The Welsh Language Commissioner's Response to the Law Commission's consultation document *Form and Accessibility of the Law Applicable in Wales*

6 October 2015
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1 Welsh Language Commissioner

1.1 The principal aim of the Welsh Language Commissioner is to promote and facilitate the use of the Welsh language. This entails raising awareness of the official status of the Welsh language in Wales and imposing standards on organizations. This, in turn, will lead to the establishment of rights for Welsh speakers.

1.2 Two principles underpin the work of the Commissioner:

- In Wales, the Welsh language should be treated no less favourably than the English language;
- People in Wales should be able to live their lives through the medium of Welsh if they choose to do so.

1.3 In due course, secondary legislation will introduce new powers allowing the setting and imposing of standards on organizations. Until then, the Commissioner will continue to inspect statutory Welsh language schemes through the powers inherited under the Welsh Language Act 1993. The first set of standards for public organizations, including the Welsh Government and Local Authorities, was imposed on 30 September 2015 by means of compliance notices. The majority of these standards will apply to these organizations 6 months from the date of the compliance notices.

1.4 The post of Commissioner was created by the Welsh Language (Wales) Measure 2011. The Commissioner may investigate any failure to implement a language scheme; interference with the freedom to use Welsh in Wales and, in future, complaints regarding the failure of organizations to comply with standards.

1.5 One of the Commissioner’s strategic objectives is to influence the consideration given to the Welsh language in policy and legislative developments. Thus one of the Commissioner’s principle functions is to provide comments in accordance with this remit, acting as an independent advocate on behalf of Welsh speakers in Wales who might be affected by these proposed changes. Such an approach is advocated to avoid any potential compromise of the Commissioner’s regulatory functions and should the Commissioner wish to conduct a formal review of individual bodies’ performance or the Welsh Government’s performance in accordance with the provisions made in the Measure.

2 Vision

2.1 Thank you for the opportunity to respond to this important consultation document, Form and Accessibility of the Law Applicable in Wales. It was interesting to read such a thorough and wide-ranging document. It is a document which is not only relevant to legislation, but many of the issues and principles discussed in it are extremely relevant to the world of work, education and training beyond the law. The recommendations resulting from your
consultation will have wide-ranging implications and influence in terms of setting working and drafting practices in Wales as a bilingual country.

2.2 My intention, in responding to the consultation, is not only to respond to specific questions which I believe are important in terms of the Welsh language, but also to set out a vision for an alternative approach to making bilingual legislation and, indeed, other public documentation in Wales. I have based this vision on the following principles:

- The Welsh language has official status in Wales in accordance with the Welsh Language (Wales) Measure 2011.\(^2\)
- The Welsh Government's vision in *A living language: a language for living*, its strategy document for the Welsh language, is to 'see the Welsh language thriving'.\(^3\)
- The National Assembly for Wales' official languages are Welsh and English and they should be treated on the basis of equality in accordance with the Government of Wales Act 2006, as amended by the National Assembly for Wales (Official Languages) Act 2012.\(^4\)
- In accordance with the Government of Wales Act 2006, all Welsh and English texts in all Assembly Measures and Acts which are in Welsh and English when enacted, and the texts of any subordinate legislation enacted in Welsh and English, are given equal standing.

2.3 Section 4.7 of the consultation document states that 'legislative drafting is the process by which policy is put into words.' This principle is integral to the process of drafting bilingual legislation. If a policy is not developed simultaneously in both Welsh and English, i.e. bilingually, then the process of 'putting a policy into words' is so much harder and will rely on translation as stated in sections 11.46-11.48 of the consultation document. It is difficult to imagine that the situation expressed by Dr Richard Crowe in 11.48, which highlights considerable reliance on translation, could be viable in the long term. It is also difficult to imagine that it meets the objectives of the Welsh Government's own policy with regard to the Welsh language, namely that 'more Welsh speakers use Welsh at work' or the legislation referred to in 2.2 above.

2.4 I therefore propose that policy and legislation developed by the Welsh Government need to be developed and drafted bilingually. There should not be a reliance on translation services to meet the requirements of developing Welsh legislation.

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\(^6\) 'the fact that policy is first formulated in the English language makes the full co-drafting model difficult if not impossible to employ and that it is, therefore, not surprising that no complete Bills have ever been co-drafted or drafted in Welsh first and translated into English. Although public consultation is bilingual, responses are translated into English, for the benefit of the non-Welsh-speaking officials. The policy instructions are drafted in English, as are the legal instructions. In both cases English is the common working language.' (11.48)

Bilingual policy development

2.5 In order to meet the objectives relating to policy and legislation referred to in 2.2, legislative approaches must be transformed, beginning with the initial process of formulating policies. The following needs to be done:

2.5.1 Ensure that the education system produces a bilingual workforce with high quality language skills in Welsh and English, as well as first-class policy development skills. Welsh universities clearly have a role to play in this in terms of preparing a bilingual workforce with suitable skills for a bilingual Wales, but it is also clear that the compulsory education system needs to ensure that pupils possess high quality linguistic skills before they begin university.

2.5.2 Bilingual policy making procedures should be implemented from the outset. An important part of this is ensuring that a high calibre, skilled bilingual workforce undertakes policy making functions within the Welsh Government in order to meet the requirements of those procedures. This includes policy officers as well as the lawyers who advise them.

2.5.3 These policy making procedures should include the development of bilingual terminology and vocabulary for these policy areas from the outset. The process of standardising terminology should not occur in a vacuum separate to the policy making process. The process of standardising Welsh and English terminology for a specific policy area should occur simultaneously as the basis of ongoing work. This should be undertaken in consultation with linguistic, content and legal experts.

2.5.4 Policy documents and instructions should be written in both languages simultaneously by officers who can write bilingual policies. There should not be a reliance on the need to translate every policy document as a second stage of producing bilingual policy documents. Welsh language responses to public consultations should not be translated into English either. Instead, officers should be able to interpret them in their original language.

Drafting bilingual legislation

2.6 The consultation document provides a variety of options for co-drafting bilingual legislation. You provide different options examined by the Canadian Government including the drafting of both versions by the same drafter (11.22.5), who would be equally proficient in both languages and would have the support of linguistic experts throughout the process. I believe that this is the option that the Welsh Government should seek to adopt, undertaking urgent planning to reach this aim in the medium-term. The current system of co-drafting used by the Welsh Government reflects the current position of the Welsh language; it does not reflect the Government's own neither policy aspirations nor the requirements of a bilingual Wales. In order to achieve this, the following would need to be done:

2.6.1 As with policy development, the education system needs to plan for this need by ensuring that bilingual lawyers are taught first-class drafting skills in Welsh and English. Jurilinguists and editors will need to be developed to assist with this process.
2.6.2 This process should benefit from the steps taken during policy development to standardise relevant terms in Welsh and English.

2.6.3 Drafters will also need to receive bilingual legal instructions from policy officers to enable them to make bilingual legislation.

**Technology**

2.7 Information technology should be maximised to facilitate the process of drafting policy and legislation.

2.7.1 Software for drafting bilingual texts, populated with sentences and terminology determined at the start of the policy development process, should be used.

2.7.2 An important step would be to use the texts developed at the policy and legislation making stage to develop a corpus of Welsh policy and legislation which could be used as a tool to assist with the process of formulating new legislation by populating the text drafting software identified above. On the basis of such a corpus, machine translation software could be developed relating specifically to Welsh policy and legislation. The development of such software would facilitate the work of translators and others who draft bilingual documents resulting from legislation. It could lead to significant financial savings as there would be no need to re-translate much of the text which is already bilingual.

2.7.3 The BydTermCymru website already publishes translation memories for bilingual legislation. Based on bilingual legislation and policy materials, translation memories and text versions of public policy documents and bilingual legislation should be developed and published on the Government's website. These should be published alongside the terms set out at the start of the policy development process. These resources would facilitate measures taken by other organizations who implement the legislation to develop other texts based on the policy and legislation. Please see in this regard the resources published by the European Commission's Directorate-General for Translation.

2.7.4 Qualified jurilinguists and editors would have to maintain translation memories, corpora and machine translation software in order to ensure that the software was both accurate and consistent.

**Interpretation**

2.8 As well as the need to develop bilingual policy drafters and makers, there is also a need to ensure that there are lawyers and judges who are able to interpret bilingual law.

2.8.1 Once again, the education system must produce a legal workforce who can interpret and handle bilingual legislation.

**Timetable**

2.9 Sadly, I do not believe that it will be possible to implement this vision in the short-term due to the prominence of the English language in the civil service in Wales, as outlined in sections 11.46-11.48 of this document. However, a robust
action plan must be put in place to ensure that such a situation can be achieved in the medium-term. Consideration should not be given to which practises are currently used and how they could be improved, but rather there is a need to plan towards a more far-reaching and strategic aim. This calls for a shift in culture, strategic planning and policy making to transform the situation.

Canada

2.10 Drafting bilingual legislation under bilingual policy instructions is not a new concept. The guidelines for drafting federal bills and regulations in Canada require that draft legislation is drafted bilingually. Those policy departments who introduce the legislation are required to:

- instruct in both languages
- respond to technical questioning from drafting officers in both languages
- evaluate the drafts in both languages.

3 The Commissioner's response to specific questions

3.1 Chapter 4 – Drafting and interpreting legislation

Consultation question 4-1: Do consultees think that the current practice strikes the right balance between simplicity and precision in legislation passed by the National Assembly?

3.1.1 I understand the desire to designate a specific chapter to bilingual drafting in chapter 11 to ensure that considerations relating to the formulation of bilingual legislation are dealt with appropriately. However, to some extent, the fact that the legislative drafting process is dealt with in a separate chapter to the bilingual legislative drafting process suggests that the formulation of bilingual legislation is not a consideration from the outset.

3.1.2 Of course, the emphasis on plain language and the use of clear words and sentences highlighted in the Office of the Legislative Counsel's drafting guidelines are principles that are to be welcomed. The guidelines also underline the differences in the way in which the Welsh and English languages are expressed where one rule could be relevant to the Welsh language and another to English, and such a discussion is, of course, welcomed. However, part 3, section 8 of the guidelines acknowledges that Welsh legislation is normally formulated in English and that Welsh language versions of the legislation are prepared by translators.

3.1.3 There is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. Adopting such a policy would highlight other considerations which could be included in the Legislative Counsel's guidelines.

Consultation question 4-10: Do consultees find the Interpretation Act 1978 and its Scottish and Northern Irish equivalents useful?

Consultation question 4-11: Do consultees think that there should be an Interpretation Act for Wales at this stage?

Consultation question 4-12: What do consultees think the benefits of an Interpretation Act for Wales would be? What would an Interpretation Act for Wales need to cover?

3.1.4 As you explain in 4.88, there would be benefits to an Interpretation Act for Wales in terms of establishing legal terminology in Welsh as well as definitions or pairings of Welsh and English language expressions. However, you state in 4.87 that you are not aware of any need to supplement English language terminology. As the laws applicable in England and Wales continue to diverge and as more laws are passed by the National Assembly, resulting in the establishment of new organizations specific to Wales, 11 I anticipate a situation whereby bilingual Welsh terminology

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11 Such as the Welsh Language Tribunal and my functions as Welsh Language Commissioner resulting from the Welsh Language (Wales) Measure 2011
would need to be defined relatively quickly. There are already some specific terms which are appearing in Welsh legislation, such as ‘llesiant’ or ‘well-being’, where a definition in both languages would be beneficial. I will be discussing the development of Welsh terminology further in my response to the questions in chapter 11, but I should state that I believe that terminology used in policy areas and legislation should be developed simultaneously rather than developing Welsh language terminology separately once English terms have been defined.

3.1.5 I believe that there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. This would move away from the current system whereby legislation is drafted in English and translated into Welsh in the majority of cases. Part of that would be the continued development of user-friendly Welsh legislative writing styles in both languages which clearly reflects the aim of the legislation. As highlighted already by the Office of the Legislative Counsel's drafting guidelines, Welsh phrases which avoid following English patterns slavishly are developing. Widening bilingual drafting of this kind could highlight further similar considerations, leading to the development of a more Welsh writing style which would digress from the English style used to legislate in England. That, in turn, would further necessitate an Interpretation Act for Wales.

3.2 Chapter 6 – Publishing the law: websites, textbooks and other sources

3.2.1 I have published a specific advice document on considerations regarding the Welsh language in terms of information technology, namely Technology, Websites and Software: Welsh Language Considerations. It offers a non-technical overview of the principles of developing bilingual technology, websites and software as well as more detailed guidelines for software technicians and developers. The advice given in this document is completely relevant to the development of online bilingual legislation databases and is relevant to the questions asked in this chapter about the form and structure of legislation websites and databases and searches in databases and online.

Consultation question 6-1: Should the Government’s responsibility for the publication of statute law free of charge be the subject of a statutory duty?

Consultation question 6-2: If so, should the duty extend to making the legislation available online?

3.2.2 As an organization which maintains an overview of legal developments with regard to the Welsh language in particular, gaining access to online legislation is now essential. You note that the authoritative version of statute is that of the Queen's Printer and there is no obligation to publish legislation electronically, such as on the legislation.gov.uk website. Producing and purchasing printed versions of legislation incurs a significant cost and there are clear benefits to publishing legislation online as it is possible to make amendments far quicker. There are also environmental benefits. I would welcome a means of ensuring that current statute is available
Consultation question 6-3: Do consultees think it important that an online legislation database for Wales clearly identifies the legislation of the United Kingdom Parliament, and parts of that legislation, that apply to Wales?

3.2.3 As an organization which maintains an overview of the law with regard to the Welsh language, it would be beneficial if there was an online legislation database for Wales that clearly identified the legislation of the United Kingdom Parliament, and parts of that legislation, that apply to Wales. Such a database would avoid any oversight and facilitate an understanding and interpretation of legislation that applies to Wales.

Consultation question 6-4: Do consultees attach importance to legislation being accessible through a general web search?

Consultation question 6-5: Do consultees consider that legislation should be accessible through a database’s internal search engine, including being searchable by subject matter?

3.2.4 I have published a specific advice document on considerations regarding the Welsh language in terms of information technology, namely *Technology, Websites and Software: Welsh Language Considerations*. Chapter 11 of the advice document provides guidelines on managing bilingual data, including storing, processing and presenting data to users. The advice given in this document is completely relevant to the development of online bilingual legislation databases.

3.2.5 I would welcome ways of facilitating the process of searching for legislation online and, as a result, it is important to allow searching for legislation through a general web search. It would be necessary to ensure that searches could be done in both Welsh and English.

3.2.6 Similarly, I would consider it sensible to allow searching of legislation through a database’s internal search engine. Again, it must be possible to undertake both Welsh and English language searches. For example, it is not currently possible to search for legislation in Welsh on legislation.gov.uk even though the website itself offers a Welsh language interface and that it is possible to see Welsh and English versions of legislation made in Wales.

3.2.7 In terms of subject-based searches, there would be clear benefits for those searching for legislation in a specific subject area. It would facilitate the process of finding legislation relating to specific subjects and allow researchers to identify other legislation relevant to the subject area in question of which they might not otherwise be aware.

Consultation question 6-6: Should Welsh language legislation be capable of being viewed alongside English language legislation on legislation.gov.uk?
3.2.8 The Government of Wales Act 2006 gives the same status to Welsh and English language legislation in Wales. This bilingual legislation is enacted by the National Assembly for Wales. For that reason, I believe that it should be possible to read Welsh language legislation alongside English language legislation on legislation.gov.uk. It is only by reading them together that they represent legislation in Wales.

3.2.9 Reading the text in either language would facilitate an understanding of the purpose of the legislation itself. For that reason, it should be possible to read Welsh language legislation alongside English language legislation. There are also practical benefits to reading Welsh language legislation alongside English language legislation as it would help those who are less confident in using the Welsh language in areas of law to do so, allowing them to refer to clauses in the English version too. By doing so, they would become more familiar with Welsh language legislative terminology and writing styles.

Consultation question 6-7: Do consultees agree that a database of legislation applicable in Wales should be organised by subject matter, following the Defralex model structure, with clear and detailed sub-divisions? Should this be done by way of links from Cyfraith Cymru/Law Wales to legislation.gov.uk or in a section of legislation.gov.uk?

3.2.10 I do not have any representations to make on these specific questions. However, I would welcome any efforts made to facilitate access to Wales-related legislation online.

3.2.11 I have also published a specific advice document on considerations regarding the Welsh language in terms of information technology, namely *Technology, Websites and Software: Welsh Language Considerations*. In developing a database of legislation applicable in Wales, I refer you to this advice document and specifically to chapter 11 which deals with storing, processing and presenting bilingual data.

Question 6-8: Should legislation available on an online legal database for Wales be editable by volunteer legal experts?  
Consultation question 6-9: If so, what safeguards should be put in place?

3.2.12 I do not have any specific comments to make with regard to allowing volunteer legal experts to edit legislation. However, if an open source editing system was developed which allowed volunteer legal experts to edit legislation, they would need to be able to update legislation simultaneously in both Welsh and English to the same standard in order to treat both languages equally. To allow this to happen, they would need to possess a high standard of legal and linguistic skills in Welsh and English.

Consultation question 6-13: Have consultees experienced difficulties due to the...
limited availability of textbooks on the law applicable to Wales?
Consultation question 6-14: What do consultees think can and should be done in order to promote accessibility to the law in the form of textbooks?

3.2.13 I welcome the Welsh and English language textbooks which deal with the law applicable to Wales which have been developed recently by the Coleg Cymraeg Cenedlaethol and the University of Wales Press. There is an urgent need to raise awareness of the difference between the law applicable only to Wales and the law applicable in England and Wales.

3.2.14 I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. As a result, there is an urgent need to develop a workforce which can develop Welsh policies and legislation. In order for this to happen, education and training policies in Wales need to respond to the needs of Wales' bilingual workforce. This would involve ensuring that an awareness of the law applicable to Wales is part of the curriculum at all levels. Discussions also need to be held with law and politics departments in England and Wales to ensure the availability of textbooks which highlight these differences and prepare a qualified legal and policy workforce to meet the requirements of bilingual legislation.

3.3 Chapter 7 – Consolidation
Consultation question 7-2: Do consultees think that there is a need for consolidation in Wales? If so, do consultees have a view on a particular area of the law in Wales that would benefit from a consolidation exercise?

3.3.1 I see the benefits of consolidating legislation, detailed in my response to questions 7-3 and 7-4 below. Moreover, as further legislation is passed in the Assembly and further disparity becomes evident between legislation in Wales and other parts of the United Kingdom, I believe that consolidation would become an even greater issue. As a result, if a decision was made to consolidate legislation, I believe that it would be better to start doing so as soon as possible rather than wait until more legislation is passed when the task could be more onerous.

Consultation question 7-3: We welcome consultees' views on the drawbacks and benefits of each of the models of consolidation described above, including pure consolidation and consolidation combined with law reform.
Consultation question 7-4: We invite consultees to provide examples and evidence of the problems they experience from a lack of consolidation, in terms of time or other costs. In addition, we ask consultees to provide examples and evidence of the costs and benefits they think would result from consolidation.

3.3.2 I do not wish to elaborate on the benefits and drawbacks of the different consolidation models. However, I do see potential benefits from consolidating legislation with regard to the Welsh language, outlined below:
In several places in chapter 7 of the consultation document, consolidation is identified as a means of simplifying and modernising language, of reconciling minor inconsistencies or ambiguities and that it has also, in terms of the tax law rewrite, for example, led to the development of drafting principles and guidelines that have since become part of the Office of the Parliamentary Counsel's guidelines. In Wales, it would not be a case of consolidating and translating the consolidation into Welsh in accordance with the current pattern of law making in Wales. Rather, bilingual drafters would need to undertake the consolidation simultaneously in both languages. This would highlight potential inconsistencies in terms of phrases within, and between, the two languages, and provide a way of setting patterns of expression for the consolidated legislation. Therefore, I see that consolidating the legislation which is applicable to Wales could lead to the development of Welsh legal writing styles as a result of consolidating the Welsh and English languages. This would facilitate the process of drafting Welsh language legislation in the future and contribute to the Office of the Legislative Counsel's legislative drafting guidelines. Indeed, the principles developed could, in turn, facilitate an Interpretation Act for Wales if one was proposed.

Chapter 12 of the consultation document discusses the need to standardise and determine Welsh language legal terms. Consolidation would be a golden opportunity to standardise those terms. It would also provide a means of identifying gaps in Welsh language terms which need to be standardised in legislation in England and Wales and, as a result, those that are currently in English only.

Consideration could be given to creating a corpus of bilingual laws in Wales through consolidation. This corpus could be used as a basis for developing bilingual legislative drafting resources and specific machine translation software for legislation. This would facilitate the drafting of new legislation in the future, would assist others who are formulating documentation resulting from the legislation and would help linguistic researchers to develop linguistic guidance. See section 3.6.19 for further information.

I should also emphasise that I do not believe that the consolidation process would be successful unless it was undertaken by bilingual drafters and editors. As a result, bilingual lawyers and linguists with high level linguistic and legal skills in Welsh and English would be needed to undertake the work.

3.4 Chapter 8 – Codification

3.4.1 I do not wish to comment on the specific questions regarding codification asked in chapter 8. However, I should state that, once again, I see the benefits of creating and stabilising bilingual legislative and drafting practices as a result of codification processes. These benefits are very similar to those referred to in my response to 7-2 and 7-3 above, namely:

- The development of Welsh legal writing styles resulting from joint codification in Welsh and English. This would facilitate the process of drafting Welsh legislation in the future and contribute to the Office of the Legislative Counsel's bilingual legislative drafting guidelines. Indeed, the principles developed could, in turn, facilitate an Interpretation Act for Wales if one was
proposed. If a law review programme was also adopted, as in New Zealand and as outlined in 8.108, there would be significant benefits in terms of considering issues such as modifying language to better express intentions; reconciling apparent inconsistencies; rectifying obvious mistakes and modernising the language.

- An opportunity to standardise Welsh and English language terms which already appear in legislation and to standardise Welsh language terms which can only currently be found in English in legislation concerning England and Wales.

- Further opportunities to extend bilingual legislative drafting practices. I do not believe that the codification process would be successful unless undertaken by bilingual lawyers, drafters and editors. Only by doing so can the law be truly codified, especially if any inconsistencies between the Welsh and English language versions of legislation need to be interpreted when formulating the codes. As a result, bilingual lawyers and linguists with high level linguistic and legal skills in Welsh and English would be needed to undertake the work.

- Consideration could be given to creating a corpus of bilingual Welsh legislation, based on codified law. This corpus could be used as a basis for developing bilingual legislative drafting resources and specific machine translation software for legislation. This would facilitate the drafting of new legislation in the future, would assist others who are formulating documentation resulting from the legislation and would help linguistic researchers to develop linguistic guidance. See section 3.6.19 for further information.

3.4.2 If there was an intention to undertake a codification process, I believe that it would need to commence shortly, rather than delaying any attempts which would mean that further legislation would be introduced in Wales which would further complicate the codification process. To reinforce this, you state that the range of law that needs to be codified in Wales is substantially less than that in England and Wales and that the National Assembly has not yet been equally active in legislating in every devolved subject area. This should make the codification process easier now before more legislation is developed.

3.5 Chapter 9 – Impact Assessments
Consultation question 9-1: We ask consultees whether a "legislative impact" assessment should be added to the list of impact assessments undertaken during the course of policy development in the Welsh Government?
Consultation question 9-2: We ask consultees whether a Welsh Legislative Design and Advisory Committee should be created?

3.5.1 I would welcome any new models proposed to ensure that legislation is planned well and is accessible and consistent from the outset. In particular, I would welcome reforms to the legislative planning process to ensure that the Welsh language is given full consideration during the process of preparing primary and subordinate legislation and that there is consistency in terms of the consideration given to the Welsh language in legislation. I would welcome the creation of a Welsh Legislative Design and Advisory Committee if it were a means to facilitate this. I detail below
some of the difficulties which have arisen so far with regard to the Welsh language in legislation and outline some of the recommendations made to Welsh Ministers in order to try and overcome those difficulties.

3.5.2 The Welsh Language (Wales) Measure 2011 gives official status to the Welsh language in Wales and creates a new legislative framework for the Welsh language, but the Measure itself cannot lead nor influence all areas relevant to the Welsh language and the Measure cannot be depended on solely to respond to all legal requirements relating to the Welsh language. As noted in section 9.26 of your consultation document, the Welsh Government is required, by statute, to undertake a legislative impact assessment with regard to the Welsh language. However, I should note that I have concerns about the effectiveness of these impact assessments. I am concerned that so many bills are being introduced without due consideration of their impact on the Welsh language during the process of developing policy and legislation and without reference to the language. Here are some examples:

- It was only as a result of intervention by the Environment and Sustainability Committee during the Bill's second passage through the Assembly that Welsh language provision was secured in the Planning (Wales) Act 2015.15
- It was only as a result of last minute intervention that local authorities and Local Health Boards are required to assess the range and level of Welsh-medium services needed to meet the care and support needs of people in the local authority area under the Social Services and Well-being (Wales) Act 2014.16
- The Regulation and Inspection of Social Care (Wales) Bill17 is currently being considered by the Assembly's Health and Social Care Committee. The Social Services and Well-being (Wales) Act 201418 above ensures that local authorities and Local Health Boards are required to assess the range and level of Welsh-medium services needed to meet the care and support needs of people in the local authority area. However, there is no clear and unambiguous reference to the Welsh language on the face of the Regulation and Inspection of Social Care (Wales) Bill as introduced to the Health and Social Care Committee. The only reference made is the inclusion of information in service providers’ annual reports about the way in which duties to meet standards in the Welsh Language (Wales) Measure 2011 will affect the way in which their functions are exercised. This shows a lack of consideration of the Welsh language and a lack of consistency between legislation in the same subject area.
- The statutory inquiry My Language, My Health: the Welsh Language in Primary Care19, that I undertook showed the need for improvements to Welsh language primary care services, including pharmaceutical services. The Welsh Government has committed to improving these services and has put measures in place to achieve this. Part 5 of the Public Health (Wales) Bill20 relates to the planning and provision of pharmaceutical services and there should be a clear link between the measures in place for Welsh language pharmaceutical services and Part 5 of this Bill. However, the Bill's supplementary documentation does not acknowledge any direct link and, without detailed consideration, there is a risk that any opportunities

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19 http://www.comisiynyddgymraeg.cymru/English/Publications%20List/Health%20inquiry%20full%20report.pdf
offered in Part 5 of the Bill to support the provision of Welsh language services will be lost.

3.5.3 In February 2014, I wrote to the First Minister Carwyn Jones AM with proposals for strengthening and reconciling the consideration given to the Welsh language when developing legislation. In February 2015, I gave evidence to the Constitutional and Legislative Affairs Committee on the process of legislating on these matters in the Fourth Assembly\(^ {21}\), underlining what I said to Carwyn Jones AM. I called on the Welsh Government to include specific references to the Welsh language in legislation. Indeed, the Welsh Government’s Welsh Language Scheme 2011-2016 includes a commitment to seize every opportunity to ensure that the Government’s primary and subordinate legislation supports the use of the Welsh language.

3.5.4 In accordance with section 4(2) (h) of the Welsh Language (Wales) Measure 2011, I recommended to Welsh Ministers that proactive steps should be taken to ensure that new legislation and subordinate legislation promotes the Welsh language by following the principles stated in the Welsh Language (Wales) Measure 2011, namely:

- Consider what impact, if any, the legislation would have on opportunities for other persons to use the Welsh language, or on treating the Welsh language no less favourably than the English language.
- Consider how legislation could be developed so that it has a positive impact, or a more positive impact, on opportunities for other persons to use the Welsh language, or on treating the Welsh language no less favourably than the English language.
- Consider how legislation could be developed so that it does not have any adverse impact, or has a less adverse impact, on opportunities for other persons to use the Welsh language, or on treating the Welsh language no less favourably than the English language.

3.5.5 I also recommended to Welsh Ministers that a framework should be put in place to ensure that the Welsh language is given routine consideration in legislation and that they should:

- review their internal arrangements for considering to what extent the Welsh language should be included in draft legislation
- establish a routine system for seeking views through public consultations on how Bills could have a more positive impact or less adverse impact on the Welsh language.

3.5.6 When Carwyn Jones AM, First Minister of Wales, who has responsibility for the Welsh language, appeared before the Communities, Equality and Local Government Committee on 24 September 2015, he acknowledged that, 'historically', the Welsh language has not been considered as 'something that was central' but that the situation is improving in his opinion. However, he stated: 'I believe it is true to say that civil servants also need to learn how important the Welsh language is to the Government’s work\(^ {22}\). It is true to say that progress has been made recently and that more consideration is given to the Welsh language now than in the past in terms of the legislative process. For example, in the Well-

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\(^{21}\) I understand that the Committee will be publishing its report on 8 October 2015.  
being of Future Generations Act\textsuperscript{23} ‘a Wales of vibrant culture and thriving Welsh language’ was one of the well-being objectives from the outset. My office has also held constructive discussions on the impact of proposed changes to Local Government and related Bills on the Welsh language.

3.5.7 These are positive steps but I would welcome ways of stabilising and formalising recent improvements to ensure that the Welsh language is given full and routine consideration as part of the legislative process, whether through the establishment of a Welsh Legislative Design and Advisory Committee or otherwise.

3.5.8 I should also note that the lack of consideration given to the Welsh language in legislation is not unique to Welsh legislation. There are some laws covering England and Wales which do not currently give due consideration to the Welsh language, such as the Births and Deaths Registration Act 1953; the Cremation (England and Wales) Regulations 2008 and the Registration of Marriages (Welsh Language) Regulations 1999. The order\textsuperscript{24} made to hold the Police Commissioner elections in 2012 did not include Welsh wording on the ballot papers. As a result, an emergency order\textsuperscript{25} had to be made 14 days before the day of the elections to ensure that bilingual ballot papers were available. However, several local authorities had already printed ballot papers and these had to be discarded and new bilingual papers printed at a significant cost. Sections 2.28-2.34 of the Electoral Commission's report\textsuperscript{26} on the elections highlight the difficulties and costs resulting from this oversight.

3.5.9 In March 2015, the UK Government announced the St David’s Day Agreement which resulted from discussions between political parties in Wales and Westminster. The report which formed part of the Agreement, namely \textit{Powers for a Purpose: Towards a Lasting Devolution Settlement for Wales}\textsuperscript{27} noted the Silk Commission's recommendations on Welsh Devolution\textsuperscript{28}. One of the Commission's recommendations was that the UK Government and Welsh Government should systematically assess and keep under review the way in which the Welsh language is used across government, in particular with a view to amending any United Kingdom legislation that does not give equal status to the Welsh language in Wales\textsuperscript{29}. Any consensus with regard to the Silk Commission's recommendations was noted in the report, and the UK Government stated how it would take action to implement those recommendations. One of the recommendations on which a consensus was reached was giving consideration to the Welsh language when legislating in Westminster. The Agreement noted that any legislation which does not give equal status to the Welsh language in Wales should be amended. There is a need to ensure that the UK Government's intentions are realised in this respect.

\begin{itemize}
\item \textsuperscript{23}http://www.assembly.wales/laid%20documents/pri-l9831%20-%20well-being%20of%20future%20generations%20(wales)%20bill/pri-l9831-e.pdf [sourced 29 September 2015]
\item \textsuperscript{26}http://www.electoralcommission.org.uk/__data/assets/pdf_file/0003/154353/PCC-Elections-Report.pdf [sourced 29 September 2015]
\item \textsuperscript{29}Recommendation 39 of the report.
\end{itemize}
3.6 Chapter 11 – Legal terminology and drafting

Consultation question 11.1: We invite the views of consultees as to how the process of standardising and keeping up to date Welsh legal terminology should be continued and funded. In particular, what manner of body should be responsible for performing this role?

3.6.1 You state in 11.4 that the English language has developed, over many centuries, succinct terminology to describe legal concepts. That terminology has not developed in a vacuum; it is the result of use and interpretation in courts throughout those years. Chapter 12 gives an outline of the situation of the Welsh language in courts since the Acts of Union of 1536 and 1542 and states that the Welsh language is now used extensively in courts in Wales. Its current use in courts and its increased use in legislation provides a domain whereby terminology can be developed through regular use and interpretation. Welsh legal terminology cannot be developed in a vacuum. Instead, it should be developed with very close links to the development and interpretation of legislation, in the same way as English legal terminology was developed.

3.6.2 I propose an approach to standardising legal terminology which:
   o requires judges, lawyers, translators and editors to refer problematic terms to one central location, explaining the context, quoting the legislation and explaining the difficulties they face
   o requires those charged with developing new policy and legislation to prescribe the terms used in Welsh and English at the start of the policy making process. Only by doing so can Welsh and English language terminology truly be standardised in order to be used in bilingually developed legislation. This is consistent with the evidence I gave to the Constitutional and Legislative Affairs Committee’s investigation into legislation in the Fourth Assembly.

3.6.3 Terminologists would need to be appointed to handle problematic terms from the aforementioned judges and lawyers. I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. These terminologists should advise policy and legislation developer as they standardise terms at the start of the process of developing bilingual policy and legislation.

3.6.4 Criteria for standardising legal terminology would need to be set and then acknowledged by the Lord Chancellor's Standing Committee (or another official organization) and used by terminologists when considering specific terms and by those charged with developing policy and legislation. It is essential that relevant organizations agree on the criteria and standardisation process to ensure that legal organizations acknowledge the terminology standardised in this way. Criteria for standardising terms have already been developed as part of the project undertaken by the Welsh Language Board.

3.6.5 Terminologists should consult with a panel of legal experts such as judges, lawyers and academics appointed by the Lord Chancellor's Standing Committee.

36/27

http://www.comisiynyddynmyrraeg.cymru/English/Publications%20List/eng82501.pdf [sourced 2 October 2015]
Terminologists would also need to consult with linguistic experts. The Coleg Cymraeg Cenedlaethol is currently in the process of establishing a Welsh Language Standardisation Panel\textsuperscript{31}. This Panel would be able to provide the necessary linguistic advice.

3.6.6 As the responsibility for developing policy and legislation in Wales lies with the Welsh Government, terminologists should work within the Welsh Government as an essential part of the bilingual policy making process and the process of drafting bilingual legislation. The Welsh Government should ensure that sufficient resources and funding are invested in the work of standardising and publishing terms for the benefit of users as outlined below in 3.6.7-3.6.10.

3.6.7 I should note three things with regard to the development and standardisation of legal terms:

- Although I acknowledge that the history of the Welsh language inevitably means that there is a lack of Welsh language legal terms, standardising Welsh language terminology should not be the only concern. Instead, standardising both English and Welsh language terms applicable to Wales should be a consideration. Wales’ new legislation, in itself, is developing new concepts in both languages. Consider, in this respect, the meaning now given to the terms ‘safonau’ and ‘standards’ with regard to the Welsh language or ‘llesiant’ and ‘well-being’. There are explicit concepts associated with these terms resulting from definitions of Welsh legislation. One of the main international principles pertaining to the standardisation of terms is the need for terms to reflect a concept. One of the purposes of legislation is to achieve policy aims and therefore it is essential to establish that policy concept from the outset and set out terms in Welsh and English that reflect that concept.

- Although some would argue that it would be best to establish a new panel to try and standardise these terms based on the pattern of previous panels such as the one established by the Welsh Language Board, I believe that it would be far better to establish a way of referring difficulties to terminologists so that it is possible to standardise terms in response to real situations and requirements.

- You state in sections 11.8 and 11.9 of the consultation document that there is a greater difference between spoken and written Welsh than between spoken and written English. I am unsure whether any reliable research has been undertaken to prove this assertion. What is more relevant perhaps is the difference between formal registers and more spoken registers in Welsh and English. When considering the process of standardising Welsh language legal terms, there would be a need to differentiate between these types of registers to ensure that complex legal concepts can be explained in a simpler way to those who do not work in the field of law. Perhaps, in this respect, the wording used in legislation and the wording resulting from its implementation would need to vary to ensure that the public understand the meaning of the legislation. In this respect, the joint process of standardising Welsh and English language terminology, as outlined above, would be even more relevant.

Consultation question 11-2: Accordingly, we invite the views of consultees as to

\textsuperscript{31} I am charged, in accordance with the Welsh Government’s strategy document for the Welsh language, \emph{A living language: a language for living}, with ‘co-ordinating developments in the field of terminology and Welsh place-names’. I established a Standardisation of Terminology and Creation of Dictionaries Coordination Panel to lead this work. One of the Panel’s recommendations was the need to establish a Welsh Language Standardisation Panel.
what, if anything, can be done to make Welsh legal terminology more accessible to legal professionals and to the public.

3.6.8 Only by exercising and using terms do we become accustomed to them. As I noted above, I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. In order for this to happen, there is a need to ensure, through the education system, that we have a workforce with suitable skills in Welsh and English to develop policies and legislation in both languages. There is now a body of Welsh-medium legislation that is continuing to expand. This body of legislation provides Welsh-medium core teaching materials for teaching students so that they become accustomed to using Welsh language legal terminology.

3.6.9 As well as the importance of education in ensuring that prospective legal workers are accustomed to Welsh language legal terminology, there must be a way of ensuring that professional workers and the public can access standardised terminology. If a system such as the one outlined above was established, which addresses terms and concepts already in use and plans for their future use in legislation, these decisions and their definitions would need to be published as soon as they are standardised. Ideally, one national search interface should be established for Welsh-English terms in all subject areas so that people are able to look in one place for terms which are currently found in a number of different sources. This would be a step towards avoid the proliferation of varied forms currently offered by different sources, which creates confusion for the user.

3.6.10 In the absence of such a search interface, the Welsh Government should use the BydTermCymru32 terminology database set up by its Translation Service to publish the terms standardised by terminologists as part of the process outlined in 3.6.1-3.6.5 above. They could come to an agreement with other organizations that publish sources of terms and vocabulary online such as Geiriadur Prifysgol Cymru (the Dictionary of the Welsh language), the Welsh National Terminology Portal and the Coleg Cymraeg Cenedlaethol, that terms standardised by the Welsh Government are also included in their databases to try and avoid a variation in forms between different sources.

3.6.11 The standardised terms and new concepts developed should be extensively marketed. In the first instance, these terms should be shared with the media to try and ensure that they are more familiar to the public. Geiriadur Prifysgol Cymru and the Oxford English Dictionary, for example, tweet and email about specific terms included in those dictionaries. It would be possible to use the same media channels, such as Twitter, Facebook, RSS updates and email, to highlight new standardised terms. Doing so would mean that people would be more likely to search for other standardised legal terms. As part of developments to publish Welsh legislation online, resources such as BBC Vocab33 which provides an explanation of the concept in question and the term in Welsh/English, would help people understand and become accustomed to new concepts and terms.

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Consultation question 11-3: We invite the views of consultees as to whether the form or presentation of bilingual legislation could be improved and, if so, in what ways.

3.6.12 I have published a Bilingual Design Guide\(^34\), which provides good practice for publishing bilingual material. The principles included in the document are relevant to the issuing of bilingual legislation.

3.6.13 With specific regard to Welsh bilingual legislation, I believe that it should be jointly published in both languages. The Government of Wales Act 2006 gives the same status to Welsh and English language legislation in Wales. This bilingual legislation is enacted by the National Assembly for Wales. As a result, I believe that it should be possible to read Welsh language legislation alongside English language legislation. It is only by reading them together that they represent legislation in Wales. Reading the text in both languages facilitates an understanding of the legislation itself.

3.6.14 There are also practical benefits to reading Welsh language legislation alongside English language legislation as it would help those who are less confident in using the Welsh language in the field of law to do so and would also enable them to refer to clauses in the English version. As a result, they would become more accustomed to Welsh language legislative terminology and writing styles.

Consultation question 11-4: Do consultees agree with our analysis of the objectives of bilingual drafting?

3.6.15 I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. This would meet the bilingual drafting objectives noted in section 11.50 of the consultation document. In particular, it would ensure faithfulness to the aim of those promoting the Bill and ensure that the meaning of the provision is consistent between the texts in both languages. It would also be a way of maintaining an efficient bilingual legal system and ensure that both languages are treated equally. As Keith Bush QC states, bilingual drafting also needs to ensure ‘a text in each language which conveys the same meaning as the other but which readers in each language perceive both to be equally natural and familiar use of language.’ Bilingual drafting by bilingual drafters who draft legislation in Welsh and English simultaneously following the receipt of bilingual policy instructions developed by bilingual policy makers would be a way of achieving that. Only by dealing with both languages simultaneously can one ensure that both languages are expressed suitably, reflecting the same meaning and conveying the purpose of the legislation.

Consultation question 11-5: Do consultees consider that the current arrangements for the allocation of drafting are satisfactory?

Consultation question 11-6: Does the system presently employed by the Welsh Government satisfactorily achieve the objectives of bilingual drafting?
Consultation question 11-7: Would there be any advantage in the Welsh Government’s seeking, as a long term objective, to move from its current model to a system of co-drafting?

3.6.16 I believe that the Welsh Government needs to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. This approach would mean a change in the arrangements currently used by the Welsh Government to produce legislation in Welsh and English and, as noted above in 3.6.14, I believe that this approach would be a way of meeting bilingual drafting objectives. I provided comments on drafting techniques to the Assembly's Constitutional and Legislative Affairs Committee as part of its investigation into Legislation in the Fourth Assembly, and my comments here are consistent with that response.35

3.6.17 As well as meeting bilingual drafting objectives, I see the following benefits to adopting this method of co-drafting legislation:

- Jointly developing a bilingual text can improve the expression and purpose of the policy and legislation itself. As highlighted by the Welsh Legislative Counsel's current guidelines, there are variations in patterns of expression between the Welsh and English languages. Therefore, by addressing the way in which policy aims are expressed through legislation in both languages, expression in both languages can be improved and policy objectives can be more effectively crystallised.
- As a result, it is also an opportunity to develop coherent and accessible legal patterns and writing styles in both languages.
- It would reduce anomalies between Welsh language and English language versions of legislation and subordinate legislation. I am aware of examples where there are differences between Welsh language and English language versions of legislation. Although not in the subordinate legislation itself, see page 3 of the explanatory note to the Welsh Language Standards Regulations (No 1) 201536 with regard to the Welsh Language Measure's policy making standards. In the explanatory note, 'pobl' is used three times in Welsh to reflect 'people' (twice) and 'person' (once) in English. In the legislation itself37, 'person/personau' is used in Welsh and 'person/persons' in English. Therefore, in the explanatory notes to the Regulations, only one example in both languages reflects the legislation itself.
- It would reduce the current reliance on the Welsh Government's translation services.
- It would extend opportunities for people to use their Welsh language skills in the workplace, in accordance with the Welsh Government's fourth strategic aim in its strategy document for the Welsh language, A living language: a language for living.

Consultation question 11-8: What roles do consultees consider appropriate for jurilinguists or editors to play in the preparation of bilingual legislation in Wales?

35 http://www.comisiynyddgymrwynglotraeg.cymru/English/Publications%20List/eng82501.pdf [sourced 2 October 2015]
3.6.18 I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. Jurilinguists and editors would have an important role to play in this respect in terms of supporting legislative drafters during the process of preparing bilingual legislation. I also believe that terminologists need to play a part in the process of developing relevant terminology in the subject area in question throughout the policy making and legislative drafting periods. These jurilinguists and editors would contribute to improving the quality of the legislation by:

- Ensuring that the texts are correct
- Ensuring linguistic consistency within and between texts in both languages
- Cross-referencing and ensuring consistency with other legislation and subordinate legislation
- Ensuring a consistent meaning within and between texts
- Providing ways of simplifying expression in both languages
- Providing advice on language and terminology
- Developing and evolving better drafting patterns
- Contributing to the development and updating of drafting guidelines that can be shared publicly
- Basing their work on research and awareness of the development of these languages
- The skills of these officers could be used as part of any steps taken to codify or consolidate legislation.

3.6.19 Bilingual jurilinguists and editors with high level linguistic skills in both Welsh and English would need to be trained to undertake these tasks. Welsh and English language university courses would therefore need to develop and highlight the importance of skills and knowledge with regard to the orthography and grammar of those languages. The Coleg Cymraeg Cenedlaethol is currently developing a masters qualification for translators. The inclusion of these elements in the qualification could be discussed with the Coleg and Aberystwyth University who will be responsible for providing the qualification.

Consultation question 11-9: We invite the views of consultees as to whether any other working tools would be of assistance in the production of bilingual legislation in Wales.

3.6.20 I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. Information technology could be of assistance in drafting legislation in this way and enabling others who use the tools produced to create their own texts based on the legislation and the policy work on which the legislation will be based. I outline below some of the developments in information technology which could be developed:

- An important step would be to use texts developed when making policies and legislation to develop a corpus of Welsh policy and legislation that could be used
as a tool for helping to make new legislation through populating text drafting software. This step should be considered when developing a database of Welsh legislation and consolidating and/or codifying legislation relevant to Wales.

- In order to support drafters, bilingual text drafting software, populated automatically with sentences and terminology set out at the start of the policy making process and set sentences noted in legislative drafting guidelines, could be used. The corpus of Welsh policy and legislation could also be used to populate this software and as a research tool to develop new legislation.

- On the basis of such a corpus, machine translation software could be developed pertaining specifically to Welsh policy and legislation. The development of such software would facilitate the work of translators and others who draft bilingual documents resulting from legislation. It could also lead to significant financial savings as there would be no need to re-translate much of the text which is already bilingual. Qualified jurilinguists and editors would be needed to maintain translation memories, corpora and translation software.

- Based on the bilingual legislation and policy materials, translation memories and text versions of public policy documents and bilingual legislation could be developed and published on the Government's website. These should be published alongside the terms set out at the start of the policy development process. Translation memories for some laws are already published on the BydTermCymru website, which also includes a database of terms developed by the Welsh Government's Translation Service. Alongside a corpus of legislation and machine translation software, translation memories and a database of terms would facilitate steps to develop other texts based on policy and legislation produced by other organizations who are charged with implementing legislation or other Government departments who develop guidelines and instructions based on policy work and legislation. Please see in this regard the resources published by the European Commission's Directorate-General for Translation.

3.7 Chapter 12 – The Interpretation of Bilingual Legislation

Consultation question 12-1: We welcome the views of consultees on the appropriate approach to the interpretation of bilingual legislation in English and Welsh.

3.7.1 Your discussion in chapter 12 emphasises the need to move towards a system of bilingual legislative drafting undertaken by one or more bilingual individuals. As noted in 12.33, 'improved legislative techniques that reduce the scope for inconsistency between language versions are evidently one way of addressing the problem'. I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. This approach would be an important step towards reducing the anomalies between Welsh and English language versions of legislation. It would improve the way in which legislation is expressed in both languages and the way in which policy objectives are crystallised. This, in turn, would reduce the possibility of a different meaning being reflected in the Welsh and English language versions.

Consultation question 12-2: Do consultees agree that all interpretation of the law enacted bilingually by the National Assembly or made bilingually by the Welsh
Government will need to take account of both language versions?

3.7.2 Based on your discussion in sections 12.51-12.55 of the consultation document, both language versions should be considered when interpreting any bilingually enacted law. Only by considering both languages simultaneously can bilingual legislation be interpreted. Furthermore, one could interpret that only by doing so can the purpose of the legislation be achieved and the equal status of both languages be maintained in accordance with section 156 (1) of the Government of Wales Act 2006, ensuring fair play is given to all parties involved in a case.

Consultation question 12-5: In interpreting a bilingual text should account be taken of its drafting and legislative history? If so, how is that to be ascertained? In particular, should greater weight be given to the language in which the initial draft was prepared?

3.7.3 The Welsh and English language texts of all Assembly Measures and Acts which are in Welsh and English when enacted, and the texts of any subordinate legislation which are in Welsh and English when made, should be treated to all intents as if they have equal status in accordance with the Government of Wales Act 2006. Welsh legislation is therefore enacted in Welsh and English. As Welsh legislation is bilingual and the same legal status is given to legislation in both languages, greater emphasis should not be placed on the language in which the first draft was prepared and the drafting history of the legislation should not be considered. This would not be consistent with the principle that both languages have equal status.

3.7.4 Potential anomalies arising between Welsh and English language versions of legislation would be a matter that should be dealt with by the courts, and it would be a means of crystallising and setting the objectives of the legislation. I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. A drafting approach such as this would be a step towards reducing any possible anomalies between Welsh and English language versions of legislation because, by simultaneously addressing the way in which the policy objective is expressed through legislation in both languages, expression can be improved in both languages and policy objectives can be more effectively explained.

Consultation question 12-6: Should expert evidence be admissible in relation to the meaning of the Welsh text? Alternatively, should the court be assisted by an interpreter or adviser? In the latter case, what should be the qualifications and precise role of the interpreter or adviser?

3.7.5 In practical terms, we are currently facing a situation whereby there are not enough judges who would be able to interpret bilingual legislation. Action needs to be taken to address this situation and try and increase the number of judges and lawyers who can work in both languages. In the meantime, there is room to consider the
need for linguistic advisers to advise judges. Translators undertake a specific role, namely to translate a text from one language to another. Advising judges would not therefore be part of their role. Instead, officers with high quality linguistic and legal skills would be needed. They would need to have close links with the process of standardising legal terms and an awareness of Welsh and English language linguistic and legal sources to which they could refer when advising on the meaning of terminology, vocabulary and specific clauses in Welsh and English. They would need linguistic and legal training before undertaking such functions.

Consultation question 12-7: Consultees are invited to express their views on the future needs for legal education and training to take account of bilingual legislation and how these may best be met.
Consultation question 12-8: In particular, should the study of bilingual legislation and its interpretation form a compulsory part of university law degree courses in Wales? If so, for whom should it be compulsory?

3.7.6 I believe that in Wales there is a need to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. Jurilinguists and editors would have an important role to play in this respect in terms of supporting legislative drafters during the process of preparing bilingual legislation. Terminologists would also need to play a part in the process of developing relevant terminology in the subject area in question from the policy making period to the legislative drafting period. In order to implement this approach to developing policy and drafting Welsh legislation, there is need for a bilingual civil service that can develop policies and draft legal documentation bilingually, along with lawyers and judges who can interpret legislation bilingually.

3.7.7 In essence, this approach emphasises the need to develop a bilingual workforce in Wales that has excellent Welsh and English language skills. Through its policy and curricular activities, the Welsh Government must put suitable plans in place to address this situation through the education system by offering pupils and students more opportunities to study through the medium of Welsh and reach a level of proficiency that enables them to work through the medium of Welsh and English in posts across the civil service. In this respect, we must remember that even though legislation is formulated by the Welsh Government and enacted by the Assembly, there are many other organizations in Wales who are responsible for implementing this bilingual legislation and many of those organizations will have linguistic responsibilities in accordance with the Welsh Language (Wales) Measure 2011. Therefore, not only is the Welsh Government responsible for developing a workforce with excellent Welsh and English language skills for its own benefit, but it is also responsible for doing so in order to allow other organizations to operate successfully and treat the Welsh and English languages equally.

3.7.8 In particular, in the context of this consultation, Welsh universities need to respond to the challenge of creating a bilingual legal workforce by providing academic courses which have been tailored specifically to meet the needs and reality of bilingual legislating in Wales. This means that law courses need to teach, exemplify
and interpret bilingual legislation and raise awareness of the considerations attached to bilingual legislating. This should be compulsory for students studying through the medium of Welsh and English as well as those who do not anticipate that they will live in Wales in the future. Further opportunities need to be offered to study through the medium of Welsh and a campaign needs to be held to highlight the need to be able to use both languages in the field of law. Furthermore, I believe that law students need to be given high level linguistic training to prepare them for undertaking bilingual legislative drafting or interpretation. This training could also be provided to students studying other relevant subjects. This training should be available through continuous professional development courses for people who are already practitioners in the field, based on schemes such as the sabbatical scheme which improves the skills of practitioners in the field of education\(^{40}\), and should also be part of law practice courses.

Consultation question 12-9: Should issues of bilingual interpretation be part of the teaching of statutory interpretation in all university law schools throughout the shared jurisdiction of England and Wales?

3.7.9 The Welsh Language Act 1993 states that the Welsh language should be treated no less favourably than the English language with regard to the administration of justice in Wales. No matter where their headquarters are located, whether in Wales or England, lawyers, barristers and judges may be required to deal with cases relating to bilingual Welsh law as well as the law of England and Wales. Beyond interpreting the law itself in the case of bilingual legislation, situations may arise whereby they would need to interpret and read texts written in Welsh only with regard to cases relating to Welsh law and the law of England and Wales. Lawyers, barristers and judges need to be aware of these considerations and understand their implications.

3.7.10 Students leave Wales to study in England and students from England come to Wales to study law and they could eventually be based in Wales or England. I therefore believe that university law schools across the shared jurisdiction of England and Wales should address issues relating to bilingual legislation and the administration of justice in Wales as part of the teaching of statutory interpretation.

4 Summary and acknowledgements

4.1 Through my work as Welsh Language Commissioner and during the process of imposing standards on public organizations in accordance with the Welsh Language (Wales) Measure 2011, the reliance on translation services to meet bilingual requirements has been highlighted. Although translation services are essential, we must also move towards more long term and strategic planning in order to develop bilingual working practices.

4.2 I believe that the Welsh Government needs to adopt the practice whereby bilingual drafters draft bilingual legislation simultaneously in Welsh and English, following the receipt of bilingual policy instructions developed by bilingual policy makers. In doing so, consideration should be given to the impact of legislation on the Welsh language

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and ways of promoting the use of the Welsh language. Legislative drafters would be
supported by jurilinguists and editors, and terminologists would play a role in the
process of developing relevant terminology in the subject area in question from the
policy making period to the legislative drafting period. These activities would be
based on information technology resources which themselves would be based on a
corpus of Welsh legislation. Bilingual resources, such as standard terms produced
during legislative drafting stages, would also be available to organizations and
individuals charged with interpreting and implementing the legislation.

4.3 I am aware that this vision and my responses to this document do not propose an
easy way of operating in the short term. It is also true that progress is being made as
more resources are published on the BydTermCymru website, for example, and that
some examples of improvement in terms of the consideration given to the Welsh
language as part of the legislating process have been highlighted recently. However,
further strategic planning and investment will be needed to build on the good work
undertaken so far, and this will require a significant cultural shift to achieve the aim of
bilingual legislating and to ensure that Welsh and English language legislation are
truely equal.

4.4 In order to achieve this position, the Welsh Government will need to set a timetable
for realising the vision I am proposing in the medium-term. It will need to continue to
implement its internal planning arrangements and ensure that its officers possess the
necessary skills; consider the contribution of information technology and put specific
procedures and guidelines in place. The Government will also need to do the
following through its education policies:

- Ensure that the education system in Wales is producing professional workers
  with high level Welsh and English language skills to discuss policy and
  legislate in both languages
- Ensure that there are more opportunities to study law through the medium of
  Welsh
- Conduct a campaign to promote the need for expertise in drafting and
  interpreting bilingual legislation
- Ensure that considerations associated with bilingual legislation form part of
  the curriculum in schools and universities in England and Wales.

4.5 Moving to such a position will be an extremely important step towards achieving the
Welsh Government's aim of seeing the Welsh language thrive in Wales. Indeed, it
would be a policy statement in itself.

4.6 Legal organizations such as the Law Commission, the Law Society and the Lord
Chancellor's Standing Committee also have a role to play. Training opportunities will
need to be made available so that workers in the field can develop their language
skills, and the importance of Welsh and English linguistic skills to work in the field of
law in Wales needs to be highlighted.

Close

4.7 Thank you once again for the opportunity to respond to this consultation. The law
has served to change people's attitudes and behaviour throughout the centuries. As
I mentioned at the start of my response, many of the issues and principles
discussed in the document are particularly relevant to the world of work, education
and training in Wales. I very much hope that the proposals resulting from this consultation will serve as a means of strengthening the position of the Welsh language in the field of law. I hope that they will also set important principles that will strengthen the position of the Welsh language throughout Wales and, in doing so, reinforce the changes that are afoot as a result of the Welsh Language (Wales) Measure 2011.