

Welsh Language Impact Assessment

Welsh Language Impact Assessment

Title: Law Derived From the European Union (Wales) Bill	WLIA Reference No <i>(completed by WLU):</i> 02/03/2018			
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Date: 01/03/2018				
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Programme/Project Type <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Policy <input checked="" type="checkbox"/> Legislation <input type="checkbox"/> Grant <input type="checkbox"/> Business change <input type="checkbox"/> Infrastructure <input type="checkbox"/> Construction, Capital <input type="checkbox"/> ICT <input type="checkbox"/> Other (Please specify below) </div> <div style="width: 45%;"> <input type="checkbox"/> Project or programme <input type="checkbox"/> Research, evaluation <input type="checkbox"/> Services <input type="checkbox"/> Contracts, tenders </div> </div> <div style="border: 1px solid black; height: 40px; margin-top: 5px;"></div>				
Costs: How much is the projected whole life cost for the programme/project? 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 type="checkbox"/>
Of the above, please provide details if there are any identified costs directly associated with the Welsh language? <p>As outlined in the Regulatory Impact Assessment produced alongside the Law Derived from the European Union (Wales) Bill ("LDEU Bill"), the administrative cost of producing the necessary secondary legislation remains uncertain due to the unique circumstances relating to the UK's withdrawal from the EU. The degree of uncertainty will diminish over time as the work progresses, and as the outcome of the negotiations and the nature of the future relationship with the EU and of the arrangements for Wales and the wider UK become clearer. However, given this uncertainty, and coupled with the limited time available, the administrative costs for the consequential secondary legislation the LDEU Bill requires; including the costs directly associated with the Welsh language, are not known at this stage.</p>				
How long is the programme/project expected to run?				
Up to 1 yr	Up to 2yrs	Up to 5yrs	Up to 10yrs	More than
Unknown				

				10 yrs	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	X	

Key milestone dates for the project:

The timeline requires the LDEU Bill to receive Royal Assent (assuming it is passed by the National Assembly of Wales) before the UK Government's European Union (Withdrawal) Bill receives Royal Assent. The LDEU Bill, and the regulations made under it, will remain in force until any future legislative action to provide otherwise.

This impact assessment will be revisited (if necessary) as the LDEU Bill progresses through the National Assembly for Wales ("the Assembly") stages.

Background

On 13 July 2017, the UK Government introduced the European Union (Withdrawal) Bill¹ ("the EU (Withdrawal) Bill") in the House of Commons. The EU (Withdrawal) Bill repeals the European Communities Act 1972 and provides that on the UK's exit from the EU the entire body of EU law (subject to some specified exceptions) is incorporated into domestic law.

The Welsh Government agrees that legislation is required to provide stability and continuity as the UK withdraws from the EU. It is essential that clarity and certainty is provided for citizens and businesses during a period of unprecedented changes. A Bill enacted by the UK Parliament, for the UK as a whole, which respected the devolution settlement would be the best way to achieve this. However, when the UK Government introduced its EU (Withdrawal) Bill as the legislative vehicle to deliver this objective, it was clear that this was not its approach.

The Welsh Government, together with the Scottish Government, has sought to address their concerns by working with the UK Government to amend the EU (Withdrawal) Bill. In the absence of an agreement, the Welsh Government and Scottish Government jointly published a number of proposed amendments to the UK Bill that, if passed, would respect the devolution settlements. Those amendments were tabled, debated and voted on at Commons Committee stage but were not passed.

As the proposed amendments to the EU (Withdrawal) Bill sought by the Welsh Government were not passed and no meaningful amendments were brought forward by the UK Government, the Welsh Ministers remain unable to recommend that the Assembly gives its consent in relation to the EU (Withdrawal) Bill as it left the Commons.

The UK Government has indicated that it will be bringing forward amendments to the devolution aspects of its Bill at Lords Committee stage. The Welsh Government continues to work with the UK Government to seek an agreement on amendments to the EU (Withdrawal) Bill but has had to prepare for the possibility that the Assembly withholds its consent. This preparation has included the development of the LDEU Bill.

¹ <https://services.parliament.uk/bills/2017-19/europeanunionwithdrawal.html>

The LDEU Bill has two main objectives. The first objective, consistent with the EU (Withdrawal) Bill, is to ensure that the law continues to function effectively on the UK's withdrawal from the EU. The second objective is to ensure that the Assembly and Welsh Ministers are responsible for taking the necessary legislative steps in relation to EU law applying in relation to Wales in devolved areas.

Subject to the Assembly passing the LDEU Bill, it will provide powers for the Welsh Ministers, by regulations, to create a body of EU derived Welsh law. This is made up of provision on devolved matters contained in:

- Direct EU law,
- EU derived enactments, and
- Provision made under EU related powers.

As EU derived Welsh law is to be created by regulations made under the LDEU Bill, the Bill itself will not result in any immediate practical change. As a result, the Bill will not effect any changes to EU law. Any changes will be achieved by regulations made under the Bill, which will only take effect at the point of the UK's withdrawal from the EU.

However, as a general rule, the policy objective of the LDEU Bill is to provide that the same rules and laws apply in Wales on the day after exit as on the day before.

Subject to the LDEU Bill being passed by the Assembly, consideration will be given to what further impact assessments are needed as part of any programme of subordinate legislation under the Bill. The following analysis is, therefore, mainly focused on the provisions contained in the Bill, but does extend, as far as is possible, to the possible impacts of the programme of subordinate legislation made under it.

STAGE 1: PLANNING

What are the aims and objectives of the policy?

What are the desired outcomes/ what constitutes 'success'?

The main proposition in the LDEU Bill is to grant the Welsh Ministers powers to maintain the current rights and obligations applicable in Wales under EU law. The LDEU Bill itself is, therefore, not intended to have an immediate effect. It will be for the regulations made under the Bill to make any necessary legislative changes.

The Welsh Ministers' powers under the LDEU Bill are specifically designed to be exercised to ensure that current rights and obligations are retained. However, some modification will be required to ensure the statute book can operate effectively. There will be a degree of policy choices involved in making these modifications but, again, the modifications must adhere to the overarching policy of securing continuity.

The LDEU Bill in itself will not have an impact on the Welsh language. However, as a consequence of the Bill a new body of devolved Welsh law that derives from existing EU rules will be created. This will potentially result in a major change in the source of the applicable law in Wales. For that reason the Welsh Government has chosen to

undertake a full Welsh Language Impact Assessment. However, the scale of the subordinate legislation that will be made under the Bill remains uncertain. It is, therefore, not possible at this stage to provide a detailed analysis of the impact the implementation of the Bill will have on the Welsh language. The degree of uncertainty will diminish with time and this impact assessment will be kept under review as the Bill progresses through the Assembly. If the Bill is passed by the Assembly, consideration will be given to what further Welsh language impact assessments are needed as part of any programme of subordinate legislation made under the Bill. The following assumes that there will be a programme of subordinate legislation brought forward under the Bill.

At present, EU law, including directly applicable law, is available in the 24 official languages of the EU (including English). English is an official language and, therefore, all directly applicable EU law is available in English but not Welsh.

The approach taken in the LDEU Bill enables all existing directly applicable EU law that contains provisions that relate to subjects within the devolved competence of the Assembly to be set out, in full, in Welsh statutory instruments. As a result, the body of direct EU law could potentially be available bilingually in Wales for the first time, enabling the citizens of Wales to be able to access the law in Welsh. It is expected that this will be the only impact of the LDEU Bill relating to the Welsh language. As noted above, there is a degree of uncertainty remaining as to the scope of the programme of subordinate legislation that would be produced under the Bill. As certainty increases, the likelihood and scope of the impact will be further analysed.

As the body of EU derived Welsh law will be created by regulations made under the LDEU Bill, rather than by the Bill itself; any impact each regulation will have on the Welsh language will need to be considered on a case-by-case basis.

What policy options have been considered?

and

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

The following options have been considered:

Do nothing and, as a consequence, use the powers provided in the EU (Withdrawal) Bill, which is currently before Parliament.

On 13 July 2017, the UK Bill was introduced in the House of Commons. The UK Bill repeals the European Communities Act 1972 and provides that on the UK's exit from the EU the entire body of EU law (subject to some specified exceptions) is incorporated into domestic law. The UK Bill confers regulation-making powers on UK Government Ministers to correct deficiencies arising from the body of EU derived law which is to be converted into domestic law, to ensure they function effectively; to make provision to prevent or remedy any breach of the UK's international obligations; and to amend legislation to ensure that any withdrawal agreement reached with the EU can be implemented effectively.

Under this option the Welsh Ministers would have corresponding powers in relation to domestic EU derived law, UK international obligations and in relation to implementing

the withdrawal agreement as they relate to devolved matters. However, the Welsh Ministers' powers would not extend to dealing with directly applicable EU law. As the UK Government and Parliament would not be legislating bilingually, any legislation made by a UK Government Minister under the powers of the EU (Withdrawal) Bill would only be in English.

This option represents the status quo. At the moment the body of EU law is only available in the official languages of the Member States of the EU (including English). This would continue to be the case if Welsh Ministers had to rely on the EU (Withdrawal) Bill without amendment. For this option, the impact on the Welsh language is considered to be neutral.

Continue to seek to work with the UK Government to amend the EU (Withdrawal) Bill, the better to reflect the devolution settlement.

In response to the EU (Withdrawal) Bill the Welsh Government, in collaboration with the Scottish Government, published amendments which addressed concerns about the Bill from a devolution perspective. In particular the amendments sought to remove the proposed new restrictions placed on the legislative competence of the Assembly and the executive competence of the Welsh Ministers.

The amendments provide that the powers conferred on UK Government Ministers to correct what is known as retained EU law could not be used to make provision within the competence of the Devolved Administrations and legislatures, without the consent of the Devolved Administrations and cannot be exercised to amend the devolution settlements (with the exception of the power to implement the withdrawal agreement, which requires the consent of the Devolved Administrations). Welsh (and Scottish) Ministers would also have equivalent powers to those conferred on UK Government Ministers to correct the deficiencies that would arise in domestic law as a result of EU withdrawal.

The amendments would mean that the Welsh Ministers would have had the same powers as Ministers of the Crown to amend deficiencies in all retained EU law as it relates to devolved matters. In consequence, the Welsh Government would have responsibility for dealing with directly applicable EU law but *could* choose for some of it to be dealt with as part of regulations made by a UK Government Minister for UK wide application.

Regulations made by Welsh Ministers to amend retained EU law would be made bilingually.

This option has some positive impact on the Welsh language by resulting in a greater proportion of the regulations made under the EU (Withdrawal) Bill being bilingual, but this would be limited due to the fact that the body of directly applicable EU law would continue to be available only in English as retained EU law.

Introduce the LDEU Bill

As set out in previous sections, the principal objective of the LDEU Bill is to provide regulatory stability in Wales on the UK's withdrawal from the European Union. As a

general rule, this will mean that the same rules and laws apply in Wales on the day after exit as on the day before. It achieves this by providing a power for the Welsh Ministers, by regulations, to create a body of EU derived Welsh law. The creation of a substantial body of law under the LDEU Bill would have a major impact on the Welsh language because, under this option, the rules contained in directly applicable EU law will be available bilingually for the first time.

This option provides the greatest potential to increase the amount of legislation available bilingually in Wales and therefore has, of all identified options, the most positive impact on the promotion and use of the Welsh language.

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

Cymraeg 2050 A million Welsh speakers not only aims to increase the number of Welsh speakers in Wales to one million by 2050 but also to increase the use of Welsh in formal and informal situations. Introducing the LDEU Bill allows for the potential of greater use of the Welsh language in many situations but could possibly have a significant impact for the legal system. Currently, when questions come before courts which relate to directly applicable EU law, the courts are unable to consult a Welsh text of the law. The powers in the LDEU Bill can be exercised to create a new body of law which would result in the body of directly applicable EU law being replicated, with necessary modifications, in Welsh domestic law. This would mean the law being made available bilingually and that courts would, for the first time, be able to refer to Welsh language versions of the body of directly applicable EU law, allowing cases to be determined in Welsh.

Academics and students would also benefit from being able to access resources in Welsh currently only available in English (i.e. the body of directly applicable EU law).

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 Welsh Language Standards for policy-making require that when policy decisions are made, regard must be given to the effects this would have on the opportunities for persons to use the Welsh language and treating the Welsh language no less favourably than the English language.

The LDEU Bill means that directly applicable EU law could be available, for the first time, in Welsh with the text in Welsh and English having equal status. The LDEU Bill could also enable greater use of the Welsh language not only for citizens who seek to understand their legal rights and obligations and for academics and students to study the law but also in terms of the enforcement of the law through the legal system.

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?

As the introduction of the LDEU Bill is under emergency measures it has not been possible to undertake consultation with stakeholders nor to provide a comprehensive

list of those that will be impacted by it.

It is envisaged that the Bill could potentially have an impact by enabling those who wish to, to access and understand their legal rights and obligations under EU retained law in Welsh. A bigger impact could result for businesses, those working in the legal sector, academics and students who are more likely to access the law. It is believed that the groups impacted would respond positively to any new legislation as its only impact would be positive as the LDEU Bill would enable an increase in the amount of bilingual legislation available in Wales.

The impact on stakeholders will be kept under review. In particular any secondary legislation made under the LDEU Bill will include, where necessary, an analysis of impacts on the Welsh language.

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

N/A

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 Division for advice)?

The main purpose of the LDEU Bill is to ensure that there is clarity and certainty for businesses and citizens in Wales by having the same rules in place the day after the UK leaves the EU as the day before, in a way which reflects the devolution settlement. Restrictions on the Assembly's legislative competence that are contained in the EU (Withdrawal) Bill mean that the LDEU Bill must receive Royal Assent before the Withdrawal Bill receives Royal Assent. As a result, the LDEU Bill must be introduced as an Emergency Bill, which allows for a shorter period for scrutiny by the Assembly.

As a result, it has not been possible to go through all the planning stages generally associated with a Bill.

However, the LDEU Bill is just the first of number of pieces of new legislation that will be required once the UK leaves the EU. Each piece of these will require, where necessary, its own analysis of the impacts on the Welsh language.

STAGE 2: IDENTIFYING AND ASSESSING IMPACTS

Impact Assessment Summary

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

Positive effects/ impacts:

Directly applicable EU law is currently only available in the official languages of the Member States of the EU, including English. It is not available in Welsh. The approach taken in the LDEU Bill could potentially see directly applicable EU law that relates to devolved subjects being set out, with the necessary modifications, in Welsh regulations that would therefore be bilingual.

If a substantial body of law were to be created under the LDEU Bill it would represent a positive impact as it would enable citizens who wish to access and understand their legal rights and obligations to do so in Welsh if they chose to do so. Those who use the legal system, including the courts, academics and students would also potentially be positively impacted to an even greater extent as they refer to the law on a regular basis.

Using the scoring system of probability multiplied by magnitude of an impact it is felt that the impact scores 3. This is because there is a degree of uncertainty remaining as to the scope of the programme of subordinate legislation that would be produced under the Bill. As certainty increases, the likelihood and scope of the impact will be further analysed.

Adverse effects/ impacts:

N/A

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

Whilst there are no specific clauses in the LDEU Bill directly aimed at promoting the Welsh language, in its entirety the LDEU Bill offers an opportunity to increase the use of the language.

In particular, any regulations made under the LDEU Bill could facilitate a greater use of the Welsh language. This includes individuals and businesses who are accessing the legal system, legal professionals asked to advise on the law, students and academics who study the law and the court system in administering the law.

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

N/A

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: **x**
 Adverse: ☐
 Neutral: ☐
 Unknown: ☐

Decision following IA

- | | |
|---|--------------------------|
| 1. No major change | X |
| 2. Adjust the policy to improve impacts | <input type="checkbox"/> |
| 3. Continue the policy with mitigation measures | <input type="checkbox"/> |
| 4. Stop and remove the policy | <input type="checkbox"/> |

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:

N/A

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?
N/A
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?
As stated above it has not been possible to undertake a consultation on the LDEU Bill because of the short timescale needed to pass it.
How will you monitor the ongoing effects during the implementation of the policy?
The ongoing effects that the LDEU Bill creates will be monitored through Welsh language impact assessments, where necessary, on the regulations made under the LDEU Bill.
Please outline how you will continue to capture effects/ impacts in future monitoring and evaluation?
This will continue to be captured through the impact assessments, where necessary, for any regulations made under the LDEU Bill.
Any other comments – ongoing results of evaluations, emerging impacts
N/A

4. Declaration

Policy lead:
The policy does not have an impact upon the Welsh language.
Name:
Sian Brown
Department:

OFMCO
Date (s):
01/03/2018
Signature:
Planned Review Dates:

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 Robert Parry (Senior Responsible Owner)	Date 02/03/2018
Signed (Senior Responsible Owner)	Review Date
Signed (Senior Responsible Owner)	Review Date
Signed (Senior Responsible Owner)	Review Date