

# Legislation (Wales) Bill

## Constitutional and Legislative Affairs Committee Inquiry

Response  
January 2019

## Legislation (Wales) Bill / Bil Deddfwriaeth (Cymru)

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### Response by the Law Society of England and Wales

#### Introduction

The Law Society of England and Wales ("the Law Society") is the professional body for solicitors, representing over 160,000 registered legal practitioners. The Law Society represents the profession to parliament, governments and regulatory bodies and has a public interest in the reform of the law.

The Law Society Wales Office delivers the Law Society's aims in Wales, working with Welsh institutions; influencing and responding to the devolution of law-making; and promoting and supporting the legal community in Wales. This response has been informed by members of the Law Society's Wales Committee which includes solicitors, academics and lay members.

#### The Bill

The landscape of legislation in Wales is complex and the divergence of Welsh legislation from England only legislation is accelerating. Given this backdrop so as far as it is possible to draw together the current law to improve accessibility the aim of the legislation is supported and to be encouraged.

#### Part 1 Accessibility of Welsh Legislation

The arguments for a duty to be included in legislation are clearly made in the Explanatory Memorandum. Whilst 'consolidating and codifying Welsh law' is the aim of the Bill the interpretation of the duty is left to the government of the day. It is a particular concern that the timing and progress of codification is a matter for the government of the day.

#### Codification and Codes of Law

The Bill refers to 'codification' and the Explanatory Memorandum to Codes of Welsh law but as we know from the Law Commission's report on the Form and Accessibility of the Law Applicable in Wales<sup>1</sup> there are versions of codification and what is proposed for Welsh law does not create a 'Code' in the civil law tradition. Viewed from a wider perspective the proposals could lead to confusion. It is proposed, therefore, that the codes which result from this activity of 'consolidating and codifying Welsh law' be referred to as 'Welsh Law Codes' to identify them as specific, novel and unique.

Having a new term to describe the way Welsh law is being 'ordered' will assist those learning about and using Welsh law in the future. The main aim of the Bill is to improve accessibility and the resulting activity will establish a new approach to statute law in Wales.

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<sup>1</sup> <https://www.lawcom.gov.uk/project/the-form-and-accessibility-of-the-law-applicable-in-wales/>

We would hope to see an open, inclusive approach to the preparation of the draft codes. Planning law is an early candidate which is benefitting from the involvement of the Law Commission another area which would benefit from being codified early in the process is local government law given its significant divergence from the law in England. We propose that the Welsh Government adopts a protocol to include factors such as early engagement with stakeholders, as these will differ with the varying topics, and whether the government can proceed to develop a new code without first seeking a Law Commission project on the relevant law.

Further, in response to the Law Commission project on the Form and Accessibility of the Law Applicable in Wales we said:

*The Constitutional and Legislative Affairs Committee could include an additional scrutiny function regarding the form of new law applicable in Wales with a protocol to introduce draft Bills for pre-legislative scrutiny and engage expert advisers (voluntarily, by committee or otherwise).<sup>2</sup>*

We would welcome more information on how the National Assembly will accommodate the making of new Welsh Law Codes.

## **Part 2 Interpretation and operation of Welsh legislation**

In 2016 in response to the Law Commission's consultation to inform its project on the Accessibility of the Law Applicable in Wales, our members agreed an Interpretation Act was necessary for Welsh law but at the time did not feel the time had come. This provision for interpretation, however is supported and welcomed.

We note that there was significant input to some of the detailed proposals for interpretation in the Counsel General's consultation on the draft Bill. However, it is clear from the Bill as laid that some of the concerns raised then have not been reflected in the redraft as introduced to the Assembly.

On Section 13 we raised specific concerns on the issue of deemed service of documents by electronic means. This refers to documents deemed to have been served on the day on which an electronic communication is sent. However, practitioners will note that in some parts of rural Wales in particular, internet connection is very poor, bandwidth of provision limited and transfer rates very slow. We question, therefore, whether a deemed service on the day of transmission is reasonable or achievable.

Whilst the Bill relates to Welsh legislation Sections 12 and 13 should be read in a wider context and in relation to the Civil Procedure Rules. Practice direction 6A at para 4.2 deals with the question of prior agreement to electronic service and file sizes etc.

**4.2** *Where a party intends to serve a document by electronic means (other than by fax) that party must first ask the party who is to be served whether there are any limitations to the recipient's*

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<sup>2</sup> [ibid.](#)

*agreement to accept service by such means (for example, the format in which documents are to be sent and the maximum size of attachments that may be received).*<sup>3</sup>

Furthermore, in the Schedule of definitions we raised a query whether it may not be appropriate to include a definition of community councils as these are unique to Wales albeit similar to Parish Councils in England.

Finally, in the Counsel General's summary of responses to his consultation on the draft Bill, he notes that there was little support for what is now Section 25 regarding duplicate offences, but although slightly amended it remains in the Bill as introduced.

Having said the above, we are broadly supportive of the majority of the suggested interpretations. Indeed there are some very welcome additions such as Section 26 which determines that unless expressed otherwise, Welsh law shall bind the Crown.

### **In force dates**

In our response to the Law Commission's project we noted:

*There is a particular concern regarding 'in force' dates. Whereas amendments produce complicated legislation knowing when particular provisions came into force is a further, greater concern. Even where legislation is annotated reliable 'in force' information remains elusive. This issue becomes further complicated where there are amendments, and further and divergent amendments, to subordinate legislation.*<sup>4</sup>

The inclusion of these provisions in Part 2 are also to be welcomed.

### **Post Legislative Scrutiny**

Whilst the Bill is concerned with the ordering of legislation there is a further element of good law making which forms part of a robust system and that is post-legislative scrutiny. The regular analysis and evaluation of the implementation of Welsh legislation is not apparent on the face of the Bill and should be encouraged.

### **Time and Capacity**

It will take many years for the aims of this legislation to be achieved. During that period of time it will be vitally important for the programme to be adequately resourced in terms of financial and human resources and for successive governments to respond positively to their new duty if the full benefits of this piece of

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<sup>3</sup> [https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06/pd\\_part06a](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06/pd_part06a)

<sup>4</sup> Ibid.

legislation are to be realised. If they are then the profession and public in Wales will have much better, more reliable access to the legislative sources of the laws of Wales.

Please refer any questions regarding this response to:

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