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Welsh Government  
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11/09/2017

Dear Mick Antoniw AM and the Legislative Counsel,

### **Interpreting Welsh legislation Consultation Document: Considering an interpretation Act for Wales**

Thank you very much for the opportunity to respond to this consultation. The recommendations resulting from the consultation will have significant implications for the drafting and interpreting of Welsh legislation together with potential to strengthen the position of the Welsh language further in the legal field. Specific comments are presented in response to some of the consultation questions in section 2 below, but the general aim of the Commissioner in responding to this consultation is to emphasise:

- Full support and approval for the ambition noted in the Counsel General's foreword to bring order to inherited laws and establish a new approach to law-making in Wales that will ensure that laws are clear and well drafted (in both languages) and put citizens first.
- The need for the Welsh Government to take action urgently to rectify the current unsatisfactory situation where National Assembly for Wales legislation is subject to the Interpretation Act 1978 which does not recognise our practice of legislating in both languages nor meet the requirements of a bilingual country where Welsh has official status.

## **1. Background**

The principal aim of the Welsh Language Commissioner is to promote and facilitate the use of the Welsh language. This is done by raising awareness of the official status of the Welsh language in Wales and by imposing standards on organisations. This, in turn, will lead to the establishment of rights for Welsh speakers.

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Two principles will underpin the Commissioner's work:

- The Welsh language should be treated no less favourably in Wales than the English language;
- Persons in Wales should be able to live their lives through the medium of the Welsh language if they choose to do so.

## 2. Consultation questions

**Question 1: Should we insert a reproduction of Schedule 1 to the Interpretation Act 1978 in the Welsh language into that Act, or should we aim to apply an interpretation Act for Wales to as much Welsh language legislation as possible?**

- i. Although including Welsh in a key piece of UK Parliament legislation is appealing on the one hand, I am not convinced that this is the best solution in terms of the Welsh language nor the best solution to do justice to the significant body of Welsh legislation that we have in the devolved Wales. Inserting a Welsh language reproduction of Schedule 1 would go some way towards answering the shortcomings of the present situation but it would not ensure that the rest of that act – the core rules specifically – are available in Welsh. On the other hand, an interpretation Act for Wales passed by the National Assembly for Wales would be available in both languages and would therefore ensure in principle that the Welsh language is treated no less favourably than the English language. I believe therefore that developing a specific interpretation Act for Wales is the best longterm solution in the interests of the Welsh language and in order to address the increasing body of separate laws that are only relevant to Wales.
- ii. Furthermore, as you noted in the consultation document, there is a long history of interpretation Acts in the jurisdiction of England and Wales and there are already two other interpretation Acts in force in the United Kingdom's devolved countries. Creating an interpretation Act for Wales would therefore be a sign of the maturity of the devolved legislature and a reasonable step towards the inevitable ambition of developing a separate legal jurisdiction for Wales in due course.
- iii. It should be emphasised, however, that question 1 above does not address the statement emphasised on p. 21 of the consultation documents that **'these options are not mutually exclusive'**. I agree with this statement and the proposition that any legislating in relation to the interpretation of legislation applying in Wales should address the absence of a Welsh language version of Schedule 1 to the 1978 Act. I would like to see you fully explore this third option as including the Welsh language on the face of one of the core acts of the UK Government would be beneficial to the status of the Welsh language. It would also be advantageous to ensure standard translations and definitions for those concepts that are not necessarily relevant to Welsh legislation but which are relevant to those who need to discuss or refer to English law through the medium of Welsh (e.g. London boroughs).



**Question 2: Do you agree with the potential benefits of an Interpretation Act for Wales identified in this consultation paper?**

- i. The principal aim of the Commissioner is to promote and facilitate the use of Welsh and therefore the *main* advantage to the Commissioner of creating an interpretation Act for Wales would be that the act would be available in Welsh which would facilitate the use and discussion of the law through the medium of Welsh. I agree, however, with the other advantages noted in the consultation documents and I believe that this opportunity should be taken to innovate and create an accessible and modern act that will deal with a wider range of areas than the 1978 Act and that will better serve the needs of Wales and the Welsh language.

**Question 5: What are your views on the potential changes to the ‘core rules’, set out in Chapter 7?**

- i. I would like to emphasise, as already highlighted by the Office of the Legislative Counsel's current drafting guidelines of course, that there are variations in patterns of expression between the Welsh and English languages. I therefore agree with the statement made on p. 31 that there would be particular issues in relation to the use of grammatical gender in the Welsh language which would need to be considered. I suspect that consideration would need to be given to other grammatical and syntactical matters as well, such as singular/plural forms.

**Question 6: What are your views on the potential new provisions that could be included in an interpretation Act for Wales, set out in Chapter 8?**

- i. I agree with the need to establish the power to correct obvious errors in legislation. It could be argued that this power is even more necessary in a bilingual context to avoid anomalies and inconsistencies between the versions that could create confusion for those who have to interpret them.
- ii. I am unclear regarding your intention in the ‘Definitions’ section on pp. 34-5. Is it only an attempt to provide examples of the type of terminology defined? From my experience of implementing the Welsh Language Measure and its associated regulations, the need for an interpretation of some basic terms has proven to be necessary in order to ensure clarification, certainty and consistency. These include, amongst others, the terms “the public” and “member of the public”, “employee”, “meeting”, “document”, “form”, “sign”, “welfare”, “emergency” and “invitation to tender”.
- iii. I also strongly agree with the need to ensure provision for matters relating to electronic communication as noted on p. 35. I believe that any Interpretation Act for Wales needs to reflect developments in technology and the way that people now correspond in practice.

**Question 8: What are your views on the other matters that could be dealt with in an interpretation Act for Wales, set out in Chapter 9?**



- i. I completely agree that provision for dealing with issues which arise only in relation to the Welsh language would be useful and I believe that provision should be made to consider the grammatical rules and characteristics of the Welsh language to ensure that the Welsh language is treated no less favourably than the English language.
- ii. I agree that the interpretation Act could provide a golden opportunity to reconsider section 156(2) of the Government of Wales Act (2006) in order to ensure provision that is more compatible with bilingual drafting practices and to ensure that there is no risk that it could be interpreted to mean that the Welsh language is treated less favourably than the English language.
- iii. I consider that there could be advantages to the Welsh language from providing standard sets of provisions to deal with routine matters such as fixed penalty notices. Establishing standard definition and wording for both languages in this area would mean that there would be no need to duplicate efforts in other areas reducing translation and proofreading costs for example.

**Question 9: We would like to know your views on the effect developing an interpretation Act for Wales could have on the Welsh language, in particular in respect of:**

- i) helping people to use Welsh, and
- ii) 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?**

- i. Due regard is given to the possible advantages and impacts of reforms with regards to the Welsh language throughout the consultation paper and it is clearly embedded in the experience of the Legislative Counsel and the Jurilinguists of drafting and interpreting bilingual legislation. The efforts made to refer to good practice in other jurisdictions which have bilingual legislation should also be applauded. I have already stated my opinion in my response to question 1 regarding the way that developing an interpretation Act for Wales would ensure that the Welsh language is treated no less favourably than the English language. It could also be added that creating such an Act would be a clear statement by the Welsh Government regarding the status of the Welsh language as a language of law and a way of strengthening its use in the legal field.

### 3. Closing comments

As an organisation that maintains an overview of the law in relation to the Welsh language, and also as an organisation that has to turn to the 1978 Act when implementing the Welsh Language (Wales) Measure 2011, I have direct experience of the shortcomings of the present situation where people are required to cross-reference the English version of legislation and refer to the English definitions of the 1978 Act before being able to fully understand the meaning of Welsh words or expressions. A situation that – as you noted on p. 20 in the consultation document – is contrary to the spirit of section 156(1) of the



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Government of Wales Act 2006. I therefore support the Government's intentions to rectify this situation and I call on the Government to act quickly – and ambitiously – in favour of the Welsh language.

As you will notice, I have offered responses to some, but not all, of the questions asked – I trust that you will receive fuller responses by others who are more informed in legal matters and who will be better qualified to advise you about the technical requirements and obligations of your propositions. For your information, Dr Richard Crowe, Chief Jurilinguist for the Welsh Government has also contacted me to ask my opinion specifically on the terms and definitions of the Schedule to the Interpretation Act 1978. This work is of specific interest to me and my Infrastructure and Research officers, and I will ensure that Dr Eleri James prepares a full response to his questions in due course. I would also be pleased if you would continue to include me in discussions regarding infrastructure matters as this work proceeds.

May I wish you all the best with the work of interpreting the responses to the consultation and determining the next steps for this important project. I also wish you every success with the long term programme of consolidating and codifying our law in Wales and ensuring that these laws are well drafted and clear in both languages.

Yours sincerely,

**Meri Huws**

The Welsh Language Commissioner