

## REGULATORY IMPACT ASSESSMENT (RIA)

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1. A Draft RIA has been completed for the Draft Legislation (Wales) Bill (the Draft Bill). Part 1 of the RIA considers accessibility of Welsh law, and Part 2 deals with statutory interpretation.
2. There are no provisions in the Draft Bill which charge expenditure on the Welsh consolidated Fund.

### Part 1: Accessibility of Welsh law

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Note to reader: background on the current and proposed arrangements for making Welsh law more accessible is set out in the Consultation Paper – see particularly Chapter 2 of Part 1 of that document.

3. Three options have been assessed when considering how to address the need to improve accessibility of the law applicable in Wales:
  - Option 1: Formal accessibility programme underpinned by statutory duty
  - Option 2: Formal accessibility programme without statutory duty
  - Option 3: Aspiration to improve accessibility but no formal programme
4. This part of the RIA does not, strictly speaking, explore a “do nothing” option as the Welsh Government is clear that the accessibility of Welsh law is an issue that must be tackled.
5. A more detailed description of each option is outlined below along with an analysis of the associated costs and benefits of each.

#### **Option 1 – Formal accessibility programme underpinned by statutory duty**

6. Under Option 1 the Welsh Government would fully implement its commitment to improving accessibility of Welsh law in accordance with those recommendations of the Law Commission (made in their report on the *Form and Accessibility of the Law Applicable in Wales*<sup>1</sup>) accepted by the Government. In doing so it would also assign dedicated resource to the task.

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<sup>1</sup> Available at:  
[http://www.lawcom.gov.uk/app/uploads/2016/06/lc366\\_form\\_accessibility\\_wales\\_English.pdf](http://www.lawcom.gov.uk/app/uploads/2016/06/lc366_form_accessibility_wales_English.pdf)

7. In July 2017 the Welsh Government accepted (or accepted in principle) all but two of the Law Commission's recommendations. This means, amongst other things, the Government has agreed to:
  - a. pursue an ongoing and regular programme of consolidation and codification of devolved legislation (and to be bound by an obligation to do so);
  - b. work with the National Assembly to develop appropriate standing orders for consolidation Bills;
  - c. preserve Codes of Welsh law once they have been made (ensuring the statute book does not become further fragmented in the future);
  - d. take action to improve the publication of legislation in electronic form, working with The National Archives; and
  - e. further develop the Cyfraith Cymru/Law Wales website<sup>2</sup>.
8. The Law Commission concluded that effective consolidation and codification of the law applicable in Wales cannot be carried out on a piecemeal basis and requires a sustained long term programme. The Commission also took the view that the status quo is no longer tenable and recommended a radical approach under which successive Welsh Governments should be bound by a statutory obligation to pursue an ongoing and regular programme of consolidation and codification of devolved legislation.
9. Option 1 involves, therefore, the statutory obligation proposed by the Law Commission be implemented by placing:
  - a. the Counsel General, as the Law Officer of Wales, under a duty to keep the accessibility of Welsh law under review (section 1 of the Draft Bill); and
  - b. the Welsh Ministers and the Counsel General under a duty to develop and implement a programme of activity for each Assembly, setting out what they intend to do to improve accessibility of Welsh law, which must include consolidating and codifying devolved law (section 2 of the Draft Bill).
10. The purpose of the duty in section 1 of the Draft Bill is that the Counsel General be obliged to consider not only each new law proposed, but the state of Welsh

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<sup>2</sup> Available at: <http://law.gov.wales/?lang=en>

law as a whole – something that is standard practice in many other jurisdictions across the world. This is intended to encourage a holistic, systematic approach to law making which would improve the accessibility of the law over the long term.

11. The duty in section 2 of the Draft Bill has a similar purpose, but provides that a programme be pursued to systematically consolidate and codify Welsh law over time, maintain codes of law once enacted and facilitate use of the Welsh language. In addition each programme could also contain other initiatives to improve accessibility, such as further developing explanatory material on the *Cyfraith Cymru/Law Wales* website or improving the way Welsh legislation is promulgated.
12. The overall aim is to ensure that a constant and enduring focus on the accessibility of the law is embedded in to the function of law making in Wales.
13. The Welsh Government and the Law Commission agree that due to the scale and complexity of the task, it will take many years to complete. An ongoing, systematic series of programmes is likely to take over 20 years to achieve the goal. The process will require significant resources and commitment over many years.
14. The timeframe for achieving an accessible Welsh statute book within which most if not all devolved legislation is codified will depend on the extent of the resource allocated to the task. The more resource available the more quickly it would be done. It is unrealistic, however, to expect the extent of the resource available to be such as to enable the task to be completed within less than 5 years (something which is unlikely to be achievable in any event due to the need to co-ordinate consolidating the law with reform of the law by the Legislative Programme). Conversely, if insufficient dedicated resource is allocated the rate of progress is likely to be such that the task is unlikely to ever be achieved because of the rate of change to the statute book that will take place in any event under the normal course of National Assembly business.
15. While the Welsh Government is committed to the task of making Welsh law more accessible, it is clear also, however, that the work required to deliver its legislative reform programme and to make the changes required to Welsh law in consequence of the United Kingdom leaving the European Union must take priority. Although the intention is to assign dedicated resource to the task of consolidating and codifying the law (in particular) there is a risk that this could – in exceptional circumstances – have to be diverted to these priorities. On the other hand there are many synergies which mean that there will be opportunities to improve accessibility while developing the legislative programme and dealing with the legislative impact of withdrawal.

### **Costs of option 1**

16. There are costs related to preparing and delivering a programme of activities to improve accessibility. There is also a cost associated with developing the Bill containing the statutory obligation – albeit this is a ‘sunk cost’ at this point in time, as a Draft Bill has been prepared.
17. For illustrative purposes only, an example programme of improving accessibility has been costed. Over a complete Assembly term this example programme would seek to deliver four to five consolidation bill projects (around one per year) as well as some consolidation of statutory instruments, projects to improve the publication and explanation of Welsh law, and other projects aimed at improving law making processes. Estimated costs of such a programme would be around £565k per annum<sup>3</sup>. The cost of each programme would be dependant upon the resource allocated to it and the scale of the activity included in it.
18. Activities within the programme, in particular consolidation projects, would primarily involve drafting and translating carried out by Welsh Government Legislative Counsel and legislative translators. Policy and administrative resource would also be required to support consolidation projects and to deliver those elements of each programme which do not involve consolidation (mainly improving the way legislation is promulgated). This would be funded by a mixture of opportunity costs absorbed in the normal course of business and additional (programme) funding from Departments in the Welsh Government on a case by case basis as currently happens with other major projects requiring specialist legal and translation resources.
19. In addition, the programme itself would need to be prepared, agreed, translated and published. These elements would be carried out by using existing resources within the Welsh Government.
20. The cost of putting a statutory obligation on the Government is minimal, as it forms part of a wider Bill that the Government intended to develop in any event on the interpretation of Welsh legislation. In any case this is now a ‘sunk cost’ as the Bill has been prepared for the purposes of consultation.

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<sup>3</sup> Note this figure is based on estimated reasonable level of activities and costs, rather than posts; it is based on costs as of March 2018 and therefore does not take into account any pay awards or additional costs that may be applicable at the relevant time.

### **Benefits of option 1**

21. Assembly Members and stakeholders, including very senior judiciary, have called upon the Welsh Government to consolidate the law within devolved areas and ensure that the law applicable in Wales is clear, certain and navigable, accessible to all and free of charge. 45 stakeholders responded to the Law Commission's consultation on the issue, and each one agreed there was a need for the Government to take action.
22. The benefits of pursuing the approach proposed, as identified by the Law Commission<sup>4</sup>, include:
  - a. making it far more likely that citizens who need to look at the law will be able to find the relevant law and understand it;
  - b. time saving from reduced research by Welsh legal practitioners and improved capacity for legal access by non-legal civic society;
  - c. greater confidence in the law for business, Government and citizens, leading to more confident and more efficient decision-making in law reform, investment and other areas;
  - d. reduced likelihood of errors;
  - e. court savings through more efficient legal processes; and
  - f. equality of the Welsh language and promotion of its use.
23. It is unclear, however, to what extent these benefits could amount to actual financial savings. The Law Commission estimated that the benefits arising from implementation of their recommendations could amount to approximately £24 million per annum. The Welsh Government has not sought to substantiate this analysis, and is not applying this figure as part of its own benefit analysis in this Draft RIA. But this figure is, at least, a monetised quantification of the time that could be saved and is an expression, therefore, of the extent to which resources could be deployed to do other things. Equally important, though impossible to quantify in monetary terms, is the undoubted social benefit that would accrue.

### **Conclusion**

24. Most if not all stakeholders agree that consolidating and codifying the law is a good idea. It is recognised also that in the medium to long term there would be

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<sup>4</sup> Law Commission (2016) *Impact Assessment to Form and Accessibility of the Law Applicable in Wales*

significant social and economic benefits. Working with a rationalised statute book would save time, increase efficiency and enable officials to do more, leading potentially also to real financial savings.

25. Although the problems outlined are not of its own making the Welsh Government recognises that it has a responsibility for the law within the emerging Welsh legal jurisdiction. The Welsh Government has already undertaken activities to address the problem and intends to do over the long term.
26. This option fully reflects the agreed recommendations made by the Law Commission and is the Welsh Government's preferred option.

## **Option 2 – Formal accessibility programme without statutory duty**

27. Option 2 involves the Welsh Government implementing its commitment to improving accessibility of Welsh law, as in Option 1, and also involves assigning dedicated resource to the task. There would, however, be one exception: the Welsh Government would not pursue legislation to impose a statutory duty on itself (and future governments) to develop the accessibility programmes outlined above.
28. The Law Commission recommended the relatively unusual step of a government imposing a duty on itself as it was conscious that numerous previous attempts in the UK at wholesale consolidation of the law had failed. It was of the view that in order to maintain the profile of the issue and ensure that the work required remains a government priority over the long term, a statutory obligation was essential. In view of the time it will take to reach the goal, the main purpose of the duty is to ensure successive governments maintain a focus on making the law more accessible. This follows the approach that has been taken (successfully) in New Zealand since 2012.

### ***Costs of option 2***

29. The vast majority of the costs associated with implementing the statutory obligation would exist whether or not it is pursued because of the existence of the wider Draft Bill. Cost savings would, therefore, be negligible (and would be opportunity cost savings not monetary savings).

### ***Benefits of option 2***

30. This section considers what benefits would arise over and above those identified in relation to Option 1. There is a certain paradox – some may say – in using legislation to address a problem caused partly by a proliferation of legislation. Governments, generally, should not legislate unless doing so is

necessary. On that basis it could be said that a statutory obligation, and the administrative implications of responding to the scrutiny of that obligation, involves use of resource that is not essential. However, the Welsh Government's view is that the benefits of raising the profile of the issue in order to ensure long term focus on the problem (partly by binding future governments) outweighs such concerns and the negligible costs.

### ***Conclusion***

31. The Welsh Government agrees with the Law Commission's view that a statutory duty is required to bind future governments and to ensure a long term focus on the issue is sustained. Option 2 is not, therefore, the Government's preferred option.

### **Option 3: Aspiration to improve accessibility but no formal programme**

32. Aspiring to implement the Welsh Government's commitment to improving accessibility of Welsh law, but without imposing a statutory obligation on the Government to do so, without dedicating additional resource to the task and without developing a formalised programme of activity.
33. Option 3 is essentially a description of the Welsh Government's work to date to tackle the inaccessibility of the statute book. The Government has undertaken numerous activities, and taken numerous decisions, designed to improve accessibility but has generally done so on a piecemeal basis where resources allow. It could be said that option 3 is not a feasible option as it would not involve full implementation of the Law Commission's recommendations but rather a desire to merely pursue the spirit of those recommendations.
34. In practice pursuing this option would also almost certainly mean that the Welsh Government would fail in its goal of codifying devolved law. This is because insufficient resource would be allocated to the enormous task of consolidation. Insufficient progress would be made to deal with the issue within a realistic timescale, while in the meantime the ordinary course of Government and National Assembly business would mean that the statute book would continue to be amended and to proliferate.

### ***Costs of option 3***

35. Under this option no dedicated resource is allocated to the task of improving accessibility. Although opportunity costs remain whenever existing resources are used this is, in practical terms, the no cost option. A saving would, therefore, be made over the short term but in the long run the problems of inaccessibility

would continue to be felt and the inefficiency would persist. This is unlikely, therefore, to represent a true saving.

### ***Benefits of option 3***

36. This benefits of this option are the financial savings (or theoretical financial savings) outlined above. These would, however, be outweighed by the near certainty that utilising existing resource will not adequately address the problem.

### ***Conclusion***

37. Under option 3 the law would almost certainly continue to become more complex, access to justice would continue to be hindered and the rule of law would be undermined. This would cause significant reputational damage to the Welsh Government and fail to realise the identified social and economic benefits of improving accessibility. As such this is not the preferred option.



## **Part 2: Statutory interpretation of Welsh law**

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Note to reader: background on the purpose of interpretation Acts and the current and proposed arrangements for interpreting Welsh laws is set out in the Consultation Paper – see particularly Part 2 of that document.

38. Three options have been assessed when considering whether to address the absence of a bespoke, modern and bilingual Act on interpreting Welsh laws:

Option 1: Maintain the application of the Interpretation Act 1978 Act (the 1978 Act) for the interpretation of Welsh laws (i.e. “do nothing”)

Option 2: Maintain the application of the 1978 Act for the interpretation of Welsh laws but reproduce Schedule 1 to that Act (which contains definitions of commonly used words and expressions) in the Welsh language

Option 3: Develop new (separate) interpretation provisions for Wales to govern the interpretation of Welsh laws.

39. A more detailed description of each option is outlined below along with an analysis of the associated costs and benefits.

### **Option 1 - Do nothing**

40. The ‘do nothing’ option means taking no further action, such that the existing 1978 Act will continue to apply to all legislation applicable in Wales. This would mean that unlike each of the other legislatures in the United Kingdom, the National Assembly would not have an Act prescribing how the laws it passes (and subordinate legislation made under those laws) should be interpreted.

41. Doing nothing is also inconsistent with the Welsh Government’s commitment to improving the accessibility of the law applying in Wales. The Welsh Government has made clear it wants the laws of Wales to be clear, certain, and navigable. Acts on the interpretation of legislation have an important role to play in achieving accessibility of the law – whilst they are technical in nature, they shorten legislation and promote consistency in the language and form of legislation. Maintaining the current legislative framework for statutory interpretation would mean that an opportunity to make bespoke, modern provision in Wales that remedies some of the problems associated with the 1978 Act would be lost.

42. There would also continue to be an absence of interpretation provisions in the Welsh language applying to the wide range of bilingual legislation in force. This

means those wanting to use the Welsh language text of the law would continue to have to rely on an English-language only interpretation Act to determine its meaning and effect. The inequality in treatment of the English and Welsh languages would, therefore, remain. This is clearly contrary to the spirit of the Government of Wales Act 2006.

43. It is anticipated that the Welsh language will have been used in 600-700 court cases by the end of 2017<sup>5</sup>, an increase from the over 570 cases in which Welsh was used during the 2015-16<sup>6</sup> period. This is a significant number. It is not clear how many of these cases have turned on a point of statutory interpretation, however, it is evident that relying on an interpretation Act which is in English only (and does not reflect Wales' distinct approach to law-making) is not appropriate.
44. This is important also because the use of the Welsh language in the law is likely to increase for a combination of reasons:
  - a. more and more bilingual laws are being passed;
  - b. more students are studying law through the medium of Welsh;
  - c. use of Welsh in the courts – already permitted in criminal courts – is likely to be expanded to the Family and Civil courts once Court Rules have been revised; and
  - d. action is being taken more generally by the Welsh Government to promote the use of the language<sup>7</sup>.

In addition there are a growing number of members of the judiciary who are able to conduct cases in Welsh – this includes a third of all Circuit Judges, a third of District Judges and just under half of District Judges (Magistrates' Courts)<sup>8</sup>.

### ***Costs of option 1***

45. Since option 1 involves maintaining the current legislative framework for the statutory interpretation of the law applicable in Wales, there are no additional costs associated with this option.

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<sup>5</sup> Judiciary of England and Wales (2017) *The Lord Chief Justice's Report 2017*

<sup>6</sup> Judiciary of England and Wales (2016) *The Lord Chief Justice's Report 2016*

<sup>7</sup> For example: Welsh Government (2017) *Cymraeg 2050: Welsh language strategy*

<sup>8</sup> Judiciary of England and Wales (2017) *The Lord Chief Justice's Report 2017*

### **Benefits of option 1**

46. If new legislation was brought forward for the interpretation of Welsh law, the 1978 Act would still continue to apply to all Acts of the UK Parliament and subordinate legislation made under them (other than by the Welsh Ministers) which apply in Wales. For ease this is referred to in this RIA as the “two-Act issue”, and a fuller explanation of the matter and the difficulties it could give rise to is given in option 3 below.
47. Under option 1 the only benefit is the 1978 Act will continue to be the Act by which laws in Wales are interpreted, and any confusion arising from the two-Act issue (and making new, bespoke provision for Welsh laws) would not, therefore, arise. Similarly like with any other proposal to amend the law, doing nothing would mean not incurring the costs associated with making the law and ensuring that users are aware of the change to the law.

### **Conclusion**

48. Under this option the identified shortcomings and inadequacies of the current legislative framework, particularly in a Welsh context would remain. No action would be taken in order to bring about the necessary improvements to the accessibility of the bilingual law applying in Wales. In light of this, the option is dismissed.

### **Option 2 – Reproduce Schedule 1 to the Interpretation Act 1978 in the Welsh language**

49. Option 2 would not address the fact that Wales unlike other legislatures in the UK (and most other legislatures in the common law world) does not have its own provisions on interpreting its laws.
50. Furthermore, many stakeholders have also suggested that the present accessibility issues raised by the application of the 1978 Act to Welsh law could only be fully addressed if the legislation was modernised. This involves making new, bespoke provision for Wales expressed in a modern and accessible drafting style and reflecting current practices in law (including advances in technology). Merely inserting a translated Schedule into the 1978 Act would not address these issues.
51. Finally, Schedule 1 of the 1978 Act contains a list of defined words and expressions that are relatively common in legislation, such as “*building regulations*”; “*financial year*”, “*PAYE income*”, “*land*”, “*person*” and “*enactment*”. However, there is no Welsh language equivalent of these definitions. Consequently, in order to fully understand certain Welsh language words and

phrases in legislation, it is necessary to consult the English language text of the same legislation, and then the 1978 Act.

52. Option 2 is therefore to produce a Welsh language version of Schedule 1 to the 1978 Act. This would apply to bilingual legislation and would define Welsh language words and expressions equivalent to those English language words and expressions listed in Schedule 1.
53. Maintaining the application of the 1978 Act to Welsh law, whilst also reproducing the existing Schedule 1 to the 1978 Act in the Welsh language, would remedy the problem caused by the definitions in the 1978 Act applying to the English language only. In addition, option 2 would not give rise to the two-Act issue (explained at option 3).
54. However, there are also rules set out elsewhere in the 1978 Act which relate to the meaning of words in bilingual Welsh law (for example section 7 (references to service by post)). Neither these rules, nor the rules in the 1978 Act that relate to the effect of legislation, would exist in law in the Welsh language if we adopted the approach in option 2. Therefore, option 2 would not, fully address the accessibility issues raised by having an English language only interpretation Act.

### ***Costs of Option 2***

55. The costs associated with option 2 relate to preparing a Welsh language version of Schedule 1. Drafting and translating this would be carried out by Welsh Government drafters and jurilinguists and as such would involve only opportunity costs absorbed in the normal course of business.
56. A suitable legislative vehicle would need to be found to amend the 1978 Act, requiring some legal and policy functions in Welsh Government to be exercised (for example, preparing relevant supporting documentation). Again these would be opportunity costs absorbed in the normal course of business.
57. If the 1978 Act was amended, there would be costs associated with making interested parties aware of the translated legislation, and where and when it would apply. This would probably take the form of information being placed on the Cyfraith Cymru/Law Wales website, the Welsh Government website, and an email to key stakeholders.

### ***Benefits of option 2***

58. Option 2 would address the absence of a Welsh language equivalent of Schedule 1 to the 1978 Act.

59. Stakeholders have indicated support for a Welsh language version of Schedule 1 to the 1978 Act. Amending the 1978 Act in this way would resolve a key shortcoming in relation to interpreting any Welsh language legislation to which that Act would continue to apply. However it is recognised that this argument has its limitations as some of the definitions in the 1978 Act cross-refer to other Acts which are only in the English language, and it would not provide for the rules in the body of the 1978 Act (which are also important) to be available bilingually.
60. It would also place the Welsh language in a key piece of UK Parliament legislation which governs how the law in England and Wales is to be read and understood.
61. Amending the 1978 Act in this way would – to some degree – contribute to improving accessibility of the law applying in Wales.

### ***Conclusion***

62. Under this option some of the identified shortcomings and inadequacies of the current legislative framework, particularly in a Welsh context would remain. Only partial action would be taken in order to bring about the necessary improvements to the accessibility of the bilingual law applying in Wales. In light of this, the option is dismissed.

### **Option 3 – Develop bespoke interpretation provisions for Wales**

63. Option 3 is to develop new bilingual and modern interpretation provisions to apply to Welsh law. This is the option delivered by the Draft Bill. In this context “Welsh law” means:
  - a. all Assembly Acts;
  - b. all subordinate legislation made by the Welsh Ministers under an Assembly Act or Measure, or (where the Welsh Ministers are not acting jointly with others) under a UK Parliament Act; and
  - c. all subordinate legislation made by any other person under an Assembly Act or Measure

where that legislation receives Royal Assent (or is made) on or after the day on which Part 2 of the Draft Bill would come into force.

64. The Draft Bill if enacted would not only address the absence in the Welsh language of the definitions of commonly used words and expressions that are set out in Schedule 1 to the 1978 Act, but would also comprise wider rules on the interpretation and operation of the law similar to those in the 1978 Act. These rules would be tailored to Welsh legislation and contribute to improving the accessibility of Welsh laws.
65. Stakeholders are keen for the Welsh Government to do something about the absence of Welsh language provision in the 1978 and for many this extends to developing bespoke, modern rules on interpretation for Wales.
66. The Constitutional and Legislative Affairs Committee saw “*merit in developing a separate Welsh interpretation Act as a means of improving the understanding of Welsh law*”<sup>9</sup>, while the Law Commission<sup>10</sup> noted the absence of provision about the interpretation of legislation in the Welsh language. Option 3 would address some recommendations made by and issues raised by, the Committee and the Commission.
67. As noted above, the Counsel General’s programme of consolidation, codification and better publication of legislation is seeking to improve the accessibility of the law applying in Wales. As a small part of that wider programme, this option would make improvements to the interpretation of Welsh law and is necessary to resolve the identified shortcomings of the 1978 Act, in particular as it applies to bilingual Welsh law.
68. Some stakeholders are of the view that a separate Act making interpretation provisions for the interpretation of Welsh law – should remain broadly similar to the 1978 Act and reproduce the effect of many of the provisions in that Act. The Welsh Government recognised this point in the policy consultation<sup>11</sup>: it is important not least because the 1978 Act addresses many of the matters that need to be addressed in any interpretation Act. Also, the existence of the two-Act issue (see below) means any departure from, or addition, to the effect of the 1978 Act in relation to Wales in the new Act should only arise where it is necessary.
69. That said, new, bespoke interpretation provision for Wales would allow the Welsh Government to reform the interpretation of legislation applying in Wales, tailoring the legislation to the specific needs of an emerging bilingual jurisdiction.

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<sup>9</sup> Constitutional and Legislative Affairs Committee (of the Fourth Assembly) (2015) *Making Laws in Wales*

<sup>10</sup> Law Commission (2016) *Form and Accessibility of the Law Applicable in Wales*

<sup>11</sup> Welsh Government (2017) *Interpreting Welsh legislation: Considering an interpretation Act for Wales*

### ***The “two-Act issue”***

70. The earlier Welsh Government policy consultation<sup>12</sup> noted that a separate Act making interpretation provisions for the interpretation of Welsh law would not apply to legislation that applies in Wales but is made by the UK Government. Rather, the new interpretation provisions would apply to Welsh law (see above). The 1978 Act would continue to apply to all Acts of the UK Parliament and subordinate legislation made under them (other than by the Welsh Ministers) which apply in Wales. This creates the possibility that a person might mistakenly apply the wrong interpretation Act when reading legislation that applies in Wales. For ease, this is referred to as the “two-Act issue”.
71. However, the two-Act issue does not necessarily negate the potential benefits of having a separate Act for Wales, particularly in a context where there is a recognised need for a bilingual interpretation Act to apply to the bilingual law that is made in Wales. It could be said that the two-Act issue is an inevitable consequence, in each of the current UK devolution models, of having a ‘devolved’ interpretation Act operating alongside the 1978 Act. A similar issue arises in Scotland and Northern Ireland, both of which have their own interpretation Acts, and there is no evidence that this has caused any particular problems in either of those jurisdictions. (The fact that there is currently no separate Welsh legal jurisdiction is of limited relevance to this issue as the interpretation provisions apply to the body of law created by the legislature and executive – something which exists in Wales regardless of the shared jurisdiction).

### ***Costs of option 3***

#### *The two-Act issue*

72. It will be important to limit the effects of the existence of two Acts relating to the interpretation of the law applicable to Wales. In particular, where such ambiguity arises, consideration needs to be given to the impact on two key categories of persons:
- a. drafters of Assembly Bills and subordinate legislation made under Acts and Measures of the Assembly (to ensure they take account of the correct interpretative rules and terms); and
  - b. individuals interpreting the law (or those representing them).

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<sup>12</sup> Welsh Government (2017) *Interpreting Welsh legislation: Considering an interpretation Act for Wales*

73. It is intended that drafters of legislation would be provided with clear guidance setting out the way the two Acts apply, and other relevant information for the purposes of preparing subordinate legislation in order to mitigate any negative impact of the existence of the two Acts.
74. Explanatory Notes to the final Act would also assist the citizen and those representing them to understand which interpretation Act actually applies to the legislation they are reading and help promote the accessibility of the law. Information would also be made available on the Cyfraith Cymru/Law Wales website, the Welsh Government website, and to practitioners, law schools, Citizens Advice Bureau, libraries, and any other interested parties.
75. Further, it is considered that while some confusion may arise initially this would be resolved once users of the new legislation become more familiar with its operation, in particular its relationship with the 1978 Act. The existence of the new Act specifically for Wales would also raise the profile and understanding of interpretation Acts and their purpose generally, which would further mitigate risk of confusion.

Note for purposes of consultation – views on possible actions to mitigate the effect of the two-Act issue are sought as part of the consultation (see paragraphs 62 to 64 of the Consultation document).

#### *Transitional costs*

76. It is difficult to quantify the costs of option 3 in monetary terms and we would welcome stakeholders' views on this. We have identified the following actions for implementation, resulting in some costs:
  - a. *Familiarisation with the new legislation* – There would be an initial cost arising in relation to the time required for users of legislation (particularly legal professionals and the judiciary) to familiarise themselves with the new Act and to understand its relationship with the existing 1978 Act. However such costs arise as part of the normal course of business since legal professionals and the judiciary are likely to already have periodic/regular training on the interpretation of the law applicable in Wales. The need for familiarisation of the new arrangements would arise in the first year following the Bill receiving Royal Assent, if passed by the Assembly.
  - b. *Preparation and delivery of guidance* – To support effective implementation of the Bill, the Welsh Government intends to develop and publish non-statutory guidance for drafters of subordinate legislation. This cost would be incurred by the Welsh Government.



The guidance would be prepared by the Welsh Government (predominantly by the Office of the Legislative Counsel, the team of lawyers who prepare Government Bills, with input from lawyers who draft subordinate legislation). The activity and resultant cost would be absorbed within the normal course of business.

The guidance would be published online only and therefore there would be no costs arising from print publication.

- c. *Training of those administering the law* – It is recognised that some training and development activity for Welsh Government drafters, legal professionals, the judiciary and Welsh law schools would need to be undertaken to raise awareness of the changes brought about by the Bill if enacted.

It is difficult to quantify the cost of training as it would not be delivered by the Welsh Government but potentially by other organisations such as the Law Society or the Welsh Committee of the Judicial College (for the judiciary and tribunal members), and the form of training may differ from one organisation to the next. For example, the Welsh Committee of the Judicial College as well as providing formal training also produces a bilingual e-letter for the Welsh judiciary. Further it is recognised that legal professionals and the judiciary are likely to already have periodic/regular training on the interpretation of the law applicable in Wales. It is therefore accepted that following Royal Assent such training would incorporate the new legislative framework and accordingly this would be within the normal course of business. For this reason it is difficult to quantify such costs, otherwise than to expect any cost to be cost-neutral.

We would therefore welcome indications from organisations who would need to ensure their members are familiar with the new arrangements, as to what sort of information Welsh Government could provide to facilitate the process.

Information sessions would be provided internally within the Welsh Government. This would fall within the opportunity costs.

### *Ongoing costs*

- 77. It is anticipated that there would be no ongoing costs of option 3.
- 78. Making the law more accessible through the implementation of option 3 in ongoing years would at least be cost neutral, and is anticipated to result in a cost saving once familiarity with the new legislation increases. Such savings are not quantifiable in monetary terms.

### ***Benefits of option 3***

79. This option would result in a modern, bilingual interpretation provisions bespoke to Wales. Like, other common law legislatures, including Scotland and Ireland, it would give the National Assembly ownership of the law governing how its legislation is to be interpreted. It would also be an improvement on the 1978 Act – not only because it would be modern and bilingual but also because the Bill, unlike the 1978 Act, would only contain provision which is relevant to the law applying in Wales (and not the law applying elsewhere in the UK).
80. The new Act for Wales whilst being technical in nature would help to keep legislation shorter and more consistent; it would reduce complexity in drafting and interpreting legislation setting out certain principles, rules and definitions once and bilingually so that they do not have to be repeated in each new law that is made. The new Act for Wales, as is the case with other interpretation Acts, would define commonly used expressions in legislation which can assist in resolving uncertainties about the meaning of particular legislative provisions. The new legislation would contain rules of statutory construction, such as provisions about when the laws come into force, the calculation of time periods, and the effects of repeal, all of which provide legal certainty. Whilst these changes are minor and technical and are only a small component of the Welsh Government's wider programme of accessibility of Welsh law they are nevertheless necessary and supported by the majority of stakeholders.
81. Those using the growing body of Welsh law would derive benefit from statutory interpretation legislation created specifically for Wales which is bilingual and tailored to this particular jurisdiction. The constitutional benefit of a separate Act making interpretation provisions for the interpretation of Welsh law would be of significance and is more consistent with the principle set out in section 156 of the Government of Wales Act 2006 (equality of languages) than the existing legislative framework.
82. The creation of a separate Act making interpretation provisions for the interpretation of Welsh law would assist in raising awareness of the relevance of interpretation Acts, among the most interested parties at least. It is clear that such Acts should ultimately be a tool that exists in the background, a part of the machinery of law that the average reader would not regularly need to have recourse to. However, the existence of such an Act, and what it does, is important. Awareness of its existence would improve accessibility of the law applying in Wales in line with the Counsel General's wider programme.
83. It is recognised that two interpretation Acts would necessarily be in operation, under this option. However, the benefits of creating a separate Act making

interpretation provisions specifically for the interpretation of the law applying in Wales would outweigh any potential drawbacks arising from the two-Act issue.

### **Conclusion (and preferred option)**

84. Wales has developed a body of bilingual legislation which will expand rapidly in future. It is important that the statutory interpretation tool used to interpret the bilingual legislation applying in Wales is fit for purpose, bilingual and reflects the practices of the National Assembly as a modern legislature. Stakeholders have made it clear that the 1978 Act is not fit for purpose.
85. It is recognised that the best means of delivering any reform of the law governing the interpretation of legislation applying in Wales would be through a new separate Act for Wales.
86. The potential benefits of developing a separate Act making interpretation provisions for the interpretation of Welsh law outweigh the costs and in particular the concerns raised by stakeholders in relation to the potential drawbacks of having two interpretation Acts operating in Wales.
87. For these reasons, option 3 is the preferred option.