing and costing the efficiencies in the Bill.

As you acknowledged in the Stage 1 debate although the impact assessment by the Law Commission was used as a starting point, the main driver for the Bill is to improve social justice by ensuring the public can have easier access to Welsh law, and you accept that cost savings are not the main driver for the Bill.

We continue to consider the rule of law demands law which is accessible, and this underpins our approach to both this Bill and the wider programme. We also recognise there are likely to be economic benefits, both at an individual project level and from the programme as a whole. The Law Commission's evidence to the Constitutional and Legislative Affairs Committee during Stage 1 gave the example of planning law. They considered that it was:

"...the sort of measure that, if simplified, if it succeeds in creating legal certainty, can stimulate inward investment. It can accelerate planning decisions that mean that people are more likely to invest in Wales than elsewhere. So, we are very interested in the fact that good legislation can have positive economic benefits."

I believe this is a notion that will also apply in other subject areas we will be consolidating and codifying, and will be enhanced by the associated projects such as the improvements to the Cyfraith Cymru/Law Wales website. Having clear and accessible information on the law, as well as access to up-to-date copies of the legislation, available free of charge to users will result in time saved and improved confidence in decision making processes and interactions with the state more generally.

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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.

The RIA to the Bill sets out the Government's rationale for noting, but not further testing, the Law Commission's impact assessment. Although the Government could undertake a similar exercise to estimate lawyer time spent researching inaccessible law, and comparing this with estimated savings in time, we do not consider it would provide any more concrete or definite findings than currently available. It would also be problematic to test whether these savings in time had actually been achieved at the end of the overall programme (which will take a generation or more to deliver). This is partly because of the timescales involved and partly because it will be difficult to identify which savings are directly attributable to the Bill.

Recommendation 2

In the Stage 1 debate, I set out that the Government accepts recommendation 6 of the Constitutional and Legislative Affairs Committee, namely that a review be undertaken of the legislation part way through the next Assembly term.

The intention is that the review the Counsel General will undertake in 2023 will include 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 Act. We therefore accept Recommendation 2 of the Finance Committee's report.

The Government would also support the National Assembly reviewing the legislation at any time it considered it appropriate to do so.

Recommendation 3

The Committee recommended that the Government provides further information on the financial implications for policy staff not costed in the RIA and costs to other bodies. You have asked for this to be included in a revised RIA.

I confirm that any revised RIA prepared at the end of Stage 2 will include example costs to the Welsh Government of preparing a consolidation Bill, but I must stress these will be indicative or sample costs and should not be considered definitive or representative of all consolidation projects. This is because we anticipate there will be a wide range in the size, complexity and duration of individual drafting projects, and a range of differing inputs from policy staff depending on each project's needs.

In relation to Part 1 of the Bill, the Committee considered there are likely to be costs to the Assembly Commission to develop a Standing Order for consolidation Bills. Developing a Standing Order is not contingent on the Bill being passed, and work has already been undertaken (by the Assembly Commission and the Welsh Government) following Business Committee's decision to prepare a suitable procedure. As such we do not agree the RIA should reflect this cost as it does not arise from the Bill itself.

The Committee was also of the view that there will be costs for private sector organisations in terms of learning what the new law says (in respect of Part 1 of the Bill). My evidence to the Committee on this point (quoted at paragraphs 24 and 29) was specifically in relation to Part 2 of the Bill. However my position remains that such organisations, and private sector lawyers, will not need to do more than note there are new interpretation provisions in place for Welsh law made after the commencement date (currently 1 January 2020). We therefore continue to maintain this would be 'normal business' activity for lawyers in the private sector. We recognise the implications for public sector lawyers, particularly those who draft subordinate legislation, is slightly more significant. We are therefore providing them with advice and guidance, to reduce any burdens on them (as set out in the RIA to the Bill).

Recommendation 4

The Committee has asked for further information on how the Welsh Government intends to publicise the Bill, if enacted – I accept this recommendation and provide more information below.

The Committee has expressed concerns that there are only limited publicity activities planned, as it considers wider public engagement would be required to generate the benefits we anticipate. Normally we would agree that wide engagement with those affected by the legislation is a vital part of the implementation of any new legislative scheme. However the approach we are taking, set out below, reflects the somewhat unusual and perhaps unique nature of this Bill.

Part 1 of the Bill is aimed at the Government, rather than the public. The benefits we see developing from the programmes of accessibility will be the consolidated and codified bilingual laws of Wales, which will be clear and certain in their effect, as well as being easily available and navigable. It is those new laws that will need to be widely promoted, and we will ensure that there are clear arrangements in place for each new Act to ensure the public are aware of the codified legislation and its implications. Promoting Part 1 of the Bill more widely is therefore considered to be of limited effect, as it is the mechanism by which improvements will be achieved rather than the improvements we all hope for.

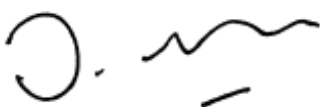
However, we will be placing details about the Act (if passed) on the Cyfraith Cymru/Law Wales website, and the intention is to engage with stakeholders on the development of each programme of accessibility. As I have mentioned above we also intend to report annually to the Assembly on progress in delivering each programme (see recommendation 10 of the Constitutional and Legislative Affairs Committee, and amendment 3 which I tabled on 4 April). These reports will further serve to highlight Part 1 of the Bill.

As set out in the Explanatory Memorandum, Part 2 of the Bill (like most interpretation Acts in Commonwealth jurisdictions) is intended to exist in the background, as part of the machinery of law that the average reader will not regularly need to have recourse to. But the RIA also acknowledges that Welsh Government drafters, legal professionals, the judiciary and Welsh law schools will benefit from being made aware of the changes brought about by Part 2 if enacted. For that reason, we have set out that we will be placing information on the Cyfraith Cymru/Law Wales websites about interpretation Acts generally, and specifically about this Act. We will draw that information to the attention of the Law Society, the Bar Council, and CILEX. Similar information will be provided to the Welsh Training Committee of the Judicial College and the Heads of the Law Schools in Wales.

Part 3 of the Bill is particularly relevant to drafters of legislation, and the guidance we refer to in the RIA, and which the Committee noted in its report, will include information about this element of the Bill.

I would like to take this opportunity to reiterate my remarks in the Stage 1 debate, and thank the Committee for their scrutiny of the Bill and their helpful report, and the Committee's support staff.

Yours sincerely,



Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister