



The Right Honourable Lord  
Justice Bean  
Chairman  
Law Commission of England  
and Wales  
1<sup>st</sup> Floor, Tower  
52 Queen Anne's Gate  
London SW1H 9AG

19<sup>th</sup> July 2017

*Dear Sir David,*

## **FINAL RESPONSE TO THE COMMISSION'S REPORT ON THE FORM AND ACCESSIBILITY OF THE LAW APPLICABLE IN WALES**

This letter is the Welsh Government's final response to the Form and Accessibility Report, issued in accordance with the Protocol between the Law Commission and the Welsh Ministers (July 2015). To reiterate comments I have made to you before – the Report is very welcome and provides a helpful blueprint as to how the Welsh Government and others can take action to ensure the laws of Wales are more accessible.

I attach a table setting out the Welsh Government's position in respect of each recommendation of the Report. I also summarise our views below.

- **A programme of consolidation and codification (Recommendations 1, 2, 3, 14 and 15)**

The Welsh Government agrees that a sustained, long term programme of consolidation and codification of Welsh law would deliver societal and economic benefits, and is necessary in order to ensure that the laws of Wales are easily accessible. This would also make the work of the Government in developing new laws – and the work of the National Assembly in scrutinising them – considerably more straightforward and therefore more efficient.

The Welsh Government has already begun to implement these recommendations by starting a pilot programme of consolidation, codification and better publication which will run through 2017 and into early 2018. I recently gave evidence to the National Assembly's Constitutional and Legislative Affairs Committee on progress and next steps. This makes clear this Government's commitment to developing more orderly systems of law making and publishing. We recognise, however, that this will be a lengthy and difficult journey, particularly over the next few years given the constitutional changes that face us.

The issues that are likely to face in consequence of the United Kingdom's withdrawal from the European Union may mean postponing activity to implement your recommendations, but I am determined that notwithstanding whatever challenges emerge we make a long term commitment to the task of improving access to the law.

- **National Assembly procedures and processes for the scrutiny of consolidation Bills and Legislative Codes (Recommendations 4, 5, 6, 7, 10 and 11)**

The National Assembly's procedures and consideration of legislation are matters for the National Assembly. However the Welsh Government strongly welcomes the Business Committee's decision to proceed with developing a standing order for consolidation Bills. A procedure that facilitates consolidation by not exposing existing policy to the full political process is fundamentally important.

- **Nature of Legislative Codes (Recommendations 8 and 9)**

As I have set out in written evidence to the National Assembly's Constitutional and Legislative Affairs Committee, we have determined that our vision of a Code is different to that of the Law Commission's. In our view the word "code" implies something comprehensive, not one part of the legislative framework. As such we do not see why a Code should not be wider than a single Act, nor why it should exclude the subordinate legislation and quasi-legislation on a topic.

We consider, therefore, that our Legislative Codes should be comprehensive, in that they should contain (to the extent practicable) all of the legislation and guidance or other similar documents made under the legislation that falls within the subject matter of the Code. Further, the existing hierarchy within, and delineation between, the legislative instruments (primary, secondary, etc.) should remain. All of the content of a Code will be made in both English and in Welsh (both, of course, having equal standing).

- **Amending statutory instruments (Recommendations 12 and 13)**

The Welsh Government welcomes these recommendations and will be undertaking further work to understand the technical implications of (in particular) Recommendation 12. If the technology can adapt, and a suitable procedure be adopted, then this should save time for all involved and make for clearer legislation for the end user.

- **Establishing a Legislative Code Office (Recommendations 16, 17 and 18)**

The Welsh Government agrees that the functions of consolidation and codification (if adopted) should be carried out within government rather than establishing a new, separate or independent, body for this work. Firstly, because creation and management of legislation is primarily a matter for Government, and secondly in practical terms this is where the necessary expertise already exists.

- **Legislative standards (Recommendations 19, 20, 21, 22 and 23)**

As the Report made clear there are a number of approaches that could be taken in developing legislative standards. The Welsh Government intends to consider these further, but acknowledges the value that standards could bring.

- **Standardisation of Welsh language legal terminology (Recommendation 24)**

As I explained in the Interim Response the Welsh Government is preparing a new strategy for the Welsh language. I am also conscious that while there is no doubt a need for more consistency in Welsh language terminology to assist users, I do not wish to develop an inflexible and prescriptive system. We do not, after all, generally speaking have standardised terms in the English language and the same word can often mean different things depending on the context and how it is used. We will, therefore, be considering – along side other matters that will arise from our new strategy – what can be done to facilitate use of the Welsh language, but this will most likely fall short of the standardisation I believe the Commission envisages.

- **An Interpretation Act for Wales (Recommendation 25)**

Last month I launched a consultation document on this issue, Interpreting Welsh Law – Considering an interpretation Act for Wales. We are seeking views on whether the Welsh Government should develop a modern and bilingual interpretation act for Wales, which would set out general rules and definitions that would apply to Welsh law. The consultation closes in mid-September and our next steps will be determined in light of the consultation responses.

- **Improving publication (Recommendations 26, 27 and 28 relating to legislation.gov.uk and recommendations 29 to 32 relating to Law Wales/ Cyfraith Cymru)**

We continue to work closely with The National Archives who operate and maintain the legislation.gov.uk website. We will also continue to support and develop the Law Wales/Cyfraith Cymru website, and the recommendations of the report are consistent with our long term ambitions for the site.

I am sure we will continue to discuss progress with the recommendations of the Report in our regular meetings, however we will also ensure relevant information is included in the annual report to the National Assembly for Wales.

I am very grateful to you and to Nicholas Paines QC – and of course your officials - for your commitment to this project. I am also grateful to your predecessor as Chairman, Lord Justice Lloyd Jones, for his personal interest in the development of Welsh law.

I'm very conscious that your report, and the actions the Welsh Government and National Assembly for Wales take to pursue its recommendations, are of historic significance. I hope history will judge us well.

I am copying this letter to the Llywydd and Chair of the Constitutional and Legislative Affairs Committee of the National Assembly, and to the Queen's Printer.

Yours sincerely,



Mick Antoniw AC/AM  
Cwnsler Cyffredinol  
Counsel General

**Recommendations of the *Form and Accessibility of the Law Applicable in Wales* report of the Law Commission, and Welsh Government response**

Recommendation	Welsh Government's response	
<p><b>Recommendation 1:</b> We recommend that the Welsh Government pursues a policy of codification, executed in accordance with the recommendations that follow.</p>	<p><b>Accept</b></p>	<p>The Welsh Government agrees that a sustained, long term programme of consolidation and codification of Welsh law would deliver societal and economic benefits, and is desirable in order to ensure that the laws of Wales are accessible. This would also make the work of the Government and the Assembly in developing new laws – and in scrutinising them – considerably more straightforward and therefore more efficient.</p>
<p><b>Recommendation 2:</b> We recommend that codification should involve:</p> <p>(1) bringing together legislation whose subject matter is within the legislative competence of the National Assembly for Wales and which is currently scattered across various pieces of legislation of the United Kingdom Parliament and/or the Assembly in a piece of Assembly legislation;</p> <p>(2) reform of the legislation as appropriate.</p>	<p><b>Accept</b></p>	<p>The Welsh Government has already begun to implement this recommendation by a starting pilot programme of consolidation, codification and better publication which will run through 2017 and into early 2018.</p> <p>In accepting these recommendations, however, the Welsh Government is very conscious of the size of the task and the limited resource available to pursue it. It is very clear – not least in view of the likely implications of the UK's withdrawal from the European Union – that this will need to be a long term project for which significant resources may not always be available.</p>
<p><b>Recommendation 3:</b> We recommend that those areas in which the law is in most need of being brought together in Assembly legislation should be identified and the process of bringing the legislation together should be undertaken.</p>	<p><b>Accept</b></p>	<p>Pursuing consolidation and codification on a long term basis will require arrangements for identifying suitable areas for work will need to be put in place. The Welsh Government's position has always been that a practical and flexible solution to identifying the matters to be codified will be required, but that a programme of some sort would be sensible. The pilot programme will provide valuable learning for how such a programme could be developed, and how the suitable areas of</p>

Recommendation	Welsh Government's response	
		work can be identified and planned.
<p><b>Recommendation 4:</b> A flexible streamlined legislative procedure should be introduced into the Standing Orders of the National Assembly for</p> <p>(1) codification or consolidation Bills that include alteration or reform of the law; and</p> <p>(2) other law reform Bills prepared by the Law Commission,</p> <p>where the alterations or reforms are judged by the Assembly not to be controversial.</p>	<p><b>Accept (in principle)</b></p>	<p>The Assembly's procedures and consideration are matters for the National Assembly (rather than the Welsh Government).</p> <p>The Welsh Government agrees with the Law Commission's view that if "...<i>the law is merely being restated without substantive reform, the legislature's time should not be taken up by scrutinising it in detail</i>" and that there should be an efficient means carrying such Bills into law "<i>without competing for Assembly time with other Bills</i>". The Government also agrees with the Commission that the "<i>legislature must not be prevented from scrutinising proposed reforms.</i>"</p>
<p><b>Recommendation 5:</b> Such a Bill should be accompanied by an Explanatory Memorandum endorsed by the Counsel General which should explain the effect of each of the Bill's sections and include or be accompanied by recommendations as to the suitability of sections for committee or Assembly scrutiny.</p>	<p><b>Accept (in principle)</b></p>	<p>The documentary requirements of any Standing Order for consolidation Bills are a matter for the National Assembly (rather than the Welsh Government). However the Welsh Government supports appropriate documentation being prepared for consolidation Bills, and notes the approaches taken in the UK Parliament and the Scottish Parliament.</p>
<p><b>Recommendation 6:</b> A committee of the Assembly should consider the Bill and Explanatory Memorandum and recommendations as to the suitability of sections for committee or Assembly scrutiny. The committee should determine whether particular sections of a Bill are controversial, or make significant changes to the existing law such as to require scrutiny by the full Assembly, while others are suitable for scrutiny by an appropriate committee.</p>	<p><b>Accept (in principle)</b></p>	<p>The approach to scrutiny within any Standing Order for consolidation Bills is a matter for the National Assembly (rather than the Welsh Government).</p>

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<p><b>Recommendation 7:</b> Assembly Members should be able to call for a debate on the committee's report.</p>	<p><b>Accept (in principle)</b></p>	<p>The approach to scrutiny within any Standing Order for consolidation Bills is a matter for the National Assembly (rather than the Welsh Government).</p>
<p><b>Recommendation 8:</b> Codes should not be formally distinct from Acts of the Assembly. An Act of the Assembly should be identified as a code by a section of that Act and its short title.</p>	<p><b>Accept in principle</b></p>	<p>Whilst agreeing that a Code should not be formally distinct from an Act of the Assembly, the Counsel General for Wales has set out in evidence to the Constitutional and Legislative Affairs Committee that the Law Commission's recommendation is unduly limited.</p> <p>The Government's view is that a Code should not just be a single Act, but should also include the subordinate legislation and quasi-legislation on a topic. Each element would be identified as being part of a Code. For example, the Act could be described as "a principal Act of the _____ Code", and the regulations as "forming part of the _____ Code", etc.</p> <p>The Welsh Government is still considering whether there is merit in a Code having legal status or whether a Code should only be an informal mechanism used to better organise and promulgate Welsh law.</p>
<p><b>Recommendation 9:</b> Codes should be preserved by a rule that, where there is a code in place, further legislation within the subject area of the code should only take effect by way of amending the code.</p>	<p><b>Accept</b></p>	<p>Maintaining the integrity of a Code (or at least the consolidated Acts that for the Code) is important, so as to retain its cohesion and completeness. The pilot programme will allow the Government to consider how this could work in practice, and there will also need to be consideration, by the National Assembly, of any matters which may need to be addressed in Standing Orders.</p>
<p><b>Recommendation 10:</b> A procedure should be</p>	<p><b>Accept</b></p>	<p>The approach to scrutiny of legislation (and the operation of</p>

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<p>established by the Assembly for considering whether to allow any piece of legislation to pass through the Assembly which does not comply with the requirement to legislate within the code.</p>	<p><b>(in principle)</b></p>	<p>Standing Orders) is a matter for the National Assembly (rather than the Welsh Government). However the Government has indicated (see recommendation 9) that it considers maintaining the integrity of a Code, once developed, to be important.</p>
<p><b>Recommendation 11:</b> The standing orders of the National Assembly should enable the Presiding Officer to put forward a motion that a Bill (in whole or part) falls within the subject area of a code and should be treated as such.</p>	<p><b>Accept (in principle)</b></p>	
<p><b>Recommendation 12:</b> When secondary legislation is amended, the updated text of the statutory instrument should then be laid before the National Assembly, rather than an amending statutory instrument.</p>	<p><b>Accept</b></p>	<p>Recommendations 12 and 13 are suitable for accepting in the context of consolidation and codification projects, as well as amending regulations not already consolidated or forming part of a Code.</p>
<p><b>Recommendation 13:</b> The resolution of the National Assembly should be limited by standing order to the changed text only.</p>	<p><b>Accept (in principle)</b></p>	<p>There are technical and resource implications of recommendation 12 will be considered as part of the work of the pilot programme</p> <p>Whilst Standing Orders are a matter for the Assembly, the Government supports recommendation 13.</p>
<p><b>Recommendation 14:</b> The Welsh Government should institute regular programmes of codification.</p>	<p><b>Accept</b></p>	<p>Pursuing consolidation and codification of legislation over the longer term will need careful planning, and it is appropriate for a programme of activity to be developed so it can be costed, resourced and delivered. This is the approach taken in respect of law reform Bills. The pilot programme will provide useful lessons to guide the development of a programme of consolidation, which may form part of the Government's wider legislation programme.</p>
<p><b>Recommendation 15:</b> The Counsel General should be obliged to present a codification programme, and report to the National Assembly on the progress of the programme at regular intervals</p>	<p><b>Accept</b></p>	

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<p><b>Recommendation 16:</b> We recommend that a Code Office should be set up to manage the process of codification and consolidation and maintain codes. The Code Office should be distinct from the existing Office of the Legislative Counsel.</p>	<p><b>Accept</b></p>	<p>We agree that a distinct office with the Welsh Government should have responsibility for developing and maintaining the Codes. For obvious reasons the Code Office should, however, be closely linked to the Office of the Legislative Counsel.</p>
<p><b>Recommendation 17:</b> We recommend that the Code Office functions should include the following:</p> <p>(1) approval or oversight of the exercise of technical maintenance of the codes;</p> <p>(2) periodic technical reviews; and</p> <p>(3) managing the process of identifying more substantive defects in codes and drafting amendments to correct them.</p>	<p><b>Accept</b></p>	<p>The Welsh Government considers there is scope to widen the functions of a 'Legislative Code Office' identified in Recommendation 17 to lead on all aspects of the accessibility programme, including developing and maintaining the Cyfraith Cymru/Law Wales website.</p>
<p><b>Recommendation 18:</b> We recommend that the Code Office should be accountable to the Counsel General and led by First Legislative Counsel.</p>	<p><b>Accept</b></p>	
<p><b>Recommendation 19:</b> We recommend that the Counsel General be responsible for publishing a set of legislative standards.</p>	<p><b>Accept</b></p>	<p>Whilst there is merit for a new legislature (and executive) in adopting legislative standards, any standards must be flexible and overseen with pragmatism. They should be a guide to good practice and principle, so as to assist debate, and to perhaps augment the existing Standing Orders for legislation.</p>
<p><b>Recommendation 20:</b> We recommend that, insofar as the standards relate to the design and content of legislation, they be reviewed by the National Assembly and, if accepted, adopted by resolution.</p>	<p><b>Accept in principle</b></p>	<p>As part of the pilot programme, further consideration will be given to recommendations 19 and 20 (and also recommendation 23 below).</p>
<p><b>Recommendation 21:</b> We recommend that the</p>	<p><b>This recommendation is for the National Assembly and therefore</b></p>	



Recommendation	Welsh Government's response	
<p>National Assembly establish a regular structure for:</p> <p>(1) pre-legislative scrutiny of Bills, including their impact on the accessibility of the statute book; and</p> <p>(2) post-legislative scrutiny of Bills, including their impact on the accessibility of the statute book.</p>	<p><b>outside the Welsh Government's response</b></p>	
<p><b>Recommendation 22:</b> We recommend that standing orders should require that the Explanatory Memorandum to a Bill disclose and justify any departure from legislative standards.</p>	<p><b>Accept in principle</b></p>	<p>The Assembly's procedures and consideration are matters for the National Assembly, rather than the Welsh Government or the Welsh Ministers.</p>
<p><b>Recommendation 23:</b> We recommend that standards for the content of explanatory notes be included in legislative standards.</p>	<p><b>Accept in principle</b></p>	<p>The development, and content, of legislative standards will need fuller consideration, but in principle they could include provision around Explanatory Notes</p>
<p><b>Recommendation 24:</b> The Welsh Government should be formally recognised as being responsible for standardisation of Welsh language legal terminology. An independent multidisciplinary panel should be established to advise the Welsh Government on Welsh language legal terminology.</p>	<p><b>Reject</b></p>	<p>Although much has already been done (for example through the development of the 'Term Cymru' database) the Welsh Government recognises that more could be done to facilitate Welsh as a language of the law. This will be considered as part of the Government's new overarching strategy on a million Welsh speakers by 2050. We do not believe, however that terms should be rigidly standardised – and wish to retain the same flexibility as exists in relation the English language.</p>
<p><b>Recommendation 25:</b> We recommend that the Welsh Government and the National Assembly consider, and keep under review, the practical benefits of introducing an Interpretation Act of the Assembly.</p>	<p><b>Accept</b></p>	<p>The Welsh Government has launched a policy consultation on the benefits and implications of an interpretation Act for Wales.</p>

Recommendation	Welsh Government's response	
<b>Recommendation 26:</b> The Welsh and English language versions of legislation should be capable of being viewed side by side on legislation.gov.uk.	<b>Accept in principle</b>	The Welsh Government sees merit in recommendations 26, 27, 28 and 30 but The National Archives (TNA) is responsible for the operation of legislation.gov.uk and improvements and developments with the site. Therefore the Welsh Government will work with TNA during the pilot programme to consider these matters further.
<b>Recommendation 27:</b> Online versions of legislation should identify the territorial applicability of the legislation.	<b>Accept in principle</b>	
<b>Recommendation 28:</b> We recommend that explanatory notes should be linked on legislation.gov.uk to the sections to which they relate.	<b>Accept in principle</b>	
<b>Recommendation 29:</b> The Welsh Government should work with the National Archives to continue to develop Cyfraith Cymru/Law Wales into a portal through which citizens can access legislation applying in Wales.	<b>Accept</b>	Recommendations 29, 31 and 32 are consistent with the Welsh Government's wider and longer term ambitions for the further development of Cyfraith Cymru/Law Wales. Our website currently acts as a portal to legislation.gov.uk and we would wish to expand this further, in both developing the website and in our discussions with TNA.
<b>Recommendation 30:</b> The Welsh Government should work with the National Archives to make legislation available online by subject matter.	<b>Accept in principle</b>	As noted above, the management and operation of legislation.gov.uk is a matter for TNA, but during the pilot programme the practical benefits of recommendation 30 will be considered against potential developments in relation to the Cyfraith Cymru/Law Wales website (which is organised by subject matter already).
<b>Recommendation 31:</b> The Welsh Government and the National Assembly should develop access through Cyfraith Cymru/Law Wales so that citizens can find all of the law relating to a particular code in	<b>Accept</b>	See recommendation 29 above.

Recommendation	Welsh Government's response	
one place, including primary and secondary legislation, statutory and non-statutory guidance and other sources as appropriate.		
<b>Recommendation 32:</b> Official guidance, including statutory guidance, should be available from the Cyfraith Cymru/Law Wales website	<b>Accept</b>	See recommendation 29 above.