



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