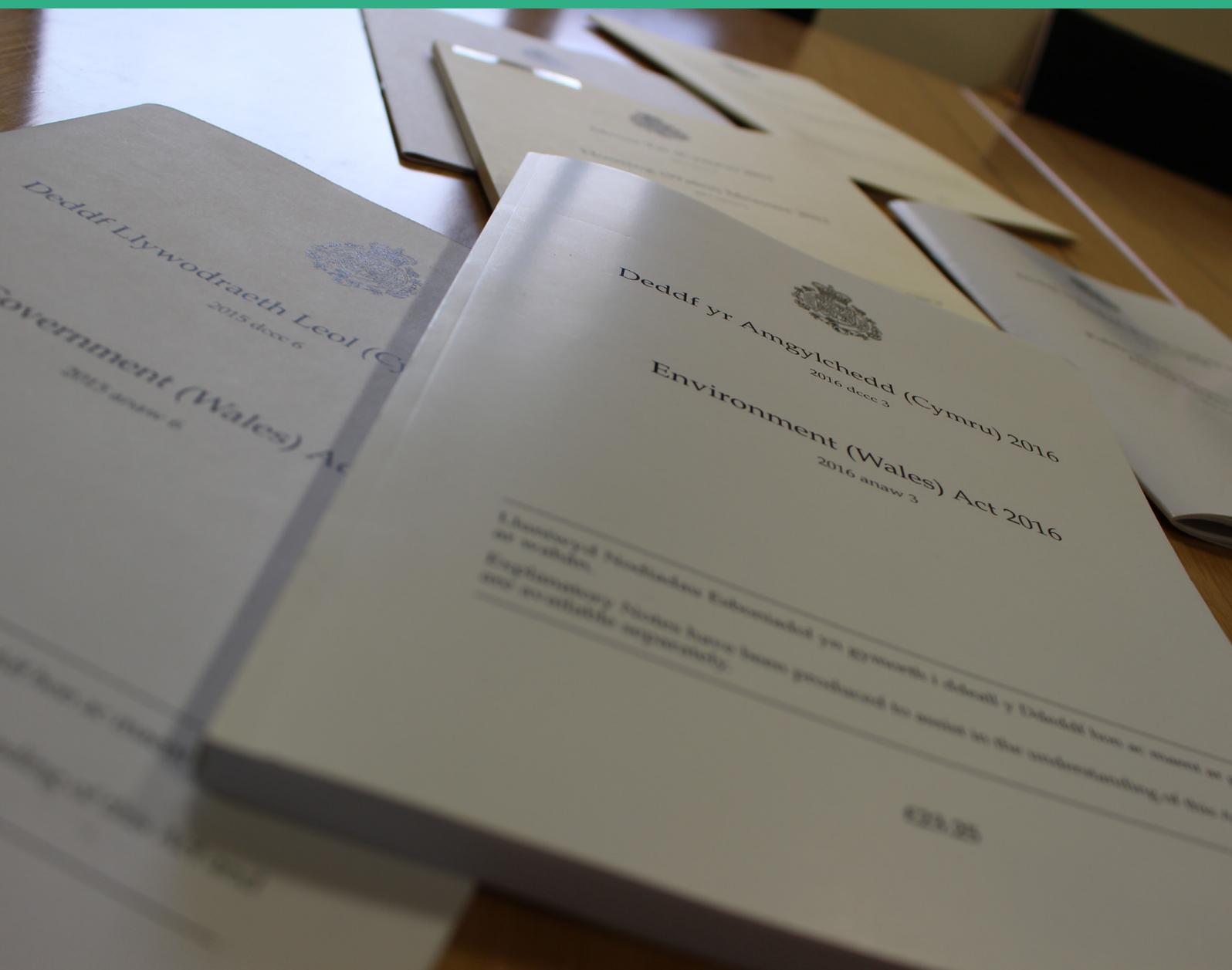


# Legislation (Wales) Bill

## Bill Summary

April 2019



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# **The Legislation (Wales) Bill**

## Bill Summary

April 2019

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## 1. Introduction

On 2 April 2019 the Stage 1 debate on the General Principles of the **Legislation (Wales) Bill** (“the Bill”) will take place in Plenary. The Counsel General is the Member in Charge of the Bill.

The Bill was introduced in the Assembly on 3 December 2018. The Bill makes provision about the interpretation and operation of Welsh legislation and requires the Counsel General and the Welsh Ministers to take steps to improve the accessibility of Welsh law.

There are four parts to the Bill:

- Part 1 imposes duties on the Counsel General and the Welsh Ministers relating to the accessibility of Welsh law.
- Part 2 makes general provision about the interpretation and operation of the Bill itself and of Welsh legislation enacted after Part 2 comes into force.
- Part 3 gives the Welsh Ministers powers to replace descriptions of dates in Welsh legislation, by replacing a date once it is known. Part 3 also gives Welsh Ministers to make subordinate legislation in different forms (regulations, rules and orders) and provides for the combination of subordinate legislation that is subject to different procedures in the Assembly, ensuring that the most stringent procedure applies.
- Part 4 contains general provisions, including consequential amendments to other legislation and provision about when and how the Bill comes into force.

**The Explanatory Notes** to the Bill provide definitions of consolidation and codification.

The Counsel General also published a **Draft Taxonomy for Codes of Welsh Law** which is intended to illustrate how Welsh legislation in most key areas could be organised.

## 2. Background

The background to the Bill has involved a number of inquiries and consultations including the Assembly's Constitutional and Legislative Affairs Committee's report on **Making Laws in Wales** (October 2015). It made a number of recommendations relating to the quality, preparation and scrutiny of legislation. In particular, it recommended that the Welsh Government develop a long-term plan for **consolidating the law in Wales**, and that the Counsel General work towards producing a **Welsh interpretation Act** that would be separate from the UK Parliament's **Interpretation Act 1978** ("the 1978 Act").

In 2016 the Law Commission published its report, **The Form and Accessibility of the Law Applicable in Wales**. It recommended that the Welsh Government should pursue a **policy of consolidating and codifying the law in Wales**. It made a number of recommendations relating to the process of consolidation and codification, including that the Counsel General should be required to present a codification programme and report on progress to the Assembly.

The Law Commission also recommended that the Welsh Government and the Assembly consider, and keep under review, the practical benefits of introducing an Interpretation Act for Wales, and made further recommendations relating to the quality, publication and availability of legislation.

The Welsh Government subsequently published a consultation document, **Interpreting Welsh Legislation: Considering an interpretation Act for Wales**, in June 2017. It sought views on the benefits of having a separate Welsh Interpretation Act and on the approach that such an Act should take. In a **Ministerial Statement** in June 2017 the then Counsel General explained that "Interpretation Acts cover a range of procedural issues and define commonly used expressions in legislation which can assist in resolving uncertainties about the meaning of particular legislative provisions." He further explained that Welsh legislation currently comes under the ambit of the 1978 Act, an Act of the UK Parliament which is nearly 40 years old. He therefore concluded that:

This Act requires modernisation and, importantly, does not recognise that our laws are made in both English and Welsh [ .....] I believe that we should develop our own interpretation Act – as has been done in Scotland and Northern Ireland – which is bilingual and tailored to our jurisdiction.

A second consultation, on the **Draft Legislation (Wales) Bill**, sought views on the approach taken in the draft Bill.

The responses to both consultations were considered in developing the Bill for introduction.

## 3. The Bill

### 3.1. Part 1: Accessibility of Welsh law

Section 1 of the Bill creates **a duty to keep the accessibility of Welsh law under review**. The duty is placed on the **Counsel General**. It is similar to, and intended to supplement (not replace), the obligation, in the [Law Commissions Act 1965](#), on the Law Commission to keep the law under review.

Section 1(2) provides a definition of “Welsh Law”:

- Assembly Acts and Measures and subordinate legislation made under them;
- other subordinate legislation made by the Welsh Ministers or the National Assembly for Wales when it had executive powers only, so far as it applies in relation to Wales; and other legislation or common law rules which could potentially be reformed or re-enacted by the Assembly.

Schedule 1 to the Bill contains definitions of various terms used in section 1(2), including “enactment”, “subordinate legislation” and “Wales”.

Section 2 requires the **Welsh Ministers and the Counsel General to develop a programme of action designed to improve the accessibility of Welsh law for each Assembly term**. Each programme should make provision for measures that are intended to **consolidate and codify Welsh law, maintain codified law and to facilitate use of the Welsh language**.

The Explanatory Notes to the Bill provide definitions of consolidation and codification. They state that **consolidating the law** generally involves bringing all legislation on a particular topic together, better incorporating amendments made to legislation after it has been enacted and modernising the language, drafting style and structure. It concluded:

In Wales consolidation of the law will involve for the most part re-enacting laws previously made by the UK Parliament, and doing so bilingually.

**Codifying the law** is intended to bring order to the statute book. This involves “organising and publishing the law by reference to its content and maintaining a system under which that law retains its structure rather than proliferating.”

Section 2(3) requires each programme of action designed to improve the accessibility of Welsh law to include activities intended to **facilitate use of the**

**Welsh language** in the law, in public administration and more generally.

Section 2(4) provides that each programme may also include proposals **to promote Welsh law** for example by raising awareness of significant changes in the law or the existence of Welsh law more generally.

Section 2(5) requires a programme to be laid **before the Assembly within six months of the appointment of the First Minister following a general election**.

This is intended to ensure that each government can be held accountable for what its programme achieves over an Assembly term.

Section 2(7) requires the Counsel General to make periodic reports to the Assembly on progress against the programme.

In an [Oral Statement](#) the Counsel General said that Part 1 of the Bill is “novel” in seeking “to put in place a system under which successive governments will be obliged to keep the accessibility of the law under review, and to take action to make it more accessible.” He went on to say that:

The long term goal is to create a well-organised Welsh statute book under which the law is categorised by Codes on specific subjects rather than simply by reference to when Acts and Statutory Instruments are made. The reason for taking the relatively unusual step of imposing a duty on the government itself is that the size and nature of the task is such that this must involve an enduring, long term, commitment. This means making consolidating the law and other related initiatives one of the priorities not only of this government but also of future governments.

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

Part 2 of the Bill makes provision about **the interpretation and operation of legislation** made by the Assembly or under powers it has conferred, and other subordinate legislation made by the Welsh Ministers and other devolved Welsh authorities.

The 1978 Act currently governs the interpretation and operation of legislation of these types. The **1978 Act will continue to apply to legislation that has been made before Part 2 comes into force**. Part 2 will apply only to legislation made after that comes into force (and to the Bill itself).

In [Plenary](#) on 4 December 2018 the Counsel General explained that:

Part 2 of the Bill follows a long tradition established by the UK Parliament in the nineteenth century when it first passed an interpretation Act. Statutory interpretation is the process of determining the meaning and effect of legislation and how it operates.

Section 3(1) of the Bill sets out the legislation to which Part 2 of the Bill applies. Part 2 applies to the Bill itself, to Assembly Acts that receive Royal Assent after Part 2 comes fully into force, and to Welsh subordinate instruments made after Part 2 comes fully into force.

The provisions in Part 2 of the Bill provide a set of presumptions about the meanings and effects that Assembly Acts and Welsh statutory instruments are intended to have. Section 4 of the Bill makes **provision about the operation of the rules in Part 2 of the Bill in relation to a particular Assembly Act or Welsh subordinate instrument**.

Sections 5 to 11 deal with the **meaning of words and expressions used in Welsh legislation**. Section 5 introduces Schedule 1 which includes a table of words and expressions. The terms listed in Schedule 1 are ones that are expected to be used in Welsh legislation and to have a consistent meaning.

Schedule 1 contains definitions of:

- terms relating to legislation (e.g. “Assembly Act”, “enactment” and “subordinate legislation”);
- terms relating to central government and public bodies (e.g. “Welsh Ministers”, “Natural Resources Wales” and “Minister of the Crown”);
- terms relating to criminal offences and courts (e.g. “summary offence”, “county court” and “High Court”);
- terms relating to the European Union and Brexit (e.g. “EU instrument”, “retained direct EU legislation” and “member State”);
- other basic legal terms (e.g. “land”, “person”, “Wales”, “writing” and “working day”).

Sections 12 and 13 relate to the **service of documents by post or electronically**. “Service” in this context describes the process of sending or delivering documents to a party in court proceedings. It applies only where an Assembly Act or a Welsh subordinate instrument provides for service by either or both of those methods. It is for individual Acts and instruments to determine whether those methods of service, or any others, are permitted in particular contexts.

Sections 14 to 19 relate to **powers and duties**. Section 14 provides that powers

conferred, and duties imposed on a person are continuous, and may be exercised from time to time and as necessary. It applies to all powers and duties conferred or imposed by Assembly Acts and Welsh subordinate instruments to which Part 2 applies, including powers and duties to make subordinate legislation.

Sections 20 to 24 deal with references in Welsh legislation to other legislation and documents.

Section 25 deals with duplicated offences which applies where conduct is an offence under two or more different Acts or instruments to which Part 2 applies or is an offence under one or more Acts or instruments to which Part 2 applies as well as the common law. The effect of the section is that a person whose conduct is a criminal offence can be prosecuted and punished under any of the law in question. However, section 25 makes it clear that the person can only be punished once for the offence.

Section 26 deals with Application to the Crown. The existing common law rule is that Acts and subordinate legislation do not bind the Crown unless:

- the Act expressly provides that it binds the Crown;
- the Crown is bound by necessary implication (though what amounts to a “necessary implication” for the purposes of the rule is not wholly certain); or
- other exceptions to the rule apply (for example where the Crown is a litigant in civil proceedings, it follows from the Crown Proceedings Act 1947 that the Crown will be bound by all relevant statutes relating to civil proceedings).

This means that in the absence of an express provision binding the Crown, the question of whether an Act binds the Crown needs to be considered by looking at the rule and its limits, and then determining whether the nature, context and content of the Act in question mean that the National Assembly must have meant for the Crown to be bound.

Section 26(1) replaces the common law rule with a statutory rule. In relation to Assembly Acts to which Part 2 applies, **it reverses the common law position so that the rule is that an Assembly Act does bind the Crown**.

Sections 27 to 29 refer to the **coming into force of legislation** and sections 30 to 35 deal with **the amendment, repeal and revocation of legislation**.

### 3.2. Part 3: Miscellaneous

Sections 39 to 37 makes provisions in relation to Welsh Ministers' powers to replace descriptions of dates and times in Welsh legislation; to make subordinate legislation in different forms and to combine subordinate legislation subject to Assembly procedures.

Section 36(1) gives the Welsh Ministers a power to amend Welsh legislation which contains a description of a date or time, by inserting a reference to the actual date or time once it is known. The power is available where a date or time is described by reference to the coming into force of an enactment or the occurrence of any other event. For example, if an Assembly Act refers to things done on or after "the day on which section 10 comes into force", and section 10 is brought into force on 1 January 2018, the Act could be amended to refer to things done on or after "1 January 2018".

The purpose of the power is to make legislation simpler and more accessible. Regulations under section 36(1) will mean that people reading the up-to-date text of the legislation will be able to understand references to dates or times without needing to refer to other legislation or documents (such as commencement orders).

Section 37 enables the Welsh Ministers to exercise powers to make regulations, rules or orders by making any other of those forms of subordinate legislation. For example, a power to make orders could instead be exercised to make regulations.

Section 37 is intended to remedy the situation where it is necessary to make a number of different regulations, rules or orders to give effect to a single policy. It applies to subordinate legislation that is made by statutory instrument, and its purpose is to enable different forms of subordinate legislation to be combined in the same instrument. Making a single statutory instrument may not only be administratively convenient but may also enable the legislation to tell its story more coherently.

Section 38 makes provision about the combination in a single statutory instrument of subordinate legislation made by the Welsh Ministers using different powers to which different Assembly procedures apply. It ensures that the instrument is subject to the most stringent of the procedures that would otherwise apply. For example, if a statutory instrument contains some provisions that would attract the affirmative procedure and some provisions that would attract the negative procedure, this section means that the affirmative procedure applies to the whole instrument.

### 3.3. Part 4: General

Sections 39 to 43 make **general provisions. Section 39** and Schedule 2 provide for the amendment of the 1978 Act, the Government of Wales Act 2006 and the Waste (Wales) Measure 2010.

Section 42 makes provision about when and how the Bill comes into force.

## 4. Financial Implications of the Bill

### 4.1. Summary

**The overall cost of the Bill falls within the range of £2.962 million to £2.984 million** (Present value: £2.498 million to £2.517 million). The RIA outlines £20 thousand to £42 thousand in transitional costs and £2.942 million in recurrent costs. The costs have been appraised over five years.

**There are no quantified savings associated with the Bill and no other costed financial benefits or disbenefits.**

#### Costs are associated with:

- Developing and reporting on a programme of accessibility
- Delivering the programme of accessibility
- Developing bespoke interpretation provisions for Wales

**All costs within the RIA are recorded as falling to the Welsh Government.**

### 4.2. Benefits

The RIA suggests the Bill could bring significant benefits for the public and private sectors in Wales and for private citizens by “progressively removing the barriers to efficient and effective use of the law”. Benefits have not been quantified.

The [Law Commission’s report into the Form and Accessibility of the Law Applicable in Wales](#), included an [Impact Assessment](#) that suggested that benefits of £23.75 million (best estimate) could be generated annually, through the introduction of similar legislation to the Bill. The Explanatory Memorandum (EM) to the Bill notes:

The Law Commission estimated that the benefits arising from implementation of their recommendations could amount to approximately £24 million per year. The Welsh Government has not sought to substantiate this analysis, and is not applying this figure as part of its own benefit analysis in this RIA. But this figure is, at least, a monetised quantification of the time that could be saved and is an expression, at least, of the extent to which resources could be deployed to do other things.

In [scrutiny with the Finance Committee on 17 January 2019](#), the Counsel General said that to quantify the costs and benefits of the Bill he had used the Law Commission’s Impact Assessment as “a starting point”. He noted the main drivers for the Bill was social justice and ensuring that “people can access the law, particularly in a context where legal aid is being cut”.

### 4.3. Specific Costs - Part 1: Accessibility of Welsh law

The costs in this Part of the Bill are associated with developing each programme and implementing that programme(s).

The most significant costs associated with the Bill are the ongoing costs **associated with delivering the programme of accessibility (£588k per annum, £2.942 million over five years).**

#### The annual cost includes:

- Drafting resource (equivalent to four Legislative Counsel). This team would deliver a consolidation bill approximately once a year - £377k
- Translation resource (equivalent to two Legislative Translators) - £93k
- One Management Band 2 and Two Management Band 3 posts to deliver the programme - £119k

Whilst the summary information in the RIA identifies costs associated with developing each programme (£15,000 to £37,000) as ‘transitional’ they recur each Assembly term. Costs include:

- Preparation and laying of programme for Assembly term (£12,000): Including identification and selection of activities for inclusion in the draft programmes (£4,500), drafting of the draft programme (£3,000), a consultation and analysis of responses (£1,500), and preparation and publication of final programmes (£3,000).
- Preparation of report on progress under the programme (£3,000 - £9,000): Once the programme is laid, the provisions under the Bill require the Counsel General to periodically report progress to the Assembly, potentially up to three times each Assembly term.
- Preparation of revised programme (£0 - £16,000): As many of the activities would be the same as those required to initially prepare the programme, the Welsh Government estimated the cost to be two-thirds of that cost (£8,000). It is likely that a programme would be revised no more than twice during the appraisal period (Welsh Government therefore suggest it is likely to be within £0 - £8,000 range)

#### 4.4. Part 2 and 3: Interpretation and operation of Welsh law

The Bill intends to develop new bilingual and modern interpretation provisions that will apply to Welsh law. The EM notes two activities in this respect:

- Preparation and delivery of guidance: development and publication of non-statutory guidance for drafters of subordinate legislation, to coincide with the coming into force of the interpretation provisions (intended for 1 January 2020). Welsh Government will incur costs of £5,000 in 2019-20 (absorbed within current resources).
- Inform those administering the law of the changes: The EM notes that the Welsh Government will need to make stakeholders and users aware of the changes brought about by the Bill. Whilst the EM notes that certain bodies will be alerted and that some of those bodies may choose to provide training or other information on the legislation, no costs are recorded against this activity.

#### 4.5. Table 1: Summary of costs associated with the Legislation (Wales) Bill

Activity	Cost (one-year)	Cost over appraisal period (5 years)
Delivering a programme of accessibility		
<i>Drafting resource (4 x Legislative Counsel)</i>	<b>£376,900</b>	<b>£1,884,500</b>
<i>Translation resource (2 x Legislative Translators)</i>	<b>£93,000</b>	<b>£465,000</b>
<i>Resource to Deliver programme (1 x MB2, 2 x MB3)</i>	<b>£118,500</b>	<b>£592,500</b>
<i>Total (ongoing)</i>	<b>£588,400</b>	<b>£2,942,000</b>
Developing and reporting on a programme of accessibility		
<i>Identification and selection of activities for inclusion in the draft programme</i>	<b>£4,500</b>	<b>£4,500</b>
<i>Drafting of the draft programme</i>	<b>£3,000</b>	<b>£3,000</b>
<i>Publishing the programmes for consultation and analysis of responses</i>	<b>£1,500</b>	<b>£1,500</b>
<i>Preparation and publication of final programme</i>	<b>£3,000</b>	<b>£3,000</b>
<i>Preparation of report on progress under the programme<sup>1</sup></i>	<b>£3,000 - £9,000</b>	<b>£3,000 - £9,000</b>
<i>Preparation of revised programme<sup>2</sup></i>	<b>£0 - £16,000</b>	<b>£0 - £16,000</b>
<i>Total (per Assembly term)</i>	<b>£15,000 - £37,000</b>	<b>£15,000 - £37,000</b>
Develop bespoke interpretation provisions for Wales		
<i>Preparation and delivery of guidance</i>	<b>£5,000</b>	<b>£5,000</b>
<i>Total (One-off Transition)</i>	<b>£5,000</b>	<b>£5,000</b>
<i>Total cost of Bill</i>		<b>£2,962,000 - £2,984,000</b>

<sup>1</sup> Range = low: once each assembly term, high: twice during each assembly term

<sup>2</sup> Range = low: no revision during assembly term, high: twice during each assembly term

Source: [Welsh Government Regulatory Impact Assessment - Legislation \(Wales\) Bill](#)

## 5. Scrutiny

The Bill was referred by the Business Committee to the **Constitutional and Legislative Affairs Committee (the Committee)** for Stage 1 scrutiny.

The Counsel General, as Member in Charge of the Bill, appeared before the Committee on 10 December 2018 and on 18 February 2019. Evidence was taken from stakeholders including the Law Commission, Citizens Advice Cymru, Swansea Law Clinic, academics and representatives of the legal profession on 14 and 28 January 2019.

The Committee **held a public consultation** which closed on 21 January 2019. The Committee received 12 responses as part of that consultation. The National Assembly's Outreach Team also interviewed a number of stakeholders, and videos of those interviews are available on the Assembly's **website**.

The Committee's **Stage 1 Report** was published on 26 March 2019. In it, the Committee recommended that the National Assembly agrees the general principles of the Legislation (Wales) Bill.

However, it made other recommendations pertaining to implementation and monitoring of the legislation. It recommended that the Counsel General should clarify how he intends to make non-legislative measures a central part of improving the accessibility of Welsh law, including:

- setting out what discussions he has had with potential legal commentators, and what the Welsh Government expects from such legal commentators;
- how he thinks that Welsh language expertise can be developed;
- how the Welsh Government will go about educating the public so that they know what their rights and obligations are in Welsh law.

The Committee also recommended that the Counsel General should commit to a review of the legislation at the mid-way point of the first Assembly term in which the legislation takes effect, i.e. by the end of 2023, and that he should, during the Stage 1 debate, provide a clear explanation of what is meant by "the accessibility of Welsh law".

Several recommendations were made suggesting amendments to the Bill. The Committee recommended that the Bill should be amended so that the Welsh Ministers and Counsel General are required to implement a programme of

accessibility prepared in accordance with section 2. In addition, the Committee recommended that the Bill should be amended so that proposed activities that are intended to promote awareness and understanding of Welsh law should be included as a duty under section 2(3) rather than being discretionary under section 2(4), and that section 2(7) should be amended so that the Counsel General is required to report to the National Assembly on an annual basis on the progress made under a section 2(2) programme.

Other recommendations made were that the Counsel General should issue a statement clarifying his proposals and intentions for codifying Welsh law and that the Business Committee should seek the views of the Constitutional and Legislative Affairs Committee as it prepares new Standing Orders for consolidation Bills, codification and law reform Bills.

The Committee made a total of 14 recommendations. The Counsel General is expected to respond to those recommendations during the Stage 1 debate.

Should the General Principles of the Bill be agreed too, the Bill will progress to Stage 2 (amendment proceedings in Committee).

The Finance Committee also undertook scrutiny of the financial implications of the Bill on 17 January 2019 and published its **report on the Bill** on 26 March 2019. The Finance Committee made four recommendations to the Welsh Government, including in regard of costing and analysing any efficiencies that might be generated through the Bill. The Finance Committee also made recommendations around costing review activity, for the Welsh Government to provide further information on the implications for policy staff not costed in the RIA and for the Welsh Government to provide further information on how it intends to publicise the Bill.

The Finance Committee also came to one conclusion in its report, noting that it was concerned as to the timing of the Bill and commitment of resources to achieve the objectives of the Bill in the context of the uncertainties and resources required around Brexit. However, the Committee accepted that implementation of the Bill would provide benefit when considering any legislative changes due to Brexit.