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Llywodraeth Cymru  
Welsh Government

Welsh Government  
Consultation – summary of responses

## Draft Legislation (Wales) Bill

September 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.  
This document is also available in Welsh.

**Overview**

This document provides a summary of the responses received by the Welsh Government to the consultation on the Draft Legislation (Wales) Bill.

**Audience**

Legal professionals, the judiciary, representative bodies, public sector bodies, academics, interest groups, the voluntary sector, and individuals with an interest in the accessibility and statutory interpretation of Welsh law.

**Action required**

For information only

**Further information**

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**Additional copies**

This document can be accessed from the Welsh Government website at:

<https://beta.gov.wales/draft-legislation-wales-bill>

## Contents

Chapter 1 – Introduction.....	6
Proposals.....	6
Consultation approach.....	6
Consultation responses .....	7
Chapter 2 – Accessibility of Welsh Law.....	8
Chapter 3 – Statutory interpretation of Welsh Law .....	10
Overall view on Part 2 of the Bill .....	10
Application of Part 2 of the Legislation (Wales) Bill.....	10
Views on specific rules and provisions within Part 2 of the Draft Bill .....	12
Section 5 (Definitions of words and expressions) and Schedule 1 (Definitions of words and expressions). .....	12
Section 7 (Words denoting a gender are not limited to that gender) .....	14
Section 8 (Variation of a word or expression due to grammar etc.).....	14
Section 9 (References to periods of time) .....	15
Service of documents by post or electronically .....	15
Section 16 (Anticipatory exercise of a power or discharge of a duty that is not on force).....	16
Section 18 (Revoking, amending and re-enacting subordinate legislation).....	17
Section 19 “Amendment of subordinate legislation by an Assembly Act” .....	17
Section 20 (Varying and withdrawing directions).....	17
Section 22 (References to legislation are to the legislation as amended) .....	18
Section 26 (Duplicated offences) .....	18
Section 27 (Application of Assembly Acts and Welsh subordinate instruments to the Crown).....	19
Section 30 (Orders and regulations bringing legislation into force) .....	19
Section 35(2)(a) (Repeal, revocation and re-enactment of legislation) .....	19
Section 33 (Re-enactment) .....	20
Section 34 (Referring to an Assembly Act by its short title after repeal).....	20
Chapter 4 – Other matters raised in consultation .....	21
Courtesy titles .....	21
Standardisation legal terminology .....	21

Government of Wales Act 2006 .....	22
Other matters raised in the consultation .....	22
Codification of Welsh law .....	22
Resources to deliver the programme .....	23
Publication .....	23
Interpretation.....	23
Chapter 5 – Impact assessments and the Welsh Language .....	24
Annex A – List of respondents .....	27

## Chapter 1 – Introduction

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1. The law is an essential part of civilised society; it is the foundation of justice and sets out citizens' rights and responsibilities. It can be difficult to understand which legislation is applicable and whether it is up-to-date. This is exacerbated in Wales by a complex devolution settlement and the inheritance of a statute book which was not designed for divergence in the law, in particular between England and Wales. Further whilst the National Assembly for Wales legislates bilingually, not all legislation currently applicable in Wales is available in up-to-date form in both the English and Welsh languages. In consequence, there have therefore been calls for the Welsh Government to take steps to improve the accessibility of the law applicable in Wales.
2. Statutory interpretation is the process of determining the meaning and effect of legislation and how it operates. Acts prescribing rules on how laws are to be interpreted are a typical feature of legal jurisdictions across the common law world. Their purpose is to shorten and simplify legislation and promote consistency in its language, form and operation. At present all of the law applying in Wales is interpreted by reference to an Act of the UK Parliament, the Interpretation Act 1978 (the 1978 Act), which exists only in the English language. An earlier consultation by the Welsh Government confirmed that there is support for the principle of bilingual, interpretation provision for Wales which is tailored to the needs of Wales and the law applicable in this country.
3. On 20 March 2018 the Draft Legislation (Wales) Bill ("the Draft Bill"), accompanying consultation document and associated impact assessments were published<sup>1</sup> for public consultation on the Welsh Government website. The consultation period lasted 12 weeks and closed on 12 June 2018.

### Proposals

4. The consultation set out the Welsh Government's proposals to improve the accessibility and statutory interpretation of Welsh law, and sought views on the Draft Bill.

### Consultation approach

5. As well as being published on the Welsh Government website, the consultation was emailed to stakeholders with a direct interest in the accessibility and statutory interpretation of the law, with regular alert emails sent to stakeholders

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<sup>1</sup> <https://beta.gov.wales/draft-legislation-wales-bill>

during the consultation period. The Welsh Government web pages received nearly 1,900 views, including 166 to the Welsh language version.

6. During the consultation period the Counsel General held two consultation events – one in Bangor and one in Swansea – and attended an event arranged by the Law Society in Cardiff; all three meetings were aimed at explaining the issues set out in the consultation to stakeholders and taking their views on the proposals. The Counsel General also raised the issues during his regular meetings with legal professionals, academics, law students and law firms.
7. The Counsel General provided a technical briefing on the Draft Bill to the Constitutional and Legislative Affairs Committee<sup>2</sup> on 14 May 2018.

### **Consultation responses**

8. A total of 20 written responses were received from stakeholders, including two from the same respondent<sup>3</sup>. The responses came from individuals and organisations representing different sectors from across Wales and the UK.
9. Respondents were able to submit their views and comments on paper or online, in either Welsh or English.
10. The majority of respondents chose to focus on particular questions and some also provided additional comments. All the responses have been analysed and noted.
11. We are grateful to everyone who responded to our consultation proposals. The responses represent an invaluable source of views, information and ideas which will refine and shape the legislative proposals to be included in a Bill for introduction to the National Assembly later this year and inform the wider programme of improvements to the accessibility of Welsh law.
12. A summary of the responses to each question is provided below. A list of respondents to the consultation is provided at Annex A. The individual consultation responses are available on the Welsh Government website: <https://beta.gov.wales/draft-legislation-wales-bill>

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<sup>2</sup> <http://record.assembly.wales/Committee/4765#A43497>

<sup>3</sup> The two written submissions are being counted as one, with the agreement of the respondent, but are being published separately.

## Chapter 2 – Accessibility of Welsh Law

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13. The consultation document explored the reasons why the law applicable in Wales is inaccessible and considered how accessibility can be improved. Part 1 of the Draft Bill sets out the Welsh Government’s legislative proposals for addressing these matters and improving accessibility of Welsh law.

**Question 1:** 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?

**Question 2:** If so, do you agree with the approach taken in Part 1 of the Draft Bill to impose such an obligation?

14. 19 of the 20 respondents to the consultation included comments relating to Part 1 of the Bill. All were in favour of the Welsh Government’s intentions to improve accessibility, and a significant majority saw merit in creating new obligations to address these issues.
15. Respondents who commented were of the view that imposing a duty in the way proposed in the Draft Bill was necessary and gave a number of reasons in support of their position. Capital Law considered the “...*reality is that underpinning the requirement as a duty will inject a momentum into a proposition that may have less force as a pure policy objective.*” Similarly while The Learned Society considered that it might not be necessary to legislate, it took the view that a Bill which states its purposes as promoting the accessibility of Welsh law “...*cannot but be welcomed and applauded.*”
16. Some of the reasons for supporting the proposition included: the need to take action as soon as possible; the need for this to be supported over a long period (respondents recognised the task of consolidating and codifying Welsh law would take a significant period of time) such that an ongoing obligation would be an appropriate mechanism for ensuring this<sup>4</sup>; and the benefits for the Welsh language of the law being made and available in both languages (particularly as much of the current law applicable in Wales has been made in English only).
17. Dr Catrin Fflûr Huws did not consider it was necessary to legislate, as arguably the functions being proposed for the Counsel General were functions which could be included in the list of Ministerial functions. Additionally Dr Huws was

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<sup>4</sup> For example, Trevor Coxon suggested that a statutory obligation upon successive governments would ensure this is not “*a single administration initiative*”.

concerned that the duty in itself might not result in real difference to the accessibility of the law.

18. The Learned Society raised a similar risk: *“The temptation to consider that the creation of a duty to make laws accessibility is equivalent to delivering accessibility needs to be avoided.”*
19. The Association of London Welsh Lawyers provided a number of detailed comments on the approach taken to impose the obligation, and was concerned that the Welsh Government’s proposals to consolidate legislation would not deliver the ambitions of the Law Commission’s proposals in its report, *Form and Accessibility of the Law Applicable in Wales*.
20. However in their response to the consultation the Law Commission *“strongly agree[d]”* with the statutory obligation proposed and the approach set out in the Draft Bill. They went on to say:

*Placing the Counsel General under a duty to keep the accessibility of Welsh law under review..., together with the Counsel General’s and the Welsh Ministers’ joint duty to present a programme of activities to each newly elected Assembly and report periodically on its progress ... are in our view an eminently suitable way of giving effect to our recommendations.*

21. A number of respondents called for more information and explanation of what is meant by consolidation and codification, and how Codes of Welsh law will be preserved once they are made. Others wanted a ‘map’ of the future Codes, and detail on what they would include. Some respondents also wanted greater detail on what activities would take place to facilitate the use of the Welsh language.
22. Some of the changes suggested by respondents to the Bill related to definitions (for example, the meaning of “Welsh law”), others to the preparation of the programme (for example, requiring this should be prepared in ‘Plain English’), or creating a duty to implement the programme. Capital Law welcomed the proposal to consult upon the draft programme, and the nature of consultation was also touched upon in the response from Bangor Law School’s Public Law Research Group.
23. The response prepared by students undertaking Cardiff University’s Graduate Diploma in Law Course drew attention to the resource implications of preparing and delivering the proposed programme and the wider initiative to improve accessibility. Other respondents raised similar points.



## Chapter 3 – Statutory interpretation of Welsh Law

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24. Part 2 of the Draft Bill sets out the Welsh Government’s legislative proposals for the statutory interpretation of Welsh law. The consultation document set out a section by section explanation of Part 2 of the Bill, and asked a number of detailed questions on specific sections.

### Overall view on Part 2 of the Bill

25. Where respondents commented on this Part of the Bill they were generally supportive of proposals to develop separate, fit for purpose, interpretation provision for Wales.
26. Some respondents raised concern about the potential confusion that could be caused by the operation of two interpretation Acts<sup>5</sup>. Respondents highlighted, the importance of making it clear which interpretation Act applies to each piece of legislation.
27. Some respondents welcomed the proposal that Part 2 of the Bill would come into force on 1 January of the year after it is passed. They thought that this proposal set a “*clear*”, “*simple*” and “*sensible*” demarcation between legislation to which the new provision for Wales would apply and that to which the existing 1978 Act would continue to be applicable. However, a number of respondents suggested that to make it absolutely clear which interpretation Act applied, it would be important to use “signposting” mechanisms. For example, setting out which Act applies in Explanatory Notes, or using hyperlinks possibly on the legislation.gov.uk website, or by provision on the face of the legislation.
28. Respondents highlighted the “*serious obstacle*” to those seeking to use the Welsh language as a language of the law caused by having to rely on a UK Parliament Act (which predates the devolution settlement) which is only available in the English language.
29. Respondents also commented on the need for improvements to the current interpretation provisions, which are not always as clear and accessible as they could be.

### Application of Part 2 of the Legislation (Wales) Bill

30. The consultation document set out the matters which the Welsh Government considered when determining the legislation to which Part 2 of the Bill would

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<sup>5</sup> The 1978 Act will continue to apply, as far as it is relevant, to some law applicable in Wales – see paragraph 59 of the consultation document for further details.

apply – see paragraphs 57 to 69 (pages 24 to 28) of the consultation document.

31. The consultation document asked specific questions about the Welsh Government’s proposed approach to application, which is provided for in section 3 of the Draft Bill.

**Question 3:** Do you agree with the approach to application of Part 2 of the Draft Bill?

32. There were eleven responses to this question, all generally supportive of the application model proposed in Part 2 of the Draft Bill.
33. Capital Law agreed with the proposal not to introduce retrospective application of the interpretation provision in Part 2, but Keith Bush QC considered this would be contrary to the aim of simplifying the interpretation of legislation applicable in Wales in devolved areas. Consequently, this respondent considered that the National Assembly’s powers to restate the law, even on reserved matters, meant that it could re-enact the 1978 Act (in bilingual form) to enable retrospective application.

**Question 4:** Do you agree with the approach in section 3(3) of the Draft Bill, which disapplies a particular rule if the context otherwise requires?

34. Of the ten responses to this question the majority agreed with the approach taken in section 3(3) of the Draft Bill, although Dr Huws was of the view that the approach perhaps added to the complexity of the law.
35. The Association of London Welsh Lawyers commented that this provision is narrower in its approach than the analogous provision in the 1978 Act and considered, along with Huw Williams and Clare Hardy, that this would bring greater certainty.
36. Cardiff Third Sector Council suggested possibly adopting standardised wording in future drafting for when a rule in Part 2 of the Bill should not apply.
37. The Learned Society of Wales considered that section 3(3)(b) posed problems for accessibility, however the organisation was of the view that this might be justifiable as being “*a necessary insurance against an overly mechanical approach to implementing interpretation provisions*”. Keith Bush QC also saw the approach as a “*necessary defence against unforeseen accidental consequences*”.

## Views on specific rules and provisions within Part 2 of the Draft Bill

*Section 5 (Definitions of words and expressions) and Schedule 1 (Definitions of words and expressions).*

38. Section 5 of the Draft Bill provides that the words and expressions set out in Schedule 1, which it introduces, have the meaning given in that Schedule where they are used in Assembly Acts and Welsh subordinate instruments to which Part 2 of the Draft Bill applies.
39. The consultation document asked specific questions about the Welsh Government's approach at questions 5 and 6.

**Question 5:** Do you consider the definition of "Wales" should be by reference to the local authority areas of Wales, or by some other means?

40. Those respondents who commented on this question provided a number of views as to how "Wales" could or should be defined in law.
41. The Association of London Welsh Lawyers considered that a consistent approach ought to be adopted to the definition of "Wales" and further that there should not be any change to the definition provided for in section 158(1) of the Government of Wales Act 2006.
42. Both the Learned Society of Wales and Keith Bush QC considered the National Assembly's legislative competence could limit the way "Wales" is defined.
43. Capital Law suggested that there should be consistency with the approach to defining "England" under the 1978 Act. They also considered that the definition in the Draft Bill was confusing and suggested that, to aid accessibility of the law in particular, provision could be made for a new clean definition which includes both the "local authority" and "sea boundary" elements of the existing definition of "Wales". Similarly, Cardiff Third Sector Council considered the definition could include coastal waters as well as land areas.
44. Neither Trevor Coxon nor Huw Williams and Clare Hardy considered that "Wales" should continue to be defined in law by reference to its local authority areas and Huw Williams and Clare Hardy went on to suggest a method of defining "Wales" by an official map.

**Question 6:** Do you have any comments on what has, or has not been, included in Schedule 1 to the Draft Bill?

45. There were ten responses to this question, with a general consensus on including the Schedule in the Draft Bill.
46. Dr Huws was of the view that Schedule 1 should focus on terms that have different meanings in Wales and England; another respondent was of the view that consideration ought to be given to including certain terms defined in the Interpretation and Legislative Reform (Scotland) Act 2010.
47. Trevor Coxon suggested that consideration ought to be given to defining “*community council*”, with other respondents suggesting that there should be further clarity as to the meaning of “*the Welsh Ministers*”, or querying the rationale for not including a definition of “*Welsh Language Commissioner*”, and for omitting “*building regulations*”, “*commencement*”, “*enactment*”, and “*registered*”.
48. The Association of London Welsh Lawyers did not agree with the proposed definition of “*financial year*” given that businesses vary their financial year ends, instead suggesting adding “*unless the context otherwise indicates*” to the current definition. The organisation also felt that “*writing*” was too narrowly defined and suggested a number of changes to the drafting of other definitions.
49. The Welsh Language Commissioner welcomed the fact that Schedule 1 makes provision for Welsh language definitions of words. The Commissioner understood the Welsh Government’s objective “*to define only those terms which are essential or most useful*” but considered the criteria for including words and expressions to be unclear.
50. The Learned Society for Wales referred to the principles set out by the first official UK parliamentary draftsman, Lord Thring<sup>6</sup> and considered that Schedule 1 appeared to satisfy Thring’s principles and that these principles should continue to be observed when further terms are added to the Schedule. Huw Williams and Clare Hardy also suggested that a “*consistent approach should be applied as to whether or not particular types of references will be included*”.

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<sup>6</sup> That “*definitions should be used to indicate where a term included or excluded something where otherwise there would exist a doubt as to its inclusion or exclusion*”; that terms should not be defined terms “*with a scientific precision where their ordinary meaning was clear and exact*”; and that meanings should not be attached to “*terms which were at variance with their ordinary usage*”.

*Section 7 (Words denoting a gender are not limited to that gender)*

**Question 7:** Do you agree with the approach in section 7 of the Draft Bill?

51. The responses to this question indicated support amongst stakeholders for drafting legalisation in a gender neutral way.
52. Trevor Coxon commented that the approach to gender definition in this provision is “*sensible*”. Cardiff Third Sector Council and the Learned Society for Wales commented, respectively, that the use of gender-neutral language is “*inclusive*” and “*neatly sidesteps any issues about gender preference and the like*”. Capital Law added that it expects future Assembly legislation to be gender neutral.
53. Both the Association of London Welsh Lawyers and Huw Williams and Clare Hardy suggested drafting amendments to section 7 of the Draft Bill. The Welsh Language Commissioner queried whether the current drafting of section 7 explains clearly enough that Welsh nouns also have a grammatical gender that is not equivalent to gender and welcomed further clarification. Similarly, another respondent was of the view that it should be made clear that the grammatical gender of a Welsh word doesn’t indicate a person’s sex.

*Section 8 (Variation of a word or expression due to grammar etc.)*

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

54. There was general consensus for the proposed approach in section 8 of the Draft Bill, which has no equivalent in the 1978 Act. A number of respondents, whilst supporting the principle of the provision, raised some notes of caution, for example:
  - a. “*whether or how*” section 8 of the Draft Bill and section 156 of the Government of Wales Act 2006 correlate;
  - b. that as section 8 is meant to cover variations necessitated by mutations in the Welsh language, there should be specific reference to “*treigliadau*”, at least in the Welsh text of the Draft Bill; and
  - c. that there would likely remain instances where drafters would need to take a more traditional approach.

55. The Welsh Language Commissioner welcomed “...*this proposed approach as it acknowledges variations of Welsh words (such as mutations) and would therefore facilitate Welsh language drafting and interpretation*”.

*Section 9 (References to periods of time)*

**Question 9:** Do you agree with the inclusion of section 9 in the Draft Bill?

56. Of the eight responses to this question, four supported the inclusion of section 9. Two respondents disagreed with the proposal: one because they were of the view that it would be “*more appropriate*” to include express provision in the specific Act where timing was relevant; the other because they considered that including the day on which the period begins could “*catch people out and cause injustice*”.
57. One respondent saw merit in the provision as a backstop, and suggested that as with similar rules elsewhere, such as the Civil Procedure Rules, the Draft Bill provision might benefit from “*an accompanying illustration*” setting out how it works in practice.

*Service of documents by post or electronically*

58. The consultation set out proposals for the service of documents in sections 13 and 14 of the Draft Bill. These sections – unlike their equivalent provision in the 1978 Act – also provide for service of documents using electronic communication.

**Question 10:** Do you agree with the approach taken on service of documents in section 13 of the Draft Bill?

**Question 11:** 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?

59. Of those who responded to these questions there were mixed views, this was also the case at the consultation events held.
60. For example, Keith Bush QC disagreed with the approach taken in section 13 commenting that provision should be made for delivering in person, by post or by email before setting out different rules for when the document is then deemed to be received.

61. A number of respondents raised concerns about provisions for deemed service including by electronic means. Their reservations included the unreliability of the internet and poor coverage/access in certain areas of Wales; the risk of hacking; security restrictions; restrictions on the sizes of documents; and the frequency in which inboxes are generally accessed. Consequently, the Association of London Welsh Lawyers were of the view that electronic service of documents should only be used to supplement service by post and that therefore the date of deemed service would be the same as that for service by post.
62. A number of respondents suggested that further clarification was needed in relation to both provisions. For example on service of documents, suggestions included the need for the provision to be future proofed to meet any future technological advances, including consideration being given to taking a power to enable the Welsh Ministers to make similar provision in relation to other forms of communication. Capital Law also suggested that the provision should make it clear that the burden of proof will be on the sender for the purposes of establishing that the service meets the relevant criteria.
63. Dr Huws considered provision in specific Acts where serving documents is relevant should deal with these matters, as opposed to making provision in the Draft Bill.

*Section 16 (Anticipatory exercise of a power or discharge of a duty that is not on force).*

<b>Question 12:</b> Do you agree with the approach taken in section 16 of the Draft Bill?
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64. There were mixed responses to this proposal: one respondent considered that as commencement provisions and commencement orders now consistently provide for initiating relevant provisions for preparatory purposes, the provision in section 16 is unnecessary.
65. The Association of London Welsh Lawyers compared section 16 to its equivalent provision (section 13) in the 1978 Act and commented that the Draft Bill provision provided more clarity. The Association also suggested that consideration be given to whether duties ought to be included within the scope of section 16. Capital Law also approved of the clarity this section now provided.

*Section 18 (Revoking, amending and re-enacting subordinate legislation)*

66. Section 18 of the Draft Bill is equivalent to section 14 of the 1978 Act. However there are a number of differences which are set out in the consultation document at paragraphs 135 to 140 (pages 43 and 44).

**Question 13:** Do you agree with the inclusion of duties in section 18 of the Draft Bill?

67. Of the seven responses to this question there was general support for the approach taken. Dr Huws thought it might be necessary to expand the provision to allow a person or body who has inherited powers by another individual or body to repeal or amend legislation by those bodies.
68. The Association of London Welsh Lawyers suggested that section 18(1) of the Draft Bill would be reasonably likely to apply to a duty to make subordinate legislation, even if it did not specifically mention 'duties'. Nevertheless the Association supported the inclusion of the word 'duties' for the purposes of clarification. The Association was also of the view that the current wording of section 18(1) could be more clearly drafted.

*Section 19 "Amendment of subordinate legislation by an Assembly Act"*

69. This section has no equivalent in the 1978 Act but was influenced by clause 4 of the Legislation Bill currently before the New Zealand Parliament. The purpose of section 19 is to address an issue that arises when an Assembly Act amends or revokes subordinate legislation.

**Question 14:** Do you agree with the inclusion of section 19 in the Draft Bill?

70. Of the eight responses to this question, the majority agreed with the inclusion of section 19. One individual suggested that the section might be drafted too broadly, whilst another respondent welcomed the clarity section 19 provided.

*Section 20 (Varying and withdrawing directions)*

71. This section has no equivalent in the 1978 Act, but has two purposes: to put beyond doubt that directions can be varied or withdrawn, and to remove the need to state this expressly every time a direction-giving power or duty is created.



**Question 15:** Do you agree with the inclusion of section 20 in Draft Bill?

72. There was general support for the inclusion of section 20 amongst the six respondents to this question. The Association of London Welsh Lawyers, whilst agreeing with its inclusion, commented that no other provisions on direction-giving powers and duties should be included. Capital Law queried the necessity for such a provision, suggesting that this would only be required if there are instances where a piece of legislation specifically prevents directions made under it from being varied, substituted, or withdrawn. They further commented that the section would be a *“worthwhile inclusion”* if its purpose is to reduce the likelihood of future unnecessary provision.

*Section 22 (References to legislation are to the legislation as amended)*

**Question 16:** Do you agree with the approach taken in section 22 of the Draft Bill?

73. Of the nine responses to this question seven agreed with the approach taken in section 22.
74. Dr Huws did not agree with the provision suggesting that *“this was not always accurate”* and was *“not a different legislative position to that found in Wales”*.
75. Conversely the Association of London Welsh Lawyers *“strongly agreed”* with the approach and a number of respondents commented on the clarity the provision provided. Capital Law, whilst suggesting that section 22 might need further tweaking, considered that this provision was *“more clearly drafted”* than its equivalents in the 1978 Act and the Interpretation and Legislative Reform (Scotland) Act 2010.

*Section 26 (Duplicated offences)*

**Question 17:** 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?

76. There were five responses to this question. Of those who responded there was little support for this provision. For example, Dr Huws suggested the need for consistency with the Scottish and English law on this matter, so as to avoid confusion. Huw Williams and Clare Hardy recognised the Welsh Government’s view of the importance of a rule which ensures that a person can only be punished once for the same offence.

*Section 27 (Application of Assembly Acts and Welsh subordinate instruments to the Crown)*

**Question 18:** Should the Draft Bill make provision about Acts binding the Crown (section 27), or should this be addressed in another way?

77. The majority of respondents to this question were supportive of the provision in section 27 as it would bring much needed clarity and certainty to determining which legislation binds the Crown.
78. Huw Williams and Clare Hardy commented that “*as a matter of policy*” individual pieces of legislation should continue to state expressly whether or not they bind the Crown, whilst seeing section 27 as a “*useful fall back position*” where there is any ambiguity.
79. The Association of London Welsh Lawyers commented that reversing the presumptions in this way has the “*merit of clarity and certainty*” commended by Lady Hale in *R (on the application of Black) v Secretary of State for Justice [2017] UKSC 81*. Trevor Coxon “*strongly*” supported such provision stating that “*for far too long the Crown has used uncertainty to shuffle out of its legal responsibilities*”. Respondents acknowledged the difficulties outlined in the consultation document with this approach but nonetheless considered that section 27 would be a significant improvement on the current operation of the common law rule, which was seen as unsatisfactory.

*Section 30 (Orders and regulations bringing legislation into force)*

**Question 19:** Do you agree with the approach taken in section 30 of the Draft Bill?

80. Of the nine responses to this question, eight respondents were supportive. Respondents considered that the provision would bring consistency across Acts and was an “*uncontroversial*”, “*practical*” and “*sensible*” addition, which would “*shorten*” and “*streamline*” future Assembly Acts. Capital Law was of the view that the approach was “*in line with the [Draft Bill’s] purpose of making the law more accessible*”.

*Section 35(2)(a) (Repeal, revocation and re-enactment of legislation)*

**Question 20:** Do you consider that section 35(2)(a) of the Draft Bill provides an accurate reflection of the common law provision?

81. Of the seven respondents to this question the majority agreed that section 35(2)(a) provides an accurate reflection of the common law position.
82. Capital Law noted that there was no equivalent to this provision in the 1978 Act or in Scotland's Act on interpretation, and were of the view that such provision had been included to "*present existing legal principles formally and in the medium of Welsh in order to improve accessibility*"
83. Alternately, Keith Bush QC considered that subsections 35(2)(a)(i) and (ii) go beyond the decision in *Moakes v Blackwell Colliery Company* [1925] 2 KB 64 and therefore did not agree with their inclusion.

*Section 33 (Re-enactment)*

**Question 21:** Do you agree with the approach taken in section 33 of the Draft Bill?

84. There were seven respondents to this question, six of whom supported the proposal. One respondent suggested that this would be a significant tool to support consolidation of legislation and also considered that section 33 would make a useful backstop and as such welcomed its inclusion.

*Section 34 (Referring to an Assembly Act by its short title after repeal)*

85. Although section 34 deals with short titles, the consultation document went on to explain the role of both short and long titles.

**Question 22:** Should the continued use of long titles in modern drafting of Bills be reconsidered?

86. There was general consensus amongst respondents to this question against the continued use of long titles, although some thought that they might be useful in addition to overview or purposes provisions.

## Chapter 4 – Other matters raised in consultation

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87. Part 3 of the consultation document sought views on the Welsh Government's consideration of other matters which may need to be dealt with in future legislation.

**Question 23:** 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)?

### *Courtesy titles*

88. The Learned Society of Wales (referring to Lord Thring's principles – see above) cautioned against attaching meanings to terms which are at variance with their ordinary usage, which the Society considered could occur where a word is defined according to the meaning of a word in another language.
89. A number of respondents supported the use of Welsh translations of titles of English language-only legislation and bodies which do not have Welsh language titles or names. Cardiff Third Sector Council was supportive of this, as long as the approach did not lead to readers of legislation being misled. Keith Bush QC suggested that adopting the practice outlined in paragraph 229 of the consultation document would avoid misunderstandings, but thought explanatory provision in the Bill should also be included. The Learned Society for Wales suggested that consideration ought to be given to taking a power for the Welsh Ministers to provide such titles. Huw Williams and Clare Hardy considered that use of the English language title with the Welsh language courtesy title in brackets would be the most "*straightforward and honest approach*". The Welsh Language Commissioner was of the view that ensuring consistency was the "*key issue*" along with the provision of publicly available guidance.

### *Standardisation legal terminology*

90. With reference to approaches in bilingual jurisdictions such as Canada, Capital Law suggested that lessons could be learned from, for example having a national body for standardising legal terminology and co-drafting. The Learned Society of Wales suggested that a similar approach to that referred above for courtesy titles could be taken to the standardisation of legal terminology in the Welsh language, to avoid and overcome variation and inconsistency in the use of the legal terms.

## *Government of Wales Act 2006*

91. The Welsh Language Commissioner acknowledged the difficulties outlined in the consultation document, but nonetheless saw merit in restating section 156 of the Government of Wales Act 2006 in the Bill as it “*naturally complements the nature of the Bill and would highlight the importance of equality between texts*”. The Commissioner also considered that the lack of availability of the Welsh language text of legislation on the legislation.gov.uk website in an up-to-date form must be addressed promptly in order to ensure compliance with section 156.
92. Keith Bush QC was of the view that it would not be appropriate to restate the provisions contained in the Government of Wales Act 2006. He commented that the status of Welsh and English versions of the legislation made by the Assembly is a constitutional issue, not a question (only) of how to interpret legislation.

### **Other matters raised in the consultation**

93. The Welsh Government also invited views on any related issues to the consultation, which had not already been specifically addressed. Some respondents provided additional thoughts on consolidation and codification of legislation, others provided views on publication and on interpretation of texts.

### *Codification of Welsh law*

94. Some respondents provided views on areas of the law which would merit early consideration for inclusion in a programme of consolidation and codification. For example, the Association of London Welsh Lawyers wished to see planning, education, and landlord and tenant law tackled initially, followed by the preparation of codes for social services, waste and environment, and local government law. Trevor Coxon supported prioritising local government law.
95. Cardiff Third Sector Council highlighted the importance of ensuring that health and social care formed part of one code as opposed to two separate codes.
96. The content of the law in Codes featured in some responses, for example Trevor Coxon sought clarification on whether laws made by public bodies such as local authorities (orders, by-laws and the like) would form part of Codes. Others made observations about the inclusion, or otherwise, of common law within the Codes.

### *Resources to deliver the programme*

97. Bangor Law School's Public Research Group noted opportunities to work with a range of researchers in Wales to improve accessibility, codification and consolidation of the law.
98. The Law Society Wales raised concern about the resources and capability to deliver a programme to improve accessibility of Welsh law in a reasonable timeframe. This was due to the National Assembly for Wales "*only [having] 60 members*" and to the breath of legislation relating to the UK's exit from the European Union likely to be subject to the National Assembly's scrutiny procedure.
99. Richard Ebley repeatedly promoted the use of ISO standards and highlighted a need to undertake effective change in the public sector through good management, requiring independent management accreditation.

### *Publication*

100. Capital Law raised concerns about the availability and viability of a publicly available digital platform which corrects the shortcomings of websites such as legislation.gov.uk – and how such a platform would fit with existing (subscription only) providers. And the Learned Society of Wales suggested that caution ought to be exercised to ensure that choices to improve accessibility made today will not "*obstruct or complicate further inevitable, eventual change*".
101. The Welsh Language Commissioner welcomed the Welsh Government's ongoing assessment of how technological developments could be employed to facilitate access to Welsh law. She highlighted the importance of ensuring that the Welsh language is given due consideration in development work.

### *Interpretation*

102. Two respondents sought clarity on the relationship between the Welsh language and English language version of texts when interpreting legislation. Dr Huws suggested that interpretation provision relevant to specific Acts should be provided for in those individual Acts.

## Chapter 5 – Impact assessments and the Welsh Language

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103. As part of the consultation on the Draft Bill the Welsh Government also consulted on the impact assessments which had been developed during the preparation of the Bill. Views were sought on the Draft Regulatory Impact Assessment and the Welsh Government's assessment of the impacts on the Welsh language, Children's Rights and Equality and Human Rights.

104. In addition questions 26 and 27 asked respondents to further consider the effect of the Draft Bill proposals on the Welsh Language.

**Question 24:** Do you have any comments on the Draft Regulatory Impact Assessment for the Draft Bill?

**Question 25:** Do you have any comments on the draft impact assessments for Welsh Language, Children's Rights, or Equality and Human Rights?

105. Of the four responses to these questions, there was only one substantive comment. Dr Huws highlighted that consideration should be given to those interpretation issues unique to Welsh language legislation, for example the need for a resolution to any inconsistency of meaning between Welsh language and English language versions of legislation.

**Question 26:** 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:

- 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?

106. Six respondents provided responses to this question and the majority believed that the provisions of the Draft Bill, particularly Part 1, would have a positive effect on the Welsh language. Respondents considered that the further development of a body of law applicable in Wales which is made bilingually, including through the processes of codification and restatement of the existing law applying in both England and Wales, would strengthen the legal status and importance of the Welsh language. Respondents further considered that this would in turn enhance use of the Welsh language and would assist in ensuring

that the Welsh language is treated no less favourably than the English language.

107. The Learned Society of Wales focussed on the creation of the codes of Welsh law relating to specific areas of devolved competence, commenting that this would make the law more accessible. The Society was also of the view that the codes would need to be comprehensive and to this end they considered that obtaining competence to restate the law on matters currently outside competence would be key, with such restatement assisting the law in those areas to be expressed bilingually.
108. Both Capital Law and the Learned Society of Wales raised concerns about how the legislation applicable in Wales, once made bilingually, would be interpreted. Capital Law commented that the interpretation provisions in Part 2 of the Draft Bill will be key and queried how any unintended conflict in the literal meaning of the Welsh language version and English language version of the legislation would be resolved. The Learned Society for Wales suggested that as a consequence of restatement (see above), a question would then arise as to whether both texts can be treated as being of equal standing in accordance with section 156(1) of the Government of Wales Act 2006. They considered such issues ought to be addressed prior to the creation of the codes.

**Question 27:** Please also explain how you believe the Draft Bill could be formulated or changed so as to have:

- i) 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
- ii) 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.

109. There were four responses to this question, with some respondents expanding on or referring to comments made in their response to question 26 above or other questions. In addition to those comments:

- a. Dr Huws suggested that the Draft Bill could for example refer specifically to the meaning of bilingual terminology and provide a guide to determining the meaning through both versions or explain what the structure of the legislation should be;
- b. Keith Bush QC commented that comprehensive fully bilingual interpretation provision, applying to the law applicable in Wales would have a very



positive effect on opportunities for people to use the Welsh language to discuss matters relating to the law.

## Annex A – List of respondents

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### Individuals:

1. Anonymous
2. Keith Bush QC, Ysgol y Gyfraith Hillary Rodham Clinton, Prifysgol Abertawe
3. Trevor Coxon, Law Society Wales Committee and former Monitoring Officer for Wrexham CBC
4. Richard W Ebley
5. Dr Tom Hannant, Hillary Rodham Clinton School of Law, Swansea University
6. Dr Catrin Fflûr Huws, Ysgol y Gyfraith, Prifysgol Aberystwyth
7. Huw Williams (Partner) and Clare Hardy (Senior Associate), Geldards LLP

### Organisations and businesses:

8. Association of London Welsh Lawyers
9. Bangor Law School's Public Law Research Group
10. Capital Law Limited
11. Cardiff Third Sector Council
12. Cardiff University's Graduate Diploma in Law Course Students: Ieuan Callaghan, Grace Ferguson-Throne, Isabelle Knight, Rhianna Paige Hardy, Phyllida Spackman
13. Judicial Appointments Commission, Professor Noel Lloyd CBE, Chair of the Welsh Matters Committee
14. Law Commission of England and Wales
15. Learned Society of Wales
16. Solicitors Regulation Authority
17. Swansea Law Clinic
18. The Law Society, Wales
19. University and College Union (Wales)
20. Welsh Language Commissioner