

# Draft Legislation (Wales) Bill

Q1. Q1: Do you agree that it is necessary to impose a statutory obligation on future governments in Wales in order to improve accessibility of Welsh law?

I believe it is vital to ensure that accessibility to the law applicable in Wales by the Profession and the Public is improved. As a lawyer specialising in public law, particularly relating to local government, for 39 years, 15 of which have been here in Wales, I can vouch for the current difficulty in accurately accessing and assessing sources of law applicable here. In my particular area of practice, namely local government, it has been the stuff of nightmares trying to ensure that the source legislation as amended or repealed in the Assembly, has been accurately recorded to advise my local authority. What you may think is a simple activity, namely is a particular decision an executive or full Council function, can take hours of painstaking research to verify with often no guarantee at the end that there is certainty. Accordingly a codification of Welsh and Welsh and English Law as applied in Wales cannot come soon enough. I would also agree that a statutory obligation upon successive governments is the only way of gaining the necessary commitment to ensure this is not a single administration initiative. It will clearly be a long time before the benefits of this work are realised, but it is vital to start now in my view to benefit future generations. In this regard, the proposal sits four square with the Well Being of Future Generations (Wales) Act 2015.

Q2. Q2: If so, do you agree with the approach taken in Part 1 of the Draft Bill to impose such an obligation?

I do not quibble with the suggested approach in Part 1 of the Draft Bill. My only comment concerns the reference to an incoming First Minister laying a programme before the Assembly "within six months of a general election." It was my understanding that a general election referred to a parliamentary election not an Assembly election but I stand to be corrected if I have misunderstood this reference.

Q3. Q3: Do you agree with the approach to application of Part 2 of the Draft Bill?

For the reasons given in the consultation document, I think that a review and restatement or new statement on statutory interpretation here in Wales is most welcome. The Interpretation Act of 1978 is now somewhat long in the tooth and has clearly been surpassed by a whole body of new law here in Wales, a position that is hardly likely to slow down in the coming years.

Q4. Q4: Do you agree with the approach in section 3(3) of the Draft Bill, which disapplies a particular rule if the context otherwise requires?

I do agree with this approach.

Q5. Q5: Do you consider the definition of "Wales" should be by reference to the local authority areas of Wales, or by some other means?

As a local government lawyer myself, I do think that the definition of Wales would best be served by reference to its local authority areas. I do realise this may give rise to issues of sea masses surrounding the Principality and fishing rights, but I do not know of a reasonably certain or simple way of addressing this. I would perhaps leave comment on this aspect to colleagues with more intimate knowledge of the issue than I!

Q6. Q6: Do you have any comments on what has, or has not been, included in Schedule 1 to the Draft Bill?

In addition to the suggested definitions in para. 99 of the consultation document, can I respectfully suggest you may think of including a definition of community council. I say this because so far as I am aware this is a

Q6. Q6: Do you have any comments on what has, or has not been, included in Schedule 1 to the Draft Bill?

title peculiar to Wales. In England the equivalent is parish council. Both countries use the concept of town councils for the bigger local bodies but community, as I say, relates only to Wales I think and so a definition thereof would be beneficial in my view.

Q7. Q7: Do you agree with the approach in section 7 of the Draft Bill?

The approach to gender definition in Section 7 seems sensible.

Q8. Q8: Do you agree with the proposed approach taken in section 8 of the Draft Bill?

I have no observation to make on this save to record that at our recent workshop at the Offices of the Law Society in Cardiff, one or two practitioners did have some issues with this.

Q9. Q9: Do you agree with the inclusion of section 9 in the Draft Bill?

Again, I have no observations to make personally on this proposal.

Q10. Q10: Do you agree with the approach taken on service of documents in section 13 of the Draft Bill?

This was viewed as quite contentious at our recent workshop. Practitioners involved in litigation particularly had some issues with this. I believe that the assumptions relating to service by electronic means were debated heavily so will leave it to colleagues with a specific expertise in this area to respond.

Q11. Q11: Do you agree with the approach for deemed service (in section 14 of the Draft Bill) or do you consider there is a more precise workable alternative?

As above, deemed service, particularly by electronic means, caused concern. There are issues relating to the assumption as to when service has been deemed by reference to how frequently an inbox is checked in practice and where there are system security restrictions on the size of documents which can be delivered to a practitioner's inbox. This may need careful consideration before formally legislating upon it

Q12. Q12: Do you agree with the approach taken in section 16 of the Draft Bill?

No comment on this

Q13. Q13: Do you agree with the inclusion of duties in section 18 of the Draft Bill?

Yes I agree

Q14. Q14: Do you agree with the inclusion of section 19 in the Draft Bill?

Yes

Q15. Q15: Do you agree with the inclusion of section 20 in Draft Bill?

Q15. Q15: Do you agree with the inclusion of section 20 in Draft Bill?

No comment

Q16. Q16: Do you agree with the approach taken in section 22 of the Draft Bill?

Agreed

Q17. Q17: Do you think the Draft Bill should make provision on duplication of criminal offences (section 26), or should we follow the approach taken in Scotland and leave this as a matter dealt with in the 1978 Act?

I have no really strong views on this personally

Q18. Q18: Should the Draft Bill make provision about Acts binding the Crown (section 27), or should this be addressed in another way?

I believe strongly that there should be provision clearly identifying what legislation binds the Crown. For too long the Crown has used uncertainty to shuffle out of its legal responsibilities.

Q19. Q19: Do you agree with the approach taken in section 30 of the Draft Bill?

I am content with the approach suggested.

Q20. Q20: Do you consider that section 35(2)(a) of the Draft Bill provides an accurate reflection of the common law provision?

I believe so, yes.

Q21. Q21: Do you agree with the approach taken in section 33 of the Draft Bill?

Yes, in substance.

Q22. Q22: Should the continued use of long titles in modern drafting of bills be reconsidered?

Yes. I believe that inelegant and unduly lengthy titles are confusing and should be phased out. Far better to use a title everyone can remember and use quickly.

Q23. Q23: Do you have any views on the other matters which could be addressed by way of future legislation (as set out in Part 3 of the consultation paper)?

Wales is unique in the United Kingdom in having a totally bilingual policy. It is important to protect this concept and where necessary to restate and legislate for this protection in Wales.

Q24. Q24: Do you have any comments on the draft regulatory impact assessment for the Draft Bill?

Q24. Q24: Do you have any comments on the draft regulatory impact assessment for the Draft Bill?

No I do not

Q25. Q25: do you have any comments on the draft impact assessments for welsh language, children's rights, or equality and human rights?

As above in answer to Q24

Q26. Q26: We would like to know your views on the effect developing the Draft Bill could have on the Welsh language, in particular in respect of: helping people to use Welsh, and treating the Welsh language no less favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

From what I can see, the Draft Bill addresses the issue of equality of language use in Wales. To that extent it will help with maintaining the use of and the perception of the importance of the Welsh language in Wales. I have nothing further by way suggestions to add, but I am not a fluent Welsh speaker and would prefer my Welsh speaking colleagues to respond on this issue more fully.

Q27. Q27: Please also explain how you believe the Draft Bill could be formulated or changed so as to have: positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

See above answer to Q26

Q28. Q28: We have asked a number of specific questions. If you have views on any related issues that we have not specifically addressed, please set them out here:

As stated earlier, the public law is difficult to find and be clear on at the present time. I sincerely hope that local government law will be a priority in terms of codification in due course.  
Secondly, it should not be forgotten that public bodies like local authorities do make law themselves, eg orders, by-laws and the like. I am not sure how this is impacted upon by the present proposals.  
Thirdly, as a former Head of Legal and Monitoring Officer at a Welsh Unitary Authority, I strongly recommend that the views of the Lawyers in Local Government: Monitoring and Governance Special Interest Group are sought on these proposals as I am sure they would have some helpful and constructive suggestions on how best to proceed.  
I am responding as a current serving member of the Law Society's Wales Committee and a now retired Head of Corporate Services and Monitoring Officer of a Welsh Principal Council.

## Page 2: Submit your response

Q29. You are about to submit your response. Please ensure you are satisfied with the answers you have provided before sending.

<b>Name</b>	Trevor Coxon
<b>Organisation (if applicable)</b>	Serving Member of the Law Society Wales Committee and retired Monitoring Officer with Wrexham County Borough Council

Q30. If you want to receive a receipt of your response, please provide an email address. Email address

Q30. If you want to receive a receipt of your response, please provide an email address. Email address

[REDACTED]

Q31. Responses to consultations may be made public. To keep your response anonymous (including email addresses) tick the box.

*No Response*