

## Welsh Language Impact Assessment

### Draft Legislation (Wales) Bill

<b>Title:</b> Draft Legislation (Wales) Bill	<b>WLIA Reference No</b> <i>(completed by WLU):</i> 18/01/01			
<b>Date:</b>	<b>Last reviewed March 2018</b>			
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<b>Programme/Project Type</b> <input type="checkbox"/> Policy <span style="margin-left: 200px;"><input type="checkbox"/> Project or programme</span> <input checked="" type="checkbox"/> Legislation <input type="checkbox"/> Grant <span style="margin-left: 200px;"><input type="checkbox"/> Research, evaluation</span> <input type="checkbox"/> Business change <input type="checkbox"/> Infrastructure <span style="margin-left: 200px;"><input type="checkbox"/> Services</span> <input type="checkbox"/> Construction, Capital <input type="checkbox"/> ICT <span style="margin-left: 200px;"><input type="checkbox"/> Contracts, tenders</span> <input type="checkbox"/> Other (Please specify below)				
<b>Costs: How much is the projected whole life cost for the programme/project?</b> If below £25k, then a full WLIA is not always required (see guidance).				
Under £25k	£25k - £49k	£50 - £249K	£250K - £1m	Over £1m
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Of the above, please provide details if there are any identified costs directly associated with the Welsh language?</b>  There are (spent) costs associated with the bilingual drafting required for the development of the Draft Bill.  There are some (minor) initial transitional costs associated with informing the judiciary, legal professionals and other interested parties about the new legislation, and its relationship with the existing Interpretation Act 1978. However, such costs arise as part of the normal course of business since the judiciary and legal professionals are likely to already have periodic training on the interpretation of Welsh				

legislation. To support effective implementation of the Draft Bill if enacted, the Welsh Government will prepare and publish (online only) explanatory material about the Bill and guidance produced for internal use (primarily by legislative counsel and lawyers who draft legislation). Accordingly, there will be (minimal) costs associated with the Welsh language in that regard which would be absorbed within the normal course of business.

Looking to the projected whole life cost, the Draft Bill proposes a duty on the Counsel General to keep Welsh law under review, and a duty on both the Welsh Ministers and the Counsel General to prepare a programme setting out how they intend to make Welsh law more accessible. That programme must include provision about consolidating and codifying Welsh law, and facilitating the use of the Welsh language. The programme will need to be produced bilingually and there will therefore be internal costs associated with the production of the programme.

In relation to the projects forming part of the programme, any consolidation and codification legislation prepared will also incur translation costs, as will any of the other activities that the Welsh Ministers and the Counsel General may undertake.

It is unclear at this stage exactly how much this will cost as the work will be undertaken over a long period of time and the actual costs will depend on the programme developed at any one time.

There are no expected costs (over and above the transitional costs noted above) in respect of the statutory interpretation of Welsh law element of the Draft Bill.

**How long is the programme/project expected to run?**

Up to 1 yr	Up to 2yrs	Up to 5yrs	Up to 10yrs	More than 10 yrs	Unknown
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Key milestone dates for the programme/ project:**

- Summer 2017 Policy consultation – *Interpreting Welsh legislation: considering an interpretation Act for Wales;*
- December 2017 Publication of summary of consultation responses;
- March to June 2018 Consultation on the Draft Legislation (Wales) Bill;
- Autumn 2018 Publication of summary of consultation responses;
- Further dates will be dependent on decisions taken in light of consultation responses to Draft Bill.

**STAGE 1: PLANNING**

**What are the aims and objectives of the policy?**

The Welsh Government is consulting on a Draft Bill that is part of the Counsel General’s wider programme of improving accessibility of the law applicable in Wales.

This programme intends to:

- develop a rationalised bilingual body of Welsh law primarily by **consolidating** existing primary and secondary legislation;
- once consolidated, **codify** the law so that all of the law on a particular subject is organised and available together in one or more “principal” Acts, together with accompanying secondary legislation and guidance; and
- improve how the law is **communicated** by ensuring that the law is published in up-to-date form and is accompanied by explanatory material and commentary.

The desired outcomes of the Draft Bill are to:

- facilitate making the law applicable in Wales identifiable and accessible; and
- provide bespoke (fit for purpose), modern and bilingual legislation on the interpretation of the law applicable in Wales.

The Draft Bill has been developed partly in response to concerns raised by the Law Commission of England and Wales (who noted the absence of Welsh interpretative provision in its report [Form and Accessibility of the Law Applicable in Wales \(June 2016\)](#)) and the Constitutional and Legislative Affairs Committee of the Fourth National Assembly for Wales (who saw merit in developing a separate Welsh Interpretation Act as a means of improving the understanding of Welsh law, in its report [Making Laws in Wales \(October 2015\)](#)). The Counsel General for Wales’ wider programme of consolidation, codification and better publication of Welsh law has also informed the Draft Bill’s policy.

In 2017 the former Counsel General issued [a 12 week public consultation](#) seeking views on the proposals for interpreting Welsh law and consideration of an interpretation Act for Wales. There was support from respondents for the principle of creating bespoke, bilingual statutory interpretation provisions for Wales. The consultation responses have informed the development of the policy for the statutory interpretation provisions for Wales.

The Draft Bill includes the following key elements:

#### Duty to keep accessibility of Welsh law under review and improve accessibility of Welsh law

The Draft Bill imposes a duty on the Counsel General to keep Welsh law under review for the purpose of seeking to ensure that it is accessible. The Draft Bill also imposes a duty on the Welsh Ministers and the Counsel General to prepare a programme setting out how they intend to make Welsh law more accessible, and that programme must make provision for consolidation and codification of Welsh law and facilitating the use of the Welsh language. The programme may also include provision on promoting awareness and understanding of Welsh law and working in collaboration with the Law Commission of England and Wales to make Welsh law more accessible.

#### Rules of interpretation

The Draft Bill also includes rules of interpretation. Currently, the Interpretation Act 1978 applies to the interpretation of all the legislation applicable in Wales, but this Act was made in the English language only. The Draft Bill in part addresses this problem as it will be bilingual. However, the provisions of the Draft Bill (if the Bill were passed

by the National Assembly for Wales “the National Assembly”) will only apply to legislation made after the date it receives Royal Assent. The Interpretation Act 1978 (which is available in English-only) will therefore, continue to apply to Welsh law made before the Bill receives Royal Assent.

The Draft Bill updates the rules of statutory interpretation which apply to Welsh law, tailoring the proposed rules to the specific needs of the jurisdiction, including in relation to the Welsh language. For example, the rule on service has been updated so that it deals with electronic communication and the rule on gender has been reconsidered so that it is appropriate for Welsh language legislation.

**What are the desired outcomes/ what constitutes ‘success’?**

In relation to the Welsh language, the desired outcome is that the Draft Bill (if and when enacted) will benefit the readers of Welsh law in the following ways:

- by leading to more bilingual law replacing existing, often outdated, English language only law that applies also to England or to the United Kingdom (“the UK”) as a whole;
- more generally by facilitating the use of Welsh language as a language of the law through the preparation, development and delivery of a programme of activities to improve accessibility to Welsh law; and
- by providing bilingual bespoke legislation on interpreting Welsh law for the first time.

In order to establish whether the desired outcomes are a success, they will be assessed against the following criteria –

- the benefit must outweigh the cost of change;
- the changes must support the creation of a clear and bilingual statute book for Wales; and
- the changes must reduce complexity.

**What policy options have been considered?**

and

**What impacts will there be if the policy is *not* implemented?**

The Draft Regulatory Impact Assessment (see Welsh Government consultation page) set outs consideration of each of the policy options and the associated costs and benefits considered for the two matters proposed to be dealt with in the Draft Bill, and includes information on the impacts if the policy is not implemented.

**Does the programme demonstrate a clear link with the Welsh Government’s strategy for the Welsh language – [Cymraeg 2050 A million Welsh speakers](#)**

Yes. Each of the main elements of the Draft Bill demonstrates a clear link to the promotion and facilitation of the use of the Welsh language and these are set out below.

Duty to keep accessibility of Welsh law under review and improve accessibility of Welsh law

Part of the duty to improve the accessibility of Welsh law involves encouraging more consolidation of the law. A large proportion of the law which applies to Wales which is within devolved competence has been inherited from the UK Parliament and Government. This means that it is law made in English only. Consolidation involves remaking these laws bilingually.

This is particularly significant for the legal sector; as more legislation becomes available in the Welsh language the easier it will become to use Welsh day to day, and to offer services through the medium of Welsh.

Individual consolidated Acts will also help to promote and facilitate the Welsh language in the given sector to which that consolidation relates.

Rules of interpretation

The statutory interpretation element of the Draft Bill promotes and facilitates the use of the Welsh language by providing the users of the Welsh language legislation with an interpretation Act which they can access in the Welsh language. The Draft Bill remedies the current situation where those wishing to use the Welsh language versions of Welsh legislation are required to cross-refer to the English language version of legislation in order for them to be able to refer to, and to apply, the Interpretation Act 1978. This is wrong in principle, and in practice it makes it more difficult for people to use the law through the Welsh language.

Again, having rules of interpretation available in the Welsh language will assist in the use of the Welsh language in the legal sector. This could lead to an increased awareness of, and use of, the Welsh language in the workplace.

However, given the technical nature of these provisions, they may not assist in the use of Welsh language in everyday life.

There is also a more general, symbolic benefit to the Welsh language as key legislation which deals with the interpretation of all (future) Welsh law will now (if enacted) be made in Welsh.

**What are the impacts/ effects (both positive and/or adverse) on the Welsh language you have identified at the initial planning stage**

i.e. Welsh speakers, Welsh language communities, Welsh medium education, Welsh learners, services available in Welsh?

The Draft Bill if enacted would have a positive impact on anyone who wishes to use Welsh language versions of legislation. This is because it is intended to lead to more bilingual legislation and bilingual commentary on that legislation, as well as setting out bilingual rules for the interpretation of the legislation.

Turning to specific provisions, the Draft Bill contains a provision which provides that where a word or expression is defined, variations of that defined term are to be interpreted in accordance with that meaning. Although the rule applies equally to both the English and Welsh language versions of enactments, the effect of the rule in the Welsh language is to put beyond doubt that mutated forms of defined terms take the

same meaning as the defined term, and that compound definitions can be split without causing doubt over their meaning (“ardal bwrdd diogelu” and “ardal y bwrdd diogelu” mean the same). This is positive as it recognises the nuances in bilingual drafting.

The gender rule in the Draft Bill also makes it clear that the rule does not apply to the gender of a noun – something which was ambiguous in the Interpretation Act 1978. Again, this is a positive step as it recognises the nuances in bilingual drafting.

This Draft Bill may also more generally have a positive impact on the Welsh language as it could encourage discussion about legislation and law generally in the Welsh language, without having to use an English language Act, ensuring that the Welsh is not treated less favourably<sup>1</sup> than English.

However, the Draft Bill will only apply to legislation passed on or after the date which the Bill receives Royal Assent (if passed by the National Assembly), and as such anyone who wishes to use Welsh language versions of legislation passed before this date will not have a bilingual interpretation Act which will apply to it.

**Who are the stakeholders? Are the needs of Welsh speakers and learners addressed? To what extent are Welsh language interest groups likely to respond positively to the proposals?**

The statutory interpretation element of the Draft Bill is technical in nature. Therefore those with a direct interest in the proposed legislation are a relatively small group of stakeholders, consisting of:

- the legal professions and other who offer legal services,
- the judiciary,
- law students and academics.

However, as the proposed legislation will affect all Welsh law, the proposed legislation will actually impact anybody who wishes to access Welsh law. This is particularly relevant to those who use or wish to read the law in Welsh.

There were 17 written responses to [the Welsh Government’s consultation held in 2017](#). The responses came from individuals and organisations representing different sectors from across Wales and the UK. Respondents were, in general, supportive of the proposal set out in the consultation to make bespoke, bilingual provision about the interpretation of Welsh legislation including in particular the Welsh Language Commissioner and the Welsh Language Liaison Judges.

Overall, respondents considered that the effects of a separate Act for Wales would be wholly positive in helping people to use the Welsh language and ensuring that the Welsh language is treated no less favourably than the English language. A number of respondents welcomed the positive steps being taken by the Welsh Government to set the framework for accessible, well drafted and workable Welsh law in both the English and Welsh languages. The Welsh Language Commissioner also supported a long term programme of consolidating and codifying the law in Wales. Similarly, a number of respondents considered the development of a separate Act for Wales to be an integral part of the Welsh Government’s wider programme on improving accessibility of bilingual Welsh law. The development of the Draft Bill has been

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<sup>1</sup> Government of Wales Act 2006, section 156 (1)

informed by these views.

**Where an assessment was not completed, or no impacts were identified, please provide a full account for record keeping purposes?**

(This could be used in the Welsh Language Tribunal in future)

Not applicable.

**What actions/ further work has been identified at the initial planning stage?**

e.g. data requirements, need for peer review, external engagement with Welsh speaking groups, identify stakeholders or consultation list, need to contact Welsh Language Unit for advice)?

None.

In line with the Welsh Language Standards, the Draft Bill, consultation document (including Draft Regulatory Impact Assessment) and written statements have been published bilingually.

All meeting requests and stakeholder events invitation have been/will be bilingual and Welsh language requirements and preferences sought.

## **STAGE 2: IDENTIFYING AND ASSESSING IMPACTS**

### **Impact Assessment Summary**

**Summarise the detailed impact assessment carried out together with the scores assigned.**

#### **Positive effects/ impacts:**

The Draft 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. The Draft Bill will help to improve accessibility, including publication, of the law applying in Wales in both the English and Welsh languages. An element of this includes a bilingual statutory interpretation tool to be used for the interpretation of the legislation applying in Wales that is tailored to a Welsh context and reflects the current drafting practices of the National Assembly.

#### **Adverse effects/ impacts:**

The existence of a new separate Act for Wales will not mean that the Interpretation Act 1978 ceases to apply. Therefore the interpretation of the law applying in Wales will be governed by two Acts; the Act which is relevant being governed by whether the law is devolved and when the legislation is made. This means that the rules for interpreting bilingual laws made before the new provisions come into force will not be bilingual (as is the case now). It is recognised that the existence of two Acts may cause some confusion but this is an inevitable consequence of tackling the issue for the future.

**Opportunities to promote the Welsh language e.g. status, use of Welsh language services, use of Welsh in everyday life, Welsh at work increased?**

The Draft Bill if enacted is likely to be more widely accessed and used by legal professionals, the judiciary, academics and court users. The Draft Bill promotes use of the Welsh language as a language of law in these key groups. It is anticipated that this will result in improved availability of Welsh language legal services and improved access to the legal system in the Welsh language for the citizen.

**Evidence/ data used including demographic profile when considering the effects/ impacts:**

Evidence used:

- Law Commission of England and Wales, Form and Accessibility of the Law Applicable in Wales (June 2016);
- Constitutional and Legislative Affairs Committee of the Fourth National Assembly for Wales, Making Laws in Wales (October 2015);
- Welsh Government Consultation Document, Interpreting Welsh Legislation, Considering an Interpretation Act for Wales (June 2017);
- The Lord Chief Justice’s Report 2016; and
- The Lord Chief Justice’s Report 2017.

**What is the overall anticipated likely impact on the Welsh language if this policy is taken forward based on the impact assessment/ risk assessment?**

- Positive:
- Adverse:
- Neutral:
- Unknown:

**Decision following IA**

1. No major change
2. Adjust the policy to improve impacts
3. Continue the policy with mitigation measures
4. Stop and remove the policy

***If answered 2,3, or 4 above – then answer the following:***

**How will you address these impacts in order to improve the outcomes for the Welsh language? Details of mitigation measures/ action points/ alternative options to reduce adverse impacts and increase positive outcomes:**

Not applicable.



**If engaging or consulting, what are your plans? What questions do you wish to ask stakeholders about the Welsh Language Impact Assessment and Welsh language related issues?**

A Welsh Language Impact Assessment was developed as part of the policy development leading to the policy consultation in 2017.

This updated Welsh Language Impact Assessment has been published alongside the Draft Bill and consultation paper. Engagement events with stakeholders will take place during the Draft Bill consultation period. The events will brief stakeholders on the proposals and seek views on how they could be improved.

Should the Bill be introduced, the National Assembly Committee scrutinising the Bill will issue a call for evidence (both written and oral) and stakeholders will have a further opportunity to make their views known.

**STAGE 3: POST CONSULTATION AND PREPARING FOR PUBLICATION, MONITORING AND EVALUATION**

**Following consultation, what changes have you made to address any Welsh language issues that were raised?**

All of the responses to the policy consultation held in 2017 were taken into account in the development of the provisions of the Draft Bill and the accompanying consultation paper.

Of concern to respondents was the fact that the Interpretation Act 1978, as an Act of the UK Parliament, was enacted in English only. Whilst that Act applies to Acts and Measures of the National Assembly and subordinate legislation made under such Acts and Measures, there is no Welsh language text of the Interpretation Act 1978. The lack of a bilingual interpretation Act has been identified as an obstacle to those seeking to use the Welsh language as a language of the law.

The majority of stakeholders were of the view that the Act governing the interpretation of Welsh law should be available in both the English and Welsh language and should provide for the statutory interpretation of Welsh language terms. The Draft Bill addresses the absence of bilingual interpretation rules applying to the wide range of bilingual legislation which is currently in force.

In particular, Schedule 1 to the Draft Bill addresses the absence of a Welsh language equivalent of the definitions of the words, and expressions set out in Schedule 1 to the Interpretation Act 1978. The Draft Bill proposes to enact modernised bilingual provisions reflecting the Welsh context (by for example removing terms which are irrelevant and out of date). Developing interpretation provisions specifically for Wales as opposed to merely reproducing Schedule 1 to the Interpretation Act 1978 in the Welsh language would mean that the Draft Bill if enacted would have wider application to Welsh language legislation. This will remove a significant barrier to and improve the accessibility of Welsh legislation in the Welsh language without the need to cross refer to the English language text of the same legislation, and consult the Interpretation Act 1978. The consultation paper accompanying the Draft Bill explores this matter further.

As highlighted by stakeholders, this approach will also ensure equal status of both English and Welsh language text in line with the requirement of section 156(1) of the

Government of Wales Act 2006.

The provisions of the Draft Bill will assist Welsh speakers in pursuing legal remedies in their chosen language and ensure that those who wish to use the Welsh language are not at a disadvantage.

This approach is one component of the wider role it is proposed the Counsel General and the Welsh Ministers will play in improving the accessibility of the law applying in Wales, and in facilitating use of the Welsh language.

**How will you monitor the ongoing effects during the implementation of the policy?**

The impact on the Welsh language will be kept under review throughout the consultation on the Draft Bill. Responses to this consultation will assist further consideration of the impact on the Welsh language and addressing the needs of Welsh speakers. The responses will inform the refining of the policy and the development of legislative proposals.

**Please outline how you will continue to capture effects/ impacts in future monitoring and evaluation?**

There will be continued consideration on the impact of the Welsh language throughout the consultation on the Draft Bill and the development (am implementation if applicable) of any legislative proposals.

**Any other comments – ongoing results of evaluations, emerging impacts**

None.

#### 4. Declaration

**Policy lead:**

**The policy does have an impact upon the Welsh language. Where there were identified adverse impacts or missed opportunities, the appropriate amendments and actions have been put in place.**

Name:

Claire Fife

Department:

Office of the First Minister

Date (s):

March 2018

Signature:

Planned Review Dates:

Summer 2018 (following consultation on the Draft Bill)

**SRO ENDORSEMENT and REVIEW**

I am satisfied that the WLIA is an accurate reflection of the programme/project at this stage of development. By signing, I am able to confirm that the Welsh Language Standards have been given the appropriate attention. I will re-assess the programme/project at key stages throughout the life of the programme/ project, including policy reviews.

Signed Dylan Hughes

(Senior Responsible Owner)

Date March 2018